Plethora of AVC Activity Marks First Week in November

By Bill Walker

"Busy" best describes Article V Convention activities in the first week of November. The week featured filings in two court cases, a report on the current status of Article V advocacy groups and a request by a member of Congress for inspection of Article V Convention state applications currently in the custody of the National Archives and Records Administration (NARA).

Sibley, Government File Court Documents

Filings in the Sibley v McConnell/Ryan Article V Convention lawsuit continued in two courts, the Superior Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit in the first week of November. Maryland attorney Montgomery Sibley originally filed his suit demanding Congress call an Article V Convention as required by the Constitution against Senator Majority Leader Mitch McConnell and Speaker of the House John Boehner last April. Boehner subsequently resigned his office in October. Under court rules newly elected Speaker of the House Paul Ryan was automatically substituted for Boehner.

The government filed a motion for leave to file a reply in Superior Court of the District of Columbia in response to papers filed earlier by Sibley. Appeal filings of the remand decision from the United States District Court for the District of Columbia issued just a week before were more plentiful. In compliance with the appeals court scheduling order of required documents and deadlines issued in late October, Sibley filed a certificate of parties and a motion for summary affirmance and oral argument.

Sibley also filed with the appeals court an exhibit of a letter sent to Speaker Boehner and Senate Majority Leader McConnell in March this year. The exhibit presents copies of the 35 state applications from 35 states both summarized in table form as well as copies of the applications taken from the Congressional Record. Under the terms of the Constitution Congress is obligated to call an Article V Convention if two-thirds of the state legislatures submit applications for a convention call. The Constitution prescribes no other term except two thirds submission which presently is 34 states.

The government has fought the Sibley lawsuit at every turn. First the government attempted to remand the case to United States District Court so it could be dismissed on standing issues. However this backfired as Sibley admitted from the beginning he lacked standing. Under federal law this meant the District Court lacked jurisdiction and an obviously reluctant federal district court judge remanded the case back to Superior Court. Speaker Ryan's government attorneys elected to appeal the decision to the United States Court of Appeals for the District of Columbia Circuit. Senate Majority leader McConnell's lawyers elected to pursue dismissal at the Superior Court level and therefore did not appeal the remand decision.

Federal court rules automatically name Speaker of the House Ryan as a party in the Sibley lawsuit. Technically Sibley is suing the office of speaker of the house and office of senate

majority leader rather than the individuals holding these offices. However federal law provides that Ryan can opt out of the suit if he desires. He shows no indication of doing this. This means Paul Ryan has elected, for whatever reasons, to publicly declare his opposition to obeying the Constitution of the United States. Efforts to contact him or his attorney for purposes of clarification and confirmation have been spurned. Ryan's office provides a message machine; a message left on it has gone unanswered. William Pittard, Ryan's government legal counsel, has not replied to a confirmed receipt email sent him.

Part of the defense used by Pittard in District Court was the introduction of Coleman v Miller. Given that Ryan has not expressed any opposition to his being associated with this case or any part of its defense it is correct to state Mr. Ryan supports all parts of the Coleman v Miller decision. This includes Supreme Court endorsement of total congressional control of the amendment process (including the convention) and authority to militarily overthrow state legislatures in order to achieve a desired ratification vote. Ryan may yet step forward to clarify whether he truly supports these sweeping powers. However, assuming he does not, this position in an election year is political poison. Ryan's position is now a matter of public record. His support of Coleman can be raised by whatever political opponent he faces in the upcoming election. Urging dictatorial rule by a government he now leads might be a hard pill for voters largely dissatisfied with government expansionism to swallow.

Judge Throws Out AVC Lawsuit from Federal Inmate

The first week of November saw Gary Lee Smith, an inmate at the Federal Correctional Institution in Seagoville, Texas become the latest person to file a federal lawsuit demanding Congress call an Article V Convention. Smith's lawsuit is the fourth Article V Convention lawsuit filed against Congress. The first two, Walker v United States, 2000 and Walker v Members of Congress 2004 were filed by this author. Walker v Members of Congress was appealed to the Supreme Court. The third suit, Sibley v McConnell/Ryan filed by Maryland attorney Montgomery Sibley, is currently in process in two federal courts, the United States Court of Appeals District of Columbia Circuit and the Superior Court of the District of Columbia.

According to a story published on November 4 in the Washington Times, Smith's complaint was dismissed by District Court Judge Richard J. Leon. Judge Leon determined Smith lacked an element of standing to establish court jurisdiction. "The plaintiff does not show he has suffered an injury or the defendants' action (or inaction) otherwise affects him personally." In his complaint Smith provided citations from the Congressional Record showing 49 states have applied for a convention. The Constitution mandates a convention call if 34 states (two thirds) submit applications. The texts of the 766 applications from 49 states already submitted to Congress can be read here.

Ordinarily this would be all there is to report on this lawsuit. However, Smith's one day lawsuit contained several unusual circumstances which may be explained by someone more versed in federal law than I but from my own perspective of having filed federal lawsuits seems a bit odd. Based on information contained in the court docket (Page one Page two), the official record of

all court papers filed in any case, I've discovered what seem to be several anomalies in the Smith case.

First, Federal Rules of Civil Procedure, (FRCP) the manual of court rules which are, in fact, federal law which "govern the procedure in all civil actions and proceedings in the United States district courts", require anyone filing a civil complaint to serve notice of the suit on the party or parties being sued in federal court. Further the rules mandate proof of service must made to the court. Proof of service is written evidence provided to the court by the plaintiff, Smith, that official papers notifying the parties named in the lawsuit of the filing of the lawsuit in court were presented to them under the terms and conditions described in the rules.

In Smith's case, according to court rules, this means Smith filing service on each member of the United States Congress as he sued all members collectively as well as several notifications to the Attorney General's office. The court rules require a judge allow a party (Smith) "a reasonable time to cure its failure to…serve a person required to be served under Rule 4(i) (2)." Rule 4(i) (2) deals with servicing all defendants, in this instance serving papers on all members of Congress each of which must be served unless by motion or court initiative the court waives this requirement which is unlikely. (This means Smith has file notices of service on every member of Congress which apparently he did not. Take my word on this one it is a lot of work. I had to serve 535 notices of service along with 535 copies of my complaint in Walker v Members of Congress).

In Smith there is no record of such a motion or court action relieving Smith of this court mandated burden. Under the rules if a plaintiff fails to provide proper service, then the court must dismiss the action—but only after 120 days have elapsed since its filing. In fact, the court record fails to show any service whatsoever by Smith. This is not entirely surprising give Judge Leon only allowed the suit to exist one day. Thus the correct ruling on the part of Judge Leon, according to court rules, would be to give Smith time to correct his service deficiencies assuming they exist. Court rules appear to support the judge could not dismiss the case if proper service was in question for at least 120 days since filing and only after giving the plaintiff Smith an opportunity to correct his error. Instead the suit was dismissed without this court mandated deficiency being addressed or even giving Smith time to address it.

Second, according to court rules the responding party, in this case the United States, has 60 days to respond to the suit by filing with the court and sending to the plaintiff what is known as an "answer" to the plaintiff's (Smith's) complaint. It is important to note the rules reserve to the defendant the right to raise the defense of lack of subject-matter jurisdiction which is what Judge Leon based his dismissal. The rules allow for several filings of different descriptions to be exchanged between plaintiff and defendant before the court issues its ruling.

As the Smith suit was filed and ruled on in a single day by Judge Leon neither the United States or Congress was given any time to answer the complaint. Therefore it is proper and correct to state Judge Leon acted in their stead. ("Stead: the office, place, or function ordinarily occupied or carried out by someone or something else"—Webster's Dictionary). While it can be predicted based on past actions what the reaction of the United States and Congress might have been to the Smith suit there is no way for certain to determine it. Equally, Judge Leon had no way of

knowing what the United States would do. As the judge interposed himself in what court rules usually assign to the defendant in most federal civil lawsuits, it appears Judge Leon ignored the court rules "govern[ing] the procedure in all civil actions and proceedings in the United States district courts" in regards to service of complaint and defendant's obligation to answer.

Third, according to case docket records and civil filing records, Smith filed his suit on October 28, 2015. According to these same records, Judge Leon wrote his decision (see last page of ruling showing handwritten date and page 2 of court docket) on October 6, 2015. The judge did not release his decision until the first week of November. The reason for this delay is unclear. Perhaps it was a clumsy attempt at cover up of obvious judicial prejudice. On the surface at least it appears, according to the official court records, the judge served both as defendant and jurist in this case. He apparently failed to permit sufficient time for the United States to respond to the suit as required by court rules. He did not follow rules of service prescribed by the rules nor permitted Smith time to correct any errors of service as required by court rules. Finally, according to court record, Judge Leon wrote his decision dismissing Smith's complaint for lack of standing 22 days before Smith filed the suit in federal district court.

This raises another issue; supposedly, federal judges are randomly picked regarding the cases they are assigned. The case is only assigned to a judge after it is filed by a plaintiff. This is to prevent obvious judge shopping on the part of plaintiffs and to ensure judicial objectivity. If such procedure was in place, how then did Judge Leon write an opinion on a case that was not filed in court and thus assigned to him until 22 days after he wrote his opinion?

It is possible this author is not aware of other laws and court procedures that apply when a federal inmate files a federal civil lawsuit that explains these apparent anomalies. It is possible, however unlikely, the court record is inaccurate and fails to reflect all legal filings, dates and so forth of this lawsuit. In which case, those responsible might find themselves facing criminal charges as they are not a "party" to the suit the only immunity given by the law for such incompetence. However, assuming the clerk's office is accurate there appears to be no rule or law exempting Smith from FRCP rules and the due process they create. The exemptions cited in Rule 81 of FRCP do not address any of the issues raised here. Indeed, if such exemption existed, you would expect the authority of a federal judge allowing that judge to make a ruling on a federal lawsuit not yet even filed in court by any person, inmate or not, to be clearly spelled out in court rules as well as federal law.

The companion manual, the Federal Rules of Criminal Procedure is no help. The only reference I could find in those rules regarding filing of papers, Rule 49 states both as to service and filings papers, "must be made in the manner provided for a civil action." Therefore according to both court procedures, the applicable rules of filing court papers and issuing service in the civil FRCP applies to both criminal and civil court procedures. Clearly therefore the court rules apply to federal inmates. This fact was apparently ignored by Judge Leon.

This does not end the matter. Judge Leon's dismissal was based on Smith failing to prove an injury or that "defendants' action (or inaction) otherwise affects him personally." As previously stated, as the United States was not given the opportunity to respond to Smith's complaint, it is not certain if the government would have raised this objection.

It is a well-known fact federal inmates have automatic standing in criminal prosecutions. This is because if standing were not automatic the courts would face an endless lack of subject matter jurisdiction complaints from criminals attempting to have their charges dismissed on this basis. As there is no general provision (save, for example, counterfeiting and treason) in the Constitution granting Congress the right to enact criminal laws, the granting of automatic standing has thus far managed to nullify court challenge by removing the basis for the challenge as federal courts can always assert they have subject matter jurisdiction as the defendant in the case has standing. The anomaly of standing in civil law predicated on the plaintiff having standing but based on the defendant having standing in criminal law is ignored by the courts. The power to create civil law is described in the Constitution (see generally the itemized powers in Article I which require civil laws to execute those powers under the necessary and proper clause) but nothing in the Constitution textually and expressly grants Congress constitutional authority to create general criminal law save for the specific crimes such as counterfeiting and treason. Thus a legitimate inquiry is whether the United States has standing in criminal prosecution can be asked.

The question is whether any criminal act whose violation is not authorized by actual constitutional text can be addressed by Congress with the creation of criminal law as express authority to create general criminal law outside of specific offenses described in the Constitution apparently does not exist. This enabling language appears to have been deliberately left out of the constitutional text as such power is neither itemized in Article I nor added anywhere by the amendments. The judicially created doctrine of implied powers is not helpful; to assert something is implied first requires that something from which the implied powers are derived is expressed.

True, in some amendments such power is implied such as in the 16th Amendment where Congress is given the power to lay and collect taxes on income (and therefore force the collection of such taxes and prescribe penalties for those not paying income taxes) but again such power is limited to a specific crime and only created by means of specific constitutional language. True, the first ten amendments reference criminal trials and prosecution but an exact reading of the language only authorizes trial (and thus constitutional protection) for crimes at the state level, not federal. No amendment language actually authorizes Congress to create general criminal law nor even states the protections described in the amendments are intended as protection for federal criminal prosecutions as such action by the federal government (outside of treason and counterfeiting and other described crimes) was apparently not contemplated by the Founders as they failed to grant the power to create general federal criminal law to the federal government. In short there is no “necessary and proper” clause for the creation of federal criminal law. (See Fifth and Sixth Amendments).

This raises a final point. Nowhere in the Articles of Confederation was the power to create general federal criminal laws (except for piracy, crimes on the high seas and (implied) regulation of naval and land forces—and again such power was specifically limited to specifically named criminal acts) ever created. This means there was no precedent for such general power. Thus, the 1787 convention had to create it if they intended it exist in the Constitution. Apparently, for whatever reasons they did not feel such general authority was either necessary or proper. Given

the recent history of tyrannical use of criminal law by the king it is no surprise the Founders apparently were reluctant to grant these same powers of general criminal law to their federal government. Apparently, based on the language of the amendments, they intended all criminal issues be addressed at the state level which obviously they felt more comfortable with. So it appears the Founders intended the criminal law powers of the federal government to be limited only to those specific violations expressly described by constitutional language.

This court action of automatic standing raises another issue. The Constitution mandates all citizens shall have the same immunities and privileges. How can one citizen be granted automatic standing while another citizen is denied the same privilege? The issue of standing appears to refute that constitutional guarantee of equality as the courts claim a right to meter standing to sue according whatever standards they establish bringing the doctrine into constitutional doubt based on violation of equal protection. More to the point can the court, having granted a federal inmate/citizen standing in one area of law deny the same privilege in another area of law to that same inmate/citizen when both areas of law are authorized by the same Constitution assuming text in the Constitution grants Congress the right to create criminal law in the first place?

In answer to Judge Leon's ruling, or assuming the United States raised the issue in its answer, Smith might have presented violation of equal protection arguments as a legal response. Whether they would have satisfied an objective, unbiased judge not prone to issue a ruling 22 days before the suit was filed, is open to debate. Of course the courts have created a series of issues in the doctrine of standing. Possibly Judge Leon only cited one part in order to justify dismissal. However, as none of the other standards were described, it appears only lack of injury prevented Smith's case from moving forward thus forcing Judge Leon to address the merits of the case, something judging by his final comment in his ruling, he obviously did not want to do.

Moreover Smith, as a federal inmate, is in a unique situation which, had he had the opportunity to present it, may have rebutted the judge's objection in yet another manner. In point of fact, as asserted in the Walker lawsuits (Walker v Members of Congress) and admitted as being correct as to fact and law by the attorney of record for the members of Congress, failure to call a convention when mandated by the Constitution is a criminal violation of oath of office by members of Congress, the same members of Congress Smith named in his lawsuit. This violation carries with it civil and criminal penalties. Part of that criminal penalty is federal officers violating their oath of office (in this case advocating the overthrow of our constitutional form of government by not obeying its provisions) can no longer hold nor seek federal office.

Obviously Smith was incarcerated for violation of some federal crime. Equally obvious is the crime is described in some federal statute enacted into law after having been written by Congress. As a federal inmate Smith has, under federal law, a right to file a habeas corpus suit as well as a suit attacking the sentencing of his particular crime. Federal law allows for the filing of such suit (with automatic standing of course) predicated on the premise he, Smith, was incarcerated in violation of the Constitution or federal law and as such, should be set free. The public record proves two thirds of the states first submitted sufficient applications for a convention call on Friday, March 13, 1908. Since then the states have repeatedly submitted sufficient applications to meet the two thirds mark. In all instances Congress has not called a

convention. Indeed, as the final portion of this story shows, Congress doesn't even know the status of the applications making a call impossible. However ignorance is no excuse under the law.

What this could mean is the members of Congress, having not called a convention as mandated by the Constitution, have criminally violated their oaths of office as admitted by the attorney of record for all members of Congress in the Walker v Members of Congress lawsuit. Thus, under the law they are legally ineligible to hold office. As they are legally ineligible to hold office these members of Congress have no constitutional authority to enact legislation as federal law disqualifies them from office. If Smith could prove the law under which he was incarcerated was enacted by Congress since 1908 or has been modified by act of Congress since that date, then he may be able to prove he has suffered personal injury as he was incarcerated under a law enacted by people not legally qualified to hold office and therefore having no constitutional authority to pass the legislation which incarcerated him. Of course, this is a great deal of speculation about the law. Not all the facts regarding the Smith's incarceration are known. Therefore anyone pursuing this issue has a lot of homework to do before crying "Eureka!" Still courts have granted standing to plaintiffs on a lot less.

Guldenshuh Releases Article V Advocacy Groups Report

In the first week of November David Guldenshuh editor and publisher of The Article V Convention Legislative Report released a 40 page report to the Heartland Institute entitled, "The Article V Movement: A Comprehensive Assessment to Date and Suggested Approach for State Legislators and Advocacy Groups Moving Forward." The report summarizes activities of Article V advocacy groups involved in obtaining state applications requesting Congress call an Article V Convention for a particular amendment proposal. Quoting the report, "This study is intended to provide a comprehensive assessment of the Article V movement in general and of each group's success to date." In my opinion, the report is well written except for one omission which I will discuss below.

The assessments are based on Mr. Guldenshuh's Article V Convention Legislative Report. This report is issued frequently during the period most state legislatures are in session and describes any progress various advocacy groups have made toward having a state legislature submit an application to Congress for an Article V Convention call. Whenever published the report appears at the FOAVC.org (Friends of the Article V Convention) website. The report reflects the overall belief of these groups that Congress is only obligated to call a convention if it receives the necessary two thirds applications from the states on the same amendment subject, or as it usually called, "same subject". FOAVC believes the 766 applications from 49 states already submitted to Congress satisfy the sole provision of the Article V of the Constitution that "…on the application of the legislatures of two thirds of the several states, [Congress] shall call a convention for proposing amendments..."

In discussing Friends of the Article V Convention (FOAVC) in the Heartland report, Mr. Guldenshuh wrote:

> "FOAVC is a nonpartisan organization that does not support any specific subject matter or topic for the call of an Article V convention. Instead, based on its reading of the Article V historical record, it believes any application passed by a state, regardless of the subject matter, should be counted toward the two-thirds threshold. Since more than 34 states have passed some form of an application, FOAVC advocates that Congress immediately call a convention. For the first time in history, FOAVC has gathered into a photographic collection taken from official government records the actual texts of hundreds of applications for Article V conventions from 49 states."

While Mr. Guldenshuh correctly stated the position of FOAVC he omitted the reasons for this belief which FOAVC has advanced over the years. The fact is there is not one official record stating the basis of a convention call is anything other than a numeric count of applying states. No evidence of "same subject" exists in the records of the 1787 Convention, Congress, or in any of the dozen Supreme Court decisions dealing with the amendment process. However, there is ample evidence in all these sources that either support or outright state a convention call is based on a numeric count of applying states.

As I stated to Mr. Guldenshuh in an email, "Indeed in my 25 years involvement in the Article V Convention movement not a single person has ever produced a single official record stating or supporting the allegation that applications must be on the same amendment subject before congress is required to call a convention. In contrast the numeric count position is supported by all official government statements [issued since 1789] whether by Congress, the convention or the courts. Beyond which, even if it were true the applications, in order to 'count' must be on the same amendment subject, the public record of already submitted applications made prior to the year 2000 shows at least three amendment subjects have already achieved the required two thirds application level meaning the argument is entirely moot."

In short, while FOAVC is alone in its opinion of numeric count, all official evidence which will be used by the government in reaching any determination of whether the states have satisfied Article V supports the FOAVC position. The recent count begun this year in Congress reinforces this position as Congress has entirely ignored the subject matter of the applications in compiling its data. What these groups fail to realize is the subject matter contained in these applications is the business of the convention not Congress; Congress is only concerned under the terms of the Constitution with the number of states submitted applications. Thus these groups ignore the public record showing three issues (repeal of income tax, apportionment, and balanced budget) have already satisfied "same subject." This sets them up for a double political whammy.

First, by asserting applications must be on the same subject in order to be counted the groups in Guldenshuh's report handicap themselves. They accept the unproven premise Congress has the right to determine whether any set of applications is on the same amendment subject. This assumption means the groups agree Congress has the right to reject these applications if it determines they do not meet a "same subject" standard which Congress alone establishes. Thus, if Congress is so inclined it can set a standard so strict no application can qualify. This is exactly why the Founding Fathers did not give Congress such power in Article V.

Thus handicapped by their own unproven proposition the groups spend year after year seeking more applications from the states instead of advancing toward proposing whatever amendment proposal they favor by forcing Congress to call based on already submitted applications. These advocates waste their political capital seeking the Holy Grail of applications—34 identical applications on the same amendment subject which they believe leave Congress no choice but to call the convention. But just as the Holy Grail is most likely a myth so too is the 34 identical state applications absolutely causing Congress to call a myth.

First, the Grail already exists but this fact is ignored by these groups as demonstrated by the three amendment subjects referred to in my email. Hence, their theory Congress will call a convention if it receives 34 applications on the same amendment subject has already been proven a myth. Probably the most convincing evidence can be read in a 1930 congressional report where Congress admits two thirds of the states have applied and categorically states the basis for a convention call is a numeric count of applying states. Thus by ignoring the evidence of public record a lot of talented people waste a huge amount of political capital reinventing the wheel and going nowhere. Just remember: it wasn't when somebody invented the wheel that we started moving, it was when someone invented the axle that things got going down the road. By the same token these groups need to consider the existing public record of applications as the axle they need to get going down the road to achieve their goals.

Second, none of these groups can explain why, if Congress has the right to ignore applications on the same subject as they have already done why can't Congress just as easily ignore the Holy Grail if it is ever created? Based on their comments it appears they believe Congress will have no choice. But their position grants Congress a choice and they provide no reason (or more importantly law or court rulings unlike the numeric position which has these in abundance) which explains why suddenly when their set of applications is submitted on their amendment proposal Congress no longer has that choice. In contrast, the numeric position has never presented Congress a choice in the first place the matter being, as Alexander Hamilton said, "peremptory" as it is based on a universal point of reference understandable by a five year old; either 34 applications from 34 states exist or they don't.

Third, there is the fact these groups believe states have the right to rescind applications (again another proposition created by convention opponents based on the proposition states have the right to nullify federal records, a premise emphatically rejected in numerous Supreme Court decisions). None of the groups can explain what happens if the Holy Grail is reached but convention opponents manage to have an application rescinded after it is submitted to Congress along with the rest of Grail but before Congress acts to call (assuming Congress makes any attempt to act).

Fourth, the position of these groups opens itself to congressional defeat without Congress even having to address the Holy Grail. As most of the political effort of these groups is based on a single amendment subject (balanced budget) which, as previously noted, has already achieved this pseudo standard, Congress can easily defeat any contemporary effort at replacement of prior applications by simply waiting until it appears the level of applications of the new replacements is one application shy of achievement. Congress then simply moves (by majority vote using already existing rules in both houses of Congress) to strike all applications on that subject, new

and old from the Congressional Record thus nullifying (or rescinding) the applications. The congressional rules in question do not require explanation for such removal by Congress and can be implemented any time. Indeed the rules are written such a manner it is possible removal of an application can be accomplished by a single member of Congress.

If this occurs these groups will have no one to blame but themselves. Having already committed to the proposition Congress can reject non-same subject applications all Congress need do if it desires, is simply agree with those who say Congress has such power and then exercise it. The light will probably then dawn on these political groups who refuse to read the Constitution and use it for their own benefit when someone like me comes along and asks, "Well if you are right, why did Congress since 1930 admit state applications have satisfied the Constitution but didn't mention their right to ignore them? Could it be they didn't believe they had such power?"

In my opinion despite the omission regarding the FOAVC position on applications, the report is well worth reading. It demonstrates the Article V Movement is not going away. While there certainly are disputes and other issues within the ranks of its membership nevertheless the movement as a whole continues toward its common goal: causing Congress to call a convention. I hope this is the first of many annual reports by Mr. Guldenschuh.

Messer Requests Inspection of NARA AVC Application Records

Chairman of the House Republican Policy Committee Congressman Luke Messer, (6th District, Indiana) sent a letter on November 6, 2015 to David S. Ferriero, Archivist of the United States the National Archives and Records Administration, (NARA) requesting NARA conduct an inspection of state applications for an Article V Convention stored in its archives.

In his two page letter Messer mentioned the recent petition for rulemaking submitted to NARA by this author. The purpose of the petition is to correct defects in recordkeeping procedures for state applications currently in the custody of NARA. In sum, there are no such procedures. The Congressman expressed similar concerns in his letter.

Messer stated, "…adequate recordkeeping of state applications submitted pursuant to Article V are absolutely essential for Congress to follow the Constitution. The current recordkeeping process for these state applications appears to be wholly inadequate, lacking the transparency of presentation that would be needed to determine how many valid state applications exist." Messer continued, "Without an official count of how many valid state applications exist, it is virtually impossible for the states to effectuate this provision in the Constitution."

Messer requested the NARA "undertake an inspection of the recordkeeping status of these applications…and report to Congress on the inspection." Further he requested if the inspection demonstrates violations of recordkeeping procedures established by federal law, the "NARA make recommendations for its correction." Messer cited numerous federal regulations and statutes requiring all federal government agencies to maintain a high standard of recordkeeping of all federal records.