

Mandamus Case: The States of _____ v. The United States Congress

Congress has violated Article V of the United States Constitution which mandates that *“Congress...shall call the convention for Proposing Amendments...on the Application of the Legislatures of two thirds of the several States.”* Congress has never officially acknowledged, authenticated, stored, or counted Applications toward an Article V Convention. In addition, Congress failed to “call” the Convention for Proposing Amendments in 1979 despite having received thirty-nine active Applications for a Convention to Propose Amendments (See Exhibit A). Importantly, thirty of these Applications were for a single-issue Fiscal Responsibility Amendment (FRA). This number increased to thirty-two single-issue FRA Applications and a total of forty Applications in 1983.

The final ratified Constitution of the United States included a provision in Article V that allowed for two thirds of the states to call a Convention for Proposing Amendments. While some founders expressed concerns about a Plenary Convention, they also acknowledged that Congress may have a conflict of interest in calling such a Convention in connection with certain matters since it could restrict or constrain their authority and Members of Congress would not be guaranteed a seat at the table at any such Convention. Exhibit B outlines Evidence of Congressional Neglect in connection with this important Constitutional provision.

Exhibit A

	State	Year Passed	Subject	Citation	Additional BBA Applications Passed by 1979
1	Virginia (11/14/1788)	1788	Plenary	1 Annals of Cong. 258-59 (J. Gales, Sr. ed., 1834) (H.R., May 5, 1789)	1973: (HJR75) 119 Cong. Rec. 8091 1975: (SJR107) 121 Cong. Rec. 5793 1976: (SJR36) 122 Cong. Rec. 8335-36
2	New York	1789	Plenary	H.R. Jour., 1st Cong., 1st Sess., 29-30 (May 6, 1789)	
3	Georgia	1832	Plenary	S. Jour., 22nd Cong., 2nd Sess., 65-66 (Jan. 9, 1833)	1976: (HR469-1267) 122 Cong. Rec. 2740
4	South Carolina (12/13/1832)	1832	Plenary	H.R. Jour. 22nd Cong., 2nd Sess. 219-20 (Jan. 21, 1833)	1976: (S.C. ACTS) 122 Cong. Rec. 4329 1979: (S1024) 125 Cong. Rec. 2114
5	Illinois	1861	Plenary	Ill. Laws 281-82	
6	Indiana (3/11/1861)	1861	Plenary	Cong. Globe, 37th Cong., Special Session 1465-66 (S., March 18, 1861)	1957: (HECR9) 103 Cong. Rec. 6475-76 1976: 122 Cong. Rec. 931 1979: (SEJR8) 125 Cong. Rec. 9188
7	Kentucky (RES1)	1861	Plenary	Cong. Globe, 36th Cong., 2nd Sess. 751, (S., Feb. 5, 1861)	
8	Ohio	1861	Plenary	Ohio Laws 181	Ohio passed a single-issue FRA in 2013
9	New Jersey	1861	Plenary	Cong. Globe, 36th Cong., 2nd Sess. 680 (S., Feb. 1, 1861)	
10	Texas (SCR4)	1899	Plenary	33 cong. Rec.219 (1899)	1979:(HCR31) 125 Cong. Rec. 5223-24
11	Colorado (SB13)	1901	Plenary	45 cong. Rec. 7113 (1910)	1978: (SJM1) 124 Cong. Rec. 8778
12	Oregon (HJR4)	1901	Plenary	34 Cong. Rec. 2290 (1901)	1979: (SJM2) 125 Cong. Rec. 5953
13	Washington (HB90)	1901	Plenary	1901 Wash. Laws 333	
14	Iowa (3/24/1904)	1904	Plenary	38 Cong. Rec. 4959 (1904)	1979: (SJR1) 125 Cong. Rec. 15,227

	State	Year Passed	Subject	Citation	Additional BBA Applications Passed by 1979
15	Kansas (HCR4)	1907	Plenary	41 Cong. Rec. 2929 (1907)	1979: (SCR1661) 125 Cong. Rec. 2110
16	Missouri (3/6/1907)	1907	Plenary	45 Cong. Rec. 7116 (1910)	Missouri passed a single-issue FRA in 1983
17	Nebraska	1907	Plenary	1907 Neb. Laws 583-84	1979: (LR106) 125 Cong. Rec. 2112
18	North Carolina	1907	Plenary	45 Cong. Rec. 7117 (1910)	1979: (SJR1) 125 Cong. Rec. 3310-11
19	Oklahoma (SJR9)	1908	Plenary	45 Cong. Rec. 7117-18 (1910)	1978: (HJR1049) 124 Cong. Rec. 12, 397
20	Montana (SJR1)	1911	Plenary	46 Cong. Rec. 2411 (1911)	
21	Wisconsin (JR15S)	1911	Plenary	47 Cong. Rec. 1873 (1911)	Wisconsin passed single-issue FRA in 2017
22	Wyoming (EJR4)	1961	Balanced Budget	107 Cong. Rec. 2759 (1961)	1978: (EJR1) 124 Cong. Rec. 14056
23	Alabama (HJR105)	1975	Balanced Budget	121 Cong. Rec. 28,347 (1975)	1979:(HJR227) 125 Cong. Rec. 2108-09
24	Louisiana (SCR109)	1975	Balanced Budget	121 Cong. Rec. 25, 312 (1975)	1979: (SCR4) 125 Cong. Rec. 19,470-71 1979: (SCR73) 125 Cong. Rec. 2110-11
25	Mississippi (HCR51)	1975	Balanced Budget	121 Cong. Rec. 12, 175-76 (1975)	1979: (HCR51) 125 Cong. Rec. 2111-12
26	Delaware (HCR36)	1976	Balanced Budget	122 Cong. Rec. 4329 (1976)	
27	Florida (SM234)	1976	Balanced Budget	125 Cong. Rec. 2109-10 (1979)	
28	Pennsylvania (R236)	1976	Balanced Budget	125 Cong. Rec. 2113-14 (1979)	

	State	Year Passed	Subject	Citation	Additional BBA Applications Passed by 1979
29	Arizona (HCM2003)	1977	Balanced Budget	123 Cong. Rec. 18,873-74 (1977)	1979: (HCM2320) 125 Cong. Rec. 2109 1979: (SJR1002) 125 Cong. Rec. 7920-21
30	Maryland (SJR4)	1977	Balanced Budget	123 Cong. Rec. 2545-46 (1977)	
31	Tennessee (HJR22)	1977	Balanced Budget	123 Cong. Rec. 18,419 (1977)	1978: (HJR22) 124 Cong. Rec. 11,437-38
32	Arkansas (HJR1)	1979	Balanced Budget	125 Cong. Rec. 4372 (1979)	
33	Idaho (HCR7)	1979	Balanced Budget	125 Cong. Rec. 3657 (1979)	
34	Nevada (SJR22)	1979	Balanced Budget	125 Cong. Rec. 2112 (1979)	
35	New Hampshire (HCR8)	1979	Balanced Budget	125 Cong. Rec. 11,584 (1979)	
36	New Mexico (SJR)	1979	Balanced Budget	125 Cong. Rec. 2112-13 (1979)	
37	North Dakota (SCR4018)	1979	Balanced Budget	125 Cong. Rec. 2113 (1979)	
38	South Dakota (JR)	1979	Balanced Budget	125 Cong. Rec. 3656-57 (1979)	
39	Utah (JR)	1979	Balanced Budget	125 Cong. Rec. 4372-73 (1979)	

NOTES:

- States in **red** had active Plenary Applications in 1979. Alaska passed a single-issue FRA application in 1982.
- In 2018, Constitutional Law Professor Robert G. Natelson (ret.) published findings from his research on the aggregation of Article V Applications in The Federalist Society Review. In his article entitled [“Counting to Two Thirds: How Close Are We to a Convention for Proposing Amendments to the Constitution?”](#) Natelson concluded, “Congress should add to the count any extant plenary applications, [as might apply toward a single subject Article V call to convention].”

Exhibit B

Evidence for Congressional Neglect of Duty

1. [The Congressional Research Service](#) noted, in 2017, that “According to the National Archives, state applications have traditionally not been collected in a central repository, but are scattered through the holdings of the Center for Legislative Archives...”
2. Congress has created “no legal process” for counting Article V State Applications despite delegating to the Archivist the sole responsibility for determining when “any proposed amendment...has been adopted.”

[Sec. 106b. of the U.S. Code](#) reads:

“Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.”

3. States have not been notified by Congress that an Article V Application has been received, authenticated, securely stored, and aggregated with other state Applications toward the Constitution’s “two-thirds” mandate to call the Convention.
4. [H. Res. 5, Section 3. Separate Orders \(3\)](#): Congress is currently disregarding its own rule “to make public purported Applications” listed by “state and year received.” However, even if followed, this rule would not fulfill the requirement of “counting” to “two-thirds,” as mandated.
5. The proposed [Article V Records Transparency Act of 2017](#) states that it is estimated to take “5 years and \$10 million” to “compile,” but “would not designate as valid,” (i.e., count) any of the 400+ Applications passed since 1789.
6. Congress failed to call the Fiscal Responsibility Amendment Convention in 1979 despite Congressional records showing thirty-nine State Applications as noted in Exhibit A.

In Conclusion

Congress has never in 234 years, officially acknowledged, stored, and counted Article V Applications despite the fact that over four hundred such Applications have been submitted by forty-nine of the fifty states since the beginning of our Republic. As of 1979, Congress failed to call the Fiscal Responsibility Convention despite [Federalist 85](#)'s ratification pledge:

*“By the fifth article of the plan, the Congress will be obliged ‘on the application of the legislatures of two thirds of the States [which at present amount to 34], to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof.’ The words of this article are peremptory. **The Congress ‘shall call a convention.’ Nothing in this particular is left to the discretion of that body.**”*

James Madison promised in [Federalist 43](#) that Article V:

“equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or the other.”

Only the U.S. Supreme Court can restore the U.S. Constitution's balance of power between the states and the federal government by requiring Congress to set the date and place for Article V's mandated Fiscal Responsibility Amendment Convention.

The states are hereby obligated to take legal action, a writ of mandamus being necessary to compel Congress to set the date and place for an Article V Convention to Propose a Fiscal Responsibility Amendment. The writ of mandamus is to be filed in Federal District Court, in a collective submission of Attorney Generals of these several states.