NATIONAL CONVENTION PBC
A Delaware Public Benefit Corporation
1854A Hendersonville Rd #204
Asheville, NC 28803
Email: jhize@yahoo.com

Jon Huizer
President and
Chief Executive Officer

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Federal Election Commission
Office of General Counsel
999 E Street, NW.
Washington, DC 20463

Petition for Amendment of Rule, Title 11 §100.4

Pursuant to Title 11, §200.2(a)(5) and 5 USC 553(e), the Petitioner seeks an amendment of Title 11 §100.4 of the Code of Federal Regulations by amending the same as follows:

§100.4 Federal Office.
Federal office means the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, ***or Delegate to a constitutional convention for proposing amendments to the Constitution of the United States.***

Article V of the United States Constitution provides for two methods of proposing amendments to the Constitution. The first method is by proposal of 2/3 of both houses of Congress and the second method is by means of a Convention called by Congress for that purpose, on the application of 2/3 of the Legislatures of the States. The authority to propose amendments to the federal Constitution is vested solely and entirely in these two deliberative bodies. It is simply a matter of fact that amending the United States Constitution is a federal action.

Further, Article V clearly identifies the Members of Congress and the Delegates to the Convention as a distinct legal class of citizens who possess the privilege to propose amendments to the Constitution. Under the 14th Amendment, this legal class must be treated equally under the law; which includes such things as free speech and debate, qualifications for candidacy, registration with the FEC, and election. Thus, if Delegates were elected to propose amendments to the federal Constitution, they would be elected to a federal office. This understanding has profound significance and justifies the need for concrete regulatory guidance and non-ambiguous terminology. The election of Delegates is not just guaranteed by the 14th Amendment, it is also fundamental to the very nature of the Convention itself. It is an understanding that can perhaps best be understood by grasping the underlying intent of the Convention, just as the the American Bar Association's Special Constitutional Convention Study Committee has done. The Committee concluded, "We believe it of fundamental importance that a constitutional convention be representative of the People of the country. This is especially so when it is borne in mind that the method was intended to make available to the People a means of remedying abuses of the national government. If the convention is to be "responsive" to the People, then the structure most appropriate to the convention is one representative of the People. This, we believe, can only mean an election of convention delegates by the People. An election would help assure public confidence in the convention process by generating a discussion of the constitutional change sought and affording the People the opportunity to express themselves to future Delegates."

Despite this clear requirement of election, there are only five States that have passed legislation providing for the Office of Convention Delegate and amazingly, each of these States have chosen by way of legislation, the appointment of partisan commissioners, to serve as Delegates, for the purpose of exercising State control over a federal office. Thus, the ambiguity surrounding the term 'federal office' enables this agenda-driven approach and helps to set a precedent that effectively nullifies the Convention itself, for the legislative intent in question is clearly unconstitutional and guarantees that Congress will not call the Convention even if thirty-four States have applied for it.

The current definition of Title 11§100.4 - Federal Office, explicitly excludes the Federal Office of Convention Delegate. It cannot be legitimately argued that the suggested amendment to the rule is dependent upon the Congressional call for the Convention. It is in fact, quite the opposite. The ambiguity in the term 'federal office' is retarding the States from promulgating the appropriate enabling statutes in accordance with the Constitution and pursuant to Article V. To tighten this Gordian knot; without enabling statutes, the States lack the capacity to carry the Convention into execution. It follows that if the States lack this capacity, the intent of State applications for a Convention to propose amendments to the Constitution is nullified because intent is essential to the action of applying. This can be clearly demonstrated by the fact that despite over 700 applications by 49 States under Article V, not a single one has ever been validated or enumerated. Nor has the responsibility to count and maintain a record of the applications ever been delegated by Congress. Applications by the States under Article V have been effectively relegated to a simple delegation to the States of the 1st Amendment right to petition for a redress of grievances and that is not the intent of Article V, as it preceded the 1st Amendment. The lack of a reference to the Conventional Delegate in Title 11§100.4 - Federal Office, only serves to deprive, deny, and abridge individuals who may wish to seek that federal office should Congress issue the call, by debilitating the States from passing the appropriate enabling statutes.

Further, 18 U.S. Code § 601 places a restriction upon anyone who deprives or denies an individual's right to seek nomination for election, or election, to Federal, State, or local office for any employment, position, or work in or for any agency or other entity of the Government of the United States. Clearly, the Article V Convention, once called by Congress would be an entity of the United States Government and Delegate would be a position within that entity. 18 U.S. Code § 601 continues by defining the term "Election" in (2)(e) as the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States. Further, legislation that bypasses these elections are violating 18 U.S. Code § 601, as they directly cause an appointee to perform the service of proposing amendments for the benefit of a political party by means of the denial and deprivation of others' right to participate in the political process. This trend is compounded by numerous agenda-driven advocacy groups, think tanks, nonprofit organizations and partisan steering committees; such as, Wolf PAC, Convention of the States, Compact for America, Citizens for Self-Governance, the Assembly of State Legislators, and the American Legislative Exchange Council. Each of these obviously partisan entities, actively lobby or 'attempt to cause' this appointment-oriented, model legislation to be introduced in the Legislatures of the States. With no federal citation available for the election of Delegates, faulty laws in only five States, effectively subvert States that wish to elect Delegates just as they do with their own State Constitutional Conventions. Amending Title 11§100.4 as suggested, imports the appropriate denotative meaning to all of the relevant terminology found within Title 11 for federal elections, provides a citation for State legislatures seeking to establish constitutionally sound legislative intent, enables the enumeration of State applications, helps to establish the appropriate constitutional precedent, and constitutes an effective remedy.

In closing, if the petitioner has failed to comply with the formatting requirements of Title 11, §200.2(a)(5) or has failed to demonstrate a substantive claim, petitioner seeks an advisory opinion with respect to the material presented hereto and pursuant to Title 11 §112.1 of the Code of Federal Regulations.

Jon Huizer, President
National Convention PBC