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Aggressive New Scheme Exposes Article V Convention Lobby

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Article V of the U.S. Constitution provides two methods for amending, or making changes to, the Constitution.

The first method (and the only method used for all 27 amendments to the Constitution) is when "two thirds of both Houses [in Congress; the House of Representatives and Senate] … propose Amendments" and those amendments are subsequently "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."

The second method for amending the Constitution, which has never been used, is when "on the Application of the Legislatures of two thirds of the several States, [the Congress] shall call a Convention for proposing Amendments," followed by the same mode of ratification — assuming that the delegates to the Convention do not exceed the scope of their commissions and create their own new mode of ratification (a likely possibility). Historically, this "Convention for proposing Amendments" has been referred to as a federal constitutional convention (Con-Con), and only recently has also been referred to as a "Convention of States" (COS) — not to be confused with the organization of the same name, the Convention of States Project / Convention of States Action.

Despite no actual wording in Article V supporting their claims, for decades advocates of the second method for amending the Constitution, an untested method, have repeatedly assured state legislators that such a convention can be "limited" to a single-subject amendment, as laid out in the applications of the state legislatures, *and* that all the applications have to be the same or similarly worded, applying to Congress to call a convention to propose the same amendment. Based on these presuppositions, Article V Convention advocates have succeeded in getting myriad applications through state legislatures purporting to limit the convention to a single subject, most notably for a federal Balanced Budget Amendment (BBA). However, despite decades of effort, they have not been able to get the required two-thirds (34 out of 50) of the states to apply to Congress in order to call a convention "limited" to proposing any single-subject amendment.

Now, a new scheme has emerged to reach the required 34 states for Congress to call a constitutional convention. The new plot calls for aggregating, or combining, the applications that state legislatures have previously passed limited to proposing a BBA with some applications passed by other state legislatures for other subjects — with one such application dating as far back as the 18th century. This new aggregation scheme exposes the hypocrisy of the Article V Convention lobby and threatens to drag the United States dangerously close to a constitutional convention, where anything could happen, from

abridging the First Amendment and abolishing the Second Amendment to even rewriting and replacing the Constitution with an entirely new and "modern" socialist constitution.

Enter Georgia

This aggressive new scheme by the Article V Convention lobby has materialized in Georgia, in the form of Senate Resolution 29, introduced by State Senator Bill Cowsert (R-Athens) on January 27, 2021. Senate Resolution 29 (S.R. 29) applies to Congress to call a convention to propose a BBA. The resolution purports to combine the "live," or outstanding, applications from the then-27 states that had passed resolutions to Congress applying for a BBA convention, with centuries-old applications from six other states that have applied for a supposedly "plenary," or unlimited, Article V Convention.

Below is the convoluted wording of S.R. 29, which, unlike any other prior BBA application, asks Congress to count the applications for a constitutional convention specifically intended to propose a BBA *along with* other convention applications that are not for a BBA. The resolution reads, in part:

> BE IT FURTHER RESOLVED that this application shall be deemed an application for a convention to address only the subject herein stated. For the purposes of determining whether two-thirds of the states have applied for a convention addressing any of the subjects stated herein, this application is to be aggregated with the applications of any other state legislatures for the single subjects of balancing the federal budget, including but not limited to previously adopted applications from Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, *Illinois*, Indiana, Iowa, Kansas, *Kentucky*, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, *New Jersey*, *New York*, North Carolina, North Dakota, Ohio, Oklahoma, *Oregon*, Pennsylvania, South Dakota, Tennessee, Texas, *Washington*, Utah, West Virginia, Wyoming, and Wisconsin; and this application shall be aggregated with the same for the purpose of attaining the two-thirds of states necessary to require the calling of a convention, but shall not be aggregated with any applications on any other subject. [Emphasis added.]

The six states, emphasized above in italics, have not passed BBA convention applications! Listed below are the six states along with their Article V convention applications that Senator Cowsert wants to combine with the 27 (now 26) active applications for a BBA convention:

- New York (1789) for a Bill of Rights;
- New Jersey (1861) to prevent the Civil War;
- Kentucky (1861) to prevent the Civil War;
- Illinois (1861) to prevent the Civil War;
- Oregon (1901) for the direct election of U.S. senators; and
- Washington (1901) for no stated purpose other than Congress simply "call a convention for proposing amendments to the constitution of the United States of America as authorized by article v."

Combining the applications for a BBA (most of which were passed in the 1970s) with the six non-BBA applications that are centuries old may lead to a situation where a convention is called by Congress without a majority of the state legislatures (let alone the two-thirds supermajority required by Article V of the Constitution) currently supporting the calling of the convention.

The wrong solution to a crisis: While many conservatives can empathize with those wanting a Balanced Budget Amendment, calling a convention to amend the Constitution is incredibly dangerous. Americans could end up with much more than just a BBA. *(Photo credit: NoDerog/iStock/Getty Images Plus)*

In fact, all of the legislators who made and supported applications for a constitutional convention at the turn of the 20th century and prior are long deceased. Furthermore, applications where the purpose for petitioning Congress to call a convention no longer applies (e.g., securing a Bill of Rights, preventing the Civil War, and the direct election of U.S. senators) are moot and should not be included in any tally for a modern Article V Convention.

S.R. 29 could be a trial balloon by the convention lobby to test the aggregation scheme meant to trigger a constitutional convention as soon as possible, without bothering to pass any additional unpopular applications through state legislatures. This belies the promises that Article V Convention spokesmen have been making to legislators for at least the past few decades that their applications for a "limited" convention would prevent a runaway convention.

Legislators aren't being told the truth. The hypocrisy is clear in Georgia, where Senator Cowsert falsely told his colleagues on the Georgia Senate floor on March 12, 2020 that the 33 states listed in his resolution (at the time S.R. 854, containing the same language as S.R. 29) *had all passed applications for a BBA convention*. And he said that they were added specifically to prevent a runaway convention!

Cowsert told fellow lawmakers:

> *This is single subject matter specific*, asking only for there to be an amendment on the balancing the budget presented or considered by the States. That's the reason for Amendment One which I will go speak to. I heard feedback in the halls and from constituents. They wanted to make sure that this was not a runaway convention to totally revamp our United States Constitution. So, the Amendment tightens it up and specifies the

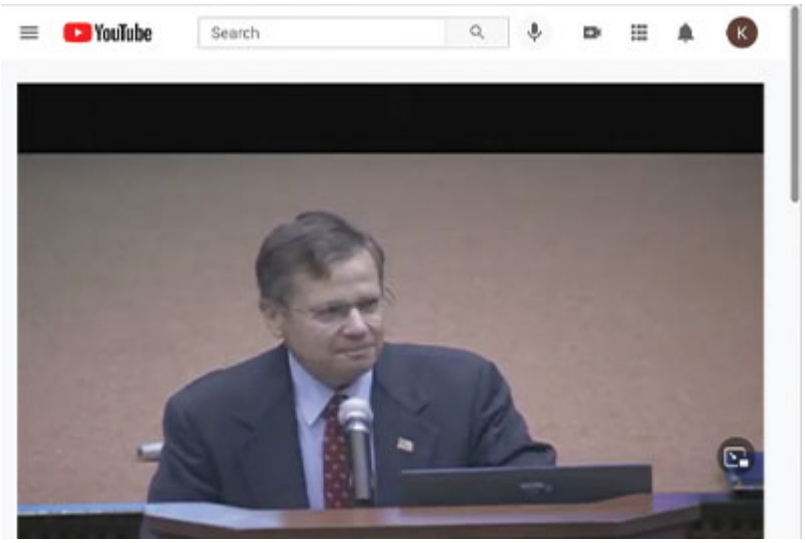
> States that already have balanced budget amendment applications in to the United States Congress, and makes it clear that we're restrained to only that one subject matter. [Emphasis added.]

Responding to a question brought up by another senator, who was concerned about the potential of combining the BBA application with the applications of other states that applied for a convention for another propose, Cowsert replied, in part:

> If there are states that have applications on other subject matters, they would not be considered as one of the 2/3 of the states that it requires to join in in calling for a constitutional amendment convention — on just balancing the federal budget. So, I have built a safeguard in there for you, so that it doesn't get lumped in and we end up having multiple subject matters considered.

However, Cowsert's aggregation language in S.R. 854 and, more recently, S.R. 29, provides no such "safeguards." Instead, it does the opposite of what he said on the Senate floor when he originally promoted S.R. 854 in 2020.

Despite Cowsert's false statements, the Georgia Senate passed S.R. 29 by a vote of 34-20 on February 22, 2021. Fortunately, the Georgia General Assembly adjourned for the year on April 2, 2021, without taking any further action on the resolution. Unfortunately, S.R. 29 carries over into the following year, at which time the George House of Representatives could still pass it. If the resolution had passed in the spring of 2021, Georgia would have become the 34th (and final) state to apply for an Article V Convention, based on this new aggregation scheme, and thus would have triggered the call for a convention, provided the resolution's rationale were recognized as legitimate by Congress.



It's his brainchild: Robert Natelson appears to be the originator of the idea to combine outstanding Article V Convention applications with BBA applications. His rationale? Those old applications were "plenary," meaning they could be for any purpose.

Nineteen days after the Georgia General Assembly adjourned, the legislature of Colorado — one of the then-27 states with a "live" application to Congress for a BBA convention — passed a resolution rescinding all of its previously passed Article V Convention applications, including its 1978 application

to Congress for a convention to propose a BBA. This action brings the count of states with "live" applications for a BBA convention down to 26. Therefore, if the Georgia Senate passes S.R. 29 in 2022 (assuming no other state legislatures rescind a previous BBA application or apply for a new one), Georgia would become the 33rd state based on the proposed aggregated count (26 states with outstanding BBA applications plus six states with non-BBA applications plus Georgia's S.R. 29 BBA application).

In addition to S.R. 29 in Georgia, Mississippi State Representative Dan Eubanks (R-DeSoto) introduced H.C.R. 58 in the Mississippi House of Representatives earlier in 2021, which applied to Congress to call a convention to propose a BBA and to combine the outstanding BBA applications with the same six aforementioned non-BBA convention applications. As the text of H.C.R. 58 says,

> This application is to be considered as covering the same subject matter as the presently-outstanding balanced budget *and unlimited-subject applications from other states*, including but not limited to previously-adopted and unrescinded applications from Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, *Illinois*, Indiana, Iowa, Kansas, *Kentucky*, Louisiana, Michigan, Missouri, Nebraska, New Hampshire, *New Jersey*, *New York*, North Carolina, North Dakota, Ohio, Oklahoma, *Oregon*, Pennsylvania, South Dakota, Tennessee, Texas, *Washington*, Utah, West Virginia, Wyoming and Wisconsin, and this application *shall be aggregated with same for the purpose of attaining the two-thirds (2/3) of states* necessary to require the calling of a convention, but shall not be aggregated with any applications on any other subject. [Emphasis added throughout].

Fortunately, H.C.R. 58 officially died in committee on April 1, 2021. Nevertheless, the introduction of both H.C.R. 58 in Mississippi and S.R. 29 in Georgia raises the following questions: Why are Article V Convention advocates suddenly looking at new ways to reach the threshold of 34 states, and who's behind the push for this new scheme?

Plot Origins & Litigation

The promotion of the new aggregation scheme can be traced, in part, to a paper published on June 7, 2018, written by Article V Convention enthusiast Robert Natelson, entitled "Federalism & Separation of Powers," with the subtitle "Counting to Two Thirds: How Close Are We to a Convention for Proposing Amendments?" Natelson contended that the same six aforementioned non-BBA convention applications in question should be counted toward reaching 34 states because he classifies those applications as being "plenary," meaning for a general convention where the delegates are free to propose any amendments that they see fit to the U.S. Constitution. And as such, according to Natelson, a BBA would fall under the purview of an all-encompassing convention. "When counting applications toward a convention for proposing a balanced budget amendment — or, indeed, toward a convention for proposing any other kind of amendment — Congress should add to the count any extant plenary application," Natelson concluded, in part. Whether or not the applications from the six aforementioned states are for a "plenary," or unlimited, convention is irrelevant. Ultimately, Congress — not Natelson — would decide which applications are counted toward an Article V Convention.

Building on Natelson's desperate and dubious proposal, little-known Article V Convention proponents Paul Gardiner, Ron Scott, and Neal Schuerer wrote an article in 2020 entitled "A Convention Strategy,"

published on the pro-Article V Convention website HuntForLiberty.com. In this article, they expressed concern about recent efforts to rescind past applications for an Article V Convention, and that as a result they must push for a convention as soon as possible before any more outstanding applications are rescinded. "In concert with the axiom that 'timing is everything', and in view of the increasing risk of COS application rescission efforts in different states, it would be a very wise action to have a COS successfully convened and conducted no later than end of year 2022," the authors pleaded.

They also cited a January 2020 "Article V Convention Legislative Progress Report," in which Georgia-based attorney David F. Guldenschuh reluctantly admitted that the Article V Convention movement has experienced a "plateauing" in its efforts to reach the necessary 34 states. "The last half of the past decade saw the Article V movement peak, but the last two years have seen a plateauing of our efforts. We are now down to four major groups: the Center for State-led National Debt Solutions (CSNDS; the 501(c)(3) arm of the BBA Task Force); U.S. Term Limits; Wolf-PAC/Free & Fair Elections; and the Convention of States Project," Guldenschuh wrote. Readers should keep in mind that Wolf-PAC is a leftist group started by radical left-wing pundit Cenk Uygur, the host of the *Young Turks*.

The face of the movement: Mark Meckler, president of Convention of States Action, is perhaps one of the best-known proponents of calling a Convention of States to amend the Constitution. He assures us nothing could go wrong. *(Photo credit: GageSkidmore)*

Gardiner, Scott, and Schuerer proposed aggregating different Article V Convention applications in order to reach the necessary 34 states. "In concert with the axiom 'a bird in the hand is worth two in the bush', it makes good sense to *use whatever qualifying COS applications are available to have a COS convened as soon as possible*." (Emphasis added.) What they really want is a general or open Article V Convention, in which any and all amendments (including a new constitution) can be proposed."Convening a *general COS* overcomes the risk of SCOTUS ruling against the legitimacy of Congress having authority to call and sanction a limited COS." (Emphasis added.)

Aggregating Article V Convention applications in order to reach the 34 states necessary to trigger a convention, regardless if it is initially described as "general" or "limited," is the very opposite of what convention advocates such as Mark Meckler of COS Project/Action, Cenk Uygur with Wolf-PAC, and other BBA convention proponents have been telling people for years. What else has the Article V Convention lobby been misleading both legislators and the public about?

In their article, Gardiner, Scott, and Schuerer cited two aggregation studies completed in 2018 by pro-Article V Convention advocates in an effort to justify reaching the necessary 34 states. The first study was produced by the American Constitution Foundation (ACF), and the second by attorney John M. Cogswell. Both the ACF and Cogswell aggregation studies concluded that there were at least 34 valid, qualifying applications to require Congress to call a general, or unlimited, constitutional convention.

Gardiner, Scott, and Schuerer concluded their article with the following recommendation from the ACF:

> The comprehensive strategy of ACF (or similar strategy) needs to be seriously considered and funded in planning to make application to the Congress to call a general COS. Below, for example, are some of the more important actions listed by ACF:
>
> Organize the states that have already submitted applications for an Article V General Convention to affirm that their applications remain valid and in force, and that they expect Congress to discharge their duty to call the Convention;
>
> • Work with additional states (if necessary) to remove limiting language from an existing application, or pass a new application for an Article V General Convention to attain the 34 applications needed to trigger the Convention;
>
> • Equip State Attorneys General for litigation to compel Congress to call the Convention, should it be necessary;
>
> • Hold a pre-convention assembly to prepare state legislatures to effectively participate in the Convention; and
>
> • Provide the states with logistical support from pre-convention all the way through ratification, including facilities, security, communications, media, and legal support.

This is key, as it reveals their strategy to reach 34 states. Gardiner, Scott, and Schuerer want to aggregate the different convention applications by removing any "limiting language" from existing applications that may hinder aggregation, and they want to pursue litigation to force Congress to call for a convention. In fact, at the 2020 annual meeting of the American Legislative Exchange Council (ALEC), held in July of that year, former Wisconsin Governor Scott Walker unveiled a plan for states to sue Congress to aggregate the BBA and non-BBA applications for an Article V Convention and thus call a convention.

The Associated Press reported that, in addition to Walker, David Biddulph, the co-founder of Let Us Vote for a Balanced Budget Amendment Citizen's Campaign, also promoted aggregating the different convention applications at a presentation developed at the annual 2020 ALEC gathering. "The new plan, presented during the ALEC workshop with a PowerPoint presentation from conservative activist David Biddulph, is to take the 28 state resolutions seeking a balanced budget amendment and combine them with six state resolutions passed over the last two centuries generally seeking a constitutional convention," AP reported. "The oldest of those was a resolution passed by New York in 1789, according to a 2018 article on the conservative Federalist Society's website by constitutional scholar Robert G. Natelson," AP explained.

According to AP, Biddulph recommended "litigation to compel Congress to call the Convention, should it be necessary." Further elaborating, "Biddulph proposed recruiting state attorneys general to file a

legal order demanding that Congress recognize the 34 state resolutions and convene a constitutional convention. If Congress refuses, the AGs would sue in federal court." Biddulph also reportedly told AP that a lawsuit was the "best shot" for getting Congress to call a convention.

The last bullet point above from Gardiner, Scott, and Schuerer's article — providing "states with logistical support from pre-convention all the way through ratification, including facilities, security, communications, media, and legal support" — would require an exorbitant amount of money to carry out. This raises a number of additional questions: Where is such a vast revenue stream coming from? If an Article V Convention does not go astray — as they have been assuring legislators for years — why would the state legislatures need logistical "support" all the way through the ratification process? Furthermore, what type of pressure, or "support," will the Article V Convention lobby exert on the convention delegates? These are all important questions that state legislators should be asking when considering potential convention applications such as S.R. 29 in Georgia, H.C.R. 58 in Mississippi, and any other application stating that it should be aggregated with dissimilar Article V Convention applications.

Constitutionalist organizations such as The John Birch Society, Eagle Forum, Phyllis Schlafly Eagles, and Ron Paul's Campaign for Liberty have long opposed the convening of an Article V Convention, because, they say, convention delegates, as the sovereign representatives of "We the People," would have the inherent right to propose any and all amendments or "to alter or to abolish" our "Form of Government," as expressed by the second paragraph of the Declaration of Independence. As a result, nothing prevents or "limits" the delegates from going so far as proposing an entirely new constitution.

Will history repeat itself? The 1787 convention was called to revise the Articles of Confederation. The delegates instead scrapped the Articles and wrote an entirely new document, our current U.S. Constitution. What would be the result if convention delegates did this today?

In fact, new constitutions have already been drafted, waiting for such an opportunity to formally propose them. Take, for instance, the Ford Foundation-funded "Constitution for the Newstates of America," proposed by Rexford Guy Tugwell in his book *The Emerging Constitution*, published in 1974. Tugwell's proposed "Constitution for the Newstates of America," as it was called, would have watered down God-given individual rights and state sovereignty, expanded the size and scope of the federal government, and allowed the president to assume dictatorial powers in the event of a national

emergency. Article XII of this "Newstates Constitution" called for its acceptance by a referendum," or national popular vote. Voting machines anyone, à la the 2020 election?

Not surprisingly, Tugwell had quite the socialist and Deep State pedigree. In 1928, he actively campaigned for the Socialist Party ticket of Norman Thomas, before switching his support to the Democratic Party's candidate, Franklin Delano Roosevelt, in 1932. Tugwell then served as the head of FDR's "New Deal Brain Trust," during which time he also expressed his desire to "make America over." In 1948, Tugwell switched his affiliation to the openly socialist and pro-Soviet Progressive Party, for which he served as the platform committee chairman. With this background, Tugwell was later hired by the tax-exempt Ford Foundation, through the Center for the Study of Democratic Institutions, which tasked him to assemble a team of academics and intellectuals to re-write the U.S. Constitution in time for America's bicentennial. The result of this was the "Constitution for the Newstates of America."

In the event that a new constitution is proposed in a future Article V Convention, the new constitution would likely include its own mode of ratification — potentially superseding the current ratification requirements in Article V. In fact, such a scenario is not outside the realm of possibility or without historical precedent. This is precisely how the current U.S. Constitution was ratified after it was drafted at the original Federal Convention, held in Philadelphia in 1787.

Looking Back to See Forward

The Continental Congress and the states originally tasked the delegates to the 1787 Philadelphia Convention with "the sole and express purpose of revising the Articles of Confederation." At the time, the Articles of Confederation were the supreme law of the land. Article XIII of the Articles of Confederation specifically stipulated that "any alterations" made to the Articles of Confederation had to be unanimously "agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State."

Both of these mandates were clearly exceeded. The delegates chose to replace the Articles of Confederation with an entirely new federal constitution. And they also altered the mode of ratification from being "confirmed by the legislatures of every State," according to Article XIII of the still-governing Articles of Confederation, to ratification by only nine of the 13 states. Article VII, Section I of the U.S. Constitution states: "The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same."

Who is to say that this historical precedent won't be used to draft an entirely new — perhaps even socialist — constitution that would be considered ratified by way of a national referendum, in a modern populist appeal to "democracy"? This would enable those pushing for the new constitution to claim popular support, when they may simply have control of the voting machines, and therefore, control of the outcome. This is why any Article V Convention, including one ostensibly "limited" to proposing a single subject or amendment such as the BBA, should be avoided at all costs.

Despite the claims made by Article V Convention advocates such as Cowsert, Gardiner, Natelson, Biddulph, and Meckler that a convention is necessary because it is the "only solution" to rein in an out-of-control federal government, the truth is that Article V was never meant to restrain the federal government's usurpation of power. The framers of the Constitution drafted Article V to remedy any potential defects in the Constitution.

According to James Madison's notes on the Federal Convention of 1787, Alexander Hamilton explained on September 10, 1787 that the purpose of amendments was "for supplying [archaic use, meaning to remedy] defects which probably appear in the new System." And in *The Federalist,* No. 85, Hamilton further explained the corrective purpose of amendments, writing in part:

> In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, *will be applicable to the organization of the government, not to the mass of its powers*. [Emphasis added.]

Today's problems in Washington do not stem from defects in the Constitution, but rather from Washington's departure from the Constitution's original meaning and interpretation. Just as an informed electorate would be necessary for upholding any new constitutional amendments, so too is an informed electorate necessary for the preservation of the current U.S. Constitution. Therefore, the solution is not new amendments, but education promoting fidelity to the current Constitution.

Back to the source: Founders such as James Madison — often called the "Father of the Constitution" — and Alexander Hamilton believed the Article V amendment process was to be used to correct defects in the Constitution, not to rein in the government.

In chapter 17 of his 1831 book *Democracy in America*, Alexis de Tocqueville observed how well the average American citizen understood the Constitution: "In New England, every citizen receives the elementary notions of human knowledge; he is moreover taught the doctrines and the evidences of his religion, the history of his country, and the leading features of its Constitution. In the States of Connecticut and Massachusetts, it is extremely rare to find a man imperfectly acquainted with all these things, and a person wholly ignorant of them is a sort of phenomenon."

Would a modern-day de Tocqueville traveling through America in 2021 be able to write or say the same about American citizens in any given state? Without such widespread knowledge among the American electorate about the Constitution or of its underpinning philosophy of individualism, freedom from oppressive government, and that ultimately our rights come from God, this author would tremble at the

results of a modern Article V Convention. As the late Supreme Court Justice Antonin Scalia said during an appearance on an episode of *The Kalb Report* on April 17, 2014, "I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?"

State legislators, all of whom have taken an oath to uphold the Constitution, should firmly reject any resolutions applying to Congress to call a convention to propose amendments to the Constitution, especially applications such as Georgia's S.R. 29 (2021-22), Mississippi's H.C.R. 58 (2021), and any other resolutions aggregating dissimilar Article V Convention applications.

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