IN THE UNITED STATES DISTRICT COURT
FOR [VENUE]

State of Alaska,

Plaintiffs,

-vs-

THE UNITED STATES; THE CONGRESS OF THE UNITED STATES; THE UNITED STATES SENATE; THE UNITED STATES HOUSE OF REPRESENTATIVES, SONCERIA BERRY, in her official capacity as Secretary of the United States Senate, and KEVIN MCCUMBER, in his official capacity as Clerk of the United States House of Representatives.

Defendants.

PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGMENT

CIVIL ACTION NO. _____

Plaintiffs, the States of Alaska [and other states], by and through their undersigned counsel, hereby allege as follows:

INTRODUCTION

1. Article V of the Constitution states in part: "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* . . . ." U.S. CONST. Art. V (emphasis added).[1]

2. The Founders of the Constitution thus provided for its amendment, aiming to ensure that it would be neither "too mutable" nor so immutable as to "perpetuate its discovered faults." THE FEDERALIST No. 43 (Madison). Concerned that Members of Congress would resist proposing amendments that would restrict the powers of the proposed new National Government, the Founders vested the States with authority, as James Madison put it in THE FEDERALIST No. 43, "to originate the amendment of errors" in the Constitution. Accordingly, on the application of two thirds of the States, the Constitution charges Congress with the mandatory, ministerial duty to call a convention for proposing amendments for consideration by the States.

3. The Founders designed Article V to ensure that neither Congress nor the States could frustrate or otherwise impede each other's ability to propose amendments, "as [errors] may be pointed out by the experience on one side, or on the other." *Id.*

4. Accordingly, Congress has a nondiscretionary duty to call a convention for proposing amendments immediately upon the receipt of applications for such a convention

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[1] A convention for proposing amendments is sometimes referred to as a "Constitutional Convention." A "Convention for proposing Amendments" is the phrase used in Article V.

from two thirds of the States. As Alexander Hamilton explained in THE FEDERALIST No. 85: "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."

5. By 1979, Congress had received valid applications from two thirds of the States, obligating it under Article V to call a convention for proposing amendments for the limited purpose of proposing an amendment restricting Congress's power to engage in deficit spending of federal tax revenues. At that time and continuing until 1998, Congress had pending before it at least 34 valid, non-rescinded State applications for a convention for proposing amendments limited to proposing such an amendment, which is commonly known as a "Balanced Budget Amendment" or more recently, a "Fiscal Responsibility Amendment."

6. Beginning in 1979 and continuing to this day, Congress has failed and refused to discharge its nondiscretionary ministerial duty under Article V to call a convention for proposing amendments for the limited purpose of proposing an amendment restricting federal deficit spending.

7. Congress's current, and continuing, duty to call such a convention for proposing amendments is founded on the following principles, all compelled by the original public meaning of Article V:

> (a.) At the moment Article V's two-thirds threshold of State applications is reached, Congress is immediately obligated to call a convention for proposing amendments, an obligation that continues under Article V until the Convention is called.

(b.) Once Article V's two-thirds threshold of State applications is reached, later rescissions of those applications bringing the total number of active applications below the two-thirds threshold does not nullify Congress's duty to call a convention for proposing amendments. In other words, once the Article V bell has been rung, it cannot be unrung.

(c.) A State's application for a convention for proposing amendments can be limited to a specific subject, and a convention for proposing amendments called for the purpose of proposing such an amendment cannot constitutionally exceed that limitation. An amendment proposed by a convention for proposing amendments that does not conform to the subject for which the Convention was called would thus be *ultra vires* and invalid.

(d.) Applications for a convention for proposing amendments limited to a specific subject need not be worded identically, and they rarely are. If a State's application can be reasonably interpreted to express agreement to a convention for proposing amendments limited to a specific subject, then it must be so interpreted by Congress and counted toward Article V's two-thirds threshold for calling a convention for proposing amendments.

(e.) A State application for a "general" or "plenary" convention for proposing amendments – that is, an application for a convention for proposing amendments that is open to considering and proposing amendments on *any* subject—expresses the State's agreement to the calling of a convention for proposing amendments for the purpose of proposing an amendment on any

subject. Such applications must therefore be counted by Congress toward Article V's two-thirds threshold requirement for a convention for proposing amendments limited to any subject.

(f.) The States' right under Article V to "originate the amendment of errors" in the Constitution is judicially enforceable.

JURISDICTION AND VENUE

8. Jurisdiction is proper in this Court under 28 U.S.C. § 1331, which provides for original jurisdiction in this Court for "all civil actions arising under the Constitution, laws, or treaties of the United States," and 28 U.S.C. § 2201, which provides for jurisdiction over actions seeking declaratory judgment.

9. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(C) because this is an action against the United States or agencies of the United States involving no real property and one of the plaintiffs resides in this district.

PARTIES

10. Plaintiffs, Alaska [and others], are states that have submitted applications to Congress pursuant to Article V for the calling of a convention for proposing amendments for the limited purpose of proposing an amendment restricting Congress's power to engage in deficit spending of federal tax revenues. Even though two thirds of the 50 States have submitted such an application, Congress has failed and refused to call such a convention for proposing amendments as required by Article V, effectively nullifying Plaintiffs' applications and denying Plaintiffs' the opportunity to participate in a convention for

proposing amendments.

11. Defendant United States is the national government created by the Constitution. It has received applications from two thirds of the States for the calling of a convention for proposing amendments for the limited purpose of proposing an amendment restricting Congress's power to engage in deficit spending of federal tax revenues. It is thus obliged under Article V to call such a convention for proposing amendments. It has failed and refused to do so.

12. Defendant Congress of the United States is established by Article I, Section 1 of the Constitution. It has received applications from two thirds of the States for the calling of a convention for proposing amendments for the limited purpose of proposing an amendment restricting Congress's power to engage in deficit spending of federal tax revenues. It is thus obliged under Article V to call such a convention for proposing amendments. It has failed and refused to do so.

13. Defendant United States Senate is established by Article I, Section 1 of the Constitution. It has received applications from two thirds of the States for the calling of a convention for proposing amendments for the limited purpose of proposing an amendment restricting Congress's power to engage in deficit spending of federal tax revenues. It is thus obliged under Article V, together with Defendant United States House of Representatives, to call such a convention for proposing amendments. It has failed and refused to do so.

14. Defendant United States House of Representatives is established by Article I, Section 1 of the Constitution. It has received applications from two thirds of the States for the calling of a convention for proposing amendments for the limited purpose of proposing

an amendment restricting Congress's power to engage in deficit spending of federal tax revenues. It is thus obliged under Article V, together with the Defendant United States Senate, to call such a convention for proposing amendments. It has failed and refused to do so.

15. Defendant Sonceria Berry is the Secretary of the United States Senate. In her role she supervises a variety of offices that manage the day-to-day operations of the United States Senate, including a range of recordkeeping duties, and is also responsible for communicating with the House of Representatives.

16. Defendant Kevin McCumber is the Clerk of the United States House of Representatives. In that role, he is charged with organizing and making publicly available applications that have been submitted to Congress pursuant to Article V for the calling of a convention for proposing amendments and designated by the chair of the Committee on the Judiciary. H. RES. 5, § 3(n) (2023).

FACTUAL ALLEGATIONS

The Structure of Article V: Two Methods of Constitutional Amendment

17. Article V states in full:

> 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.

U.S. CONST. Art. V (emphasis added).

18. Article V of the Constitution establishes two methods by which the Constitution can be amended. The first permits Congress to propose amendments. To date, this has been the only method used to amend the Constitution. The second permits States to propose amendments.

19. Under the first method, Congress may propose constitutional amendments when both the House and Senate agree to do so by a vote of two thirds of Members present.

20. Under the second method, the States may initiate the process for constitutional amendments by submitting applications to Congress for the calling of a convention for proposing amendments at which amendments may be proposed. Once two thirds of the States have submitted applications for a Convention, Article V provides that Congress "shall call a Convention for proposing amendments."

Once Two Thirds of the States Have Applied for a Convention for Proposing Amendments,
Congress's Duty to Call a Convention is Mandatory

21. Article V commands that Congress "shall call a Convention for proposing Amendments," "on the Application of the Legislatures of two thirds of the several states." U.S. CONST. Art. V.

22. The plain text speaks in mandatory and limiting terms—use "of the mandatory 'shall,' . . . normally creates an obligation impervious to . . . discretion." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). Thus, the plain meaning

of Article V's terms is that Congress has a nondiscretionary duty, once the threshold of applications from two thirds of the States is reached, to call a convention for proposing amendments.

23. Indeed, in advocating for the Constitution's adoption, Hamilton expounded on the text of this article, explaining that, "[b]y the fifth article of the plan, the Congress will be *obliged* 'on the application of the legislatures of two thirds of the States . . . to call a convention.' . . . 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." THE FEDERALIST No. 85 (Hamilton) (emphases in original).

24. Other Founders, including George Washington, James Iredell, James Madison, and Tench Coxe, agreed that Congress has no power to impede the States' path to a convention for proposing amendments. George Washington stated that Article V ensures that "a constitutional door is open for such amendments as shall be thought necessary by nine States." *Letter from George Washington to John Armstrong* (Apr. 25, 1788) (on file with THE NAT'L ARCHIVES, FOUNDERS ONLINE), https://bit.ly/3t856Sa. As Tench Coxe explained: "If two thirds of [State] legislatures require it, Congress *must* call a general convention, even though they dislike the proposed amendments, and if three fourths of the state legislatures or conventions approve such proposed amendments, they become an actual and binding part of the constitution, *without any possible interference of Congress*." Tench Coxe, *A Pennsylvanian to the New York Convention*, PA. GAZETTE, June 11, 1788, *reprinted in* 20 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION ("DOCUMENTARY HISTORY") 1139, 1142–43 (John P. Kaminski et al. eds., 2004); *see also*

Tench Coxe, *A Friend of Society and Liberty*, PA. GAZETTE, Jul. 23, 1788, *reprinted in* 18 DOCUMENTARY HISTORY 277, 283 (1995) ("It is provided in the clearest words, that Congress shall be *obliged* to call a convention on the application of two-thirds of the legislatures[.]"); Robert G. Natelson, *Proposing Constitutional Amendments by Convention: Rules Governing the Process*, 78 TENN. L. REV. 693, 734–35 (2011) (collecting statements from the Founders).

25. Experience had taught the Founders that flexibility in amending the Constitution was of paramount importance and that Congress, if not checked, could pose an impediment to the States' ability to consider, propose, and ratify constitutional amendments. After all, in creating the new Constitution, the Founders eschewed the amendment process laid out in the Articles of Confederation, which required both approval of Congress and ratification by every State, as unduly restrictive and unworkable. OFF. OF LEGAL COUNSEL, DEP'T OF JUST., *Memorandum Opinion for the Attorney General, Constitutional Convention—Limitation of Power to Propose Amendments to the Constitution*, No. 79-75 (Oct. 10, 1979), *in* 3 OPINIONS OF THE OFFICE OF LEGAL COUNSEL IN RELATION TO THEIR OFFICIAL DUTIES 398 (Leon Ulman ed., 1982) ("OLC Opinion").

26. When the delegates arrived in Philadelphia in 1787 for the Constitutional Convention, the Virginia Plan, drafted by James Madison to guide the Philadelphia Convention's initial debates, included as its 13th resolution: "[T]hat provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto." OLC Opinion, App'x I at 411.

27. During the initial debates over Article V, several members of the Philadelphia Convention argued that excluding the National Legislature was unnecessary. But George Mason disagreed, cautioning the delegates that "[t]he plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments therefore will be necessary, and it will be better to provide for them, in an easy, regular and Constitutional way than to trust to chance and violence. It would be improper to require the consent of the Natl. Legislature, because they may abuse their power, and refuse their consent on that very account. The opportunity for such an abuse may be the fault of the Constitution calling for amendment." *Id*.

28. The Committee of Detail, which created the first draft of the Constitution according to the resolutions of the Philadelphia Convention, drafted a proposal for amending the Constitution under which Congress had no role except the duty to call a Convention upon the States' request: "On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a Convention for that purpose." *Id*., App'x I at 412.

29. As the Philadelphia Convention worked its way toward the final language of Article V, it created the dual-track process that was ultimately adopted, and the central role of the States in proposing amendments was never diminished. *Id*., App'x I at 412–14. And the duty prescribed to Congress to call a Convention on the application of two thirds of the States was consistently couched in mandatory terms. *See* RUSSELL L. CAPLAN, CONSTITUTIONAL BRINKSMANSHIP 27–30 (1988) (detailing drafting history of Article V at the Philadelphia Convention).

30. In short, the Founders understood that Congress "might refuse to adopt a necessary or desirable amendment, particularly one designed to curb its own authority." ROBERT G. NATELSON ET AL., STATE INITIATION OF CONSTITUTIONAL AMENDMENTS: A GUIDE FOR LAWYERS AND LEGISLATIVE DRAFTERS 22 (4th ed. 2016), https://bit.ly/3PT4bOv ("Natelson"). "Accordingly, the Framers added the convention for proposing amendments as a way for the states to present corrective amendments for ratification without substantive congressional participation." *Id.*

The Constitution Permits the States To Apply for a Subject-Limited Convention

31. Article V permits the States to submit an application for the calling of a general, also known as a plenary, convention for proposing amendments,[2] which is open to considering and proposing amendments on any subject.

32. Article V also permits the States to apply for a convention for proposing amendments limited to considering and proposing an amendment on a specific substantive subject.

33. That Article V permits a limited Convention is supported by history, modern practice, and the structure of Article V.

34. The American Bar Association ("ABA") and the Department of Justice ("DOJ")

[2] Many sources use the term "general Convention" to refer to a Convention not limited by specific topic (like the Philadelphia Convention). Some scholars have argued that the term "general Convention" is incorrect when used in this manner, as it refers to a Convention's national (rather than regional) status, not to its topic. *See, e.g.*, Robert G. Natelson, *Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments*," 65 FLA. L. REV. 615, 629 (2013). Other interchangeable terms include "unlimited," "plenary," or "open" applications and Conventions.

Office of Legal Policy ("OLP") have concluded that Article V permits and envisions a subject-limited Convention. In 1974, the ABA examined the constitutionality of limited Conventions, concluding "that Congress has the power to establish procedures which would limit a convention's authority to a specific subject matter where the legislatures of two-thirds of the states seek a convention limited to that subject." SPECIAL CONST. CONVENTION STUDY COMM., AM. BAR ASS'N, AMENDMENT OF THE CONSTITUTION BY THE CONVENTION METHOD UNDER ARTICLE V at 11 (1974) ("1974 ABA Report"). In 1987, OLP published a lengthy report concluding that Article V permits a limited convention for proposing amendments. OFF. OF LEGAL POL'Y, DEP'T OF JUST., PUB. NO. 115134, LIMITED CONSTITUTIONAL CONVENTIONS UNDER ARTICLE V OF THE UNITED STATES CONSTITUTION 1 (1987). First, OLP explained that the States and Congress stand on equal constitutional footing under Article V and therefore must be treated similarly; since Congress can limit its constitutional amendment debates to a specific topic, the States must be able to do the same. *Id.* at 5. Second, principles of consensus that underlie Article V dictate that the States can and should reach a consensus on the subject of a constitutional amendment prior to engaging in a Convention. *Id.* at 20. Third, history and practice indicate that conventions for proposing amendments can be called on a subject-limited basis and that a general or unlimited convention is not required. *Id.* at 28.

35. Founding-Era history supports the proposition that applying States may limit the subjects to be considered at, and thus the amendments to be proposed by, a convention for proposing amendments. The "history of the origins of the amending provision," the ABA concluded, offers "no justification for the view that Article V sanctions only general

conventions." 1974 ABA Report at 16. "In the Founders' experience, convention calls and pre-call requests almost invariably designated one or more subjects and promoted a convention to address those subjects." Robert G. Natelson, *Counting to Two Thirds: How Close Are We to a Convention for Proposing Amendments to the Constitution?*, 19 FEDERALIST SOC'Y REV. 50, 53 (2018), https://bit.ly/46mMRXm ("*Counting to Two Thirds*"). "Founding-era practice informs us that Article V applications and calls may ask for either a plenipotentiary convention or one limited to pre-defined subjects." Natelson, *Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments*," *supra*, at 686. "Most American multi-government gatherings had been limited to one or more subjects, and the ratification-era record shows affirmatively that the Founders expected that most conventions for proposing amendments would be similarly limited." *Id.*

36. In THE FEDERALIST NO. 85, Alexander Hamilton wrote: "[E]very amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly . . . . [C]onsequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place." Hamilton's statement reflects the Founders' understanding that applying States could specify "particular subject matter at the beginning of the process," and not be required to engage in an unlimited plenary session. Natelson, *Proposing Constitutional Amendments by Convention*, *supra*, at 727. As Tench Coxe explained, "states would make application explicitly to promote particular amendments." *Id*. at 728. And "[i]f two thirds of those legislatures require it, Congress must call a general convention, even though they dislike

the proposed amendments, and if three fourths of the state legislatures or conventions approve such proposed amendments, they become an actual and binding part of the constitution, without any possible interference of Congress." *A Pennsylvanian to the New York Convention*, *reprinted in* 20 DOCUMENTARY HISTORY, *supra*, at 1142–43. Abraham Yates, Jr., likewise understood that the subject of the proposed amendments would be agreed upon prior to a subject-limited Convention. In a 1788 letter to William Smith, Yates wrote: "We now Cant [sic] get the Amendments unless 2/3 of the States first Agree to a Convention And as Many to Agree to the Amendments—And then 3/4 of the Several Legislatures to Confirm them[.]" *Letter from Abraham Yates, Jr., to William Smith*, Sept. 22, 1788, *reprinted in* 23 DOCUMENTARY HISTORY 2474 (2009).

37. So too, a limited Convention is consistent with State historical practice, "under which limited conventions have been held under constitutional provisions not expressly sanctioning a substantively-limited convention[.]" 1974 ABA Report at 17.

38. A limited Convention is necessary, as a practical matter, for the States to effectuate the power granted to them under Article V. "Since Article V specifically and exclusively vests the state legislatures with the authority to apply for a convention, we can perceive no sound reason as to why they cannot invoke limitations in exercising that authority." *Id*. at 16. Congress, of course, only proposes amendments limited to a particular subject. Accordingly, a rule forbidding limited Conventions "would relegate the alternative [State-controlled] method to an 'unequal' method of initiating amendments. Even if the state legislatures overwhelmingly felt that there was a necessity for limited change in the Constitution, they would be discouraged from calling for a convention if that convention

would automatically have the power to propose a complete revision of the Constitution." *Id.* "[A] substantively-limited Article V convention is consistent with the purpose of the alternative method since the states and people would have a complete vehicle other than the Congress for remedying specific abuses of power by the national government[.]" *Id.* at 17. On the other hand, if the Constitution precluded limited-subject Conventions, the State-controlled method would be logistically unwieldy, if not impossible. *See* Michael B. Rappaport, *Reforming Article V: The Problems Created by the National Convention Amendment Method and How To Fix Them*, 96 VA. L. REV. 1509, 1521 (2010). The Founders obviously did not intend the State-controlled Article V method of amending the Constitution to be a nullity.

39. Modern State practice likewise supports the proposition of a limited convention for proposing amendments. "At the state level, for example, it seems settled that the electorate may choose to delegate only a portion of its authority to a state constitutional convention and so limit it substantively." 1974 ABA Report at 16.

40. Likewise, the States have long submitted applications to Congress limited to specific topics—including multiple limited-subject applications per State—indicating a commonly shared understanding that a limited Convention is permissible.

41. That a convention for proposing amendments can be limited to proposing an amendment on a single subject is also supported by common sense. As Professor Van Alstyne explained, "[t]he notion that nothing may be considered by means of convention unless everything may be considered in that same convention seems . . . a *non sequitur* having no basis whatever in article V." William W. Van Alstyne, *Does Article V Restrict the*

States to Calling Unlimited Conventions Only?—A Letter to a Colleague, 1978 DUKE L. J. 1295, 1306 (1978). "The most proper use, rather than the least proper use, of such a convention would be in contemplation of a fairly modest change rather than a wholesale change." *Id.* All the more is this true where, as here, the particular problem to be addressed at the Convention is one that "Congress might not be expected swiftly to repair, especially if Congress were itself the source of the mischief[.]" *Id.* at 1305. The contrary position—that State applications for a subject-limited Convention are not constitutionally permissible—would create the absurd result by which "Congress could turn aside even identically phrased, single-item resolutions submitted by more than two-thirds of the states resolved to have a particular (constitutional) grievance considered in convention[.]" *Id.* at 1304.

42. Accordingly, "Congress *is* under a constitutional obligation to call a convention responsive in good faith" to applications on "a given subject of sufficient common description." *Id.* at 1305. Thus, when two thirds of the States apply for a limited convention for proposing amendments, "Congress should proceed with the call—and limit the agenda exactly in accordance with the unequivocal expressions of those solely responsible for the event." *Id.* at 1306.

Under Article V's State-Controlled Method of Constitutional Amendment, Congress's Duties Are Mandatory and Ministerial

43. Article V provides Congress with no power to exercise substantive discretion over how to count State applications for a convention for proposing amendments, or to impose any requirements on the States in the form or substance of their applications for a

convention for proposing amendments.

44. "Congress serves as an agent for the states in counting applications and calling the convention." Natelson, *supra*, at 27. "As the text indicates, this duty is ministerial and mandatory." Natelson, *Counting to Two Thirds*, *supra*, at 59. "Plenary congressional power over the amendment process simply cannot be squared with the text of Article V or with basic principles of limited constitutional government." Michael Stokes Paulsen, *A General Theory of Article V: The Constitutional Lessons of the Twenty-seventh Amendment*, 103 YALE L. J. 677, 723 (1993).

45. The lesson of Article V's history is clear. "The various stages of drafting through which article V passed convey . . . that the state mode for getting amendments proposed was not to be contingent upon any significant cooperation or discretion in Congress. Except as to its option in choosing between two procedures for ratification . . . Congress was supposed to be mere clerk of the process convoking state-called conventions." Van Alstyne, *Does Article V Restrict the States to Calling Unlimited Conventions Only?—A Letter to a Colleague*, *supra*, at 1303.

46. As the clerk charged with counting State applications and calling the Convention, Congress must receive and review applications from the States. Congress has failed to fulfill these responsibilities.

47. State applications for a convention for proposing amendments are often worded differently but nonetheless reflect a consensus among the applying States for the calling of a Convention limited to consideration of a specific subject.

48. Because State applications for a convention for proposing amendments are

rarely identical, "Congress's ministerial duty to call a convention also includes the duty to group applications according to subject matter." James Kenneth Rogers, Note, *The Other Way To Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L. & PUB. POL'Y 1005, 1019 (2007). Congress's discretion in carrying out that duty is exceedingly limited.

49. Article V enshrines a critical federalism principle in creating the two separate tracks for constitutional amendment, with one track provided for the States. As James Madison put it in THE FEDERALIST No. 43, 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 on the other."

50. Article V's State-controlled method is a means for the States to bypass Congress and to propose needful amendments, including amendments deemed by the States to be in their interests even if not in Congress's interests.

51. Article V's State-controlled method also provides an avenue for the States to exert pressure on Congress to propose amendments to address the States' concerns. History has borne this out. For example, "[t]he pressure generated by numerous petitions for a constitutional convention is believed to have been a factor in motivating Congress to propose the Seventeenth amendment to change the method of selecting Senators." 1974 ABA Report at 2; *see also* RONALD D. ROTUNDA & JOHN E. NOWAK, 2 TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 10.10(b)(iii) (5th ed. 2012).

52. Congress is not always a neutral arbiter when the States apply for amendments through the Convention process. Rather, as the Founders understood, Congress's

constitutional interests may conflict with the constitutional interests of the States. As Hamilton noted in THE FEDERALIST No. 85, many Founders believed that "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." Likewise, Samuel Rose, a New York legislator who supported the federal Constitution at New York's ratifying convention explained: " 'The reason why there are two modes of obtaining amendments prescribed by the constitution I suppose to be this—it could not be known to the framers of the constitution, whether there was too much power given by it or too little; . . . and they prescribed for the states a mode of restraining the powers of government, if upon trial it should be found that they had given too much.' " Natelson at 22 (quoting 23 DOCUMENTARY HISTORY 2520–22).

53. Congress is certainly not a neutral arbiter in reviewing applications for a Convention for the purpose of proposing an amendment restricting Congress's power to engage in deficit spending of federal tax revenues. Rather, Congress faces the actual conflict of interest the Founders envisioned. *Id.* Article I grants Congress the power over the purse through the Appropriations Clause. U.S. CONST. Art. I, § 9, cl. 7. The spending power is Congress's "most complete and effectual weapon." THE FEDERALIST No. 58 (Madison). By limiting Congress's ability to use that power under certain conditions, a federal deficit spending amendment would significantly constrain Congress's power. Like an amendment proposing congressional term limits or a congressional salary cap, Congress's interests are directly contrary to an amendment constraining its spending power. This conflict of interest is apparent from the State applications themselves, many

of which explicitly mention Congress. *See, e.g.*, Alabama HJR 227 (1976) ("[I]n the absence of a national emergency that the total of all federal appropriations *made by the Congress* for any fiscal year may not exceed the total of all estimated federal revenue for that fiscal year." (emphasis added)). *See also* Arizona SJR 1002 (1979), Arkansas HJR 1 (1979), Idaho HCR 7 (1979), Nebraska LR 106 (1976), New Mexico SJR 1 (1979), Oklahoma HJR 1049 (1976), Pennsylvania HR 236 (1976), Texas HCR 31 (1977), Virginia SJR 36 (1976). In sum, the conflict in theory envisioned by the Founders is realized in the *actual* conflict created by State applications asking Congress to call a Convention to consider and propose an amendment restricting federal deficit spending.

54. Under the guise of discretion to interpret and count applications, Congress could block or otherwise frustrate the States's ability to exercise their Article V power to propose amendments that might be adverse to Congress's interests, including an amendment restricting Congress's spending power. *See* Natelson, *Counting to Two Thirds* at 54 ("Leaving the question to Congress would undercut the convention procedure's fundamental purpose as a mechanism for *bypassing* Congress.").

55. Article V therefore denies Congress authority to reject or otherwise nullify applications based on their form or substance, or to exercise significant discretion in interpreting and counting applications. Congress has not established statutory principles or standards for interpreting and counting applications, but given the text, history, structure, and purpose of Article V, Congress must follow the Founding-Era practice of reading State applications "in the most straightforward manner" and "treating applications in a forgiving manner." *Id*. at 59. If a State's application can reasonably be interpreted to express

agreement to a convention for proposing amendments limited to a specific subject, then it must be so interpreted by Congress and counted toward Article V's two-thirds threshold for calling a convention for proposing amendments.

If the Applications of 34 States Can Reasonably Be Interpreted To Ask Congress To Call a Limited Convention for Proposing Amendments, Congress Must Call Such a Convention

56. Given Congress's constitutionally limited role under Article V's State-controlled amendment method, the text, history, and structure of Article V require that if the two-thirds threshold of State applications is reached under any reasonable standard of interpreting and aggregating State applications for a limited convention for proposing amendments, Congress is constitutionally required to call such a Convention.

57. If Congress receives 34 applications that can reasonably be interpreted to ask Congress to call a limited Convention, and Congress fails or refuses to do so, Congress has exceeded its constitutional role as a mere agent of the States and clerk of the Convention and seized for itself the power that Article V reserves to the States. Such usurpation by Congress in fact came to pass following the point in time – 1979 – when Congress had before its valid applications from more than 34 States asking Congress to call a limited Convention for the purpose of proposing an amendment to address federal deficit spending, to which Congress has not yet complied to fulfill its Constitutional duty.

Reasonable Counting Principles

58. Congress must act as a faithful agent of the States in interpreting and counting nonidentical State applications in a reasonable and forgiving manner, especially when Congress's own interests are in conflict with the proposed amendment. "[T]here is no

Founding-Era practice suggesting that the text should be read otherwise than in the most straightforward manner[.]" Natelson, *Counting to Two Thirds* at 59. "This conclusion is reinforced by the Constitution's use of the imperative: 'Congress . . . shall call' and by the Founding-Era practice of treating applications in a forgiving manner." *Id.*

59. To be aggregated for a limited Convention, State applications must demonstrate some subject-matter intersection or otherwise reflect a common intent to consider the subject in question.

60. It is reasonable to aggregate applications that specifically reference a Convention for proposing an amendment to address federal deficit spending with applications for a plenary Convention, so long as the plenary applications do not evince any intent to remain operative only if a plenary Convention is called.

61. "When a state legislature applies to Congress for a limited convention, it grants Congress its authorization to call a convention on that topic. When a state legislature applies for a plenary convention, it grants Congress authority to call a convention to consider any amendments to the current Constitution." *Id*. at 58. The applications thus intersect. This follows from the fundamental legal principle that "[t]he greater includes the lesser." *Id.* at 57 (cleaned up).

a. Founding-Era practice supports this counting principle. The "Founders' understanding of the word 'application,' . . . included requests for conventions (as in Article V), calls, commissions, and instructions." *Id.* "Like other Founding-Era applications, commissions and instructions could be narrow, wider but still limited,

or plenary. . . . [and] a commissioner with wider authority could participate fully in meetings restricted to subjects narrower than, but included within, the scope of his wider authority." *Id.*

b. Common sense likewise supports the principle that the "greater includes the lesser." An application for the calling of a Convention open to proposing amendments on any and all subjects intersects with an application for a Convention limited to proposing an amendment on one specified subject. To be sure, a State *could* expressly limit its application to a plenary Convention with a statement like: "We'll attend a convention, but only if all constitutional amendments may be considered." *Id.* at 59 (emphases omitted). Such plenary-only applications do not reflect consensus with States seeking a Convention limited to proposing amendments on specified subjects. In any case, such a plenary-only application would be unprecedented in the history of Article V: "[c]ertainly no Article V application has ever expressed . . . . [this] 'all or nothing' position." *Id.*

c. Congress's constitutional role in the structure of Article V supports aggregating purely plenary applications with applications for a Convention limited to a specific subject. "Another reason for restraining Congress's discretion as to which plenary applications to aggregate is the nature of Congress' role in the convention process." *Id.* "When aggregating applications and issuing the call, Congress acts

> as an executive agent for the state legislatures." *Id.* "Because a primary purpose of the convention procedure is to check Congress, when it aggregates applications, it does so in a conflict of interest situation. Fiduciary principles argue against allowing Congress to avoid a convention by interpretive logic chopping." *Id.*

62. It is reasonable to aggregate applications that specifically reference a Convention for proposing an amendment restricting federal deficit spending with applications that reference related or similar purposes, such as requiring a balanced federal budget or imposing federal fiscal restraint. Again, Congress must interpret and aggregate applications in a "forgiving" manner, *id.*, and may not "block a convention by sophistic word parsing," *id.* at 60. When applications for a limited Convention demonstrate substantive subject-matter intersection, despite different wording, they should be counted together. As the Department of Justice's Office of Legal Counsel explained: "The various authorities agree that the applications need not be identical, but that it suffices if the States request a convention to address the same general problem or issue." OLC Opinion, No. 79-4, at 18. (in 79-4).

63. Where "thirty-four applications, however worded, agree that the convention is to consider a particular subject and do not include language fundamentally inconsistent with each other," Congress is constitutionally required to call a Convention. Natelson at 54.

64. A State application can be rescinded but it does not expire unless so stated on its face. "Unless expressly time-limited, applications remain in effect until formally

rescinded." Natelson, *Counting to Two Thirds*; *see also* Paulsen, *A General Theory of Article V*, 103 Yale L. J. at 735 ("Such applications may be rescinded later or modified by the enacting state, but so long as they remain unrepealed they retain their full legal force."). Several points support this straightforward principle:

a. First, "[l]egislative actions normally do not lapse due to the mere passage of time." Natelson, *Counting to Two Thirds*, at 54. Legislation presumptively remains in effect, even if long-standing or outdated. "Nothing in constitutional history or usage suggests that Article V legislative resolutions comprise an idiosyncratic exception." *Id.*

b. Second, precedent supports the proposition that Article V resolutions do not expire. Congress first proposed the Twenty-Seventh Amendment in 1789, and several states ratified it at that time, though not the required three-fourths of the States then in the Union. The amendment then remained dormant for over two centuries. In 1992, the 38th State—three-fourths of the States now in the Union—finally ratified the Twenty-Seventh Amendment, and it became effective. This precedent establishes that Article V resolutions do not automatically expire with the passage of time.

c. Third, when States have wanted to place a temporal limit on their Article V resolutions, they have expressly included an expiration date on the face of the resolution. *Id.* This practice implies that there is no background principle of automatic expiration.

d. Fourth, any implicit expiration date, whether imposed by Congress or a Court, would be arbitrary, and lack any principled basis in the text, history, or structure of Article V.

e. Fifth, the common practice of States rescinding their Article V resolutions implies that applications do not otherwise automatically expire with the passage of time. "Legislatures becoming dissatisfied with applications can, and do, regularly rescind them." *Id.*

65. Although a State may rescind an application, once Congress's constitutional duty to call a Convention has been triggered, it remains obligatory until the Convention is called, even if one, or all, of the triggering applications are rescinded. "Only when the magic number of state ratifications occurs does any interest legally 'vest,' preventing simple legislative repeals. At that point, the constitutive action of the whole has, by virtue of Article V's rule of recognition, become more than the sum of its individual parts." Paulsen, *A General Theory of Article V*, 103 Yale L. J. at 726. When that critical constitutional threshold is reached, "repeal, revocation, rescission, and—the most extreme manifestations—nullification and secession, are unlawful." *Id.* "Each part can repeal its contribution toward the creation of a whole *until* the whole has been finally created." *Id.* (emphasis added).

Thirty-Four States
Have Applied for a Convention for Proposing Amendments Limited to the

Subject of
Federal Deficit Spending

66. By 1979, two thirds of the States had submitted valid applications under Article V asking Congress to call a convention for proposing amendments for the limited purpose of proposing an amendment restricting Congress's power to engage in deficit spending of federal tax revenues. At that time and continuing until 1998, Congress had pending before it at least 34 valid, non-rescinded State applications for a convention for proposing amendments limited to proposing such an amendment. In the peak period in the early-1980s, there were *38* valid applications for a limited Convention on the subject of proposing an amendment addressing federal deficit spending. This exceeds the constitutional threshold of 34 States, and triggers Congress's mandatory, ministerial constitutional duty to call a limited Convention.

67. Plenary applications—that is, those that ask Congress to call a Convention open to consideration of amendments on any particular substantive subject—are properly counted with applications that specifically reference a Convention on federal deficit spending, either through the use of the phrase "balanced budget" or similar wording describing the same subject.

68. These applications may reasonably be counted together because the subject of interest intersects, thus demonstrating a consensus among the applying States for a Convention to consider an amendment restricting federal deficit spending.

A. Total State Applications for a Federal Deficit Convention By Year

69. Table 1 below displays the sum of State applications for a limited Convention on a Federal deficit amendment by year.

Table 1

Total State Applications for a Limited Convention on a Federal Deficit Amendment[3]

Year	Total State Applications for a Limited Convention on a Federal Deficit Amendment
1974	12
1975	18
1976	23
1977	27
1978	29
1979	**37**
1980	**37**
1981	**37**
1982	**38**
1983	**38**
1984	**38**
1985	**38**
1986	**38**
1987	**38**
1988	**36**
1989	**36**
1990	**35**
1991	**35**
1992	**35**
1993	**35**
1994	**35**
1995	**35**
1996	**35**
1997	**35**
1998	**35**

[3] Consistent with the position advocated by preeminent Article V scholars that applications for a plenary Convention may be aggregated with applications for a specific Convention on a particular topic, *see supra*; *see also* Robert G. Natelson, *Counting to*

70. Congress's duty to call a limited convention for proposing amendments on a federal deficit amendment was triggered in 1979.

71. By the end of 1979, 37 States had submitted either plenary applications or applications for a limited Convention on a federal deficit amendment. This exceeds the constitutional threshold of 34 States (i.e., two-thirds of the 50 States).

72. By the end of 1982, 38 States had submitted either plenary applications or applications for a limited Convention on a federal deficit amendment. This exceeds the constitutional threshold of 34 States.

73. The number of States with valid, unrescinded applications for either a plenary Convention or a Convention limited to consideration of a federal deficit amendment remained above the two thirds threshold from at least 1979 to 1998.

B. Applications for a Federal Deficit Convention by State

74. In 1982, Plaintiff Alaska submitted an application asking Congress to call a limited Convention for the purpose of proposing an amendment restricting federal deficit spending. Leg. Res. 1, 12th Leg., 2d Sess. (Alaska 1982). By joint resolve, Alaska's Legislature made "application and request[ed] that the Congress of the United States call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not

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Two Thirds, Table 1 aggregates applications for a Convention to consider a federal deficit amendment and related topics as well as plenary applications that do not express or imply a commitment to any unrelated substantive topic.

exceed the total of all estimated federal revenues for that fiscal year." *Id.* This was done because Congress was causing "continuous and damaging inflation and consequently a severe threat to the political and economic stability of the United States." *Id.* Alaska affirmed its commitment to a limited convention in 2014. Alaska Stat. § 44.99.610.

75. Table 2 displays the State applications asking Congress to call a limited Convention for the purpose of proposing an amendment restricting federal deficit spending.

Table 2 Countable State Applications for a Limited Convention on a Federal Deficit Amendment[4] [5]					
	State	**Date**	**Rescission**	**Citation**	**Text Excerpt**
1.	Alabama	1976	1988	HJR 227 *See also* HJR 112 (2015); SJR 100 (2011); HJR 105 (1975).	"[T]he Alabama Legislature makes application and requests that the Congress of the United States call a constitutional convention, pursuant to Article V of the Constitution of the United States, for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year."
2.	Alaska	1982	N/A	HJR 17 am S *See also* HJR 22 am (2014).	"[T]his body makes application and requests that the Congress of the United States call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year[.]"

[4] Table 2 compiles the applications for each State countable toward a limited Convention on a federal deficit amendment. Where some States have submitted multiple countable applications, Table 2 highlights the most recent application countable toward the constitutional threshold first reached in 1979 and reaching a peak in the early-to-mid 1980s. Table 2 also compiles citations to the additional countable applications. As with Table 1, Table 2 applies the reasonable counting principles stated *supra*: aggregating applications for a federal deficit Convention with pure plenary applications that indicate no intent to be bound by other, unrelated substantive topics.

3.	Arizona	1979	2003	SJR 1002 *See also* HCR 2013 (2017); HCR 2010 (2017); HCM 2003 (1977).	"[T]he Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year."
4.	Arkansas	1979	N/A	HJR 1 *See also* SJR 3 (2019).	"[T]his Body makes application and requests that the Congress or the United States call a constitutional convention for the specific and exclusive purpose or proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total or all estimated Federal revenues for that fiscal year[.]"
5.	Colorado	1978	2021	SJM 1	"That the Congress of the United States is hereby memorialized to call a constitutional convention pursuant to Article V of the constitution of the United States for the specific and exclusive purpose of proposing an amendment to the federal constitution prohibiting deficit spending except under conditions specified in such amendment."

[5] Records of the State applications are attached to this Complaint and compiled in an Appendix.

6.	Delaware	1975	2016	HCR 36	"[T]he General Assembly of the State of Delaware hereby, and pursuant to Article V of the Constitution of the United States, makes application to the Congress of the United States to call a convention for the proposing of the following amendment to the Constitution of the United States . . . The costs of operating the Federal Government shall not exceed its income during any fiscal year, except in the event of declared war. [This] constitutes a continuing application . . . until at least two-thirds of the legislatures of the several states have made similar applications[.]"
7.	Florida	1976	1988	SM 234 *See also* SM 658 (2014); SM 476 (2014); SCR 10 (2010); HM 2801 (1976).	"A memorial to the Congress of the United States making application to the Congress to call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions thereto."
8.	Georgia	1976	2004	HR 469-1267 *See also* SR 736 (2014); SR 371 (2014).	"That this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."

9.	Idaho	1979	1999	HCR 7 *See also* SJM 9 (1963).	"[T]he Legislature makes application and requests that the Congress of the United States call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year[.]"
10.	Illinois	1861	2022	N/A	"Be it resolved by the General Assembly of the State of Illinois, that if application shall be made to Congress, by any of the States deeming themselves aggrieved, to call a convention, in accordance with the constitutional provision aforesaid, to propose amendments to the constitution of the United States, that the Legislature of the State of Illinois will and does hereby concur in making such application."
11.	Indiana	1979	N/A	SJR 8 *See also* HCR 9 (1957); HJR 4 (1907); 1861 Plenary Application.	"The General Assembly of the State of Indiana makes application to the Congress of the United States for a convention to be called under Article V of the Constitution of the United States for the specific and exclusive purpose of proposing an amendment to the Constitution to the effect that, in the absence of a national emergency, the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year."

12.	Iowa	1979	N/A	SJR 1	"[T]he Iowa general assembly respectfully makes application to and petitions the congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."
13.	Kansas	1978	N/A	SCR 1661	"[T]he Legislature of the State of Kansas hereby makes application to the Congress of the United States to call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by the Congress for a fiscal year shall not exceed the total of al estimated federal revenues for such fiscal year. If the Congress shall propose such an amendment to the Constitution, this application shall no longer be of any force or effect[.]"
14.	Kentucky	1861	N/A	R.1	"Resolved by the General Assembly of the Commonwealth of Kentucky: That application to Congress to call a convention for proposing amendments to the Constitution of the United States, pursuant to the fifth article thereof, be, and the same is hereby, now made by this General Assembly of Kentucky; and we hereby invite our sister States to unite with us, without delay, in similar application to Congress."

15.	Louisiana	1979	1990	SCR 4 *See also* SCR 52 (2016); HCR 70 (2014) HCR 87 (2011); SCR 73 (1978); SCR 269 (1975); SCR 109 (1975).	"[T]his body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."
16.	Maryland	1975	2017	SJR 4	"That this Body further and alternatively requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing such an amendment to the Federal Constitution, to be a new Article XXVII" "requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated Federal revenues[.]"
17.	Mississippi	1975	N/A	HCR 51 *See* also SCR 596 (2019).	"That we do hereby, pursuant to Article V of the Constitution of the United States, make application to the Congress of the United States to call a convention of the several states for the proposing of the following amendment to the Constitution of the United States . . . The Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues[.]"

18.	Missouri	1983	N/A	SCR 3 *See also* SCR 4 (2021); SCR 4 (2017); SJ & CR (1907).	"[T]his body respectfully makes application to the Congress of the United States for a convention to be called under Article V . . . for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."
19.	Nebraska	1976	N/A	LR 106 *See also* LR 14 (2022).	"That, alternatively, this Legislature makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenue for that fiscal year."
20.	Nevada	1980	2017	SJR 8 *See also* SJR 2 (1977).	"That this legislature requests the Congress of the United States to call a convention limited to proposing an amendment to the Constitution of the United States which would provide that, in the absence of a national emergency, the total of all federal appropriations for any fiscal year must not exceed the total of the estimated federal revenue for that year."

21.	New Hampshire	1979	2010; restored in 2012.	HCR 8 *See also* HCR 40 (2012).	"[T]his body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto[.]"
22.	New Mexico	1976	2017	SJR 1	"[T]his body makes application and requests that the congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year[.]"
23.	New York	1789	N/A	N/A	"We . . . make this application to Congress, that a convention be immediately called, of deputies from the several States, with full power to take into their consideration the defects of this Constitution that have been suggested by the State Conventions, and report such amendments thereto as they shall find best suited to promote our common interests, and secure to ourselves and our latest posterity, the great and unalienable rights of mankind."
24.	North Carolina	1979	N/A	SJR 1	"[T]his body respectfully petitions the Congress of the United States to call a convention for the exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget in the absence of a national emergency."

25.	North Dakota	1975	2001	SCR 4018 *See also* HCR 3006 (2017); HCR 3015 (2015); SCR 4007 (2011).	"A concurrent resolution of the North Dakota Legislature calling for an amendment to the U.S. Constitution proposing to the several states the requirement of a balanced U.S. cash budget for each session of Congress except in time of war or national emergency . . . . That we respectfully propose an amendment to the Constitution of the United States and call upon the people of the several states for a convention[.]"
26.	Ohio	1861	N/A	N/A *See also* SJR 5 (2013).	"Resolved by the General Assembly of the State of Ohio, That this general assembly does hereby make application to congress to call a convention for proposing amendments to the constitution of the United States, pursuant to the fifth article thereof."
27.	Oklahoma	1976	2009	HJR 1049 *See also* SJR 23 (2021); SJR 4 (2016).	"[T]his Body requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year."
28.	Oregon	1977	1999	SJM 2	"That this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."

29.	Pennsylvania	1976	N/A	HR 236	"[T]he General Assembly of the Commonwealth of Pennsylvania makes application and requests that the Congress of the United [States] call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year."
30.	South Carolina	1978	2004	S 1024 *See also* HJR 3205 (2022); S 670 (1976).	"Memorializing Congress to Call a Constitutional Convention for the Purpose of Amending the Federal Constitution to Limit Annual Federal Appropriations to Annual Revenues, with Certain Exceptions. . . . That Congress is requested, pursuant to Article V of the United States Constitution, to call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution."
31.	South Dakota	1979	2010	SJR 1 *See also* HJR 1001 (2015)	"[T]his Legislature hereby makes application under said Article V of the Constitution of the United States . . . and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency, as defined by law, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year[.]"

32.	Tennessee	1977	2010	HJR 22 *See also* SJR 67 (2016); HJR 548 (2014).	"That pursuant to Article V of the Constitution of the United States, application is hereby made to the United States Congress to call a convention for the purpose of considering and proposing an amendment to the Constitution of the United States to require that, in the absence of a national emergency, the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated federal revenues for that fiscal year, such amendment to read substantially as follows . . . ."
33.	Texas	1977	N/A	HCR 31 *See also* SJR 2 (2017); HCR 13 (1978); SCR 4 (1899).	"[T]his body request that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year[.]"
34.	Utah	1979	2001	HJR 12 *See also* SJR 9 (2019); HJR 7 (2015).	"[T]his Legislature applies to the Congress of the United States to call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution which would require, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed that total of all estimated federal revenues from that fiscal year."

35.	Virginia	1976	2004	SJR 36 *See also* SJR 107 (1975); HJR 75 (1973); 1788 Plenary Application	"[T]his Body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year[.]"
36.	Washington	1901	N/A	HB 90	"That application be and the same is hereby made to the Congress of the United States of America to call a convention for proposing amendments to the constitution of the United States of America as authorized by article v of the constitution of the United States of America."
37.	Wisconsin	1929	N/A	JR 65 S *See also* AJR 9 (2022); AJR 21 (2017); JR 15 S (1911).	"[T]he legislature of the state of Wisconsin hereby earnestly requests and petitions congress to call a convention for proposing amendments to the United States constitution[.]"

38.	Wyoming	1961	2009	HJR 7 *See also* HJR 2 (2017); HJR 12 (1977).	"[P]ursuant to the provisions of Article V of the Constitution of the United States, application is hereby made to the Congress of the United States to call a convention for the purpose of proposing an amendment to such Constitution under which, except for trust fund expenditures and receipts, the expenditures of the Federal Government during any fiscal year may not exceed the estimated receipts of such Government during such fiscal year, unless a substantial majority of the Congress, on recommendation of the President and because of war or other grave national emergency, votes to suspend the limitation on expenditures for a specified period of time."

76. In sum, by the early 1980s, 32 States had submitted applications for a limited Convention related to a balanced budget amendment or differently worded but substantively similar federal deficit amendments. Those include: (1) Alabama HJR 227 (1976); (2) Alaska HJR 17 am S (1982); (3) Arizona SJR 1002 (1979); (4) Arkansas HJR 1 (1979); (5) Colorado SJM 1 (1978); (6) Delaware HCR 36 (1975); (7) Florida SM 234 (1976); (8) Georgia HR 469-1267 (1976); (9) Idaho HCR 7 (1979); (10) Indiana SJR 8 (1979); (11) Iowa SJR 1 (1979); (12) Kansas SCR 1661 (1978); (13) Louisiana SCR 4 (1979); (14) Maryland SJR 4 (1975); (15) Mississippi HCR 51 (1975); (16) Missouri SCR 3 (1983); (17) Nebraska LR 106 (1976); (18) Nevada SJR 8 (1980); (19) New Hampshire HCR 8 (1979); (20) New Mexico SJR 1 (1979); (21) North Carolina SJR 1 (1979); (22) North Dakota SCR 4018 (1979); (23) Oklahoma HJR 1049 (1976); (24) Oregon SJM 2 (1977); (25) Pennsylvania HR 236 (1976); (26) South Carolina S 1024 (1978); (27) South

Dakota SJR 1 (1979); (28) Tennessee HJR 22 (1977); (29) Texas HCR 31 (1977); (30) Utah HJR 12 (1979); (31) Virginia SJR 36 (1977); (32) Wyoming HJR 7 (1961). *See also* Nevada SJR 2 (1977) (application countable toward the 1979 count when the two-thirds threshold was first reached).

77. Six additional States had submitted applications for a plenary Convention, open to proposing amendments on any subject, including restricting federal deficit spending. Those include: (33) Illinois (1861); (34) Kentucky R.1 (1861); (35) New York (1789); (36) Ohio (1861); (37) Washington HB 90 (1901); (38) Wisconsin JR 65 S (1929). *See also* Missouri SJ & CR (1907) (application countable toward the 1979 count when the two-thirds threshold was first reached).

78. These applications, which may reasonably be aggregated together, result in 38 valid countable applications, which exceed the constitutional threshold of 34 States and trigger Congress's duty to call a Convention.

More Restrictive Counting Standards Still Yield 34 Valid Applications

79. As explained, Congress's limited ministerial duty to act as an agent of the States in interpreting and aggregating State applications for the calling of a Convention precludes Congress from exercising an interpretive or other discretion that would result in effectively nullifying State applications or imposing requirements thereon. Even if Congress had some discretion to establish and apply interpretive standards under Article V, more restrictive principles than those articulated above would still result in at least 34 valid State applications asking Congress to call a limited Convention for the purpose of proposing an amendment addressing federal deficit spending.

A. More Restrictive Counting Standard I

80. Some commentators have argued that State applications that propose specific amendment text, rather than simply a subject for consideration at the Convention, are invalid and may not be counted toward the two-thirds threshold. Under this standard, an application is deemed invalid "if it called for a convention with no more authority than to vote a specific amendment set forth therein up or down, since the convention would be effectively stripped of its deliberative function." 1974 ABA Report at 30.

81. Although Congress lacks discretion to impose this extra-constitutional limitation on the States, even applying this standard, the critical constitutional threshold of 34 States has still been reached.

82. Only one State application in the above compilation both included specific amendment text and consented only to a Convention limited to the consideration of that specific amendment text. Delaware's application states: "if two-thirds of the states make application for a convention to propose an identical amendment . . . such convention would have power only to propose the specified amendment and would be limited to such proposal and would not have power to vary the text thereof nor would it have power to propose other amendments on the same or different propositions." Delaware HCR 36, 128th Gen. Assembly, 1st Sess. (Del. 1975), *in* Letter from Bob Goodlatte, Chairman, U.S. House of Representatives, to Hon. Karen Haas, Clerk of the House of Representatives ("Goodlatte-Hass Letter") (Aug. 29, 2016), https://bit.ly/3ETvIJc. The application specifies that it is to be countable with "similar" applications. *Id.*

83. Even if (1) Congress has discretion to nullify applications based on its own

counting standards, and (2) a State application for a Convention expressly limited to consideration of only specific proposed text could constitutionally be deemed invalid by Congress, only Delaware's HCR 36 would be invalid and not countable.

84. If Delaware's application is not counted, a total of 36 valid State applications were pending before Congress at the end of 1979, which still exceeds the constitutional threshold of 34 States.

85. Accordingly, even under this more restrictive counting theory, Congress's duty to call a Convention for the purpose of considering a federal deficit amendment would remain.

B. More Restrictive Counting Method II

86. An even more restrictive counting standard has been advocated by some commentators. It would nullify applications that propose specific amendment text and evince *any* intent that the Convention be limited to discussion of that text, even if phrased in less emphatic terms than Delaware's HCR 36 application discussed *supra*.

87. Although Congress lacks discretion to impose this extra-constitutional limitation on the States, even applying this restrictive standard, the critical constitutional threshold of 34 States has still been reached.

88. Mississippi's HCR 51 includes specific amendment text and applies for a Convention "for proposing amendments to the Constitution of the United States." HCR 51, Miss. Laws of 1975, ch. 526 (Miss. 1975), *in* Goodlatte-Hass Letter (Aug. 1, 2016), https://bit.ly/4658FqO. But the application does not limit the scope of discussion at the Convention, for it specifies that it is to be countable with "similar" applications. *Id.*

89. North Dakota's SCR 4018 proposes specific amendment text and applies "for a convention for such purpose as provided by Article V of the Constitution, the proposed Article providing as follows. . . ." SCR 4018, 44th Leg. (N.D. 1975), *in* Goodlatte-Hass Letter (Aug. 29, 2016), https://bit.ly/3Lxe1mA. But the application does not limit the scope of discussion at the Convention, for it specifies that it is to be countable with "similar" applications. *Id.*

90. Even if (1) Congress has discretion to nullify applications based on its own counting standards and (2) a State application evidencing *any* intent that the Convention be limited to consideration of specific amendment text could constitutionally be deemed invalid by Congress, only Delaware's HCR 36, Mississippi's HCR 51, and North Dakota's SCR 4018 would be invalid and not countable.

91. If these three applications are not counted, a total of 34 valid countable State applications were pending before Congress as of 1979, thus still meeting the constitutional threshold. By the end of 1983, if these three applications are not counted, a total of 35 valid countable State applications were pending before Congress, thus exceeding the constitutional threshold.

92. Accordingly, even under this highly restrictive counting theory, Congress's duty to call a Convention for the purpose of considering a federal deficit amendment would remain.

Congress Is Under a Current Constitutional Duty To Call a Limited Convention on the Subject of Federal Deficit Spending

93. The constitutional threshold of 34 States was reached in 1979, and at least 34

applications for a limited Convention on the subject of federal deficit spending remained unrescinded over a period of decades. Accordingly, Congress's constitutional duty to call such a Convention was triggered and remains binding to this day. Yet Congress has failed and refused to call a convention for proposing amendments.

94. There is no time limit on Congress's duty to call a Convention once it has received valid applications from two thirds of the States. Once the Constitutional threshold has been reached, the duty remains binding until satisfied by a congressional call for a Convention.

95. That a number of States purported to rescind their Convention applications, such that less than two thirds of the States had unrescinded applications beginning in 1999, does not release Congress from its mandatory ministerial duty to call the Convention. To be sure, just as Congress may repeal legislation proposing a Constitutional amendment and States may repeal legislation ratifying a Constitutional amendment, States may repeal legislation applying to Congress for a convention for proposing amendments. But such repeals will be valid and effective only if they are enacted *before* the two-thirds threshold had been triggered—that is, before the States' constitutional interest has *vested*. In the case of repeals of congressional legislation proposing a constitutional amendment or a State's legislation ratifying a constitutional amendment, vesting occurs under Article V when three fourths of the States have ratified the proposed amendment and it becomes, at that moment, "valid to all Intents and Purposes, as Part of this Constitution." At that point, a Congressional repeal of the proposed amendment or a State repeal of its legislation ratifying the amendment would be invalid and ineffective. *See* Paulsen, *A General Theory of Article V*, 103 YALE

L.J. at 725–26. Likewise, once two thirds of the States have applied to Congress for a limited convention for proposing amendments on a given subject, Congress's duty to call the Convention vests, and any subsequent legislation purporting to repeal a State's application for the Convention is invalid.

96. Congress's continuing failure to comply with its ministerial duty to call a limited convention for proposing amendments to consider an amendment addressing federal deficit spending visits continuing injury on the applying States, and they are entitled to judicial relief. Article V requires nothing less.

Congress May Be Sued To Perform Its Duty and This Court Can Issue a Declaratory Judgment

97. In light of the foregoing, this Court should enter a declaratory judgment holding that Congress is currently obligated under Article V to call a convention for proposing amendments limited to considering an amendment restricting federal deficit spending.

98. No threshold requirement for a justiciable case or controversy bars this suit.

A. Sovereign Immunity Does Not Apply

99. While Congress ordinarily enjoys broad legal protections against suit under the doctrine of sovereign immunity, that doctrine does not bar relief here.

100. As discussed above, Article V's dual-track amendment processes were intentionally designed by the Founders to answer the concern that Congress may refuse to heed calls from the States "to originate the amendment of errors" in the Constitution, particularly in cases in which the amendment, like one restricting federal deficit spending, would limit Congress's power. THE FEDERALIST No. 43 (Madison). Indeed, the process

was adopted with the specific fear of obstruction by Congress in mind. And when Anti-Federalists challenged the proposal on precisely the ground that Article V would permit the States to propose and ratify amendments "if Congress sees fit, but not without," the Federalists answered by pointing to the alternative State-controlled process in Article V as proof that the Anti-Federalist fears were unfounded. Natelson, *Proposing Constitutional Amendments by Convention*, *supra*, at 734–35 & n.274 (quoting *Massachusettensis*, MASS. GAZETTE, Jan. 29, 1788, *reprinted in* 5 DOCUMENTARY HISTORY 831 (1998)).

101. If, however, the States have no judicial recourse for Congress's failure to perform its duty under Article V—if the State-controlled process for amending the Constitution may be stymied by Congress's failure or refusal to call a Convention when the two-thirds threshold is satisfied—then Article V's State-controlled process is a nullity.

102. Just as the States consented to certain suits as part of the "plan of the convention"—that is, they necessarily waived their sovereign immunity where "the structure of the original Constitution itself" requires it, *Alden v. Maine*, 527 U.S. 706, 728–29 (1999)—so too here the *federal government* necessarily waived its sovereign immunity against suits by the States under Article V. Such a waiver is implied by the structure of the Constitution, for it is a necessary concession to the States to make Article V effective.

103. Indeed, Article V, as with other constitutional provisions protecting the sovereign prerogatives of the States from encroachment by the federal government, must be enforceable by "some . . . tribunal" as the only way "to prevent an appeal to the sword and a dissolution of the compact[.]" THE FEDERALIST No. 39 (Madison). If Congress has the discretionary power to outright deny States access to the amendment process specified

in Article V, and the Judicial Branch has no power to review it, then the Constitution's assurance to the States of an unobstructed pathway to amendment is a dead letter.

B. Plaintiffs Have Standing To Challenge Congress's Failure To Call a Convention

104. "Standing requires an injury in fact that must be concrete and particularized, as well as actual or imminent. . . . [A] grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an 'injury in fact.' " *Carney v. Adams*, 141 S. Ct. 493, 498 (2020) (cleaned up). Additionally, an injured party must show that the claimed injury is "fairly traceable to the challenged action" and "redressable by a favorable ruling." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (internal quotation marks omitted).

105. In this case, Plaintiffs are States that, during the critical time period, submitted valid applications to Congress under Article V, asking it to call a limited Convention for the purpose of proposing an amendment to the United States Constitution restricting federal deficit spending. Article V of the Constitution obliged Congress to call such a Convention, but Congress, by its inaction, has rendered Plaintiffs' applications nullities.

106. Plaintiffs' injury from Congress's violation of Article V is sufficient to establish their standing and is, furthermore, fairly traceable to the Defendants' inaction. *See, e.g.*, *Coleman v. Miller*, 307 U.S. 433, 438 (1939).

107. In *Coleman*, the Supreme Court held that a group of 20 legislators, whose votes "would have been sufficient to defeat [a] resolution ratifying [a] proposed constitutional amendment" had standing to challenge the validity of the lieutenant governor's casting of

a tie-breaking vote. *Id.* at 446. The Supreme Court later explained that *Coleman* "stands for the proposition that legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if the legislative action goes into effect (or does not go into effect) on the ground that their votes have been completely nullified." *Raines v. Byrd*, 521 U.S. 811, 823 (1997).

108. Here, rather than a group of State legislators, Plaintiffs are sovereign that submitted valid applications to Congress for the calling of a convention for proposing amendments, applications that, along with those of other States, reached the constitutionally mandated two-thirds threshold required for calling such a Convention.

109. Plaintiffs have therefore suffered a concrete institutional injury that is sufficient to give rise to standing. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 802 (2015) (finding standing where "an institutional plaintiff assert[ed] an institutional injury"). This is especially true in light of the fact that the Supreme Court has explained that States are "entitled to special solicitude in [the] standing analysis" when they bring suit to protect their "quasi-sovereign interests." *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007).

110. Finally, Plaintiffs' claims are redressable, as discussed below, through this declaratory judgment action.

C. <u>This Case Does Not Present a Non-Justiciable Political Question</u>

111. "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). And although some " '[q]uestions, in their nature political,' are beyond the power of the courts to resolve," *El-*

Shifa Pharm. Indus. Co. v. United States, 607 F.3d 836, 840 (D.C. Cir. 2010) (en banc) (quoting *Marbury*, 5 U.S. (1 Cranch) at 170), this case is not one of them.

112. The Supreme Court has "explained that a controversy involves a political question . . . where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012) (internal quotation marks omitted). Neither situation applies here.

113. First, as the text, structure, and history of Article V (discussed in detail above) establish, Congress has a mandatory, ministerial duty to call a Convention upon receiving the applications of two thirds of the States. The procedure, as demonstrated above, was devised and adopted by the Founders in order to provide the States with a mechanism "to originate the amendment of errors" in the Constitution without interference or obstruction by Congress. Thus, far from a "textually demonstrable constitutional commitment of the issue to" Congress, Article V's design of the State-controlled method for proposing amendments is a textually demonstrable constitutional *withholding* of the issue from Congress. The discretion that matters under Article V here is exclusively reserved to the States.

114. That Article V commits amending authority to the States under the State-controlled process does not raise a political question either, since "it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the 'political question.' " *Baker v. Carr*, 369 U.S. 186, 210 (1962).

115. Second, rather than a "lack of judicially discoverable and manageable standards," the plain text of Article V supplies the only standard that matters in this case—when two thirds of the states apply for a convention for proposing amendments, a Convention must be called by Congress. Though scholars have differed on the proper constitutional standards for aggregating applications for a Convention and on whether and how a Convention may be limited, *see, e.g.*, Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis*, 81 CONST. COMMENT. 53, 56 (2012), answering these questions involves analysis of the Constitution's text and history and the text of State applications—ordinary exercises of the judicial function. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2130 & n.6 (2022).

116. It is therefore unsurprising that courts have repeatedly treated controversies relating to the proposal and ratification of amendments under Article V as justiciable. *See, e.g.*, *Hollingsworth v. Virginia*, 3 U.S. 378 (1798); *Leser v. Garnett*, 258 U.S. 130 (1922); *Hawke v. Smith*, 253 U.S. 221 (1920); *Carmen v. Idaho*, 459 U.S. 809 (1982).

CLAIMS FOR RELIEF

COUNT I

Declaratory Judgment

117. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

118. Plaintiffs are States that applied to Congress under Article V for a limited convention for proposing amendments to consider an amendment restricting federal deficit spending.

119. Upon receipt of applications from two thirds of the several States—at least 34 of the 50 States—reflecting their consensus in support of a limited Convention on a specific subject, Congress is compelled to call such a Convention. It has no discretion to decline to make the call—its duty in this regard is purely ministerial.

120. At a time when Plaintiffs' applications were still valid and pending before Congress, this constitutional two-thirds threshold was reached. Yet despite receiving valid applications from more than 34 States asking Congress to call a limited Convention to consider an amendment restricting federal deficit spending, Congress has continuously failed and refused to call such a Convention.

121. When the States gave up their individual sovereignty and joined the United States under the Constitution, it was with the explicit understanding that Congress would have no discretion to interfere with or otherwise obstruct the right of the States to consider and propose constitutional amendments once applications for the calling a convention for proposing amendments were submitted to Congress by two thirds of the States.

122. A declaratory judgment is available to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a).

123. "A court may grant declaratory relief even though it chooses not to issue an injunction or mandamus." *Powell v. McCormack*, 395 U.S. 486, 499 (1969). "A declaratory judgment can then be used as a predicate to further relief, including an injunction." *Id.*

124. Plaintiffs' injuries are ongoing for as long as Congress continues to fail and refuse to call the requested Convention, and there is no adequate remedy under our constitutional structure for Plaintiffs' injury other than an order from this Court declaring Congress's current obligation under Article V to call such a Convention. Congress will then be bound to exercise the limited discretion granted to it by Article V to determine the time and place of the Convention and to select the method of ratification.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for an order and judgment:

a. Declaring that Congress has a present and continuing obligation to call a limited convention for proposing amendments because at least 34 States have applied for such a convention;

b. Declaring that Congress's failure to call a limited convention for proposing amendments when 34 States applied for such a Convention violated, and continues to violate, the rights of Plaintiffs and the other applying States under Article V of the Constitution;

c. Declaring that the Secretary of the United States Senate and the Clerk of the United States House of Representatives have a present and continuing obligation to effectuate the calling of a limited convention for proposing amendments;

d. Awarding Plaintiffs their reasonable costs, including attorneys' fees, incurred in bringing this action; and

e. Granting such other and further relief as this Court deems just and proper.

Dated: [Date]

Respectfully Submitted,

[Alaska Signature Block]

[Other Plaintiff Signature Blocks]

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* *Pro Hac Vice* applications forthcoming