

The ASSEMBLY of STATE LEGISLATURES

May 24, 2016

The Honorable Luke Messer
U.S. House of Representatives
508 Cannon House Office Building
Washington, D.C. 20515

Congressman Messer:

Thank you for the effort to put in place a process that will ensure the applications of the legislatures of the states are being publically published and recognized by Congress. This is an important, responsible and much needed step in regards to upholding the constitutional power of the states to amend under Article V.

The Assembly of State Legislatures (ASL) is the first caucus of state legislatures, as recognized under IRS Sec 501(c) (6), in the history of our Republic with the specific purpose of drafting rules and procedures by which an Article V convention for proposing amendments would function. Only currently serving state legislators are allowed to participate, and no outside organizations are permitted involvement in any way. This is to ensure political purity in our proceedings and product.

When we analyze any subject matter regarding Article V, under which your draft legislation would fall, we look first at the direct verbiage of Article V and then through the direction of the founders in their specific intent and design.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

In regards to a “*convention for proposing amendments,*” there are two actions for which Congress has authority to act, and in both instances the action is compulsory. The first is that Congress, upon application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments. The second is that the choice of form for ratification is to be proposed by Congress. We then must apply the founder’s intent and design to anything within the scope of these two actions.

This is explained to us in the statements of both Alexander Hamilton in Federalist 85 and George Mason in his speech at the Constitutional Convention on 11 June 1787, as documented in James Madison’s Notes.

“It would be improper to require the consent of the National Legislature, because they may abuse their power, and refuse their consent on that very account...” George Mason Speech: Constitutional Convention, 11 June 1787. Source: James Madison’s Notes

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“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. And of consequence, all the declamation about the disinclination to a change vanishes in air.” Alexander Hamilton. Source: Federalist 85

This clearly establishes that the process of convening a “*convention for proposing amendments*” required by Congress does not allow any action that is discretionary in nature.

Additionally, as expressed in the 10th Amendment to the United States Constitution,

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Therefore, for example, it is reserved to the States to judge for themselves the form, style, and nature of their application, the method of delivery, etc.

Through a thorough analysis of the proposed legislation, the Assembly of State Legislatures has found that the Article V Records Transparency Act of 2016 is within the allowable actions of Congress and does not take any action of discretion that would be unconstitutional.

We again reiterate our great happiness that Congress is undertaking their solemn obligation under Article V and eagerly await the completion of the work envisioned herein. Thank you again for the work you are doing as well as your service to our nation.

Warm regards,

A handwritten signature in black ink that reads "Chris Kapenga". The signature is written in a cursive style with a long horizontal line extending to the right.

Chris Kapenga
State Senator, Wisconsin's 33rd Senate District
Co-President, The Assembly of State Legislatures