

# THE ARTICLE V CONVENTION: DISCUSSING THE REALITY VERSUS THE FANTASY

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## I. INTRODUCTION

First, I'd like to thank Cooley Law School for inviting me to address you. Most speakers at such events have a legal background. Mine is journalism—finding facts and reporting them. While many are qualified to discuss the theory of an Article V convention, my expertise lies in the reality of an Article V convention.

As noted, I am the only person in United States history ever to have filed federal lawsuits, *Walker v. United States* in 2000 and *Walker v. Members of Congress* in 2004,<sup>1</sup> dealing with the obligation of Congress to call an Article V convention. The latter suit, *Walker v. Members of Congress*, was appealed to the Supreme Court. I helped found FOAVC, Friends Of the Article V Convention, a non-partisan group dedicated to educating the people about an Article V convention and correcting information, which is either misconstrued or outright lied about. To that end, I was instrumental in collecting for the first time in United States history, photographic copies of the 750 applications submitted to Congress for a convention call by forty-nine states.<sup>2</sup> The Constitution mandates a convention call if thirty-four states submit thirty-four applications.

## II. THE FOAVC WEBSITE

As stated in *Federalist 85*, *The national rulers will have no option upon the subject. By 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 for proposing amendments.* Continuing the quote of 85, *The words in this article are peremptory. The Congress shall call a*

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1. See *FOAVC Frequently Asked Questions*, FRIENDS OF THE ARTICLE V CONVENTION, <http://foavc.org/file.php/1/Articles/FAQ.htm#Q9.01> (last visited Aug. 22, 2011), for complete information regarding the two Walker lawsuits including full discussion and presentation of copies of all legal briefs, responses and court rulings.

2. See *Image of Article V Applications*, FRIENDS OF THE ARTICLE V CONVENTION, [foavc.org/file.php/1/Amendments](http://foavc.org/file.php/1/Amendments) (last visited Aug. 22, 2011), to view photographic copies of applications submitted by the states for an Article V convention. The copies are from the Congressional Record, which is the assigned public record for all state applications.

*convention. Nothing in this particular is left to the discretion of that body.* The public record is complete—is emphatic. The states have applied. A convention call is peremptory.

The Constitution mandates Congress call a convention.<sup>3</sup> Legal scholars and even convention opponents say if the states apply, Congress must call.<sup>4</sup> The Supreme Court has declared in four separate decisions, without dissent, Congress must call.<sup>5</sup> Despite this, Congress has never even obeyed the Constitution. It has never even compiled the applications into a single public record. Aided by convention opponents like the John Birch Society as well as a complacent judiciary, Congress has buried the applications in the Congressional Record, and thus, deliberately and willfully vetoed the Constitution.<sup>6</sup>

### III. THE FOUR LIES OF CONVENTION OPPONENTS

I'd like to turn and discuss for a moment the four lies used to support Congress vetoing the Constitution, and I'll briefly discuss them.

#### *A. The Runaway-Convention Lie*

The first lie is that in 1787 the Convention was a “runaway” convention. That is, that it exceeded its authority in creating the Constitution and then forced this new form of government down the throats of the American people. To avoid this, as we might not be so lucky next time, opponents say we should not hold a convention. Public record

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3. “The Congress . . . 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 . . .” U.S. CONST. art. V.

4. It would be far easier to cite those legal scholars who have not stated Congress must call a convention if the states apply than to list the literally hundreds of articles supporting this view. Examples of such an opinion are: Judge Bruce M. Van Sickle, *A Lawful and Peaceful Revolution: Article V and Congress' Present Duty to Call a Convention for Proposing Amendments*, 14 HAMLIN L. REV. 1 (1990); RUSSELL L. CAPLAN, *CONSTITUTIONAL BRINKSMANSHIP, AMENDING THE CONSTITUTION BY NATIONAL CONVENTION* (1988).

5. See *United States v. Sprague*, 282 U.S. 716, 730 (1931); *Dillon v. Gloss*, 256 U.S. 368, 374 (1921); *Hawke v. Smith*, 253 U.S. 221, 226 (1920); *Dodge v. Woolsey*, 59 U.S. 331, 348 (1855).

6. Proof of this statement is demonstrated by the simple fact no such summation of applications exists in the federal record and that the private organization, FOAVC, was the first in United States history to compile such a record.

disproves this lie.<sup>7</sup> That record shows the convention obeyed the law of the land at that time to the letter. Further, after the convention disbanded, the states had nearly 150 votes to accept the proposed Constitution. A single ‘no’ vote would have defeated the proposal.

### *B. The Burger Letter Lie*

The second lie is the so-called Burger letter, which warns of the “dangers” of a convention. This letter allegedly written in 1983 by Chief Justice Warren Burger was “discovered” by a JBS member. It served as the centerpiece of “evidence” by JBS until FOAVC proved, by use of public record, the letter is a phony. For example, the letter is dated June 2, 1983, and refers to Burger as “retired.” In 1983, Chief Justice Burger was still on the Supreme Court—quite active. Further, he is on public record as supporting a convention.<sup>8</sup>

### *C. The Balanced-Budget Amendment Lie*

The third lie concerns the actual number of applications submitted by the states. JBS only discusses a single amendment issue: a balanced-budget amendment saying thirty-two states have applied for this amendment, thus implying this is all the applications there are. In this way, JBS avoids mentioning the other 718 applications. By the way, if you go through our site and take a look at them, you’ll find balanced budget with nearly 200 applications from the first application for balanced budget and the next. There is no way that anybody researching this—since you literally have to go page by page through the record—could have missed that many, except by deliberate intention. Public record shows that thirty-six states have applied for balanced budget, not thirty-two. And if same-subject issue were the basis of a convention call, a sufficient number of applications on this issue alone means there must be a convention call.

### *D. The Constitutional-Convention Lie*

Finally is the constitutional-convention lie. It says that the Article V convention is a constitutional convention and will write a new constitution.

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7. See Bill Walker, *Proposing the Constitution and Article V; What if They Had No Choice*, NOLAN CHART (Aug. 19, 2009), [http://www.nolanchart.com/article6449\\_Proposing\\_The\\_Constitution\\_And\\_Article\\_V\\_What\\_If\\_They\\_Had\\_No\\_Choice.html](http://www.nolanchart.com/article6449_Proposing_The_Constitution_And_Article_V_What_If_They_Had_No_Choice.html).

8. See Bill Walker, *A Question of Accuracy—What Else Can You Tell Me About the Burger Letter?*, NOLAN CHART (Feb. 20, 2009), [http://www.nolanchart.com/article6024\\_A\\_Question\\_of\\_AccuracyWhat\\_Else\\_Can\\_You\\_Tell\\_Me\\_About\\_The\\_Burger\\_Letter.html](http://www.nolanchart.com/article6024_A_Question_of_AccuracyWhat_Else_Can_You_Tell_Me_About_The_Burger_Letter.html).

Public record, history, and the Constitution disprove this.<sup>9</sup> An Article V convention may only propose amendments, just like Congress. It cannot write a new constitution. Amendments still must be ratified before becoming part of the Constitution. Anyone saying differently simply has not read the Constitution.

#### IV. THE FEDERAL LAWSUITS

Now, I would like to discuss the research behind my two amendatory lawsuits. As we all know amendatory law consists of civil, constitutional, and criminal law. My suits addressed Congress's obligation to call a convention and whether sufficient law exists to deal with the exigencies of a convention.

Many legal experts state there is no law regarding a convention. Thus, we cannot hold a convention. My research into public law proves this incorrect. As a journalist, I probably did not find as much law as a trained attorney might. After five years of research, I was only able to find 208 Supreme Court decisions affecting and dealing with the legal issues of an Article V convention.<sup>10</sup> It appears I am the only person who actually ever bothered to look at the public law rather than assuming no law exists, so my work is somewhat unique.

Thus far, my work has had little effect in the convention debate as most people still are in the emotional rather than the reason state. The only group I have been able to persuade is the United States government. That group has officially and formally acknowledged my conclusions are correct to fact and law, the only official action thus far taken by the government in regards to a convention.

#### V. WHAT THE CONSTITUTION TELLS US ABOUT AN ARTICLE V CONVENTION

Now, there is a basic constitutional principle entirely ignored by the legal establishment when discussing the law and the convention. Article V

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9. See Bill Walker, *The Misconstrued Article V Application; Making Life A Lot Simpler Regarding Article V*, NOLAN CHART (Aug. 21, 2010), [http://www.nolanchart.com/article7956\\_The\\_Misconstrued\\_Article\\_V\\_Application\\_Making\\_Life\\_A\\_Lot\\_Simpler\\_Regarding\\_Article\\_V.html](http://www.nolanchart.com/article7956_The_Misconstrued_Article_V_Application_Making_Life_A_Lot_Simpler_Regarding_Article_V.html).

10. Brief in Support of Motion Seeking Declaratory and Injunctive Relief in Finding Unconstitutional the Failure of Congress to Call a Convention to Propose Amendments Upon Receipt of Property Number of Applications by the Several States as Prescribed in Article V of the United States Constitution, Walker v. United States (W.D. Wash. 2000), available at <http://foavc.org/file.php/1/Articles/Brief.pdf>.

is part of the Constitution and thus affects all the Constitution. Conversely, all parts of the Constitution affect Article V. As stated in *Marbury v. Madison*, something either is constitutional or is not constitutional. Between these two points, there is no middle ground.

In *United States v. Sprague*, the Supreme Court, agreeing with the United States, said Article V was *clear in statement and in meaning, contains no ambiguity, and calls for no resort of rules of construction*. Article V therefore cannot be construed to mean anything but what it expressly states. This ruling, however, does not preclude applicable portions of the Constitution used to effect or achieve the clear statement and meaning of Article V. Thus, the rest of the Constitution answers the questions of law about a convention.

Central to this is the Fourteenth Amendment principle of equal protection under the law. It is well settled law that all members of a clearly defined legal class must be treated equally under the law.<sup>11</sup> The Constitution permits only specific citizens to propose amendments to the Constitution: elected members of Congress and convention delegates. This forms a clearly defined legal class. Equally important is the Supreme Court

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11. *See Gulf, C. & S.F. Ry. Co. v. Ellis*, 165 U.S. 150, 155 (1897).

[I]f the law deals alike with all of a certain class, it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true, yet it is equally true that such classification cannot be made arbitrarily. . . . [Classification] must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily, and without any such basis.

*Id.* (citations omitted). “[A]rbitrary selection can never be justified by calling it classification.” *Id.* at 159.

The function of both convention and Congress is constitutionally identical, i.e., the proposal of amendments to the Constitution. The effect of the proposal, if ratified, is identical. The Constitution authorizes no other political bodies to make amendment proposal. Article V strictly and equally limits the power of amendment proposal upon both convention and Congress. Given these facts, there is no possible way to classify the two bodies differently, i.e., two legal classes, as they are identical as to authority, effect, limit, and exclusiveness. As the Constitution excludes all others from amendment proposal, there is no constitutional basis for anybody to create a classification. There is no authority in the Constitution allowing any political or judicial body to do so.

*See Hawke v. Smith*, 253 U.S. 221, 227 (1920). “It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed.” *Id.* More importantly, there is no “difference which bears a reasonable and just relation to the act in respect to which the classification is proposed” as the functions of both Congress and convention are identical in all respects. *Ellis*, 165 U.S. at 155.

principle in *Hollingsworth v. Virginia* that the President shall have no part in the amendatory process.<sup>12</sup> This prevents Congress from legislative, despotic control of the convention. Thus, we know the following:

Public record shows that Congress lacks authority to commit, debate, or even vote on a convention call because *it would seem to imply that the House had a right to deliberate on the subject, which it does not.*<sup>13</sup> All applications are considered tabled until a sufficient number of states apply, which they have. Congress, immediately forming itself into a committee of the whole, is then required to take the applications off the table, decide the time and location of the convention, and issue the call. It has no other authority in this matter.

Second, as members of Congress are elected subject to federal and state election laws, so must convention delegates. Equally, both are subject to criminal laws and oath of office laws. Both must satisfy terms of office set in the Constitution, which are age, citizenship, and residency. As there are two sets of terms, one House, one Senate, equal protection demands the least standard, the House, for delegates to a convention to satisfy.

Article V mandates *a convention* for proposing amendments rather than *conventions*. Equal protection of representation in Congress mandates a delegate number equal to that of the House, 435 delegates elected within already-established districts. There is one difference. A convention lacks tax power. It has one power, to propose amendments. That's it. Therefore, its delegates will be non-partisan, volunteer, and hold office only for the term of the convention itself.

The convention is caused by state application. States must therefore be represented. Equal protection mandates each delegate's vote be equal. Given the population disparity between the states, a greater population

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12. 3 U.S. 378, 381 (1798).

Two objections are made: 1st, That the amendment has not been proposed in due form. But has not the same course been pursued relative to all the other amendments, that have been adopted? And the case of amendments is evidently a substantive act, unconnected with the ordinary business of legislation, and not with the policy, or terms, of investing the President with a qualified negative on the acts and resolutions of Congress.

*Id.* (footnote omitted). “There can, surely, be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation: *He has nothing to do with the proposition, or adoption, of amendments to the Constitution.*” *Id.* at 382 (Chase, J. concurring) (emphasis added).

13. See 1 Annals of Cong. 258–61 (1789) (Joseph Gales ed., 1834), for a discussion by members of Congress following the submission of an application by the State of Virginia. The conclusion of the discussion is unmistakable—Congress must call and has no option in doing so.

obviously carries more weight than a lesser. Equal protection forbids this. Delegates will vote, therefore, not as individuals, but within state delegations with each state having one vote. Two-thirds of the states, or thirty-four, are required for amendment proposal as equal protection mandates delegates have no advantage over their congressional counterparts. As in 1787, to avoid control by a single state delegation, motions will require a second from a second state delegation.

Like Congress, the convention appoints its own officers, sets its own rules and maintains a journal of its proceedings. Unlike Congress which strenuously avoids the people having any real say in their government, the convention will be interactive and use the Internet to allow citizens to propose amendments for delegates to consider. Simple public pressure is going to cause this.

Unlike the parliamentary tricks of congressional rules, convention rules will be basic. A convention has one purpose. All delegates have equal seniority. Thus, no gimmicks such as a committee chairman setting amendment policy by holding proposals in committee will occur.

While the Congress is eternal, a convention is short term, a few weeks at most. Rather than dealing with egocentric congressional personalities focused on nothing more than getting re-elected and given the two-thirds vote required, delegates will quickly dispense with convention business with most proposals falling by the wayside.

In election, the voter will vet delegates in ways Congress avoids. We all know during election members promise anything but, once elected, deliver nothing. A convention deals with written amendment issues. The voter will demand to read the texts a proposed delegate supports or opposes. Delegate positions are absolute; they support or they oppose. The voters will focus on the sole issue of a convention: what amendments, if any, become part of the Constitution. The vote on delegates also means a referendum on amendment issues. In short, the entire convention is nothing but issues.

Thus, given the information the Constitution provides as to convention law, any person saying there is none is simply incorrect.

## VI. THE FALSE PREMISES:

### LIMITING A CONVENTION, APPLICATION RECESSIONS

Many say they would support a convention if it could be limited. Without question the phrase *on the application of the Legislatures of two thirds of the several States, Congress shall call a Convention for proposing Amendments* is the most misconstrued phrase in the Constitution. Many read it as meaning a “constitutional convention” empowered to write a new constitution. The term *convention for proposing amendments* is plain as to

meaning and intent thus requiring no rules of construction as expressed in *U.S. v. Sprague*.

This term “limits” a convention to proposing amendments to our present Constitution. However, what people really mean when describing a “limited” convention is they want a convention limited to a political agenda they favor. This means politically rigging the convention so their special interests control it.

The plain language of Article V prevents this limitation. It is a convention for proposing *amendments* not *an amendment*. Only the convention can limit itself to a single amendment proposal.<sup>14</sup>

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14. That said, however, a convention’s agenda *constitutionally can be limited if the states desire it and this can be done at any stage the states desire*. While limitation of the agenda convention clearly requires the cooperation of thirty-four state legislatures and presents numerous constitutional, legal, and political landmines, the simple use of the *ratification procedure* is constitutional, politically desirable, and legally unassailable. Simply put, there is nothing in the Constitution that mandates *when* a state may issue a ratification vote on a particular amendment proposal or even an amendment issue. By the simple combination of thirteen state legislatures, declaring in an official vote before a convention convenes or is even called, stating what amendment issues they will consent to ratify, the agenda of a convention can be limited only to those amendment issues the states choose to ratify.

As to Congress conducting an end run around state legislatures that might take the above proposed step, by calling for a state ratification convention instead of submitting to state legislatures, it is for this reason that a second ratification method was incorporated into the Constitution. Nevertheless, the Speaker makes the assumption that if state legislatures were to do as suggested, it would be because they have broad political support within their own states for such actions, meaning that it is more than likely a state ratification convention would reflect the same position as the state legislature. Moreover, like the state legislatures, there is nothing to say when such a convention convenes. In most states, the current state laws on such conventions require a convention when Congress submits a proposed amendment for ratification (however proposed). Just as the state legislatures could exercise a limit on a convention agenda at any stage of the process, so too can conventions called by the state legislatures to have such conventions vote on such amendments or issues place such limits at any stage in the process. In either case, ratification is clearly a state power unassailable by legal means because the outcome is exclusively a state power. Assuming the vote is by either convention or legislature, nothing in the Constitution prevents such action and in no way conflicts with any United States Supreme Court ruling.

Indeed, ours is one of the few amendment procedures in existence that, as the matter proceeds, the minority opposition grows stronger, not weaker. While the opposition must muster one-third opposition at the proposal stage to defeat an amendment proposal, it only requires one-fourth to prevent the issue at the



However, the states can limit a convention, not by pre-set agenda, but by pre-designed or pre-disposed ratification. There is nothing in the law anywhere that says a state has to issue its ratification vote after an amendment is proposed. Thus, by thirteen states simply deciding that they will elect only ratification subjects and deciding what those are, they will immediately limit the convention to those subjects.

If a convention is politically limited, it follows it is not limited just to specific issue but specific political outcome, i.e., opposing gun control or pro-abortion. If so, why hold a convention at all? What would the delegates debate? On what would the voter decide given the pre-decided outcome? Such circumstances do not satisfy *Hawke v. Smith* that speaks of *deliberative assemblages representative of the people* in discussing Article V conventions. In order to be deliberative, elected delegates must debate and resolve amendment proposals as is done in Congress. Not that people would not like to also limit Congress save for the Speech and Debate clause.

In *Gravel v. United States*, the Court said,

The heart of the Clause is speech or debate in either House. Insofar as the clause is construed to reach other matters, they must be an integral part of the deliberative . . . processes by which Members participate . . . with respect to the consideration and passage or rejection of . . . other matters which the Constitution places within the jurisdiction of either House.

The Court mandates conventions are deliberative. It uses the same word describing *other matters which the Constitution places within the jurisdiction of either House*, such as debating proposed amendments. It is not much of a leap to state any effort to limit a convention violates the speech and debate clause. To do so denies delegates the equal opportunity to debate proposed amendments as is afforded members of Congress.

The only way to limit a convention should be by election. The people elect delegates with particular amendment positions. At convention, after debate, these delegates prevail. For those unfamiliar with this process it is known as a republican form of government.

## VII. THE MISTAKEN CONCEPT OF APPLICATION RESCISSION

People assume the purpose of state applications is applying for a particular amendment proposal. *Black's Law Dictionary* defines an

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ratification stage. Hence, those in opposition are politically better served to use the ratification procedure to their advantage than the proposal procedure.

*application* as a *request* or *petition*. Simple rearrangement and substitution of synonym, permitted by English grammar, clarifies the meaning and intent even to those who will not read it: on the request of two-thirds of the several state legislatures, Congress shall call a convention. The purpose of an application is to cause a convention call, not to propose an amendment. All state applications request a convention call and therefore are in full force and effect.

For years, JBS has gone about convincing state legislatures to rescind their applications with no legal proof such rescissions are even constitutional. The results are dubious. Since JBS began its campaign in the 1980s, the states have submitted nearly half of the 750 applications now in public record.<sup>15</sup> Rescissions are invalid because in both *Hawke v. Smith* and *U.S. v. Sprague*, the Court stated Article V is plain in meaning and requires no rules of construction. Thus, there are no implied powers. As noted in *Hawke*, when acting in the amendment process, states operate under the authority and limitations of Article V, not their own state constitutions. Article V grants no authority for either Congress or the states to rescind applications. Therefore, such rescissions are unconstitutional.

If such implied powers existed, Congress, rather than the states, would rescind the application. Only Congress has authority to remove items from the Congressional Record, which is where the applications are placed.<sup>16</sup> As the power is implied, Congress could easily interpret it as authority to rescind applications even if the states did not request it.

Congress has never officially rescinded any application. *Marbury v. Madison* states a legislature cannot act repugnant to the Constitution. Public record shows the states submitted sufficient applications for a convention call prior to any rescission being submitted. Therefore, the

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15. See *Article V Amendment Applications Tables*, FOAVC.org, <http://foa5c.org/file.php/1/Articles/AmendmentsTables.htm> (last visited Aug. 22, 2011).

16. See U.S. CONST. art. I, § 5, cl. 3 (“Each House shall keep a Journal of its Proceedings, and from time to time publish the same . . . .”); U.S. CONST. amend X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.”). As the Constitution mandates each house of Congress keep a journal of its proceedings, thus delegating that power to the United States, the principle expressed in the Tenth Amendment clearly precludes the states from removing anything from such journals except by action of Congress, which is given exclusive authority to keep the journals. As the Congress elected to enter the applications in its journals, it is clear the records fall under the authority of the federal government of the United States once the states have sent them to Congress and, therefore, are no longer subject to state control in any fashion.

convention call being peremptory preempts any state rescission as the terms for a convention were already satisfied.

## VIII. THE WALKER LAWSUITS

### *A. Standing*

Now, turning to my lawsuits. Some have suggested that my suits lacked standing and, therefore, are meaningless. Now, without question standing is a legislative power, not judicial as demonstrated in *McConnell v. FEC*, where Congress defined standing legislatively. Nonetheless, there is no law defining the terms and conditions of standing. As such standing has a dubious history of consistency. Even Chief Justice Rehnquist, in *Elk Grove Unified School District v. Newdow*, spoke of the *novel prudential standing principle* raised by the Court to *avoid reaching the merits of the constitutional claim*.

There is one consistency, however. If a party lacks standing, the court lacks jurisdiction to make a ruling. Standing is based on the Case or Controversy Clause of Article III. On these two rocks of legal dogma, the doctrine of standing rests. There are problems some however.

First, the Constitution describes three legal petitions that can be brought before a court, not two: cases, controversies, and suits. Suits are described in both the Seventh and Eleventh amendments. Now, I'm sure all here are well-observed or well-knowledged of the well-settled principle of law as expressed in *Wright v. U.S.*, for example, that the Constitution in *every word must have its due force and appropriate meaning*. Thus, suits are a distinct form of legal petition permitted by the Constitution. Further, the Eleventh Amendment directly amended Article III. Hence, the correct constitutional term is cases, controversies, and suits. Despite this, the Supreme Court has never addressed suits in any ruling on standing. This fact means one of three things: (1) the Supreme Court has never heard of the amendments to the Constitution; (2) the Court deliberately intends to not use rules of standing to address suits; or (3) the word suits replaced "cases and controversies" in the Constitution, in which case the entire premise of standing is unconstitutional as it refers to and is based on a term no longer in the Constitution. In any event, the only possible conclusion given these circumstances is standing is not required to file a suit.

I filed suits and so designated them. Therefore, I required no standing. Moreover, my suits dealt exclusively with the amendatory process. In *Coleman v. Miller*, the Court ruled any court opinion in the amendatory

process is advisory, which, of course, requires no standing.<sup>17</sup> Then there is the fact that members of Congress, by refusing to call a convention, violates federal criminal law. No standing is required in criminal law. Public record proves thirty-nine states have applied for repeal of federal income tax, one state more than is needed for ratification. Congress's refusal to call violates the Constitution and prevents repeal, thus, allowing continued collection of the tax. Income-tax law permits reparation if such tax if it is collected in violation of the Constitution. I sought reparation under federal income-tax law, which grants standing for those seeking reparation.

### B. *The Four Court Decisions*

The Supreme Court has ruled in four decisions that Congress must call a convention if the states apply: *Dodge v. Woolsey*, 1855; *Hawke v. Smith*, 1920; *Dillon v. Gloss*, 1921; and *United States v. Sprague*, 1931. The words in these four decisions make it impossible to reach any conclusion but that Congress has no option but to call a convention if the states apply.

In *Walker v. United States*, the district court nullified the words of these four Court decisions by simply obliterating them out in a reference it quoted that used them. Second, the court applied the political question doctrine in *Coleman* to justify the nullification. Political-question doctrine has never been applied to a convention call, as it is peremptory. The only possible interpretation of the two rulings is the court believed under the political question doctrine Congress has the option *not* to call a convention despite the direct language of the Constitution. Before my suit, a convention call was peremptory with Congress having no option. Afterwards, a convention call was optional with Congress having the authority under the political-question doctrine to veto the direct language of the Constitution. Clearly, the court ruled, meaning, if nothing else, I had implied standing.

#### 1. *Coleman v. Miller*

*Coleman v. Miller* is usually characterized as a plurality decision and, thus, assumed to be of dubious authority. What is missed is the decision is based on *all* reasons given by the Justices and therefore all parts apply making its authority the same as any other decision. Only one part of

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17. See *Coleman v. Miller*, 307 U.S. 433, 459–60 (“Therefore, any judicial expression amounting to more than mere acknowledgment of exclusive Congressional power over the political process of amendment is a mere admonition to the Congress in the nature of an advisory opinion, given wholly without constitutional authority.”).

*Coleman* discusses the constitutional-amendment process as opposed to ratification, which was the main subject in *Coleman*. As the district court used *Coleman*, this portion must be the basis of its ruling. In that portion, the Supreme Court assigns Congress *exclusive, sole, complete, undivided control* of the amendatory process.

The Court stated,

Congress, possessing exclusive power over the amending process, cannot be bound by and is under no duty to accept the pronouncements upon the exclusive power by this Court. . . . Therefore, any judicial expression amounting to more than mere acknowledgment of exclusive Congressional power over the political process of amendment is a mere admonition to the Congress in the nature of an advisory opinion, given wholly without constitutional authority.

Now, if I am incorrect in these assumptions, the four previous decisions that I just cited prevail. Either Congress must obey the peremptory language of Article V, or it does not have to. There is no middle ground in this.

## 2. *Walker v. Members of Congress*

My second lawsuit, *Walker v. Members of Congress*, established the official, formal position of the members of Congress on a convention call and presented the issues to the Supreme Court including the criminal violations by Congress. To that end, I filed individually against all members of Congress. Members were allowed to opt out by declaring support of Article V. No member did this. Thus, for the first time in United States history, Congress chose to express public opposition to obeying the Constitution.

Trial was held at the Ninth Circuit Court of Appeals as the United States choose not to appear at district court. The district court had previously reaffirmed the ruling in *Walker v. United States*. At trial, the U.S. Attorney refused to answer who they represented and under what federal law the Department of Justice had authority to appear. After several motions, the court ordered the United States to answer these questions.

The attorney stated in writing she had letters from both House and Senate counsels instructing her to oppose my lawsuits.<sup>18</sup> Under federal law,

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18. During the proceedings, the DOJ attorney produced a letter, which she stated authorized her to represent all members of Congress. *See* Letter from Karen D. Utiger, Attorney, Appellate Division, Tax Division, United States Department of

House and Senate counsels cannot act without votes of Congress instructing them to do so. Further, federal law mandates before the DOJ can represent any member of Congress, each must individually request such representation. Therefore, I can state every member of Congress determined of his own volition to oppose obeying the Constitution and instructed their attorneys of record to proceed on that basis. When that decision became public record, the members of Congress violated their oaths of office. Executive Order 10450 defines the terms of violation of oath of office as described in 5 U.S.C. § 7311 and provides *the alteration of the form of the government of the United States by unconstitutional means* is a violation of oath of office. Our form of government prescribes two methods of amendment proposal, not one. It does not give Congress the authority to refuse calling a convention.

I appealed to the Supreme Court, which ultimately denied me certiorari, meaning the Court upheld, without review, the lower court's decision that, based on the advisory opinion of *Coleman*, Congress could veto the Constitution under the political-question doctrine.

#### IX. WHAT DID *WALKER V. MEMBERS OF CONGRESS* PRODUCE?

However, before the Court ruled on the certiorari appeal, the Supreme Court Rule 15.2 demanded for the first time in the proceedings, the United States address the issues of fact and law raised in the suit. The rule reads:

A brief in opposition[,] . . . [i]n addition to presenting other arguments for denying petition, . . . should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court were certiorari granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition.

This rule forced the government to actually address the issues presented rather than hiding behind standing. The United States either had to state I was correct as to fact and law or I was not. I stated the following in my brief before the Supreme Court:

1. A convention call is preemptory;
2. There are sufficient applications on record already to cause a convention call;

3. A convention call is based on a simple numeric count of applying states with no other terms or conditions such as recessions, same subject, contemporaneous and so forth; and

4. By refusing to obey the Constitution and so advocating the same in a public forum, the members of Congress violated their oaths of office and other federal criminal laws.

The Solicitor General of the United States, acting in both his official capacity and as official attorney of record for all members of Congress, after consultation required by federal law with those members, formally and officially waived response to my brief. Thus, he formally and officially acknowledged what I had stated in my brief was and is correct as to fact and law. This is what I mean when I state that the only group I've been able to persuade is the United States government as this is the only official government act on the convention call in United States history to date.

As to the criminal offenses I have mentioned, 5 U.S.C. § 7311, Violation of Oath of Office, one year in prison forbids any person from holding or accepting federal office. As public record shows, Congress has refused to call a convention over an extended period of years, involving numerous members; 18 U.S.C. § 371, Conspiracy to Defraud the United States, five years in prison applies. According the Congressional Research Service, conspiracy need not be about money or property: *The scheme may be designed to deprive the United States of money or property, but it need not be so; a plot calculated to frustrate the functions of a governmental entity will suffice.* The governmental entity in this case is the convention, which is clearly assigned specific authority and power by law, and one whose function is frustrated by the conspiracy of members of Congress.

Then is obstruction of government proceedings, under 18 U.S.C. § 1505, another five years in prison. The convention call is a proceeding pending before Congress. The law states, *Whoever corruptly . . . obstructs, . . . or endeavors to . . . obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States . . . [s]hall be fined under this title [or] imprisoned not more than 5 years.* By obstructing the convention call, members violate federal criminal law.

## X. SUMMATION

For years, Congress and the judiciary have played a tennis match with the convention call. Congress says the judiciary must rule before it acts yet oppose any suit allowing the court to do so. The judiciary says a call is a

political question for Congress to decide. The tennis match continues, both Congress and judiciary void the Constitution, and the people are screwed.

This tennis match needs stopping by changing the game. The game is now about civil and constitutional law, which both sides side step. Criminal law is clearly the purview of the judiciary. Given the criminal offenses, the issue is no longer about a convention call but whether the judiciary will permit Congress to commit criminal acts. If not, a call will result. If so, the Constitution is reduced to no more than advisory text.

How is the game changed? You simply say, *Your Honor, I wish to present you evidence that members of Congress have violated federal criminal laws and formally request you undertake, as required by your oath of office, such actions as necessary to bring those people responsible to justice.* After that, it is up to the judiciary to decide whether the Constitution continues to exist. Then you simply sit down.