

Congress Sets State Application Count As Zero

No Rules Exist for Count; Passes Law Mandating Delegate Election

By Bill Walker

In only what can be only described as a kiss off response Kirk Boyle, legal counsel of the House of Representatives responded [in a one page letter](#) to [Dan Marks' request](#) for an official count of state applications currently recognized by Congress for an Article V Convention call. The sheer volume of applications in question is best appreciated by examination of [this map](#).

Mr. Boyle's response was succinct—number of applying states counted by Congress: zero.

Mr. Boyle stated Karen Haas, Clerk of the House of Representatives, whose job it is to maintain and keep all reports required by law has not been instructed by statutory law to maintain any count of the applications. However this response does not agree with the facts. [As reported earlier](#), “Under [House rules \(Rule II, 2\(b\) and Rule VII\)](#) the clerk of the House is responsible for providing any reports required by law to be made to Congress. This of course includes a report listing the number of applying states requesting a convention call as the “law” in question is Article V of the Constitution. The procedure for recording applications was established on [May 5, 1789](#) and has remained unchanged. Therefore, according to House rules, the record is public domain as it has existed over 30 years. Under House rules the clerk is considered the “custodian” of all records of the House of Representatives including state applications for a convention call.”

Mr. Boyle's letter does not discuss that the Constitution describes Article V, as well as the rest of the Constitution, as “law of the land.” That law mandates Congress call a convention. Obviously, to be compliance with that law, Congress must track the applications in order to know *when* to call. However, Mr. Boyle asserts, because Congress has not passed a law authorizing a count of applications, no one is obliged to count the applications, including the House clerk. Therefore Congress does not have to call a convention because it has not consented to do so in the form of a law authorizing such count. Thus, Congress can ignore the Constitution because it has not consented to be bound to the terms of Article V and conduct a count of applications. In legal language, this is known as the principle of sovereign consent or sovereign immunity.

Despite four Supreme Court rulings mandating a convention call is peremptory, Mr. Boyle's position is [all 746 applications submitted by 49 states](#) don't count because Congress has never consented to obeying the Constitution; in this instance by providing a means for the applications to be counted by Congress. This fact means, not only are all applications *for* a convention call by the states being ignored by Congress, but also all so-called “rescissions” which the John Birch Society has spent the last 40 years submitting to Congress. This fact means these so-called “rescissions” are meaningless. They have had no effect whatsoever on the number of applying

states or their applications as Congress has never recognized the validity of the applications in question. Therefore, from the point of view of Congress, there is nothing to rescind.

Mr. Boyle suggested Mr. Marks consent to having his letter forwarded to the House Judiciary Committee “for further consideration.” There are several problems with this suggestion. First, the Founders made it [absolutely clear the issue of a convention call was not to be submitted to a congressional committee](#). Such an act, according to James Madison, would imply Congress would have the authority to refuse and not call the convention. Secondly, the rules (or lack thereof) Mr. Boyle cites for the refusal by the clerk to count the applications are the same House rules which govern the committee and subcommittee. Thus, these entities have no more authority to count the applications than the clerk does, *if one accepts the premise set forth by Mr. Boyle*. Hence, according to the rules (or lack thereof), the committees can give no more “consideration” to Mr. Marks’ request than the clerk has. Mr. Boyle’s purpose is obvious. By asking Mr. Marks to submit his letter to a congressional committee for “consideration,” Mr. Boyle wants to establish Congress has a choice as to whether or not to call a convention—even if the states apply in sufficient number. As cited above, this so-called choice is entirely contrary to the Founders’ intent, court rulings, and even previous statements from Congress itself.

If Mr. Marks forwards his letter to these committees, he effectively agrees these committees have the right to “consider”, *but not actually act upon*, the applications. Hence, if in their “consideration” *they determine* Congress should not call, a precedent is set which Congress can repeatedly exploit. Mr. Boyle speaks with a forked tongue. On the one hand, he asserts there is no rule for counting applications; on the other he creates a magical rule out of thin air granting a congressional committee the authority to “consider” counting the applications, and thus determine whether a convention call will be made by Congress. The rules of the House are plain: committees don’t have the right to make up their own rules. Thus, the ploy is obvious. The committee will return with a contrived excuse allowing it to refuse to obey the Constitution. It may be the exact same excuse as Mr. Boyle’s, or it may be different. *The important point is it will be a refusal on the part of Congress to obey the Constitution and will have no basis in either legislation or House rules as Mr. Boyle admits neither exists.*

Just as importantly, the precedent Mr. Boyle seeks can be used by Congress as an excuse to override the “necessary and proper” clause forbidding legislation by Congress in Article V, as the article is not part of the “foregoing” powers the clause describes. It also neatly nullifies the Supreme Court ruling in [Hollingsworth v Virginia](#), in which the court ruled the president shall have no part in the amendatory process, meaning he cannot sign legislation related to amending the Constitution—legislation ([1973](#), [1985](#), [1989](#)) which, in the past, Congress has attempted legislate that if enacted would have controlled every aspect of a convention, including a veto by Congress should that body not agree with proposed amendments made by the convention. There is little doubt, if given the chance again, Congress will follow the same path.

Mr. Boyle's offer to Mr. Marks is nothing less than asking a United States citizen to give Congress a license to nullify the Constitution. Once it is established Congress may "consent" or may "consider" whether or not to obey the Constitution, the result is Congress is granted sovereign independence of the Constitution. This so-called independence is based on the principle of sovereign consent or sovereign immunity ("the king can do no wrong"), which is, a sovereign may only be bound to such law as he himself consents to. This principle was guiding principle under King George III, but last time I checked, our nation operates under a Constitution. That Constitution expressly states all parts of the government are bound to all parts of the Constitution. Thus the principle of sovereign consent is entirely refuted by the terms of the Constitution.

Mr. Boyle's response is even more incredulous, given the fact federal law already mandates how convention delegates are selected—[by election](#). Obviously, the House of Representatives had to have been involved in putting into place a federal criminal law that heretofore resolved the unresolved question of delegate selection. This single sentence, placed as it is in the criminal code of the United States, answers numerous questions most people have about a convention. [In the past](#) I have [discussed the fact](#) that convention delegates will be elected. This federal law confirms this fact. At the minimum, the law eliminates those suggesting the federal government (and others) will control the convention, rather than the people. Indeed, it is a criminal offense to attempt to control convention agenda by means of threats or intimidation, such as threatening arrest if delegates do not obey instructions from a state legislature. It totally discredits the fiduciary theories of [Rob Natelson](#) and [Compact for America](#). It affirms the obvious proposition that only the people may alter the Constitution. It is they who exclusively hold such authority through their right of alter or abolish—the fundamental right of this nation on which all other rights of the people rest.

This federal law reflects the Supreme Court decisions of [Hawke v Smith](#), [Leser v Garnett](#) and [Kimble v Swakhamer](#). Collectively, the decisions expressly rule states operate under the federal constitution, rather than state constitutions, when involved in the federal amendment process. Therefore no state constitution has authority in the federal amendment process. Further the rulings state that "conventions [shall be] deliberative assemblages representative of the people which...would voice the will of the people." These combined decisions mean this federal law nullifies any state law attempting to influence, manipulate or control convention delegates by means of state law except as such law relates to the election of delegates by the people. As state laws are passed under the authority of state constitutions and in this instance state legislatures do not operate under this authority, no state law can have any effect on the federal amendment process.

State laws such as those recently passed in Indiana, [Senate Bill 224](#) and [Senate Bill 225](#), share one commonality—seeking to limit a convention by arresting delegates if they do not explicitly conform to instructions, not from the people, but special interest groups within the state legislature (or elsewhere if the state law so directs) whose sole political purpose is the passage of

a single amendment proposal. Thus, these groups want to control convention agenda, to the exclusion of the people, other amendment proposals, and even the Constitution itself, and reserve *exclusively* to themselves the power to decide how the Constitution will be amended. All this is done under the guise of stopping a “runaway” convention, a frequently leveled but never proved charge about an Article V Convention. The sheer volume of already submitted state applications make it clear the state legislatures reject this myth—if they believed it were true, doesn’t it stand to reason they would not apply in the first place?

Yet, the fact is, these state laws *create a runaway convention*. A runaway convention is a convention where the entire amendment process is controlled by a single political faction. This faction unilaterally puts its agenda *and no other* in the Constitution. It blocks all political opposition. It allows only delegates the faction approves to attend the convention. It *totally* excludes the people from the convention process. It rides roughshod over all constitutional protections intended to foster deliberation or consideration of amendment proposals with the sole aim of passage of an amendment with no debate whatsoever. The faction is a de facto tyranny. A simple read of the material from Compact for America or the Indiana state laws proves this is the object of these groups and laws.

The federal law gives people a familiar backdrop to understand the convention and makes them part of that process—a very important part—determining who will be at the convention and by extension, through the election process, what issues the people want discussed at that convention. The vetting process of election automatically eliminates many outlandish ideas floating about, as the supporters of those proposals simply won’t be elected in the first place to advance their cockamamie proposals. The federal law states what the Supreme Court has long since declared: the amendment process of the Constitution is *federal*, not state, meaning the *federal Constitution* prevails, not state constitutions. Hence, any state laws attempting to regulate the convention, as does the Indiana law, are not only unconstitutional, but possibly in violation of federal criminal law. Left intact, however, are already well-established state election laws indispensable to the election of federal officials. This federal law *automatically makes all convention delegate candidates subject to* these state laws under the principle of the 14th Amendment—equal protection under the law. Obviously, the same laws that govern election of all others described in the law must apply to convention delegates and this can only occur through both state and federal election laws.

Yet, those advocating selection of delegates by some means of appointment, without any input from the people, still have satisfaction, albeit not what they desired. This one sentence criminal law at once satisfies their desire for a criminal law in the matter, while simultaneously removing the selection process from the obvious back room politics of such plans as Compact for America. In short, the law mandates an open convention, elected by the people where the people’s representatives will be able to discuss this nation’s problems and propose solutions to them by means of thoughtful deliberation, just as described by the Supreme Court.

So if Congress has passed this law, why, for crying out loud, won't the House of Representatives COUNT THE APPLICATIONS? Obviously, Congress did not make this law in a vacuum. Its purpose is obvious: to bring about the necessary law to allow people to elect convention delegates. Why pass this law, *unless Congress knew there are sufficient applications on file to cause a convention call*. The Constitution says, "[O]n the application...Congress...shall call a convention for proposing amendments..., not "whenever they get around to it, Congress shall call..." Hence, the law for choosing delegates is enacted. So why stop there?

Let us examine the facts. Mr. Boyle does not dispute that any of the 42 different state applications sent him by Mr. Marks are anything but valid and legitimate. He neither disputes, nor addresses, that [in 2006](#) the attorney of record for Congress, the solicitor general, acknowledged before the Supreme Court that a sufficient number of applications had been submitted by the states to cause a convention call. The only possible way the solicitor general could acknowledge this fact is that a count by Congress had been conducted in order to verify this fact. Mr. Boyle does not refute recent [CRS Reports in which numerous references](#) were made to the records, compiled by FOAVC, which show [49 states have submitted over 700 applications](#) for a convention call. He does not dispute the actions of Congress taken in May, 1789, in which the House of Representatives *tabled* the applications "until a sufficient number of applying states" shall exist, at which time "Congress shall have no power to decline."

Mr. Boyle's response raises a crucial question for this nation that *must* be repeated. He states nowhere in House rules are there procedures mandating the clerk (or anyone) count the applications of the states. Thus he places House rules above the requirements of the Constitution, a direct repudiation of [Powell v McCormack](#). He states Congress reserves to itself the power of consent to obey the Constitution, that is, Congress must provide a statutory procedure in order for it to obey a constitutional provision where, according to the words of the Constitution itself, no such legislative authority can or will exist. If it does *not* do so, then Congress is not obligated to obey the constitutional provision in question. Moreover, this problem is not confined to just Article V. Several provisions in the Constitution, such as selection of a president, if the Electoral College is tied, for example, are not addressed by House or Senate rules. Are we to assume no president will be selected because the House failed to pass a law covering this problem?

The problem is blatant. Nowhere do the Rules of the House of Representatives state members or employees of the House shall obey the Constitution. Earlier versions of House rules contained such a provision, but the most recent version of House rules *does not*. Therefore, according to House rules, the House is not governed by the Constitution, nor is it obligated to obey this document. Hence, according to the Rules of the House of Representatives, the Constitution has no authority over the House of Representatives, unless they have recognized such authority in their rules and then only as they specifically recognize, on a case by case basis.

How then can the House *derive* any authority from the Constitution if it does not recognize the authority of that document? What is the legal basis under which the House of Representatives

operates today? The question is not an idle one. If the House of Representatives assert that its rules (or lack of rule) trump the express text of the Constitution, then it is stating it is supreme to the Constitution and that the House operates not under the authority of the Constitution, but its own authority.

At the minimum, Mr. Boyle's response is incorrect because the authority of the Constitution, the words of Article V, "Congress...shall call a convention for proposing amendments" mandate the authority of the clerk of the House to count and tabulate the applications as this text, combined with House Rule text, make it irrefutable such a record is part of the clerk's job, i.e., keeping records required by law. The Constitution itself provides the rule *and is the law in question*. Thus, no rule of the House (or lack of it) can be used as an excuse for the clerk *not* to respond to Mr. Marks' request, as that rule is subservient to the Constitution and its absolute mandate.

It is absolutely clear now. THE CONGRESS OF THE UNITED STATES HAS NO INTENTION OF OBEYING THE CONSTITUTION AND CALLING AN ARTICLE V CONVENTION, AS MANDATED BY THE CONSTITUTION, REGARDLESS OF HOW MANY APPLICATIONS THE STATES SUBMIT OR BY WHATEVER METHOD OF COUNTING THE APPLICATIONS IS ADVANCED. Thus, new state applications, regardless of amendment subject, are meaningless. Congress will use any excuse it can to avoid calling a convention, *even if this means renouncing the entire Constitution*. Everyone who has ever been involved in the convention movement, pro or con, agree on a single point: *if the states apply, Congress must call the convention*. We now know for certain Congress will not call because they believe the Constitution is optional, *not* obligatory, on them.

Clearly, we have a runaway government. This runaway government does not recognize the authority of the Constitution as law of land. If it did, Mr. Boyle would have noted the authority of Article V and stated, under that authority, *even if no rule exists in the House the clerk must keep a record of the applications and a count of applying states*. He, then, would have given Mr. Marks the number of applying states, as he requested. Instead, obviously, Congress views itself as a law unto itself. This cannot be tolerated by the American people. We cannot have a tyranny ruling us. It must be resisted by all means necessary.

We cannot have a government that spies on us, attempts to thwart our political process, denies us rights, and denies us the constitutionally guaranteed means to resolve national problems this government refuses to address or by its actions, creates. We can no longer depend on the government for solution, because it has become the problem.

Every person reading this document should, at the minimum, send a letter of protest [or petition](#) to Congress—even if they object to the calling of a convention. Why? Because the issue is no longer about a convention—it is about government obedience to the Constitution. If a convention is not held soon to resolve economic, political, civil and social issues of this nation, we will collapse. The actions of a recalcitrant national government will leave the American people only

one option—outright, open, civil war.. Once such a war begins, it will be too late for a convention and probably too late for this nation.

Stating the obvious does not mean someone “is advocating” a civil war. If the government leaves us no other alternative, we will have no option but to fight. The convention is the last peaceful option offered us in our constitutional form of government. It is intended to operate *without national government interference*. It is intended to find *peaceful* solutions to national issues. Obviously, the government wants no such peaceful resolution of issues. Why else deny the process? Hence, the government wants to wage war on its own people.

Unlike other so-called constitutional or statutory violations by the government alleged by various other groups, which almost always are proved meritless, as close examination reveals no actual violation of constitution or statute this violation is undeniable. The government has admitted its position in writing. It cannot be allowed to stand. Those who smugly assume there is no danger, because *their favorite part* of the Constitution has not been violated ignore the obvious: one day, the government, empowered by its success in Article V, will simply move to another part of the Constitution, and violate that. This hear no evil, speak no evil, see no evil mode of convention opponents and frankly, many convention supporters, has the same logic as those passengers on the Titanic who assumed because they were at the aft of the ship, there was no danger because only the bow was sinking. Action is needed now—not so much as to hold a convention, but to save the Constitution.