

# Sibley files Federal AVC Lawsuit against Congress

By Bill Walker

Montgomery Blair Sibley, an attorney based in Maryland, became the second person in United States history to file a federal lawsuit against members of Congress for failure to call an Article V Convention as required by Article V of the United States Constitution with the filing of a federal complaint in Washington, DC. The first person to file this type of lawsuit was the author of this article who filed two cases, Walker v United States in 2000 and Walker v Members of Congress in 2004. The latter suit was appealed to the Supreme Court.

As announced in his [blog](#) Sibley filed his suit on April 9, 2015 in the Superior Court for the District of Columbia, Civil Division. The defendants in the case are Majority leader Mitch McConnell of the United States Senate and John Boehner, Speaker of the House of Representatives. The [complaint](#) seeks a declaratory judgment and a writ of mandamus by the court requiring Congress to call an Article V Convention. It requests an advisory jury trial rather than a decision by the court itself. According to Mr. Sibley, the Superior Court was chosen as the court of choice because “it is an Article I federal court where ‘standing’ is not a legal bar to the claim.”

In the past the federal government has asserted standing, or lack of the right to sue, as the basis to deny any lawsuit filed requiring Congress to obey the Constitution and call an Article V Convention. However, the latest Supreme Court ruling made in 1939, Coleman v Miller (the basis of the court rulings made in the two Walker lawsuits) states that any court ruling regarding the amendatory process in the Constitution is an “advisory” opinion. Advisory opinions do not require standing on the part of the plaintiff bringing the suit. Moreover the decision clearly states that while Congress has “exclusive” control over the amendment process, nevertheless, it is required to obey the Constitution. Article V gives no option to Congress on calling a convention if the states apply meaning Congress is peremptorily required to call the convention. It has been referred to by the Founders as “peremptory.”

In his complaint Mr. Montgomery lists 35 states which have submitted applications for a convention call. The Constitution mandates a convention call if two thirds of the state legislatures submit applications meaning 34 states must submit applications. Article V only requires applications by the states for a convention call to occur. It does not require submission of the same application from all states nor does it require the applications be for the same amendment subject. In all, [49 states have submitted a total of 766 applications](#) for a convention call. To date, all applications have been ignored by Congress which, [until recently](#), had not even bothered to tabulate the applications for purposes of counting, a necessary step to occur before a call can be issued.

According to court rules, the government has 60 days in which to respond to the complaint.