Assigned Judge:Coughenour

BILL WALKER
PRO SE
PO BOX 698
AUBURN, WA 98071-0698
TELEPHONE:(253) 735-8860

UNITED STATES DISTRICT COURT,

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

| | |
|---|---|
| BILL WALKER,<br>PLAINTIFF,<br>v.<br>THE UNITED STATES OF AMERICA<br>Defendant | 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 PROPER NUMBER OF APPLICATIONS BY THE SEVERAL STATES AS PRESCRIBED IN ARTICLE V OF THE UNITED STATES CONSTITUTION.<br><br>C. A. No. COO-2125C |

**TABLE OF CONTENTS**





BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

**TABLE OF AUTHORITIES**

ARTICLE CITATIONS


ABA Special Constitutional Convention Study Comm., *Amendment of the Constitution By the Convention Method Under Article V* (1974) *referred to in* S. REP No. 135, 99th Cong., 1st Sess., (1985)

Bond & Engdahl, *THE CONSTITUTIONAL CONVENTION, The Duties and Powers of Congress Regarding Conventions For Proposing Amendments",* Nat'l. Legal Center for the Public Interest,(1987)

Buckwalter, *Constitutional Conventions & State Legislators,* 20 J. Pub. L. 543, 548 (1971)

Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988)

Connely, *Amending the Constitution: Is This Any Way to Call for a Constitutional Convention?,* 22 ARIZ. L. REV. (1980)

Ervin, *Proposed Legislation to Implement the Convention Method of Amending the Constitution,* 66 MICH. L. REV. (1968)

ANTIFEDERALIST No. 49

THE FEDERALIST FARMER No. 4

THE FEDERALIST No. 1

THE FEDERALIST No. 39

THE FEDERALIST No. 40

THE FEDERALIST No. 43

THE FEDERALIST No. 47

THE FEDERALIST No. 49

THE FEDERALIST No. 76

THE FEDERALIST No. 78

THE FEDERALIST No. 85

Kern, *A Constitutional Convention Would Threaten the Rights We Have Cherished for 200 Years,* 4 Det. C.L. Rev. 1087, 1089-90 (1986)

Martig, *Amending the Constitution, Article V; The Keystone of the Arch,* 35 Mich. L. Rev. 1253, 1255 (1937) (citing DOCUMENTS ILLUSTRATIVE OF THE FORMATION OF THE UNION OF THE AMERICAN STATES, H.R. Doc. No. 398, 69th Cong., 1st Sess. 35 (1927))

PROPOSED PROCEDURES FOR A LIMITED CONSTITUIONAL CONVENTION, AEI Legislative Analysis, 98th Congress, 2nd Sess.,(1984)





BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Rackoff, "*The Monster Approaching the Capital*": The effort to Write Economic Policy into the United States Constitution, 15 AKRON L. REV. 733, 745 (1982)
Tribe, *Issues Raised by Requesting Congress to call a Constitutional Convention to Propose a Balanced Budget Amendment*, 10 Pac LJ 638-50 (1979)
Tribe, *The 27th Amendment Joins the Constitution*, Wall Street Journal, May 13, 1992, A 15
Van Sickle, Boughey, "*A Lawful and Peaceful Revolution: Article V and Congress' Present Duty to Call a Convention for Proposing Amendments*", 14 HAM. L. REV. (1990)
Voegler, *Amending the Constitution by the Article V Convention Method*, 55 N.D.L. Rev. 355, 359 (1979) (quoting *L. Orfield,* THE AMENDING OF THE FEDERAL CONSTITUTION 1 (1942))
79-75 Memo. Op. Att'y Gen 390 (1979)
16 Ops. Of the Office of Legal Council 102 (1992)

## SUPREME COURT CITATIONS

Ware v. Hylton, 3 U.S. 199 (1796)
Hollingsworth v. Virginia, 3 U.S. 378 (1798)
Calder v. Bull, 3 U.S. 386 (1798)
United States v. Cooper, 4 U.S. 341 (1800)
Marbury v. Madison, 5 U.S. 137 (1803)
United States v. Fisher, 6 U.S. 358 (1805)
Hepburn v. Ellzey, 6 U.S. 445 (1805)
Fletcher v. Peck, 10 U.S. 87 (1810)
Martin v. Hunter's Lessee, 14 U.S. 304 (1816)
McCulloch v. Maryland, 17 U.S. 316 (1819)
Trustees v. Woodward, 17 U.S. 518 (1819)
Farmer's & Mechanics' Bank of Pa. v. Smith, 19 U.S. 131 (1821)
Gibbons v. Ogden, 22 U.S. 1 (1824)
Ogden v. Saunders, 25 U.S. 213 (1827)
Brown v. Maryland, 25 U.S. 419 (1827)
Foster v. Neilson, 28 U.S. 253 (1829)
Craig v. Missouri, 29 U.S. 410 (1830)
State of Rhode Island v. Commonwealth of Massachusetts, 37 U.S. 657 (1838)
Holmes v. Jennison, 39 U.S. 540 (1840)
Prigg v. Commonwealth of Pennsylvania, 41 U.S. 539 (1842)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Pollard v. Hagan, 44 U.S. 212 (1845)
Cary v. Curtis, 44 U.S. 236 (1845)
Luther v. Borden, 48 U.S. 1 (1849)
Reeside v. Walker, 52 U.S. 272 (1851)
Kennett v. Chambers, 55 U.S. 38 (1852)
Dodge v. Woolsey, 59 U.S. 331 (1855)
Gilman v. City of Philadelphia, 70 U.S. 713 (1865)
Texas v. White, 74 U.S. 700 (1868)
Ex parte McCardle, 74 U.S. 506 (1869)
Hepburn v. Griswold, 75 U.S. 603 (1869)
In re State Tonnage Tax Cases, 79 U.S. 204 (1870)
Slaughterhouse Cases, 83 U.S. 36 (1872)
Chicago B&Q Railroad Co. v. Otoe County, 83 U.S. 667 (1872)
The Township of Pine Grove v. Talcott, 86 U.S. 666 (1874)
Woodson v. Murdock, 89 U.S. 351 (1874)
Minor v. Happersett, 90 U.S. 163 (1875)
Kohl v. United States, 91 U.S. 367 (1875)
United States v. Cruikshank, 92 U.S. 542 (1876)
Knote v. United States, 95 U.S. 149 (1877)
Wheeling, P.& C. Transport Co. v. City of Wheeling, 99 U.S. 273 (1878)
United States v. Germaine, 99 U.S. 508 (1878)
Missouri v. Lewis, 101 U.S. 22 (1879)
Ex parte Siebold, 100 U.S. 371 (1880)
Ex parte Clarke, 100 U.S. 399 (1880)
Hall v. State of Wisconsin, 103 U.S. 5 (1880)
Jarrolt v. Moberly, 103 U.S. 580 (1880)
Kilbourn v. Thompson, 103 U.S. 168 (1881)
United States v. Lee, 106 U.S. 196 (1882)
United States v. Harris, 106 U.S. 629 (1882)
Escanaba Co. v. Chicago, 107 U.S. 678 (1883)
United States v. Gale, 109 U.S. 65 (1883)
Ex parte Yarbrough, 110 U.S. 651 (1884)
Head Money Cases, 112 U.S. 580 (1884)
Barbier v. Connolly, 113 U.S. 27 (1884)
United States v. Price, 116 U.S. 43 (1885)
Hart v. United States, 118 U.S. 62 (1886)
Yick Wo v. Hopkins, 118 U.S. 356 (1886)
Hayes v. State of Missouri, 120 U.S. 68 (1887)
In re Coy, 127 U.S. 731 (1888)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Lake County v. Rollins, 130 U.S. 662 (1889)
In re Loney, 134 U.S. 372 (1890)
Field v. Clark, 143 U.S. 649 (1892)
United States v. Ballin, 144 U.S. 1 (1892)
Virginia v. Tennessee, 148 U.S. 503 (1893)
Marchant v. Pennsylvania R. Co., 153 U.S. 380 (1894)
Austin v. United States, 155 U.S. 417 (1894)
United States v. Realty Company, 163 U.S. 427 (1896)
Plessy v. Ferguson, 163 U.S. 537 (1896)
In re Chapman, 166 U.S. 661 (1897)
Allen v. Smith, 173 U.S. 389 (1899)
Stearns v. State of Minnesota, 179 U.S. 223 (1900)
Davis v. Burke, 179 U.S. 399 (1900)
Burton v. United States, 202 U.S. 344 (1906)
Williamson v. United States, 207 U.S. 425 (1908)
Twining v. New Jersey, 211 U.S. 78 (1908)
Coyle v. Smith, 221 U.S. 559 (1911)
Pacific States Telephone & Telegraph Co. v. Oregon, 223 U.S. 118 (1912)
United States v. Mosley, 238 U.S. 383 (1915)
Missouri Pacific Railway Co. v. Kansas, 248 U.S. 276 (1919)
State of Rhode Island v. Palmer, 253 U.S. 350 (1920)
Hawke v. Smith, 253 U.S. 221 (1920)
United States ex rel. Widenmann v. Colby, 265 F. 998, 999 (D.C. Circ. 1920)
Newberry v. United States, 256 U.S. 232 (1921)
Dillon v. Gloss, 256 U.S. 368 (1921)
Fairchild v. Hughes, 258 U.S. 126 (1922)
Leser v. Garnett, 258 U.S. 130 (1922)
Frothingham v. Mellon, 262 U.S. 447 (1923)
Edwards v. Cuba R.R., 268 U.S. 628 (1925)
Myers v. United States, 272 U.S. 52 (1926)
Barry v. United States ex rel. Cunningham, 279 U.S. 597 (1929)
The Pocket Veto Case, 279 U.S. 655 (1929)
United States v. Sprague, 282 U.S. 716 (1931)
United States v. Smith, 286 U.S. 6 (1932)
Powell v. Alabama, 287 U.S. 45 (1932)
Williams v. United States, 289 U.S. 553 (1933)
Snyder v. Commonwealth of Massachusetts, 291 U.S. 97 (1934)
United States v. Chambers, 291 U.S. 217 (1934)
Long v. Ansell, 293 U.S. 76 (1934)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Railroad Retirement Bd. v. Alton Railroad Co., 295 U.S. 330 (1935)
Carter v. Carter Coal Co., 298 U.S. 238 (1936)
United States v. Butler, 297 U.S. 1 (1936)
De Jonge v. Oregon, 299 U.S. 353 (1937)
Herndon v. Lowry, 301 U.S. 242 (1937)
Cincinnati Soap Co. v. United States, 301 U.S. 308 (1937)
Wright v. United States, 302 U.S. 583 (1938)
Coleman v. Miller, 307 U.S. 433 (1939)
United States v. Classic, 313 U.S. 299 (1941)
United States v. Darby Lumber Co., 312 U.S. 100 (1941)
United States v. Saylor, 322 U.S. 385 (1944)
United States v. South-Eastern Underwriters Ass'n., 322 U.S. 533 (1944)
Saunders v. Wilkins, 152 F. 2d 235 (1945)
Bell v. Hood, 327 U.S. 678 (1946)
United Public Workers v. Mitchell, 330 U.S. 75 (1947)
Christoffel v. United States, 338 U.S. 84 (1949)
United States v. Texas, 339 U.S. 707 (1950)
United States v. Louisiana, 339 U.S. 699 (1950)
Dyer v. Sims, 341 U.S. 22 (1951)
Tenney v. Brandhove, 341 U.S. 367 (1951)
United States v. Rumely, 345 U.S. 41 (1953)
Brown v. Board of Education, 347 U.S. 483 (1954)
Ullmann v. United States, 350 U.S. 422 (1956)
Watkins v. United States, 354 U.S. 178 (1957)
Kinsella v. United States ex rel. Singleton, 361 U.S. 234 (1960)
Eastern R.R. Presidents Conference v. Noerr Motor Freight, 365 U.S. 127 (1961)
Poe v. Ullman, 367 U.S. 497 (1961)
Baker v. Carr, 369 U.S. 186 (1962)
Russell v. United States, 369 U.S. 749 (1962)
Edwards v. South Carolina, 372 U.S. 229 (1963)
Gray v. Sanders, 372 U.S. 368 (1963)
Griffin v. County School Bd. Of Prince Edward County, 377 U.S. 218 (1964)
Reynolds v. Sims, 377 U.S. 533 (1964)
WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964)
Maryland Committee v. Tawes, 377 U.S. 656 (1964)
Davis v. Mann, 377 U.S. 678 (1964)
Roman v. Sincock, 377 U.S. 695 (1964)
Lucas v. Colorado General Assembly, 377 U.S. 713 (1964)
Wesberry v. Sanders, 376 U.S. 1 (1964)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Fortson v. Toombs, 379 U.S. 621 (1965)
Griswold v. Connecticut, 381 U.S. 479 (1965)
United States v. Johnson, 383 U.S. 169 (1966)
Miranda v. Arizona, 384 U.S. 436 (1966)
Dombrowski v. Eastland, 387 U.S. 82 (1967)
Whitehall v. Elkins, 389 U.S. 54 (1967)
Flast v. Cohen, 392 U.S. 83 (1968)
Williams v. Rhodes, 393 U.S. 23 (1968)
Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969)
Kirkpatrick v. Preisler, 394 U.S. 526 (1969)
Powell v. McCormack, 395 U.S. 486 (1969)
Data Processing Service v. CAMP, 397 U.S. 150 (1970)
Jenness v. Fortson, 403 U.S. 431 (1971)
California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972)
Bullock v. Carter, 405 U.S. 134 (1972)
United States v. Brewster, 408 U.S. 501 (1972)
Gravel v. United States, 408 U.S. 606 (1972)
Roe v. Wade, 410 U.S. 113 (1973)
Doe v. McMillan, 412 U.S. 306 (1973)
United States v. SCRAP, 412 U.S. 669 (1973)
Kusper v. Pontikes, 414 U.S. 51 (1973)
Storer v. Brown, 415 U.S. 724 (1974)
American Party of Texas v. White, 415 U.S. 767 (1974)
Eastland v. United States Servicemen’s Fund, 421 U.S. 491 (1975)
Warth v. Seldin, 422 U.S. 490 (1975)
Buckley v. Valeo, 424 U.S. 1 (1976)
National League of Cities v. Usery, 426 U.S. 833 (1976)
U.S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452 (1978)
Kimble v. Swackhamer, 439 U.S. 1385 (1978)
Illinois Elections Board v. Socialist Workers Party, 440 U.S. 173 (1979)
United States v. Helstoski, 442 U.S. 447 (1979)
Missouri v. NOW, 620 F.2d 1301 (8th Cir.), cert. Denied 449 U.S. 842 (1980)
Idaho v. Freeman, 529 F. Supp. 1107 (D.C.D. Idaho, 1981)
Valley Forge College v. Americans United for Separation of Church and State, Inc., et al., 454 U.S. 464 (1982)
NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982)
North Dakota v. United States, 460 U.S. 300 (1983)
Anderson v. Celebrezze, 460 U.S. 780 (1983)
Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Uhler v. AFL-CIO, 468 U.S. 1310 (1984)
Montanans For A Balanced Budget Committee v. Harper, 469 U.S. 1301 (1984)
Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985)
Air France v. Saks, 470 U.S. 392 (1985)
Bowsher v. Synar, 478 U.S. 714 (1986)
United States v. Sitka, 666 F. Supp. 19,22 (D. Conn. 1987)
Meyer v. Grant, 486 U.S. 414 (1988)
OPM v. Richmond, 496 U.S. 414 (1990)
Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise, 501 U.S. 252 (1991)
Gregory v. Ashcroft, 501 U.S. 452 (1991)
Department of Commerce v. Montana, 503 U.S. 442 (1992)
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
New York v. United States, 505 U.S. 144 (1992)
U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995)
United States v. Hays, 514 U.S. 1002 (1995)
Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996)
Printz v. United States, 521 U.S. 98 (1997)
Reno v. ACLU, 521 U.S. 844 (1997)
Dunn v. Commodity Futures Trading Commission, 519 U.S. 465 (1997)
El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155 (1999)
Alden v. Maine, 119 S.Ct. 1138 (1999)
Nelson v. Adams USA, Inc., 99-502 (2000)

## OTHER COURT CITIATIONS

Attorney-General for Canada v. Attorney-General for Ontario and Others, L.R. A.C. 326, 347 (1937)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

State ex rel. Mullen v. Howell, 107 Wash. 167, 181 Pac. 920 (1919)

United States v. Baugh, 9th Circuit Court of Appeals, #9810224, (1999)

## GENERAL REFERENCE CITATIONS

THE HARVARD CLASSIC, AMERICAN HISTORICAL DOCUMENTS 1000-1904, (C. Eliot ed. 1910)
PRECEDENTS OF THE HOUSE OF REPRESENTATIVES (Washington: 1907), Sec. 3483 (A. Hinds)
THE RECORDS OF THE FEDERAL CONVENTION OF 1787,(1911),&(rev. Ed 1937), (Farrand)
THE LAW OF TREATIES, British Practice and Opinions, A.D. McNair (1938)
2,3,4 ELLIOT'S DEBATES (1937)
A CONCISE HISTORY OF THE AMERICAN REPUBLIC (2d ed. 1983) (Morison, H. Commager & Leuchtenburg)
THE AMENDING OF THE FEDERAL CONSTITUTION 1 (1942) (Orfield)
A CONSTITUTIONAL CONVENTION: THREAT OR CHALLENGE (1981) (Edel)
CONSTITUTIONAL CONVENTIONS: THEIR NAUTRE, POWERS AND LIMITATIONS (1917) (Hoar)
A MORE PERFECT UNION: THE MAKING OF THE UNITED STATES CONSTITUTION (1987) (Peters)
UNFOUNDED FEARS: MYTHS AND REALITIES OF A CONSTITUIONAL CONVENTION (1989) (P. Weber & B. Perry)
CONGRESSIONAL QUARTERLY'S GUIDE TO THE U.S. SUPREME COURT, 2ND EDITION, (1992) (Witt)
ENCYCLOPEDIA OF THE SOCIAL SCIENCES (1934)

## STATUTORY AND CONGRESSIONAL CITATIONS

S & H.R.J. Res. 3 1st Cong., 1st Sess., 1 Stat. 97-98 (1789)
14 Stat. 428, (1867)
15 Stat. 706,707 (1868)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

15 Stat. 709 (1868)
S. Rept. No. 1335, 54th Congress, 2nd Sess.(1897)
96 Cong. Rec. 3250 (Message from President Truman accompanying Reorg. Plan No. 20 of 1950)
S. 2307, 90th Cong., 1st Sess. (1967)
Congressional Budget and Parliament Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974)
Pub. L. No. 95-100, 91 Stat. 994 (1977)
Equal Rights Amendment Extension, Hearings before the Senate Judiciary Subcommittee on the Constitution, 95th Congress, 2nd Sess.,(1978)
Equal Rights Amendment Extension, Hearings before the House Judiciary Subcommittee on Civil and Constitutional Rights, 95th Congress, 1st/2nd sess. (1977-78)
H.J. Res. 638, 95th Congress, 2nd Sess., 92 Stat. 3799 (1978)
S. 119, S. 2812, H.R. 3373, 98th Cong., 2nd Sess; S. 40, 99th Cong., 1st Sess, (1985)
Rep. No. 135, 99th Cong., 1st Sess.,(1985)
Balanced Budget & Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, Title 2,99 Stat. 1038 (1985)
Pub. L. No. 99-177, 99 Stat. 1039, 1062 (1985)
Pub. L. No. 99-509, Title 7, 100 Stat. 1949 (1986)
S. 204, 101st Cong., 1st Sess. (1989).
F.R. Doc. 92-11951, 57 Fed. Reg. 21187 (1992)
138 Cong. Rec. (daily ed.) S 6948-49, H 3505-06 (1992)
United States Code (as noted in text)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## CONGRESSIONAL RECORD CITATIONS

*Applications*

1 Annals of Congress 1103 (J Gales ed. 1790)
1 Annals of Congress 248 (J Gales ed. 1789)
33 Cong. Rec. 219 (1899)
33 Cong. Rec. 280 (1899)
34 Cong. Rec. 2560 (1901)
34 Cong. Rec. 2615 (1901)
34 Cong. Rec. 2680 (1901)
35 Cong. Rec. 112 (1901)
35 Cong. Rec. 117 (1901)
35 Cong. Rec. 117 (1901)
35 Cong. Rec. 1779 (1901)
35 Cong. Rec. 208 (1901)
35 Cong. Rec. 2344 (1901)
35 Cong. Rec. 2344 (1902)
35 Cong. Rec. 2707 (1902)
35 Cong. Rec. 2707 (1902)
37 Cong. Rec. 24 (1903)
37 Cong. Rec. 276 (1903)
38 Cong. Rec. 4959 (1904)
39 Cong. Rec. 2447 (1905)
40 Cong. Rec. 138 (1905)
40 Cong. Rec. 4551 (1906)
41 Cong. Rec. 2497 (1907)
41 Cong. Rec. 3011 (1907)
41 Cong. Rec. 3072 (1907)
42 Cong. Rec. 163 (1907)
42 Cong. Rec. 164 (1907)
42 Cong. Rec. 164 (1907)
42 Cong. Rec. 359 (1907)
42 Cong. Rec. 5906 (1908) (1907)
42 Cong. Rec. 894 (1908)
42 Cong. Rec. 895 (1908)
42 Cong. Rec. 895 (1908)
42 Cong. Rec. 895 (1908)
43 Cong. Rec. 2025 (1909)
43 Cong. Rec. 2065 (1909)
43 Cong. Rec. 2071 (1909)
43 Cong. Rec. 2115 (1909)
43 Cong. Rec. 2667 (1909)
43 Cong. Rec. 2670 (1909)
44 Cong. Rec. 127 (1909)
44 Cong. Rec. 1620 (1909)
44 Cong. Rec. 50 (1909)
45 Cong. Rec. (1910) (1907)
45 Cong. Rec. (1910) (1907)
45 Cong. Rec. 3035 (1911) (1903)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

45 Cong. Rec. 7113 (1910) (1901)
45 Cong. Rec. 7113 (1910) (1901)
45 Cong. Rec. 7114 (1910) (1901)
45 Cong. Rec. 7114 (1910) (1903)
45 Cong. Rec. 7114 (1910) (1907)
45 Cong. Rec. 7114 (1910) (1907)
45 Cong. Rec. 7115 (1910) (1902)
45 Cong. Rec. 7115 (1910) (1907)
45 Cong. Rec. 7115 (1910) (1908)
45 Cong. Rec. 7116 (1910) (1901)
45 Cong. Rec. 7116 (1910) (1903)
45 Cong. Rec. 7116 (1910) (1907)
45 Cong. Rec. 7116 (1910) (1907)
45 Cong. Rec. 7116 (1910) (1908)
45 Cong. Rec. 7117 (1910) (1903)
45 Cong. Rec. 7117 (1910) (1907)
45 Cong. Rec. 7117 (1910) (1908)
45 Cong. Rec. 7118 (1905)
45 Cong. Rec. 7118 (1910) (1901)
45 Cong. Rec. 7118 (1910) (1903)
45 Cong. Rec. 7118 (1910) (1907)
45 Cong. Rec. 7119 (1910) (1901)
45 Cong. Rec. 7119 (1910) (1903)
45 Cong. Rec. 7119 (1910) (1903)
45 Cong. Rec. 7119 (1910) (1908)
46 Cong. Rec. 2411 (1911)
46 Cong. Rec. 4280 (1911)
46 Cong. Rec. 4339 (1911)
46 Cong. Rec. 651 (1911) (1910)
47 Cong. Rec. 1298 (1911)
47 Cong. Rec. 1842 (1911)
47 Cong. Rec. 187 (1911)
47 Cong. Rec. 1873 (1911)
47 Cong. Rec. 2000 (1911)
47 Cong. Rec. 2188 (1911)
47 Cong. Rec. 3087 (1911)
47 Cong. Rec. 661 (1911)
47 Cong. Rec. 85 (1911)
47 Cong. Rec. 98 (1911)
47 Cong. Rec. 99 (1911)
49 Cong. Rec. 1433 (1913) (1912)
49 Cong. Rec. 2463 (1913)
49 Cong. Rec. 2464 (1913) (1912)
50 Cong. Rec. 116 (1913)
50 Cong. Rec. 120 (1913)
50 Cong. Rec. 1796 (1913)
50 Cong. Rec. 2290 (1913)
50 Cong. Rec. 2428 (1913)
50 Cong. Rec. 42 (1913)
53 Cong. Rec. 2442 (1916)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

60 Cong. Rec. 11 (1920)
60 Cong. Rec. 31 (1920)
67 Cong. Rec. 456 (1925)
69 Cong. Rec. 455 (1927)
71 Cong. Rec. 2590 (1929)
71 Cong. Rec. 3369 (1929)
71 Cong. Rec. 3856 (1929)
75 Cong. Rec. 3299 (1932)
75 Cong. Rec. 45 (1931)
75 Cong. Rec. 48 (1931)
75 Cong. Rec. 57 (1931)
79 Cong. Rec. 10814 (1935)
79 Cong. Rec. 10814 (1935)
84 Cong. Rec. 2509 (1939)
84 Cong. Rec. 3320 (1939)
84 Cong. Rec. 985 (1939)
86 Cong. Rec. 3407 (1940)
86 Cong. Rec. 3439 (1940)
87 Cong. Rec. 1729 (1941)
87 Cong. Rec. 3172 (1941)
87 Cong. Rec. 3370 (1941)
87 Cong. Rec. 3812 (1941)
87 Cong. Rec. 4537 (1941)
87 Cong. Rec. 8904 (1941)
89 Cong. Rec. 2516 (1943)
89 Cong. Rec. 2516 (1943)
89 Cong. Rec. 2728 (1943)
89 Cong. Rec. 2944 (1943)
89 Cong. Rec. 3761 (1943)
89 Cong. Rec. 4017 (1943)
89 Cong. Rec. 5690 (1943)
89 Cong. Rec. 7523 (1943)
89 Cong. Rec. 7524 (1943)
89 Cong. Rec. 7525 (1943)
89 Cong. Rec. 8220 (1943)
89 Cong. Rec. 8220 (1943)
90 Cong. Rec. 4040 (1944)
90 Cong. Rec. 6141 (1944)
95 Cong. Rec. 4568 (1949)
95 Cong. Rec. 4571 (1949)
95 Cong. Rec. 5628 (1949)
95 Cong. Rec. 6586 (1949)
95 Cong. Rec. 6587 (1949)
95 Cong. Rec. 7000 (1949)
95 Cong. Rec. 7686 (1949)
95 Cong. Rec. 7689 (1949)
95 Cong. Rec. 7893 (1949)
95 Cong. Rec. 8285 (1949)
97 Cong. Rec. 10716 (1951)
97 Cong. Rec. 2936 (1951)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

97 Cong. Rec. 3939 (1951)
97 Cong. Rec. 5155 (1951)
97 Cong. Rec. 6033 (1951)
98 Cong. Rec. 1056 (1952)
98 Cong. Rec. 1057 (1952)
98 Cong. Rec. 1057 (1952)
98 Cong. Rec. 1225 (1952)
98 Cong. Rec. 1225 (1952)
98 Cong. Rec. 1496 (1952)
98 Cong. Rec. 4003 (1952)
98 Cong. Rec. 742 (1952)
98 Cong. Rec. 947 (1952)
98 Cong. Rec. 947 (1952)
99 Cong. Rec. 10052 (1953)
99 Cong. Rec. 10623 (1953)
99 Cong. Rec. 320 (1953)
99 Cong. Rec. 320 (1953)
99 Cong. Rec. 9180 (1953)
99 Cong. Rec. 9864 (1953)
101 Cong. Rec. 1532 (1955)
101 Cong. Rec. 2086 (1955)
101 Cong. Rec. 2270 (1955)
101 Cong. Rec. 2274 (1955)
101 Cong. Rec. 2840 (1955)
101 Cong. Rec. 2840 (1955)
101 Cong. Rec. 2861 (1955)
101 Cong. Rec. 8397 (1955)
101 Cong. Rec. 8776 (1955)
102 Cong. Rec. 7240 (1956)
102 Cong. Rec. 7304 (1956)
103 Cong. Rec. 10863 (1957)
103 Cong. Rec. 12787 (1957)
103 Cong. Rec. 4831 (1957)
103 Cong. Rec. 6471 (1957)
103 Cong. Rec. 6472 (1957)
103 Cong. Rec. 6473 (1957)
103 Cong. Rec. 6474 (1957)
103 Cong. Rec. 6475 (1957)
103 Cong. Rec. 8085 (1958)
104 Cong. Rec. 8058 (1958)
105 Cong. Rec. 1709 (1959)
105 Cong. Rec. 1834 (1959)
105 Cong. Rec. 2793 (1959)
105 Cong. Rec. 3083 (1959)
105 Cong. Rec. 3085 (1959)
105 Cong. Rec. 3220 (1959)
105 Cong. Rec. 4329 (1959)
105 Cong. Rec. 4398 (1959)
106 Cong. Rec. 10749 (1960)
106 Cong. Rec. 14315 (1960)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

106 Cong. Rec. 14401 (1960)
107 Cong. Rec. 2154 (1961)
107 Cong. Rec. 2742 (1961)
107 Cong. Rec. 2759 (1961)
107 Cong. Rec. 2799 (1961)
107 Cong. Rec. 4454 (1961)
107 Cong. Rec. 4715 (1961)
107 Cong. Rec. 7484 (1961)
108 Cong. Rec. 5051 (1962)
109 Cong. Rec. 10241 (1963)
109 Cong. Rec. 10441 (1963)
109 Cong. Rec. 10441 (1963)
109 Cong. Rec. 10441 (1963)
109 Cong. Rec. 10442 (1963)
109 Cong. Rec. 11530 (1963)
109 Cong. Rec. 1172 (1963)
109 Cong. Rec. 1173 (1963)
109 Cong. Rec. 11852 (1963)
109 Cong. Rec. 11852 (1963)
109 Cong. Rec. 11853 (1963)
109 Cong. Rec. 14638 (1963)
109 Cong. Rec. 14639 (1963)
109 Cong. Rec. 14767 (1963)
109 Cong. Rec. 14767 (1963)
109 Cong. Rec. 14779 (1963)
109 Cong. Rec. 14808 (1963)
109 Cong. Rec. 15105 (1963)
109 Cong. Rec. 15107 (1963)
109 Cong. Rec. 15362 (1963)
109 Cong. Rec. 2071 (1963)
109 Cong. Rec. 2072 (1963)
109 Cong. Rec. 2278 (1963)
109 Cong. Rec. 2278 (1963)
109 Cong. Rec. 2281 (1963)
109 Cong. Rec. 2765 (1963)
109 Cong. Rec. 2768 (1963)
109 Cong. Rec. 2769 (1963)
109 Cong. Rec. 2769 (1963)
109 Cong. Rec. 2769 (1963)
109 Cong. Rec. 2769 (1963)
109 Cong. Rec. 3274 (1963)
109 Cong. Rec. 3274 (1963)
109 Cong. Rec. 3788 (1963)
109 Cong. Rec. 3854 (1963)
109 Cong. Rec. 3855 (1963)
109 Cong. Rec. 3982 (1963)
109 Cong. Rec. 3982 (1963)
109 Cong. Rec. 4050 (1963)
109 Cong. Rec. 4050 (1963)
109 Cong. Rec. 4457 (1963)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

109 Cong. Rec. 4469 (1963)
109 Cong. Rec. 4778 (1963)
109 Cong. Rec. 4779 (1963)
109 Cong. Rec. 4779 (1963)
109 Cong. Rec. 4900 (1963)
109 Cong. Rec. 5014 (1963)
109 Cong. Rec. 5014 (1963)
109 Cong. Rec. 5014 (1963)
109 Cong. Rec. 5014 (1963)
109 Cong. Rec. 5250 (1963)
109 Cong. Rec. 5581 (1963)
109 Cong. Rec. 5867 (1963)
109 Cong. Rec. 5868 (1963)
109 Cong. Rec. 5868 (1963)
109 Cong. Rec. 5947 (1963)
109 Cong. Rec. 6438 (1963)
109 Cong. Rec. 6657 (1963)
109 Cong. Rec. 6659 (1963)
109 Cong. Rec. 6930 (1963)
109 Cong. Rec. 6931 (1963)
109 Cong. Rec. 7060 (1963)
109 Cong. Rec. 7277 (1963)
109 Cong. Rec. 7287 (1963)
109 Cong. Rec. 9942 (1963)
109 Cong. Rec. 2768 (1963)
110 Cong. Rec. 10013 (1964)
110 Cong. Rec. 5659 (1964)
110 Cong. Rec. 5922 (1964)
110 Cong. Rec. 7371 (1964)
110 Cong. Rec. 7484 (1964)
110 Cong. Rec. 7616 (1964)
110 Cong. Rec. 9875 (1964)
111 Cong. Rec. 10016 (1965)
111 Cong. Rec. 10673 (1965)
111 Cong. Rec. 10673 (1965)
111 Cong. Rec. 10922 (1965)
111 Cong. Rec. 10922 (1965)
111 Cong. Rec. 11163 (1965)
111 Cong. Rec. 11488 (1965)
111 Cong. Rec. 11713 (1965)
111 Cong. Rec. 11802 (1965)
111 Cong. Rec. 12110 (1965)
111 Cong. Rec. 1216 (1965)
111 Cong. Rec. 1216 (1965)
111 Cong. Rec. 1229 (1965)
111 Cong. Rec. 12853 (1965)
111 Cong. Rec. 1402 (1965)
111 Cong. Rec. 14144 (1965)
111 Cong. Rec. 14163 (1965)
111 Cong. Rec. 14308 (1965)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

111 Cong. Rec. 1437 (1965)
111 Cong. Rec. 14458 (1965)
111 Cong. Rec. 15699 (1965)
111 Cong. Rec. 15764 (1965)
111 Cong. Rec. 15769 (1965)
111 Cong. Rec. 15769 (1965)
111 Cong. Rec. 15770 (1965)
111 Cong. Rec. 164 (1965)
111 Cong. Rec. 18171 (1965)
111 Cong. Rec. 18476 (1965)
111 Cong. Rec. 18999 (1965)
111 Cong. Rec. 19379 (1965)
111 Cong. Rec. 19534 (1965)
111 Cong. Rec. 19740 (1965)
111 Cong. Rec. 19775 (1965)
111 Cong. Rec. 20839 (1965)
111 Cong. Rec. 21105 (1965)
111 Cong. Rec. 24720 (1965)
111 Cong. Rec. 24723 (1965)
111 Cong. Rec. 25237 (1965)
111 Cong. Rec. 26073 (1965)
111 Cong. Rec. 26167 (1965)
111 Cong. Rec. 27482 (1965)
111 Cong. Rec. 2777 (1965)
111 Cong. Rec. 2948 (1965)
111 Cong. Rec. 3061 (1965)
111 Cong. Rec. 3061 (1965)
111 Cong. Rec. 3304 (1965)
111 Cong. Rec. 3304 (1965)
111 Cong. Rec. 3304 (1965)
111 Cong. Rec. 3714 (1965)
111 Cong. Rec. 3714 (1965)
111 Cong. Rec. 3722 (1965)
111 Cong. Rec. 3722 (1965)
111 Cong. Rec. 3990 (1965)
111 Cong. Rec. 4064 (1965)
111 Cong. Rec. 4083 (1965)
111 Cong. Rec. 4320 (1965)
111 Cong. Rec. 4395 (1965)
111 Cong. Rec. 5800 (1965)
111 Cong. Rec. 5817 (1965)
111 Cong. Rec. 5820 (1965)
111 Cong. Rec. 6175 (1965)
111 Cong. Rec. 6183 (1965)
111 Cong. Rec. 6917 (1965)
111 Cong. Rec. 7259 (1965)
111 Cong. Rec. 880 (1965)
111 Cong. Rec. 880 (1965)
111 Cong. Rec. 881 (1965)
111 Cong. Rec. 94 (1965)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

111 Cong. Rec. 94 (1965)
112 Cong. Rec. 199 (1966)
112 Cong. Rec. 199 (1966)
112 Cong. Rec. 200 (1966)
112 Cong. Rec. 43 (1966)
112 Cong. Rec. 44 (1966)
112 Cong. Rec. 44 (1966)
113 Cong. Rec. 10118 (1967)
113 Cong. Rec. 11175 (1967)
113 Cong. Rec. 11743 (1967)
113 Cong. Rec. 17634 (1967)
113 Cong. Rec. 18007 (1967)
113 Cong. Rec. 20893 (1967)
113 Cong. Rec. 6384 (1967)
113 Cong. Rec. 6766 (1967)
113 Cong. Rec. 7126 (1967)
113 Cong. Rec. 8004 (1967)
113 Cong. Rec. 8496 (1967)
115 Cong. Rec. 11987 (1969)
115 Cong. Rec. 12249 (1969)
115 Cong. Rec. 24116 (1969)
115 Cong. Rec. 35587 (1969)
115 Cong. Rec. 36153 (1969)
116 Cong. Rec. 20672 (1970)
116 Cong. Rec. 20919 (1970)
116 Cong. Rec. 21309 (1970)
116 Cong. Rec. 21369 (1970)
116 Cong. Rec. 22778 (1970)
116 Cong. Rec. 22906 (1970)
116 Cong. Rec. 23765 (1970)
116 Cong. Rec. 41879 (1970)
116 Cong. Rec. 5479 (1970)
116 Cong. Rec. 5499 (1970)
116 Cong. Rec. 6097 (1970)
116 Cong. Rec. 6221 (1970)
116 Cong. Rec. 6877 (1970)
117 Cong. Rec. 11841 (1971)
117 Cong. Rec. 12210 (1971)
117 Cong. Rec. 16574 (1971)
117 Cong. Rec. 19801 (1971)
117 Cong. Rec. 21712 (1971)
117 Cong. Rec. 22280 (1971)
117 Cong. Rec. 2789 (1971)
117 Cong. Rec. 30887 (1971)
117 Cong. Rec. 30905 (1971)
117 Cong. Rec. 3175 (1971)
117 Cong. Rec. 41598 (1971)
117 Cong. Rec. 4632 (1971)
117 Cong. Rec. 5020 (1971)
117 Cong. Rec. 527 (1971)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

117 Cong. Rec. 5303 (1971)
117 Cong. Rec. 541 (1971)
118 Cong. Rec. 11444 (1972)
118 Cong. Rec. 11445 (1972)
118 Cong. Rec. 11885 (1972)
118 Cong. Rec. 11885 (1972)
118 Cong. Rec. 16214 (1972)
118 Cong. Rec. 33047 (1972)
118 Cong. Rec. 33259 (1972)
118 Cong. Rec. 5282 (1972)
118 Cong. Rec. 6501 (1972)
119 Cong. Rec. 10675 (1973)
119 Cong. Rec. 11446 (1973)
119 Cong. Rec. 11446 (1973)
119 Cong. Rec. 11515 (1973)
119 Cong. Rec. 11835 (1973)
119 Cong. Rec. 12408 (1973)
119 Cong. Rec. 14234 (1973)
119 Cong. Rec. 14421 (1973)
119 Cong. Rec. 14421 (1973)
119 Cong. Rec. 14428 (1973)
119 Cong. Rec. 16324 (1973)
119 Cong. Rec. 17022 (1973)
119 Cong. Rec. 18190 (1973)
119 Cong. Rec. 1939 (1973)
119 Cong. Rec. 7282 (1973)
119 Cong. Rec. 7282 (1973)
119 Cong. Rec. 8089 (1973)
119 Cong. Rec. 8091 (1973)
119 Cong. Rec. 8550 (1973)
119 Cong. Rec. 8689 (1973)
121 Cong. Rec. 12168 (1975)
121 Cong. Rec. 12175 (1975)
121 Cong. Rec. 12867 (1975)
121 Cong. Rec. 13433 (1975)
121 Cong. Rec. 19117 (1975)
121 Cong. Rec. 21065 (1975)
121 Cong. Rec. 24412 (1975)
121 Cong. Rec. 25312 (1975)
121 Cong. Rec. 27821 (1975)
121 Cong. Rec. 28347 (1975)
121 Cong. Rec. 29630 (1975)
121 Cong. Rec. 4730 (1975)
121 Cong. Rec. 5793 (1975)
121 Cong. Rec. 5793 (1975)
122 Cong. Rec. 1400 (1976)
122 Cong. Rec. 16814 (1976)
122 Cong. Rec. 23550 (1976)
122 Cong. Rec. 2740 (1976)
122 Cong. Rec. 3161 (1976)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

122 Cong. Rec. 4090 (1976)
122 Cong. Rec. 4329 (1976)
122 Cong. Rec. 5572 (1976)
122 Cong. Rec. 8336 (1976)
122 Cong. Rec. 931 (1976)
122 Cong. Rec. 9735 (1976)
123 Cong. Rec. 10481 (1977)
123 Cong. Rec. 11041 (1977)
123 Cong. Rec. 11048 (1977)
123 Cong. Rec. 11888 (1977)
123 Cong. Rec. 13057 (1977)
123 Cong. Rec. 13301 (1977)
123 Cong. Rec. 13471 (1977)
123 Cong. Rec. 14649 (1977)
123 Cong. Rec. 14825 (1977)
123 Cong. Rec. 15539 (1977)
123 Cong. Rec. 15808 (1977)
123 Cong. Rec. 18419 (1977)
123 Cong. Rec. 18419 (1977)
123 Cong. Rec. 18869 (1977)
123 Cong. Rec. 18873 (1977)
123 Cong. Rec. 20659 (1977)
123 Cong. Rec. 22002 (1977)
123 Cong. Rec. 22002 (1977)
123 Cong. Rec. 2545 (1977)
123 Cong. Rec. 4797 (1977)
123 Cong. Rec. 9289 (1977)
123 Cong. Rec. 9603 (1977)
124 Cong. Rec. 11103 (1978)
124 Cong. Rec. 11437 (1978)
124 Cong. Rec. 11438 (1978)
124 Cong. Rec. 12011 (1978)
124 Cong. Rec. 12011 (1978)
124 Cong. Rec. 12011 (1978)
124 Cong. Rec. 12215 (1978)
124 Cong. Rec. 12397 (1978)
124 Cong. Rec. 12397 (1978)
124 Cong. Rec. 12544 (1978)
124 Cong. Rec. 12694 (1978)
124 Cong. Rec. 1292 (1978)
124 Cong. Rec. 14193 (1978)
124 Cong. Rec. 14584 (1978)
124 Cong. Rec. 14911 (1978)
124 Cong. Rec. 1662 (1978)
124 Cong. Rec. 17055 (1978)
124 Cong. Rec. 19683 (1978)
125 Cong. Rec. 10144 (1979) (1975)
125 Cong. Rec. 11203 (1979)
125 Cong. Rec. 11584 (1979)
125 Cong. Rec. 12888 (1979)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

125 Cong. Rec. 13387 (1979)
125 Cong. Rec. 134 (1979)
125 Cong. Rec. 134 (1979)
125 Cong. Rec. 15227 (1979)
125 Cong. Rec. 15792 (1979)
125 Cong. Rec. 15852 (1979)
125 Cong. Rec. 16350 (1979)
125 Cong. Rec. 16351 (1979)
125 Cong. Rec. 19359 (1979)
125 Cong. Rec. 19470 (1979)
125 Cong. Rec. 2936 (1979)
125 Cong. Rec. 3007 (1979)
125 Cong. Rec. 3007 (1979)
125 Cong. Rec. 3196 (1979)
125 Cong. Rec. 3322 (1979)
125 Cong. Rec. 3427 (1979)
125 Cong. Rec. 3427 (1979)
125 Cong. Rec. 3522 (1979)
125 Cong. Rec. 3655 (1979)
125 Cong. Rec. 3656 (1979)
125 Cong. Rec. 3656 (1979)
125 Cong. Rec. 3657 (1979)
125 Cong. Rec. 3906 (1979)
125 Cong. Rec. 4071 (1979)
125 Cong. Rec. 4152 (1979)
125 Cong. Rec. 4372 (1979)
125 Cong. Rec. 4372 (1979)
125 Cong. Rec. 4372 (1979)
125 Cong. Rec. 4627 (1979)
125 Cong. Rec. 4702 (1979)
125 Cong. Rec. 4702 (1979)
125 Cong. Rec. 4861 (1979)
125 Cong. Rec. 5223 (1979)
125 Cong. Rec. 5368 (1979)
125 Cong. Rec. 5450 (1979)
125 Cong. Rec. 5953 (1979)
125 Cong. Rec. 7920 (1979)
125 Cong. Rec. 8108 (1979)
125 Cong. Rec. 9188 (1979)
125 Cong. Rec. 9368 (1979)
126 Cong. Rec. 10650 (1980)
126 Cong. Rec. 10790 (1980)
126 Cong. Rec. 1104 (1980)
126 Cong. Rec. 11389 (1980)
126 Cong. Rec. 5768 (1980)
126 Cong. Rec. 6172 (1980)
126 Cong. Rec. 8306 (1980)
126 Cong. Rec. 8360 (1980)
126 Cong. Rec. 8972 (1980)
126 Cong. Rec. 909 (1980)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

126 Cong. Rec. 9337 (1980)
126 Cong. Rec. 9765 (1980)
127 Cong. Rec. 1524 (1981)
127 Cong. Rec. 19856 (1981)
127 Cong. Rec. 761 (1981)
128 Cong. Rec. 2917 (1982)
128 Cong. Rec. 798 (1982)
129 Cong. Rec. 10594 (1983)
129 Cong. Rec. 4942 (1983)
130 Cong. Rec. 4884 (1984)
130 Cong. Rec. 6892 (1984)
132 Cong. Rec. 1023 (1986)
132 Cong. Rec. 2548 (1986)
133 Cong. Rec. 4183 (1987)
133 Cong. Rec. 7728 (1987)
135 Cong. Rec. 232 (1989)
135 Cong. Rec. 3233 (1989)
135 Cong. Rec. 3528 (1989)
135 Cong. Rec. 998 (1989)

*Recessions*

97 Cong. Rec. 10973 (1951)
98 Cong. Rec. 4641 (1952)
98 Cong. Rec. 742 (1952)
98 Cong. Rec. 742 (1952)
99 Cong. Rec. 4311, 4434 (1953)
99 Cong. Rec. 6163 (1953)
100 Cong. Rec. 11943 (1954)
100 Cong. Rec. 9420 (1954)
101 Cong. Rec. 99 (1955)
115 Cong. Rec. 18411, 18714 (1969)
115 Cong. Rec. 18411, 18714 (1969)
115 Cong. Rec. 19353, 24111 (1969)
115 Cong. Rec. 19353, 24111 (1969)
116 Cong. Rec. 11548, 11942 (1970)
116 Cong. Rec. 11548, 11942 (1970)
116 Cong. Rec. 11548,11942 (1970)
134 Cong. Rec. 8312 (1988)
134 Cong. Rec. 8312 (1988)
135 Cong. Rec. 3528 (1989)
135 Cong. Rec. 5485 (1989)
S 529 (28JA) Cong. Rec. Index 1992


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## MISCELLANOUS CITATIONS

UNITED STATES DECLARATION OF INDEPENDENCE (1776)

TREATY OF PEACE WITH GREAT BRITIAN (Malloy, ed. *Treaties, Conventions, Etc. Vol. I*)

Alexis de Tocqueville, DEMOCRACY IN AMERICA (1835)

UNITED STATES ARTICLES OF CONFEDERATION (1781)

UNITED STATES CONSTITUTION (1788)

WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED, 2nd Ed. (1984)

BLACK'S LAW DICTIONARY 6th ed. (1990)

U.S. TERM LIMITS, www.termlimits.org. (1997)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## INTRODUCTION

There are two methods of amendment in the United States Constitution which allow for legal and orderly change in the Constitution in order to reflect the requirements, desires and needs of its citizens. This amendment process is probably the most important aspect of the entire Constitution as it gives the document its much vaunted flexibility and thus has allowed the Constitution to remain viable and contemporary through two hundred years of tumultuous United States history. As noted by James Iredell, in the North Carolina Ratifying Convention of 1787:

> "The Constitution of any government which cannot be regularly amended when its defects are experienced, reduces the people to this dilemma—they must either submit to its oppressions, or bring about amendments, more or less, by a civil war. Happy this, the country we live in! The Constitution before us, if it is adopted, can be altered with as much regularity, and as little confusion, as any act of Assembly; not, indeed, quite so easily, which would be extremely impolitic, but it is a most happy circumstance, that there is a remedy in the system itself for its own fallibility, so that alterations can without difficulty be made, agreeable to the general sense of the people."[1]

This "happy circumstance" is contained in Article V of the Constitution which reads:

"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

[1] 4 ELLIOT'S DEBATES 176-77 (1937).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

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."[2]

If this "happy circumstance" exists and has apparently worked so well for over two hundred years, then it is proper to pose the question of why the issue of a convention to propose amendments should be entertained at all. Has not Congress effected sufficient amendments to meet the needs of the people, and is this not sufficient in satisfying those needs that the untried method of a convention to propose amendments should be ignored by Congress?[3] Should America undertake a perilous constitutional journey as the untested, untried and (some think) unfettered convention to propose amendments purports to be?

The Constitution binds us together in a unique form of citizenship we call America. That citizenship is based on the concept that the powers of the government are derived from the consent of the governed;[4] that the Constitution is an expression of a contract between government and citizen; that its provisions *must* be obeyed; that none, particularly those trusted to

---

[2] U.S. CONST. art. V, *reprinted in* 2 M. Farrand, THE RECORDS OF THE FEDERAL CONVENTION OF 1787, pp. 662-663 (1911) [hereinafter 1,2,3 or 4 Farrand]. *See* also 4 M. Farrand, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (rev. Ed 1937).

[3] The convention to propose amendments, however untried, is part of the Constitution. It is a major component in the concept of the separation of powers. By this single phrase, the Founding Fathers *guaranteed* that under no circumstances would all the sovereign power of the nation exist in the federal government. There would always remain a method whereby the states and the people could exercise control over the federal government. To place all power of amendment in the hands of the Congress is to create a dangerous concentration of power. The Congress has done this quietly and without approval by the people. This cannot be allowed.

As James Madison observed:

"I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations." (Speech at the Virginia Ratifying Convention, June 16, 1788.

[4] "The constitution of the United States is to be considered as emanating from the people and not as the act of sovereign and independent states." McCulloch v. Maryland, 17 U.S. 316 (1819).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

govern, are above its law[5]; that this nation suffers grievously when these concepts are subverted, and any subversion of that document must be prevented at all costs lest the entire document and its precepts be destroyed.

This is the responsibility of all citizens: not to give blind obedience to government, but instead to make responsible inquires into their government's actions and policies.[6] That same citizenship demands leaders whose job it is to listen and respond to those inquires and, should it be found their actions or policies are in basic conflict with the Constitution, to alter or abolish those conflicts so as to conform to the provisions of that document, however inconvenient or cumbersome that may be.

Under the terms of the United States Constitution, when two-thirds of the several states apply, Congress is mandated to call a convention to propose amendments.[7] Forty-nine states have applied for a convention to propose amendments.[8] On its face, that fact alone compels Congress to call a convention, which it has not, and compels the judicial system, under its oath

---

[5] United States v. Lee, 106 U.S. 196 (1882). *See infra* text accompanying note 291.

[6] "Privileges and immunities of citizens of the United States...are only such as arise out of the nature and essential character of the national government...that among the rights and privileges of national citizenship recognized by this court are...the right to inform the United States authorities of violation of its laws." Twining v. New Jersey, 211 U.S. 78 at 97 (1908).

[7] *See supra* text accompanying note 2.

[8] *See infra*,
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.
According to the ABA Report,(*see infra* text accompanying notes 1589-1698) the state of Hawaii has made a single application (ABA Report p. 80) for a convention to propose amendments. However, this information has not been confirmed by latter research.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

to support the Constitution, to enforce that document’s provision and declare such inaction by Congress, unconstitutional.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## PURPOSES OF MOTION AND ORDER

The purpose of this motion and order are to establish:

--under the authority of Article V of the United States Constitution, Congress is obligated to call a convention to propose amendments on the application of two-thirds of the several state legislatures;

--the sole standard of application intended by the Framers of the Constitution as established in Article V is a two-thirds numeric count of applying states legislatures;

--applications have been filed with Congress by more than two-thirds of the several state legislatures notifying it of the states' intention and desire to hold a convention to propose amendments;

--these applications constitute more than a sufficient numeric count of applying state legislatures to satisfy the two-thirds application requirement specified in Article V of the United States Constitution;

--neither implication, expression nor historic record of the Constitution demonstrate Congress is permitted any discretion in calling a convention to propose amendments whether by debate or legislative act which establish any pre-conditions (other than the two-thirds numeric count of applying state legislatures) such as same subject or contemporaneousness that serves to obstruct the intent of the convention clause of Article V of the United States Constitution;

--until a convention to propose amendments is called by Congress all applications filed by the state legislatures for a convention to propose


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

amendments are in full force and effect and may not be voided by *laches* of Congress failing to perform its constitutionally mandated duty specified in Article V of the United States Constitution;

--the state legislatures having fulfilled the two-thirds requirement of Article V of the United States Constitution, and thus, among other reasons, are not permitted under its terms from vetoing Congress in its mandated obligation to call a convention to propose amendments any recession of any application for a convention to propose amendments filed by any state is unconstitutional;

--the perimeter of Congress' call of a convention to propose amendments were intended by the Framers to be a limited "minuscule" role which precisely ends upon its issuance of a convention call;

--Congress is denied any authority by the Constitution to legislate or regulate any procedural or substantive matters concerning the convention to propose amendments;

--any issue of state malapportionment has no effect on the validity of applications for a convention to propose amendments or on the obligatory action of Congress to call such a convention, but in no way holds Congress immune from the effects of Section 2 of the 14th Amendment;

--the convention to propose amendments is constitutionally autonomous with its own powers and authority, limited by the applicable provisions of the Constitution, but is in no way subservient to any other branch of the United States Government or any branch of state government in the execution of these powers and authorities;


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

--Congress is obligated to pass any proposed amendment[s]from the convention to the states for ratification either by state convention or consideration in the various state legislatures and thus may not, in any manner, “veto” any proposed amendment[s] made by the convention to propose amendments;

--no member of the executive branch of the United States Government or the several states, or any of its assigns, may, in any way, obstruct or interfere with the calling of the convention to propose amendments, its proper and legal business or any of its proposed amendment[s];

--under the terms of the 14th Amendment, the general operational powers of Congress are equally granted to the convention to propose amendments in order to permit it to execute its constitutional function and that these general operational powers serve to answer the composition, authority and other such matters related to the convention to propose amendments;

--the doctrine of equal protection dictates the election of delegates to the convention to propose amendments and precludes any other form of selection such as gubernatorial or congressional appointment, the number of delegates, and sovereign representation;

--the terms and conditions of the Constitution prevent and preclude any financial aid or regulation of the convention to propose amendments through this avenue, either by Congress or the several states;

--such constitutional terms and conditions also dictate the convention to propose amendments be conducted, convened and held on the Internet in order to be compliance with all terms and specifications of the Constitution;


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

--the state legislatures having exercised their constitutional power in applying for a convention to propose amendments have thus exhausted all state power in the matter (until the issue of ratification of a proposed amendment shall arise), the matter now becomes a power of the people under their right to alter or to abolish;

--in it *laches* to call a convention to propose amendments as prescribed and mandated by Article V of the United States Constitution, Congress has violated the constitutional right of the people to alter or to abolish, thus violating the Ninth Amendment of the Constitution;

--any *laches* by Congress in failing to call a convention to propose amendments is an act of tyranny which is contrary to the intent and spirit of the Constitution as intended by its Framers;

--the *laches* of Congress has violated not only the general right of the people to alter or to abolish but several individual rights of the plaintiff including, but not limited to, his right to vote in an election and right to politically associate;

--Congress being *constitutionally mandated* to call a convention to propose amendments as specified in Article V of the United States Constitution, the proper number of state legislatures having applied, and Congress having refused to do so, the Court is obligated to determine that the United States Congress, as a body of the whole, is in violation of the Constitution and;

--it is entirely within the Court’s constitutional power and duty to compel Congress to fulfill its constitutional obligation and declare such *laches* to refuse to call a convention to propose amendments unconstitutional


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

and issue such declaratory judgment as required compelling Congress to call a convention to propose amendments including stipulations and provisions necessary to prevent any state or federal obstruction of a convention to propose amendments in the execution of its constitutional duties.

## ARGUMENTS SUPPORTING JUDICIABLITY OF ACTION

### JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331[9] and 28 U.S.C. § 1361.[10]

### VENUE

Venue is proper in this District under 28 U.S.C. § 1391(e)(3).[11]

---

[9] "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."
As this suit is a civil action arising under a question entirely contained within Article V of the United States Constitution, the district court clearly has original jurisdiction in this matter.

[10] "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United states or any agency thereof to perform a duty owed to the plaintiff."

[11] "A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which...(3) the plaintiff resides if no real property is involved in the action."
As the plaintiff seeks only declaratory relief and seeks no monetary damages, resides in the jurisdiction of U.S. District Court, Western District and is bringing action against the defendants only in their official capacities, venue is proper under this clause of U.S.C.A.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## REMEDY SOUGHT

This suit seeks declaratory judgment[12] against all defendants in their official capacities and seeks relief compelling Congress to execute its required ministerial constitutional duty[13] and act[14] to call a convention to propose amendments as specified in Article V of the United States Constitution together with other orders as necessary for such issues as hereinafter more fully appear.

---

[12] "In a case of actual controversy within its jurisdiction,...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." 28 U.S.C.A. § 2201.

"Declaratory judgment. Statutory remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his legal rights. A binding adjudication of the rights and status of litigants even though consequential relief is awarded. Brimmer v. Thomson, Wyo., 521 P.2d 574, 579. Such judgment is conclusive in a subsequent action between the parties as to the matters declared and, in accordance with the usual rules of issue preclusion, as to any issues actually litigated and determined. Seaboard Coast Line R. Co. v Gulf Oil Corp., C.A.Fla., 409 F.2d 879." BLACK'S LAW DICTIONARY 6th ed. (1990).

[13] "Ministerial duty. One regarding which nothing is left to discretion--a simple and definite duty, imposed by law, and arising under conditions admitted or proved to exist." BLACK'S LAW DICTIONARY 6th ed. (1990).

[14] "Ministerial act. That which is done under the authority of a superior; opposed to *judicial*. That which involved obedience to instructions, but demands no special discretion, judgment, or skill. Arrow Exp. Forwarding Co., v. Iowa State Commerce Commission, 256 Iowa 1088, 130 N.W.2d 451, 453. An act is 'ministerial' when its performance is positively commanded and so plainly prescribed as to be free from doubt. J.E. Brenneman Co., V. Schramm, D.C.Pa., 473 F.Supp. 1316, 1319. Official's duty is 'ministerial' when it is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts. Long V. Seabrook, 260 S.C. 562, 197 S.E.2d 659, 662.

"One which a person or board performs under a given state of facts in a prescribed manner in obedience to the mandate of legal authority without regard to or the exercise of his or their own judgment upon the propriety of the act being done. State, Dept. Of Mental Health v. Allen, Ind. App., 427 N.E.2d 2, 4; Gibson v. Winterset Community school Dist., 258 Iowa 440, 138 N.W.2d 112, 115." BLACK'S LAW DICTIONARY 6th ed. (1990).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## STATEMENT OF FACTS

Between 1790 and the present, the state legislatures have filed 564 applications with Congress for a convention to propose amendments. These applications have come from 49 states. Article V of the United States Constitution states [in part] that: “Congress ... on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments...” The plain language of the Constitution is explicit. Congress must a call a convention to propose amendments when two-thirds of the state legislatures shall apply, which they have.

Upon learning these facts from public record, the plaintiff in the year 1999 attempted to file for election as a delegate for a convention to propose amendments. The plaintiff was denied this opportunity by the state of Washington and the Congress of the United States because: (1) the state in question (Washington) does not even have a law allowing for such a filing, and (2) even if such a law did exist, Congress has vetoed the Constitution in its refusal to call a convention despite the state legislatures having more than satisfied the numeric count required under Article V. As congressional *laches* preempts any state law by effectively nullifying that law, even if it does exist, the plaintiff seeks relief from the unconstitutional congressional action of refusing to call a convention as specified in Article V of the United States Constitution. This *laches* violates the plaintiff’s individual rights and the people’s right to alter or abolish their government.

Because the plaintiff cannot seek office, he has been denied a right of citizenship to which he is entitled. Further, because an election has not been


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

held to elect convention delegates, he has been denied the right to vote in an election to which he is entitled to vote. Because of congressional *laches* he is unable to associate politically with any assurance of effect of that association. For these reasons, together with other unconstitutional insults by Congress to his rights, the plaintiff seeks relief from the Court.

## STANDING OF PLANTIFF TO BRING SUIT

### *Introduction*

The obligation of Congress to call a convention is well established.[15] Congress through its *laches* has failed to perform this obligatory duty. Further, it is clear Congress has no intention of fulfilling this constitutional duty. In failing to call a convention to propose amendments, Congress has violated six of plaintiff's rights guaranteed to him in the Constitution in a personal, particularized, concrete manner. Plaintiff maintains congressional *laches* to obey clear, specific and plain constitutional language to be judicially reviewable. Plaintiff maintains this *laches* can be redressed by the Court within its usual powers as prescribed by the Constitution.

### *Requirements of Standing Established By the Court*

[15] *See infra* text, generally, STATE APPLICATIONS FOR A CONVENTION, p.661.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Standing is defined as:

"...[A] concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court; it is the right to take the initial step that frames legal issues for ultimate adjudication by court or jury. State ex rel. Cartwright v. Oklahoma Tax Com'n, Okl., 653 P.2d 1230, 1232."[16]

The United States Supreme Court has established three specific standards which plaintiffs must satisfy order for a person to have standing to sue.

"It is now well settled that 'the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of.... Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'"[17]

The Court requires the plaintiff[18] to show standing by demonstrating that the Congress has violated a specific legal right of the plaintiff in a manner that is clearly specific and direct in nature and that the Court can redress this violation by use of its constitutionally delegated powers.

*Federal Standing: The Caplan Opinion*

While the rules of standing have been laid out, the fact remains the courts have never addressed *specifically* a suit, case or controversy dealing with the convention to propose amendments. Hence, the question of standing as it relates *directly* to the convention to propose amendments is entirely

[16] BLACK'S LAW DICTIONARY 6th ed. (1990).
[17] United States v. Hays, 514 U.S. 1002 (1995)(quoting Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).
[18] "The party invoking federal jurisdiction bears the burden of establishing these elements." Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

unexplored, i.e., what is a "concrete" injury, what if anything may the courts redress, and are there "special" standing circumstances regarding this provision of the Constitution?

Thus, as this suit is the first to present the courts with a question of this nature, it is logical this suit not only present its standing issues, but explore the matter in some depth so as to present all circumstances surrounding the judicial standard.

The only textual discussion of standing in the courts in regard to the convention to propose amendments is found in Caplan's[19] *Constitutional Brinksmanship*.[20] Caplan wrote:

> "The duty of Congress to call a convention may be viewed alternatively as the right to have a convention called. In the event of congressional noncompliance with the obligations of article V, that right may be vindicated in the courts. Suit would be brought after Congress determined that the conditions for a call had not been met: one or more applications were incorrect in form, or stale, or did not agree in subject matter with the rest. Or, equally likely, Congress would have ignored the petitions entirely. The suit would probably ask the federal court to order Congress to make the necessary determinations and, upon ascertaining that all requirements have been satisfied, to call a convention or in the alternative to propose the amendment.(1)
>
> "Article V's reference to the state legislatures as the applying agents would be construed to endow them with standing---that is, eligibility to bring suit because of injury traceable to the defendant's unlawful conduct, a requirement inferred by the courts from article III---and to exclude other possible litigants such as the governors, the President, members of the general public, or a fraction of Congress.(2) No pro-convention member of Congress willing to bring suit against the majority could surmount the barriers erected by the courts, and individual members of the public would be ineligible as well.(3) Only the state legislatures, specifically those that had filed applications, would have standing to sue: only they could allege that their constitutionally guaranteed amending powers had been infringed by the inaction of Congress.(4) The defendants in a suit against a recalcitrant Congress would be the officers charged with tabulating the applications and possibly members of Congress themselves.(5)"[21]

---

[19] For short biography on author, *see infra* text accompanying note 1547.
[20] Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988).
[21] (1) United States *ex rel*. McLennan v. Wilbur, 283 U.S. 414, 420 (1931) (mandamus order will issue where the duty is "ministerial" and "plainly

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

If Caplan's opinion is taken summarily, it appears to be the alpha and omega of the matter.[22] Caplan, dispensing with any individual rights that might be trampled in the process, permits only a state legislature[23] to bring

---

defined"); see 5 *Annals of Cong.* 530 (1796) (Rep. Lyman: calling an article V convention is "ministerial").

(2) *In re* Opinion of the Justices, 262 Mass. 603, 606 (1928) (article V excludes the voters from the amending process, vesting "all power over the subject... exclusively in the Legislatures of the several States"). The modern test for article III standing is set out in Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982).

(3) Riegle v. Federal Open Market Committee, 656 F.2d 873, 881 (D.C. Cir.), *certiorari denied*, 454 U.S. 1082 (1981) (when the dispute is among members of Congress, i.e., is really about the lawmaking process itself, equitable discretion counsels dismissal). On the ineligibility of the general public, *see Valley Forge*, 454 U.S. at 482-83; Fairchild v. Hughes, 258 U.S. 126 (1922) (private citizen lacked standing to have 19th amendment declared void).

(4) Note, "Proposed Legislation on the Convention Method of Amending the United States Constitution," 85 *Harvard Law Review* 1612, 1643 (1972). The Kansas legislators in *Coleman* had standing because of their constitutionally "adequate interest in maintaining the effectiveness of their votes." 307 U.S. at 438.

(5) United States *ex rel*. Widenmann v. Colby, 265 F. 998, 1000 (D.C. Cir. 1920)(action lies against official charged with proclaiming the adoption of amendments to federal Constitution). Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988). p.133.

[22] "Once Congress has received the correct number of applications, it must, *if all other requirements are met*, call the convention"; "Congress must determine whether the amendment proposed by the convention (if any) meet all constitutional requirements"; "In providing that 'on the Application of the Legislatures' Congress 'shall call a Convention,' article V implies that Congress is the agent entrusted to receive, inspect, and decide on the validity of applications, and that applications must be submitted to Congress to be counted toward a convention call." Caplan refutes this last statement in his own book in discussing specific state applications. Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988). Preface, p. ix, p. 94. *See also infra* text accompanying note 729.

[23] Or presumably a member of a legislature who actually voted for an application. Caplan is unclear on this important point. It is a point which the Court addressed recently in a case involving members of a legislature (in this case Congress) bringing suit when it said:

"One element of the case or controversy requirement is that appellees, based on their complaint, must establish that they have standing to sue. ... To meet the standing requirements of Article II, '[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.' ... We have consistently stressed that a plaintiff's complaint must establish that he has a 'personal stake' in the alleged dispute, and that the alleged injury suffered is particularized as to him. ... We have also stressed that the alleged injury

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

1 suit to compel Congress to call a convention should Congress, as it is doing

2 now, refuse to call a convention when the states have applied. Caplan

---

must be legally and judicially cognizable. This requires, among other things, that the plaintiff have suffered 'an invasion of a legally protected interest which is ... concrete and particularized.'... And our standing inquiry has been especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional. ... [W] must carefully inquire as to whether appellees have met their burden of establishing that their claimed injury is personal, particularized, concrete, and otherwise judicially cognizable."

Having established the standards on which members of a legislature must establish standing, the Court then addressed the specifics of the case before the bench saying:

"First, appellees have not been singled out for specially unfavorable treatment as opposed to other Members of their respective bodies. Their claim is that the Act causes a type of institutional injury (the diminution of legislative power), which necessarily damages all Members of Congress and both Houses of Congress equally. ... Second, appellees does not claim that they have been deprived of something to which they personally are entitled—such as their seats as Members of Congress after their constituents had elected them. Rather, appellees' claim of standing is based on a loss of political power, not loss of any private right, which would make the injury more concrete.

"If one of the Members were to retire tomorrow, he would not longer have a claim; the claim would be possess by his successor instead. The claimed injury thus runs (in a sense) with the Member's seat, a seat which the Member holds (it may quite arguably be said) as trustee for his constituents, not as a prerogative of personal power.

"[Appellees] have not alleged that they voted for a specific bill, that there were sufficient votes to pass the bill, and that the bill was nonetheless deemed defeated. In the vote on the Line Item Veto Act, their votes were given full effect. *They simply lost that vote*."

The Court then dispensed with appellees' claim saying:

"In sum, appellees have alleged no injury to themselves as individuals (contra Powell), the institutional injury they allege is wholly abstract and widely dispersed (contra Coleman), and their attempt to litigate this dispute at this time and in this form is contrary to historical experience. *We also note that our conclusion neither deprives Members of Congress of an adequate remedy (since they may repeal the Act or exempt appropriations bills form its reach), nor forecloses the Act from constitutional challenge* (*by someone who suffers judicially cognizable injury as a result of the Act*)." Raines v. Byrd, 521 U.S. 811 (1997) (emphasis added).

Clearly, Caplan's *carte-blanche* view that members of the state legislature have standing to sue must suffer at least two asterisks. First, based on the Court's language, it is logical to presume that even if a member of the legislature brought suit, that legislator must occupy a seat which was first occupied by a member *who originally voted in favor of the convention application*. Secondly, it can be argued such a legislator might not possess a sufficient personal stake in the matter to justify standing (as his "standing" arrived via official inheritance rather than by personal action)simply because the legislator in question could try again at resubmission of applications in order to compel Congress to obey the Constitution.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

bequeaths only to the state legislatures, whose sterling record of resisting federal bureaucratic efforts to subjugate state sovereignty is well known, the power of standing. To these iron-willed (?) legislatures, the author grants sole right of redress, casting aside any effect the decision might have on the lowly sovereign citizens who might be affected by the convention either being called or *not* being called.

Because of the obvious constitutional importance of the issue facing the Court, this suit is obligated to look more deeply into this single opinion that also holds, without a shred of proof, that Congress shall be the sole arbiter of the amendatory process.[24]

We begin by dissecting the various issues raised in Caplan's analysis of standing:

> "*The duty of Congress to call a convention may be viewed alternatively as the right to have a convention called. In the event of congressional noncompliance with the obligations of article V, that right may be vindicated in the courts. Suit would be brought after Congress determined that the conditions for a call had not been met: one or more applications were*

---

[24] *See supra* text accompanying note 22.

This suit does not dispute Caplan's contention that only those applications submitted to Congress can be counted toward a convention call. However, Caplan refutes his own contention "that Congress is the agent entrusted to receive, inspect, and decide on the validity of applications" in discussing specific state applications. *See infra* text accompanying note 729.

Caplan's standing argument is thus illogical on an important point even before it is more thoroughly examined: the author maintains the states have standing to sue *because the actions of Congress contradict their intent, all the while maintaining Congress "as the agent entrusted to...decide on the validity of the applications" has the sole constitutional duty to do just that.* Both statements cannot possibly be true. If Congress has the sole duty to decide on convention applications, the matter ends there. Only if it is accepted that Congress *does not* have such power do the states (or anyone else) have standing to sue.

The reason for this is obvious. If Congress is operating in an entirely constitutional manner,(in having sole constitutional power of decision) it cannot be said to be performing an act that in any way can be said to be doing injury, in any description, to anyone. Thus, one of the primary elements of standing is not present.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*incorrect in form, or stale, or did not agree in subject matter with the rest*."

As will be shown in greater detail later in this suit, the Founding Fathers *clearly* did not intend to give Congress any discretion in the calling of a convention to propose amendments.[25] Further, Caplan again repudiates himself in his own work by pointing out Madison's interpretation of Congress' "discretion" in refusing to call a convention:[26] that Congress has no discretion in the matter. Caplan thus exposes another point of illogic in his position. He holds the states and presumably the people have the right to compel Congress to call a convention, while at the same time holding the mechanism of that right, the call itself, is under the discretionary control of Congress which may then use that discretion to veto the right that Caplan maintains the states and people possess.

> "*Or, equally likely, Congress would have ignored the petitions entirely. The suit would probably ask the federal court to order Congress to make the necessary determinations and, upon ascertaining that all requirements have been satisfied, to call a convention or in the alternative to propose the amendment*."

Caplan ignores the most basic principles of separation of powers in this part of his argument regarding standing. He holds the Court can order Congress to put forward a specific amendment proposal, ignoring entirely that this would require the Court to approve the actual language of the proposed amendment to satisfy itself that its order had been fulfilled. This violates

[25] *See infra* text, accompanying notes 505-514.
[26] *See infra* text accompanying note 514.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Article V because the amendatory process does not involve the judiciary in any manner. The simple fact is that Congress, like the convention, clearly has the power to proposed amendments, and this power is delegated to no other constitutional authority. Thus, the Court could not "order Congress...to propose the amendment."

Secondly, Caplan, in referring to "Congress...upon ascertaining that all requirements have been satisfied" clearly implies that Congress has the power to establish *requirements* that need to be "satisfied" before it is required to issue the call. The Constitution only mandates one requirement for the states to satisfy: a numeric count of applying states.[27] All other "requirements" therefore would have to be of a political nature which the Court has repeatedly maintained it has no jurisdiction over.[28] Thus the Court could not be used in any manner to "implement" these other "requirements." Congress would have to stand alone in creating these "political requirements" without the benefit of constitutional backing from the Court.

Thirdly, Caplan again implies Congress has discretion in the calling of a convention by being able to establish such "requirements." As noted above, Caplan refutes this position himself, thus defeating his own argument.[29]

Fourth, Caplan's statement "or in the alternative to propose the amendment" implies that only if the states have applied for a specific amendment proposal are they justified to have standing. Caplan ignores the

---

[27] *See supra* text accompanying note 2.
[28] *See infra* text accompanying notes 293,897,1053,1054,1056,1057,1072,1108, 1170-1212.
[29] *See infra* text accompanying note 729.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Founding Fathers clear intent that the states need only numerically apply in sufficient number for a convention to be called.[30] Thus, it can be reasonably deduced that Caplan's position on the states' standing is contingent not only on a legislator first occupying a seat that was occupied by a member who originally voted in favor of the convention application in question, not only the legislator proving he can not try again at resubmission of the application, but also that the application subject agrees with other state applications. Obviously Caplan strikes far afield of the standards established by the Court.[31]

> *"Article V's reference to the state legislatures as the applying agents would be construed to endow them with standing---that is, eligibility to bring suit because of injury traceable to the defendant's unlawful conduct, a requirement inferred by the courts from article III---and to exclude other possible litigants such as the governors, the President, members of the general public, or a fraction of Congress."*

Caplan maintains the states have the right to standing, albeit with several caveats the Court has never considered as necessary to standing. The plaintiff certainly believes the states *should* have the right of standing, along with sovereign citizens, to compel Congress to obey the Constitution. Plaintiff also believes the standing the states need to satisfy should be no more narrow or stringent than any other standing before the courts.

But, in light of the *Coleman*[32] ruling granting Congress the "incidental" power to regulate and ultimately change the ratification votes by the states to whatever outcome Congress desires,[33] can it not be argued the Court has

---

[30] *See infra* text accompanying note 513.
[31] *See infra* text accompanying note 17.
[32] *See infra* text accompanying notes 1021-1108.
[33] *See infra* text accompanying note 917,1055.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

simultaneously removed standing from the states to sue in any amendatory question because it granted "exclusively and completely" to Congress "power over the amending of the Constitution to Congress alone."?[34] Further, the Court cannot summarily dispatch this obvious interpretation of the meaning of *Coleman* that Congress has "exclusive[ly] and complete[ly]...power over amending of the Constitution." Without the Court granting standing in a subsequent related suit, there can be no suit for which the Court can rule, and thus the words of the Court remain in effect. Thus it is trapped in its own ruling leaving this interpretation (one, which based on the evidence presented, Congress has taken full advantage of) to be available for use by Congress. As the courts may have effectively eliminated the standing of the states to sue,[35] this logically leaves only the sovereign citizen to pursue the matter.

---

[34] *See infra* text accompanying note 802.

[35] This is not the only time the Court has addressed the issue of whether a state has standing to sue. The Court has made it clear a state is not automatically entitled to standing when it said:

"In the first case, the state of Massachusetts presents no justiciable controversy, either in its own behalf or as the representative of its citizens. ...

"The state of Massachusetts in its own behalf, in effect, complains that the act in question invades the local concerns of the state, and is a usurpation of power, viz. the power of local self-government, reserved to the states.

"Probably it would be sufficient to point out that the powers of the state are not invaded, *since the statue imposes no obligation but simply extends an option which the state is free to accept or reject*. But we do not rest here. Under article 3, 2, of the Constitution, the judicial power of this court extends 'to controversies... between a state and citizens of another state' and the court has original jurisdiction 'in all cases...in which a state shall be a party.' The effect of this is not to confer jurisdiction upon the court merely because a state is a party, but only where it is a part to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant. In Wisconsin v. Pelican Insurance Co., 127 U.S. 265, 289, 8 S. Sup. Ct. 1370, 1373 (32 L. Ed. 239), Mr. Justice Gray, speaking for the court, said:

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"'As to "controversies between a state and citizens of another state:" The object of vesting in the courts of the United States jurisdiction of suits by one state against the citizens of another was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff state were compelled to resort to the courts of the state of which the defendants were citizens. Federalist, No. 80; Chief Justice Jay, in Chisholm v. Georgia, 2 Dall. 419, 475; Story on the Constitution, 1638, 1682. The grant is of "judicial power," and was not intended to confer upon the courts of the United States jurisdiction of a suit or prosecution by the one state, of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other state at all.'" ...

"What, then, is the nature of the right of the state here asserted and how is it affected by this statute? *Reduced to its simplest terms, it is alleged that the statute constitutes an attempt to legislate outside the powers granted to Congress by the Constitution and with the field of local powers exclusively reserved to the states. Nothing is added to the force or effect of this assertion by the further incidental allegations that the ulterior purpose of Congress thereby was to induce the states to yield a portion of their sovereign rights*; that the burden of the appropriations falls unequally upon the several states; and that there is imposed upon the states an illegal and unconstitutional option either to yield to the federal government apart of their reserved rights or lose their share of the moneys appropriated. *But what burden is imposed upon the states, unequally or otherwise?* Certainly there is none, unless it be the burden of taxation, and that falls upon their inhabitants, who are within the taxing power of Congress as well as that of the states where they reside. Nor does the statute require the states to do or to yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated by the simple expedient of not yielding. In the last analysis, the complaint of the plaintiff state is brought to the naked contention that Congress has usurped the reserved powers of the several states by the mere enactment of the statute, though nothing has been done and nothing is to be done without their consent; and it is plain that that question, as it is thus presented, is political, and not judicial in character, and therefore is not a matter which admits of the exercise of the judicial power." Frothingham v. Mellon, 262 U.S. 447 (1923). (emphasis added).

What Caplan presumes is the fact that "legislatures *as the applying agents* would be construed to endow them with standing---that is, eligibility to bring suit because of injury traceable to the defendant's unlawful conduct..." entirely disregards the Court's already established standing proving *concrete* injury. As noted in Frothingham, the action of Congress *placed no burden, i.e., injury on the states*. While the plaintiff can demonstrate concrete injury to his rights, the same cannot be said of the states. The *laches* of Congress does not require the states to yield any sovereignty. Reduced, as the Court said, to its simplest terms, the *laches* of Congress in not a calling a convention to propose amendments despite the states satisfying Article V simply *ignores* the sovereign power, not reduces it. The states are still free to apply for a convention, the full extent of their sovereign power; the applications simply mean nothing to Congress as it may refuse to honor them.

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Further, the states would be compelled in some manner to discuss Congress' ulterior purpose in its *laches*. They would be further compelled to allege that this usurped the reserved powers of the several states by the mere existence of the *laches*. As no other act by Congress exists, this would be the extent of their presentation. The Court has made it clear that such allegations fall into the realm of political question rather than judicial power and thus would be free to dispense the case due to lack of standing. Thus, Caplan's contention of the states having standing as agents falls short on several points.

The states can only have standing *if it assumed Congress must call a convention and has no discretion in the matter*. Thus, if Congress does not call, there is an argument of injury. But Caplan holds that Congress does have discretion, i.e., the right to refuse or reject applications. If so, then the only power of the state, to apply for a convention, is unaffected, and thus the state has no standing. If, however, it is the *intent* of the application, to hold a convention, that is primary in the constitutional language, then certainly there is grievous injury to the states denying them a right to have a convention. This fact of standing to the states does not exclude the people from this process nor deny them standing.

Throughout all this process, the fact is the people possess the transcendent right to alter or abolish and thus have standing regardless of whether or not the states have standing. Simply put: several groups may have standing to sue on a particular issue. Caplan himself maintains it is the intent of the application that is paramount in this matter and thus refutes himself on the most critical point of the matter: the intent of the applications. (*See infra* text accompanying note 729.) Once the intent is established, Caplan's standing argument falls to the ground.

Caplan discusses the states as "applying agents." This term clearly implies *the states are acting at the bequest of another party*. In this case, clearly it is the citizens of that state seeking to use their right of redress to amend the Constitution. Caplan obviously presumes that as agent for the citizens this relationship somehow creates an exclusionary status barring the citizens from seeking redress for the *laches* of Congress.

An agent is defined as:

"A person authorized by another (principal) to act for or in place of him; one intrusted with another's business. Humphries v. Going, D.C.N.C., 50 F.R.D. 583, 587." BLACK'S LAW DICTIONARY 6th ed. (1990).

If the Constitution is considered a contract for the purposes of this specific discussion, then it is clear the state in this instance cannot be construed as a general agency but rather must be viewed as a special agency.

The definition of special and general agency are defined as:

"General agency. That which exists when there is a delegation to all acts connected with a particular trade, business or employment. It implies authority on the part of the agent *to act without restriction or qualification in all matters relating* to the business of the principal." BLACK'S LAW DICTIONARY 6th ed. (1990). (emphasis added)

"Special agency. One in which the agent is *authorized to conduct a single transaction or a series of transactions not involving a continuity of service*." BLACK'S LAW DICTIONARY 6th ed. (1990). (emphasis added).

If the state acts as an agent for the citizens, then any general contract establishing a general agency must be the state constitution rather than the federal Constitution. Hence if the state is to be construed as a general agency, it must be under the authority of the general contract that is

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the state constitution. The federal Constitution grants certain *specialized powers* to the states, among them is convention application power, a power that is expended once the state has so applied, and hence when the state acts in this capacity as agent, it is in the form of special agency.

In the case of a state applying for a convention, the term “special agency” is most appropriate. The state is *not* authorized under the terms of Article V “to act without restriction... in all matters relating to ... the principal.” Instead, Article V clearly limits the state to a “single transaction” or “series of transactions not involving a continuity of service.” The fact of special agency is self-evident in that once the state has applied for a convention it can take no further action until Congress calls a convention, which is based not on any further action of the agent (the state) but is based on the actions of other agents (the other states) over which the agent (the state) has no control. The state has therefore exhausted its entire assignment made with its principle (the citizens). There is nothing in Article V that gives the states any power beyond applying for a convention. Thus, there is a termination of the “continuity of service” provided to the principal (the citizens) by the agent (the states).

Simply because an agent (the states) performs a specific act desired by the principal (the citizens) does not revoke the principal’s right to seek redress for that act independent of the agent. Where the agent acts lawfully and the action performed by the agent is in total fulfillment of the desires of the principal, in this case applying for a convention, then there is nothing in the doctrine of agency implying that such an act by an agent causes the principal (the citizens) to somehow forfeit the right of redress unless such forfeiture is expressly stated in the agreement between the agent and the principal.

In the Constitution, such exclusion of redress certainly is not expressed. An agent, it should be remembered, acts for a principal *under the terms of a contract*. In the case of Article V, all the contract calls for is that the state applies for a convention and nothing more. Thus, in this instance, no such forfeiture is stated in the Constitution, which serves as a contract between principal (the citizens) and the agent (the state). Indeed, if the Constitution is viewed as a contract, then under the Ninth and Tenth Amendments, citizens have retained undefined auxiliary powers that the special agent provision of Article V does not nullify. Under the First Amendment, citizens expressly retain the right of redress. So from a contract point of view (which is how Caplan views the matter with his reference to states being agents)the fact that the states act as agents does not remove the right of redress from the people. Thus, the right of redress is preserved for either agent or principal, and either may seek redress.

Further, the terms of any agreement between agent/principal terminates upon the agent fulfilling his contracted action. In this case, the filing of a convention application terminates the agent/principal relationship. The Constitution contemplates no further action by the states beyond filing the application. Any further action in the matter (assuming Congress obeys the Constitution) is left to the citizens to elect delegates who then hold a convention to propose amendments whose products are subject to the next prescript of Article V amendment process, ratification. Only then does either Congress or the states come back into the process, Congress in the minuscule role of determining the method of ratification, and the states in the role of either directly ratifying the proposed amendment through the legislatures or holding conventions for the citizens to do the same.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Clearly, this suit offers the opportunity for the government to complete the circle of standing. If *Coleman* is affirmed by the Court and the government succeeds in convincing the Court to reject plaintiff's standing, the only possible interpretation is that Congress is sovereign, the Court having already established the states have questionable, if not invalid, standing in the matter. The government having eliminated all challengers in the matter by showing none have valid standing, Congress would be sovereign as it possesses "exclusive[ly] and complete[ly]...power over amending of the Constitution."

> *"No pro-convention member of Congress willing to bring suit against the majority could surmount the barriers erected by the courts, and individual members of the public would be ineligible as well. Only the state legislatures, specifically those that had filed applications, would have standing to sue: only they could allege that their constitutionally guaranteed amending powers had been infringed by the inaction of Congress."*

It is neither contested nor debated that the Court in a recent suit[36] found that unless members of Congress met the three prerequisites of standing, they had no basis for suit, but again Caplan contradicts himself. He refers to these members of Congress "bring[ing] suit against the majority." Obviously this implies (a) a vote by Congress and (b) the acceptance by Caplan that Congress has discretion in the calling of a convention to propose amendments, a position entirely at odds with the intent of the Founding Fathers. Thus, if members of Congress were to bring suit, standing could be based on the simple fact that Congress acted in a clearly unconstitutional manner.

[36] *See* Raines v. Byrd, 521 U.S. 811 (1997).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As to the individual citizen such as the plaintiff "be[ing] ineligible" as to standing to sue, this issue will be explored in more depth in the following sections of this suit.

Caplan then maintains only those states that had filed applications (which according to most sources is every state in the Union) would have standing to sue. He states "only they could allege that their constitutionally guaranteed amending powers had been infringed by the inaction of Congress." However, Caplan ignores in this statement the obvious intent and effect of *Coleman*. As the Court sanctioned the power of Congress to "veto" under the guise of a political question the ratification vote of any state,[37] it is obvious the "constitutionally guaranteed amending powers" of the states are no longer "guaranteed."

> *"The defendants in a suit against a recalcitrant Congress would be the officers charged with tabulating the applications and possibly members of Congress themselves."*

Caplan's last point is out of date. No one under current federal law, in or out of Congress, is charged with tabulating state applications for a convention. Further, under current law, the federal official charged with proclaiming the adoption of a constitutional amendment cannot act until he receives "official notice." Current law fails to provide a method for providing this "official notice."[38] Plaintiff takes no issue with his conclusion of suing members of Congress. As the Constitution names no other

[37] *See infra* text accompanying note 917,1055.
[38] *See infra* text accompanying note 875.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

responsible party, it is conclusive the members of Congress must be defendants in their official capacity.

*Summation*

While Caplan may appear to be attempting to "define" standing so as permit the calling of a convention, a closer examination of the article shows it is nothing more than a smokescreen, which if used as the basis of standing, serves to deny anyone- citizen, state legislator, or member of Congress- the right of redress through the courts, thus preserving the unconstitutional action of Congress to veto the Constitution by not calling a convention to propose amendments. Caplan's analysis must therefore be summarily rejected in favor of the well established prerequisites of standing, absent caveats or special conditions imposed on them for the purpose of defeating a convention to propose amendments call. Thus, if these prerequisites are satisfied, or standing can otherwise be shown using a method the Court has already permitted, it follows any citizen, regardless of official position, may bring successful suit to compel Congress to fulfill its mandated constitutional duty. Plaintiff now turns to the specific issues of standing in this suit.

*Specific Issues Of Standing*

Plaintiff raises six issues of standing in this suit:

1. Congress has denied plaintiff's right to vote in an election required by the Constitution for the purpose of electing delegates to the convention to propose amendments.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

2. Congress has denied the right of plaintiff to associate for legitimate and legal political reasons and objectives.
3. Congress has denied a clearly defined method of redress specified in the United States Constitution and thus prevented plaintiff from exercising his First Amendment right in this manner.
4. Congress has violated the separation of powers doctrine in that it has usurped, by its *laches*, the clear separation of powers between the federal government and the states, but as well the separation of powers between Congress and the people by attempting to assume their sovereignty granted them by treaty.
5. Congress by its *laches* has denied plaintiff the right to seek and hold public office.
6. The *laches* of Congress in not calling a convention to propose amendments when mandated by the Constitution is a violation of the Constitution per se.

Each of these issues will be examined in turn presenting evidence by the plaintiff to demonstrate standing.

## ISSUE OF STANDING (1): DENIAL OF RIGHT TO VOTE

*Congress has denied plaintiff's right to vote in an election required by the Constitution for the purpose of electing delegates to the convention to propose amendments*.

In order for the plaintiff to demonstrate an injury in fact by Congress to his right to vote, it is clear he is required first to prove an election to elect delegates to a convention to propose amendments must be held. Next he must demonstrate that he is lawfully and legally entitled to participate in this election. Finally he must prove that the action (or inaction) of Congress *directly* is the cause of the obstruction for his inability to participate in


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

this election. This then establishes plaintiff's injury in fact. From this point he can proceed to the other points of standing.

The difficulty of presenting "injury in fact" in this suit insofar as it relates to holding an election is that nothing has occurred. No election of this nature has ever occurred in the entire history of the United States. Thus, history is of no help in proving this matter. Nor can any statute be of any aid because Congress has never written one concerning the convention to propose amendments. (No doubt because Congress wishes to retain its unconstitutional exclusivity to the amendatory process[39]). This then leaves only the power of inference from which to derive an answer as to whether or not an election is required.

When a constitutional clause governing an action of Congress commands Congress to act, and Congress then fails to act, it is inherently contradictory to find that this congressional *laches* creates neither harm nor injury. At some level, all law is intended to protect society from some harm. The word "protect" in this context is self-evident. That a constitutional clause, statute, ordinance or regulation may cause unanticipated mischief not envisioned by those who ordained it does not justify those regulated by that clause, statue, ordinance or regulation to unilaterally abrogate this direction, most especially where the society has provided a specific method to alter or abolish the clause, statue, ordinance or regulation if so required. It follows if Congress maintains it can veto constitutional clauses at will,

[39] *See infra* text accompanying notes 1054,1126.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

then others regulated by different constitutional clauses can also veto these clauses. As the intent of the clauses is clearly to protect society from harm, it is clear if the clauses are ignored or vetoed by those they are intended to regulate that society is now exposed to harm or injury it would have not have otherwise suffered if the clauses were obeyed. Thus to veto or ignore any constitutional clause's edict denotes a *prima facie* harm or injury.

What harm is done by Congress ignoring a convention call? The answer lies in the determination of *why* the Founders put the convention to propose amendments in the Constitution: to prevent tyranny by the national government. Clearly, the convention to propose amendments provides that no matter what course, abuse, action or direction the national government pursues, its power may always be countered (and presumably neutralized) by the people through a convention to propose amendments, thus preserving their rights as described in the Constitution.[40] Consequently, if clauses of the Constitution are ignored by the national government, the rights of the people preserved in the Constitution may be voided, a harm or injury which is best described as catastrophic, *not* non-existent.

True, the issue of standing in this suit deals with the denial by Congress of a single vote by one elector in one election. This suit asks the

[40] The evidence of this assertion is based on the amendatory procedure of the Constitution itself. It is possible for the states (and the people) to amend the Constitution without the national government. There are two points where the national government is involved in the amendatory procedure, but in both cases the national government is given no option to rescind or otherwise obstruct the states and the people.

On the other hand, the national government *cannot* amend the Constitution under *any circumstances* without the cooperation and agreement of the states and the people.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Court to examine a single droplet in the river of electoral power.[41] But for the Court to fail to do so affords Congress the ability to dam the entire river. Does this fact, that a significant number of electors, i.e., *every citizen who may wish to cast a vote in electing a convention delegate*, has been disenfranchised remove the matter from Court consideration because it is in fact not an *individual* personal injury? Not specifically. The Court has made it clear the fact a large number of people may share in an injury *does not* present a basis to deny standing.[42]

---

[41] "The Government urges us to limit standing to those who have 'significantly' affected by agency action. But, even if we could begin to define what such a test would mean, we that it is fundamentally misconceived. 'Injury in fact' reflects the statutory requirement that a person be 'adversely affected' or 'aggrieved,' and it serves to distinguish a person with a direct stake in the outcome of a litigation—even though small—from a person with a mere interest in the problem. We have allowed important interests to be vindicated by plaintiffs with no more at stake in the outcome of an action than a fraction of a vote, see Baker v. Carr, 369 U.S. 186; a $5 fine and costs, see McGowan v. Maryland, 366 U.S. 420; and a $1.50 poll tax, Harper v. Virginia Bd. of Elections, 383 U.S. 663. While these cases were not dealing specifically with 10 of the APA, we see no reason to adopt a more restrictive interpretation of 'adversely affected' or 'aggrieved.' As Professor Davis has put it: 'The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.' Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev. 601, 613. See also K. Davis, Administrative Law Treatise 22.09-5, 22.09-6 (Supp. 1970)." United States v. SCRAP, 412 U.S. 669 (1973).

[42] The Court has made its position clear in this matter in at two least cases:

"To deny standing to person who are in fact injured simply because many others are also inured, would mean that the most injurious and widespread Government actions could be questioned by nobody. We cannot accept that conclusion...." United States v. SCRAP, 412 U.S. 669 (1973).

The Court has also said:

"Often the fact than an interest is abstract and the fact that it is widely shared go hand in hand. But their association is not invariable, and where a harm is concrete, though widely shared, the Court has found 'injury in fact.' See Public Citizen, 491 U.S., at 449-450. ('[T]he fact that other citizens or groups of citizens might make the same complaint after unsuccessfully demanding disclosure...does not lessen [their] assert injury.') Thus the fact that a political forum may be more readily available where an injury is widely shared (while counseling against, say, interpreting a statute as conferring standing) does not, by itself, automatically disqualify an interest for Article III purposes. Such an interest, where sufficiently

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Plaintiff maintains the provisions of the Constitution, specifically the equal protection clause,[43] lead to an inevitable conclusion: delegates to a convention to propose amendments must be elected by the people. In turn, these elected delegates represent the wishes and desires of the people who so choose them. The appointment of delegates either by the state legislature or state executive, other than for the purpose of replacing vacancies, is clearly unconstitutional.[44] Plaintiff further maintains it is far too much a stretch of constitutional intent to assume that because the convention is "vacant" its entire membership can be appointed by state officials absent voter approval.

Having established that convention delegates must be elected, it follows that for such action to occur, there must be an election of these delegates. Due to the *laches* on the part of Congress, this has not happened *despite the fact the Constitution mandates Congress must a call a convention and thus trigger an election of delegates*. This *laches* presents the Court a unique question. In most disputes involving voting violations, an election is held, but for various reasons specific individuals are prevented from, in one manner or another, fully participating in that election. In this suit, however, the opposite is true: the national government has not removed the voters from the election, but the election from the voters.

---

concrete, may count as an 'injury in fact.' *This conclusion seems particularly obvious where* (to use a hypothetical example) large number of individuals suffer the same common-law injury (say a wide spread mass tort), or *where large numbers of voters suffer interference with voting rights conferred by law*." Federal Election Commission v. Akins, 524 U.S. 11 (1998) (emphasis added).

[43] *See infra* text accompanying notes 1208-1244.

[44] *See infra* text accompanying note 1346.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Is there any less violation of the Constitution in denial of the right to vote if the national government, by its *laches*, discriminates against even a single voter in an election it *does* hold, thus denying his vote, as opposed to the national government discriminating against *all voters* by not holding an election at all, thus denying *all* votes? If, for example, Congress voided elections for its offices when mandated by the Constitution, thus leaving its current officers in place, would a citizen have standing to sue to compel such elections? As the word "shall" is the operative word used in the Constitution to compel such action in both Article V and the clauses regulating election of members of Congress,[45] it is logical any argument defending such action in the one instance must equally apply to the other. To discriminate otherwise will be left to the wisdom of the Court to devise.

As with all rights of the people, there are two parts: the expressed right and the mechanism of the right. The expressed right is that statement contained or implied in the Constitution. The mechanism of the right is the system (usually a function of government) necessary to effectuate that expressed right. Each part of the right is impotent without the other.

In an election, the government provides the mechanism; the people provide the right. This is demonstrated by the following hypothetical. If the government provides all the "ornaments" of an election such as booths, monitors, ballots, tally sheets, etc., but no citizen exercises his right to

[45] *See infra* text accompanying notes 853,860; U.S. CONST., art. I, §2, §§ 1; U.S. CONST. 17th Amend.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

alter and abolish[46] and thus does not vote, there is no election. The reason is because *no action of election has occurred*. The intent of an election, which is to gather sovereign input from the people so as to direct the government in a course of action, is unsatisfied.

The reverse situation, where the people *seek* to vote but the government holds no election, is just as invalid, *because no action of election has occurred here either*. However, in this instance this reverse situation is not a hypothetical, but a reality. Congress *in fact* has failed to provide the mechanism of a vote by its *laches* of not calling a convention to propose amendments when mandated by the Constitution. Thus, Congress has denied the plaintiff's and all other potential electors' rights to exercise their votes, a right the Court has characterized as "the most basic of political rights..."[47]

For a convention to occur, the states must apply, which they have,[48] thus compelling a convention call, followed by the people voting on convention delegates they wish to represent them at the convention. Thus, once the numeric threshold of applying states established by the Constitution is satisfied, the people have a vested right in the calling of a convention to propose amendments, because they now are *obligated to act* if the constitutional mandate of Article V is to be consummated. For Congress not to

---

[46] In this case using a relatively minor portion of the right to alter or abolish by voting in an up-or-down election.
[47] Federal Election Commission v. Akins, 524 U.S. 11 (1998).
[48] *See infra*
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

call a convention when constitutionally mandated, therefore, creates an injury in fact not only to the states but the people as well.

But even if Congress has voided an election,[49] it is clear this fact alone is not enough to prove standing. The Court requires that a *demonstrable harm or injury* must be shown by the plaintiff in order to prove standing. Therefore, the question becomes, if a single election, among the hundreds if not thousands, mandated by either statute or Constitution is not protected, what demonstrable harm is done to an individual citizen or even a group of citizens who are denied the right to vote?

Clearly, the Court has recognized the importance of the right of vote. It said:

> "Privileges and immunities of citizens of the United States...are only such as arise out of the nature and essential character of the national government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States. ... Thus, among the rights and privileges of national citizenship recognized by this court are... the right to vote for national officers...and the right to inform the United States authorities of violation of its laws."[50]

Thus, the Court has recognized both the right of the people to vote *and* their right to "inform" authorities of violations of [federal] law. This ruling alone implies citizens have standing where the government denies citizens their right to vote. If they did not have standing, how else could

---

[49] In this instance, no other conclusion is possible except that Congress alone is responsible for denial of voting rights. It is clear until Congress calls a convention to propose amendments, the individual states cannot act to hold these elections. The Founding Fathers did not allow in the Constitution for the states to act independently outside the confines of the Constitution because they realized this would lead to the breakdown of the entire document; the evidence is clear the states, having *not* acted on their own, either individually or collectively, understand this basic principle of constitutional construction. Congress is yet to learn it.

[50] Twining v. New Jersey, 211 U.S. 78 (1908).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the people “inform” “authorities” of such violations *with the expectation of redress except through the courts*?

Does Congress have an overriding interest so pervasive to afford it the right to veto the Constitution? That is to say, can the government in this suit invoke the doctrine of sovereign immunity?[51] The answer is clearly not. In the first place, Congress has enacted legislation specifically granting redress for violations of civil rights.[52] Further, it has enacted several *criminal sanctions*[53] against violations of civil rights including violation of voting rights.[54] Further, Congress has removed by statute most of its tort

---

[51] “Sovereign Immunity. A judicial doctrine which precludes bringing suit against the government without its consent. Founded on the ancient principle that ‘the King can do no wrong,’ it bars holding the government or its political subdivisions liable for the torts of its officers or agents unless such immunity is expressly waived by statute or by necessary inference from legislative enactment. Maryland Port Admin. V I.T.O. Corp. of Baltimore, 40 Md. App. 697, 395 A.2d. 145, 149.” BLACK’S LAW DICTIONARY 6th ed. (1990).

[52] “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured *in an action at law, suit in equity,* or other proper proceeding for redress...” 42 U.S.C.A. 21, § 1983. (emphasis added).

[53] The plaintiff is not interested in invoking these criminal sanctions against members of Congress for violating his civil voting rights unless, by loss of his civil suit seeking redress of this violation, he shall have no other option to recover these rights.

[54]“If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution...or because of his having so exercised the same...They shall be fined under this title or imprisoned not more than ten years, or both...” 18 U.S.C.A. 13, § 241.

“Whoever, under color of any law, statue, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution...shall be fined under this title or imprisoned not more than one year, or both...” 18 U.S.C.A. 13, § 242.

“(b)Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with...(A)voting or qualifying to vote,

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

immunity to redress.[55] Despite the adage, "The King can do no wrong," the fact is there is no *king* in the United States. As the *people* are the source of all sovereignty and have assigned powers to the government via the Constitution, it is clear the government by implication has already "consented" to be sued where the government does not obey the Constitution because the people have a right to ensure the government obeys the Constitution their sovereign power has placed within it.[56] In willfully

---

qualifying or campaigning as a candidate for elective office,... in any primary, special, or general election;(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;...or(4)...participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate--shall be fined under this title, or imprisoned not more than one year, or both." 18 U.S.C.A. 13, § 245.

[55] "The district courts shall have original jurisdiction,...of...(2)Any other civil action or claim against the United States,...founded either upon the Constitution, or any Act of Congress..." 28 U.S.C.A. 85, § 1346.

[56]"The grounds of that decision [United States v. Colby, 49 App. D.C. 358, 265 Fed. 998 affirming a decree to dismiss] were that the validity of the amendment could be in no way affected by an order of cancellation, that it depended on the ratifications by the states, and not on the proclamation, and that the proclamation was unimpeachable since the Secretary was required, under Revised Statutes, 205 (Comp. St. 303), to issue the proclamation upon receiving from three-fourths of the states official notice of ratification, and had no power to determine whether or not the notices received stated the truth. But we have no occasion to consider these grounds of decision.

"Plaintiff's alleged interest in the question submitted is not such as to afford a basis for this proceeding. It is frankly a proceeding to have the Nineteenth Amendment declared void. In form it is a bill in equity; but it is not a case, within the meaning of section 2 of article 3 of the Constitution, which confers judicial power on the federal courts, for no claim of plaintiff is 'brought before the court[s] for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs.' .... Plaintiff has only the right, possessed by every citizen, to require *that the government be administered according to law* and that the public moneys not be wasted. Obviously this general right does not entitle a private citizen to institute in the federal courts a suit to secure by indirection a determination whether a statute, if passed, or a constitutional amendment, about to be adopted, will be valid." Fairchild v. Hughes, 258 U.S. 126 (1922).

As noted in *Fairchild*, the people do have the right to require "that the government be administered according to law..." The Court made no distinction between statutory or constitutional law, and it thus is valid to assume the

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

disobeying the Constitution, the choice of immunity is not the choice of the government, but of the people. In this instance, the government is no less immune from redress than any individual citizen who violates constitutional provisions because as a sovereign power the people clearly possess the inherent right to preserve their sovereignty from any threat—even from a government they have created to execute that sovereignty.

This self-evident right therefore confers standing on the plaintiff because he is entitled, as are all citizens of the United States, to take whatever steps are necessary, within the legal bounds of the Constitution, to protect his right to vote. For Congress to prevent the exercise of this most basic right can only be described as a concrete personal injury of the most serious order to the rights of the plaintiff, thus providing a more than sufficient standing on which to bring suit. In order to do this the plaintiff is obligated to delve into all aspects of the convention to propose amendments in order to prevent any other *laches* by Congress and thus creating further personal injuries.

Injury: The plaintiff has been denied his right to vote.

---

Court intended that government must be administered with respect to both types of law.

However, there is no validity in attempting to use *Fairchild* to defeat the issue of standing presented here. The Fairchild suit, as the Court noted, attempted to stop the legal amendatory process of the United States Constitution that, insofar as the Court determined, had been observed at each step by Congress and the states. In this case, however, the intent is *to effect* a legal and lawful amendment process which the evidence shows Congress has ignored and to enforce that provision of the Constitution, or to see “that the government be administered according to law...”


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Causal Relationship: Congress by its refusal to call a convention to propose amendments when mandated by the Constitution, has thus denied the plaintiff the right to vote in an election that should be constitutionally held.

Remedy: Remedy of injury to the plaintiff can be accomplished by the Court compelling Congress to call a convention to propose amendments in compliance with the clear language of the Constitution, thus triggering a series of events leading to the election which Congress has denied the plaintiff.

## ISSUE OF STANDING (2): DENIAL OF RIGHT TO ASSOCIATE

*Congress has denied the right of plaintiff to associate for legitimate political objectives*.

Congress' refusal to call a convention to propose amendments, a willful and deliberate *laches* of mandated constitutional action, has allowed spurious myths to spring up like brambles about the convention to propose amendments. This has been done for a single express purpose: to retain illegal, raw and


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

unconstitutional political power over the amendatory process of the Constitution, an objective that is clearly self-evident, as no other citizen, body, official or state in this nation benefits from the seizure of this power *except* Congress.

An example of the brambles Congress has sown can be demonstrated by quoting the words of Congress itself as spoken in its own record:

> "Popular discontent with the conduct of public affairs by the national government and with the specific decisions of the Supreme Court have stimulated state petition drives for particular amendments that have come remarkably close to *forcing* the call of a constitutional convention. Some 150 of the 400 petitions for a constitutional convention filed in the 196-year life of Article V have been submitted in the past twenty years. A current drive for the call of a convention is only two states short of the number required *to initiate consideration of the validity* of state petitions Additional state activity *threatens* to make the convening of a convention a reality."[57]

Such inflammatory words as emphasized are clearly meant to spawn fear in the American public. A examination of their propaganda is in order.

In the first place, obeying the provisions of the Constitution does not mean that something is *forced*. The Constitution is law of the land. One *complies* with its provisions; one is not "forced." The only way the term "forced" can be applied, therefore, is that the Constitution is "*forcing" Congress to obey the Constitution*. *Hence, the logical conclusion is that Congress is stating that for it to obey the Constitution, it must be "forced" to do so, i.e., compelled to do so against its collective will*.

---

[57] "Proposed Procedures for a Limited Constitutional Convention" 98th Congress, 2d Session (1984), p.1. (emphasis added). There is no getting around the obvious propaganda of the emphasized words in this Introduction. Whether subtly hidden in these lines or boldly proclaimed in the Hatch Bill,(*see infra* text accompanying notes 596-613) the obvious political goal of Congress is to strangle all freedom of the American citizen when comes to his rights in the convention to propose amendments.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Second, Congress clearly holds it has the right to "*consider...the validity* of state petitions. There is *no* language in the Constitution giving Congress this power. But the propagandists of Congress presume, however subtly, that it has veto power over the Constitution.

Finally, there is the word "threaten". Its meaning is self-explanatory. And the deduction from its use by Congress is equally self-explanatory. Obviously, Congress considers any action that reduces its powers, however constitutional, to be a "threat" to its power. By use of such propaganda, Congress instills fear in people with only one purpose: to defeat the Constitution and retain unlawful, illegal and unconstitutional political power over the amendatory process.

This unwarranted fear caused by congressional *laches* has had a chilling effect on the ability of the plaintiff to gather signatures for his initiative movement, calling on his state legislature to apply for a convention.[58] This chilling effect strikes at the heart of the entire electoral process, as well as the full faith and credit clause of the Constitution.[59] Congress, without Court determination or proper legislative action, has obstructed a lawful state court decision.[60]

The right of the people to peaceably assemble is clearly of national character. As summed up by the Court:

---

[58] *See infra*, EXHIBIT 3, p.708.
[59] "Full Faith and Credit shall be given in each State to the public Acts, records, and judicial Proceedings of every other States. And the Congress may be general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. Const., art. IV, § 1.
[60] *See infra*, EXIBIT 2, Washington State AGO Opinion No. 4, 1983, p. 702.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the National Government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances."[61]

Therefore, as citizens have the “right...to meet peaceably for consultation in respect to public affairs,” and if Congress negates this “core political speech”[62] right, this clearly causes a concrete personal injury to

---

[61] United States v. Cruikshank, 92 U.S. 542 (1876}.

[62] “‘The First Amendment is a value-free provision whose protection is not dependent on “the truth, popularity, or social utility of the ideas and beliefs which are offered.” NAACP v. Button, 37 U.S. 415 (1963). “The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind... In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the truth from the false for us.’” Thomas v. Collins, 323 U.S. 516 (1945). ...

“‘The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public oncern without previous restraint or fear of subsequent punishment.’ Thornhill v. Alabama, 310 U.S. 88 (1940) at 101-102. The First Amendment ‘was fashioned to assure unfettered interchange of idea for the bringing about of political and social changes desired by the people.’ Roth v. United States, 354 U.S. 476 (1957). Appellees seek by petition to achieve political change in Colorado, their right freely to engage in discussions concerning the need for that change is guarded by the First Amendment.

“The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change. Although a petition circulator may not have to persuade potential signatories that a particular proposal should prevail to capture their signatures, he or she will at least have to persuade them that the matter is one deserving of the public scrutiny and debate that would attend its consideration by the whole electorate. This will in almost every case involve an explanation of the nature of the proposal and why its advocates support it. Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” Meyer v. Grant, 486 U.S. 414 (1988).

The Court then cited two reasons why interference by the government in blocking petitions actions by the citizens was unconstitutional. The Court said:

“First, it limits the number of voices who will convey appellees’ message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.”


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the plaintiff because plaintiff has *specifically* attempted to gather public support for an initiative proposal specifically aimed at utilizing the constitutional power that Congress has denied by its *laches*.

Any state objections to the matter were resolved in a Washington State Supreme Court ruling some 80 years ago.[63] Thus, there is no conflict with state law as was the case with other states initiatives that attempted to use initiatives to have the state legislatures apply for a convention to propose amendments.[64] As there is no state conflict, the only question of obstruction of the Constitution lies with Congress, not the states.

The Supreme Court of the United States has discussed in numerous suits the power of the government, either state or federal, to limit or otherwise control the right of citizens to associate for political reasons. In a recent suit, the Court said:

> "Appellants argue that even if the statue imposes some limitation on First Amendment expression, the burden is permissible because other avenues of expression remain open to appellees and because the State has the authority to impose limitations on the scope of the state-created right to legislate by initiative. Neither of these arguments persuades us that the burden imposed on appellees' First Amendment rights is acceptable.
>
> "That appellees remain free to employ other means to disseminate their ideas does not take their speech through petition circulators outside the bounds of First Amendment protection. Colorado's prohibition of paid petition circulators restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication. That it leaves open 'more burdensome' avenues of communication, does not relieve its burden on First Amendment expression. FEC v. Massachusetts Citizen For Life, Inc. 479 U.S. 238 (1986). Cf. Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981). *The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing*."[65]

---

[63] *See infra*, EXIBIT 2, Washington State AGO Opinion No. 4, 1983, p. 702.
[64] *See infra* text accompanying note 1114.
[65] Meyer v. Grant, 486 U.S. 414 (1988).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As the State of Colorado attempted in its argument that as the initiative is a state created power, the state has the power to regulate it, Congress may attempt this argument as well. Certainly it will be called on to explain all of its legislative attempts maintain regulatory control of the convention[66] should it choose to avoid the matter, as the Court has already answered the matter directly:

> "Relying on Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico, 478 U.S. 328 (1986), Colorado contends that because the power of the initiative is a state-created right, it is free to impose limitations on the exercise of that right. That reliance is misplaced. In Posadas the Court concluded that 'the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling ' Id., at 345-346. The Court of Appeals quite properly pointed out the logical flaw in Colorado's attempt to draw an analogy between the present case and Posadas. The decision in Posadas does not suggest that 'the power to ban casino gambling entirely would include the power to ban public discussion of legislative proposals regarding the legalization and advertising of casino gambling.' 828 F.2d, at 1456. Thus it does not support the position that the power to ban initiatives entirely includes the power to limit discussions of political issues raised in initiative petitions. And, as the Court of Appeals further observed:
>
> 'Posadas is inapplicable to present case for a more fundamental reason- the speech restricted in Posadas was merely "commercial speech which does 'no more than propose a commercial transaction...'" Posadas, [425 U.S., at 340] (quoting Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 762 (1976))..... Here, by contrast, the speech at issue is "at the core of our electoral process and of the First Amendment freedoms," Buckley, 424 U.S., at 39 (quoting Williams v. Rhodes, 393 U.S. 23, 32 (1968)}- an area of public policy where protection of robust discussion is at its zenith." Id. 1456-1457.'
>
> "We agree with the Court of Appeals' conclusion that the statute trenches upon an area in which the importance of First Amendment protections is 'at its zenith.' For that reason the burden that Colorado must overcome to justify this criminal law is well-neigh insurmountable."[67]

The Court then set a standard that applies as much to Congress as to the State of Colorado, saying:

> "The State's interest in protecting the integrity of the initiative process does not justify the prohibition because the State has failed to demonstrate that it is necessary to burden appellees' ability to communicate their message in order to meet its concerns."[68]

---

[66] *See infra* text accompanying notes 593-613.
[67] Meyer v. Grant, 486 U.S. 414 (1988).
[68] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Court then completed its order striking down Colorado's limitations on initiative saying:

"'[L]egislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment.' Buckley v. Valeo, 424 U.S., at 50. That principle applies equally to 'the discussion of political policy generally or advocacy of the passage or defeat of legislation.' Id. at 48. The Colorado statute prohibiting the payment of petition circulators imposes a burden on political expression that the state has failed to justify."[69]

As the Court noted in another suit:

"[T]he Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution."[70]

In this same suit, the Court said:

"In the present situation the state laws place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voter, regardless of their political persuasion, to case their votes effectively. Both of these rights, of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the first Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States. Similarly we have said with reference to the right to vote. 'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'"[71]

The Court then said:

"The State has here failed to show any 'compelling interest' which justifies imposing such heavy burdens on the right to vote and to associate."[72]

There is nothing in the ruling that precludes the same high standards on Congress as the Court placed on the State of Ohio and the other states.

Therefore, for Congress to regulate plaintiff's right to associate, clearly it must demonstrate a "compelling interest"[73] to do so, i.e., that its

---

[69] *Id*.
[70] Williams v. Rhodes, 393 U.S. 23 (1968).
[71] *Id*.
[72] *Id*.
[73] "Compelling state interest." One which the state is forced or obliged to protect. Coleman v. Coleman, 32 Ohio St.2d 155 291 N.E.2d 530, 534. Term used

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

need to regulate, or in this case entirely prevent, outweighs the constitutional protections of the First Amendment. Does Congress have such a compelling interest? As the government has held the language and meaning of Article V is clear and unambiguous,[74] and as this language has not altered since *Sprague*, it places grave doubt on the need for government regulation in order to "clarify" it, as the government insisted in *Sprague* that no such compelling interest existed, *and the Court agreed*.

Clearly, a compelling interest by definition is "one which the state is *forced or obliged to protect*." The word "forced" is thus employed in two manners, one by legal definition and one by Congress. In the former, it implies an obligation on the state *in order to protect it*, presumably from extinction or destruction. With the latter, the meaning of the word is clearly *compelling Congress to perform an act it does not wish to perform and has no interest in protecting*. Thus, by its own actions attempting legislation to completely regulate and even veto the actions of the convention, Congress has demonstrated it has no compelling interest in a convention to propose amendments, because Congress' intent is clear: not to protect, but to destroy. Any "interest" Congress has in a convention to propose amendments is in preventing the political erosion of its power by strangling the convention, and this standard of protection simply is neither sufficient nor serious

---

to uphold state action in the fact of attack grounded on Equal Protection or First Amendment rights because of serious need for such state action. Also employed to justify state action under police power of state. Printing Industries of Gulf Coast v. Hill, 382 F.Supp. 801 (D.C. Tex.)." BLACK'S LAW DICTIONARY 6th ed. (1990).

[74] *See infra* text accompanying notes 26,527,550,670,728,1034,1095,1283-1284.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

enough to overcome the high walls that protect the civil liberties of the First Amendment.

The Supreme Court is unequivocal: all citizens have a basic, core civil right to politically associate using whatever methods they deem appropriate. The Court is equally unequivocal regarding powers of the state (or Congress) to regulate this basic core right: unless the state can demonstrate a compelling interest to regulate such association, its interest must fall. The Court has established extraordinarily high walls to protect this basic core right.

Simply stated: Congress has no compelling interest in preventing any political association by using *laches* to refuse to call a convention. This *laches* thwarts all political association and thus defeats plaintiff's specific efforts at gathering public support for a convention to propose amendments. Such action on the part of Congress must be declared unconstitutional as it destroys, rather than protects, the civil right in question. This *laches* thus provides standing to plaintiff to recover his full and basic right to politically associate.

Injury: Congress' *laches* in refusing a call a convention to propose amendments has created a chilling effect on the efforts of the plaintiff to politically associate for the advancement of a convention to propose amendments as mandated by the Constitution. This unwarranted fear caused by congressional *laches* has had a chilling effect on the ability of the plaintiff to gather signatures for his initiative movement, calling on his state legislature to apply for a convention


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Causal Relationship: Congress, in its refusal to call a convention, has created an unwarranted fear of a convention to propose amendments in the mind of the public.

Remedy: By compelling Congress to call a convention as mandated by the Constitution, plaintiff's ability to politically associate, minus the oppressive congressional *laches*, is automatically resolved.

## ISSUE OF STANDING (3): DENIAL OF RIGHT OF REDRESS

*Congress has denied a clearly defined method of redress specified in the United States Constitution and thus prevented plaintiff from exercising his First Amendment right in this manner*.

In its most basic form, the purpose of the convention to propose amendments is to provide an orderly constitutional method whereby actions of the federal government may be *redressed at the constitutional level* by the people acting through the states. The evidence of this assertion is plain. The states, acting under the authority of Article V, have applied, *thus expressing their intent to hold a convention*. Their constitutional duty is complete. It now is up to the people *to act, either by electing delegates or participating as elected delegates, and effecting redresses to the actions of the federal government*: altering, abolishing or adding provisions to the Constitution the people see appropriate so as to effect those redresses sought. However, this constitutional redress cannot be accomplished *if Congress is permitted by laches or other means to veto the Constitution.* Thus, through its *laches*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress is vetoing the constitutional right of citizens to utilize a constitutionally guaranteed right of redress.

In discussing standing, Caplan said in part:

"Article V's reference to the state legislatures as the applying agents would be construed to endow them with standing---that is, eligibility to bring suit because of injury traceable to the defendant's unlawful conduct, a requirement inferred by the courts from article III---and to exclude other possible litigants such as the governors, the President, *members of the general public*, or a fraction of Congress. No pro-convention member of Congress willing to bring suit against the majority could surmount the barriers erected by the courts, and *individual members of the public would be ineligible as well*."[75]

In maintaining "members of the public [are] ineligible" because of lack of standing to bring suit to compel Congress to call a convention, Caplan relies primarily on two Court suits: *Valley Forge* and *Fairchild*. Caplan states:

"On the ineligibility of the general public, *see Valley Forge*, 454 U.S. at 482-83; Fairchild v. Hughes, 258 U.S. 126 (1922) (private citizen lacked standing to have 19th amendment declared void)."[76]

Referring to the pages cited by Caplan, it is clear the Court does not state that private citizens lack standing in this matter simply because they are private citizens. While the standards of standing established by the Court are higher than to allow any citizen to bring suit, nevertheless the standards established by the Court are not insurmountable. Thus, Caplan's assertion that private citizens are ineligible to sue is in fact false. Simply put, if a private citizen satisfies the standards of standing, he has standing to sue. This was all *Valley Forge* stated.

---

[75] *See supra* text accompanying note 21. (footnotes omitted, emphasis added).
[76] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

To be specific, the Court rejected generalized complaints by citizens who attempt to use the courts to air complaints about the way the government is run. The Court stated:

"The Court of Appeals was surely correct in recognizing that the Art. III requirements of standing are not satisfied by 'the abstract injury in nonobservance of the Constitution asserted by...citizens.' Schlesinger v. Reservists Committee to Stop the War, 418 U.S. at 223, n. 13. This Court repeatedly has rejected claims of standing predicated on 'the right, possessed by every citizen, to require that the Government be administered according to law....'" Fairchild v. Hughes, 258 U.S. 126, 129 (1922). Baker v. Carr, 369 U.S. 186, 208 (1962). See Schlesinger v. Reservists Committee to Stop the War,, supra, at 216-222; Laird v. Tatum, 408 U.S. 1 (1972); Ex parte Levitt, 302 U.S. 633 (1937). Such claims amount to little more than attempts 'to employ a federal court as a forum in which to air...generalized grievances about the conduct of government.' Flast v. Cohen, 392 U.S., at 106."[77]

Nowhere in this language can there be any support for Caplan's supposition that citizens have no standing to sue in regard to Article V questions. Rather, the Court merely restated its long held position that if any party demonstrates standing it may bring suit regarding *any constitutional question*. Caplan's use of *Fairchild* is of little help in his assertion.

In *Fairchild*, the Court said:

"Plaintiff's alleged interest in the question submitted is not such as to afford a basis for this proceeding. It is frankly a proceeding to have the Nineteenth Amendment declared void. In form it is a bill in equity; but it is not a case, within the meaning of section 2 of article 3 of the Constitution, which confers judicial power on the federal courts, for no claim of plaintiff is 'brought before the court[s] for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs.' Plaintiff has only the right, possessed by every citizen, to require that the government be administered according to law and that the public moneys be not wasted."[78]

The Court clearly stated a citizen does not have a right to use the courts to void an amendment or other *legal* action of the legislature. *Specifically*, it stated that citizens have "the right to require the

[77] Valley Forge College v. Americans United for Separation of Church and State, Inc., et al., 454 U.S. 464 (1982).
[78] Fairchild v. Hughes, 258 U.S. 126 (1922).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

government be administered according to law." It did not stipulate or limit this right to only statutory matters. Indeed, as constitutional law violations are more fundamental, such violations require more protection by the Court than statutory violations. Thus, it is valid for a citizen to exercise his right to demand the government be administered according to *constitutional* as well as statutory law. The only stipulation the Court made is the citizen demonstrate the governmental action in question either violates rights, or court action is required to punish wrongs.[79] This is a far cry from Caplan's *carte blanche* exclusion of all private citizens seeking redress from abuses by Congress of Article V.

There is a major difference between this legal action and the action sought in *Fairchild*. In *Fairchild*, the plaintiffs attempted, as the Court noted, to prevent the adoption of a constitutional amendment that had gone through all the proper constitutional steps of Article V to become an amendment to the Constitution. The Court properly said the plaintiffs in that

[79] "Wrong. A violation of legal rights of another; an invasion of right to the damage of the parties who suffer it, especially a tort. State ex rel. And to use of Donelon v. Deuser, 348 Mo. 628, 134 S.W.2d 132, 133. It usually signifies injury to person, property or relative noncontractual rights of another than wrongdoer, with or without force, but, in more extended sense, includes violation of contract. Daurizio v. Merchants' Despatch Transp. Co. 152 Misc. 716, 274 N.Y.S. 174.

"The idea of *rights* naturally suggest the correlative of *wrongs*; for every right is capable of being violated. A right to receive payment for goods sold (for example) implies a wrong on the part of him who owes, but withholds the price; a right to live in personal security, a wrong on the part of him who commits personal violence. And therefore, while, in a general point of view, the law is intended for the establishment and maintenance of *rights*, we find it, on closer examination, to be dealing both with rights and wrongs. It first fixes the character and definition of rights, and then, with a view to their effectual security, proceeds to define wrongs, and to devise the means by which the latter shall be prevented and redressed." BLACK'S LAW DICTIONARY 6th ed. (1990).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

suit had no right to attempt to use the courts to subvert the adoption of an amendment in this manner. Here, the plaintiff seeks to have the Court *cause Congress to obey proper Article V procedures where the necessary evidence, i.e., the proper number of state applications for a convention,*[80] *clearly demonstrate Congress has failed to do so*. Thus, unlike Fairchild, Congress *has not followed a prescribed method of constitutional amendment; it has violated constitutional law by not issuing a call for a convention when mandated by the Constitution*. Under these circumstances, plaintiff maintains he has "the right, possessed by every citizen, to require that [Congress] be administered according to law," and that this circumstance alone provides him standing to sue.

Beside the applications, what proof is there that Congress has never had even the slightest intention of obeying the Constitution? As Caplan stated:

> "Congress has never kept regular track of incoming convention applications, and there exists no official catalogue of the applications adopted by the states since 1789. No federal official has even be designated to receive and keep track of applications separately, although the rules adopted by the Senate and House of Representatives specify that memorials to Congress (which state a grievance but do not ask for any remedy) and petitions (which request specific action ) are to be delivered to the Secretary of the Senate and the Clerk of the House. Convention applications are usually deemed to fall under one or the other category of submission."[81]

By not even tracking state applications, Congress practices a form of *peine fort et dure*[82] on the convention clause of Article V. Pretending the

---

[80] *See infra* text TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664.

[81] Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988), Preface p. xix.

[82] "In old English law, a special form of punishment for those who being arraigned for felony, obstinately 'stood mute' that is, refused to plead or put themselves upon trial. It is described as a combination of solitary confinement, slow starvation, and crushing the naked body with a great load of iron. This atrocious punishment was vulgarly called 'pressing to death'" BLACK'S LAW DICTIONARY 6th ed. (1990).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

clause doesn't exist, it relegates it to solitary confinement. By not tracking the applications, it mutes the voice of the people. By piling on countless unconstitutional conditions and stipulations, it tries to crush the clause to death.

The Founding Founders never intended the convention method of amendment to "plead" its suit before Congress before being allowed to exist. Article V is a self-executing constitutional provision and, thus, so is the convention method of amendment. Save for writing the amendment or amendments going through the provision's process, no ancillary legislation by Congress in proposing its own amendment(s), or the convention for that matter, is required to execute its provisions. In neglecting Article V Congress defiles the Constitution in its the most fundamental principle: the government possesses only those powers licensed to it by the people and is powerless to expand or ignore them.

This issue of congressional ignorance is significant in the standing of the plaintiff to bring suit in order to redress this matter. As the Court said:

> "[A]part from the 'case' or 'controversy' test, [standing concerns] the question whether the interest sought to be protected by the complaint is arguably within the zone of interests to be protected or regulated by the states or constitutional guarantee in question."[83]

As the clear intent of the convention clause of Article V is to redress abuses of the national government,[84] clearly preserving that method of redress from abuse by the national government falls "within the zone of interest and

[83] Data Processing Service v. CAMP, 397 U.S. 150 (1970).
[84] *See infra* text accompanying notes 514,529,1041,1682.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

legal protection prescribed by the powers of the article." Logically, there is nothing more essential to the "zone of interest...of the constitutional guarantee in question" than preserving the existence of the right in the first place. Obviously, if this primary objective of self-preservation of the right does not exist, the rest of the redress prescribed in the article becomes meaningless. Clearly, the *laches* of Congress makes any further inquiry as to whether plaintiff has standing in regard to the zone of interest of the constitutional guarantee in question needless. Congress has chosen to threaten the most basic, fundamental and obvious zone of interest that can exist for any prescribed right in the Constitution: the elimination of that right by the national government without properly amending the Constitution, which is the only way such action can be constitutionally undertaken.

In an analogous decision discussing the right of taxpayers to see "public monies [are] not wasted," the second basis on which citizens, according to *Fairchild*, can sue, the Court made it clear citizens must establish certain proofs in order to use the courts to redress these rights. The Court said:

> "The nexus demanded of federal taxpayers has two aspects to it. First, *the taxpayer must establish a logical link between that status and the type of legislative enactment attacked*. Thus, a taxpayer will be a proper part to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, 8, of the Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statue. This requirement is consistent with the limitation imposed upon state-taxpayer standing in federal courts in Doremus v. Board of Education, 342 U.S. 429 (1952). Second, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, *the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed* upon the exercise of the congressional taxing an spending power and not simply that the enactment is generally beyond the powers


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

delegated to Congress by Art. I, 8. When both nexuses are established, the litigant will have shown a taxpayer's stake in the outcome of the controversy and will be a proper and appropriate party to invoke a federal court's jurisdiction."[85]

The Court then concluded by saying:

"[W]henever such specific limitations are found, we believe a taxpayer will have a clear stake as a taxpayer in assuring that they are not breached by Congress. *Consequently, we hold that a taxpayer will have standing consistent with Article III to invoke federal judicial power when he alleges that congressional action under the taxing and spending clause is in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power. The taxpayer's allegation in such cases would be that his tax money is being extracted and spent in violation of specific constitutional protections against such abuses of legislative power.*"[86]

While the Court did not directly address the issue of citizens having the government obey the law, though it is certainly implied in its "derogation of those constitutional provisions which operate to restrict..." phrase, nevertheless certain common principles between *Flast* and *Fairchild* are apparent. The Court made it clear a logical link between the citizen and the abuse must be established. The Court said the taxpayer must demonstrate the actions of the government serve to derogate those constitutional provisions that operate to restrict the exercise of that power, or prevent such abuses of legislative power.

This second stipulation is well proven by Caplan's statement alone. Congressional *laches* in direct disregard of constitutional mandates derogates the entire Constitution by attacking its most fundamental principle: secured specified rights immune from the interference of arbitrary and capricious legislative action.

---

[85] Flast v. Cohen, 392 U.S. 83 (1968). (emphasis added).
[86] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The establishment of the second stipulation creates the necessary link required to prove the first stipulation. Like all citizens, this citizen is subject to the laws of this nation. He also receives such benefits as those laws may prescribe. These rights and benefits are set forth in the United States Constitution. The most fundamental right of citizenship in this nation is the right to alter or abolish regarding the form and powers of the national government embodied in Article V. This right is exercised using prescribed procedures set forth in that article. The Founders intended Congress, insofar as calling a convention, have no discretion in the matter whatsoever.[87] Congress, in refusing to call a convention to propose amendments when mandated by the Constitution for whatever excuse, exceeds the specific constitutional limitations established by the Founding Fathers. Any denial by Congress in any manner, *including not tracking the applications*, violates the clear intent and meaning of the Constitution. Under these circumstances, the actions of Congress serve to derogate those constitutional provisions that operate to restrict the exercise of that power, or prevent such abuses of legislative power. This in turn provides the stipulation necessary for the plaintiff to invoke the right “possessed by every citizen, to require that the government be administered according to law.” Congress has violated the Constitution at a fundamental level, and it is the right of plaintiff to seek redress, thus giving him standing.

[87] *See infra* text accompanying notes 505-514.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Injury: Congress in its *laches* of refusing to call a convention has violated the Constitution at a fundamental level.

Causal Relationship: Congress having violated constitutional provisions meant to restrict or otherwise deny Congress this unconstitutional exercise of power has violated the right of the plaintiff to require the government be administered according to constitutional law.

Remedy: By compelling Congress to call a convention as mandated by the Constitution, plaintiff's right to require the government be administered according to constitutional law is restored.

ISSUE OF STANDING (4): VIOLATION OF THE DOCTRINE OF SEPARATION OF POWERS

*Congress has violated the separation of powers doctrine in that it has usurped, by its laches, the clear separation of powers between the federal government and the states, as well the separation of powers between Congress and the people, by attempting to assume their sovereignty granted them by treaty*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

It is well established the people are the source of all sovereignty in this nation.[88] As the people are sovereign, they have full discretion regarding the disbursement of their sovereign powers through offices[89] of government in order to effect them. The delegation of these powers is most properly described as a license[90] of sovereign power as the people have retained their option to withdraw that sovereign power any time they wish through the amendatory process, and either retain it for themselves or reassign it to another office.[91] Thus, they may license as much or as little sovereign power to any office of government as they choose and may withdraw it at any time.

Regardless of how much power was assigned by the people, the Founders assumed Congress might attempt to abuse, in one form of another, the powers

---

[88] *See infra* text accompanying notes 921-1133. *See also* Kennett v. Chamber, 55 U.S. 38 (1852): "Under the constitution, sovereignty in the United States resides in the people."

[89] "Office. A right, and correspondent duty, to exercise a public trust. A public charge or employment. An employment on behalf of behalf of the government in any station, or public trust, not merely transient, occasional, or incidental." BLACK'S LAW DICTIONARY 6th ed. (1990).

[90] "License. The permission by competent authority to do an act which, without such permission, would be illegal; a trespass, a tort, or otherwise not allowable. People v. Henderson, 391 Mich. 612, 218 N.W.2d 2, 4." BLACK'S LAW DICTIONARY 6th ed. (1990).

[91] *See* Hollingsworth v. Virginia, 3 U.S. 378, (1798):

"The people limit and restrain the power of the legislature, acting under a delegated authority, but they impose no restraint on themselves. The could have said by an amendment to the constitution, that no judicial authority should be exercised, in any case, under the United States; and, if they had said so, could a court be held, or a judge proceed, on any judicial business, past or future, from the moment of adopting, the amendment. On general ground, then, it was in the power of the people to annihilate the whole..."

*See also* United States v. Chambers, 291 U.S. 217 (1934):

"The Congress, however, is powerless to expand or extend its constitutional authority.... The National Prohibition Act was not repealed by act of Congress, but was rendered inoperative, so far as authority to enact its provisions was derived from the Eighteenth Amendment, by the repeal, not by the Congress but by the people, of that amendment."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

licensed them.[92] Thus, the Founding Fathers installed a system of checks and balances and separation of powers in the Constitution designed to counter the assigned power of one office with the assigned power of another. They also reserved powers entirely from the national government, retaining these powers either to the states or the people; thus these powers are *separate* from those of the national government. One such check and balance of the latter description, a power of the people, is the convention to propose amendments. The people, acting through the states, can directly use their power to alter or abolish as they desire, bypassing any objections of the national government. The convention thus serves as a check and balance against abuses of power by the national government.

Further, under the doctrine of separation of powers,[93] any office of government the people license to execute a portion of their sovereign power is limited solely to the use of those specific powers. This separation of powers is two-fold: the office of government may not assume powers entrusted to other

---

[92] *See infra* text accompanying notes 494,505-521.

[93] "Separation of powers. The governments of state and the United States are divided into three departments or branches: the legislative, which is empowered to make laws, the executive which is required to carry out the laws, and the judicial which is charged with interpreting the laws and adjudicating disputes under the laws. Under this constitutional doctrine of 'separation of powers,' one branch is not permitted to encroach on the domain or exercise the powers of another branch. See U.S. Constitution, Article I-III. *See also* Power (*Constitutional powers).*"

"Power. *Constitutional Powers.* The right to take action in respect to a particular subject matter or class of matters, involving more or less discretion, granted by the constitution to the several departments or branches of the government, or reserved to the people. Powers in this sense are generally classified as legislative, executive , and judicial *(q.v.)*; and further classified as enumerated (or express), implied, inherent, resulting, or sovereign powers." BLACK'S LAW DICTIONARY 6th ed. (1990).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

offices of government, thus maintaining its independence from other offices,[94] nor may it assume powers retained from government by the people.[95] This includes, but is not limited to, such sovereign powers as the people's right to alter or abolish.

Combined, the power of license, checks and balance, and separation of powers dictate entirely the description of power created by the people for each office of government.[96] Once assigned these powers, each office of

---

[94] The exception of course is whether by reasonable implication or expressed language in the Constitution, a zone of dual use of a specific power is established. Such an example would be the passage of a law where Congress writes the law, it is reviewed by the President and then may suffer review by the courts which may ultimately find its provisions conflict with the Constitution. Thus, whether a law has full effect is dependent on several offices of government using some portion of the sovereign power licensed to them by the people. Each power is essential for the passage of the law; each office retains discretion to use or withhold its licensed power.

The principle of separation of powers holds that while branches of government may intermingle so as to form a workable government, this means in simple form that the President's veto power cannot be assumed by a member of Congress, that a federal judge may not write legislation destined for the signature of the President or that under ordinary circumstances, Congress may act as a judiciary body and review ordinary civil or criminal cases.

[95] "Under a constitution conferring specific powers, this power contended for must be granted or it cannot be exercised." United States v. Fisher, 6 U.S. 358 (1805); "The government of the United States can claim no powers which are not granted to it by the Constitution." Martin v. Hunter's Lessee, 14 U.S. 304 (1816).

[96] "The Constitution is the fundamental law of the United States, and no department of government has any other powers than those thus delegated to it by the people." Hepburn v. Griswold, 75 U.S. 603 (1869). "The government of the United States is one of limited powers, and no department possess any authority not granted by Constitution." *Id.*

"That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. ... The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

"The original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

"The government of the United States is of the latter description. The powers of the legislature are defined and limited, and that those limits may not be mistaken, or forgotten, the constitution is written."
Marbury v. Madison, 5 U.S. 137 (1803).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

government has discretion to use that sovereign power but *only within the limits prescribed by the people*. One license the people entrusted to Congress, an office of government, was participation in the amendatory process of the Constitution. However, the people did not give *exclusive amendatory power to Congress*. Therefore, Congress can neither be assigned, nor assume, all amendatory power of the Constitution.[97]

As the various licenses of sovereignty by the people describe entirely the limits of power, restrictions and prohibitions of offices of government, it follows these licenses become limits of the office of government that may neither be exceeded nor ignored. As part of the limits of various offices, the people prescribed certain specific textual qualifications they required any occupant of the office must satisfy before being allowed to occupy the office. The Court has ruled that no additional standards except those textual standards established in the Constitution can be used to judge the qualifications of the office.[98] On numerous occasions the Court has declared through its power of judicial review that actions by offices of government are unconstitutional or not in compliance with the license originally prescribed by the people to that office.

As such, any citizen of the United States elected or appointed to any office of government established by the Constitution, i.e., licensed by the

---

[97] However, the Court has ruled to the contrary in this instance, and it will be up to the wisdom of the Court to determine whether they or the Founders are correct in this. *See infra* text accompanying notes 1053-1108.

[98] "[W]e have concluded that art. I, 5, is at most a 'textually demonstrable commitment' to Congress to judge only the qualifications expressly set forth in the Constitution." Powell v. McCormack, 395 U.S. 486 (1969).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

people, must satisfy those textual qualification for office prescribed in the Constitution in order to occupy the office, *but also must comply with the limits, powers, and restrictions of the office prescribed by the people in their license of sovereign power to that office.*

All members of Congress are bound by oath to support the Constitution.[99] Accordingly, this means Congress agrees to *support the Constitution which includes all of its clauses, provisions and limits of office.* Consequently, while the *Powell* ruling only referred to membership qualifications for admission to Congress, i.e., age, residence and citizenship, the principle stated by the Court certainly applies to the general as well as the specific, i.e., the source of any power of Congress must be found in and is limited to the text of the Constitution.[100]

The Court's power to determine an action by an office of government unconstitutional, a power not necessarily licensed by the people, instead is the licensed power to decide "cases [and] controversies...arising under the

---

[99] "The Senators and representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution..." U.S. Const. Art. VI, § 3.

[100] *See also* United States v. Fisher, 6 U.S. 358 (1805), "Under a constitution conferring specific powers, the power contended for must be granted or it cannot be exercised."; "The government of the United States can claim no powers which are not granted to it by the Constitution." Martin v. Hunter's Lessee, 14 U.S. 304 (1816); "In construing Federal Constitution, Congress must be held to have only those powers which are granted expressly or by necessary implication." Prigg v. Commonwealth of Pennsylvania, 41 U.S. 539 (1842); "The government of the United States is one of limited powers, and no department possess any authority not granted by Constitution." Hepburn v. Griswold, 73 U.S. 603 (1869); "Every act of Congress must find in the Constitution some warrant for its passage." "Federal government is one of enumerated powers, and, while such powers are to be reasonably and fairly construed with a view to effectuating their purposes, an attempted exercise of a power clearly beyond true purpose of grant cannot be sustained." United States v. Harris, 106 U.S. 629 (1882).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Constitution." Such controversies arise, mistakenly or deliberately, by actions of offices of government violating separation of powers, checks and balances or the license of power granted them by the people embodied in the actual textual language of the Constitution. Sometimes, as in the case of Congress' failure to call a convention, they violate all three.

As the writings of the Founding Fathers indicate,[101] the convention call is a pure minuscule, mechanical constitutional duty obligatory on Congress. While members of Congress obviously would prefer otherwise, they do occasionally have constitutional duties apart from their political pleasures, fund raisers, junkets and other abuses of office. Equally clear by its *laches* is the fact Congress would rather veto the Constitution than obey its clear mandate. By its proposed legislation, it is apparent Congress desires to place the convention to propose amendments under its political umbrella, allowing Congress to amend the Constitution by legislative fiat rather than be bothered with the stringent limits placed on its political power by the Constitution.

This is what this suit actually is all about: political power. If Congress wins, its political powers will be totalitarian. Through total control of the convention to propose amendments, Congress gains total control the amendatory process of the Constitution absent any check by any other constitutional body. It acquires dictatorial control of the Constitution with no more than a majority vote, assuming the current rules governing Congress are obeyed. There is no guarantee of even that happening.

---

[101] *See infra* text accompanying notes 490-521.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The principle in *Powell* that congressional powers are limited to the textual language in the Constitution is significant, but the second part of the ruling is even more so: that Congress *is powerless to add or subtract from these textual powers*.[102] Any doubt that this principle expressed by the Court

---

[102] "Our examination of the relevant historical materials leads us to the conclusion that petitioners are correct and that the Constitution leaves the House without authority to exclude any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution." Powell v McCormack, 395 U.S. 486 (1969). (Majority opinion).

"Contests may arise over whether an elected official meets the 'qualifications' of the Constitution, in which even the House is the sole judge. But the House is not the sole judge when 'qualifications' are added which are not specified in the Constitution.

"A man is not seated because he is a Socialist or a Communist.

"Another is not seated because in his district members of a minority are systematically excluded from voting.

"Another is not seated because he has spoken out in opposition to the war in Vietnam.

"The possible list is long. Some cases will have racist overtones of the present one.

"Others may reflect religious or ideological clashes.

"At the root of all these cases, however, is the basic integrity of the electoral process. Today we proclaim the constitutional principle of 'one man, one vote.' When that principle is followed and the electors choose a person who is repulsive to the Establishment in Congress, by what constitutional authority can that group of electors be disenfranchised?" Powell v. McCormack, 395 U.S. 486 (1969). (Justice Douglas, concurring opinion.)

Justice Douglas then quoted Senator Murdock from Utah in Senate debates at seating Senator-elect William Langer of North Dakota in the early 1940's. Douglas quoted Murdock's testimony and Senate debates in which Murdock said:

"'I construe the term "judge" to mean what is held to mean in its common, ordinary usage. My understanding of the definition of the word "judge" as a verb is this: When we judge of a thing it is supposed that the rules are laid out; the law is there for us to look at and to apply the facts.

"'But whoever heard the word "judge" used as meaning the power to add to what already is the law?'"

Douglas then stated:

"I believe that Senator Murdock stated the correct constitutional principle governing the present case.

"Constitutional scholars of two centuries have reaffirmed the principle that congressional power to 'judge' the qualifications of its members is limited to those enumerated in the Constitution. 1 J. Story, Commentaries on the Constitution 462 (5th ed. 1891); C. Warren, The Making of the Constitution 420-426 (1928). See also remarks by Emmanuel Celler, Chairman of the House Select Committee which inquired into the qualifications of Adam Clayton Powell, Jr., and which recommended seating him:

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

has no general application to other provisions of the Constitution limiting Congress is dispensed with by a simple example. If a member of Congress *already in office* attempts to violate the term of his office by remaining in office without re-election, *the Powell principle applies, making the act unconstitutional*. Nor is the *Powell* principle limited strictly to Congress. It would equally apply if the president, for example, attempted to remain past his term of office.

Thus, age, citizenship and residency are textual constitutional limits of office requiring satisfaction *prior* to a citizen *being seated in* Congress and may neither be added to nor subtracted from by Congress. The same is true for the remainder of the Constitution; that textual language creates obligatory on-going limits of power on all members of Congress *after* they are seated, and these too may neither be added to, nor subtracted from, except by amendment.

By what method did the Founders fix these limits in the Constitution? A simple reading of a few examples from the text makes this obvious:

"All legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a senate and House of Representatives."[103]

"No Person shall be a Representative..."[104]

"The Senate of the United States shall be composed of two Senators from each State..."[105]

In these examples, only a few of the many limits prescribed by the Founding Fathers to fix a limit on government, they employed a single word to

---

"'The Constitution lays down three qualifications for one to enter Congress - age, inhabitancy, citizenship. Mr. Powell satisfies all three. The House cannot add to these qualifications. 113 Cong. Rec. 4998.'"

[103] Art. I, § 1, U.S. CONST.

[104] Art. I, § 2, §§ 2, U.S. CONST.

[105] Art. I, § 3, U.S. CONST.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

so express. The Founders used the imperative “shall” which in all cases as used in the Constitution is both obligatory as well as non-discretionary on the part of Congress (or any other affected party) as to the effect, intent and meaning of its directive.[106]

In *Powell*, the Court held the terms of admission effected by the word “shall” were absolute, i.e., Congress has no discretion to either add or subtract from the terms set forth in the Constitution. There being nothing in the Constitution to indicate the “shall” used to define qualifications of office for Congress is any different from the “shall” used to mandate a convention call from Congress, it must be assumed that the imperative is equally compelling and non-discretionary in both cases. Thus, the calling of the convention to propose amendments as expressed by the word “shall” in Article V is a limit of office as absolute as the membership admission clause, and Congress may neither add to nor subtract these absolutes set forth in the Constitution.

The word “shall” not only compels the mandatory action on Congress to call a convention, it also dictates under what circumstance Congress is obligated to call. There is no difference between this dual use in Article V and its dual use in the membership clause discussed in *Powell*. The membership clause states:

> “No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.”[107]

---

[106] *See infra* text accompanying notes 853,860.
[107] Art. I, § 2, §§ 2, U.S. CONST.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As discussed in *Powell*, if a citizen elected to the House of Representatives fulfills the three constitutional stipulations, he *shall* be a member of the House of Representatives.[108] He need not satisfy any other stipulations as the word "shall" precludes such discretion. Using the same logic of *Powell*, but applying it to the convention to propose amendments, it follows if the two-thirds of the states apply for a convention, Congress *shall* call a convention with no discretion in the matter. The states, as with a prospective member of Congress, need not satisfy any other stipulation as the word "shall" precludes such discretion. The states only need apply in sufficient numeric quantity as to compel Congress to call.

How do the findings in *Powell* provide standing for the plaintiff? The Constitution grants immunity to all citizens from having rights not enumerated in the Constitution being either denied or disparaged. This guarantee is contained in the Ninth Amendment which states:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Ninth Amendment was written by James Madison.[109] The obvious question concerning this constitutional guarantee is, what unenumerated rights was Madison referring to? It is fairly certain Madison meant the right of the

---

[108] "Further analysis of the 'textual commitment' under Art. I, 5 (see Part Vi, B (1)) has demonstrated that in judging the qualifications of its members Congress is limited to the standing qualifications prescribed in the Constitution. Respondents concede that Powell met these. Thus, there is no need to remand this case to determine whether he was entitled to be seated in the 90th Congress. Therefore, we hold that, since Adam Clayton Powell, Jr., was duly elected by the voters of the 18th Congressional District of New York and was not ineligible to serve under any provision of the Constitution, the House was without power to exclude him from its membership." Powell v. McCormack, 395 U.S. 486 (1969).

[109] *See infra* text accompanying note 1137.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

people to alter or abolish.[110] The Supreme Court has established the Ninth Amendment as its main argument in pro-choice actions, citing the right of privacy as the basis on which a woman may have an abortion.[111] Further, the Court has ruled the Ninth Amendment reinforces rights prescribed in the 5th and 14th Amendments.[112]

However, there are problems with some of these interpretations. For example, when Madison wrote the 9th Amendment, the 14th Amendment didn't exist. Therefore, it is impossible that his intent in writing the 9th Amendment was to reinforce the 14th Amendment. Thus, on the basis of original intent, this presumption of reinforcement of the 14th Amendment is invalid. However, the language of the 14th Amendment certainly allows the Court to extend it to include the 9th Amendment which, as noted, it has.

The point is, Madison gave no indication in his writing[113] *that the 9th Amendment was limited to or otherwise related only to 5th Amendment rights*. As Madison wrote all of the Bill of Rights, it stands to reason if he intended

---

[110] *See infra* text accompanying notes 1137-1147,1682.
[111] "Although the Constitution does not speak in so many words of the right of privacy in marriage, I cannot believe that it offers these fundamental rights no protection. The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the traditional relation of the family - a relation as old and as fundamental as our entire civilization - surely does not show that the Government was meant to have the power to do so. Rather, as the ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government though not specifically mentioned in the Constitution." Griswold v. Connecticut, 381 U.S. 479 (1965).

"This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state actions, as we feel it is, or, as the District Court determined, in the Ninth amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Roe v. Wade, 410 U.S. 113 (1973).
[112] *See infra* text accompanying note 1141.
[113] *See infra* text accompanying note 1137.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

such a connection, he would have made it obvious. Neither the language of the amendment, nor Madison's comments, support such a proposition. As the obvious purpose of the amendment is related to *unenumerated rights*, it is highly unlikely Madison intended it to relate to *enumerated rights*.

Further, the Federalist Papers make it clear that a proposed amendment "would be a single proposition, and might be brought forward singly."[114] i.e., each amendment proposal would stand on its own merits. This logic is defeated if it held the Founders wrote the 5th Amendment with the intent it had to be reinforced by the 9th Amendment in order for the 5th Amendment to be in effect. Assuming the logic of the Court, that the 9th Amendment reinforces the 5th Amendment (and presumably this was the intent of the author), an obvious question arises: what would be the status of the 5th Amendment had the 9th Amendment not been ratified? If one accepts the Court's logic in this matter, the only answer possible was the 5th Amendment was therefore incomplete and thus without effect. The "logic" falls on its face in light of literally thousands, if not hundreds of thousands of uses of the 5th Amendment in criminal cases of all descriptions in which the 9th Amendment isn't even mentioned or cited. The only interpretation that makes sense is the 9th Amendment's *provision can be used to reinforce the 5th Amendment, but neither is dependent on the other for constitutional validity or effect, nor is the 9th Amendment's effect exclusive to either the 5th or the 14th Amendments*.

[114] *See infra* text accompanying note 497.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The matter goes further than this in the convention call. Those advocating “same subject” as the basis of the call run into a problem. If the meaning of the phrase “would be a single proposition, and might be brought forward singly” is an amendment passage dependent upon the passage of another amendment, then it is impossible for a convention to remain a “same subject” convention. Obviously, the convention must pass at least two amendments on different subjects that are somehow linked together. Both must pass in order for the “same subject” amendment to be effective. However such a stipulation is so illogical, it is impossible to support. Thus, there can be no support for the notion that any specific amendment is used to “prop up” another amendment. Each is independent and autonomous in its constitutional effect.

Therefore, while the 9th Amendment may be used as augmentation to other clauses of the Constitution, its main purpose lies in its obvious language: the protection of unenumerated rights of the people from government interference or disparagement. Madison made it clear he wrote the 9th Amendment to protect the rights of citizens that exist completely *outside the expressed provisions of the Constitution, and that his concern was that by enumerating some of those rights in a Bill of Rights, it would be implied or presumed that these other rights were no longer protected or were somehow the right of the government.*[115] The 9th Amendment was clearly intended to prevent this from happening. Thus the 9th Amendment has a specific constitutional purpose separate and distinct from other constitutional provisions.

[115] *See infra* text accompanying note 1137.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As with other constitutional clauses, therefore, particularly those involving individual rights, if those rights are impaired by government action, a citizen is guaranteed the right to seek redress from that government, and the courts are empowered, should they determine such impairment has occurred, to redress the injury. The Constitution does not discriminate so as exclude a 9th Amendment injury. Thus, an action of Congress, such as not calling a convention to propose amendments, where it can be demonstrated it violates unenumerated 9th Amendment rights, is as valid a point of standing as what might be termed the more “typical” constitutional clauses used to prove standing.

It is therefore a reasonable inquiry to determine what unenumerated rights the Founders meant to protect with the 9th Amendment. From this determination, it can be discovered whether or not the actions of Congress in denying a term of office prescribed by the Constitution, i.e., a failure to call a convention to propose amendments, violates the plaintiff’s Ninth Amendment rights. This inquiry must extend beyond the already proved right to alter and abolish and the right of privacy, as the former is dealt with elsewhere in this suit with respect to standing, and the latter has no bearing as to standing in this instance.

Clearly, a plaintiff cannot prove standing by simply fabricating a right, then alleging violation by the government. He is obligated to prove standing on the basis of a textual demonstration of this right, and then prove in a specific, concrete manner that this right has been violated by some government action. Proving standing based on a violation of the 9th Amendment means first a textual demonstration of a right not enumerated in the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Constitution. Second, it requires a demonstration of a textual expression on the part of the Founders that such an action taken by government against this right was a violation.

For the purposes of this suit, the best textual example would be one making it clear the Founders said it was a violation of their rights for a government to ignore, change or otherwise alter their form of government *without* the consent of the people so affected by the change, yet this violation is *not* enumerated in the Bill of Rights. If such a protest and violation is demonstrated, then such an action by Congress, for example, must be unconstitutional, *as it was the intent of the 9th Amendment to guard against this type of violation, among others*. Further, as it is under 9th Amendment protection, it *must* be a violation of the right of the people, i.e., the plaintiff, as the amendment *specifically* addresses violations of their rights (and thus his) and no others.

Nowhere is it stated in the Constitution that a government altering its form is unconstitutional, or that doing this violates the rights of the people. Nevertheless, the Founders made it clear they believed such actions by a government were a violation of their fundamental rights. In at least five clauses in the Declaration of Independence, this specific act was textually used as a basis by the Founders to declare independence because the King of England had violated the rights of the colonists.[116] The Declaration stated:

---

[116] It is entirely reasonable to use specific examples of protest by the colonists in the Declaration of Independence as these objections demonstrate what the Founders believed were powers of the government *not* consented to by the people, i.e., that sovereign power licensed by the people *do not include these powers*. As the King of England agreed by his signing of the Treaty of

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"He has dissolved Representative Houses repeatedly, for opposing with manly firmness *his invasions on the rights of the people*."

"He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, *have returned to the People at large for their exercise*...."

"He has combined with other to subject us to a jurisdiction *foreign to our constitution, and unacknowledged by our laws*; giving his Assent to their Acts of pretended Legislation."

"For taking away our Charters, abolishing our most valuable laws, *and altering fundamentally the forms of our Governments*."

"For *suspending our own Legislatures, and declaring themselves invested with power to legislate for us* in all cases whatsoever."[117]

These passages are plain and unambiguous on the identity of the violation: altering a form of government that in turn removes the rights of people, rights that the colonists realized others subject to the rule of the King of England still enjoyed. Thus, the word "our" is significant in this case. "*Our* Governments", "*our* own Legislatures" or "*our* laws" do not refer to Congress or even colonial legislatures. Instead, the word "our" refers *directly* to the people.[118] In the largest sense, a form of government that transgressed the rights of the American people by changing its form so as to deprive rights that formerly existed was the overriding driving force behind the independence movement. The various repressive actions taken by the British Crown, which the colonists labeled as "tyrannous" and "destructive," eventually overcame the reluctance of the colonists to declare their independence.[119]

---

Paris, through the treaty clause of the Constitution, these denials, as much as any powers granted, became law of the land. *See infra* text accompanying notes 921-1009.

[117] Declaration of Independence (1776). (emphasis added).

[118] *See infra* text accompanying notes 994-1001,1421.

[119] "Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursing invariably the same Object evinces a design to reduce them under absolute

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

By declaring the acts of the King that altered the form of government an act of tyranny against the people, there is no question the Founders believed these acts were violations of the rights of the people. They protested these acts in the Declaration of Independence and their belief the consequent violations justified their separation. Thus, by textual demonstration, it can be shown if the government attempts to alter its form by ignoring the terms of office prescribed, it is a violation of rights recognized by the Founders *but not enumerated* in the Constitution. Nowhere does the Constitution express that *it is a violation of the right of the people if the government fails to conform to the limits of office established in the Constitution*. Nevertheless, without this fundamental right, the entire structure of the Constitution would collapse. *Therefore, it is a fundamental, unenumerated right of the people*. As such, this right falls under the protection of the Ninth Amendment.[120]

Thus, if Congress alters the form of government prescribed in the Constitution, it is a violation of one of the plaintiff's unenumerated rights as prescribed by the 9th Amendment. In failing to call a convention to propose amendments when mandated by the Constitution, Congress has altered the form of government without due process of law, which in this case requires a constitutional amendment to do so. Congress has never even bothered to write

---

Despotism, it is their right, it is their duty, to throw off such Government and to provide new Guards for their future security.

"Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these states."

[120] *See infra* text accompanying note 1077.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

such a proposed amendment, let alone send it to the states for almost certain defeat in ratification. Instead, it has simply ignored the Constitution and violated plaintiff's 9th Amendment right of government conformity to the limits of office prescribed in the Constitution.

Injury: Congress has unconstitutionally ignored a limit of office and thus altered the form of government prescribed by the Constitution.

Causal Relationship: Congress, having violated an expressed constitutional provision intended to restrict or otherwise deny Congress this unconstitutional exercise of power, has also violated plaintiff's unenumerated 9th Amendment right of preservation of governmental form.

Remedy: In compelling Congress to call a convention, the Court restores the limit of office as prescribed by the Constitution to its proper role and thus redresses the violation of plaintiff's unenumerated 9th Amendment right of preservation of governmental form.

## ISSUE OF STANDING (5): DENIAL OF RIGHT TO SEEK PUBLIC OFFICE

*Congress by its laches has denied plaintiff the right to seek and hold public office*.

Many of the fundamental rights of United States citizens are not expressed in the Constitution. One of these fundamental unexpressed rights is


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the right of citizens to seek public office. The Court has made it clear the right to vote for candidates seeking office is a fundamental core right of all citizens.[121] This fact established, an obvious question presents itself: how can the fundamental core right to vote be protected if the government can arbitrarily[122] regulate the object of the vote, whether issue or candidate, so

---

[121] *See supra* text accompanying notes 40-56.

[122] The Court has discussed arbitrary decisions by the government. While the Court was discussing the right of a person to conduct a business, in this case a laundry, the words of the Court are clearly applicable to the case at hand regarding Congress' arbitrary refusal to call a convention (and thus prevent the plaintiff from seeking office to such a convention) when mandated by the Constitution. The Court stated:

"We are consequently constrained, at the outset, to differ from the supreme court of California upon the real meaning of the ordinances in question. That court considered these ordinances as vesting in the board of supervisors a not unusual discretion in granting or withholding their assent to the use of wooden buildings as laundries, to be exercised in reference to the circumstances of each case, with a view to the protection of the public against the dangers of fire. We are not able to concur in that interpretation conferred upon the supervisors. There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. *They seem intended to confer, and actually to confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or to withhold consent*, not only as to places, but as to persons*, so that, if an applicant for such consent, being in every way a competent and qualified person, and having complied with every reasonable condition demanded by any public interest, should failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of mandamus to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility. The powers given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint.* ...

"'Class legislation, discriminating against some and favoring others, is prohibited, but legislation, which, in carrying out a public purpose, is limited in its application, if, within the sphere of its operation, it affects alike all person similarly situated, is not with the [Fourteenth] amendment.'

"The ordinance drawn in question in the present case is of a very different character. It does not prescribe a rule and conditions, and for the regulation of the use of property for laundry purposes to which all similarly situated may conform. It allows, without restriction, the use for such purposes of buildings of brick or stone, but, as to wooden buildings, constituting nearly all those in previous use, *it divides the owners or occupiers into two classes, not having respect to their personal character and*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*qualifications for the business, nor the situation and nature and adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from whom that consent is withheld, at their mere will and pleasure. And both classes are alike only in this: that they are tenants at will, under the supervisors, of their means of living.* The ordinance, therefore, also differs from the not unusual case where discretion is lodged by law in public officers or bodies to grant or withhold licenses to keep taverns, or places for the sale of spirituous liquors, and the like, when one of the conditions is that the applicant shall be a fit person for the exercise of the privilege, because in such cases the fact of fitness is submitted to the judgment of the officer, and calls for the exercise of a discretion of a judicial nature.

*"When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, or course, not subject to law, for it is the author and source of law, but in our system, which sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.* And the law is the definition and limitation of power. It is, indeed, quite true that there must be always be lodged somewhere, and in some person or body, the authority of final decision; and in may cases of mere administration, the responsibility is purely political, no appeal lying except to the ultimate tribunal of public judgment, exercised either in the pressure of opinion, or by means of the suffrage. *But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts bill of rights, the government of the commonwealth 'may be a government of laws and not of men.' For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails as being the essence of slavery itself.*

*"There are many illustrations that might be given of this truth, which would make manifest that it was self-evident in the light of our system of jurisprudence. The case of the political franchise of voting is one. Though not regarded strictly as a natural right, but as a privilege merely conceded by society, according to its will, under certain conditions, nevertheless it is regarded as a fundamental political right, because preservative of all rights.* In reference to that right, it was declared by the supreme judicial court of Massachusetts, in Capen v. Foster, 12 Pick. 485, 488, in the words of Chief Justice Shaw, '*that in all cases where the constitution has conferred a political right or privilege, and where the constitution has not particularly designated the manner in which that right is to be exercised, it is clearly with the just and constitutional limits of the legislative power to adopt any reasonable and uniform regulations, in regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right in prompt, orderly, and convenient manner,*' nevertheless, '*such a construction would afford no warrant for such an exercise of legislative power as, under the pretense and color of regulating,*

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

as to obstruct the vote or prevent the entire process from taking place at all? Obviously, the answer is self-evident and consequently demonstrates the need for equal protection of the right to seek public office. Without protection, the entire voting process becomes meaningless.[123] As the Court has stated:

---

*should subvert or injuriously restrain, the right itself.'* It has accordingly been held generally in the states that whether the particular provisions of an act of legislation establishing means for ascertaining the qualifications of those entitled to vote, and making previous registration in lists of such, a condition precedent to the exercise of the right, were or were not reasonable regulations, and accordingly valid or void, was always open to inquiry, as a judicial question." Yick Wo v. Hopkins, 118 U.S. 356 (1886)(emphasis added).

Thus, the Court has made it clear that under the terms of the Fourteenth Amendment the government may not use the licenses assigned it by the people in an arbitrary manner based solely on personal or political reasons. Further, the Court made it clear that the government may only regulate a right "where the constitution has not particularly designated a manner" in which that right is to be exercised. Additionally, the Court made it clear such regulation, if it is required, "are designed to secure and facilitate the exercise of such right in prompt, orderly, and convenient manner," and may not be used to "should subvert or injuriously restrain, the right itself."

In the case of the convention to propose amendments, the Constitution *has particularly designated a manner in which the right is to be exercised*. It has specified an obligatory action on Congress with no discretion on the part of that body to call a convention when two-thirds of the states apply for a convention. Thus, regulation by Congress is neither required nor permitted. But if such regulation in some minor fashion were needed, *such regulation must facilitate the right, in this case the calling of a convention, i.e., ensuring that a convention occurs*, and may not be used to "subvert or injuriously restrain the right itself", i.e., ensure that a convention *does not* take place or is so regulated by Congress as to subvert or restrain the right so effectively as to render its exercise meaningless. *See infra* text accompanying notes 596-608.

Thus, an action or inaction by Congress that subverts the right of plaintiff to seek the office of delegate to a convention to propose amendments, when by edict of the Constitution such an election must take place because a convention is mandated, clearly is a violation of the Constitution, and as the Court noted, "[is]always open to inquiry, as a judicial question." There can be no question, therefore, that such denial by Congress confers standing on the plaintiff to bring suit to redress such denial by Congress.

[123] In a case presented to the Court by that great *amices curiae* writer John C. Armor, the Court directly dealt with precluding candidates from seeking office, in this case, President of the United States. The Court summed the issue saying:

"The question presented by this case is whether Ohio's early filing deadline placed an unconstitutional burden on the voting and associational rights of Anderson's supporters."

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Court then continued:

"'[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.' Our primary concern is with the tendency of ballot access restrictions 'to limit the field of candidates from which voters might choose.' Therefore, [i]n approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.' Ibid.

"The impact of candidate eligibility requirements on voters implicates basic constitutional rights.(1) Writing for a unanimous Court in NAACP v. Alabama ex rel Patterson, 357 U.S. 449, 460 (1958), Justice Harlan stated that it 'is beyond debate that freedom to engage in association for the advancement of beliefs and idea is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.' In our first reviews of Ohio's electoral scheme, Williams v. Rhodes, 393 U.S. 23, 30-31 (1968), this Court explained the interwoven strands of 'liberty' affected by ballot access restrictions:

"'In the present situation the state laws place burdens on two different, although overlapping, kinds of rights-the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms.'

"As we have repeatedly recognized, voters can assert their preferences only through candidates or parties or both. 'It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues.' Lubin v. Panish, 415 U.S. 709, 716 (1974). The right to vote is 'heavily burdened' if that vote may be cast only for major-party candidates at a time when other parties or other candidates are 'clamoring for a place on the ballot.' Ibid. Williams v. Rhodes, supra. At 31. The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.

"In this case, we base our conclusions directly on the First and Fourteenth Amendments and do not engage in a separate Equal Protection Clause analysis. We rely, however, on the analysis in a number of our prior election cases resting on the Equal Protection Clause of the Fourteenth Amendment. These cases, applying the 'fundamental rights' strand of equal protection analysis, have identified the First and Fourteenth Amendment rights implicated by restrictions on the eligibility of voters and candidates, and have considered the degree to which the State's restrictions further legitimate state interest. See, e.g., Williams v. Rhodes, 393 U.S. 23 (1968); Bullock v. Carter, 405 US. 134 (1972); Lubin v. Panish, 415 U.S. 709 (1974); Illinois Elections Bd. v. Socialists Workers Party, supra." Anderson v. Celebrezze, 460 U.S. 780 (1983).

There is commonality in all of these cited cases in *Anderson*. In all them the Court found that while the state has a vested interest in regulating the election process, it must ensure all candidates have reasonable access to the ballot process. Considering the Court has ruled that where the states (and presumably Congress) have violated this access in such areas as excessive filing fees and unusual or restrictive filing times and procedures, it is not too far a reach to presume the Court would find where Congress has acted (or

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"A fundamental principle of our representative democracy is, in Hamilton's words, 'that the people should choose whom they please to govern them.' 2 Elliot's Debates 257. As Madison pointed out at the Convention, *this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself*."[124]

Congress has recognized this fundamental core right to seek public office and has passed several criminal laws designed to prevent any interference with it.[125] Congress has not exempted itself from any of these

---

in this case failed to act) so as to exclude *all candidates from any access whatsoever to the ballot box, that such actions would be ruled unconstitutional*.

[124] Powell v. McCormack, 395 U.S. 486 (1969). (emphasis added).

[125] U.S.C. Title 42, Chapter 21, Subchapter 1, Sec. 1983 states (in part):

"Every person who, under color of any statute, ordinance, regulation, *custom*, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

U.S.C. Title 18, Part I, Chapter 13, Sec. 241 states (in part):

"*If two or more persons* conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the laws of the United States, or because of his having so exercised the same;...They shall be fined under this title or imprisoned not more than ten years, or both...."

U.S.C. Title 18, Part I, Chapter 13, Sec. 245 (b) states (in part):

"*Whoever*, whether or not acting under *color of law*, by force of threat of force willfully injures, intimidates or *interferes with*, or attempts to injure, intimidate or interfere with...(A) voting or qualifying to vote, *qualifying or campaigning as a candidate for elective office*, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special or general election: (B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;...or (4) any person because he is or has been, or in order to intimidate such person or any other person *or any class of person* from—(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described,...or (B) affording another person or class or person opportunity or protection to so participate; or (5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other person to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described....of participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be fined under this title, or imprisoned not more than one year, of both..."

U.S.C. Title 18, Part I, Chapter 13, Sec. 242 states (in part):

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

laws and thus is as subject to the criminal penalties prescribed as anyone else. The plaintiff is not seeking criminal action at this time against any member of Congress or its incorporated body that may result in members of Congress serving up to ten years in a federal penitentiary. However, if the government chooses to advocate and were the Court to agree that the plaintiff lacks civil standing to sue where he has been barred from seeking elected office by an action of Congress, then the plaintiff may feel obligated to employ this legal alternative. The criminal law in question only deals with the act of person or persons conspiring or otherwise preventing a citizen from seeking elective office. It is not concerned with how that conspiracy is accomplished.

The evidence of Congress' *laches* preventing the plaintiff's access to seek elective office is shown by the series of letters in this suit.[126] The plaintiff attempted to file for the elected public office of delegate to a United States Constitutional Convention from the State of Washington.[127] As the

---

"*Whoever*, under color of any law, statute, ordinance, regulation, or *custom*, willfully subjects any person in any State, Territory, commonwealth, Possession, Or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,... shall be fined under this title or imprisoned not more than one year, or both." (emphasis added).

"Custom. Term generally implies habitual practice or course of action that characteristically is repeated in like circumstances. Jones v. City of Chicago, C.A.7 Ill., 787 F.2d 200, 204." BLACK'S LAW DICTIONARY 6th ed. (1990).

[126] *See infra* text APPENDIX A---EVIDENCE OF PERSONAL INJURY IN SUPPORT OF STANDING, p.700.

[127] It should be noted the correct constitutional term is "convention to propose amendments." Thus the plaintiff actually would be a delegate to the United States Convention to Propose Amendments. However, for reason explained later in this suit, in dealing with Washington State officials, the plaintiff elected to use the more popular, if entirely incorrect term of constitutional convention. *See infra* text accompanying notes 295,301-303.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

exhibits clearly show, the State of Washington is unable to fulfill this request as the Washington State legislature has never enacted a law allowing for filing of this specific office. Thus, as there is no procedure to allow for filing for office, the plaintiff is prevented from seeking public office.

Under U.S.C.,[128] this lack of procedural legislation can be described as a custom. The record shows the states have repeatedly applied for a convention to propose amendments.[129] These applications have included applications by the Washington State legislature. It is a reasonable supposition that the legislature was aware that its actions, combined with similar actions by other states, could result in a convention to propose amendments. As the state has helped to set in motion a chain of events that could result in a convention, it follows it would need to pass laws necessary for its participation in a convention. As these applications by the states have occurred over several years, and with each application the State of Washington has failed to act despite this knowledge, this repeated lack of action on the part of the state has obviously become a “habitual practice or course of action that characteristically is repeated in like circumstances” or a custom. An action against the State of Washington certainly could be brought. And without question the federal government would support such an action.

The question is *why* the federal government would support such an action by the plaintiff. A simple thought problem supplies the answer. Let us suppose

---

[128] *See supra* text accompanying note 125.
[129] *See infra* text
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

for this thought problem that the plaintiff does file an action against the State of Washington in federal court. The Court, finding for the plaintiff, orders the State of Washington to draft legislation so as to hold elections so as to permit the plaintiff to seek office. Now, for the purposes of this thought problem, let us suppose these elections are held in the state and *no other state resident seeks the office in question. Let us further assume that the plaintiff receives every single vote possible from the state*, i.e., he is elected by 100 percent of all eligible voters in the state with every voter possible voting in favor of the plaintiff representing them at a convention to propose amendments.

Thus the state, through the action of its electors, has expressed to the fullest extent possible its support for the plaintiff to hold elective office. What would be the effect of this election? The answer: nothing. Even if the plaintiff were voted to be a delegate to a convention to propose amendments by every voting citizen, nothing would happen. The effect of the vote cast by the voters of the State of Washington would be for all intents and purposes totally ineffective. Why? *Because without a call for a convention to propose amendments from Congress as required by the Constitution, there is no reason to believe there would be a convention for the delegate by the State of Washington to attend.*

Consequently, any Section 1983 action brought by the plaintiff against the State of Washington would not resolve the issue. It is a reasonable assumption that any state law written by the State of Washington (or any other state for that matter) would be written so as to comply with the provisions found in the United States Constitution. This means the legislature would be


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

forced to write the law so as to not allow for election of delegates *until the state received notice of a convention call from Congress*. Further, it is logical the state would say in any court action that it was not required to draft a law *because Congress had not called a convention, and therefore it was under no obligation to conduct an election*. In this, the *state* would be correct and would be immune, but such protection cannot extend to Congress *because Congress is mandated under the Constitution to call a convention and has no discretion in the matter. It has not done so. Therefore it has no defense and in fact is the casual factor of why the plaintiff cannot seek office*.

The Constitution is clear in the matter. Individual states may not call a convention. However, as Congress has no discretion in the matter, their applications compelling Congress to call a convention have the same effect. *It cannot be overemphasized that the options in the convention call sit with the states and not Congress*. There is, then, a prescribed constitutional order in this: the states decide to apply for a convention; Congress calls; delegates are elected; a convention is held; amendments are proposed; possible ratification takes place. Thus, any state holding elections for delegates before *Congress fulfills its mandated constitutional duty puts the cart before the horse*. While Congress has no discretion in calling a convention, nevertheless it is a mandated constitutional step that must take place before elections can be held, a convention convened, or amendments proposed.[130]

[130] Without a convention call by Congress as specified in the Constitution, any attempt to convene a convention is unconstitutional. The Founders, having

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Consequently, to first sue a state or states with the object of causing an election for convention delegate to occur is merely a ploy to permit Congress to defeat the clear intent of the Constitution.

Any action, therefore, against an individual state by any plaintiff is entirely meaningless because it fails to resolve the root cause of the

---

placed the convention call as an expressed procedure in the Constitution, ensured its legitimacy by eliminating any other method for such a convention to come into being. By refusing Congress discretion in calling a convention, by permitting Congress to call a convention only upon application of the states, and by denying Congress authority to prevent that convention, the Founders ensured that the power of the convention call would reside with the states and the people, not Congress. Thus if Congress does not call, a convention may not occur, but Congress has no choice in calling a convention.

This unique constitutional circumstance explains why a group of states, governors or opportunistic politicians cannot simply "declare" themselves a "constitutional convention". Any amendatory proposal passed by such a convention would be patently unconstitutional because this convention would not be based on a numeric count of applications submitted by the legislatures of the states to Congress that would compel a convention call under the rubrics of Article V. Because this is the only method specified in the Constitution, any other method used to "convene" a convention to propose amendments must be construed as unconstitutional. Critics of a convention, both in and outside of Congress, who have insisted on using this bogus argument, are simply wrong.

This is not the only example of this principle in the Constitution. For example, the Constitution declares that any person elected as President must take an oath before assuming office. "Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: 'I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.'" U.S. CONST., art. II, § 1 §§ 2. Clearly, if any person, even if legally elected to the position, should fail to take this oath and attempt to exercise the powers of president, it is clear the language of the Constitution means these actions would be unconstitutional.

Does this then imply Congress is entitled to discretion in its call as it must ensure the convention is "legal"? Does it then further imply Congress is entitled to prescribe which conditions ensure the convention is "legal"? Is it then implied that if Congress determines what is a "legal" convention, it can then regulate the convention in order to ensure it complies with its definition of what is a "legal" convention? The answer is no.

As Congress has no discretion in a convention call while the state legislatures have discretion as to whether or not to apply, it follows Congress is deprived of its customary superior position in the Constitution. Instead, Congress is inferior to the states and the people, unable to add, detract or obstruct their desire for a convention.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

problem: *Congress' refusal to call a convention to propose amendments when mandated by the Constitution.* Accordingly, a suit to seek redress in a state that either does not have a law, such as Washington State, or has a law in place to elect delegates to a convention but has not exercised that law, is impossible. The issue is one of standing. The Court cannot judicially resolve the issue. A court order compelling a state election does not resolve the issue of an elected officer with no elected office to occupy. Thus, the *laches* of Congress, ignored by an action first against a state or states, negates not only the effect of the election, but simultaneously the court order as well while leaving the *laches* completely untouched.

Consequently, this suit, aimed to redress the *laches* of Congress in ignoring the Constitution, is proper as it addresses the correct issue in the correct constitutional order. Once the Court determines it is unconstitutional for Congress not to call a convention and in doing so has violated plaintiff's right to seek office and redresses both issues, then should any state be recalcitrant regarding election of delegates, proper remedy may be sought. Having eliminated the states from redress, however, does not excuse Congress.

The Court has ruled repeatedly on ballot access. No ruling gives support to a congressional *laches* that effectively eliminates an entire election. Instead the Court has held any interest the government has in regulating an election must be based on a compelling need and *must not* overburden either the election or a candidate seeking public office. The Court said:

> "Restrictions on access to the ballot burden two distinct and fundamental rights, 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters regardless of their political persuasion, to cast their votes effectively.' Williams v. Rhodes, supra, at 30. *The freedom to associate as a political party, a right we have recognized as fundamental, see 393 U.S., at 30-31, has diminished practical value if the party can be kept off the ballot*. Access restrictions also


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

implicate the right to vote because, absent recourse to referendums, 'voters can assert their preferences only through candidates or parties or both.' Lubin v. Panish, 415 U.S. 709, 716 (1974). *By limiting the choices available to voters, the State impairs the voter's ability to express their political preferences*. And for reason to self-evident to warrant amplification here, we have often reiterated that voting is of the most fundamental significance under our constitutional structure. Wesberry v. Sanders, 376 U.S. 1, 17 (1964); Reynolds v. Sims, 377 U.S. 533, 555 (1964); Dunn v. Blumstein, supra; at 336.

"*When such vital individual rights are at stake, a State must establish that its classification is necessary to serve a compelling interest*. American Party of Texas v. White, 415 U.S. 767, 780-781 (1974), Storer v. Brown, 415 U.S. 724, 736 (1974); Williams v. Rhodes, supra, at 31. To be sure, the Court has previously acknowledged that states have a legitimate interest in regulating the number of candidates on the ballot. In Lubin v. Panish, supra, at 715, we observed:

"'A procedure inviting or permitting every citizen to present himself to the voters on the ballot without some means of measuring the seriousness of the candidate's desire and motivation would make rational voter choices more difficult because of the size of the ballot and hence would tend to impede the electoral process... The means of testing the seriousness of a given candidacy may be open to debate; the fundamental importance of ballots of reasonable size limited to serious candidates with some prospects of public support is not.'

"Similarly, in Bullock v. Carter, 405 U.S. 134, 145 (1972) (footnote omitted), the Court expressed concern for the States' need to assure that the winner of an election 'is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections.' Consequently, we have upheld properly drawn statutes that require a preliminary showing of a 'significant modicum of support' before a candidate or party may appear on the ballot. Jenness v. Fortson, 403 U.S. 431, 442 (1971); see, e.g., American Party of Texas v. White, supra.

"*However, our previous opinions have also emphasized that 'even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty*,' Kusper v. Pontikes, 414 U.S. 51, 58-59 (1973), *and we have required that States adopt the least drastic means to achieve their ends*. Lubin v. Panish, supra, at 716; Williams v. Rhodes, supra, at 31-33. *This requirement is particularly important where restrictions on access to the ballot are involved*. The States' interest in screen out frivolous candidates must be considered in light of the significant role that third parties have played in the political development of the Nation. Abolitionists, Progressives, and Populists have undeniably had influences, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office."[131]

The Court has made it clear that individual judgment is required when examining actions by the government regarding restricting access to the ballot

[131] Illinois Elections Board v. Socialist Workers Party, 440 U.S. 173 (1979). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

by political candidates. Basically, the Court made it clear it would weigh the rights of the plaintiff against the need of regulation expressed by the government. The Court said:

"Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by an 'litmus-paper test' that will separate valid from invalid restrictions. Storer, supra, at 730. Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. *It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate*. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors in the reviewing court in a position to decide whether the challenged provision is unconstitutional."[132]

Having described how it determines whether a government action is unnecessarily burdensome on ballot access, the Court has set specific limits on the burdens the government may impose. In *Storer v. Brown*,[133] the Court said:

"In Williams v. Rhodes, the opportunity for political activity within either of two major political parties was seemingly available to all. *But this Court held that to comply with the First and Fourteenth Amendments the State must provide a feasible opportunity for new political organizations and their candidates to appear on the ballot. No discernible state interest justified the burdensome and complicated regulations that in effect made impractical any alternative to the major parties.* Similarly, here, we perceive no sufficient state interest in conditioning ballot position for an independent candidate on his forming a new political party as long as the State is free to assure itself that the candidate is a serious contender, truly independent, and with a satisfactory level of community support."

Thus the Court established that the government must provide a feasible opportunity for candidates to appear on the ballot. While the Court did discuss in this suit minority parties having access to the ballot as opposed to mainstream parties, the principle is not without application in this suit. Clearly an action by the government that denies access *to all candidates*

---

[132] Anderson v. Celebrezze, 460 U.S. 780 (1983). (emphasis added).
[133] 415 U.S. 724 (1974). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*seeking office regardless of political or party affiliation* because the government refuses to hold an election mandated by the Constitution falls under the terms of *Storer* and therefore is unconstitutional.

In *Bullock v. Carter*,[134] the Court said:

"Since the State has failed to establish the requisite justification for this filing-fee system, we hold that it results in a denial of equal protection of the laws. It must be emphasized that nothing herein is intended to cast doubt on the validity of reasonable candidate filing fees or licensing fees in other context. *By requiring candidates to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot, the State of Texas has erected a system that utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote on the candidates of their choice. These salient features of the Texas system are critical to our determination of constitutional invalidity*."

Again in this suit the Court emphasized an alternative means of access to the ballot for candidates as the minimum standard for a system of election to be set by the state in order to be constitutional and made it clear that using "the criterion of [the] ability to pay as a condition to being on the ballot" is unconstitutional. In this same ruling the Court discriminated between reasonable filing fees and a filing fee system that is "patently exclusionary [in] character",[135] holding the former is permissible while the latter is not.

In a suit where the Court found *in favor* of a state electoral system, the Court said:

"*In a word, Georgia in no way freezes the status quo, but implicitly recognizes the potential fluidity of American political life. ...*

"*The fact is, of course, that from the point of view of one who aspires to elective public office in Georgia, alternative routes are available to getting his name printed on the ballot*. He may enter the primary of a political party, or he may circulate nominating petitions either as an independent candidate or under the sponsorship of a political organization. We

---

[134] 405 U.S. 134 (1972). (emphasis added).
[135] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

cannot see how Georgia has violated the Equal Protection Clause of the Fourteenth Amendment by making available these two alternative paths, neither of which can be assumed to be inherently more burdensome than the other."[136]

As the Court summarized in yet another suit where it found for a state electoral system, the Court said:

"In sum, Texas 'in no way freezes the status quo, but implicitly recognizes the potential fluidity of American political life.' Jenness v. Fortson, 403 U.S., at 439. It affords minority political parties a real and essentially equal opportunity for ballot qualification. Neither the First and Fourteenth Amendments nor the Equal Protection Clause of the Fourteenth Amendment requires any more."[137]

If there is a basic theme behind all these court rulings, it is the clear propensity to provide access to the ballot as broad as possible for candidates of all political stripes. The Court has recognized the states do have an interest in preserving an orderly election, but not at the expense of obstructing electors from voting for candidates representing their political point of view.

Based on the above suits, Congress clearly fails any reasonable court test regarding ballot access by candidates such as the plaintiff for convention delegate. Congressional *laches* not only prevents independent candidates, but small party candidates, startup party candidates, major party candidates, conservative candidates, liberal candidates, reactionary candidates and even radical candidates from seeking the elected office of convention delegate. In short, Congress *prevents every candidate of any possible description from seeking the office of convention delegate.* This *laches* not only serves to "freeze the status quo" but sets it in concrete.

---

[136] Jenness v. Fortson, 403 U.S. 431 (1971). (emphasis added).
[137] American Party of Texas v. White, 415 U.S. 767 (1974).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Such a “preservation” is a clear violation of plaintiff’s right to seek public office.

Injury: Congress’ *laches* in failing to call a convention when constitutionally mandated has denied the right of plaintiff to seek elective office.

Causal Relationship: In failing to call a convention to propose amendments as mandated by the Constitution, Congress has caused a series of events responsible for denying the plaintiff his constitutional right to seek elective office in this situation.

Remedy: In compelling Congress to call a convention, the Court creates a series of events which allows the plaintiff to seek elective office.

## ISSUE OF STANDING (6): VIOLATION OF CONSTITUTION *PER SE*

*The laches of Congress in not calling a convention to propose amendments when mandated by the Constitution is a violation of the Constitution per se.*

### *The Transgression of Fairchild*

Can the federal government ignore an expressed clause of the United States Constitution that compels an action to which the government objects?


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

May it veto the clause with impunity? Or is the government, like the citizens whose sovereign power created the Constitution, bound to the Constitution and the law it created without exception? If the constitutional clause is all the law that exists to compel governmental action, is this sufficient *per se*, or must the Constitution suffer consent on the part of government before the clause is effective? If the government ignores an expressed clause, do citizens have the right to require the government to obey their Constitution simply because they expect the government, like themselves, to be administered according to the law, regardless if that law is the Constitution or a statutory law?

At one time the Court held that citizens do possess the right to require the government to be administered according to law. The Court stated:

> "Plaintiff's alleged interest in the question submitted is not such as to afford a basis for this proceeding. It is frankly a proceeding to have the Nineteenth Amendment declared void. In form it is a bill in equity; but it is not a case, within the meaning of section 2 of article 3 of the Constitution, which confers judicial power of the federal courts, for no claim of plaintiff is "'brought before the court[s] for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs,'" See In re Pacific Railway Commission (C.V.) 32 Fed. 241, 255, quoted in Muskrat v. United States, 219 U.S. 346, 357, 31 S. Sup. Ct. 250. ...
>
> "*Plaintiff has only the right, possessed by every citizen, to require that the government be administered according to law* and that the public monies be not wasted. Obviously *this general right* does not entitle a private citizen to institute in the federal courts a suit to secure *by indirection* a determination whether a statute, if passed, or a constitutional amendment, about to be adopted, will be valid."[138]

Thus, the Court acknowledged the general right of citizens to *require* the government "be administered according to law" but said *this general right does not allow a private citizen to institute a suit by indirection to secure a determination on whether a statute or amendment is valid.* The Court *did not*

[138] Fairchild v. Hughes, 258 U.S. 126 (1922). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

remove the right. Instead it said any attempt to mislead the Court as to the object sought by the citizen would not be allowed. Significantly, the Court did not discriminate between statutory and constitutional law, just as the Constitution does not differentiate between ordinary statutory law and *supreme* law of the land, i.e., law exclusively within the Constitution itself.[139] Thus, it is a reasonable assumption the Court intended citizens to have the right of redress for either simply because the government violated one or the other form of law.

At first the Court supported the *Fairchild* decision[140] but in recent decisions began adding stipulations[141] that reinterpreted the right of citizens

---

[139] *See infra* text accompanying notes 1533-1535.

[140] "The Court held that the plaintiffs' alleged interest in the question submitted was not such as to afford a basis for the proceeding; that the plaintiffs had only the right possessed by every citizen 'to require that the government be administered according to law and that public moneys be not wasted' and that this general right did not entitle a private citizen to bring such a suit as the one in question in the federal courts. It would be difficult to imagine a situation in which the adequacy of the petitioners' interest to invoke our appellate jurisdiction in Leser v. Garnett, supra, could have been more sharply presented.

"The effort to distinguish that case on the ground that the plaintiffs were qualified voters in Maryland, and hence could complain of the admission to the registry of those alleged not to be qualified, is futile. The interest of the plaintiffs in Leser v. Garnett, supra, as merely qualified voters at general elections is certainly much less impressive than the interest of the twenty senators in the instant case." Coleman v. Miller 307 U.S. 433 (1939).

[141] "The [district] court first rejected the contention that the appellees were without standing to sue because they allegedly had no more than 'a general interest in seeing that the law is enforced.'...

"The appellants challenge the appellees' standing to sue, arguing that the allegations in the pleadings as to standing were vague, unsubstantiated, and insufficient under our recent decision in Sierra Club v. Morton, supra. The appellees respond that unlike the petitioner in Sierra Club, their pleadings sufficiently alleged that they were 'adversely affected' or 'aggrieved' with the meaning of 10 of the Administrative procedure Act... We agree. ...

"Relying upon our prior decisions in Data Processing Service v. Camp, 397 U.S. 150 and Barlow v. Collins, 397 U.S. 159, we held that 10 of the APA conferred standing to obtain judicial review of agency action only upon those who could show '*that the challenged action caused them "injury in fact," and where the alleged injury was to an interest "arguably within the zone of*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

to require the government to be administered according to law. Ultimately these interpretations led the Court to entirely discard the right of a citizen to seek redress simply because he desired the government to be administered according to law, most especially if the law was a constitutional clause.[142]

In place of the right of citizens to require the government to be administered according to law and seek redress simply because the government violated the law, the Court created the doctrine of standing.[143] Standing establishes conditions, subject entirely to Court discretion, that a citizen must satisfy *before* being allowed by the Court to seek redress. None of these

---

*interest to be protected or regulated" by the statutes that the agencies were claimed to have violated.'*...

"*In Sierra Club, though, we went on to stress the importance of demonstrating that the party seeking review be himself among the injured*, for it is *this requirement* that gives a litigant a direct stake in the controversy and *prevents the judicial process from becoming no more than a vehicle for the vindication of the value interest of concerned bystanders. ..*

"To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could no questioned by nobody;. We cannot accept that conclusion." United States v. SCRAP, 412 U.S. 669 (1973). (emphasis added).

Thus the Court, while still accepting the premise of *Fairchild*, added the severe provision that only those who were "injured in fact" were entitled to bring suit, referring to citizens who wanted the government to obey the law but not necessarily directly affected by the government ignoring the law, as "no more than a vehicle for the vindication of the value interest of concerned bystanders."

The only conclusion that can be drawn from the Court's statement is that it considered citizens expecting their government to be administered according to the law to be of no constitutional value and thus deserving no constitutional protection. The only conclusion that can be drawn from this is the Court sanctioned the government not being bound to the law, including the Constitution itself.

[142] "The complaint in this case shares a common deficiency with those in Schlesinger and Richardson. *Although respondents claim that the Constitution has been violated, they claim nothing else*. They fail to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees." Valley Forge College v. Americans United For Separation of Church and State, Inc., et al., 454 U.S. 464 (1982). (emphasis added).

[143] *See supra* text accompanying note 17.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

conditions are expressed in the Constitution.[144] These conditions therefore are based entirely on the Court's interpretation of the Constitution, which in turn is based not a constitutional clause, but an early Court ruling.[145] This Court doctrine was arrived at despite the Court's admission that standing is confusing and subject to "considerations" outside the Constitution that may have been created by the Court in order to satisfy its own needs rather than that of the Constitution.[146] By employing standing to determine whether a citizen is "entitled"[147] to redress, the Court assumes the discriminatory role

---

[144] "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States and Treaties made, or which shall be made, under their Authority;--to all cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;---to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under the Grants of different States, and between a state, or the Citizens thereof, and foreign states, citizens or Subjects." U.S. CONST., art. III, § 2 §§ 1.

[145] "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule." Marbury v. Madison, 5 U.S. 137 (1803).

[146] "The term 'standing' subsumes a blend of constitutional requirements and prudential considerations, and it has not always been clear in the opinions of this Court whether particular features of the 'standing' requirement have been required by Art. III ex proprio vigore, or *whether they are requirements that the Court itself has erected and which were not compelled by the language of the Constitution*. ...

"We need not mince words when we say that the concept of Art. III *standing has not been defined with complete consistency in all of the various cases decided by this Court* which have discussed it nor when we say that *this very fact is probably proof that the concept cannot be reduced to a one-sentence or one-paragraph definition*. *But of one thing we may be sure: Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States*." Valley Forge College v. Americans United For Separation of Church and State, Inc., et al., 454 U.S. 464 (1982).

"Ex proprio vigore. By their own force" BLACK'S LAW DICTIONARY 6th ed. (1990). (emphasis added).

[147] "In essence the question of standing is whether the litigant *is entitled* to have the court decide the merits of the dispute or of particular issues. The inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise. E.g., Barrows v. Jackson, 346 U.S.

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

of gatekeeper with respect to a citizen's right of redress. Therefore, while the Court rejected a citizen's right *to require* the government be administered according to law, its reasons for doing so have not been compelled by constitutional edict but Court convenience. If this is so, as its own words appear to indicate, then it was simply for its own convenience that the Court chose to reject the right of a citizen to require the government to obey the law, be it statutory or law wholly in the Constitution in favor of its own discriminatory power.

*The Overlooked Imperatives*

---

249, 255-256 (1953). In both dimensions it is founded *in concern about the proper—and properly limited - role of the courts in a democratic society.*

"In its constitutional dimension, standing imports justiciability, whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. ... *The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally*.

"*Apart from this minimum constitutional mandate, this Court has recognized other limits on the class of persons who may invoke the courts' decisional and remedial powers.* First, the Court has held that when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. E.g., Schlesinger v. Reservists to Stop the War, supra; United States v. Richardson supra; Ex parte Levitt, 302 U.S. 633, 634(1937). Second, even when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. E.g., Tileston v. Ullman, 318 US. 44 (1943). See United States v. Raines, 362 US. 17 (1960); Barrows v. Jackson, supra. *Without such limitations—closely related to Art. III concerns but essentially matters of judicial self-governance*—the courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights. See e.g. Schlesinger v. Reservists to Stop the War, 418 U.S. at 222." Warth v. Seldin, 422 U.S. 490 (1975). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

What the Court has conveniently ignored is whether the Constitution, most especially the doctrine of equal protection as already interpreted by the Court, *permits* the Court the option to invent standing at all or, if standing *may exist*, permits the Court any discretion in its administration.[148] For all intents and purposes standing is nothing more than a form of license issued by the Court, the terms, conditions *and administration* of which are entirely under Court control. The effect of this license is to grant whether or not a citizen is "entitled" to redress according to Court interpretation of law, an interpretation that by Court admission has shifted virtually on a suit-by-suit basis. This license exists despite the expressed, unconditional First Amendment guarantee of the right of the people to seek redress.[149] The Constitution clearly prevents Congress from interfering with this right.[150] Yet the Court, apparently through the doctrine of standing, holds itself above this expressed language *and its own conclusions on the subject*.

Beyond the First Amendment language, Article III states (in part):

---

[148] The Court has made it clear from the very beginning of its presumption of judicial review that constitutional intent must hold sway over ordinary legislation. The ruling is equally applicable to the Court itself, that the intent and meaning of the Constitution overrides a judicial ruling both as pertaining to intent and to the administration of that ruling. Where there is conflict between a ruling and the Constitution, the ruling must fall.

"If then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply." Marbury v. Madison, 5 U.S. 137 (1803).

[149] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; *or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances*." U.S. CONST., First Amendment. (emphasis added).

[150] *See supra* text accompanying note 61.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"[t]he judicial Power *shall extend to all* Cases, in Law and Equity, arising under this Constitution, the Laws of the United States and Treaties made, or which shall be made, under their Authority..."[151]

This clause contains two non-discretionary imperative commands, "shall"[152] and "all,"[153] which are as conclusive and mandatory on the judiciary as they are anywhere else the Founders employed them in the Constitution. In conjunction with the word "extend"[154] (which implies *expanding* the power rather than *reducing* in any manner) the words present the Court no discretion[155] as to applying judicial[156] power.[157] Yet by creating standing, the Court has retracted. This contradiction demands resolution.

---

[151] For full text, *see supra* text accompanying note 144.
[152] *See infra* text accompanying notes 853,860.
[153] "All. Means the whole of---used with a singular noun or pronoun, and referring to amount, quantity, extent, duration, quality, or degree. The whole number or sum of ---used collectively, with a plural noun or pronoun expressing an aggregate. Every number of individual component of; each one of---used with a plural noun. In this sense, all is used generically and distributively. 'All' refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves. State v. Hallenberg-Wagner Motor Co., 341 Mo. 771, 108 S.W.2d 398, 401." BLACK'S LAW DICTIONARY 6th ed. (1990).
[154] "Extend. Term lends itself to great variety of meanings, which must in each case be gathered from context. It may mean to expand, enlarge, prolong, lengthen, widen, carry or draw out further than the original limit; *e.g.*, to extend the time for filing an answer, to extend a lease, term of office, charger, railroad tract, etc. Keetch v. Cordner, 90 Utah 423, 62 P.2d 273, 277. To stretch out or to draw out. Loeffler v.. Federal Supply Co., 187 Okl. 373, 102 P.2d 862, 864." *Id*.
[155] For the Court to have discretion would have involved the Founding Fathers using the word "may" which they did on several occasions in the Constitution, i.e.: "Each House may determine the Rules of its proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member." (U.S. CONST., art I, § 5, §§ 2); The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their votes; which Day shall be the same throughout the United States." (U.S. CONST., art. II, § 1, §§ 4). The term "may" clearly implies the power *not to do something at all* along with the usual power of choosing what to do within the given parameters of the specific power. Hence, there is a clear distinction by the Founders in the use of the word "shall" and the word "may."
[156] "Judicial. Belonging to the office of a judge; as judicial authority. Relating to or connected with the administration of justice; as a judicial officer. *Having the character of judgment or formal legal procedure*; as a judicial act. Proceeding from a court of justice; as a judicial writ, a

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

At the outset it is obvious the words do not allow the Court a choice as to *whether or not judicial power shall apply to a case*[158] *or controversy*[159] *or any other form of redress specified in the Constitution*. For the Court to presume it can hold the states, citizens, as well as other branches of government accountable to the Constitution where the word "shall" is used, yet hold itself exempt to that same accounting, is clearly unconstitutional.[160]

---

judicial determination. Involving the exercise of judgment or discretion; as distinguished from *ministerial*." BLACK'S LAW DICTIONARY 6th ed. (1990).

[157] "Power. The right, ability, authority, or faculty of doing something. Authority to do any act which the grantor might himself lawfully perform. Porter v. Household Finance Corp. of Columbus, D.C. Ohio, 385 F.Supp. 336, 341." *Id*.

[158] "Case. A general term for an action, cause, suit, or controversy, at law or in equity; a question contested before a court of justice; an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice. A judicial proceeding for the determination of a controversy between parties wherein rights are enforced or protected, or wrongs are prevented or redressed; any proceeding judicial in its nature." *Id*.

[159] "Cases and controversies. This term, as used in the Constitution of the United States, embraces claims or contentions of litigants bought before the court for adjudication by regular proceedings established for the redress, or punishment of wrongs; and whenever the claim or contention of a party takes such a form tat the judicial power is capable of acting upon it, it has become a case or controversy. Interstate Commerce Com'n. v. Brimson, 154 U.S. 447, 14 S.Ct. 1125, 38 L.Ed. 1047. The federal courts will only consider questions which arise in a 'case or controversy', i.e., only justiciable cases. Art. III, Sec. 2, U.S. Const. The case or controversy must be definite and concrete, touching the legal relations of parties having adverse interests. The questions involved must not be moot or academic, nor will the courts consider collusive actions. Aetna Life Ins. Co. v. Haworth, 300 U.S. 229, 240, 241, 57 S.Ct. 461, 464, 81 L.Ed. 617. The facts in controversy, under all circumstances, must show a substantial issue between the parties having adverse legal interests of sufficient immediacy and reality to warrant issuance of a judgment. Adams v. Morton, C.A. Mont., 581 F.2d. 1314, 1319." *Id*.

While the term "case" and "case or controversy" appear to be a redundancy, the fact is there is a distinct difference in that the federal courts reserve to themselves the role of gatekeeper by the use of standing to determine whether a citizen is "entitled" to redress under the protection of the Constitution. The general term "case" does not include this discrimination and thus cannot be applied as a definition in this issue.

[160] A Court position supporting this would be a clear violation of separation of powers and federalism. It is a well understood principle that the branches of the federal government are *co-equal*. Thus, if the Court holds the other branches, states and citizens must be bound by the Constitution, then so must the Court.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Therefore, as the imperative “shall” is used regarding judicial power in conjunction with the totally inclusive word “all,” it is clear the judicial power granted by the Constitution is to be extended to “all” cases “arising under this Constitution” *with no discretion on the part of the Court to disallow any case*. Certainly the Court is empowered to use its judicial power to resolve an issue on the basis of the meaning and intent of the Constitution. *There is, however, no language in the Constitution supporting the notion the Court can decide an issue based on its own “convenience” or “self-governance.”* Such a method of determination would be discriminatory *per se*[161] as it provides discretion by the Court when none was intended nor permitted.

*The Court Justification of Standing*

The Court justifies the doctrine of standing by holding the doctrine prevents the Court from exceeding its constitutional limit of power. According to the Court this limit of power confines the Court only to deciding on issues that in some manner affect the rights of individuals. The Court’s power *does not extend* to ensuring the legality of government acts, according to the Court. If the Court were to attempt to ensure that the government acted in compliance with the Constitution, the Court has said, it would become no more

[161] ”Per se Lat. By itself; in itself; take alone; by means of itself; through itself; inherently; in isolation; unconnected with other matters; simply as such; in its own nature without reference to its relation.” BLACK’S LAW DICTIONARY 6th ed. (1990).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

than a forum for public discourse on the actions of the federal government.[162] There is, however, a significant difference between "a party request[ing] a court of the United States to declare its legal rights,"[163] and a citizen asking the court to enforce the law, or more specifically, "*to require* that the government be administered according to law."[164] The former involves the Court declaring or clarifying rights guaranteed a citizen in the Constitution. The latter deals with the most basic, fundamental principle in this nation: that government is bound, limited and regulated by force of law emanating from the sovereign power of the people which the government is powerless to ignore.

The doctrine expressed in *Fairchild* that citizens have the right to require government be administered according to the law did not deal with individual rights. It dealt with the right of every sovereign citizen to

---

[162] "We lack that confidence in cases such as Frothingham where a taxpayer seeks to employ a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System." Flast v. Cohen, 392 U.S. 83 (1968).

[163] "Article III of the Constitution limits the 'judicial power' of the United States to the resolution of 'cases' and 'controversies.' The constitutional power of federal courts cannot be defined, and indeed has no substances, without reference to the necessity 'to adjudge the legal rights of litigants in actual controversies.' Liverpool S.S. Co. v. Commissioners of Emigration, 113 U.S. 33, 39 (1885). *The requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights*, and has couched that request for forms of relief historically associated with courts of law in terms that have a familiar ring to those trained in the legal process. The judicial power of the United States defined by Art. III is not an unconditioned authority to determine the constitutionality of legislative or executive acts. The power to declare the rights of individuals and to measure the authority of governments, this Court said 90 years ago, 'is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy.' Chicago & Grand Trunk R. Co. v. Wellman, 143 U.S. 339, 345 (1892). Otherwise, the power 'is not judicial in the sense in which judicial power is granted by the Constitution to the courts of the United States.' United States v. Ferreira, 13 How. 40 48 (1852)." Valley Forge College v. Americans United For Separation of Church and State, Inc., et al., 454 U.S. 464 (1982). (emphasis added).

[164] *See supra* text accompanying note 138.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

assert this most basic fundamental right. It addressed the *collective* right *and reasonable expectation of all sovereign American citizens* that they have *the right to require and demand* their government to be administered according to law whether that law is contained within a statute or the Constitution. In short, they, the sovereign citizens, expect no more of their government than they demand of themselves.

An specific act of government may indeed violate a right of an individual citizen just as a specific act of an individual may violate another individual's rights. These unlawful acts certainly are entitled to redress in the courts. However, an act of government that violates law, most especially a law exclusively expressed in the Constitution, does not necessarily translate into a violation of *individual rights guaranteed by that document*. Nevertheless, rights have been transgressed. The reason is many rights guaranteed by the Constitution do not fit neatly under the heading of "individual rights."

Instead these rights, usually viewed as structural or procedural clauses, fall under the category of *collective* or *per se* rights. However labeled, they are as fundamental and equally valid law as the more popular "individual" rights in the Constitution. The Constitution is "supreme law of the land"[165] with no qualifiers. Thus, there is no part of the Constitution that is not "supreme law of the land." In refusing to call a convention when

[165] "*This Constitution*, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, *shall be the supreme Law of the Land*..." U.S. CONST., art. VI, § 2. (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the two-thirds requirement of Article V is satisfied, Congress violates a collective or per se right of citizens guaranteed by the Constitution, that it shall call a convention. The supreme law of the land is therefore violated, and thus the act of Congress is unconstitutional.[166]

However, in decisions regarding its own judicial power,[167] the Court has stated it is "limited" by the doctrine of standing[168] to only deciding "cases" or "controversies"[169] that the Court states only allow it to act if the rights

---

[166] "Unconstitutional. That which is contrary to or in conflict with a constitution. The opposite of 'constitutional.' Norton v. Shelby County, 118 U.S. 425, 6 S.Ct. 1121, 30 L.Ed. 178.

"This word is used in two different senses. One, which may be called the English sense, is that the legislation conflicts with some recognized general principle. This is no more than to say that it is unwise, or based upon a wrong or unsound principle, or conflicts with a generally accepted policy. The other, which may be called the American sense, is that the legislation conflicts with *some provision of our written Constitution, which it is beyond the power of a legislative body to change.* U.S. v. American Brewing Co., D.C.Pa., 1 F.2d 1001, 1002." BLACK'S LAW DICTIONARY 6th ed. (1990). (emphasis added).

[167] *See supra* text accompanying note 144.

[168] *See supra* text accompanying notes 77,185.

[169] "The jurisdiction of federal courts is defined and limited by Article III of the Constitution. In terms relevant to the questions for decision in this case, the judicial power of federal courts is constitutionally restricted to 'cases' and 'controversies.' As is so often the situation in constitutional adjudication those two words have an iceberg quality, containing beneath their surface simplicity submerged complexities which go to the very heart of our constitutional form of government. Embodied in the words 'cases' and 'controversies' are two complementary but somewhat different limitations. In art those words limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process. And in part those words define the role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas committed to the other branches of government. Justiciability is the term of art employed to give expression to this dual limitation placed upon federal courts by the case-and-controversy doctrine.

"Justiciability is itself a concept of uncertain meaning and cope. Its reach is illustrated by the various grounds upon which questions sought to be adjudicated in federal courts have been held not to be justiciable. Thus, *no justiciable controversy is presented when the parties seek adjudication of only a political question, when the parties are asking for an advisory opinion, when the question sought to be adjudicated has been mooted by subsequent developments, and when there is no standing to maintain the action*. Yet it remains true that '[j]usticiability is... not a legal concept with a

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

of individual citizens are somehow transgressed. Therefore, according to the Court's rulings that created standing, Congress' refusal to call a convention despite a clear constitutional mandate to do so, violating the supreme law of the land, must be ignored because it does not violate a specific individual right expressed somewhere in the Constitution. By administering standing in this manner, the Court is able to discriminate against citizens seeking redress on issues the Court, for whatever non-constitutional reasons, prefers *not* to decide. In effect the Court has established a double standard: those

---

fixed content or susceptible of scientific verification. Its utilization is the resultant of many pressures...'" Poe v. Ullman, 367 U.S. 497, 508 (1961).

"*Part of the difficulty in giving precise meaning and form to the concept of justiciability stems from the uncertain historical antecedents of the case-and-controversy doctrine*. ... Thus, the implicit policies embodied in Article III... impose the rule against advisory opinions on federal courts. *When the federal judicial power is invoked to pass upon the validity of actions by the Legislative and Executive Branches of the Government, the rule against advisory opinions implements the separation of powers prescribed by the Constitution and confines federal courts to the role assigned them by Article III*. ... Consequently, the Article III prohibition against advisory opinions reflects the complementary constitutional considerations expressed by the justiciability doctrine. Federal judicial power is limited to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally though to be capable of resolution through the judicial process." Flast v. Cohen, 392 U.S. 83 (1968). (emphasis added).

"Article III of the Constitution limits the 'judicial power' of the United States to the resolution of 'cases' and 'controversies.'" Valley Forge College v. Americans United for Separation of Church and State, Inc., et al., 454 U.S. 464 (1982).

Interestingly, the Court *assumes* the power "to pass upon the validity of actions by the Legislative and Executive Branches of the Government," i.e., declare such actions unconstitutional, or veto these actions based on the language of Article III. However, just as there is no language creating standing, there is no such language in Article III granting the Court such power. Indeed, it could be argued that whenever the Court does declare an action of the other two branches unconstitutional (or overturns a previous decision by itself which it prescribed was constitutional), that it is merely offering an advisory opinion to that branch *that thus far it has accepted but is under no constitutional obligation to do so.* The question then is, does the Court use standing because it is demanded by the Constitution, or does it employ standing merely because of its fear of being overwhelmed by the other two branches should it stray too far from enforcing the standards of that document upon them when they would politically prefer it otherwise?


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

clauses in the Constitution that the Court will enforce and those it chooses not to. The Court therefore holds in its doctrine of standing that it has the power to exclude certain parts of the Constitution from being "supreme law of the land," a direct contradiction of an expressed provision of the Constitution. The Court has repeatedly ruled it may neither subtract or add to the language of the Constitution, i.e., amend the Constitution by judicial decree.[170] By its own rulings, therefore, the Court must include all words used in the Constitution defining its power, none of which may be subjugated or ignored.[171]

The right of redress expressed in *Fairchild* is a fundamental right of all citizens to expect their government to be confined, regulated and limited by the expressed provisions of the Constitution. It is not some general public interest analogous to citizens watching a parade pass and is of such inconsequence that it may be summarily dismissed by the Court. The presumption by any branch of the government that it may expand beyond these expressed limits, unfettered by any effort from citizens seeking to compel a limited government because that government finds the citizens do not possess "standing" to do so, defeats the entire purpose of the Constitution. As such,

---

[170] *See infra* text accompanying notes 95,100,203,278,284,548,551,572,642, 784,833,1120,1276,1293,1533.

[171] As the Court has assumed judicial review or veto of a legislative, executive, state or individual citizen action without expressed constitutional support, creating such a power, it can be argued such a power is entirely for Court "self-governance" or done for the "convenience" of the Court. The only expressed veto in the Constitution is presidential veto of congressional legislation *but with the provision that ultimately the people, through their representatives, have the final say in the issue.* The Court has not seen fit to provide an equivalent method of redress where the sovereign power of this nation, i.e., the people, can review a Court decision and pass final judgment on it as to whether or not they *consent* to this veto.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the presumption is inherently and blatantly unconstitutional, *per se*. However contrived, even a ruling or rulings by the Supreme Court does not make this fact any less salient especially when such rulings are based on Court "convenience" or "self-governance."

The Founders did not conceive standing; it is a totally modern Court creation. Had they desired such a doctrine for the Court, they would have put such discretion in the Constitution. Instead, they established absolutes in the Constitution using words such as "shall"[172] and "all" designed and intended to provide no options to those so affected. The Founders placed such limitations in the Constitution as protections against tyrannical abuse by the government.[173] Every time government creates an option in the Constitution where none exists, it breaks a limitation created by the Founders.

Standing, as administered by the Court, allowing for a separate but equal standard of judgment as well as providing discretion to ignore the collective and per se rights of the Constitution, is no less an injury to the intentions of the Founders. These collective or per se rights have nothing to

---

[172] "When a term which has been used plainly in a limited sense in the constitution respecting the legislative and executive department is also employed in that which respects the judicial department, it must be understood as retaining the sense originally given to it." Hepburn v. Ellzey, 6 U.S. 445 (1805).

[173] The entire issue of freedom versus tyranny is a question of options and who shall possess them. If a nation is free, then most of the options of actions lie with the people, i.e., the government has no power to restrict these options. In a tyranny, the options lie entirely with the government, and the people have little or none. In a manner of speaking therefore, a tyranny is an absolute democracy for those in power because it has every option at its disposal. Realizing a government, like people, will naturally attempt to assume more power, i.e., more freedom, the Founders employed imperatives throughout the Constitution designed to limit these freedoms on the part of the government, i.e., reduce the possibility of tyranny occurring.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

do with individual rights because they do not, and never were intended to, deal with individual rights.[174] But they have everything to do with preventing tyranny by the government. In this, they are essential to the liberty of this nation. Yet, under the doctrine of standing, these rights are excluded by the Court from judicial review and hence, full constitutional protection.

Thus, in its administration of standing, the Court edits the Constitution as to extent and meaning, something the Court has maintained it does not have the power do.[175] Instead of formulating a unified definition of this Court-created power permitting all citizens to redress *all the law expressed in the Constitution*, the Court, presumably for its "convenience" and "self-governance," has seen fit to define "case" or "controversy" in ambiguous, fluctuating terms. Having seen fit to define these words, it is free to alter the definition through various interpretations of standing, adding and subtracting meanings as discretion dictates, so as to selectively determine whether a citizen is "entitled" to the right of redress. In focusing entirely on the meaning of "cases" and "controversies" rather than the entire phrase in the Constitution that defines its power and by ruling the Court interpretation of those phrases limits the Court to decide on issues exclusive to individual rights, rather than deciding on violations of all expressed

---

[174] Such clauses include, but are certainly not limited to, members of Congress being elected (art. I, § 2, §§ 1); the right of Congress to assemble once a year (art. I, § 4, §§ 2); public records of proceedings (art. I, § 5, §§ 3); a public procedure for passing public laws (art. 1, § 7, §§ 2); specified powers of Congress (art. I, § 8); public record of public expenditures (art. I, § 9, §§ 7); election of an executive (art. II, § 1, §§ 2-4); full faith and credit to state acts, records and proceedings (art. IV, § 1); amendatory control of the Constitution by at least one method outside the influence and control of the government (art. V).

[175] *See supra* text accompanying note 170.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

clauses of the Constitution, the Court has avoided the clear intent and effect of the imperative commands of the Constitution. This separation has left the Court unable to rule on some of the most fundamental clauses of the Constitution because they do not relate to individual rights. Consequently, the Court's self-imposed segregation effectively means the Court can only rule *on parts* of the Constitution, rather than the entire instrument. However, nowhere in the Constitution is such a limitation on the Court stated or implied.[176]

*The Suit and Equity Issue*

Among other words in the Constitution the Court has avoided in its discussion of standing are "suit"[177] and "equity".[178] As the word "suit" in the

[176] There is no clause in the Constitution stating: "Judicial power shall extend to all cases, in law and equity, arising under this Constitution *except where the Court by its determination for its convenience and self-governance shall find a citizen desiring redress for a violation of law by the government does not deserve the right to sue for such redress*." Yet this is precisely the provision the Court has inserted into the Constitution by its edicts creating standing, yet holding such *cannot be done* by other branches of the government. *See infra* text accompanying notes 189,261,527,670,728,1034.

Of course, there is nothing to prevent the Court from seeking such a limitation by requesting of Congress or the states that an amendment be passed so applying such a limitation. To date, however, no such request has been made by the judiciary.

Those who would argue this would be an impossible situation in which to govern, requiring an amendment to the Constitution each time the government wished to extend its powers, and there were no *expressed provision nor reasonable* implication to do so, fail to grasp the core concept of the intent of the Founders: this is the way it's supposed to be. This is how the government *is supposed* to be limited- with specified powers that cannot be exceeded except by amendment.

[177] "Suit. A generic term, of comprehensive signification, referring to any proceeding by one person or persons against another or others in a court of

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Eleventh Amendment[179] speaks *directly* to judicial power, the word is significant. Under the terms of Article V, the word "suit" has the full force and effect as the rest of the Constitution and is equal in weight and effect to the words "case" and "controversy".[180] It cannot be ignored by the Court. Nor may the Court assume the word is merely shorthand for "case" or "controversy" as the Constitution does not so state this.[181] Further, the definition of the word "suit" and the Court's own language precludes such a

---

law in which the plaintiff pursues, in such court, the remedy which the law affords him for the redress of any injury or the enforcement of a right, whether at law or in equity. Kohl v. U.S., 91 U.S. 367, 375, 23 L.Ed. 449; Weston v. Charleston, 27 U.S. (2 Pet.) 449, 464, 7 L.Ed. 481; Syracuse Plaster Co. v. Agostini Bros. Bldg. Corporation, 169 Misc. 564, 7 N.Y.S.2d 897. It is, however, seldom applied to a criminal prosecution. And it was formerly sometimes restricted to the designation of a proceeding inequity, to distinguish such a proceeding from an action at law. Term 'suit' has generally been replaced by term 'action'; which includes both actions at law and in equity. Fed. R. Civil P.2." BLACK'S LAW DICTIONARY 6th ed. (1990). *See also infra* text accompanying note 182.

[178] "Equity. Justice administered according to fairness as contrasted with the strictly formulated rules of common law. It is based on a system of rules and principles which originated in England as an alternative to the harsh rules of common law and which were based on what was fair to a particular situation. One sought relief under this system in courts of equity rather than in courts of law. The term 'equity' denotes the spirit and habit of fairness, justness, and right dealing which would regulate the intercourse of men with men. Gilles v. Department of Human Resources Development, 11 Cal.3d 313, 113 Cal. Rptr. 374, 380, 521 P.2d 110. Equity is a body of jurisprudence, or field of jurisdiction, differing in its origin, theory, and methods from the common law; though procedurally, in the federal courts and most state courts, equitable and legal rights and remedies are administered in the same court." BLACK'S LAW DICTIONARY 6th ed. (1990).

[179] "The Judicial power of the United States shall not be construed to extend *to any suit* in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of Subjects of any Foreign State." U.S. CONST., Eleventh Amendment. (emphasis added).

[180] *See supra* text accompanying note 2.

[181] This fact alone defeats the Court's position on its judicial power being limited to case and controversy. *See supra* text accompanying note 179.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

conclusion[182] even though the modern definition of the word "suit" has been replaced by the word "action."[183]

The Eleventh Amendment precluded one specific type of suit, i.e., a suit by citizens of one state against another state, but the language clearly did not eliminate *all suits*. Instead, it *added new language to the Constitution,*

---

[182] "In Weston v. Charleston, 2 Pet. 464, Chief Justice Marshall, speaking for this court, said, 'The term [suit] is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords. The modes of proceeding may be various; but, if a right is litigated in a court of justice, the proceeding by which the decision of the court is sought is a suit.' A writ of prohibition has, therefore, been held to be a suit; so has a writ of right, of which the Circuit Court has jurisdiction; (Green v. Liter, 8 Cranch, 229); so has habeas corpus. Holmes v. Jamison, 14 Pet. 564. When, in the eleventh section of the Judiciary Act of 1789, jurisdiction of suits of a civil nature at common law or in equity was given to the circuit courts, it was intended to embrace not merely suits which the common law recognized as among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined as distinguished from rights in equity, as well as suits in admiralty." Kohl v. United States, 91 U.S. 367 (1875).

[183] It is a well established practice of the Court to judge the Constitution not on the basis of the original intent of the Framers, but as a "living document," i.e., deciding an issue not on the original intent of the Framers or writers of an amendment, but instead in the light of the full flower of current, modern day life. (E.g.: "In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. *We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws*." Brown v. Board of Education, 347 U.S. 483 (1954). (emphasis added).

If that legal philosophy is applied in this instance, then by modern interpretation, rather than the original intent, (*see supra* text accompanying note 177) the word "suit" means no more than an "action". Thus, the Constitution allows "actions" under law or equity meaning the Constitution clearly allows for Court redress if a law is violated (under law) or *if there is some unfair action of a party* (equity). The equity part of the Constitution, most especially as interpreted by the Court in modern times, has become an expressed term so broad and vague in current meaning as to be virtually limitless.

Equity deals with fairness and feelings. Any issue a party brings to court today can meet this minimum standard: that the party has been treated unfairly. The expressed term "suit" as interpreted under modern standards defeats current interpretation of standing because (1) the language the Court uses for its justification no longer exists in the Constitution or has been modified by amendment, and (2) it is based on implied meaning rather than expressed text, which seeks to discriminate against certain actions. Thus standing is not constitutional.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*language effecting judicial power that did not exist prior to the ratification of the amendment*, creating an entirely new description of redress involving the judiciary. Thus, judicial power extends to cases, controversies *and suits*, *or it is entirely possible the amendment has removed the cases and controversies clause entirely from the Constitution*.[184] In any event, as the

[184]"Amendment. To change or modify for the better. To alter by modification, deletion, or addition." BLACK'S LAW DICTIONARY 6th ed. (1990).

There are two possible interpretations of the effect of the Eleventh Amendment on the cases and controversies clause, neither of which allows the Court to retain its present limited interpretation of the case and controversy clause. The Eleventh Amendment either added to the clause or replaced it entirely.

If the most basic premise of an amendment to the Constitution is accepted, that an amendment modifies the Constitution (including the Court's powers), and once this amendment is ratified, the Court is bound to interpret the Constitution based on that amendment's effect rather than the original effect and language of the Constitution, then as the Eleventh Amendment introduced the word "suit" into the Constitution and linked it to judicial power, the question is what is the intent of the word "suit" *as opposed to the original meaning and intent of the phrase "cases and controversies" that the word "suit" has replaced or modified*? It is clear the clause "case and controversy" *cannot* be considered interchangeable or have the same meaning as the word "suit". If this were true, the amendment would be meaningless, and thus the notion the Constitution can be amended would be defeated. As the Constitution itself prescribes two methods of amendment, this interpretation is impossible.

Therefore, the Eleventh Amendment's term "suits" either replaces or adds to the case and controversy clause. If it replaces the case and controversy clause, the effect would be to entirely nullify the Court's interpretation regarding the doctrine of standing: the Court is limited to deciding only issues that are cases or controversies. But as the term no longer exists in the Constitution, this interpretation is not possible. As these were the only terms addressed by the Court in *all of its rulings regarding standing, and the term no longer exists in the Constitution as it has been removed by amendment*, the effect would be to nullify all the Court's rulings concerning standing.

If on the other hand, the case and controversy clause has been added to by the Eleventh Amendment, the current Court rulings exempt *all suits* from the doctrine of standing. In either case, the Court's interpretation simply does not agree with actual constitutional language.

Further, the fact the Eleventh Amendment affects judicial power in any manner leads to the inescapable conclusion that for judicial power to be in any manner affected cannot be done by judicial interpretation. Rather, *as with the rest of the Constitution*, it requires a constitutional amendment for that power to be reduced or altered. Thus, for the Court to limit itself based on its own interpretation of the Constitution for its own "convenience" or "self-governance" is unconstitutional.

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Court has never included the word “suit” in its discussion of standing, confining that discussion in numerous rulings to only a discussion of “cases” and “controversies”, and as the word *is* contained in the Constitution and *specifically relates to the extent of judicial power*, the only logical conclusion that can be drawn is *suits* are not included in the doctrine of standing.

---

In this same context, the Court has also avoided the expressed language of the First Amendment allowing for the people to “peaceably...assemble, and to petition the Government for a redress of grievances” as it relates to standing. As this amendment clearly affected all the Constitution, it is arguable it also affected the powers of the Court as it relates to standing. Specifically, the people granted themselves the right of unconditional redress *not previously granted in the Constitution, when the case and controversy clause was written*, that specified when they sought *redress from the government the government was expressly forbidden from interfering with this redress in any manner*. Thus, if an action by the people falls under the general term of “redress” rather than “resolution” it may not be interfered with by the government which of course includes the Court.

The issue then is whether the doctrine of standing deals with the action of redress by the citizen or with the resolution of the issue by the government. Logically, if the government is petitioned by citizens, *the point at which the government begins to act to resolve the issue marks the outermost extent of the right of redress which cannot be interfered with by the government and, conversely, marks the outermost extent of government power to resolve the issue in which the government does have discretionary power*.

Based on this premise the question is, where does the doctrine of standing fall, on the side of redress or on the side of resolution? Logically, the answer found must be based on the purpose of the doctrine. Does the doctrine of standing purport to resolve the issue, or does it purport to address the action of redress? The answer is clear. The Court uses standing to determine whether a citizen “deserves” redress. Thus it purports to address and regulate the right of the people to seek redress from the government, *and this attempt by the Court to judge whether or not a citizen “deserves” redress is clearly in direct violation of the expressed language of the Constitution in an amendment which can only be interpreted as modifying or otherwise altering the original intent and meaning of the Constitution.* As there is no conditional exclusion contained within the First Amendment excluding or otherwise exempting Article III or any of its language from First Amendment provisions, it is clear the First Amendment affects this provision as well as all of the rest of the Constitution. Thus, the doctrine of standing is unconstitutional because it conflicts with at least two amendments to the Constitution.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Current Court procedures have also ignored the word “equity”. This exclusion is not constitutional as the Constitution has never been amended in this manner. Thus, the original language and meaning of the word “equity” must be respected and, just as with the word “suit,” are supreme to any interpretation that attempts to negate or otherwise void “equity”. Therefore, despite current practice, “law” and “equity” are not interchangeable terms. The Constitution uses these words individually and does not permit a melding of these two distinct terms. Thus, a suit seeking redress solely for equity is as viable as one seeking redress for law.

*The Equal Protection Effect*

The doctrine of standing permits the Court to be a gatekeeper determining whether a citizen is “entitled” to redress. Even as “basic” as the Court prescribes the doctrine of standing in *Valley Forge*,[185] the doctrine still permits discrimination on the part of the Court *in its administration of the doctrine*, segregating each individual citizen’s redress into two groups:

[185] “First, the plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of.... Third, *it must be likely*, as opposed to *merely speculative*, that the injury will be redressed by a favorable decision...” Valley Forge College v. Americans United For Separation of Church and State, Inc., et al., 454 U.S. 464 (1982). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

those who are permitted redress and those who are denied it. The right of redress as specified in the First Amendment, however, contains no such segregation. The Court has not provided a monistic, universal criterion of standing, i.e., a single, specified, *precise* textual description setting out the procedure of standing that a plaintiff may ascribe, and if he does so, can be said to have satisfied standing. Instead, standing is administered on a basis that the Court admits relates as much to Court "convenience" as constitutional clause. The terms used in standing to facilitate this segregation are generalized, vague and open to interpretation. What *precisely* is a concrete injury in fact? Where *precisely* is the line drawn dividing "likely" and "speculative" as to the effect of a ruling, and what *specific* criteria defines both terms?

The doctrine of equal protection demands that *the application of these terms in the doctrine of standing* be equitable, universal and applicable in all circumstances to all citizens and not be contrived by the Court using vague or generalized terms to administer standing.[186] The application of the doctrine of standing by the courts does not meet this constitutional standard.

---

[186] Clearly, under the equal protection clause, the Court has held that the law must be applied equally to any group that shares common attributes, in this case the common attribute of citizens seeking redress through the courts. (*See infra* text accompanying notes 1208-1309). This edict prescribes that the Court is obligated to prescribe a single criterion of standing, a standing applicable to all citizens of this group, i.e., a group seeking redress from the courts, *without any variation or interpretation for each citizen seeking to bring an issue to the Court*.

If the Court is compelled to "explain" or "redefine" standing for a specific issue brought to it, then it is clear this violates the doctrine of equal protection. Thus standing is unconstitutional because it is discriminatory as it creates a separate but equal standing on citizens, a legal standard long since rejected by the courts. The cases upon which equal protection is based well precede *Valley Forge*, and as *Valley Forge* did not

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The doctrine of standing lacks specific rules needed to define its individual application so as to prevent any form of discrimination or segregation whether based on characteristics of the citizen involved or the type of constitutional issue sought. There is, for example, no section in the Federal Civil Rules Handbook outlining the procedures required of a plaintiff to satisfy standing and therefore standing does not attain the same level of competence demonstrated by other federal court proceedings. The kind of specific rules needed to desegregate standing are found in abundance in the rest of federal judicial proceedings.[187] With these specific, well laid out

---

exclude or otherwise overturn them, their rulings must remain in effect. This effect is that the Court is obligated to treat all litigants equally, which in the case of standing can only mean a specific, single standard *with no interpretation or discrimination* on the part of the Court. It is not sufficient nor equitable to have words which may mean different standards; one lawyer's "concrete" is another lawyer's "jelly," particularly if they happen to be in adversarial position.

The question pares down to equal protection. It is an interpretation that a party cannot ask the courts to resolve a question. The Constitution does not say one shall receive equal protection "subject to the interpretation and permission of the judicial system." Further, there is nothing to say that a judicial ruling is any more constitutional or any less unconstitutional than any other government edict, and that somehow it is excluded from the equal protection standard. The Fourteenth Amendment says equal protection, and thus the term "general interest in seeing the law is obeyed by the government" is all that is required as the interpretation of the term "judicial power" can only mean that the judiciary, acting in the stead of the people, shall see the laws are faithfully enforced.

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution...." U.S. CONST., art. VI § 3.

[187] E.g., rules of procedure found in the Federal Rules of Civil Procedure; rules of evidence in Federal Rules of Evidence.

As noted in a recent case the Court said:

"The Federal Rules of Civil Procedure are designed to further the due process of law that the Constitution guarantees. Cf. Fed. Rule Civ. Proc. 1 (Rules 'shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.')." Nelson v. Adams USA, Inc., 99-502 (2000).

There are two issues raised by the Court. First, if the Court asserts that Federal Rules of Civil Procedure "are designed to further the due process

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

rules, the Court has established a standard of jurisprudence, a set of clearly defined, expressed, universal, detailed standards specifying the minutiae of the subject and how they relate to citizens seeking redress. Yet, if standing is not satisfied, the citizen is denied redress *by a procedure the Court cannot even define in specific terms so as to permit the citizen the ability to satisfy it*.

Thus, in the *administration of the doctrine of standing*. the high standard of consistent jurisprudence, otherwise maintained by the courts, is lacking. Nevertheless, the doctrine is applied to all citizens seeking redress from the courts. Each citizen is judged individually on whether he is "entitled" to redress. As each issue is judged individually, the merits of one successful standing may not necessarily be applied to another question of standing, or it may be applied *depending solely on the discretion of the member of the judiciary making the determination*. The doctrine of standing does not even contain the most basic standard of equity and fairness, that two identical issues will either both receive, or both be denied, standing. Thus, the doctrine of standing is an inconsistent application of a ubiquitous practice of the judiciary designed to discriminate against the right of redress of some citizens while permitting the right of redress of other

---

of law the Constitution guarantees," it can be logically asserted that if there are no rules of procedure, then any procedure adopted by the Court cannot be said "to further the due process of law the Constitution guarantees."

The second issue deals with the word "action." Under its doctrine of standing, the Court maintains only "cases and controversies" can be adjudicated by the Court. Here the Court clearly recognizes that "actions" also fall under the constitutional guarantee of equal protection. *See supra* text accompanying notes 177,183,184.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

citizens: in short a doctrine of separate but equal. As such, this is a *per se* violation of the equal protection clause.[188]

*The Stipulations of Standing*

Yet despite the discriminatory nature of standing as created by the Court, a reasonable form of standing can exist that addresses *all parts of the Constitution, most especially those clauses that are expressed law contained within the Constitution*. The Court can correct its error simply by ruling *on*

[188] In Brown v. Board of Education, 347 U.S. 483 (1954), the Court established yet another standing criterion that compelled resolution. In *Brown*, the Court quite properly decided the segregation of children based on race, whether or not the physical facilities of the schools were identical, was unconstitutional.

The Court clearly ignored any "injury in fact", whether or not a judicial ruling would have effect, and even whether it was speculative or concrete. Instead, the Court based its power to decide the issue solely on its importance saying:

"Because of the *obvious importance of the question presented*, the Court took jurisdiction."

Thus the Court established that it may overrule the constitutional limits of standing whenever the "obvious importance of the question presented" so dictates. While the question of *Brown* was certainly important to this nation, its significance pales in comparison to this suit. *Brown*, for all its importance, dealt with a segment of the population; the issue before the Court today affects every single American. *Brown* created the concept of the "living document" theorem of constitutional law. ("In approaching this problem, we cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. *We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." Id.*) This issue deals with the most basic, fundamental and unchanging part of the Constitution and through that, renders complete control to whomever controls it. *Brown* basically decided whether a portion of the Constitution was to be extended to a specific segment of America; this issue decides whether the Constitution will exist at all.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*all clauses of the Constitution whether or not they deal with individual rights and whether or not they transgress a particular individual right, i.e., return to Fairchild and enforce the right of citizens to require the government be administered according to law*.

The Court is composed of reasonable members capable of employing common reason to arrive at reasonable conclusions. It is self evident these members therefore are reasonable. It is also a self evident premise of reason that when two or more reasonable persons are unable to arrive at a reasonable conclusion, it follows the conclusion cannot be defined as reasonable. Over time these reasonable members have reached different conclusions defining standing. As standing is not expressly granted to the Court in the Constitution, it follows it is an interpretive, implied power of the Court. A reasonable implied power ceases to be reasonable when there is disagreement over what that reasonable implied power is.[189] As the members cannot conclude what is standing without disagreement among the reasonable members, it follows the standards set by the Court exceed the reasonable implied powers of the Constitution and must be agreeable to all reasonable members of the judiciary.

Thus, there can be only two stipulations of the doctrine of standing possible that the Court can use to create a universal doctrine of standing equitable to all citizens. They are: (1) plaintiff can textually demonstrate the proof of law in question, i.e., an expressed provision of the Constitution

[189] "The exception from a power granted by the constitution mark its extent." Gibbons v. Ogden, 22 U.S. 1 (1824); "Where intention of words and phrases used in Constitution is clear, there is no room for construction and no excuse of interpolation." U.S. v. Sprague, 282 U.S. 716 (1931).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

that compels an action on the part of the government, and (2) textual evidence of violation of this law by the government. There is no need for a citizen to prove injury to one's self because there is no such stipulation in the Constitution, and standing as conceived today was never intended by the Founders. What was intended was that the government be limited and bound by the Constitution and thus its law extended to all "cases" involving it.[190]

*The Recalcitrant Gatekeeper*

In failing to provide a universal and expressed definition of the doctrine of standing equally applied to all citizens in all circumstances, the Court, in its administration of standing, becomes a gatekeeper regulating the right of people to seek redress. This gatekeeper function is entirely Court-created with no legislative support for it. Congress has never passed a law designed to clarify or limit the Court's discrimination in administrating standing. Significantly, despite the Court's determination its power may be

[190] "The constitution vests the whole judicial power of the United States in one Supreme Court, and such inferior courts as congress shall, from time to time, ordain and establish. This power is *expressly* extended to all cases arising under the laws of the United States; and, consequently, in some form, may be exercised over the present case; because the right claimed is given by a law of the United States." Marbury v. Madison, 5 U.S. 137 (1803).
"The judicial power of the United States is extended to all cases arising under the constitution." *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

limited by congressional action,[191] the Court has never called on Congress to eliminate, clarify or otherwise define this Court-created discrimination by requesting appropriate legislation or constitutional amendment.

In sum, the *expressed* words of the Constitution, particularly the word "shall" in the phrase "shall extend to all," provides no discretion to the Court, i.e., an option on whether or not judicial power "shall extend to all cases..." This expressed constitutional language defeats any *implied interpretation* of the Court defining "case" or "controversy" so as allow discrimination, i.e., standing, by the Court unless, under the doctrine of equal protection, the Court provides a universal definition of standing equally applied to all citizens in all circumstances.[192]

*Standing: The Final Bastion of Plessy?*

While Court has rejected the doctrine of separate but equal,[193] it nevertheless remains strong and viable renamed as the doctrine of standing.

[191] "Judicial power of the United States, although originating in the constitution, is, in general, dependent for its distribution and organization and for most of its exercise entirely upon congressional action." Cary v. Curtis, 44 U.S. 236 (1845).
[192] The singularity of the word "all" allows no other conclusion on this point. *See supra* text accompanying note 153.
[193] "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

What is the true difference between a Jim Crow law designed to discriminate and segregate a person from his rights and a court procedure designed to discriminate and segregate a person from his rights? What significant variation is there between a state law holding that one individual with a grievance is equal to another but deprived of any redress by arbitrary state decision, and a Court ruling saying that one individual with a grievance is equal to another but deprived of any redress by arbitrary Court decision? Is there any real difference between a decision of a state not to resolve an issue an individual seeks to redress by simply saying he is not "entitled" to redress or because it is not "convenient" or does not fit with the state's arbitrary plan of "self-governance," and the Court choosing not to resolve an issue an individual seeks to redress by simply saying he is not "entitled" to redress or because it is not "convenient" or does not fit with the Court's arbitrary plan of "self-governance?" So long as the doctrine of standing exists beyond the expressed language of the Constitution that means no more than the government shall obey the Constitution and that citizens have a right to enforce their Constitution, *Plessy*[194] is alive and well.

---

guaranteed by the Fourteenth Amendment." Brown v. Board of Education, 347 U.S. 483 (1954).

[194] "The distinction between laws interfering with the political equality of the negro and those requiring the separation of the two races in schools, theaters, and railway carriages has been frequently drawn by this court. This, in Strauder v. West Virginia, 100 U.S. 303, it was held that a law of West Virginia limiting to white male person 21 years of age, and citizens of the state, the right to sit upon juries, was a discrimination which implied a legal inferiority in civil society, which lessened the security of the right of the colored race; and was a step towards reducing them to a condition of servility. Indeed, the right of a colored man that, in the selection of jurors to pass upon his life, liberty, and property, there shall be no exclusion of

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

his race, and no discrimination against them because of color, has been asserted in an number of cases." Plessy v. Ferguson, 163 U.S. 537 (1896).

Thus, even in *Plessy*, the Court held that in matters of political equality, all persons were equal. This of course was before the creation of standing which segregated rights into "entitled" and non-entitlement. The Court has maintained it created standing in order to enforce the limitations imposed on it by the Founders or for its "convenience" or "self-governance." Does the doctrine of standing reduce the equality of some constitutional issues to a subservient level relative to other constitutional issues? Plessy said if such inferiority were inferred, it was the fault of the plaintiff:

"So far, then, as a conflict with the fourteenth amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determing the question of reasonableness, it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorized or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the fourteenth amendment than the acts of congress requiring separate schools for colored children in the district of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

"We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." *Id*.

In the treatment of citizens seeking redress, there is no difference between *Plessy* and the doctrine of standing. Both prescribe that it is an acceptable practice to deny the rights of redress to citizens and base their conclusion on some form of preserving internal order rather than on constitutional right, thus creating two classes of civil rights for citizens: those the Court will enforce and those the Court will not enforce. Standing, therefore, as created by the Court, is a "partition" segregating citizen from right of redress.

In *Plessy*, the answer to this concept was expressed by Justice Harlan, the sole dissenter who said:

"The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in the view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guarantied by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*The Per Se Assertion—Shuttlesworth and Brown*

The purpose of this suit is not to argue the merits of the doctrine of standing except as that doctrine relates to achieving a specific end: to compel Congress to obey the Constitution and call a convention to propose amendments. As the single requirement in the Constitution, a proper numeric ratio of applying states, has been satisfied, the refusal of Congress to call a convention is clearly a *per se* violation of the Constitution.

How has the Court addressed per se violations of the Constitution by the government with respect to the power of citizens to respond to those per se violations? The answer is unequivocal:

---

"In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case. ...

"The result of the whole matter is that while this court has frequently adjudged, and at the present term has recognized the doctrine, that a state cannot, consistently with the constitution of the United States, prevent white and black citizens, having the required qualifications for jury service, from sitting in the same jury box, it is now solemnly held that a state may prohibit white and black citizens from sitting in the same passenger coach on a public highway, or may require that they be separated by a 'partition' when in the same passenger coach. May it not now be reasonably expected that astute men of the dominant race, who affect to be disturbed at the possibility that the integrity of the white race may be corrupted, or that its supremacy will be imperiled, by contact on public highways with black people, will endeavor to procure statutes requiring white and black jurors to be separated in the jury box by a 'partition' and that, upon retiring form the court room to consult as to their verdict, such partition, if it be a movable one, shall be taken to their consultation room, and set up in such way as to prevent black jurors from coming too close to their brother jurors of the white race. If the 'partition' used in the court room happens to be stationary, provision could be made for screens with openings through which jurors of the two races could confer as to their verdict without coming into personal contact with each other. I cannot see but that, according to the principles this announced such state legislation, although conceived in hostility to, and enacted for the purpose of humiliating citizens of the Untied States of particular race, would be held to be consistent with the constitution." *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"In this case, by failing to tailor the no-trespass condition narrowly to allow for lawful demonstrations, the Park Service also failed to leave open sufficient alternative means for the protestors to communicate their views. ... Such distancing of the demonstrators from the intended audience does not provide a reasonable alternative means for communication of RWHP's views. In Bay Area Peace Navy,... [w]e stated '[a]n alternative is not ample if the speaker is not permitted to reach the "intended audience."' ... '*The First Amendment protects the right of every citizen to "reach the minds of willing listeners and to do so there must be opportunity to win their attention*."'

"The government does not question the defendants' standing to make a facial challenge because one need not apply for a benefit *conditioned by a facially unconstitutional law*. See Shuttlesworth v. City of Birmingham, 394 U.S. 147, 151 (1969)."[195]

In light of the Court's rulings regarding the doctrine of standing, its position in *Shuttlesworth* is, to say the least, ironic. The Court stated:

"There can be no doubt that the Birmingham ordinance, as it was written, conferred upon the City Commission virtually unbridled and absolute power to prohibit any 'parade,' 'procession,' or 'demonstration' on the city's streets or public ways. For in deciding whether or not to withhold a permit, the members of the Commission were to be guided only by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals *or convenience*.' This ordinance as it was written, therefore, fell squarely within the ambit of the many decisions of this Court over the last 30 years, holding that a *law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional*. 'It is settled by a long line of recent decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees *contingent upon the uncontrolled will of an official-as by requiring a permit or license which may be granted or withheld in the discretion of such official- is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.'* Staub v. Baxley, 355 U.S. 313, 322. *And our decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license. 'The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to is demands*.' Jones v. Opelika, 316 U.'S. 584, 602 (Stone, C.J., dissenting) adopted per curiam on rehearing, 319 U.S. 103, 104."[196]

There is a contradiction between the Court's *Shuttlesworth* position and the Court's position on standing. On one hand, the Court holds the government violating the Constitution is insufficient grounds to warrant standing where a

[195] United States v. Baugh, 9th Circuit Court of Appeals, #9810224, (1999).
[196] Shuttlesworth v. City of Birmingham, 394 U.S. 147(1969).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

citizen seeks redress for a violation of the Constitution.[197] Yet simultaneously it holds a citizen has a right to ignore an unconstitutional law which violates the Constitution *and that standing has no bearing because "the Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to is demands*."

Logically, both of these assertions cannot stand. One possibility is that the Constitution and the rights guaranteed therein trump the government with the citizens possessing the right to protect themselves by ignoring unconstitutional actions and laws of the government; this would translate as the citizens having the power to ignore Court-imposed rules of standing. The other possibility is that the government trumps the Constitution with the government possessing the right to decide whether citizens are "entitled" to the rights guaranteed by the Constitution; this would translate as the Court imposing standing for its own "convenience."

Like Congress, the Court's doctrine of standing establishes a branch of national government as gatekeeper, assigning to itself whether or not a citizen, citizens, or even the entire nation can be "entitled" to the guarantees of the Constitution. Unlike Congress, however, the Court has at least attempted to justify its segregation of citizen rights based on its interpretation of the Constitution instead of simply ignoring the document as Congress has done, thereby de facto vetoing the Constitution. Nevertheless, no

[197] See *supra* text accompanying note 142.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

matter how fancy or deftly written the prose used to justify segregation, it still remains segregation, and a de facto veto of the Constitution is still a de facto veto of the Constitution. There is in fact no real difference between the arguments used by the courts to justify or deny standing and those arguments the Court has condemned in such rulings as *Shuttlesworth* where commissioners acted, according to the Court, in the same arbitrary and capricious manner.

The commissioners, Congress and the Court suffer an identical trait: the presumption of those licensed by the people to carry out their sovereign powers that this license somehow grants them the power to decide whether or not the people are "entitled" to unconditional rights granted them in the Constitution. It is blatant prior restraint. Yet, because these powers of the people so greatly affect those *in political power*, these licensees have seen fit to establish conditions and terms regarding unconditional rights where no such conditions exist for purposes of "convenience" or "self-governance." The Founders declared citizens possess "unalienable" rights, meaning no government has the right to segregate them from a citizen.[198] Any act of government, therefore, which attempts this form of segregation is in direct conflict with the most central premise of the Founders, a premise clearly embedded in the Constitution. In a word, any such attempt is unconstitutional *per se*. The Court has ruled that in any conflict between government act and Constitution,

[198] "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator *with certain unalienable rights..."* Declaration of Independence (1776). *See infra* text accompanying notes 923-1009.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the government act must fall. It need hardly be pointed out the Court, while ruling on an act of the legislature, could hold itself exempt from its conclusions.[199]

---

[199] "The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

"That the people have an original right to establish, for their future government, such principles as, *in their opinion*, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

"*This original and supreme will organizes the government, and assigns to different departments their respective powers*. It may either stop here, or establish certain limits not to be transcended by those departments.

"*The government of the United States is of the latter description*. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. *It is a proposition to plain to be contested, that the constitution controls any legislative act repugnant to it*; or, that the legislature may alter the constitution by an ordinary act.

"Between these alternative there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written constitution contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an action of the legislature, repugnant to the constitution, is void. ...

"It is also not entirely unworthy of observation that in declaring what shall be the *supreme* law of the land, the *constitution* itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in *pursuance* of the constitution, have that rank.

"Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that *courts*, as well as other departments, are bound by that instrument." Marbury v. Madison, 5 U.S. 137 (1803) (emphasis added).

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

By the Court's admission, the doctrine of standing is generalized, vague, arbitrary and exists as much for Court "convenience" as any perceived constitutional need. This latter point has been defined by the Court without consideration of the effect of at least two constitutional amendments on the doctrine of standing.[200] The intent of the doctrine of standing is to allow the Court to arbitrarily decide whether or not a citizen is "entitled" to protection of expressed rights in the Constitution. In this suit, the fact the plaintiff has shown denial of at least five of his unalienable rights, all of which have been previously recognized by the Court as satisfying standing, does not guarantee any of them will pass Court muster.

Frankly, the Court may not find it "convenient" to decide the issue of Congress refusing to obey the Constitution in this manner. Using its doctrine of standing, the Court may choose *never* to decide any issue of redress presented to it by any citizen or state in this matter regardless of whatever violation of the Constitution is involved. Standing, *as much as the unconstitutional actions of Congress*, blocks constitutionally guaranteed redress by citizens *as well as other specified constitutional procedures*, and it is irrelevant to the Court whether the Constitution is violated, only whether or not the Court decides a citizen is "entitled" to redress.

---

Even though *Marbury* discussed an act of the legislature being void if contrary to the Constitution, there is no difference between that and a Court doctrine that is contrary to the Constitution. As *Marbury* states, the courts are as bound to the Constitution as other government departments. Thus a Court doctrine, such as standing, that conflicts with clear unequivocal and unconditional constitutional language, in this case the right of redress, must be void as currently interpreted.

[200] *See supra* text accompanying note 184.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In *Shuttlesworth*, the Court ruled a definite alternative allowing citizens to reach their intended audience must exist, and any uncontrolled licensing by government official[s] that permit that official[s] to act as a gatekeeper not permitting such alternative is unconstitutional. The Court cannot hold itself unaffected by its own conclusions and rulings. Thus, in the issue of a convention call, the Court cannot shuffle citizens to Congress for redress (as the commissioners in *Shuttlesworth* attempted to do by saying blacks could protest, but not parade) because as the evidence presented in this suit makes clear, Congress is in no way disposed to obey the Constitution.[201] Therefore, unless the Court intends to grant to the President of the United States dictatorial powers to effect a convention call, there is no other alternative of redress left open for a citizen "to reach [his] intended audience" which is to have the plain language of the Constitution obeyed *except through the Court*. By this same reasoning, Congress may not ignore Article V and attempt to shuffle off citizens seeking to exercise the right of a convention to propose amendments guaranteed in the Constitution for its "convenience" or "self-governance." Simply put, the Constitution must be satisfied as specified in Article V in the manner prescribed, and any other practice of Congress is plainly unconstitutional.

Unlike other per se violations of the Constitution summarily dismissed by the Court on the basis that such violations are insufficient reasons for

---

[201] *See infra* text
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664 to
TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART II, p.693.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

redress,[202] this per se violation by Congress also violates the 14th Amendment's guarantee of due process in all of plaintiff's standing issues and as a stand alone action. In short, rights guaranteed in the Constitution are deprived without due process of law because no amendatory action allowing such action on the part of the government has occurred, and only in this manner, by amendment, and in no other method, may constitutional language, and thus intent, be altered.[203] The Congress has attempted to alter the plain language of Article V without amendment which is a clear violation of due process.

Therefore, as Congress is engaged in a *per se* violation of the expressed language of the Constitution, according to Court ruling, standing is to be ignored,[204] as the plaintiff is not required to prove standing in order to have redress from the Court. In fact, if this ruling of the Court is carried to its logical conclusion, as the administration of the doctrine of standing conflicts with the First and Eleventh Amendments,[205] is an arbitrary, vague procedure established for "convenience" of the Court, intended to segregate citizens from their constitutionally guaranteed rights without any clear alternative for the citizen to obtain redress and as such is a *per se* violation of the Constitution, it may, as the Court has ruled, be ignored by the plaintiff.[206]

---

[202] *See supra* text accompanying note 142.
[203] "Nothing new can be put into the constitution except through the amendatory process, and nothing old can be taken out without the same process." Ullmann v. U.S., 350 U.S. 422 (1956).
[204] *See supra* text accompanying note 196.
[205] *See supra text* accompanying note 184.
[206] The segregation aspect of the doctrine of standing becomes glaringly apparent when examining the consistency of Court rulings. On one hand, the Court holds in a case dealing with one section of specific, *expressed* language

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Court has enunciated this form of citizen redress as the "obvious importance of the question presented" doctrine[207] which has been used by the Court where it admits the language and intent of the Constitution is "inconclusive" to the issue presented,[208] but the Court wishes to consider the issue "in light of its full development and its present place in American life throughout the Nation."[209] Plaintiff does not maintain the language of the Constitution, nor the intent of the Framers, is "inconclusive" as to the present issue presented to the Court, but does maintain the question of this suit is of such "obvious importance" as to preclude any disqualification by the Court on the basis of standing.

In *Brown*, the Court found that segregation was a *per se* violation of the Constitution based on the 14th Amendment, even though the Court admitted the

---

of the Constitution that a violation of the Constitution is not enough to warrant redress. *See supra* text accompanying note 142. Yet, in another case involving specific, *expressed* language of the Constitution, the Court not only holds there is standing *but maintains the law involved in the matter may be ignored by the citizen so affected by the law.* The incongruity is blatant.

[207] "The plaintiffs contend that segregated public schools are not 'equal' and cannot be made 'equal' and that hence they are deprive of the equal protection of the laws. *Because of the obvious importance of the question presented, the Court took jurisdiction*." Brown v. Board of Education, 347 U.S. 483 (1954) (emphasis added).

[208] "Reargument was largely devoted to the circumstances surrounding the adoption of the fourteenth Amendment in 1868. It covered exhaustively consideration of the amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources case some light, it is not enough to resolve the problem with which we are faced. *At best they are inconclusive*. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among 'all persons born or naturalized in the United States.' Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty." *Id.* (emphasis added).

[209] "We must consider public education *in light of its full development and its present place in American life throughout the Nation*." *Id.* (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

14th Amendment had little connection with the issue. Nevertheless, the Court maintained it had the power to declare an action of government unconstitutional simply because it violated the Constitution *per se*. In this instance, there is a direct *textual* violation of the Constitution both as to language itself and intent of the framers. It is an obvious *per se* violation of the Constitution, and based on the *Brown* decision the Court has the power to declare the government action unconstitutional.

While the use of the "obvious importance of the question presented" doctrine in *Brown* was certainly properly and correctly employed by the Court to arrive at a needed and correct decision regarding a portion of the American population and denial of its rights, the fact remains *Brown* only affected and dealt with a portion of the American population. This issue, the mandated calling of a convention to propose amendments by Congress, affects every American citizen, and the outcome of this decision will have a direct repercussion on the rights of all American citizens and in this sense is even more significant than *Brown*.

What was the essence of *Brown*? Flatly, to defy a form of tyranny, in this instance, the acts by some Americans to segregate other Americans from their inalienable rights, rights that belong to *all* Americans. The Supreme Court of the United States courageously opposed that tyranny, holding segregation and discrimination were and are unconstitutional. Americans have always fought against tyranny, whatever form it takes. They have died on beaches in Europe and the Pacific fighting it. They have marched in streets opposing it. In distant past, they fought it in Congress. Americans understand that fighting for rights has nothing to do with being conservative, liberal or


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

any other label. It is about freedom and the liberty that rights provide. People who attach such labels to those seeking to preserve rights take it for granted that such rights exist gratis. They are wrong. Rights must be preserved. They must be protected. They must be defended. Otherwise they will die and with their death, freedom and liberty. It is an ongoing struggle that began with our Founding Fathers who wrote a Declaration of Independence declaring the rights they valued and explaining for all the world why they fought the strongest nation on earth to free this nation from tyranny. The Founders then created the Constitution to preserve those rights and created a system of government accountable and subservient to the people. In the Constitution, the Founders demanded that all members of that government swear to “preserve, protect and defend” the Constitution: in other words, preserve, protect and defend the American people from tyranny. It is reasonable, therefore, to conclude that part of the constitutional duty of the Court is to oppose tyranny in any form.

As such, the Court faces a dilemma regarding the allegation of tyranny by Congress. Because of its edict on standing, the Court cannot refute tyranny without first granting standing. For without standing, the Court can go no further than to create a *de facto* approval of the tyranny charged in this suit. By the Court’s own rulings, its effect must cease at that point. The Court will have failed in its most fundamental duty, that of guarding the rights of the people from the effect of tyranny.

A requirement of standing is establishing an injury in fact or harm to a plaintiff. Ultimately, the Court makes this judgment. Therefore, the Court must determine whether there is any harm in Congress’ not calling a


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention. As the Founders created the Constitution with the intent of forever preventing that establishment of a tyranny, it becomes clear that the language of Article V was intended along with the rest of the Constitution, to effect this. If it is assumed the Founders created the Constitution in order to protect the nation and thus its citizens from the effects of tyranny, it follows any violation of the Constitution must cause harm in this manner, if in no other. In order for the Court to exempt Congress via standing, therefore, it follows it must discuss at some point how the refusal of Congress to call a convention causes no harm. This in turn requires the Court to address the essence of this suit: that under the plain language of the Constitution, Congress must call a convention and has no discretion regarding this.[210] In order to exempt Congress from complying with the Constitution, the Court is thus compelled to bend this clear language to the needs of standing. The Court is now faced the reality of the Founders' original intent. To provide an exemption to standing, the Court must prove what is *not required* to call a convention. By eliminating what is *not* required to compel a congressional call, and by justifying this for purposes of standing, that which remains, however construed, *must* be what is required for Congress to call. Under any circumstances, therefore, the question of this suit will be answered by the Court. Thus, the issue and standing meld into one alloy, separation of which by any means is impossible: the expression by force of law of the terms and circumstance of a convention call.

[210] Which the Court itself has said is clear unambiguous language. *See infra* text accompanying notes 261,527,551,670,728,1034,1046,1074.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The alternative is for the Court to sanction Congress' violation of constitutional law while permitting the citizens of this nation no redress in the matter, another constitutional violation by refusing to rule on the issue at all. While viable for Court "convenience" in the past, such action will simply not work in this instance. Refusing to rule is a de facto recognition of the right of Congress to violate the expressed language of the Constitution. The Court thus grants Congress a veto power over the Constitution much more dangerous than any convention amendment could ever contrive. Thus, in this instance where an expressed provision of the Constitution is involved, and where on its face there appears to be a violation, standing and law become inseparable. Consequently, justice is best served if the matter were resolved not on the technicalities of standing but on the merits of the argument that Congress is violating the most fundamental principle of this nation.

As the Court has said:

"[I]t must not be forgotten that in a free representative government nothing is more fundamental than the right of the people, through their appointed servants, to govern themselves in accordance with their own will, except so far as they have restrained themselves by constitutional limits specifically established, and that, in our peculiar dual form of government, nothing is more fundamental than the full power of the state to order its own affairs and govern its own people, except as so far as the Federal Constitution expressly or by fair implication, has withdrawn that power. The power of the people of the states to make and alter their law at pleasure is the greatest security for liberty and justice..."[211]

## THE POLITICAL QUESTION ISSUE

[211] Twining v. New Jersey, 211 U.S. 78 (1908).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*The Obvious Ploy*

By refusing to call a convention to propose amendments despite a clear constitutional mandate, Congress' obvious ploy to defend its *laches* will be to maintain that the entire matter is a political question beyond the Court's jurisdiction. Certainly, if the purpose of this suit was to defeat a specific *constitutional amendment proposal*, the Court would be correct in holding, as it has repeatedly held in the past, that such a question is political in nature and thus not a judicial matter; the Court has made it clear it has no business deciding whether or not *an amendatory proposal* becomes part of the Constitution.[212] By the same token, however, where constitutional *procedure* was involved in the question before the Court and required interpretation by the Court, it has held *consistently* the issue was *not* a political question and therefore subject to judicial review.[213] As the Court has never ruled in its entire history on any aspect of the convention to propose amendments *save that*

[212] *See* Dodge v. Woolsey, 59 U.S. 331 (1855); Hawke v. Smith, 253 U.S. 221 (1920); Leser v. Garnett, 258 U.S. 130 (1922); United States v. Sprague, 282 U.S. 716 (1931); Coleman v. Miller, 307 U.S. 433 (1939).

[213] However in its last ruling regarding the amendatory process, Coleman v. Miller, 307 U.S. 433 (1939), the Court ruled Congress had "exclusive" control over the entire amendatory process and excluded itself, and by implication, the people and the states completely from *any participation* in the process except as regulated under congressional monopoly. *See infra* text accompanying notes 1053-1112.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Congress must call a convention if a sufficient number of states apply,*[214] *the question of this suit clearly falls in the latter category.*

The political question doctrine was most extensively examined in Baker v. Carr[215] where the Court defined it:

> "It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found *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*; *or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion*; *or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government*; *or an unusual need for unquestioning adherence to a political decision already made*; *or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.*"[216]

This is crux of the matter: whether or not the refusal of Congress to obey a clear constitutional mandate constitutes a "manifestly unauthorized exercise of power" or is simply a political question under congressional control. If Congress opts for the political question doctrine as the basis of its obstruction of the expressed language of the Constitution, the Court has made it clear the political question doctrine is a very narrow ledge on which to stand. The Court said:

> "Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for nonjusticiability on the ground of a political question's presence. The doctrine of which we treat is one of 'political questions,' not one of 'political cases.' *The courts cannot reject as 'no law suit'* a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority."[217]

---

[214] *See supra* text accompanying note 212.
[215] 369 U.S. 186 (1962).
[216] *Id*.
[217] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Any discussion of the political question doctrine in relation to the convention call must in some manner be a definition of the relationship of the states and the people to Congress,[218] a definition the Court has never even established. While the Court has addressed the political question doctrine between the states, the people and Congress in two contexts, the Guaranty Clause[219] and Article V, these court suits shared a common trait: an attempt to

---

[218] As the convention to propose amendments is an exercise of the people's right to alter or abolish their government, it might be more properly stated that any relationship where the people are directly involved is a question of *sovereignty* and whether or not they have licensed the specific sovereign power in question to the government. As the specific sovereign power in question in this case is in fact the sovereign power itself, and whether or not by use of the political question doctrine this basic power shall be *transferred* from the people to Congress, thus making Congress sovereign and consequently removing sovereignty *in its entirety* from the people by no longer allowing them the right to alter or abolish their form of government, and as this is clearly contrary to previous Court rulings in this area, (*see infra* text accompanying note 221) it is clear the Court is *obligated* to clarify this relationship and to establish clearly whether or not under the doctrine of political question Congress can assume sovereignty *in its entirety* from the people.

[219] *See*, for example, Baker v. Carr, 369 U.S. 186 (1962) where the Court discussed the states and the Guaranty Clause. In this instance the Court found the Constitution's guarantee of a republican form of government to be a political question and therefore "nonjusticiable." The Court relied on its earlier decision reached in Luther v. Borden, 48 U.S. 1, (1849). However, the Court, quoting Daniel Webster who argued for the defense in *Luther*, noted the case was "an unusual case."

As the Court explained:

"Chief Justice Taney's opinion reasoned as follows: (1) If a court were to hold the defendants' acts unjustified because the charter government had no legal existence during the period in question, it would follow that all of that government's actions-laws enacted, taxes collected, salaries paid, accounts settled, sentences passed-were of no effect, and that 'the officers who carried their decisions into operation [were] answerable as trespassers, if not in some cases as criminals.'" The Court then continued:

"There was, of course, no room for application of any doctrine of de facto status to uphold prior acts of an officer not authorized de jure, for such would have defeated the plaintiff's very action. A decision for the plaintiff would inevitably have produced some significant measure of chaos, a consequence to be avoided if it could be done without abnegation of the judicial duty to uphold the Constitution."

In short, for the Court have ruled in any other manner would have compelled the Court find the laws the plaintiffs were basing their action on were in fact void which would then mean the plaintiff's successful action would be based on laws no longer in effect.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

use the courts to *overthrow* a government action, *not preserve it*.[220] Thus, they present a problem. As the Court correctly observed in these suits, the plaintiffs were attempting to use the courts to achieve an end they had not achieved politically. Therefore, in almost every suit, they correctly ruled the matter specifically brought before the Court was a "political question."

The fact is, both the convention call and the Guaranty Clause were intended to *preserve* peaceful government. In the case of the convention call, it allows for a peaceful method of change in government where otherwise a recalcitrant government might cause violent action on the part of the people. In the case of the Guaranty Clause, a means is provided whereby the national government, under certain specified circumstances, can preserve a state government elected by the people that in some fashion faces overthrow either by rebellion or invasion.

As this suit urges the *enforcement* of a constitutional clause *and thus preserves that provision, this suit is in alignment with the original intent of that clause*. Hence, it is quite opposite from other suits and cases the Court has addressed. Further, it is the *government that is attempting to*

---

[220] For such examples see Luther v. Borden, 48 U.S. 1 (1849) where the action was brought to declare state laws in Rhode Island to be void during the time of the Dorr Rebellion; Pacific States Telephone and Telegraph Co. v. Oregon, 223 U.S. 118 (1912) where an attempt was made by PSTT to overthrow an initiative passed in the state of Oregon.

There are even more examples in the cases brought to the Court regarding amendatory procedure. At the heart of each was an attempt to overthrow a specific amendment that had been recently ratified. Such cases include Hollingsworth v. Virginia, 3 U.S. 378 (1798), Eleventh Amendment; Hawke v. Smith, 253 U.S. 221 (1920), Eighteenth Amendment; Fairchild v. Hughes, 258 U.S. 126 (1922), Nineteenth Amendment; Leser v. Garnett, 258 U.S. 130 (1922), Nineteenth Amendment; United States v. Sprague, 282 U.S. 716 (1931), Eighteenth Amendment; Coleman v. Miller, 307 U.S. 433 (1939), amendment proposal not ratified by states.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*overthrow the Constitution by ignoring its clear mandate*. Thus, the threat to the Constitution in this instance is not the people attempting to overthrow the government, but the government attempting to overthrow the sovereignty of the people. Such blatant tyranny hardly fits the description "political question." Consequently, congressional reliance on precedent based on the political doctrine question in relation to a convention to propose amendments is weak at best and non-existent at worst.

Further, the Court has stated repeatedly the people are the source of all sovereign power in the United States[221] which they used to create a limited form of government embodied in the Constitution licensing that government with certain aspects of their sovereign power in order for it to carry out its assigned functions. Based on these Court rulings, it is a logical inference that regardless of how much of their sovereignty the people license to the government, they retain the ultimate sovereign right to ensure the licenses they have granted are executed by the government according to the terms and conditions they have established and the right to revoke or otherwise alter the licenses granted if they so decide. If this were not so, the entire process of the people creating a Constitution intended to limit government becomes meaningless. In its most basic conception, the Constitution is a

[221] "The constitution of the United States is to be considered as emanating from the people and not as the act of sovereign and independent states." McCulloch v. State of Maryland, 17 U.S. 316 (1819); "The constitution of the United States was established not by the states in their sovereign capacities, but by the people of the United States." Martin v. Hunter's Lessee, 14 U.S. 304 (1816); "The Constitution is the fundamental law of the United States, and no department of government has any other powers than those thus delegated to it by the people." Hepburn v. Griswold, 75 U.S. 605 (1869).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

contract between the people and the government the people have created. If the people are the source of all sovereignty and they license some of that sovereign power under specific terms and conditions to a government that in turn can ignore that license, it is clear that it cannot be stated that sovereignty emanates from the people. Simply put, the government has assumed a power greater than that which was originally granted; i.e., it has become sovereign, and therefore the people are not sovereign. Yet, the Court has stated the people are the source of all sovereignty, which means the government cannot be sovereign except as licensed by the people. The only escape from this paradox is the acceptance that the people retain the ultimate sovereign power to ensure that which they have licensed is executed according to the license they established. Thus any political question doctrine must not only be decided on the basis of the parameters discussed below, but in the case of a convention to propose amendments, be determined as to whether or not such a decision permanently transfers sovereignty from the people to Congress in the name of “political question.”

*A Textually Demonstrable Constitutional Commitment*

The textual commitment clause of the political question doctrine appears at first glance to be all Congress requires to claim complete control of the convention to propose amendments. As Congress is named in Article V, the apparent logical conclusion is that the Constitution has “textually committed”


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention control to Congress.[222] However, a deeper examination of *Baker* demonstrates the political question doctrine is not as black and white as Congress would obviously prefer. The Founding Fathers[223] made it clear that Congress has no discretion (hence, no political options) in the calling of a convention.[224] As there is no constitutional support for Congress refusing to call, it is clear the *laches* of Congress in failing to call a convention is an obstruction of the intent of Constitution. The Court has made its position clear regarding the use of the doctrine of political question by any branch of government to obstruct the intent of the Constitution. The Court said:

> "The political question doctrine, a tool for maintenance of governmental order, will not be so applied as to promote only disorder. ... They [the courts] will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power."[225]

The Court has also rejected the contention that constitutional language gives Congress exclusive grants of power to act in a judicial capacity or in this case the power to "judge" the state applications. The Court stated:

> "Respondents first contend that this is not a case 'arising under' the Constitution within the meaning of Art. III. They emphasize that Art. I, 5, assigns to each house of Congress the power to judge the elections and qualifications of its own members and to punish its members for disorderly behavior. Respondents also note that under Art. I, 3, the Senate has the 'sole power' to try all impeachments. Respondents argue that these delegations (to

---

[222] *See supra* text accompanying note 2. However, this cursory assumption is usually made by those who read the Constitution for what they want it to say rather than what it does say. True, the *issuance* of the actual convention call is clearly a congressional responsibility. Nonetheless, this responsibility is based *entirely* on the application of the state legislatures *and cannot occur without these applications*. Further, it is also dependent on the sovereign power of the people exercising their right to alter or abolish after the call has been issued. Finally, the matter is *compulsory on Congress with no discretion on its part provided or intended*. Hence such a cursory reading of Article V is a complete misassumption of the clear language and intent of the article.

[223] And, as equally important, in any discussion involving the convention call, the Court has also indicated Congress has no discretion. *See supra* text accompanying notes 212,527,670,728,834,1034.

[224] *See infra* text accompanying notes 497-521.

[225] Baker v. Carr, 369 U.S. 186 (1962).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

'judge,' and to 'try') to the Legislative Branch are explicit grants of 'judicial power' to the Congress and constitute specific exceptions to the general mandate of Art. III that the 'judicial power' shall be vested in the federal courts. Thus, respondents maintain, the 'power conferred on the courts by article III does not authorize this Court to do anything more than declare its lack of jurisdiction to proceed.'

"We reject this contention. Article III, 1, provides that the 'judicial Power... shall be vested in one supreme Court, and in such inferior courts as the Congress may...establish.' Further, 2 mandates that the 'judicial Power shall extend to all Cases... arising under this Constitution...' It has long been held that a suit 'arises under' the Constitution if a petitioner's claim 'will be sustained if the Constitution...[is] given one construction and will be defeated if [it is] given another.' Bell v. Hood, 327 U.S. 678, 685 (1946). See King County v. Seattle School District No. 1, 263 U.S. 361, 363-364 (1923). Cf. Osborn v. Bank of the United States, 9 Wheat. 738 (1824). See generally C. Wright, federal Courts 48-52 (1963). Thus, this case clearly is one 'arising under' the Constitution as the Court has interpreted that phrase. Any bar to federal courts reviewing the judgments made by the House or Senate in excluding a member arises from the allocation of powers between the two branches of the Federal Government (a question of justiciability), and not from the petitioners' failure to state a claim based on federal law."[226]

The same cursory reading of the Constitution that assumes the fate of a convention to propose amendments is entirely in the hands of Congress and, under the political question doctrine, that any judicial review is thus invalid while overall incorrect, does have a valid, if severely restricted, point. The narrowness of this point, however, is consequential and may not be disregarded.

The Court has ruled it has the constitutional power to "define what the law is."[227] In short, the Court claims the power of judicial review. This power means the Court has the constitutional power to interpret the intent and meaning of the Founding Fathers expressed in the Constitution and, based on that intent and meaning, declare whether an action (or inaction) by the government is in compliance with the Constitution. Judicial review in the case of a convention to propose amendments allows the Court to define the

[226] Powell v. McCormack, 395 U.S. 486 (1969).
[227] *See infra* text accompanying notes 287-288.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

circumstances of a convention call, i.e., define under what terms Congress shall call a convention. It may issue an order that Congress *call* the convention based on this determination. However, judicial review does *not* grant the Court the right *to call* a convention.

This fact established, the Court can do no more, therefore, than determine, based on the intent of the Founders,[228] under what circumstances, if any, that Congress may "judge" applications by the states for calling a convention to propose amendments. If, for example, the Court finds that "same subject",[229] "contemporaneousness",[230] or any other standard that provides Congress discretion to "judge" state applications, is the proper interpretation of the Constitution, then it follows that once such discretion is established by the Court, it is up to *Congress*, not the Court, to employ that discretion.

Further, as such standards have been used to justify Congress *vetoing applications and thus not calling a convention* despite the imperative "shall"[231] as used in Article V, such Court-created congressional discretion can only intend that Congress has the power to decide whether or not the applications are "accepted" by Congress and thus to enable Congress to *veto the states in their desire to have a convention to propose amendments as expressed in those applications*. Thus, the Court must also interpret the imperative "shall" as it applies to Congress and the convention call and

---

[228] For the intent and meaning of the Founders, *see infra* text accompanying notes 491-521,1439.
[229] *See infra* text accompanying notes 669-728.
[230] *See infra* text accompanying notes 736-789.
[231] *See infra* text accompanying notes 853,860.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

resolve any discrepancies between that interpretation of the word “shall” that grants Congress discretion and the use of the word “shall” in the rest of the Constitution that grants no discretion.[232] The specific question the Court must decide is: whether the Founding Fathers intended Congress to have any discretion in the convention call and, if so, what discretion. Once the Court has so determined this question, its constitutional duty, and thus its authority, is accomplished. By the Court’s own doctrine of political question, once it has defined the terms of the Article V convention call, the assignment of those terms to Congress is clear, and thus any further examination by the Court is precluded. Consequently, in this definable sense, the political

[232] One of many examples in the Constitution employing the word “shall” in the absolute imperative sense is the establishment of terms of elected office for members of Congress and the President. The terms of office are one of the most fundamental principles of limited government, ensuring the officials of the national government cannot retain power indefinitely. *See* U.S. CONST., art. I, § 2, § 3, art. II, § 1, 17th Amendment, § 1. Should the Court choose to alter the obvious meaning of the word “shall” as used in terms of office, it will have to explain why, in the same document written by the same authors, “shall” means an absolute imperative in which Congress has no discretionary power (being bound to a term of office), yet simultaneously means an absolute imperative in which Congress has discretionary power and in fact may ignore the entire imperative altogether.

By the same token, the Court will need to explain the difference between two-thirds of Congress, meaning a numeric portion of Congress with no other conditions necessary, while two-thirds of the state legislatures applying does not mean a numeric count and implies a variety of conditions.

This issue the Court faces is one of pure logic. It cannot be successfully argued that once such an absolute is imposed in the Constitution, it can then be liquidated by terms, conditions, stipulations or other actions, for then it ceases to be an absolute. Any description of discretion that permits Congress to make up its collective mind *prior to the mandated action of the Constitution* can in no logical way be described as an absolute. It simply makes no sense that Congress is mandated without exception to call a convention, but then gets to decide whether or not it is going to. The proposition that Congress possesses absolute discretion of issuance of a convention call is akin to the proposition that a federal officeholder has a choice as to whether to leave or remain in office when his term expires *without* suffering electoral review.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

question doctrine does apply. The Court defines the Constitution, and Congress employs that definition in executing the matter defined.[233]

In this sense, therefore, this issue before the Court is identical to one it resolved in *Powell*.[234] In *Powell*, the Court had to determine whether or not Congress could *exclude*, as opposed to the *expressed constitutional language allowing it only to expel by the two-thirds vote*, a member-elect of Congress based on reasons other than those qualifications of office specified in the Constitution. As is common in the Constitution, those qualifications are specified using the absolute imperative "shall." In this instance, it is used by the Founders no fewer than four times.[235] As discussed in *Powell*, the Constitution does use the word "shall" in regard to Congress being able to judge elections, returns and qualifications of its members,[236] and it does permit under a specified procedure that a House of Congress may expel a member.[237]

In *Powell*, it was argued that these provisions provided exclusive discretion to Congress to determine under what terms and conditions an elected

---

[233] At present Congress is operating under its own interpretation of the Constitution, i.e., the convention call is an absolute power of Congress, and it may safely ignore the attempts of the states and the people to call one. Congress holds it has the power to veto the Constitution outright.
[234] Powell v. McCormack, 395 U.S. 486 (1969).
[235] "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a citizen of the Untied States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U.S. CONST. art. I, §3.
[236] "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members,..." U.S. CONST., art. I, § 5, §§ 1.
[237] "Each House may... with the Concurrence of two thirds, expel a Member." U.S. CONST., art. I, § 5, §§ 2.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

member of Congress could be seated, and that Congress could create any terms it wished in order to deny a citizen elected to Congress his seat in Congress.

The Court disagreed saying:

"Had the intent of the framers emerged from these materials with less clarity, we would nevertheless have been compelled to resolve any ambiguity in favor of a narrow construction of the scope of Congress' power to exclude members-elect. A fundamental principle of our representative democracy is, in Hamilton's words, 'that the people should choose whom they please to govern them.' 2 Elliot's Debates 257. As Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself. In apparent agreement with this basic philosophy, the Convention adopted his suggestion limiting the power to expel. To allow essentially that same power to be exercised under the guise of judging qualifications, would be to ignore Madison's warning, borne out in the Wilkes case and some of Congress' own post-Civil War exclusion cases, against 'vesting an improper & dangerous power in the Legislature.' 2 Farrand 249. Moreover, it would effectively nullify the Convention's decision to require a two-thirds vote for expulsion. Unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a members with the concurrence of two-thirds. In short, both the intention of the Framers, to the extent it can be determined, and an examination of the basic principles of our democratic system persuade us that the Constitution does not vest in the Congress a discretionary power to deny membership by a majority vote.

"For these reasons we have concluded that Art. I, 5 is at most a 'textually demonstrable commitment' to Congress to judge only the qualifications expressly set forth in the Constitution. Therefore, the 'textual commitment' formulation of the political question doctrine does not bar federal courts from adjudicating petitioner's claims....

"[A]s our interpretation of Art. I, 5, discloses a determination of petitioner Powell's right to sit would require no more than an interpretation of the Constitution. Such a determination falls within the traditional role accorded courts to interpret the law and does not involve a 'lack of respect due [a] co-ordinate [branch] of government' nor does it involve a 'initial policy determination of a kind clearly for non-judicial discretion.' Baker v. Carr, 369 U.S. 186 at 217. Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility."[238]

The Court's examination in *Powell* of "standing qualifications prescribed in the Constitution"[239] is analogous to the calling of the convention to propose amendments, because the Constitution prescribes specific

[238] Powell v. McCormack, 395 U.S. 486 (1969).
[239] *See supra* text accompanying note 108.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

qualifications for the event to occur. In the case of election to Congress, residency, age and citizenship requirements are enumerated. In the case of the convention call, a specific *number of applying states* (based on a ratio to the total number of states in the Union) is enumerated. The Court's discussion "that the people should choose whom they please to govern them" relates directly the right of the people to alter or abolish. There is little doubt the people choosing their representatives in their national legislature clearly falls under their right to alter the government by choosing representatives who effect changes in the law. Precisely the same is the people choosing representatives at a convention who effect changes in the Constitution. The power of the people is identical in either case, and as the Court noted, "this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself." In the case of *Powell*, Congress attempted to limit the selection; in the case of the convention call, Congress has *attempted to eliminate the franchise entirely*. There is no other difference. Thus the Court's conclusion "...that Art. I, 5 is at most a 'textually demonstrable commitment' to Congress to judge only the qualifications expressly set forth in the Constitution" is equally applicable and conclusive to the convention call: that the Article V convention call is at most a "textually demonstrable commitment" to Congress to judge only the qualifications *expressly* set forth in the Constitution, which means Congress merely conducts a numeric count of the applications to determine that two-


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

thirds of the states have applied for a convention. Thus, as Congress could not exclude a member by a simple majority vote,[240] neither can Congress refuse to call a convention. In sum, the Court held that which is written in the Constitution is that which is meant. Therefore, if the states satisfy the single standard of the Constitution, a numeric count, Congress can use no other criterion on which to judge whether a call of a convention should occur and thus must issue a call. Thus, it can hardly be said, based on the intent of the Founders, that a call is a "commitment" to a coordinate political department. Indeed, if there is a textual commitment, it lies with the state legislatures *and* the people equally. As the rights of both have been violated by the actions of Congress, this cannot be said to be protected by the political question doctrine.

*A Lack of Judicially Discoverable Standards*

As the government has already agreed,[241] Article V is a clear, unambiguous statement requiring no interpretation by the Court. In short, its

[240] "In short, both the intention of the Framers, to the extent it can be determined, and an examination of the basic principles of our democratic system persuade us that the Constitution does not vest in the Congress a discretionary power to deny membership by a majority vote." Powell v. McCormack, 395 U.S. 486 (1969).

[241] "The United States asserts that article 5 is clear in statement and in meaning, contains no ambiguity, and calls for no resort of construction. A mere reading demonstrates that this is true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses, or, on the application of the legislatures of two-thirds of the states, must call a convention to propose them. Amendments proposed in either

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

meaning can be arrived at simply by readings its words. The standard by which Congress must call a convention to propose amendments is singular—a numeric count of applying states. Thus, a judicially discoverable standard is evident in the words themselves and has been so conceded by the government. Thus there is no lack of discoverable standards that prevent the Court from arriving at its conclusions.

*An Initial Policy Of Clearly Nonjudicial Discretion*

As the doctrine clearly deals with the political, it is obvious the Court's reference in this instance refers to the Court having to reach a political decision of clearly nonjudicial nature. For example, the Court certainly is not empowered to decide whether or not military forces should be employed in a foreign land or whether those forces once deployed should be withdrawn. Thus, were such a question to be brought to the Court, it clearly justifies the Court *not* reaching a conclusion because the Court is required to arrive at a political policy decision clearly outside its constitutional powers and thus its discretion.

It is on this basis the Court has consistently and correctly refused to resolve cases asking *specific constitutional amendment proposals* be declared

---

way become a part of the Constitution, 'when ratified by the legislatures of three-fourths of the several States or by Convention in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress…'" United States v. Sprague, 282 U.S. 716 (1931).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

unconstitutional because in reality as the Court observed, they were nothing more than attempts to use the Court to achieve a political end unsuccessfully achieved in the political arena.[242] There is a distinct difference, however, between a specific amendment proposal and the amendatory process as a whole, of which the convention to propose amendments is part. Like elections of officeholders called for in the Constitution, the process must be protected by the Court from political assault. Otherwise it will be destroyed. It is hardly worth more than passing comment to observe the Court would hardly sit still, for example, at any attempt of disenfranchisement by withholding the entire election for a member of Congress.

The same holds true for the convention to propose amendments. In both congressional elections and the convention, the Founding Fathers established no options on the part of the government to void the mechanisms protecting the rights of the people called for in the Constitution. Consequently, any initial policy determinations were made by the Founders, thus relieving the Court of any such burden.

Further, Congress has never established a single regulation or statute concerning the convention call. Thus, whether discussing the Founders or

---

[242] *See* Fairchild v. Hughes, 258 U.S. 126 (1922): "Plaintiff's alleged interest in the question submitted is not such as to afford a basis for this proceeding. It is frankly a proceeding to have the Nineteenth Amendment declared void."; Leser v. Garnett, 258 U.S. 130 (1922):"Ratification of the proposed amendment to the federal Constitution, now known as the Nineteenth, 41 Stat. 362, has be proclaimed on August 26, 1920… The petitioners contended, on several grounds, that the amendment had not become part of the federal Constitution."; United States v. Sprague, 282 U.s. 716 (1931): "The appellees contended in the court below, and here, that notwithstanding the plain language of article 5, conferring upon the Congress the choice of method of ratification, as between action by legislatures and by conventions, this Amendment could only be ratified by the latter."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress, it is clear there is no "initial policy" for the Court to resolve or create. Hence, the "initial policy" question is inapplicable in regard to the issue of this suit.

*A Lack Of Respect Due Coordinate Branches Of Government*

As the Court has stated, the political question doctrine is basically nothing more than the Court's deference to the separation of powers between the various branches of government established in the Constitution.[243] Part of the doctrine states the Court cannot decide a question if it contains "the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government…" This generalized statement can be interpreted in variety of meanings by the Court, providing it great latitude should it require it.

For example, one meaning could certainly refer to not expecting the Court to perform a constitutional task mandated to another branch of government, i.e., commission officers, an executive function. Certainly, in most circumstances,[244] within this function is the option on the part of the

[243] "It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers." Baker v. Carr, 369 U.S. 186 (1962).
[244] The circumstance that permits such option on the part of the executive is of course that the Constitution permits such an option.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

executive *not* to perform a constitutional task. Thus, the executive may choose *not* to commission a specific officer candidate, and the Court, employing the "due respect" clause, would in all likelihood not interfere.

But what if the refusal on the part of the executive were based on the religious beliefs of the candidate in question? Where would this fall in the area of "due respect of" a coordinate branch of government? Most likely, this could not be defended as a political question outside Court review because the executive, *like all coordinate branches of government*, is given certain powers and denied others. One power denied under the First Amendment and Article VI is religious discrimination or a religious test for office. Thus, were the executive to so discriminate, he would show a lack of respect for his own constitutional powers and limits.

It is a reasonable inference the Court *expects the other coordinate branches of government to "respect" their own powers granted them by the Constitution*, in short, to carry out their prescribed constitutional duties without the Court being required to serve as taskmaster.

But where the coordinate branch has shown a lack of respect for its own powers and limitations, then the Court has no choice but to step in as taskmaster. Thus, for the executive not to commission an officer, for example, because of his religious beliefs, calls for the legitimate interference of the Court because the executive has violated provisions of the Constitution. For the Court to redress the executive in this specific circumstance is not an action showing lack of respect due a coordinate branch of government. The Court is merely mandating that a branch of government obey the Constitution, something it is supposed to do without being told.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Thus, it is a reasonable inference the Court will not allow a coordinate branch of government to use the political question doctrine as a shield from Court redress if it is clear the intent of the coordinate branch of government is to shun or otherwise avoid its constitutional obligations or, as is usually the case, restrictions. Such is the case with congressional refusal to call a convention to propose amendments when the states have applied. The Court can hardly be said to show a lack of respect to Congress when all the Court is doing is attempting to force Congress to obey the Constitution.

However, the question does require a direct answer. Can the Court reach an independent resolution of a convention call without destroying the powers of Congress? Yes. Article V makes it clear the power of Congress is limited in the case of a convention to propose amendments to calling the convention. The Court, using its usual and routine powers of constitutional interpretation, merely defines what a call is and under what circumstance—-a numeric count of applying states--Congress is obligated to call. After that, it is up to Congress to do so absent Court interference unless Congress strays constitutionally too far from that which the Court has defined. The power of the call is left untouched except for the Court to observe it has been used unconstitutionally by Congress and to compel that body to use it in a constitutional manner.

*Unquestioning Adherence To A Political Decision Already Made*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The specific language used by the Court in its political question doctrine is "…or an unusual need for unquestioning adherence to a political decision already made…". In other words, Congress' political decision to refuse to call a convention despite a clear constitutional mandate places the Court in a bind: unquestioning adherence to a political decision already made would grant Congress veto power over the Constitution at its whim. This is blind obedience beyond the pale for the Court. As such, no further comment is required.

*The Question of Potential Embarrassment*

As the Court provided no qualifying definition of the term "embarrassment," it follows the word must be used in its common and usual manner,[245] and that this common definition is what the Court intended to determine whether a Court ruling could be made if it caused "embarrassment." The only applicable definition of the word "embarrassment" is: "to hinder, impede, cause difficulties" or "to complicate, make more difficult."[246]

[245] *See infra* text accompanying note 551.
[246] WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED, 2nd ed. (1983).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Thus, if a ruling made by the Court would “hinder, impede, cause difficulties, complicate or make more difficult” a political goal of Congress, then the Court cannot rule because such an impediment constitutes a political question. Clearly, if one accepts this definition, *every action of Congress is immune from judicial review because the very act of the review impedes or make more difficult* achieving a political goal. Obviously, if the Court rules an action of Congress is unconstitutional and thus prevents Congress from so acting, this can certainly be defined as an impediment. But by the Court’s own ruling, it cannot so rule because doing so creates the impediment.

Is there a resolution to this issue, or has the Court created a monstrous paradox? Has it given Congress, under the doctrine of political question, a perfect immunity because any Court ruling acts as an impediment and thus is an embarrassment to Congress? Such an interpretation creates a runaway Congress, and it was clearly not the intent of the Founders to permit this occurrence. Certainly the argument that the embarrassment clause of the political question doctrine is Court-created and thus its discretion lies entirely with the Court, is ineffective. There is nothing that says Congress could not adopt a similar stance either by declared legislative fiat, law or simple resolution granting it total discretion in such matters. Certainly if Congress can argue that it has ultimate power of control over the states and the people in their constitutional power and right to have a convention, Congress can equally argue the same premise exists over controlling Court doctrine.

What then is the answer? Logically there can only be one: that this particular clause of the political question doctrine is without merit. Its


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

instigation creates an obvious conflict with the intent of the Constitution and entirely scraps the separation of powers allowing Congress unlimited control of every aspect of all branches of government. Simply stated, the clause is unconstitutional and void.

The only other definition of embarrassment is "to cause to feel self-conscious; confused and ill at ease; disconcert; fluster."[247] If this is the Court's definition, any embarrassment resides with Congress in vetoing the Constitution and thus embarrassing the Nation as well as itself. To compel Congress to call a convention to propose amendments when it is constitutionally mandated to do so is merely compelling Congress to do its duty, nothing more.

This fact alone frees the Court from any conflict regarding the rest of the "embarrassment" clause: "multifarious pronouncements by various departments on one question." The members of Congress have all taken an oath to support the Constitution—all of the Constitution.[248] The oath does not say "to support the Constitution except where it is politically inexpedient or I disagree with it." Simply said, Congress has "pronounced" by its *laches* in not calling a convention to propose amendments that it has the power to ignore the Constitution. It is not a "multifarious" pronouncement by the Court to make the only *legal* pronouncement: that Congress is bound to obey *all* the Constitution and cannot veto it at its discretion.

---

[247] *Id*.
[248] "The Senators and Representatives before mentioned,… shall be bound by Oath or Affirmation, to support this constitution…" U.S. CONST., art. VI, § 3.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*The Speech and Debate Clause—A Protection, not an Immunity*

While not specifically mentioned by the Court in the political question doctrine, Congress has nevertheless, on occasion, attempted to use the Speech and Debate Clause[249] as the basis to exclude judicial review of congressional action.[250] While legitimate in many circumstances, the provisions of Article V

[249] "The Senators and Representatives shall receive a Compensation for their services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place." U.S. CONST., art. I, §6, §§ 1.

[250] "Respondents assert that the Speech or Debate Clause of the Constitution, Art. I, 6, is an absolute bar to petitioners' action. This Court has on four prior occasions- Dombrowski v. Eastland, 387 U.S. 82 (1967); United States v. Johnson, 383 U.S. 169 (1966); Tenney v. Brandhove, 341 U.S. 367 (1951); and Kilbourn v. Thompson, 103 U.S. 168 (1881)- been called upon to determine if allegedly unconstitutional action taken by legislators or legislative employees is insulated from judicial review by the Speech or Debate Clause." Powell v. McCormack, 395 U.S. 486 (1969).

Other cases involving the Speech and Debate Clause have included Williamson v. United States, 207 U.S. 425 (1908) where the Court interpreted the phrase "treason, felony or breach of the peace" to exclude all criminal offenses from the privilege's coverage; Gravel v. United States, 408 U.S. 606 (1972) which held that the constitutional immunity of members of Congress from grand jury questioning extended to their aides if the conduct in question would be a protected legislative act, if performed by the member; Doe v. McMillen, 412 U.S. 306 (1973) where the Court held members of Congress were immune from invasion of privacy actions if conducting legitimate legislative activities; Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1975) where the Court found Congress immune from claimed violations of the First Amendment; Hutchinson v. Proxmire, 443 U.S. 111 (1979) where the Court held that the speech or debate clause did not immunize a member of Congress from libel suits for allegedly defamatory states he made about a person in press releases and newsletters, even though the statements had originally been made on the Senate floor; and United States v. Brewster, 408 U.S. 501 (1972) where the Court found that illegal criminal acts such as bribery were not protected by the speech and debate clause.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

make such exemption for Congress in this instance impossible. The convention call is an obligatory, non-discretionary imperative on Congress on which the Founders intended that "the national rulers shall have no option."[251] This unequivocal language clearly demonstrates the Founding Fathers were neither interested nor concerned with analysis of legislative motivation either of Congress or its individual members regarding a convention call. Because the convention call demanded by the Constitution is *obligatory*, neither debate nor vote is permitted under the terms of the Constitution. *Congress must call*. Congress is no more permitted "[t]he freedom of deliberation, speech and debate,"[252] under the terms of Article V, thus allowing it to question the motivation of the states in applying for a convention in response to the people requesting them to do so, than it is permitted to veto any other provision of the Constitution. Consequently, the speech and debate clause is not applicable as an immunity for Congress because constitutionally Congress is prohibited from debating the issue. The immunity in this instance is nullified by the intent of the Framers which is to have Congress *call* a convention on the specific action by the state legislatures, *not stop it*.

As such, if Congress, either by *laches* or deliberate act, refuses to call a convention to propose amendments, such action cannot be said to be

---

[251] *See infra* text accompanying notes 506.

[252] "The New Hampshire Constitution of 1784 provided: 'The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any action, complaint, or prosecution, in any court or place whatsoever,' Part I, Art. XXX." Tenney v. Brandhove, 341 U.S. 367 (1951).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"acting in the sphere of legitimate legislative activity"[253] "in pursuance"[254] of the Constitution.[255] The Court has made it clear the intent of the speech and debate clause is to allow members of Congress to accomplish such legitimate legislative activities free from outside pressure and distraction.[256] It is not intended to extend illegitimate legislative power.[257]

---

[253] "Both parties insist that their respective positions find support in these cases [Dombrowski, Johnson, Tenney and Kilbourn] and tender for decision... whether respondents in participating in the exclusion of petitioner Powell were 'acting in the sphere of legitimate legislative activity,' Tenney v. Brandhove, supra, at 376." Powell v. McCormack, 395 U.S. 486 (1969).

[254] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;… shall be the supreme Law of the Land…" U.S. CONST., art. VI, § 2.

[255] While a multitude of grandiose words have been layered by many as to the purpose and intent of the Constitution, the fundamental fact is it was created by the Founders as an attempt to prevent governmental abuses of power entrusted to it by those whom it ruled. Hence, any action made "in pursuance" of the Constitution must be in conformance with the implied intent and expressed language of the Founders. To hold otherwise renders the entire document meaningless. Simply put, if the Founders intended that Congress (the national rulers) shall call a convention on the application of two-thirds of the state legislatures and that "[they] shall no option," any action contrary to this is not in pursuant of the Constitution and thus is unconstitutional.

[256] "The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators." United States v. Brewster, 408 U.S. 501 (1972).

In an earlier decision, the Court elaborated on the clause saying:

"The reason for the privilege is clear. It was well summarized by James Wilson, an influential member of the Committee of Detail which was responsible for the provision in the Federal Constitution. 'In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected for the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offence.' II Works of James Wilson (Andrews ed. 1896) …

"The provision in the United States Constitution was a reflection of political principles already firmly established in the States. Three State Constitutions adopted before the Federal Constitution specifically protected the privilege. The Maryland Declaration of Rights, Nov. 3, 1776, provided 'That freedom of Speech, and debates or proceedings, in the legislature, ought not to be impeached in any other court or judicature.' Art. VIII. The Massachusetts Constitution of 1780 provided: 'The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action, or complaint, in any other court or place whatsoever.'

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

How does the Court determine whether Congress is "acting outside its legislative role?" The answer is plain. Legitimate legislative powers that can be made in pursuance with the Constitution are itemized in that document. In other words, the Founding Fathers spelled out in *expressed written* language what was and was not a legitimate legislative power of Congress. Thus, if Congress acts in manner *contrary* to the expressed power, it is not acting in pursuance of the Constitution, and hence there is no Speech and Debate Clause immunity. As the *laches* of Congress in refusing to call the convention is not expressly prescribed in the Constitution, is in obvious conflict with the clear intent of the Founders, and is an action contrary to the expressed

---

Part The First, Art. XXI. Chief Justice Parsons gave the following glass to this provision in Coffin v. Coffin, 4 Mass. 1, 27 (1808):

"'These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I therefor think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate, but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature, and in the execution of the office; and I would define the article as securing to every member exemption from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office, with out inquiring whether the exercise was regular according to the rules of the house, or irregular and against their rules.'" Tenney v. Brandhove, 341 U.S. 367 (1951).

[257] "We come then to the question whether from the pleadings its appears that the defendants were acting in the sphere of legitimate legislative activity. *Legislatures may not of course acquire power by an unwarranted extension of privilege*. The House of Commons' claim of power to establish the limits of its privilege has been little more than a pretense since Ashby v. White, 2 Ld. Raym. 938, 3 id. 320. This Court has not hesitated to sustain the rights of the private individuals when it found Congress *was acting outside its legislative role*. Kilbourn v. Thompson, 103 U.S. 168; Marshall v. Gordon, 243 US. 521; compare McGrain v. Daugherty, 273 U.S. 135, 176." Tenney v. Brandhove, 341 U.S. 367 (1951).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

language, it follows Congress cannot claim Speech and Debate immunity because it is not acting in pursuance of the Constitution.[258]

This fact also precludes Congress from claiming immunity from the single action sought by this suit. The suit is unique compared to previous suits involving the Speech and Debate Clause. It does seek to question the motivations of Congress as to why it has not followed the Constitution, beyond establishing its desire to function as a tyranny. Neither criminal action nor any form of civil redress is sought against any member of Congress as a consequence of his desire to function as a tyrant. The single action sought by this suit is to compel Congress to obey an obligatory constitutional mandate, thus no longer allowing it to be a tyranny. The Court has never indicated in any of the rulings dealing with Speech and Debate that it may be used to thwart the clear intent and language of the Constitution. But if it does now, it is Congress that will blaze this new constitutional territory, not the plaintiff. Thus, there is no violation of the Speech and Debate Clause immunity by the plaintiff in this action.

*Summation Of Judiciable Arguments*

[258] If the Speech and Debate Clause immunity extended to acts of Congress not in pursuance of the Constitution, as well as those made in pursuance, the combination would present an absolute immunity to any review of congressional action under any circumstances. As such, the Court would have to abdicate its power of judicial review as this power is based on the premise of the Court voiding those acts of Congress not made in pursuance of the Constitution as unconstitutional.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In most Supreme Court suits concerning Article V, the issue before the Court involved a specific proposed amendment originating in Congress using its proposal authority under Article V. The constitutional issue raised before the Court involved questions of procedure addressing either how the amendment was proposed in Congress, or how that amendment was ratified and whether those procedures were constitutional.[259] In many cases, the Court determined the issue was a political question that properly belonged in the hands of the national legislature or the political arena, citing the lack of criteria for judicial determination because, as Chief Justice Hughes said:

"[N]one are to be found in Constitution or statute."[260]

However, this lack of judicial criteria is not true regarding the convention to propose amendments. Here the language of the Constitution is clear and compelling.[261] Equally compelling is the history of the intent of the

---

[259] Hollingsworth v. Virginia 3 U.S. 378 (1798); National Prohibition Cases, 253 U.S. 350 (1920); Leser v. Garnett, 258 U.S. 130 (1922); Dillon v. Gloss, 256 U.S. 368 (1921); Coleman v. Miller, 307 U.S. 433 (1939).

[260] Coleman v. Miller, 307 U.S. 433 at 453 (1939).

[261] "The United States asserts that article 5 is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates that this true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses; or, *on the application of the legislatures of two-thirds of the States, must call a convention to propose them.* Amendments proposed in either way become a part of the 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...'" United States v. Sprague, 282 U.S. 716 (1931). (emphasis added).

The matter does not rest here. Even when Congress' unconstitutional conditions have been met, Congress has refused to call a convention. *See infra* text

TABLE 6—SAME SUBJECT APPLICATIONS, PART I, p.685;
TABLE 6—SAME SUBJECT APPLICATIONS, PART II, p.686;
TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART I, p.692;

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Founding Fathers regarding the calling of a convention to propose amendments. Those opposed to calling a convention *mandated* by Article V of the United States Constitution[262] base their position on gross misinterpretations of that article.[263] Were such faulty interpretations adopted by the Court, they would result in such constitutional chaos as to destroy the entire instrument. Only with a strict interpretation of the clear meaning of the words laid down by the Founding Fathers as those Founders specifically intended them to mean, can these dangers be avoided. The fact that most opposition to a convention is based, not on constitutional principles, but on thinly veiled opposition to a particular political amendment is no grounds on which to thwart the Constitution.[264] As the Supreme Court observed:

> "Constitutional principles cannot be allowed to yield simply because of disagreement with them"[265]

A scrutiny of the history of the Constitutional Convention of 1787 leaves no doubt as to the unequivocal intention of the Founding Fathers to

---

TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART II, p.693.

[262] U.S. CONST., art. V; *see supra* text accompanying note 2.

[263] *See infra* text accompanying notes 418,419,547.

[264] The proof of this statement lies in an objective reading of almost all texts written on the convention within the last several years. Contained in each one was the admission that a balanced budget amendment might trigger a convention, and this was the purpose for writing the book. It is interesting to note none of the authors bothered to discuss the convention absent a specific political agenda that a particular amendment proposal generates.

*See* generally, UNFOUNDED FEARS: MYTHS AND REALITIES OF A CONSTITUIONAL CONVENTION (1989),(P. Weber & B. Perry); Bond & Engdahl, *THE CONSTITUTIONAL CONVENTION, The Duties and Powers of Congress Regarding Conventions For Proposing Amendments,* Nat'l. Legal Center for the Public Interest,(1987) Caplan, Constitutional Brinksmanship: Amending the Constitution by National Convention, (1988);Kern, A Constitutional Convention Would Threaten the Rights We Have Cherished for 200 Years, 4 Det. C.L. Rev. 1087, 1089-90 (1986); Rackoff, "The Monster Approaching the Capital": The effort to Write Economic Policy into the United States Constitution, 15 AKRON L. REV. 733, 745 (1982); Tribe, *Issues Raised by Requesting Congress to call a Constitutional Convention to Propose a Balanced Budget Amendment*, 10 Pac LJ 638-50 (1979).

[265] Griffin v. County School Bd. Of Prince Edward County, 377 U.S. 218 (1964).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

compel a convention to be held in spite of congressional opposition when the states apply for one. The record of the states' application for a convention to propose amendments[266] make it undeniable of the intent of the states and the people hold a convention. The post-1787 Convention record lays bare the stark lack of national legislative options and the unconstitutionality of Congress' *laches* to call a convention.[267]

The constitutionally mandated congressional call for a convention to propose amendments cannot be considered a political question left to the discretion of Congress as this would defeat the very intent of the convention alternative for amending the Constitution established by the Founding Fathers,[268] that of *removing any congressional obstacles* toward amending the Constitution by this alternative means. As noted in 1788 by Alexander Hamilton:

"Nothing in this particular [is left]...to the discretion of that body."[269]

---

[266] *See infra*,
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664;
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.

[267] Indeed, as Congress has never passed any legislation regarding the convention to propose amendments, then the sole standard that can be considered is whether the states have satisfied the single requirement specified by the Constitution, that two-thirds of their number have applied for a convention. The prima-facie evidence is clear. Over two-thirds of the states have applied for a convention. *See infra*,
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.

[268] *See infra* text accompanying notes 436-437.

[269] THE FEDERALIST No. 85 (A. Hamilton) (May 28, 1788). *See infra* text accompanying notes 506,507,513. The Supreme Court has made it clear it is entirely proper to rely on the Federalist Papers as a source to define the intent and meaning of the Constitution. The Court said:

"The members of the Federalists are entitled to weight in any discussion *as to the true intent and meaning* of the provisions of the fundamental law of the United States." Wheeling, P.& C. Transport Co. v. City of Wheeling, 99 U.S. 273 (1878). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

This constitutional mandate on Congress serves as a major check of excessive federal power in our Constitution. Indeed, as observed by a member of the 1787 Convention, without a convention provision in place:

> "By this Article Congress [would] only have the Power of proposing Amendments at any future time to this constitution, & shou'd it prove ever so oppressive, the whole people of America can't make, or even propose Alterations to it;[it would be] a Doctrine utterly subversive of the fundamental Principles of the Rights & Liberties of the people[.]"[270]

Thus, the issue of calling a convention to propose amendments is raised above the level of mere politics concerning a specific amendment proposal. Instead it focuses on the right of the people, through the states, to exercise the *right to alter or abolish their government* by proposing amendments to the Constitution via convention as specified in Article V. It focuses also on Congress' veto by *laches* of a specific provision of the Constitution. In doing so, Congress has exceeded the authority granted it by the Constitution and has denied a specific, recognized right of the people.[271] *The intent of the Founding Fathers is clear*. *Under no circumstances can Congress stand in the way of the states amending the Constitution, either in proposal or ratification, as Article V mandates Congress must act so as to allow the states to proceed on the matter*. *On the other hand, the states possess the power, either through amendment proposal or refusal to ratify a*

---

[270] Colonel Mason, 1787 Constitutional Convention delegate. *See infra* text accompanying note 435.

[271] "The people limit and restrain the power of the legislature, acting under a delegated authority, but they impose no restraint on themselves. They could have said by an amendment to the constitution, that no judicial authority should be exercised, in any case, under the United States, and, if they had said so, could a court be held, or a judge proceed, or any judicial business, past or future, from the moment of adopting the amendment? On general ground, then, it was in the power of the people to annihilate the whole..." Hollingsworth v. Virginia, 3 U.S. 378 (1798).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*congressionally proposed amendment, to stop any congressional attempt to alter the Constitution*.

The Supreme Court has ruled only a few times on Article V issues, and in these rulings it has stated under what circumstances Congress must call a convention.[272] It has never directly ruled on any question surrounding a

---

[272] The Supreme Court has never *directly ruled* on convention issues. Thus, any comments by the Court have been in the context of describing the amendatory process rather than actually ruling on the convention to propose amendments as a specific matter of the case. However the consistency of these descriptions, together with their detail, cannot be ignored, especially when one considers that the usual political bent of judges attributed to specific authors in the Court are entirely absent in this case. In short, it makes no difference whether the judge is liberal, conservative, of this century or the last, the answers are always the same. While the Court has described the matter succinctly, there have been some rulings that at first glance appear *not* to favor this suit. However, a closer examination reveals this not to be true. *See infra* text accompanying note 1034.

The Court said:

"The framers of the Constitution realized that it might in the progress of time and the development of new conditions, require changes, and they intended to provide an orderly manner in which these could be accomplished; to that end they adopted the fifth article.

"This article makes provision for the proposal of *amendments* either by two-thirds of both houses of Congress, or on *application* of the Legislatures of two-thirds of the states; *thus securing deliberation and consideration before any change can be proposed*. The *proposed change can only become effective* by the ratification of the Legislatures of three-fourths of the states or by convention in like number of states. The method of ratification is left to the choice of Congress. *Both methods of ratification, by Legislatures or convention, call for action by deliberative assemblages representative of the people, which it was assumed would voice the will of the people*." Hawke v. Smith, 253 U.S. 716 (1920)(emphasis added).

In Dillon v. Gloss, 256 U.S. 368 (1921) the Court was very explicit in its description of the convention and the obligation of Congress to call it. The Court said:

"A further mode of proposal—as yet never invoked—is provided, which is, that *on the application of two-thirds of the states* Congress shall call convention for the purpose." (emphasis added).

The Court was even more explicit regarding the convention to propose amendments in a later case. *See supra* text accompanying note 261, *infra* text accompanying note 1034.

While *Hawke* did not properly describe the obligation of Congress to call a convention on the application of the state legislatures, it nevertheless did establish an important principle. *Hawke* recognized the Founding Fathers had established an amendatory procedure that required "deliberative assemblages," i.e., ..."voice [of] the will of the people..." in order for the Constitution to be amended. As the Court made no distinction between a proposing convention

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention to propose amendments: e.g., its limits and powers as defined by the Constitution, Congress' power over the convention (if any), and its relationship to the states. These questions can only be answered by a clear understanding of the meaning and intent of Article V and a specific ruling defining them.

Some of this definition has already been done by the Court.[273] The Court has ruled that the two-thirds requirement for adoption of a proposed constitutional amendment in Congress applies to two-thirds of those members present and voting and not to two-thirds of the entire membership of Congress.[274] Thus the Court defined the meaning of the word "two-thirds" as it applies to Article V. It is significant the Court *did not define the word "two-thirds" as meaning anything else than a numeric total of members of Congress involved in the process. Nor did the Court attach any significance whatsoever to the subject of the specific amendment being discussed by members of Congress. Instead it established a general, all-encompassing rule applicable to all circumstances regarding a vote by members of Congress to propose an amendment to the Constitution.*

In so defining these words (two-thirds) the Court established a precedent: that it possesses definition jurisdiction of the words used in Article V and the intent of their meaning. Thus, it is able to define other

---

and a ratifying one, it is clear a convention to propose amendments must also be composed of "deliberative assemblages of representative[s] of the people" in order to "voice the will of the people..."

[273] State of Rhode Island v. Palmer, 253 U.S. 350 (1920). *See also* Missouri Pacific Railway v. Kansas, 248 U.S. 276 (1919).

[274] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

words contained in Article V of the Constitution where confusion, politically motivated or otherwise, exists as to their intent and meaning.

Further, the Supreme Court held in two suits[275] that when states act to ratify a proposed amendment, their actions are "a federal function, derived from the Federal Constitution..."[276] Thus, the courts recognized the states' participation in the amendatory process as federal in nature.

The Court observed:

"While the power of a state Legislature to legislate in the enactment of laws for the state is derived from the people of the state, the power to ratify a proposed amendment to the federal Constitution has its source in such Constitution."[277]

Thus, under this doctrine, to whatever extent constitutional authority is granted to the states in this court-defined relationship of federal power, it follows the states and thus the people they represent, to that extent, become part of the federal government. Thus, the Court in this suit is simply asked to address yet another constitutional conflict of delegation of federal power between two branches of the federal government, Congress in its mandated role of calling a convention, and the states in their Court-defined federal role as applicants for a convention to propose amendments to the Constitution.

The convention to propose amendments exists exclusively within the Constitution, i.e., it is an exclusive creation in and of the federal Constitution. As nothing in the Constitution provides otherwise, the convention must be considered equal to the other governmental authorities created in that document. That is to say, within its scope of delegated and

---

[275] Hawke v. Smith, 253 U.S. 716 (1920); Leser v. Garnett, 258 U.S. 130 (1922).
[276] *Id.*
[277] Hawke v. Smith, 253 U.S. 221 (1920).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

designated powers, the convention is as valid and legitimate a branch of government as are the other three ordinary branches of government prescribed in the Constitution. Thus, it fulfills the first principle of limited constitutional government: no branch of the government may ignore or exceed the Constitution.[278]

The *laches* of Congress in the face of the overwhelming number of applications by the states[279] clearly demonstrates Congress' de facto claim to the authority to veto the Constitution and ignore its provisions. Under these circumstances, it would be constitutional suicide for the Court to refer the issue of calling a convention to propose amendments to Congress by terming it a political issue, analogous to giving a key to the liquor cabinet to an alcoholic. The Framers were explicit in their constitutional language and their interpretation of the meaning of those words:

> "Let us attend to the manner in which amendments are made. The proposition for amendments may arise from Congress itself, when two-thirds of both house shall deem it necessary. If they should not, and yet amendments be generally wished for by the people, two-thirds of the legislatures of the different states may require a general convention for the purpose, in which case Congress are under the necessity of convening one."[280]

---

[278] "The government of the United States can claim no powers which are not granted to it by the Constitution." Martin v. Hunter's Lessee, 14 U.S. 304; "[The] court may not construe Constitution so as to defeat its obvious ends when another construction equally accordant with the words and sense thereof, will enforce and protect them." Prigg v. Commonwealth of Pennsylvania, 41 (16 Pet.) U.S. 539 (1842); "In construing Federal Constitution, Congress must be held to have only those powers which are granted expressly or by necessary implication." Chicago B&Q Railroad Co. v. Otoe County, 83 U.S. 667 (1872); "The government of the United States is one of limited powers and no department possesses any authority not granted by Constitution." Hepburn v. Griswold, 75 U.S. 603 (1869). *See infra* text accompanying note 548.

[279] *See infra* text,
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664;
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.

[280] James Iredell, 4 ELLIOT'S DEBATES 177 (1937). *See infra* text accompanying note 518.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As the Founding Fathers provided no option to the calling of a convention once the states had applied for one, and Congress has not acted on these application as it is required to do, the question of congressional *laches* in the face of constitutionally mandated action clearly falls to the courts to adjudicate under the Constitution's Article III power allowing the Court to decide "all cases...arising under this Constitution."[281] This is a question of the Court applying a basic constitutional standard, i.e., the expressed language of the document on an action by Congress, a practice, when

[281] U.S. CONST., art. III, § 2 (1). *See* also Bell v. Hood, 327 U.S. 678 (1946); "Before deciding that there is no jurisdiction, the district court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. For to that extent 'the party who brings a suit is master to decide what law he will rely upon and...does determine whether he will bring a "suit arising under" the (Constitution or laws) of the United States by his declaration or bill'" The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25, 411" (Hood); "The reasons for this is that the court must assume jurisdiction to decide whether the allegations state a cause of action on which the court can grant relief as well as to determine issues of fact arising in the controversy." (Hood); "...it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction."(Hood);"...the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another. For this reason the district court has jurisdiction. Gully v. First National Bank, 299 U.S. 109, 112, 113, 97; Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 199, 200, 244, 245." (Hood). Further, as neither Congress (*see infra* text accompanying notes 561-578), the President (*Id.*), nor the states(*See* Ware v. Hylton, 3 U.S. 199 (1796), McCulloch v. Maryland, 17 U.S. 316 (1819), Gibbons v. Ogden, 22 U.S. 1 (1824)) have the authority to define the *federal* constitutional issues surrounding a convention to propose amendments, the process, by simple elimination, must be left to the federal courts under their Article III power to "decide all cases...arising under this constitution..." (U.S. CONST., art. III,§ 2).

While this suit has raised questions of standing that must be addressed,(*see supra* text accompanying notes 15-211) the issue is one of jurisdiction, not standing to sue. The constitutional language is clear. It is the job of the courts to define the document and no standing issue alters that fact.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

such a standard clearly existed in the Constitution, the courts have not hesitated to apply in the past.[282]

While it is conceded the actual calling of the convention to propose amendments (that is the issuing the call notifying the states of a convention) is clearly a responsibility of Congress,[283] this fact by itself does not exclude the judiciary from determining under what constitutional conditions Congress must act, or from considering the constitutionality of congressional *laches* when clear evidence exists that Congress has ignored the mandate of the Constitution.

Certainly, the Court has no more authority than Congress to affect the content of a convention to propose amendments.[284] But as equally certain, the Court has the duty and obligation to interpret Article V and other parts of the Constitution in regard to the context of a convention:[285] under what circumstance Congress must fulfill its obligation, what a "call" consists of, how limited congressional involvement shall be in the operation of a convention, what powers and authorities the convention has, and to what extent the rest of the provisions of the Constitution affect a convention to propose amendments.

---

[282] Hawke v. Smith, 253 U.S. 221 (1920); Coleman v. Miller, 307 U.S. 433 (1939); Powell v. McCormack, 395 U.S. 486 (1969); U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1994).
[283] U.S. CONST., art V.
[284] In re State Tonnage Tax Cases, 79 U.S. 204 (1870). *See* also Ullmann v. U.S.,350 U.S. 422 (1956). "Courts cannot add any new provisions to the constitution by construction." (Tonnage); "Nothing new can be put into the constitution except through the amendatory process, and nothing old can be taken out without the same process." (Ullmann).
[285] U.S. CONST., art III.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

It is duty of the Court to ensure that the full meaning and intent of the Founding Fathers as expressed in the Constitution are faithfully observed by both citizen and government.[286] If either shall transgress that Constitution, either by *laches* or by deed, then the Court, where necessary, must apply the full force of its office to force compliance with the Constitution.

For above all, the Court is obligated to address and repair the excesses of the national government as they may, from time to time, conflict with the meaning and purpose of the Constitution, and it is obligated to find for the Constitution in such conflict. As Chief Justice Marshall stated:

> "It cannot be presumed that any clause in the constitution is intended to be without effect; and, therefore, such a construction is inadmissible, unless the words require it...
>
> "It is emphatically the province and duty of the judicial department to say what the law is...
>
> "[I]f a law be opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty...
>
> "The distinction between a government with limited and unlimited powers is abolished, and if those limited do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.
>
> "Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it...
>
> "If then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply."[287]

---

[286] Farmer's & Mechanics' Bank of Pa. v. Smith, 19 U.S. 131 (1821); "The constitution of the United States was made for the whole people of the union and is equally binding upon all the courts and all citizens."

[287] Marbury v. Madison, 5 U.S. 137 (1803).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

To rule the contrary, Chief Justice Marshall said:

"...would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding...is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed with pleasure."

"...it thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written constitution."[288]

If the issue before the Court were that Congress had called a convention to propose amendments, the judiciary could not intercede to prevent it,[289] but as the issue is congressional failure to call a convention when constitutionally mandated to do so,[290] the Court can and must intercede to take such action as required to compel Congress to obey the Constitution. Otherwise, Congress will be permitted a de facto *veto* of the Constitution based on that body's arbitrary and capricious political discretion. It will establish a precedent allowing Congress, or any branch of the government, the "privilege" to reject the Constitution any time and under any circumstances where the obedience of such constitutional restrictions proves politically unfavorable or desirable. Once this power of veto is handed to Congress, it

---

[288] *Id.*

[289] If "the national rulers...will have no option upon the subject..." this concept must include the Court as well as Congress. *See infra* text accompanying note 507.

[290] The only requirement of the Constitution is that at least two-thirds of the several states apply for a convention. (*See supra* note 2). At least two-thirds of the states have done so. (*See* TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664; TABLE 2—STATES APPLYING FOR A CONVENTION, p.676). All applications have been filed with Congress which elected to place them in the Congressional Record. (*See infra* text accompanying note 1655). This filing constitutes the only action the Constitution requires the states to take, and Congress cannot add additional provisions to that standard. (*See* Powell v. McCormick, 395 U.S. 486 (1969)). As with ratification, the states having applied, it is conclusive upon Congress to call and conclusive upon the courts to enforce. (*See* Leser v. Garnett, 258 U.S. 130 (1922)).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

remains only to political whim and expediency to speculate where next the Congress will ignore the Constitution. The ultimate end of this trail of judicial timidity would be the destruction of the entire constitutional concept of limited, controlled government.

The Supreme Court spoke directly on the responsibility of government and its officials to obey the Constitution when it said:

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance, with impunity. All the officers of the Government, from the highest to the lowest, are creatures of the law and are bound to obey it.

"It is the only supreme power in our system of government, and every man who, by accepting office, participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."[291]

The court cannot permit the disassembly of a provision of the Constitution by a branch of the government simply because that branch chooses not obey it or relies on weak pre-conditions which essentially maintain a convention to propose amendments would be clumsy, inefficient or unworkable.

But as the Supreme Court said, however cumbersome, inconvenient or inefficient a provision might be:

"[C]onvenience and efficiency are not the primary objectives--or the hallmarks—-of democratic government..."[292]

As Justice Burger concluded:

"The choices...made in the Constitutional Convention impose burden on governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choice were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked. There is *no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit Constitutional standards may be avoided, either by the Congress or by the President*. With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom

---

[291] United States v. Lee, 106 U.S. 196 at 220 (1882).
[292] Immigration and Naturalization Service v. Chadha, 462 U.S. 919 at 944 (1983).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution."[293]

The Court's obligation to the Constitution is unequivocal. It must review Congress' *laches* of obeying a clear constitutional standard and determine whether or not such *laches* is unconstitutional, and no issue of political question may stand in the way of this overriding duty.

As the convention call is contained within the Constitution, the supreme law of the land, it follows the Court is authorized to define the convention. Consequently, the Court may *define* the powers and limits of Congress in this regard. It does have the power to declare whether the current actions of Congress regarding a convention call are constitutional. It does not have the power, as such, to *enforce* such an decision. Ultimately Congress must decide if it will obey the Court's order.[294]

---

[293] *Id.* at 959. (emphasis added).

[294] The Founding Fathers realized the importance of a judiciary in maintaining the Constitution. Any politically motivated thought by Congress to overrule a Court so disposed to support the assertions of this suit that Congress is mandated to call a convention and has no discretion either in the call or in regulating the convention should, before acting on such thoughts, carefully consider the following words of the Founders:

"Whoever attentively considers the different departments of power must perceive, that in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has not influence over either sword or the purse, no direction ether of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

"This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks...

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"*The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such for instance as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing*.

"Some perplexity respecting the right of the courts to pronounce legislative acts void, because contrary to the constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the actions of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

"*There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid.* To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

"If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the constitution. *It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and legislature, in order, among other things, to keep the latter within the limits assigned to their authority*. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought of course to be preferred; or in other words, the constitution ought to be preferred to the statute, the intention of the people to the intent of their agents.

"*Nor does this conclusion by any means suppose a superiority of the judicial to the legislative powers. It only supposes that the power of the people is superior to both; and that where the will of the legislature declared in its statutes, stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental...*

"[*The*] *independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humours which the arts of designing men, or the influence of particular*

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

1

*conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information and more deliberate reflection, have a tendency in the meantime to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community*..." THE FEDERALIST No. 78 (A. Hamilton) (May 28, 1788). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## CONSTITUTIONAL CONVENTION OR CONVENTION TO PROPOSE AMENDMENTS: WHAT'S THE DIFFERENCE?

There is a difference between the phrase "constitutional convention," probably the most misused and misconstrued phrase in constitutional lexicon,[295] and "convention to propose amendments." In its strictest sense, a constitutional convention is a convention that writes a constitution. But it could also be a gathering intended to conduct any kind of business concerning a constitution. The term "constitutional convention" is overly general in nature, meaning, and power, and thus its use runs counter to the limited powers prescribed by the Founding Fathers in the Constitution.

[295] In the first place, nowhere in the entire Constitution is the term "constitutional convention" found. Thus, the term "constitutional convention" is imprecise at best and at worst an outright lie. The reason for this is because, almost without exception, all those who use the term attach the automatic assumption that a "constitutional convention" has the power to write a new Constitution and without question will do so if convened.

This assumption ignores several points: a) the lack of political desire by anyone to write such a document; b) the political obstacles involved in writing such a document; c) the almost impossible task of overcoming ratification requirements; d) the fact the Constitution prohibits such a convention from occurring. *See infra* text accompanying notes 808-811.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Consequently, nowhere in the entire Constitution are the words "constitutional convention" to be found. Instead, the Constitution refers to "a convention to propose amendments."[296]

A convention for proposing amendments, according to the language of Article V, specifically refers to a convention gathered to propose amendments to the United States Constitution. No other meaning, power or intent is attached to this phrase. Thus, the term "convention to propose amendments" is a strict interpretation of the Constitution and, as such, is of limited scope and power. In this sense, therefore, it is a "same subject" convention: it cannot consider, compose, pass out or even discuss a new constitution as it is limited strictly to proposing amendments to the current Constitution. Whatever amendments are proposed, the original document must remain intact. If the convention were to do otherwise, such action clearly would be unconstitutional.[297] Unlike the 1787 Constitutional Convention where Congress

---

[296] *See supra* text accompanying note 2.

[297] As such, either the Court or Congress could simply ignore the new Constitution proposal by either declaring it unconstitutional or refusing to send it on for ratification. It must be remembered that both bodies are commanded by the Constitution to act only "in pursuance of the Constitution" and thus have an obligation to "support the Constitution." Ignoring or otherwise failing to comply with *all the words of Article V* would not be supporting the Constitution.

"Nothing new can be put into the constitution except through the amendatory process, and nothing old can be taken out without the same process." Ullmann v. U.S., 350 U.S. 422 (1956).

Thus a proposal to write a new constitution would itself be constitutional only if the existing Constitution were previously amended to permit such an act. Even here, however, the wisdom of the Founders would prevail. It would be a new convention most certainly composed of new members elected in the new political climate created by the amendment so described (that of the fact a new Constitution would become a reality) who would actually write the new document. Thus, whatever political fervor that launched the new constitution movement would stand a chance of political dilution if not outright destruction from those already in political power or who otherwise opposed a new constitution. Ultimately, such a new convention might

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

gave the convention a *carte blanche* set of instructions to address the issues facing the Confederation,[298] the Founding Fathers wisely did not include such a sweeping power in the Constitution.

Therefore, like the rest of the powers of the Constitution, the convention to propose amendments is a limited power of the states and the people and is limited to specific, narrow purpose, just as Congress is limited by Section 8 of Article I of the United States Constitution. The intent of the Constitution is one of limited powers.[299] Unless it is authorized, a branch of government cannot act, and this concept extends throughout all the provisions of the Constitution, including the convention to propose amendments.

To those who insist the convention can ignore this fact and expand beyond its prescribed constitutional limits, the case is simple: the convention to propose amendments is no more dangerous to the Nation than what the courts and Congress and President have already done, specifically ignoring the strict limits imposed on them by constitutional language. If the people fear a expanding runaway convention, how can they justify an runaway government? If they accept a runaway government, then they must accept a runaway convention as both government and convention are simply running away

---

see the wisdom of simply creating specific amendments to deal with the problem or problems and de facto or outright propose the repeal of the authorizing amendment.

[298] *See infra* text accompanying note 1682.

[299] "The government of the United States can claim no powers which are not granted to it by the Constitution." Martin v. Hunter's Lessee, 14 U.S. 304 (1824); "In construing Federal Constitution, Congress must be held to have only those powers which are granted expressly or by necessary implication." Prigg v. Commonwealth of Pennsylvania, 41 U.S. 539 (1842).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

from the same constitutional limits. If one runaway is considered politically correct, then the other runaway is certainly so.

The issue is not the speed at which something runs, but that it runs at all. The hypocrisy of those who condemn a convention for exceeding its powers, yet stand by or in some cases labor to increase the power of the government beyond that which was clearly intended by the Founders, requires no more comment than to observe the obvious: that the convention, if so inclined to expand its powers, is doing no more than the national government is doing already. Hence, it is not “running away”. It is merely catching up.

If the correct term is “convention to propose amendments,” can it successfully be argued that applications by states that apply for a “constitutional convention” are either ineffective or cannot be counted toward a convention to propose amendments? As most, if not all, applications from the state legislature request a “constitutional convention” and none for a “convention to propose amendments,” it would appear, at first glance, not a single application is proper.

There is a problem with this conclusion. In the first place, the intent of the Founders was that the “national rulers… shall have no option” in the calling of a convention.[300] Thus, no national body, i.e., Congress, was to have any choice as to the calling of a convention if the states applied. Thus, there is no national body empowered to refuse the states. In the second place,

[300] *See infra* text accompanying note 506.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the issue revolves around *substance, not form*. Thus, it is the *intent* of the states and the people that matters here.[301]

In this same regard, any reference by the plaintiff in his evidence proving standing is not diluted by his use of the words “constitutional convention.” The reason the plaintiff chose to use the term “constitutional convention” in his letters to the State of Washington[302] was simply because he realized the misnomer is so pervasive that the plaintiff realized Washington State officials might not comprehend what he referring to if he used the correct term in his letters. After all this state doesn’t even have law on its books allowing the election of convention delegates regardless of whatever term is used.[303]

Also, the intent of the states negates any “same subject” argument that might attach itself in an effort to use precise constitutional language. It is

---

[301] As observed by Caplan in his book, (*see infra* text accompanying note 729) however, the way the state legislature chose to word the application is irrelevant. It is the intent of the states, however expressed, to hold a convention *under the authority of Article V of the United States Convention that is paramount*. Thus, whether the states refer to the convention as a “constitutional convention”, “a convention to propose amendments”, or just plain “convention,” it is clear the applications wish to exercise the power and authority granted the states and people under Article V of the United States Constitution. For examples of application language demonstrating this intent, *see generally*, APPENDIX B---EXAMPLES OF VARIOUS APPLICATIONS FILED BY THE STATES FOR A CONVENTION, p.717.

There are other examples in the Constitution such as “right to bear arms” which everyone equates to meaning guns. The fact is, the term “arms” is broad based and encompasses knives, spears, nuclear bombs, in short, anything that is an “arm.” Indeed, the ultimate demonstration of the intent of the states being paramount lies in the “implied powers” doctrine, a doctrine long recognized by the Court. All implied powers are based on the concept of the intent of the Founders rather than expressed words, as no implied power is “named” in the Constitution.

[302] *See generally* APPENDIX A---EVIDENCE OF PERSONAL INJURY IN SUPPORT OF STANDING, p.700.

[303] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

true *the precise* language of Article V says “on the application” of the state legislatures, Congress shall call a convention to propose amendments. Based on the Founders’ actual words,[304] however, there is no support for a “same subject” convention as the motion creating this language[305] (and thus expressing the intent of the Founders) was clearly a *numerically based action,* and this action is absolutely independent of any particular amendment proposal. In fact, it is a reasonable assumption that based on the fact the trigger for a convention to propose amendments is numeric, that the Founders by using the word “application” meant that a state only had to apply *once* for a convention and thus, when two-thirds of the state legislatures had applied *once*,[306] Congress was required to call a convention.

Article V does not say that a convention to propose amendments can only address the topic for which it is called, and it does not require that a convention be called on a particular topic at all. The convention, like Congress, can propose whatever amendments it feels appropriate, regardless of any state legislator’s hopes, whether or not these hopes are expressed in the language of the application. If it were “same subject”, that intent would have to be expressed where Article V reads “shall call a convention for proposing amendments.” The correct language would have to state “amendment” or, “shall

[304] *See infra* text accompanying notes 506,507,513,514.
[305] *See infra* text accompanying notes 435-437.
[306] This assumption is based on the fact that the Gerry amendment creating the convention requires a numeric total of states to effect a convention with no indication that any state was required to apply more than once for a convention. *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

call a convention to propose an amendment expressing the consensus of the applying states."[307]

If the word "application," being singular in lexicon, made any legal difference, it would then have to mean a single application written by one state, with all other states constitutionally mandated to ratify the amendment proposal.[308] Ignoring the obvious problems of sovereignty that this would create, the most difficult issue for "same subject" advocates would be to decide which state of the Union would be empowered to write all amendment proposals with the other 49 states unable to change a single comma once that state had written its proposal. Only when it is realized that "application" simply is an intent expressed by the state legislature to hold a convention, and thus *all states and the people they represent* are equal in their expression and merely are adding their sovereign voices in a single chorus, does the solution present itself. Any attempt to dilute or change the mixture by a notion of "living document" merely serves to make the entire process unworkable.

Any doubt that the Founders did not intend this as the meaning of the word "application" is dispensed by the fact that from the very beginning[309] each state has properly claimed its right to submit as many applications as it wished for a convention, and *none* contain any language seeking permission or

---

[307] *See infra* text accompanying notes 669-692.
[308] For a further discussion on the word "application" *see infra* text accompanying notes 1530-1537.

[309] ***See infra*** **text**

TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664; APPENDIX B---EXAMPLES OF VARIOUS APPLICATIONS FILED BY THE STATES FOR A CONVENTION, p. 717.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

prior approval from any other state as to subject, language, intent or any other aspect of the application.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## CONSTITUTIONAL CONVENTION HISTORY

### INTRODUCTION

Any interpretation of the meaning and intent of Article V must be based on careful scrutiny of the Constitutional Convention of 1787. Indeed, as far as this constitutional provision, it is the only source of construction. There has been no direct judicial or legislative action in this matter since that time. The record of 1787 is therefore pristine and uncontaminated by succeeding generations. The Framers' intent thus comes through loud and clear.

The very essence of the Constitutional Convention of 1787 is embedded in Article V. As the history of the Convention demonstrates, the main reason for the Convention was the fact that the Articles of Confederation did not allow for change (except by unanimous consent of the states, which proved to be almost impossible to achieve),[310] and thus the national government could not cope with the nation's problems as they arose. The Framers saw to it the Constitution did allow for change, and as a result it has remained a credible blueprint describing a form of government that has remained viable for over two hundred years.

If the Constitution is a living document, then its ability, as provided for in Article V, to be altered in a peaceful, thoughtful and deliberate fashion, is its heartbeat. This flexibility satisfies the most basic need of

[310] *See infra* text accompanying note 335.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

democratic government: the ability of that government to alter itself to meet the changing needs of those governed.

Thus, any assault on Article V, by failing to follow its clear and plain provisions, serves to strike at the very heart of the Constitution by removing that most precious ability for peaceful change. This is a most dangerous trail--for the country or its government--to follow. For if a government cannot respond to the evolution of its people, then it most certainly will fall to their revolution.

## EVENTS LEADING UP TO THE CONVENTION OF 1787

In November, 1777, the Articles of Confederation and Perpetual Union, drafted by John Dickinson with alterations by the Continental Congress, were adopted.[311] Under the provisions of the articles, each state had one vote in the national legislature, and nine of the thirteen states had to agree on such matters as a declaration of war, treaties and the borrowing of money.[312] A Committee of the States was provided in the Articles to act between sessions of Congress, exercising all powers except those requiring agreement by nine of the thirteen states.[313] While there was a federal system in the Articles of

[311] S. Morison, H. Commager & Leuchtenburg, A CONCISE HISTORY OF THE AMERICAN REPUBLIC 107 (2d ed. 1983).
[312] *Id.*
[313] *Id.* at 107-08


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Confederation, the system lacked actual federal power.[314] By 1786, it was clear to such national leaders as George Washington and John Adams that the union of the states could not endure unless the Articles were extensively revised.[315] The thirteen states were suffering an economic depression that no single state could handle alone, Great Britain had refused to negotiate with the Confederation because of the United States' impotence internationally,[316] and Shay's Rebellion had demonstrated its impotence domestically.[317]

The states had begun to quarrel over matters of commerce. The Commonwealth of Virginia invited the states to send delegates to a convention at Annapolis to "take into consideration the trade of the United States."[318] The convention met in September 1786, but only five states sent delegates.[319] This number was too few to reach meaningful decisions, but under the leadership of Alexander Hamilton, it adopted a report proposing that all thirteen states send delegates to a convention "to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union."[320]

[314] *See Id.* at 108.
[315] *Id.* at 114.
[316] *Id.*
[317] *Id.*
[318] *Id.*
[319] *Id.*
[320] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## THE CONSTITUTIONAL CONVENTION OF 1787 AND THE GREAT COMPROMISE

The Constitutional Convention was scheduled to begin May 14, 1787 in Philadelphia, but a majority of states did not arrive until May 25.[321] In all, twelve states sent a total fifty-five delegates to the Convention with Rhode Island the single exception.[322] After the Convention elected George Washington as presiding officer and appointed a rules committee,[323] its real work began. On May 29, as a starting point for discussion, Governor Edmund Randolph of the Commonwealth of Virginia submitted a set of resolutions generally outlining the principles on which the Virginia delegation believed the new government should be based.[324] This set of fifteen resolutions is known as the Virginia Plan.[325]

The Virginia Plan, which was generally supported by the large states, contained the basic framework of the Constitution as finally adopted,[326] including provisions for a national legislature of two branches with members of both houses apportioned according to population, a national executive, and a national judiciary.[327] Resistance by the smaller states to the Virginia Plan was led by New Jersey which offered its own plan largely based on the existing

---

[321] 1 FARRAND, *supra* note 2 at 1. (Reference to the date of the entry and author is supplied parenthetically. As the convention was held entirely in 1787, the listed date does not include a year. Where the date is not given in a listing of several sources, reference is implicitly made to the immediately preceding date.

[322] *Id.*

[323] 1 FARRAND, *supra* note 2, at 2 (Journal---May 25).

[324] *Id.* at 16 (Journal—May 29), 20 (Madison), 23 (Yates), 27 (McHenry), 27 (Patterson).

[325] *Id.* at 20-22 (Madison—May 29); 3 *Id.* at 593.

[326] *See generally* S Morison, H. Commager & W. Leuchtenburg, A CONCISE HISTORY OF THE AMERICAN REPUBLIC 115 (2d ed. 1983).

[327] *See generally* Id.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Articles of Confederation.[328] The two groups deadlocked on the issue of the representation of the states in the national legislature.[329] In July, the deadlock was broken by a suggestion from Connecticut that one house of the national legislature be apportioned according to population, and the other house, the Senate, provide an equal vote for each state.[330] This has come to be known as the "Great Compromise" so often referred to in histories of the Constitution. The importance of this compromise is demonstrated by the last clause in Article V, which provides "that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."[331] This clause of Article V seeks to ensure that the results of the "Great Compromise" remain intact and undisturbed.

## INTRODUCTION TO THE AMENDATORY PROVISION

One subject of discussion and concern at the Constitutional Convention was the matter of future amendments to the Constitution. One commentator has noted that "[t]he idea of amending the organic instrument of a state is peculiarly American."[332] But it was not a new concept for the delegates to the Constitutional Convention. Several of the state constitutions included

---

[328] *See generally* Id. at 115-16.
[329] *See generally* Id. at 116.
[330] *See generally* Id.
[331] U.S. CONST., art. V.
[332] Voegler, *Amending the Constitution by the Article V Convention Method*, 55 N.D.L. Rev. 355, 359 (1979) [Hereinafter Voegler] (quoting *L. Orfield,* THE AMENDING OF THE FEDERAL CONST.ITUTION 1 (1942)).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

amendment procedures.[333] Even the Articles of Confederation had its amendment provision in paragraph XIII, which required proposals to be agreed to in Congress and ratified by all the states:

> "And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alterations be agreed to in a Congress of the united states, and be afterwards confirmed by the legislatures of every state."[334]

According to convention delegate Charles Pinckney of South Carolina, "[I]t is to this unanimous consent, the depressed situation of the Union is undoubtedly owing."[335] The best demonstration of the futility of amending the Articles of Confederation under the existing provision was the fact that Rhode Island did not even send a delegate to the Philadelphia convention.[336]

The delegates took a realistic, rather than an idealistic, approach in constructing their new Constitution, and this realistic approach extended to the development of its amendatory article. Dickinson struck the keynote of the entire Convention with his statement that:

> "[e]xperience must be our only guide. Reason may mislead us. It was not Reason that discovered the singular & admirable mechanism of the English Constitution. It was not Reason that discovered or ever could have discovered the odd & in the eye of those who are governed by reason, the absurd mode of trial by Jury. Accidents probably produced these discoveries, and experience has give [sic] a sanction to them. This then is our guide."[337]

There are two basic differences between the final version of Article V of the new Constitution and the old Article XIII of the Articles of

---

[333] *See generally Id.* at 359-60.
[334] Martig, *Amending the Constitution, Article V; The Keystone of the Arch,* 35 Mich. L. Rev. 1253, 1255 (1937) (citing DOCUMENTS ILLUSTRATIVE OF THE FORMATION OF THE UNION OF THE AMERICAN STATES, H.R. Doc. No. 398, 69th Cong., 1st Sess. 35 (1927)).
[335] 3 FARRAND, *supra* note 2, at 120.
[336] *See* 4 *Id.* at 18-20.
[337] 2 *Id.* at 278.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Confederation.[338] First, a power is reserved to the states to call a convention for proposing amendments, in addition to Congress' power to propose amendments. The reason for this change was the desire by the delegates to retain in the several states the power to circumvent a recalcitrant or abusive Congress by initiating a convention to propose amendments,[339] reflecting the opinion that "the assent of the National Legislature ought not to be required" to an amendment to the Constitution.[340] The second major difference between Article V and Article XIII is that proposed amendments do not require unanimous consent by the several states. As was noted with the Pinckney comment,[341] the poor economic conditions existing in the United States at that time, which were directly attributable to the unanimous ratification provision of the Articles of Confederation, made the adoption of an amending process *not* requiring unanimous consent almost inevitable.

In reaching the final result as reflected in Article V, the delegates at the Convention spent considerable discussion as to whether the assent of the national legislature to amendments should be required. The final version of Article V does allow Congress to propose amendments, but any such proposal must still be ratified by the states, and only by the states. Thus, under *both*

---

[338] *Compare* U.S. CONST., art. V, *supra* text accompanying note 2 *with* Articles of Confederation art. XIII, *supra* text accompanying note 334.
[339] 1 FARRAND, *supra* note 2, at 203 (Madison—June 11)(Madison's comments); 2 *Id.* at 629 (Madison—Sept. 15)(Mason's comments); *See also* 3 *Id.* at 127 (Randolph's comments to the Virginia House of Delegates), 367-68 (Mason's account as told to Thomas Jefferson) 575 n.6 (Letter from George Read to John Dickinson of Jan. 17, 1787); 4 *Id.* at 61 (Mason's notes).
[340] 1 *Id.* at 22 (quoting Resolution 13 of the Virginia Plan).
[341] *See supra* text accompanying notes 334-335.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the Articles of Confederation and the United States Constitution, Congress has never been granted the power to propose *and* ratify amendments.[342]

## THE AMENDATORY PROVISION: THE RECORD

### *May 29----June 11: The Virginia Plan*

As noted previously, the Virginia Plan served as the starting point for discussion at the Convention.[343] This plan prescribed in general terms the principles on which the Virginia delegation believed the new government should be based.[344] Resolution 13 of the Virginia plan addressed the issue of future amendments to the new Constitution:

> "13. Resd. that 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 be required thereto."[345]

The significance of this early statement was the demonstration that a major purpose of the amendatory article was to provide a means for amending the Constitution *despite* congressional inaction or opposition. This fact is especially significant because much of the final text of the Constitution was derived from the principles enunciated in the Virginia Plan.[346]

---

[342] *See supra* text accompanying notes 2,334.
[343] 1 FARRAND, *supra* note 2, at 16 (Journal—May 29), 20 (Madison), 23 (Yates), 27 (McHenry), 27 (Patterson).
[344] *Id.*
[345] *Id.* at 22 (Madison—May 29).
[346] 3 *Id.* at 593.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

However, the Virginia Plan was not the only plan submitted for discussion by the delegates. Charles Pinckney of South Carolina submitted a proposed constitution,[347] a copy of which no longer exists.[348] Insofar as can be determined, the Pinckney Plan provided little in the direction of the amendment process:

> "[XVI] The assent of the Legislature of States shall be sufficient to invest future additional Powers in U.S. in C. Ass. and shall bind the whole confederacy."[349]

Pinckney later maintained that his plan envisioned Congress as the proponent of amendments,[350] but there is nothing in the text of his amendatory provision to indicate how amendments were to be proposed.

Another proposal, distributed to several members of the Convention but never formally put before it,[351] was written by Alexander Hamilton. Unlike the Virginia Plan which made it clear that Congress was not to have any power to interfere with the process, Hamilton's draft delegated the ability to propose amendments to the national legislature:

> "This Constitution may receive such alterations and amendments as may be proposed by the Legislature of the United States, with the concurrence of two-thirds of the members of both Houses, and ratified by the Legislatures of, or by Conventions of deputies chosen by the people in, two-thirds of the States composing the Union."[352]

While there was disagreement between those delegates favoring the exclusion of Congress from the amendment process (as demonstrated by the

---

[347] 1 *Id.* at 16 (Journal—May 29), 23(Madison), 24 (Yates).
[348] 3 *Id.* at 595. There is great confusion by the lack of a correct copy of the so-called Pinckney Plan. *See generally Id.* at 595, 601-04. The information quoted is from the combination of all the sources of information available in 1911 when Professor Farrand combined to reconstruct what he believed to be the Pinckney Plan in its original form. *See Id.* at 604.
[349] *Id.* at 609. The words "in C. ass." apparently stand for "in Congress assembled."
[350] *Id.* at 120.
[351] *Id.* at 617.
[352] *Id.* at 630.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Virginia Plan), and those delegates who wanted Congress to originate all amendments (as called for in Hamilton's plan), it is clear even at this early state in the creation of Article V, that the subject matter of the amendment was immaterial. What concerned the Framers was the *process of amendment* which, from the earliest concept to completion, remained a *numeric count causing the amendment process to occur, rather than* the *subject matter of the amendment being the basis upon which an amendment was processed*.[353]

On May 30, the delegates began their discussions focusing on the resolutions presented in the Virginia Plan.[354] On June 5, the discussion reached Resolution 13, Virginia's proposal regarding the amendment process.[355] As stated above, the Virginia Plan provided that:

> "[a] provision ought to be made for amendment of the Article of Union whensoever it shall seem necessary, and the assent of the National Legislature ought not to be required thereto."[356]

The first delegate to address the issue was Charles Pinckney who stated quite simply he "doubted the propriety or necessity of it."[357] However, Elbridge Gerry spoke in favor of the resolution, stating:

> "The novelty & difficulty of the experiment requires periodical revision. The prospect of such a revision would also give intermediate stability to the Govt. Nothing has yet happened in the States where this provision existed to proves [sic] its impropriety."[358]

---

[353] *See infra* text accompanying note 513.
[354] 1 *Id* at 30 (Journal—May 30), 33 (Madison), 38 (Yates), 40 (McHenry).
[355] *Id.* at 117 (Journal—June 5), 121 (Madison), 126 (Yates).
[356] *Id.* at 22 (Madison—May 29). Although Madison's notes of June 5 show a slightly different wording of Resolution 13, it is apparent—by the return to the original language of the Resolution when quoted later in the Journal and by Madison—that Madison was paraphrasing the content of the resolution in his June 5 notes. *See Id.* at 22 (Madison—May 29), [2] (Madison—June5), and 194 (Journal—June 11), 227 (Journal—June 13), 231 (Journal—June 13), 237 (Madison—June 13); 2 *Id.* at 84 (Journal—July 23), 133(Comm. Detail, Doc. I).
[357] 1 *Id.* at 121 (Madison—June 5).
[358] *Id.* at 122 (Madison—June 5).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Following these comments, the delegates postponed the matter for further discussion.[359]

On June 11, the delegates again discussed Resolution 13.[360] According to Madison's notes, "several members did not see the necessity of the [Resolution] at all, nor the propriety of making the consent of the Natl. Legisl. unnecessary."[361] However, Colonel Mason, "urged the necessity of such a provision"[362] stating:

> "The plan now to be formed will certainly be defective, as the confederation has been found on trial to be. Amendments therefore will be necessary, at 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 amendmt."[363]

Governor Randolph "enforced" Colonel Mason's arguments.[364] At this point the delegates unanimously agreed to the portion of Resolution 13 stating that "provision ought to be made for the amendment of the Articles of the Union whensoever it shall seem necessary,"[365] but they postponed a decision on whether the assent of the national legislature would be required.[366] Thus, when Governor Randolph reported on the state of the resolutions several days later,

---

[359] *Id.* at 117 (Journal—June 5), 122 (Madison), 126 (Yates).
[360] *Id.* at 194 (Journal—June 11), 202-03 (Madison), 206 (Yates).
[361] *Id.* at 202 (Madison—June 11). Madison did not state which convention members spoke against the resolution. But based on comments made regarding this provision at other points in the convention, the most like opponent was Charles Pinckney. *See Id.* at 121 (Madison—June 5).
[362] *Id.* at 202 (Madison—June 11).
[363] *Id.* at 202-03.
[364] *Id.* at 203.
[365] *Id.* at 194 (Journal—June 11), 203 (Madison), 206(Yates); *Id.* at 22 (Madison—text of resolution).
[366] *Id.* at 194 (Journal—June 11), 203 (Madison), 206 (Yates).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the text of the resolution concerning the amendment process (now numbered as Resolution 17) was as follows:

> "Resolved that provision ought to be made for the amendment of the articles of union whensoever it shall seem necessary."[367]

*June 29----July 23: Miscellaneous Concerns*

On June 29, the issue of the appropriate amendment process was discussed during the debate on whether each state should have an equal vote in the second house (i.e., the Senate).[368] During the discussion of this issue, Judge Oliver Ellsworth of Connecticut stated he would not be surprised if the new Constitution should require amendment in the future, even though "we made the general government the most perfect in our opinion..."[369] "Let a strong Executive, a Judiciary & Legislative power be created," Judge Ellsworth said, "but Let not too much be attempted; by which all may be lost."[370] Ellsworth described himself as "not in general a half-way man, yet [I] prefer[] doing half the good we could, rather than do nothing at all. The other half may be added, when the necessity shall be more fully experienced."[371]

---

[367] *Id.* at 227 (Journal—June 13), 231 (Journal—slight changes in punctuation and capitalization), 237 (same). It is at this point in the convention that the committee that had been working on the resolutions rose, with the resolution now being considered by the entire convention sitting as a committee of the whole House. *Id.* at 224 (Journal—June 13), 241 (Journal—June 15).
[368] *Id.* at 469 (Madison—June 29), 474-75 (Yates), 478 (King).
[369] *Id.* at 475 (Yates—June 29).
[370] *Id.* at 469 (Madison—June 29).
[371] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

James Madison spoke in response to Judge Ellsworth regarding the need to continually strive for the best plan of government and the difficulty other governments had experienced in changing their form of government once it was in place:

> "I would always exclude inconsistent principles in framing a system of government. The difficulty of getting its defects amended are great and sometimes insurmountable. The Virginia state government was the first which made, and through its defects are evident to every person, we cannot get it amended. The Dutch have made four several attempts to amend their system without success. The few alterations made in it were by tumult and faction, and for the worse."[372]

Another delegate who recorded Madison's comments used them to demonstrate a concern about the potential danger of relying on future amendments, arguing the delegates should continue to struggle to create the best possible structure of government:

> "The Gentleman from Connecticut has proposed doing as much at this Time as is prudent, and leavg. Future amendments to posterity—this a dangerous Doctrine—the Defects of the Amphictionick League were acknowledged, but they never cd. Be reformed. The U Netherlands have attempted four several Times to amend their Confederation, but have failed in each Attempt—The fear of Innovation, and the Hue & Cry in favor of the Liberty of the people will prevent the necessary Reforms--[.]"[373]

Despite these expressed concerns, Resolution 17—"That provision ought to be made for the amending of the articles of union, whensoever it shall seem necessary"-[374] was considered by the entire Convention for the first time on July 23.[375] The Resolution was passed unanimously, apparently without discussion.[376]

---

[372] *Id.* at 475-76 (Yates—June 29).
[373] *Id.* at 478 (King—June 29). Madison did not record his own version of his comments, apparently due to the adjournment of the convention for the day immediately after Madison spoke. *Id.* at 476 (Yates—June 29).
[374] 2 *Id.* at 84 (Journal—July 23), 87 (Madison).
[375] *Id.*
[376] 2 *Id.* at 84 (Journal—July 23), 87 (Madison).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The resolution was discussed, however, in relation to another resolution that "the legislative, Executive, and Judiciary Powers within the several States, and of the national Government, ought to be bound by oath to support the articles of union."[377] During the discussion, James Wilson of Pennsylvania said, "he was never fond of oaths" and that "[h]e was afraid they might too much trammel the...Members of the Existing Govt in case future alterations should be necessary; and prove an obstacle to Resol: 17, just agd. to."[378] Nathaniel Gorham of Massachusetts said he could not see how taking an oath would hinder future changes to the Constitution:

> "Mr. Ghorum [sic] did not know that oaths would be of much use; but could see no inconsistency between them and the 17. Resol: or any regular amendt. Of the Constitution. The oath could only require fidelity to the existing Constitution. A constitutional alteration of the Constitution, could never be regarded as a breach of the Constitution, or of any oath to support it."[379]

Elbridge Gerry of Massachusetts agreed with Gorham and added that he considered oaths as having value by impressing upon the officers of the new government the fact that the state and federal governments were not distinct governments but were instead components of a general system, thereby preventing the preference that existed in favor of the state governments.[380] The resolution relating to oaths was then passed without objection.[381]

---

[377] 2 *Id.* at 84 (Journal—July 23); 1 *Id.* at 227 (Journal—13)(original text of resolution),231 (Journal) (changes in capitalization), 237 (Journal)(changes in capitalization and abbreviations); 2 *Id.* at 87 (Madison—July 23)(changes in capitalization and abbreviations).
[378] 2 *Id.* at 87 (Madison—July 23).
[379] 2 *Id.* at 87-88 (Madison—July 23).
[380] 2 *Id.* at 88 (Madison—July 23).
[381] *Id.; See also Id.* at 84 (Journal—July 23).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*July 26----August 6: Committee of Detail*

On July 26, the resolutions voted on by the convention were submitted to the Committee of Detail[382] whose job it was to transform the principles set out in the resolutions into a detailed and workable constitution. The committee, consisting of John Rutledge of South Carolina, Edmund Randolph of Virginia, Nathaniel Gorham of Massachusetts, Oliver Ellsworth of Connecticut, and James Wilson of Pennsylvania,[383] took approximately one week to complete their work.[384] During this week, the committee had before it numerous proposals relating to the amendment process,[385] including the proposals contained in the Virginia Plan[386] and the Pinckney Plan.[387]

The language of the Virginia proposal remained the same as its May 20 introductory version, which was as follows: "Resolved That Provision ought to be made for the Amendment of the Articles of Union, whensoever it shall seem necessary."[388] The original Virginia proposal ended this quote with the proviso

---

[382] *Id.* at 117 (Journal—July 26).
[383] *Id.* at 97 (Journal—July 24), 106 (Madison).
[384] *See generally Id.* at 117 (Journal—July 26), 175 (McHenry—Aug. 4), 176 (Journal—Aug. 6).
[385] *See generally Id.* at 133, 136, 148, 152, 159, 174; 3 *Id.* at 609.
[386] 2 *Id.* at 133 (Comm. Of Detail, Doc. I).
[387] *Id.* at 136 (Comm. Of Detail, Doc. III); *See also Id.* at 98 (Journal—July 24) 3 *Id.* at 609 (Pinckney Plan). The New Jersey Plan, also known as the Patterson Proposals, 2 *Id.* at 98 (Journal—July 24), was also before the committee. *Id.* at 98, 134 n. 3 (Comm. Of Detail, Doc. III) However, the New Jersey Plan did not contain a provision for future amendments to the proposed constitution. *See* 1 *Id.* at 242-45 (Madison—June 15), 247 (King); *See also* 3 *Id.* at 611-13, 615-16.
[388] 2 *Id.* at 133 (Comm. Of Detail, Doc. I); *See also* 1 *Id.* at 22 (Madison—May 29), 194 (Journal—June 11), 203 (Madison—June 11), 227, 231 (Journal—June 13); 237 (Madison—June 13); 2 *Id.* at 84 (Journal—July 23), 87 (Madison—July 23).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"that the assent of the National Legislature ought not to be required thereto."[389] The convention had voted to adopt the first part of the Virginia Resolution,[390] but discussion on the second part of the Resolution was postponed.[391]

Due to missing documentation, Professor Farrand was forced to attempt a reconstruction of the original text of the Pinckney amendatory provision. He determined the text most likely read:

"The assent of the Legislature of States shall be sufficient to invest future additional Powers in the U.S. in C. ass. and shall bind the whole confederacy."[392]

The only surviving document of the portion of the Pinckney Plan before the Committee of Detail is an outline of that Plan,[393] containing only the following reference to amendment:

"24. The Articles of Confederation shall be inviolably observed, and the Union shall be perpetual; unless altered as before directed."[394]

It is unclear what was meant by the term "unless altered as before directed," but it reasonable to assume this language referred to some other reference in the Plan now lost to history.

The next relevant document that does exist in the records of the Committee of Detail is a draft copy of portions of the Constitution before the Committee. This draft reveals substantial information on the thought processes of the Committee through the editing process contained in the document itself,

---

[389] 1 *Id.* at 22 (Madison—May 29), 121 (Madison—June 5), 194 (Journal—June 11), 202-03 (Madison—June 11).
[390] *Id.* at 194 (Journal—June 11), 203 (Madison), 206 (Yates); 2 *Id.* at 84 (Journal—July 23), 87 (Madison).
[391] 1 *Id.* at 194 (Journal—June 11), 203 (Madison).
[392] 3 *Id.* at 609.
[393] 2 *Id.* at 129, 134 (Comm. Of Detail. Doc. III); *See generally* 3 *Id.* at 595, 601-09.
[394] 2 *Id.* at 136 (Comm. Of Detail, Doc. III).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

especially editing related to the introduction of the idea of a convention to propose amendments for proposing amendments to the Constitution. These references also demonstrate the thought processes surrounding whether changes to the Constitution by amendment would be made only one at a time.

The document, initially in the handwriting of Edmund Randolph, read:

"*An alteration* may be effected in the articles of union, on the application of two-thirds of the state legislatures."[395]

Randolph subsequently struck out the words "two-thirds" and replaced them with the word "nine",[396] then apparently allowed John Rutledge to make suggestions and changes on the document. Rutledge changed the language back to two-thirds of the state legislatures and then, significantly, added the first reference to the use of a convention as part of the amendment process.[397]

Rutledge's version now read as follows:

"*An alteration* may be effected in the articles of union, on the application of 2/3d of the state legislatures *by a Covn.*"[398]

Rutledge then crossed out the entire language quoted above and replaced it with the following:

"on appln. of 2/3ds of the State Legislatures to the Natl. Leg. They call a Convn. To revise or alter ye. Articles of union."[399]

Rutledge's revisions were included in the subsequent drafts (now in Wilson's handwriting) created by the Committee of Detail, but now with an important addition:

"This Constitution ought to be amended whenever *such Amendment* shall be necessary; and on Application of the Legislatures of two-thirds of the Sates

---

[395] *Id.* at 137 n.6, 148 (Comm. Of Detail, Doc. IV)(emphasis added).
[396] *Id.*
[397] *Id.*
[398] *Id. (emphasis added).*
[399] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

of the Union, the Legislature of the United States shall call a Convention *for that Purpose.*"[400]

On August 6, the first draft of the Constitution was submitted to the Convention by the Committee of Detail.[401] The amendatory process contained in Article XIX of the draft provided:

"On the application of the Legislatures of two-thirds of the States of the Union, for *an amendment* of this Constitution, the Legislature of the United States shall call a Convention *for that purpose.*"[402]

Once again reference was made to "an amendment" and a convention "for that purpose."

*August 30----September 10: Article XIX*

On August 30, the convention took up the matter of Article XIX.[403] On this date, there was little discussion on the proposal. Gouverneur Morris of Pennsylvania suggested "that the Legislature should be left at liberty to call

[400] *Id.* at 152 n. 14, 159 & n.16 (Comm. Of Detail, Doc. VIII) (emphasis added), 174 (a similarly worded draft proposed by the Committee of Detail).
[401] *Id.* at 176 (Journal—August 6), 177 (Madison), 190 (McHenry).
[402] *Id.* at 188 (Madison—Aug. 6)(emphasis added).
[403] *Id.* at 461 (Journal—Aug. 30), 467-68 (Madison).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

a Convention, whenever they please."[404] The proposal was passed as submitted without objection with this suggestion by Morris being turned down by the delegates.[405]

As passed, the amendatory article allowed only the states to initiate the amendment process, and the representatives of the states to draft the amendment on that issue at a convention. The terms of the August 30 version left Congress without the ability to propose amendments; instead, Congress was given the ministerial duty to call a convention on the application or request of two-thirds of the state legislatures. Also, Article XIX did not explicitly require ratification of the proposed amendment.

On September 10, Elbridge Gerry of Massachusetts moved to reconsider Article XIX.[406] Gerry expressed concern that a majority of States could, through the convention process, "bind the Union to innovations that may subvert the State-Constitutions altogether."[407] Alexander Hamilton of New York seconded the motion to reconsider, rejecting Gerry's concerns, but asserting Congress should also have the power to call a convention:

> "[Hamilton] did not object to the consequences stated by Mr. Gerry—There was no greater evil in subjecting the people of the U.S. to the major voice than the people of a particular State—It had been wished by many and was much to have been desired that an easier mode for introducing amendments had been provided by the articles of Confederation. It was equally desirable now that an easy mode should be established for supplying defects which will probably appear in the new System. The mode proposed was not adequate. The State Legislatures will not apply for alterations but with a view to increase their own powers—The National Legislature will be the first to perceive and will be most sensible to the necessity of amendments, and ought also to be empowered, whenever two-thirds of each branch should concur to call a Convention--- There

[404] *Id.* at 468 (Madison—Aug. 30).
[405] *Id.* at 461 (Journal—Aug 30), 468 (Madison—Aug 30).
[406] *Id.* at 555 (Journal—-Sept. 10), 557 (Madison—-Sept. 10).
[407] *Id.* at 557-58 (Madison---Sept 10.)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

could be no danger in giving this power, as the people would finally decide in the case."[408]

James Madison next spoke on the subject stating his concerns on the lack of specificity in the terms employed in Article XIX: "Mr. Madison remarked on the vagueness of the terms 'call a Convention for the purpose' as sufficient reason for reconsidering the article. How was a Convention to be formed? By what rule decide? What the force of its acts?"[409]

The Convention then voted to reconsider the amendatory provision.[410] Many delegates were persuaded by Alexander Hamilton's argument that the national legislature should be able to propose amendments directly, without the need for calling a convention to propose amendments.[411] Roger Sherman of Connecticut then moved to add the following italicized words to Article XIX:

"On the application of the Legislatures of two-thirds of the States of the Union, for an amendment of this Constitution, the Legislature of the United States shall call a Convention for that purpose *or the Legislature may propose amendments to the several States for their approbation, but no amendments shall be binding until consented to by the several States.*"[412]

By this change, the states continued to have the right to apply for a convention for proposing "an amendment" to the Constitution, but now Congress would be given the power to directly propose "amendments" to the states for ratification. Sherman's motion was seconded by Elbridge Gerry of Massachusetts.[413]

---

[408] *Id.* at 558 (Madison---Sept. 10).
[409] *Id.*
[410] *Id.* at 555 (Journal), 558 (Madison—Sept 10).
[411] *Id.* at 558-59 (Madison—-Sept. 10).
[412] *Id.* at 555 ( Journal---Sept. 10), 558 (Madison---Sept. 10),188 (Madison---Aug. 6)(previous text of art. XIX)(emphasis added).
[413] *Id.* at 558 (Madison---Sept. 10).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

However, the delegates quickly realized the language of this addition would result in a return to the requirement contained in the Articles of Confederation requiring unanimous approval of the states in order to effectuate a change in the new Constitution. James Wilson therefore immoderately moved for the insertion of the words “two-thirds,” so that amendments would be binding upon the consent of two-thirds of the several states.[414] Wilson’s motion was narrowly defeated (by a vote of five states in favor and six opposed).[415] Wilson then moved to alter the Resolution by inserting the words “three-fourths” of the several states, which was passed without objection.[416]

Now, Article XIX read as follows:

“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* or the Legislature may propose *amendments* to the several States for their approbation, but no amendments shall be binding until consented to by three-fourths of the several States.”[417]

Under this version, either the national legislature or a convention could propose an amendment to the Constitution (though it could be technically argued at this point the States only had the power to propose *an amendment* while the Congress had the power to propose *amendments*), with all such amendments having to be approved by three-fourths of the states.

---

[414] *Id.*
[415] *Id.* at 558-59.
[416] *Id.* at 555 (Journal---Sept. 10), 559(Madison---Sept 10).
[417] *Id.* at 188 (Madison---Aug. 6)(previous text of art. 19), 555 (Journal—Sept. 10)(added language), 558-59 (Madison---Sept 10)(same)(emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

James Madison next proposed a change in the content of the amendatory provision, moving to postpone consideration of the Article presently before the convention as amended and to instead take up the following proposal:

> "The Legislature of the U--- S---- whenever two-thirds of both Houses shall deem necessary, or on the application of two-thirds of the Legislatures of the several States, shall propose *amendments* to this Constitution which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three-fourths at least of the Legislatures of the several States, or by Conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the U.S[.]"[418]

This version of the amendatory process marks the first appearance of the provision charging Congress with the duty to choose between the two methods of ratification, either by three-fourths of the state legislatures or by three-fourths of conventions held in each state for that purpose.

More significantly, Madison's new version deleted all reference to a convention for proposing "an amendment," thus making it necessary for all proposals for "amendments" to come from the national legislature.

There was, apparently, no discussion on this significant change in the amendatory process. This may be somewhat surprising, especially in the light of the second clause of the Virginia Plan: "the assent of the National Legislature ought not to be required."[419] The discussion of this assent had been repeatedly postponed by the delegates,[420] despite Colonel Mason's previous statements opposing the requirement for the consent of the national legislature.[421]

---

[418] *Id.* at 555 (Journal—--Sept. 10), 559 (Madison---Sept. 10)(emphasis added).
[419] 1 *Id.* at 22 (Madison—May 29).
[420] *Id.* at 117 (Journal---June 5), 122 (Madison---June 5), 126 (Yates---June 5), 194 (Journal---June 11), 194 (Madison---June 11).
[421] *Id.* at 202-03 (Madison---June 11). *See supra* text accompanying note 363.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Instead, the discussion turned to a completely different matter. After receiving a second from Alexander Hamilton, John Rutledge of South Carolina objected to giving a majority of states the ability to amend the Constitution on the topic of slavery.[422] Madison acceded to Rutledge's suggestion to add a proviso which provided that "no amendments which may be made prior to the year 1808, shall in any manner affect the 4 & 5 sections of the VII article[.]"[423]

The fourth and fifth sections of Article VII contained the requirement that no prohibition would be allowed "on the migration and importation of such persons as the several States shall think proper to admit," that such migration and importation shall not be prohibited, and that no per capita tax would be levied except in proportion to the Census, which counted blacks as three-fifths their number.[424] With this proviso ensuring the continuation of slave trade in the United States until at least the year 1808, the revised amendatory article was passed.[425]

*September 12----September 17: Article V*

[422] "Mr. Rutledge said he never could agree to give a power by which the articles relating to slaves might be altered by the States not interested in that property and prejudiced against it." 2 *Id.* at 559 (Madison---Sept. 10).
[423] *Id.* at 555 (Journal---Sept. 10), 559 (Madison---Sept. 10).
[424] *Id.* at 182-83 (Madison---Aug. 6).
[425] *Id.* at 555-56 (Journal---Sept. 10), 559 (Madison---Sept. 10).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As the delegates were in the process of finishing consideration of the few remaining proposals submitted to them by the Committee of Detail, the job of putting together the completed work of the Convention into a cohesive draft Constitution was given to the Committee of Style (also known as the Committee of Revision),[426] consisting of William Johnson of Connecticut, Alexander Hamilton of New York, Gouverneur Morris of Pennsylvania, James Madison of Virginia, and Rufus King of Massachusetts.[427] On September 12, the Committee of Style delivered its report of the Constitution as revised and arranged.[428] It was here that the amendatory provision was renumbered Article V.[429] The revised article read as follows:

> " V. *The Congress,* whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, *shall propose amendments* to this constitution, which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of the legislatures 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 1808 shall in any manner affect the and sections of article..."[430]

The Committee had made minor stylistic changes, but otherwise had followed the last version (Madison's) approved by the delegates.[431] This new version required all amendments to be proposed by Congress.

On September 15, the convention reached discussion of Article V after discussing the first four articles.[432] Roger Sherman began the discussion by

---

[426] *Id.* at 582 (Journal---Sept. 12).
[427] *Id.* at 547 (Journal---Sept. 8), 553 (Madison---Sept. 8).
[428] *Id.* at 582 (Journal---Sept. 12), 585 (Madison---Sept. 12).
[429] *Id.* at 602 (Comm. On Style).
[430] *Id.*(footnotes omitted)(emphasis added). *See infra* text accompanying note 418.
[431] *Compare Id.* at 555 (Journal---Sept. 10), 559 (Madison---Sept. 10) *with Id.* at 602 (Comm. on Style).
[432] *Id.* at 629 (Madison---Sept. 15).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

reiterating Elbridge Gerry's[433] fear that a majority of states might use Article V to the detriment of other states objecting to the amendment:

> "Mr. Sherman expressed his fears that three-fourths of the States might be brought to do things fatal to particular States, as abolishing them altogether or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the State importing slaves should be extended so as to provide that no States should be affected in its internal police, or deprived of its equality in the Senate."[434]

Colonel Mason also spoke against the amendatory article. He focused on his concern that Congress could prevent the proposing of amendments. On the back of his copy of the draft Constitution, Mason wrote the following:

> "Article 5th. By this Article Congress only have the Power of proposing Amendments at any future time to this constitution, & shou'd it prove ever so oppressive, the whole people of America can't make, or even propose Alterations to it; a Doctrine utterly subversive of the fundamental Principles of the Rights & Liberties of the people[.]"[435]

Mason's notes served as the basis for the comments he gave on the convention floor, which were recorded by Madison:

> "Col. Mason thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, the first immediately, and in the second, ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case."[436]

As a result of these concerns, Gouverneur Morris of Pennsylvania and Elbridge Gerry of Massachusetts "moved to amend the article so as to *require a Convention on application of 2/3 of the Sts..."*[437]

James Madison then addressed the motion:

> "Mr. Madison did not see why Congress would not be as much bound to propose amendments applied for by two-thirds of the States as to call a Convention on the like application. He saw no objection however against

---

[433] *Id.* at 557-58 (Madison—---Sept. 10), 629 (Madison---Sept. 15).
[434] *Id.* at 629 (Madison---Sept. 15).
[435] 4 *Id.* at 59 n.1, 61; 2 *Id.* at 637 n. 21 (stating that the quoted language "was written by Mason on the blank pages of his copy of the draft of September 12").
[436] 2 *Id.* at 629 (Madison---Sept. 15). *See infra* text accompanying notes 363,418,430,435.
[437] *Id. (emphasis added).*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

providing for a Convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum &c. which in Constitutional regulations ought to be as much as possible avoided."[438]

The Convention unanimously agreed to the motion by Morris and Gerry,[439] thus acceding to Mason's request to re-insert the convention method of amending the constitution into Article V.

There is further evidence supporting the desire of the delegates to have a convention provision within the Constitution. This involves the attempt by a minority of delegates to remove the provision from the proposed draft constitution. The account was provided by Thomas Jefferson as told to him years later by George Mason:

"Anecdote. The constn. As agreed at first was that amendments might be proposed either by Congr. or the legislatures a commee was appointed to digest & redraw. Gov. Morris & King were of the commee. One morng. Gov. M. Moved an instrn for certain alterns (not ½ the members yet come in) in a hurry &

---

[438] *Id.* at 629-30. In his comments, Madison made a distinct difference as to the meaning of Article V as a result of the Gerry-Morris amendment. *Previous* to the amendment by Gerry-Morris, Madison interpreted Article V to mean that Congress was bound to propose *amendments* when applied for by two-thirds of the states. ("Congress would be as much bound to *propose amendments applied for* by two-thirds of the States") *After* the Gerry-Morris amendment, Congress was bound to call a convention on two-thirds applications by the states. ("as to call a Convention on the like application") It is clear Madison realized the intent and purpose of the applications by the states had changed from the states having the power to propose *amendments* to *applying for a convention which then proposed amendments.* Thus, the convention *acquired the power to propose amendments, and the states acquired the power to apply for a convention.* Further, Madison also realized that "Congress [was] bound..." to call a convention upon two-thirds applications of the states. *See infra* text accompanying note 514.

As to any change in language made to Gerry's language, the Supreme Court has addressed this issue. The Court said:

"[R]espondents' argument misrepresents the function of the committee of Style. It was appointed only 'to revise the stile of and arrange the articles which had been agreed to.... 2 Farrand 553.' '[T]he Committee...had no authority from the Convention to make alterations of substance in the Constitution as voted by the Convention, nor did it purport to do so, and certainly the Convention had no belief...that any important change was, in fact, made....'" Powell v. McCormack, 395 U.S. 486 (1969).

[439] 2 Farrand at 630.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

without understanding it was agreed to. The Commee reported so that Congr. shd have the exclusive power of proposg. Amendmts. G. Mason observd it on the report & opposed it. King denied the constrn. Mason demonstrated it, & asked the Commee by what authority they had varied what had been agreed. G. Morris then impudently got up & said by authority of the convention & produced the blind instruction beforementd, which was unknown by ½ of the house & not till then understood by the other. They then restored it as it stood originally."[440]

According to Jefferson's retelling of Mason's recollection, a minority of delegates almost succeeded in deleting the convention from the Constitution, but their attempt was foiled by the vigilance of several other delegates.

The point of the anecdote is obvious. The Constitutional Convention desired a method whereby the states could amend the Constitution absent Congress' participation or permission. And, as they "restored it as it stood originally," clearly this includes the Morris-Gerry amendment "requiring a Convention on application of 2/3 of the Sts..."[441] Thus, the convention to propose amendments was essentially approved *twice* by the delegates *prior* to final approval of the document. The language of the motion is unequivocal:[442] a convention is *required* on the application of two-thirds of the states, and these applications *must* be considered as an expression of intent to hold a *convention*, *not* to offer an amendment to Congress for its potential veto. The portion of Article V that contained the convention was reinserted into the draft constitution on September 15.

Roger Sherman, as he had attempted five days earlier,[443] again tried to require the unanimous consent of all the states to any amendments, and once

---

[440] 3 *Id.* at 367-68 (footnote omitted).
[441] *See supra* text accompanying note 437.
[442] *See supra* text accompanying notes 435-437.
[443] 2 *Id.* at 555 (Journal---Sept. 10), (Madison---Sept. 10).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

more his proposal was turned down by the Convention.[444] Elbridge Gerry then moved to strike the language that allowed ratification to occur by the convention method, which also failed.[445]

Roger Sherman then moved to prohibit any amendment that would affect the internal police of a state or would deprive a state "its equal suffrage in the Senate."[446] James Madison, speaking against the motion, cautioned the following: "Begin with these special provisos, and every State will insist on them, for their boundaries, exports & c."[447] The membership agreed with Madison and voted down Sherman's motion, three states to eight.[448] Sherman then moved to strike Article V altogether, but this motion also failed.[449] However, Sherman's point on the need to keep the suffrage of the Senate equal gathered support from delegates representing the small states. Gouverneur Morris of Pennsylvania (a state which had previously voted against Sherman's two motions)[450] then moved "to annex a further proviso---'that no State, without its consent shall be deprived of its equal suffrage in the Senate'"[451] According to Madison, the motion had been "dictated by the circulating murmurs of the small States..."[452] As a result, the motion "was agreed to without debate, no one opposing it, or in the question, saying no."[453]

---

[444] 2 *Id.* at 630 (Madison---Sept. 15).
[445] *Id.*
[446] *Id.*
[447] *Id.*
[448] *Id.*
[449] *Id.* at 630-31.
[450] *Id.* at 630.
[451] *Id.* at 631
[452] *Id.*
[453] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The debate on the Constitution ended September 15, at which time the Constitution as amended was agreed to unanimously.[454] The Convention ordered that the Constitution be engrossed,[455] and two days later, on September 17, the engrossed Constitution was read[456] and signed.[457] The final version of Article V read as follows:

ARTICLE V.

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 Convention 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 nay 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.[458]

## SUMMARY OF RECORD REGARDING PRIMARY ISSUES

### *Need for an Amendment Process and the Convention Method*

Some delegates to the Constitutional Convention questioned the need for providing a procedure for amending the new Constitution.[459] Some delegates even

---

[454] 2 *Id.* at 633 (Madison---Sept. 15), 634 (McHenry---Sept. 15).
[455] *Id.*
[456] *Id.* at 641 (Madison---Sept. 17), 649 (McHenry).
[457] *Id.* at 648-49 (Madison---Sept. 17), 649 (McHenry).
[458] *Id.* at 662-63.
[459] *See supra* text accompanying notes 357,361,449.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

expressed fear that the proposed amending provision could be used as a means by which the rights of some states could be subverted by a majority of other states.[460] However, most of the delegates realized the plan of government created by the Convention would not be perfect and would require, from time to time, amendments to correct imperfections and the changing needs of America.[461] Several delegates, especially Colonel Mason, strongly believed the amendment process was absolutely necessary, not only to correct defects in the new system,[462] but also to protect the people and the states from an abusive or oppressive national legislature.[463] In response to these fears, the Convention acceded to the request to create a process of proposing amendments by a convention method.[464]

*Role of the States and Congress in Proposing Amendments*

The Virginia Plan, while calling for an amendment process, did not specify whether the states or the national legislature would propose amendments, but it did specify "that the assent of the National Legislature ought not be required thereto."[465] Both the Pinckney and Hamilton plans envisioned the national legislature as the initiator of proposed amendments,

[460] *See supra* text accompanying notes 407,434-436.
[461] *See supra* text accompanying notes 358,362-364,369-371,408.
[462] *See supra* text accompanying notes 345,349,358,362-365,367,369.
[463] *See supra* text accompanying notes 363-364,435-436.
[464] *See supra* text accompanying notes 437-440.
[465] *See supra* text accompanying notes 344-345.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

and neither called for a convention to *propose* amendments, but Hamilton's plan did allow for a state convention to *ratify* amendments proposed by the national legislature.[466] When the amendatory provision emerged from the Committee of Detail, it provided that state legislatures could apply to the national legislature for an amendment, and that the national legislature would then be required to call a convention for that purpose.[467] The amendatory article was later amended to also allow the national legislature to propose amendments,[468] and then subsequently revised further to provide that the states could apply to the national legislature for amendments they desired, rather than for a convention, with the national legislature then being required to actually propose the desired amendments.[469] At this time, the reference to the national legislature calling a convention upon the application of two-thirds of the states was dropped.[470] Therefore, when the amendatory provision emerged from the Committee of Style, only the national legislature was authorized to propose amendments.[471] When this change was discovered, the provision was amended a final time, permitting either the national legislature, or a convention applied for by two-thirds of the states, to propose amendments *and requiring* the national legislature to call a convention "on application of 2/3 of the Sts."[472]

---

[466] *See supra* text accompanying notes 349-352.
[467] *See supra* text accompanying note 402.
[468] *See supra* text accompanying note 412.
[469] *See supra* text accompanying notes 418,430.
[470] *See supra* text accompanying notes 418,430.
[471] *See supra text* accompanying note 430.
[472] *See supra* text accompanying notes 437,458.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

This series of revisions and proposals to Article V was the product of the dispute between those in the Convention who believed the federal government would be in the best position to perceive the need for particular amendments, and those who believed the amending process of the Constitution should contain language to thwart or redress the actions or excesses of an unresponsive or corrupt national governing body. It was clearly a confrontation between those wishing a powerful national government and those fearing that result. In the end, both sides got what they sought: the national legislature could propose amendments it felt were needed, and the national legislature could be circumvented by the states through the convention process when the state legislatures considered such circumvention necessary.

*Ratification: Method and Number of States Required.*

Under the Articles of Confederation, the state legislatures were empowered to ratify amendments proposed by the national legislature.[473] The Pinckney Plan used this approach,[474] while the Hamilton Plan included ratification by a convention held in each state.[475] The Convention paid little

[473] *See supra* text accompanying note 334.
[474] *See supra* text accompanying note 349.
[475] *See supra* text accompanying note 352.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

attention to the details of ratification until nearly the end, at which time Madison proposed his revision of the amendatory article which left it to the national legislature to actually propose all amendments. In doing so, he resurrected Hamilton's proposal that ratification could be either by the consent of the state legislatures or by state conventions called for that purpose.[476] This change in ratification was carried forward by the delegates in the final version of Article V.[477]

Hamilton's initial plan also envisioned ratification by two-thirds of the states.[478] During the convention, there were attempts by some delegates to revert back to the unanimity requirement found in the Articles of Confederation.[479] But the real debate centered on whether ratification would occur upon the consent of two-thirds or three-fourths of the states. When the matter was finally voted, ratification by two-thirds was narrowly defeated,[480] and the delegates then agreed to ratification of amendments by three-fourths of the states.[481]

*Amendment (Singular) vs. Amendments (Plural)*

The Articles of Confederation only allowed for one amendment to be proposed at any one time, referring to "any alteration" and requiring

[476] *See supra* text accompanying note 418.
[477] *See supra* text accompanying note 458.
[478] *See supra* text accompanying note 352.
[479] *See supra* text accompanying notes 412,444.
[480] *See supra* text accompanying notes 414-415.
[481] *See supra* text accompanying note 416.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

ratification by the states of "such alteration."[482] While the Virginia Plan did not specify any details of an amendment process,[483] the Hamilton Plan did allow for more than one amendment to be proposed at a time, providing that the Constitution "may receive such alterations and amendments" as proposed by the states and agreed to by both houses of the national legislature.[484] Despite this, when the amendatory article emerged from the Committee of Detail, the provision allowed that the states could apply for "an amendment" to the constitution, and that the national legislature would call a convention "for that purpose."[485]

The subsequent amendment to Article XIX by Roger Sherman retained the language for a single amendment when proposed by a convention, but then added that the national legislature could "propose *amendments"* and that "no *amendments"* could be binding until consented to by the states.[486] Soon after the adoption of Sherman's amendment, Madison succeeded in having the delegates delete any reference to the states proposing single (or any) amendments by the convention method, leaving the amended version of Article XIX to refer solely to the national legislature being able to "propose amendments."[487] The concept of singular amendments was never again considered by the delegates. Instead,

---

[482] *See supra* text accompanying note 334.
[483] *See supra* text accompanying notes 344-345.
[484] *See supra* text accompanying note 352.
[485] *See supra* text accompanying note 402.
[486] *See supra* text accompanying note 412. Thus, from approximately July 26 until September 10, proposals were before the Convention that envisioned single amendments proposed to the states. *See supra* text accompanying notes 395,398,400,402,412. On September 10, the Convention delegates accepted a proposal that allowed the national legislature to propose multiple amendments to the states. *See supra* text accompanying note 412.
[487] *See supra* text accompanying notes 418,430.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

when supporters of the convention method succeeded in reinserting the provision, the drafters continued to follow Madison's multiple amendments language, allowing the national legislature to "propose amendments" (plural) or the states to demand a convention "for proposing Amendments" (plural).[488]

Therefore, the plain language of Article V is clear and decisive: Congress shall call a "Convention for proposing *Amendments,"* not a convention for proposing *an amendment.* It is therefore clear than an Article V convention has the power to consider various issues (plural) and the right to submit various amendments (plural) to the states for consideration and ratification, just as Congress has done in the past.[489] In addition, the language in Article V does not authorize the states to apply for *an amendment*; rather they are only authorized to apply for a *convention* for proposing *amendments.* The states have *no* authority under the article to propose an amendment. That power rests solely with the Congress and the convention to propose amendments. Were it to the contrary, the entire concept of separation of powers would be defeated, as the states would have unlimited control of the Constitution, and a small

---

[488] *See supra* text accompanying notes 437,439,458.

[489] *See* S. & H.R.J. Res. 3 1st Cong., 1st Sess., 1 Stat. 97-98 (1789). In submitting the first set of proposed amendments, Congress forwarded twelve proposed amendments to the state for ratification. *Id.* Of those twelve, ten were adopted (now known as the Bill of Rights) on Dec. 15, 1791. An eleventh proposal was adopted on May 7, 1992 as Amendment 27 to the United States Constitution leaving only one proposal not ratified.

The text of the rejected article is as follows:

Art. I After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less then one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifth thousand persons.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

minority of states could easily deflect any effort by the Congress to amend the Constitution.

The focus of Article V is clearly on the ability of the states to demand a convention, and not on the subjects to be considered by such a convention. In fact, nowhere in the discussion of the delegates at the Constitutional Convention is there demonstrated the slightest inclination toward regulating the subjects of amendments. Rather, the focus is on the *process* of amendment, and the language of Convention delegates Morris and Gerry who "moved to amend the article so as to *require* a Convention on *application* of 2/3 of the Sts...",[490] leaves no doubt as to the intent of the Founding Fathers in regard to the language of Article V. Article V does *not* require Congress to call a convention when two-thirds of the states call for the same *amendment,* rather it requires Congress to call a convention when two-thirds of the states call for a *convention.*

The precise reason the convention alternative was included in Article V was to provide a means for proposing amendments *despite* any opposition *or* inaction by the national legislature. Therefore, the terms of Article V cannot be construed to defeat that purpose by granting Congress *any* authority to obstruct a convention in *any* manner it might attempt, including failing to call in a timely fashion as it is required to do.

Thus, if any action of Congress demonstrates the slightest impediment to a convention to propose amendments--- either during the application process by

[490] *See supra* text accompanying note 437.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the state legislatures, the required calling, the actual operation of the convention, or in forwarding whatever amendment proposals the convention to the states for ratification--- that action, impediment or inaction *must* be unconstitutional.

## POST-CONVENTION DISCUSSION OF ARTICLE V

While some Constitutional Convention delegates had expressed little support for an amendatory article during the Convention, saying that such an article wasn't needed,[491] the fact the proposed Constitution was subject to amendment became an important point in support of the adoption of the Constitution, and public debate began as soon as the text of the proposed Constitution became public. Not all views were favorable concerning the amendatory proposal.[492]

---

[491] 1 FARRAND, *supra* note 2, at 121 (Madison---June 5), 202 (Madison—--June 11). *See supra* text accompanying notes 357,361,373.

[492] S. MORISON, H. COMMAGER & W. LEUCHTENBURG, A CONCISE HISTORY OF THE AMERICAN REPUBLIC 121 (2nd ed. 1983); W. Peters, A MORE PERFECT UNION: THE MAKING OF THE UNITED STATES CONST.ITUTION 219-20 (1987). On October 10, 1787, Edmund Randolph presented at length his views on the proposed Constitution in a letter to the Speaker of the Virginia House of Delegates. 3 FARRAND, *supra* note 2, at 123. Randolph specifically discussed his preference that the states should have been allowed to propose amendments to the proposed Constitution, as opposed to either accepting it in its entirety or rejecting it in its entirety:

> "I was afraid that if the constitution was to be submitted to the people, to be wholly adopted or wholly rejected by them, they would not only reject it, but bid a lasting farewell to the union. This formidable event I wished to avert, by keeping myself free to propose amendments, and thus, if possible, to remove the obstacles to an effectual government."

*Id.* at 126. In defending his view, Randolph described why the amendment process contained in the proposed Constitution was not sufficient to alleviate his concerns:

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

On October 27, 1787, several writers favoring the Constitution, using the pseudonym “Publius”, began publishing arguments in favor of the

---

“Again, may I be asked, why the mode pointed out in the constitution for its amendments, may not be a sufficient security against its imperfections, without now arresting it in its progress? My answers are --- 1. That it is better to amend, while we have the constitution in our power, while the passions of designing men are not yet enlisted, and while a bare majority of the States may amend than to wait for the uncertain assent of three-fourths of the States. 2. That a bad feature in government, becomes more and more fixed every day. 3. That frequent changes of a constitution, even if practicable, ought not to be wished, but avoided as much as possible. And 4. That in the present case, it may be questionable, whether, after the particular advantages of its operation shall be discerned, three-fourths of the States can be induced to amend.”
*Id.* at 126-27 Two days later, the fourth installment of the *Federalist Farmer* was published, criticizing the proposed constitution and particularly focusing on the amendatory provision:

“It may also be worthy our examination, how far the provision for amending this plan, when it shall be adopted, is of any importance. No measures can be taken towards amendments, unless two-thirds of the Congress, or two-thirds of the legislatures of the several states shall agree. Every man of reflection must see, that the change now proposed, is a transfer of power from the many to the few, and the probability is, artful and ever active aristocracy, will prevent all peaceable measures for changes, unless when they shall discover some favourable moment to increase their own influence. I am sensible, thousands of men in the United States are disposed to adopt the proposed constitution, though they perceive it to be essentially defective, under an idea that amendment of it, may be obtained when necessary. This is a pernicious idea...” THE FEDERALIST FARMER No. 4, Storing 2.8.58 (Oct. 12, 1787).

“...[A]fter the constitution is once ratified, it must remain fixed until two-thirds of both the houses of Congress shall deem it necessary to propose amendments; *or the legislatures of two-thirds of the several states shall make application to Congress for the calling a convention for proposing amendments*...”

“Two-thirds of both houses of congress, or the legislatures of two-thirds of the states, must agree *in desiring a convention to be called*.” ANTIFEDERALIST No. 49 printed in The Massachusetts Gazette, January 29, 1788. (emphasis added).

Clearly, in these passages, the concern of the opponents was that a small *numeric* number of states could prevent the passage of an amendment desired by the majority of states or members of Congress. It is important to realize that nowhere in this passage, *nor in any other argument presented by the opponents of the convention was any other standard but a numeric total of states causing a convention used as an argument. Obviously, if such powers as the Congress now claims by its refusal to call a convention were understood as powers of Congress, clearly the opponents would have used them*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Constitution, which were later republished as THE FEDERALIST.[493] James Madison focused particularly on Article V in THE FEDERALIST No. 43. He discussed the great value of allowing both Congress *and* the states to proposed changes in the Constitution:

> "'[t]o provide for amendments to be ratified by three-fourths of the States, under two exceptions only.' That useful alterations will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with ever mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. *It moreover 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.*"[494]

---

[493] THE FEDERALIST No. 1 (A. Hamilton) *See generally* S. MORISON, H. COMMAGER & W. LEUCHTENBUR, A CONCISE HISTORY OF THE AMERICAN REPUBLIC 121 (2nd ed. 1983). ON January 16, 1788, James Madison, in THE FEDERALIST No. 39, argued that the plan of government reported by the Convention, including the method of amending the proposed Constitution, had the character of being federal as opposed to nation, but that the amendatory provision was a combination of both:

> "If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither whole *national*, nor wholly *federal.* Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and particularly, in computing the proportion by *States*, not by *citizens*, it departs from the *national* and advances towards the *federal* character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the *federal*, and partakes of the *national* character."

THE FEDERALIST No. 39 (J. Madison) (Jan. 16, 1788)(emphasis in original).

[494] THE FEDERALIST No. 43 (J. Madison)(emphasis added). Madison then went onto state the basis for the two exceptions contained in Article V relating to equal suffrage in the senate and slavery:

> "The exception in favour of the equality of suffrage in the senate was probably meant as a palladium to the residuary sovereignty of the States, implied and secured by the principle of representation in one branch of the legislature; and was probably insisted on by the States particularly attached to that equality. The other exception must have been admitted on the same considerations which produced the privilege defended by it." *See infra* text accompanying note 1620.

*Id.* One week later, on January 30, the delegates to the Massachusetts Ratifying convention discussed Article V of the proposed Constitution. 2 ELLIOT'S DEBATES 116 (1937). Rufus King began the discussion by responding to

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In THE FEDERLIST No. 49, Madison discussed whether the people should be called upon to resolve conflicts between the various branches of government, or to correct breaches of one branch of government against the other branches of government.[495] While Madison said he did not refer "the proposed recurrence to the people, as a provision in all cases for keeping the several departments of power within their constitutional limits," he nevertheless stated that "a constitutional road to the decision of the people, ought to be marked out, and

---

the opponents to the new constitution, stating that "many of the arguments of (the) gentlemen were founded on the idea of future amendments being impracticable." *Id.* No other nation's constitution, King opined, "had so fair an opportunity to correct any abuse which might take place in the future administration of the government under it." *Id.*

A Dr. Jarvis next spoke on the value of the amendatory provision:

"Whatever may have been my private opinion of any other part, or whatever faults or imperfections I have remarked, or fancied I have *See*n, in any other instance, here, sir, I have found complete satisfaction: this has been a resting place on which I have reposed myself in the fullest security, whenever a doubt has occurred, in considering any other passage in the proposed Constitution."

*Id.* Dr. Jarvis especially noted the fact that Article V created an opportunity for peaceful change:

"In other countries, sir---unhappily for mankind,---the history of their respective revolutions has been written in blood... When we shall have adopted the Constitution before us, we shall have in this article an adequate provision for all the purposes of political reformation. If, in the course of its operation, this government shall appear to be too severe, here are the means by which this severity may be assuaged and corrected. If, on the other hand, it shall become too languid in its movements, here, again, we have a method designated, by which a new portion of health and spirit may be infused into the Constitution."

*Id.* at 116-17. Noting the weakness of the Massachusetts own amendatory provision, which limited the operation of the article for alteration to a given time, Dr. Jarvis state that "in the present Constitution, the article is perfectly at large, unconfined to any period, and may admit of measure being taken in any moment after it is adopted.": *Id.* at 117. Dr. Jarvis then concluded his argument in favor of the proposed constitution by asserting the following:

"[A}s it is clearly more difficult for twelve states to agree to another convention, than for nine to unite in favor of amendments, so it is certainly better to receive the present Constitution, in the hope of its being amended, tan it would be to reject it altogether, with, perhaps, the vain expectation of obtain another more agreeable than the present."

*Id.* The Massachusetts Ratifying Convention ratified the proposed national Constitution on February 6, 1788. *Id.* at 162, 181.

[495] THE FEDERALIST No. 49 (J. Madison)(Feb 2, 1788).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

kept open, for certain great and extraordinary occasions."[496] The proposed Article V would serve this important task.

The documentation is clear. By these comments it is obvious the Founding Fathers saw that limits on governmental powers were clearly required, either by the originators of the Constitution working on the document until they got it right, as Mr. Randolph proposed, or by the use of the amendment system contained within the document as Madison and others proposed. But all held a common theme that government powers required checks which that government could neither avoid, deny, regulate nor otherwise blunt in order to limit governmental power. Clearly, therefore, a convention to propose amendments was intended as a check to regulate excesses of the national government, and it was not intended that the national government could avoid, deny, regulate or otherwise blunt this constitutional check for its own self-interest.

During the public debate on the adoption of the proposed Constitution, calls such as Randolph's, urging corrections on the document before adoption, led to discussion of calling of a second convention to amend the proposed Constitution. On May 28, in THE FEDERALIST No. 85, Alexander Hamilton argued against this idea. In his writing, Hamilton said he believed numerous problems would result from attempts to amend the proposed Constitution prior to its adoption. He preferred therefore to correct the faults in the Constitution through the amendment process already provided for within the document.

Hamilton stated:

---

[496] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"[E]very amendment to the constitution, if one established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point, no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently whenever nine, or rather ten states, were united in the desire of a particular amendment, that amendment must infallibly take place. There can therefore be no comparison between the facility of effecting an amendment, and that of establishing the first instance a complete constitution."[497]

Many proponents of the view that any convention for proposing constitutional amendments must be limited to a single issue often refer to this passage as supporting their position.[498] However, it is clear these proponents read more into the passage than is actually there, to the point of blatant misconstruement.

First, only when three-quarters of the states (ten states) are "united in the desire of a particular amendment,[must] that amendment must infallibly take place." Two-thirds of the states (nine) will not accomplish the matter, whether the issue is brought by the Congress or a convention, because it does not reflect "the will of the requisite number." Until a proposal is ratified, it has no effect and thus cannot "infallibly take place". Therefore, the only logical conclusion to the meaning of this passage is that Hamilton was speaking of amendment ratification, not proposal.[499]

Hamilton's goal in this passage is an attempt to assure people that if changes to the national government were desired, the national government would not be able to block them. His argument was also directed against the current

---

[497] THE FEDERALIST No. 85 (A. Hamilton)(May 28, 1788).
[498] *Id.*
[499] In FEDERALIST No. 85, Hamilton added a footnote that clearly explained his intent regarding the phrase "nine, or rather ten, states". He wrote:
"It may rather be said TEN, for though two-thirds may set on foot the measure, three fourths must ratify."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

system of change in government, that of the Confederation, which required *unanimous* consent to amend its provisions.[500] He was attempting to show an *advantage* in the new system, that it only required *ten* states in the Constitution to effect change as opposed to the *unanimous* situation required at the time under the Confederation.

When Hamilton's remarks are considered in their context, the interpretation that any convention for proposing constitutional amendments must be limited to a single issue is clearly incorrect.[501] Hamilton's comments do not address the question of whether a convention would be limited to a single subject. Instead, his language is clearly focused on his opposition to calling a second convention prior to the adoption of the proposed Constitution, a convention that could rewrite the document from scratch and

---

[500] *See supra* text accompanying note 334.

[501] Prefacing the quoted remarks of this suit, Hamilton stated:

"It appears to me susceptible of absolute demonstration, that it will be far more easy to obtain subsequent than previous amendments to the Constitution. The moment an alteration is made in the present plan, it becomes, *to the purpose of adoption*, a new one, and must undergo a new decision of each State. To it complete establishment throughout the Union, it will therefore require the concurrence of thirteen States. If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, alterations in it may at any time be effected by nine States. Here, then, the chances are as thirteen to nine in favor of subsequent amendment, rather than of the original adoption of an entire system." Footnote omitted; *see supra* text accompanying note 499.

"This is not all. Every Constitution of the United States must inevitably consist of a great variety of particulars, in which thirteen independent States are to be accommodated in their interests or opinions of interest. We may of course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form a majority on one question, may become the minority on a second, and an association dissimilar to either may constitute the majority on a third. Hence the necessity of moulding and arranging all the particulars which are to compose the whole, in such a manner as to satisfy all the parties to the compact, and to a final act. The degree of that multiplication must evidently be in a ratio to the number of particulars and the number of parties."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

place the whole of its work before the state legislatures *again*. His language argues that any defects in the proposed Constitution should be repaired by post-ratification amendments targeting specific problems, and that the states could review and ratify the proposed amendments one at a time.

It should be remembered, as indicated by the Randolph comments,[502] that not all Americans favored adoption of the Constitution. Certainly the calling of a second convention would have played into the hands of the document's opponents.

Obviously, Hamilton used arguments that he intended would prevent this by demonstrating the advantages and strengths of the proposed Constitution. It would be illogical to assume he would therefore propose an amendment system for the states that could be vetoed by Congress or was limited in use by the states to a single subject as defined by Congress, thus rendering the states virtually impotent to amend the Constitution.

Further, Hamilton did not state that the scope of the subjects considered by a convention called for proposing amendments would be limited to a single issue. Rather, he was merely stating that once Congress or the convention determined what amendments should be made to the Constitution, every proposed amendment "would be a single proposition, and might be brought forward singly."[503] By such a method, each amendment would be considered by the states singly and without the turmoil associated with the rewriting and adopting of a completely new constitution each time a change was required.

---

[502] *See supra* text accompanying note 492.
[503] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

This method would also prevent the “all or nothing” result that would occur if a block of amendments were presented as one unit.

It must be remembered that Hamilton was addressing the idea of amendments generally, and that his remarks were not addressed specifically to the convention method of proposing amendments, any more than they were addressed specifically to the identical amendment power of Congress. It is only common sense to assume amendments proposed by either Congress or a convention would be submitted to the states as individual proposals. Congress, after all, submitted the Bill of Rights to the states as a package of twelve separate proposals, of which eleven were ratified, but nevertheless each separate amendment required individual ratification.[504] By this action, the matter of single subject is silenced as Congress itself simultaneously submitted twelve different *amendments*, all on various subjects, to the states for ratification. Therefore, like Congress, a convention for proposing amendments can draft and simultaneously propose several amendments on different subjects that the states could ratify or reject, each on its own merits. Hamilton was only pointing out the preferability of this approach to starting over again with another pre-ratification convention of the originally proposed Constitution.

This point of view especially makes sense when one considers Hamilton’s concern, which he had just previously discussed in his text, that a second

[504] 4 FARRAND, *supra* note 2, at 93 n.3. The ten amendments received ratification from the states on Dec. 15, 1791. The eleventh proposal was ratified in 1992. *See supra* text accompanying note 489.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention for the purpose of adding amendments to the proposed Constitution would doubtlessly not succeed because of:

> "the necessity of moulding and arranging all the particulars which are to compose the whole in such a manner as to satisfy all the parties to the compact; and hence also an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act."[505]

Thus, any assertion based on Hamilton's words that a convention is limited to a single issue is without merit, as clearly Hamilton was discussing holding another general convention prior to the original Constitution being ratified.

Hamilton next addressed the assertion that the national government would be able to block the amendment process:

> "In opposition to the probability of subsequent amendments, it has been urged, that the 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. For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not the mass of its powers; and on this account alone, I think there is no weight in the observation just stated. I also think there is little weight in it on another account. The intrinsic difficulty of governing THIRTEEN STATES at any rate, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion, constantly *impose* on the national rulers the *necessity* of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of doubt, that the observation is futile. It is this, that the national rulers, whenever nine states concur, 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, (which at present amounts to nine) to call a convention for proposing amendments, which *shall be valid* to all intents and purposes, as part of the constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof.' 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. And of consequence all the declamation about their disinclination to a change, vanishes in air. Nor however difficult it may be supposed to unite two-thirds or three-fourths of the states legislatures, in amendments which may affect local interest, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may

[505] THE FEDERALIST No. 85, *supra* note 497, 501. (A. Hamilton).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

safely rely on the disposition of the state legislatures to erect barriers against the encroachments of the national authority."[506]

It is totally illogical to maintain that Hamilton, in the same article, would propose a convention that would have such sweeping power as to leave:

> "[T]he national rulers...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*, (which at present amounts to nine) *to call a convention for proposing amendments*, which *shall be valid* to all intents and purposes, as part of the constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof.' *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*. *And of consequence all the declamation about their disinclination to a change, vanishes in air*."[507]

and then try to maintain that he believed the same convention system would be limited to a single subject in the proposal of amendments. The idea of using Hamilton's words to argue for a single subject convention simply collapses in the face of Hamilton's own words.

It is also clear from Hamilton's language that he believed that once the minimum number of states applied for a convention to propose amendments for proposing amendments, Congress was required to call such a convention:

> "...national rulers, whenever nine states concur, will have no option upon the subject... The words of this article (V)are peremptory. The Congress '*shall* call a convention.' Nothing in this particular is left to the discretion of that body."[508]

Hamilton clearly points out that the applications by the states *are for applying for a convention to propose amendments, not for a specific amendment.* It is also clear that even Hamilton, the preeminent proponent of national power,[509] believed that Congress' role in calling a convention was extremely

---

[506] *Id.*
[507] *Id.*(emphasis added).
[508] *Id.*
[509] Hamilton was the major proponent of *national* government and so favored a broad interpretation of implied powers for the federal government. As such, when Hamilton said the government had no discretion in calling a convention to propose amendments, it must be eminently clear he was leaving absolutely no

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

limited, as shown by his comment, "[n]othing...is left to the discretion of that body."[510] As Hamilton, and Morris, one of the originators of the Gerry-

---

room for the government to maneuver out of the obligation. Had there been any intent on the part of the Founders that Congress possessed even the tiniest speck of discretion in issuing a convention call, Hamilton, *as the author of the final language inserted into the Constitution*, would have found that speck and expanded it into a mountain. Instead, Hamilton is emphatic as only Hamilton could be. Congress shall have no discretion in the matter.

[510] *Id.* On June 5 the delegates of the Virginia Ratifying Convention began discussing Article V of the proposed Constitution. Concerned that the method of amending the proposed Constitution would prove too difficult, Patrick Henry stated:

"The way to amendment is, in my conception, shut... However uncharitable it may appear, yet I must tell my opinion---that the most unworthy characters may get into power, and prevent the introduction of amendments. Let us suppose---for the case is supposable, possible, and probable---that you happen to deal those powers to unworthy hands; will they relinquish powers already in their possession, or agree to amendments? Two-thirds of the Congress, or of the state legislature, are necessary even to propose amendments. If one-third of these be unworthy men, they may prevent the application for amendments; but what is destructive and mischievous, is, that three-fourths of the state legislatures, or of the state conventions, must concur in the amendments when proposed! In such numerous bodies, there must necessarily be some designing, bad men. To suppose that so large a number as three-fourths of the states will concur, is to suppose that they will possess genius, intelligence, and integrity, approaching to miraculous. It would indeed be miraculous that they should concur in the same amendments..."

3 ELLIOT'S DEBATES 49 (1937). According to Patrick Henry, "a most despicable minority" could prevent amendment if the government should prove to be oppressive. *Id.* at 55.

The next day, James Madison responded to Patrick Henry's concerns. Madison argued that it was better to adopt a constitution that allows amendment by three-fourths of the states rather than to continue with the unanimity requirement contained in the Articles of Confederation. Madison stated:

"He [Patrick Henry] complains of this Constitution, because it requires the consent of at least three-fourths of the states to introduce amendments which shall be necessary for the happiness of the people. The assent of so many he urges as too great an obstacle to the admission of salutary amendments, which, he strongly insists, ought to be at the will of a bare majority... Does not the thirteenth article of the Confederation expressly require that no alteration shall be made without the unanimous consent of all the states?!... Would the honorable gentleman agree to continue the most radical defects in the old system, because the petty state of Rhode Island would not agree to remove them?"

*Id.* at 88-89. Wilson Nicholas also responded to the assertion that it would be difficult to obtain amendments to the new Constitution. Nicholas referred directly to the alternative of conventions for proposing amendments:

"The worthy member [Patrick Henry] has exclaimed, with uncommon vehemence, against the mode provided for securing amendments. He thinks amendments can never be obtained, because so great a number is required to

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Morris amendment, were members of the committee[511] that drafted the final language of the Constitution, it is obvious Hamilton knew *exactly* what the Constitution meant regarding the actions of the national government. His answer is emphatic: no discretion.[512] The only standard Hamilton recognized as a limitation to a convention being called was that of the prerequisite number of states applying for one;[513] after that things were automatic.[514]

---

concur. Had it rested solely with Congress, there might have been danger. The committee will see that there is another mode provided, besides that which originates with Congress. On the application of the legislatures of two-thirds of the several states, a convention is to be called to propose amendments, which shall be part of the Constitution when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof. It is natural to conclude that those states who will apply for calling the convention will concur in the ratification of the proposed amendments."
*Id.* at 101-102. Nicholas added that the state ratifying conventions would be even more likely to agree to the proposed amendments because the proposals would be presented to the states singly. Nicholas stated:
"There are strong and cogent reasons operating on my mind, that the amendments, which shall be agreed to by those states, will be sooner ratified by the rest than any other that can be proposed. The conventions which shall be so called will have their deliberations confined to a few points; no local interest to divert their attention; nothing be the necessary alterations. They will have many advantages over the last Convention. No experiments to devise; the general and fundamental regulations being already laid down."
*Id.* at 102. Virginia ratified the Constitution on June 25, 1788. *Id.* at 627, 654-55.

[511] *See supra* text accompanying note 426,427.

[512] It is clear Hamilton's language not only discusses the *expressed* power of Congress but the *limits and extent of Congress' implied powers.* After all, the term "no discretion" is not used in Article V. Thus, the term must be meant to describe the implied powers of Congress in this matter. *See infra* text accompanying note 627.

[513] In the paragraph following the statement "Nothing in this particular is left to the discretion of that body" Hamilton continued:
"If the foregoing argument is a fallacy, certain it is that I am myself deceived by it, for it is, in my conception, one of those rare instances in which a political truth can be brought to the test of a *mathematical* demonstration." FEDERALIST No.85 (A. Hamilton)(emphasis added). *See infra* text accompanying note 1439.

[514] However his words have been misinterpreted, it is clear that James Madison also understood the intent of Article V, that the purpose of the applications by the states was not to favor a particular amendment proposal but to compel Congress to call a convention. In a letter written to George Eve, January 2, 1789, Madison wrote:

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Hamilton's interpretation is repeated and even more defined by the comments of Wilson Nicholas of Virginia:[515]

---

"I have intimated that the amendments [referring to the yet to be written Bill of Rights] ought to be proposed by the first Congress. I prefer this mode to that of a General Convention. 1st. Because it is the expeditious mode. *A convention must be delayed, until 2/3 of the State Legislatures shall have applied for one; and afterwards the amendments must be submitted to the States:* whereas if the business be undertaken by Congress the amendments may be prepared and submitted in March next." (emphasis added) UNFOUNDED FEARS: MYTHS AND REALITIES OF A CONSTITUTIONAL CONVENTION (1989) (P. Weber, B. Perry).

The language is unequivocal. Madison clearly understood the purpose of the applications by the states was to cause a convention to be called, *not* to submit a subject to Congress for that body to approve. While he clearly recognized the congressional method of proposal was more "expeditious", nevertheless his words are clear and unambiguous regarding the purposes of applications to Congress for a convention.

This is not the only example where Madison's interpretation was expressed and agreed to by other Framers:

"Framer John Dickinson, in a newspaper essay, agreed: 'whatever their [Congress] sentiments may be, they [Congress] *must* call a convention for proposing amendments, on the applications of two-thirds of the legislatures of the several states.'(1)

"In a published letter, Madison wrote: 'the question concerning a General Convention, does not depend on the discretion of Congress. If two thirds of the States make application, Congress cannot refuse to call one; if not, Congress have no right to take the step.'(2) On May 5, 1789, when Virginia's convention application was resented to Congress, Madison informed his colleagues in the House of Representatives that when 'two-thirds of the State Legislatures concurred in such application,... it is out of the power of Congress to decline complying, the words of the Constitution being express and positive relative to the agency Congress may have in case of applications of this natures.' From the words of article V 'it must appear that Congress have no deliberative power on this occasion.'"(3) Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988)(emphasis in original). Footnotes as noted below:

(1) 3 *Elliot* at 636; 4id. at 178; Letter No. 8 of "Fabius" (John Dickinson), in P. Ford, ed., *Pamphlets on the Constitution of the United States* 204, 210 (1888) (letters first published serially in the *Delaware Gazette* [Wilmington], 1788; first pamphlet ed., 1797).

(2) James Madison to Thomas Mann Randolph, Jan. 13, 1789, in 11 *Madison Papers* at 417. The letter was published in the *Virginia Herald* on January 15, in the *Virginia Independent Chronicle* on January 28, and in other periodicals. R. Ketcham, *James Madison: A Biography* 276 (1971). Similarly, James Madison to George Eve, Jan. 2, 1789, in 11 *Madison Papers* at 405.

(3) 1 *Annals of Cong.* 260 (1789). Similarly, id. at 260-61 (Reps. Boudinot, Bland, and Tucker); 5 id. at 498, 530 (1796) (Reps. Smith and Lyman).

[515] *See supra* text accompanying note 510.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"On the application of the legislatures of two-thirds of the several states, a convention is to be called to propose amendments..."[516]

Then, in reference to ratifying any proposed amendment, Nicholas restates the proposition and clearly demonstrates the correct interpretation of the power of the convention to propose *amendments*:

"...those states who will apply *for calling the convention* will concur in the ratification of the proposed *amendments*."[517]

In the North Carolina ratifying convention, James Iredell discussed the manner in which amendments could be proposed, specifically referring to the ability of the states to demand changes through the convention method of proposing amendments. Iredell stated:

"Let us attend to the manner in which amendments may be made. The proposition for amendments may arise from Congress itself, when two-thirds of both house shall deem it necessary. If they should not, and yet *amendments* be generally wished for by the people, *two-thirds of the legislatures of the different states may require a general convention for the purpose, in which case Congress are under the necessity of convening one*."[518]

Iredell's comments again serve to underscore the intent of the meaning of the convention provision in Article V.

---

[516] *Id.*

[517] *Id.* (emphasis added).

[518] 4 ELLIOT'S DEBATES 177 (1937).(emphasis added). Earlier during his speech, Iredell spoke out on the importance of Article V:

"Mr. Chairman, this is a very important clause. In every other constitution of government that I have ever heard or read of, no provision is made for necessary amendments. The misfortune attending most constitutions which have been deliberately formed, has been, that those who formed them thought their wisdom equal to all possible contingencies, and that there could be no error in what they did. The gentlemen who framed this Constitution though with much more diffidence of their capacities; and undoubtedly, without a provision for amendment it would have been more justly liable to objection, and the characters of its framers would have appeared much less meritorious. This, indeed, is one of the greatest beauties of the system, and should strongly recommend it to every candid mind."

*Id.* at 176. Iredell also perceived the ability of the amendment process to prevent bloodshed, as is shown by his language quoted at the beginning of this document. (*see Id.; see supra* text accompanying note 1). According to Iredell, it was "highly probable that amendments agreed to in either of these methods would be conducive to the public welfare, when so large a majority of the states consented to them." 4 ELLIOT'S DEBATES 176 (1937).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"If...*amendments* [are]...generally wished...two-thirds of the legislatures may *require* a *general* convention for the purpose, in which case Congress are under the *necessity* of convening one."[519]

Iredell words cannot be more plain. The purpose of Article V is allow the states to apply for a *general convention*, not for *an amendment*. The convention can propose *amendments*, and Congress *must* call a convention on the application of the proper number of states.

If there is any further doubt, then the discussion between Iredell and a Mr. Bass at the North Carolina ratifying convention ends it. Bass commented to the ratifying convention that:

"[I]t was plain that the introduction of amendments depended altogether on [the will of] Congress."[520]

Iredell responded to Bass by saying:

"[I]t was very evident that it did not depend on the will of Congress; for that the legislatures of two-thirds of the states were authorized to make application for calling a convention to propose amendments and, on such application, it is provided that Congress *shall* call such a convention, so that they will have no option."[521]

---

[519] *See supra* text accompanying note 518. (emphasis added).

[520] 4 ELLIOT'S DEBATES 178 (1937).

[521] *Id.* Although North Carolina's first ratifying convention refused either to adopt or reject the proposed Constitution, North Carolina's second ratifying convention finally ratified the Constitution on November 19, 1789, some seven months after the first Congress assembled and some six months after President Washington's inauguration. W. Peters, A MORE PERFECT UNION; THE MAKING OF THE UNITED STATES CONST.ITUTION 234 (1987). Article V was also of great concern to President Washington. In his first inaugural address (1789), Washington said:

"Beside the ordinary objects submitted to your care, it will remain with your judgment to decide how far an exercise of the occasional power delegated by the fifth article of the Constitution is rendered expedient...by the nature of objections which have been urged against the system, or by the degree of inquietude which has given birth to them."

43 THE HARVARD CLASSIC, AMERICAN HISTORICAL DOCUMENTS 1000-1904, at 225, 227 (C. Eliot ed. 1910)(reprinting Washington's First Inaugural Address (Apr. 30, 1789)). In his Farewell Address (1796), after eight years of service as president, Article V again occupied Washington's thoughts: "The basis of our political systems is the right of the People to make and to alter their Constitutions of Government---But the constitution which at any time exists, 'till changed by and explicit and authentic act of the whole People, is sacredly obligatory upon all." *Id.* at 233, 239 (reprinting Washington's Farewell Address (Sept. 19, 1796)). Washington further added: "If, in the opinion of the People, the distribution or modification of the Constitutional

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

It is clear from the various comments made at the ratifying conventions that Article V was perceived as a viable method of correcting errors that might be found in the new Constitution. It is also as clear that no one, not even the opponents of the Constitution, interpreted Article V's convention clause to mean that Congress had a right to regulate the convention, that the convention could only propose a single subject, that two-thirds of the states had to agree on this subject before a convention was called, or that Congress had the power to interpret whether or not a single subject had been applied for by the states.

Instead, the post-convention record demonstrates that the Founding Fathers and those who ratified the Constitution believed that the convention method contained in Article V was intended to provide a way to circumvent Congress, that Congress had no choice but to call a convention upon the proper number of states requesting a convention, that this convention was free and independent of congressional control and regulation, and that it had the power to propose more than one amendment for ratification to the states it choose to do so.

**AMENDING THE CONSTITUTION BY THE CONVENTION METHOD**

---

powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates---But let there be no change by usurpation..."*Id.* at 242. In these two famous orations, Washington referred more specifically to Article V than to any other provision of the Constitution.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In spite of the attention the convention method of amendment received during and after the 1787 Constitutional Convention, an amendment has never been drafted and proposed by convention.[522] In fact, the convention method of amendment has been called a "constitutional curiosity," the forgotten part of the article, and "[o]ne of the best-known 'dead letter' clauses in the federal Constitution."[523]

This assumption is completely false. It cannot be assumed that simply because the convention to propose amendments has not been used since the implementation of the Constitution, that it is "dead," any more than it can be assumed that because no dictator has ever taken control of a state that the constitutional guarantee of a republican form of government for the states is "dead."

The Supreme Court stated the matter succinctly:

"Nothing new can be put into the constitution except through the amendatory process, and nothing old can be taken out without the same process."[524]

If it is granted that the convention provision of Article V is "dead," then how can it be said the Constitution is the supreme law of the land if the government the Constitution is supposed to limit possesses the unlimited power to arbitrarily and capriciously ignore its provisions with impunity? Does it

---

[522] *See, e.g.,* Voegler, *supra* note 332, at 356.
[523] *Id.*
[524] Ullmann v. U.S. 350 U.S. 422 (1956). In the same ruling the Court also stated, "As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion.". *See* Marbury v. Madison, 5 U.S. 137 (1803). "It cannot be presumed that any clause in the constitution is intended to be without effect."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

not mean, in fact, the entire Constitution, not just the convention, is "dead"?

The doctrine of *laches* simply does not apply here.[525] The fact is, a convention to propose amendments has not occurred *not* because the states have failed to *exercise* their right to apply for a convention, but because Congress has failed to follow its mandated constitutional duty to *call* one. Its failure to obey the Constitution does not "kill" that portion of Article V and render it invalid; rather this congressional *laches* threatens the entire Constitution.

The Supreme Court has repeatedly ruled that any provision in the United States Constitution may only be altered or invalidated by an amendment to the Constitution,[526] *not* by arbitrary decision on the part of the government.[527]

---

[525] 'Doctrine of *laches*,' is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity." BLACK'S LAW DICTIONARY, 6th ed. (1990).

This doctrine, however, has absolutely no place in constitutional law. The idea that the government can void a right guaranteed by the Constitution simply by delaying any action on the matter is so blatantly repulsive to the spirit, if not the letter, of the Constitution as to warrant no further comment.

Further, is it not *Congress*, under the doctrine of *laches* that has forfeited any supposed right to influence a convention call in refusing to deal with the matter in a timely fashion? The government cannot be allowed to bury its head in the sand for almost a century regarding the calling of a convention, refusing to enact any legislation on the matter when mandated to do so, then cry "Foul! The doctrine of *laches* applies to the states!"

The Court has ruled the states still retain the rights assigned them by the Constitution even if they have use them; thus, there are no time limits on rights. Further, the Court has held the states cannot consent to an unconstitutional act and therefore cannot negate these rights. Under both circumstances, therefore, the doctrine of *laches* cannot apply. *See infra* text accompanying notes 1180-1205.

[526] It could be argued that any statute which is contrary to the Constitution, and thus unconstitutional, technically is an illegal "amendment" to the Constitution. The Supreme Court has struck down over 124 such acts as of 1992. CONGRESSIONAL QUARTERLY'S GUIDE TO THE U.S. SUPREME COURT, 2ND EDITION, 1992,

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Further, as revisions contained in several amendments indicate,[528] the provisions of the Constitution are only "dead" when they are replaced or altered by a constitutional amendment. Indeed, almost all amendments have been added to correct deficiencies in the original document, which is exactly what the Founders intended when they wrote Article V.

---

E. WITT, p.1001-1009. Further, the Court has addressed specific challenges regarding constitutional clauses, i.e. Hollingsworth v. Virginia, 3 U.S. 378 (1798),Slaughterhouse cases, 83 U.S. 36 (1872), Powell v. McCormack, 395 U.S. 486 (1969), U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995). *See supra* text accompanying note 524.

[527] Indeed, in United States v. Sprague, 282 U.S. 716 (1931), it was urged by the appellate party that "it was the intent of its framers, and the Constitution must, therefore, be taken impliedly to require, that proposed amendments conferring on the United States new direct powers over individuals shall be ratified in conventions...that the framers thought that ratification of the Constitution must be by the people in convention assembled and not by legislatures, as the latter were incompetent to surrender the personal liberties of the people to the new national government."

The Court disagreed and said in response:

"Thus, however, clear the phraseology of article 5, they urge we ought to insert into it a limitation on the discretion conferred on the Congress, so that it will read, 'as the one of the other mode of ratification my be proposed by the Congress, as may be appropriate in view of the purpose of the proposed amendment.' This can not be done.

"The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning; where the intention is clear there is no room for construction and no excuse for interpolation or addition. Martin v. Hunter's Lessee, 1 Wheat. 304; Gibbons v. Ogden, 9 Wheat, 1; Brown v. Maryland, 12 Wheat 419; Craig v. Missouri, 4 Pet. 410; Tennessee v. Whitworth, 117 U.S. 139, 6 S.Ct. 649; Lake County v. Rollins, 130 U.S. 662, 9 S. Ct. 651; Hodges v. United States, 203 U.S. 1, 27 S. Ct. 6; Edwards v. Cuba R. Co., 268 U.S. 628, 45 S. Ct. 614; The Pocket Veto Case, 279 U.S. 655, 49 S. Ct. 463; Story on the Constitution (5th Ed.) 451; Cooley's Constitutional Limitations 2d Ed.) pp. 61, 70.

"If the framers of the instrument had any thought that amendments *differing in purpose* should be ratified in different ways, nothing would have been simpler that so to phrase article 5 as to exclude implication or speculation. The fact that an instruments drawn with such meticulous care and by men who so well understood how to make language fit their thought does not contain any such limiting phrase affecting the exercise of discretion by the Congress in choosing one or the other alternative mode or ratification is persuasive evidence that no qualification was intended." (emphasis added).

[528] U.S. CONST., 11th, 16th,18th, 20th,25th, 26th amendments.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The point of constitutional law is obvious and plain: any provision of the United States Constitution is in full effect and force until altered by amendment. Any other concept would be catastrophic, reducing the entire document to nothing more than national hypocrisy.

The right of the people to "alter or abolish...any Form of Government"[529] was seen by the colonists as a right central to the new system of American democracy. Critical to this concept was Article V of the United States Constitution which embodied a convention to propose amendments called by the states. However, to this date, due to the *laches* by Congress, the right of the states to hold a convention has been effectively abrogated.

This *laches* has spawned many popular and completely mistaken beliefs. Among them:

1. A convention to propose amendments may only be held to propose a single subject amendment;
2. A convention to propose amendments may only be held if two-thirds of the states request the same single subject for amendment;
3. A convention to propose amendments may only be held if the subject is contemporaneous;
4. A convention to propose amendments may only be held under those regulations Congress may choose to impose;
5. A convention to propose amendments may have its proposed amendment vetoed by Congress should Congress refuse to submit said amendments to the states for ratification.[530]

---

[529] S. MORISON, H. COMMAGER & W. LEUCHTENBURG, A CONCISE HISTORY OF THE AMERICAN REPUBLIC 98 (2d ed. 1983); *see also* the Declaration of Independence para. 2 (U.S. 1776); *see* also FEDERALIST No. 40 (J. Madison); "...the transcendent and precious right of the people to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness."

[530] *See infra* text accompanying notes 593-612. *See* also Bond & Engdahl, *THE CONSTITUTIONAL CONVENTION, The Duties and Powers of Congress Regarding Conventions For Proposing Amendments",* Nat'l. Legal Center for the Public Interest, p.4-5(1987). It is interesting to note that despite the apparent support by Bond & Engdahl for this mistaken belief, they conclude:

"In sum, the *determinative* function of Congress with regard to Article V conventions for proposing amendments begins and ends with the call; and even the determination *whether* to issue a call is removed from Congress' discretion, when two-thirds of the States apply. The Framers seem deliberately

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Of course Congress has determined that Congress is to be the sole arbiter of whether the states have met these pseudo-constitutional standards.[531] But even when these pseudo-constitutional standards of same subject, contemporaneousness, et al., are met by the states, Congress has not acted.[532]

Commentators are mistaken in their assertions that the Article V convention provision is "forgotten" or a "dead letter" because the mere threat posed by drives to call a convention for proposing amendments has a substantial *in terrorem* effect on the actions of Congress.[533] As a result of this phenomenon, Congress has been prodded into proposing several constitutional amendments.[534]

It is true the threat of a convention has caused Congress to propose amendments regarding the direct election of senators (17th Amendment),[535] repealing prohibition (18th Amendment),[536] limiting Presidential terms (22nd Amendment),[537] and instituting the presidential succession plan (25th

---

to have made it so. If this be true, regardless how desirable it might seem for Congress to legislate answers to some of the many questions that are certain to arise if such a convention is called, those questions simply *are beyond Congress' power to resolve.*(emphasis added). The most it can do, even in the form of legislation, is to offer non-binding counsel." *Id.* p. 15.

[531] *See infra* text accompanying notes 435-437,439,458,465-472,486,487,496,497-521.

[532] *See infra* text accompanying notes 541,1302,
TABLE 6—SAME SUBJECT APPLICATIONS, PART I, p.685;
TABLE 6—SAME SUBJECT APPLICATIONS, PART II, p. 686;
TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART I, p.692;
TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART II, p.693.

[533] *See* Voegler, *supra* text accompanying note 332, at 358.

[534] *Id.*

[535] Conley, *Amending the Constitution: Is This Any Way to Call For a Constitutional Convention?,* 22 ARIZ. L. REV. 1011, 1016 n.49 (1980).

[536] *Id.*

[537] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Amendment).[538] Even during this current session of Congress, efforts to add amendments to the Constitution by convention continue in such areas as term limits.[539] This effect has also caused Congress to enact earlier legislation, such as the Budget Control Act[540] and the Balanced Budget Act.[541] Further, the risk of a single topic reaching the two-thirds requirement for a convention has caused Congress to seek relief by amendment from controversial Supreme Court decisions. For example, during the first four months of the 97th Congress (1981-82), 145 proposals for constitutional amendments were offered dealing with school busing, racial integration, prayer in public schools, abortion, and the use of racial quotas.[542]

This congressional preemptive response to a single topic convention has been termed "...a natural and even desirable process."[543] Congress, as the national legislative body, serves as a testing ground for evaluating the strengths, wisdom and consequences of various amendment proposals. It then responds, sometimes by taking no action, other times by drafting and proposing

---

[538] *Id.*
[539] U.S. Term Limits, www.termlimits.org. (April 5, 1997).
[540] Congressional Budget and Parliament Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974); Pub. L. No. 95-100, 91 Stat. 994 (1977); Pub. L. No. 99-177, 99 Stat. 1039, 1062 (1985). *See also* Buckwalter, *Constitutional Conventions & State Legislators,* 20 J. Pub. L. 543, 548 (1971).
[541] Balanced Budget & Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, Title 2,99 Stat. 1038 (1985); Pub. L. No. 99-509, Title 7, 100 Stat. 1949 (1986). As to convention applications, the states have submitted more than enough applications in this pseudo-constitutional standard to compel a convention. *See*
TABLE 6—SAME SUBJECT APPLICATIONS, PART I, p.685;
TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART I, p.692.
[542] Rackoff, *"The Monster Approaching the Capital": The effort to Write Economic Policy into the United States Constitution,* 15 AKRON L. REV. 733, 745 (1982).
[543] Van Sickle, *A Lawful and Peaceful Revolution: Article V and Congress' Present Duty to Call a Convention for Proposing Amendments"*, 14 HAM. L. REV. No. 1 at 38 (1990).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

amendments, and sometimes by using the less cumbersome solution of statutory enactment. *But this testing ground concept does not relieve Congress of its obligation under the Constitution to call a convention when the states have applied for it.* It is the actual act of calling that must set the standard to determine that Congress has satisfied the constitutional requirement, not attempts by that body to placate the states by proposing amendments or employing other legislative actions to avoid the constitutional mandate.

What Congress has ignored is the *cumulative* intent of the states, i.e., the correct and legal desire by the states to hold a convention *regardless* of whatever subjects are discussed. Forty-nine states have applied for a convention to propose amendments.[544] While the subject matters of the applications vary, they all share one commonality: the calling of a convention to propose amendments.

As the number and frequency of the applications has increased in the last several years, Congress has responded, but in a totally inappropriate and unconstitutional manner. Its response to its constitutionally mandated action of calling a convention has been, instead of a call, a history of attempts to pass legislation that would give Congress complete control over an Article V convention and serve to make that process of amendment no more than a subservient arm of congressional whim and veto, precisely opposite of what the Founding Fathers intended.[545] This response by Congress can only be considered

---

[544] *See infra*
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.
[545] *See supra* text accompanying notes 437, 459-490, 518.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

a direct threat to the concept of government “by the people” and beyond the authority of Congress as granted to it by the Constitution.

## CONGRESS’ LIMITED ROLE IN CALLING A CONVENTION FOR PROPOSING AMENDMENTS

### INTRODUCTION

#### *Limited Power Granted to Congress by Article V*

Some organizations, such as the American Bar Association,[546] and prominent individuals, such as senators, attorneys general and legal scholars, have asserted that Congress has the power to establish procedures governing

[546] *See infra* APPENDIX C---1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, p. 1.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the calling of a national convention to propose amendments.[547] The decisive defect in the position supporting congressional control of a convention to propose amendments and in proposed legislation attempting to control and limit the convention, is that proposals would far exceed the authority of Congress to legislate in this area.

Congress can only possess the authority granted to it by the Constitution.[548] The Constitution's only grant of authority to Congress to involve itself in a convention for proposing amendments is found in Article V:

---

[547] E.g., S. REP. No. 135, 99th Cong. 1st Sess., at 22-23; Ervin, Proposed Legislation to Implement the Convention Method of Amending the Constitution, 66 MICH. L. REV. 8875, 879 (1968); Connely, Amending the Constitution: Is This Any Way to Call for a Constitutional Convention?, 22 ARIZ. L. REV. 1011, 1018 (1980); ABA Special Constitutional Convention Study Comm., Amendment of the Constitution By the Convention Method Under Article V 31-32 (1974), referred to in S. REP No. 135, 99th Cong., 1st Sess., at 23 (1985); 79-75 Memo. Op. Att'y Gen 390 (1979); Bond & Engdahl, THE CONSTITUTIONAL CONVENTION, The Duties and Powers of Congress Regarding Conventions For Proposing Amendments", Nat'l. Legal Center for the Public Interest, 4-5 (1987). *See* supra text accompanying notes 418,430.

[548] U.S. CONST., amend. 10;"The government of the United States can claim no powers which are not granted to it by the Constitution." Martin v. Hunter's Lessee, 14 U.S. 304 (1816);"[The] court may not construe Constitution so as to defeat its obvious ends when another construction equally accordant with the words and sense thereof, will enforce and protect them." Prigg v. Commonwealth of Pennsylvania, 14 U.S. 539 (1842); "In construing the Federal Constitution, Congress must be held to have only those powers which are granted expressly or by necessary implication." Chicago B&Q Railroad Co. v. Otoe County, 83 U.S. 667 (1872); "The national government possesses no powers but such as have been delegated to it, whereas the states have all but such as have been surrendered." Gilman v. City of Philadelphia, 70 U.S. 713 (1865); Hall v. State of Wisconsin, 103 U.S. 5 (1880);"The government of the United States is one of limited powers, and no department possesses any authority not granted by the Constitution." Hepburn v. Griswold, 75 U.S. 603 (1869); "Federal government is one of enumerated powers, and, while such powers are to be reasonably and fairly construed with a view to effectuating their purposes, an attempted exercise of a power clearly beyond true purpose of grant cannot be sustained." United States v. Harris, 106 U.S. 629 (1882);"If an act passed by Congress is not one which Congress is expressly authorized to enact, the question arises as to whether it is properly an incident to a power expressly granted to Congress, and necessary to the execution of such powers, and if it is not the act is void." *Id.*; "Every act of Congress must find in the Constitution some warrant for its passage." *Id.*. *See* also Railroad Retirement Board. v. Alton Railroad Co., 295 U.S. 330 (1935).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"The Congress...on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments..."[549]

The language of Article V is plain and simple. Article V clearly and plainly limits Congress' role in a convention for proposing amendments to the "calling" of the convention.[550] This interpretation is supported by the long-standing rule of constitutional construct that "[t]he words are to be taken in their natural and obvious sense and not in sense unreasonably restricted or enlarged."[551]

---

[549] U.S. CONST., art. V.

[550] *Id. See* also United States v. Chambers, 291 U.S. 217 (1934): "The Congress, however, is powerless to expand or extend its constitutional authority. The Congress, while it could propose, could not adopt the constitutional amendment or vary the terms or effect of the amendment when adopted... The National Prohibition Act was not repealed by act of Congress, but was rendered inoperative, so far as authority to enact its provisions was derived from the Eighteenth Amendment, by the repeal, not by the Congress but by the people, of that amendment... In the instant case, constitutional authority is lacking. Over the matter here in controversy, power has not been granted but has been taken away. The creator of the Congress has denied to it the authority it formerly possessed, and this denial, being unqualified, necessarily defeats any legislative attempt to extend that authority... The question is not one of public policy which the courts may be considered free to declare, but of the continued efficacy of legislation in the face of controlling action of the people, the source of the power to enact and maintain it. It is not a question of the developing common law... The principle involved is thus not archaic, but rather is continuing and vital—that the people are free to withdraw the authority they have conferred and, when withdrawn, neither the Congress nor the courts can assume the right to continue to exercise it."

Clearly, in the case of the convention to propose amendments, the framers sought to withdraw authority from the Congress to exclusively control the amendatory process and this "withdrawal" was approved by the people in conventions assembled. Therefore, Congress cannot exceed its limited authority granted to it under Article V. *See supra* text accompanying notes 436-439,527.

[551] Martin v. Hunter's Lessee, 14 U.S. 304 (1816);*see also*: "Where the text of the constitution is clear and distinct, no restriction on its plain and obvious import should be admitted unless the inference is irresistible." *Id.*; "The framers of the constitution and the people who adopted it must be understood to have employed words in their natural sense and to have intended that which was said." Gibbons v. Ogden, 22 U.S. 1 (1824); "Where provision in United States Constitution is unambiguous and its meaning is entirely free from doubt, the intention of the framers of the constitution cannot be inquired into, and the Supreme Court is bound to give the provision full operation, whatever might be the views entertained of its expediency." (Per Justice Thompson) Ogden v. Saunders, 25 U.S. 213 (1827); *see* also Trimble, J., concurring; Brown v. Maryland, 25 U.S. 419 (1827); Craig v. Missouri, 29 U.S.

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The extremely limited role in the convention process allotted to the Congress by the Framers of the Constitution arose out of the desire of a majority of the Framers to provide a safeguard against an abusive or recalcitrant national legislature.[552]

Despite the early desires to exclude the national government from any involvement in the amendment process, primarily demonstrated by the Virginia Plan,[553] the Framers were willing to allow the national legislature to propose amendments, perhaps in accordance with Hamilton's argument that the national legislature would be in a good position to perceive the need for alterations to the system of government.[554] They also provided, however, the alternative

---

410 (1830); Holmes v. Jennison, 39 U.S. 540 (1840);"Court may not construe Constitution so as to defeat it obvious ends when another construction, equally accordant with the words and sense thereof, will enforce and protect them." Prigg v. Commonwealth of Pennsylvania, 41 U.S. 539 (1842); "A constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed." Jarrolt v. Moberly, 103 U.S. 580 (1880); Lake County v. Rollins, 130 U.S. 662 (1889); Edwards v. Cuba R.R., 268 U.S. 628(1925); The Pocket Veto Case, 279 U.S. 655(1929); "Where intention of words and phrases used in Constitution is clear, there is no room for construction and no excuse for interpolation." United States v. Sprague, 282 U.S. 716 (1931); Williams v. United States, 289 U.S. 553 (1933);"In expounding the Constitution, every word must have its due force and appropriate meaning." Wright v. United States, 302 U.S. 583 (1938);"Where there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightly be preferred." United States v. Classic, 313 U.S. 299 (1941); United States v. South-Eastern Underwriters Ass'n., 322 U.S. 533 (1944).

[552] 1 FARRAND, *supra* note 2, at 202-03 (Madison---June 11)(Madison's comments);2 *Id.* at 629 (Madison---Sept. 15)(Mason's comments); *See also* 3 *Id.* at 127 (Randolph's comments to the Virginia House of Delegates), 367-68 (Mason's account as told to Thomas Jefferson), 575 n.6 (Letter from George Read to John Dickinson of Jan. 17, 1787); 4 *Id.* at 61 (Mason's notes). *See supra* text accompanying notes 345,435-437,497-521.

[553] *See supra* text accompanying notes 325,345-346.

[554] U.S. CONST., art. V; 2 FARRAND, *supra* note 2, at 558 Madison---Sept. 10)(recording Hamilton's comments). *See supra* text accompanying notes 351-352, 413.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

method of calling a convention at the direction of the states.[555] The records of the debate on this subject make it plain that the purpose of this alternative method was to allow the states to circumvent the national legislature and to propose amendments despite congressional opposition or recalcitrance.[556] But as accurately predicted by Colonel Mason,[557] the national legislature has proved to be recalcitrant in its mandated obligation to call a convention. Mason warned about allowing the national legislature any voice concerning the convention when he said:

> "The plan now to be formed will certainly be defective, as the confederation has been found on trial to be. Amendments therefore will be necessary, at 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 amendmt."[558]

Clearly, with comments such as Mason's, it would be absurd to say that the Framers of the Constitution intended to entrust Congress with constitutional authority over the very institution that was created specifically in the Constitution to bypass and restrain Congress should it act against the will of the people. Thus, Congress' powers relating to Article V must be construed in the narrowest terms possible, so that the purpose of the convention in providing a means to circumvent Congress can be most fully realized. The role of Congress must be, as much as possible, a purely

---

[555] U.S. CONST., art. V

[556] 1 FARRAND, *supra* note 2, at 203 (Madison---June 11)(Mason's comments); 2 *Id.* at 629 (Madison---Sept. 15)(Mason's comments);*See also* 3 *Id.* at 127 (Randolph's comments to the Virginia House of Delegates), 367-68 (Mason's account as told to Thomas Jefferson), 575 n.6 (Letter from George Read to John Dickinson of Jan. 17, 1787); 4 *Id.* at 61 (Mason's notes).

[557] *See supra* text accompanying notes 362,363.

[558] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

mechanical or ministerial one, rather than a discretionary one. As Alexander Hamilton succinctly stated, "[t]he words of this article are peremptory. The Congress '*shall* call a convention.' Nothing in this particular is left to the discretion of that body."[559]

The structure of the federal government created by the Constitution also supports the fact that Congress' role in the amendments-by-convention process is entirely limited to the simple calling of the convention. The convention process derives its constitutional authority from Article V; it is not a component of any of the three branches of the government created by the first three articles. The convention derives its power from a separate and independent grant of authority in the Constitution itself; it cannot be made subservient to any branch of the government. Further, the sole purpose of the convention is to propose changes in the pre-existing system of government. This function, by its very nature, renders the convention distinct from, if not superior to, the three branches of government it is meant to alter.

*Legislative Procedure Issues*

If it is assumed that Congress can legislate over a convention to propose amendments, as Congress by its own attempts has demonstrated,[560] then this authority must somehow be implied within Article I.[561] Clearly, the power

[559] THE FEDERALIST No. 85 (A. Hamilton).
[560] *See infra* text accompanying notes 593-612.
[561] U.S. CONST., art. I, § 8, (1-18).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

must be implied, as nowhere in Article I is it expressed. Article I clearly deals with the *legislative* authority of Congress.

Contained within Article I are specific procedures regarding how a piece of proposed legislation becomes law.[562] In every case, before such an event may occur, the proposed legislation, after it has been passed by the Senate and the House of Representatives, must be submitted to the President of the United States for his approval.[563]

The Supreme Court has addressed the question of ambiguity surrounding these sections of the Constitution and found none.[564] Further, in one of its earliest decisions, the Supreme Court addressed the issue of the participation of the President in the amendatory process[565] and determined that the

---

[562] U.S. CONST., art. I, § 7, (2),(3).

[563] U.S. CONST., art. I,§7,(2): "Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States..."; *see* also U.S. CONST., art. I,§ 7 §§ 3:"Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in this case of a bill."

[564] "Under constitutional provision that bill not returned by the President to House of Congress wherein it originates within 10 days shall be become a law, "unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law," quoted words are entirely free from ambiguity, so that there is no occasion for construction." Wright v. United States, 302 U.S. 583 (1938).

[565] "And in the case of amendment, 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" Hollingsworth v. Virginia, 3 U.S. 378 (1798); "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.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

presidential veto or approval only applied to ordinary cases of legislation, not amendments to the Constitution.[566]

Thus, by this single decision, the Court established that Congress has two distinct sets of power: legislative, which requires the participation of the President of the United States to exercise; and amendatory, which does not require the participation of the president.[567]

The only other alternative that could possibly exist to allow Congress to legislate in amendatory matters, outside of its own power to propose amendments and choose the method of ratification,[568] would be the creation of a new legislative procedure to enact legislation to supplement the current

---

[566] "[T]he evidence relating to the role of the president does not, in a positive sense, demonstrate an intent one way or the other. However, the answer to this question rests as much on what was not said in the 1787-88 debates as on the opinions that were expressed. Considered in this light, the negative evidence points overwhelmingly to the conclusion that Article I, section 7 was intended to apply only to those legislative functions referred to in other portions of that article and not to Congressional actions taken under Article V. In the thousands of words and many months of argument devoted to the powers of the president, including his position vis-à-vis Congress, one can find no evidence that the specific question of his role in any aspect of the amendment process ever arose, either in connection with Article I or Article V. It is difficult to conceive of two constitutional issues---which strict-constructionists insist are related---being subjected to such close scrutiny by so great a variety of politically astute observers, for so long a period of time, without someone, somewhere, raising a question or making a comment about the effect of one procedure on the other. Hence, although in a literal sense one may argue that under Article I, section 7, "a resolution is a resolution is a resolution," and every act of Congress so identified must be subject to presidential approval, nothing in the formative history of Article I will support the application of this principle to actions taken under Article V. One the contrary, the very fact that the amendment process was, one every occasion, debated as a separate and distinct problem unrelated to other legislative functions, suggests that the intent was not to treat that process in the same way as matters requiring both legislative and executive action." A CONSTITUTIONAL CONVENTION: THREAT OR CHALLENGE (1981) (Edel).

[567] It can be reasonably implied from a reading of *Hollingsworth* that Justice Chase in his footnote derived his decision from a strict and direct reading of Article V. Nowhere in that article is there the slightest implication, expressed or implied, of presidential participation in the amendatory procedure. S*ee supra* text accompanying note 2.

[568] U.S. CONST., art. V; *see supra* text accompanying note 2.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

procedure carefully and specifically laid out in Article I. This procedure would have to allow Congress to enact legislation, ostensibly to regulate the convention, but would also provide a precedent whereby Congress could circumvent the President by simply passing legislation and not presenting it to him for his disposition.

Absent this alternative, which on its face is fraught with constitutional danger, should it be *assumed* Congress *can* legislate in regard to the convention to propose amendments, under its Article I, Section 8 powers, it would follow that such legislation ***must*** be approved by the President of the United States, or, subject to his veto,[569] be re-approved by a two-thirds vote of each house of Congress.[570] The provision is mandatory; Congress cannot legislate without involving the President of the United States.

This legislative authority of Congress would therefore mean the President could veto the amendment process and in the political course of matters stop its progress altogether, as the needed two-thirds override vote by Congress might not necessarily or automatically occur.[571] This principle

---

[569] "While Congress can repeat or supersede legislation in subsequent sessions, general legislation will control without such action, and the president's veto may serve to balance hasty action to override procedures that have been put in place." PROPOSED PROCEDURES FOR A LIMITED CONSTITUTIONAL CONVENTION, AEI Legislative Analysis, 98th Congress, 2nd Sess. (1984), p.11.

[570] In Missouri Pacific Railway Co. v. Kansas, 248 U.S. 276 (1919), the Supreme Court determined the two-thirds vote of each House required to pass a bill over a veto means two-thirds of the members present provided there was a quorum.

[571] By the same token, expecting the president's veto to be able to hold up against a determined Congress offers little consolation as the Congress may be able to override the vetoes of the executive as was done, for example, with President Andrew Johnson's veto of the Reconstruction Act in which Congress

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

clearly violates the concept of separation of powers, not to mention the Court's previous rulings.[572] It is possible this situation might serve to open a pathway for an ambitious chief executive to seize power over the entire Constitution by vetoing the amendment process.

As the words of the Constitution must have their "due force and appropriate meaning,"[573] it follows that each word must be considered individually and uniquely and may not be exchanged either in meaning or effect for another word in the Constitution unless such exchange is clearly expressed.

The Founding Fathers clearly understood the difference between a law, a resolution, a vote, an order and a call.[574] Congress may not refer to an amendatory procedure as a "call", then use legislative powers granted

---

raised several constitutional amendatory issues. *See infra* text accompanying notes 1248-1309.

[572] Hollingsworth v. Virginia, 3 U.S. 378 (1798); *see* also Martin v. Hunter's Lessee. 14 U.S. 304 (1816), Prigg v. Commonwealth of Pennsylvania, 41 U.S. 539 (1842), Chicago B&Q Railroad Co. v. Otoe County, 83 U.S. 667 (1872); Gilman v. City of Philadelphia, 70 U.S. 713 (1865); Hepburn v. Griswold, 75 U.S. 603 (1869); Hall v. State of Wisconsin, 103 U.S. 5 (1880); "Federal government is one of enumerated powers, and, while such powers are to be reasonably and fairly construed with a view to effectuating their purposes, an attempted exercise of a power clearly beyond true purpose of grant cannot be sustained." United States v. Harris, 106 U.S. 629 (1882); "If an act passed by Congress not one which Congress is expressly authorized to enact, the question arises, as to whether it is properly an incident to a power expressly granted to Congress, and necessary to the execution of such powers, and if it is not the act is void." *Id.*; "Every act of Congress must find in the Constitution some warrant for its passage." *Id.*; Railroad Retirement Bd. v. Alton Railroad Co., 295 U.S. 330 (1935); Linder v. United States, 45 S.Ct. 446 (1925); United States v. Butler, 297 U.S. 1 (1936).

[573] Wright v. United States, 302 U.S. 583 (1938).

[574] 2 FARRAND, 301-302, 304-305; *see* also Hawke v. Smith 253 U.S. 221 (1920), discussion by Justice Day regarding the framers understanding of the term "legislatures". *See infra* text accompanying note 1651.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

expressly and exclusively for an order, law, resolution or vote,[575] to accomplish it.

Each of these words has a procedure expressly associated with it that must be followed in order to effectuate it. Each legislative method, whether law, order, resolution or vote, requires the participation of the president,[576] but not a call[577] as it is amendatory in nature and not part of the Article I procedures. As the convention exists completely within Article V (amendatory), as do all congressional amendatory powers, it follows Congress must use its *amendatory* powers specified in Article V, and not its *legislative* powers specified in Article I, when dealing with an amendment issue. Thus, each power of Congress is separate and unique in authority, and none can constitutionally be mixed.

---

[575] U.S. CONST., art. I,§ 2 §§ 3;*see* also S. Rept. No. 1335, 54th Congress, 2nd Sess.; 4 A. Hinds, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES (Washington: 1907), Sec. 3483, "[Any] order, resolution, or vote if it is to *have the force of law* must be submitted [to the president for approval.] *Id.*; "Whether actions taken by either House are, in law and in fact, an exercise of legislative power depends not on their form but upon 'whether they contain matter which is properly to be regarded as legislative in its character and effect.'", Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983). The other major component of the Court's reasoning in Chadha stemmed from its reading of the Constitution as making only "explicit and unambiguous" exception to the bicameralism and presentment requirements. Thus, the House alone is given power of impeachment, and the senate alone is given power to convict upon impeachment, to advise and consent to executive appointment, and to advise and consent to treaties; similarly, the Congress may propose a constitutional amendment without the President's approval, and each House is given autonomy over certain "internal matter," e.g., judging the qualifications of its members. By implication then, exercises of legislative power not falling within any of these "narrow, explicit, and separately justified: exceptions must conform to the prescribed procedures: "passage by a majority of both Houses and presentment to the President." *Id.; see* also Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise, 501 U.S. 252 (1991).

[576] *Id.*

[577] Hollingsworth v. Virginia, 3 U.S. 378 (1798).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Therefore, unless it is decided that massive changes in the construement of the Constitution are warranted, or the principal expressed by Chief Justice Marshall is to be overturned,[578] it must be concluded Congress cannot legislate in the area of the convention to propose amendments because:

1. It would require Congress to use its legislative powers in an area where the Constitution only permits Congress to use its amendatory powers;
2. It would permit the President of the United States to use the veto in the amendatory process;
3. The convention to propose amendments "call" is not legislation either in character or effect, since it is an amendatory process.

Thus, in the case of the convention, Congress is restricted to an expressed, limited, specified amendatory power of Article V: the call. And as Congress cannot legislate in this area, it therefore follows it may only perform that which is not legislation, a non-binding call.[579]

*Definition and Limits of the Congressional "Call"*

[578] *See supra* text accompanying note 287.

[579] *See supra* text accompanying notes 506, 530. The call, while mandated upon Congress to issue, does not bind the states to *attend* as demonstrated by Rhode Island's lack of attendance at the 1787 Convention. (*See supra* text accompanying note 322). As the Supreme Court has ruled, an amendatory vote in Congress is not a binding requirement on any member. That is, no member of Congress *is required* to cast a vote on an amendatory proposal and therefore must be seated for the vote to be legal and binding. (*See infra* text accompanying note 869). Therefore, the Court has allowed that less than the total membership of Congress can vote for an amendatory proposal and still satisfy the two-thirds support of Congress as required in Article V. If it were otherwise, a single member of Congress, by his absence, could stymie the entire amendatory process, even if every other member of Congress was in favor of an amendment. Similarly, the states have the same right not to attend a convention but the convention would still continue. But this right of the states not to send delegates, once a call has been issued to a convention to propose amendments, does not translate into a power of the states veto the Congress' call *prior* to it being issued; *see infra* text accompanying notes 841-882.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

What is a “call” in the sense of a convention to propose amendments? Simply put, the “call” is a means to effectuate the commencement of a convention to propose amendments.

The definition of the word “call” is:

“To say in a loud voice; to shout; to announce”,[580] and “to summon; as, to call a messenger, to *call* a meeting.”[581]

Similarly, the word “meeting” is also revealing:

“[A]n assembly, a gathering of people especially to discuss or decide on matters,” and “a point of contact or intersection; a junction.”[582]

It is upon these two definitions that the limits of Congress’ role must be defined.[583] A meeting cannot occur unless a mutual place and time frame exists.[584] At this point the meeting has occurred. Therefore, no further input from anyone “calling” a meeting is required. Thus, the power of the call by Congress must include, even under the narrowest of construction, two parts.

---

[580] WEBSTER’S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED, 2nd ed. (1983).

[581] *Id.*

[582] *Id.*

[583] In Ullmann v. United States, 350 U.S. 422 (1956), the Supreme Court discussed the strict dictionary definition of words as they relate to the Constitution. “The significance of constitutional provisions is vital, not formal, and is to be gathered not simply by taking the words in the dictionary but by considering their origin and the line of their growth.” *Id.*

In the case of the convention call, however, there has been no “line of growth” as it has never been used since 1787. Further, the historic record clearly demonstrates that Congress was to be given “no discretion” in the matter of calling a convention to propose amendments. (*See supra* text accompanying notes 437-439,459-490,493-521). Under these narrow historic circumstances, therefore, the dictionary definitions of the words must be the proper interpretation of their meaning as they are the narrowest interpretation possible that satisfies the clear intent of the Founding Fathers, yet still grant the necessary authority to Congress needed to carry out its mandated constitutional duty.

[584] While the popular interpretation of a “meeting” is a physical face to face engagement, it is significant that a meeting is also “a point of contact or intersection”. Thus it is as faithful to the intent of the definition if a “meeting” is held on the telephone or even on the Internet. Even though there is no *physical* location involved, nevertheless such an event does transpire in a single time frame at a particular junction, in this instance a linkage between one or more physical locations by means of electronic connection. In this mode, in countless numbers a day, matters are discussed or decided: thus a meeting. *See* also *infra* text accompanying notes 1403-1417.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

First, the call must consist of an acknowledgment by Congress that the proper number of states has applied for a convention to propose amendments.[585] However, this acknowledgment does not imply a choice on the part of Congress,[586] as in whether or not that body may decide if a convention occurs; rather, it is the *required* action Congress must follow when the proper number of states applies for a convention to propose amendments.[587]

Second, the call must entail a non-binding *recommendation* as to the time and place the convention will meet. As Congress has no discretion in the matter,[588] it is entirely prevented from dictating any of the terms regarding a convention. However, even under the narrowest interpretation, Congress does have an obligation to ensure a convention occurs. At the least this means that Congress must *suggest* a time and place for that convention. If Congress does not *suggest* a time and place, then it leaves open a door for constitutional chaos with the possibility of fifty states trying to resolve fifty different locations and times for the convention.

With a time and place at least offered by Congress, a common point of reference is provided. The states may alter either the time or place if they choose,[589] but this fact is immaterial to the call. Congress will have already

---

[585] *See supra* text accompanying note 2.
[586] *See supra* text accompanying notes 435-437,506-521.
[587] *Id.*
[588] *Id.*
[589] Congress is allowed to change the time of its meetings; "The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." (U.S. CONST., art I, §4 (2); and neither house may "adjourn… to any other place than that in which the two houses shall be sitting." U.S. CONST., art. I, §5 (4). Since the Congress can, by its determination, change its meeting time and, by implication, move itself to a new place so long as both houses in the same location, it follows the states have the same authority and limitations toward

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

fulfilled its obligation, thus satisfying the definition of the word “call”. Further, this will consume Congress’ minuscule authority granted by the Constitution to effectuate a convention to propose amendments by a call. *After that, Congress’ constitutional authority and obligation terminates.*[590] *The rest is up to the states or the people themselves.*

Despite these facts, there persists a congressional tradition of attempting to manage the convention at every level, thus reducing it to a mere handmaiden of congressional whim.

Obviously, the Court cannot rule on proposed legislation. However, the history and obvious intent of that legislation, together with the constitutional interpretation by Congress that it represents, offers more than just interesting reading. It serves to justify the clear definition of the constitutional perimeters of the convention to propose amendments by the Court, based on the clear intent of the Founding Fathers which can be summed up by Hamilton’s comment that “Nothing in this particular is left to the discretion of that body [Congress]”.[591] This definition cannot be left to the political shortsightedness of Congress, if indeed that were even possible, which fortunately it is not.[592]

---

the convention. The states can establish a different time for the convention once a call has been issued and the entire convention must meet at a single place and cannot be divided, but this place may be moved by the states if they choose.

[590] In an analogous decision, the Supreme Court determined congressional participation ends once legislation is passed by Congress.”[A]s Chadha makes clear, once Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly---by passing new legislation.” Bowsher v. Synar, 478 U.S. 714 (1986). *See supra* text accompanying note 575.

[591] *See supra* text accompanying note 506.

[592] *See supra* text accompanying notes 2,459-490,493-521,547-579.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## CONGRESSIONAL PROPOSALS ATTEMPTING TO LIMIT ARTICLE V

### *Legislative History*

Recent congressional efforts to control and limit the scope of a convention for proposing amendments began with the Ervin Bill, Senate Bill 2307, in 1967.[593] Since that time, a number of bills aimed at regulating so-called constitutional conventions has been introduced.[594] These bills, building on previous versions, have been refined from year to year, but fortunately have never been enacted into law.[595] In the 101st Congress, for example, this line of proposed legislation was embodied in Senate Bill 204 introduced by Senator Orrin Hatch of Utah.[596] Among its provisions, this proposed legislation:

1. Requires that state legislatures, when petitioning for a convention, state the subject matter of the amendment(s) to be proposed;[597]
2. Provides that petitions remain in effect for only seven years after submission to Congress;[598]
3. Requires that only petitions pertaining to the same subject be counted together toward the two-thirds state requirement;[599]
4. Provides that Congress shall call a convention to address only a single subject;[600]

---

[593] S. 2307, 90th Cong., 1st Sess. (1967).
[594] *See* Voegler, *supra* note 332, at 357 n.14.
[595] *Id.; See also* S.1272, 93rd Cong.,1st Sess, (1973); S. 119, S. 2812, H.R. 3373, 98th Cong., 2nd Sess; S. 40, 99th Cong., 1st Sess, (1985); S. Rep. No. 135, 99th Cong., 1st Sess. (1985).
[596] S. 204, 101st Cong., 1st Sess. (1989).
[597] *Id.* § 2(a).
[598] *Id.* § 5(a).
[599] *Id.* § 6(a).
[600] *Id.* §§ 6(a), 10, 11(b)(ii).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

5. Regulates the number of delegates to be sent by each state, and the manner of election;[601]
6. Forbids the election of United States senators, representatives and other federal officers as convention delegates;[602]
7. Provides that a convention be convened by the President Pro Tempore of the Senate and the Speaker of the House;[603]
8. Requires that delegates take an oath to comply with the Constitution of the United States during the convention;[604]
9. Determines how votes are to be allocated;[605]
10. Sets a six month time limit on the operation of a convention;[606]
11. Prohibits a convention from proposing an amendment outside the subject matter for which the convention was called;[607]
12. Permits Congress to refuse to transmit a proposed amendment to the states for ratification.[608]

Had this bill been enacted, it is evident it would have asserted sweeping congressional regulation over all phases of a convention for proposing amendments, granting enormous implied and expressed powers to Congress. Congress, essentially, would be able to circumvent the prescribed amendment process by use of unconstitutional statutory means.[609] Congressional thinking on this matter is clear. Nowhere in its history has Congress demonstrated any inclination, by the submission of a single proposed piece of legislation, toward staying within its limited role of call as prescribed by the Constitution and clearly intended by the Framers.[610]

---

[601] *Id.* § 7.
[602] *Id.* § 7(a).
[603] *Id.* § 8(a).
[604] *Id.* § 8(a).
[605] *Id.* § 9(a).
[606] *Id.* § 9(c).
[607] *Id. §§ 10*.
[608] *Id. §§ 11(b)(ii).*
[609] *See supra* text accompanying notes 561-579.
[610] This trend by Congress has continued through the present day. H.J. Res. 29, 106th Cong., 1st Session (1999) introduced by Congressman Tom Bliley would permit the states to submit to Congress actual proposed amendments but gives Congress veto power over those amendments by establishing an *automatic* veto of proposed amendments by the states *unless* two-thirds of each house of Congress voted to defeat the required legislation expressly vetoing the amendment.
Section 2 of the proposed constitutional amendment reads in part;
"If a proposed amendment is submitted to the Congress under this article and...two-thirds of each House vote *against* legislation *expressly disapproving*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The strategy of the sponsors of this legislation is obvious: to assert complete congressional control over the procedural and substantive matters of the convention in such a way as to subvert the original intentions of the Framers and instead substitute its own agenda for the Constitution. Such control would significantly limit the scope of the convention to amendments concerning a single topic, as that subject may be defined by Congress.[611] Congress' effort to place the convention under its control is motivated by "[c]oncern [that] has frequently been expressed about the possibility of a 'runaway' convention, unfaithful to the mandate with which it was charged by the States *and the Congress.*"[612] This reason, however altruistic, is based on utterly false reasoning and historic fact. Simply put, Congress does not have, nor ever was intended to have, the constitutional authority to control or regulate the convention in any way outside of its minuscule role in calling the convention.[613]

**POLITICAL PRE-CONDITIONS FOR CALLING A CONVENTION TO PROPOSE AMENDMENTS**

---

the proposed amendment, the proposed amendment shall be deemed to be submitted to the several States for their consideration." (emphasis added).

[611] Such a perspective is demonstrated in a senate report: "The perspective of S. 40 is that the States may call a convention to be limited to a particular subject matter... If the requisite number of States apply for convention on a specific subject matter, the convention may consider and propose only amendments pertaining to that subject matter.." S. REP No. 135 99th Cong., 1st Sess., at 3 (1985).

[612] *Id.* at 2 (emphasis added).

[613] *See supra* text accompanying notes 2,459-490,493-521,547-560.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

# INTRODUCTION

In order to bolster the contention that a convention to propose amendments should *not* be called as required in the Constitution,[614] various pseudo-constitutional assumptions have evolved over the years, that in reality are no more than political pre-conditions designed to favor continued congressional dominance of the amendatory system. The intent of these political pre-conditions is to allow Congress either to regulate the convention to such an extent as to render its calling meaningless, or to simply ensure that no convention is ever called, regardless of the desire of the states.

The plain answer to all these pre-conditions and pseudo-constitutional assumptions is the following: The Constitution *demands* Congress call a convention when two-thirds of the Several States apply.[615] There are no other conditions or standards the states are required to meet[616] before Congress must issue the call. Congress has no further role in the convention beyond a basic, limited call.[617] The applications of the states are used merely to express the

---

[614] U.S. CONST., art. V.
[615] *Id.*; *see supra* text accompanying notes 2,459-490,493-545.
[616] An analogous decision regarding the unconstitutionality of Congress adding pre-conditions to clearly specified textual terms spelled out in the Constitution was addressed in Powell v. McCormack, 395 U.S. 486 (1969) in which the court found "Congress is limited to the standing qualifications prescribed in the Constitution." This principle should apply here: Congress is limited to the standing qualifications prescribed in the Constitution regarding a convention to propose amendments, i.e., two-thirds of the state legislatures have applied for one.
[617] *See supra* text accompanying notes 547-592.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

intent of the states to hold a convention and have nothing to do with the subject matter or matters to be discussed at a convention.[618] Finally, the convention to propose amendments is as much a valid, legitimate and proper part of the Constitution as the three branches of government and cannot be regulated or subjugated by them except as provided by the Constitution.[619]

Nevertheless, each of these pre-conditions and pseudo-constitutional assumptions will be examined separately in this suit in order to refute them once and for all.

## THE NECESSARY AND PROPER CLAUSE PRE-CONDITION

The pre-condition states that the convention may be regulated and legislated by Congress because of the "necessary and proper" clause.[620]

Proposed Senate Bill 204[621] and its history of legislation[622] are perfect examples of the "necessary and proper" clause[623] run amok. The assumption behind this proposed legislation is that somehow this clause gives Congress the implied power to entirely regulate a convention to propose amendments.

---

[618] *See infra* text accompanying notes 669-728.
[619] *See infra* text accompanying notes 921-1134.
[620] U.S.CONST., art. I, § 8 (18). The full clause reads:
"To make all *laws* which shall be *necessary* and *proper* for carrying into execution the *foregoing* powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." (emphasis added).
[621] *See supra* text accompanying note 596.
[622] *See supra* text accompanying note 593,594.
[623] U.S. CONST., art. I, § 8 (18).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

While it is true the clause certainly applies to Congress' *statutory* authority, it neither grants nor applies the same freedom of regulation and legislation to Congress' *amendatory* role.[624]

There is no mention of Congress having a broad scope of implied powers in addition to its direct powers outlined in Article V; no corresponding "necessary and proper" clause exists in Article V.[625] Therefore, the "necessary and proper" clause can only refer to the *foregoing statutory* powers of Congress as outlined in Article I, not to its Article V *amendatory* powers.

While it is true *McCulloch*[626] recognized that broad implied powers were granted to Congress, even Chief Justice Marshall, in his ruling, limited these powers to Congress' *statutory* authority and, most notably, nowhere mentioned *amendatory* powers.[627] As early as 1798, less than three years before Marshall

---

[624] *See supra* text accompanying notes 561-592.

[625] As observed by the Court, the Constitution must first clearly grant a power *before* such power can be exercised by the government.

The Court said:

"Under a constitution conferring specific powers, the power contended for must be granted or it cannot be exercised." United States v. Fisher, 6 U.S. 358 (1805).

In a later decision the Court said:

"Every act of Congress *must find* in the Constitution some warrant for its passage... If an act passed by Congress is not one which Congress is *expressly authorized* to enact, the question arises, as to whether it is properly an incident *to a power granted* to Congress, and necessary to the execution of such power, and if it is not *the act is void*." United States v. Harris, 106 U.S. 629 (1882).

[626] McCulloch v. Maryland, 17 U.S. 316 (1819).

[627] In *McCulloch*, Marshall said:

"This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs... To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason and to accommodate its *legislation* to circumstances." (emphasis added). Marshall then concluded:

"If no other motive for its insertion can be suggested, a sufficient one is found in the desire to remove all doubts respecting the right to *legislate*

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

became Chief Justice, the Supreme Court recognized two separate areas of constitutional authority, statutory and amendatory, acknowledging the authority for each power was derived from distinct areas of the Constitution.[628] Marshall made no attempt to imply in *McCulloch* that *Hollingsworth* had in any way been overturned.[629]

Therefore, it is clear *McCulloch* was only intended to refer to and clarify that portion of the Constitution that it specifically referred to, namely the statutory powers of Congress expressed in Article I, because it is only here the term “necessary and proper” is used in relation to congressional power. The “necessary and proper” clause of “foregoing” powers[630] serves not only to divide, but to determine that these powers are not interchangeable, i.e., statutory powers cannot be used as a substitute for amendatory powers. Simply put, Congress is not authorized in Article I to legislate changes to the Constitution itself. To do that, Congress must employ its amendatory powers.

As Chief Justice Marshall stated in *McCulloch v. Maryland*:

“The result of the most careful and attentive consideration bestowed upon this clause is, *that if it does not enlarge*, it cannot be construed to restrain the powers of Congress, or to impair the right of the legislature to exercise its best judgment in the selection of measures to carry into execution the constitutional powers of the government. If no other motive for its insertion can be suggested, a sufficient one is found in the desire to remove all doubts respecting *the right to legislate on that vast mass of*

---

on that vast mass of *incidental* powers which must be involved in the constitution...” (*Id.*) (emphasis added).

[628] “And in the case of amendments is evidently a *substantive* act, *unconnected with the ordinary business of legislation*...” Hollingsworth v. Virginia, 3 U.S. 378 (1798).

[629] In fact, in Hawke v. Smith, 253 U.S. 221 (1920), the Court reaffirmed Hollingsworth when it said:

“At an early day this court settled that the submission of a constitutional amendment did not require the action of the President.” (*Id.*).

[630] U.S. CONST., art. I, § 8 (18).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*incidental powers which must be involved in the constitution*, if that instrument be not a splendid bauble.

"We admit, as all must admit, that the powers of the government are limited, and *that its limits are not to be transcended*. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, *which will enable that body to perform the high duties assigned to it*, in the manner most beneficial to the people. *Let the end be legitimate, let it be within the scope of the constitution*, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, *but consist with the letter* and spirit *of the constitution*, are constitutional."[631]

The issue, that of the enlargement of the "necessary and proper" clause in order to regulate the convention, centers on the simple question of whether or not "Congress has sole and complete control over the amending process, subject to no judicial review,"[632] and whether that "sole and complete control"[633] may be judged to be part of "that vast mass of incidental powers which must be involved in the constitution."[634] If the Court affirms that amending the Constitution is nothing more than an incidental power of Congress, then the matter is rested.[635] Congress may then proceed to use the "necessary and proper" clause to alter or abolish the Constitution at will, unrestricted by any provision of the document, as it could successfully be argued that any decision by Congress could always be construed as "necessary and proper."[636]

---

[631] McCulloch v. Maryland, 17 U.S. 316 (1819) (emphasis added).
[632] Coleman v. Miller, 307 U.S. 433 (1939).
[633] *Id.*
[634] McCulloch v. Maryland, 17 U.S. 316 (1819).
[635] This, of course, would be in direct conflict with Hollingsworth v. Virginia, 3 U.S. 378 (1798), where the court referred to the amendatory process as "substantive act, unconnected with the ordinary business of legislation". However, in a later case, the Court held that Congress did have exclusive control over the amendatory process. It could be inferred this overturned *Hollingsworth* though there are substantial questions surrounding this interpretation. *See infra* text accompanying notes 1053-1141.
[636] The Court addressed this "unrestricted" use of the "necessary and proper" clause in a recent case when it said:

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"The dissent of course resorts to the last, best hope of those who defend ultra vires Congressional action, the Necessary and Proper Clause. It reasons...that the power to regulate the sale of handguns under the Commerce Clause, couple with the power to 'make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers,' Art. I §8, conclusively establishes the Brady Act's constitutional validity, because the Tenth Amendment imposes no limitations on the exercise of delegated powers but merely prohibits the exercise of powers 'not delegated to the United States.' What destroys the dissent's Necessary and Proper Clause argument, however, is not the Tenth Amendment but the Necessary and Proper Clause itself. When a 'La[w]...for carrying into Execution' the Commerce Clause violates the principle of state sovereignty reflected in the various constitutional provisions we mentioned earlier, ['*It is incontestable that the Constitution established a system of "dual sovereignty" Gregory v. Ashcroft, 401 U.S. 452, 457 (1991), Tafflin v. Levitt, 493 U.S. 455, 458 (1990). Although the States surrendered many of their powers of the new Federal Government, they retained "a residuary and inviolable sovereignty." THE FEDERALIST No. 39 at 245 (J. Madison). This is reflected throughout the Constitutional's text, Lane County v. Oregon, 7 Wall 71, 76 (1869); Texas v. White, 7 Wall. 700, 725 (1869), include (to mention only a few examples) the prohibition on any involuntary reduction or combination of a States' territory. Art. IV, §3, the Judicial Power Clause, Art. III, §2, and the Privileges and Immunities Clause, Art. IV,§2, which speak of the "Citizens" of the States; the amendment provision, Article V, which requires the votes of three fourths of the States to amend the Constitution; and the Guarantee Clause, Art. IV, §4, which "presupposes the continued existence of the states and...those means and instrumentalities which are the creation of their sovereign and served rights." Helvering v. Gerhardt, 304 U.S. 405, 414-415 (1938). Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but also discrete, enumerated ones, Art. I, §8, which implication was rendered express by the Tenth Amendment's assertion that "[t]he 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."'*] it is not a 'La[w]...proper for carrying into Execution the Commerce Clause,' and is thus, in the words of the Federalist, 'merely [an] ac[t] of usurpation' Which 'deserve[s] to be treated as such.' The FEDERALIST No. 33, at 204 (A. Hamilton). See Lawson & Granger, The 'Proper' Scope of Federal Power: A Jurisdictional Interpretation of the Sweeping Clause, 43 Duke L.J. 267, 297-326, 330-333 (1993). We in fact answered the dissent's Necessary and Proper Clause argument in New York: 'Even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts... [T]he Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce.' 505 U.S., at 166.

"The dissent perceives a simple answer in that portion of Article VI which requires that 'all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution,' arguing that by virtue of the Supremacy Clause this makes 'not only the Constitution, but every law enacted by Congress as well,' binding on state officers, including laws requiring state officer enforcement. The Supremacy Clause, however, makes 'Law of the Land' only 'laws of the United States which shall be made in Pursuance [of the Constitution]';

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

But, if as Marshall asserts, the power must be limited by "those high powers *assigned* to it",[637] and the execution of those powers must be "legitimate"[638], "within the scope of the constitution,"[639] and "consist[ent] with the letter and spirit of the constitution,"[640] and that it "does not enlarge,"[641] then the Court must acknowledge the "necessary and proper" clause does not allow Congress to romp about the Constitution unbridled and unfettered.

Let us take these terms in turn and summarize what Marshall and others have set out as the limit of the "necessary and proper" clause.

It is obvious the first limit established by the Chief Justice is that, however broad the power of "necessary and proper" is construed, an original power must be assigned to Congress in order to support it.[642] Second, any

---

so the Supremacy Clause merely brings us back to the question discussed earlier, whether laws conscripting state officers violate state sovereignty and thus not in accord with the Constitution." Printz v. United States, 521 U.S. 98 (1997).

Clearly, the Supreme Court held unless an action of Congress is itself constitutional, Congress cannot use its necessary and proper clause to accomplish it. In other words, Congress cannot use a constitutional means to accomplish an unconstitutional end.

[637] McCulloch v. Maryland, 17 U.S. 316 (1819) (emphasis added).

[638] *Id.*

[639] *Id.*

[640] *Id.*

[641] *Id.*

[642] "We admit, as all must admit, that the powers of the government are limited, *and that its limits are not to be transcended*... Let the end be legitimate, *let it be within the scope of the constitution*, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." McCulloch v. Maryland, 17 U.S. 316 (1819)(emphasis added).

"The powers actually granted the government of the United States by the constitution are those which are expressly given or given by necessary implication." Martin v. Hunter's Lessee, 14 U.S. 304 (1816); "The government of the United States can claim no powers which are not granted to it by the Constitution." *Id.*; "Court may not construe Constitution so as to defeat its obvious ends when another construction equally accordant with the words and sense thereof, will enforce and protect them" Prigg v. Commonwealth of

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

attempt to construe the enlargement of the power must be a legitimate enlargement, within the scope of the Constitution and consistent with the letter and spirit of the Constitution.[643] The expansion of Federal authority must fulfill the criterion of being a necessary and proper expansion of power in order to adequately complete the original *expressed* power contained within the Constitution, as Chief Justice Marshall said:

> "To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable..."[644]

It can therefore be assumed that the "necessary and proper" clause extends implied powers to Congress only to the extent that "without which, the end would be entirely unattainable."[645]

Therefore, if it is possible for Congress to satisfy the provisions and demands of the Constitution with current authority and powers, it cannot employ the "necessary and proper" clause to expand its powers. Thus, the concept of "necessary and proper" is self-limiting: *Congress gets no more power than it requires to get the job done, and that such power does not enlarge the limited powers granted to Congress in the Constitution, thus granting new powers not provided in the Constitution.*

---

Pennsylvania, 41 U.S. 539 (1842); "In construing the Federal Constitution, Congress must be held to have only those powers which are granted expressly or by necessary implication.", Chicago B&Q Railroad Co. v. Otoe County, 83 U.S. 667 (1872).

[643] "The "necessary and proper clause" of the federal Constitution is not a grant of power but a declaration that Congress possesses all of the means necessary to carry out its specifically granted powers." Kinsella v. United States ex rel. Singleton, 361 U.S. 234 (1960). *See supra* text accompanying notes 631,642.

[644] *Id.*

[645] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

If all the power Congress needs in order to effect the notifying of the states of the convention to propose amendments is to pass a call suggesting a time and place for the convention and to acknowledge the proper number of states has applied for a convention, thus satisfying the generally accepted meaning of the word "call",[646] together with fulfilling the "spirit and the letter of the Constitution",[647] then this is the necessary and proper extent of its power as authorized by the Constitution. Congress is granted no more authority by the Constitution. Consequently, it can take no further action in the matter.[648]

Even Justice Marshall agreed, however, that the power of the "necessary and proper" clause must comply with "the letter...of the Constitution,"[649] never exceeding that which is "prohibited."[650] Are there any expressed prohibitions within the Constitution relating directly to the "necessary and proper" clause? The answer is yes.

The full clause reads:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the Government of the United States, or in any department or officer thereof."[651]

---

[646] See *supra* text accompanying notes 580-590.
[647] See *supra* text accompanying notes 435-437,506,513; U.S. CONST., art. V.
[648] Clearly implicit in this however is the fact that Congress must *act*, i.e., it must undertake an action in order to solve the problem. If Congress has taken an action that clearly precludes the need for it to obtain any more power, and if this action has produced a power so pervasive and encompassing that no further power needed, then this is the limit of congressional power and satisfies the term "necessary and proper." *See infra* text accompanying notes 917,1108.
[649] McCulloch v. Maryland, 17 U.S. 316 (1819) (emphasis added).
[650] *Id.*
[651] U.S. CONST., Art. I, § 18.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Even if the arguments and court decisions preventing the use of the statutory power in the amendatory process could be circumvented,[652] the fact is the "necessary and proper" clause is limited by the word "foregoing", clearly indicating the Founding Fathers' intent[653] to allow congressional discretion only in its statutory powers.[654]

The Congress is clearly authorized only to make laws necessary and proper to carry out the "foregoing" powers enumerated in Article I of the Constitution. Nowhere in enumerated powers is any power of amendment mentioned.[655] Therefore, the term "foregoing" removes the "necessary and

---

[652] *See supra* text accompanying notes 561-592.

[653] In Hawke v. Smith, 253 U.S. 221 (1920), the Supreme Court addressed the question of clarity and meaning of words in the Constitution as they related to the intent and understanding of those words by the Founding Fathers:

"There can be no question that the framers of the Constitution clearly understood and carefully used the terms in which that instrument referred to the action of the Legislatures of the states. When they intended that direct action by the people should be had they were no less accurate in the use of apt phraseology to carry out such purpose." *Id.*

It is not beyond reasonable implication to assume that such understanding of the meaning and intent of the words of the Constitution by the Framers extended to *all* words contained within the Constitution.

[654] *Id.; see* also McCulloch v. Maryland, 17 U.S. 316 (1819); "The words 'all laws necessary and proper for carrying into execution' powers expressly granted or vested, have in the constitution a sense equivalent to that of words laws not absolutely necessary indeed, but appropriate, plainly adapted to constitutional and legitimate ends; laws not prohibited, but consistent with letter and spirit of the constitution; laws really calculated to effect objects intrusted to government." Hepburn v. Griswold, 75 U.S. 603 (1869). This suit maintains the clear intent of the Framers was that the convention to propose amendments was *not an* "object[s] intrusted to government". *See supra* text accompanying notes 2,459-490,493-521,547-560.

[655] Indeed, the Constitution does specify what the enumerated powers of Congress shall relate to and thus, by clear implication, what the "necessary and proper" clause must also relate to.

The Preamble of the Constitution states:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

1 proper" clause from the amendatory process that follows later in the

---

There is little question the Preamble is as valid law as the rest of the Constitution. Such a question was settled early by the Court in McCulloch v. Maryland, 17 U.S. 316 (1819) when Chief Justice John Marshall wrote:

"The government proceeds directly from the people; is 'ordained and established' in the name the people; and is declared to be ordained, 'in order to form a more perfect union, establish justice, ensure domestic tranquility, and secure the blessings of liberty to themselves and to their posterity.'…

"The government of the Union, then is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.

"This government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it [is] now universally admitted."

It also speaks plainly to the fact that certain powers are reserved to the states or to the people. (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. U.S. CONST., 10th Amend.) Thus, if the power is not assigned to either state or federal government, it remains a power of the people.

What powers of those claimed by the people in the Preamble are then assigned Congress? The Constitution states the matter plainly:

"The Congress shall have Power to lay and collect Taxes, Duties, imports and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States…" (U.S. CONST., art. I, § 8, §§ 1).

A careful examination of the enumerated powers listed in Section 8 clearly shows all enumerated powers are all related to this summation of power—-the power to tax, to provide for the defense of the nation and the power to provide for the general welfare of the nation. The power to regulate the convention to propose amendments by no stretch of the imagination falls under any of these general, yet enumerated, powers.

Thus, it can be argued the language of the Preamble of the Constitution reinforces the proposition that the people and the states have a right to a convention to propose amendments absent any interference from the national government.

Therefore, if the federal government is assigned by the Constitution "[to] provide for the common Defence, [and] promote the general Welfare," (Preamble) and if it is taken that the government is a limited government of limited powers, and if those limits are specific as to what areas the government may concern itself with, then it follows the people of the United States have reserved to themselves the right "[to] secure the Blessings of Liberty..." as they have *not* specified this power is assigned to Congress or to the government as a whole. They have *only* assigned Congress the right of taxation, defense and general welfare but *not* the securement of liberty.

Clearly, the "Blessings of Liberty" as the Founding Fathers understood the term, means the people possess the right to alter or abolish their government to secure these blessings (*See generally* Declaration of Independence (1776)) and therefore, the right of the people to employ a convention to propose amendments to alter or abolish the government by amendatory procedure cannot logically be said to be a power of Congress or of the Federal government.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Constitution. The word prohibits the power from extending beyond the legislative powers granted in Article I. However, there still remains the clause, “all other powers vested by this constitution in the Government of the United States.”[656]

[656] The Constitution also authorizes Congress “To make Rules for the Government and Regulation of the land and naval forces;” (U.S. CONST., art I, § 8, §§ 14). There has never been a court decision regarding what “rules” Congress is authorized to make for the government. Therefore the matter must be arrived by deduction.

“Government” is defined as:

“In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments... *The regulation, restraint, supervision, or control which is exercised upon the individual members of an organized jural society by those invested with authority; or the act of exercising supreme political power or control*.” BLACK’S LAW DICTIONARY 6th ed. (1990) (emphasis added).

Unlike Congress, which possesses governmental powers through its legislative authority and amendatory powers, the convention to propose amendments possesses only amendatory powers which as established in the Constitution are advisory in nature.

As noted by Madison in FEDERALIST No. 40:

“In the preceding inquiries the powers of the convention have been analyzed and tried with the same rigor, and by the same rule, as if they had been real and final powers for the establishment of a Constitution for the United States. We have seen in what manner they have borne the trial even on that supposition. *It is time now to recollect that the powers were merely advisory and recommendatory*; that they were so meant by the States, and so understood by the convention; and that the latter have accordingly planned and proposed a Constitution which is to be of no more consequence than the paper on which it is written, unless it be stamped with the approbation of those to whom it is addressed. This reflection places the subject in a point of view altogether different, and will enable us to judge with propriety of the course taken by the convention.”

The central point is the convention to propose amendments does not govern; it has no authority under the Constitution to enforce any ruling (or amendment) it may propose. It does not have any power that allows it to *act* in the exercise of supreme authority or control. Thus it does not satisfy the definition of the word *government*. The convention is advisory, not governmental in nature. Therefore, the convention to propose amendments cannot be construed to be part of the government of the United States because the government of the United States does have the power to act and enforce its rules and decisions. Rather, a convention is a constitutional body and thus can only construed to be part of the *form of government* created by the Constitution. As the convention is not governmental in nature and not a part of the government of the United States, it follows Congress cannot establish rules for it under its power to establish “rules for the government”.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Here, obviously, the "necessary and proper" clause is expanded beyond Article I, but how far does that power relate to Article V's requirement that "Congress...shall call a convention..."?[657]

The answer to the question is simple: like the "rules of government" clause,[658] the power of the convention to propose amendments is not "vested by the Constitution in the Government of the United States", but instead is a separate power of the Constitution. That power, in turn, is controlled by the states and the people who have ability to cause a convention to be called. The states and the people are clearly not part of the Government of the United States and thus do not fall under the "necessary and proper" clause because their powers are not "vested in the Government of the United States."[659]

Congress cannot call until the states apply, and as Hamilton said, "nothing is left to the discretion of that body."[660] Further, as Hamilton noted, "Congress *shall* call a convention."[661] Thus, Congress is given no choice in the matter and is granted no discretion regarding it.

Legislating, at the very least, involves choices and decisions by a legislative body. Compromises between opposing views frequently have to be formulated, weighed and melded into a product of law created by a consensus of legislators. If, as the Framers intended, Congress is given no discretion

---

[657] U.S. CONST., Art. V.
[658] *See supra* text accompanying note 656.
[659] However, the provisions of Article V vest Congress with the actual procedural call. Within the minuscule clerical role this matter entails, Congress has the power and the obligation to pass such legislation as to cause the calling of the convention. Even here, Congress falls far short of the mark. *See infra* text accompanying note 879.
[660] See *supra* text accompanying note 209.
[661] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

regarding the call, then it follows that Congress cannot legislate they cannot legislate the matter because it has no choice. There is simply nothing to legislate. There are no compromises or decisions to reach because all the choices and decisions have been made by the Founding Fathers and the applying states. And as there is nothing to legislate, the "necessary and proper" clause cannot apply in the matter of an Article V convention to propose amendments.

Finally, the clause allows Congress to "make all laws..." There is a clear difference between a law and an amendment to the Constitution.[662] The two terms are not interchangeable, nor are the procedures for creating them the same.[663] Therefore, if Congress invokes a law, it draws upon one source of the Constitution for authority.[664] If it acts in an amendatory manner, it draws upon an entirely different source of constitutional authority.[665] Thus, the "necessary and proper" clause only applies to Congress' power to "make all laws" and does not apply to any amendatory power. Thus, the provision itself is limited to statutory matters and does not grant any such latitude in the amending portion of the Constitution.

In light of the extremely limited power of Congress to call a convention,[666] and the comments of the Founding Fathers,[667] can the extension of the power through the use of "necessary and proper" be greater in scope than

---

[662] *See supra* text accompanying notes 561-579.
[663] *Id.*
[664] *Id.*
[665] *Id.*
[666] *See supra* text accompanying note 660.
[667] See *supra* text accompanying notes 140-142,202,209,214,217,220.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the original grant of power directly prescribed in the Constitution? If the Constitution prescribes only that Congress "shall call",[668] does that infinitesimal grant of original constitutional power enlarge through the use of the "necessary and proper" clause to grant Congress complete and utter control of the amendatory process? Or, to paraphrase Chief Justice Marshall, must "the power be construed so as to be a legitimate need upon Congress for it to enlarge its powers beyond the original scope conceived by the Founding Fathers in the Constitution?"

The answer to Marshall's question is both profound in its logic and brutal in its implications. Either the Court must ignore *all* concepts of the separation of powers found within the Constitution and grant Congress unlimited power to regulate that which the Founders *specifically* intended it should not—or the Court must side with the intent and wisdom of the Founding Fathers and thus limit and construe Congress' calling power narrowly as *was* intended.

The Court in its wisdom must decide the course of this nation. Shall it follow the rule of law as laid out so carefully by the Founders, a tried-and-true path that has resulted in untold benefits? Or shall it walk the treacherous path of providing the Federal government untold, unlimited and uncontrolled power—the very tyranny the Revolution was fought to overturn? A walk on the latter path will have consequences that will ring down through the ages.

---

[668] U.S. CONST., Art. V.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## THE SINGLE SUBJECT PRE-CONDITION

### *Introduction*

Some have proposed[669] that Congress has the power to ignore applications by the states for a convention unless those applications relate to the same subject, thus granting Congress the power of content-based discrimination. Thus, states this argument, unless the required two-thirds of the states apply *on the same subject*, Congress has the right to reject or ignore the applications and *not* call a convention to propose amendments.[670]

Despite these opinions, Congress has never bothered to establish criteria for the determination of exactly what is "same subject" where a convention to propose amendments is concerned. Instead, that deliberative body

---

[669] *See supra* text accompanying note 547.

[670] The Court disposed of this argument in the closely related case, United States v. Sprague, 282 U.S. 716 (1931), in which the Court utterly rejected the notion that the mode of ratification chosen by Congress needed to be based on the particular subject matter of the amendment.

The Court said in part:

"Thus, however, clear the phraseology of article 5, they [appellants] urge we ought to insert into it a limitation on the discretion conferred on the Congress, so that it will read, 'as the one or the other mode of ratification may be proposed by the Congress, *as may be appropriate in view of the purpose of the proposed amendment'* This can not be done." (emphasis added). *See supra* text accompanying note 527; *infra* text accompanying note 1048.

Obviously, if the Court found the subject matter of a proposed amendment or amendments can have no bearing as to the method of ratification chosen by Congress, it follows the subject matter of application for a convention to propose amendments must be equally irrelevant as that would require the introduction of phrases (such as cited in Sprague) into Article V, either expressed or implied, that were simply never intended by the Framers to be there.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

has at various times responded with proposed amendments of its own regarding subjects of which many states, as expressed in their applications, have requested as amendments.[671] This proposing of an amendment itself rather than calling the convention has been the congressional pattern of response in all cases but one.[672]

By its actions, Congress has in effect read Article V as if the Gerry amendment[673] had never existed. But the Gerry amendment to Article V *was* proposed and *accepted* by the Founding Fathers,[674] ratified by the people in conventions assembled, and therefore cannot be ignored by Congress. *An action—or inaction—taken by Congress is not necessarily constitutional, no matter how many times that action is taken.*

*The Basis of the Same Subject Pre-Condition*

Ignoring the convention issue for a moment, it is probably safe to say, if the intent of the Founding Fathers regarding any constitutional issue was to be based on early drafts of the Constitution, that almost any interpretation desired of that intent could be created. At one point, for

[671] *See supra* text accompanying notes 535-538.
[672] *See infra* text accompanying note 437.
[673] *See supra* text accompanying notes 435-437; *infra* text accompanying notes 682-686.
[674] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

example, there was no electoral college contained within the Constitution. Would it therefore be a proper interpretation of the Constitution to maintain the Founding Fathers did not mean to have an electoral college involved in presidential elections, and therefore it is constitutionally permissible not to have those electors vote for President? Obviously not.

But the proponents of “same subject” rush in where constitutional intent fails to tread. The pre-condition presented by these proponents of “same subject” rests on early drafts of Article V. Here, say proponents, the Founding Fathers wrote language that indicated “same subject” should hold sway, and therefore this is what the Constitution should be construed to mean.

In other words, they would have the construement of the article based, not on its final form, but on earlier drafts of the Constitution, works in progress, written while the delegates were still deliberating—adding, revising, deleting and *changing* that article. They construe the Constitution based on half-finished work that was later *deliberately* changed by the delegates and would have this construement *ignore* those later additions, revisions and deletions by those delegates.

During the Convention the delegates repeatedly were forced to compromise strongly held and opposing points of view. The early drafts reflected the evolution of these compromises beginning with various concepts of government refined over time to reach the final form we know today as the Constitution. Clear evidence exists that the Founders changed their minds often on many issues over the course of the Constitutional Convention of 1787. To use early drafts of the Constitution, where such changes and compromises were being hammered out, to attempt to prove the final intent of the Founders, where


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

clear evidence exists that such intent had changed over time, is ludicrous on its face.

*The Erroneous Historic Basis of the Same Subject Pre-Condition*

It should therefore come as no surprise that "same subject" proponents rest their pre-condition primarily on an interpretation of the *first draft* of the amendment article that read:

> "This Constitution ought to be amended whenever *such Amendment* shall be necessary; and on Application of the Legislatures of two-thirds of the Sates of the Union, the Legislature of the United States shall call a Convention *for that Purpose."*[675]

There is no doubt that had the Founding Fathers stopped at this point in the formation of Article V, the applications for an amendment would have had to all concern the same subject. Further, the convention could have only considered one subject per convention. However, the delegates did not stop here and instead revised the article several times.

On August 6, this first draft of the Constitution was submitted to the Convention by the Committee of Detail.[676] The amendatory process contained in Article XIX of the draft provided:

> "On the application of the Legislatures of two-thirds of the States of the Union, for *an amendment* of this Constitution, the Legislature of the United States shall call a Convention *for that purpose."*[677]

Under this plan, had there been no changes, "same subject" certainly would have applied. First, the provision called for *an amendment*, not

---

[675] 1 FARRAND at 152 n. 14, 159 & n.16 (Comm. Of Detail, Doc. VIII) (emphasis added), 174 (a similarly worded draft proposed by the Committee of Detail).
[676] *Id.* at 176 (Journal—August 6), 177 (Madison), 190 (McHenry).
[677] *Id.* at 188 (Madison—Aug. 6)(emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*amendments* as in the final version.[678] Further, it clearly required [an] "application" of the "Legislatures of two-thirds of the States of the Union..." This being the case, clearly "same subject" would have been proper, and in fact it could be argued the application would have to be the same application *from all the states applying* in order to be a proper application to which Congress must respond.

Later Madison introduced a proposal reading:

"The Legislature of the U--- S---- whenever two-thirds of both Houses shall deem necessary, or on the application of two-thirds of the Legislatures of the several States, shall propose *amendments* to this Constitution which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three-fourths at least of the Legislatures of the several States, or by Conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the U.S[.]"[679]

Then, on September 12, a further amendment revision was proposed by the Committee of Revision.

The amendment read:

"*The Congress,* whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, *shall propose amendments* to this constitution, which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of the legislatures 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 1808 shall in any manner affect the and sections of article..."[680]

The Committee had made minor stylistic changes but otherwise had followed the last version (Madison's) approved by the delegates.[681] This new version required all amendments to be proposed by Congress.

---

[678] *See supra* text accompanying note 2.
[679] *Id.* at 555 (Journal—--Sept. 10), 559 (Madison---Sept. 10)(emphasis added).
[680] *Id.*(footnotes omitted)(emphasis added). *See supra* text accompanying note 418.
[681] *Compare Id.* at 555 (Journal---Sept. 10), 559 (Madison---Sept. 10) *with Id.* at 602 (Comm. on Style).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In other words, Congress was charged with the actual writing of a proposed amendment. The effect of this method, had the Founding Fathers adopted it, would have also required the states to apply for the same subject, as clearly the wording only allowed Congress to act to propose an amendment after two-thirds of the states had applied for it. Obviously, Congress could not have done this if the applications concerned different subjects.

The most important impact of this wording was that *Congress*, not the states, had ultimate control of the Constitution through the amendment process. The states could apply for an amendment, but it was *Congress* that actually wrote it and therefore determined when the two-thirds requirement was satisfied.

Under Madison's proposal Congress clearly would have possessed power to regulate the application language of the states to the last comma. There is no question that the content of the application, not the number of the applications, would have determined when the two-thirds requirement was satisfied. Thus, Congress would have been able to veto such applications if the application language did not meet some congressional standard. Further, it is clear that Congress would have had the authority to change these standards at any time and thus forever stall any application by the states if it chose to do so.

The dangers of this method of amendment are obvious and were directly addressed by Colonel Mason following the adoption of Madison's proposal by the delegates. His discussion focused on his concern that Congress could prevent the proposing of amendments. On the back of his copy of the draft Constitution, Mason wrote the following:


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"Article 5th. By this Article Congress only have the Power of proposing Amendments at any future time to this constitution, & shou'd it prove ever so oppressive, the whole people of America can't make, or even propose Alterations to it; a Doctrine utterly subversive of the fundamental Principles of the Rights & Liberties of the people[.]"[682]

Clearly, by these comments, Mason realized that if Congress *did possess the power of "same subject" determination, it could use that power to veto the applications of the states, no matter how carefully they worded their applications.*

Mason's notes served as the basis for the comments he gave on the convention floor, which were recorded by Madison:

"Col. Mason thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, the first immediately, and in the second, ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case."[683]

As a result of these concerns, Gouverneur Morris of Pennsylvania and Elbridge Gerry of Massachusetts "moved to amend the article *so as to require a Convention on application of 2/3 of the Sts..."*[684]

James Madison then addressed the motion:

"Mr. Madison did not see why Congress would not be as much bound to propose amendments applied for by two-thirds of the States as to call a Convention on the like application. He saw no objection however against providing for a Convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum &c. which in Constitutional regulations ought to be as much as possible avoided."[685]

The Convention unanimously agreed to the motion by Morris and Gerry,[686] thus acceding to Mason's request to re-insert the convention method of

---

[682] 4 *Id.* at 59 n.1, 61; 2 *Id.* at 637 n. 21 (stating that the quoted language "was written by Mason on the blank pages of his copy of the draft of September 12").
[683] 2 *Id.* at 629 (Madison---Sept. 15). *See supra* text accompanying notes 363,418,430,435.
[684] *Id. (emphasis added).*
[685] *Id.* at 629-30.
[686] *Id.* at 630.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

amending the Constitution into Article V; *this changed the meaning of the article from that of "same subject" applications to a simple numeric count causing a convention to occur*.[687] The language of the motion is unequivocal:[688] a convention is *required* on the application of two-thirds of the states, and these applications *must* be considered as an expression of intent by the states to hold a *convention*, *not* to offer an amendment[689] to Congress for its

---

[687] There is further evidence supporting the desire of the delegates to have a convention provision within the Constitution. This involves the attempt by a minority of delegates to remove the provision from the proposed draft constitution. The account was provided by Thomas Jefferson as told to him years later by George Mason:

"Anecdote. The constn. As agreed at first was that amendments might be proposed either by Congr. or the legislatures a commee was appointed to digest & redraw. Gov. Morris & King were of the commee. One morng. Gov. M. Moved an instrn for certain alterns (not ½ the members yet come in) in a hurry & without understanding it was agreed to. The Commee reported so that Congr. shd have the exclusive power of proposg. Amendmts. G. Mason observd it on the report & opposed it. King denied the constrn. Mason demonstrated it, & asked the Commee by what authority they had varied what had been agreed. G. Morris then impudently got up & said by authority of the convention & produced the blind instruction beforementd, which was unknown by ½ of the house & not till then understood by the other. They then restored it as it stood originally." (3 FARRAND at 367-68)(footnote omitted).

According to Jefferson's retelling of Mason's recollection, a minority of delegates almost succeeded in deleting the convention method of amendment from the Constitution, but their attempt was foiled by the vigilance of several other delegates.

The point of the anecdote is obvious. The Constitutional Convention desired a method whereby the states could amend the Constitution absent Congress' participation or permission. And as they "restored it as it stood originally," clearly this includes the Morris-Gerry amendment "requiring a Convention on application of 2/3 of the Sts..." Thus, the convention method of amendment was approved *twice* by the delegates *prior* to final approval of the document.

[688] *See supra* text accompanying notes 435-437.

[689] The final blow to "same subject" comes when it is realized that the convention, like Congress, has the right to propose *amendments*, not just an *amendment* (*See supra* text accompanying note 2). Congress itself has proposed *amendments*, all on different subjects, simultaneously. (*See supra* text accompanying note 489). If Congress has the power to simultaneously propose *amendments*, and the convention has the power to propose *amendments*, it follows the convention also has the power to propose *amendments* on different subjects simultaneously.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

potential veto by any means Congress might devise. Therefore, Congress has no power of discretion in the matter.

The single criterion for calling a convention is the *number* of applications. Thus, any specific amendment subject proposed for discussion at a convention to propose amendments and contained within a state's application is immaterial. While the reasons for placing such subjects in an application may have political significance, the subject matter is constitutionally irrelevant. It is as constitutionally valid for a state to submit a general, non-specific application, as several have done,[690] as it is to apply for a specific subject, as many have done.[691] Each application by the state, whether it contains subject matter or not, is equally valid.[692]

*A Brief Summation of the History of Article V*

The final version of Article V specifies that a convention propose (or write) the actual amendments.[693] The applications by the states are made in order to cause this convention to occur, not to propose specific amendments.[694]

---

[690] *See infra* text, TABLE 4—GENERAL APPLICATIONS, NON SPECIFIC, p.683.
[691] *See infra* text, TABLE 5—GENERAL APPLICATIONS, INCLUDING SPECIFIC, p.683.
[692] *See infra* text, TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664.
[693] *See supra* text, accompanying notes 2,458.
[694] *See supra* text, accompanying notes 683,684.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Earlier drafts of Article V, either expressly or by implication, provided that Congress write all amendments to the Constitution.[695] Thus, it can be inferred Congress was intended to possess the right to "judge" the applications for "same subject" before it could act on them. *But the Morris-Gerry amendment changed all that from a "same subject" application to a simple numeric count in order for a convention to be called.*[696]

Thus, Congress cannot judge the content of the convention applications by the states because:

1. The applications by the states are numeric in nature rather than subjective;
2. The states are not empowered to *write* proposed amendments, and therefore the applications contain no actual amendment language or substance to judge;
3. Congress has no implied or expressed constitutional authority, as this was removed by the Morris-Gerry amendment, to propose amendments desired by the states and therefore has no reason to judge the content of the applications by the states for any amendment;
4. Congress is given no option in calling a convention; as Congress must call, regardless of application content, "same subject" cannot be used as a criterion to satisfy the two-thirds requirement.

*The point of this change to the meaning and intent of Article V cannot be overemphasized. Before Gerry's and Morris' amendment to Article V, the "same subject" interpretation was correct. However, it was deliberately changed by the Founding Fathers to a simple numeric count*[697] *following Colonel Mason's speech on the subject.*[698] *The intent of the applications was changed by the Founding Fathers from applying for an amendment to simply notifying Congress of the desire of the states to hold a convention. This change was made because Mason feared that Congress, if it held the sole power of*

---

[695] *See supra* text, accompanying notes 675-681.
[696] *See supra* text, accompanying notes 682-684.
[697] *See supra* text accompanying notes 506-513.
[698] *See supra* text accompanying notes 682,683.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*amendment through use of "same subject", would ignore the wishes and desires of the states to amend the Constitution. The Convention unanimously agreed with Mason and passed Gerry's amendment to prevent Congress from doing this. Events have demonstrated Mason's fear was well founded. Congress has been allowed to use completely false and unconstitutional pre-conditions, such as "same subject", as an excuse to ignore the Constitution and refuse to call a convention.*[699]

*The Right of Discussion Issue*

The same subject pre-condition, as with all the other pre-conditions proposed to defeat the calling of a convention, presents another inherent difficulty in that it mandates a violation of the doctrine of equal protection under the Constitution.[700]

Whenever a member of Congress wishes to *discuss* a proposed amendment, that member may introduce such a subject on his own accord to Congress. He requires no permission from Congress to do so, nor is there any requirement for a minimum number of members of Congress affirming the matter for it to be *discussed*.[701] No member of Congress represents more than a single state, or a

[699] *See supra* text accompanying note 363.
[700] U.S. CONST., 14th amend. § 1, "due process of the laws." Further, such limitations of subject matter of amendments have been declared unconstitutional by the Supreme Court as per the 1st Amendment. *See infra* text accompanying notes 1196,1310-1333.
[701] Of course, in order for the *amendment subject* to become an *amendment proposal* by Congress, it requires consent from two-thirds of each house.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

portion thereof, in the Union. Under our system of government, members of Congress are representatives of their constituencies, and it is assumed at the least that they represent the desires of those who elected them.[702] Therefore, if a member of Congress proposes an amendment for discussion, it can be presumed this submission represents the desires of those at home who elected that member.[703]

As representation to the national government is determined by state boundaries or portions of a state, and as no representatives at large exist whose representation in Congress encompasses more than a single state, it follows that it only requires *a single state*, represented by a single member of Congress, to introduce a subject regarding a constitutional amendment for *discussion* in Congress.[704] However, the same subject pre-condition would hold that in order to *discuss* a measure at a convention to propose amendments, it requires two-thirds agreement by the states just to discuss a subject for a proposed amendment.[705]

---

[702] *See* Hawke v. Smith, 253 U.S. 221 (1920).

[703] The Supreme Court, in discussing ratification, addressed this concept when it said in part:

"The method...call[s] for action by deliberative assemblages of representative[s] of the people, which it was assumed would voice the will of the people." *Id*.

[704] It can be argued if it were true that a single member of Congress could not *introduce* a subject for discussion, but instead required the consent of other members of Congress to *introduce* the subject, that this would be a violation of the member's immunity under Article I, § 6 (1): "They shall in all cases...be privileged...for any speech or debate in either house, they shall not be questioned in any other place." If members of Congress required consent from other members just to introduce an amendment subject, it could argued, as these members represent sovereign states, that such consent was a form of questioning "in another place" and thus a violation of their constitutional guarantee of freedom of debate, which at the least must be the freedom to discuss any subject a particular member wishes.

[705] Congress has long adhered to the "same subject" pre-condition, for it has refused to call a convention in spite of a numeric total of state applications

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

This raises an interesting hypothetical. For the sake of argument, let us assume that "same subject" is the correct interpretation of Article V, i.e., two-thirds of the states must concur on a given topic before that topic may be entertained at a convention to propose amendments. As no higher standard for proposal exists for the convention than for Congress,[706] and as the states by their applications have already granted consent, it may be argued that the subject has passed the convention before its delegates have discussed or even written a proposed amendment.

But this hypothetical casts an even longer shadow: under the same subject pre-condition, it would take only four more states to ratify an amendment. Thus, if three-quarters of the states should apply for a convention on the same subject *before Congress could act to call a convention*, one could argue that the subject has legitimately become part of the Constitution before an amendment has even been written.

While this assertion may appear absurd on its face, this shadow has substance.[707] While Congress may propose an amendment to the states for ratification, the states may only submit applications for a convention "for

---

far in excess of the two-thirds threshold established in Article V. It can be argued that Congress is violating the convention's right by subjecting the debate to propose an amendment to questioning "in another place" when it stubbornly forbids that debate by refusing to call the required convention. Congress' inaction is patently unconstitutional and must be recognized as such. *See infra* text accompanying notes 1320-1333.

[706] Under the doctrine of equal protection as provided in the 14th Amendment to the Constitution. *See supra* text accompanying notes 1209-1244; 1418-1510.

[707] According to at least two authors, two subjects, balanced budget and limited taxation (Repeal of the 16th Amendment) have received enough applications to not only satisfy application but also ratification standards. *See infra*
TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART I, p. 692;
TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART II, p.693.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the purpose of proposing amendments," as stated in Article V of the Constitution. Thus, an amendment is not actually written until a convention is held and the delegates write and submit such an amendment to the states for ratification. A convention may very well choose *not* to submit an amendment, just as Congress often does.[708] The Constitution avoids giving the states the power to write an amendment; instead it only grants them the power to apply for a convention.[709]

For this reason, while certain characteristics of ratification and application may be interpreted simultaneously, this interpretation is not ubiquitous. In ratification, the states and Congress are dealing with an *already written*, specific proposal. In applications, the states and Congress are dealing with yet-to-be written, conceptual proposals. This difference is crucial.

If the Court should stipulate the following conditions:

1. A state application for a convention to propose amendments, like a ratification, is a vote or approbation for approval of a particular amendment;[710]
2. An application cannot be recessed;[711]
3. "Single subject" is the correct interpretation of Article V;

then it follows that the "amendment" has already been approved by at least two-thirds of the states before it has even been written.

The above stipulation creates a paradox. How can the states change an amendment they have already approved? What if the number of states required for ratification of an amendment applies for a convention before Congress can

---

[708] *See supra* text accompanying notes 535-542.
[709] U.S. CONST., art. V.
[710] *See infra* text accompanying note 776.
[711] *See infra* text accompanying notes 890-920.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

call one? This hypothetical, if followed to its logical conclusion, would dictate that an unspecified, unwritten amendment has become part of the Constitution and is free from review by either Congress or the states.

If true, then who would write this amendment? And, should there be disagreement or advantage taken in this already approved process by those given the task of writing this *carte-blanche* amendment check, can there be redress as the issue has already been ratified?

Paradoxes such as this make for bad law. The only logical interpretation of Article V is that the two-thirds application standard explicitly deals with *compelling* Congress to call a convention, not with approval by the states of any subject of an amendment.

Objections to this interpretation are of course based on the provision of Article V that states:

> "[amendments]...which 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..."[712]

But if "same subject" is the accepted interpretation, once the proper number of states seeking a "same subject" amendment reaches the two-thirds threshold,[713] Congress would have already selected the method of ratification, which would be the convention method by default.

However, a careful, exact reading of Article V prohibits this interpretation. Article V states clearly that the conventions must be

---

[712] *See infra* text accompanying note 2.
[713] *See infra*
TABLE 6—SAME SUBJECT APPLICATIONS, PART I, p.685;
TABLE 6—SAME SUBJECT APPLICATIONS, PART II, p.686.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"conventions in three-fourths [of the states] thereof..." Proponents of "same subject" conveniently ignore the "s" in "amendments"; the Constitution empowers the convention to consider more than one subject at a time, which alone should eliminate "same subject" as a basis for determining the convention call.

Should one choose to ignore the "s" in "conventions", another unconstitutional precondition may be created, in which an already proposed amendment, if concurred by enough states, would be considered as ratified even before written. To reduce this argument *ad absurdum*, one could state that as the Federal convention clearly includes all the states, thus a Federal convention is merely holding all the state conventions simultaneously. While this type of quick fix could be considered a convenience, it would completely demolish the doctrine of separation of powers.

But the "s" in "conventions" may not be ignored, and neither may the "in" in "in convention"; both would alter the entire meaning of Article V as intended by the Founders. Thus, the "s" in "amendments" may not be ignored either, for this would change the proposing process as intended by the Founders.[714]

However, if one uses the interpretation of a simple numeric tally of the states in Article V as intended by the Founding Fathers,[715] this paradox, as with all other pre-conditions used to oppose a convention, vanishes.[716] Under

---

[714] *See infra* text accompanying notes 852-867;1669-1671.
[715] *See supra* text accompanying notes 507,513,514.
[716] "*Nothing in this particular is left to the discretion of that*[Congress] *body*. And of consequence all the declamation about their disinclination to a

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the numeric count interpretation, no matter what subject or subjects are mentioned in applications by the states, no matter how old the applications, no matter how radical the proposals, they must still win approval at a convention where vigorous and spirited public debate will most certainly occur *before* they are even proposed to the states for ratification. The proposal will be written as a proposed amendment *prior* to its approval instead of the other way around. No proposal will have any previous advantage coming into a convention that otherwise might occur under the same subject pre-condition, and issues regarding pre-ratification or adoption completely disappear.

Assuming consent of the convention, the proposed amendment would face a complete ratification vote requiring three-quarters approval by the states as was intended by the Founding Fathers before the proposal would be part of the Constitution.[717] Thus, a proposed amendment would suffer great and deliberative debate, as it should before becoming part of the Constitution, instead of being slipped through by use of some constitutional loophole as amendment advocates, in the heat of political battle, might attempt.

*Legislative Issues Regarding Same Subject Pre-Condition*

---

change, *vanishes* in air." THE FEDERALIST, No. 85 (A. Hamilton)(emphasis added). *See supra* text accompanying notes 506,507.

[717] *See supra* text accompanying note 2.



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Without a doubt, “same subject” clearly presents Congress with the *most* discretion possible regarding a convention to propose amendments. Among the items placed on Congress’ discretionary menu are:

1. Definition of “same subject”;[718]
2. Rejection of applications because the subject does not meet with congressional approval;[719]
3. Limitation of applications to an approved subject;[720]
4. Refusal of applications because so much as one word was out of place;[721]
5. Veto of any amendment proposed by a convention by refusing to pass it on to the states for ratification;[722]
6. Dismissal of a state legislature should it incur congressional disapproval by ratifying or not ratifying an amendment.[723]

The matter does not stop there. Because of the committee system in Congress, it is not only possible, but likely, that a single member of Congress, such as a powerful committee chairperson, would decide all aspects of the amendatory process for the convention *and* whether any amendment desired by the states *would ever* reach a convention to propose amendments.

The amendment procedure, now constitutionally immune from the sullied world of day-to-day politics, would become infected by political considerations. Further, there would be no guarantee of consistency in the amendment process by allowing Congress *legislative* participation. What one Congress might establish, the next might undo. Therefore, what was acceptable as an application to one Congress might, to the next Congress, be unacceptable. The constitutional guarantee of congressional action “on the application of the states”[724] would effectively be voided.

---

[718] *See supra* text accompanying note 597.
[719] *See supra* text accompanying note 599.
[720] *See supra* text accompanying note 600.
[721] *See supra* text accompanying note 607.
[722] *Id.*
[723] *See infra* text accompanying note 917.
[724] *See supra* text accompanying note 2.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

All of this, of course, requires resolutions, votes and laws on the part of Congress. Certainly no one can argue that “same subject”, which allows Congress to completely regulate the only other means of amending the Constitution and grants Congress the ability to veto or otherwise neutralize that amendment process, would be an *incidental* congressional power subject only to the usual rules of common legislation. Therefore, infusing Congress with these broad powers that enable it to so deeply regulate the amendatory process *must* be considered substantive in nature.

Thus, if such powers *are* substantive and relate *exclusively* to the amendatory process, it follows that the issue raised in *Hollingsworth* must be addressed. How can it be held that the proposal of an amendment, “a substantive act, unconnected with the ordinary business of legislation,”[725] does not require the participation of the President, yet the regulation of the process producing such amendments *does* require participation of the President and is merely an incidental power? Are the two separable? The answer is clearly no.

As has been shown, the intention of the Founding Fathers[726] and the interpretation of the Supreme Court[727] is *that Congress has no discretion in a convention to propose amendments and does not possess the power of legislation* within the proposal process. Therefore, Congress has no constitutional

[725] Hollingsworth v. Virginia, 3 U.S. 378 (1798).
[726] *See supra* text accompanying notes 561-592.
[727] Hollingsworth v. Virginia, 3 U.S. 378 (1798).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

authority to enforce any discretion regarding the subjects[728] of applications by the states for a convention to propose amendments.

[728] Congressional interpretations of Supreme Court interpretations of Article V appear to be limited only to those cases that may be misconstrued to favor Congress remaining in control. Such an example is a report issued by the PROPOSED PROCEDURES FOR A LIMITED CONSTITUIONAL CONVENTION, AEI Legislative Analysis, 98th Congress, 2nd Sess.,(1984).

The report said:

"The Senate Judiciary Committee report (Senate Report 98-594, p.28, citing Dillon v. Gloss, 256 U.S. 368 (1921))argues that the underlying principle of Article V is the need for constitutional consensus. Congress now has before it petitions for convening a convention from well over two-thirds of the states, but these petitions address different subjects and thus do not present the consensus required by Article V as interpreted by the Supreme Court. If the Constitution is in fact concerned with consensus, the states are enabled to call a limited convention. If the Constitution is not concerned with consensus, then the Congress is already delinquent in not calling a convention to deal with the numerous petitions now on hand. Opponents of a limited convention, according to the report, cannot have it both ways; they must choose one horn of the dilemma or the other."

The problem with congressional reliance upon *Dillon* as support for "same subject" consensus is that this ignores a later decision regarding the matter, United States v. Sprague, 282 U.S. 716 (1931). In *Dillon*, the Court discussed ratification. It incorrectly assumed that none of the earlier proposed amendments would ever gain enough support for ratification and thus concluded:

"That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the states many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more states to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from article 5 is that the ratification must be within some reasonable time after the proposal."

Hence, from this ruling, came the concept of "consensus". However, the ratification of the 27th Amendment defeated this argument of the Court. *See infra* text accompanying notes 756-764.

But even more significant in the effect of Court rulings on the amendatory process is the direct language of *Sprague*. Simply put, the Court addressed directly the idea of adding limitations as is urged by "same subject" advocates.

The Court disagreed, saying:

"The United States asserts that article 5 is clear in statement and in meaning, contains no ambiguity, and calls for no resort for rules of construction. A mere reading demonstrates that this is true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses; or, on the application of the legislatures of two-thirds of the States, *must call a convention to propose them.*" (emphasis added).

The Court then continued:

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## INSUFFICIENT APPLICATIONS PRE-CONDITION

This pre-condition is actually nothing more than a variation on “same subject”, and the same rebuttals generally apply.

First, it is argued that Congress must determine whether it has received applications from two-thirds of the state legislatures and therefore is inherently entitled to determine that the content of the applications matches Congress’ view on what is an application. Then, so the pre-condition goes, if the content of the applications does not conform to Congress’ view, Congress may reject the application or applications.

---

“[Appellees] urge we ought to insert into it a limitation on the discretion conferred on the Congress, so that it will read, ‘as the one or the other mode of ratification may be proposed by the Congress, *as may be appropriate in view of the purpose of the proposed amendment*.’ This can not be done.” (emphasis added).

Thus, in this single ruling, the Court refutes “same subject”. True, the Court was in both cases discussing ratification, not a convention call. *But if opponents of a convention--or proponents of “same subject”-—can maintain that such rulings support their view and may be applied, it then follows that this must also apply where such evidence exists that this view is incorrect*.

In the specific matter, the Court in *Sprague* made it clear the convention can deal with more than one amendment by the simple use of the word “them” describing the convention’s proposal process. Thus, a single subject convention is defeated because it is clear the convention can propose multiple amendments simultaneously.

Secondly, “same subject” was defeated by the Court when it affirmed that Congress is denied the limiting power to view an amendment for ratification (and presumably for proposal) “as may be appropriate in view of the purpose of the proposed amendment.” In other words, the particular subject matter of a proposed amendment cannot be used to specify which mode of ratification is employed by Congress. Using the logic of extending the ratification decision by the Court to apply to proposal processes, it also follows that subject matter “as may be appropriate in view of the purpose of the proposed amendment” may not be used by Congress as the basis to judge whether a convention to propose amendments call shall be issued.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

This pre-condition entirely misses the point of the purpose of Article V's provision. The constitutional *intent* of the applications is to establish the desire of the states to have a convention, not to win approval from Congress of a proposed amendment.[729] *The Founding Fathers never intended to give Congress a choice in the matter of calling a convention to propose amendments.*[730] The existence of the applications, once they have reached the two-thirds threshold, are in and of themselves full satisfaction of the Article V provision and thus serve as a constitutional mandate on both

---

[729] Supporters of "same subject" applications are clearly inconsistent on this point.

"In providing that 'on the Application of the Legislatures' Congress 'shall call a Convention,' article V implies that Congress is the agent entrusted to receive, inspect, and decide on the validity of applications, and that applications must be submitted to Congress to be counted toward a convention call." Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988) p.94.

There is no dispute that an application from a state for a convention must be submitted to Congress in order for it to "count", numerically, or otherwise. However, in his own book, Caplan defeats his own argument in establishing Congress as "the agent entrusted to...decide on the validity of applications" when discussing the form of the application.

In a footnote discussing a 19th Century application by the state of Alabama, the author discussed *the intent* of the application conceding that the word "apply" need not appear in an application for it to be valid. If the author concedes that a specific word need not be in the application for it to be valid, that the intent of the application is the only criterion required for the application to be valid, it is unreasonable and illogical to assume any other words in the application are needed in order for it to be valid. The intent of the application, according to the author himself, transcends all other such considerations.

Caplan wrote:

"Acts Passed at the extra and Annual Sessions of the General Assembly of the State of Alabama 142, 141 (Tuscaloosa, 1833); Message from His Excellency, Henry W. Edwards, to the Legislature of Connecticut, May, 1833, at 11 (Hartford,1833); 1 T. Cooper, ed., The Statues at Large of South Caroline 390, 400-401 (Columbia, 1836). Since the Alabama act only 'recommended' a convention rather than 'applied' for one, it has been considered not a true article V application. W. Pullen, 'The Application Clause of the Amending Provision' at 45. *The intent, however, is plain, and there is not requirement that the word 'apply' be used in an application*." (emphasis added).

[730] *See supra* text accompanying notes 435-437,458,472,506-516,518-521.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress and the states. No other determination by Congress is therefore required except for a simple numeric count.

If Congress is permitted to define what is and is not a "proper" application, i.e., assume the power of veto over the application process of the states in spite of the mandate of Article V, then the potential exists for Congress to abuse that authority and unconstitutionally refuse to call a convention, even when the requisite number of states has applied for one, such as is now the case.[731]

It is unfortunate that the Framers chose to grant Congress even this ministerial role in the convention process. It appears from Hamilton's remark that the Framers did not foresee the possibility that Congress would seize on this slight authority to prevent a convention from ever being called.[732]

---

[731] *See infra* text, TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.

[732] In FEDERALIST No. 85 Hamilton wrote:

"In opposition to the probability of subsequent amendments, it has been urged, that the 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. For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not the mass of its powers; and on this account alone, I think there is no weight in the observation just stated. I also think there is little weight in it on another account. The intrinsic difficulty of governing THIRTEEN STATES at any rate, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion, constantly *impose* on the national rulers the *necessity* of a spirit of accommodation to the reasonable expectations of their constituents."

Here, sadly, it must be concluded that Hamilton, the great supporter of national government, put more faith in the desire of the national government to "accommodate the expectation of their constituents" than the facts bear out, and that the opponents in this case were correct "that the 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."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The fact remains, however, that Congress is involved in the convention process. The Framers clearly limited the definition of an application to that of a numeric count expression of intent by the states to hold a convention to propose amendments.[733] Obviously, Congress must count the applications even under the numeric tally concept. But this limited constitutional power allowing Congress to count the applications of the states does not translate into an authority to reject, define or otherwise determine the content or context of an application. Once the proper number of states has applied, Congress must call. Just as obviously, if a numeric count of the applications is less than two-thirds of the states, the Congress cannot call a convention to propose amendments.[734]

At presently therefore, the insufficient applications pre-condition is defeated because more than two-thirds of the states have applied for a convention.[735] Once a convention is held, however, and the applications have thus been discharged, it then becomes the *only* pre-condition that disallows a congressional call.

## THE CONTEMPORARY PRE-CONDITITON

The contemporaneous or timeliness pre-condition rests on a simple, if flawed, premise: Congress has the right to reject applications from the states

---

[733] *See supra* text accompanying note 730.
[734] *See infra* text accompanying note 869.
[735] *See infra* text
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

for a convention to propose amendments because it finds the applications are not “contemporary” or no longer “timely”—-i.e., they do not fall within an undefined time period, or the issue discussed in the application, if any, is no longer a politically contemporaneous subject.

At first glance, the contemporary requirement for applications—-i.e., applications must be “contemporary” to “count”--does present some intuitive appeal based on the sense that the Framers inserted the two-thirds requirement so that a convention would be called only if there were a substantial nationwide consensus that a convention were needed. The contemporary pre-condition then states that if applications are given ongoing effectiveness, then conceivably applications from two-thirds of the states could accumulate over many years, requiring a convention to be called at a time when there is no present or “contemporary” consensus among two-thirds of the states that a convention is needed at that time. Therefore, it is the right of Congress to reject those applications that it determines are no longer “contemporary”, leaving only those Congress determines are “contemporary”. If Congress finds enough applications are not “timely”, then Congress is not required to call a convention regardless of how many applications have been filed by the states.

The contemporary pre-condition presents nearly as many problems in the areas of definition and logic as does the same subject pre-condition. In addition, the contemporary pre-condition raises several constitutional issues and ultimately fails in the face of congressional actions regarding current amendments to the Constitution.

*The Definition “Problem”*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Proponents of the contemporary pre-condition fail in the most basic of areas. They misconstrue the word “contemporary”. They use the word to mean “current event.” Thus the contemporary standard is defined by its proponents as meaning Congress should only call a convention if what it is desired to be amended is a “current event”, i.e., a subject that is being already considered by Congress as a subject for amendment, and that unless an undefined time period of contemporaneousness is fulfilled, calling a convention based simply on the constitutionally mandated two-thirds requirement would be “useless” and therefore should not occur.[736]

---

[736] “The ‘contemporaneity’ requisite to Congress’ call obligation is *not explicit* in the text of Article V, but it seems implicit even *without any certainty as to how much time should be permitted to elapse.* The notion that the Congress is obligated to call a convention, simply because two-thirds of the States have--over some extended period of time--requested one, makes little sense. While it may be true that the States would probably not ratify the product of any such convention, it seems useless to call one under such circumstances. Amendment is after all extremely unlikely in the absence of a contemporaneous belief that amendment is necessary.

“The ‘consensus’ requisite seems necessary upon a few moments’ reflection. Surely there should be no obligation to call a convention, for example, if just twenty states seek one on a particular topic and just fourteen seek one on another. That clearly would indicate only that minorities are concerned about different points, neither of which concerns a majority.” Bond & Engdahl, THE CONSTITUTIONAL CONVENTION, The Duties and Powers of Congress Regarding Conventions For Proposing Amendments”, Nat’l. Legal Center for the Public Interest,(1987), p. 4,5. (emphasis added). See also APPENDIX C---1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, p.1.

“The Committee feels that some limitation is necessary and desirable but takes no position on the exact time except it believes that either four or seven years would be reasonable and that a Congressional determination as to either period should be accepted.” ABA Report at p.37.

The report then discussed the ability of the states to withdraw applications. The report stated:

“Since a convention should reflect a “contemporaneously-felt need” that it take place, we think there should be no such limitation [to withdrawing applications].” ABA Report at p.37.

Further, the report urged that the states should have a say in whether or not their applications cover the same subject as other applications from other states.

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The problem with this narrow definition of the word “contemporary” in the limited “current event” sense is that it would defeat a basic constitutional principal: that any action by the government in relation to the Constitution is to be that of fulfilling, not disobeying, its provisions and intents. The Constitution clearly mandates that if two-thirds of the states apply, Congress must call a convention.[737] Even if applications were considered in some “contemporary” standard, that standard must favor satisfying the states’ right to a convention, not granting Congress power to veto the mandate of Article V.[738]

The reason for this interpretation is obvious. If Congress is given the power to decide what is and is not a “contemporary” application, it could easily use this power of definition to veto the calling of a convention even if the proper number of states had applied, simply by defining the contemporary standard more narrowly than whatever record of application existed, thus eliminating some states’ applications and thus reducing the number of state applications below the two-thirds threshold.[739] Clearly, this

---

The report said:

“From a slightly different point of view, the power to withdraw implies the power to change and this relates directly to the question of determining whether two-thirds of the state legislatures have applied for a convention to consider the same subject. A state may wish to say specifically through its legislature that it does or does not agree that its proposal covers the same subject as that of other state proposals. The Committee feels that this power is desirable.” ABA Report at p.37.

In sum, the ABA Report favors granting to each state a veto power over a congressional determination that a convention should be called.

[737] *See supra* text accompanying note 2.

[738] *See supra* text accompanying notes 278,286-288,291-293.

[739] No less at issue here are the problems involving legislating contemporary standards, whatever they might be, in the area of Article V, when no such constitutional authority exists for Congress to pass legislation. The problems presented earlier of non-presidential involvement in the amendment process

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

would violate the intention of the Founding Fathers who intended "no discretion"[740] on the part of Congress when it came to calling a convention.

The "current event" contemporary pre-condition fails to recognize the basic federalist intent of the Founding Fathers. In allowing Congress to determine what is "contemporary" the pre-condition assumes only Congress (i.e., the national government) may set the agenda for an amendment or amendments to the Constitution. The Founding Fathers clearly intended *both* the states and the Congress should have the ability to amend the Constitution to redress issues *each* saw was needed for the good of the nation.[741] Under this concept of dual sovereignty, it is not improbable, therefore, that Congress may pursue one or more amendments to the Constitution while the states and people through the convention system, pursue others, neither of which is related to the other at all. The states clearly have a right to contribute to the Constitution as much as Congress does and not be bound to Congress solely setting the national agenda.

*The Congressional Laches "Problem"*

---

present constitutional issues in Congress using its legislative powers. *See supra* text accompanying notes 598,599,620-1099,718-728.

[740] *See supra* text accompanying notes 435-442,506-521.

[741] *See supra* text accompanying note 2. "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..." (U.S. CONST., art. V, (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The contemporary pre-condition is based on an assumption that Congress, by its *laches*, has proven is not valid. The pre-condition assumes Congress will *obey the Constitution* in a timely fashion. That is, the pre-condition presupposes that Congress, upon receiving applications, will move to determine if they are contemporary or not while the question surrounding the application still possesses validity. But Congress has not done this.

Instead, by its *laches* Congress has allowed applications to pile up in the *Congressional Record* with no indication that it ever intends to act and call a convention.[742] Congress cannot be permitted to veto portions of the Constitution--for any reason, no matter how politically expedient--by refusing to act on the applications in a timely manner, then use this *deliberate inaction* as the excuse upon which to later declare the applications no longer "contemporary". Congress cannot be allowed to set the timetable regarding applications for the states, deciding for them when they will be "allowed" to participate in the formulating of national policy, anymore than the states should be allowed to do the same for Congress.

If Congress acts when it is supposed to, as specified by Article V, there can be no question of contemporary applications because the convention is called when the applications are unquestionably contemporary, i.e., when the minimum number needed to call a convention has been submitted. It is only

[742] *See infra* text TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664; TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

by its delay of obeying the Constitution that Congress has generated this pseudo-issue.

The final proof that causes the contemporary pre-condition to fall is the application record of the states themselves.[743] Certainly, a set of applications less than ten years old fulfills any reasonable "contemporary" standard. However, as Congress has never defined this standard, one may state emphatically that no such standard exists. In using this standard to define when a convention shall be called, Congress is attempting to use something that does not exist to define something that does exist. Thus, the age of the applications can have no bearing on whether the states have satisfied the two-thirds requirement.

*The Ex post facto "Problem"*

*Ex post facto* is the first of many constitutional problems facing any contemporary pre-condition imposed by Congress. The Constitution specifically forbids Congress and the states from passing any *ex post facto* law.[744]

In one of its earliest decisions, the Supreme Court defined the prohibition against the passage of *ex post facto* laws by the legislature as

[743] *See infra* text, TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664. As the record shows, a set of thirty-four applications were filed by the several states to Congress between 1976 and 1989.

[744] "No bill of attainder or ex post facto law shall be passed." U.S. CONST., art. I, § 9, §§ 3; "No state shall...pass any...ex post facto law..." U.S. CONST., art. I, § 10, §§ 1.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

applying exclusively to penal or criminal cases.[745] As any law Congress might impose on regulating a convention to propose amendments clearly is civil in nature, it would seem the Court removed any prohibition against Congress regulating the convention using this provision of the Constitution. However, a closer examination of Justice Chase's opinion and the concurring opinion of Justice Iredell presents a different view.

Justice Chase said in part:

"I cannot subscribe to the omnipotence of a State Legislature, or that it is absolute and without control; although its authority should not be expressly restrained by the Constitution, or fundamental law, of the State. The people of the United States erected their Constitution, or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty; and to protect their persons and property from violence. The purposes for which men enter into society will determine the nature and terms of the social compact, and as they are the foundation of the legislative power, they will decide what are the proper objects of it. The nature, and ends of legislative power will limit the exercise of it. This fundamental principle flows from the very nature of our free Republican governments, *that no man should be compelled to do what the laws do not require; nor to refrain from acts which the laws permit*. There are acts which the Federal, or State, Legislature cannot do, without exceeding their authority. *There are certain vital principles in our free Republican governments, which will determine and over-rule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty; or private property, for the protection whereof of the government was established*. An *act* of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. The obligation of a law in governments established on express compact, and on republican principles, must be determined by the nature of the power, on which it is founded. A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or, in other words, for an act, which, when done, was in violation of no existing law; a law that destroys, or impairs, the lawful private contracts of citizens; a law that makes a man Judge in his own cause; or a law that take property from A and gives its to B. *It is against all reason and justice, for a people to entrust a Legislature with such powers; and therefore, it cannot be presumed that they have done it. The genius, the nature, and the spirit, or our State Governments, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them*."[746]

---

[745] Calder v. Bull, 3 U.S. 386 (1798).
[746] *Id*. (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Justice Chase made a presumption regarding legislative power and acts that the evidence of this suit clearly demonstrates was correct: it was never the intent of the Framers that Congress could use its powers to deprive citizens of a "fundamental principle" [that] "flows from the very nature of our free Republican governments, *that no man should be compelled to do what the laws do not require; nor to refrain from acts which the laws permit*." However, in the same Court decision, Justice Chase made another presumption regarding legislative power and acts which the evidence of this suit clearly demonstrates was incorrect, in that the Congress has deprived citizens of their right to alter or abolish[747] *without* it being a benefit to any group *except* Congress,[748] and there clearly has been no effort by Congress to make full satisfaction in this regard. Therefore, Congress has violated the principle of *ex post facto*.

Justice Chase said:

"*It is not to be presumed, that the federal or state legislatures will pass laws to deprive citizens of rights vested in them by existing laws*; unless for the benefit of the whole community; and on making full satisfaction... When I say that a right is vested in a citizen, I mean, that he has the power to do certain actions; or to possess certain things, according to the law of the land."[749]

Justice Iredell was even more specific in his concurring opinion in which he said:

"In order, therefore, to guard against so great an evil, it has been the policy of all the American states, which have, individually, framed their state constitutions since the revolution, and of the people of the United States, when they framed the Federal Constitution, to define with precision the objects of the legislative power, and to restrain its exercise within marked and settled boundaries. *If any act of Congress, or of the Legislature of a state, violates those constitutional provisions, it is unquestionably void*; though, I admit, that as the authority to declare it void is of a

---

[747] *See infra* text accompanying notes 921-1020,1136-1147.
[748] *See infra* text accompanying note 1126.
[749] Calder v. Bull, 3 U.S. 386 (1798). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

delicate and awful nature, the Court will never resort to that authority, but in a clear and urgent case. If, on the other hand, the Legislature of the Union, or the Legislature of any member of the Union, shall pass a law, within the general scope of their constitutional power, the Court cannot pronounce it to be void, merely because it is, in their judgment, contrary to the principles of natural justice... There are then but two lights, in which the subject can be viewed: 1st If the Legislature pursue the authority delegated to them, their acts are valid. 2nd If they transgress the boundaries of that authority, their acts are invalid. In the former case, they exercise the discretion vested in them by the people, to whom alone they are responsible for the faithful discharge of their trust; but in the latter case, they violate a fundamental law, which must be our guide, whenever we are called upon as judges to determine the validity of a legislative act."[750]

Thus, while the *Calder* decision specifically confined its ruling only to acts of a legislature that punished a citizen criminally for acts previously not criminal, nevertheless it made it clear that legislatures were forbidden from violating the terms of the social compact that serves as the basis of this Constitution. The court made it clear that "act[s] which, when done, was in violation of no existing law" cannot be subsequently voided by a legislative act and that if the legislature does act in such a manner such acts are "void."

Under this general interpretation of *ex post facto*,[751] because the applications represent an expression of the fundamental right of the people--that of the right to alter or abolish--it is clear Congress is forbidden from enacting legislation that would in any manner render state applications for a convention to propose amendments invalid.[752] Further, *ex post facto* dictates that as Congress has enacted no legislation that challenges the legality or validity of any application, it must be assumed all applications are legal, valid and in current force; congressional inaction in this case merely serves

[750] *Id*. (emphasis added).
[751] *See supra* text accompanying notes 746-750.
[752] *See infra* text accompanying notes 868-920.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

to *strengthen, not weaken*, the *ex post facto* argument. Thus, the contemporary standard, or any other such pseudo-standard, cannot be applied to any application already filed with Congress because such applications represent the action of a fundamental right that the Congress is not empowered to overturn. It equally clear as the Founding Fathers intended no discretion on the part of Congress in the calling of the convention, any limitations in legislation, if indeed such legislation may legally *be* proposed,[753] cannot include any provisions excluding any state application, as this would provide Congress a veto over state applications which is a direct violation of an expressed constitutional provision[754] and violates the fundamental principles of *ex post facto*. For the same reason, the states cannot recess their convention applications on the basis of contemporaneousness or any other pseudo-standard, because this would be a similar violation of the Constitution and *ex post facto*.[755]

*The 27th Amendment "Problem"*

If one argues, as does the ABA Report,[756] that the rules regarding ratification should "be equally applicable to state applications for a national constitutional convention,"[757] then the pre-condition that

[753] *See supra* text accompanying notes 560-579.
[754] "Congress...*shall*...call a convention" U.S. CONST., art. V. (emphasis added).
[755] *See infra* text accompanying notes 921-1009,1136-1146,1148-1205.
[756] *See infra* APPENDIX C---1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, p.1.
[757] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

applications must be “contemporary”—i.e., “reflect the will of the people in all sections at relatively the same period...”[758]--to “count” must certainly fail in light of the most obvious contrary example: the 27th Amendment to the Constitution. This amendment was proposed by Congress in 1789 but did not receive ratification by the states until 1992, some 203 years later.[759] If it is argued that an application by a state must be “contemporary” to “count”, and that court decisions concerning ratification also apply to applications, then the 203 years needed in order to ratify the 27th Amendment must establish the contemporaneous standard called for by those advocating such a standard for applications for a convention to propose amendments.

Those advocating that court interpretations applying to ratification also apply to applications for a convention to propose amendments ignore the most obvious problem: the Court was not even considering such a question when it ruled. Thus, these advocates rely on a connection that even the Court itself has never attempted to make.[760] Despite this obstacle, how can it be argued in any way but the affirmative that an application filed in 1789,[761] for example, is just as effective and current as a 203 year old ratification vote for a constitutional amendment that caused that amendment to become part of the Constitution when these ratifying states are the same states applying for a convention using the same power derived from the same article in the Constitution,?

---

[758] *Id.*
[759] *See supra* text accompanying note 489.
[760] *See infra* text accompanying note 767.
[761] *See infra* text
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The age issue surrounding applications is further diluted by the fact that all but four of the state applications have occurred in this century.[762] In fact, more applications for a convention have been filed by the states within the past 35 years than in the entire 172 years previous.[763] Thus, these applications clearly express a more contemporaneous desire by the states than does the ratification vote of the 27th Amendment.

Article V gives no hint that Congress possesses the power to set age limits on convention applications, nor was it intended to. No discretion means no discretion.[764] To grant Congress the power to limit applications based on some arbitrary "contemporary" standard regulated by Congress grants that body as much discretion, if not more, than if Congress regulated the convention using the same subject pre-conditions presented earlier.

In light of the 27th Amendment and the *ex post facto* issues, a contemporary standard would be extremely difficult to define, let alone justify, even for Congress. If the states express, either by application or ratification, their desire to deal with a question of constitutional amendment, *regardless of the age of that question, then the matter of contemporaneousness is satisfied.*

---

[762] *Id.*
[763] Between the years 1789 and 1961, the states filed a total of 150 applications(eliminating duplicate applications filed by the same state) with the Congress requesting a convention to propose amendments. From 1962 until 1992, the states filed 209 applications. *See infra* TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664.
[764] *See supra* text accompanying notes 506-513.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*The Dillon v. Gloss "Problem"*

Proponents of the contemporary pre-condition usually refer to Dillon v. Gloss[765] to provide constitutional support[766] for their position.[767] In *Dillon*, however, where the Supreme Court did directly address the question of contemporaneousness as it applied to ratification, the Court did not say a proposed amendment must be contemporaneous—-i.e., dealing with a subject that is a "current event"--rather it said "ratification [must] represent[s] a contemporaneous sentiment of the required number of states."[768] In other words, ratification must represent the "current" situation of the desire for ratification of an amendment by the states.

---

[765] Dillon v. Gloss, 256 U.S. 368 (1921).

[766] *Dillon* is a weak argument for effecting a convention to propose amendments because the issue was clearly limited to *congressional* amendment proposals. Except for quoting Article V, at no time was the convention to propose amendments mentioned. Considering the question before the Court--the limits of congressional power to affect the ratification process—-one might have expected it to come to the fore. One of the most obvious questions arising from ratification is whether Congress has the power to affect, by ratification limitation, an amendment proposed by a convention to propose amendments should the convention desire a different limit, or no limit at all. As the court was mute on this subject, it must be assumed that the Court intended to limit itself *strictly* to congressional amendment proposals, leaving the products of a convention to propose amendments alone. *See infra* text accompanying note 827.

[767] *See infra* APPENDIX C---1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, "We believe the reasoning of Dillon v. Gloss to be equally applicable to state applications for a national constitutional convention." ABA Report at p.35.

[768] Dillon v. Gloss, 256 U.S. 368 (1921).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Thus, if one accepts the pre-condition that *Dillon* defines the issue of contemporaneousness insofar as convention applications are concerned, the issue becomes not whether the applications represent a "current event", but whether these applications represent the current desire by the states for a convention. What are the facts regarding this desire? Firstly, more than two-thirds of the states have applied for a convention to propose amendments.[769] Secondly, a mass of applications, well in excess of the required two-thirds, remain currently in force today.[770]

Thus, those who attempt to use *Dillon* to present a reason *not* to call a convention are faced with the fact that even *their* "contemporary" standard—-i.e., that the applications must be "current"--is satisfied by these applications that clearly demonstrate a "contemporaneous sentiment of the required number of states."[771]

*Dillon*, however, dealt with more than just the definition of "contemporaneous" as it applied to constitutional ratification. The Court upheld Congress' right to prescribe time limits on the ratification of amendments proposed by Congress. Further, the Court intimated that proposals that were not ratified "within some reasonable time" were no longer open for ratification.[772] However—and quite significantly—-the Court did *not* intimate

---

[769] *See infra*
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.
[770] *See infra* text accompanying notes 851-920;
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664;
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.
[771] Dillon v. Gloss, 256 U.S. 368 (1921). *See infra* text accompanying note 1553.
[772] "That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

that Congress had the power to impose a time limit on the calling of a convention to propose amendments. The silence is persuasive.[773]

The Court acknowledged it found nothing in Article V expressly relating to time constraints,[774] yet allowed that it found intimated in the amending process a "strongly suggest[ive]" argument that proposed amendments are not open to ratification for all time or by states acting at widely separate times.[775]

Three related considerations were put forward:

"First, proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefore that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of a approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do."[776]

---

amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the states many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more states to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from article 5 is that the ratification must be within some reasonable time after the proposal." Dillon v. Gloss, 256 U.S. 368 (1921).

[773] *See supra* text accompanying note 766.

[774] "It will be seen that this article says nothing about the time within which ratification may be had-—neither that it shall be unlimited nor that it shall be fixed by Congress. What then is the reasonable inference or implication? Is it that ratification may be had at any time, as within a few years, a century or even a longer period, or that it must be had within some reasonable period which Congress is left free to define? Neither the debates in the federal convention which framed the Constitution nor those in the state conventions which ratified it shed any light on the question." Dillon v. Gloss, 256 U.S. 368 (1921).

However, it appears that the ratification of the 27th Amendment does "shed...light on the question." *See supra* text accompanying notes 489,756-764.

[775] Dillon v. Gloss, 256 U.S. 368 (1921) at 374.

[776] *Id.* at 374-375.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Those opposed to a convention to propose amendments reason that this opinion by the Supreme Court may be carried *carte blanche* to the application process of the convention, thus justifying a "contemporary" standard for applications and permitting Congress to set "reasonable" time limits on applications just as it has done in ratification. However, Congress has never set such time limits for applications.

That there exists a "reasonable" time period for ratification, however, has been strongly controverted.[777] In 1992 the Office of Legal Counsel of the Department of Justice prepared for White House counsel an elaborate memorandum which disputed all aspects of the *Dillon*.[778] First, *Dillon's* discussion of contemporaneity was discounted as dictum.[779] Second, the three "considerations" relied on in *Dillon* were deemed unpersuasive.[780] Third, the OLC memorandum argued that the proper mode of interpretation of Article V was to:

> "[P]rovide a clear rule that is capable of mechanical application, without any need to inquire into the timeliness or substantive validity of the

---

[777] "Article V says an amendment 'shall be valid to all Intents and Purposes, as part of this Constitution' when 'ratified' by three-fourths of the states---not that it might face a veto for tardiness. Despite the Supreme Court's suggestion, no speedy ratification rule may be extracted from Article V's text, structure or history." Tribe, The 27th Amendment Joins the Constitution, Wall Street Journal, May 13, 1992, A 15.. *See* also In re State Tonnage Tax Cases, 79 U.S. 204 (1870)—--"Courts cannot add any new provisions to the constitution by construction."

[778] 16 Ops. Of the Office of Legal Council 102 (1992).

[779] *Id.*, 109-110. *Coleman's* (see Coleman v. Miller, 307 U.S. 433 (1939)) endorsement of the dictum in *Dillon* was similarly pronounced dictum. *Id.*, 110.

[780] "Thus, the Court simply assumes that, since proposal and ratification are steps in a single process, the process must be short rather than lengthy, the argument that an amendment should reflect necessity says nothing about the length of time available, inasmuch as the more recent ratifying States obviously thought the pay amendment(27th Amendment) was necessary, and the fact that an amendment must reflect consensus does not so much as intimate contemporaneous consensus."16 Ops. Of the Office of Legal Council 102 (1992) at 111-112; U.S. CONST., 27th amend. *See supra* text accompanying notes 759-763.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

consensus achieved by means of the ratification process. Accordingly, any interpretation that would introduce confusion must be disfavored."[781]

The rule ought to be, echoing Professor Tribe, that an amendment is ratified when three-fourths of the States have approved it.[782] The memorandum vigorously pursued a "plain-meaning" rule of constitutional construction. It noted that Article V says nothing about time limits,[783] and elsewhere in the Constitution when the Framers wanted to include time limits they did so. The absence of any time language in Article V means there is no requirement of contemporaneity or of a "reasonable" period.[784]

The true question regarding state applications for a convention is not so much whether Congress *has* set time limits on the applications but whether Congress *may* set such time limits.

---

[781] 16 Ops. Of the Office of Legal Council 102 (1992) at 113. The question naturally must be asked, that if the OLC report finds that in regards to Article V ratification, "any interpretation that would introduce confusion must be disfavored", and that such interpretation must provide "a clear rule of...mechanical application, *without any need to inquire into the timeliness or substantive validity of the consensus achieved*...", can a lesser constitutional standard of process held for the convention to propose amendments be valid where opponents argue for the "need to inquire into the timeliness or substantive validity of the consensus achieved"?

[782] *Id.* at 113-116.

[783] This was acknowledged by the Supreme Court in Dillon v. Gloss, 256 U.S. 368 (1921). *See infra* text accompanying note 774.

[784] 16 Ops. Of the Office of Legal Council 102 (1992) at 103-106. The OLC also referenced previous debates in Congress in which members had assumed this proposal and the others remained viable. *Ibid.*; *see also* Martin v. Hunter's Lessee, 14 U.S. 304 (1809)---"Where the text of the constitution is clear and distinct, no restriction on its plain and obvious import should be admitted unless the inference is irresistible."; Wright v. U.S. 302 U.S. 583 (1938)---"In expounding the constitution, every word must have its due force and appropriate meaning."; U.S. v. Classic, 313 U.S. 299 (1941)---"Where there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightfully be preferred." Finally, it would appear that Congress itself, in certifying the 27th Amendment, effectively laid to rest this particular proposition of *Dillon*. *See supra* text accompanying notes 489,759.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As "nothing in [that] particular is left to the discretion of that body [Congress]"[785], it follows Congress cannot have any determining authority surrounding the contemporaneousness of applications. If, contrary to the Founding Fathers and the arguments of the OLC and others, such a contemporaneous standard shall exist, then who shall establish such an arbitrary standard for applications under Article V, the states or Congress? The answer is obvious: neither. The Founding Fathers made it clear that Congress was to be excluded from such discretion in the area of the convention to propose amendments.[786] Further, the states cannot veto each other's sovereign actions, so it follows this power cannot belong to the states.[787] Therefore, as both Congress and the states are excluded, the only logical conclusion is there may be no contemporary pre-condition because neither the states or Congress have the right to create it.

The only definition that can possibly be relevant regarding the contemporary pre-condition is that the critical mass of applications from the "required number of states" exists to satisfy the two-thirds threshold specified by the Constitution for a convention to propose amendments.[788] This condition exists now, thus satisfying "the contemporaneous sentiment of the required number of states"[789] criterion necessary for Congress to fulfill its mandated constitutional obligation.

---

[785] See *supra* text, accompanying notes 506,561-613,620-667.
[786] *See supra* text accompanying notes 497-513.
[787] *See infra* text accompanying notes 837-867.
[788] See *infra* text,
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664;
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.
[789] Dillon v. Gloss, 256 U.S. 368 (1921).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## THE "RUNAWAY" CONVENTION PRE-CONDITION

Some commentators and members of Congress have expressed fear of a "runaway" convention.[790] This fear is entirely unfounded. It is a shibboleth raised in support of the assertion of sweeping congressional control over the convention.

Most of the concern expressed by these authorities centers around the concept of a "runaway" convention,[791] i.e., a convention that, despite any limits regarding the agenda placed upon it either by the several states, the courts, or Congress,[792] persists in "running away." The term usually was intended to sustain the popular notion that the convention would draft radical amendments that would overthrow the entire government. Under this notion these amendments would be proposed by some faction of radicals and fanatics representative of some unknown element of the political spectrum. Despite their lack of political power, these fanatics would nevertheless slip stealthily into the convention and, like a virus, seize control.

While the political realities surrounding the election of delegates may largely be ignored as they relate to the constitutional question presented, it must be realized that they exist. One of these realities will be the interest

---

[790] *See, e.g.,* Kern, *A Constitutional Convention Would Threaten the Rights We Have Cherished for 200 Years,* 4 Det. C.L. Rev. 1087, 1089-90 (1986); S. Rep. No. 135, 99th Cong., 1st Sess., at 2-3 (1985). *See supra* text accompanying note 612.

[791] *Id.*

[792] As has been shown throughout this suit, Congress *has* no such authority to set such limits on the convention.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

of all Americans surrounding the convention process. If election of delegates is deemed constitutional, such election will doubtless involve a scrutiny by millions of voters in the several states focusing on perspective delegates' character and political views, not to mention the inevitable media attention attached thereto, all of which will serve to expose every voting tendency the candidate might have.

In order for such a radical overthrow of the government to occur as the "runaway" convention advocates fear, a group would have to control three-quarters of the legislatures, Congress, the courts and a greater number of voters in order to get its delegates elected and overcome the inevitable opposition that would arise to its radical platform. The simple fact is this: no such radical element with sufficient political base to control the convention exists, secret or not, in this country today. If such a group did exist, it would suffer the same public scrutiny other political groups would face, and thus its motives would be well known and, assuming the group did take control, done with the assent of the people.

Following the convention, it is probable that individual delegates may elect to support the ratification of certain amendments in their individual states, lending their support for the proposed amendments with whatever public credit they may have. However, the fate of the amendments proposed by the convention will be decided by the state legislatures or by votes in ratification conventions. Both ratification groups will be composed of entirely different individuals than composed the convention. Therefore, unless the state legislatures and ratification conventions can also be subverted by


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

this secret fanatical group, the constitutional fact is that the radical amendments proposed by them will be no more than historic footnotes.[793]

Of course, such "fanaticism" has occurred once in our history, with the 27th Amendment, which required some 200 years to ratify. But it should be noted that this specific amendment was proposed by the Founding Fathers in order to control exorbitant pay raises granted by the politicians to themselves at the national government level; when, in modern times, Congress attempted to give itself a fifty percent pay raise, the "fanaticism" of the people caused the amendment to be revived and ratified. Therefore, it was not an external group "taking over" the government, but the actions of Congress itself which trigged the "fanatical" reaction.

This is the specific purpose of the amending process: to correct and control the national government, its excesses, and such actions by the Congress as in the area of pay raises, that clearly demonstrates Mason's concerns regarding the assumption of power by the federal government and the need for *both* systems of amendment.[794]

The concept is offered to show that Congress must "protect" the Constitution. The simple fact is, the Constitution requires no such "protection." Its makeup and provisions more than adequately provide ample protection against any actions of a runaway convention should that be

---

[793] "...four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the states many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more states to make three-fourths by representatives of the present or some future generation." Dillon v. Gloss 256 U.S. 368 (1921).

[794] *See supra* text accompanying note 363.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

necessary. But this is quite unlikely. The delegates to a convention to propose amendments would hardly constitute a dangerous mob. They will, without a doubt, be the cream of their representative states. Delegates will likely be community leaders elected by and from the same populace that elects the members of Congress.[795] It is fair to assume these people will be reasoned, experienced people that the nation, by its very election, shows that it can trust.

Furthermore, and most significantly, a convention can do nothing more than *propose* amendments. Even if the most extreme fears of the advocates of congressional control came to pass and a convention proposed several dozen radical, dangerous or otherwise potentially destructive amendments, the simple rejection of these proposals by a mere thirteen states would render them entirely void and without effect.[796] On the other hand, any amendment that can

---

[795] We cannot ignore the common sense the American voter has consistently shown in rejecting extreme positions. As noted by Dean James E. Bond:

"Delegates...would probably represent mainstream philosophies. American legislatures seldom breed radicals, and the American people at large rarely embrace radicals. A convention to propose amendments would probably look a lot like an average Congress---and while that might not be an inspiring prospect, it is scarcely an alarming one, either." (Bond & Engdahl, "THE CONSTITUTIONAL CONVENTION, *The Duties and Powers of Congress Regarding Conventions For Proposing Amendments",* Nat'l. Legal Center for the Public Interest, p.19 (1987).

[796] As observed by Madison in FEDERALIST No. 40 commenting on the power of the 1787 Convention, "It is time now to recollect that the powers [of the convention] were merely advisory and recommendatory, that they were so meant by the States, and so understood by the convention; and that the latter have accordingly planed and proposed a Constitution which is to be of no more consequence than the paper on which it is written, unless it be stamped with the approbation of those to whom it is addressed."

The constitutional safeguard--ratification by three-quarters of the states, which prevents a runaway convention, or possibly, a runaway Congress--simply cannot be ignored. Article V's ratification provision *means that no proposed amendment can take effect until it is ratified by three-quarters of the states*. After the convention has proposed its amendments, its work is finished. Therefore, the convention is disbanded, and its members are free to return to their lives with their constitutional privilege to propose

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

pass through the proposal process, be it through Congress or a convention, and then muster the needed thirty-eight states approval deserves to be part of the Constitution.

Hamilton's arguments in FEDERALIST No. 85, that all amendments once proposed either by Congress or the convention *must* be presented singly to the states for their *individual* consideration,[797] lends great weight against the preposterous notion that calling a convention to propose amendments would inevitably lead to a runaway convention. Thus, this constitutional fact destroys any concerted effort by the convention, or parts thereof, to ensure its runaway efforts would be successful. Different propositions could be individually attacked, leaving only what the states desired to have in the Constitution and thus removing the rest.

Even the argument that delegates might "slip" radical parts into otherwise desired amendments falls under this constitutional safeguard. Under the strict interpretation of Article V that allows the states only to affirm or reject a proposed amendment, this attempt by delegates could be thwarted. The states could request Congress to call a new convention and pass a different amendment or amendments, or Congress could propose a different amendment or amendments and remove the offending passage even if it were ratified, as occurred with the 18th and 21st Amendments.

---

amendments ended. Thus, any effect that their combined numbers might have is entirely diluted *before* a single action by them has any legal or constitutional effect.

[797] *See infra* text accompanying notes 497-511.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

But if the argument of implied powers within Article V ratification is accepted, then a whole range of options must be conceded for the states in their area of ratification. Under this concept, if it is granted that under implied powers Congress may establish limits, regulations and other standards beyond the non-discretionary standards set forth by the Founding Fathers, then it follows the states may likewise assume discretion regarding their powers in the article, particularly in ratification, allowing them to go beyond a simple affirmation vote for a proposed amendment.

This said, then as Madison observed, if the convention's amendatory authority (or Congress') is merely advisory to the states, then it follows the states have the right not to accept all or *some of the advice given*.[798] Therefore, they could vote to accept only portions of the proposed amendment or amendments. However, while the states, under the concept of implied powers, could select which part of an amendment proposal to ratify, they could not change the proposal itself as this would violate the exclusive constitutional power of the Congress and the convention.

Despite the Supreme Court ruling that ratification is nothing more than "the expression of the assent of the state to a proposed amendment,"[799] it is nevertheless clear by Madison's comments that the Founding Fathers intended that the legislatures can determine *what kind* of expression of assent they give, and that this assent was in fact the most important part of the

[798] *See supra* text accompanying note 796.
[799] Hawke v. Smith, 253 U.S. 221 (1920).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

amendment process.[800] If three-quarters of the legislatures, for example, ratified a proposed amendment but specifically gave instructions that a certain clause of the proposed amendment *was not* ratified, it would create a difficult constitutional position for Congress to void this ratification vote if it did not agree with it. Nevertheless it is conceded Congress does possess this power to void a ratification vote and could choose to use it by removing the offending state legislatures from power by legislative fiat.[801]

Support for this overwhelming power is made in a concurring opinion of the Supreme Court which stated:

> "Such division between the political and judicial branches of the government is made by Article V which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the Article exclusively and completely to Congress."[802]

It is interesting to note, however, that this concurring opinion of Justice Black neglected the convention method of amendment entirely and, if these words are taken literally in the fullest extent, then the Constitution has been amended by judicial fiat in that the convention system of amendment, if not the entire ratification process, has been summarily removed by the Court. As the Court has ruled that such cannot be the case,[803] it is likely Justice Black was only referring to those *specific, limited powers* granted to

---

[800] The states are entirely free, for example, to express the reasons why they give assent or rejection and are free to examine the matter before them for as long as they wish or, if they so desire, not even take up the matter at all.

The most important evidence of this power, however, rests not with ratification, but with convention applications. The states can place whatever language they want in them concerning any matter they want, file them at any time and as many times as they desire and *all are equally valid*.

[801] *See infra* text accompanying note 917.

[802] Coleman v. Miller, 307 U.S. 433 (1939). *See infra* text accompanying notes 1053-1055.

[803] *See supra* text accompanying notes 548,777.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress under Article V which allow Congress to propose amendments, choose the mode of ratification, and its *mandatory obligation to call a convention upon application of the state legislatures without discretion on the part of Congress*, and not to a complete revision of the balance of power laid out in the Constitution. *However, there is nothing stated in Coleman that supports this view.*[804] As *United States v. Chambers*[805] demonstrated, the Court clearly recognized the limited power of Congress to amend the Constitution. Nothing in *Coleman* specifically altered this earlier decision.[806] Thus, *while the language in Coleman may be interpreted as granting Congress unlimited amendatory power, the Court did not actually rule that this was the case*.

Thus, as noted in *Chambers*,[807] within those specified, limited amendatory powers, Congress does have absolute control, but at the expense of implied powers that grant Congress regulation and control of the convention to propose amendments and the states' ratification decisions.

Only when it is accepted that the grant of implied powers given by the Court to Congress relates to its *proposal* power to place one or more amendments before the states--which is advisory, instead of Congress' ratification power (which the Constitution states is no more than a simple choice between one of two methods of state ratification)--can constitutional

---

[804] However, an indication of the Court's rejection of *Coleman* may be found in a recent case where the Court discussed the ability of Congress to impinge on the sovereign immunity of the states. It is interesting that in this recent discussion, the Court did not even mention Article V powers as a basis on which Congress could abrogate state immunity. *See infra* text accompanying note 1208.

[805] 291 U.S. 217 (1934).

[806] *See supra* text accompanying note 550.

[807] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

chaos be avoided. Similarly, realization that the states are as equally limited in their ratification choice, whether to accept a proposed amendment or not, avoids any constitutional chaos at this level. In short, neither Congress nor the states possesses implied ratification powers.

Finally, the Constitution only empowers the convention, like Congress, to offer amendments as "part of *this* Constitution."[808] The term "part of this Constitution" clearly implies and expresses that any proposed amendment must allow for the present Constitution to continue[809] as it is that document which is being amended.[810] A new constitution cannot be considered an "amendment" to the Constitution as there would be nothing left of the old Constitution for the "amendment" to be part of. Thus, this type of "amendment" is not authorized by the Constitution and therefore is unconstitutional.

---

[808] U.S. CONST., art. V.

[809] "Article V provides that adopted amendments become 'Part of *this* Constitution,' a phrase that (as Nathaniel Gorham said at Philadelphia) refers exclusively 'to the existing Constitution.' Congress and a convention are alike limited by article V to amendments respecting this, and not some other, new, frame of government. One reason why the Constitution could not be amended by interweaving the proposals within the text to create a totally new draft, said Representative Livermore in 1789, was that 'neither this Legislature, nor all the Legislatures in America, were authorized to repeal a constitution.'

"'Roger Sherman agreed:

'By the present constitution, we, nor all the Legislatures in the Union together, do not possess the power of repealing it. All that is granted us by the 5th article is, that whenever we shall think it necessary, we may propose amendments to the constitution; not that we may propose to repeal the old, and substitute a new one.'" Constitutional Brinksmanship*: Amending the Constitution by National Convention*, Caplan (1988). (emphasis in text).

[810] Of course, the argument springs to mind that the Founding Fathers themselves "amended" the Articles of Confederation despite its rules of amendment. This argument is simply not true. Madison refuted this position in FEDERALIST No. 40 by pointing out the much more generalized words of the acts authorizing the Convention than the Article V language provides. In any event, as Madison noted, the Convention's actions were purely advisory. *See supra* text accompanying note 796; *infra* text accompanying note 1659. The new amendment would have to provide language similar to that authorizing the 1787 Constitutional Convention.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In order for such an action to be constitutional, a convention or Congress would first have to offer an amendment to the states amending Article V allowing for the writing of a new constitution by one of those two bodies. Assuming passage, *then* a convention, or whatever body was specified in the new amendment procedure, would propose a new constitution. But it is impossible, under the *strict interpretation* of Article V, for a single convention to constitutionally propose a new constitution.

The possibility of this double system of amendment-ratification being undertaken without the more expedient use of amendments first being employed to deal with the issues involved virtually ensures against a runaway convention.[811] Even in amending the Constitution, the convention had limits placed upon it by the Founding Fathers, thus remaining true to the concept of limited government. Thus, the pre-condition of a runaway convention is entirely false because the convention constitutionally has no place to run away to.

If Congress holds it has the power to regulate a convention to propose amendments and maintains the reason it must do so is because of the "unlimited" power of the convention, then does this not in fact mean Congress is actually seeking a power it does not possess? Does it not in fact mean

[811] However, this is not necessarily true in respect to a runaway Congress. The Congress has "acquired" implied powers over the years which violate the strict procedural standards of Article V. Taken as a whole, these implied powers allow Congress to circumvent all constitutional safeguards regarding amending the Constitution. None of these special powers are possessed by the convention to propose amendments and thus the convention is actually a "safer" bet constitutionally than the Congress. *See supra* text accompanying notes 565,577,629; *infra* text accompanying notes 917,921-1134,1188.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress itself gains “unlimited” power otherwise denied it by the Constitution? Does it not in fact mean that the threat now becomes a runway Congress, rather than a “runaway” convention?

The Constitution states the single standard for the calling of a convention is application of two-thirds of the states. If Congress has the power to regulate a convention or otherwise determine the “validity” of applications and reject them should it find them not “valid,” has not Congress in fact become a runaway Congress, acquiring the power to amend the Constitution either by adding provisions to this two-thirds standard or failing to call despite the constitutional mandate?

A major fear about a convention is the mistaken notion that somehow its power is unlimited, i.e., the convention is a *extraconstitutional* body above the Constitution itself. The basis for this assumption is usually found by those examining state constitutional conventions where on many occasions throughout our history such conventions have routinely proposed new constitutions for various states. In some instances, these conventions have acted in a manner that has been considered “runaway.”[812]

While this is certainly true for *state constitutional conventions*, it is certainly *not true* for the federal convention to propose amendments. This convention is *intraconstitutional*, i.e., its power is clearly limited by the Constitution itself and is limited to offering amendments to the Constitution,

[812] *See* CONSTITUTIONAL CONVENTIONS: THEIR NATURE, POWERS AND LIMITATIONS (1917) (Hoar) pp. 105-119 generally where the author cites several examples of state conventions throughout history exceeding various limits placed on their powers. For the most part, such actions by the conventions were supported either in the state courts or by the people or state legislatures involved.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

rather than the unlimited power of writing a new Constitution. The power that authorizes it, the right of the people to alter or abolish, is transcendent, and therefore is extraconstitutional, but this power must be exercised through a constitutional procedure that is a limit or restraint on the convention amendatory procedure. Further, as the convention is intraconstitutional, other restraints may exist.[813] But simply because the convention is intraconstitutional, this fact alone does not mean that a branch of the government may simply presume to regulate and control it unless the Constitution permits such regulation and control which in this case the Constitution does not.

The convention to propose amendments, like the rest of the branches of the government, possesses certain powers and is limited by the Constitution. If the convention violates these powers or limits, remedy through the courts is available. Thus, the idea the convention is unlimited in power simply is not true.

Probably the greatest limit on the convention's power, however, is the ratification vote by the states. If the proposal suffers defeat in thirteen states, the proposal dies for all time unless re-proposed either by Congress or another convention (a highly unlikely event). Bluntly, if opponents to these "frightful" and seemingly "invincible" amendments cannot muster enough

[813] The notable examples of restraint on the convention are the specific procedural requirements expressed in Article V that make the convention's actions no more than advisory in nature. *See supra* text accompanying note 796,810; *infra* text accompanying note 1659.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

opposition to defeat the matter in thirteen states, they should pack up and go home.

## THE PROTECTIONISM MOVEMENT PRE-CONDITION

The Framers of the Constitution hoped that their work would endure[814] but realized at the same time that changes would be necessary from time to time to correct excesses of the national government.[815] But this fact provides no support for the assertion that Congress should or may exercise control over the convention process for the purpose of continuing the Constitution as it now reads. The ultimate strength of the Constitution lies in its ability to change in response to the needs of the nation that created it. Any construction of the Constitution that would seek to freeze the Constitution as it now reads would in reality defeat the Constitution, which the opponents of a convention so reverently espouse, by removing its greatest strength and simultaneously destroying its supremacy as law of the land. Ironically, those who promote limits to the convention method in the guise of protecting the Constitution are actually emasculating it. In any event, these self-appointed "protectors" of the Constitution are not needed. The Constitution has already provided for its own protection. Every provision of the Constitution will "endure" precisely until three-fourths of the states concur that it should be

[814] S. Rep. No. 135, 99th Cong., 1st Sess., at 7-8,9-10,25 (1985).
[815] *See supra* text accompanying notes 345,362-364,371,374-376.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

changed.[816] Congress should not, and cannot, under the guise of "protecting the Constitution," impose any barrier against the right of the states to alter the Constitution when two-thirds of them call for a convention and three-fourths of them ratify the amendments proposed by the convention.

## CONGRESSIONAL CALL SANS STATE APPLICATIONS PRE-CONDITION

By the same token some scholars[817] have stated that Congress may call a convention to propose amendments on its own initiative without naming it as such or without the states having first submitted applications. This assertion is entirely without merit. There can be little support for this as the Framers were presented with this option at the Convention and chose not to include it as a provision in Article V.[818]

---

[816] While most of the Constitution falls under the concept of implied powers for one or more branches of the government, the amendatory procedure should be as much as possible immune from this concept, as it is an *expressed quantitative process*, each step of which provides not only proper deliberation and consideration for a proposed change to the Constitution, but simultaneously guards against rash, unwise or excessive acts by either minority or majority. *See supra* text accompanying notes 559,781;*infra* text accompanying note 895.

Indeed, it is only by accepting one or more of the pre-conditions to "protect" the Constitution proposed by the opponents of a convention, that the Constitution can be subverted. All of the "protections" proposed by opponents essentially allow for a small group to regulate and control the amendatory process to *its* ends and eliminate the carefully constructed safeguards built into Article V.

[817] Bond & Engdahl, *THE CONSTITUTIONAL CONVENTION*, *The Duties and Powers of Congress Regarding Conventions For Proposing Amendments",* Nat'l. Legal Center for the Public Interest, p. 8-10 (1987).

[818] *See supra* text accompanying notes 404-405; "Gouverneur Morris's suggestion on that day that Congress be left at liberty to call a convention "whenever it pleased" was not accepted." (APPENDIX C---1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, p.14.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Constitution clearly states a convention may only be called “on the application of...the states...”[819] Thus, if the states have not applied, the Congress may not call one on its own accord, presumably with its own agenda as the purpose of the call. The power to initiate a convention, i.e., the filing of applications,[820] rests with the states, not Congress.

## THE RATIFICATION “VETO” PRE-CONDITION

Article V charges Congress with the plainly worded constitutional duty to select the mode of ratification for amendments that have been proposed--ratification either by the state legislatures or state conventions.[821] It does *not* provide for a third choice by Congress, *that of a veto or “no” vote*, on the amendments proposed by a convention to propose amendments. Congress cannot refuse this duty of designation for the purpose of exercising a *de facto* veto over the convention, nor may it use this duty as a means “of reviewing” a proposed amendment. Such a naked assertion of unconstitutional power would scarcely deserve serious discussion, yet Congress’ history of action—-or inaction—-described above shows how it has effectively exercised this thinly disguised veto power.[822]

### *The Time Limit Ratification “Problem”*

[819] U.S. CONST., art. V.
[820] *Id.*
[821] *See supra* text accompanying note 2.
[822] *See supra* text accompanying notes 593-612.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Supreme Court has ruled Congress has the implied authority to fix a reasonable time period in which states must ratify a proposed constitutional amendment.[823] It has also ruled that what constitutes a reasonable time period is a nonjusticiable political matter for Congress to determine.[824] Neither suit established that such implied powers of Congress extend to a convention's amendment proposals. More significantly, neither suit determined that the convention does not possess on its own right the same implied powers in regard to its own amendment proposals, or that under the doctrine of equal protection, it may "review" congressional amendment proposals even after ratification has taken place.

However, an objective examination of the intent of the Founding Fathers and a determination of the effect of such implied powers on a convention to propose amendments and its relationship to Congress lead to the conclusion that the establishment of ratification time limits by Congress on amendments proposed by convention is unconstitutional for two reasons:

1. It is an exercise of amendatory power not granted by the Constitution to Congress;[825]

---

[823] Dillon v. Gloss, 256 U.S. 368 (1921).

[824] Coleman v. Miller, 307 U.S. 433 (1939).

[825] Implication has a way of inflating national power, not shrinking it. There is nothing contained in *Dillon* or *Coleman* that limits Congress solely to establishing time limits on the ratification within its ratification power. If Congress can regulate the ratification of an amendment by placing such provisions within it after it has been already proposed by the convention, it follows it can place other changes in it. If this is correct, then the convention amendment is subject to congressional review (amendment) and approval (or veto) before being submitted for ratification. However, this was not the intention of the Founding Fathers and does not follow the prescribed amendatory format of Article V.

Further, the issue of Congress possessing the power of veto of a convention amendment is raised in that, given the convention proposes a time limit of its own within its own amendment, and Congress establishes another

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

2. After a convention amendment has left the convention, if Congress may place conditions on it, then the *final form* of that amendment is actually proposed by Congress, *not* the convention.

The Constitution establishes two equal amendatory proposal procedures.[826] Permitting Congress to alter or otherwise affect an amendment proposed by a convention, thus creating a method of proposal whereby Congress alone is the only proposing amendatory body, clearly defeats the expressed intent of Article V.

While *Dillon* was correct that Congress may set time limits for ratification on its own amendments, the Court erred in attributing this authority to ratification power. The proper source of constitutional authority is congressional amendatory *proposal* power.

In each circumstance that Congress has proposed ratification time limits for an amendment, the provision has been contained within the specific amendment under consideration,[827] thus creating a take-it-or-leave-it situation for the states. At no time has Congress ever presented to the states a *separate* proposal of time limit ratification that the states then could

---

different time period, which shall take precedence? If it is established that the congressional action does, then a *de facto* "veto" power exists which could easily then be applied to the entire proposed amendment. This was clearly not the intention of the Founding Fathers. *See supra* text accompanying notes 2,435-437,506-513.

[826] *See supra* text accompanying note 2.

[827] U.S. CONST., 18th Amend, § 3; "This Article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution within seven years from the date of the submission hereof to the states by the Congress."; *see also* U.S. CONST., 20th Amend., § 6; U.S. CONST., 21st Amend. § 3; U.S. CONST., 22nd Amend., § 2. It is important to note Amendments 23, 24, 25, 26, and most notably 27, contain no such limiting ratification language and therefore Congress was obviously not *proposing* a limitation on the ratification time for the states.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

address *independently* of the amendment language.[828] Thus, only through its amendatory *proposal* power has Congress exercised the right to limit its own amendment proposals.[829] Why? If the ratification limit was not part of the amendment, it could not be created using Congress' amendatory *proposal* power,

---

[828] It is easy to see why the Supreme Court might make the error and attribute the authority of Congress to establish time limits on ratification to Congress' ratification power. The association is obvious. Even the language of Article V lends some credence to the concept:

"...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..." (U.S. CONST. Art. V).

However, it is clear by the concerned language of Article V that the choice Congress is presented by the Constitution lies in a simple choice as to *which* type of ratification shall be used for the particular amendment, *not* a power to propose a different amendment process each time an amendment is considered. Further, such a concept flies in the face of the axiom that the amendatory process should be as "mechanical" as possible. *See supra* text accompanying notes 781-784.

A simple hypothetical should prove the point. Let us first stipulate that two amendments are simultaneously proposed by Congress, such as in the case of the first ten amendments.(*See supra* text accompanying note 489.) Let us further stipulate that different modes of ratification are proposed for each beyond the simple choice of either legislature or convention. The inference is that Congress could favor one proposed amendment over another by placing terms of ratification on it that it does not impose on the other proposed amendment. Would this not violate the equal protection clause of the 14th Amendment? Surely, based on the spirit of the Constitution, it can be argued as self-evident the Founding Fathers did not intend for Congress to be able to "stack the deck" in the amending of the Constitution.

[829] As a practical matter, there is no other logical conclusion. If the time limit set by Congress is not considered part of the proposed amendment, then it follows that the states have a *separate* choice as to whether or not to accept its provisions. The subject matter in the amendment is one choice to be decided by the states, and *its time limit* becomes another. The time limit of the amendment has nothing to do with the subject matter and therefore must be considered a different subject for ratification *if* the time limit power of Congress is not considered part of its proposal power. Therefore, a state could vote to ratify an amendment, but vote that it wished ratification to take, for example, eight years, or simply reject the proposed time limit completely.

Would this "selective" ratification by the states mean the amendment is rejected or accepted? If enough states voted to reject the proposed time limit, would that mean the entire amendment was rejected by the states or just that provision, thus removing any time limit for ratification? Obviously, such a situation would create constitutional chaos. For this reason, Congress, the convention and the states must be held to a one-way standard in the amendatory process. Otherwise, the states would be empowered to "propose" their own amendments by editing the convention or congressional proposal through selective ratification. *See infra* text accompanying notes 843-914.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

but would be an exercise of Congress' legislative power. As Congress' legislative power cannot be used in the amendatory process,[830] such a separate action by Congress could be constitutionally rejected by the states. Therefore, the only way Congress may *propose* a time limit on an amendment is through its amendatory *proposal* authority.

Congressional ratification time limits on a convention proposed amendment(s) not only violates Article V but raises serious equal protection issues. As it has been shown that the powers in question are part of the proposal authority of Congress and that convention proposal authority is equal to that of Congress, it follows that the convention would have the same limitation power *as Congress.* This raises many problems.[831]

When the convention to propose amendments is considered along with Congress in effecting a time limit on an amendment, the only logical way out of this Pandora's Box is to conclude that time limits on ratification—-but not the choice of method of ratification—-are controlled by whichever body proposes the amendment. Congress is free, therefore, to limit *its* amendment proposals, and the convention free to limit its amendment proposals. But neither body is free to limit *each others' amendment proposals*. Therefore, neither body interferes with the constitutional authority of the other, nor is the specific congressional duty of choice of ratification mode in anyway impinged.

---

[830] *See supra* text accompanying notes 560-579,620-668.

[831] As Congress is an on-going body and the convention is not, then the question arises, would the convention have the right to "review" amendments already ratified since the last convention and simply "edit" them as it chose without resubmitting them for ratification?


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## SUMMATION ON PRE-CONDITIONS

The convention has the same constitutional authority to set time limits on ratification for a particular amendment it proposes. To allow Congress sole power in this would create two constitutional problems. The first would permit Congress to veto proposed amendments by refusing to send them to the states for ratification. The second would enable Congress to edit or change amendments after they had left the convention. This would make Congress the sole proposing body for amendments, a clear violation of Article V.

The enactment and use of this proposal, or any similar to it, would completely defeat the purpose of Article V and would constitute nothing less than the nullification of a constitutional provision by legislative fiat. If the convention proposes one or more amendments, Congress is obligated under Article V to designate the mode of ratification. Article V cannot be read as granting Congress the authority to prevent by any means the forwarding of proposed amendments to the states for their review, or to review or edit proposed amendments once they have left the convention.

The most important point about all the pre-conditions discussed in this suit is that *none* of them has force of law, i.e., neither the courts nor Congress has ever given the slightest credence to any of them. They have been derived primarily from various authors who advanced them over the years as the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

basis to oppose a particular amendment that they feared might trigger a convention.[832] None of these authors had the ability to separate their political agenda from constitutional procedure and appeared entirely willing to mix the two for the sake of political expediency. As these opinions have no force of law, the Court cannot insert them into the Constitution.[833] This may only be done by the amending process, and none of these pre-conditions exist in that document either by implication or expressed language.

The only pre-condition the Court has ever acknowledged in any of its decisions is the single *numeric count* requirement *expressed* in the Constitution: when two-thirds of the several states shall apply for a convention to propose amendments, the Congress *shall call one*.[834] Regardless of Court interpretations of Article V, no decision has altered this fact even when the Court was presented in one of its suits with the option of inserting changes to the amendatory procedure based on the subject of the amendment.[835]

In summation, then, it is clear that none of the above arguments justifies or permits Congress the power to interfere with the clear right of the states to apply for a convention and the consequential obligation on

---

[832] The best evidence supporting this contention is the fact that none of these authors bothered to discuss a simple *numeric* count of applying states as the basis on which a convention must be called. Thus, all ignored the clear language of the Founding Fathers. *See supra* text accompanying notes 436-438,497-514,518-521.

[833] "Nothing new can be put into the constitution except through the amendatory process, and nothing old can be taken out with the same process." Ullmann, v. United States, 350 U.S. 422 (1956); "Court cannot add any new provisions to the constitution by construction." In re State Tonnage Tax Cases, 79 U.S. 204 (1870).

[834] *See* Dodge v. Woolsey, 59 U.S. 331 (1855); Hawke v. Smith, 253 U.S. 221 (1920); Dillon v. Gloss, 256 U.S. 368 (1921); United States v. Sprague, 282 U.S. 716 (1931); Coleman v. Miller, 307 U.S. 433 (1939).

[835] *See supra* text accompanying note 728.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress to call one when the states do apply, nor do these arguments justify attempts by Congress to interfere with the self-executing nature of Article V. Thus, because Article V is self-executing, Congress is neither required nor permitted to add or subtract from it.[836]

## THE INABILITY OF STATES TO LIMIT AN ARTICLE V CONVENTION

Article V provides the states the power to apply for a convention for proposing amendments and the power to ratify amendments proposed either by Congress or by the convention process.[837]

The history and plain language of Article V demonstrate that a convention for proposing amendments cannot be limited to a single issue or subject either by Congress or the states.[838] Article V does not authorize the states to apply for *an amendment,* rather it authorizes them only to apply for a *convention* for proposing *amendments*.[839] The power to propose amendments rests only with the Congress or the convention to propose amendments.[840] Thus, a state does not possess the power to limit a convention to a particular subject

---

[836] "A constitutional provision which is complete in itself need no further legislation to put it in force, but is self-executing." Davis v. Burke, 179 U.S. 399 (1900).
[837] *See supra* text accompanying note 2.
[838] *See supra* text accompanying notes 669-726.
[839] *See supra* text accompanying note 2.
[840] If this were otherwise, the entire concept of separation of powers would be defeated. The states would have unlimited amendatory control of the Constitution while a small minority of states could easily defeat any effort by the Congress to amend the Constitution.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

by limiting the efficacy of its application to a particular subject because the purpose of the application is to apply for a convention, *not* an amendment subject.[841] Therefore, just as with Congress, the states have no authority to limit the scope of the convention to a single subject.

Just as a state cannot demand that Congress discuss or propose an amendment on a subject it dictates, likewise a state cannot defeat its application by claiming it is viable only if the convention accedes to its demand that a given subject be addressed. The states have no authority to place such an unconstitutional demand on Congress, nor do they have such authority to place such a demand in their applications.[842]

When a state applies under Article V for the calling of a convention for proposing amendments, it knows from the language of Article V that it cannot inhibit the scope of the convention. It is a convention for proposing *amendments*. The clear language of the Article combined with the historic fact that the selection of the plural form of the word “amendments” was a deliberate act leads steadfastly to the inescapable conclusion that a state cannot limit the convention or its application to one subject.[843]

---

[841] *See supra* text accompanying notes 480-490.

[842] Under the 14th Amendment doctrine of equal protection, clearly any immunity or privilege granted Congress by the Constitution regarding Article V powers to propose amendments must equally extend to the convention to propose amendments. In both the congressional and convention methods, the Constitution clearly places the power *to propose amendments* exclusively in those two bodies. Thus, the states are denied the right *to propose amendments*.

[843] Although Congress may fix reasonable time limits relating to the ratification of its own proposed amendments, Dillon v. Gloss, 256 U.S. 368, 325-76 (1921); Coleman, v. Miller, 307 U.S. 433, 452 (1939), there is nothing in the text of Article V or the intent of the Framers that would support a limitation being placed upon the states relating to time for applying for an Article V convention for proposing amendments. This point can also be shown by the analogous Supreme Court decision in Leser v. Garnett, 258 U.S. 130

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The same logic that excludes Congress from considering "same subject" as a standard for determining the validity of state applications[844] also applies to the states themselves. The states cannot limit themselves to a single subject convention in their applications as this would be a veto of the sovereignty of the states.[845] Any state has the right to *discuss anything it wishes at a convention* just as a single member of Congress representing that state may institute debate on any amendment subject or subjects he or she wishes in Congress.[846]

This right of discussion by the states is further reinforced by the limited power of the states in Article V to apply for a convention to propose amendments, but not to propose amendments. If same subject pre-condition is accepted, the power of proposal and ratification *rests* *in the same body, namely the states*.[847] This reconstruction of the Constitution would establish a

---

(1922),in which the Court points out that the governing law relating to the amendments process resides in Article V of the Constitution, and that Article V necessarily "transcends any limitation sought to be imposed by the people of a state." *Id.* at 137;*see infra* text accompanying notes 907 for a more recent analogous decision, North Dakota v. United States, 460 U.S. 300 (1983).

[844] *See supra* text accompanying notes 669-726.

[845] *See infra* text accompanying note 1444.

[846] *See supra* text accompanying notes 700-717.

[847] Further, under this erroneous concept of "same subject," the amendment would already be written, so that the convention's participation (if any) would be a mere formality. If the states are denied the right to discuss, their delegates could not negotiate or alter a proposed amendment prior to submission to the states for ratification. Ratification itself would become a mere formality as those states proposing an amendment would certainly ratify it, perhaps simultaneously. This would lead to a complete breakdown of Article V.

This idea would run totally contrary to any amendatory procedure in our nation's history. No single body has ever been granted *both* ratification *and* proposal authority simultaneously. *See supra* text accompanying notes 2,334.

It is clear, however, the states desire to discuss proposed amendments. As demonstrated in the examples of this suit,(*See infra* TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664.), while the states go sometimes to great lengths to politically justify the submission of an application, in none of them are contained actual amendment language.

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

second, autonomous government independent of the Federal government with full ability to reject any constitutional demands of the Federal government while possessing the full ability to regulate and control the Constitution absent Federal input.[848] While Congress could protest, that body could do nothing to prevent it.[849] The effect would be to cut off the Federal government from its own Constitution and place the control of that body in the hands of the states.

Because state applications cannot be based on subject and cannot limit or otherwise veto the desires of the other states concerning a convention, the *only* condition the applications can satisfy is the numeric count mandated by Article V. Thus, it follows that *all* applications from the states serve to satisfy that numeric count requirement.[850] Any subject matter expressed in the application is of no constitutional importance, though certainly the state through its delegation is entirely free to pursue the subject matter once the convention convenes.

---

Therefore, it is obvious the states expect the convention to propose the actual amendment language, thus preserving the concept of separation of powers.

[848] In short, it would return this nation to the Articles of Confederation and its associated amendatory problems. *See supra* text accompanying notes 310-320,334-336,338-341.

[849] Unless Congress exercised its power to remove state legislatures such as it did during the ratification of the 14th Amendment. *See infra* text accompanying notes 917,1006,1053-1073,1077,1079,1089,1094,1188,1239,1333.

[850] As no state's application can be considered greater than any other, it follows that no matter how many times a state applies for a convention, its application can only be considered once in any set of applications. (*See supra* text accompanying note 2; the term "several States" implies no state may be counted twice). However, as the Congress has, by its *laches*, caused several sets of applications to have accumulated, this fact is immaterial at this point.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## DECISION AND RECESSION

### *Introduction*

Two questions remain on Article V and the convention call: decision and recession. On decision, who determines that the two-thirds requirement mandated by Article V has been met?[851] On recession, does a state have the right to recess its application before the two-thirds requirement has been met, after the requirement is met but before Congress has issued the call, or even after Congress has issued the call?

### *The importance of the "little" words*

The relevant part of Article V concerning this question states (in part):

> "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...*when* ratified by the Legislatures of three fourths of the several States*...*"[852]

---

[851] This determination, however is a purely ministerial duty and does not confer upon any person or body the right or ability to establish terms for the call. No person or body may establish arbitrary terms or conditions--not contained within the Constitution--that would thwart the will of the people and the states expressed through their applications. Such power would be contrary to the clear stated intent of the Founding Fathers. (*See supra* text accompanying notes 361,362,435-437,497-518,521). Therefore, only by using a strict numeric count, which is after all the only standard the Constitution requires for a convention to be called, can this ministerial duty be satisfied. (*See supra* text accompanying note 2).

[852] U.S. CONST., art. V. (emphasis added.)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

While political views of proposed amendments have had some bearing on legal issues presented to the courts, some issues stemmed from interpretations of the meaning and intent of the general wording of Article V with respect to ratification as opposed to the language relating to the convention call.

The reason for this difference is apparent: the call is an *immediate action mandated on Congress.* The call is one of the steps of a process designed by the Founders to allow redress even if the national government does not desire redress. Realizing the possibility of this governmental opposition, the Founders used the most direct and strongest word possible[853] so as to ensure compliance and remove all obstinacy on the part of the national government.[854] Ratification, on the other hand, is a choice of the people or, through them, the state legislatures which, absent judicial interpretations or congressional interference, *only* occurs at their consent *whenever* that may be.[855] The Founding Fathers realized that because choice was involved, political considerations would come into play and therefore prescribed no definite limits on the process so as to allow as much considered judgment as was deemed appropriate for the particular question involved.

---

[853] The word "shall" is defined as;

"(a) to express futurity in the first person, and determination, compulsion, obligation, or necessity in the second and third persons; (b) in a question expecting *shall* in the answer; (c) in law and resolutions; as, the fine *shall* not exceed $100; (d)in subordinate clauses introduced by *if, when,* etc. These formal conventions, however, do not reflect prevailing usage, in which, *shall* and *will* are used interchangeably with *will* predominating in all persons." WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY UNABRIDGED 2nd ed., cc 1984. *See* also *supra* text accompanying notes 856,858,860.

[854] *See supra* text accompanying notes 435-437,497-518,521.

[855] The most clear example of this is the 27th Amendment, requiring 203 years to ratify. *See supra* text accompanying notes 489,774,775,784,794;*infra* text accompanying note 917.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Hence, different words were used to describe different portions and purposes of the amendatory process. The intent of the Founding Fathers, therefore, regarding the meaning of these “little” words is critical to the proper interpretation of Article V.

The word “on” and the word “when” do *not* mean *exactly* the same thing, and this careful choice in words by the Founding Fathers helps to explain the difficulties surrounding ratification that do not encumber a convention call. The word “when” is defined as: “the time or moment” or “at the time that; at or just after the moment that.”[856] The word “on” has a much more specific meaning: “after and in consequence of; immediately after and as a result; as *on* the ratification of the treaty the armies were disbanded; he made a profit *on* the sale.”[857]

The clear difference between the two words is that of timeliness and action.[858] The plain meaning of the words “on” and “shall” do not allow Congress the luxury of delay or refusal and clearly reinforce Hamilton’s statements that Congress has no discretion in calling a convention to propose amendments.[859] It mandates immediate action upon Congress.

---

[856] WEBSTER’S NEW TWENTIETH CENTURY DICTIONARY UNABRIDGED 2nd ed., cc 1984.
[857] *Id.*(emphasis in original).
[858] Certainly the word “when” could have been substituted where “on” exists in Article V. The passage could have said, for example, (in part) “The Congress...*when* applied for by the state legislatures shall call a convention...” However, using the word “when” at this point in Article V does allow for possible mischief by Congress. If a state recessed an application, for example, would the moment still exist? Obviously, possibilities such as this would have left the calling of a convention in the hands of Congress to decide. Clearly, the Founding Fathers did not want this, hence the choice of the stronger and more definite word “on”. *See supra* text accompanying notes 363,364,435-437.
[859] See *supra* text accompanying notes 497-513.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

However, Congress has not acted. In the pure linguistic sense this lack of response in calling a convention can only mean Congress has, for its own purposes, mixed the meanings of “on” and “shall” with the more generalized, non-imperative definition of “when” and allowed that definition to become its interpretation of the Article V.[860] Thus, Congress erroneously assumes it can

[860] No matter what dictionary source is used, there is no support for Congress misreading the intent of the Founding Fathers. BLACK’S LAW DICTIONARY (6th ed. 1990), defines the word “on” as:

“Upon; as soon as; near to; along; along side of; adjacent to; contiguous to; at the time of; following up; in.”

The word “when” is defined as:

“At what time; at the time that; at which time; at that time. Gehrung v. Collister, 52 Ohio App. 314, 3 N.E.2d 700, 701, 5 O.O. 195. At, during, or after the time that; at or just after the moment that. In re Morrow’s Will, 41 N.M. 723, 73 P.2nd,130, 1364. In the event that, on condition that, in virtue of the circumstance that. Frequently employed as equivalent to the word “if” in legislative enactments and in common speech.”

The key word in Article V in regards to the convention call is obviously the word “shall” which Black’s defines as:

“As used in statues, contract, or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term “shall” is a word of command, and one which has always or which must be given a *compulsory meaning*; as denoting obligation. The word in ordinary usage means “must” *and is inconsistent with a concept of discretion.* People v. Municipal Court for Los Angeles Judicial Dist., 149 C.A.3d 951, 197 Cal, Rptr. 204,206. *It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced*, particularly if public policy is in favor of this meaning, or *when addressed to public officials*, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears. People v. O’Rourke, 124 Cal. App. 752 13 P.2d 989, 992.” (emphasis added)

However, Black’s continues:

“But it may be construed as merely permissive or directory (as equivalent to “may”), to carry out the legislative intention and in cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense. Wisdom v. Board of Sup’rs of Polk County, 236 Iowa 669, 19 N.W.2d 602, 607, 608.”

This final paragraph of definition provides little benefit to Congress. In the first place, the Founding Fathers clearly intended that “[N]othing in this particular is left to the discretion of that body [Congress]” regarding the calling of the convention (*See supra* text accompanying note 506) thus clearly placing their intended usage of the word “shall” in the command sense. Secondly, the definition clearly says the interpretation of the word “shall” can only be taken to mean “may” when “in cases where no right or benefit to any one depends on its being taken in the imperative sense...”

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

call a convention if it chooses, under what terms its chooses, by whatever regulations it chooses--and not immediately, without interference, and on the application of the states, as the Constitution demands.[861]

These "little" words are not insignificant in the Constitution.[862] As recently as 1997, the Court took note of their importance in discussing the word "in".[863] As it has in the past, the Court ruled the intent of the words must be used in their commonly understood definitions.[864] These "little" words contained in Article V provide for the very essence of federalism---the right of the people either through the states or the national government to peacefully modify their Constitution,[865] as was the clear intent of the Founding Fathers.[866] Congress has no constitutional right to misinterpret these

---

Clearly, it is evident that the right of the people and the states to have a convention to propose amendments and amend the Constitution despite opposition from the national government, thus preserving the federalist system, *depends* on the word being taken in the imperative sense; the Founding Fathers realized this when they discussed and formulated Article V. (See *supra* text accompanying notes 363,364,435-437). The right, as Madison observed, was "transcendent" (see *supra* text accompanying notes 529; *infra* text accompanying note 1659) and therefore demands the word "shall" in this instance be *only* interpreted in the imperative, command sense leaving Congress *no* discretion in calling a convention.

[861] See *supra* text accompanying notes 596-608.

[862] See *supra* text accompanying notes 700-716,1669-1671.

[863] "The CFTC's interpretation violates the ordinary meaning of the key word "in," which is usually thought to be "synonymous with [the] expression 'in regard to,' 'respecting,' [and] 'with respect to.'" BLACK'S LAW DICTIONARY 758 (6th ed. 1990)." Dunn v. Commodity Future Trading Commission et al. 519 U.S. 465 (1997).

[864] See *supra* text accompanying note 551.

[865] Because our basic concept of sovereignty holds that such sovereignty resides with the people, it is self-evident they may exercise that sovereignty in any manner they choose. Therefore, if their state legislatures apply for a convention to consider proposing amendments to the Constitution, it is no less a valid exercise of sovereignty than that of petitioning Congress for similar amendments. For Congress to ignore the applications of the state legislatures not only violates the states' right to apply for a convention but the people's transcendent sovereign power. *See supra* text accompanying note 755.

[866] See *supra* text accompanying notes 363,364,435-437,497-513.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"little" words so as to allow it to prostitute the separate and equal amendatory methods of the Constitution into a single, unconstitutional amendatory system that it exclusively regulates and controls.[867]

*Decision*

The Supreme Court has ruled on the definition of "two-thirds" as it applies to Article V:[868] it refers to members of Congress present and voting for a proposed amendment--assuming a quorum--and not to two-thirds of the total membership of Congress.[869] Thus, a proposed amendment may come from

---

[867] See *supra* text accompanying notes 278,548,551,572,642,784.

[868] See *supra* text accompanying note 273; *see* also State of Rhode Island v. Palmer, 253 U.S. 350 (1920).

[869] While State of Rhode Island v. Palmer, 253 U.S. 350 (1920), only briefly summarized the Supreme Court's position, Missouri Pacific Railway v. Kansas, 248 U.S. 276 (1919) discussed the matter at length. In that decision, it was contended a law banning the transportation of liquor across state lines was void because it had been vetoed by the President of the United States and when returned to Congress did not receive a two-thirds override vote from the Senate, as the full body was not present at the time of the vote. The Court disagreed and in its reasoning discussed Article V and the amendatory process at length.

The Court said:

"The identity between the provision of article 5 of the Constitution, given the power by two-thirds vote to submit amendments, and the requirements we are considering as to the two-thirds vote necessary to override a veto makes the practice as to the one applicable to the other.

"At the first session of the first Congress in 1789 a consideration of the provision authorizing the submission of amendments necessarily arose in the submission by Congress of the First ten amendments to the Constitution embodying a bill of rights. They were all adopted and submitted by each house organized as a legislative body pursuant to the Constitution, by less that the vote which would have been necessary had the constitutional provision been given the significance now attributed to it. Indeed, the resolutions by which the action of the two houses were recorded demonstrate that they were formulated with the purpose of refuting the contention now made.

"'Resolved: That the Senate do concur in the resolve of the House of Representatives on "articles to be proposed to the Legislatures of the states as amendments to the Constitution of the United States," with amendments; two-

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

thirds of the Senators present concurring therein.' 1st Cong. (1st Sess.) September 9, 1789, Senate Journal, 77.

"And the course of action in the House and the record made in that body is shown by a message from the House to the Senate which was spread on the Senate Journal as follows:

"'A message from the House of Representatives, Mr. Beckley, their clerk, brought up to resolve of the House of this date, to agree to the...amendments proposed by the Senate to "Articles of amendments to be proposed to the Legislatures of the several states as amendments to the Constitution of the United States,"...;two-thirds of the members present concurring on each vote...' 1st Cong. (1st Sess.) Sept. 21, 1789, Senate Journal, 83.

"When it is considered that the chairman of the committee in charge of the amendments for the House was Mr. Madison, and that both branches of Congress contained many members who had participated in the deliberations of the convention or in the proceedings which led to the ratification of the Constitution, and that the whole subject was necessarily vividly present in the minds of those who dealt with it, the convincing effect of the action cannot be overstated."

This was the same Mr. Madison who, as the same chairman of the same congressional committee, in May of that same year, prescribed the actions of Congress as to the first convention application by a state in which Mr. Madison made it clear that Congress was to have no discretion in the matter, not even so much as a debate. *See infra* text accompanying note 1655.

The Court then continued:

"The construction which was thus given to the Constitution in dealing with a matter of such vast importance, and which was necessarily sanctioned by the states and all the people, has governed as to the every amendment to the Constitution submitted from that day to this. This is not disputed, and we need not stop to refer to the precedents demonstrating its accuracy. The settled rule, however, was so clearly and aptly stated by the Speaker, Mr. Reed, in the House, on the passage in 1898 of the amendment to the Constitution providing for the election of Senators by vote of the people, that we quote it:

"'The question is one that has been so often decided that it seems hardly necessary to dwell upon it. The provision of the Constitution says "two-thirds of both houses." What constitutes a house? A quorum of the membership, a majority, one-half and one more. That is all that is necessary to constitute a house to do all the business the comes before the House. Among the business that comes before the House is the reconsideration of a bill which has been vetoed by the President, another is a proposed amendment to the Constitution, and the practice is uniform in both cases that if a quorum of the House is present the House is constituted, and *two-thirds of those voting are sufficient in order to accomplish the object*...' Hinds' Precedents of the House of Representatives, pp. 1009-1010." (emphasis added).

Is it not obvious that the states are in fact "voting" when they apply for a convention? After all, an application is nothing more than the formal affirmation of the state to hold a convention. The Constitution mandates that, "two-thirds of those [states] voting are sufficient in order to accomplish the object." What is the object? It is "to *require a Convention on application of 2/3 of the Sts.*" (*See supra* text accompanying notes 437,439). The two-thirds standard has existed since the first session of Congress and has been supported by both Article V and the 14th Amendment. Clearly Congress can not hold the states to a higher standard of amendment procedure than it has held

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress with less than two-thirds of the total number of both houses having approved the measure, and this is considered constitutionally valid.[870]

The Court has also ruled on *when* an amendment is considered ratified and has determined it is a political question left either to Congress[871] or to a designated executive official, upon whom, once having determined the proper number of states has ratified a proposed amendment, it is "conclusive" for that official to proclaim such ratification.[872] In 1922 when the Supreme Court made its decision, the designated executive officer under then current law was the Secretary of State.[873] Later, Congress changed the law and designated the Archivist of the United States as the executive officer charged with determining when a proposed amendment to the Constitution has been ratified.[874]

---

itself, which is a simple two-thirds numeric vote of those voting (assuming a quorum) "in order to accomplish the object."

[870] Just as Congress has done in passing amendments, the Court did not interpret the key word "two-thirds" as anything other than a strictly numeric value for the purposes of the amendment process and did not add provisions or provisos *other* than that which related *directly* to a numeric determination regarding a congressional vote for proposing an amendment. *See supra* text accompanying note 869.

By the same token, therefore, the "two-thirds" applications called for in Article V must be interpreted as strictly a numeric value of applying states and, like Congress in its amendatory votes, can have no provisos or terms (i.e. same subject, contemporaneousness etc.; *see supra* text accompanying notes 614-831,869) added to it before such applications can be considered valid for compelling Congress to call a convention.

[871] The Congress has only certified one amendment to the Constitution as ratified: the 14th Amendment. This process, however, did involve an executive officer who reached a determination regarding ratification of that amendment to which Congress later agreed. *See infra* text accompanying note 917; *see also* Coleman v. Miller, 307 U.S. 433 (1939).

[872] "Official notices to the Secretary of State, duly authenticated, that the Legislatures of the states had ratified a proposed amendment, was conclusive upon him, and his proclamation to the effect that the required number of states had ratified the amendment is conclusive on the courts, so that the validity of the ratifications by the Legislatures cannot be questioned in the courts." Leser v. Garnett, 258 U.S. 130 (1922); *see* also Hawke v. Smith, 253 U.S. 221 (1920), Dillon v. Gloss, 256 U.S. 368, (1921).

[873] *Id.*

[874] *See supra* text accompanying note 917.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

However, under current law, no person or persons is specifically designated to decide when an amendment has been ratified. The law does state the Archivist is to publish such amendments when "adopted" but does not specify who is to provide "official notice" to the Archivist that such ratification has taken place.[875] The law makes it clear that the Archivist may only take action after he has "received" official notice. Therefore, it is clear the Archivist cannot act in an independent manner and instead must wait for "official notice."[876] Interestingly, Congress does not even authorize itself to perform this duty. Likewise, the law does not authorize the Archivist of the United States, nor any other body or official, to record, let alone decide, whether the proper number of applications for a convention to propose amendments has been received, though it does call on the Archivist to record all "bill[s],order[s],resolution[s] or vote[s]."[877] This portion of

---

[875] "Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States." 1 U.S.C.A. Sec. 106b (1997).

[876] *Id.*

[877] "Whenever a bill, order, resolution, or vote of the Senate and House of Representatives, having been approved by the President, or not having been returned by him with his objections, becomes a law or takes effect, it shall forthwith be received by the Archivist of the United States from the President, and whenever a bill, order, resolution, or vote is returned by the President with his objections, and, on being reconsidered, is agreed to be passed, and is approved by two-thirds of both Houses of Congress, and thereby becomes a law or takes effect, it shall be received by the archivist of the Untied States from the President of the Senate, or Speaker of the House of Representatives in whichsoever House it shall last have been so approved, and he shall carefully preserve the originals." 1 U.S.C.A.. Sec. 106a (1997).

While the Archivist is clearly required to record all bills, orders, resolutions, or votes in Congress, the law does not mention a convention call.

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

United States Code, of course, complies with the requirements specified in the Constitution.[878] However, as far as an official notice of ratification of amendments, as well as convention calls, Congress has not provided in United States Code a procedure for either constitutional act,[879] leaving the matter at best ambiguous and vague.

---

Therefore, the Archivist of the United States has no connection whatsoever with the convention to propose amendments or the call process.

Nowhere, in fact, is there any reference in U.S.C.A. to the convention call, *except* in the Constitution itself. Therefore, as the Constitution is supreme law (*see* US CONST. art. VI § 2), and no other laws have been created by Congress regarding this matter, the only law that applies is Article V, which specifies when a certain number of states has applied, a convention must be called by Congress.

[878] "Each house shall keep a journal of its proceedings, and from time to time publish the same..." US CONST., art. I, §5, §§3. "Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it." (US CONST., art. I, §7, §§2.) "Every order, resolution, or vote to which the concurrence of the senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the Untied States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill." (US CONST., art. I, §7, §§3.)

[879] Certainly a simple procedure for Congress to maintain a record of convention applications is clearly implied in Article V, or else how would Congress know when two-thirds of the states had applied for a convention? And in this, Congress clearly has met at least that obligation by continuing the practice established by Madison and recording the applications from the states for a convention as they have come into Congress over the years. (*See supra* text accompanying notes 869; *infra* text accompanying note 1655. *See infra* TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664). However, this simple recording alone does not satisfy the constitutional mandate of Article V: "Congress...*shall*...call a convention." Congress is mandated to take *action* by Article V when the states have applied and therefore is remiss in not providing a legislative method whereby *action* on the applications can be taken.

Clearly, therefore, there must be a simple procedure in law allowing Congress to issue a convention call. This acknowledgment would seem to contradict an earlier portion of this suit (*See supra* text accompanying notes 560-579), but this is not so. So long as Congress remains within the limited constitutional bounds of the definition of the call, its actions are proper and constitutional. (*See supra* text accompanying notes 580-592). There is a critical point here. Congress has the right to establish *legislative*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*procedures* governing its own conduct as to how it will issue a convention call. But this procedure can provide no discretion to Congress regarding the call itself once the proper number of states has applied. Further, this procedure may not place terms or conditions upon the convention, its agenda, its delegates, the states, or those amendments the convention may propose. In no way may Congress attempt to regulate, control, veto or otherwise interfere with the constitutional authority and duties of the convention.

In short, this minuscule constitutional and legislative requirement does not justify congressional attempts to entirely regulate and control every aspect of the convention. (See *supra* text accompanying notes 593-612,620-668). A simple stitch in the fabric of the law to repair a small tear does not authorize Congress to weave an entirely new garment of power, absent any constitutional grant to do so.

The law required for Congress to issue a convention call need be no more complex than the following example:

"The Congress, upon receipt of applications for a convention to propose amendments (or any other term describing such a convention as a state legislature may choose to employ) from at least two-thirds of the several state legislatures shall, within a period not to exceed five days (excluding weekends and holidays), issue a call for the convening of a convention to propose amendments as required by Article V of the United States Constitution.

"A specific section of the Congressional Record shall be set aside to record all past and present convention applications by the states. A table showing when states have applied, the date(s) of application, and the total number of states that have applied shall be continuously kept in this part of the Congressional Record. When Congress shall call a convention, those applications already on file whose filing shall have caused the convention to have been called, shall be noted in a separate table and kept continuously in the Congressional Record as applications having been satisfied.

"Immediately upon the applications of the states reaching the two-thirds numeric requirement of Article V of the United States Constitution, the Speaker of the House shall notify the Congress of the same who shall then issue the call as prescribed in the first section of this law. It will be incumbent on the duties of the Speaker of the House to monitor the Congressional Record and report to Congress at least once a year on the current standing of applications on file requesting a convention to propose amendments.

"It will be incumbent on the Speaker of the House as part of his duties to certify the applications of the states. This shall consist solely and exclusively of obtaining written verification from the Secretary of State of each state that shall make an application which shall attest to the date the application was submitted to Congress and the text of its contents. All such verifications shall be obtained within five working days of the submission of a convention application by a state to Congress and shall continuously be kept in a designated section of the Congressional Record.

"The convention to propose amendments call shall be limited solely and entirely to an acknowledgment of the two-thirds numeric count of the states applying for a convention to propose amendments and shall list the applying states, together with a proposed time and place for said convention to propose amendments to convene.

"Such location shall include an Internet web page that shall serve as a temporary location for the convention until the delegates shall be elected and shall assume the cost of their own Internet page, server and other related

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

It must be assumed Congress knows its constitutional duties.[880] If true, why has Congress not provided itself specific procedures for both ratification and a convention call? Do they perhaps suffer from an institutional memory lapse? Hardly. No, it is far more likely Congress, as has become its usual time-honored tradition, desires to pass the buck to someone else thus avoiding any political disaster that might otherwise befall it. Could it be that Congress, by its *laches* in this matter, intends that a non-elected executive official or an appointed bureaucrat should have the power to determine whether the Constitution of the United States has been ratified or whether a convention to propose amendments call should be issued by Congress? More importantly, *may* Congress delegate such authority? In the area of the ratification, there is little doubt that Congress may, and has, delegated the determination of ratification, but can this also be extended to the convention call?

---

Internet services. Nothing in this law shall be construed as limiting or restricting the several states from establishing a different time and place for the convention to propose amendments to convene on the Internet should the states or their delegates so determine once the call has been issued.

"The Archivist of the United States shall, upon official notice either by Congress or a designated officer of the convention, record and keep all documents, papers, transcripts or any other material related to the convention and shall publish all proposed amendments passed by the convention.

"Congress, upon official receipt of amendments proposed by the convention to propose amendments which shall be transmitted to Congress by a designated officer of the convention, shall, within a period not to exceed ten days from the date of receipt of such amendments, issue and transmit to the several states, a mode of ratification for such amendments, as prescribed by Article V of the United States Constitution, which shall be either ratification by three-fourths of the legislatures of the several states or conventions in three-fourths thereof and, upon receipt of the proper number of states ratifying, shall notify the Archivist of the United States of the ratification of such amendments and cause and compel the same to be certified as part of the United States Constitution."

[880] *See supra* text accompanying note 877.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Can an executive official have any discretionary role in the calling of a convention, and if such a role exists, is it constitutional to allow this discretion to prevent a convention from being called?

Fortunately, the Supreme Court addressed this issue in one of its earliest rulings, and it determined the President "has nothing to do with the proposition, or adoption, of amendments to the Constitution."[881] The Court said:

> "And in the case of amendments is evidently a substantive act, unconnected with the ordinary business of legislation, and not within the policy, or terms, of investing the President with a qualified negative on the acts and resolutions of Congress."[882]

Clearly, as the Supreme Court has ruled the President of the United States is to be "unconnected" with amending the Constitution,[883] it is clear that any subservient member of the executive branch, such as the Secretary of State, must also be excluded from the amendatory process in any substantive

---

[881] Hollingsworth v. Virginia, 3 U.S. 378, (1798).

[882] *Id.*

[883] Obviously, this ruling must be interpreted as including both Congress and the convention as both deal with the amendatory process. While a less studied reading might interpret the ruling only to mean Congress, it must be remembered the Court was addressing *veto* power over legislation by the president and acknowledging the fact that the amendatory procedure was different than "ordinary business of *legislation*." The president, like Congress, can only exercise those powers given to him in the Constitution. Nowhere does that document provide or even imply that the President of the United States is in any way connected with the convention to propose amendments and, therefore, his veto power is confined strictly to the refutation of *congressional* action as this is the only event in which the president is authorized by the Constitution to intervene with such power. The Court did not mention the convention simply because veto power never was granted to the president in the first place.

Further, as the Court made no distinction between the two methods of amendment proposal, it clear that "amendments" [were] a substantive act", not the method of proposal, and thus, whether they originated from Congress or a convention, they were immune from presidential veto.

In any event, the question is entirely silenced by the Court's all-encompassing edict that the president "has nothing to do with the proposition, or adoption, of amendments to the Constitution."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

manner,[884] and such exclusion would certainly include the bureaucracy, i.e., the Archivist of the United States.[885]

---

[884] This means the official or bureaucrat, therefore, can have no more than a minuscule role in which there is provided no discretion in the matter, i.e., a clerical role. *See supra* text accompanying notes 871-873,875,877,879;*infra* text accompanying note 885.

[885] In 1992, the OLC report (see *supra* text, accompanying notes 778-779,781,784) argued that the executive officer charged with the function of certifying--then the Archivist--has only the ministerial duty of counting the notifications sent to him. Separation of powers and federalism concerns also counseled against a congressional role, and past practice, in which all but the 14th Amendment were certified by an executive officer, was noted as supporting a decision against a congressional role.(16 Ops. Of the Office of Legal Coun. 121-126 (1992)(prelim. pr.).

If this rule is adopted that the appropriate executive official has the sole responsibility, it would appear that an official—-then the Archivist--would have no discretion but to certify once he receives state notification. (United States ex rel. Widenmann v. Colby, 265 F. 998, 999 (D.C. Circ. 1920), affd. mem. 257 U.S. 619 (1921); United States v. Sitka, 666 F. Supp. 19,22 (D. Conn. 1987), affd., 845 F.2nd 43 (2d Circ.), cert. Den., 488 U.S. 827 (1988). See also 96 Cong. Rec. 3250 (Message from President Truman accompanying Reorg. Plan No. 20 of 1950); 16 Ops. Of the Office of Legal Coun. 102, 117 (1992) (prelim. pr.).

Under the old Administrative Procedures Act, the official could request the Department of Justice for a legal opinion on some issue, such as the validity of rescissions. That course has been advocated by the executive branch, naturally, but it is one a little difficult to square with the ministerial responsibility of the Archivist. (OLC report, 116-118.) Thus, OLC said, the action "clearly requires that, before performing this ministerial function, the Archivist must determine whether he has received 'official notice' that an amendment has been adopt 'according to the provisions of the Constitution.' This is the question of law that the Archivist may have properly submitted 'to the Attorney General for resolution.'"(*Id.* at 118) But if his duty is "ministerial," it would appear the Archivist may only officially notice the receipt of a state resolution. If he may, in consultation with the Attorney General, determine whether the resolution is valid, that is considerably more than a "ministerial" function.

In any event, there would seem to be no support for a political question precluding judicial review under these circumstances. Whether the Archivist certifies on the mere receipt of a ratification resolution or does so only after ascertaining the resolution's validity, it would appear it is action subject to judicial review. The notion of leaving to a non-elected bureaucrat the decision as to whether or not the Constitution of the United States is amended or whether a convention to propose amendments should be called is ludicrous on it face and deserves no further comment.

Ultimately, current law has rendered this entire matter moot as it is clear the Archivist is given no discretionary powers in the matter and can only respond after receiving "official notice". *See supra* text accompanying note 875.

In any event, while ratification issues may arise as a result of executive involvement, no such obstacle can possibly stand regarding applications for a convention. "*Congress...shall...call on the application...*"

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Simply put, the issue of whether a sufficient number of convention applications exists to satisfy the numeric count requirement of the Constitution cannot be left to the discretion of an executive official or bureaucrat. Congress is specifically named in the Constitution to issue a call for a convention to propose amendments. Congress cannot delegate that constitutional authority to any other branch of government,[886] any more than it can ignore this *specified* constitutional duty.[887] Congress' sole duty is to count the applications,[888] and if a sufficient number exists to cross the two-

---

precludes any executive involvement or bureaucratic discretion and would be a direct violation of the principle clearly expressed in Hollingsworth v. Virginia, 3 U.S. 378 (1798). "The approval of the President is not necessary for a proposed amendment." (*Id.*).

[886] As might be interpreted under the old Administrative Procedures Act. *See supra* text accompanying note 885.

[887] The failure of Congress to provide a minuscule legal procedure by which it would issue a convention call or establish a clear procedure for the ratification of the convention's amendments is just as unconstitutional as is attempting to regulate the convention beyond the obvious intent of the Founding Fathers. *See supra* text accompanying note 879.

It would seem at first glance that this argument *for* a law by Congress runs counter to all thus presented in this suit. Such is not the case. It is not that this suit maintains Congress cannot pass a law regarding the convention call, rather it is with the extent and effect of proposed laws thus formulated, together with the congressional refusal despite a constitutional mandate to call a convention that this suit takes issue.

Simply put, this suit holds that *some statutory* law must certainly exist in order for Congress to carry out its minuscule duty as specified in the Constitution, but that this constitutional specification does not permit Congress to expand its power beyond that which was intended: a simple call for a convention to propose amendments absent any national government interference or regulation.

[888] Solely for the purposes of this suit, it is intrinsically assumed without evidential proof: (1) that members of Congress can count and perform basic fractional math so as to arrive at the conclusion that fifty states have applied, (2) that this mathematical number exceeds the two-thirds numeric count application requirement established by Article V of the Constitution, and (3) therefore a convention to propose amendments must be called.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

thirds threshold, as it does at present, then Congress must issue a call for a convention.[889] No other option exists in the Constitution.

*Recession*

[889] Despite the minuscule provisions suggested above for legislative action in the convention call by Congress, (see supra text accompanying notes 879,887) the call itself can in no way be considered legislative action. Indeed, the call must issued by Congress without the consent or review of the President of the United States (see supra text accompanying notes 560-579), as to do otherwise would violate the separation of powers and grant discretion to Congress in that, should the president veto the action of Congress, Congress would have discretion in its reconsideration of the matter. (See supra text accompanying note 878). Therefore, a legislative act such as is found in United States Code is not constitutional as it requires presidential approval before taking effect.

The convention call is unique in that it does not allow nor does it require any input from the president yet it has important constitutional consequences. It is a unique legal device, exclusive to the amendatory procedure, found only in the Constitution and related exclusively to that procedure. Therefore, while the Constitution does authorize Congress to perform this minuscule, yet vital, constitutional duty, the Constitution withholds the usual legislative powers of Congress in performing it. Thus, such a matter must be entered as a separate legal action of Congress, removed from any legislative record such as United States Code to avoid any implication of Congress possessing any legislative power in the matter.

Because this power of the national legislature is absent either presidential or judicial review (In the case of judicial review the Court does not possess the power to *prevent* the call once the states have applied, but does possess the power to *compel* a call if the states have applied and Congress refuses to obey the Constitution. *See supra* text accompanying notes 278,281,286-288,291-293.), the call must be extremely narrow and focused on the minuscule roll prescribed in the Constitution. The reason for this is obvious. On the application of the states, Congress must act, and no option or discretion by Congress is provided or was intended. If the expressed agency of government is so clearly limited, restrained and compelled, then all other branches of the government must be as equally bound.

Therefore, the actual convention call should as simple and direct as possible and need be no more complex than this example:

"The Congress of the United States, having received applications from at least two-thirds of the several states applying for a convention to propose amendments as prescribed in Article 5 of the United States Constitution, hereby issues a call to the several states for a convention to propose amendments. The Congress suggests the following time and place for said convention to convene on the Internet, but acknowledges the states may, at their discretion, alter either time or place for the convention. Such time and place shall be... The states applying for the convention are as follows..."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As previously discussed, the immediate action demanded by the use of the word “on” as it relates to Article V of the United States Constitution, is much less definitive for the word “when” as it relates to ratification.[890] It simply refers to that “time or moment”.[891] Thus, the word “when” is much more prone to interpretative mischief.[892]

In the past, opponents endeavoring to prevent the adoption of a particular amendment to the Constitution have used this less definite interpretation as a basis to raise questions to the Court either concerning procedural issues of its adoption, such as the number of members in Congress voting for its adoption, or to maintain the right of states to recess or change their previously filed ratifications in order to have the Court overturn the adoption of the amendment.[893] The Court has refused to do so. In some suits the Court has ruled the objections are political in nature and thus not judicable.[894] But even where the Court has heard a specific objection, in no case has it ever invalidated a constitutional amendment. Meanwhile, lower federal courts have, on at least one occasion, invalidated the ratification of

---

[890] *See supra* text accompanying notes 852-867.
[891] *Id.*
[892] *See supra* text accompanying notes 856,860.
[893] *See* Hollingsworth v. Virginia, 3 U.S. 378 (1798), Missouri Pacific Railway Co. v. Kansas, 248 U.S. 276 (1919), State of Rhode Island v. Palmer, 253 U.S. 350 (1920), Hawke v. Smith, 253 U.S. 221 (1920), Dillon v. Gloss, 256 U.S. 368 (1921), Leser v. Garnett, 258 U.S. 130 (1922), Coleman, v. Miller, 307 U.S. 433 (1939).
[894] Coleman v. Miller, 307 U.S. 433 (1939).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

a proposed amendment based on the specific issue that time had expired for ratification.[895]

The Supreme Court has in one suit held that it was up to Congress to determine whether or not recessions by the states were valid.[896] In that suit, the Court said:

> "We think that in accordance with this historic precedent the question of the efficacy of ratifications by the states legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment."[897]

On its face, it would appear the Court had answered the question, leaving the entire issue of recession of ratification votes by the states, and--some would argue--the question of convention applications completely in the hands of Congress to decide at its discretion.[898] Therefore, if

---

[895] The issue of states revoking ratification might have come to a final conclusion had time literally not run out. In the case of the proposed Equal Rights Amendment, Congress sought to extend the time limit necessary for ratification after it had first established a seven year limit. (See Equal Rights Amendment Extension, Hearings before the Senate Judiciary Subcommittee on the Constitution, 95th Congress, 2d sess. (1978); Equal Rights Amendment Extension, Hearings before the House Judiciary Subcommittee on Civil and Constitutional Rights, 95th Congress, 1st/2nd sess. (1977-78)). Congress passed a three year extension of the ratification process. (See H.J. Res. 638, 95th Congress, 2nd sess. (1978); 92 Stat. 3799.) Litigation ensured and a federal district court, finding the issue to be justiciable, held that Congress did not have the power to extend, but before the Supreme Court could review the decision the extended time period expired and mooted the matter. (See Idaho v. Freeman, 529 F. Supp. 1107 (D.C.D. Idaho, 1981) prob. juris. noted, 455 U.S. 918 (1982), vacated and remanded to dismiss, 459 U.S. 809 (1982).

Also much disputed during consideration of the Equal Rights Amendment was the question whether once a state had ratified, could it thereafter withdraw or rescind its ratification, precluding Congress from counting that state toward completion of ratification. Four States (Nebraska, Tennessee, Idaho, South Dakota) had rescinded their ratifications, and a fifth had declared that its ratification would be void unless the amendment was ratified within the original time limit (South Dakota). Another state's recession was vetoed by the lieutenant governor of that state (Kentucky). This question too was left unanswered by the expiration of the time limit of the amendment.

[896] Coleman v. Miller, 307 U.S. 433 (1939).

[897] *Id.*

[898] *See supra* text accompanying notes 756.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

applications are to be treated the same as ratification votes by the states, the Court has ruled conclusively that the matter is entirely up to Congress to decide when and if a convention to propose amendments is to be called.

However, there are several problems with this presumption. In the first place, it was the clear intent of the Founding Fathers that Congress should have no discretion in the calling of a convention to propose amendments.[899] Certainly, if Congress is provided the means whereby it becomes the final arbiter in such matters, this is a clear violation of the Framers' intent.[900] In the second place, the Court was divided on the suit, i.e., the decision was only rendered by four justices, the rest of the Court concurring in the decision but "for somewhat different reasons."[901] Therefore, it can be held that *Coleman* was nothing more than *dicta*, and the court actually never reached a decision.[902]

Most important, however, was the basis of the political question the Court cited in *Coleman.* Obviously, a decision based on an event can be no more conclusive than the event itself. In *Coleman*, the Court specifically referred to the ratification of the 14th Amendment to the Constitution in which five states either voted not to ratify or later changed their minds after they had ratified as justifying Congress being the ultimate judge in such matters.[903]

---

[899] *See supra* text accompanying notes 497-513.
[900] *See supra* text accompanying notes 435-439,1655.
[901] *Id.*
[902] However, the decision reached in *Coleman* was reached by a concurrence, and thus it is possible to argue that all arguments used by the Court to arrive at its decision must be valid. *See infra* text accompanying notes 1053-1108.
[903] *See infra* text accompanying note 917.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In the ratification of the 14th Amendment, Congress allowed that *recessions by two northern states that had previously voted in favor of ratification of the 14th Amendment were invalid, while it simultaneously held that three southern states that voted against ratification of the 14th Amendment, then voted in favor of ratification (after their state legislatures were removed by the national government and replaced by new members of Congress' own choosing), were valid.*[904] Thus, in the north, Congress ruled the states *could not* recess their ratifications after the state had voted, but in the south, the Congress held the states *could* recess their ratification vote after the state had voted. The political decision of Congress therefore was the states could *and* could not recess their ratification vote once they had voted, thus leaving the question of ratification recession, i.e., whether or not a state recession of a ratification vote is valid, a definite maybe.[905] The only thing the 14th Amendment ratification did establish was that the national government could refute ratifications of the states by armed overthrow of the state legislatures, based totally on the arbitrary and capricious political whim of Congress. It is most unlikely the Founding Fathers, under the guise of

[904] *Id.*

[905] It is probably good for the convention question that the 14th Amendment, despite any ratification issues surrounding it, did become part of the Constitution. Under that amendment, recession of ratification votes or convention applications must have "equal protection under the law" which means at the minimum that a single standard must apply. As the Court in *Coleman* allowed for two diametrically opposed standards to apply in its example, i.e., the states could and could not recess applications, it is clear that such a double standard is not valid under the doctrine of equal protection as provided by the 14th Amendment.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

choosing a mode of ratification, ever intended to grant such arbitrary powers to Congress.[906]

Thus, while the question of state recession of ratification votes has been presented to the Supreme Court, no definitive decision has ever been reached either by the courts or the Congress. In recent years, the Supreme Court has ruled on states recessing statutory law agreements with the federal government, however. The Court held that once a state gives its permission in a Federal matter, it cannot rescind that position, as the role assigned to the state has been "exhausted."[907]

Does this concept of "exhaustion" apply to the application procedure for a convention to propose amendments? It would appear so. *North Dakota v. United States*[908] cited two reasons under which the states could revoke or withdraw "approval". First, if the statute in question "authorized the withdrawal of approval previously given," and second, if the "legislative history suggest[ed] that Congress intended to permit Governors to revoke their consent." In other words, revocation is valid if there is specific Federal

---

[906] *See supra* text accompanying notes 435-439.
[907] "The consent required...cannot be revoked at the will of an incumbent Governor... Nothing in the statute authorized the withdrawal of approval previously given. Nor does...legislative history suggest that Congress intended to permit Governors to revoke their consent." "Since [the legislation] does not permit North Dakota to revoke its consent outright, the State may not revoke its consent based on noncompliance with the conditions set forth in the 1977 legislation." "North Dakota's central argument is that the gubernatorial consent...once given, may be revoked by the State at will." "The United States takes the position that...once consent has been given, "the role assigned to the state by Congress has been exhausted." North Dakota v. United States, 460 U.S. 300 (1983).
[908] 460 U.S. 300 (1983).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

language allowing recession or if the authors of the legislation intended to grant states the right of recession.

Neither reason for granting recession cited by the Court seems to apply to convention to propose amendments applications. First, there is no specific language in the Constitution allowing for recession of applications.[909] As the Founding Fathers went through several drafts regarding amending the Constitution, it is logical to suggest that should the Founding Fathers have wished states to have the power of recession, they would have written it into the Constitution. Nothing in the record suggests they did. It follows then that the applications for a convention must be viewed in the same manner. Unless there is specific language in the Constitution or the Framers intended that the states have the right to rescind, recession by the states of convention to propose amendments applications is unconstitutional. The role assigned to the states by the Constitution for applying for a convention is "exhausted" once the state has filed, and the state cannot rescind its application.[910] Congress then calls the convention which fulfills the applications and thus voids them. Then the state is free to apply or not apply for a future convention if it wishes.

---

[909] *See supra* text accompanying note 2. *See also* Hawke v. Smith, 253 U.S. 221 (1920); "It is not the function of courts or legislative bodies, national or state, to alter the [amendatory] method which the Constitutional has fixed."

[910] The same concept applies to the ordinary citizen's vote and can be used as an analogous example. The citizen has all the time he requires *before* entering the ballot box to choose. Even during the vote, he may take a reasonable time in casting his ballot. But, once the vote is made and placed in the ballot box, he may not rescind it.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

There are other problems with the concept of allowing state recessions of convention applications beyond granting immense congressional power in the matter. A withdrawal of an application by a state after the necessary two-thirds requirement is reached cannot be considered effective or constitutional because once two-thirds of the states have applied, the terms of Article V oblige Congress to call a convention,[911] and no subsequent act by a state may vitiate that obligation.[912]

Permitting the states to rescind their applications after two-thirds of them have applied for a convention creates the disastrous effect of granting each state a veto over a constitutionally mandated congressional action in addition to a veto over the sovereign state right of application. Both actions are clearly unconstitutional.[913]

Neither the states nor Congress has the right to veto the Constitution, either by overstepping the bounds of authority granted them by the Constitution by vetoing the authority granted to the other, or by ignoring its mandates. Because the two-thirds threshold required by the Constitution has been met and was met before the filing of any recessions,[914] any application language containing recession or “sunset” clauses must be deemed

---

[911] “Congress...on...application of the states...shall call a convention...” U.S. CONST., art. V.
[912] “This Constitution...shall be the supreme law of the land...anything in the constitution or laws of any state to the contrary notwithstanding.” U.S. CONST., art. VI, § 2.
[913] *Id. See also infra* text accompanying note 915.
[914] *See infra* TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664; TABLE 3—STATE RECESSIONS, p.678.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

unconstitutional. Thus, all applications on record remain in full force until Congress issues a convention call, thus discharging them.

Not even before reaching the two-thirds threshold does a state have the ability to rescind its application or to include a time limit on the application's effectiveness.[915] In the present situation, the question of

[915] If this were allowed, it would permit a single state applying for a convention to decide the issue of the convening of a convention to propose amendments by withdrawing its application just as the two-thirds requirement was reached, thus permitting that state to "veto" the matter. Despite the fact the application comes from the state, it must be remembered the convention to propose amendments is *federal*, not state, in nature. Thus, this is not a *state* action in the usual sense but is a federal action by the state permitted it by the Constitution. As such, the state's application cannot be viewed as a state matter. The application action, once filed, passes from state to federal, and thus matters such as equal sovereignty between the states come into question that simply do not exist within a single state. *See infra* text accompanying notes 1418-1510.

The convention to propose amendments only deals with amendments to the federal Constitution. The Constitution is supreme over that of any single state. Thus, the Constitution's sovereign authority is supreme to that of any single state.

As observed by the Supreme Court:

"The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable that it does not. Those powers are not given by the people of a single State. They are given by the people of the United States, to a government whose laws, made in pursuance of the constitution, are declared to be supreme. *Consequently, the people of a single State cannot confer a sovereignty which will extend over them*." McCulloch v. Maryland, 17 U.S. 316 (1819) (emphasis added).

Thus, if a state attempts to veto a convention call through the removal of its application, it is attempting to extend its sovereignty over other states and the federal government, which the Court has made clear it cannot do.

If a time limit on applications is permitted, it is possible a state, for whatever *political* reason, could have its application read, "This application shall no longer be effective on the moment when two-thirds of the states shall apply for a convention." As to the reason for such unusual writing, it could be the motivation of the state to merely *act* as if it was in favor of a particular political position when in fact it was not. However such political expediencies should not be the basis upon which such an important constitutional issue as a convention should be decided.

Of course it can be argued there are other states available that can provide the necessary two-thirds requirement, and therefore a state, once it has submitted, can withdraw its application because other states are available.

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

recessing a state's application is moot because the threshold was met before any recessions were introduced.[916]

While the recession of applications has never been addressed by the Court or Congress, the question of recession of ratifications by the states has. The essential logic of Congress and the courts in the area of state recession of ratification seems to be a one-way street, i.e., once a state consents to the ratification of an amendment, it may not rescind that consent. This standard, however, is not without questions.[917] If a ratification vote of

---

This position ignores the central argument against it, that of permitting one sovereign state a veto authority over another sovereign state in which both possess equal authority under the Constitution. It would be the same as permitting one state to approve the ratification vote of another state or allowing that state to approve actions of the second state's legislature before they took effect.

Allowing a state to withdraw its application, no matter when that state originally applied, gives a veto over the other states that do wish a convention. This is a clear violation of the concept expressed by the Supreme Court in several of its decisions in which the Court made it clear that the states, whenever admitted, possess all the powers granted to states under the Constitution and that these powers must be equal in all states.

"[The] right of...every...new state to exercise all the powers of government, which belong to and may be exercised by the original states of the Union, must be admitted, and remain unquestioned." Pollard v. Hagan, 44 U.S. 212 (1845).

The Court has further ruled that:

"Equality of constitutional right and power is the condition of all the States of the Union, old and new." Escanaba Co. v. Chicago, 107 U.S. 678 (1883).

Any such action by a state would necessarily have to be based on state law or state constitutional authority. However, as the court ruled in Hawke v. Smith, no such state authority exists; in fact, it is clearly unconstitutional. *See supra* text accompanying note 909;*infra* text accompanying notes 1148-1207.

Further, such an action by a state as rescinding its application would be a violation of the right of the people to alter or abolish. *See infra* text accompanying notes 991-1009,1136-1146.

[916] *See infra* TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664; TABLE 3—STATE RECESSIONS, p.678.

[917] In the past, the states have withdrawn their ratifications only to have these ignored by the national government. The 14th Amendment was ratified by the legislatures of Ohio and New Jersey, both of which subsequently passed rescinding resolutions. Contemporaneously, the legislatures of Georgia, North

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the state can suffer no recession once made, it would appear that the convention application, which allows no option on the part of Congress, must be held to this same minimum standard.

As to application recessions, as the record demonstrates, the minimum number of states required to apply for a convention had applied *previous to any* recessions by the states being filed.[918] The Constitution is emphatic. Congress must call "on the application of two-thirds of the states." If

---

Carolina and South Carolina rejected ratification resolutions. Pursuant to the Act of March 2, 1867 (14 Stat. 428) the governments of those states were reconstituted, and the new legislatures ratified. Thus, there were presented both the question of the validity of a withdrawal and the question of the validity of a ratification following rejection. Congress requested the Secretary of State, who was then responsible for receiving notices of ratification and proclaiming adoption, to report on the number of states ratifying the proposal, and the Secretary's response specifically noted the actions of the Ohio and New Jersey legislatures. The Secretary then issued a proclamation reciting that 29 states, including the two that had rescinded and the three which had ratified after first rejecting, had ratified, which was one more than the necessary three-fourths. He noted the attempted withdrawal of Ohio and New Jersey and observed that it was doubtful whether such attempts were effectual in withdrawing consent.(15 Stat. 706,707) He therefore certified the amendment to be in force if the rescissions by Ohio and New Jersey were invalid. The next day Congress adopted a resolution listing all 29 states, including Ohio and New Jersey, as having ratified and concluded that the ratification process was completed.(15 Stat. 709) The Secretary of State then proclaimed the amendment as part of the Constitution. These actions by Congress have raised questions of the validity of the 14th Amendment and congressional authority in the amendatory process. *See supra* text accompanying note 849; *infra* text accompanying notes 1006,1053-1073,1077,1079,1089,1094,1188,1239,1333.

A second more modern example is the ratification of the 27th Amendment to the Constitution. In 1992, the Archivist of the United States proclaimed the 27th Amendment ratified a day before both Houses of Congress adopted resolutions accepting ratification. (F.R. Doc. 92-11951, 57 Fed. Reg. 21187; 138 Cong. Rec. (daily ed.) S 6948-49, H 3505-06). This completed a ratification vote that spanned 203 years. While Congress did not remove any state legislatures during the process of ratification, it did, by its actions, recognize ratification votes that had taken place several years before, thus confirming the concept of a "one-way street" in ratification. *See supra* text accompanying note 1088.

[918] *See infra* TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664; TABLE 3—STATE RECESSIONS, p.678.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress does not act, this inaction does not nullify the applications. They remain in force, and thus any recessions under any circumstances are invalid until a convention is called.[919] Therefore, all convention applications on file with Congress are valid, contemporary and in full effect until Congress calls a convention.[920]

---

[919] Only Louisiana has attempted to rescind all its applications with a 1992 notice. (*Id.*) If the concept of states having the right to recess applications is accepted, then it must be based on the same concept expressed by the Court regarding the definition of the word "two-thirds" in the Constitution. (*See supra* text accompanying note 869). This would mean that Louisiana is not "present". Thus, this would reduce the total number of states applying to 49 and the two-thirds mark to thirty-three states rather than thirty-four states. In any event, this still leaves forty-nine states still applying for a convention, a number far in excess of the minimum under either standard. However, it is clear that only one interpretation of count is correct. *See infra* text accompanying note 920.

[920] As noted earlier, "while certain characteristics of ratification and application can be interpreted in a simultaneous manner, this interpretation cannot be ubiquitous." *See supra* text accompanying note 700-716.

Another example of this is in the interpretation of the word "two-thirds". The Court, in allowing less than the full number of Congress to be a valid number for that body to propose amendment, (*See* Missouri Pacific Railway Co. v. Kansas, 248 U.S. 276 (1919); State of Rhode Island v. Palmer, 253 U.S. 350 (1920);*supra text* accompanying notes 273,570,734,869.) apparently opened the door to an interesting situation concerning convention applications. By allowing that it does not require an actual two-thirds count of both houses, but rather *two-thirds of those participating in the meeting* (assuming a quorum), the Court left the door open to the concept that *less than two-thirds of the states applying actually are required for a convention to convene*. The logic is simple for this position. If Congress can legally propose an amendment based on a sliding scale of numbers, i.e., that a small minority of membership could in fact propose an amendment, then it follows under the equal protection clause of the 14th Amendment that such a power must exist for the states in their application procedure.

Using this sliding scale, it is mathematically possible to achieve the proposal of an amendment in Congress with only 181 members voting: thirty-five in the Senate and 146 in the House. While the minimum number of states needed in the House is almost impossible to predict, (though it can be estimated that only a few large states such as California, New York and Texas would certainly be sufficient) it is clear that only eighteen states are required in the Senate to agree to an amendment proposal in order for it to be sent to the states for ratification. This calculates out to 36 percent of the states, or slightly over *one-third*.

Obviously, under this interpretation, there is a problem as a minority of states (the same 36 percent) could cause a convention to occur when two-thirds of the states have not actually applied. How is the matter to be

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

resolved? In the application sense, there is no such thing as a “quorum” of states. Obviously, for the purposes of application, all states are always “present”; thus any quorum must be based on the relationship of applying states to the total number of states.

The answer lies in the strict numeric count interpretation of the meaning of the word “two-thirds” as discussed by Hamilton. (*See supra* text accompanying notes 505-513.) Only under this rule can the constitutional intent of the Framers be preserved and thus, any subterfuge prevented.

The two-thirds numeric count standard, as Madison noted, “guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to *originate* the *amendment* of errors, as they may be pointed out by the experience on side, or on the other.” FEDERALIST No. 43.

Further, the fact that applications cannot be recessed, once applied for by the states, further buttresses against this danger; it removes any concept of quorum from the equation. If a state can withdraw its application, then the remainder of the states might otherwise argue that the state is not “participating” in the convention application process and, like a member of Congress not present at an amendment proposal vote, can not effect outcome by his absence. Therefore, the state does not “count,” so the two-thirds number needed is lower than what it would be if the state were “counted.” Using this logic, it is possible that a single state could cause a convention to be held if no other state has applied.

This argument, of course, is entirely false as it clearly violates the equal sovereignty afforded all states. Simply put, because a state does not participate in applying for a convention to propose amendments does not mean that the two-thirds requirement of the Constitution can be ignored. Article V clearly calls for a convention “on the Application of the Legislatures of two thirds of the *several States*...” There is no exemption clause in Article V, either expressed or implied, that permits any state to be exempted from the term “several states.” However, the implication is clear that the term “several states” includes all the states in the Union, and therefore the two-thirds calculation must be based on a fractional calculation of this total.

In summary, therefore, there is an important difference in the meaning of the word “two-thirds” in regard to Congress and the convention to propose amendments. In Congress, the two-thirds requirement is a sliding scale based on members present at the time of vote; in the application process, the two-thirds requirement is an absolute numeric total based on total number of states currently in the Union. However, in both cases, a pure number will trigger the event in question. But, in the actual convention to propose amendments, the question of quorum is germane where the quorum rule must be observed. *See infra* text accompanying note 1344,1418-1510.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## THE TREATY OF PARIS AND THE CONVENTION

### INTRODUCTION

Following the end of the Revolutionary War, through a series of agreements[921] culminating in the signing of the Treaty of Paris,[922] Great Britain "acknowledged"[923] the independence and sovereignty of the American colonies.

Ordinarily, this should be the alpha and omega of the matter. However, the Treaty of Paris appears to give sovereignty either expressly or by implication to several political entities. By definition, sovereignty can only belong to one supreme political body within a nation.[924] So, the question becomes to whom was this sovereignty ultimately acknowledged?

---

[921] Preliminary Articles of Peace, November 30, 1782; Declarations of Suspension of Arms and Cessation of Hostilities, January 20, 1783; Proclamation Declaring the Cessation of Arms, April 11, 1783.

[922] September 3, 1783.

[923] The full text of Article I of the Treaty of Paris reads as follows:

"His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free sovereign and independent states, that he treats with them as such, and for himself, his heirs, and successors, relinquishes all claims to the government, propriety, and territorial rights of the same and every part thereof." Treaty of Peace with Great Britain, Sept. 3, 1783, (Malloy, ed. *Treaties, Conventions, etc.,* Vol. I, p. 586 ff.) hereafter referred to as Treaty of Paris, (1783).

[924] *See infra* text accompanying note 939.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Treaty of Paris names "the said United States"[925] which could be argued was no more than a collective name for the colonies.[926] As of the signing of the treaty, "the said United States" consisted of the Congress of the United States, created under the Articles of Confederation.[927] There were no executive or judicial branches of government in the Articles of Confederation; all national power resided with Congress.[928]

Certain powers were designated to Congress, among which were the rights to approve any treaty made by a state and to negotiate treaties.[929] Further, the Articles of Confederation *specifically* forbade any state in the United

---

[925] "United States. This term has several meanings. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution. Hooven & Allison Co., v. Evatt, U.S. Ohio, 324 U.S. 652, 65 S.Ct. 870, 880, 89 L.Ed. 1252." BLACK'S LAW DICTIONARY, 6th ed. (1990).

[926] "The Stile of this Confederacy shall be "The United States of America." Art. I, Articles of Confederation (1781).

"And that persons of any other description shall have free liberty to go to any part or parts of any of the *thirteen United States*..." Art. V, Treaty of Paris, (1783). (emphasis added).

It is clear from these citings that: (1) the *United States*, from the point of view of the Americans, was no more than a name that the thirteen original colonies called themselves when working collectively, (2) that the British understood and accepted this fact, (3) it was as proper to refer to "the United States" indicating a single body, as it was to call them "the thirteen United States" indicating multiple bodies. Thus, there can be no conclusion drawn as to whether "the United States" received sovereignty simply by reading "the United States" in Article I as that name referred both to the nation and the individual states.

[927] "For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to meet in Congress..." Art. V, *Id.*

[928] A national judicial system, such as it was, made Congress "the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States boundary, jurisdiction or any cause whatever..." Art. IX, *Id.*

[929] "The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war...of sending and receiving ambassadors---entering into treaties and alliances..." Art. IX, *Id.*;


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

States “from entering into any...treaty with any King...”[930] This expressed power of Congress was clearly reinforced under Article II of the Articles of Confederation.[931]

As the Articles of Confederation provided that no state could enter into a treaty with a king, it could be argued that Congress, as the sole national power of the United States, was the only political entity that could receive sovereignty. Is this a correct point of view?

After all, in the same sentence acknowledging United States sovereignty, the treaty also acknowledged the sovereignty of the thirteen original colonies, going so far as to name each colony separately as being “free, sovereign and independent states.”[932] There appears to be a conflict between the Treaty of Paris and the Articles of Confederation. On the one hand, the treaty “sends” sovereignty to the states, but the Articles of Confederation prevent the states from “receiving” it.[933] There is no question sovereignty was conferred by the Treaty of Paris. But to whom? The issue seems murky at best. Was it conferred on the Congress, “the said United States”, the thirteen enumerated states, the thirteen United States or on yet another unnamed political entity?

---

[930] “No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or *treaty with any King*, Prince or State...” Art. VI, *Id.*

[931] “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation *expressly* delegated to the United States, in Congress assembled.” Art. II, *Id.* (emphasis added).

[932] *See supra* text accompanying note 923.

[933] *See supra* text accompanying notes 929,930.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The answer to this question is critical. If sovereignty resides in the Congress of the United States, and it would appear at first glance based congressional actions regarding the ratification of the 14th Amendment[934] together with its refusal to call a convention despite mandated constitutional decree,[935] that this may be the case, then the thrust of this suit must fail.[936] But if sovereignty resides elsewhere, and in such a manner and form as to preclude and exclude congressional dominance of that sovereignty, thus making Congress subservient to that sovereignty, and if such sovereignty exists in such a form and manner as to control or otherwise direct the Congress of the United States, then the thrust of this suit must succeed. Thus, the Treaty of Paris' relationship to the Constitution and, in turn, its amendatory procedure require close scrutiny; whoever possesses the sovereignty created by the Treaty of Paris determines who can exercise it.

## DEFINITIONS

We begin by defining those important terms related to the Treaty of Paris.

### *What is Independence?*

[934] *See supra* text accompanying notes 917;*infra* text accompanying notes 1055,1056,1106-1108.
[935] *See supra* text accompanying notes 2,435-439,497-509,515-517,519,521.
[936] Clearly, if the Congress can reject, ignore or otherwise veto or void provisions of the Constitution, it must be sovereign and supreme to the Constitution.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"The state or condition of being free from dependence, subjection, or control. Political independence is the attribute of a nation or state which is entirely autonomous, and not subject to the government, control, or dictation of any exterior power."[937]

"The state or quality of being independent; freedom from the influence, control or determination of another or others; self-maintenance or self-government."[938]

*What is Sovereignty?*

"The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; the supreme will, paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.

"The power to do everything in a state without accountability,--to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like.

"Sovereignty in government is that public authority which directs or orders what is to be done by each member associated in relation to the end of the association. It is the supreme power by which any citizen is governed and is the person or body of persons in the state to whom there is politically no superior. The necessary existence of the state and that right and power which necessarily follow is 'sovereignty.' By 'sovereignty' in its largest sense is meant supreme, absolute, uncontrollable power, the absolute right to govern. The word which by itself comes nearest to be the definition of 'sovereignty' is will or volition as applied to political affairs. City of Basbee v. Cochise County, 52 Ariz. 1, 78 P.2d 982, 986."[939]

*What is a Subject?*

"One that owes allegiance to a sovereign and is governed by his laws. The natives of Great Britain are *subjects* of the British government. Men in free governments are subjects as well as *citizens*; as citizens they enjoy rights and franchises; as subjects they are bound to obey the laws. Swiss Nat. Ins. Co. v. Miller, 267 U.S. 42, 45 S.Ct. 213, 214, 69 L.Ed. 504."[940]

*What is a Citizen?*

---

[937] BLACK'S LAW DICTIONARY 6th ed. (1990).
[938] WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, 2nd ed. (1983).
[939] BLACK'S LAW DICTIONARY 6th ed. (1990).
[940] *Id.* (emphasis in original).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"One who, under the Constitution and laws of the United States, or of a particular state, is a member of the political community, owning allegiance and being entitled to the enjoyment of full civil rights. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. U.S. CONST., 14th Amend.

"'Citizens' are members of a political community who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and protection of their individual as well as collective rights. Herriott v. City of Seattle, 891 Wash.2d. 48, 500 P.2d 101, 109."[941]

*What is a Treaty?*

"A treaty is in its nature a contract between two nations, not a Legislative Act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infraterritorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently to be regarded in courts of justice as equivalent to an Act of the Legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act—the treaty address itself to the political, not the judicial department; and the Legislature must execute the contract before it can become a rule for the court."[942]

*What is a Contract?*

"A contract is a compact between two or more parties, and is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do, a particular thing; such was the law under which the conveyance was made by the governor. A contract executed is one in which the object of contract is performed; and this, says Blackstone, differs in nothing from a grant... A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert the right. A party is, therefore, always estopped by his own grant."[943]

*Contracts—Implied and Expressed Powers*

As the courts consider a treaty to be essentially a contract, it follows that the general concepts of contract law applies to treaties. Certainly, at

---

[941] *Id.*
[942] Foster v. Neilson, 28 U.S. 253 (1829).
[943] Fletcher v. Peck, 10 U.S. 87 (1810).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the least, this includes the concept of *expressed* and *implied* powers of contract.[944]

The word "implied" is defined as:

"This word [implied] is used in law in contrast to 'express'; i.e. where the intention in regard to the subject-matter is not manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances, the general language, or the conduct of the parties. Term differs from 'inferred' to the extent that the hearer or reader 'infers" while the writer or speaker 'implies.'"[945]

The definition of "express" is:

"Clear; definite; explicit; plain; direct; unmistakable; not dubious or ambiguous. Declared in terms; set forth in words. Directly and distinctly stated. Made known distinctly and explicitly. And not left to inference. Minneapolis Steel & Machinery Co. v. Federal Surety Co., C.C.A. Minn., 34 F.2d 270, 274. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with "implied."[946]

The courts have long recognized that the government, in the performance of its duties, requires implied powers not specified in the Constitution in order to perform them.[947] If, as the Court has held, "a treaty...is... equivalent of an Act of the Legislature..."[948] and that "a treaty is in its nature a contract between two nations,"[949] it follows that such treaties may contain not only expressed provisions granting or removing powers or calling for action by the United States, but also *implied powers* derived from those

---

[944] "An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing.

"An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter or reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding." BLACK'S LAW DICTIONARY, 6th ed. (1990).

[945] *Id.*

[946] *Id.*

[947] McCulloch v. Maryland, 17 U.S. 316 (1819).

[948] Foster v. Neilson, 28 U.S. 253 (1829).

[949] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

expressed provisions, and that these implied powers are equivalent in legal strength and validity as any expressed provision of a treaty.

*Congressional Power and Treaties*

What are the powers of Congress in regard to treaties? Can the Congress, for example, change its decision regarding a treaty? Can it ignore its provisions? Under what terms, if any, can Congress *not* change a treaty?

If, as Chief Justice Marshall said, a party is "always estopped by his own grant,"[950] then it would seem Congress cannot alter a treaty once it has agreed to it. From a strict definition point of view, however,[951] it would appear if such congressional power exists, then Congress must be sovereign, and the answer to whether Congress can modify a treaty seems to be yes. The Supreme Court has found:

> "[A] treaty made by the United States with any foreign nation...is subject to such acts as Congress may pass for its enforcement, modification, or repeal."[952]

It would appear by this finding, the Court holds Congress' power to enforce, modify or repeal a treaty to be absolute and unchallenged, and, therefore, Congress is sovereign. Thus, the alpha and omega of the matter:

---

[950] Fletcher v. Peck, 10 U.S. 87 (1810); *see supra* text accompanying note 943.
[951] "The power to do everything in a state without accountability,--to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like." *See supra* text accompanying note 939 for full text of definition.
[952] Head Money Cases, 112 U.S. 580 at 598 (1884).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress is sovereign and therefore has the right to reject the Constitution or any of its provisions.

However, there are two problems with this rapid judgment. First, such a conclusion is based on a *decision* by the Supreme Court, a branch of the United States government subject to control by the Constitution. Therefore, the Court appears to have power to define the power of Congress and as, by the definition of sovereignty, this cannot be if Congress is sovereign, it would appear Congress does not have sovereignty. Further, in the same decision, the Court said:

> "A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual wars. It is obvious that with all this the judicial courts have nothing to do and can give no redress. But a treaty may also contain provisions which confer *certain rights upon citizens or subjects of one of the nations residing in the territorial limits of the other,* which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country...
>
> "*A treaty then, is a law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case as it would to a statue*."[953]

Thus, the Supreme Court determined Congress can rescind provisions of a treaty. Does this mean Congress may also rescind the rights of people secured under a treaty? Chief Justice Marshall answered this question saying:

> "The principle asserted is, that one legislature is competent to repeal any act which a former legislature was competent to pass, and that one legislature cannot abridge the powers of a succeeding legislature.
>
> "The correctness of this principle, so far as respects general legislation, can never be controverted. But, if an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power. Conveyances have been made, those conveyances have vested legal estate, and, if those estates may be seized by the sovereign authority, still, that they originally vested is a fact, and cannot cease to be a fact.

---

[953] *Id.* (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"When, then, a law is in its nature a contract, *when absolute rights have vested under that contract, a repeal of the law cannot divest those rights*, and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community."[954]

Thus the courts recognize that a treaty, like a contract, is subject to change by Congress and that Congress may rescind treaty provisions or entire treaties if it wishes, but *under no circumstances may Congress rescind rights granted to people under those treaties.*

The Court has acknowledged if Congress modifies a treaty, that change "becomes the subject of international negotiations and reclamations."[955] Clearly, therefore, the Court recognizes that any changes by Congress, once a treaty is agreed to, like a contract, can mean the treaty may be considered void by either of the parties to that treaty, and thus any provisions, stipulations, *grants of authority,* or any other recognized power of contract, expressed or implied, are simultaneously voided.[956] In other words, *if Congress changes the terms of a treaty, fails to obey or enforce its provisions, or otherwise alters the agreed upon stipulations, whether expressed or implied within a treaty, that treaty may no longer be in effect.*

## THE TREATY OF PARIS—IMPLIED AND EXPRESSED POWERS?

---

[954] Fletcher v. Peck, 10 U.S. 87 (1810). (emphasis added).
[955] Head Money Cases, 112 U.S. 580 at 598 (1884).
[956] The fact that our courts have determined that no rights may be nullified by changes in a treaty that created them does not in any way obligate the other sovereign nation that is party to the treaty. As a sovereign nation it would have every right to regard the matter in an entirely different light, i.e., the voiding of the treaty *does* effect or even nullify rights created in the treaty. Simultaneously, despite any rulings of our court system, it would be up to the nation involved in the treaty to determine whether such actions by Congress constituted a breach of the treaty and thus had caused its nullification.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Are the provisions of the Treaty of Paris entirely expressed, or are there implied powers and provisions contained within its articles?[957] Are the provisions executory or executed?[958]

Clearly Articles II, III, IV, VI, VII, VIII, and IX are expressed provisions, in that they require no further legal action on either the part of Britain or the United States in order to carry them out. Their provisions are clear and unequivocal. Prohibitions preventing the passage of laws are plain and understandable. The returning of property, collection of legal debts,

---

[957] The easiest method to examine the treaty is probably article by article.

Article I "acknowledges...[the states]...to be free sovereign and independent states..."

Article II establishes the boundaries of the United States.

Article III establishes fishing rights.

Article IV allows for the collection of debts by either side upon the other.

Article V asks for Congress to "provide for the restitution of all estates, rights and properties [belonging to real British subjects] which have been confiscated..." and provides no person have such interest in such recovery shall meet "lawful impediment in the prosecution of their just rights."

Article VI establishes amnesty to those facing prosecution or confiscation and prevents further such reprisals against these people.

Article VII calls for peace between the subjects of Great Britain and the citizens of the United States, orders the release of all prisoners of war, orders all British military forces to leave the United States and orders the return of all records and documents seized by the British to the states.

Article VIII allows for free navigation of the Mississippi River by subjects of Great Britain and citizens of the United States.

Article IX provides that any territory of the other taken by military force before the provisional articles (signed in 1782) arrived in America shall be restored "without difficulty and without requiring any compensation."

Article X is the witness and signatory provisions of the treaty and contains no applicable provisions of execution.

[958] "Contracts are also divided into executed and executory, *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the arrangement is made, as where an article is sold and delivered, and payment therefor is made on the spot; *executory,* where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time." BLACK'S LAW DICTIONARY, 6th ed. (1990). (emphasis in original).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

freeing of prisoners, removal of troops and other military considerations are clear and unambiguous as are territory definitions, fishing and navigation rights. As defined by Marshall,[959] they are therefore executed portions of the treaty.

This leaves Article V and Article I. Article V is certainly a executory provision. It calls on Congress to recommend an action to the various state legislatures regarding property rights of the British subjects. It does not bind Congress to a time frame or a specific result regarding this recommendation. Clearly Article V calls for further legislative action on the part of the Congress before the provision can be carried out, thus satisfying the definition of the word “executory”.[960]

In addition, Article V’s provisions demonstrate an example of implied powers within the treaty. In this instance, the United States is given limited authority over British subjects, leaving the details of such authority clearly in the hands and discretion of the United States. Clearly, Article V leaves it to Congress to determine what type of appeal to the states will be made and what provisions of law will be sought. Its language suggests the states are left to determine *if* they will enact such legislation, how it will be enforced, for how long and even who will pay for it. All these questions (to be answered by the Americans in this case) imply *governmental authority to do the job required, but the authority is in no way specified in the treaty* which

[959] *See supra* text accompanying notes 942,943.
[960] *See supra* text accompanying note 943.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

satisfies the definition of the word "implied".[961] Thus, this provision clearly establishes that the Treaty of Paris contains implied powers, and that both sides recognized these implied powers as a valid part of the treaty.

## ARTICLE I—THE CRUX OF THE CONTRACT

### *Executory or Executed?*

What about Article I, the most important provision of the treaty, the provision "acknowledging" sovereignty and independence to the United States and the several states? Is it an executed or executory provision? Does it contain implied provisions?

The obvious conclusion is that Article I is an executed provision. The King of England granted the United States independence and sovereignty, and that is the alpha and omega of the matter. But is this so?

A closer examination of the precise wording of the Treaty of Paris shows, in fact, that it is not the alpha and omega. Unlike most royal decrees, the King did not "grant"[962] anything; he instead "acknowledged"[963] American

---

[961] *See supra* text accompanying note 945.

[962] The word "grant" used in this context is defined as:

"In England, an act evidenced by letters patent under the great seal; *granting something from the king to a subject*." BLACK'S LAW DICTIONARY, 6th ed., (1990). (emphasis added).

[963] The word "acknowledge" is defined as:

"To own, avow, or admit; to confess; to recognize one's acts, and assume the responsibility therefor." *Id.*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

sovereignty and independence.[964] As provided in the remainder of the treaty, this required several actions for fulfillment:

- A territory defining where such existed;
- The removal of foreign influences;
- The resolution of debts;
- The issue of prisoner exchange;
- The settling of criminal charges;
- The resolution of property rights disputes.

Clearly these important issues were based on the executory nature of Article I. But if the Treaty of Paris' Article I was, in fact, an executory provision, what obligation did this place on the United States and the several states composing it in order for them to "bind[s] himself to do, or not to do, a particular thing"?

The answer is as critical as it is obvious. The obligation of the several states was to assume sovereignty, based on the terms of the treaty, which was no more than the King acknowledging, formalizing and legitimizing

---

"To own, avow, or admit to be true, by a declaration of assent; as, to *acknowledge* the being of a God." WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY UNABRIDGED 2nd ed., (1983). (emphasis in original).

[964] The language of the Treaty of Paris is noticeably different from the usual phraseology used by the King of England at the time in granting or bequeathing something. Compare the Treaty of Paris with language used in Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819). "We...do, of our special grace, certain knowledge and mere motion, by and with the advice of our counsel for said province, by these presents, will, ordain, grant and constitute..."(Woodward); "His Britannic Majesty acknowledges the said..."(Treaty of Paris).

The change in language cannot be dismissed as merely a change in royal style in proclamations. The evidence is plain. In the earlier Woodward example, (the proclamation issued by George III, December 13, 1769) the King is acting with "certain knowledge" and is "will[ing], grant[ing], ordain[ing] and constitute[ing]" an act, whereas in the Treaty of Paris, also issued by George III, he is simply "acknowledging." *See supra* text accompanying note 923.

Clearly, a difference in royal decree must mean a difference in meaning. Obviously, the King could not "grant something to his subjects" (*see supra* text accompanying note 962) as by treaty he was stating the Americans were no longer his subjects; hence the different language.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

that which the Americans themselves defined as sovereignty was indeed, and in fact, sovereignty. Under contract law, this acknowledgment became a term of the treaty, mutually understood and agreed to by both sides and, upon the signing and ratification of the treaty, binding on both sides.[965] Pragmatically, if there is no mechanism by which a territory can exercise its independence and sovereignty, there can be no independence or sovereignty.[966] Therefore it required actions on both sides, a royal acknowledgment on one side, and the creation of a government or governments[967] on the other side based on the terms of that acknowledgment in order for sovereignty to exist.

---

[965] "[I]t is our responsibility *to give the specific words* of the treaty *meaning with the shared expectations* of the contracting parties." Air France v. Saks, 470 U.S. 392 (1985); *see also* El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155 (1999). (emphasis added).

It is a simple question to ask what were the "shared expectations" of the United States and Great Britain in the signing of the Treaty of Paris. The answer: to acknowledge the sovereignty of the United States. Thus, the meaning of the words of that treaty must be viewed in a light consistent with this shared expectation.

[966] "The necessary existence of the state and that right and power which necessarily follow is "sovereignty." *See supra* text accompanying note 939.

[967] There is nothing in the Treaty of Paris that precluded the states (or any other body which possessed sovereignty) from creating a national government and extending its sovereignty by one degree or another to it. This is, of course, the familiar term of *dual* sovereignty, i.e., the somewhat unique American concept that two governmental bodies can govern the same territory simultaneously, each possessing specific, defined powers of government that may or may not conflict with one another.

Indeed, such a system already existed under the Articles of Confederation which established a weak national government by limiting its power. "[E]ach state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled." Articles of Confederation, art. II (1781).

The relationship of dual sovereignty has altered over time. With the ratification of the Constitution, the Constitution became "supreme law of the land...anything in the Constitution or laws of any State to the contrary notwithstanding." (U.S. CONST., Art. VI, § 2). Thus, the sovereignty of the states, to one degree or another, became subordinate to the national government *except whereby such state sovereignty was made equal or supreme*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Had not the treaty been signed, it is unlikely there would have been a Constitution and therefore no convention amendatory procedure contained within that document, and most certainly, if such a document had existed, its legal strength would have been in doubt. The political reality is, without sovereignty, no nation can create a sovereign government which is, after all, no more than a mechanism created by that nation to administer its sovereignty. Thus, the Constitution *derives its formal sovereign authority* from the Treaty of Paris,[968] which in turn "acknowledged" an already existing *informal* sovereignty in America. Without this formal acknowledgment, the status of American sovereignty would have remained in doubt. With the signing of the

---

*within the Constitution, such as the right of the states to apply for a convention and Congress' subordinate obligation to call one.*

The concept of relinquishment of sovereignty was clearly noted by the Supreme Court in a case involving the state of Texas:

"When Texas came into the Union, she ceased to be an independent nation. She then became a sister State on an 'equal footing' with all other States. That act concededly entailed a *relinquishment* of some of her sovereignty." United States v. Texas, 339 U.S. 707 (1950). (emphasis added).

Clearly the relinquishment of sovereignty must equally apply to the national government where such relinquishment either is implied or expressed in the Constitution if dual sovereignty is to be valid. The principle, however convoluted over the years, nevertheless remains constant, that both national government and states each possess mutually exclusive sovereign powers granted them under the Constitution; neither side has the authority to invade the other's prescribed sovereign authority.

As noted by the Supreme Court:

"...[I]t may be said, and in a general way rightfully so, that the powers of the legislature of a state are limited by its constitutional provisions... Whatever the people, framing their organic act, have declared to be the limits of legislative power, and the modes in which the power shall be exercised, must always be recognized by the courts, state and national, as obligatory." Stearns v. State of Minnesota, 179 U.S. 223 (1900).

[968] The Constitution was a choice of how the sovereignty created in the Treaty of Paris would be used. The Constitution does not grant sovereignty, it merely directs and regulates its use. Nowhere in the document is there any creation of sovereignty, and in fact, a careful reading of the Constitution clearly indicates the assumption of sovereignty based on the Treaty of Paris.

The Constitution specifies that "*all treaties made*, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land..." U.S. CONST., art. VI §2. (emphasis added). Thus, the Treaty of Paris and the sovereignty it created became supreme law of the land.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Treaty of Paris, there was doubt as to the creation of sovereignty for America. This permitted the legitimate creation of a government by that sovereignty. This sovereignty created the Constitution. Therefore, the Constitution is subordinate to the Treaty of Paris *and to the terms of sovereignty acknowledged by it*, as without the treaty and its acknowledgment of sovereignty, the Constitution could not exist.

Is Article I of the Treaty of Paris an executory or executed clause?[969] The King of England did not grant anything; he only acknowledged. He agreed, *in a formal, binding contract* for both the British *and* the Americans, to a state of affairs already existing and thus *legitimized* American sovereignty. Essentially, the Americans declared *their independence and their definition of sovereignty*. The British agreed to that declaration and definition and *bound both sides by treaty to that same declaration and definition as, for the treaty to remain in effect, the terms of it have to be mutually agreed to*. When the terms cease to be mutually agreed to, the treaty, like any contract, ceases to exist.

This contract remains in force today and is the sole basis of our sovereignty. Put another way, without the Treaty of Paris in effect, America

[969] The term "executed" implies something performed in the past and completed. (*See supra* text accompanying note 958). If the provision creating American sovereignty is "executed", then it could be said to be a state existing only in the past tense, i.e., that it does not exist now. The logical question to ask: is this country is sovereign at this moment? Obviously, the United States is sovereign at this moment. On what is this present sovereignty based? As there is no other mechanism that created this sovereignty, it is self evident that the terms of the treaty carry forth to present day and beyond and create the sovereignty. Thus, the Treaty of Paris is a treaty in which Great Britain remains committed to "acknowledge" the sovereignty of the United States and thus keep the treaty valid and in force. Clearly therefore the term "executory" must apply.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

is not sovereign. To remain sovereign, the Treaty of Paris must remain in effect. Therefore, the Treaty of Paris' provision creating American sovereignty is executory as it creates a continual sovereignty existing in the present tense, always in force.

*Implied or Expressed Powers*

Having established that expressed and implied powers exist within the Treaty of Paris,[970] that the sovereignty acknowledged in the treaty is an executory provision of that treaty that remains in force to this day,[971] that the terms of that provision define American sovereignty,[972] that the Constitution is subordinate to such a definition of sovereignty,[973] there then comes the questions of whether the specific provisions creating American sovereignty contain both expressed and implied provisions, upon whom sovereignty was acknowledged, and how this all relates to a convention and congressional inaction of the calling of a convention.

Sovereignty consists of two parts: political supremacy unaccountable to any other power,[974] and unaccountable political powers such as the power to "make peace and war."[975]

---

[970] *See supra* text accompanying notes 945-949,957-961.
[971] *See supra* text accompanying note 969.
[972] *See supra* text accompanying notes 966-968.
[973] *See supra* text accompanying note 968.
[974] "The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; the supreme will, paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived..." *See supra* text accompanying note 939.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

It follows that determining which American political entity received sovereignty as the result of the signing of the Treaty of Paris requires an examination of which entities the King of England either expressly acknowledged sovereignty to, or which entities he negotiated a sovereign power with, thus implying that entity possessed or was "acknowledged" to have sovereign power. By these actions, sovereignty was assigned to the political entity, and as the provisions granting sovereignty, whether implied or expressed, are executory, it follows such assignments of sovereignty remain in full force today.

Where then are relevant provisions in the treaty that relate either to expressed acknowledgment of sovereignty or deal with sovereign powers *of a political entity not expressly acknowledged to have sovereignty*? There are only two provisions in the Treaty of Paris that apply. In Article I, the King of England "acknowledges" sovereignty to the states, an expressed provision of sovereignty.[976] In Article VII, the King establishes a "firm and perpetual peace between his Brittanic Majesty and the said states, *and between* the subjects of the one *and the citizens of the other*..."[977]

While the treaty uses the terms, "sovereign", "independent" or "free,"[978] nowhere are there definitions of these important words in the treaty.

---

[975] "The power to do everything in a state without accountability,--to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, *to make war or peace*, to form treaties of alliance or of commerce with foreign nations, and the like." (emphasis added). *Id.*
[976] *See supra* text accompanying note 923.
[977] Treaty of Paris, art. VII (1783). (emphasis added).
[978] The treaty does specify that Britain (the King) "relinquishes all claims to the government, propriety, and territorial rights of the same and every part thereof." Therefore it can be inferred from this statement that sovereignty,

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Similarly, there are no definitions of the words “subjects” or “citizens”.[979] The consequence of this omission is obvious. The meaning of these words, expressed and implied, must have been mutually *understood and agreed to* by both Britain and the United States, and therefore these mutually understood and agreed to definitions and meanings must be considered part of the *implied powers* of that treaty.[980]

Thus, it cannot be simple rhetoric that compelled both America and Great Britain to establish peace, not only with the states, but with the citizens of the states as well. It is particularly significant when it is realized the words ”citizens” and “subjects” appear only twice in the treaty: once in the clause that establishes actual peace between Great Britain and the United States[981] and once establishing free travel along the Mississippi River.

While free travel may or may not be a sovereign power,[982], the first use of the word “citizen” negotiating peace certainly is.[983] The meaning of the provision is obvious. *Peace could not be established between Great Britain and the states unless it was made, not only between the former colonies and the*

---

as the British saw it, had to do with “government, propriety, and territorial rights”, but again there is no specific definition in the treaty. *Id.*

[979] The treaty states:

> “There shall be a firm and perpetual peace between his Britannic Majesty and the said states, and between the subjects of the one and the citizens of the other...” *Id.* at art. VII.

[980] *See supra* text accompanying note 965.

[981] *Id.*

[982] It is likely that the right to travel is not a sovereign power though it could be argued that the freedom to travel when and where one wishes is a clear sign of sovereignty. Even within a political boundary, however, not everyone is free to travel anywhere, anytime. For various reasons, from safety to security, restrictions have been placed on travel. Clearly therefore, a sovereign power ultimately determines how “free” travel is.

[983] *See supra* text accompanying note 939.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*King, but also between the King and the citizens of the several states as well.*

Only a sovereign power has the right to "make peace or war."[984] The making of peace between Great Britain and America involved not only the states but the citizens as well. The conclusion therefore is obvious: the King of England acknowledged in the Treaty of Paris not only the sovereignty of the several states, *but also the separate political sovereignty of the citizens of the several states*. However, by the definition of sovereignty,[985] only one of the entities could actually *be* sovereign, the other forced to be subservient to it. The question is which one?

*The Great Separator*

What transformed former subjects of the Crown into citizens of the United States (and the sovereign states), separating them from the Crown, and what effect has that separation on a convention and the *laches* of Congress in calling one? In other words, what event created the American sovereignty "acknowledged" by George III in the Treaty of Paris?

---

[984] *Id.*
[985] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

While it may have formalized and legitimized this great separation and the resulting sovereignty, the Treaty of Paris did not in fact create it. The use of the word “acknowledge” clearly indicates the King was accepting something that already existed.[986] Obviously then, this separation had to *predate* the Treaty of Paris. The question becomes a simple one: what historic event differentiated United States citizen and British subject, splitting one people into two, thus creating sovereignty for the one and preserving the status quo for the other? In short, what did the King “acknowledge?”

George III did not live in a vacuum and was certainly fully aware of the political realities of the American Revolution. Nevertheless, the well known rules of diplomacy of that time required an official written act notifying him of the desire of the American colonies for sovereignty and the terms of this sovereignty. How else could King George “acknowledge” American desires if he didn’t know what those desires were, and how could England and the United States mutually agree to a definition of sovereignty when clearly the two countries defined that word differently: Britain defining sovereignty as emanating from a king and America defining sovereignty as emanating from the people. For a treaty to be in effect, both sides had to mutually agree to what the term "sovereignty" meant, and this meant the Americans, who were creating a new form of sovereignty, had to present some method to define this new form of sovereignty whereby the British could understand it and therefore agree to it.

[986] *See supra* text accompanying notes 923,963.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

So how did the Americans accomplish this?

The answer is the Declaration of Independence, *an act of Congress*,[987] which was actually nothing more than a declaration of sovereignty. In fact, the Founding Fathers used the words interchangeably. Following the surrender at Yorktown in 1781, and based on the terms of sovereignty so plainly, forcefully and eloquently expressed in the Declaration of Independence, *diplomatic* negotiations between America and Britain commenced.[988] The King of England eventually "acknowledged"[989] these terms, thus legitimizing an already claimed sovereignty. Therefore, the mutually agreed to definition and understanding of sovereignty for the United States were those terms and conditions expressed in the Declaration of Independence.

*The Terms and Conditions of Independence*

Sovereignty is defined as:

"The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; the supreme will,

---

[987] The final paragraph of the Declaration of Independence states:

"We, therefore, the Representatives of the United states of America, *in General Congress, Assembled*..." Declaration of Independence (1776). (emphasis added). It should be noted that at no time in any of the founding documents of the United States are any actions of any earlier Congress rejected. It is obvious, therefore, that despite any name changes that might have occurred--First Continental Congress, Second Continental Congress, Congress of the United States--the Founding Fathers considered "the Congress" to be a perpetual body serving some capacity or another as a national legislature.

[988] The United States, in the Declaration of Independence, specified under what *condition*s independence could be declared, what caused the United States to declare such independence, what that independence was, and who authorized such a declaration. The key of American sovereignty lies in who authorized such a declaration, for it is clear that entity must be sovereign.

[989] The Declaration of Independence was the only official declaration of independence or sovereignty made by the United States. As only one claim was ever made, that claim had to be the one "acknowledged" by the king.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent."[990]

It follows that a claim of sovereignty must satisfy the following conditions:

1. The creation of a supreme political authority or power from which all other specific political entities within the territory controlled by that sovereignty derive authority;
2. The creation of a supreme political authority or power that has paramount control of the government, its form, administration and extent;
3. The creation of a supreme political authority or power that is internationally independent and entirely free to regulate its internal affairs without foreign interference or dictation.

The question then is what phrase or term expressed in the Declaration of Independence satisfies these three requirements? There is only one:

> "...that governments are instituted among men, deriving their just powers *from the consent of the governed.* That when any Form of Government becomes destructive of these ends, *it is the right of the people to alter or abolish it*..."[991]

No other provision in the Declaration of Independence satisfies the three requirements of sovereignty,[992] and no other expression of sovereignty is

---

[990] *See supra* text accompanying note 939.

[991] Declaration of Independence (1776). (emphasis added).

[992] The specific phrase that satisfies the three requirements of sovereignty is not the more famous "government are instituted among men, deriving their just powers from the consent of the governed." Rather, it is the more obscure *expressed* "...*right* of the people to alter or abolish [their government]..." that satisfies the requirements of sovereignty.

There are four reasons for this:

First, the phrase "right of the people..." *specifically* assigns a clear sovereign power to a *specific* political entity, in this case, the people of the United States.

Second, the phrase provides for a supreme political power that obviously controls the government, its administration, and upon which all other political powers are dependent. It follows that if the people can alter or abolish their government as they desire, this is a supreme sovereign power as no political power in the United States can exist unless the people consent to it. Therefore that political power, even its existence, is entirely subject to the will of the people.

Third, there is the question of executed and executory provisions of a contract. It follows that the term "consent of the governed" *could* be

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

required; simple logic dictates sovereignty need only be established once for a particular political entity.[993] Therefore, the expressed right of the people[994] to alter or abolish their government is the American definition of sovereignty.[995] Being the sole concept of sovereignty expressed in the Declaration of Independence, it thus becomes the sole definition of sovereignty "acknowledged" by the King of England in the Treaty of Paris.[996]

---

interpreted as an executed contractual provision, i.e., once the people have consented, they cannot change their minds. (Most dictatorships use a variation of this theme as a basis on which to justify their continued rule despite protests from their people.) However, the term "right of the people to alter or abolish..." clearly is an executory provision; it exists as a *continuing* power of the people that can be used by them at any time, allowing them to establish procedures, such as a convention call, to alter or abolish their government and which that government is *obligated* to obey.

Finally, the term "consent of the governed" as used in the Declaration of Independence refers to all governments. The term "right of the people..." refers *specifically* to the citizens of the United States. *See infra* text accompanying note 997.

[993] Unless the sovereignty of a specific territory is compromised by foreign intervention, i.e., a war, or by such civil unrest as to degrade the source of sovereignty, that sovereignty remains permanently in effect.

[994] That this right is created by and for the people is further reinforced in the final paragraph of the Declaration of Independence which reads in part:

"We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, *do, in the Name, and by the authority* of the good *People of these Colonies*, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent *States*;" Declaration of Independence (1776). (emphasis added).

[995] The right to alter or abolish, as used in American independence, was clearly a new definition of sovereignty. Beyond establishing a separation between subject and citizen, it redefined the meaning of the word "citizen" in that it conferred upon those so affected the unique right to control, not only their own destiny, but that of the government empowered by them for the common destiny of all. This right never existed in any sovereignty previous to the American Revolution. It could never exist for the subjects of Great Britain. In that form of government, the sovereignty resided with a king emanating from him to the people. In America, the sovereignty emanated from the people and was bestowed upon the government *with the reserved power of the people* to further alter or abolish that government as and when they chose.

[996] Many types of sovereignty could have been claimed by America. The basis for these claims could have been geographic, aristocratic in which a new sovereign replaced the current king, or even historic. None of these was used by America in the Declaration of Independence.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Further, the right to alter or abolish was claimed *exclusively* for and by the citizens of the United States.[997] America never claimed anyone else had the right to declare independence. There is no reference, for example, to the peoples of the world having the right to revolt. The rest of the Declaration served merely to justify *why* America felt justified in exercising its claimed right.[998] Thus, while the treaty does not expressly grant "the right of the people to alter or abolish government", it clearly is an *implied* power of the Treaty of Paris as it served as the term and condition upon which sovereignty was acknowledged by the Crown, i.e., the citizens of the United States were sovereign, claiming *for themselves* the right to alter or abolish their government, a right that has never been transferred to any other political entity.[999]

---

[997] In the Declaration, Jefferson first speaks of "*one people*...dissolving the political bands which have connected them with another", referring obviously to the people of the United States, then changes to "*all men* are created equal that *they* are endowed with certain unalienable rights...", which obviously encompasses the entire human race. When Jefferson refers to the actual act of declaring independence by America, however, he again switches back to "the right of the *people*..." or even the more specific "We have..." This is no accident of words. Clearly, Jefferson claimed universal rights for all mankind(life, liberty, etc.), but reserved the *revolutionary* right to alter and abolish (i.e., sovereignty) *exclusively* for the people of the United States. Declaration of Independence (1776). (emphasis added).

[998] "But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their futures security... The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. *To prove this, let facts be submitted to a candid world." Id.* (emphasis added).

[999] While it true the people have bestowed upon various governmental bodies in the United States the privilege to act on behalf of the people, the basic right to alter or abolish still remains with the people. Neither the Declaration of Independence nor the Constitution contains language that removes that right and invests it with any other political entity.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The British accepted in the Treaty of Paris the condition of the right to alter or abolish the government by the people as the meaning and term of American sovereignty. Under this specific condition and term, sovereignty was agreed to by the British. Thus, the Treaty of Paris conferred on the citizens of the United States a legal *right*.[1000]

It is short step to consider this right supreme to all other rights,[1001] even above the Constitution itself, as the people also have the right to "institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."[1002]

Nothing in the Declaration of Independence limits the people to a particular structure or form of government. Instead, it claims the transcendent right to alter or abolish. If the people have abrogated that right to some degree by establishing a process, such as the amendatory process spelled out so carefully in Article V of the Constitution whereby deliberative thought and consideration are required before such a step is undertaken,[1003] this deliberative process does not grant Congress the authority to obstruct that right[1004] whenever such standards established by the people in order to enact the right have been satisfied.[1005]

---

[1000] A right that Congress has no authority to remove. *See supra* text accompanying notes 953,954.
[1001] Especially when the Founding Fathers considered this right to be "transcendent". *See supra* text accompanying notes 529,1659.
[1002] Declaration of Independence (1776).
[1003] *See supra* text accompanying notes 790-811;*infra* 1105.
[1004] *See supra* text accompanying note 1000. *See also* U.S. CONST., art. I, § 1, "All legislative Powers *herein granted* shall be vested in a Congress of the United States..." There is no expressed grant of power, legislative or

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

It follows that if the Treaty of Paris is still in force, there must be at least one method *unregulated by the national government*—-i.e., a method whereby "alter or abolish" can be accomplished without obtaining consent in some form from the government--allowing the people of the United States "to alter or abolish" their national government.[1006] The King acknowledged the right of the people to institute a new government and recognized *them* as sovereign. They in turn created a government to execute their sovereign powers. The King neither acknowledged nor agreed to the transfer of sovereignty to another government *unless it was a government under the sovereign control of the people of the United States.*

If Congress has negated the right of the people to alter or abolish by vetoing or obstructing the process established to exercise that right, or if Congress has obstructed the mechanism through which that right is to be exercised, then it is clear that Congress has assumed sovereignty, a condition not granted by the Treaty of Paris. It is absurd to argue the United States government could void this concept of citizen sovereignty and still claim to be a free, independent and *sovereign* government because it was on the basis of citizen sovereignty, and this basis alone, that sovereignty was

---

otherwise, giving Congress the right to obstruct, delay or otherwise interfere with the people's right to alter or abolish.

[1005] *See supra* text accompanying note 521.

[1006] By overthrowing the state governments during the ratification of the 14th Amendment, Congress presented a serious question as to whether or not the states have the right to amend the Constitution without national government approval. This action also put the sovereignty formerly held by the states within the grasp of Congress. By allowing Congress to veto, obstruct or otherwise control the convention method of amendment, despite a clear constitutional directive to the contrary, there is a question whether Congress today is in fact sovereign. *See supra* text accompanying notes 849,917; *infra* text accompanying notes 1053-1073,1077,1079,1089,1094,1188, 1239,1333.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

claimed in the first place. Such an action by Congress is a violation of the Treaty of Paris; the contract is no longer in effect.[1007]

[1007] It would be well to remember that while British and American law share many common attributes and history, *they are not the same.* How Britain might interpret a violation of the Treaty of Paris so described in this suit is not a predictable result. While at first it may seem absurd that Congress, by the actions so described, could cause the downfall of America's sovereignty, the idea is not so far fetched as might be supposed.

First, there is no savings clause in the Treaty of Paris, i.e., a clause that holds if some provision of the treaty is violated, the rest of the document remains intact and in force. Thus, it is possible to argue that if any term of the treaty is violated, the entire treaty or contract is violated. Similarly, there is no reference in the treaty that could be interpreted as an agreement by the British acknowledging American sovereignty "forever." In fact, as is shown below, the treaty does not even place restrictions on any British *government*, merely on "himself, heirs and successors..." Therefore, the obligation of the British *government* could conceivably be brought into question as even the Crown in this instance did not acknowledge American sovereignty on a perpetual basis. By changing royal families, or the removal of royalty from Britain, this obligation could be considered terminated.

Second, the British hold that while it is the Crown that negotiates a treaty, it is Parliament that continues a treaty in effect. As with Congress, Parliament retains the right to negate treaties Great Britain has made in the past. As was stated by Lord Atkin in delivering the judgment of the Privy Council in Attorney-General for Canada v. Attorney-General for Ontario and Others, L.R.A.C. 326, 347 (1937):

"It will be essential to keep in mind the distinction between (1) the formation, and (2) the performance, of the obligations constituted by a treaty, using that word as comprising any agreement between two or more sovereign States. Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative actions. Unlike some other countries, the stipulations of a treaty duly ratified do not within the Empire, by virtue of the treaty alone, have the force of law. If the national executive, the Government of the day, decide to incur the obligations of a treaty which involve alteration of law they have to run the risk of obtaining the assent of Parliament to the necessary statue or statues. To make themselves as secure as possible they will often in such case before final ratification seek to obtain from Parliament an expression of approval. But it has never been suggested, and it is not the law, that such an expression of approval operates as law, or that in law it precludes the assenting Parliament, or any subsequent Parliament, from refusing to give its sanction to any legislative proposals that may subsequently be brought before it. Parliament, no doubt, as the Chief Justice pointed out, has a constitutional control over the executive: but it cannot be disputed that the creation of the obligations undertaken in treaties and the assent to their form and quality are the function of the executive alone. Once they are created, while they bind the state as against the other contracting parties, Parliament may refuse to perform them as so leave the State in default. In a unitary State whose Legislature posses unlimited powers the problem is simple. Parliament will either fulfill or not treaty obligations imposed on the State by its executive. The nature of the obligation does not affect the complete

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Because of this fact, Congress was given no discretion by the Founding Fathers in the calling of a convention[1008] as it would subjugate the "...transcendent...right of alter or abolish."[1009]

## THE NON-SOVEREIGN CONGRESS

It is clear the sovereignty of the United States is "*the right of the people* to alter or abolish their government."[1010] This concept of sovereignty

---

authority of the Legislature to make them law if it so chooses... The question is not how is the obligation formed, that is the function of the executive; but how is the obligation to be performed, and that depends on the authority of the competent Legislature or Legislatures." THE LAW Of TREATIES: British Practice and Opinions, A.D. McNair (1938) p. 9.

Third, while the Treaty of Paris does speak of a "firm and perpetual peace between his Britannic Majesty and the said states, and between the subjects of the one and citizens of the other..." it is important to remember within a few short years of the signing of that treaty, America again went to war against Great Britain in the War of 1812. At that time, the British expressed the opinion that this act of war by America *negated the Treaty of Paris.*

"We shall find in the course of our examination that, the farther back we go, the more sweeping and undiscriminating are the assertions that all treaties are abrogated by the outbreak of war between the contracting parties." (*Id.* at p. 532 quoting DIGEST OF INTERNATIONAL LAW, vol. v, § 779, p. 383). Lord Bathurst, in an October 30, 1815 note to Mr. John Quincy Adams "on the effect of the war of 1812-14 between Great Britain and the United States on the Treaty of 1783," wrote:

"To a position of this novel nature [Mr. Adams had been contending that the Treaty of 1783 had not been annulled by the recent war] Great Britain cannot accede. She knows of no exception to the rule that all treaties are put an end to by a subsequent war between the same parties."

It should be clearly noted that the Treaty of Ghent ending the War of 1812 contained no reference reestablishing any of the terms of the Treaty of Paris or resolving this issue. The matter is clearly in the hands of the British. They may view the matter quite differently from ourselves. There is no guarantee that if the question of the efficacy of the Treaty of Paris were poised to Great Britain that its answer would be all that predictable.

[1008] *See supra* text accompanying notes 497-513.
[1009] *See supra* text accompanying note 529,1659.
[1010] Declaration of Independence (1776) (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

was legitimized and acknowledged in the Treaty of Paris.[1011] It is clear that a treaty is a contract,[1012] that a treaty, like a contract, has both expressed and implied provisions,[1013] that both implied and expressed provisions exist in the Treaty of Paris,[1014] and that provisions are, under the Constitution, "law of the land."[1015] It is clear Congress has the right to re-negotiate a treaty or terminate the same *unless the treaty confers rights to a people.*[1016]

Congress does not have the sovereign power to reject at its discretion portions or provisions of the Constitution unless one that concedes that Congress is unaccountable to any political power.[1017] Congress only has the powers "herein granted"[1018] to it in the United States Constitution.[1019] The Congress is accountable to the voters, the Supreme Court and the President of the United States. It is the i*nstrument* of sovereignty, not the source. Clearly, therefore, it is *not* a sovereign body and as such is bound to such checks, balances, limitations *and instructions* as are provided by the people in the Constitution to regulate and control Congress.

---

[1011] *See supra* text accompanying note 923.
[1012] *See supra* text accompanying notes 942,953.
[1013] *See supra* text accompanying notes 945-949.
[1014] *See supra* text accompanying notes 961,963,964,968,968.
[1015] U.S. CONST., art. VI, §2.
[1016] *See supra* text accompanying notes 953,954.
[1017] *See supra* text accompanying note 939.
[1018] U.S. CONST., art. I, § 1.
[1019] The sovereignty of the people is confirmed in the Constitution itself with the phrase "We, the People..." which not only sets out great philosophical concepts of liberty and limited government but clearly and legally establishes by whose sovereign authority the Constitution was ordained. It was clear by this phrase the Founding Fathers realized who had been acknowledged as having sovereignty in the Treaty of Paris.

This is further reinforced by the term "herein granted", which clearly indicated that a sovereign power was granting authority to a subordinate. U.S. CONST., art I, § 1. *See supra* text accompanying notes 964,1004.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As the people possess sovereignty, and this sovereignty was formally obtained by the acknowledgment made in the Treaty of Paris, it is clear the Treaty of Paris is supreme to the Constitution. Therefore, the Treaty of Paris is the one treaty Congress cannot make "subject to such acts as Congress may pass for its enforcement, modification, or repeal."[1020]

The reason is obvious. Permitting Congress to tamper with the treaty would violate the prohibition that prevents Congress from repealing rights obtained under a treaty. Thus, if Congress could modify the treaty under which this nation achieved sovereignty, it could switch that sovereignty unilaterally from the people to itself.

## THE SUPREME COURT: CONGRESSIONAL SOVEREIGNTY THROUGH THE BACK DOOR?

Congress is not sovereign, but instead is an instrument of the Constitution through which the people administer their sovereignty.[1021] Through the Constitution the people have granted to Congress certain limited sovereign powers while simultaneously retaining their transcendent sovereign power to alter or abolish.[1022] By what source of authority then does Congress claim it may ignore the constitutional mandate of calling a convention when the proper number of states has applied?[1023] By what source of authority does Congress

---

[1020] Head Money Cases, 112 U.S. 580 at 598 (1884).
[1021] "Under the constitution, sovereignty in the United States resides in the people." Kennett v. Chambers, 55 U.S. 38 (1852); "The Constitution is the fundamental law of the United States, and no department of government has any other powers than those thus delegated to it by the people." Hepburn v. Griswold, 75 U.S. 663 (1869).
[1022] *See supra* text accompanying notes 921-1020.
[1023] *See infra*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

claim it may regulate the convention even to the extent of vetoing a convention's proposed amendments?[1024]

The people, the only *legitimate authority for such sovereign actions*, have never expressly granted Congress the authority to veto the Constitution in any manner, and indeed the entire principle of limited American government leads to the conclusion that no such *implied power*[1025] *has ever been granted*.[1026] As the people have never granted such authority, and the only other source of authority in the United States that could be construed to grant such authority is the Constitution that the people created to exercise their sovereignty, it follows this "source of authority" Congress claims by its *laches* in calling a convention to propose amendments, thus vetoing the Constitution, must be found within the Constitution. As it is the people who are sovereign, it follows this "source of authority", like Congress, *cannot* be

---

TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664;
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.

[1024] *See supra* text accompanying notes 593-613.

[1025] No part of government can be given the power to define the right to alter or abolish. This is self-evident. For to define is to limit. In a democracy, the right to alter or abolish must have full immunity from government interference except where the people have so explicitly designated a limit. Otherwise the right is meaningless. How, for example, could one say a citizen has the right to alter or abolish if, in an election, he is told by the government whom he shall vote for? How can it be argued that the citizens of the United States have the right to alter or abolish their government if the government can rule that none of their actions can affect the Constitution and that only the government itself possesses the privilege to affect the document independent and autonomous of the people it is supposed to represent? The simple answer is, of course, that it cannot be said the citizen has this right if the government can so act. It is for this reason the principle of immunity from governmental interference must extend to all aspects of this fundamental right.

[1026] The language of the Constitution is clear. The people expressly granted to Congress certain powers and no others. "All legislative Powers *herein granted*..." U.S. CONST., art. 1, § 1. There can be little doubt as to the intention of these words. Powers not "herein granted" are not assigned to Congress, and nowhere in the Constitution is Congress granted the right to veto the Constitution, either by expressed language or implication.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

sovereign because it is contained within the Constitution. The same reasons prohibiting congressional sovereignty[1027] also prohibit any other branch of government described in the Constitution from being sovereign, and thus, this "source of authority" must be submissive, not only to the provisions of the Constitution, but to the people's right to alter or abolish, i.e., the people's sovereignty. Therefore, this "source of authority" offers no more validity to Congress refusing to call a convention to propose amendments than does any other assertion of congressional sovereignty.

Therefore, like the Congress, the other branches are limited by the Constitution. It is as unconstitutional for them to attempt to veto or disobey the Constitution as it for Congress, and any such action, or *laches* (where the Constitution mandates action on the part of a governmental branch such as the calling of the convention) must be considered an unconstitutional act. To *whatever extent that action or laches, removes, obstructs or otherwise interferes with the people's transcendent right to alter or abolish, unless such laches or action is expressly granted by the people, that action or laches must yield to the people's sovereignty.* Any such action or *laches* by any branch of government is invalid, and must be rescinded so as to no longer obstruct or interfere with the people's transcendent right to alter or abolish.

Obviously this matter concerns the interpretation of the meaning and intent of the Founding Fathers as expressed through their historic works of

[1027] *See supra* text accompanying notes 921-1020.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the Declaration of Independence and the Constitution. Of the two remaining branches of the government, the Judiciary is the branch of government charged in the Constitution with interpreting the Constitution as to its meaning and intent.[1028] The only conclusion that can be drawn from the *laches* of Congress in calling a convention to propose amendments is that Congress has seized upon one or more Supreme Court decisions that, according to Congress, grants it sovereign powers in the amendatory process not envisioned by the Founding Fathers. If this is true, then the Court has opened a back door for unconstitutional actions by Congress, and the Court must then *firmly* close this door.

There are two questions to be answered:

1. Has the Supreme Court written a decision[s] that could be interpreted by Congress as allowing it the sovereign authority to veto the Constitution?
2. Does the Supreme Court have authority to make such rulings based on the powers vested in it by the Constitution?

*The Court Rulings: An Accidental Back Door?*

Only the Judiciary by its various rulings handed down through the years provides any basis of authority from which Congress could assume it has the right to veto the Constitution or possess the right to refuse to follow its clear mandates. Obviously the Court is not known for wide-eyed radicalism, nor is it alleged that any overt intent is harbored by the Judiciary to remove the

[1028] "It is, emphatically, the province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. 137 (1803). *See also* U.S. CONST., art. III, § 2; "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and Treaties made, or which shall be made, under their Authority..."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

people's sovereignty. However, the Court, in its over two hundred year history, has reached thousands of decisions. It is prudent to assume that with all persons, sometimes words are said or written in haste or without full consideration of their effect. The Court on numerous occasions has issued rulings clearly limiting congressional power and therefore limiting any concept of congressional sovereignty. Nevertheless, reckless language can unintentionally slip into any court decision. Such language can then be seized upon by the politically opportunistic using it to justify their own self-serving actions, distorting what was neither intended nor envisioned by the original author or authors.

If unchecked, such avaricious exploitation threatens the fundamental concepts of the Constitution; thus the Court is obligated to excise the cancer. A careful examination of the relevant decisions regarding Article V is mandated in order to answer the question of what reckless language, if any, the Court has used that has allowed Congress to seize upon it and claim *de facto* sovereignty.

While Congress could edit any number of court decisions, plucking a phrase here and a phrase there to build a sand castle of authority, the fact remains the Court has visited the issue of amendatory procedure only a few times in its history. If these decisions contain no reckless language, then it is likely the basis of authority for the congressional *laches* and veto of the Constitution lies elsewhere. If, on the other hand, such decisions do contain such language, then the search need go no further.

The suits are: Hollingsworth v. Virginia, 3 U.S. 378 (1798); Missouri Pacific Railway Co. v. Kansas, 248 U.S. 276 (1919); Hawke v. Smith, 253 U.S.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

221 (1920); State of Rhode Island v. Palmer, 253 U.S. 350 (1920); Dillon v. Gloss, 256 U.S. 368 (1921); Leser v. Garnett, 258 U.S. 130 (1922); United States v. Sprague, 282 U.S. 716 (1931); United States v. Chambers, 291 U.S. 217 (1934); Coleman v. Miller, 307 U.S. 433 (1939).

*The Earlier Decisions*

*Hollingsworth*: This suit is probably the most substantial enforcement of the people's right to alter or abolish and therefore contains no language giving support to Congress to veto the Constitution. The court said:

> "*The people limit and restrain the power of the legislature*, acting under a delegated authority, but they impose no restraint on themselves. They could have said by an amendment to the constitution, that no judicial authority should be exercised, in any case, under the United States; and, if they had said so, could a court be held, or a judge proceed, or any judicial business, past or future, from he moment of adopting, the amendment? On general ground, then, it was in the power of the people to annihilate the whole and the question is, whether they have annihilated a part, of the judicial authority of the United States... The amendment is paramount to all the laws of the union, and if any part of the judicial act is in opposition to it, that part must be expunged."[1029]

*Missouri Pacific*: In this suit the court specifically defined the meaning of the word "two-thirds" as used in the Constitution. There is no language that can be interpreted as supporting Congress vetoing the Constitution.[1030]

*Hawke*: This suit struck down the use of a state referendum to approve a ratification vote by a state legislature on a constitutional amendment. The Court said:

---

[1029] Hollingsworth v. Virginia, 3 U.S. 378 (1798) (emphasis added).
[1030] *See supra* text accompanying note 869.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"The fifth article is a grant of authority by the people to Congress. The determination of the method of ratification is the exercise of a national power specifically granted by the Constitution, that power is conferred upon Congress, *and is limited to two methods,* by action of the Legislatures of three-fourths of the states, or conventions in a like number of states.

"The argument to support the power of the state to require the approval by the people of the state of the ratification of amendments to the federal Constitution through the medium of a referendum rests upon the proposition that the federal Constitution requires ratification by the legislative action of the states through the medium provided at the time of the proposed approval of an amendment. This argument is fallacious in this—ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the state to a proposed amendment.

"It is true that the power to legislate in the enactment of the laws of a state is derived from the people of the state. But the power to ratify a proposed amendment to the federal Constitution has its source in the federal Constitution. The act of ratification by the state derives its authority from the federal Constitution to which the state and its people have alike assented."[1031]

*Hawke* certainly removed the right of the people to alter or abolish their government by removing control of a state legislature's ratification votes.[1032] It did not, however, remove that power entirely.[1033] Further, it specified Congress' power is limited to two methods of ratification. This limit provides no language supporting congressional veto of the Constitution by refusing to call a convention to propose amendments.[1034]

---

[1031] Hawke v. Smith, 495 U.S. 221 (1920). (emphasis added).

[1032] *See supra* text accompanying notes 272,629,653,1076,1096,703, 1651,1681,755,872,909,915.

[1033] *See infra* text accompanying note 1121.

[1034] However, for the opportunistic, there is a misstatement in *Hawke* that would appear to support the "same subject" advocates. The Court states:

"This article [U.S. CONST., art. V] makes provision for the proposal of amendments either by two-thirds of both houses of Congress, or on application of the Legislatures of two-thirds of the states;" Clearly, the "same subject" advocates have used this error of language as support for their argument.

However, none of these advocates bothers to note that the same Court in a decision reached less than a year later stated:

"A further mode of proposal---as yet never invoked---is provided, which is, that on the application of two-thirds of the states Congress shall call a convention for the purpose." Dillon v. Glass, 256 U.S. 368 (1921).

True, Justice Day wrote the opinion in *Hawke*, while Justice Van Devanter wrote *Dillon*. But it is interesting to note that *as support for the statement above quoted in Dillon*, Van Devanter cited *Hawke* (among other decisions). It is hardly likely that Justice Van Devanter would use a citation to support his

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

However, *Hawke* does raise several constitutional problems that, while they do nothing to expand the power of Congress, certainly weaken the states and the people regarding the amendatory procedure.

*Hawke* subverts the right of the people to alter or abolish their government by denying them the right to use elections to accomplish the same. While referenda are specified in the decision, it is too fine a point to suppose that the decision cannot or would not be extended to any other form of election. Thus, it is irrelevant as to what type of election *Hawke* prevents; an election is an election. To deny one form of election denies all forms; thus initiative and general elections also are defeated by *Hawke* as they too are not derived from the federal Constitution and would, under the reasoning proposed in *Hawke*,[1035] be as unconstitutional as a referendum. If the Court holds that the federal Constitution does not recognize the referendum as

---

statement that did not agree with that statement. It is also highly unlikely that *where the Court's decision itself concerned the meaning of the text of the Constitution*, Justice Van Devanter would have ignored such a fundamental difference in interpretation.

The only conclusion that is possible is that Justice Day chose to write an abbreviated version of Article V, as *Hawke* primarily concerned the subject of ratification, and convention applications were almost a footnote in the matter. In the case of *Dillon*, Justice Van Devanter chose to examine the proposal method in more depth and with more accuracy. Proof of this is self-evident: Justice Day used a single sentence to describe the amendment process; Justice Van Devanter used an entire paragraph.

Any further doubt as to the true meaning of the constitutional phrase was removed in United States v. Sprague, 282 U.S. 716 (1931) written by Justice Roberts. Justice Day was no longer on the Court, but Justice Van Devanter was. Justice Roberts, writing for the Court said:

"The United States asserts that article 5 is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates that this is true. It provides two methods of proposing amendments. Congress may propose them by a vote of two-thirds of both houses; *or, on the application of the legislatures of two-thirds of the States, must call a convention to propose them*." (emphasis added).

[1035] *See supra* text accompanying note 1032.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

constitutional, it can be stated with equal conviction that the Constitution equally does not recognize initiative or general election in the amendatory procedure unless first approved by Congress.[1036]

The problem with this reasoning arises when focusing on a convention to propose amendments. In *Hawke*, the Court assumed elected bodies would reflect "the will of the people."[1037] But if, like ratification, the convention to propose amendments is an instrument "derived from the federal constitution,"[1038] then how can the people act as they are denied the use of election in order to express their collective will? The Founding Fathers made it clear Congress was to have no discretion in the matter.[1039] The Court, through this decision, has made it clear the people cannot act.

What if, for example, a state legislature appoints delegates rather than, as the Hawke decision assumes, holds elections in order to have the will of the people expressed? What if these delegates prior to their appointment simply come to the legislature and pay for their appointments? What if the people of the state violently disagree with these appointments? Has not *Hawke* removed the right of the people to compel their legislature to hold elections

---

[1036] *See infra* text accompanying notes 1110-1122.
[1037] "The method of ratification is left to the choice of Congress. Both method of ratification, by Legislatures or conventions, call for action by deliberative assemblages representative of the people, which it *was assumed would voice the will of the people*." Hawke v. Smith, 495 U.S. 221 (1920) (emphasis added).
[1038] "It is true that the power to legislate in the enactment of the laws of a state is revived from the people of the state. But the power to ratify a proposed amendment to the federal constitution has its source in the federal Constitution. The act of ratification by the state derives its authority from the federal Constitution to which the state and the people have alike assented." *Id.*
[1039] *See supra* text accompanying notes 497-509.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

of convention delegates and defeat such appointments? As the federal convention to propose amendments is derived from the federal Constitution, does not *Hawke* make such appointments legal? Indeed, as only the state legislatures are mentioned in Article V, and no elections are specified therein, how can it be any other way?[1040]

The brutal fact is that *Hawke* was wrongly decided. The matter can only be resolved by accepting that the amendatory process, as it relates to the convention and--in this case—ratification is a combination of federal *and* state authorities, both of which must be employed to express the people's transcendent right to alter or abolish. Form cannot be allowed to outweigh substance in this matter.[1041] If the people create an election result that counters a vote of the legislature, then it is the legislature that must succumb to the will of the people. While it is conceded that if Congress chooses the method of ratification requiring a vote of the legislatures, it must be the legislature that expresses; this choice of Congress cannot be used to exclude the people from the process *if that state so chooses*. It can only mean the official, final position of the state in the matter must ultimately

---

[1040] It is noteworthy how the Court finds objection to the participation of the people in the amendatory process of the Constitution, while illustriously touting them as the source of all power (*See supra* text accompanying note 1021.) yet seems to have no problem in supporting the subjugation of the elected state legislatures and their power of ratification in this same process by the actions of a clearly politically motivated Congress. *See infra* text accompanying notes 1053-1066.

[1041] As Madison observed in FEDERALIST No. 40:

"They [The Constitutional Convention delegates] must have reflected, that in all great changes of established governments, forms ought to give way to substance, that a rigid adherence in such cases to the former, would render nominal and nugatory the transcendent and precious right of the people to 'abolish or alter their governments as to them shall seem most likely to effect their safety and happiness.'"


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

be *expressed* by that legislature; how the decision is arrived at is the sole business of the state. Therefore, if the people of a state wish an election to resolve a federal Constitution amendatory question, they have a right to do so.

The conclusion of *Hawke* is obvious: it does not enlarge congressional power in the amendatory process; it simply removes the people from the process unless Congress elects to include them. While ominous, there is still no reckless language that Congress could use as a basis to veto the Constitution; Congress has merely been given the power to negate the will of the people, the sovereign source of the Constitution's authority.

*Rhode Island*: This suit, for the most part, merely summed up earlier suits. It restated *Hawke* and *Missouri Pacific* and added nothing that might be construed as granting Congress veto power. It did not provide reasons for its conclusions which was criticized in the decision itself where Associate Justice McKenna said:

> "The court in applying it [the Eighteenth Amendment] has dismissed certain of the bills, reversed the decree in one, and affirmed the decree in four others... I am, however, at a loss how or to what extent to express the grounds for this action. The court declares, conclusions only, without giving any reasons for them. The instance may be wise--establishing a precedent now, hereafter wisely to be imitated. It will undoubtedly decrease the literature of the court, if it does not increase its lucidity."[1042]

There is nothing in Rhode Island granting veto power to Congress. While perhaps brevity is confusing in this case, it does not confer upon Congress enlargement of its constitutional powers or imply permission to go outside them.

[1042] State of Rhode Island v. Palmer, 253 U.S. 350 (1920).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Dillon*: In that suit, the Court said:

"That the Constitution contains no express provision on the subject is not in itself controlling; for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed. An examination of article 5 discloses that it is intended to invest Congress *with a wide range of power* in proposing amendments. Passing a provision long since expired, it subjects this power to *only two* restrictions: one that the proposal shall have the approval of two-thirds of both houses, and the other excluding any amendment which will deprive any state, without its consent, of its equal suffrage in the Senate."[1043]

Here, for the first time, the Court removed itself from its previously uniform position that "the language is plain and admits no doubt in its interpretation."[1044] In other words, the Court had held previously that Article V contained no *implied* provisions, that everything in the amendatory procedure was *expressed*. As of *Dillon*, however, the Court held that Congress is *by implication* endowed with a "wide range" of unspecified powers limited only by two incidental provisions of Article V, neither of which contains much substance. Despite this, while this decision may provide *some* support for congressional sovereignty, there is no explicit language in the decision as such.

*Leser*: The *Leser* decision[1045] restated several other decisions in regard to the 19th Amendment. There can be no interpretation of congressional sovereignty as Congress is not even mentioned once in the decision.

*Sprague*: The Court held:

"The United States asserts Article 5 is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates that this is true."[1046]

The Court then added:

---

[1043] Dillon v. Gloss, 256 U.S. 368 (1921).
[1044] Hawke v. Smith, 495 U.S. 221 (1920).
[1045] Leser v. Garnett, 258 U.S. 130 (1922).
[1046] United States v. Sprague, 282 U.S. 716 (1931).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"The Constitution was written to be understood by the voters; its words and phrases were used in her normal and ordinary and distinguished from technical meaning; where the intention is clear there is no reason for construction and no excuse for interpolation or addition."[1047]

The suit concerned the concept that the subject of a proposed amendment dictates by which method ratification must be conducted. The Court rejected the idea saying:

"...[The appellees] urge we ought to insert into it a limitation on the discretion conferred on the Congress, so that it will read, 'as the one or the other mode of ratification may be proposed by the Congress, *as may be appropriate in view of the purpose of the proposed amendment.'* This can not be done."[1048]

Here again, Congress is supported in its discretionary role regarding choice of ratification method, but the Court grants nothing more that can be construed as support for congressional sovereignty.

*Chambers*: In this suit, the Court actually *removed* power from Congress stating:

"The Congress, however, is powerless to expand or extend its constitutional authority. The Congress, while it could propose, could not adopt the constitutional amendment or vary the terms or effect of the amendment when adopted. The National Prohibition Act was not repealed by act of Congress, but was rendered inoperative, so far as authority to enact its provisions was derived from the Eighteenth Amendment, by the repeal, not by the Congress but by the people, of that amendment."[1049]

The Court added:

"In the instant case, constitutional authority is lacking. Over the matter here in controversy, power has not be granted but has been taken away. The creator of the Congress has denied to it the authority it formerly possessed, and this denial, be unqualified, necessarily defeats any legislative attempt to extend the authority."[1050]

Finally, the Court concluded:

"The question is not one of public policy which the courts may be considered free to declare, but of the continued efficacy of legislation in the face of controlling action of the people, the source of the power to enact and maintain it... The principle involved is thus not archaic, but rather is continuing and vital—that the people are free to withdraw the authority they

---

[1047] *Id.*
[1048] *Id.* (emphasis added).
[1049] United States v. Chambers, 291 U.S. 217 (1934).
[1050] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

have conferred and, when withdrawn, neither the Congress nor the courts can assume the right to continue to exercise it."[1051]

Certainly, "the Congress is *powerless* to expand..."[1052] provides no comfort to those who would seek authority for congressional sovereignty.

*Coleman: The "Final" Word?*

The greatest boost to those seeking authority for congressional sovereignty may have come with the latest suit to reach the Supreme Court on this matter, *Coleman v. Miller*,[1053] a 1939 decision that has remained the final word in the amendatory process for over sixty years. The suit involved an attempt by Kansas state legislators to overturn a change in a ratification vote by the Kansas legislature that first rejected a proposed amendment (that never received enough ratification votes to make it part of the Constitution), then 13 years later, reversed itself and voted in favor of ratification. The key point of this suit is that while the change in ratification *may* have presented a ratification issue for Congress to address, Congress never did address it because the states never provided the three-quarters affirmative action required in the Constitution in order to compel the question before

[1051] *Id.*
[1052] *Id.*
[1053] Coleman v. Miller, 307 U.S. 433 (1939).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress. Hence, the use of the political question doctrine set forth in *Coleman* was premature as the Court decided on a political question issue *before* the political body in question acted.[1054]

In *Coleman* the Court approved of the right of Congress to overthrow state legislatures should it (Congress) not agree with a ratification vote, granted Congress "exclusive" control of the constitutional amendatory process, removed itself from any ability to oversee or interfere with this control saying that its opinions were nothing more than "advisory," and finally intimated only Congress had the power to amend the Constitution.

The Court first acknowledged the "right" of Congress to overthrow state legislatures for the expressed political purpose of altering ratification votes on proposed amendments to whatever outcome Congress desired. The Court said:

> "On July 9, 1868, the Congress adopted a resolution requesting the Secretary of State to communicate 'a list of States of the Union who legislatures have ratified the fourteenth article of amendment' and in Secretary Seward's report attention was called to the action of Ohio and New Jersey. On July 20th Secretary Seward issued a proclamation reciting the ratification by twenty-eight States, including North Carolina, South Carolina, Ohio and New Jersey, and stating that it appeared that Ohio and New Jersey had since passed resolutions withdrawing their consent and that 'it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid and therefore ineffectual'. The Secretary certified that if the ratifying resolutions of Ohio and New Jersey were still in full force and effect, notwithstanding the attempted withdrawal, the amendment had become

---

[1054] "It has been plausibly suggested the Court's lavish deference to Congress in *Coleman* may be connected with the "Court-packing" plan of 1937. The plan was President Franklin Roosevelt's response to the Court's invalidating piece after piece of the his New Deal legislation. Of the four concurring justices, three (Black, Frankfurter, and Douglas) were appointed by Roosevelt. Justice Roberts switched sides, becoming swing vote in cases upholding important New Deal acts. L. Baker, *Back to Back: The Duel Between FDR and the Supreme Court* (1967); Henkin, "Is There a 'Political Question' Doctrine?, 85 *Yale Law Journal* 597, 625 (1976); Millet, "The Supreme Court, Political Questions and Article V—A Case for Judicial Restraint," 23 *Santa Clara Law Review* 745, 756 (1983)" Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention* (1988), footnote 55, p. 209.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

part of the Constitution. On the following day the Congress adopted a concurrent resolution which, reciting that three-fourths of the States having ratified (the list including North Carolina, South Carolina, Ohio and New Jersey) declared the Fourteenth Amendment to be a part of the Constitution and that it should be duly promulgated as such by the Secretary of State. Accordingly, Secretary Seward, on July 28th, issued his proclamation embracing the States mentioned in the Congressional resolution and adding Georgia.

"Thus the political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the presence of an actual ratification. While there were special circumstances, because of the action of the Congress in relation to the governments of the rejecting States (North Carolina, South Carolina and Georgia) *these circumstances were not recited in proclaiming ratification* and the previous action taken in these States was set forth in the proclamation as actual previous rejections by the respective legislatures.

"*We think that in accordance with this historic precedent the question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment.*"[1055]

Thus, with only a minor stipulation,[1056] the Court sanctioned the overthrow of state legislatures as an implied power of Congress in the amendatory procedure of the United States Constitution. It is noteworthy that nowhere in the decision did the Court *limit* this implied power to a single instance or provide any support that such future actions would, in any way, be disapproved by the Court.

The second decision by the Court was that Congress has exclusive control over the amendatory process, and the Judiciary could make no ruling

---

[1055] Coleman v. Miller, 307 U.S. 433 (1939).(emphasis added).

[1056] Apparently the Court approved the overthrow of state legislatures by the Congress if that legislature expresses a ratification vote counter to whatever Congress determines is "politically correct." *Coleman* clearly vindicates this action if Congress does not mention in its ratification proclamation that it has, in fact, overthrown legislatures in order to change their ratification vote. Instead *Coleman* simply requires Congress merely acknowledge the previous recessions by those legislatures in question, but does not state under what circumstances the legislatures "changed" their collective minds. *See supra* text accompanying notes 849,917,1006; *infra* text accompanying notes 1077,1079,1089,1094,1188.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

interfering with Congress regarding it. In several places in the *Coleman* decision, the Court upheld this concept saying:

"The Constitution grants Congress exclusive power to control submission of constitutional amendments. Final determination by Congress that ratification by three-fourths of the States has taken place 'is conclusive upon the courts.' *In the exercise of that power, Congress, of course, is governed by the Constitution*. However, whether submission, intervening procedure or Congressional determination of ratification conforms to the commands of the Constitution, call for decisions by the 'political department' of questions of a type which this Court has frequently designated 'political.' And decision of a 'political question' by the 'political department' to which the Constitution has committed it 'conclusively binds the judges, as well as all other officers, citizens, and subjects of the government.' Proclamation under authority of Congress that an amendment has been ratified will carry with it a solemn insurance by the Congress that ratification has taken place as the Constitution commands. Upon this assurance a proclaimed amendment must be accepted as a part of the Constitution, leaving to the judiciary its traditional authority of interpretation. *To the extent that the Court's opinion in the present case even impliedly assumes a power to make judicial interpretation of the exclusive constitutional authority of Congress over submission and ratification of amendments, we are unable to agree*."[1057]

The Court also said:

"The Court here treats the amending process of the Constitution in some respects as subject to judicial construction, in others as subject to the final authority of the Congress. There is no disapproval of the conclusion arrived in Dillon v. Gloss, that the Constitution impliedly requires that a properly submitted amendment must die unless ratified within a 'reasonable time.' Nor does the Court now disapprove its prior assumption of power to make such a pronouncement. And it is not made clear that only Congress has constitutional power to determine if there is any such implication Article V of the Constitution. On the other hand, *the Court's opinion declares that Congress has the exclusive power to decide the 'political questions' of whether a State whose legislature has once acted upon a proposed amendment may subsequently reverse its position*, and whether, in the circumstances of such a case as this, an amendment is dead because an 'unreasonable' time has elapsed. Such division between the political and judicial branches of the government is made by *Article V which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the article exclusively and completely to Congress. The process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point.*

*"Since Congress has sole and complete control over the amending process, subject to not judicial review, the views of any court upon this process cannot be binding upon Congress, and insofar as Dillon v. Glass, supra, attempts judicially to impose a limitation upon the right of Congress to determine final adoption of an amendment, it should be disapproved. If Congressional determination that an amendment has been completed and becomes a part of the Constitution is final and removed from examination by the courts,*

[1057] Coleman v. Miller, 307 U.S. 433 (1939). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*as the Court's present opinion recognizes, surely the steps leading to that condition must be subject to the scrutiny, control and appraisal of none save the Congress, the body having exclusive power to make that final determination.*

*"Congress, possessing exclusive power over the amending process, cannot be bound by and is under not duty to accept the pronouncements upon that exclusive power by this Court or by the Kansas courts. Neither State nor Federal courts can review that power. 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*."[1058]

As Congress is granted "exclusive[1059] power[1060] to control[1061]" the amendatory process for political ends and purposes, this language could be interpreted by Congress as allowing it total control of the amendatory procedure, as that is precisely what the language says.[1062] This is reckless language to warm the blood of any tyrant.[1063]

---

[1058] *Id.* (emphasis added).

[1059] "*Appertaining to the subject alone, not including, admitting, or pertaining to any others*. Sole. Shutting out; debarring from interference or participation; vested in one person alone. *Apart from all others, without the admission of others to participation*. People on Complaint of Samboy v. Sherman, 156 N.Y. S2d. 835, 837." BLACK'S LAW DICTIONARY, 6th ed., (1990). (emphasis added).

[1060] "The right, ability, authority, or faculty of doing something. Authority to do any act which the grantor might himself lawfully perform. Porter v. Household Finance Corp. Of Columbus, D.C. Ohio, 385 F.Supp. 336, 341." BLACK'S LAW DICTIONARY, 6th ed., (1990).

[1061] "To exercise restraining or directing influence over. To regulate; restrain; dominate; curb; to hold from action; overpower; counteract; govern." BLACK'S LAW DICTIONARY, 6th ed., (1990).

[1062] As the Court has ruled many times that the Constitution is to be interpreted in its plain meaning, it follows so must any Court decision be interpreted in its plain meaning. *See supra* text accompanying notes 551,784.

[1063] "Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, either vested constitutionally in one ruler, or usurped by him by breaking down the division and distribution of governmental powers." BLACK'S LAW DICTIONARY, 6th ed., (1990).

As James Madison observed:

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective may justly be pronounced the very definition of tyranny." FEDERALIST No. 47, January, 1788.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

It is but a small step for an ambitious Congress (or members within it) to assume that, having received judicial sanction to abolish state legislatures to alter ratification votes by the states,[1064] it has gained the incidental power to entirely regulate and control the convention to propose amendments,[1065] the only constitutional body that might politically oppose it. After all, if Congress can abolish state legislatures, it follows it can certainly ignore their applications expressing a desire to hold a convention to propose amendments.

What better way to solve the problem, from a political point of view, than to simply ignore it and pretend it doesn't even exist? What better way to solve the matter politically than to attach all sorts of unconstitutional pre-conditions[1066] that can be altered at the whim of Congress so as to ensure a convention never occurs and thus totally thwart the states and the people and their constitutionally guaranteed right to a convention?

*The Effect of Coleman*

[1064] *See supra* text accompanying notes 1055,1056,1058.
[1065] *See supra* text accompanying notes 593-608; *infra* 1126.
[1066] *See supra* text accompanying notes 614-831.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

If *Coleman* is interpreted literally, and it would appear this is the only way it can be interpreted,[1067] then it grants *carte blanche* to Congress in the amendatory procedure.

Why then bother with the amendatory procedure at all? Clearly, if Congress wishes, it can define any question of amendment as "political" and therefore subject it to its exclusive control and regulation of which the Court can do no more than provide an advisory opinion that Congress is not even obligated to heed.[1068] Why not just allow Congress to rule by legislative fiat and eliminate ratification of amendments by the state legislatures or state conventions as Congress has the power to overturn such decisions anyway?[1069]

The entire matter can be distilled to a single question: shall Congress, under the doctrine of "political question", rule this nation, or shall the Constitution, under the doctrine of limited government, rule this nation? The two doctrines *are* mutually exclusive:[1070] Congress cannot be said to have exclusive control over the amendatory process, which is nothing less than exclusive control of the sovereign right of the people to alter or abolish

---

[1067] This interpretation is based on taking the words of the Court in their plain and usual meaning, an interpretation the Court has used itself for interpreting the Constitution. *See supra* text accompanying notes 284,548,551,1062.

[1068] *See supra* text accompanying note 1058.

[1069] *See supra* text accompanying note 917,1055.

[1070] The political question doctrine allows for an open-ended government bound by no rules except its own that it may, for whatever political reason, alter or abolish at any time. The doctrine of limited government holds that government is established under the sovereign direction of the people and is granted certain limited powers by them, and that that government may not exceed or violate those powers except by consent of the people establishing that government.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

their government, and still be said to be subject to the Constitution as it is the right to alter or abolish which *is* sovereignty in this nation.[1071]

If the doctrine of political question is unassailable as the Court has indicated,[1072] then it is clear Congress must be sovereign and the people, the original possessors of sovereignty, cannot be.[1073]

Thus, under the doctrine of political question, Congress achieves sovereignty and possesses the right, if not the duty, to protect itself from destruction by regulating or otherwise ignoring the states (and thus, the people) in both ratification and convention applications.

*What's Wrong With This Picture?*

First, this completely offends the basic core concept of the Constitution: that government is the servant, not the master of the people. Second, it directly violates several expressed provisions of the Constitution.[1074] Third, the "sovereignty" of Congress is based on the

---

[1071] *See supra* text accompanying notes 921-1020.
[1072] *See supra* text accompanying note 1058.
[1073] *See supra* text accompanying note 939.
[1074] The Court has discussed this matter at length, saying:

"The departments of the government are legislative, executive, and judicial. They are coordinate in degree to the extent of the powers delegated to each of them. Each, in the exercise of its powers, is independent of the other, but all, rightfully done by either, is binding upon the others. The constitution is supreme over all of them, because the people who ratified it have made it so, consequently, any thing which may be done unauthorized by it is unlawful. But it is not only over the departments of the government that the constitution is supreme. It is so, *to the extent of its delegated powers*, over all who made themselves parties to it; States as well as persons, within whose concessions of sovereign powers yielded by the people of the States, when they accepted the constitution in their conventions. Nor does its supremacy end there. It is supreme over the people of the United States,

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

decisions of another branch of government which then leads to the conclusion it is this branch that is sovereign, not Congress, *if it assumed either branch of government possesses sovereignty*.

So, how is this matter to be resolved? The rejection by *laches* of convention applications and the abolition of states legislatures in order to alter a ratification vote outcome apparently are two sides of the same coin in the eyes of Congress; if it is accepted Congress can alter the ratification of

---

aggregately and in their separate sovereignties, because they have excluded themselves from any direct or immediate agency in making amendments to it, and have directed that amendments should be made representatively for them, by the Congress of the United States, when two-thirds of both houses shall propose them; or *where the legislatures of two-thirds of the several States shall call a convention for proposing amendments,* which, in either case, become valid, to all intents and purposes, as a part of the constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths of them, as one or the other mode of ratification may be proposed by Congress. The same article declares that no amendment, which might be made prior to the year 1808, should, 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. The first being a temporary disability to amend, and the other two permanent and unalterable exceptions to the power of amendments.

"Now, whether such a supremacy of the constitution, with its limitations in the particulars just mentioned, and with the further restriction laid by the people upon themselves, and for themselves, as to the modes of amendment, be right or wrong politically, no one can deny that the constitution is - supreme, as has been stated, and that the statement is in exact conformity with it.

"Further, the constitution is not only supreme in the sense we have said it was, for the people in the ratification of it have chosen to add that 'this constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the Untied States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the constitution or law of any state to the contrary notwithstanding.' And, in that connection, to make its supremacy more complete, impressive, and practical, that there should be no escape from its operation, and that is binding force upon the States and the members of Congress should be unmistakable, it is declared that 'the senators and representatives, before mentioned, and the members of the state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by an oath or affirmation to support this constitution." Dodge v. Woolsey, 59 U.S. 331 (1855). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

an amendment by abolishing state legislatures, it follows Congress can ignore state applications for a convention to propose amendments.

Further, in all of this, there is remains the question of *free will* on the part of the state legislatures. Do states, by whatever method of ratification chosen, retain the right to *reject* a proposed amendment,[1075] or is ratification nothing more than an "expression of the *assent* of the state to a proposed amendment,"[1076] thus indicating the process is nothing more than an outmoded procedure that may be rejected by Congress at any time that body so chooses?

It would appear *Coleman's* answer to this question is that the states do not possess free will and are subject to the exclusive political control of Congress.[1077] While it would seem, at first glance, that *Coleman* is the alpha and omega of the matter, there are several problems with this conclusion.

---

[1075] This concept of free will must be carefully stated. The states *do* possess the right of choice in ratification of an amendment and in the application for a convention. However, because of reasons discussed elsewhere in this suit,(*see supra* text accompanying notes 890-918) it is clear once a state makes a decision regarding ratification or convention, it cannot rescind that decision.

[1076] Hawke v. Smith, 253 U.S. 221 (1920).

[1077] Of course, it could be stated such congressional action is simply *illegal* and therefore entirely improper, irregular, invalid and ineffectual. However, if this position is taken in regard to the ratification of the 14th Amendment, it would bring into question the validity of that amendment, a question entirely outside the scope of this suit. In *Coleman*, the Supreme Court removed any doubt as to this question. Simply put, the amendment is valid. It follows, therefore, the methods (that incidentally were discussed at length in *Coleman* with no objection raised by any Court member) employed by Congress to ratify the amendment must also be considered valid and constitutional and thus become part of Congress' incidental regulatory powers in the amendatory process. *See supra* text accompanying notes 849,917,1006,1053-1073,1079,1089, 1094,1239,1253-1259,1333. Clearly this power, thus far sanctioned by the Court, at the least, violates the Ninth Amendment. *See supra* text accompanying notes 88-119,1136-1147.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

First, Congress itself, in its abolishing of state legislative ratifications, was inconsistent and essentially held that states could and could not recess ratification votes.[1078] In the north, Congress rejected recessions by two states that had previously voted in favor of ratification, saying they were invalid; in the south, where three states had originally *rejected* the proposed amendment, the Congress abolished the legislatures of the states, replaced them with political appointees of their own choosing, *then altered the original vote of the legislature* thus *allowing* the recession of a previous vote. Thus, the use of its power in this instance is inconclusive.

Second, there is no expressed provision in the Constitution allowing Congress to abolish states legislatures in order to alter ratification votes.[1079] Therefore, the power to do so must an *implied* power.[1080] But implied

---

[1078] *See supra* text accompanying note 917.

[1079] Any argument attempting to validate congressional abolition of state legislatures on the fact the three states involved were on the losing side in the Civil War is without merit despite the actions of Congress at the time.

Throughout the Civil War, the Union held the secession of the southern states to be illegal. Instead, President Abraham Lincoln maintained the states were in a state of rebellion and were always part of the Union. (It should be noted as proof of this position that the Union flew a national flag which contained 34 stars all through the Civil War, the total number of states, north and south, existing at that time.)

The problem with Lincoln's action in declaring the states in rebellion is the Constitution does not support his position.

First, the right of secession is implied under the terms of Article V ("...and no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."). Thus, if a state does grant its consent to deprive itself of its equal suffrage, then it follows its representation in the national government may be terminated. Second, the Constitution holds that in a state of rebellion, only the writ of Habeas Corpus may be terminated. ("The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. CONST., art. I, § 2).

In any event, the Constitution requires that either the Executive or the Legislature of the state in question must apply to the United States for action *before* the United States can act to guarantee a republican form of

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

government or deal with rebellion or invasion. (“The United States shall guarantee to every state in this Union, a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.” U.S. CONST., Art. IV, § 4).

There is no record of the southern state legislatures ever having requested the federal government to intervene as specified under the Constitution, no proof that these southern legislatures were ever unable to meet, no proof that any governor from the south requested such aid from the federal government, no proof there was any form of invasion (except by the Union forces themselves), and no proof that a government in the south changed its form from its already previously established republican form. Therefore, Lincoln’s action in declaring the southern states in rebellion is a constitutionally questionable one.

Nor could Lincoln find any comfort in art. I § 9 §§ 3 which states: “No state shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”

In the first place, Lincoln’s own action of calling for troops made it clear he had determined the nation was not “in a time of Peace.” Thus it was legal for the states to “keep Troops, or Ships of War...” Secondly, while it may true that the firing by Beauregard on Fort Sumter on April 12, 1861 may have made him guilty of destruction of federal property, illegal discharge of a weapon and even disturbing the peace, by no means can it be said this action began a war. An individual cannot declare war. It requires an act of a sovereign nation to do so, *and the south despite all its rhetoric never declared war*. *In fact, Lincoln’s actions in the matter only served to cause more states to secede from the Union*.

So the question, is when did a sovereign power commit an act of war? The answer is clear. The Civil War actually began with the first battle between the two sides, usually called Bull Run or Manassas, fought on July 18, 1861. The key constitutional question is, where did this battle occur and why? It occurred when the sovereign Union forces *crossed into the state of Virginia*. Under the clear terms of the Constitution, if a state is invaded, it has the right to defend itself. Thus, there are no constitutional grounds by which Lincoln could attack the states.

The reason for this is abundantly clear: unless otherwise specified in the Constitution, the design of the Founding Fathers was that the states were to be *supreme* to the federal government. Thus, they were provided the ability to wage war, defend their territory, *regulate the national government through a separate amendatory procedure* and so forth. The conclusion is clear. *The Founding Fathers never intended the Federal Government to possess the power to control the states beyond those limited powers granted it in the Constitution*.

Lincoln’s action in calling for 75,000 volunteers on April 15, 1861 on the basis of *possse comitatus* is also questionable. In the first place, *posse comitatus deals with a sheriff pursuing and arresting felons*. There is no mention of granting the “sheriff” the right to start a war and clearly this was Mr. Lincoln’s intent for it would be far stretch of the imagination to assume the president required this many people to arrest Mr. Beauregard for his actions three days earlier.

True, the Court did find that “the Federal Government may call out the militia in case of civil war; its authority to suppress rebellion is found in

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

power to suppress insurrections and to carry on war." Texas v. White, 74 U.S. 700 (1869). (For a more detailed discussion of Texas v. White, see *infra* text accompanying note 1080.) However, as the date of the case indicates the decision by the Court was reached *eight year after* Mr. Lincoln's actions and therefore while the ruling may carry affect today, it cannot be said to have merit in 1861.

In sum, while Mr. Lincoln's actions may have been politically valid, there is little support in the constitutional language allowing the president or the Congress to have *used their wartime powers* in the Civil War because they did not recognize the sovereignty of the South and without this, these were legally unavailable. There is no support in the Constitution allow the President of the United States the unilateral power to declare war. Further, as interpreted at the time, the power of the president was limited to arrest of felons. *Thus, the only way the North could have constitutionally fought the Civil War was to have taken the position that the South had the right to secede from the Union, a position they chose not to take.* As the Union did not take this position, it follows the South never seceded. The affect of this fact as it relates to the case at hand becomes clear in the aftermath of the Civil War.

Following the military victory by the northern states, Congress passed the Reconstruction Act which established how the former Confederate States would be readmitted to the Union. (Reconstruction Act of Mar. 2, 1867, c. 153, 14 Stat. 428 § 5). The act stated (in part):

"That when the people of any one of the said rebel states shall have form a constitution of government in conformity with the Constitution of the United States in all respects, framed by the convention of delegates elected by the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said state for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, *and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States*, said state shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter preceding sections of this act shall be inoperative in said State..." (emphasis added).

Obviously, in the Reconstruction Act, Congress relied on its power under Article IV to form new states as the basis upon which it could act. ("New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, with the Consent of the Legislatures of the States concerned as well as of the Congress." U.S. CONST., art IV, § 3 §§ 1). The problem is that the

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Constitution deals specifically with the admission of *new* states, not with the states *that Congress and the President both contended were already in the Union, i.e., "old" states.* Therefore, under the Constitution, the Union had no authority to do anything to affect states already in the union, *unless such actions applied to all states past, present and future.*

Congress conveniently ignored basic logic: if it held the southern states were part of the Union because they could not secede, the states could not be "readmitted" by the Reconstruction Act because as member states they were already admitted. Thus, the Reconstruction Act was meaningless in that it required admission of states to the Union that were already admitted.

Further, Congress "rigged" the ratification vote of the 14th Amendment in requiring that amendment to be passed *before* the states could be admitted. Thus, *if the northern states had not ratified the 14th Amendment, by the terms of the Reconstruction Act, the southern states would not have been readmitted to the Union even if they had ratified the amendment.*

In fact, the Constitution was violated by the admission of West Virginia, *if the Union were consistent in its argument*, that Virginia was still in the Union. ("New States may be admitted by the Congress into this Union; but no new States *shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.*" U.S. Const., art. IV, § 3. emphasis added). Thus, if the Union was consistent in its argument, the fact that state was in "rebellion" did not remove its constitutional protection of removal of territory to form a new state without its consent. In fact, the hypocrisy of the Union position is best demonstrated by the West Virginia example: the Union obeyed the Constitution when it was convenient and no more.

There is another problem raised by Congress in the Reconstruction Act. Article V of the Constitution states, "...amendments...shall be valid...when ratified by the Legislatures of three fourths of the several states..." Clearly implied in this phrase of the Constitution is the fact that the ratifying states *must be within the Union at the time of the ratification vote*. The proof of this is that territories, protectorates and similar possessions of the United States cannot ratify constitutional amendments. Only members states can. Further, as the Constitution mandates a specific number of states must ratify in order for an amendment to pass, it is obvious the determination of which states are in the Union (and which are not) must be established if it is to be established whether the amendment received the proper number of ratification votes. The obviousness of this statement and the reason for it are clear: if this were not so, *foreign* states would be able to ratify amendments to our Constitution and thus the entire question of our sovereignty would be in doubt.

Yet, this is exactly what Congress permitted in the Reconstruction Act. To ratify an amendment, a state must already be in the Union. The Union maintained the confederate states were not in the Union by the fact Congress insisted through the enactment of the Reconstruction Act that the confederate states must be "readmitted." Therefore, the confederate states could not have ratified an amendment under any circumstances *because they were not part of the Union*. But the Congress permitted these *non-union* states to vote on ratification *and to be included in the calculation of the total number of states required for ratification*. (And it must be remembered Congress held that the states could only be "readmitted" if the amendment passed.) Thus, it established foreign states that are not part the Union may vote on

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

ratification of amendments to the Constitution. The result: Congress created a question as to the sovereignty of the United States and gave credence to the idea that Britain could, under certain circumstances, reclaim the United States. *See supra* text accompanying note 1007.

But even if it is conceded that Congress had the power it claimed in the Reconstruction Act, that it could require new state constitutions and new legislatures to be created in states that it maintained were still part of the Union, the matter must terminate there for constitutional authority. Nowhere in the Constitution is Congress provided a legislative fiat to "arrange" the outcome of a ratification vote on a constitutional amendment. Clearly, a ratification vote by a state is a legal constitutional power and as such, any exercise thereof, affirmative *or* negative, can in no way be considered to be a form of *rebellion*, as the state is merely employing a legal, constitutional power. While the Congress certainly could request the states vote on the matter of the 14th Amendment, nowhere in the Constitution, either expressly or by implication, is there the slightest argument whereby Congress may fix the results of such a vote as was done by the Reconstruction Act. By permitting Congress the power to overthrow state legislatures, thus effecting the outcome of a ratification vote of a constitutional amendment, and by allowing that Congress could mandate a particular outcome of that ratification vote, a dangerous power was created: the ability to amend the Constitution by legislative fiat. *See supra* text accompanying notes 849,917,1006,1053-1073,1077; *infra* text accompanying notes 1089,1094,1188,1239,1333.

No doubt it will be argued Congress acted properly under its republican form of government guarantee. As pointed out earlier in this footnote, such guarantee can only be acted upon by the federal government *if the states ask for the intervention.* True, the Constitution guarantees "to every state in this Union a republican form of government..." U.S. CONST., art. IV, § 4; *See also* Luther v. Borden, 48 U.S. 1 (1849); Minor v. Happersett, 90 U.S. 163 (1875); Pacific States Telephone & Telegraph Co. v. Oregon, 223 U.S. 118 (1912). True, the Supreme Court has ruled Congress determines whether a republican form of government exists, but this determination is considered to have been made if the Congress admits a state's senators and representatives to Congress. (*Id.*) The Court did not say Congress' determination was to be based on whether a state approved of a particular constitutional amendment, nor did it allow that Congress could ignore the constitutional provision of the states first having to ask the Congress to intervene.

How does this relate to the convention to propose amendments? If Congress, by legislative fiat as it did with the Reconstruction Act, can determine the outcome of a ratification vote, can it not also determine the "outcome" of applications for a convention to propose amendments? Using the logic employed by the Congress when it assumed the power to overthrow the states, the answer must be no.

As no state's representatives or senators have been denied representation in Congress, and as this is the standard set by the Supreme Court that determined whether a state was in rebellion or was a non-republican form of government, it must be assumed all state governments are republican governments, i.e., a government subject to the will of the people that elected it, and that none of these states are in rebellion against the government of the United States.

This established, it follows these elected officials of these republican, non-rebellious states acted in accordance with the desires, wishes and intent of the people they represented when they filed applications for a

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention to propose amendments. In other words they acted in a constitutionally legal manner, and by no stretch of the imagination can such actions be considered rebellion.

Thus, as Congress has not declared any state to be in rebellion, it has denied itself the right to use the powers it created in the Reconstruction Act, however constitutionally questionable they may be. In sum, Congress therefore has no right to "direct" or "adjust" the outcome of a ratification vote by the states or applications for a convention to propose amendments because these are lawful constitutional powers being used by states which are neither in a state of rebellion nor non-republican in their form of government.

Finally, any argument that the Reconstruction Act was self-destructing and only aimed at particular states offers no comfort. Clearly, a Congress so disposed, once the power has been established, can easily write a similar piece of legislation to affect any number or group of states it chooses.

[1080] Before any examination of Texas v. White, 74 U.S. 700 (1868) can begin, it must noted the issue before the Supreme Court was not sovereignty. It was about money. It was about whether or not White and others who had come into possession of what would be today termed bearer bonds were entitled to collect that money from the State of Texas. For reasons, most likely due to the recent devastation of the recent civil conflict, it was to the advantage of Texas *not* to pay the bonds as a payment of five million dollars at that time would have most certainly bankrupted the state plunging it into more political havoc than already existed. Therefore, it was the *State of Texas* which desired to have the Supreme Court considered a continual member of the union, i.e., a sovereign state, which had recently suffered some difficulties, rather than a state that had succeeded from the union. It was also the desire of the State of Texas to have the court's permission to void a contract in the form of bonds in spite of expressed constitutional language prohibiting such action by a state. It was therefore to the advantage of Texas not to bring up or point to any provision in the Constitution which might bolster its actions regarding succession.

As it not the purpose of this suit to debate the merits of *Texas* except as it relates to the issue at hand, the arguments regarding whether or not a state can void a contract despite expressed constitutional language forbidding the same, will be largely minimized though it should be noted a strong dissent from three of the justices on the Court (Justices Grier, Swayne, Miller) *did not* give the Court a pass.

As to the issue of succession, the Court conceded that "it is true that the State of Texas was not at the time of filing this bill, or is not now, one of the United States, we have no jurisdiction of this suit, and it is our duty to dismiss it." Thus it tacitly accepted that succession *as a condition of a sovereign state could exist*. The Court chose to then define what a state was. Significantly, the dissents of the justices used an entirely different definition.

The Court majority wrote:

"A state, in the ordinary sense of the Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. It is the union of such states, under a common constitution, which forms the distinct and greater political unit, which that Constitution, designates as the United States, and makes of the people and states which compose it once people and one country."

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Court then noted the Constitution seemed to use the same word, "state" in different senses saying:

"In the clauses which impose prohibitions upon the States in respect to the making of treaties, emitting of bills of credit, and laying duties of tonnage, and which guarantee to the States representation in the House of Representatives and in the Senate, are found some instances of this use in the Constitution. …

"But it is also used in its geographical sense, as in the clauses which require that a representative in Congress shall be an inhabitant of the State in which he shall be chosen, and that the trial of crimes shall be held within the State where committed.

"And there are instances in which the principal sense of the word seems to be that primary one to which we have adverted, of a people or political community, as distinguished from a government. In this latter sense the word seems to be used in the clause which provides that the United States shall guarantee to every State in the Union a republican form of the government , and shall protect each of them against invasion.

"In this clause a plain distinction is made between a State and the government of a State."

The dissenting justices, lead by Justice Grier, strongly dissented on the Court's majority conclusion of the definition of a state. Justice Grief wrote:

"The original jurisdiction of this court can be invoked only by one of the United States. The Territories have no such right conferred on them by the Constitution, nor have the Indian tribes who are under the protection of the military authorities of the government.

"If I regard the truth of history for the last eight years, I cannot discover the State of Texas as one of these United States. I do not think it necessary to notice any of the very astute arguments which have been advanced by the learned counsel in this case, to find the definition of a State, when we have the subject treated in a clear and common sense manner by Chief Justice Marshall, in the case of Hepburn & Dundass v. Ellxey [6 U.S. 445 (1805)]. As the case is short, I hope to be excused for a full report of it, as stated and decided by the court. He says:

'The question is, whether the plaintiffs, as residents of the District of Columbia, can maintain an action in the Circuit Court of the United States for the District of Virginia. This depends on the act of Congress describing the jurisdiction of that court. The act gives jurisdiction to the Circuit Courts in cases between a citizen of the State in which the suit is brought, and a citizen of another State. To support the jurisdiction in this case, it must appear that Columbia is a State. On the part of the plaintiff, it has been urged that Columbia is a distinct political society, and is, therefore, a 'State' according to the definition of writers on general law. This is true; but as the act of Congress obviously uses the word 'State' in reference to that term as used in the Constitution, it becomes necessary to inquire whether Columbia is a State in the sense of that instrument. The result of that examination is a conviction that the members of the American Confederacy only are the States contemplated in the Constitution. The House of Representatives is to be composed of members chosen by the people of the several States, and each State shall have at least one representative. 'The Senate of the United States shall be composed of two senators from each State.' Each State shall appoint, for the election of the executive, a number of electors equal to its whole number of senators and representatives. These causes show that the word

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

'State' is used in the Constitution as designating a member of the Union, and excludes from the term the signification attached to it by writers on the law of nations.'

"Now we have here a clear and well-defined test by which we may arrive at a conclusion with regard to the question of fact now to be decided.

"Is Texas a State, now represented by members chosen by the people of that State and received on the floor of Congress? Has she two senators to represent her as a state in the senate of the United States? Has her voice been heard in the late election of President? Is she not now held and governed as a conquered province by military force?…

"It is true that no organized rebellion now exists there, and the courts of the United States now exercise jurisdiction over the people of that province. But this is no test of the State's being in the Union. Dacotah is no State, and yet the courts of the United States administer justice there as they do in Texas. The Indian tribes, who are governed by military force, cannot claim to be States of the Union. Wherein does the condition of Texas differ from theirs?"

The distinction between majority opinion and dissent is clear: the majority concerned itself with the *form* of a state government while those in dissent addressed whether or not a state could *function in its required constitutional role*, or in other words, carry out its assigned constitutional role; in short, form versus function.

Thus the dissent essentially asked: can a state be considered a state if it cannot function as a sovereign state? As the dissent pointed out, the fact a state has a government invoked upon it by military force or outside federal authority does not make it a state. Further, in the case of Texas, its "sovereignty" was shared with the State of Louisiana without consent by the citizens of either state. Thus, the "government of the state", a military district had, without consent of the involved states as required by the Constitution, combined territories into a single "state." As the Constitution forbids such combination, to be valid, the majority decision the Court of that day must agree that state governments may "share" sovereign power or that they may be combined by military force, but such actions somehow have no effect on the sovereign power and validity of the state. Obviously this is impossible. What the majority of the Court ignored was the Constitution not only affords obligations on the states *but protections as well outside the republican form of government clause and there is nothing in the Constitution which holds that any clause may be voided or that a state may pick and choose which clauses shall effect it nor does the Constitution allow the national government any veto of any clause any state shall take advantage of.* Thus, the answer is obvious regarding the Court's question: to be a state in the context of the Constitution, a state must satisfy both form *and* function. If it cannot satisfy both, it is clear a state cannot properly be to be a state in the union. Thus, both sides were correct as all parameters established by the Court must be satisfied.

Both majority and dissent ignored the vote of the people of Texas which instructed their legislature to withdraw from the United States. Instead the Court majority confined itself exclusively to "state" sovereignty stating:

"It is needless to discuss, at length, the question whether the right of a State to withdraw from the Union for any cause, regarded by herself as sufficient, is consistent with the Constitution of the United States."

The implication of this sentence is clear. The Court clearly assigns the right of alter or abolish to *the state and not the people.* This sentence

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

served as prelude on which the Court based this opinion, the articles of confederation.

The Court said:

"The Union of the states never was a purely artificial and arbitrary relation. It began among the Colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction from the Articles of Confederation. By these the Union was solemnly declared to 'be perpetual.' And when these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained 'to form a more perfect Union.' It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not? …

"The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States…

"When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. The act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other Sates was as complete, as perpetual, and as indissoluble as the union between the original states. There was no place for reconsideration, or revocation, except through revolution, or through consent of the States…

"Considered therefore as transactions under the Constitution, the ordinance of secession, adopted by the convention and ratified by a majority of the citizens of Texas, and all the actions of her legislature intended to give effect to that ordinance, were absolutely null. They were utterly without operation in law. The obligations of the State, as a member of the Union, and of every citizen of the State, as a citizen of the United States, remained perfect and unimpaired. It certainly follows that the State not cease to be a State, nor her citizens to be citizens of the Union. If this were otherwise, the State must have become foreign, and her citizens foreigners. The war must have ceased to be a war for the suppression of rebellion, and must have come a war for conquest and subjugation."

What was neatly ignored by the Court majority was:

a)the Articles of Confederation *specifically named which states were in a "perpetual" union and did not mention Texas*. This of course was because Texas was under the sovereign control of Mexico at the time of the adoption of the articles.

b)the articles defined this "perpetual" union as "enter[ing] into a firm league of friendship with each other…" (Articles of Confederation, § 3. *see also* § 4: "The best to secure and perpetuate mutual friendship and intercourse among the people of the different States…"

Hence the Court's reliance on a perpetual union of states simply is not backed by the words of the Articles of Confederation, nor does the well known history of the articles during the time they were in effect bear out the concept that the states viewed themselves as a "perpetual" union.

As to the Court's discussion that if Texas were not a state, its citizens were foreigners and the war fought would be for "conquest and subjugation" it has been pointed out previously that neither side declared war, that to declare war *requires the act of a sovereign state or nation outside the nation on which war is declared as otherwise it is defined as*

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*rebellion and that the Constitution mandates the national government cannot act in cases of rebellion unless requested to do so by the state legislature or governor.* It bears repeating no such requests were made and that none of the southern states invaded the Union until the Union had first invaded them with an army. In all therefore, while such niceties of term are from this historic perspective no more than observation, it is clear the actions of the Union, by the Court's own definition, were action of conquest and subjugation."

The Court also ignored the fact the Constitution was not ordained by the states, but by the people using their right of alter or abolish. Indeed the actions of Texas mirrored precisely the actions of the colonies with the identical response by a superior sovereign power. If the Court were to hold the action of alter or abolish by the people is void in the one example of Texas, it follows it is equally obligation to question the identical procedure in the establishment of the United States.

As noted in McCulloch v. Maryland, 17 U.S. 316 (1819):

"The government proceeds directly from the people; is 'ordained and established' in the name of the people; and is declared to be ordained, 'n order to form a more perfect union, establish justice, ensure domestic tranquility, and secure the blessings of liberty to themselves and to their posterity.' The assent of the States, in their sovereign capacity, is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negatived, by the State governments."

The only possible interpretation is that *Texas* overturned *McCulloch* as to this fundamental point: that the states were sovereign, not the people and that it was the states that established the Constitution, not the people in spite of the expressed language to the contrary.

All of this of course, is based on the Court's reliance on the Articles of Confederation. Both *McCulloch* and *Texas* refer to their action of sovereignty as "final" which at the least implies there was no further action required nor permitted in the matter. It is impossible in the question of sovereignty for both to be "final." Thus, one must fall. The question then evolves into the validity of the Articles of Confederation after the adoption of the Constitution which describes itself as "supreme law of the land." As there has been no contradiction by the Court then the Articles of Confederation still apply and must be viewed as having full force and effect of law in this nation as a term of government which means the Constitution is not supreme law as there is then another law of the land of equal supremacy or b0 the Constitution has an amendment which must cause great alteration in its interpretation.

If the Constitution is to viewed as supreme law, then the Articles of Confederation cannot be considered to be in effect or have force of law. The court cannot bounce back to the articles whenever it pleases, plucking a phrase here and there to bolster its argument then leaving the rest of the document in the dust bin. Either the Articles of Confederation are valid and still in force and the Constitution, having been created after them, is subservient to them, or at least amended by them, or they are not valid and the Constitution is unaffected except where the Founders chose to put the language of the articles into the Constitution. Either the Constitution is supreme law of the land or it is not. Either the states are the ultimate sovereign power as called for in the articles or they are not. In the

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Constitution, it is the people who are sovereign; in the articles it is the states. Both cannot be; one must be subservient to the other. However, there is one unifying theme uniting both documents: in neither is the national government supreme.

The Court ultimately must choose which to follow, the articles or the Constitution or create a legal bridge of some sort so as to bring the articles in as part of the Constitution in which case it must at the minimum negate the 10th Amendment as passed and fortify it with the word "expressly." Such a change cannot be taken lightly as the effect of this change alone, not to mention a multitude of others contained within the articles would serve to wipe out much of today's taken for granted federal power including that of the Court itself. In any event whether one asserts the Articles of Confederation or the Constitution, the sovereign power of the states or the sovereign power of the people, the issue is clear as amendatory process: in both is an amendatory process absent any national government discretion or consent exists under both plans and must be obeyed by the national government thus permitting both the power to amend their form of government without national government approval.

Finally, and this point has been made before but is worth repeating here, Article V of the United States Constitution provides for a state to withdraw from the United States Senate with no more than its own consent. From this expressed state power, the step implying the states possess the right of succession *in total* is so small as to be termed obvious. Thus the contention of the Court that "[t]he Constitution, *in all its provisions*, looks to an indestructible Union, composed of indestructible States…" (emphasis added) is not entirely correct as at least one provision, ignored by the Court suggests a dissolvable Union achievable by no more than the action of an individual state. However as the Court didn't address this issue in *Texas*, the answer to this specific question remains unresolved to this day.

Even without the expressed language of Article V, there is little comfort in the decision which might be used to justify congressional regulation or veto of state applications for a convention to propose amendments. Two quotes from the majority settles the issue.

The Court wrote:

"But the perpetuity and indissolubility of the Union, by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom, and independence, an every power, jurisdiction, and right not expressly delegated to the United states. Under the Constitution, though the powers of the States were much restricted, still, all powers not delegated to the United States nor prohibited to the States, are reserved to the States respectively, or to the people. …

"And we think that the principle sanctioned by it [the organization of opposing governments in a state] may be applied, with even more propriety, to the case of a State deprived of all rightful government, by revolutionary violence; though necessarily limited to cases where the rightful government is thus subverted, or in imminent danger of being overthrown by an opposing government, set up by force within the State."

It can be concluded therefore the Court felt congressional overthrow of state legislatures was warranted but only extreme conditions and certainly did not sanction such overthrow as a result of constitutionally sanctioned state actions such as applying for a convention to propose amendments.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

powers in the Constitution are the judicial creation of the Supreme Court.[1081] The Constitution does not expressly use the term “implied powers” anywhere within it; it has required Supreme Court rulings in order to establish this part of the Constitution. It follows if such power is implied and such powers are defined exclusively by judicial interpretation and decision, then such powers may and can be reviewed by the Court and, at the discretion of that branch of government, withdrawn if found appropriate. Therefore, the Court’s determination that it can only serve in an advisory capacity regarding the amendatory process[1082] must be considered ineffectual.[1083] Thus, the Court is

---

[1081] “Among the enumerated powers, we do not find that of establishing a bank, or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. … A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and all of the means by which they may be carried into execution, would partake the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, the important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves.” McCulloch v. Maryland, 17 U.S. 316 (1819).

[1082] Coleman v. Miller, 307 U.S. 433 (1939).

[1083] By its actions Congress has demonstrated it *relied* on the Court decision as effectual. Thus, this same action serves *to reject the Court’s position that its rulings are advisory only.* If Congress relies on a Court decision as the basis on which it claims to have the power to do something, in this case control the entire amendatory procedure, then that decision cannot be said to be advisory. “ADVISORY. Counseling, suggesting, or advising, but not imperative or conclusive.”; ADVISORY OPINION. “Such may be rendered by a court at the request of the government or an interested party indicating how the court would rule on a matter should adversary litigation develop. An advisory opinion is thus an interpretation of the law without binding effect. While the International Court of Justice and some state courts will render advisory opinions *the federal courts will not; their jurisdiction being restricted to cases or controversies*.” BLACK’S LAW DICTIONARY, 6th Ed. (1990). (emphasis added). *See* U.S. CONST., art. III, § 2 §§ 1; “The judicial Power shall extend to all Cases...to Controversies to which the United States shall be a Party...”

The conclusion is obvious. As *Coleman* was clearly a case under Supreme Court jurisdiction, and the Constitution prescribes that the Court’s

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

obligated to maintain jurisdiction in the matter because it is only by its interpretative authority (i.e., assumption of sovereign power) that the power to exclusively control the amendatory process[1084] continues to exist. Just as clearly, therefore, the Court is empowered to modify or clarify this broad power it created so as to bring it into conformity with other constitutional provisions that suits such as this may bring to the Court's attention.

As stated in *Hawke*:

"The language of the article is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed."[1085]

The essential question of the brief, however, is not whether it is the function of the Court (or the legislative bodies) "to alter the method which Constitution has fixed" for amending the Constitution, but whether it is the function of the courts to *enforce* what the Constitution *has* fixed. And if the Constitution has "fixed" a method, can Congress be granted such extraordinary, unlimited *implied* powers as are expressed in *Coleman*, or is the plain language of Article V plain enough that it leaves no doubt as to its meaning?

If, as *Coleman* maintains, the Court has no judicial review of the amendment process and that it is the exclusive domain of Congress, would it therefore sit mute under the *Coleman* doctrine if Congress enacted radical changes to the amendatory ratification process, or if Congress simply failed to follow its provisions when it found such compliance politically or

---

jurisdiction can only extend to "cases and controversies" and thus cannot be advisory, it follows its ruling *cannot be advisory*.

[1084] Coleman v. Miller, 307 U.S. 433 (1939).

[1085] Hawke v. Smith, 253 U.S. 221 (1920).



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

otherwise inconvenient, such has been proposed for a convention in the Hatch bill and other similar bills?[1086]

Would the Court, for example, in the ratification process, restrained by *Coleman*, watch Congress extended its power of statutory control beyond the constitutional point of choice between the two modes of ratification,[1087] that of state legislature or state convention?

Would the Court, stayed by *Coleman*, allow Congress unlimited latitude in the selection of legislators who would then vote on whether to ratify a proposed amendment?

Would the Court, fettered by *Coleman*, sit idly by while Congress inserted its own officers to supervise the legislatures during the ratification process?

Would the Court, tied by *Coleman*, allow Congress to determine the makeup of the delegates attending a state ratifying convention and allow Congress to set the agenda, pick its own officers to run it and install other similar restraints?

Would the Court, bound by *Coleman,* allow Congress to legislate by what terms and manner congressionally approved subjects would be discussed in a legislature or a ratifying convention in regards to a proposed ratification?

Would the Court, gagged by *Coleman,* allow Congress to regulate the voting procedures of the states on ratification either within the legislature or at a convention, allow Congress to refuse to recognize a state ratification

---

[1086] *See supra* text accompanying notes 596-607
[1087] U.S. CONST., art. V.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

vote on a proposed amendment unless Congress agreed with that vote, and allow Congress the authority to veto that ratification vote should it not agree with its outcome by overthrowing the legislatures and replacing the elected representatives with persons of its own choosing?

Surely, today, the answer to these questions must be a resounding no.[1088]

If this refusal by the Court in allowing exclusive congressional control of the *ratification* process is true, how can it be successfully argued the *proposal* process of a convention to propose amendments can be so regulated when, at this stage, the embryonic stage in the creation of an amendment or amendments, the most vigorous and independent debate must be preserved if that amendment or amendments are to receive the severe and public criticism needed in order to ensure the change sought to the Constitution is desired by the people and not merely an expression of the political whims of Congress?

In *Coleman*, the Court had the opportunity, if not the obligation, to specify the limits of such broad phrases as "exclusive and complete control" of the amendatory process. It choose not to, leaving in its wake confused "*dicta*"[1089] that only served as a basis for the unconstitutional actions of Congress in not calling for a convention.

---

[1088] However, the most recent decision of the Court in the amendatory process, *Coleman*, supported just this sort of sweeping power by Congress. *See supra* text accompanying notes 849,917,1006,1056,1077. It is perhaps the most ironic of situations that the Supreme Court, when presented with the question in 1872, found that Congress did not have such powers. *See infra* text accompany note 1252. It was only in *Coleman* that such powers were "discovered."

[1089] "Dicta. Opinions of a judge which do not embody the resolution or determination of the court. Expression in court's opinion which go beyond the facts before court and therefore are individual views of author of opinion and not binding in subsequent cases as legal precedent. State ex re. Foster v. Naftalin, 246 Minn. 181, 74 N.W.2d 249." BLACK'S LAW DICTIONARY, 6th ed., (1990).

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"Dictum. The word is general used as an abbreviated form of *obiter dictum*, 'a remark by the way;' that is, an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar, but not necessarily involved in the case or essential to its determination; any way of illustration, argument, analogy, or suggestion. Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved or essential to determination of the case in hand are obiter dicta, and lack the force of an adjudication. Wheeler v. Wilkin, 98 Colo. 568, 58 P.2d 1223, 1226." *Id*.

However, it is unlikely, given the judicial structure provided in the Constitution that the"[t]he judicial power of the United States shall be vested in one Supreme Court..." *id.* § 1, and that the "judicial power shall extend to all case, in law and equity, arising under this Constitution..." (U.S. CONST., art III, § 2, §§1), that *dicta* can exist at the Supreme Court level. The Supreme Court is the final authority in the judicial power of the United States and thus renders the final and ultimate decision on any legal matter before it. Therefore, any opinion (or part thereof) must be considered the final word in such matters and thus cannot be said to be *dicta* unless such expression is made in dissenting opinions, which in this case instant was not.

*See* also 16 Ops. Of the Office of Legal Coun., 102, 125 (1992) (prelim. pr.) The report opined the Coleman precedent was not binding and that the 14th Amendment action by Congress was an "aberration". The memorandum argued that the *Coleman* opinion by Chief Justice Hughes was for only a plurality of the Court and, moreover, was *dictum* since it addressed an issue not before the Court.

There are several problems with this position of the government. In the first place, concurrence of justices is a common practice in the Court. It has never been seriously suggested than an opinion of the Court is invalid or *dictum* simply because different justices arrive at the same conclusion for different reasons. Instead, the concurrences are simply considered part of the *majority* opinion.

Second, the report addressed the opinion of Chief Justice Hughes and did not discuss the opinion of Justices Black et al. in which this conclusion was the *heart* of their argument, not merely a sidebar.

Third, the subject discussed, the power of Congress to reject or accept ratification votes of the states and under what terms, was central to the issue in that the Court used the actions of Congress in the ratification of the 14th Amendment as justification for its "political question" doctrine. Indeed, it was the sole evidence used by the Court in this regard.

Finally, the government's opinion that Congress' actions regarding the ratification of the 14th Amendment were nothing more than an "aberration" simply do not hold water in light of the congressional *laches* regarding the convention to propose amendments. Congress is expected to follow the Constitution which means at the least, obeying its clearly written, easily understood, expressed provisions. Perhaps one "Oops, we goofed in not obeying the amendatory process" by Congress could be excused in this matter, but certainly not two (not calling a convention when the states have applied) and most especially three (ignoring Section 2 of the 14th Amendment calling for reduction in representation in Congress if voting rights are denied at the state level). *See infra* text accompanying notes 1245-1309.

As the Court observed in several decisions, the meaning of the words in the Constitution should be construed so as to *effect* their intent, *not* defeat

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Simply put, unless the Constitution specifically provides the power for Congress to do so, Congress cannot use its statutory powers to wander about the Constitution changing its provisions to suit that body's whims.[1090] To do otherwise would destroy the very essence of the document, that of prescribed, limited powers for all branches of government, thus preserving the freedom of all citizens who might otherwise suffer were one branch or another to exceed such limits. In the case of the convention to propose amendments or the ratification process, the Constitution does not grant that power to Congress and *neither should the courts under any circumstances.*

As the Office of Legal Council of the Department of Justice has argued, Article V gives Congress no role other than to propose amendments and to specify the mode of ratification;[1091] no mention is made in the Constitution of allowing Congress the power to overthrow state legislatures in order to change ratification, or regulating the convention to propose amendments as part of its amendatory repertoire.

---

it. *See* In re State Tonnage Tax Cases, 79 U.S. 204 (1870); "Where there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightly be preferred."; U.S. v. Classic, 313 U.S. 299 (1941); "Constitutional provision would be given a reasonable interpretation and would be held to express the intention of its framers." Woodson v. Murdock 89 U.S. 351 (1874); "A constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed." Jarrolt v. Moberly, 103 U.S. 580 (1880). *See supra* text accompanying notes 849,917,1006,1053-1073,1077,1079; *infra* text accompanying notes 1094,1188,1239,1333.

[1090] *See supra* text accompanying note 550.

[1091] 16 Ops. Of the Office of Legal Coun. 102, 121-126 (1992).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Through its *laches*,[1092] Congress has sought to deny to the convention that which itself so jealously defends, the right of free debate and independent action, as guaranteed to it in the Constitution.[1093]

The amendatory process must be read as a specific, narrow *procedure* prescribed by unambiguous language clearly reflecting the intent of the Founding Fathers which must be as immune from politics as possible. While debate over a specific amendment proposal certainly involves political considerations, politics must not be allowed to spill over into the amendatory *procedure* and corrupt it.[1094]

The Supreme Court has held that the power to choose the mode of ratification is entirely up to Congress;[1095] however, nothing in that ruling

---

[1092] *See supra* text accompanying notes 595-608,611.

[1093] "The senators and representatives shall...be privileged from arrest...and for any speech or debate in either house, they shall not be questioned in any other place." U.S. CONST., art. I, § 6 §§ 1.

[1094] During the ratification of the 14th Amendment, Congress certainly could be accused of extending political considerations into the amendatory process by the removal of three state legislatures whose votes against the then proposed amendment would have prevented its ratification. Because of this action, Congress is now "stuck" with the power to overthrow legislatures in a ratification vote. This power was upheld in Coleman v. Miller, 307 U.S. 433, (1939). *See supra* text accompanying notes 849,917,1006,1053-1073,1077,1079, 1089; *infra* text accompanying notes 1188,1239,1333.

This said, it is obvious that this incidental amendatory power provides Congress with all the power necessary to deal with any eventuality a convention to propose amendments might pose, thus rendering any pre-condition, such as "same subject", "contemporaneousness", etc., superfluous and extraneous. By simply overthrowing the state legislatures to arrive at whatever ratification vote the Congress deems "politically correct", Congress can neutralize any proposed amendment of the convention to propose amendments. Thus, under the constitutional provision of "necessary and proper," *if it is held that such a standard does apply to Congress,* then Congress has no right to any other power, as this power of overthrow of the state legislatures provides all that is necessary and proper in the matter. *See supra* text accompanying notes 620-668.

[1095] United States v. Sprague, 282 U.S. 716 (1931).

However, both *Hawke* and *Sprague* were rendered *previous* to *Coleman*. Therefore, it is conceded that under the provisions of *Coleman* that Congress does have the power to overturn state legislatures. However, it is not

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

granted Congress a veto in this respect.[1096] In ratification, Congress merely chooses the method of ratification,[1097] either by the state legislatures or by state conventions.[1098] After that, it is up to the states to proceed. The constitutional authority therefore passes from the national government to the states and becomes an individual state matter. The same principal must apply to a convention: Congress calls,[1099] and after that it is up to the states to proceed.

The Court did not even mention the convention method of amending the Constitution in *Coleman*. Thus, the proposition that "Congress has sole and complete control over the amending process..."[1100] does not automatically relate to the convention. Clearly such a proposition as manifested by the Court was clearly was not the intention of the Founding Fathers when they wrote Article V.[1101] The dangers of such a doctrine allow a "runaway" Congress that far outweighs any "dangers" posed by a convention. Any relevancy to the

---

conceded congressional control of the amendatory process extends to the convention, as this was not specifically discussed in the decision. Further, the comments of the Court cast doubt as to whether or not another body, such as the convention, does not also possess power equal to that of Congress' amendatory proposal power, but certainly *not* including the power to overthrow state legislatures should the convention disagree with ratification votes. That power belongs to Congress exclusively. *See supra* text accompanying notes 1055,1056.

[1096] "Under the United States Constitution, article 5, providing for the ratification of propose amendments by the Legislatures of three-fourths of the states or by conventions in three-fourths thereof, as one or the other mode may be proposed by Congress, the power of determining the method of ratification is conferred upon Congress, and *is limited to the two methods specified*." Hawke v. Smith, 253 U.S. 221 (1920)(emphasis added).

[1097] U.S. CONST., art. V.

[1098] *Id.*

[1099] *See supra* text accompanying notes 580-590.

[1100] *Id.*

[1101] *See supra* text accompanying notes 325,339-340,345,356,363,389,398-400,403-405,414,435-437,506.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention to propose amendments must therefore rest in the Court statement that: “it is not made clear that only Congress has constitutional power to determine if there is any such implication in Article V of the Constitution.”[1102]

If there is *any* implication in Article V, it is that the convention to propose amendments method of amendment is in all respects *equal* to the congressional method.[1103] If, as *Coleman* held, the amendatory procedure is entirely political in nature and thus entirely free of judicial review, then the convention to propose amendments must have the same *political* autonomy. Therefore, under this interpretation of *Coleman*, the convention has the same constitutional authority to propose amendments, absent congressional or judicial control, as does Congress in proposing amendments absent convention or judicial control.[1104]

This conclusion of *Coleman* is disturbing and far reaching. The Court, in granting such leeway to Congress substitutes political convenience for

---

[1102] *See supra* text accompanying note 1058.

[1103] “...which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution...” U.S. CONST., art. V. The implication of this phrase of Article V can only lead to the conclusion that the power of the convention and of Congress must be considered equal. If the Court interprets this power as exclusively political rather than constitutional, it nevertheless must remain equal.

[1104] However, this suit takes issue with this entire line of reasoning regarding the autonomy of Congress from judicial review or constitutional limitation. This suit holds Article V, like all other portions of the Constitution, is subject to judicial review and interpretation. It holds that the convention is as limited by the Constitution as is Congress in the amendatory procedure. Finally, this suit holds what should be obvious: the amendatory procedure of the United States Constitution is a *constitutional procedure*, not a *political* maneuver.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

constitutional doctrine. Such a grant must be denied to Congress *and* the convention.

If the pre-conditions of congressional regulation of a convention or the amendatory process are justified to "fill in the details" in order to prevent a "runaway" convention as laid out in the Hatch bill,[1105] then it follows that Congress has similar powers in order to prevent a "runaway" ratification by the legislatures. If Congress can regulate to the point of making a proposed amendment subject to its approval before it is submitted to the states[1106] *and vetoing ratification results it does not choose to accept by removing the offending state legislatures from power*,[1107] has not Congress assumed sovereignty, as it is by congressional consent alone that the manner and method of the amendatory process proceeds under the banner of being nothing more than a "political question"?[1108]

---

[1105] *See supra* text accompanying notes 596-608.
[1106] *Id.*
[1107] *See supra* text accompanying note 917.
[1108] As Congress possesses the incidental regulatory power of removing state legislatures and replacing them should a ratification vote counter congressional political desires, it may be argued that Congress has been sovereign for over 130 years.

However, this sovereign power is based on Congress *acting*, i.e., committing a *physical* act. In the case of the removal of the three state legislatures and the replacement of their members, Congress *acted* in that it *physically* removed the legislators duly elected by the people of the states involved and replaced them with members of Congress' liking. Congress could not simply ignore the rejection of ratification of the 14th Amendment by the three states, it had to *act* in order to counter or negate their effect. This clearly is the minimal standard set by Congress in the exercise of this incidental amendatory power if it is to be used by Congress in the area of convention applications—that Congress must actually *use* it. Congress must actually remove of one or more state legislatures duly elected by the voters of their respective states. Congress must implant a new legislature. Congress must compel that legislature to vote to alter or abolish such applications for a convention to propose amendments as Congress deems politically expedient or convenient.

Additionally, this incidental amendatory power completely satisfies the constitutional standard of "necessary and proper" as it supplies all power

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Thus the decision facing the Court is plain: either to firmly remove the reckless language of *Coleman* and place Congress in its proper constitutional role in the amendatory process, or to accept finally that Congress is sovereign.

*The Infinite Well*

The Founding Fathers visualized the right to alter or abolish, i.e., the sovereignty of the people, as an infinite well from which the people dispense power to government. No matter how much power they assign to government, the well remains eternally theirs, thus enabling them to alter the government by removing power such as they did with the 21st Amendment, limiting power as they did with the 11th Amendment, or extending power as they did with the 14th Amendment. While the people have established procedures codifying their right to alter or abolish into a prescribed, formal arrangement set out in Article V and have provided for the courts to enforce such procedures, they still retain the transcendent right which neither the courts nor Congress can remove from

---

required in order for Congress to counteract any perceived convention threat, real or imagined. Thus, Congress requires no other power in the matter, such as judging applications as to timeliness or same subject, as the power to overthrow state legislatures in the amendatory process supplies all power Congress requires. However, as Congress has not removed any state legislatures in order to thwart the calling of a convention to propose amendments, it must be presumed Congress favors a convention to propose amendments as it has not used its constitutional and lawful incidental amendatory power to prevent one. *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

them except by their expressed consent.[1109] By whatever terms the people establish, the government shall be bound. It may sip from the cup, but may never drink from the well.

Can the ideal of a right be greater than the mechanism that expresses that right? As the mechanism is regulated, is not the right itself compromised? Can it be successfully held that a right exists if there is no means by which to exercise it? The emphatic answer is no. The mechanism of the right and the right itself are inseparable. In the case of the right to alter or abolish, the people require a mechanism that must be separate and independent of any previous limitations the people have thus far laid out in the Constitution in order to express this basic right. Similarly, the mechanism must be free of any interference from the government the people intend to regulate. Obviously, the mechanism must be available to all and must be able in some fashion to express the common consent of the people. The only mechanism fitting this description is a vote. If the right is transcendent, so must be the mechanism. Thus, to whatever extent any court decision finds that such actions are unconstitutional, it must be the court decision that gives way, not the right the people to alter or abolish.

What is unconstitutional?

"That which is contrary to or in conflict with a constitution. The opposite of 'constitutional' Norton v. Shelby County, 118 U.S. 425, 6 S.Ct. 1121, 30 L.Ed. 178.

This word is used in two different senses. One, which may be called the English sense, is that the legislation conflicts with some recognized general

[1109] It is illogical to maintain that the power the courts have so expressly denied Congress, the right to remove rights granted by treaty, could be then removed by a simple court order. Obviously, in determining that Congress is denied this power, the Court determined that *all* branches of government are denied the same power. *See supra* text accompanying note 954.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

principle. This is no more than to say that it is unwise, or is based upon a wrong or unsound principle, or conflicts with a generally accepted policy. The other, which may be called the American sense, is that the legislation conflicts with some provision of our written Constitution, which is beyond the power of a legislative body to change. U.S. v. American Brewing Co., D.C. Pa., 1 F.2d. 1001, 1002."[1110]

In other words, "unconstitutional" is the determination that something is in basic conflict with the Constitution either in its expressed provisions or with the spirit of the Constitution as envisioned by the Founding Fathers.[1111]

As the court is limited by the Constitution to deciding cases, controversies and suits arising *under*[1112] the Constitution, it follows the Court does not have the right or authority to issue rulings limiting or affecting the supreme sovereign power to alter or abolish. Where the people by means of constitutional edict have already dispatched power, the Court can certainly speak and enforce, but where no such edict exists the Court must remain silent and withdraw. So it is with *Coleman*. The Court cannot assign exclusive control of the amendatory process, *dicta* or otherwise, to Congress as it is clear this was neither the intent of the Founders nor the text of the Constitution. The Court is obligated to say so in plain text, leaving no doubt

---

[1110] BLACK'S LAW DICTIONARY, 6th Ed. (1990).

[1111] A fundamental question must be posed as nothing is expressed in Article V prohibiting citizen participation in the amendatory process by use of the vote. Would the Founding Fathers, if the question were put to them, hold that the use of a vote in the amendatory process would violate the principles of government they so carefully labored to lay out in the Constitution, i.e., that it would violate the spirit of the document?

We think not.

[1112] "The judicial Power shall extend to all Cases, in Law and Equity, arising *under* this Constitution..." U.S. CONST., art. III, § 2 (emphasis added).

"Under. Sometimes used in its literal sense of below in position, beneath, but more frequently in its secondary meaning of 'inferior' or 'subordinate.' Also according to; as, 'under the testimony.'" BLACK'S LAW DICTIONARY 6th ed. (1990).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

that Congress is limited, confined and subject to the will of the people, rather than the people subject to the whims of Congress.

### *The 21st Amendment "Problem"*

The *Hawke* decision presents an even more fundamental challenge to the right of the people to alter or abolish their government. It denies the right to use a vote to do so, the single mechanism the people possess to peacefully express their desire in such matters. In *Hawke* the Court ruled that in the ratification of the 18th Amendment, the legislative decision for ratification could not be reviewed by referendum.

The Court said in part:

"It is not the function of courts or legislative bodies national or state, to alter the method of amendment which the Constitution has fixed. The act of the state derives its authority from the federal constitution to which the state and people have alike assented... A state has no authority to provide for the submission to a referendum under the state Constitution of the ratification of a proposed amendment to the federal Constitution, as is attempted by the amendment of 1918 to the Constitution of Ohio."[1113]

Since *Hawke*, at least one member of the Supreme Court, sitting as circuit judge, has upheld state court decisions that used state grounds to deny initiatives that would have directed the state legislatures to apply for a convention to propose amendments. Despite the view of one author that this

[1113] Hawke v. Smith, 495 U.S. 221 (1920); *see* also Leser v. Garnett, 258 U.S 130 (1922); "The ratification of a proposed amendment to the United States Constitution by the legislators of a state is a federal function derived from the federal Constitution, and transcends any limitations sought to be imposed by the people of a state."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

precludes the use of initiatives in this matter, the facts of the suits involved do not support this.[1114]

There is a basic problem with *Hawke* that was never more forcefully demonstrated than with the ratification of the 21st Amendment. Here the ratification of a proposed amendment was by state ratification conventions, not by state legislatures. In order for the election of delegates to the federal ratification conventions to occur, state constitutional authority,

---

[1114] "California and Montana, whose legislatures had refused to pass applications [for a balanced budget amendment], saw unsuccessful attempts to place on their ballots popular referenda directing the legislatures to submit applications. Justice Rehnquist let stand decisions by the respective state Supreme Courts that the referenda contravened state constitutional provisions as well as article V, which contemplated legislatures acting independently of external restrictions." Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988), p.84.

A closer examination of the two court cases, Uhler v. AFL-CIO, 468 U.S. 1310 (1984) and Montanans For A Balanced Budget Committee v. Harper, 469 U.S. 1301 (1984) reveals that Justice Rehnquist primarily relied on the fact that the California Supreme Court determined the initiatives submitted were invalid based on *state* constitutional grounds. (Montanans For A Balanced Budget et al. simply referred to the decision reached in Uhler v. AFL-CIO.)

In *Uhler*, Justice Rehnquist said:

"The California court undertook to decide two clearly federal questions relating to the meaning of the word 'Legislatures' in the above clause [referring to Article V of the U.S. Constitution]: (1) whether that word encompasses the voters of a State who have power to enact laws by initiative, and (2) whether it includes a legislature not acting as an independent body, but forced to act by exercise of the initiative power. The court answered each of these questions in the negative, concluding that the word 'Legislatures' means the State's lawmaking body of elected representatives, acting independently of restrictions imposed by state law. *These federal questions are important and by no means settled*: *however, because the California court went on to hold the proposed initiative invalid on independent state-law grounds*, I am satisfied that a majority of this Court would conclude that there is an adequate and independent state ground for the California court's decision.

"After a detailed analysis of California law and a discussion of the treatment of similar questions by other state courts, the Supreme Court of California decided that important portions of the proposed initiative were not 'statutes,' as that term is used in the California Constitution, but were 'resolutions,' and were therefore not a proper subject of the initiative process under the California Constitution.... We have long held that we will not review state-court decisions such as this, largely for the reason that decisions on the federal questions in such cases would amount to no more that advisory opinions." (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

executed by state legislative actions, had to be employed.[1115] A number of issues had to be dealt with using state authority to accomplish the required vote on ratification. The states used laws created by the state legislatures, *and thus state authority*, to handle the counting, printing and distribution of ballots, the establishment of polling locations, the monitoring of elections, and the establishment of the number of delegates and place and time of the ratifying convention. *In other words, the matter could not be accomplished without state constitutional authority. Hawke* states the ratification is not based on state constitutional authority but on federal constitutional authority, yet there is no expressed provision in the Constitution regarding such elections except for allowing Congress to establish a uniform time for federal elections.[1116] Indeed, *Hawke*, which was in effect before the 21st Amendment, clearly states the amendatory procedure rests solely in the federal Constitution and not the state constitutions.

Was this ratification vote therefore unconstitutional because it violated *Hawke* and used state authority? No. Why? Because the actions of the

---

[1115] Congress elected to provide no leadership regarding rules for state ratification conventions in the ratification of the 21st Amendment, thus leaving the entire matter in state hands. *See* A CONSTITUTIONAL CONVENTION: THREAT OR CHALLENGE (1981) (Edel), p. 97. Thus the states had no choice but to use their own authority, based on their own constitutions and laws to carry out the *federally mandated* action.

[1116] Of course, in one clause of the Constitution, Congress does have power over elections, though strictly speaking the article only empowers Congress to regulate the election of its own members and *not* convention delegates either to a convention to propose amendments or to a state ratification convention. Therefore this provision would be a doubtful source of authority for Congress to act to regulate in this manner. *See infra* text accompanying notes 1338,1453.

"The Times, places and Manner hold elections for senators and representatives shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by Law make or alter such regulations, except as to the places of choosing Senators." U.S. CONST., art. I, § 4 §§ 1.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

states were, in one way or another, *previous* to the final ratification action required under the Constitution. The state authority served as a framework that the individual states used to reach a final decision on the ratification of the amendment. A public vote before a state legislature votes on ratification is merely another form of framework and therefore can be no less legal than the ratification vote of the 21st Amendment. By use of a vote, the state legislatures gather input from the sovereign source. The core concept of representative government holds that government *represents the views of the people the representatives were elected to represent*.[1117]

[1117] "In America the people appoint the legislative and the executive power and furnish the jurors who punish all infractions of the laws. The institutions are democratic, not only in their principle, but in all their consequences; and the people elect their representatives directly, and for the most part annually, in order to ensure their dependence. *The people are therefore the real directing power; and although the form of government is representative, it is evident that the opinions, the prejudices, the interests, and even the passions of the people are hindered by no permanent obstacles from exercising a perpetual influence on the daily conduct of affairs*. In the United States the majority governs in the name of the people, as is the case in all countries in which the people are supreme. This majority is principally composed of peaceable citizens, who, either by inclination or by interest, sincerely wish the welfare of their country. But they are surrounded by the incessant agitation of parties, who attempt to gain their cooperation and support." Alexis de Tocqueville, DEMOCRACY IN AMERICA (1835). (emphasis added).

"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be affirm that the deputy is greater than his principal; that the servant is above his master; *that the representatives of the people are superior to the people themselves*; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

"If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put on them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the constitution. *It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people to substitute their will to that of their constituents*." THE FEDERALIST, No. 78, Alexander Hamilton, April 4, 1788. (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

If ratification is an approbation of elected state representatives who are to reflect the will of the people in the matter, how can those state representatives determine what is the will of the people if they have no authority to place the matter before them in order to find out? The proposition that indirect political elections for officeholders will suffice to replace direct elections on the specific matter is weak at best. It is quite possible a candidate for legislative office may be elected without the subject matter of a particular proposed amendment ever being *discussed once* during the election. Hence, the idea of the legislator knowing the will of the people without benefit of a vote on the issue is essentially vaporous. Opinion polls *may* reflect the mood and disposition of the people, but opinion polls are not elections, and legislatures purporting to know the will of the people based solely on opinion polls run the risk of great condemnation when elections are held, not to mention just being plain wrong in their assumptions. Clearly, those states that would have the question posed directly to the people before acting on a ratification question demonstrate the greatest obedience to the concepts of democratic government.

The Court's pronouncement in *Hawke*[1118] that referendums may not be used to review a legislative ratification vote in no way conflicts with the proposition expressed in this suit that such elections and initiatives are legal as means to compel state action or express the opinion of the people in regard to ratification and application matters if such a vote is made *previous*

[1118] *See supra* text accompanying note 1113.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

to a vote by the state legislature and may even be binding upon the legislature if that legislature so chooses, either by terms expressed in its state constitution or by legislative act. That the legislature, under that method of ratification prescribed in Article V of the Constitution, must have final say in the matter, i.e., the official position of the state must be as a result of a vote taken from that source, is not disputed; as to how that state legislature reaches that decision is clearly a state matter.[1119]

The only conclusion that may be drawn from *Hawke* and *Coleman* is the Court meant for Congress to be the "owner" of the Constitution exclusive from any input of the people. The Court's reckless language unconstitutionally removed the sovereignty of the people from the Constitution. While the Court may state the people have sovereignty[1120] and all power flows from them and so on and so forth, if in reality the Court states the people possess sovereignty, then denies any reasonable means for the people to employ that

---

[1119] In Hawke v Smith, 253 U.S 221 (1920), the Court clearly based its decision on the concept that "representative assemblies would reflect the will of the people." How can it be held that a state legislature that is in no way bound to heed the people in ratification or application matters reflects the will of the people better than an a specific initiative on the subject, a vote that would reflect the will of the people and compel the legislature to act in that reflective manner?

Article V only provides that Congress choose one of two methods of ratification, that Congress may propose amendments, that if the legislatures apply in sufficient number it must call a convention to propose amendments, *and nothing more*. Nothing in the Constitution states *how* the state legislatures must arrive at their decision in such matters as ratification. Thus the legislatures are free to enact, *if they so choose*, binding initiatives on such questions provided the legislature still performs the actual recording of the vote so as to satisfy the Constitution.

[1120] "The Constitution of the United States was established not by the states in their sovereign capacities, but by the people of the United States." Martin v. Hunter's Lessee, 14 U.S. 304 (1816); "Under the constitution sovereignty in the United States resides in the people." Kennett v. Chambers, 55 U.S. 38 (1852).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

sovereignty in the decision-making process of amending their Constitution, which is to say, removes the people from controlling the Constitution, as the amendments are designed to control the scope, direction, effect and limits of that document, it can only be concluded that the sovereignty of the people has ceased to exist, and the authority of the Constitution thus must be based on some concept of law other than the alleged sovereignty of the people.

If the people are not permitted to express their support or opposition to a proposed amendment in such a way as to be considered a free collective expression of popular will, then popular sovereignty, i.e., the will of the people, becomes questionable. As legislatures are free to arrive at a decision entirely independent of the people they represent, and as legislators are permitted to ignore such an expression of popular will by considering it "non-binding", as per *Hawke* and other decisions,[1121] then popular sovereignty

[1121] "The Supreme Court of Nevada said with respect to the statute that it 'does not concern a binding referendum, nor does it impose a limitation upon the legislature. As already noted, the legislature may vote for or against ratification, or refrain from voting on ratification at all, without regard to the advisory vote. The recommendation of the voters is advisory only.'

"Under these circumstances, applicants' reliance upon this Court's decisions in Leser v. Garnett, 258 U.S. 130 (1922) and Hawke v. Smith, 253 U.S. 221 (1920) is obviously misplaced. Both seem to me to stand for the proposition that the two methods for state ratification of proposed constitutional amendments set forth in Art. V of the United States Constitution are exclusive: Ratification must be the legislatures of three-fourths of the states or by convention in three-fourths of the States...

"Under the Nevada statute in question, ratification will still depend on the vote of the Nevada Legislature, as provided by Congress and by Art. V. I would be most disinclined to read either Hawke, supra, or Leser, supra, or Art. V as ruling out communication between the members of the legislature and their constituents. If each member of the Nevada Legislature is free to obtain the views of constituents in the legislative district which he represents, I can see no constitutional obstacle to a *nonbinding*, advisory referendum of this sort." Kimble v. Swackhamer, 439 U.S. 1385 (1978). (emphasis added). (Opinion of Justice Rehnquist, Circuit Justice).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

becomes even more questionable. Considering this, do the people have *any* sovereignty? Has not the Court fulfilled Colonel Mason's worst fear?[1122]

*The Limited Powers of the Court*

There is no question that the Court possesses the right to declare actions (or *laches*) of Congress, the Executive or even the Court itself unconstitutional. That this power is by implication, i.e., derived from judicial determination rather than expressed constitutional edict, is well known.[1123] It follows, however, that such implied power must invariably yield to expressed provisions in the Constitution.[1124]

---

[1122] "The plan now to be formed will certainly be defective, as the confederation has been found on trial to be. Amendments therefore will be necessary, at 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 amendmt." *See supra* text accompanying notes 362,363.

[1123] Marbury v. Madison, 5 U.S. 137 (1803).

[1124] Clearly, in a limited constitutional system, implied powers "found" in a constitution must be derived from expressed provisions of the Constitution. As the Constitution is an expression of the sovereign will of the people, it follows that any interpretation derived from that document must be subservient to the expressed provisions of the Constitution. *See supra* text accompanying note 1117.

In constitutional law, one is committed to a certain logic. The use of inductive logic is excluded. One cannot have a situation, start from that point and work backwards to construe the expressed language of the Constitution to fit that situation, altering the clear meaning and intent of the words, as needed to the point of even ignoring them entirely. Fortunately, even judicial activists are forced to begin at the beginning, starting with the Constitution and its words then attempting to bend them, however stiffly, to fit the mold they wish to form.

Thus, while it is conceded that implied powers have as much force in law as expressed provisions of the Constitution once such implications are "discovered", that is not the point here. The point is that such implications *must be derived* from expressed language of the Constitution, and in this sense, therefore, it is supreme to implied provisions as these cannot exist

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Based on the Supreme Court cases discussed,[1125] it appears the Court has held two positions that clearly reject the transcendent right of the people to alter or abolish their government and thus lend comfort to a Congress wishing, for strictly political reasons,[1126] not to call a convention. It has ruled that

---

unless the express language creating them exists in a logical, judicially defensible way. Simply put, there must a grant of expressed power in the general sense before there can be an implication in the specific sense.

[1125] *See supra* text accompanying notes 1029-1108.

[1126] There is no question that Congress has failed to act for political reasons alone. As one author observed in discussing the proposed Balanced Budget Amendment:

"...Congress would give the states a certain amount of time to revise applications. The parties could then adjust strategy, the states deciding if they wanted to continue pressing for an amendment, and if so whether from Congress or a convention; *Congress examining the applications to see how many could be repelled.* A major altercation would be like to occur regarding the length of time applications stay effective, since a faction in Congress might favor the amendment and advocate a long period to include as many applications as possible...

"Since the amendment has by definition lost in Congress by the time thirty-four applications arrive, sufficient votes for a period longer than six or seven years would probably be lacking, unless as simple majority in each house favored the amendment sufficiently to extend the deadline in hopes of eventually reaching the two-thirds necessary to carry the amendment itself, or of obtaining the convention demanded in the applications...

"With guidelines for validity and deadlines for effectiveness established*, and with at least one application found defective or stale*, *pressure would shift back to the states whose petitions were rejected, and the cycle would resume*. The applying states would by no means automatically resubmit corrected applications, since the legislatures in the early states would have had major changes in personnel, and might have voted on the applications originally with little realization or their possible impact."

The same author added:

"Congress in modern times has by and large maintained that a convention cannot be limited. This view, however sincerely arrived at, happens also to be useful in dissuading states from submitting applications, *thereby leaving Congress in exclusive control of the amendment process*. For the same reason Congress, especially the liberal establishment concentrated for the last thirty years in the House of Representatives, has an interest in leaving the route undefined. Don Edwards, chair of a House Judiciary subcommittee finds 'no assurance' that a national convention 'could not be a runaway,' and opposes a procedures bill on the ground that it would aid the drive for a convention: 'Anything that encourages this sort of utilization of Article V is unwise.' *The more obscure the process, the easier it is for Congress to discourage pressure by rejecting applications on technical grounds—a phenomenon that has been aptly called the 'politics of uncertainty.'*

"For this reason Congress has never established a procedure for receiving and verifying applications, never promulgated guidelines for

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

votes of the people cannot be part of the federal amendatory process[1127] and that Congress has exclusive and unbridled control of that amendatory process.[1128] Combined, these decisions appear to render any concept of "the right of the people to alter or abolish"[1129] "nugatory and void."[1130] But is this so? Can the Supreme Court negate the transcendent right of the people to alter or abolish?

The simple answer to this question is no.[1131]

If the people attempt to void the prescribed methods of amendment as established in the Constitution, the Court is obligated and clearly possesses the power to intercede and prevent such aberrations of the Constitution as the cited cases demonstrate. In each case, however, there is a commonality, and *it is the commonality of these cases that is paramount, not their specific issue.*

---

applications or for the convention itself. Congress could have done so long ago, Justice Scalia has said, by amending article V if necessary. 'But the Congress is not about to do that. It likes the existing confusion, because that deters resort to the convention process. It does not want amending power to be anywhere but in its own hands.'" Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention* (1988), p.114, 161-162. (emphasis added). *See supra* text accompanying notes 1063-1065.

[1127] Hawke v. Smith, 495 U.S. 221 (1920); State of Rhode Island v. Palmer, 253 U.S. 350 (1920); Leser v. Garnet, 258 U.S. 130 (1922); Uhler v. AFL-CIO, 468 U.S. 1310 (1984).

[1128] Coleman v. Miller, 307 U.S. 433 (1939).

[1129] Declaration of Independence (1776).

[1130] FEDERALIST No. 40. *See supra* text accompanying note 1659.

[1131] Indeed, in one of its earliest cases, the Supreme Court made it abundantly clear the right of the people to alter or abolish was supreme even to their constitutional powers, a statement not refuted by any of the cited cases.

The Court said:

"The people limit and restrain the power of the legislature, acting under a delegated authority; but they impose no restraint on themselves. They could have said by an amendment to the constitution, that no judicial authority should be exercised, in any case, under the United States; and, if they had said so, could a court be held, or a judge proceed, on any judicial business, past or future, from the moment of adopting the amendment? On general ground, then, it was in the power of the people to annihilate the whole..." Hollingsworth v. Virginia, 3 U.S. 378 (1798).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In each suit, an attempt was made to circumvent the clearly defined method of amendment. Each suit asked the Court to judicially "write in" provisions in Article V that were not expressed, in other words, to change the methods and procedures laid out for amending the Constitution so as fulfill some narrow political ambition even though those who had proposed and ratified a particular amendment had followed the amendatory procedure in Article V. The Court properly refused and thus established the constitutional principal that where the amendatory procedure is followed, the courts cannot be used to overturn it.

Conversely, the Court established that if the amendatory procedure *is* complied with, the courts are *obligated* to enforce it. Therefore, where the people have properly followed the amendatory process of the Constitution by acting through their state legislatures, and have thus submitted applications as prescribed by the Constitution in the proper number so as to amount to two-thirds or more of the several states, thus satisfying the sole requirement placed upon them by the Constitution in order to compel the calling of a convention to propose amendments, then neither the courts nor the Congress may stand in their way.

The power of the Court is therefore severely limited to that of enforcement of Article V, as the constitutional requirements to compel a convention to propose amendments have been satisfied. *Hawke*, *Coleman*, et al., and the powers therein granted by the Court to Congress cannot be employed to thwart a convention to propose amendments. The Court's job is to enforce the Constitution, *not* further the selfish ambitions of politicians. Therefore it is obligatory on the Court to enforce the Constitution and declare the *laches*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

of Congress unconstitutional and, if necessary, void those parts of *Hawke* and *Coleman* that are in conflict with this fact.

One issue remains that must be resolved before the Court may act. The issue is the transcendent nature of the right to alter or abolish. If the right is transcendent, i.e., above the Constitution, and the courts are limited to deciding cases arising only *under* the Constitution,[1132] then a dilemma arises. How can the courts act in any constitutional capacity to protect or otherwise enforce a right which, by definition of those who created it, is transcendent, or supreme, to the document which must be employed to bring about such enforcement and protection? If the Constitution must be used in order to protect or enforce this right, doesn't this mean this "transcendent" right is not transcendent at all but subservient to the Constitution, and therefore no such "right" exists *supreme* to the Constitution, that in fact it was not created by the Treaty of Paris and therefore is not protected under the interpretations cited in this suit which would hold such rights immune from congressional interference?[1133]

If this is so, then surely those governmental bodies created in the Constitution, such as Congress, must be supreme to the right to alter or abolish. Under its implied legislative powers,[1134] can Congress therefore not

---

[1132] "The judicial Power shall extend to all Cases, in Law and Equity, arising *under this Constitution*, the Laws of the United States, and Treaties made, or which shall be made..." U.S. CONST., art. III, § 2 §§ 1.
[1133] *See supra* text accompanying notes 950-956.
[1134] "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. CONST., art. I § 8, §§ 18.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

define, regulate, subjugate or even abolish this right, and does this not in turn mean that Congress is indeed sovereign and the right of the people to alter or abolish is, in reality, no more than just well-penned rhetoric?

To answer this question, this suit must turn away from Article V, on which it has been focused, and turn to other parts of the Constitution, most notably the amendments.

## THE CONVENTION AND THE AMENDMENTS

### INTRODUCTION

There are three amendments to the United States Constitution that have a direct bearing on a convention to propose amendments. The first two amendments, the 9th and 10th, serve to strengthen the case that Congress cannot ignore the Constitution and therefore must call a convention to propose amendments. Further, the 9th Amendment firmly establishes the right to alter or abolish *as a constitutional right and not well-penned rhetoric*. The 14th Amendment serves to answer all of the organizational objections that opponents have raised regarding a convention to propose amendments, objections that essentially echoed the questions raised by Madison at the original Constitutional Convention.[1135]

[1135] "Mr. Madison did not see why Congress would not be as much bound to propose amendments applied for by two-thirds of the States as to call a Convention on the like application. He saw no objection however against providing for a Convention for the purpose of amendments, except only that

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## THE NINTH AMENDMENT

The 9th Amendment to the Constitution consists of a single sentence which states:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."[1136]

The meaning of the 9th Amendment is straightforward and best described by its author, James Madison, who said:

"It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution [the Ninth Amendment]." I Annals of Congress 439 (Gales and Seaton ed. 1834).[1137]

Madison's intent is quite clear:[1138] the sole purpose of the amendment is to protect from government infringement or obstruction those rights of the people not expressly enumerated in the first eight amendments to the Constitution or otherwise specified elsewhere in that document. The 9th

---

difficulties might arise as to the form, the quorum &c. which in Constitutional regulations ought to be as much as possible avoided." *See supra* text accompanying note 438.

[1136] U.S. CONST., 9th Amend.

[1137] Griswold v. Connecticut, 381 U.S. 479 (1965).

[1138] The term "particular exceptions to the grant of power" is an important and often overlooked term in this passage. Clearly, it demonstrates Madison's belief that a bill of rights *limited the rights of the people, not expanded them.* This is not surprising as it was Madison who had referred to the "transcendent and precious right of the people to 'abolish or alter their government as to them shall seem most likely to effect their safety and happiness'" in FEDERALIST No. 40 in January, 1788, no more than a year earlier. Logically, a transcendent power is limited if it is enumerated for the very reason expressed by Madison in his comments that the rest of the power might fall away or be considered powers of the government.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Amendment is the Constitution's necessary and proper clause for the protection of the individual rights of the people.

Despite its apparent broad scope, however, the amendment has been little used by the courts with the exception of *Griswold* and *Roe v. Wade*.[1139] In *Griswold*, Justice Goldberg expounded two principals regarding the 9th Amendment. He established:

1. The purpose of the amendment is to protect "basic and fundamental rights" not enumerated in the Constitution;
2. The words of the 9th Amendment are not mere rhetoric and that it "cannot be presumed that any clause in the constitution is intended to be without effect" Marbury v. Madison, 1 Cranch 137, 174 [1803]. In interpreting the Constitution, "real effect should be given to all the words it uses." Myers v. United States, 272 U.S. 52 [1926]."[1140]

As Justice Goldberg phrased it:

"In sum the Ninth Amendment simply lends strong support to the view that the 'liberty' protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments. United Public Workers v. Mitchell, 330 U.S. 75 [1947]."[1141]

And how does the Court determine what is a basic and fundamental right of the people?

"In determining which rights are fundamental, judges are not left at large to decide case in light of their personal and private notions. Rather, they must look to the 'traditions and [collective] conscience of our people' to determine whether a principle is 'so rooted [there] ... as to be ranked as fundamental' Snyder v. Massachusetts, 291 U.S. 97, 105 [1934]. The inquiry is whether a right involved 'is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'"... Powell v. Alabama 287 U.S. 45, 67 [1932]. 'Liberty' also 'grains content from the emanations of ... specific [constitutional] guarantees' and 'from experience with the requirements of a free society.' Poe v. Ullman, 367 U.S. 497, 517 [1961] (dissenting opinion of Mr. Justice Douglas)."[1142]

These questions are critical to the argument. Is the right of the people to alter or abolish their government so rooted in the traditions and

---

[1139] 410 U.S. 307 (1975).
[1140] Griswold v. Connecticut, 381 U.S. 479 (1965).
[1141] *Id.*
[1142] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

collective conscience of the American people as to be ranked as a fundamental and basic right? Is this right of such a character that it cannot be denied without violating the fundamental principals of liberty and justice that lie at the base of all our civil and political institutions? If so, should not this right receive protection from government obstruction under the rubrics of the 9th Amendment?

The answer is obvious. This right *is* the fundamental principal of liberty and justice in our nation. Many of the more frequently referred to rights, such as freedom of speech, freedom of peaceful assemblage and petition, due process, presumption of innocence at trial, freedom of the press but to name a few, are merely freedoms and rights that have branched out from this root American right. Each branch has the power to alter or even abolish parts of government or decisions rendered by it. Collectively and individually, they form the very heart, soul and mind of the American system of liberty and justice.[1143] These branches draw sustenance from the root that feeds them. What happens to a tree if the root is cut out? How can rights that affect the government be preserved if the right to effect the changes on government is not?

[1143] A careful examination of the Declaration of Independence shows that most, if not all, of the complaints against the British government in that document became rights guaranteed in the Bill of Rights or served as the basis for limiting government somewhere else in the Constitution. The most fundamental of these rights expressed in the Declaration of Independence was the right of the people to alter or abolish their government, for without securing this right, none of the other rights could be achieved.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

True, the phrase, “right of the people to alter or abolish” does not appear anywhere in the Constitution.[1144] But if there is a phrase in that document that defines that right, that describes the fundamental belief of the American people that their government is created to serve the people that created it, not the other way around, it is “We, the People...do ordain and establish this Constitution.”[1145]

Clearly, the exercise of the right to alter or abolish by the people, when they have followed prescribed constitutional methods, must receive 9th Amendment protection if for no other reason than to guarantee all other rights in the Constitution are protected. Where Congress, either by *laches* or act, for political or other reasons, attempts to deny this right, such *laches* or act must be removed. In this specific case, the *laches* by Congress to call a convention to propose amendments clearly denies the people their right to alter or abolish and thus violates Article V of the Constitution as well as the 9th Amendment.

There can be no support for Congress possessing implied legislative powers to regulate, subjugate or abolish this right. A weak argument would propose that if this so-called “transcendent” right must suffer constitutional

---

[1144] The right to alter or abolish, however, is not without constitutional support. Through the implied powers of the Treaty of Paris, (*see supra* text accompanying notes 944-1020) and the treaty clause of the Constitution (U.S. CONST., art. VI § 2 “This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, *shall be the supreme Law of the Land*...”(emphasis added), it becomes law of the land.

[1145] U.S. CONST., Preamble.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

protection in order to exist, it therefore cannot be transcendent and thus is subject to congressional regulation.

This misses the heart of the matter entirely. History has repeatedly shown the very nature of government, however benevolently established, (and this was clearly understood by the Founding Fathers) will, left unchecked, or more frequently, unguarded, invariably choose to expand itself and its powers at the expense of the liberties of the citizens it was established to protect. Few in history have ever demanded a tyranny as a preferred form of government. Rather tyranny evolved, like a cancer, targeting first the very checks designed to hold it at bay. So it is with the convention to propose amendments, a fundamental check in our system of government. It is no surprise that Congress has thwarted it. This body is neither disposed to share power nor yield it up gracefully.[1146]

It is not inconsistent, therefore, that a right claimed to be transcendent by the Founding Fathers suffers constitutional protection in order to effectuate it. The pragmatics of law and the realities of congressional actions[1147] leave no other choice in the matter if this fundamental right is to be preserved. The 9th Amendment was specifically placed in the Constitution by the Founding Fathers in order to deal with such contingencies to preserve the rights of the people that were not enumerated but nevertheless were and are as sacred and precious as those named in the Constitution.

---

[1146] *See supra* text accompanying note 1126.
[1147] *See supra* text accompanying notes 593-613.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

To deny 9th Amendment protection to this right, thus affirming that Congress may refuse to call a convention to propose amendments when the proper number of states has applied as they now have done, operating under the authority of the people exercising their right to alter or abolish, is to do nothing less than feed a great amount of fertilizer to the cancerous weed of tyranny and violate the very spirit and principal of the Constitution.

## THE TENTH AMENDMENT

The 10th Amendment to the Constitution states:

"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."[1148]

Few proponents of *ultra vires* congressional regulation of the convention have addressed the primary issue raised by this single sentence of the Constitution: whether the convention to propose amendments is a "power" of the United States (i.e., Congress) or is a "power" of the states or of the people. The importance of this question cannot be over-stressed. If the convention to propose amendments is a power of the federal government, then regulation by the government may be proper.[1149] But if the convention to propose amendments is a state power, then congressional regulation is prohibited. And if it is a power of the people, then neither the federal nor the state governments may regulate it. The problem at first appears a complex one as the Congress and

[1148] U.S. CONST., 10th Amend.
[1149] However, many questions must be answered before such a conclusion could be reached. *See supra* text accompanying notes 524-831.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the states apparently “share” in the authority of calling a convention to propose amendments. Is this actually so?

It is the transcendent right of the people to alter or abolish their government.[1150] It is the constitutional power of the states, acting on behalf of the people, to apply for a convention to propose amendments.[1151] The two powers are neither mutually exclusive nor in conflict with one another. As noted in *Hawke*,[1152] in the amendatory process the state legislatures serve as representative bodies to express the will of the people, thus becoming the mechanism[1153] whereby the people exercise their right to alter or abolish. Thus, the constitutionally protected right to alter or abolish[1154] becomes a constitutional mechanism by which the people’s desire to alter or abolish their form of government is implemented. Logically, if the right to alter or abolish is constitutionally protected, so must be the mechanism that effectuates that right.

The right in this suit is the right of the people to alter or abolish. While the states certainly are part of the amendatory process, because the *purpose* of the convention is to alter the Constitution by amendment, it follows the convention to propose amendments is ultimately a power of the people even though the power is derived from a provision found in the federal Constitution. As indicated by the words of the 10th Amendment, not all

---

[1150] *See supra* text accompanying notes 1136-1147.
[1151] *See supra* text accompanying note 2.
[1152] *See supra* text accompanying notes 1031-1041.
[1153] However, this mechanism is transitory in nature. *See supra* text accompanying notes 907-920.
[1154] *See supra* text accompanying note 1150.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

language contained in the Constitution was intended for the exclusive benefit of the federal government as a means to expand its powers; much of the language in the document is designed to accomplish the exact opposite.[1155]

[1155] As noted by the Supreme Court in Gregory v. Ashcroft, 501 U.S. 452 (1991) when it said:

"As every schoolchild learns, our Constitution establishes a system of dual sovereignty between the states and the Federal Government. This court also has recognized this fundamental principle. In Taffin v. Levitt, 493 U.S. 455, 458 (1990), '[w]e beg[a]n with the axiom that, under our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause.' Over 120 years ago, the Court described the constitutional scheme of dual sovereigns:

"'"[T]he people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence."..."[W]ithout the States in union, there could be no such political body as the United States." Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.' Texas v. White, 7 Wall, 700, 725 (1869), quoting Lane County v. Oregon, 7 Wall. 71, 76 (1869).

"The Constitution created a Federal Government of limited powers. '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.' U.S. CONST., 10th Amend. The States thus retain substantial sovereign authority under our constitutional system...

"Just as the separation and independence of the coordinate Branches of the Federal Government serve to prevent the accumulation of excessive power in any one Branch, a healthy balance of power between the States and Federal Government will reduce the risk of tyranny and abuse from either front. Alexander Hamilton explained to the people of New York, perhaps optimistically, that the new federalist system would suppress completely 'the attempts of the government to establish a tyranny':

"'[I]n a confederacy the people, without exaggeration, may be said to be entirely the masters of their own fate. Power being almost always the rival of power, the general government will at all times stand ready to check usurpations of the state governments, and these will have the same disposition towards the general government. The people, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of their other as the instrument of redress.' The FEDERALIST No 28, pp. 180-181 (C. Rossiter ed. 1961)...

"One fairly can dispute whether our federalist system has been quite as successful in checking government abuse as Hamilton promised, but there is no doubt about the design. If this 'double security' is to be effective, there must be a proper balance between the states and the Federal Government. *These*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Thus, it is not a question of editorial locution, but use of power that is fundamental in the matter. Who is empowered to use this proposal provision in the Constitution? Certainly it is not Congress; that body has a separate amendatory proposal power in the Constitution.[1156] It would seem by process of elimination, the convention to propose amendments is a state power that the clear language of the Constitution demonstrates is equal in all respects to that of the congressional method of amendment,[1157] but this term, "state power", as the Court has observed, must be applied carefully.[1158] While the

---

*twin powers will act as mutual restraints only if both are credible. In the tension between federal and state power lies the promise of liberty*.

"The Federal Government holds a decided advantage in delicate balance: the Supremacy Clause. U.S. CONST., Art. VI. As long as it is acting within the powers granted it under the Constitution, Congress may impose its will on the states. Congress may *legislate* in areas traditionally regulated by the States. This is an extraordinary power in a federalist system. *It is a power that we must assume Congress does not exercise lightly.*" (emphasis added).

It should be noted the Court *did not* mention or even intimate congressional interference in the amendatory process as it clearly limited congressional interference to *legislative* matters. As the Court said in an earlier case:

"The [Tenth] Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion *that impairs the States' integrity or their ability to function effectively in a federal system.*" National League of Cities v. Usery, 426 U.S. 833 (1976). (emphasis added).

[1156] U.S. CONST., art. V.

[1157] U.S. CONST., art. V.; *see supra* text accompanying notes 506-513.

[1158] "In discussing this question, the counsel for the state of Maryland have deemed it of some importance in the construction of the constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent States. The powers of the general government, it has been said, are delegated by the states, who alone are truly sovereign; and must be exercised in subordination to the states, who alone possess supreme dominion.

"It would be difficult to sustain this proposition. The Convention which framed the constitution was indeed elected by the state legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might 'be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification.' This mode of proceeding was adopted; and by the convention, by Congress, and by the states legislatures, the instrument was submitted to the people. *They acted*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

states play an important part in the convention to propose amendments, the actual *power itself* is a power of the people.

But what of the convention call? As it is Congress that must call, doesn't this mean the convention to propose amendments is a federal power subject to congressional regulation? Incontestably, the convention call is a power delegated by the Constitution expressly to Congress, but with exceptional limits. The convention call is a mandated imperative on Congress leaving that body no discretion in the matter.[1159] When prohibited by lack of state applications, Congress cannot issue a call; when authorized by a sufficient number of applications, Congress must call. Thus, Congress can only call a convention to propose amendments *when compelled to do so by the states' action*. In filing the applications with Congress, it clear *only the states*,

---

*upon it in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in convention*. It is true, they assembled in their several States---and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States. *But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the means of the State governments*.

"From these conventions the constitution derives its whole authority. The government proceeds directly from the people; is 'ordained and established' in the name of the people; and is declared to be ordained, 'in order to form a more perfect union, establish justice, ensure domestic tranquility, and secure the blessings of liberty to themselves and to their posterity.' The assent of the States, in their sovereign capacity, is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. *It required not the affirmance, and could not be negatived, by the State governments*. The constitution, when thus adopted, was of complete obligation, and bound the State sovereignties." McCulloch v. Maryland, 17 U.S. 316 (1819) (emphasis added).

Thus it is clear that while a convention to propose amendments is a "state power," that name is in fact a misnomer. The convention is actually an expression of the people's sovereignty. Therefore any "state power" must be viewed in the light of *facilitating* this sovereign expression as opposed to obstructing it.

[1159] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

acting through their legislatures, may apply for a convention. Thus, in this limited portion of the convention process, the matter is entirely a state power, but as observed by the Court, a power presumed to be based on the will of the people.[1160] As Congress may only call when the states compel it, and cannot call unless permitted to do so by the states (through the action of application), the convention call is actually a state power, and thus, under the terms of the 10th Amendment, is reserved to the states and therefore denied to Congress.[1161] However, once the states have acted to compel a convention, the matter passes from their purview and reverts to the people under their right to alter or abolish.[1162] Thus, the power is "reserved to the states respectively, or to the people."

*The Courts and the 10th Amendment*

Throughout the history of the United States the 10th Amendment has been used by those wishing to curtail the power of the federal government (usually expressed through acts of Congress) with varying degrees of success. The cases have generally dealt with acts of Congress related to the commerce

[1160] *See* Hawke v. Smith, 253 U.S. 221 (1920). *See supra text* accompanying notes 25,272,1037,1119.
[1161] *Id.* Even though the 10th Amendment had not yet been written, it is clear the Founding Fathers were very concerned about preventing Congress from exclusively controlling the amendatory process and therefore intended the states have a separate proposal power. *See supra* text accompanying notes 435-437.
[1162] *See supra* text accompanying notes 921-1009;1136-1147.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

clause[1163]and perceived intrusions of this power into areas thought to be under exclusive state sovereign authority.

The courts have interpreted the meaning of the 10th Amendment differently throughout the years. Beginning with *McCulloch*,[1164] the Court said:

"[T]he states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government."[1165]

Chief Justice John Marshall, author of the *McCulloch* decision, a few years later expanded his pro-federal government expansionist interpretation of the 10th Amendment when he wrote:

"Powerful and ingenious minds, taking as postulates, that the powers expressly granted to the government of the Union are to be contracted...into the narrowest possible compass, and that the original powers of the States are retained, if any possible construction will retain them, may...explain away the constitution...and leave it a magnificent structure indeed, to look at, but totally unfit for use."[1166]

In the ensuing years, the Court reversed itself on the 10th Amendment. Justice Owen J. Roberts wrote in 1936:

"From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted or reasonably to be implied from such as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary, the Tenth Amendment was adopted. The same proposition, otherwise states, is that powers not granted are prohibited."[1167]

But within a few years of *Butler*, the Court reversed itself again saying:

"Our conclusion is unaffected by the Tenth Amendment... The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might

---

[1163]"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;" U.S. CONST., art. I, §7, §§ 3.
[1164] McCulloch v. Maryland, 17 U.S. 316 (1819).
[1165] *Id.*
[1166] Gibbons v. Ogden, 22 U.S. 1 (1824).
[1167] United States v. Butler, 297 U.S. 1 (1936).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers... From the beginning and for many years the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end."[1168]

From this decidedly nationalistic view, the pendulum of Court opinion has swung back and forth in recent years with the position of the Court on the issue many times decided by a single vote.[1169] In *Garcia*, the Court recognized the sovereignty of the states and rejected the "truism" argument of *Butler* saying:

"We therefore now reject, as unsound in principle and unworkable in practice, a rule of state immunity and federal regulation that turns on a judicial appraisal of whether a particular government function is 'integral' or 'traditional.' Any such rule leads to inconsistent results at the same time that it disserves principles of democratic self-governance, and it breeds inconsistency precisely because it is divorced from those principles. If there are to be limits on the Federal Government's power to interfere with state functions—as undoubtedly there are—we must look elsewhere to find them. We accordingly return to the underlying issue that confronted this Court in National League of Cities—the manner in which the Constitution insulates States from the reach of Congress' power under the Commerce Clause."[1170]

The Court then held the matter was best solved as a "political question" saying:

"Of course, we continue to recognize that the states occupy a special and specific position in our constitutional system and that the scope of Congress' authority under the Commerce Clause must reflect that position. But the principal and basic limit on the federal commerce power is that inherent in all Congressional action—the built-in restraints that our system provides through state participation in federal governmental action. The political process ensures that laws that unduly burden the States will not be promulgated."[1171]

---

[1168] United States v. Darby Lumber Co., 312 U.S. 100 (1941).
[1169] As exemplified by the favorable vote of Justice Blackmun in National League of Cities v. Usery, 426 U.S. 833 (1976) and his turnaround in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985). In *Garcia*, Justice Blackmun wrote the National League of Cities test for "integral operations in areas of traditional governmental functions" had proven " both impractical and doctrinally barren," and that the Court in 1976 had "tried to repair what did not need repair."
[1170] Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985).
[1171] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

However, in the most recent suits, the concept of "political question" seems to have been rejected by the Court.[1172] In *New York*,[1173] the Court found the Constitution does not give Congress authority to require states to regulate,[1174] no matter how powerful the federal interest involved.[1175] Rather, the Constitution gives Congress authority to regulate matters directly,[1176] to

---

[1172] As to Congress, it is clear that insofar as the convention to propose amendments, it does not hold the states in "a special and specific position in [the] constitutional system," nor does it recognize that "the built-in restraints that our system provides through state participation in federal governmental action." In fact, it is clear that Congress wishes no "interference" in the area of amendatory power. *See supra* text accompanying notes 1126.

[1173] New York v. United States, 505 U.S. 144 (1992).

[1174] "While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, *the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions*. See Coyle v. Smith, 221 U.S. 559, 31 S.Ct.688, 689, 55 L.Ed. 853 (1911). The Court has been explicit about this distinction. 'Both the states and the United States existed before the Constitution. The people, though that instrument, established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the Confederate government, which acted with powers, greatly restricted, only upon the States.' Lane County v. Oregon, 7 Wall, at 76. The Court has made the same point with more rhetorical flourish, although perhaps with less precision, on a number of occasions. In Chief Justice Chase's much-quoted words, 'the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.' Texas v. White, 7 Wall 700 (1869)." *Id.* (emphasis added).

[1175] "No matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate." *Id*.

[1176] "The Convention generated a great number of proposals for the structure of the new Government, but two quickly took center states. Under the Virginia Plan, as first introduced by Edmund Randolph, Congress would exercise legislative authority directly upon individuals, without employing the states as intermediaries. 1 Records of the Federal Convention of 1787, p.21 (M. Farrand, ed.1911). Under the New Jersey Plan, as first introduced by William Paterson, Congress would continue to require the approval of the states before legislating, as it had under the Articles of Confederation. 1 *id*., at 243-244. These two plans underwent various revisions as the Convention progress, but they remained the two primary options discussed by the delegates... In the end, the Convention opted for a Constitution in which Congress would exercise its legislative authority directly over individuals rather than over States... This choice was made clear to the subsequent state ratifying conventions... In

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

preempt contrary state regulation,[1177]or in some circumstances regulate individuals directly.[1178] Further it found that consent by state officials to an act of Congress does not preclude the determination that such an act of Congress unconstitutionally infringes on state sovereignty, and therefore such "consent" is unconstitutional. The Court found where Congress exceeds its authority relative to the states, departure from the constitutional plan

---

providing for a stronger central government, therefore, the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States." *Id.*

[1177] "As we have seen, the court has consistently respected this choice. We have always understood that even where the Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. E.g., FERC v. Mississippi, 456 U.S. 762-766, 102 S.Ct., at 2138-2141; Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 452 U.S., at 288-289, 101 S.Ct., at 2366; Lane County v. Oregon, 7 Wall., at 76. The allocation of power contained in the Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce... In sum, the cases relied upon by the United States hold only that federal law is enforceable in state courts and that federal courts may in proper circumstances order state officials to comply with federal law, propositions that by no means imply any authority on the part of Congress to mandate state regulation." *Id.*

[1178]"These cases involve no more than an application of the Supremacy Clause's provision that federal law 'shall be the supreme Law of the Land,' enforceable in every state. More to the point, all involve congressional regulation of individuals, not congressional requirements that States regulate. Federal statutes enforceable in state courts do, in a sense, direct state judges to enforce them, but this sort of federal "direction" of state judges is mandated by the text of the Supremacy Clause. *No comparable constitutional provision authorizes Congress to command state legislatures to legislate*." *Id.* (emphasis added).

It is not beyond reasonable implication to assume if the Court finds that Congress cannot compel state legislatures to legislate regulation desired by Congress, that such prohibition would include higher legislative standards such as civil, criminal and amendatory law. However, it is conceded this prohibition was not explicitly stated by the Court and therefore exceptions may exist.(*See infra* text accompanying note 1188). Thus, such proposals in the Hatch Bill,(*see supra* text accompanying notes 596-607)such as regulating the number of delegates to a convention (*Id*.) cannot be set by congressional command.

While the Court found Congress does have the power to regulate individuals, this is no help in a convention to propose amendments as individuals (citizens) would also be exempt from congressional regulation under 9th Amendment protections. *See supra* text accompanying notes 88-119,1150.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

cannot be ratified by "consent" of state officials, as the Constitution does not protect sovereignty of states for the benefit of the states or state governments as abstract political entities or even for the benefit of public officials governing states, but rather the Constitution divides authority between federal and state governments for protection of individuals.[1179]

[1179] "Respondents note that the Act embodies a bargain among the sited and unsited States, a compromise to which New York was a willing participant and from which New York has reaped much benefit. Respondents then pose what appears at first to be a troubling question: How can a federal statute be found an unconstitutional infringement of state sovereignty when state officials consented to the statute's enactment?

"The answer follows from an understanding of the fundamental purpose served by our Government's federal structure. The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.' Coleman v. Thompson, 501 U.S. 722, 759, 111 S.Ct. 2546, 2570, 115 L.Ed.2d. 640 (1991) (Blackmun, J. dissenting). 'Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and Federal Government will reduce the risk of tyranny and abuse from either front.' Gregory v. Ashcroft, 501 U.S., at 458, 111 S.Ct., at 2400 (1991). *See* The FEDERALIST No. 51, p.323 (C. Rossiter ed. 1961).

"Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the 'consent' of state officials. An analogy to the separation of powers among the branches of the Federal Government clarifies this point. The Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment. In Buckley v. Valeo, 424 U.S. 1, 118-137, 96 S.Ct.612, 682-691, 46 L.Ed. 2d 659 (1976), for instance, the Court held that Congress had infringed the President's appointment power, despite the fact that the President himself had manifested his consent to the statute that caused the infringement by signing it into law. See National League of Cities v. Usery, 426 U.S., at 842, n.12, 96 S.Ct., at 2469 n.12. In INS v. Chadha, 462 U.S. 919, 944-959, 103 S.Ct. 2764, 2780-2788, 77 L.Ed.2d.317 (1983), we held that the legislative veto violated the constitutional requirement that legislation be presented the President, despite Presidents' approval of hundred of statutes containing a legislative veto provision. See id., at 944-945, 103 S.Ct., at 2781. The constitutional authority of Congress cannot be expanded by the 'consent' of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States." New York v. United States, 505 U.S. 144 (1992).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In the latest suit involving the 10th Amendment, the Court went even further saying:

"We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policy making is involved, and no case by case weighing of the burdens or benefits is necessary, such commands are fundamentally incompatible with our constitutional system of dual sovereignty."[1180]

Thus, the Court ruled Congress may not use its legislative powers to compel the states to regulate on congressional demand,[1181] nor may Congress circumvent that prohibition by conscripting state officials directly in order to bring about the same end. As delegates to a convention to propose amendments are *not* federal officials,[1182] this ruling presents grave doubt as to whether legislative proposals such as the Hatch Bill[1183] could ever be considered constitutional in that (1) acts of Congress greatly narrow state authority,[1184] (2) congressional regulation of a convention to propose amendments clearly intrudes into a constitutional area reserved for the states,[1185] and (3) the Hatch Bill and other such legislative proposals[1186] seek to circumvent the prohibition against compelling the states to regulate by

---

[1180] Printz v. United States, 521 U.S. 98 (1997).
[1181] In a more recent decision, the Court has even removed Congress's ability to regulate the states under the Commerce Clause holding that they cannot be sued except under provisions of the 14th Amendment. *See infra* text accompanying note 1208.
[1182] Delegates are citizens of the United States, however. Thus, as with all citizens, they receive constitutional protection guaranteed under the Constitution. *See infra* text generally, 14th Amendment p.517.
[1183] *See supra* text accompanying notes 596-608.
[1184] *See supra* text accompanying note 1179.
[1185] *See supra* text accompanying notes 1157-1161.
[1186] *See supra* text accompanying notes 593-595.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

congressional edict[1187] by "conscripting" state officials to carry out a federal regulatory program, in this case, the regulation of the convention to propose amendments.[1188]

*The States, the 10th Amendment and the Convention*

Together, *New York* and *Printz* make it clear Congress is prohibited under the terms of the 10th Amendment from using its regulatory powers to compel the states to act under congressional direction.[1189] Thus, congressional control of the convention to propose amendments through such legislation as the Hatch

[1187] New York v. U.S., 505 U.S. 144 (1992).

[1188] However, neither of these decisions affects the incidental regulatory power of Congress to overthrow state legislatures in their ratification votes and "fix" their votes so as to be "politically correct". The reason of course is that in the overthrow of the state legislatures, Congress actually replaces the legislative members with persons acceptable to Congress who in turn carry out congressional directives. The separation between federal and state thus is eliminated. As the case addressed the *regulatory* powers of Congress in its *legislative* not *amendatory* capacity, *Coleman* must still hold in that area. Therefore, this incidental regulatory power of Congress remains intact. *See supra* text accompanying notes 849,917,1006,1056,1079,1089,1094.

[1189] The Court has in recent cases extended this prohibition further, holding that Congress may not use the federal courts to abrogate the sovereign immunity of the states (Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996) nor may Congress employ the state courts to abrogate the sovereign immunity of a state (Alden v. Maine, 119 S.Ct. 1138 (1999). These cases specifically dealt with sovereign immunity as interpreted under the 11th Amendment, that federal infringement into state sovereignty is prohibited unless expressed powers granted to Congress in the Constitution allow for such infringement. *See infra* text accompanying note 1208.

It is not a major step to propose that the rulings would also apply in prohibiting Congress from infringing on the states' sovereignty in the amendatory procedure as this is merely another part of the Constitution where the same principle must apply if the states' sovereignty (and the people's right to alter or abolish) is to be preserved. If it is not to be preserved, then *Coleman* is the ruling authority. *See supra* text accompanying note 1188.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Bill is unconstitutional as Congress has no power to regulate the convention,[1190] the states,[1191] or the delegates to the convention.[1192]

Having dispensed with the effect of these rulings on Congress, the question then becomes what effect do they have on the states? For example, how do *New York* and *Printz* affect the political intent of the applications[1193] that has altered over the years, and does this change in intent by the states have any constitutional validity that affects the convention applications submitted by the states? What effect, for example, do these two rulings have on recession of applications by the states?

To begin with, the rulings mean that state officers, in this case the state legislatures, may not use applications for a convention to propose amendments as political protests in an attempt to register "support" for a proposed constitutional amendment with the political "understanding" that Congress will not actually call a convention.[1194] The intent of the Constitution is clear: applications by the states shall cause a convention to be held, and Congress shall have no discretion in calling one once the states

---

[1190] *See supra* text accompanying notes 1157-1161.
[1191] *See supra* text accompanying note 1174.
[1192] "The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. *To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals.*" (emphasis added). *See supra* text accompanying note 1179.
[1193] "Until the twentieth century, convention applications were submitted by the states or encouraged by Congress out of actual demand for a convention. As the great conventions of the eighteenth century faded from national consciousness, the procedure evolved into a 'protest clause' to goad or scare Congress itself to act on a desired amendment." Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988), p.61.
[1194] *See supra* text accompanying note 1179.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

have applied.[1195] An application, therefore, is an application, and Congress is mandated to deal with it, regardless of political motive, identically,[1196] as a

[1195] *See supra* text accompanying notes 435-437;508-513.

[1196] For Congress to do otherwise would violate the 14th Amendment's equal protection clause and the 10th Amendment protection to the states. Congress would thus "favor" some applications of the states while "disfavoring" others solely for political reasons (assuming it wanted a convention to propose amendments at all, which it has clearly demonstrated it does not). The states, wishing to win "favor" would thus be pressured to submit only "favorable" applications. This obviously would greatly limit the states' authority as it would establish congressional determination over the applications instead of a numeric count total as intended by the Founding Fathers (*see supra* text accompanying note 513). The Court has made it clear this kind of limitation on the states is unconstitutional saying:

"The constitutional authority of Congress cannot be expanded by the 'consent' of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States." New York v. United States, 505 U.S. 144 (1992).

The Court was even more explicit in an earlier case when it said:

"If the Federal Constitution is our guide, a person who might to wish to 'alter' our form of government may not be cast into the outer darkness. For the Constitution prescribes the method of 'alteration' by the amending process in Article V; and while the procedure for amending it is restricted, there is no restraint on the kind of amendment that may be offered. Moreover, the First Amendment, which protects a controversial as well as a conventional dialogue (Terminiello v. Chicago, 337 U.S. 1), *is as applicable to the States as it is to the Federal Government*; *and it extends to petitions for redress of grievances* (Edwards v. South Carolina, 372 U.S. 229, 235) *as well to advocacy and debate*." Whitehill v. Elkins, 389 U.S. 54 (1967) (emphasis added).

In *Edwards* the Court said:

"'[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech...is... protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rise far above public inconvenience, annoyance, or unrest... There is no room under our Constitution for a more restrictive view. For the alternative *would lead to standardization of idea either by legislatures*, courts, or dominant political or community groups.' Terminiello v. Chicago, 337 U.S. 1, 4-5...

"As Chief Justice Hughes wrote in Stromberg v. California, 'The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

constitutional procedure, not a political straw vote of the states. Anything contrary to this constitutional command must therefore be unconstitutional.[1197] The constitutional structure makes no other conclusion possible.[1198] Thus any "consent" by state officials to a political limitation on constitutional applications serves to destroy the constitutional intent of the applications--that of compelling Congress to call a convention. This "consent" clearly narrows both the states' power to apply for a convention and Congress' power to call one. Therefore, it violates the constitutional structure. Thus, such "consents" are unconstitutional.

Likewise, recessions of applications by the states is equally unconstitutional. They constitute a form of "consent" by state officers to an unconstitutional act of Congress. An application recession presents Congress the opportunity to shirk its mandated duty of calling a convention. The Founding Fathers intended Congress should have no discretion in calling a

---

Amendment...'" Edwards v. South Carolina, 372 U.S. 229 (1963). (emphasis added).

[1197] "Congress...shall call a convention...upon the application...of the state legislatures." U.S. CONST., art. V. "...the Supremacy Clause makes federal law paramount over the contrary positions of state officials; the power of federal courts to enforce federal law thus presupposes some authority to order state officials to comply." New York v. United States, 505 U.S. 144 (1992).

The federal law, in this case, the Constitution itself, is plain: if the states apply, Congress shall call a convention. Political agreements, however altruistic, cannot stand in the way of this supreme command of the Constitution.

[1198] "'The Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States.'" New York v. United States, 505 U.S., at 166; 'The great innovation of this design was that our citizens would have two political capacities, one state and one federal, *each protected from incursion by the other*---a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relations, its own privity, *its own set of mutual rights* and obligations to the people who sustain it and are governed by it.' U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 831 (1995)." Printz v. United States, 521 U.S. 98 (1997). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention upon the proper number of applications by the states.[1199] A recession of applications thus conflicts with the basic intent of the application and of the Constitution, compelling a convention to occur. [1200] Any "consent" to the destruction of this constitutional intent of the applications on the part of state officers by their recessing applications clearly narrows the states' power to hold a convention as well as congressional power to call one and thus violates the constitutional structure.[1201] Therefore, convention application recessions are unconstitutional.

Finally, as Congress is restricted by the 10th Amendment to a limited, minuscule call, which in fact is nothing more than an expression of reserved state power, any pre-conditions Congress may attempt to attach to the calling of a convention, such as contemporaneousness, same subject, etc., are unconstitutional as the 10th Amendment makes the convention to propose amendments a state power (but one which is transitory, i.e., once the states have applied in sufficient number to compel a call, the power passes to the people under their right to alter or abolish) and thus prohibits any congressional interference; any pre-conditions by Congress are therefore unconstitutional.[1202]

By the same reasoning, any pre-conditions the states attempt to impose on convention applications are in violation of the 10th Amendment as they would (1) preclude or prevent Congress from carrying out its mandated duty to

---

[1199] *See supra* text accompanying notes 508-513.
[1200] *See supra* text accompanying notes 851-920.
[1201] *See supra* text accompanying note 1196.
[1202] *See supra* text accompanying notes 614-831.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

call a convention,[1203] (2) serve as a veto on the applications by the other sovereign states,[1204] and (3) serve to narrow the states' power to hold a convention as well as congressional power to call one and thus violate the constitutional structure.[1205] Therefore, such political "protest clause[s]" must be considered ineffectual and unconstitutional where they conflict with the supreme constitutional purpose of the application, that of compelling Congress to call a convention.

*Summation*

The convention to propose amendments is a state power[1206] not subject to congressional regulation, nor to any "consent" by state officials that would preclude or prevent its calling by Congress where otherwise Congress is mandated to do so. It is clear Congress may attach no pre-conditions to the applications by the states because under the 10th Amendment's division of power, it has no authority to do so.

In sum, if the states apply, Congress must call, and *neither Congress nor the states* may constitutionally prevent a convention (except by the states not applying for one in the first place which at present is not the case),[1207]

---

[1203] U.S. CONST., art. V; *see supra* text accompanying notes 2,435-437,508-513.
[1204] *See supra* text accompanying notes 842-850,909-916.
[1205] *See supra* text accompanying note 1196.
[1206] A power, however, transitory in nature. *See supra* text accompanying notes 907-920,1153,1155,1158,1179,1192.
[1207] *See infra*
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664;
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

least of all for any convenient, short term, self-interested political reasons. The states and Congress have as much constitutional right to refuse to call a convention or attempt to thwart it by playing games with the applications as they do to refuse to hold an election mandated by either state or federal constitutions. Both actions are part of the transcendent power of the people to alter or abolish their government, and refusal by either federal or state government to comply is equally unconstitutional and therefore may not be permitted by the Court.

## THE FOURTEENTH AMENDMENT

### *Introduction*

Until now discussion of the convention to propose amendments in this suit has centered on what might be termed “original documentation”, i.e., the words actually written by the Founding Fathers, such as the Declaration of Independence, the original Constitution, the Federalist Papers and the Bill of Rights. However, the Constitution is a progressive document, designed by the Founding Fathers to be altered to meet the changing needs of the nation. Any discussion of the convention to propose amendments and its mandated congressional call is incomplete without examining the post-Founding Fathers amendments, primarily Section 1 of the 14th Amendment, to determine their effect, if any, on the convention to propose amendments.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Clearly the 14th Amendment altered the relationship between the federal government and the states, restructuring that relationship so as to generally favor the federal government over the previously stronger state governments.[1208] Does this change in relationship favor Congress, skirting its Article V requirement of calling a convention when the states apply, or does the 14th Amendment strengthen the proposition that Congress is mandated to

---

[1208] The importance of the 14th Amendment in the question of the convention to propose amendments cannot be understated. Recently, the Supreme Court ruled it is only through the 14th Amendment that Congress possesses the power to abrogate state immunity from federal suit. If Congress can abrogate the states' immunity to apply for a convention to propose amendments either through legislation or federal suit, therefore, it must be based on the 14th Amendment provisions.

The Court said:

"The inquiry into whether Congress has the power to abrogate unilaterally the States' immunity from suit is narrowly focused on a single question: Was the Act in question passed pursuant to a constitutional provision granting Congress such power? *This Court has found authority to abrogate under only two constitutional provisions: the Fourteenth Amendment*, see, e.g., Fitzpartric v. Bitzer, 427 U.S. 445, 96 S.Ct. 2666, 49 L.Ed.2d 614 *and*, a plurality opinion, *the Interstate Commerce Clause*, Pennsylvania v. Union Gas Co., 491 U.S. 1, 109 S.Ct. 2273, 105 L.Ed.2d.1. The Union Gas plurality found that Congress' power to abrogate came from the States' session of their sovereignty when they gave Congress plenary power to regulate commerce. Under the rationale of Union Gas, the Indian Commerce Clause is indistinguishable from the Interstate Commerce Clause.

"However, in the five years since it was decided, Union Gas has proven to be a solitary departure from established law. Reconsidering that decision, none of the policies underlying stare decisis require this Court's continuing adherence to its holding. The decision has been of questionable precedential value, largely because a majority of the Court expressly disagreed with the plurality's 'rationale. Moreover, the deeply fractured decision has created confusion among the lower courts that have sought to understand and apply it. The plurality's rationale also deviated sharply from the Court's established federalism jurisprudence and essentially eviscerated the court's decision in *Hans*, since the plurality's conclusion—that Congress could under Article I expand the scope of the federal court's Article III jurisdiction contradicted the fundamental notion that Article III sets forth the exclusive catalog of permissible federal-court jurisdiction. *Thus, Union Gas was wrongly decided and is overruled*." Seminole Tribe of Florida v. Florida et al., 517 U.S. 44 (1996). (emphasis added).

Thus, the Court now holds that only through the 14th Amendment may state immunity be abrogated and then only in "pursuant to a constitutional provision granting Congress such power."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

call a convention to propose amendments?[1209] Does the 14th Amendment provide answers to other questions surrounding a convention to propose amendments such as those raised by Madison at the original Constitutional Convention?[1210]

*Immunity and Privilege Clause*

Section 1 of the 14th Amendment states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[1211]

Key in this section of the amendment is the phrase "the privileges or immunities of citizens of the United States..." The amendment clearly states two citzenships are possessed by all persons born or naturalized in the United States who are subject to its jurisdiction: citizenship in the United States (a national or federal citizenship) and citizenship in the state wherein the person resides.[1212]

---

[1209] *See supra* text accompanying notes 497-514.
[1210] *See supra* text accompanying note 438.
[1211] U.S. CONST., 14th Amend., § 1.
[1212] It could argued this amendment redefined the sovereignty of the United States in that it modified Art. IV, §2, §§ 1 of the original Constitution ("The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.") which clearly did not recognize national or federal citizenship, only state citizenship. However this argument runs afoul of Art. I, §2, §§ 2 and Art. I, § 3, §§ 3 which calls for members of Congress to be "citizens of the United States" in order to qualify for office that was written at the same time and *does* recognize such federal citizenship. The relationship between these two citzenships is what was altered by the 14th Amendment. Thus, the 14th Amendment merely restated what the Founding Fathers had already recognized. *See supra* text accompanying notes 925,926;*infra* text accompanying notes 1214,1215.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The amendment also states "no state may abridge the privileges or immunities of citizens of the United States..."[1213] Obviously, by simple deduction, citizenship in the United States encompasses certain immunities and privileges that do not exist as immunities and privileges of citizenship in an individual state.[1214] This is self-evident, otherwise there would be no purpose in the amendment distinguishing between two forms of citizenship. Put another way, citizenship in the United States must provide additional immunities and privileges of citizenship not found in state citizenship.[1215] The question then is what is the difference between individual state immunities and privileges and national immunities and privileges?

While the courts have occasionally expressed certain implied immunities and privileges,[1216] a strict construction of the Constitution defines only one difference between the immunities and privileges of state citizenship and the immunities and privileges of citizens of the United States. Citizens of the

---

[1213] U.S. CONST., 14th Amend., § 1.

[1214] "The next observation is...that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual." Slaughterhouse Cases, 83 U.S. 36 (1872).

[1215] "Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State...we wish to state here that it is only the former which are placed by this clause ['No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,' 14th Amend., § 1] under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment." *Id.*

[1216] *Id.*; *see* also Twining v. New Jersey, 211 U.S. 78 (1908).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

United States enjoy the right to be elected members of Congress[1217] and to hold the offices of President or Vice President.[1218]

As one of the conditions of eligibility for federal office, the Constitution mandates that members of Congress must be citizens of the United States[1219] "...chosen...by the people of the several states."[1220] The Constitution grants special powers to citizens holding federal elected office[1221] that are withheld from the general citizenry.[1222] By virtue of the Constitution these elected citizens have been granted a special privilege: the right to make certain decisions affecting all citizens of the United States.[1223] These rights include the right to enact statutory legislation[1224] and the right to propose amendments to the Constitution.[1225] The Constitution also grants this privilege of amendment proposal to delegates to a convention to propose amendments.[1226] The special powers of these citizens are clearly a

---

[1217] "No Person shall be a Representative who shall not have attained the Age of twenty five Years, and *been seven Years a Citizen of the United States*..." U.S. CONST., art. I, §2 §§ 2; "No Person shall be a Senator who shall not have attained the Age of thirty Years, *and been nine Years a Citizen of the United States*..." U.S. CONST., art. I, § 3 §§ 3(emphasis added).
[1218] *"No person except a natural born Citizen, or a Citizen of the United States*, at the time of the Adoption of this Constitution, shall be eligible to the Office of President..." U.S. CONST., art. I, § 1, §§ 5. (emphasis added).
[1219] U.S. CONST., art. I, § 2, §§ 3; U.S. CONST., art. I, § 3, §§ 3; *see supra* text accompanying notes 1217,1218.
[1220] U.S. CONST., art. I, § 2, §§ 1; 17th Amend. § 1.
[1221] *See generally* U.S. CONST., art. I, art. II, art. V.
[1222] For example, Congress is allowed to print and coin money in the name of the United States. (U.S. CONST., art I, § 8, §§ 5) While there have been some exceptions, if any general citizen attempts to exercise this power, it is a crime. Thus, there is a separation of powers between the sovereign citizen and the government. The citizen licenses some of his sovereign power to the government in this case and therefore can no longer exercise that power. *See supra* text accompanying notes 1136-1147.
[1223] U.S. CONST., art. I, § 1.
[1224] U.S. CONST., art. I, § 8.
[1225] U.S. CONST., art. V.
[1226] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

privilege granted only to these particular citizens of the United States.[1227] While any citizen may be granted such powers, it is only through election that the powers in question are granted.[1228] Thus, citizens so elected constitute a particular class of citizenry.[1229]

But this privilege, granted through election, does not remove or replace the general right of the people to alter or abolish. Instead, it is a *form* of the right to alter or abolish, transitory in nature, like the transitory power of state legislatures to apply for a convention to propose amendments. This specific privilege granted to this specific class of elected citizens is the

---

[1227] "Privilege. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others." BLACK'S LAW DICTIONARY 6th Ed. (1990).

The word "privilege" is also defined as:
"1) a right, immunity, benefit or advantage granted to some person, group or persons, or class not enjoyed by others and sometime detrimental to them; 2) a basic civil right, guaranteed by a government; as the privilege of equality for all." WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED, 2nd Ed., cc. 1984.

[1228] For this reason, only citizens who are elected to the position (unless there be a vacancy which shall be filled as prescribed under art. I, § 4) can possess these powers. Thus, as with all members of Congress, any delegate to a convention must be elected. This constitutional edict precludes any state government or legislature from appointing any delegates, thus circumventing the will of the people.

[1229] "Class. A group of persons, things, qualities, or *activities having common characteristics or attributes*. In re Kanawha Val. Bank, 144 W.Va. 346, 109 S.E.2d. 649, 670." BLACK'S LAW DICTIONARY 6th Ed. (1990).(emphasis added).

While it is certainly true that "[T]he significance of constitutional provisions [are] vital, not formal, and [are] to be gathered not simply by taking the words in the dictionary but by considering their origin and the line of their growth..." (Ullmann v. United States, 350 U.S. 422 (1956)), nevertheless at the minimum, the meaning and intent of the words in the Constitution must have at least the effect of their definition. While it is conceded the words in the Constitution, through judicial interpretation, may assume a greater role in meaning than that assigned ordinary dictionary definition, this does not eliminate the minimum standard of definition. Thus, where the minimum standard of the meaning of the words in the Constitution (i.e., basic definition) is sufficient to accomplish the matter, this minimum standard cannot be rejected or ignored. *See supra* text accompanying notes 574; *infra* text 1651.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

ability to write the actual language of a proposed constitutional amendment. Upon proposal, this special grant of power terminates until it is used again in the proposal of another amendment. It is during this transitory period that the privilege applies, however, and thus the terms and conditions of the 14th Amendment must also apply.

As with "application",[1230] in its use of "privilege", the Constitution does not distinguish between "a right, immunity, benefit or advantage granted to some person, group or persons, or class not enjoyed by others," and "a basic civil right, guaranteed by a government; as the privilege of equality for all."[1231] The 14th Amendment merely requires "the equal protection of the laws."[1232] Therefore, a privilege granted under the Constitution may only affect a portion of the citizenry of the United States and yet be entirely constitutional.[1233] The 14th Amendment also requires that all citizens shall receive "equal protection of the laws" for such privileges,[1234] i.e., all

---

[1230] *See infra* text accompanying notes 1533-1544.
[1231] *See supra* text accompanying note 1227.
[1232] U.S. CONST., 14th Amend., § 1.
[1233] *See infra* text accompanying note 1234,1236.
[1234] "The constitutional guarantee of 'equal protection of the laws' means that no person or *class of persons* shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness. People v. Jacobs, 27 Cal,App.3d 246, 103 Cal. Rptr. 536, 543; 14th Amend., U.S. Const. Doctrine simply means that similarly situated persons must receive similar treatment under the law. Dorsey v. Solomon, D.C. Md., 435 F.Supp. 725, 733." BLACK'S LAW DICTIONARY, 6th Ed. (1990). (emphasis added). *See infra* text accompanying note 1236.
The amendment states that state laws may not abridge the privileges or immunities of citizens of the United States. Clearly, these immunities and privileges must derive from protections found in the Constitution itself. As the federal government is bound to uphold the Constitution, ("The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution..." (U.S. CONST., art. VI § 3)) it is clear the

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

citizens in such a group or class shall be affected equally, and any other citizen entering into that group or class shall receive the same and equal privilege.[1235] Further, the 14th Amendment mandates that all citizens in any class shall be equally affected by the law as any other member of that class.[1236]

---

federal government is as equally bound to provide "equal protection" under its laws as are the states.

The opposing position would be an absurdity: that the federal government could require the states to administer all laws equitably for all citizens while simultaneously defaulting in the equitable administration of federal laws. Such action by the federal government would defeat the entire purpose of the amendment. How could the states be expected to equitably administer their laws so as not to deny privileges and immunities of national citizenship guaranteed to citizens if a state was forced to choose between several "versions" of equality caused by discriminatory practices of the federal government?

[1235] *Id*.

[1236] "If...we take into view the general objects and purposes of the Fourteenth Amendment, we shall find...these are to extend United States citizenship to all natives and naturalized person, and to prohibit the States from abridging their privileges or immunities, and from depriving any person of life, liberty or property without due process of law, and from denying to any person within their jurisdiction the equal protection of the laws. *It contemplates persons* and *classes of persons*... For, as before said, it has respect to persons and classes of persons. *It means that no persons or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances*." Missouri v. Lewis 101 U.S. 22 (1879) (emphasis added).

"The fourteenth amendment, in declaring that no state 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, *but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights*; that all persons should be equally entitled to pursue their happiness, and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, and the prevention and redress of wrongs, and the enforcement of contracts; *that no impediment should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon one than are laid upon others in the same calling and condition*; and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses... *Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a*

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As the 14th Amendment requires that all members of a particular class receive equal protection under the law, it is obvious that any constitutional standard applying to one portion of a class must apply equally to all members of that class. Although the Constitution does not expressly state that convention delegates must be United States citizens, in order to benefit from the privileges granted them by the Constitution it becomes clear that such delegates must also meet the same qualifications imposed on the rest of the class, i.e., Congress. Thus convention delegates must be citizens of the United States in order to qualify for election, as well as meeting any other qualification standards the Constitution imposes on members of Congress.[1237]

---

*public purpose, is limited in is application, if within the sphere of its operation it affects alike all persons similarly situated*, is not within the amendment. In the execution of admitted powers unnecessary proceedings are often required which are cumbersome, dilatory, and expensive; yet, if no discrimination against any one be made, and no substantial right be impaired by them, they are not obnoxious to any constitutional objection." Barbier v. Connolly, 113 U.S. 27 (1884) (emphasis added).

"The fourteenth amendment to the constitution of the United States does not prohibit legislation which is limited either in the object to which it is directed, or by the territory within which it is to operate. *It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed*. As we said in Barbier v. Connolly, speaking of the fourteenth amendment: 'Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.'" Hayes v. State of Missouri, 120 U.S. 68 (1887). (emphasis added). *See also* Marchant v. Pennsylvania R. Co., 153 U.S. 380 (1894) summarizing and restating Missouri v. Lewis, Hayes v. Missouri and Barbier v. Connolly.

[1237] The qualifications for the House of Representatives and the United States Senate are different. Besides citizenship (seven years for a member of the House of Representatives, nine years for the Senate)the Constitution establishes minimum ages (twenty-five years for the House of Representatives, thirty years for the Senate) and that the candidate "be an Inhabitant of that State for which he shall be chosen." U.S. CONST., art. I.

These requirements, which the Supreme Court has held are the only requirements citizens need to satisfy in order to occupy a seat in Congress, (*see* generally Powell v. McCormack, 395 U.S. 486 (1969)) must therefore, under

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The 14th Amendment guarantees that no law promulgated either by the United States or the several states shall abridge the privileges or immunities of citizens of the United States unless it is equally applied, i.e., that the law in question, whether constitutional or statuary in nature, shall be equally applied to all citizens so affected by the law.[1238] This fact produces one conclusion. The power of Congress can be neither more nor less than that of the convention to propose amendments insofar as the amendatory power is concerned.[1239] Thus, any privilege or immunity granted by the Constitution to members of Congress or claimed by that body in its amendatory role must be granted equally to the convention delegates. Hence, any incidental powers related to this amendatory role must be equal for both proposing bodies.

---

the terms of the 14th Amendment, be the same requirements for convention delegates. As there are two standards in the Constitution, it is clear the qualifications for convention delegate must be the least stringent as set forth by the Constitution. In other words, whatever is the minimum standard the Constitution establishes to be a member of Congress, that standard must be the one to apply for convention delegates.

If it is concluded otherwise, i.e., that convention delegates are not subject to 14th Amendment protection, then the result would be the establishment of special qualification standards, (obviously set by Congress with obvious political motives behind them) which *Powell* clearly ruled as unconstitutional. Hence, the qualifications for convention delegate must be the same as that of a member of the United States House of Representatives: twenty-five years of age, a citizen of the United States for at least seven years and who, at the time of election, is an inhabitant of that State for which he or she is chosen. *See supra* text accompanying note 1217,1218.

[1238] U.S. CONST., 14th Amend.; *See supra* text accompanying notes 1234,1236.

[1239] This, of course, does not include Congress' incidental regulatory power to overthrow the state legislatures by military force and replace them with members of their own political choosing as this part of Congress' power involves *ratification* which the convention to propose amendments has no part. *See supra* text accompanying notes 849,917,1006,1056,1079,1094; *infra* text accompanying note 1333.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As nothing in the Constitution allows Congress to revoke or regulate these rights,[1240] clearly any regulation of the convention to propose amendments by Congress requires that such legislative regulations be equally binding on Congress as the convention with equal force and effect.

No doubt it will be argued that the "implied" powers of the call[1241] create a one-way street in this matter with Congress being able to regulate the convention to propose amendments unfettered by the provisions of the 14th Amendment. This argument misses the point entirely. It presumes to place legislative fiat above constitutional law. The Constitution is straightforward in the matter: citizens in a particular class must be treated equally under the law. Therefore, the issue is not that Congress may legislate, but that Congress seeks to deny equality under the law, denying part of a class of

---

[1240] Except by "due process of law." (U.S. CONST., 14th Amend., § 1) In this instance, however, as the law involved is the Constitution itself, due process would have to be a constitutional amendment.

[1241] As to whether there is, or ever was, intended to be such implied power, the clear answer is no. The entire concept of implied power is based on the assumption that "Such [powers] as are necessary to make available and carry into effect those powers which are expressly granted or conferred, *and which must therefore be presumed to have been within the intention of the constitutional or legislative grant*." (BLACK'S LAW DICTIONARY 6th Ed. 1990). (emphasis added).

The key here is intention. Clearly, if there were no intention by the Founding Fathers that such implied powers should be found in the constitutional language, then there is no presumption of such implied power because it was never intended.

In the case of the convention to propose amendments, the language of the Founding Fathers is clear, precise and unambiguous. Congress shall have "no discretion in the matter." (*See supra* text accompanying notes 497-514). As implied powers clearly create discretion for whomever possesses them, in this case, Congress, and as it is obvious the Founding Fathers meant there should be no such discretion, the language of the Constitution does not grant implied powers to Congress in this instance.

Further, the use of such power must leap several other constitutional problems. *See supra* text accompanying notes 547-920.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

citizens privileges that Congress, as part of that same class, seeks to retain exclusively for itself.[1242]

No legislative act may usurp the Constitution, and therefore any act of legislation may only be legal if it adds to the amendatory powers of Congress and the convention to propose amendments equally, or equally detracts from these powers.[1243]

If Congress maintains it can regulate what subject matter will be discussed by the convention to propose amendments, it follows the convention to propose amendments can regulate what subject matter Congress discusses. If Congress proposes it can veto amendments proposed by the convention to propose amendments, the convention to propose amendments must be able to veto a congressional proposal. If Congress maintains that two-thirds of the states must agree on one subject for an amendment before it may even be discussed at a convention to propose amendments, it means two-thirds of each house of Congress must agree to a single subject before it may be discussed in that body, which essentially means two-thirds of the membership of Congress must submit the same proposal in Congress before discussion on that subject may begin in Congress.[1244]

---

[1242] Those who have opposed a convention to propose amendments, generally members of Congress, have used any argument they could to prevent this mandated constitutional procedure, all in the name of "protecting" or "defending" the Constitution.

The Supreme Court has responded to this concept distinctly, saying:

"Beneficent aims however great or well directed can never serve in lieu of constitutional power." Carter v. Carter Coal Co., 298 U.S. 238 (1936).

[1243] *See supra* text accompanying notes 560-831.

[1244] And, as with the convention, as supporters of "single subject" maintain, this two-thirds threshold for discussion is separate of the vote by Congress to actually submit the measure to the states for ratification. In other words, Congress would merely, by the first two-thirds vote, agree to discuss the

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In summation, the two proposal bodies, Congress and the convention to propose amendments, comprised of citizens of the United States, form a class of citizens who are empowered with the privilege to propose amendments to the Constitution. The Constitution mandates all members of a class must have equal protection under the law, i.e., that no member or members of the class may receive preferential treatment or have any privilege or immunity that class enjoys abridged. Thus, all constitutional qualifications for office must equally apply to both bodies. Further, all powers claimed by Congress to regulate the convention to propose amendments must equally apply to Congress, and regulation on Congress must also apply to the convention.

*The Apportionment Argument of Senator Tydings*

Some in Congress have argued that because the states were malapportioned, the applications from these states for a convention to propose amendments may be ignored by the Congress.[1245] The question of malapportionment

---

matter; then would come the actual vote on the proposed amendment. Thus, the matter would have to be twice passed by Congress (two votes in each house of Congress) in order to be a valid amendment proposal, whereas Article V clearly only specifies a single vote by Congress to validate any amendment proposal. Obviously, this is a constitutional conflict, but this suit will leave the resolution of such a quandary to the supporters of "same subject". After all, it is their constitutional interpretation that would require both Congress and the convention to do everything *twice*, whereas the Founding Fathers were quite content to only require the matter be resolved *once*.

[1245] In 1967, during a debate on the convention, Democratic Senator Millard Tydings of Maryland presented his argument as to why Congress could reject convention applications by the states:

"His first point of attack was on the states' petitions, most of which he declared were invalid because they had been submitted by legislatures that, as the Supreme Court had found, were malapportioned and therefore illegally constituted. Acknowledging that a 'malapportioned legislature may be

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

raises several constitutional issues, many of which are outside the scope of this suit and will therefore only be briefly examined. However, not all the constitutional issues involving malapportionment are without some bearing on the issue of a convention to propose amendments, and these will be examined more closely.

Summed up, Senator Tydings' arguments were:

1. Congress has the right to review applications;
2. Congress may reject applications because the legislature submitting them is malapportioned: "A legislature has no competence to initiate amendments to the Constitution to make legal its illegality."[1246]

---

competent, pending the reapportionment, to pass legislation generally,' Tydings insisted that 'such a legislature has no competence to initiate amendments to the Constitution to make legal its illegality.' As evidence that the Supreme Court was not alone in calling the states to account for unconstitutional apportionment systems, he cited cases in Georgia and Utah in which lower courts had agreed that it was improper for a malapportioned legislature to propose amendments, either to the state constitution or the Constitution of the United States, particularly when the subject was legislative reapportionment.

"(1). Tydings called the senate's attention to a footnote in one court's opinion that observed:

"'It is interesting to note the speed by which the last State legislature memorialized Congress to call a constitutional convention to provide for reapportionment "on factors other than population..." compared to the Legislature's hesitancy to properly reapportion under the mandate of this court.'

"(2). Tydings charged that of the 29 state legislatures that had petitioned for an amendment to overturn the reapportionment decision, '23 were unconstitutionally apportioned at the time the petition was approved, 13 of those 23 legislatures were under court orders to reapportion, and litigation was pending in the other 10.' The petitions, he said, 'were passed in haste, without the measured deliberativeness which should accompany the weighty responsibility of proposing an amendment to the Constitution of the United States...' Tydings pointed out the reapportionment of the legislatures was welcomed by the majority of the citizens of the country, but was most unpopular among the malapportioned state legislatures. It was the latter, he observed, who were challenging the court's ruling. His conclusion was that the petitions received from legislatures that the court had found malapportioned were invalid, and Congress entitled to ignore them."

A CONSTITUTIONAL CONVENTION: THREAT OR CHALLENGE (1981) (Edel), p. 88-89.

Footnotes in the Edel text are as follows:

(1). The cases cited were Fortson v. Toombs, initially heard by a three-judge federal court and later reviewed by the Supreme Court, 379 U.S. 621 (1965), and Petuskey v. Rampton, 243 F. Supp. 365 (1965).

(2). CR [Congressional Record], vol. 133, p.10, 102.

[1246] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The senator's last argument can be disposed of by the simple observation that legislatures, both federal and state, have on numerous occasions made that which was legal, illegal and that which was illegal, legal. Such examples include homosexuality, drinking, gambling and labor laws to name a few that over the years have undergone a change in status either from legal to illegal status or vice versa. Therefore it is clear a legislature can change the legality of a particular subject. As to whether a legislature "has no competence to initiate amendments to the Constitution to make legal its illegality", the Supreme Court has addressed this issue when the cases cited by Senator Tydings reached them and made it clear that such power does exist in the legislative process, thus refuting the senator's supposition.[1247]

---

[1247] In 1965 the Court said:

"As to the provision forbidding submission to the electorate of a legislatively proposed new state constitution, I can find nothing in the Fourteenth Amendment, elsewhere in the Constitution, or in any decision of this Court which requires a State to initiate complete or partial constitutional change only by some method in which every voice in the voting population is given an opportunity to express itself. *Can there be the slightest constitutional doubt that a State may lodge the power to initiate constitutional changes in any select body it pleases, such as a committee of the legislature, a group of constitutional lawyers, or even a 'malapportioned' legislature—particularly one whose composition was considered, prior to this Court's reapportionment pronouncements of June 15, 1964, to be entirely and solely a matter of state concern?*

"Similarly as to the provision of the lower court's original decree limiting the functions of the 1965 legislature, *it seems scarcely open to serious doubt that so long as the federal courts allow this Georgia legislature to sit, it must be regarded as the de facto legislature of the State, possessing the full panoply of legislative powers accorded by Georgia law*." Fortson v. Toombs, 379 U.S. 621 (1965). (emphasis added).

In another case, the Court said:

"If the Federal Constitution is our guide, a person who might wish to "alter" our form of government may not be cast into the outer darkness. For the Constitution prescribes the method of 'alteration' by the amending process in Article V, and while the procedure for amending it is restricted, *there is no restraint on the kind of amendment that may be offered*." Whitehill v. Elkins, 389 U.S. 54 (1967) (emphasis added).

And as noted in Hawke v. Smith, 253 U.S. 221 (1920), the Court said:

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Coleman, Apportionment, and the 14th Amendment*

Having disposed of two of Senator Tydings' arguments, the question then is did the passage of the 14th Amendment by Congress (including the methods by which the amendment was ratified) modify the intent and meaning of Article V as it relates to the calling of a convention to propose amendments, essentially voiding the clear intent of the Founding Fathers which was that Congress was to have no discretion in the matter?[1248]

Clearly, there is no expressed language in the 14th Amendment granting Congress the power to reject state applications for a convention to propose amendments,[1249] nor does the amendment grant any new power to Congress in the

---

"The only question really for determination is: What did the framers of the Constitution mean in requiring ratification by 'legislature'? That was not a term of uncertain meaning when incorporated into the Constitution. What it meant when adopted it still means for the purpose of interpretation. *A Legislature was then the representative body which made the laws of the people*... It is true that the power to legislate in the enactment of the laws of a state is derived from the people of the state. *But the power to ratify a proposed amendment to the federal Constitution has its source in the federal Constitution.* The act of ratification by the state derives its authority from the federal Constitution to which the state and its people have alike assented." (emphasis added).

Taken together these rulings make it clear that a legislature, (through a convention to propose amendments or by actions taken by members of Congress) may propose any amendment of any subject; such power of ratification and convention are derived from authority of the federal Constitution and are thus not affected by malapportionment of state legislatures.

[1248] *See supra* text accompanying notes 497-514.

[1249] The courts are of no help to the Congress. While the Constitution does grant the Court the right to decide "all cases...arising under this Constitution." (U.S. CONST., art. III, § 2, §§ 1), the Constitution does not grant the courts the power to decide on the transcendent issue of amendment by using court decisions to "throw out" applications by the states. This would be as much a violation of state application rights as congressional actions in the matter. *See supra* text accompanying note 284,909,1208.

Second, the issue of *ex post facto* arises. While a court order can affect decisions of a legislature declared malapportioned, the fact is that *ex post facto* would prevent the order from taking effect retroactively and, once the legislature was in compliance with the court order, any new applications

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

ratification procedure. Indeed, as noted by the courts at the time, the primary purpose of the 13th, 14th and 15th Amendments:

> "...on the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested, we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him."[1250]

While the "freedom of the slave race" and the "establishment of security for that freedom" is a noble cause, by no stretch of the imagination can the granting of freedom to a particular race be translated into a power to overthrow, without amendment, the amendatory procedure of the Constitution.[1251] Nowhere in the language of the courts of that day is there any discussion or even allusion to such a power or that such a power was ever contemplated or even implied. Indeed, the discussion of the Court in *Slaughterhouse* indicates the exact opposite.[1252] Thus, from an expressed point of view, it is clear

---

would be "correct". *See supra* text accompanying notes 744-756;*infra* text accompanying notes 1302-1305,1553.

Finally, as it is a right (i.e., the right to alter or abolish) involved, it is clear that such a right cannot be removed by the subsequent actions of a legislature or a court. *See supra* text accompanying notes 954,1136-1147.

[1250] Slaughterhouse Cases, 83 U.S. 36 (1872).

[1251] *See supra* text accompanying note 1208.

[1252] "Was it the purpose of the fourteenth amendment that by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the federal government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belong exclusively to the States?

"All this and more must follow, if the proposition of the plaintiffs in error be sound. For not only are these rights subject to the control of Congress whenever in its discretion any of them are supposed to be abridged by State legislation, but that body may also pass laws in advance, limiting and restricting the exercise of legislative power by the States, in their most ordinary and usual functions, as in its judgment it may think proper on all such subjects. And still further, such a construction followed by the reversal of the judgments of the Supreme Court of Louisiana in these cases, would

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress derived no additional powers in its amendatory role as a result of the passage of the 14th Amendment.

How then did the Court reach its conclusions in *Coleman*? Or, more specifically, what language in the Constitution did the Supreme Court use to arrive at its ruling?[1253] Bluntly, the Court used no language found in the Constitution. Rather, it relied on the actions of Congress under the Reconstruction Act.[1254] In this piece of legislation, Congress assumed the power by legislative fiat to dictate how a state legislature would vote on the ratification of a proposed amendment to the Constitution.[1255] Thus, it was this *legislative* power asserted by Congress, *not constitutional language*[1256] that

---

constitute this court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens, with authority to nullify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of this amendment. The argument we admit is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions, when the effect is to fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character, when in fact it radically changes the whole theory of the relations of the state and Federal governments to each other and of both these governments to the people; the argument has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt.

"We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them." *Id. See supra* text accompanying note 1236.

[1253] *See supra* text accompanying notes 1053-1108.

[1254] *See supra* text accompanying note 1077.

[1255] *Id.*

[1256] While this point will be pursued no further in this suit, it is interesting to note that in so deciding, the Court used legislative language to define constitutional limit rather than using constitutional intent to define legislative limit. Thus, the Court completely reversed its usual procedure in arriving at its decision.

Clearly this brings into grave doubt the finding of Chief Justice John Marshall who said:

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

was the basis for support by the Supreme Court in *Coleman*.[1257] Thus the Court assumed a *political* rather than *constitutional* stance when it wrote *Coleman*.[1258] Therefore any validity of the argument by Senator Tydings that the Congress has the constitutional authority to effect state ratification votes or a convention to propose amendments is based, not on the language of the Constitution, nor on the history or language of the 14th Amendment, but on the legislative language of the Reconstruction Act, the intent of which was questioned by the Supreme Court at the time.[1259]

*Reynolds v. Sims---The Dissent of Justice Harlan*

---

"It cannot be presumed that any clause in the constitution is intended to be without effect; and, therefore, such a construction is inadmissible, unless the words require it."

In the same decision, Marshall also said:

"The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the art of the people, to limit a power in its own nature illimitable." Marbury v. Madison, 5 U.S. 137 (1803).

Hence, should the Court choose to reaffirm its ruling in *Coleman*, it will affect more than just this provision of the Constitution. The Court will establish that *any legislative language by Congress* is supreme to the Constitution, and it must be constitutional language which must yield, not legislative fiat. The effect of this will have far reaching consequences long after this case is settled.

[1257] *See supra* text accompanying notes 1053-1108.

[1258] The Court may have justified its support using constitutional arguments, though a careful reading of the decision shows few were presented. In fact, those supporting Congress' incidental regulatory power primarily used the actions of Congress and the 14th Amendment as justification for their position. Certainly no expressed, specific constitutional language was quoted to justify the congressional action, nor did the Court refer to *Slaughterhouse* or quote Marshall in its findings. *See supra* text accompanying notes 1252,1256. Thus the Court assumed a political position rather than a constitutional one.

[1259] *See supra* text accompanying note 1252.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The final point of Senator Tydings' argument, that Congress may reject applications by state legislatures because they are malapportioned, brings into focus a much overlooked problem in the Constitution. Senator Tydings' comments obviously were based on a series of 1962 through 1965 Supreme Court rulings establishing that the federal courts could regulate the apportionment of state legislatures.[1260] Essentially, the Court, relying on the doctrine of the equal protection clause[1261] of the 14th Amendment,[1262] overruled all arguments of apportionment previously used by the states *except* population as

---

[1260] *See* Baker v. Carr, 369 U.S. 186 (1962); Gray v. Sanders, 372 U.S. 368 (1963); Reynolds v. Sims, 377 U.S. 533 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964); Maryland Committee v. Tawes, 377 U.S. 656 (1964); Davis v. Mann, 377 U.S. 678 (1964); Roman v. Sincock, 377 U.S. 695 (1964); Lucas v. Colorado General Assembly, 377 U.S. 713 (1964); Wesberry v. Sanders, 376 U.S. 1 (1964); Fortson v. Toombs, 379 U.S. 621 (1965).

[1261] "...nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws*." 14th Amend., § 1. (emphasis added).

[1262] "And our decision in Wesberry was of course grounded in that language of the Constitution which prescribes that members of the Federal House of Representatives are to be chosen 'by the People,' while attacks on state legislative apportionment schemes, such as that involved in the instant cases, are principally based on the Equal Protection Clause of the Fourteenth Amendment. Nevertheless, Wesberry clearly established that the fundamental principle of representative government in this county is one of equal representation for equal numbers of people, *without regard to race*, sex, economic status, or place of residence within a State." Reynolds v. Sims, 377 U.S. 533 (1964). (emphasis added).

Clearly this ruling by the Court confirms a much earlier finding by the Supreme Court which said:

"In this case, the discrimination complained of is exercised against him and other citizens, who are as justly entitled to protection from wrongful discrimination, and to the full protection of their constitutional right of equality before all the courts of the State as if they were of African descent. If not, that amendment which sought to establish equality before the law establishes inequality, by giving preference to the rights of the colored race, and affording them superior protection.

"The weight of authority and sound reason seem to establish, that while the immediate object sought by the adoption of the amendment was protection of the negro, its provisions extend and inure to the common benefit of all." Missouri v. Lewis, 101 U.S. 22 (1879).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the basis on which representatives could be apportioned using the “one man, one vote” principle.[1263]

The exclusive use of the equal protection clause was objected to by Associate Justice Harlan who said that reliance on the equal protection clause did not provide authorization for the Court to act as it did.[1264] Justice Harlan then attacked the Court’s “failure to address itself at all to the Fourteenth Amendment as a whole”.[1265] Justice Harlan then discussed previous

---

[1263] “[O]nce the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded... The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.” Gray v. Sanders, 372 U.S. 368 (1963).

[1264] “Today’s holding is that the Equal Protection Clause of the Fourteenth Amendment requires every State to structure its legislature so that all the members of each house represent substantially the same number of people; other facts may be given play only to the extent that they do not significantly encroach on this basic ‘population’ principle. Whatever may be thought of this holding as a piece of political ideology---and even on that score the political history and practices of this country from its earliest beginnings leave wide room for debate (see the dissenting opinion of Frankfurter, J., in Bake v. Carr, 369 U.S. 186, 266, 301-323)--- I think it demonstrable that the Fourteenth Amendment does not impose this political tenet on the States or authorize this Court to do so.” Reynolds v. Sims, 377 U.S. 533 (1964).

[1265]“The Court’s constitutional discussion, found in its opinion in the Alabama cases (Nos. 23, 27, 41, ante. p. 533) and more particularly at pages 561-568 thereof, is remarkable (as, indeed, is that found in the separate opinions of my Brothers Steward and Clark, ante. pp. 588, 587) for its failure to address itself at all to the Fourteenth Amendment as a whole or to the legislative history of the Amendment pertinent to the matter at hand. Stripped of aphorism, the Court’s argument boils down to the assertion that appellees’ right to vote has been invidiously ‘debased’ or ‘diluted’ by systems of apportionment which entitle them to vote for fewer legislators than other voters, an assertion which tied to the Equal Protection Clause only the constitutionally frail tautology that ‘equal’ means ‘equal.’

“Had the Court paused to probe more deeply into the matter, it would have found that the Equal Protection Clause was never intended to inhibit the States from choosing any democratic method they please for the apportionment of their legislatures. This is shown by the language of the Fourteenth Amendment taken as a whole, by the understanding of those who proposed and ratified it, and by the political practices of the States at the time of the Amendment was adopted. It is confirmed by numerous state and Congressional actions since the adoption of the Fourteenth Amendment, and by the common understanding of the Amendment as evidenced by subsequent constitutional

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

suits recently decided by the Supreme Court demonstrating that they were not inconsistent with his conclusions.[1266]

Justice Harlan then quoted the 14th Amendment:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a States, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be

---

amendments and decisions of this Court before Baker v. Carr, supra, made an abrupt break with the past in 1962.

"The failure of the Court to consider any of these matters cannot be excused or explained by any concept of 'developing' constitutionalism. It is meaningless to speak of constitutional 'development' when both the language and history of the controlling provisions of the Constitution are wholly ignored. Since it can, I think, be shown beyond doubt that state legislative apportionments, as such, are wholly free of constitutional limitations, save such as may be imposed by the Republican Form of Government Clause (U.S. CONST., Art. IV, 4), the Court's action now bringing them within the purview of the Fourteenth Amendment amounts to nothing less than an exercise of the amending power by this court." *Id*.

[1266] "Before proceeding to my argument it should be observed that nothing done in Barker v. Carr, supra, or in the two cases that followed in its wake, Gray v. Sanders and Wesberry v. Sanders, supra, from which the Court quotes at some length, forecloses the conclusion which I reach.

"Baker decided only that claims such as those made here are within the competence of the federal courts to adjudicate. Although the court stated as its conclusion that the allegations of a denial of equal protection presented 'a justiciable constitutional cause of actions,' 369 U.S., at 237, it is evident from the Court's opinion that is was concerned all but exclusively with justifiability and give no serious attention to the question whether the Equal Protection Clause touches state legislative apportionments. Neither the opinion of the Court nor any of the concurring opinions considered the relevant text of the Fourteenth Amendment or any of the historical materials bearing on that question. None of the materials were briefed or otherwise brought to the Court's attention.

"In the Gray case the Court expressly laid aside the applicability to state legislative apportionments of the 'one person, one vote' theory there found to require the striking down of the Georgia county unit system...

"In Wesberry, involving Congressional districting, the decision rested on Art. I, 2, of the Constitution. The Court expressly did not reach the arguments put forward concerning the Equal Protection Clause. See 376 U.S., at 8, note 10.

"*Thus it seems abundantly clear that the Court is entirely free to deal with the cases presently before it in light of materials now called to its attention for the first time*." *Id*. (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."[1267]

Justice Harlan then commented:

"Whatever one might take to be the application to these cases of the Equal Protection Clause if it stood alone, I am unable to understand the Court's utter disregard of the second section which expressly recognizes the states' power to deny 'or in any way' abridge the right of their inhabitants to vote for 'the members of the [State] Legislature,' *and its express provision of a remedy for such denial or abridgment*. The comprehensive scope of the second section and its particular reference to the state legislatures preclude the suggestion that first section was intended to have the result reached by the court today. If indeed the words of the Fourteenth Amendment speak for themselves, as the majority's disregard of history seems to imply, they speak as clearly as may be against the construction which the majority puts on them."[1268]

Justice Harlan then discussed the history of the proposal of the 14th Amendment, the record of the debates in Congress surrounding the amendment and its ratification history.[1269] The justice then discussed post-ratification

---

[1267] U.S. CONST., 14th Amend., § 2.

[1268] Reynolds v. Sims, 377 U.S. 533 (1964).(emphasis added).

[1269] Justice Harlan concluded:

"It is incredible that Congress would have exacted ratification of the Fourteenth Amendment as the price of readmission [to the Union by the succeeding states], would have studied the State Constitutions for compliance with the Amendment, and would then have disregarded violations of it.

"The facts recited above show beyond any possible doubt:

1. that Congress, with full awareness of and attention to the possibility that the States would not afford full equality in voting rights to all their citizens, nevertheless deliberately chose not to interfere with the States' plenary power in this regard when it proposed the Fourteenth Amendment;
2. that Congress did not include in he Fourteenth Amendment restrictions on the States' power to control voting rights because it believed that if such restrictions were included, the Amendment would not be adopted; and
3. that at least a substantial majority, if not all, of the states which ratified the Fourteenth Amendment did not consider that in so doing, they were accepting limitations on their freedom, never before questioned, to regulate voting rights as they chose.

"Even if one were to accept the majority's belief that it is proper entirely to disregard the unmistakable implications of the second section of the Amendment in construing the first section, one is confounded by its disregard of all this history. There is here none of the difficulty which may attend the application of basic principles to situations not contemplated or understood when the principles were framed. The problems which concern the Court now were problems when the amendment was adopted. By the deliberate choice of those responsible for the Amendment, it left those problems untouched." *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

history and other factors[1270] related to Section 2 including court cases the justice maintained were overturned by the current court decisions.[1271] After reviewing each case involved, Justice Harlan finished his dissent with a chillingly accurate prediction.[1272]

---

[1270] "In the present we can go still further. If the constitutional amendment was the only means by which all men, and later, women, could be guaranteed their right to vote at all, even for federal officers, how can it be that the far less obvious right to a particular kind of apportionment of state legislatures—a right to which is opposed a far more plausible conflicting interest of the state than the interest which opposes the general right of vote-can be conferred by judicial construction of the Fourteenth Amendment? Yet, unless one takes the highly implausible view that the Fourteenth Amendment controls methods of apportionment but leaves the right to vote itself unprotected, the conclusion is inescapable that the Court has, for purposes of these cases, relegated the Fifteenth and Nineteenth Amendments to the same limbo of constitutional anachronisms to which the second section of the Fourteenth Amendment has been assigned." *Id*.

[1271] "Mention should be made finally of the decisions of the Court which are disregarded or, more accurately, silently overruled today. Minor v. Happersett, supra, in which the Court held that the Fourteenth Amendment did not confer the right to vote on anyone, has already been noted." *Id*.

Justice Harlan then cited the following cases as being overturned by the court: Colegrove v. Barrett, 330 U.S. 804; Remmey v. Smith, 102 F. Supp. 708 (D.C. E. D. Pa.); Kidd v. McCanless, 200 Tenn. 273, 292 S. W. 2d 40 (denied under 352 U.S. 920); Radford v. Gary, 145 F. Supp. 541 (D.C. W. D. Okla.) (denied under 352 U.S. 99).

Justice Harlan said:

"The Court's elaboration of its new 'constitutional' doctrine indicates how far—and how unwisely—it has strayed from the appropriate bounds of its authority. The consequence of today's decision is that in all but the handful of States which may already satisfy the new requirements the local District Court or, it may be, the state courts, are given blanket authority and the constitutional duty to supervise apportionment of the state Legislatures. It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the States." *Id*.

[1272] "With these cases the Court approaches the end of the third round set in motion by the complaint filed in Baker v. Carr. What is done today deepens my conviction that judicial entry into this realm is profoundly ill-advised and constitutionally impermissible. As I have said before, Wesberry v. Sanders, supra, at 48, *I believe that the vitality of our political system, on which in the last analysis all else depends, is weakened by reliance on the judiciary for political reform, in time a complacent body politic may result*.

"These decisions also cut deeply into the fabric of our federalism. What must follow from them may eventually appear to be the product of state legislatures. Nevertheless, no thinking person can fail to recognize that the aftermath of these cases, however desirable it may be thought in itself, will have been achieved at the cost of a radical alteration in the relationship between the States and the Federal Government, more particularly the Federal

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*The 14th Amendment, Section 2 "Problem"*

The simple point of section 2 of the 14th Amendment is that if a state denies voters the right to vote in either state or federal elections, then its federal representation is reduced.[1273] The fact is the Court, like Congress, is

---

Judiciary. Only one who has an overbearing impatience with the federal system and its political processes will believe that that cost was not too high or was inevitable.

"*Finally these decisions give support to a current mistaken view of the Constitution and the constitutional function of this Court. This view, in a nutshell, is that every major social ill in this country can find its cure in some constitutional 'principle,' and that this Court should 'take the lead' in promoting reform when other branches of government fail to act. The Constitution is not a panacea for every blot upon the public welfare, nor should this Court, ordained as a judicial body, be thought of as a general haven for reform movements.* The Constitution is an instrument of government fundamental to which is the premise that in a diffusion of governmental authority lies the greatest promise that this Nation will realize liberty for all its citizens. This Court, limited in function in accordance with that premise, does not serve its high purpose when it exceeds its authority, even to satisfy justified impatience with the slow workings of the political process. *For when, in the name of constitutional interpretation, the Court adds something to the Constitution that was deliberately excluded from it, the Court in reality substitutes its views for what should be so for the amending process*." *Id*. (emphasis added).

At first glance, by the use of this last quote, this suit has supplied a position by a member of the Supreme Court that aids in defeating its position in the calling of a convention to propose amendments. Nothing could be farther from the truth. Obviously, Justice Harlan was referring in his remarks to the Court using questionable constitutional decisions to further political agendas that have been frustrated by the speed and direction of the political process. In this, he was entirely correct.

The convention to propose amendments is a mandated *constitutional process*. This *constitutional procedure* has been obstructed by *political agendas.* There is nothing wrong with a political agenda for a particular amendment proposal, but that agenda cannot be allowed to contaminate the Constitution which is exactly what Justice Harlan said was happening in Baker v. Carr. Because the convention is mandated by the Constitution and has been illegally obstructed by those with a political agenda and because this is clearly unconstitutional, it is entirely correct and totally within the proper authority of the Court to see that this provision of the Constitution is enforced and such agendas refuted where they conflict with mandated constitutional procedure.

[1273] It is interesting that while the Court in *Reynolds* relied on the equal protection clause of the 14th Amendment as the basis of its determination that only population could be used as the basis of apportionment, only in section 2 of the 14th Amendment is this expressed. Not even Justice Harlan noted this

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

bound to enforce the Constitution; neither has the luxury or the authority to pick and choose what sections will be enforced and what sections will be ignored, especially when the Court attempts to use implied reasoning to outweigh or overrule expressed provisions of the Constitution. If the Constitution mandates, as it does in section 2, that the denial of voting rights by a state shall result in federal reapportionment of that state's congressional delegation, reducing its number, then that is what is required and must, at the minimum, occur.[1274]

Under the terms of the Constitution, the Supreme Court's judicial power "shall extend to all cases...arising under this Constitution."[1275] Implicit in

---

fact. Thus the Court's finding is clearly based on this provision of the Constitution. In order to reach its conclusion based on its interpretive reasoning, the Court even had to ignore its own conclusion regarding Section 2 of the 14th Amendment.

The Court said:

"Article 1, 2, 4, 5 and Amendment XIV, 2 relate *only to* congressional elections and obviously do not govern apportionment of state legislatures." Baker v. Carr, 369 U.S. 186 (1962).

[1274] A careful reading of Section 2 of the 14th Amendment which states in part that "*But when the right to vote at any election* for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a States, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, *or in any way abridged*...." (emphasis added) poses an interesting question for the Court. As Congress has been required to call a convention to propose amendments since at least 1911, (*see infra* TABLE 2—STATES APPLYING FOR A CONVENTION, p.676) and this involves citizens using their voting franchise, it can argued that the right to vote *at any election has been abridged*. *As Congress has refused to call a convention and thus hold elections for convention delegates and such refusal has been complete and total for all citizens of all states*, under the terms of Section 2 of the 14th Amendment the validity of *all elections for all congressional representatives is in doubt as by the terms of the amendment, all representation must be reduced by the proportion of those who have been discriminated against, which in this case, is every voting citizen in the United States.* The Court has addressed this matter regarding Congress denying the right of vote and offers no support for congressional obstruction. *See supra* text accompanying note 238.

[1275] U.S. CONST., art. III, § 2, §§ 1.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

that constitutional power is the concept that there must be a controversy for the Court to decide, i.e., that there must be a dispute involving at least two of points of view, one of which the Court must favor. However, when the Constitution mandates an action, the legitimate question must be posed: how can the Court find in any other way where such action is mandated and expressed as essentially there is no controversy? The answer is clear: it cannot. The Constitution, as supreme law of the land, allows no controversy where its provisions are understandable, unambiguous and mandatory. It then is left to the Court merely to serve as a method of enforcement for this constitutional standard as would be expected of all branches of government, that they would, to whatever extent is their constitutional power, “support, defend and enforce” the Constitution.

Would there be any “controversy,” for example, over the declaration by a member of Congress or the President that he or she intended to remain in office past his constitutional term without reaffirmation by election? Would there be any “controversy” if a president declared himself reelected despite not receiving a favorable vote in the Electoral Collage? Obviously not. Where the Constitution is unambiguous in intent, its intent must be unambiguously obeyed, and the Court is obligated not to “interpret” or even to entertain “controversy,” but to enforce the Constitution as it is expressed.[1276]

[1276] “Where the text of the constitution is clear and distinct, no restriction on its plain and obvious import should be admitted unless the inference is irresistible.” Martin v. Hunter’s Lessee, 14 U.S. 304 (1816); “Where there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightly be preferred.” U.S. v. Classic, 313 U.S. 299 (1941); *see supra* text accompanying note 551.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The meaning and language of Section 2 is unambiguous and clear. It commands a single action, that of reducing federal representation in the House of Representatives of any state that denies or in any way abridges the right to vote in any federal or state election.[1277] It employs the word "shall" which leaves no discretion either upon Congress or the courts.[1278] The section provides no other pre-conditions to be satisfied except that the right to vote has somehow been abridged or denied;[1279] other constitutional standards, such as equal protection, may certainly be employed to determine this has occurred,[1280] but no other part of the Constitution prevents or obstructs the Section 2 command. Thus, there can be only one conclusion regarding Section 2 of the 14th Amendment: Congress is malapportioned because the mandated reduction of federal representation as required by the Constitution upon the discovery by the Court of state denial of voting rights has never been carried out.

There is no evidence in *Reynolds* that any appellees or appellants or justices involved in the case, other than Justice Harlan, even raised the matter of section 2 and its enforcement.[1281] That is, neither the appellees nor appellants requested that section 2 be enforced; instead the cases clearly focused on resolving state inequities only, without regard to federal consequences. Clearly speculation as to the reasoning of plaintiffs for not

---

[1277] *See supra* text accompanying note 1267.
[1278] *See supra* text accompanying note 860.
[1279] *See supra* text accompanying note 1267.
[1280] *See* Reynolds v. Sims, 377 U.S. 533 (1964); *see supra* text accompanying note 1260.
[1281] *See supra* text accompanying note 1266.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

requesting such action by the Court in these cases is outside the scope of this suit and will not be pursued. The simple fact is the matter was not brought up by anyone except Justice Harlan. This fact, however, does not relieve the Court of enforcing the Constitution and its expressed provisions. Where the Constitution mandates a specific remedy, no other may be considered.

By the same token, a central point was overlooked by Justice Harlan in his dissent but not by the Court majority: while the Constitution clearly mandates a punishment for states that deny or abridge voting rights by reduction of federal representation, it is also clear that under the doctrine of the equal protection clause, *this denial or abridgment of voting rights must be terminated* because this denial or abridgment of voting rights *by the states* is a violation of the doctrine of the equal protection clause.

The Court, having determined there was denial of voting rights by the states, under the doctrine of equal protection, is not prevented by the Constitution, indeed, is commanded by the provisions of Section 1 of the 14th Amendment, to remedy the situation *within the states* by ordering that under that clause, reapportionment of the states occurs, thus restoring voting rights to the people. But the matter cannot not rest there: the Constitution then demands that once having made this determination, congressional reduction of representation must occur. The Court cannot give Congress a “pass” on this matter.[1282]

[1282] Opponents of this conclusion will naturally cite Saunders v. Wilkins, 152 F.2d 235 (1945) where the Court dismissed a suit involving the state of Virginia. In the suit, the plaintiff, Saunders brought an action against the Secretary of State of the Commonwealth of Virginia for damages for the secretary’s refusal to certify the name of the plaintiff as a candidate for

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

It is an axiom of constitutional law that every act, at its minimum inquiry, is either constitutional or unconstitutional; there is no semi-constitutional.[1283] The expressed words in the Constitution are its minimum standard that allow no further reduction in effect.[1284] From this standard

---

the office of Congressman-at-large on the theory that apportionment acts of Congress and a redistricting act of Virginia failed to take into account the affect of a poll tax which allegedly disenfranchised some sixty percent of the voters of the state. The plaintiff cited specifically Section 2 of the 14th Amendment as the basis of his contention that Virginia was malapportioned.

The Fourth Circuit Court of Appeals ruled that reapportionment was "political, rather than judicial" and consequently the suit was dismissed.

There is no comfort is this case as it was clearly overturned by Davis v. Mann, 377 U.S. 678 (1964), one of the six cases brought to the Court regarding reapportionment of the state legislatures. The case was, of course, from Virginia. In this case, as with *Reynolds*, the Court held it had jurisdiction in the matter. Thus, *Saunders* was overturned and with these decisions the matter clearly was removed from the political question doctrine and placed by the Court's own actions into the realm of the judiciary.

Surprisingly, Justice Harlan did not refer to *Saunders* in his argument in *Reynolds*. A careful reading of *Saunders* clearly shows the 1964 Supreme Court overturned this decision, *thus affirming the plaintiff's case which called for the use of section 2 of the 14th Amendment to reapportion Congress*.

Nor is there any help in using Department of Commerce v. Montana, 503 U.S. 442 (1992). While the Court addressed the issue of Congress being able to "freeze" representation in the House of Representatives at 435 members, the Court did not address *the reduction* of representatives as a result of malapportionment. Essentially, what has not been addressed by the Court is that Section 2 of the 14th Amendment negated the 30,000 population per representative requirement of the United States Constitution thus allowing for representation to be based on a much higher figure per representative. (U.S. CONST., art. I, §2, §§ 3, "The number of representatives shall not exceed one for every thirty thousand...")

[1283] "That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected... This original and supreme will organized the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments. The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written... It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or that the legislature may alter the constitution by an ordinary act. *Between these alternatives there is no middle ground*." Marbury v. Madison, 5 U.S. 137 (1803). (emphasis added).

[1284] "It cannot be presumed that any clause in the constitution is intended to be without effect." Marbury v. Madison, 5 U.S. 137 (1803); "Where provision in United States Constitution is unambiguous and its meaning is entirely free

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

emanates all implications of these words; but these implications in no way relieve that minimum standard of performance by those affected by it.[1285] Thus, whatever is expressed in the Constitution must at the minimum be accomplished *together with* any reasonable and proper implication of those words. Federal reapportionment of Congress is based on clear, unambiguous constitutional language requiring no interpretation. The courts cannot ignore such language.[1286] Thus, if the number of representatives permitted to each state in Congress is not in compliance with a provision of the Constitution, that representation must be unconstitutional.[1287]

---

from doubt, the intention of the framers of the constitution cannot be inquired into, and the Supreme Court is bound to give the provision full operation, whatever might be the views entertained of its expediency." Ogden v. Saunders, 23 U.S. 213 (1827); "Court may not construe Constitution so as to defeat its obvious ends when another construction, equally accordant with the words and sense thereof, will enforce and protect them." Prigg v. Commonwealth of Pennsylvania, 41 U.S. 539 (1842); "A constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed." Jarrolt v. Moberly, 103 U.S. 580 (1880); "Where intention of words and phrases used in Constitution is clear, there is no room for construction and no excuse for interpolation." United States v. Sprague, 282 U.S. 716 (1931); "In expounding the Constitution, every word must have its due force and appropriate meaning." Wright v. United States, 302 U.S. 583 (1938).

[1285] "That which is implied in a constitution is as effectual as what is expressed." The Township of Pine Grove v. Talcott, 86 U.S. 666 (1874); "With the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part thereof as what is expressed." Dillon v. Gloss, 256 U.S. 368 (1921).

[1286] *See supra* text accompanying note 1284.

[1287] Of course Congress can get around the apportionment issue by declaring itself not bound by the Constitution, thus establishing itself as a tyranny. Or Congress can declare it is malapportioned, thus establishing itself as unconstitutional. This, of course, does not preclude other branches of the Federal government from reaching the same conclusion and acting on it.

By openly professing it has ignored the clear language of Section 2 of the 14th Amendment, Congress could chalk up two major accomplishments. First, it would bring into doubt the validity of every law passed by Congress since the ratification of the 14th Amendment. Second, it might well establish Congress as the last bastion of institutional racism in America. After all, it is abundantly clear that the prime purpose of the authors of the 13th, 14th and 15th Amendments was to deal with racism. By refusing to obey

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Constitution sets no timetable for congressional reapportionment, save the imperative "shall"[1288] and the less definite "when."[1289] Thus, it is proper for the Court to wait a period of time before ordering such action. However, after some thirty years, any further delay would seem beyond the pale.

Several questions are raised by the fact that Congress is malapportioned. Most notably is the legitimacy of any congressional act passed since June 15, 1964[1290] as any act voted on in Congress was done by representatives not authorized by the Constitution to do so.[1291] Then there is the issue that the terms "when" and "upon" could be argued to mean that any act of Congress involving representatives of a state that denied voting rights was invalid *from the time the actual denial took place regardless of when the Court decision occurred*.[1292] Certainly the question is significant because for

---

constitutional language written by Congress itself, that branch must face the painful possibility of being classed among the institutionally racist. Or Congress can ignore both issues, thus establishing itself not merely as a tyranny, but a racist and unconstitutional tyranny at that. As this suit is not actually concerned with the 14th Amendment's language on apportionment, it will leave this matter to the wisdom of members of Congress.

[1288] *See supra* text accompanying note 853,856,860.

[1289] *Id*.

[1290] The date *Reynolds* was decided. *See* Reynolds v. Sims, 377 U.S. 533 (1964).

[1291] Just as impeachment is a term of office for both judiciary and presidency, constitutional apportionment is a term of office for Congress. In each case, the Constitution, beside the other expressed terms of age, citizenship and so forth, sets as a condition of the office, or term, the fact that the officeholder may be removed.

While not specifically addressed in Powell v. McCormack, 395 U.S. 486 (1969), it is clear Congress "is limited to the standing qualifications prescribed in the Constitution." One of these standing qualifications in the Constitution is section 2 of the 14th Amendment which prescribes a reduction of representation for a state based on certain actions by that state. Congress may not ignore this anymore than it may ignore any other textual specification in the Constitution regarding holding office.

[1292] In some cases, this might affect acts of Congress extending back as far as 1901. *See* Reynolds v. Sims, 377 U.S. 533 (1964). However, there is substantial

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

an act of Congress to be constitutional, it must be in compliance with the *entire* Constitution.[1293]

*What's Good for the Goose...*

However, the purpose of this suit is not to argue the issue of congressional reapportionment as mandated by the Constitution except as that issue may affect the calling of a convention to propose amendments. Therefore, the issue of federal reapportionment or malapportionment will not be probed further except in this particular light.

What is the effect of *Reynolds* et al. on the convention to propose amendments? To answer this question, one obvious fact must be established: the states, having gone through court ordered reapportionment, *are in all respects* constitutional while the Congress, *having yet to be apportioned after the*

---

evidence the Court would not rule so drastically. *See infra* text accompanying note 1308.

[1293] "The government of the United States can claim no powers which are not granted to it by the Constitution." Martin v. Hunter's Lessee, 14 U.S. 304 (1816); "Under provision of Constitution declaring that constitution and laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land, there can be no law inconsistent with the fundamental law, and no enactment not in pursuance of authority conferred by it can create obligations or confer rights." Hepburn v. Griswold, 75 U.S. 603 (1869); "The constitution is the supreme law of the land and no act of Congress is of any validity which does not rest on the authority conferred by that instrument." United States v. Germaine, 99 U.S. 508 (1878); "Every act of Congress must find in the Constitution some warrant for its passage." United States v. Harris, 106 U.S. 629 (1882).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Court having determined the states were malapportioned,* is unconstitutional.[1294]

The first point is the destruction of an obvious conclusion that would serve to defeat the calling of the convention to propose amendments. The argument would be that if Congress is not properly apportioned, any concept of basing convention representation, i.e., the number of delegates in each state delegation sent to a convention to propose amendments, on the state's congressional representation[1295] is inherently flawed, as Congress itself is not properly apportioned. Thus, the convention to propose amendments cannot be constitutional as Congress is not, and therefore it cannot be held until Congress becomes constitutional.[1296]

This argument is erroneous. Despite the fact the states are malapportioned, this fact, which has since been corrected by the Court, does not negate the authority of their state legislatures.[1297] This point established, it then follows that all constitutional powers, federal and state, were at all times available to the state legislatures. One of these

---

[1294] If the axiom expressed by Marshall is to be complied with, no other conclusion is possible. *See supra* text accompanying note 1283.

[1295] *See infra* text accompanying notes 1424-1430,1440-1480.

[1296] If this argument is accepted, it presents at least two problems. First, it offers a tremendous *political* opportunity to those opposed to a convention by simply delaying the reapportionment of Congress *ad infinitum*. But it is the constitutional dangers that are more important. By assuming Congress is the pacesetter of the Constitution, it is assumed erroneously that Congress *in some manner must still control the convention.* This was not intended by the Founding Fathers. *See supra* text accompanying notes 505-514.

The fact is, the effect of congressional malapportionment on the selection of delegates is nil. *See infra* text accompanying notes 1481-1485.

[1297] "[I]t seems scarcely open to serious doubt that so long as the federal courts allow this Georgia Legislature to sit, it must be regarded as the de facto legislature of the State, possessing the full panoply of legislative powers accorded by Georgia law." Fortson v. Toombs, 379 U.S. 621 (1965).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

powers, “derived from the federal constitution” is the power to apply for a convention to propose amendments.[1298] Thus, reapportionment had no effect on the states’ authority to apply for a convention to propose amendments.[1299] The effect of this conclusion is clear: all applications by the states are valid regardless of their apportionment.

The central point of Senator Tydings’ argument, that malapportionment by the states negates convention applications while the states are malapportioned, has ironically the effect of removing obstacles to the calling of the convention to propose amendments. If it is accepted that malapportionment has an effect on state applications, then clearly it can only affect those applications that were filed while the states were malapportioned. The cases before the Supreme Court cite a span of abuses ranging from approximately 1910 to 1964.[1300] Obviously, any applications made by the states before or after this period of time must be considered valid as there is no malapportionment in the state legislatures. In the case of the pre-1910 era, malapportionment had yet to occur; in the post-1964 era, due to Court ordered reapportionment, the states were no longer malapportioned; thus their applications are unquestionably and incontestably valid and legal.

---

[1298] “It is true that the power to legislate in the enactment of the laws of a state is derived from the people of the state. But the power to ratify a proposed amendment to the federal Constitution has its source in the federal Constitution. The act of ratification by the state derives its authority from the federal Constitution to which the state and its people have alike assented.” Hawke v. Smith, 253 U.S. 231 (1920).

[1299] Senator Tydings, of course, completely ignored the obvious implications of *Hawke* and *Fortson*. Together, they defeat the final prong of his argument. *See supra* text accompanying note 1245.

[1300] *See supra* text accompanying note 1260.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Between these two eras exists a more than sufficient number of applications by a sufficient number of states to compel the calling of a convention irrespective of any argument used to prevent it.[1301] Ironically, using Senator Tydings' argument, removing the so-called "illegal" applications still *leaves at least two same subject amendments, balanced budget and tax limited taxation;*[1302] *both of these amendments are clearly contemporaneous in nature*.[1303] Therefore, *if one prescribes to these unconstitutional pseudo pre-conditions as the basis upon which to call a convention to propose amendments, they have been met*. *If one does not prescribe to these unconstitutional pseudo pre-conditions and accepts only a numeric total as being the basis on which a convention is called, it too has been met*. Thus, the pseudo pre-conditions established by opponents of a convention to propose amendments may be satisfied by using an argument of an opponent of the calling of a convention, an argument designed to *block* the calling of a convention to propose amendments but which in fact *facilitates rather than obstructs a convention call*.

---

[1301] *See infra*
TABLE 6—SAME SUBJECT APPLICATIONS, PART I, p.685;
TABLE 6—SAME SUBJECT APPLICATIONS, PART II, p.686;
TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART I, p.692;
TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART II, p.693.

[1302] Applications made before 1910 that effect the calling of a convention to propose amendments are applications by the states for general conventions. They, of course, are added to any "same subject" applications, provided the applications come from different states. Of course, proper interpretation of the Article V provision makes any subject mentioned in the application irrelevant as only the numeric count total of applying states matters. *See supra* text accompanying notes 532,541;*infra*
TABLE 6—SAME SUBJECT APPLICATIONS, PART I, p.685;
TABLE 6—SAME SUBJECT APPLICATIONS, PART II, p.686.

[1303] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

However, the fact that Senator Tydings' argument does satisfy the unconstitutional pseudo pre-conditions of the opponents of the calling of a convention to propose amendments does not lend credence or weight to these unconstitutional arguments.[1304] Rather, it demonstrates the fallacy of these arguments by exposing the complete disregard of the Constitution by those who would "defend" it. These "defenders" would "save" the Constitution by ignoring its provisions. If the Constitution is to have meaning and purpose, it must be obeyed. If it is not obeyed, it can have no meaning or purpose. Thus, those who would disobey its provisions in the name of "defending" it actually seek to destroy it. The Constitution is forthright: when the proper number of states apply, the Congress shall call a convention and has no discretion in the matter.[1305]

*The Effect of Section 2 on the Convention Call*

Convention opponents will quickly latch onto the apparently obvious argument to defeat the call: as Congress is malapportioned and therefore unconstitutional, Congress cannot issue a convention call because such call

---

[1304] "[T]he particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void..." Marbury v. Madison, 5 U.S. 137 (1803).

If this axiom applies to all laws, it certainly must apply to any politically motivated pseudo pre-conditions that have no support of any law. The fact must be stated bluntly: despite all the rhetoric used by opponents to a convention, not one of their arguments has ever become law.

[1305] *See supra* text accompanying notes 2,497-514.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

issued from an unconstitutional body cannot be constitutional.[1306] Thus, Congress will first have to reapportion itself (after an investigation conducted by Congress) by first determining whether Section 2 of the 14th Amendment actually affects Congress and which states if any are affected. Congressional "investigation" lags on until public interest dies away at which time a report is issued saying no state is affected and representation need not be altered. As to the convention call, the original reason for the issued being raised, it is quietly ignored, and convention call is never issued despite the constitutional mandate.

There are two fallacies with this "obvious" argument. First, the argument ignores the intent of the Founding Fathers regarding the calling of the convention and the role of Congress in it. Second, despite malapportionment, the argument presumes the legislature cannot legislate if it is malapportioned; in fact the powers of a legislature still exist.

As to the first fallacy: simply put, the malapportionment of Congress does not affect the convention call because the call is mandated upon Congress by the Constitution. In other words, the vote is automatic *and absolute*, the poll and its result having already been performed by the Founding Fathers in the language of Article V[1307] which establishes all of Congress in favor with no dissent. Therefore, no actual "vote" of Congress is required as it is the body in whole which is commanded by the Constitution; the command is effective and conclusive upon the Congress regardless of its numbers. Thus, the

[1306] *See supra* text accompanying note 1245.
[1307] *See supra* text accompanying note 2,497-514.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

distribution of congressional representatives among the states is irrelevant to the matter of a convention call.

As to the second fallacy, that being malapportioned prevents Congress from calling, the Supreme Court addressed this issue in an analogous ruling concerning the states and malapportionment. The Court determined that:

> (1) No state (and presumably Congress) is required "to initiate complete or partial constitutional change only by some method in which every voice in the voting population is given an opportunity to express itself";
>
> (2) "[I]t seems scarcely open to serious doubt that so long as the federal courts allow this...[l]egislature to sit, (and presumably Congress) it must be regarded as the de facto legislature of the State, possessing the full panoply of legislative powers accorded by... law."[1308]

Thus, there is no solace in the malapportionment argument for those wishing to use it as an excuse for Congress not to call a convention as required by the Constitution. Of course, should Congress *vote* to regulate the convention, that is an entirely different matter. Here, Congress, malapportioned and thus unconstitutional, would be forced to take a vote on the matter. Consequently, its malapportionment comes into the legislative equation together with question of its legality. A malapportioned, unconstitutional Congress would be attempting to regulate or obstruct the constitutional and legally apportioned states in their pursuit of a

---

[1308] Fortson v. Toombs, 379 U.S. 621 (1965). (parentheses added). It is hardly a stretch to assume that a Court that found a state legislature was in fact "de facto" and therefore possessed all legislative powers would not accord the same determination regarding Congress.

However, this assumption is not without risk. In the case of the states, the Court relied on *interpretation* of the Constitution to arrive at its decision. In the case of Congress, however, it would have to deal directly with *expressed language* that it might find difficult to refute given that the Court has held an issue is either constitutional or unconstitutional. This may explain why the Court did not mention Congress in this particular ruling but instead dealt only with the states. *See supra* text accompanying notes 1247,1297.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

constitutional right for them and their citizens. This, in addition to the incidental regulatory power of Congress to control the ratification vote of the states in a constitutional amendment,[1309] might conceivably cause negative political reaction among the people. They might object to Congress assuming the powers of a tyrant for its own political and self-serving ends--specifically maintaining power.

## Constitutional Provisions Effecting Convention and Congress

### THE POWER OF INTERNAL AFFAIRS

#### *Equal Protection Clause and "Filling In The Details"*

The purpose of the convention to propose amendments is to discuss and distill various proposals made by the states into actual draft amendment language to be submitted to the states for ratification.[1310] Logically, the Constitution must be construed so as to allow the convention to perform its

---

[1309] *See supra* text accompanying notes 849,917,1006,1056,1077,1079,1089, 1094,1188.

[1310] Congress has sole discretion as to which method of ratification will be employed: ratification by state legislatures or by state constitutional conventions. (U.S. CONST., art. V). Congress is limited to these two forms of ratification.

"Under U.S. Constitution, article 5, providing for the ratification of proposed amendments by the Legislatures of three-fourths of the states or by conventions in three-fourths thereof, as one or the other mode may be proposed by Congress, the power of determining the method of ratification is conferred upon Congress, *and is limited to the two methods specified.*" Hawke v. Smith, 253 U.S. 221 (1920).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

constitutional duty[1311] without unconstitutional congressional oversight.[1312] The apparent difficulty in this proposition is that the convention is left to operate under the expressed provisions of the Constitution (and its reasonable implications) without the "benefit" of specific legislation enacted by Congress to "fill in the details". Despite fears that this situation would lead to a "runaway" convention,[1313] fears which have been usually raised as objections to a particular amendment proposal,[1314] this is not an insurmountable problem requiring unconstitutional interference from Congress. Rather, a single constitutional interpretation clarifies and resolves the issue without breaking the intent or spirit of the Constitution.

Having already established the equal protection clause of the 14th Amendment applies to both convention delegates and members of Congress, it is a small step to acknowledge that the same clause equally applies to the convention *corpus* as to Congress.[1315] Well settled procedural and structural

---

[1311] "Where there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightly be preferred." United States v. Classic, 313 U.S. 299 (1941).

[1312] *See supra* text accompanying notes 547-831.

[1313] *See supra* text accompanying notes 790-813.

[1314] *See supra* text accompanying notes 409,555-558,595-612.

[1315] This interpretation is clearly implied in the language of Article V. The article calls for amendments either by Congress or by convention to "be valid to all intents and purposes..." (U.S. CONST., art. V). Clearly, the procedures by which an amendment proposal is arrived at must be as equally valid whether made by Congress or convention. It is the same reasoning that the 14th Amendment itself is valid, that the procedures used to ratify it were themselves valid and constitutional. *See supra* text accompanying notes 849,917,1006,1056,1079,1094.

The 14th Amendment's requirement of "equal protection under the law" clearly mandates these procedures must be equal under the law, in this case, the Constitution itself which is the "supreme *law* of the land." (U.S. CONST., art. VI, § 2) (emphasis added).

However, unlike the convention, congressional procedures are specified by clauses in the Constitution. These general procedures allow the Congress to

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

constitutional clauses that serve to establish the internal powers of Congress are sufficient in scope and time-tested reliability to allow the convention to regulate itself using these same clauses to "fill in the details."

If the Court adopts the general principle that these constitutional clauses that regulate Congress' *general* internal makeup and establish its general, non-legislative powers apply equally to the convention to propose amendments, then the answer is simple. Using the 14th Amendment's doctrine of equal protection in this manner allows the Court to answer the questions regarding the formation, composition and general internal powers of the convention without imposing itself unduly in the matter; thus a separation of powers conflict is avoided.[1316] The doctrine of equal protection thus disposes of many legal thorns raised by convention critics and even answers Madison's concerns.[1317]

These internal powers include both expressed powers of Congress, such as appointing its own officers,[1318] and reasonable implied powers, such as the right to hire staff or the right to conduct hearings for the purpose of gathering information and input on proposed amendments. Equally important, any

---

"fill in the details" for itself without further constitutional authority. So it must also be for the convention. Therefore, to fulfill the standards of the 14th Amendment and Article V, those *specified* constitutional provisions that affect Congress must apply equally to the convention to propose amendments.

[1316] By the same token, however, any questions raised regarding internal powers of the convention that might find their way to the courts in separate actions can be addressed by the Court expeditiously by use of well established case law. This allows for a convention to exist well within the law without facing endless legal hurdles in order to accomplish its constitutional mission.

[1317] *See supra* text accompanying note 409.

[1318] U.S. CONST., art. I, § 2, §§ 5.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

general constitutional restrictions or protections on Congress also apply to a convention to propose amendments.[1319]

*The Freedom of Debate Issue*

Without question the most important procedural clause in the Constitution is the freedom of speech and debate clause.[1320] This constitutional guarantee permits a representative body elected by the people

[1319] Suppose, however, the Court were to reject this argument and leave the convention to propose amendments to fend for itself. What would occur? The answer is obvious. There would follow perhaps hundreds of lawsuits, both federal and state, dealing with various "unanswered" questions surrounding the convention. The motivations behind these suits certainly would be the political aim of achieving some advantage in support of a proposed amendment.

How would the courts resolve these lawsuits, i.e., where will the courts look for guidance? The answer would be already established case law dealing with analogous questions in relation to the constitutional clause in question. The question then becomes, from which governmental body has such case law evolved? The answer, of course, is Congress, the result of weighing actions of Congress against the interpretation of constitutional intent. Thus, the Court would apply the principle of the 14th Amendment advocated in this suit not in a *de facto* manner, but in a piecemeal fashion. Is it not a wiser, more concise and sounder policy to merely state the matter for all time in the original case and declare the effect so as to avoid the fears so eloquently, if erroneously, advocated by the opponents of the convention to propose amendments? The logic of the equal protection argument becomes self-evident when the alternative is examined: endless court cases, confusion and chaos against the background of a mandated constitutional action. In this situation, it should be the job of the Court to clarify, not piece together, the constitutional picture.

[1320] "They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and return from the same; *and for any speech or debate in their house, they shall not be questioned in any other place*." U.S. CONST., art. I, § 6, §§ 1. (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

to perform its work without the threat of external interference and censorship.[1321] Certainly a constitutional protection so necessary for the protection of the legislative process must equally apply to the protection of the amendatory process.[1322] Using the 14th Amendment doctrine of equal protection,[1323] extending this constitutional protection to the convention is a simple process of deductive logic[1324] and case law.[1325] Such protection, of course, includes any limitations imposed by the clause.[1326]

---

[1321] This clause represents "the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the commons and the Tudor and Stuart monarchs during which successive monarchs utilized the criminal and civil law to suppress and intimidate critical legislators. Since the Glorious Revolution in Britain, and throughout United States history, the privilege has been recognized as an important protection of the independence and integrity of the legislature." United States v. Johnson, 383 U.S. 169 (1966).

"In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders." *Id*.

The Court also noted:

"The immunities of the speech or debate clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators." United States v. Brewster, 408 U.S. 501 (1972); *see also* Kilbourn v. Thompson, 103 U.S. 168 (1881).

[1322] While the *function* of the legislative process differs between ordinary legislation and amendatory proposals, and the Constitution thus mandates different standards for passage of an amendatory proposal as opposed to a legislative proposal, nevertheless the *operative actions* of the legislature (or convention) are the same in both cases. In both cases, members hold hearings, conduct debates and ultimately vote on the proposal in question. There can be little support for the notion that just because a proposal before the Congress happens to be amendatory in nature, it is removed from the protection of the speech and debate clause of the Constitution.

"The heart of the clause is speech or debate in either House, and insofar as the clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or *with respect to other matters which the Constitution places within the jurisdiction of either house*." Gravel v. United States, 408 U.S. 606 (1972). (emphasis added).

[1323] *See supra* text accompanying notes 1310-1319.

[1324] If it is held that the Congress and the convention to propose amendments shall receive equal protection "under the law," then it follows that any such protections afforded Congress, such as the speech and debate clause, must

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

equally extend to the convention if the doctrine of equal protection is to be obeyed.

[1325] The protection of this clause is not limited to words spoken only in debate. “Committee reports, resolutions and the act of voting are equally covered, as are ‘things generally done in a session of the House by one of its members in relation to the business before it.’” Powell v. McCormack, 395 U.S. 486 (1969), quoting Kilbourn v. Thompson, 103 U.S. 168 (1881). Thus, so long as legislators are “acting in the sphere of legitimate legislative activity,” they are “protected not only from the consequence of litigation’s result but also from the burden of defending themselves.” Tenney v. Brandhove, 341 U.S. 367 (1951); Dombrowski v. Eastland, 387 U.S. 82 (1967); Powell v. McCormack, 395 U.S. 486 (1969); Eastland v. United States Servicemen’s Fund, 421 U.S. 491 (1975).

[1326] However the term “legislative activity” does have limits. The Court has held that the portion of the clause holding members “privileged from arrest” (*see supra* text accompanying note 1320) is practically obsolete. The privilege applies only to arrests in civil suits, which were still common in the United states at the time the Constitution was adopted. (*see* Long v. Ansell, 293 U.S. 76 (1934)). It does not apply to service of process in either civil (*Id*.) or criminal cases (*see* United States v. Cooper, 4 U.S. 341 (1800). Nor does it apply to arrest in any criminal case. The phrase “treason, felony or breach of the peace” has been interpreted to withdraw all criminal offenses from the operation of the privilege. (*See* Williamson v. United States, 207 U.S. 425 (1908)).

The clause provides immunity for members in the area of inquiry, such as, for example, committee hearings.(*see* Kilbourn v. Thompson, 103 U.S. 168 (1881); Eastland v. United States Servicemen’s Fund, 421 U.S. 491 (1975); Dombrowski v. Eastland, 387 U.S. 82 (1967)). However, the clause was held *not* to defeat a suit seeking to enjoin the public dissemination of legislative materials *outside* the halls of Congress. (*see* Doe v. McMillan, 412 U.S. 306 (1973). Public dissemination of materials outside the halls of Congress is not protected, the Court held, because it is unnecessary to the performance of official legislative actions.

Members who make defamatory remarks outside the legislative body through press releases or newsletters are not protected by the clause. *See* Hutchinson v. Proxmire, 441 U.S. 111 (1979). The Court affirms the clause protects more than speech or debate in either House, but in order for the other matters to be covered, “they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or reject of proposed legislation or with consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.” (quoting Gravel v. United States, 408 U.S. 606 (1972). The Court distinguished between the more important “informing” function of Congress, i.e., its efforts to inform itself in order to exercise its legislative powers, and the less important “informing” function of acquainting the public about its activities. The latter function the Court did not find an integral part of the legislative process. (*See also* Doe v. McMillan, 412 U.S. 306 (1973)). Press releases and newsletters are “[v]aluable and desirable” in “inform[ing] the public and other Members” but neither are essential to the deliberations of the legislative body nor part of the deliberative process. (*See* Hutchinson v. Proxmire, 443 U.S. 111 (1979).

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Court discussed the various “informing” functions of Congress in such cases as Watkins v. United States, 354 U.S. 178 (1957); United States v. Rumely, 345 U.S. 41 (1953) and Russell v. United States, 369 U.S. 749 (1962) (dissent of Justice Douglas).

The Court has also discussed the application of general criminal statues as they apply to members. In United States v. Johnson, 383 U.S. 169 (1966) the Court held that a speech given on the floor of Congress, in so far as authorship, motivation and content, was protected by the clause. In the specific case, a member of Congress was charged with conspiracy to divert a governmental inquiry into alleged wrongdoing by accepting a bribe to make a speech of the floor of the House of Representatives. The speech was charged as part of the conspiracy and extensive evidence concerning it was introduced at a trial. The examination into the context of the speech was foreclosed by the Court.

Finally, the Court has addressed the issue of the member taking bribes. In upholding the validity of an indictment of a member, which charged that he accepted a bribe to be “influenced in his performance of official acts in respect to his action, vote and decision” on legislation, the Court drew a distinction between a prosecution that caused an inquiry into legislative acts or the motivation for performance of such acts, and a prosecution for taking or agreeing to take money for a promise to act in a certain way. The former is proscribed, the latter is not. “Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. It is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator . . . Nor is inquiry into a legislative act or the motivation for a legislative act necessary to a prosecution under this statute or this indictment. When a bribe is taken, it does not matter whether the promise for which the bribe was given was for the performance of a legislative act as here or, as in Johnson, for use of a Congressman’s influence with the Executive Branch.” United States v. Brewster, 408 U.S. 501 (1972). In other words, it is the fact of having taken a bribe, not the act the bribe is intended to influence, which is the subject of the prosecution, and the speech or debate clause interposes no obstacle to this type of prosecution. (*See also* United States v. Helstoski, 442 U.S. 447 (1979)). The Court also held the speech or debate clause does not extend privilege to allow for a member to violate an otherwise valid criminal law in preparing for or implementing legislative acts. (*See* Gravel v. United States, 408 U.S. 606 (1972).

These last two findings of the Court are particularly significant for the convention to propose amendments due to its unique election situation. Unlike Congress, where members may seek re-election, there is no similar situation for convention delegates. Upon the end of the convention, their terms end with no re-election possible. Therefore, unlike members of Congress, there can be no legal on-going re-election fund for delegates. Hence, any money received (outside of legal compensation) by any delegate must construed as a bribe.

Further, as the Court observed, accepting money in agreement to “act in a certain way” is illegal, and the delegate could face criminal charges. Thus, any campaign money from individuals or groups of a particular amendment persuasion could face prosecution in that they would obviously be seeking to have a delegate (or state delegation) vote in a certain way on an amendment, a violation of law.

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Clearly the speech and debate clause grants to Congress and the convention the right to discuss what it desires and to vote on those matters as it pleases without outside interference.[1327] Congressional legislative proposals, such as the Hatch Bill,[1328] are clearly repugnant to the speech and debate clause as intended by the Founding Fathers,[1329] despite language contained in some proposals "guaranteeing" such protection.[1330] A question should be answered by those in favor of censoring debate in a convention: would the 1787 Constitutional Convention have produced the Constitution in its present form if Congress or the states had been able to peer over its shoulder at each moment of debate, limiting the subjects discussed, and able to veto the results at any time?[1331]

---

Hence, this interpretation preventing "big money" from influencing the vote on amendments by "supporting" delegates will help maintain the "cleanliness" of the convention.

[1327] *See supra* text accompanying notes 700-717,1322,1325.

[1328] *See supra* text accompanying note 596.

[1329] *See supra* text accompanying note 607.

[1330] *See* S. 119, S. 2812, H.R. 3373, 98th Cong., 2nd Sess. Despite the guarantee language, all three bills only permitted a same subject limited convention with Congress having the power to determine what that same subject was, permitted Congress not to issue a convention call if it found state applications did not concern the same subject, limited the time the applications by the states for such a convention were effective, limited the debate in the convention to the subject approved by the Congress, limited the time the convention could be in session, and allowed Congress to disapprove any amendment different from those authorized by its convention call not to be transmitted to the states for ratification.

[1331] A single example is sufficient to demonstrate the point. Suppose, for example, the states had stopped all debate on the amending of the convention on August 7, 1787. *See supra* text accompanying notes 401,402. At that time, the amendatory process did not require ratification by the states, nor was Congress authorized to offer any amendments. Thus, amendments could have been made and approved by a body of delegates of any political persuasion *without any ability of either the states or the federal government to prevent it.* This truly would have been a "runaway" convention. Thanks to later changes (and the debate that went with it) this threat was eliminated by the Founding Fathers. *See supra* text accompanying notes 403-458.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Constitution provides each House of Congress can "determine the Rules of its Proceedings."[1332] While each House of Congress may enact legislation effecting its own procedures regarding its amendatory powers, this constitutional clause does not give Congress the power to extend statutory control over the convention; it clearly allows only for each House of Congress to regulate itself. Indeed, the Constitution doesn't even allow either House of Congress to regulate the other house, let alone state or even imply Congress has the power to regulate the convention's proceedings.[1333] As no such constitutional authority exists, it is clear Congress cannot statutorily barge in and start legislating simply because it feels like it. The fact that the convention must operate under the same general *constitutional* provisions as Congress *does not give Congress the constitutional right to impose its will on the convention any more than it provides that the convention could pass binding regulations affecting the conduct of Congress in its constitutional business. The fundamental rule of law of the Constitution is that the Congress, like the other branches of government, can only employ the powers*

[1332] U.S. CONST., art. I, § 5, §§ 2.

[1333] Clearly the refusal of Congress to issue a convention call and the "power" of Congress to regulate the convention are inextricably tied together, not by the Constitution, but by the actions of Congress. The "necessary and proper" clause is of no help in this matter. *See supra* text accompanying note 656. There are many legislative "problems" connected with Congress regulating the convention, and thus the use of ordinary legislative authority offers no solution. *See supra* text accompanying notes 546-831. This leaves Congress one choice as the source of its authority: it may exercise its "incidental" regulatory power acquired during the passage of the 14th Amendment and legislatively declare its opposition to the calling of a convention, i.e., Congress declares openly it will not follow the specifications of the United States Constitution. *See supra* text accompanying notes 849,917,1006,1056,1079,1094,1239. By doing this, of course, Congress completes its assumption of sovereignty from the people. *See supra* text accompanying notes 921-1134.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*granted it by the Constitution; this is no less true in the relationship of Congress to the convention.*

*Other Internal Powers of the Convention Created by the Constitution*

Once it is firmly established that the convention to propose amendments and the Congress both derive their authority equally from the Constitution, and must be equally protected under the provisions of that document, then it is a simple matter to examine the Constitution for other provisions that either grant authority or limit both Congress and the convention to propose amendments. Taken as a whole, these provisions allow the convention to propose amendments to operate within a well developed constitutional framework.

*Election Provisions*

The constitutional clauses regarding the election of congressional representatives are quite specific. Such provisions are equally specific for the election of convention delegates. In sum, substituting the term "delegates" where appropriate in lieu of constitutional language dealing with


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

members of Congress, the following specific provisions regarding delegates apply.

1. The delegate must be a citizen of the United States;[1334]
2. The delegate must be an inhabitant of that state in which the delegate is chosen;[1335]
3. The delegate shall be chosen by the people of the several states whose electors in each State shall have the qualifications requisite for electors of the most numbers branch of the state legislature;[1336]
4. The delegate shall meet the minimum standards of qualification of office as specified in the Constitution;[1337]
5. The delegate shall have the times, places and manner of holding elections be prescribed in each state by the legislature; but the Congress may at any time by law make or alter such regulations.[1338]

---

[1334] U.S. CONST., art. I, § 2, §§ 2; *see supra* text accompanying notes 1212-1226.

[1335] U.S. CONST., art. I, § 2, §§ 2. Any proposal of "at-large" delegates (i.e., delegates representing special interests, regions or causes or delegates from United States territories) is clearly defeated by this clause of the Constitution in the convention. However, like Congress, *non voting* delegates from the various territories could attend the convention.

[1336] U.S. CONST., art. I, § 2, §§ 1; As any vote taken at the convention must be on a state by state basis, rather than by individual delegate basis, (*See infra* text accompanying notes 1418-1480) the question then becomes whether delegates must represent the entire state or can be elected from portions of it. If strict constitutional construction is observed and the doctrine of equal protection accordingly applied, it is clear that the delegate must meet the minimum standards of qualification of office of a representative, rather than a senator,(*see supra* text accompanying notes 1217,1218,1237; *infra*,1337) and that one of those qualifications must be the number of population (and hence the partition of a state) that representative represents. In this case, the Constitution specifies the population represented "shall not exceed one [representative] for every thirty thousand" (U.S. CONST., art. I, §2 §§ 3). Thus, the delegate must represent a portion of population but also represents the state. *See supra* text accompanying note 493,1418-1510.

The Court has made it clear that such a principle already extends to congressional districting, and thus, under the doctrine of equal protection, would extend to convention delegates. As the Court said:

"Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes. Therefore, the command of Art. I, 2, that States create Congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality..." Kirkpatrick v. Preisler, 394 U.S. 526 (1969).

[1337] U.S. CONST., art. I, § 2, §§ 2. The constitutional standards for a delegate must be the same as those established by the Constitution for the delegate's amendatory counterpart in Congress, that is a member of the House of Representatives. *See supra* text accompanying note 1237.

[1338] "The Times, Places and Manner of hold Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof;

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators." U.S. CONST., art. I, § 4, §§ 1.

The Constitution clearly mandates that state legislatures regulate the election of members of Congress *unless* Congress prescribes a law that effects these regulations. Certainly, therefore, Congress can make such laws or alter such regulations the states may create *provided* such regulations are uniform (i.e., they apply equally to both the election of members of Congress and to convention delegates) and are not punitive or discriminatory in nature, i.e., acts of Congress do not attempt to regulate the convention itself but instead are aimed at preserving the integrity of the election process without attempting to influence the outcome of the election.

Clearly, Congress may not use this power to attempt to block the calling of a convention to propose amendments by passing legislation that in some way obstructs the election of delegates. The times, places and manner of *holding* elections may be regulated by Congress. The implication is clear: these powers clearly only deal with *facilitating* elections, not obstructing them.

Congress should have little need to regulate in this area. Already in effect is a sizable measure of legislation passed by Congress to regulate federal elections. These include a law requiring election in the House of Representatives by district (81 Stat. 581, 2 U.S.C.A. § 2c), and the specification of a single day in all states for election of representatives. (17 Stat. 28 (1872)), 2 U.S.C.A. § 7.

Congress also has enacted in 1957, 1960, 1964, 1965, 1968, 1970, 1975, 1980 and 1982, legislation to protect the right to vote in all elections, federal, state, and local, through the assignment of federal registrars and poll watchers, suspension of literacy and other tests, and the broad proscription of intimidation and reprisal, whether with or without state action, which deal quite adequately with protecting the integrity of elections. (*See* P.L. 85-315, Part IV, § 131, 71 Stat. 634, 637 (1957); P.L. 86-449, Title II, § 301, Title VI, 601, 74 Stat. 86, 88, 90 (1960); P.L. 88-352, Title I, § 101, 78 Stat. 241 (1964); P.L. 89-110, 79 Stat. 437 (1965); P.L. 90-284, Title I, § 101, 82 Stat. 73 (1968); P.L. 91-285, 84 Stat. 314 (1970); P.L. 94-73, 89 Stat. 400 (1975); P.L. 97-205, 96 Stat. 131 (1982). Most of these statutes are codified in 42 U.S.C.A. § 1971 et. seq. The penal statutes are in 18 U.S.C.A. § 241-245.).

Also Congress has, beginning in 1907, passed several laws regulating the contribution of money in federal elections. (34 Stat. 864 (1907), now a part of 18 U.S. C. § 610). Congress has also passed legislation regarding campaign contributions and other expenditures in federal elections, and other acts have provided other similar regulations, such as the Hatch Act (5 U.S.C.A. § 7324-7327). (*See also* 43 Stat. 1070, 2 U.S.C.A. § 241-256. Comprehensive regulation is now provided by the Federal Election Campaign Act of 1971, 86 Stat. 3, and the federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, as amended, 90 Stat. 475, found in titles 2, 5, 18 and 26 of the U.S. Code. *See also* Buckley v. Valeo, 424 U.S. 1 (1976)).

Through several court decisions, congressional regulations to protect the integrity of the vote itself have been defined. The Supreme Court has held the right to vote for members of Congress is derived from the Constitution, (*see* United States v. Classic, 313 U.S. 299 (1941) and that Congress therefore may legislate to protect the integrity of this right. Congress may protect the right of suffrage against both official and private abridgment. (Buckley v. Valeo, 424 U.S. 1 (1976). Where a primary election is an integral part of the procedure of choice, where it might well be in the selection of delegates, the

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Internal Powers*

Of equal importance in the operation of the convention to propose amendments is its internal powers. Congress, as exemplified in the Hatch Bill[1339] and other similar proposed pieces of legislation,[1340] would have all such powers regulated by Congress, granting no independent internal powers to the convention.

Allowing Congress such broad latitude in regulating internal powers makes no more constitutional sense than allowing the President of the United States to establish the internal working rules of the Senate or permitting the House of Representatives to establish all rules of court proceedings. The violation of separation of powers is obvious, and the dangers thereto attached equally obvious. Can it therefore be argued that allowing Congress to regulate the internal powers of the convention to propose amendments, *a*

---

right to vote in the primary election is subject to congressional protection. (*See* United States v. Classic, *id.*). This right includes the opportunity to cast a ballot and have it counted honestly, freedom from personal violence and voter intimidation, protections against a failure to count ballots lawfully cast and protection against the dilution of their value by the stuffing of the ballot box with fraudulent ballots. (*See* United States v. Mosley, 238 U.S. 383 (1915); United States v. Saylor, 322 U.S. 385 (1944); Ex parte Yarbrough, 110 U.S. 651 (1884).

Congress has, of course, established sanctions for violations of these laws. Obviously, under the doctrine of equal protection, such sanctions would apply to violators in connection with the election of convention delegates as equally as it applies to election of members of Congress. (*See* Ex parte Siebold, 100 U.S. 371 (1880); Ex parte Clarke, 100 U.S. 399 (1880); United States v. Gale, 109 U.S. 65 (1883); In re Coy, 127 U.S. 731 (1888).

[1339] *See supra* text 596-608.

[1340] *See* S. 1272, APPENDIX C---1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, Appendix A, p.46.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*constitutionally separate body of power*, is any less dangerous and any less destructive of the separation of powers doctrine?[1341]

[1341] It is clear from the writings of the Founding Fathers that wholesale assumption of power by one branch of the government over another was never intended.

As stated by Madison in FEDERALIST No. 47:

"One of the principal objections inculcated by the more respectable adversaries to the Constitution, is its supposed violation of the political maxim, that the legislative, executive, and judiciary departments ought to be separate and distinct... No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. *The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny*. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system... [W]here the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted." (emphasis added).

True, Madison conceded in FEDERALIST No. 47 that the separate branches of government could have "partial agency in" another branch of government. However, his examples are extremely telling. All of them relate *to the product of a branch of the government and not to the process by which that branch of government goes about achieving that product.* In the case of the convention to propose amendments, it is the states with their ratification power that act to check the power of the convention.

As Madison wrote:

"The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The entire legislature, again, can exercise no prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department."

In the case of the convention to propose amendments, Congress would control the process of the convention, not to mention its product—an amendatory proposal-- by establishing a veto of that amendment. (*See supra* text accompanying note 607). This clearly is an attempt by Congress to "possess the *whole* power of another department" and, as observed by Madison, is nothing more than "tyranny".


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Based on the doctrine of equal protection, the following congressional powers granted by the Constitution must be accorded to the convention. Without these powers, neither Congress nor the convention could do its work. Beside permitting the internal structuring of the organization, these rules simultaneously insure the independence of the body by insulating it from outside interference by other branches of government that might otherwise use the remiss to "fill in the details." Thus, the following become manifest.

1. The convention must have the right to choose its officers;[1342]

2. The convention must be the judge of the elections, returns and qualifications of its members;[1343]

---

[1342] U.S. CONST., art. I, § 2, §§ 5; U.S. CONST., art. I, § 3, §§ 5. The desire of Congress to insert its own officers to preside over the convention to propose amendments (*See supra* text accompanying note 603) is politically obvious and dangerous. While no court case regarding this clause of the Constitution can be cited, to permit such action by Congress invites control of the convention. True, the Hatch Act (*Id*.) calls only for congressional leaders to preside until permanent leaders are chosen, but it should be noted it will be *congressional* leaders who will preside over this selection. It will be c*ongressional* leaders who will appoint the committee members who compose the rules under which the permanent leaders will be chosen. These opportunities allow for congressional influence at the very basic and formative level of the convention, influence that, once established, would hard for the convention to purge. The Court cannot permit such influence and violation of separation of powers if a more viable alternative exists which, of course, in this instance, it does--allowing the convention to choose its own officers.

[1343] U.S. CONST., art. I, § 5, §§ 2. The convention, like each house of Congress, must have the power to judge its own elections for the identical reasons Congress has the authority--to guard against election fraud, to settle contested elections, and to investigate charges of undue influence on an election. In short, the purpose of the power is to ensure elections are fair, open and honestly reflect the will of the people. This responsibility cannot be denied to the convention in order to further the political ends of Congress. Undue influence, from whatever source, is still undue influence.

In order to carry out this power, the convention will, like the Houses of Congress, act as a judicial tribunal, with like power to compel attendance of witnesses. In the exercise of its discretion, it may issue a warrant for the arrest of a witness to procure his testimony, without previous subpoena, if there is good reason to believe that otherwise such witness would not be forthcoming. (*See* Barry v. United States ex rel. Cunningham, 279 U.S. 597 (1929)). It may punish perjury committed in testifying before a notary public upon a contested election. (*See* In re Loney, 134 U.S. 372 (1890)). This power to judge elections will extend to an investigation of expenditures made to influence nominations at a primary election. (*See* Newberry v. United States, 256 U.S. 232 (1921)). Refusal by the convention to permit a person presenting

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

3. The convention be limited to same quorum rules as prescribed for the Houses of Congress:[1344]

---

credentials in due form to take the oath of office does not oust the jurisdiction of the convention to inquire into the legality of the election, nor does such refusal unlawfully deprive a state that elected such a person of its equal suffrage in the convention. (*See* Barry v. United States ex rel. Cunningham, 279 U.S. 597 (1929)).

[1344] U.S. CONST., art. I, § 5, §§ 1. In United States v. Ballin, 144 U.S. 1, (1892), the Court said:

"The constitution provides that 'a majority of each [house] shall constitute a quorum to do business.' In other words, when a majority are present the house is in a position to do business. Its capacity to transact business is then established, created by the mere presence of a majority, and does not depend upon the disposition or assent or action of any single member or fraction of the majority present. All that the constitution requires is the presence of a majority, and when that majority are present the power of the houses arises.

"But how shall the presence of a majority be determined? The constitution has prescribed no method of making this determination, and it is therefore within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact."

In the case of the convention to propose amendments, the matter of what constitutes a "majority of members present" must be carefully considered. The question is whether the majority of members present is an actual majority of the delegates, *or the states the delegates represent or some combination of both*. In other words, is the power of the majority vested in the individual delegates or in the delegations at large? The Court answered this question in *Ballin* saying:

"[T]he general rule of all parliamentary bodies is that when a quorum is present, the act of a majority of the quorum is the act of the body. This has been the rule for all time, except so far as in any given case the terms of the organic act under which the body assembled have prescribed specific limitations... The two houses of Congress are legislative bodies representing large constituencies. Power is not vested in any one individual, but in the aggregate of the numbers who compose the body, and its act is not the action of any separate member or number of members, but the action of the body as a whole..."

Thus, as with Congress, the power of the convention to conduct its business cannot be based on individual delegates, but on the body as a whole. In the convention to propose amendments, therefore, quorum is based on the delegations at large, i.e., the states rather than individual delegates. (U.S. CONST., art. V; *see infra* text accompanying notes 1505-1510). Therefore, in the convention to propose amendments, if a majority of states is present, the convention must be said to have a quorum and thus have the constitutional power to conduct its business.

Thus, using the doctrine of equal protection, limited as described above, it becomes clear that a majority of states shall constitute a quorum to do business, but a smaller number of states may adjourn from day to day and may be authorized to compel the attendance of absent members (or states) in such manner and under such penalties as the convention may provide.

However, having established that a quorum is ultimately based on the states rather than the individual delegate does not mean that a tiny minority of strategically placed, ambitious delegates could sneak through amendatory

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

4. The convention must determine the rules of its proceedings;[1345]

5. The convention must be able to punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a delegate;[1346]

---

proposals. The matter is more complex due to the fact the delegates represent *two distinct sovereignties and that within each state delegation this second sovereignty must be respected*. *See infra* text accompanying notes 1418-1510.

These standards of quorum provide constitutional assurance that political obstructions such as walk-outs or filibusters that might otherwise paralyze the convention by eliminating its quorum will ultimately not succeed. Thus, they allow the convention to complete its assigned constitutional business.

[1345] U.S. CONST., art. I, § 5, §§ 2. Just as with the Houses of Congress in the exercise of their constitutional power to determine their rules of proceedings, the convention to propose amendments may not "ignore constitutional restraints or violate fundamental rights and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matter of method are open to the determination of the house... The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, *absolute and beyond the challenge of any other body or tribunal*." United States v. Ballin, 144 U.S. 1 (1892).

The rule of the Court is clear in this matter. So long as the convention abides by the fundamental rights laid down in the Constitution and does not violate other constitutional restraints with its rules, it may create whatever rules it deems appropriate, and such power to make such rules, within these constitutional limitations, are "absolute and beyond the challenge of any other body", including Congress. As the doctrine of equal protection applies in this matter, the convention to propose amendments should, of course, be guided by such decisions as United States v. Smith, 286 U.S. 6 (1932); Christoffel v. United States, 338 U.S. 84 (1949); Powell v. McCormack, 395 U.S. 486 (1969).

However, it is beyond the scope of this suit to itemize each rule of Congress together with any related court decisions, nor is such a laborious task required. Merely establishing the judicial standard as stated in *Ballin* is sufficient, leaving to further court action, if required, any specific details of rules that might arise. It is fairly certain, however, that such court action will be rare, if needed at all, due to the fact the convention's rules will, for the most part, be much simpler in scope. Unlike Congress whose rules are in place to deal with a wide range of legislative as well constitutional duties, such as impeachment, the convention's rules will be dedicated to the achievement of a single purpose within a relatively short period of time, i.e., the passage of amendment proposals, and will thus not need the breadth of rule-making required by Congress.

[1346] U.S. CONST., art. I, § 5, §§ 2. As with any parliamentary body, that body must have the right to maintain order within itself. This necessarily implies the right of that body to discipline members who violate the rules of that body and, if need be, expel members for extraordinary offenses. This is no less true for the convention to propose amendments. Even if the Supreme Court had not ruled in this matter, which it has, the need for the convention to possess such powers as expulsion, censure and reprimand are self-evident in any orderly society.

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

6. The convention must keep a journal of its proceedings, and publish the same, excepting such parts as may in the convention's judgment require secrecy, and the yeas and nays of the states on any questions must, upon the desires of one-fifth of those present, be entered in the journal;[1347]

---

As with Congress, the convention, through its internal rules, can make it an offense for delegates to receive compensation for services from government departments or even private interests, i.e., where the convention is considering amendments that affect that department or interest. (*See* Burton v. United States, 202 U.S. 344 (1906)). While it is true the convention cannot by its rules make such actions by delegates a criminal offense, as the convention lacks legislative authority, clearly the convention does possess the power, as does Congress, to reprimand or even expel a member for such conduct.

As the Court has noted:

"[T]he right to expel extends to all cases where the offense is such as in the judgment of the Senate is inconsistent with the trust and duty of a member." (*See* In re Chapman, 166 U.S. 661 (1897)).

While this specific case dealt with the Senate of the United States, clearly such power would also be afforded to the House of Representatives, and by the doctrine of equal protection, to the convention to propose amendments.

However, this power of expulsion extends only to delegates and not to the entire state delegation. Clearly, as with its membership in the United States Senate, a state delegation cannot be removed from the convention without its own consent. (U.S. CONST., art. V). Therefore, should a convention delegate suffer expulsion, the state retains the right to install a replacement for that delegate as it does for Congress. (U.S. CONST., art. I, § 4; "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such vacancies."

[1347] U.S. CONST., art. I, § 5, §§ 3. The specific reason the convention to propose amendments must maintain a journal of its proceedings is identical to why Congress must do so. "[T]o ensure publicity to the proceedings of the legislature, and a correspondent responsibility of the members to their respective constituents." (*See* Field v. Clark, 143 U.S. 649 (1892)).

The primary purpose of the convention to propose amendments is to serve as part of the constitutional system whereby the people can peacefully redress such grievances of government as they may have. As such, it is *mandatory* the convention, as with all parts of the government, be open and public in its actions, debates and decisions except in such rare and unusual circumstances that secrecy may be required. Despite the clear need of the 1787 Constitutional Convention requiring secrecy in order to complete its work, such is not the case for a modern convention whose purpose is not to create a new form of government but to process amendatory proposals. These amendatory issues are already public knowledge, and therefore to hide them in secrecy is at the minimum illogical, and at the maximum, political suicide. It is highly unlikely that the fact an amendment proposal coming from the convention was created in secret would escape the comment of that amendment's critics, and it is likely the suspicion over it would defeat that amendment. Thus it is difficult to justify any action of the convention to propose amendments being hidden from the people. Indeed, the ideal convention to propose amendments would be the exact opposite: an fully *interactive* convention to propose amendments between delegates and citizens at each step of the process so as to truly be an exercise in democracy. (*See infra* text accompanying notes 1403-1417).

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

A careful examination of the Constitution shows it is a grand checklist designed to deal with the issues raised in the Declaration of Independence and to solve the political weaknesses created by the Articles of Confederation. One of the often overlooked strengths of the 1787 Constitutional Convention was the careful preparation of the issues facing the country at the state level. This preparation resulted in several plans of action to solve these issues, such as the Virginia Plan. (*See supra* text accompanying notes 325-326,343-346,354-356,386,419). These citizen-sponsored plans enabled the Convention delegates to have a true sense of the needs of the people for whom they were attempting to create a government. Thus, citizen input was important not only for the purpose of ascertaining the *needs of the citizens* but also to serve as a base of political support for the later passage of the Constitution. If the citizens had not been involved from the very beginning of the process, it is likely the Constitution would never had come into being. Thus, the Court, within the perimeters of representative government and constitutional restraints, should encourage the participation of the people in the process of the convention to propose amendments, not discourage it.

The right of the people to redress their grievances as set forth in the First Amendment, ("Congress shall make no law respecting...the right of the people to peaceable to assemble, and to petition the Government for a redress of grievances." U.S. CONST., 1st Amend.) can trace its roots from the Magna Carta through a series of Acts of Parliament to the English Bill of Rights of 1689 which asserted the right of the subjects to petition the King and "all commitments and prosecutions for such petitioning to be illegal" Vol. 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES, p. 98 (1934).

Historically, therefore, the right of petition is the primary right, the right peaceably to assemble a subordinate and instrumental right, as if the First Amendment read: "the right of the people peaceably to assemble" in order to "petition the government." (United States v. Cruikshank, 92 U.S. 542 (1876)).

Today, however, the right of peaceable assembly is, in the language of the Court, "cognate to those of free speech and free press and is equally fundamental..." [I]t is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions--principles which the Fourteenth Amendment embodies in the general terms of its dues process clause... The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question...is not as to the auspices under which the meeting is held but as to its purposes; not as to the relation of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the constitution protects." (De Jonge v. Oregon, 299 U.S. 353 (1937); *see also* Herndon v. Lowry, 301 U.S. 242 (1937)). It is highly unlikely the Court would find citizens peaceably assembling to urge amendments to the Constitution be passed or defeated and to lend peaceable support to that point of view would "transcend the bounds of the freedom of speech which the Constitution protects."

Further, over the years, the right of petition has expanded. It is no longer confined to demands for "a redress of grievances," in any accurate meaning of these words, but comprehends demands for an exercise by the government of its powers in furtherance of the interest and prosperity of the petitioners and of their views on politically contentious matters. (*See* Eastern R.R. Presidents Conference v. Noerr Motor Freight, 365 U.S. 127

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

7. The convention must have all necessary implied powers required to carry out its constitutionally authorized duties.[1348]

*Limitations, Immunities or Prohibitions*

As with members of Congress, certain immunities and privileges, as well as prohibitions, are attached to convention delegates.

---

(1961)). The right extends to the "approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government. Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition." (*See* California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972). *See also* NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982); Missouri v. NOW, 620 F.2d 1301 (8th Cir.), cert. Denied 449 U.S. 842 (1980).

While never specifically mentioned in any court case, it is a reasonable inference that any court decisions which extend the right of redress to "all branches of the Government" must extend the same right to a convention to propose amendments.

As summed up by the Court:

"The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the National Government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." (United States v. Cruikshank, 92 U.S. 542 (1876)).

[1348] No legal brief, however detailed, can specify every power and authority needed by the convention to propose amendments. Fortunately, there is no need for such a laborious task. The proper interpretation of the "necessary and proper" clause of the Constitution makes such effort unnecessary. Just as with Congress, the "necessary and proper" clause, using the doctrine of equal protection can, within the constitutional limits imposed on the convention to propose amendments, (specifically its limited power to propose amendments) function as equally well as it does for Congress as it will for the convention.

As described earlier, (*See supra* text accompanying notes 620-668) the fact the convention may avail itself of the power of the "necessary and proper" clause in order to carry out its constitutional business does not permit Congress to use it to impose its will on the convention. The "necessary and proper" clause's purpose is to allow elasticity in the powers of Congress, not to grant it the power to wander about the Constitution imposing its legislative will as it sees politically fit.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

1. No person holding any office under the United States or the several states shall be a delegate to the convention to propose amendments during his continuance in office.[1349]

[1349] The Constitution states that:

"No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time and no person holding any office under the United States, shall be a member of either House during his continuance in Office." U.S. CONST., art. I, § 6, §§ 2.

"The Constitution has provided some important guards against the danger of executive influence upon the legislative body: it declares that 'No senator or representative shall during the time *for which he was elected,* be appointed to any civil office under the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person, holding any office under the United States, shall be a member of either house during his continuance in office.'" THE FEDERALIST No. 76, (A. Hamilton) (April 1, 1788) (emphasis in original).

As observed by Hamilton, while the intent of this provision in the Constitution was to guard against excessive executive encroachment through appointment of the legislative, it is equally clear it functions as well against encroachments by the judiciary into the legislative or encroachments of the legislative into the executive. Employing the doctrine of equal protection, it also serves to guard against individual encroachments by politically motivated members of Congress. (*See supra* text accompanying notes 593-613). It also serves to prevent excessive encroachment of *state politicians* who might otherwise be tempted to appoint themselves convention delegates while remaining in their respective state offices under the obviously political assumption that the mere fact of their election somehow qualifies them to modify the Constitution without specific license from their electors.

There can be little doubt about this interpretation of the effect of this clause. As the supremacy clause of the Constitution (U.S. CONST., art. VI, § 2) assures all state constitutions are subservient to the federal Constitution, it follows that all state offices and political subsections thereof, such as county and municipal offices, are subservient to the federal Constitution where any conflict between state and federal might exist. (*See* McCulloch v. Maryland, 17 U.S. 316 (1819): "This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them.").

It is well established the federal amendatory power is "derived from the federal constitution." (*See* Hawke v. Smith, 253 U.S. 221 (1920). Clearly, therefore, the convention to propose amendments is under the authority of the United States Constitution. As such, the position of convention delegate must be considered an office as no other means of description is provided in the Constitution. Thus, under the doctrine of equal protection, the office of convention delegate must be accorded the same general immunities, privileges and protections as any other federal office. (*See infra* text accompanying note 1350). One of these protections in the Constitution (U.S. CONST., art. I, § 6 §§ 2) is the protection from influence by preventing an officeholder in one federal branch to occupy that office while simultaneously occupying another

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

2. In all cases except treason, felony and breach of the peace, a delegate must be privileged from arrest during his attendance at the convention, and in going to and returning from the same; and for any speech or debate in the convention, he shall not be questioned in any other place.[1350]

3. The term of office for a convention delegate shall be limited to the duration of the convention to propose amendments, and all privileges, immunities and protections therein attached shall cease at the conclusion of the convention.[1351]

*The States' Responsibility In Preparing for the Convention*

---

office in another branch of government, and this protection must equally apply in force of law to the office of convention delegate.

Further, under the doctrine of equal protection, this immunity of office extends to the states. Thus, no state officeholder or any officeholder in any subsection thereof can hold that office while simultaneously holding the office of convention delegate.

There is yet another issue in this matter—-sovereignty. As the people are the source of sovereignty in the United States, and it is a clear principle that the government of the United States is a *limited* government, granted only those powers the people choose to endow, it follows the government is a *subject of the sovereignty of the people*, just as in England during the time of the Revolution, the people were *subjects* to the sovereignty of the King.

As such, those officials who compose the government of the United States must be considered *subjects* to the people. Thus, as subjects, they cannot possess the full powers of citizens. The sovereign power of the citizens to alter or abolish is clearly to allow *citizens to alter or abolish their government*, not the reverse. If government officials are permitted to be convention delegates *while still retaining governmental office,* it permits the reverse situation and offers a situation whereby the government could assume the right to alter or abolish *exclusive* of the citizens. This subverts the right entirely. For this reason, government officials must be excluded from convention *while they remain active members of the government(s)* the right to alter or abolish is intended to modify.

[1350] *See supra* text accompanying notes 1320-1333.

[1351] U.S. CONST., art. I, § 6, §§ 1; The constitutional protections afforded convention delegates can only exist "during their attendance at the session and in going to and returning from the same..." The convention's single power under the Constitution is to propose amendments to the Constitution and forward those proposals to Congress which in turn determines which method of ratification the proposal shall suffer. (U.S. CONST., art. V). Clearly, once the convention has finished proposing amendments, it has no other constitutional authority to exist and must therefore adjourn *sine die*. Thus, the term of office of the convention delegates is limited to that of the length of the convention itself. The convention cannot reconvene once it has finished its proposal business until the states resubmit applications for a new convention.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The doctrine of equal protection solves most of the thorny issues surrounding a convention to propose amendments and resolves most of the unconstitutional pre-conditions raised by opponents to a convention. Nevertheless, not every issue can be addressed in a single brief, nor every question answered by means of a federal court. Thus, the application of the doctrine of equal protection can only go so far.

For some advocates who prefer opinion polls to elections, the current vogue is to use the courts to fix every social issue. When engaged by them in such fashion, the courts are subverted. Courts are not social engineers; their purpose is to clarify the Constitution and other legal issues and compel compliance with them. Thus, for the courts to address the convention to propose amendments as if it were a political panacea, micromanaging it with court orders is as erroneous as permitting Congress to do it. However fashionable, such political correctness cannot become the dogma of the convention to propose amendments. While there is no doubt the Court can find Congress' refusal to call a convention to propose amendments unconstitutional, the fact remains the Court has no more authority under the Constitution to affect the content of the convention *than Congress or the states*.

Certainly, the Court has the authority under the Constitution to define what the Founding Fathers intended regarding the convention. It has the right to define, insofar as it has so addressed similar questions facing congressional power and authority, those phrases and clauses in the Constitution that define the organizational concepts of the bodies involved. But this is as far as the Court can be permitted to go. The defining of an organizational concept does not give the Court the right to tell the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention what it can or cannot do with that power of organization. Were it otherwise, all that would be accomplished would be substituting one master for another. The convention to propose amendments would still be a slave to the other branches of the federal government, and this clearly was not the intent of the Founding Fathers. Thus, a Court ruling should accomplish so much; no order should bind the convention in a straitjacket of microscopic court rulings. As Congress is prohibited by the Constitution from involving itself beyond a minuscule clerical role, the Court is obligated to give wide latitude to the convention to deal with the remaining issues.

While it is acknowledged that leaving some organizational matters to the convention may provide access to those who would attempt to use the convention to propose amendments for their own short-sighted political agenda, this nevertheless is a risk that must be accepted. The processes of the American democratic system have no guarantee of success. It must be left, well or ill, to the political honesty and goodwill of the people in the various states,[1352] calling on their patriotism to place this grave constitutional authority and responsibility above the petty politics of the moment, thus to provide a fair, open, public and unbiased convention, where issues prevail over petty

[1352] However, political honesty and goodwill is not all that may be relied on. As the convention is a creation of the federal Constitution, the Court has made it clear that individual states cannot regulate federal constitutional powers. (*See supra* text accompanying notes 915,1349). The Court has correctly stated the Constitution is supreme to any state law. (U.S. CONST., art. VI, § 2). Further, in the matter of the convention to propose amendments, the states exhaust their power once they have applied for a convention. (*See supra* text accompanying notes 890-920). Thus the states must be viewed as merely a collective incubator in which the convention is organized, fulfilling the same role executed during the time the federal government was organized after ratification of the Constitution.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

ambition, where national solution outweighs personal gain, where America can see one of its finest hours.

## THE MONEY TRAP

One of the major paradoxes of the convention to propose amendments facing the states, Congress and the Court is the pragmatic question of who is constitutionally permitted to finance the convention to propose amendments, which entity is constitutionally responsible for financing the convention, and to what extent it can be financed.

The Supreme Court has on several occasions ruled that the Constitution must be construed so as to ensure its provisions are carried out.[1353] It is a self-evident truth that all clauses of the Constitution *must* be obeyed; no clause is greater in effect than another. Any action cannot be constitutional if one clause of the Constitution is interpreted to violate another clause of the Constitution or if the action satisfies one constitutional clause but violates another. Thus, any solution to a constitutional question must satisfy the entire Constitution, not only part of it.

### *The Congressional Appropriation Alternative*

This constitutional truth lies at the bottom of the paradox regarding the financing of the convention to propose amendments. The Founders'

[1353] *See supra* text accompanying notes 548,551,572,1062,1256,1283.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

intentions were clear: the convention to propose amendments was to be called by Congress upon the proper number of applications from the states, Congress would have no discretion in the matter, and Congress could in no way establish pseudo-conditions for the states to fulfill before allowing a convention occur.[1354] Thus, the Founding Fathers intended that the applications be purely numeric, i.e., a simple numeric count of the states would satisfy the constitutional requirement.[1355]

It is also an equally unquestionable truth, uncontested by this suit, that Congress (together with the assent of the president) is clearly in control of the appropriations of the federal government. There can be no doubt of this especially in the light of the fact that the Founding Fathers set forth this fact in at least three separate clauses of the Constitution. First, the Founding Fathers made clear only Congress may pass a law (with the participation of the president).[1356] Beside bills which are intended to become laws, the Founding Fathers also specified what other acts of Congress (outside of the convention call) may be passed by Congress.[1357] These powers thus firmly established, the Constitution then clearly and unequivocally spells out how and by what method money may be paid out from the United States Treasury. As the matter can only be acted upon "in consequence of law," and only Congress

---

[1354] *See supra* text accompanying notes 497-514.
[1355] *See supra* text accompanying notes 497-514; 660-699.
[1356] "Every Bill which shall passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States." U.S. CONST., Art. I, § 7, §§ 2.
[1357] "Every Order, Resolution, or Vote to Which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States..." U.S. CONST., art. I, § 7, §§ 3.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

(together with the assent of the president) can create necessary law, it follows only Congress has the power to appropriate money from the Treasury.[1358] Further, when Congress directs a specific sum be paid to a certain person, neither the Secretary of the Treasury nor any court has discretion to determine whether the person is entitled to receive it.[1359] Finally, the Court has determined that no officer of the federal government is authorized to pay a debt due from the United States, whether reduced to judgment or not, without an appropriation for that purpose,[1360] nor may a government employee, by erroneous advice to a claimant, bind the United States through equitable estoppel principles to pay a claim for which an appropriation has not be made.[1361]

Therefore the Constitution mandates no monies may be drawn from the Treasury except as appropriated by law; Congress has the sole power to make that law and the unlimited discretionary power to set any terms it deems appropriate for the expenditure of that money. Thus, by merely setting such terms and conditions for the appropriation as it wishes, it can accomplish by legislative appropriation what the Founding Fathers clearly did not intend, the discretionary control of the convention to propose amendments.[1362] Congress

---

[1358] "No money shall be drawn from the treasury, but in Consequence of Appropriations made by Law." U.S. CONST., art. I, § 9, §§ 7.
The Supreme Court has ruled this clause is a limitation upon the power of the Executive Department and does not restrict Congress in appropriating moneys in the Treasury. *See* Knote v. United States, 95 U.S. 149 (1877); Cincinnati Soap Co. v. United States, 301 U.S. 308 (1937).
[1359] United States v. Price, 116 U.S. 43 (1885); United States v. Realty Company, 163 U.S. 427 (1896); Allen v. Smith, 173 U.S. 389 (1899).
[1360] Reeside v. Walker, 52 U.S. 272 (1851).
[1361] OPM v. Richmond, 496 U.S. 414 (1990).
[1362] *See supra* text accompanying notes 497-514.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

could even prescribe the identical controls as are found in the Hatch Bill[1363] and thus, through appropriation, circumvent not only the Founding Fathers and the Constitution but also sovereignty of the states and the people. Article V of the United States Constitution clearly intends Congress shall have no discretion in calling a convention to propose amendments; clauses in Article I give Congress full discretion in the matter through the use of appropriations. Thus, the conflict. The Constitution allows no discretion on the part of Congress in calling a convention to propose amendments but allows full discretion on the part of Congress in *financing* it. In other words, Congress can control a convention by appropriation rather than legislation and be within the Constitution.

The paradox does not end here. The Supreme Court has made it abundantly clear the President of the United States is to have no part in the amendatory process of the Constitution.[1364] Yet for Congress to exercise its appropriation power, the president must be involved in the process.[1365] With that involvement comes the power of the president to veto or otherwise politically affect the amendatory process, a power the Court specifically has said the president does not possess.[1366] Can there be any doubt there is no difference between a president possessing veto power over a proposed amendment and possessing veto power over a convention appropriation? Either power effectively accomplishes

---

[1363] *See supra* text accompanying notes 595-612.
[1364] *See supra* text accompanying notes 565-566.
[1365] *See supra* text accompanying notes 1356-1357.
[1366] *See supra* text accompanying notes 565-571.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the same goal: mandating the approval of the Executive before the amendatory process can proceed.

Without this Executive involvement Congress cannot employ its appropriation power. Therefore, for Congress to involve itself financially, it must be allowed that either the president can involve himself in the amendatory process through the appropriation process, or that Congress can, for the purposes of appropriation to the convention only, be allowed to ignore sending an appropriation bill to the president for his assent as required by the Constitution. Thus, there is a second paradox within the first paradox.

There is a third paradox that may be caused by Congress itself. Based on its history regarding the calling of the convention, it is entirely possible Congress may exercise one of its less frequently used discretions and simply refuse to finance the convention at all. Based on the above cited cases,[1367] it is clear the Court has little power to affect such a decision by Congress. Thus, Congress can essentially veto any Court order compelling a convention be called by Congress by simply refusing to provide the money necessary for a convention while simultaneously issuing the required call, thus avoiding any reprisals by the Court, *provided it is assumed that Congress must furnish the necessary funds for the convention to operate*.

However, this assumption is a fallacy. Nothing in the Constitution, either by expression or implication, commands Congress to fund a convention to propose amendments. Indeed, given the Founding Fathers intended “no

[1367] *See supra* text accompanying notes 1358-1361.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

discretion" on the part of Congress in the matter and the paradoxes involved if congressional appropriation powers are involved in the amendatory process, it is logical to conclude Congress was never intended, nor should it be empowered, to expand its power beyond its minuscule clerical roll provided in the Constitution.

The Supreme Court has ruled constitutional clauses cannot be ignored whenever their consequence becomes inconvenient; therefore the effect of Article V cannot be ignored simply because it is convenient or politically expedient to do so.[1368] Simply because there is a method whereby Congress can exercise full discretion regarding the control of the convention to propose amendments does not mean Congress is constitutionally allowed to use this discretion. It must be remembered at all times that the Constitution is an instrument designed primarily to *limit* national governmental power, *not* expand it.

Therefore, beyond the constitutional arguments described above preventing such discretion by Congress,[1369] the plain fact is there are other methods available to fund the convention. Therefore, it cannot be successfully argued that because Congress does have discretionary powers in appropriations, such discretion must be automatically applied to the convention. As there is a clear constitutional conflict that if ignored allows Congress the ability to veto the Article V mandate if federal appropriations are permitted, the simple

[1368] "In expounding the Constitution, every word must have its due force and appropriate meaning." Wright v. United States, 281 U.S. 276 (1938).
[1369] *See supra* text accompanying notes 1362-1367.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

answer to this constitutional paradox is Congress cannot constitutionally fund the convention. Funding, to whatever level is required, must be acquired elsewhere.

*The Court Appropriation Alternative*

Of course, those who would attempt to use the courts as a tool of social engineering will immediately see the advantage of simply handing the appropriation function to the Court itself. By the merest wave of a court order, the Judiciary would simply regulate Congress *and* the appropriation process at the same time, cultivating those shoots the Court feels most appropriate and pruning the offending barbs sure to be offered by Congress.

Ignoring for the moment the above cited cases[1370] in which the Supreme Court has declared that the Court is not in the appropriations business, it should come as no surprise that the Court has ruled on this matter when it said:

> "Beneficent aims however great or well directed can never serve in lieu of constitutional power."[1371]

Thus, while it may be politically expedient and even financially sound in principle that a single source of funding for the convention be acquired, the constitutional fact is it cannot be the federal government that provides such funds. Neither can such funding be obtained through the federal courts. Beyond any other argument, there is the residual corruption that will remain

[1370] *See supra* text accompanying notes 1359-1361.
[1371] Carter v. Carter Coal Co., 298 U.S. 238 (1936).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

if such a reckless course is followed. Millions, if not billions, in federal appropriations could be re-deployed by court order, even after having been directed by a legislative process open to public scrutiny.[1372] To re-deploy the money, no matter how good the reason, would be to open a Pandora's Box of avarice.

Hence, the use of any court decree to appropriate funds for the convention, however altruistic such a decree would at first seem to be, is as unconstitutional and dangerous as having Congress attend to the matter itself.

*The Convention Appropriation Alternative*

The Supreme Court has made it clear the provisions of the Constitution are to be interpreted so as to effectuate their intent, not obstruct it.[1373] These provisions, of course, are designed to regulate the various obligations of government, either by direct expressed term or by implied interpretation,

[1372] "...and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." U.S. CONST., art. I, § 9 §§ 7.

[1373] "Court may not construe Constitution so as to defeat its obvious ends when another construction, equally accordant with the words and sense thereof, will enforce and protect them." Prigg v. Com. of Pa., 41 U.S. 539 (1842); "A constitutional provision should not be constructed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed." Jarrolt v. Moberly, 103 U.S. 580 (1880); "When there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightly be preferred." United States v. Classic, 313 U.S. 299 (1938).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

in a specific pattern of operation. It follows this principle must apply to legislative powers.

Therefore, if legislative powers must be interpreted as to effectuate the intent of the Constitution, not obstruct it, it follows, perhaps, that if the Congress of the United States is constitutionally unable to use its powers to effectuate a constitutional provision, and the judiciary is powerless to effectuate the mandate, yet still the Constitution commands the provision must be carried out, and that another governmental body must assume that responsibility. The apparently logical choice would be for the Court to direct the convention to propose amendments to assume such powers as are required to effectuate the constitutional provisions.

In this instance, as the matter involves appropriations, the essence of the matter is, shall the convention, by its own exclusive actions, have the power to appropriate such funds from the national treasury or the state treasuries as are required for the convention to carry out its assigned constitutional duty? Clearly, it has been recognized for some time that the convention, in concept, must have certain powers to carry out its duties.

> "The general rule is undoubtedly this:--as Conventions are commonly numbers assemblies, containing, in most cases, the same number of members as the State legislatures, they are possessed of such powers as are requisite to secure their own comfort, to protect and preserve their dignity and efficiency, and to insure orderly procedure in their business. For the attainment of these ends, they are not without the authority possessed by agents in general, and, in my judgment, they are possessed of no other or greater. Thus, they must have a suitable hall, adequately warmed and lighted; and, though the Acts calling them were silent on the point, they would unquestionably have power to engage one, and to pledge the faith of the state for the rental thereof."[1374]

[1374] CONSTITUTIONAL CONVENTIONS: Their Nature, Powers and Limitations (Hoar) (1917), quoting CONSTITUTIONAL CONVENTIONS (Jameson) (1887), pp. 172-173.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

However, the financing of a convention involves more than just pledging the "faith" of the United States or the individual states. It would involve the convention pledging the *credit* of the United States or the individual states.[1375] There is no getting around this point: meeting halls cost money to rent, staff members cost money to hire, security costs money to procure, printing costs money; in short, a convention held in the usual physical sense requires large sums of money. This money cannot be created out of thin air; it must come from some already established financial source, a source that most certainly will, as one its provisions for providing the necessary funds, demand a voice in how those funds are expended.

Beyond this cold financial fact are the obvious dangers inherent to the idea of allowing the convention to propose amendments to assume power over federal funds, even for the explicit limited purpose of providing only for its own needs. The Constitution clearly assigns certain powers to certain government functions. It does not allow these powers to be shuffled like a deck of cards in order to obtain the best "hand" for whatever is politically expedient. Basically, the Founding Fathers dealt the cards over two hundred years ago to this nation; it is up to us if we wish to stay in the game to play the cards dealt and not try to deal a new hand from the bottom of the desk. This fact is no less true in the Founders' plan regarding the expenditure of public funds. It is just as absurd to maintain that this

[1375] "A convention may undoubtedly incur expense for its legitimate needs. We have already seen that a convention can pledge the faith of the State for the expense of hiring a hall. But it is a far cry from pledging the *faith* of the State to pledging the *credit* of the State." *Id.* (emphasis in original).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

carefully thought out plan should be overturned by giving the convention the power to run rampant through the federal funding process as it is to give Congress the power to run rampant through the convention amendatory process. Both invasions of the separation of powers threaten to result in the destruction of the Constitution.

Thus, the convention appropriation alternative is unworkable; it violates the separation of powers doctrine established in the Constitution.

*The Convention Credit Card Alternative*

If the convention cannot directly appropriate the funds necessary, can it not pledge the faith of the United States for the necessary monies and expect Congress (or some other monetary source) to have that body come up with the funds after the convention concludes? This way, the above cited constitutional conflicts[1376] are apparently avoided. Congress is granted no opportunity to regulate the convention because no monies are actually expended until *after* the convention concludes.

While some court cases involving this issue shed some light on the matter, the main objection to this method of funding lies in the world of practical, pragmatic politics. There is no reason to assume that a hostile Congress would be inclined to hand over funds for an already concluded convention just because “it the right thing to do.” The only difference

[1376] *See supra* text accompanying notes 1370-1375.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

between the above method of appropriation and the credit card method is that the convention would have the power to acquire funds *before* the event, thus allowing at least some public discussion. The credit card method would allow unlimited appropriation by proxy thus dumping an unpredictable debt on the federal government with no public input whatsoever.

Unlike the convention's main work, that of proposing amendments, which is only advisory in nature with no effect of law until ratified by the states, the appropriation of funds, however, which either must be expended before the conclusion of the convention or used to pay debts accrued by the convention previous to funds being acquired, is *not* required by the Constitution to be reviewed by the states. Hence, there is no check and balance system common to almost every other action in the Constitution to prevent possible monetary abuses by convention delegates.

This matter is not without analogous case law. Following the Civil War, a number of controversies arose out of attempts by Congress to restrict the payment of the claims of persons who had aided the rebellion but had thereafter received a pardon from the President. In one of these cases, the Court declared it was within the competence of the Congress to declare that the amount due to persons thus pardoned should not be paid out of the Treasury and that no general appropriations should extend to their claims.[1377]

---

[1377] "If the joint resolution had said nothing on the subject of a pardon, no pardon could have had the effect to authorize the payment out of a general appropriation of a debt which a law of congress had said should not be paid out of it. The pardon cannot have such effect ascribed to it merely because the joint resolution says that it shall not have such effect. It was entirely within the competency of congress to declare that the claims mentioned in the joint resolution should not be paid till the further order of congress. It is

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The analogy, of course, is not that the convention to propose amendments constitutes any form of rebellion. Rather, the fact that one branch of government has taken an constitutional action does not obligate another branch to act. As the Court said:

> "[A]lthough before the joint resolution was passed the claimant had received from the president a pardon 'for all offenses committed by him arising from participation, direct or implied, in the Rebellion,' *the pardon did not authorize the payment of the claim, nor did the joint resolution take away anything which the pardon had conferred; and that it was entirely within the competency of congress to declare that the claims mentioned in the joint resolution should not be paid until the further order of congress*."[1378]

Clearly these two Court rulings establish that Congress is not bound to grant appropriations after the fact except as Congress shall determine, and the actions of another branch of government, in this case a pardon by the President, do not guarantee or compel Congress to appropriate money. Thus, if the convention is held and the convention, *without previous approval from Congress*, attempts to extend the credit of the United States in order to pay for convention costs, Congress has every right to refuse such an obligation. Thus, for both constitutional as well as political reasons, the convention "credit card" is an unworkable proposition. While the convention may be federal in nature, it is certainly *not* federal in financing.

*The State Appropriation Alternative*

---

now within its competency to declare that they may be paid, in like means as...should not apply to payments to be made out of a general appropriation made by that act to pay mail contractors for mail service performed in certain states in 1859, 1860, and 1861, and before they 'respectively engaged in war against the United States.'" Hart v. United States, 118 U.S. 62 (1886).

[1378] Austin v. United States, 155 U.S. 417 (1894). (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Another alternative for funding the convention to propose amendments is, of course, to involve the states in the matter. This can be accomplished in either of two ways: voluntary funding by each state or federally ordered funding.

The logic of the states financing the convention to propose amendments is seemingly inexorable. Even though its powers are derived from a federal document, ultimately the convention to propose amendments is a *state*, rather than a *federal*, proposition. Beyond the congressional call, the federal government has nothing to do with a convention to propose amendments until it returns with proposed amendments. At this stage of events, Congress determines which mode of ratification will be used to submit the amendments to the states. Basically, the federal government's involvement is best described as being used only when, during this process, there arises a need for a synchronized action involving the cooperative efforts of the states, the trigger of which the Founding Fathers could not justify assigning to the states. Therefore, they gave this limited matter to Congress but clearly removed all discretion from the Congress otherwise. Thus, because the Founding Fathers did not address the matter in the Constitution, despite the admonition of Madison,[1379] it can be concluded they did not intend further involvement by the federal government. For the convention to succeed, the states were intended to "fill in the details." Clearly this would involve, at the minimum, the financing of the event in order for it to take place. Therefore, it should

[1379] *See supra* text accompanying note 438.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

be the responsibility of the states to deal with such financial matters as they may arise. It is assumed in this scenario that absent unified federal authority, the states must work out the matter of compensation among themselves, establishing such payments for convention expenses as they may individually or collectively see fit and appropriate.[1380]

Despite the "inevitability" of this argument, it is far from a *fait accompli*. Historic, political, and constitutional questions, which cannot be ignored, place great barriers in front of this simplistic solution.

The first barrier to the states working together is historic. The major reason the states created first the Articles of Confederation and later the United States Constitution was their inability to work together without quarreling among themselves.[1381] This inability to function together, absent a federal system, was not left behind once the Constitution took effect. Questions involving intergovernmental immunities, both federal versus state and state versus state, have arisen over our entire history, the most notable conflict being the Civil War.

In more peaceful disputes, the Supreme Court has decided several issues relating to interstate compacts and their effect upon the states. The very fact the Supreme Court is involved in deciding these issues demonstrates the

[1380] In this matter of finance, certain legitimate expenses of a convention are of a general nature, i.e., expenses not incurred by any particular state delegation, but still *must* be sustained for the convention to function, such as security, staff and furniture.
[1381] *See supra* text accompanying notes 314-316.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

difficulty of the states working together even after they have reached agreement on a matter.[1382]

Putting aside the historic question, there remain the political and constitutional issues. If the Court does determine it is the responsibility of the states to finance the convention to propose amendments, it runs into the same problem as with Congress--that of discretion. State or federal, the Court is not in the appropriation business. Thus, the difficulty of establishing the terms and conditions by which a state provides financial support is potentially multiplied by a factor of fifty with each state legislature able to set whatever terms it feels is appropriate. To assume the political opportunism of state legislatures is any less voracious than that of Congress when presented the opportunity, is at best, folly. No doubt the ugly head of political agenda will be thrust into the appropriation formula.

---

[1382] One example of such a dispute that relates greatly to the matter at hand is Dyer v. Sims, 341 U.S. 22 (1951) in which the state of West Virginia attempted to withdraw from a compact between itself and seven other states regarding control of pollution of the Ohio River. The Court found two significant points: the Court has final power to pass upon the meaning and validity of compacts between states, and an agreement entered into between states by those who alone have political authority to speak for a state cannot be nullified unilaterally or given final meaning by any organ of one of the contracting states.

The Court said:

"But a compact is after all a legal document. Though the circumstances of its drafting are likely to assure great care and deliberation, all avoidance of disputes as to scope and meaning is not within human gift. Just as this Court has power to settle disputes between states where there is no compact, it must have final power to pass upon the meaning and validity of compacts. It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified, or given final meaning by an organ of one of the contracting States. A State cannot be its own ultimate judge in a controversy with a sister State. To determine the nature and scope of obligations as between States whether they arise through the legislative means of compact or the 'federal common law' governing interstate controversies (Hinderlider v. La Plata Co., 304 U.S. 92, 110), is the function and duty of the Supreme Court of the Nation."


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As to having the Court regulate the states through court order compelling a unified appropriation, this "solution" has its own share of problems. First, there is no precedent that the states must attend the convention and hence, must support it financially. In 1787, Rhode Island sent no delegates to that convention, yet still retained its sovereignty and gained equal powers with the other states under the new Constitution, such as the ratification of proposed amendments. Despite the fact Rhode Island did not attend the 1787 Constitutional Convention, there is no evidence the Founding Fathers felt they possessed the power to expel or exclude that colony from the Republic. It is doubtful a court today would find otherwise. The fact a state is sovereign provides an obvious if overlooked power: the right of the state *not* to do something so long as it does not violate the United States Constitution. Nothing in the Constitution demands a state attend a convention just as there is no demand that a state *must* vote on the ratification of a proposed amendment. Further, what recourse would a court have if a state chose not to "chip in" to finance a convention? The seizure of state assets in order to pay for the convention to propose amendments? Such a precedent would be devastating, if not entirely destructive of state sovereignty and separation of powers.

There is no help for the Court in the supremacy clause of the Constitution.[1383] This clause only takes effect when state law is in *conflict*

[1383] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land..." U.S. CONST., art. VI, § 2.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

with the Constitution, and there is no conflict in this case. The states certainly possess, as does Congress,[1384] the unassailable right to determine how they will spend their state tax dollars where such expenditure is not a violation of rights or of constitutional law, and nothing in the Constitution mandates or even implies the states, like Congress, *must* finance a convention to propose amendments. Thus, there is some question whether the federal courts even have authority in this specific matter.

Finally, as indicated in *Dyer*, it is the federal courts that have final say regarding "the meaning and validity of compacts".[1385] This would seem to negate any issues that have been raised concerning the supremacy clause or the attendance of the states at a convention. However, the matter is not that simple. The Court has empowered itself properly to be the final judge of the "meaning and validity of compacts" but has not empowered itself to be the final and ultimate *negotiator or arbitrator of the formation of state compacts.* In this matter, the Constitution deals with these issues by *granting approval of all such compacts to Congress*.[1386] In other words, the Constitution grants Congress *discretion* over all aspects of state compacts *previous* to their effectuation. The matter of congressional discretion in regards to the convention to propose amendments has been well discussed in this suit, and the intent of the Founders remains the same: none.[1387] Therefore, having the states finance the convention to propose amendments, as this would involve an

---

[1384] *See supra* text accompanying notes 1358-1361.
[1385] *See supra* text accompanying note 1382.
[1386] No State shall, without the Consent of Congress...enter into any Agreement or Compact with another State..." U.S. CONST., art. I, § 10, §§ 3.
[1387] *See supra* text accompanying note 497-514; 1358-1361.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

agreement[1388] or compact[1389] that under the terms of the Constitution grants ultimate approval by Congress before such an agreement or compact can take effect,[1390] is unconstitutional as it confers on Congress discretion in the

---

[1388] "A meeting of two or more minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition. In law, a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances. The consent of two or more persons concurring respecting the transmission of some property, right, or benefits, with the view of contracting an obligation, a mutual obligation." BLACK'S LAW DICTIONARY 6th ed. (1990).

[1389] "An agreement or contract between persons, nations or states. Commonly applied to working agreements between and among states concerning matters of mutual concern. A contract between parties, which creates obligations and rights capable of being enforced, and contemplated as such between the parties, in their distinct and independent characters. A mutual consent of parties concerned respecting some property or right that is the object of the stipulation, or something that is to be done or forborne." BLACK'S LAW DICTIONARY 6th ed. (1990).

[1390] It would have better if the Founding Fathers, in writing the Constitution, had considered the matter of financing future conventions in its provisions. Instead, the Founders left the matter up to the courts to resolve, and in this particular matter the Court has construed the meaning of the Compact Clause in such a manner as to leave room for debate on the matter.

In Virginia v. Tennessee, 148 U.S. 503 (1893), the Court discussed agreements and compacts between states and the meaning of the language of the clause. The Court said:

"The terms 'agreement' or 'compact' taken by themselves, are sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects; to those to which the United States can have no possible objection or have any interest in interfering with, as well as to those which may tend to increase and build up the political influence of the contracting states, so as to encroach upon or impair the supremacy of the United States, or to interfere with their rightful management of particular subjects placed under their entire control.

"There are many matters upon which different states may agree that can in no respect concern the United States... If then, the terms 'compact' or 'agreement' in the constitution do not apply to every possible compact or agreement between one state and another, for the validity of which the consent of congress must be obtained, to what compacts or agreements does the constitution apply? We can only reply by looking at the object of the constitutional provision and construing the terms 'agreement' and 'compact' by reference to it...

"Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination *tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States*. Story, in his Commentaries, (section 1403,) referring to a previous part of the same section of the constitution in which the clause in question appears,

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

observes that its language 'may be more plausibly interpreted from the terms used, "treaty, alliance, or confederation," and upon the ground that the sense of each is best known by its association ("noscitur a sociis") to apply to treaties of a political character; such as treaties of alliance for purposes of peace and war; and treaties of confederation, in which the parties are leagued for mutual government, *political co-operation, and the exercise of political sovereignty*, and treaties of cession of sovereignty, or conferring internal political jurisdiction, or external political dependence, or general commercial privileges;' and that 'the latter clause, "compacts and agreement," might then very properly apply to such as regarded what might be deemed mere private rights of sovereignty; such as questions of boundary, interests in land situate in the territory of each other, and other internal regulations for the mutual comfort and convenience of states bordering on each other.' And he adds: '*In such cases the consent of congress may be properly required*, in order to check any infringement of the rights of the national government; and, at the same time, a total prohibition to enter into any compact or agreement might be attended with permanent inconvenience or public mischief.'" (emphasis added).

In a more recent case, U.S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452 (1978), the Court affirmed the earlier *Virginia* decision but added several important stipulations that relate to the states financing a convention to propose amendments.

The Court said:

"We reaffirmed Mr. Justice Field's view that the 'application of the Compact Clause is limited agreements that are "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States."' Id., at 369, quoting Virginia v. Tennessee, 148 U.S. at 519. This rule states the proper balance between federal and state power with respect to compacts and agreements among States...

"The Clause reaches both 'agreements' and 'compacts,' the formal as well as the informal. *The relevant inquiry must be one of impact on our federal structure*...

"Appellants further urge that *the pertinent inquiry is one of potential, rather than actual, impact upon federal supremacy*. We agree... [*T*]*he test is whether the Compact enhances state power quoad the National Government*. This pact does not purport to authorize the member States to exercise any powers they could not exercise in its absence." (emphasis added).

Clearly, these decisions, in so far as they relate to the financing of the convention to propose amendments, cast grave doubt on the ability of the states through any agreement or compact to finance the convention. There can be little doubt that through the convention the *potential political power of the states will increase*, and the *present* sovereignty of the United States Government will proportionately decrease. From a strictly political point of view it is irrelevant whether even a single amendment emerges from this particular convention. What is significant is a shift of power from the National Government to the States as it relates to the amending of the Constitution. Equally clear is this particular agreement or compact would relate directly to political co-operation among the states and therefore by the Court's own definition would require approval by Congress. Given that the Congress has completely ignored the mandate of Article V, there is little doubt that presented the opportunity, Congress would never give its consent for a compact allowing the financing of the convention to propose amendments.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

calling of the convention to propose amendments by the regulation of state funds intended to finance the convention through its compact clause power.[1391]

*Summation*

Despite their collective wisdom, the Founding Fathers created a paradox in the Constitution regarding the convention to propose amendments: on the one hand they quite properly forbid any discretion on the part of Congress regarding the calling of a convention; on the other hand, they placed clauses in the Constitution that collectively prevent either the states or Congress (or both) from *financing* the convention so that it may occur.

What then remains? A concession that Congress is in fact correct in its *laches because it doesn't matter whether they call or not*. Why? Because even if Congress desired to call a convention, it would issue the call under its

[1391] However, in *U.S. Steel*, the Court quoted Holmes v. Jennison, 39 U.S. 540 (1840) as the basis to support its conclusion. In *Jennison* the Court said:

"Can it be supposed, that the constitutionality of the act depends on the mere form of the agreement? We think not. The Constitution looked to the essence and substance of things, and not to mere form. It would be but an evasion of the constitution to place the question upon the formality with which the agreement is made."

That said, can it not be argued that the convention to propose amendments is a constitutionally permissible compact between the states, and therefore would any compact required of the states for this purpose, however it may effect the political balance between the National Government and the States, be in fact constitutional? Unfortunately, nowhere did the Court see fit to discuss the effects of agreements and compacts as they related to a convention to propose amendments. Therefore, their current ruling prohibiting such political actions (outside the expressed, mandated convention itself) must be consider the "final" word. If the matter is to be modified, it must be up to the wisdom of the Court to do so without permitting other political actions by the states not related to a convention to occur. *See supra* text accompanying note 1353.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

own terms and conditions. Why? Because either through its appropriation power or its compact and agreement power, Congress would possess ultimate authority on the financing of the convention. By way of this unanticipated constitutional loophole, Congress would thus possess unlimited discretion on the convention's call, mission and operation. This concession, of course, would produce chaos. It would cause untold damage to the system of checks and balances so carefully created by the Founders. An ambitious Congress in league with a weak, lax or corrupt president could alter the Constitution in any manner desired.

Is it possible to avoid this Armageddon scenario and still be constitutional in financing the convention? The answer is yes. First, it must be remembered the Constitution was designed to *limit* government, *not* the people who created that government;[1392] thus, that which is not prohibited by the Constitution to the people is permitted by it for the people.[1393] Second, it is an axiom of constitutional law that provisions of the Constitution must be construed so as to *effectuate* its provisions, *not* obstruct them.[1394]

---

[1392] "Under the constitution, sovereignty in the United States resides in the people." Kennett v. Chambers, 55 U.S. 38 (1852); "The Constitution is the fundamental law of the United States, and no department of government has any other powers than those thus delegated to it by the people." Hepburn v. Griswold, 75 U.S. 603 (1869); "The government of the United States is one of limited powers, and no department possess any authority not granted by Constitution." (*Id.*).

[1393] "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." (U.S. CONST., 10th Amend.).

[1394] "Where there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightly be preferred." United States v. Classic, 313 U.S. 299 (1941).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The people, as the ultimate sovereign authority in the United States, have the transcendental power to alter or abolish their government.[1395] Clearly implied in this right is the power of the people to employ whatever means are necessary to accomplish this right. Thus, if by oversight, error or omission, a form of government created by them fails to provide the means or conveyance by which that created government can be used by the people to accomplish some or all of the necessary changes without violating some term or condition that established that government, then it follows because of the transcendent power the people themselves possess, they can provide whatever means are required in order to "fill in the details."

What details need to be "filled in" that would provide the financial support necessary to effect a convention call from Congress without violating the Constitution as interpreted by the Supreme Court? A quick reexamination of what is involved in the convention call is therefore in order.

Simply put, the "call" is nothing more than the announcement by Congress of a meeting[1396] which in turn is no more than "[A]n assembly, a gathering of people especially to discuss or decide on matters" and "a point of contact or intersection; a junction."[1397]

As it has been demonstrated that no other method of finance by federal or state government is constitutionally permissible, it follows the resolution of this matter must involve the discovery of a method whereby the cost of a

---

[1395] *See supra* text accompanying notes 1136-1147.
[1396] *See supra* text accompanying notes 2,581.
[1397] *See supra* text accompanying note 582.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention is equally distributed among those involved in the project, i.e., the delegates. As the delegates do not possess the power to tax,[1398] i.e., the power to redistribute the cost of the convention onto the people in general, this method must be accomplished without undo financial burden to any delegate.

This concern relates to the constitutional, rather than the financial. It would be as unconstitutional to add, as a condition for being a convention delegate, a term of wealth as it would be to add any other condition not specified in the Constitution.[1399] Beyond the constitutional considerations, however, is a necessary requirement to avoid the golden rule of political agenda and money: “He that has the gold--rules.” The alternative of permitting a small number of wealthy delegates to finance the convention rather than distributing the cost equally among all delegates invites these wealthy “benefactor” delegates to use this special position of influence to regulate the convention, or at the least, the fate of a particular amendment proposal. For the sake of the ultimate goal of the convention, which must be to maintain the confidence of the American people in its constitutional institutions, such political antics cannot be permitted and in this specific instance are entirely unnecessary.

---

[1398] “The *Congress* shall have Power to lay and collect Taxes, Duties, Imports and Excises; to pay the Debts and provide for the common Defence and general Welfare of the United States.” (U.S. CONST, art. I, §8, §§1). (emphasis added). There is no room for doubt that the Founders intended only Congress to have the power to tax.

[1399] *See* supra text accompanying notes 290,616,1235,1262,1315,1335.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

What is the purpose of a convention to propose amendments? It is a forum, “a point of contact or intersection” where amendment or amendments may be proposed, publicly discussed, altered, and as a result of this discussion, assuming sufficient support for such matters, passed out of the convention to face possible ratification by the states. All other matters to this forum are extraneous or subservient. Thus, they can be removed without doing constitutional damage to the convention’s purpose. Such matters as security, building, furniture--in short, all physical matters usually associated with a meeting, and most of its costs--are in this instance superfluous. The essence of a convention is the free exchange of information and agreement among the participants on the eventual outcome of that information. Thus, all that is required for the delegates is the free exchange of information, *not* a physical meeting among them.

The resolution of this financial dilemma thus devolves into finding a method whereby the delegates, by their own financial means, can support a convention *without* excluding any delegate of modest means,[1400] *without* relying on the financial wealth of some delegates, or relying upon government, state or federal, for the needed funds.[1401]

---

[1400] The Court has made it clear that excluding a candidate from seeking office is unconstitutional. Nothing the Court has ever stated would lead to the conclusion that such protections would not extend to a convention delegate. *See supra* text accompanying note 131.

[1401] The fact the convention is strictly amendatory in nature, i.e., it does not possess legislative authority, leads to an interesting difference between convention delegates and members of Congress. Because there is no source of revenue that the convention can attach, i.e., tax, convention delegates will be forced to serve in a volunteer capacity. Members of Congress are paid for their services, and while some might argue convention delegates must be paid the same as members of Congress, the plain fact is that without a source of revenue, this is impossible. Congress, using its tax powers, does have sources

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As there is no other alternative of funding that the Supreme Court has not removed, and as the Supreme Court has further has ruled on numerous occasions that the provisions of the Constitution must be construed so as to effectuate them, the only logical conclusion regarding convention financing is, as was so eloquently spoken by Sherlock Holmes, "[W]hen you have eliminated all which is impossible, then whatever remains, however improbable, must be the truth."[1402]

*The "Virtual" Convention*

One information system exists that satisfies the conditions of Court decisions regarding the financing of a convention to propose amendments, yet provides the simultaneous exchange of information necessary for the delegates to conduct their essential business, i.e., the proposal, discussion, alteration and forwarding of amendments to the states via Congress, which is charged with the choice of ratification. This information system is the Internet.[1403]

---

of revenue by which to raise funds to pay its members; the convention does not and thus has no revenue from which to pay its delegates.

[1402] "The Adventure of the Blanched Soldier" by Sir Arthur Conan Doyle.

[1403] "The Internet is an international network of interconnected computers. It is the outgrowth of what began in 1969 as a military program called 'ARPANET,' which was designed to enable computers operated by the military, defense contractors, and universities conducting defense related research to communicate with one another by redundant channels even if some portions of the network were damaged in a war. While the ARPANET no longer exists, it provide an example for the development of a number civilian networks that, eventually linking with each other, now enable tens of millions of people to communicate with one another and to access vast amounts of information from around the world. The Internet is 'a unique and wholly new medium of worldwide human communication.'

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"The Internet has experienced 'extraordinary growth.' The number of 'host' computers—-those that store information and relay communications--increased from about 300 in 1981 to approximately 9,400,00 by the time of trial in 1996. Roughly 60% of these hosts are located in the United States. About 40 million people used the Internet at the time of trial, a number that is expected to mushroom by 200 million by 1999.

"Individuals can obtain access to the Internet from many different sources, generally hosts themselves or entities with a host affiliation. Most colleges and universities provide access for their students and faculty, many corporations provide their employees with access through an office network; many communities and local libraries provide free access; and an increasing number of storefront 'computer coffee shops' provide access for a small hourly fee. Several major national 'online services' such as America Online, CompuServe, the Microsoft Network, and Prodigy offer access to their own extensive proprietary networks as well as a link to the much larger resources of the Internet. These commercial online services had almost 12 million individual subscribers at the time of trial.

"Anyone with access to the Internet may take advantage of a wide variety of communication and information retrieval methods. These methods are constantly evolving and difficult to categorize precisely. But, as presently constituted, those most relevant to this case are electronic mail ('e mail'), 'chat rooms,' and the 'World Wide Web.' All of these methods can be used to transmit text; most can transmit sound, pictures, and moving video images. Taken together, these tools constitute a unique medium--known to its users as 'cyberspace'—located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet.

"E-mail enables an individual to send an electronic message—generally akin to a note or letter--to another individual or to a group of addressees. The message is generally stored electronically, sometimes waiting for the recipient to check her 'mailbox' and sometimes making its receipt known through some type of prompt. A mail exploder is a sort of e-mail group. Subscribers can send messages to a common e-mail address, which then forwards the message to the group's other subscribers. Newsgroups also serve groups of regular participants, but these postings may be read by others as well. There are thousands of such groups, each serving to foster an exchange of information or opinion on a particular topic running the gamut from, say, the music of Wagner to Balkan politics to AIDS prevention to the Chicago Bulls. About 100,000 new messages are posted every day. In most newsgroups, postings are automatically purged at regular intervals. In addition to posting a message that can be read later, two or more individuals wishing to communicate more immediately can enter a chat room to engage in real time dialogue--in other words, by typing message to one another that appear almost immediately on the others' computer screens. The District Court found that at any given time 'tens of thousands of users are engaging in conversations on a huge range of subjects.' It is 'no exaggeration to conclude that the content on the Internet is as diverse as human thought.'

"The best known category of communication over the Internet is the World Wide Web, which allows users to search for and retrieve information stored in remote computers, as well as, in some cases, to communicate back to designated sites. In concrete terms, the Web consists of a vast number of documents stored in different computers all over the world. Some of these documents are simply files containing information. However, more elaborate documents, commonly known as Web 'pages,' are also prevalent. Each has its own address—

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress has no discretion in calling the convention to propose amendments.[1404] In the call, Congress can only recommend a time and place for the convention.[1405] As with the rest of the Constitution's clauses, the convention call *must* comply with all provisions of the Constitution and applicable Court decisions.[1406] The virtual convention, however improbable, is the only alternative that satisfies all constitutional provisions and all judicial decisions. It follows, therefore, any interpretation of what a convention call entails must include the virtual convention as it is the only alternative that fulfills both constitutional and judicial standards.

---

'rather like a telephone number.' Web pages frequently contain information and sometimes allow the viewer to communicate with the page's (or 'site's') author. They generally also contain 'links' to other documents created by that site's author or to other (generally) related sites. Typically, the links are either blue or underlined text--sometimes images.

"Navigating the Web is relatively straightforward. A user may either type the address of a known page or enter one or more keywords into a commercial 'search engine' in an effort to locate sites on a subject of interest. A particular Web page may contain the information sought by the 'surfer,' or, through its links, it may be an avenue to other documents located anywhere on the Internet. Users generally explore a given Web page, or move to another, by clicking a computer 'mouse' on one of the page's icons or links. Access to most Web pages is freely available, but some allow access only to the readers' viewpoint, to both a vast library including millions of readily available and indexed publications and a sprawling mall offering goods and services.

"From the publishers' point of view, it constitutes a vast platform from which to address and hear from a world wide audience of millions of readers, viewers, researchers, and buyers. Any person or organization with a computer connected to the Internet can 'publish' information. Publishers include government agencies, educational institutions, commercial entities, advocacy groups, and individuals. Publishers may either make their material available to the entire pool of Internet uses, or confine access to a selected group, such as those willing to pay for the privilege. 'No single organization controls any membership in the Web, nor is there any centralized point from which individual Web sites or services can be blocked from the Web.'" Reno v. ACLU, 521 U.S. 844 (1997). (footnotes omitted).

[1404] *See supra* text accompanying note 497-514.
[1405] *See supra* text accompanying notes 581-592.
[1406] *See supra* text accompanying notes 287-288,524,1248,1276-1277,1293.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Opponents of a virtual convention or a convention to propose amendments in general may attempt to use the weak argument that the Internet cannot be used for a convention because it is not a "place." Therefore, as the call must include "a time and place"[1407] and the Internet is not a "place," a convention cannot take place on it.

The fallacy of this argument is the limited and physical conception of the word "place." The intent of the Constitution is to permit the people to hold a convention to propose amendments as a means of exercising their transcendent right to alter or abolish their government[1408] as they see fit, and this must be the overriding obligation. In any event, there is no help here even from the dictionary as the word in question provides enough "stretch" to encompass the matter regardless.[1409]

Such acts as the Hatch Bill[1410] prove Congress' voracious appetite to dominate the people's right to alter or abolish by controlling the *political* association of the convention delegates. Whether in the virtual or physical world, this was *not* intended under our system of government.[1411] In numerous decisions, the Court has defended this constitutionally protected right of political association.[1412] Further, the Court has not only ruled against such

---

[1407] *See supra* text accompanying notes 581-590.
[1408] *See supra* text accompanying notes 921-1009.
[1409] The word "place" has several definitions which upon examination refute the limited physical concept of the word. These include:
"space; room."; "a particular area or locality"; "(a) part of space occupied by a person or thing." Certainly there can be no argument that the Internet is a "thing" and therefore occupies a "place".
[1410] *See supra* text accompanying notes 596-608.
[1411] *See supra* text accompanying note 497-514.
[1412] The Court has made it clear in such decisions as Kusper v. Pontikes, 414 U.S. 51 (1973):

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

congressional avarice in the "physical" world, but also against such interference in the "virtual" world.[1413]

In *Reno*, the Court made it clear that congressional regulation of the Internet would suffer stringent court review. The Court, quoting the lower district court, affirmed the district court's decision, saying:

> "Judge Dalzell's review of 'the special attributes of Internet communication' disclosed by the evidence convinced him that the First Amendment denies Congress the power to regulate the content of protected speech on the Internet. His opinion explained at length why he believed the Act would abridge significant protected speech, particularly by noncommercial speakers, while '[p]erversely, commercial pornographers would remain relatively unaffected.' He construed our cases as requiring a 'medium specific' approach to the analysis of the regulation of mass communication, and concluded that the Internet—as 'the most participatory form of mass speech yet developed.'—is entitled to 'the highest protection from governmental intrusion.'"[1414]

In *Reno* the Court prohibited regulation of the Internet by Congress even for the limited purpose of regulating pornography. Thus, there can be no doubt that even though the Court did not directly address the question of regulating peaceful political petition and voting, the Court would rule as forcefully against congressional control of the Internet should such regulation resemble the Hatch Bill. The Court as much stated this in *Reno* when it said:

> "Finally, unlike the conditions that prevailed when Congress first authorized regulation of the broadcast spectrum, the Internet can hardly be considered a 'scarce' expressive commodity. *It provides relatively unlimited, low cost capacity for communications of all kinds*. The Government estimates that '[a]s many as 40 million people use the Internet today, and that figure is expected to grow to 200 million by 1999.' This dynamic, multifaceted category of communication includes not only traditional print and new services, but also audio, video, and still images, as well as interactive,

---

"[T]here can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and idea is a form of 'orderly group activity' protected by the First and Fourteenth Amendments..."

Ironically, the Court has been more generous in its interpretations regarding the association of individuals for political purposes than for the states associating for the same purpose. *See supra* text accompanying note 1390.

[1413] Reno v. ACLU, 521 U.S. 844 (1997).

[1414] *Id.* (footnotes omitted).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

real time dialogue. *Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates father than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer*. As the District Court found, 'the content on the Internet is as diverse as human thought.' *We agree with its conclusion that our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium*."[1415]

The Court then added:

"The Government's position is equivalent to arguing that a statute could ban leaflets on certain subjects as long as individuals are free to publish books. In invalidating a number of laws that banned leafleting on the streets regardless of their content—we explained that '*one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place*.' Schneider v. State (Town of Irvington), 308 U.S. 147 (1939)"[1416]

Finally, the Court summarized its position, saying:

"The dramatic expansion of this new marketplace of ideas contradicts the factual basis of this contention. The record demonstrates that the growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, *we presume the governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship*."[1417]

Given these unequivocal statements of the Court, it is clear Congress, in issuing a convention call that includes a suggested time and place for the convention, cannot use its regulatory power to control the convention's web page, server or other electronic components necessary to be on the Internet simply because the event is online. The Court has made it clear that freedom of speech and political association for legitimate lawful political purposes are guaranteed freedoms for which the Constitution forbids congressional interference.

---

[1415] *Id.* (footnotes omitted). (emphasis added).
[1416] *Id.* (emphasis added).
[1417] *Id.* (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Internet offers several advantages for a convention to propose amendments that are neither constitutional nor financial in nature, but taken together provide major benefits.

These include:

1. Accuracy of record.

The Internet possesses instant accurate recording by the means of "backup". This offers delegates, observers and historians the ability to examine the convention record, literally minute by minute, if need be. Unlike the first Constitutional Convention, where the record is woefully lacking, totally accurate information is possible.

2. Issues rather than personality.

The Internet removes such physical obstacles to communication as sex, age, creed and race. It is the great leveler. As a result, people using the Internet are viewed primarily by their "message" rather than their "medium." As the novelty of the Internet and the convention pass and the delegates settle down to business, an advantage arises: the delegates will focus on the issues at hand, not individual personality traits. This will not only accelerate the convention as it will remove much extraneous material, but will also provide a sense of professionalism sadly lacking in the national legislature.

3. Full press coverage sans press agenda.

The partisan adversarial press that existed for most of the Republic's history disappeared after World War II to be replaced by a generically liberal and internationalist press owned by a very small number of large corporations. Since Watergate there has been little serious investigative journalism. Jefferson expected the free press to be the watchdog of the Republic, but today's Establishment Media functions more as a lapdog to those in power. Access to those in power and the government's regulatory role over radio and television together provide a reason for the corporate media to stay on the federal government's reservation.

Most Americans realize that their news is presented with a corporate and ideological bias reflected both by the owners of the media and those who work for them; many readers and viewers have learned to filter out the tons of ideology to get at the few ounces of genuine fact.

Once Congress does its duty and calls a convention to propose amendments, both the Left and the Right will mobilize to get the convention to pass amendments on their particular "wish lists". Due to unavoidable bias the Establishment Media will weigh in on the Left, bias its coverage of the convention's proceedings, and load the arguments in favor of amendments representative of that bias. A proceeding as critical as a convention to propose amendments requires fair and objective reporting if the people are to be armed with the facts necessary for them to arrive at intelligent decisions. *The people cannot afford the sloppy and biased reporting provided by today's press, radio and television.*

Fortunately, a convention held on the Internet eliminates these concerns. Unlike a convention held in a physical location, a convention held in cyberspace permits independent access to the facts without the media's filtering process. Any observer can obtain access to the facts and make up his own mind. Still, the media will have full freedom to cover the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention however it pleases. It just won't have the ability to obscure the truth.

4. Interactivity.

The *major* advantage the Internet offers to any convention is the aspect of interactive communication. Unlike all other media of communication (excluding direct speech between two individuals) which are one-way media, i.e., a communication that emanates from one source and spreads in a single direction of communication to many receiving points, the Internet is two-way medium. In the Internet, any point can be both receiver and sender virtually simultaneously to any or all other points in the entire Internet. Thus, the Internet offers not only one-to-one communication but multiple communication as well in two simultaneous directions.

Thus, the convention delegates will be able to communicate not only with each other but with their constituents as well, and these constituents will be able to interact with the delegates *as decisions are made rather than after the fact as is common with such communication media as newspapers and television*. Delegates will be able to present amendment proposals which can be edited by both delegates and citizens through comments and suggestions to both the delegates and the convention itself.

In addition, the convention can seek out information from the citizens in a manner never done before. The convention can ask for suggestions regarding amendments that citizens feel are needed and get the answer *directly from the people in their own words* so that no "interpretation" shall be required. In this way, the people will not only be able to *elect* but *select* by examining, editing and otherwise presenting matters of concern to them on an individual basis which in today's world of conceptual politics is impossible. Thus, the individual will be of importance, not the political concept.

Of course, the convention will still employ the more traditional methods of communications such as fax, telephone and mail. In this way, citizens who do not have Internet access still will be afforded full access to the convention. In addition, these traditional methods of communication can be digitized so as eventually end up in the same form as the electronic communication. The result will be that no matter how a citizen elects to communicate to the convention, his message will be heard equally.

Further, arguments for and against a position can be presented not only to the convention by delegate and citizen alike, but to all concerned so that an exchange of ideas and issues will ensue, presenting an unprecedented volume of material from which to select.

5. Stay at home delegates.

Because the Internet literally will come to the individual delegate, bringing the convention with it, rather than requiring the delegate to go to the convention, this presents a unique situation having no political equal in American history. Simply put, delegates will be able to remain in and with those people who elected them rather than be transported to some far distant location to conduct their business. Thus, not only will the delegates be able to gather input from all over the nation through the Internet, they will be able to remain in *physical* contact with those most important to them, *the citizens who elected them to the convention, and will be able to gather information from them much more frequently than the common politician does today.* The delegate will literally have the best of both worlds.

There is another equally important advantage to the delegates not usually considered. The Internet is essentially controlled by the receiver, i.e., the delegate. The delegate therefore is able to select when and under


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

what conditions he will examine the information presented. This permits the delegate the ability to choose when he will “delegate.” Thus, delegates can work at night, on the weekends, in the morning or, through use of laptop computers, take the convention with them wherever they wish requiring only a wire or wireless phone system to connect them. For those not so financially advantaged, the convention is as close as the nearest public library, school, or fire station.

This local control in turn allows the delegate to remain in his own lifestyle. There is no compelling reason for a delegate to give up his or her employment or uproot his or her family life. Thus, already established incomes and lifestyles can remain essentially unaffected or at least under the control of the individual delegate more than a physical convention offers. Because of the advantage to the delegates of maintaining income and lifestyle, in addition to the lower cost of being a delegate, the field of delegates will be more diverse as the costs involved are much lower. This diversity will include groups not usually heard from in American political life, but groups whose participation is both important and significant. Hence, the convention will be represented by delegates more “in tune” with America.

6. Keeping the convention honest.

There will be those who will attempt to influence the convention to propose amendments by other means than just sending e-mail to delegates. Bluntly put, these people are like files around a manure pile: impossible to get rid of, a pest to everyone. It is one thing to lobby and campaign in public for a particular amendment. It is quite another to attempt to purchase influence.

Nothing in the Internet itself can help or substitute for the honesty and integrity required of each delegate in this particular matter. That character will have to come from within, and one hopes the electorate will look for just this strength in the people it elects. The greatest point in favor of the virtual convention is that the delegates will remain close to those who elected them and thus will be subject to their scrutiny and review. And unlike members of Congress who have been able to rely on the short memories of the electorate and their own gifts for sandbagging their constituents, a complaint to the convention—-and the public scrutiny that would follow—-is literally only a click away.

## CONVENTION VOTING PROCEEDURES BY THE STATES

ONE STATE, ONE VOTE


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The most important principle of American citizenship is that citizens both are citizens of the United States *and* of the individual states in which they reside.[1418] Further, the Constitution demands that these citizens be equal in all states as well as in the nation as a whole.[1419] The reason for this elaborate duplication of citizenship is a question of sovereignty that the Founders understood clearly.

In the Declaration of Independence, the Founding Fathers claimed that the people had the right to "alter or abolish" the government and thus claimed sovereignty for themselves *expressed* through the states (and later the national government created by the people in the Constitution).[1420]

As the Founding Fathers claimed that the "people" were sovereign and made no disclaimers regarding this sovereignty, it must follow that sovereignty was to be applied equally to all citizens.[1421] If this is true, then it follows all citizens must be equal in sovereign power, otherwise those citizens who were not risked being subjugated by citizens with more sovereign

---

[1418] "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. CONST., Art. IV, § 2 §§ 1; "All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..." U.S. CONST., 14th Amend.

[1419] "...nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST., 14th Amend.

[1420] "We, therefore, the Representatives of the united States of America, in General Congress, Assembled...do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are...Free and Independent States..." Declaration of Independence (1776). *See supra* text accompanying notes 921-1146;1209-1309.

[1421] The Founding Fathers committed themselves to this interpretation by the famous "all men are created, that they are endowed by their Creator with certain unalienable Rights..." Declaration of Independence, (1776).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

power. If this occurred in large measure, the entire principle upon which the country was founded would collapse.

As the Founders were creating a republican form of government, this meant at the very least that citizen representatives chosen by the people to represent them in the national government had to represent all citizens equally. Therefore, a population quota was placed in the Constitution so as to ensure all citizens were represented equally[1422] and thus ensure the sovereign powers of each citizen were equal in the national government. This was further ensured by having each representative possess equal voting power in the national government.[1423]

However, there was a second sovereignty that the Founders could not ignore: the states. Under the terms of the Treaty of Paris, either expressly or by implication, both the people and the states were granted sovereignty.[1424] The Founding Fathers made it clear in the Declaration of Independence that governments were formed by the citizens who created them to carry out their sovereign needs *and that "the powers of the government were derived from the consent of the governed."*[1425] As the colonial/state governments had long

---

[1422] "The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative..." U.S. CONST., art. I § 2 §§ 3.

[1423] While there is no specific provision in the Constitution that specifies each representative shall have one vote, the Constitution does specify each Senator "shall have one vote." *See* U.S. CONST., art. I, §3 §§ 1 and 17th Amendment. As there is no evidence this omission has ever resulted in any representative attempting to cast more than a single vote on any matter, it can be logically concluded after this period of time since the ratification of the Constitution that representatives, just as senators, have only one vote.

[1424] *See supra* text accompanying notes 921-1009.

[1425] "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed..." Declaration of Independence, (1776).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

existed in America, this line in the Declaration of Independence not only served to *transfer* sovereignty from the King of England to the citizens of the United States, but established the power of the people to determine which sovereign powers would be transferred to the states, thus making the people *supreme in sovereignty*. Therefore, to grant sovereignty to the people of the United States completely in the Treaty of Paris, it was required, either expressly or by implication, that both the sovereignty of the states and the people be acknowledged, as some of the people's sovereignty had already been transferred from the people to the states.

Thus, the Founders could not ignore the states in the Constitution, as some of the sovereignty possessed by the people would have otherwise been outside the scope, regulation and control of the Constitution had they done so.[1426] As the Treaty of Paris was incorporated by the Constitution as "law of the land,"[1427] it follows the sovereignty transferred to the states from the people became "law of the land." This accomplished, it follows that for the people to be able to exercise their sovereign right to alter or abolish, it must involve the states, as some of their sovereign power has been transferred to this political body, a body that has been granted the sovereign power to act independently within the constraints of the Constitution.[1428] As the entire

---

[1426] Hence, the Founders incorporated the Supremacy Clause into the Constitution (U.S. CONST., art. VI, § 2) which effectively covered *all* state sovereignty granted by the people, regardless of its nature.

[1427] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land..." U.S. CONST., art. VI §2.

[1428] This independence is demonstrated in Article IV and the Tenth Amendment but a careful reading of the Constitution shows it exists throughout most of the Constitution.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Constitution rests on the concept of the right of the people to "alter or abolish,"[1429] it follows the states must be involved in the alteration as they were given some of the sovereign power necessary to accomplish this by the people.[1430]

Therefore, the Constitution commands that representation for the sovereign citizens of the United States must be grounded on two factors: population within each state, and state sovereignty, neither of which can be ignored without usurping the sovereignty of the people. This edict is no less true for the convention to propose amendments: both population and states must be represented in order for the constitutional mandates of equal protection to be satisfied.

*One Vote, One Delegate*

As ours is a representative form of government representing the sovereign power of the citizens, it follows this representation must therefore represent the two criteria of that representation. First, citizens elected to

[1429] *See supra* text accompanying note 521.
[1430] However, it must be remembered this sovereign power is transitory, i.e., the states are merely a step in the process, and once they have exercised that sovereign power in the matter, their power is exhausted. *See supra* text accompanying notes 907-920.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

a representative position in the national government are elected to represent a particular population segment or political entity or both.[1431] Secondly, the constitutional authority of each elected representative must be equal to any other particular representative, otherwise the sovereignty of the particular population segment or political entity would be compromised to a greater representative sovereign authority. When expressed through his vote, thus exercising the opinion of those who elected him, the *voting authority* of that representative is as equal in influence and consequence as any other representative.

Naturally, the *political* power of a particular representative may be greater than another representative but not his constitutional authority. That authority is based on sovereignty, derived from the citizens who elect the representative. Under the equal protection clause of the 14th Amendment[1432] and the privileges and immunities clause of Article IV,[1433] no citizen can be more sovereign than any other citizen, i.e., no citizen's sovereignty can be more "weighted" than any other citizen's sovereignty.

A good example of this is to compare the sovereign voting power of a wealthy citizen and a poor citizen. Which citizen has greater influence in the election? Perhaps the wealthy man has spent millions supporting a particular candidate or issue. Perhaps the poor man can only hand out a few handwritten

---

[1431] *See infra* text accompanying note 1494.
[1432] "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..." U.S. CONST., 14th Amend. § 1. *See supra* text accompanying notes 1209-1244.
[1433] "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. CONST., art. IV § 2 §§ 1.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

leaflets to a few individuals. Would it therefore be correct to say the wealthy citizen has more influence in the vote? No. Because in the *actual vote*, which is the expression of sovereign authority by the two citizens, they are equal. Each possesses the same amount of constitutional authority. Their sovereign power of the right to alter or abolish, when actually expressed through a vote, is identical; so it must be with the representatives they elect.

This equality of sovereign authority is no less true of the convention delegates who are elected by their fellow citizens to represent their right to alter or abolish by composing proposed amendments to the Constitution. How much voting authority shall each delegate possess in the convention? The obvious answer is of course that each delegate shall have one vote, and usually this is where the matter ends in such congressional proposals as the Hatch Bill.[1434] However, it is important to establish *why* this answer is obvious as it explains other matters related to it.

In the federal government, representatives,[1435] senators,[1436] judges[1437] and even the president[1438] are limited to a single "vote" or expression of a specific, designated sovereign authority granted them by the people regarding

---

[1434] *See supra* text accompanying notes 596-608.
[1435] U.S. CONST., art. I, § 2 §§ 1. While it is not specified in the Constitution that a representative has only one vote, there is no reference anywhere in that document suggesting anything to the contrary.
[1436] U.S. CONST., art. I, § 3 §§ 1; *See also* U.S. CONST., 17th Amend.
[1437] While no specific provision in the Constitution specifies that a group of justices in the court system, such as in the appellate or the Supreme Court level, are limited to a single vote on a given issue, the fact remains there is no record of it being otherwise. This matter, therefore, after over two hundred years of procedure, becomes essentially self-evident.
[1438] The Constitution provides the President with only one veto on a given piece of legislation. U.S. CONST., art. I, § 7 §§ 3.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

an issue. The reason for this is that the "vote" is an affirmative or negative decision by the official casting that "vote." In our democratic system a single vote of "no" from a single source is neither more nor less significant than that single source voting ten times "no". The effect of the vote remains the same.[1439] In a collective body such as Congress, that single affirmative or negative "vote" by a particular official is then *numerically* summed to represent the *consensus* of all members of that governmental body expressing their granted sovereign power. This summation then becomes the "vote" of that body.

---

[1439] The Founding Fathers recognized this from the very beginning of our national history. Article V of the Articles of Confederation (1781) stated, "In determine question in the United States in Congress assembled, each State shall have one vote." Thus, at the time the 1787 Constitutional Convention was taking place, this concept was the law of the land. It would be absurd to maintain the Founding Fathers who used this one state/one vote concept at the Constitutional Convention of 1787 could be accused of intending another system of "count" for ratification *or* convention applications (*See supra* text accompanying notes 414-416,448.) as such a counting system would have been illegal under the Articles of Confederation. In order for such a system to be legal, therefore, it would have to have been specified in the new Constitution, which it was not. The Constitution granted *limited, specified* powers to the United States, and all other powers *not* specified were retained by the states.

"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." U.S. CONST., 10th Amendment.

Therefore, the old one state/one vote system specified in the Articles of Confederation, not altered or specified in the Constitution, had to be the Framers' intent as a basis to determine when a constitutional requirement took effect that involved a state decision. *See supra* text accompanying notes 506-521.

There are numerous examples of this one state/one vote concept in the Constitution. Article VII which established ratifying the Constitution clearly specified a numeric total in order for the Constitution to take effect. "The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same." U.S. CONST., art. VII. This clause, together with the application procedure of Article V, effectively transferred the specific and limited provision of the Articles of Confederation granting each state one vote in such matters as are placed before them into the Constitution and thus makes such a provision valid and in force to this day.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Thus, to express its sovereign power, a delegate representing a specific population or political entity requires no more than a single vote. Any voting system contrived to give delegates more than a single vote would be required under the doctrine of equal protection clause of the Constitution to give the same number or "weight" of votes to each convention delegate. The effect of the doctrine of equal protection would still be to give a delegate "one" vote, because no matter the number of votes granted, the actual vote devolves to a single vote by each delegate. Thus, for no other reason than concision, it is logical to allow each delegate no more than a single vote.

*The Equality of the States*

The Constitution clearly involves the states in the amendatory process. Members of Congress elected from the states have the power to propose amendments.[1440] State legislatures may apply for a convention to propose amendments that the national government is *obligated* to call if enough states apply.[1441] All ratification of proposed amendments is performed on a state-by-state basis in one form or another.[1442]

---

[1440] "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution..." U.S. CONST., art. V.
[1441] "...on the Application of the Legislatures of two thirds of the several States, [the Congress] shall call a Convention for proposing Amendments..." *Id.*
[1442] "[Amendments shall be valid] when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof..." *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Constitution contemplates only states as the political subdivisions of this nation. It does not imply or express the creation of special "population districts" for amendatory purposes that cross established state lines. The matter is self evident. Only the people, the branches of the national government, the convention, and the states are specified in the Constitution. No other political bodies are created by the document. In order for such creations to exist they must be expressed in the Constitution. From this expression could come implied powers, but as there is no such expression in the Constitution, there can be no implied powers.[1443] Thus, any such political divisions for the purpose of amendment other than by states is unconstitutional.

Under our federal system of government which consists of a national government and the individual sovereign states, each state is considered equal *in sovereign power and authority* with its sister states regardless of when that state was admitted to the Union.[1444]

---

[1443] "In construing the constitution of the United States as to the grant of powers to the United States and restrictions upon the states, the general rule adopted is that, where no exception is made in germs, none will be made by mere implication." State of Rhode Island v. Commonwealth of Massachusetts, 37 U.S. 657 (1838.)

[1444] "That one of the original thirteen states could now be shorn of such powers by an act of Congress would not be for a moment entertained. The question, then, comes to this: Can a state be placed upon a plane of inequality with its sister states in the Union if the Congress chooses to impose conditions which so operate, at the time of its admission...

"The position of counsel for the plaintiff in error is substantially this: That the power of congress to admit new states, and to determine whether or not its fundamental is republican in form, are political powers, and as such, uncontrollable by the courts. That Congress may, in the exercise of such power, impose terms and conditions upon the admission of the proposed new state, which, if accepted, will be obligatory, although they operate to deprive the state of powers which it would otherwise possess, and, therefore, not admitted upon 'an equal footing with the original states.'...

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"But what is this power? It is not to admit political organizations which are less or greater, or different in dignity or power, from those political entities which constitute the Union. It is, as strongly put by counsel, a 'power to admit states.'...

"The definition of 'a state' is found in the powers possessed by the original states which adopted the Constitution—a definition emphasized by the terms employed in all subsequent acts of Congress admitting new states into the Union. The first two states admitted into the Union were the states of Vermont and Kentucky, one as of March 4, 1791, and the other as of June 1, 1792. No terms or conditions were exacted from either. Each act declares that the state is admitted 'as a new and entire member of the United States of America.' 1 Stat. at L. 191, 189, chps. 7, 4. Emphatic and significant as is the phrase admitted as 'an entire member' even stronger was the declaration upon the admission in 1796 of Tennessee [1 Stat. at L.491, chap. 47] as the third new state, it being declared to be 'one of the United States of America,' 'on an equal footing with the original states in all respects whatsoever,'- phraseology which has ever since been substantially followed in [all subsequent] admission acts...

"'This Union' was and is a union of states, equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself. To maintain otherwise would be to say that the Union, through the power of Congress to admit new states, might come to be a union of states unequal in power, as including states whose powers were restricted only by the Constitution, with others whose powers had been further restricted by an act of Congress accepted as a condition of admission. Thus it would result, first, that the powers of Congress would not be defined by the Constitution alone, but in respect to new states, enlarged or restricted by the conditions imposed upon new states by its own legislation admitting them into the Union; and, second, that such new states might not exercise all of the powers which had not been delegated by the Constitution, but only such as had not been further bargained away as conditions of admission. ...

"And all constitutional laws are binding on the people in the new states and the old ones, whether they consent to be bound by them or not. Every constitutional act of Congress is passed by the will of the people of the United States, expressed through their representatives, on the subject-matter of the enactment; and when so passed it becomes the supreme law of the land, and operates by its own force on the subject-matter, in whatever state or territory it may happen to be. The proposition, therefore, that such a law cannot operate upon the subject-matter of its enactment, without the express consent of the people of the new state, where it may happen to be, contains its own refutation, and requires no further examination. ...

"The plain deduction from this case is that when a new state is admitted into the Union, it is so admitted with all the powers of sovereignty and jurisdiction which pertain to the original states, and that such powers may not be constitutionally diminished, impaired, or shorn away by any conditions compacts or stipulations embraced in the act under which the new state came into the Union, which would not be valid and effectual if the subject of congressional legislation after admission." Coyle v. Smith, 221 U.S. 559 (1911).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

This sovereign equality and authority extends to all constitutional questions.[1445] Thus, in the ratification process, each state, either through its state legislature or state convention, has a single "vote" either to accept or reject a proposed amendment.[1446] While both state conventions and legislatures may contain many voting members, as with the convention delegates, the final decision is reduced to a single vote by each state.

In the case of the convention to propose amendments, it is the *state* legislatures that initiate the formal process that culminates in the calling of a convention. As the Court noted in *Hawke*,[1447] the amendatory process cannot be changed or ignored; thus the participation of the states is obligatory. As with all other forms granted sovereign expression by the states, no state can have a greater "vote" than any other state either in application or ratification.[1448] No state, for example, has two ratification votes on a particular amendment.[1449]

---

[1445] *Id*.
[1446] U.S. CONST., art. V.
[1447] "It is not the function of courts or legislative bodies, national or state, to alter the [amendatory] method which the Constitutional has fixed." Hawke v. Smith, 253 U.S. 221 (1920).
[1448] The Supreme Court has ruled in several analogous decisions that the states, like the citizens in them, are equal to one another. In some instances, the Court has *reduced* state sovereignty, but the Court has never ruled that one state is superior in sovereignty over another. *See* Pollard v. Hagan, 44 U.S. 212 (1845); Escanaba Co. v. Chicago, 107 U.S. 678 (1883), Coyle v. Smith, 221 U.S. 559 (1911); United States v. Texas, 339 U.S. 707 (1950); United States v. Louisiana, 339 U.S. 699 (1950).
[1449] U.S. CONST., art. V; "...when ratified by the legislatures of three-fourths of the several states..." This numeric calculation combined with the term "several states" serves to make it impossible for a state to vote twice as the numeric calculation calls for a certain number of the "several states" to vote for ratification, and a second vote by a state or even states that have already "voted" would not bring that total any closer to realization. Thus, a state can only "vote" once in ratification of an amendment. *See supra* text accompanying note 907.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

While there is no constitutional limit on the number of times a state may apply for a convention to propose amendments, no state has more power of application than any other state.[1450] The Constitution requires a *total number* of two-thirds of the total states to apply for a convention to cause it to occur.[1451] Thus, it would be unconstitutional to count the state of Texas, for example, twice simply because they have two applications filed. Each state receives credit for one application for each two-thirds count toward a specific convention. It is not unconstitutional, however, once that two-thirds count is reached, to count the next application on file by a state toward a new set of applications which, when the two-thirds mark is again reached, causes another convention call.[1452]

Further, in the election of delegates to a convention to propose amendments, these elections must be held on a state-by-state basis with the

---

[1450] *Id.*; The only variance here is that Article V calls for two-thirds of the states to apply, but the numeric-several states clause again assures one state/one application toward the two-thirds mark of any set of applications.

[1451] *See supra* text accompanying notes 437,506,513-514,516,519,521.

[1452] This suit does not advocate the calling of multiple conventions as the evidence of state applications indicates. (*See infra* TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664; TABLE 2—STATES APPLYING FOR A CONVENTION, p.676). The utter confusion of *as many as eight concurrent conventions being called or the even more absurd possibility of eight conventions being called consecutively* dictates a more practical solution.

Due to the unconstitutional action of Congress in not calling a convention in a timely fashion, application set after application set has piled up. The only practical solution to this *laches* by Congress is for the Court to rule in finding the Congress unconstitutional in not calling a convention, and that this call required by the Constitution satisfies *all* applications of the states. However, this must be done with an *absolutely clear* ruling by the Court that *Congress may never again refuse to call a convention to propose amendments when the states have applied.* Otherwise, Congress will certainly use this precedent to circumvent the Constitution. The Court can justify this decision as there was no action before it until this suit which permits it to rule. Thus, when only one set of applications existed in the early 1900's, the Court could not rule and thus is free to resolve this matter expeditiously as it was problem not of its own creation.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

state legislatures possessing the constitutional power to prescribe the time, place and manner of the elections of these delegates.[1453] True, the Constitution does prescribe that Congress under this provision of the Constitution "may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators."[1454] Advocates favoring the regulating of the convention through this apparent constitutional loophole, however, should not jump too high for joy. As has been clearly shown under the 14th Amendment[1455] and by the fact the constitutional provision in question *specifically* refers to "Senators and Representatives," it is clear that any such law would have to equally affect members of Congress and could not be used only to regulate convention delegates. Further, it is clear that laws already in effect regulating the "time, places and manner" of election of "Representatives and Senators" must equally apply to the election of convention delegates.[1456]

As the Constitution clearly mandates that the legislatures of each state shall regulate the time, manner and places of election of delegates and members of Congress, and as such sovereign authority ceases at the border of each state where it meets another equal sovereign authority, there is no doubt that any election of delegates must be confined with the borders of each

---

[1453] "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations except as to the Places of choosing Senators." U.S. CONST., art. I, § 4, §§ 1. *See supra* text accompanying notes 1116,1338.
[1454] *Id*.
[1455] *See supra* text accompanying notes 1209-1244.
[1456] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

state. Because the delegates must represent all the sovereign power from which they were elected, it is clear the delegates must not only represent the population that elected them, but also the state from which they were elected.[1457]

Some scholars have attempted to maintain that the state possesses the *exclusive* right to appoint delegates, absent election.[1458] While conclusions

---

[1457] *See supra* text accompanying notes 1418,1419,1422,1424-1430.

[1458] "The first principle relevant to this reflection is one that infuses our entire constitutional structure: the principle of federalism. Regardless of any disparities of population among them, and notwithstanding the complexities of intergovernmental relations and power allocations, our constitutional union is a federation of distinct political communities and legal entities called States. And despite judicial decrees affecting apportionment of representation within the several States or within the federal House of Representatives, some features of our Constitution preclude subordination of State equality to the democratic ideal of an equal voice for every person. The Senate's composition, with two members from each State regardless of size or population is one example. The process of amendment under Article V is another.

"Ratification must be done State by State, whether by legislatures or by ratification conventions. This means, there now being fifty States of widely different population, that disapproval by barely more than a quarter of those voting in the thirteen least populous States could block an amendment urgently demanded by the overwhelming majority of American citizens. A comparable observation applies to 'applications' for a 'proposing' convention. Even assuming the State legislatures as now reapportioned mirror exactly the sentiments of the electorate, a bare majority of legislatures in each of the thirty-four smallest states could compel a convention that the substantial majority of Americans do not want. These hypotheticals are more extreme than anything reality will present, but they illustrate the ineluctable point: Article V processes cannot be approximated to the ideal of 'one person, one vote.' Amendments of the Constitution necessitates action State-by-State, not democratic action by the nation as a whole.

"It would anomalous, then, to require delegation strength in a convention for proposing amendments to be proportional to population. It would be no less anomalous to require that delegation strength comport with the respective States' representation in Congress, which, except for the equality of representation in the Senate, conforms roughly to the same population proportionality rule. And it would be worse than anomalous---it would be an arrogation of forbidden prerogative in order to impose a dubious rule---for *Congress* to direct that delegations to a convention for proposing amendments conform to any such rule. Neither Article V nor anything else in the Constitution warrants federal interference with State discretion in this matter. On the contrary, the power to decide the delegation size comes within the Tenth Amendment's provision that powers not delegated to the United States are reserved to the states; or to the people.

(Footnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

regarding the fact that the states must be involved in the convention process are correct, the conclusion that the states somehow have the implied power to remove the Constitution from the people, the source of its sovereign power, is ludicrous on its face. The idea of allowing the state legislatures *exclusive control of the amendatory process by allowing them the power to appoint delegates absent consent of the people through open elections* is so repulsive to the spirit of the Constitution, if not its letter,[1459] as to require no

---

"In default of any other established mechanism by which States (or the people in each of them) could do so, only the States' legislatures could make decisions on the size of State delegations. Whether to do so in the normal mode of legislation, with gubernatorial approval or veto, must be determined in each State on the basis of its peculiar state constitution and practices. It would be naïve and officious for academics to suggest that State legislators would need extraordinary guidance on how to proceed. They have their staffs and State legal departments---not to mention such organizations as the council of State Governments and the National Conference of State Legislatures, which are quite capable not only of giving counsel but also of coordinating efforts to prevent extravagant or dysfunctional delegation disparities.

"It would not be the first time that several separate legislatures have had to decide how large a delegation to send to a convention. Twelve did so in 1787. On that occasion, two legislatures designated three delegates, two designated four, five designated five, one designated six, and two designated seven. Incidentally, there was no correlation between the number of delegates appointed and the States' size or population.

"A larger delegation could be of little value unless each delegate were to enjoy a separate vote; and in that case, there would be incentive to send thousands. But the same principle elucidated earlier suggests that voting at such a convention would have to follow the rule equality among States. *That federalism principle which permeates the Constitution and particularly Article V, underscored by the absurd alternative of States vying to pack the house with delegates of their own choosing, compels the conclusion that whatever the number delegates from each State, every State's delegation must have equal voting power."*

Bond & Engdahl, *THE CONSTITUTIONAL CONVENTION*, *The Duties and Powers of Congress Regarding Conventions For Proposing Amendments,* Nat'l. Legal Center for the Public Interest,(1987)(emphasis added).

[1459] Bond's interpretation ignores two important constitutional points:

First, the fundamental, transcendent right of the people to alter or abolish *guaranteed* by the 9th Amendment and by treaty. *See supra* text accompanying notes 921-1147.

Second, the 14th Amendment requirement, expressed in *Hawke* (*see supra* text accompanying notes 25,272) and supported by other decisions, that only

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

further comment. True, in the Constitutional Convention of 1787 the legislatures did appoint their delegates just as they did the first two Continental Congresses. In all cases, however, the product of these appointments was the absolute resolution in the Declaration of Independence and the Constitution by these appointed delegates *that this was to be a nation of elected officials responsible to the will of the people and that the powers granted to these elected officials derived from a Constitution, not from politically expedient appointments.*

The convention application is a state power.[1460] However, this state power is clearly limited and clearly *transitory* in nature. It is in fact a sovereign power of the people *expressed through* the states.[1461] This power cannot be activated unless two-thirds of the states apply for a convention. Each individual state legislature has the independent authority to submit an application without approval of any other state legislature.

Once this power is used by the states, however, it has been exhausted.[1462] Beginning with the people compelling action through their representative states' bodies,[1463] these bodies act, each using the transitory sovereign power assigned them by the people through the Constitution. This transitory power is then transferred to Congress which is *obligated* to use it

---

United States citizens who are *elected* have the right to propose amendments to the Constitution. *See supra* text accompanying notes 1209-1244.

[1460] *See supra* text accompanying notes 1148-1162.

[1461] *See supra* text accompanying notes 921-1009,1135-1146.

[1462] *See supra* text accompanying notes 907-920.

[1463] *See supra* text accompanying notes 25,272,1035.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

in calling a convention to propose amendments.[1464] The power then becomes a power of the people under their right to alter or abolish in a new form, autonomous of both federal and state power, yet constrained by the Constitution.[1465] This then completes the sovereign circle. Hence, by brilliant design of the Founders, the power to alter or abolish remains in the hands of the people yet simultaneously is a state and federal power.

In this specific case, the people have established a procedure for the amendment of their Constitution, which provides that the amendatory process shall be carried out through the states. This does not mean the individual states cannot be guided by votes of the people, as discussed earlier,[1466] or that the fundamental right of the people to alter or abolish their government is abrogated by turning the matter to the exclusive control of the state legislatures. It simply means the amendatory procedure must be based on the states. This procedure must provide an equal voice for all citizens despite the fact the national population base has been divided into varying numbers by state boundaries which still must somehow achieve equality despite their population differences.

To satisfy the constitutional requirement of equal population, each delegate to a convention to propose amendments must represent an equal number of people within a state.[1467] The total number of delegates elected in each state is determined by the total population of the state. Thus, the larger the

---

[1464] "The Congress...shall...call a convention for proposing Amendments..." U.S. CONST., art. V.
[1465] *See supra* text accompanying notes 1135-1147.
[1466] *See supra* text accompanying notes 1109-1134.
[1467] *See supra* text accompanying notes 1336.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

population of the state, the more delegates in its delegation to the convention that state is entitled to have.[1468]

The problems associated with an exclusively population-based delegate vote at a convention to propose amendments faced the Founding Fathers. If they had permitted convention voting to be based on individual delegate votes, the convention could have easily degenerated into a contest between the states, each attempting to stuff the most number of delegates into the convention hall in order to insure passage of their particular views.[1469]

The Founders' solution was to work through the states, giving each of them a single vote regardless of population while permitting the state legislatures to send as many delegates to the convention as they pleased. Thus, the states' individual populations were represented by whatever apportionment the legislatures chose to employ, while their respective state sovereign authorities (and thus their sovereign powers) were protected equally at the *convention* level.

By using the states as the basis of representation in the Constitutional Convention, the Founders avoided the problem of delegate-stuffing while answering negatively the basic question of equal representation: if citizens are all equal, is a state which is more populous more "sovereign" than a smaller, less populous state?

---

[1468] *Id*.

[1469] The equal protection clause was placed in the Constitution to prevent this very thing from happening, thus providing constitutional protection of equal representation in government, giving an equal voice to all citizens of America, and providing equal sovereign authority for its representatives or delegates. As long as this goal is met, the specific numeric division of the convention is of no concern.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As pointed out by the Supreme Court, equality was never intended to promote superiority.[1470] As state sovereignty is derived from the sovereignty of its citizens,[1471] it is a small jump using the 14th Amendment to conclude that each state's authority and the authority of the delegates in the convention to propose amendments must be equal, i.e., that no state or delegate shall possess any more constitutional authority than any other state or delegate.[1472]

As convention delegates are elected only by a *segment* of the national population, specifically from a district within the boundaries of a particular state, the total number of delegates chosen from each state will, in the course of representing the total population of that state, differ from state to state. If population is the *exclusive* basis of sovereign expression, and the states are to be represented, as they must be in order to have all sovereign power of the people represented,[1473] then it follows the representative power of the states must be expressed by the number of delegates it possesses. While the sovereign power of the people in this case would apparently be equal, the state sovereign power is not.

---

[1470] "In this case, the discrimination complained of is exercised against him and other citizens, who are as justly entitled to protection from wrongful discrimination, and to the full protection of their constitutional right of equality before all the courts of the State as if they were of African descent. If not, that amendment which sought to establish equality before the law established inequality, by giving preference to the rights of the colored race, and affording them superior protection.

"The weight of authority and sound reason seem to establish, that while the immediate object sought by the adopting of the amendment was protection of the negro, its provisions extend and inure to the common benefit of all." Missouri v. Lewis, 101 U.S. 22 (1879).

[1471] *See supra* text accompanying notes 1418-1425.

[1472] *See supra* text accompanying notes 1418-1439.

[1473] *See supra* text accompanying notes 1425-1430.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Depending on the number of delegates, some states would receive a larger proportion of the people's sovereign power than others. This means the sovereign authority of each delegate would "count" more (or less) depending on which state the delegates happen to come from. Thus, in reality, the sovereign authority of the delegates are unequal. The Court has made it clear this will not be allowed.[1474]

---

[1474] "It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only a face value, could be constitutionally sustainable. *Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical*. Overweighing and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the states. Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor. *Weighting the votes of citizens differently, by any method or means*, merely because of where they happen to reside, *hardly seems justifiable*. One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.'" Lane v. Wilson, 307 U.S. 268, 275; Gomillion v. Lightfoot, 364 U.S. 339, 342.

As we stated in Wesberry v. Sanders [376 U.S. 1 (1964)], supra: "We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of district containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would...run counter to our fundamental ideas of democratic government..." Reynolds v. Sims, 377 U.S. 533 (1964). (emphasis added) (footnotes omitted).

The logic of this portion of the Court's ruling in Reynolds cannot be over emphasized. By determining that no voter in any state can be counted by any multiple, and by applying this logic though all the states via the 14th Amendment by the use of equal protection, it must be concluded that the same rule of equality must apply for voters or representatives of those voters when in a situation that such a comparison applies. In other words, the power of a representative or senator in Congress, *in so far as his voting power, i.e., how much effect his vote will count,* is the same, *no matter from which state he comes*. Therefore, his vote is equal with every other member of that body. The fact that he may come from a large state with large populace or a small

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

While the representative sovereign authority of the individual delegate is equal as each delegate represents the same population segment, the cumulative difference in number of delegates still presents the problem that state sovereign authority is not equal *between the states*, and the Constitution does not permit this.[1475] While politically problematic that all members of a state delegation would favor a particular amendment, thus actually using this sovereign advantage, nevertheless the constitutional potential does exist. In the course of events, the constitutional probability must take precedence over political improbability.

This constitutional potential means the effect of the "count" of each delegate vote has the potential to extend the sovereign power of the state in question *beyond its own borders*. The logic of this position is self evident. In order for a particular state to possess more sovereign authority due to its larger population, a corresponding decrease in sovereign authority must occur in another state. This is in violation of the Constitution which specifies that the "privileges and immunities" for citizens shall be equal in each state, and no state is permitted to create an inequality.[1476] Whether

---

state with small populace is discarded when the power of the vote is counted. While a state may be entitled to more representation within its state delegation due to its population, the fact remains no vote counts any more than any other vote.

As this ruling applies equally to all states and all districts *within* them, it follows it must also apply *between* the states, i.e., that the political balance of representation between districts regardless of which state the district is in, is the same.

[1475] *See supra* text accompanying note 1444.

[1476] *See supra* text accompanying note 1418.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

legislated by the state or not, such an action by a state gathering more sovereign authority than another state violates the Constitution *prima facie*.

Thus, the 14th Amendment, together with the original privileges and immunities clause in the Constitution, comes into play twice in this matter. First, it demands convention delegates receive equal protection under the law to that of members of Congress regarding their amendatory authority.[1477] Second, these provisions demand that because delegates are formed in groups with each group of delegates representing a varying number of population in each state, these groups nevertheless must be equal under the law, i.e., their sovereign authority must be equal.[1478]

This means the voting power of the delegates must be equal, i.e., one delegate's vote cannot "count" more toward amending the Constitution than another delegate's vote, and in this case that the group of delegates cannot "count" more than another such group. Thus, as each delegate group is in fact a state, it follows that no state's vote can be either greater or lesser than any other in the proposal of amendments to the Constitution. Clearly, each state must have an equally weighted vote in any convention just as each delegate must have an equally weighted vote.

This fact does not deprive the delegates of equal protection as previously described, nor does it violate the concept of the right to alter or abolish because this is part of the deliberative process set up by the citizens of the United States in the amendatory system of the Constitution.

---

[1477] *See supra* text accompanying notes 1211-1233,1234.
[1478] *See supra* text accompanying notes 1235-1236.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Hence, representation by delegates, i.e., individual delegates voting exclusively based on population, is unconstitutional as it would provide a means whereby a particular delegate's vote, based on the number of delegates from a particular state, would "count" more than another state's delegate vote.

There is only one way out of this constitutional dilemma. As the Founding Fathers determined over two hundred years ago, by acknowledging that the vote by the various states is an affirmation, they understood that delegate votes are for the purpose of expressing the vote *of the state, thus expressing both the sovereign authority of the people and the sovereign authority the people have given to the states.* In turn, this cumulative vote of the delegates, each of which has the same constitutional authority *within the boundaries of each state as each delegate represents the same population value and thus sovereign authority*, is used to express the vote of the state. In this manner, the sovereign authority of each delegate is equal.

Hence, the convention votes must be by state, not by delegate, the individual delegate votes being relegated to votes within each state delegation to establish the state's position on the question before them. The delegates' numbers in each delegation account for the equality required for population representation, while their summary vote accounts for equal representation among the several states. Thus, the Constitution is satisfied in all respects.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

As the convention will be conducted on the Internet,[1479] it is clear this will require the establishment of a Web page for each state with a method for each state delegate to vote and the matter automatically forwarded to the home page of the convention for cumulative votes. As to such parliamentary problems of motion, second, and so forth, based on the experience of the 1787 Convention, there is no reason that the rules that worked so well once will not work equally well again. Such matters should be left entirely to the discretion of the convention to work out.[1480]

*The Effect of Section Two, 14th Amendment*

Because of the one state/one vote rule, the effect of Section 2 of the 14th Amendment mandating reduction in congressional representation as a result of discrimination is null. Because delegate representation is based on congressional redistricting, it is conceded the *number of delegates* would be reduced, but *the cumulative effect* of the delegate's vote from the individual state would be unaffected, because no matter the number of delegates in the state delegation, the state is still entitled under its equal sovereignty protection to a single vote equal to that of the other states. It would simply be voted by a lesser number of delegates.

Thus, this suit will not pursue congressional reapportionment as mandated under Section 2 of the 14th Amendment because it does not directly

[1479] *See supra* text accompanying notes 1403-1417.
[1480] *See infra* text accompanying notes 1339-1351.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

affect the convention to propose amendments. However, such a constitutional aberration could not be tolerated should Congress attempt to legislate the convention. Congress' legislative authority is authorized by the Constitution, and this same Constitution also includes Section 2 of the 14th Amendment which also limits Congress.

As the courts have already found the states in violation of apportionment due to discrimination,[1481] it is clear Section 2 of the 14th Amendment must be applied in this matter as it provides the redress felt needed by the congressional authors of the 14th Amendment. If it is conceded that Congress is constitutionally able to legislate in such a fundamental area of the Constitution as regulating the entire amendatory process,[1482] it follows at the minimum this requires Congress itself be constitutional.[1483] Otherwise, the result is an unconstitutional body (Congress) regulating a constitutional body (the convention), clearly the exact opposite of what was intended in the Constitution: that the government *obey the Constitution which at the minimum means the government itself must be constitutional before it can demand that others it regulates comply with the congressional interpretation of its constitutional authority*.

While the Court has held *state legislatures* hold power even if malapportioned,[1484] it did not rule that Congress, *which is bound to be ruled by all provisions of the Constitution*, is likewise exempt. Thus, Congress is

[1481] *See supra* text accompanying note 1260.
[1482] *See supra* text accompanying notes 1053-1108,1125-1134.
[1483] *See supra* text accompanying note 1294.
[1484] *See supra* text accompanying note 1297.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

limited by the Constitution and can take no action unless authorized by the Constitution, in contrast to the states which are limited by the Constitution *only* if their actions are in conflict with the Constitution; otherwise they are unbounded by it.[1485] However, this suit is not seeking congressional reapportionment unless such unconstitutional legislative actions by Congress attempt to affect it, as this would *directly affect* the convention as was clearly *not* intended by the Founding Fathers.

*Passage of An Amendment Proposal---The Proper Ratio*

One of the final questions that must be addressed regarding the convention is, what proportion of vote must be taken by the states in a convention for an amendment proposal to be constitutionally valid. In other words, how many states must favor an amendment proposal in order for it to pass a convention to propose amendments. The Constitution is apparently silent on the matter as no such standard is expressed in Article V. However, this "silence" is a fabrication because those giving an opinion have simply failed to examine the entire Constitution for an answer.

Over the years, four numeric ratios have emerged as the required number for a convention vote to pass a proposed amendment: a unanimous vote used by the first convention, a three-quarters vote based on the notion that

[1485] "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." U.S. CONST., 10th Amend.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

ratification by the states requires this proportion; a two-thirds vote based on the fact the Constitution places this limit on the two Houses of Congress; and a simple majority vote based on the notion that as the Constitution is silent on the matter, usual parliamentary procedure is sufficient. Each of these must be examined in turn in the light of the entire Constitution for the answer.

*The Unanimous Vote*

The most succinct argument against the convention to propose amendments being required to vote unanimously on any amendment proposal before such an amendment is considered passed is that this “unanimity” is precisely why the Articles of Confederation failed to work. As a result of this failure, the Founding Fathers created a new governmental instrument, the Constitution, that allowed for needed changes in the government with less than a unanimous decision of all the states.

Madison discussed the matter directly:

“In one particular it is admitted that the convention have departed from the tenor of their commission. Instead of reporting a plan requiring the confirmation *of the legislatures of all the states,* they have reported a plan which is to be confirmed by the *people*, and may be carried into effect *by nine states only*. It is worthy of remark that this object, though the most plausible, has been the least urged in the publications which have swarmed against the convention. The forbearance can only have proceeded from an irresistible conviction of the absurdity of subjecting the fate of twelve States to the perverseness or corruption of a thirteenth; from the example of inflexible opposition given by a *majority* of one sixtieth of the people of America to a measure approved and called for by the voice of twelve States, comprising fifty-nine sixtieths of the people, an example still fresh in the memory an indignation of every citizen who has felt for the wounded honor and prosperity of his country. As this object, therefore, has been in a manner


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

waived by those who have criticized the powers of the convention, I dismiss it without further observation."[1486]

It is clear any vote by a convention to propose amendments to approve an amendment proposal never were intended by the Founding Fathers to need a unanimous vote in order to pass. True, the Founding Fathers in their Convention did *mandate* a unanimous vote in order to pass the *proposed Constitution* from their Convention, but it must be remembered they were operating under the Articles of Confederation which mandated unanimous votes by the states before an amendment could be passed.[1487] To have passed a proposed constitution absent of a unanimous vote might have raised an insurmountable legal issue that could have defeated the Constitution. However, clearly the Founding Fathers by their ensuing actions intended for this problem of amendatory unanimity to end with them.

*The Three-Quarters Vote*

The next ratio is a three-quarters approval for an amendment proposal to pass. This ratio appears a logical answer. The Constitution requires a three-quarters approval before an amendment proposal is ratified. Therefore, under equal sovereignty, the states must use a three-quarters vote to pass an

[1486] FEDERALIST No. 40, James Madison, January 18, 1788. (emphasis in original).
[1487] Technically speaking, the Convention did not pass the proposed Constitution by unanimous vote of the states. As Rhode Island did not send any delegates, it actually passed the Constitution *by a unanimous vote of the delegates present at the Convention*. To get around this problem, the Convention took the position that the proposed constitution was *advisory in nature* until ratified. *See supra* text accompanying notes 796,1486.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

amendment proposal as this is the ratio required under their ratification power.

Such hasty inference ignores the basic concept of equal sovereignty: the matter of sovereign equality is *between* the individual states and thus is a prescribed balance of power. Therefore, in the matter of ratification, it is proper to say that each state shall have equal effect by its vote in the ratification of an amendment, and it is equally proper to prescribe how much *collective* sovereign power is required to accomplish the particular power prescribed. This said, however, the matter terminates at this point.

Thus, the powers and limits of a specific prescribed sovereign power have absolutely no bearing on another prescribed sovereign power; each is an individual matter. The proof of this matter is self-evident in that the Constitution says that *each prescribed sovereign power of government may be amended without effecting any other power unless so prescribed or implied by the amendment*. Thus, the fact the states are required to have a three-quarters affirmation in order to ratify a proposed amendment has absolutely nothing to do with the sovereign power required by the states to approve a proposed amendment at a convention.

The key point is that a three-quarters vote is constitutionally enforceable unless a smaller ratio is also constitutionally valid, in which case the minimum constitutional standard must take precedence. It is a self-evident proof that if the minimum constitutional standard is met, this is all that is required for that constitutional effect to occur. Nowhere in the Constitution is it expressed or even implied that if a standard set by the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Constitution is met, it then must be exceeded *in order* to meet a minimum standard.

For example, in the overturning of a presidential veto, which requires a two-thirds vote in both Houses of Congress,[1488] it would be entirely unconstitutional that Congress, having met this standard, would then have to reach a three-quarters vote to override a veto. The Constitution, and thus the issue, is satisfied at the constitutional minimum.

Thus, a final conclusion must be withheld until the other two smaller ratios are examined to see if either is constitutionally valid and enforceable.

*The Majority Vote*

Clearly, a simple majority vote of the states is less than the three-quarters vote. Thus, if there is no intercession by the Constitution, the majority vote must be the acceptable standard of a vote of the states at a convention to propose amendments to pass a proposed amendment as it is the least ratio possible that satisfies the most elemental parliamentary rule that the majority rules. However, it is clear that parliamentary procedure must yield to the Constitution, and thus the final option, two-thirds, must be examined for its constitutional validity before a final judgment can be rendered.

[1488] U.S. CONST., art. I, § 7, §§ 2.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*The Final Option*

The final ratio is two-thirds. Unlike all the other ratios previously discussed, this ratio does related directly to the proposal process of amendments to the Constitution. Under Article V, two-thirds of the members of Congress in each House must vote in favor of a proposed amendment to the Constitution in order to submit it to the states for ratification.[1489] Thus, this ratio is a limit on the effect of a vote of Congress (and its members) to amend the Constitution. Under the doctrine of equal protection[1490] this ratio must become the ratio of affirmation required for the convention to propose amendments in order for those proposals to be constitutionally valid. Thus, the ratios of unanimous, majority and three fourths are constitutionally invalid.

The question however arises, with two sovereignties involved, population and state, how shall the two-thirds ratio be imposed? An often overlooked point is that the original intent of the Founding Fathers was to have two different sovereignties, population, represented in the House of Representatives, and states, represented in the Senate. The 17th Amendment changed the manner of election of the members of the Senate but *left unaffected the political body the Senate members represent*, specifically the states.

---

[1489] *See supra* text accompanying notes 869,1344.
[1490] *See supra* text accompanying notes 1211-1244.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Constitution is clear and unambiguous on this point. The House of Representatives is "composed of Members chosen every second Year by the People of the several states."[1491] Representatives are "apportioned among the several States...according to their respective Numbers...[and] shall not exceed one [representative] for every thirty Thousand..."[1492] There is no question these phrases in the Constitution indicate the intent of the Founding Fathers to base representation in the House of Representatives on population.

In contrast, "[T]he Senate of the United States [is] composed of two Senators from each State..."[1493] The 17th Amendment, which changed the method of choosing senators from the state legislatures to popular election, left the phrase "from each State" intact thus preserving the fact *senators are elected to represent the state in spite of the fact it is population, rather than state legislatures, that chooses them*.[1494]

---

[1491] U.S. CONST., art. I, § 2, §§ 1.
[1492] U.S. CONST., art. I, § 2, §§ 3.
[1493] U.S. CONST., art. I, § 3, §§ 1.
[1494] This amendment makes it clear that it is constitutional intent, not method of voting, that determines which sovereignty or sovereignties an official elected under the Constitution represents.

Hence, it is constitutionally valid that a member of the Senate represents not only those citizens who chose him (population) but the state as well. Thus, a single official may simultaneously and constitutionally represent more than one sovereignty if that office is so established by the Constitution. However, the constitutional prohibition against an official holding more than one civil office still remains in effect, thus prohibiting any official from holding *two* offices simultaneously and assuming more sovereign authority than any other single official in the United States.

"No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office." U.S. CONST., art. I, § 6 §§ 1. *See supra text* accompanying note 1349,1431.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Despite the different sovereignties of population and states the convention delegates must represent, the Constitution is clear on one point. Unlike Congress, the convention cannot consist of any upper and lower house. The reason is expressed in a Constitution which only authorizes "a convention,"[1495] i.e., a single proposing body, not two. The Constitution does not create two separate houses as it does with Congress. The two houses of such a hypothetical convention would have to be equal in power and sovereign authority (using the same doctrine of equal protection that applies between Congress and the convention as a whole) and thus would have the same identical single power prescribed by the Constitution: the power to propose amendments *but without any constitutional language mandating that a proposed amendment would have to pass both houses as is required for the two houses of Congress*.[1496] Indeed, the phrase "a convention" would preclude such a presumption of dual passage. Thus, such an arrangement of dual houses would create essentially *two* conventions, something prohibited by the clear language of the Constitution.

Thus, the problem with a bicameral convention is, if one "house" proposes one amendment and the other "house" proposes a different version of

---

[1495] "The Congress...shall call *a Convention* for proposing Amendments..." U.S. CONST., art. V. (emphasis added).

[1496] Unlike Congress, which the Constitution *specifically* demands both in Article I concerning legislative (U.S. CONST., art. I, § 7 §§ 2 "Every Bill which shall have passed the House of Representatives and the Senate...") and Article V, ("The Congress, whenever two thirds of *both* Houses shall deem it necessary..." (emphasis added).) concerning amendatory, where any action of Congress *requires consent of both Houses*, there is no such specific language regarding the convention to propose amendments. Thus, there is no *expressed provision* in the Constitution creating such a bicameral convention or, more importantly, *any constitutional requirement that the two houses of such a creation must work in consensus in order to propose an amendment.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

that same amendment, how will it be determined which version will be sent to the states as this is the only power the convention possesses?[1497] Any amendment the convention produces must eventually be presented to the states for ratification and would create constitutional chaos if it is presumed the Founding Fathers intended that two versions of an amendment on the same issue could be simultaneously submitted for ratification. If both versions were to somehow receive ratification approval, which would be effective should they contain contradictory provisions?

True, the Constitution does refer to "a Congress of the United States,"[1498] then immediately describes that Congress as consisting "of a Senate and House of Representatives."[1499] Logically, for the Congress to constitutionally exist, it "shall consist of a Senate and House of Representatives."[1500]

No such similar constitutional description exists for the convention to propose amendments. Instead, the Constitution describes "a Convention for proposing amendments."[1501] The intent and meaning of the word "a" by the Founders is clearly inferred by their use of it regarding Congress.[1502] The

---

[1497] *See supra* text accompanying note 2.
[1498] U.S. CONST., art. I, § 1.
[1499] *Id*.
[1500] *Id*.
[1501] U.S. CONST., art. V.
[1502] AN, [weakened variant of *one* from AS. *an.* the numeral one, which lost stress and shortened its vowel as it came into use as a mere particle; the older and fuller form of *a*.]
1. one; one sort of." (emphasis in original).
A "an abbreviation of Anglo-Saxon *an* or *ane*, one, used before word beginning with a consonant sound or a sounded *h;* as, *a* table, *a* home, *a* unicorn." (emphasis in original). WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED, 2nd ed. (1983).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Founders established “a” Senate and “a” House of Representatives. Their intent is obvious and unambiguous. The Founders created one Senate and one House of Representatives and obviously intended, by the use of the word “a”, that there be *one* convention.

Further, the Congress was established *primarily* by the Founding Fathers as a *legislative* body with amendatory power added almost as an afterthought.[1503] While the Constitution does require a two-thirds vote in each house of Congress, the *actual* act of proposing an amendment is done by Congress as a whole, i.e., a single body.[1504] Thus, it is clear it must be a convention that proposes amendments just as it is a Congress which proposes amendments.

*The Quorum Issue*

There is another element in this issue. The Supreme Court has ruled the two-thirds vote necessary in each House of Congress to pass a constitutional amendment is based not on two-thirds of the total membership of the House but

[1503] *See supra* text accompanying notes 325,356,362,366,374,388,389,395,399,400.
[1504] “*The Congress*, whenever two thirds of both Houses shall deem it necessary, *shall propose Amendments to this Constitution*...” U.S. CONST., art. V. (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

on two-thirds of the members present,[1505] assuming a quorum.[1506] Under the equal protection doctrine of the 14th Amendment, this Court decision must presumptively apply to the convention to propose amendments.[1507]

The Constitution places a quorum standard on both types of representation in Congress, i.e., population and state. Presumptively, under the doctrine of equal protection, this standard must be equally applied to both forms of representations in the convention. Thus, the quorum rule applies to the total number of delegates voting and to the total number of state delegations voting for a proposed amendment. This translates in real numbers to a minimum of twenty-six states represented by delegates at the convention[1508] for a quorum to exist. Of these twenty-six states, a favorable

---

[1505] *See supra* text accompanying notes 869,870,920.

[1506] A quorum is defined as ""a Majority of each [House]." U.S. CONST., art. I, § 5, §§ 1.

[1507] *See supra* text accompanying note 1236.

[1508] Or, in the case of the convention, as it is to be held on the Internet, on-line. The Internet does present an interesting twist to the issue in that it blurs the usual definition of the word "present." At a physical meeting, the matter is easily defined by a simple count of physical bodies in a given space. But in cyberspace no such physical world exists.

If, for example, a vote question is posted on the convention's page or is downloaded to the various delegates' e-mail, it is possible the delegates may not immediately receive this posting. Are they therefore "present" or not at the time the question before the "house" is asked? Thus, is there a quorum present? Obviously, the convention will have to determine this question in final form, but for the purposes of this suit, it will be assumed that as in Congress a specified period of time is set aside for members to vote, and as long as members vote within this prescribed time period, they are considered present and voting. Thus, a simple rule establishing such a period of voting for the delegates to a convention is constitutional as well as practical. The only difference would be that in Congress such voting is usually limited to fifteen minutes. In the convention, it is likely a period of perhaps as much as 48 hours might be more appropriate as many delegates who work all day might not read their postings for several hours until, for example, the evening hours and thus would not have a chance to respond immediately. This rule would also take into account the various time zones across the country so that delegates would not have to vote at inconvenient or unreasonable times.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

vote of two-thirds, or a minimum of eighteen states, would have to favor an amendment proposal to pass.

Admittedly, there is some danger with this conclusion, however constitutional it may be. With only twenty-six states required to constitute a quorum and only eighteen votes needed to pass a proposed amendment, political ambition might raise its ugly head. The Founders faced this threat, and the convention will have to be equally vigilant.[1509]

Thus, the quorum of the states is established, leaving only the question of the number of delegates needed to constitute a quorum. While a simple majority of each state delegation of the twenty-six states required for a state's quorum may appear appealing, there is little doubt that such an arrangement is, due to the doctrine of equal protection, unconstitutional.

The Constitution does not demand that a vote in either House of Congress be based on *individual* states for a quorum to exist. Rather, the quorum is based on the total number of members of the House present *representing the particular sovereignty* in question, regardless of which states or segments of population are represented. Thus, in the Senate, as far as quorum is concerned, it does not matter whether any specific state's senators are present, just so long as fifty-one senators, regardless of which states they

[1509] As Congress and the 1787 Convention have done, the convention to propose amendments will have to impose strict rules mandating attendance of delegates and the starting and adjournment of its on-line meetings in order to preserve the integrity of the convention against the possible actions of a few ambitious delegates lest they try what was attempted in the original Convention. *See supra* text accompanying note 440.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

represent, are present. In the House of Representatives, a quorum can exist that only includes nine states.[1510]

However, there is a difference between the Houses of Congress and the convention to propose amendments. The members of Congress represent *a single sovereignty* while convention to propose amendments delegates *represent two sovereignties*. Thus, *the quorum standards for both sovereignties, population and state, must be satisfied by the delegates in order for the convention to be constitutional*.

In the convention, representation exists for a state whether it is represented by all its delegates or a single delegate. Thus, *a quorum is created and satisfied when one or more representatives from at least twenty-six states are present*. In the matter of population, a quorum exists whether or not the delegates represent any specific state, *as long as their total number satisfies the minimum established by the Constitution*.

Therefore, in the convention to propose amendments, a simple majority of the total delegates, regardless of which states they represent, is all that is required to conduct business, assuming at least one delegate from each of the twenty-six states necessary to constitute the required state quorum exists. In other words, fifty-one percent of the delegates present constituting the population quorum must represent at least twenty-six states. Of this quorum, a two-thirds vote is required to pass an amendment proposal assuming a majority

[1510] With 435 members in the House of Representatives, a quorum in the House is 217. Assuming the representatives of California, 52 representatives; Texas, 30; New York, 31; Florida, 23; Pennsylvania, 21; Illinois, 20; Ohio, 19; Michigan, 16; New Jersey, 13; are assembled, the required quorum is present with members to spare.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

vote of the delegations from at least eighteen separate states favor the amendment.[1511]

## COUNTING THE PENDING APPLICATIONS

In determining the number of states that have pending applications for a convention for proposing amendments to the Constitution, several points must be recognized:

1. According to the text of Article V, Congress must call a convention upon the application of two-thirds of the state legislatures;[1512]
2. The only standard in the Constitution is the two-thirds *numeric count* request by the state legislatures for a convention to propose amendments;[1513]
3. The purpose or subject of the application for a convention for proposing amendments is irrelevant;[1514]
4. There is nothing in the language of Article V that provides applications may be withdrawn by the states once they have been filed;[1515]
5. There is nothing in Article V that supports a construction of contemporaneousness for applications;[1516]
6. Congress has no power to establish any pseudo-constitutional standards for state applications in order to allow them not to "count" as applications for a convention.[1517]

As the record shows,[1518] many applications contain a general statement as to the reason the states have applied for a convention for proposing amendments; other applications are more specific, providing the proposed text

---

[1511] Assuming all 535 delegates representing all 50 states are present and voting, this means an amendment proposal to be passed by the convention must receive a favorable majority vote from at least 34 state delegations with at least 359 of the 535 delegates favoring the measure regardless of which delegations they represent.
[1512] *See supra* text accompanying notes 2,437,439,440,497-521.
[1513] *See supra* text accompanying notes 2,437,439,440,497-521,728,834.
[1514] *See supra* text accompanying notes 669-735.
[1515] *See supra* text accompanying notes 837-920;1193-1205.
[1516] *See supra* text accompanying notes 736-789.
[1517] *See supra* text accompanying notes 522-668;790-833.
[1518] *See infra*
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664;
TABLE 4—GENERAL APPLICATIONS, NON SPECIFIC, p.683;
TABLE 5—GENERAL APPLICATIONS, INCLUDING SPECIFIC, p.683.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

for an amendment to the Constitution. The fact that a state has provided its rationale for submitting its application, or even specific language for a proposed amendment, does not mean that the application should be considered without effect. It is still an application for a convention for proposing amendments to the Constitution. Moreover, even if reference to the reason for the application was intended by the state legislature as a unstated attempt to limit the convention to one subject, the state has no authority to limit a convention for proposing amendments to a particular subject.[1519]

*The Question of Singularity*

At first reading, it would appear the term "the application" implies a singularity, i.e., the *same* application for an "amendment." Even if the Founding Fathers and the Supreme Court are ignored in defining the term "on the application of the state legislatures of two-thirds of the several States..."[1520] there is little help even in the semantics of the language to those wishing for "same subject" interpretation; the above cited authorities have repeatedly disposed of the idea of applications for an amendment as opposed to the proper interpretation of applications by the states for a convention.[1521]

---

[1519] *See supra* text accompanying notes 837-850.
[1520] *See supra* text accompanying note 2.
[1521] *See supra* text accompanying notes 261,271-273,284,434-440,491-521,527,551,670,728,1034,1074,1284.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Nor is there help in the apparent singularity of the phrase, "on the Application of the Legislatures of two-thirds of the several States..."[1522] which advocates of "single subject" apparently seem to rely on, interpreting this phrase to somehow imply the states must submit to Congress the exact same application. Nothing else in the *actual language* of Article V supports such a supposition. These supporters use this "interpretation" to base their contention Congress has the power to regulate a convention to propose amendments without providing a single shred of authoritative proof[1523] for their interpretations.[1524]

---

[1522] *See supra* text accompanying note 2.

[1523] This suit defines authoritative proof as:

"Authority. Permission. Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge. Control over; jurisdiction... Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties."

"Proof. The effect of evidence; the establishment of a fact by evidence."

"Evidence. Any species of proof, or probative matter, legal presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc. for the purpose of inducing belief in the minds of the court of jury as to their contention. Taylor v. Howard, 111 R.I. 527, 304 A.2d 891, 893. Testimony, writings, or material objects offered in proof of an alleged fact or proposition." BLACK'S LAW DICTIONARY 6th Ed. (1990).

Using these definitions, authoritative proof is the establishment of facts based on evidentiary proof in the form of records, documents or other established legal acts derived from a source[s] of authority that possess the legal constitutional power to enforce its decision[s] based on that evidence and facts regarding a convention to propose amendments and related questions to it, or which that source[s] of authority recognizes as a valid source to provide such facts and evidence.

[1524] Such examples can be found in Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988):

"In providing that 'on the Application of the Legislatures' Congress 'shall call a Convention,' article V *implies* that Congress is the agent entrusted to receive, *inspect, and decide on the validation of applications*, and that applications must be submitted to Congress to be counted toward a convention call." p.94. (emphasis added).

There is no dispute that "applications must be submitted to Congress [in order] to be counted toward a convention call." But the clear intent of the

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Founders (*see supra* text accompanying notes 434-440,491-521) makes it clear there was no implication intended to allow Congress to "*decide on the validation of applications*." Further, as already noted, Caplan fails to provide a *single authoritative reference* to substantiate this sweeping assertion by the author. On the other hand, the opposing view represented in this suit has cited numerous Supreme Court cases to provide support together with the Founding Fathers speaking directly on the matter. *See supra* text accompanying notes 261,271-273,284,434-440,491-521,527,551,670,728,1034, 1074,1284.

Other authors are equally lax in providing substantiation in this critical area. One author at first seems to concede the obligation of Congress to call a convention and its ministerial powers in the call. Bond & Engdahl, *THE CONSTITUTIONAL CONVENTION, The Duties and Powers of Congress Regarding Conventions For Proposing Amendments",* Nat'l. Legal Center for the Public Interest,(1987):

"It thus *seems quite certain* that Congress *is obligated* to call a convention when the requisite *number* of States apply, so that its function in doing so is purely ministerial."

However, Bond then backtracks on his own statement saying:

"The questions...are secondary to questions about how Congress *should determine whether the requisite number of States have applied for a convention*... The test for determining the validity of Congress' answers to such questions should be whether they ensure that a convention will be called if the applications of two-thirds of the States constitute a contemporaneous consensus that a convention should be held to consider a matter or matters of concern. That is the only criterion which reconciles the right of the States to demand a convention and Congress' duty to call it. The 'contemporaneity' requisite to Congress' call obligation is not explicit in the text of Article V, but it seems implicit even without any certainty as to how much time should be permitted to elapse. The notion that the Congress is obligated to call a convention, simply because two-thirds of the States have---over some extended period of time---requested on, makes little sense." p.4. (emphasis added).

Bond is unique in his assertion, and of course, provides no authority to substantiate it. It offends intellectual honesty in that it is not even logical. Bond maintains Congress "is obligated" to call a convention "when the requisite number of states apply" and then proceeds to refute his own statement by providing a means where Congress can refuse to do what is obligated.

Another author, Edel, states:

"That this position does not resolve the question is clear the fact that Article V does not mention limitations when it speaks of a convention. Short of denying the theory of implied powers and implications of the 'necessary and proper' clause, it is difficult to insist that complete silence regarding congressional authority in this one segment of the Constitution indicates an intent to deny congress any authority in that area...

"As the Supreme Court said more than fifty years ago, Article V 'is intended to invest Congress with a wide range of power in proposing amendments.' [footnote cites Dillon v. Gloss, 256 U.S. 373 (1921)] Although this view was offered in the context of a complaint that Congress had acted illegally in placing a limit on the time permitted states for ratification of the Eighteenth Amendment, it was a broad response to an equally broad contention that 'Congress has no power to limit the time of deliberation *or otherwise control* what legislatures shall do in their deliberation' [emphasis

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Throughout our nation's history state legislatures have presented a variety of legislative subjects to Congress usually in the form of memorials.[1525] Thus, Congress routinely receives a variety of requests from the states on a variety of subjects. These memorials were in common use even in the colonial days.

Realizing this fact, the Founding Fathers made it clear in the language of Article V that the phrase "the application" *must* relate exclusively to the calling of a convention as opposed to involving the legislative powers of

---

in original text]. If the 'wide range of powers' allows conditions to be placed on some actions of state legislatures, it must surely permit the establishment of ground rules for a national convention that cannot come into existence except on the call of Congress...

"If it is reasonable that the national legislature provide uniform procedures for state conventions, it is practically inevitable that Congress perform the same function in the process of calling a national convention. The question is not whether there should be federal control, but How much federal control?" A CONSTITUTIONAL CONVENTION: THREAT OR CHALLENGE (1981) (Edel). p. 96-97.

While Edel does refer to a Supreme Court decision, it is interesting that he, like all the other authors, ignores the most persuasive statement by the Supreme Court favoring their position. This is of course the all encompassing authority granted to Congress in *Coleman*. It can only be presumed the authors have, like the Court, apparently rejected the premise of *Coleman*. *See supra* text accompanying notes 1053-1108,1208. Further, Edel's reliance on *Dillon* can be refuted. See *supra* text accompanying note 728.

In *UNFOUNDED FEARS: MYTHS AND REALITIES OF A CONSTITUIONAL CONVENTION* (1989)(P. Weber & B. Perry), the authors review all of the applications placed before Congress, then without substantiation state:

"The two-thirds majority required by Article V to trigger Congress' convention call has proved insurmountable over the two centuries since the founding." p.75.

Again these authors fail to provide authoritative substantiation, even to using *Coleman* for their primary argument on the convention to propose amendments: that the applications from the states for a convention must be for the same subject.

But the greatest offender in this is the American Bar Association whose August, 1973 report on the matter contains so many errors and misstatements as to requires two *sections* of this suit in order to respond to them. *See infra* APPENDIX C---1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, p.1.

[1525] "Memorial. A document presented to a legislative body, or to the executive, by one or more individuals, containing a petition or a representation of facts." BLACK'S LAW DICTIONARY 6th Ed. (1990).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress.[1526] Thus, the Founders enforced the separation of congressional legislative and amendatory powers.[1527] The words "the application" refers not to the singularity of the application[1528] as it pertains to same language, same amendment etc., but to the *singularity of function* of the application[1529] which is to compel Congress to call a convention to propose amendments.

*An Application Is An Application*

Simply put, an application is an application.[1530] An application cannot be called something else just because it includes reference to the reason it

---

[1526] *See supra* text accompanying note 437-442.
[1527] *See supra* text accompanying notes 560-579.
[1528] Even the choice of the word "the" as opposed to the more general "a" or "an" lends strength to this position.
"The. An article which *particularizes* the subject spoken of. In construing statue, definite article 'the' particularizes *the subject which it precedes* and is word of *limitation* as opposed to indefinite or generalizing force 'a' or 'an' Brooks v. Zabka, 168 Colo. 265, 450 P.2d 654, 655." (emphasis added).
"Particular. Relating to a part or portion of anything; separate; sole; single; individual; specific; local; comprising a part only; partial in extent; not universal. Opposed to general. State v. Patterson, 6 Idaho 67, 88 P.2d. 493, 497. Of, or pertaining to, a single person, *class* or thing. Albin v. Hughes, Tex. Civ. App., 304 S. W.2d 371, 372."
"Class. A group of persons, things, qualities, or activities having common *characteristics* or attributes. In re Kanawha Val. Bank, 144 W.Va. 346, 109 S.E.2d 649, 670."
"Characteristics. 1. That which constitutes a character; that which characterizes; a distinguishing trait, feature, or quality; *a peculiarity*." BLACK'S LAW DICTIONARY 6th Ed. (1990). (emphasis added).
[1529] "The act of making *a request* for something." BLACK'S LAW DICTIONARY 6th Ed. (1990).(emphasis added). *See supra* text accompanying note 1530 for full definition of "application."
[1530] The word "application" is defined as:
"A putting to, placing before, preferring a request or petition to or before a person. The act of making a request for something. A petition. The use or disposition made of a thing. A bringing together, in order to ascertain some relation or establish some connection; as the *application* of a rule or principle to a case or fact. An appeal or petition, especially as written or presented; a putting to, placing before; preferring a request or petition to

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

is made.[1531] Nor is its constitutional intent altered by its form or content.[1532] The word "application" must be read in its "natural and obvious sense."[1533] As the term "application" is a general one, it must be construed to include applications of all types, including those that provide a statement regarding why the application is made. This principle is demonstrated in *Fletcher v. Peck*,[1534] wherein Chief Justice John Marshall construed the term "contract" as used in the Constitution:

---

or before a person; the act of making a request for something, Sparacino v. Ferona, 9 Ill. App.2d. 422, 133 N.E.2d. 753, 755." BLACK'S LAW DICTIONARY 6th Ed. (1990). (emphasis in original).

The relevant portion of this definition is "the act of making a request for something," and "a petition." The relevant definition of the term "petition" clarifies the issue:

"A formal written request addressed to some governmental authority." *Id.*

The Founding Fathers intended Congress be *required* to call a convention on the application to two-thirds of the states; therefore there are no options on the part of that body as to the "requests" made by the states. Thus, the word "appeal", which implies consideration and judgment on the part of the body being appealed to, or the use of the word "request" in the sense of providing options to that body upon which the request is made, while certainly accurate and applicable in most cases, simply cannot apply in this specific, narrow case. *See supra* text accompanying notes 2,437-439,506-513.

[1531] To do this would put the form of the application over its function, which is to cause the calling of a convention to propose amendments. In an early Supreme Court case involving the Compact Clause (U.S. CONST., art. I, § 10, §§ 3) the Court addressed the proposition of form over function in the Constitution.

The Court said:

"Can it be supposed, that the constitutionality of the act depends on the mere form of the agreement? We think not. The Constitution looked to the essence and substance of things, and not to mere form. It would be but an evasion of the constitution to place the question upon the formality with which the agreement is made." Holmes v. Jennison, 39 U.S. 540 (1840).

Thus, it is clear the Court regards the function of an application, that of causing a convention to propose amendments to be called, paramount to its form. Noticeably, this decision is particularly significant as it relates to state compacts. The argument can be well made that the convention is merely another constitutionally permissible compact. *See supra* text accompanying notes 551,1391.

[1532] *See supra* text accompanying notes 1514,1517,1519-1531.

[1533] Martin v. Hunter's Lessee, 14 U.S. 304 (1816). *See supra* text accompanying note 551.

[1534] Fletcher v. Peck, 10 U.S. 87 (1810).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

"[S]ince the constitution uses the general term contract, without distinguishing between those which are executory and those which are executed, it must be construed to comprehend the latter as well as the former...

"Is the clause to be considered as inhibiting the states from impairing the obligation of contracts between two individuals, but as excluding from that inhibition contracts made with itself? The words themselves contain no such distinction. They are general, and are applicable to contracts of every description."[1535]

By the same logic, the Constitution uses the general term "application," without distinguishing between applications for a general convention and applications relating to a particular subject. The term must therefore "be construed to comprehend the latter as well as the former." And because the term "application" is general in nature, it is appropriate to applications of every description.

In sum, a state may give the reason for its submission of a convention application in its application, but this reason has no effect on the constitutional purpose of the application which is to compel Congress to call a convention by acting as a valid application to establish the two-thirds threshold of applying states for the calling of a convention for proposing amendments. Thus, in the *counting* of applications, the matter is entirely a numeric count,[1536] i.e., when two-thirds of the states have applied for a convention, the Congress is mandated to call one.[1537]

Also, it is not appropriate to omit any application on the theory of contemporaneousness or any other pseudo-constitutional ground because the

---

[1535] *Id.*
[1536] *See supra* text accompanying note 513.
[1537] *See supra* text accompanying note 514.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

constitutionally granted powers cannot be withdrawn on any theory of *laches* or failure of Congress to act.[1538]

In making the count of the applications pending for a convention to propose amendments to the Constitution, none can be ignored due to recession by the states.[1539] At least two-thirds of the states have applied for a convention, and these applications were submitted to Congress *prior* to any recessions being submitted by the states to withdraw them.[1540] Even if the states possessed the power of recession, which they do not, they certainly have no power to veto the Constitution any more than Congress does, and as over two-thirds of them have applied for a convention prior to any submission of any recessions, such recessions must be considered invalid as they would serve to attempt to veto a provision of the Constitution mandating congressional action. Hence, any recessions by the states are invalid. Thus, these applications that the states have attempted to recess must be counted toward the constitutional two-thirds requirement regardless of any attempt at recession.

Any attempt to construe the term “application” narrowly prevents the full implementation of Article V. The most basic rule of constitutional construction is that the words contained in the Constitution are to be given full meaning and effect.[1541] In the words of Justice Story, “we cannot rightly

---

[1538] *See supra* text accompanying notes 730-836.
[1539] *See supra* text accompanying notes 890-920.
[1540] *See* TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664; TABLE 3—STATE RECESSIONS, p.678.
[1541] *See supra* text accompanying notes 669-735.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

prefer, of the possible meanings of its words, that which will defeat rather than effectuate the Constitutional purpose."[1542] The term "application" must be given substance and effect. To quote Justice Frankfurter, no constitutional guarantee "should suffer subordination or deletion."[1543] Nor, as was clearly stated in *Miranda v. Arizona*, can constitutional rights, whether they be granted to the states or the people, be removed by legislative fiat.

"...Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."[1544]

Thus having eliminated all excuses that have been politically proposed for *not obeying the clear language of the Constitution*, we left with more than a sufficient number of applying states to satisfy the constitutional mandate of Article V, specifically every state in the Union.

## STATE APPLICATIONS FOR A CONVENTION

### INTRODUCTION

Until now this suit has discussed the deliberate unconstitutional *laches* of Congress in calling a convention to propose amendments in terms of intent of the Founding Fathers, interpretations by the Supreme Court and provisions of the Constitution related to Article V. The following tables are derived from three sources: "*A Lawful and Peaceful Revolution: Article V and Congress' Present Duty to Call a Convention for Proposing Amendments*", 14 HAM. L. REV.

[1542] United States v. Classic, 313 U.S. 299, 316 (1941).
[1543] Ullmann v. United States, 350 U.S. 422, 428 (1956).
[1544] Miranda v. Arizona, 384 U.S. 436, 491 (1966).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

(1990) by the Honorable Bruce M. Van Sickle[1545] and Lynn M. Boughey;[1546] *"Constitutional Brinksmanship: Amending the Constitution by National Convention",* by Russell L. Caplan;[1547] and *Unfounded Fears: Myths and Realities of a Constitutional Convention"*, by Paul J. Weber[1548] and Barbara A. Perry.[1549] Primary evidentiary reliance is made on the material from Senior Federal District Court Judge Van Sickle. This material summarizes the immense volume

[1545] "The Honorable Bruce M. Van Sickle is the United States Senior District Court Judge for the District of North Dakota. Judge Van Sickle received his B.S.L.(1939) and L.L.B.(1941) from the University of Minnesota. Following service in the Pacific during World War II, he practice law at Minot, North Dakota (1947-71), and served in the 1957 and 1959 North Dakota Legislative Sessions. Judge Van Sickle was appointed as a federal judge in 1971, and began senior status in 1986... Judge Van Sickle was nominated by President Richard Nixon, and received immediate confirmation by the senate without the necessity of attending any Senate hearings." Van Sickle, Boughey: "A Lawful and Peaceful Revolution: Article V and Congress' Present Duty to Call a Convention for Proposing Amendments", 14 HAM. L. REV. (1990).

[1546] "Lynn M. Boughey is an attorney practicing law in Minot, North Dakota. Lynn is a Truman Scholar (1977). He received his B.A. from Grinnell College (1979) and his J.D. with honors from Hamline University School of Law (1983), where he served as Articles and Managing Editor of the Hamline Law Review. Following law school, he clerked for Judge Van Sickle (1983-85) and the Honorable Gerald VandeWalle, Justice, North Dakota Supreme Court (1985-86). From 1986 to 1989, he was in private practice at the law firm of Pringle & Herigstad, Minot, North Dakota, specializing in litigation. From 1989 to 1990, Lynn served as Deputy Insurance Commissioner for the State of North Dakota." *Id.*

[1547] "Russell L. Caplan, an attorney with the United States Department of Justice, holds degrees from Dartmouth, Oxford (as a Fulbright Scholar) and the Yale Law School. His writing on constitutional theory and history has appeared in such journals as the *Harvard Law Review*, the *Virginia Law Review*, and *The New Republic*." Constitutional Brinksmanship: Amending the Constitution by National Convention. Caplan (1988).

[1548] "Paul J. Weber is a professor and chairman of Department of Political Science at the University of Louisville, Kentucky. He wrote *Private Churches and Public Money* and contributed to numerous publications including *The Review of Politics, Polity, the Journal of Law and* Politics, and several law reviews." *Unfounded Fears: Myths and Realities of a Constitutional Convention*, by Paul J. Weber and Barbara A. Perry (1989).

[1549] Barbara A. Perry is an assistant professor of Political Science at Sweet Briar College. She has written articles for the *Journal of Church and State* and the *Journal of Law and Politics* and is at work on another book regarding the U.S. Supreme Court's "Catholic Seat." *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

of applications[1550] by the states to Congress in the Congressional Record[1551] for a convention to propose amendments. These tables are intended to provide conclusive evidence regarding the tyranny of Congress by substantiating:

1. The numeric count of applying states as required by Article V of the Constitution has been satisfied and;
2. *Even when Congress establishes a pre-condition for calling a convention, it will not honor its own rules*.

The evidence shows any construement of Article V contrary to the original intent of the Founding Fathers, i.e., a numeric count of states, will be seized by Congress to prevent a convention call as a method to veto the Constitution and maintain its tyrannical power. This must be permanently struck down by the Court.

## THE BIG PICTURE

According to Senior Federal District Court Judge Van Sickle, the states have submitted a total of 523 applications and 44 recessions to Congress.[1552] As Table 1 clearly shows, all but a handful of these applications have been

---

[1550] "The contents of voluminous writing, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court." Federal Civil Rules, Rule 1006 (1999).

[1551] "Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

"(1) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution." *Id*. at Rule 902.

[1552] *See infra*,
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664,TABLE 3—STATE RECESSIONS, p.678.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

submitted to Congress in this century and over half of the total applications submitted by the states are since 1963.[1553]

**TABLE 1—STATE APPLICATIONS FOR A CONVENTION**

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 1 | 1789 | Virginia | General | 1 Annals of Congress 248 (J Gales ed. 1789) |
| 2 | 1789 | New York | General | 1 Annals of Congress 248 (J Gales ed. 1789) |
| 3 | 1790 | Rhode Island | General | 1 Annals of Congress 1103 (J Gales ed. 1790) |
| 4 | 1899 | Texas | General | 33 Cong. Rec. 219 (1899) |
| 5 | 1899 | Texas | General | 33 Cong. Rec. 280 (1899) |
| 6 | 1901 | Oregon | Direct election of senators | 35 Cong. Rec. 117 (1901) |
| 7 | 1901 | Minnesota | Direct election of senators | 34 Cong. Rec. 2560 (1901) |
| 8 | 1901 | Minnesota | Direct election of senators | 34 Cong. Rec. 2615 (1901) |
| 9 | 1901 | Minnesota | Direct election of senators | 34 Cong. Rec. 2680 (1901) |
| 10 | 1901 | Nebraska | Direct election of senators | 35 Cong. Rec. 1779 (1901) |
| 11 | 1901 | Michigan | Direct election of senators | 35 Cong. Rec. 117 (1901) |
| 12 | 1901 | Pennsylvania | Direct election of senators | 45 Cong. Rec. 7118 (1910) (1901) |
| 13 | 1901 | Montana | Direct election of senators | 35 Cong. Rec. 208 (1901) |
| 14 | 1901 | Tennessee | Direct election of senators | 35 Cong. Rec. 2344 (1901) |
| 15 | 1901 | Tennessee | Direct election of senators | 35 Cong. Rec. 2707 (1902) |
| 16 | 1901 | Arkansas | Direct election of senators | 45 Cong. Rec. 7113 (1910) (1901) |
| 17 | 1901 | Colorado | General (Direct election of senators) | 45 Cong. Rec. 7113 (1910) (1901) |
| 18 | 1901 | Idaho | Direct election of senators | 45 Cong. Rec. 7114 (1910) (1901) |
| 19 | 1901 | Minnesota | Direct election of senators | 45 Cong. Rec. 7116 (1910) (1901) |
| 20 | 1901 | Texas | General | 45 Cong. Rec. 7119 (1910) (1901) |
| 21 | 1901 | Nevada | Direct election of senators | 35 Cong. Rec. 112 (1901) |
| 22 | 1902 | Tennessee | Direct election of senators | 35 Cong. Rec. 2344 (1902) |

[1553] Even if applications received by Congress from the states were considered invalid due to malapportionment, which they are not,(*See supra* text accompanying notes 1245-1309.)the states have reapplied in sufficient numbers to again compel Congress to call a convention and have even satisfied the unconstitutional "same subject" requirement by applying for "Balanced Budget". Including general applications,(*See infra* text accompanying notes 1565-1568.) a total of 38 states have applied for this subject since 1963. In terms of numeric count applications, which is the only constitutional requirement the states need satisfy,(*See supra* text accompanying notes 505-514.)forty-six states have applied since 1963. Thus, under either interpretation, malapportionment has no effect on the obligation of Congress to call a convention.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 23 | 1902 | Kentucky | Direct election of senators | 45 Cong. Rec. 7115 (1910) (1902) |
| 24 | 1902 | Tennessee | Direct election of senators | 35 Cong. Rec. 2707 (1902) |
| 25 | 1903 | Utah | Direct election of senators | 45 Cong. Rec. 7119 (1910) (1903) |
| 26 | 1903 | Washington | General (Direct election of senators) | 45 Cong. Rec. 7119 (1910) (1903) |
| 27 | 1903 | Oregon | Direct election of senators | 45 Cong. Rec. 7118 (1910) (1903) |
| 28 | 1903 | Nevada | Direct election of senators | 45 Cong. Rec. 7117 (1910) (1903) |
| 29 | 1903 | Nebraska | Direct election of senators | 45 Cong. Rec. 7116 (1910) (1903) |
| 30 | 1903 | Illinois | General (Direct election of senators) | 45 Cong. Rec. 7114 (1910) (1903) |
| 31 | 1903 | Wisconsin | Direct election of senators | 37 Cong. Rec. 276 (1903) |
| 32 | 1903 | Nevada | Direct election of senators | 37 Cong. Rec. 24 (1903) |
| 33 | 1903 | Washington | General (Direct election of senators) | 45 Cong. Rec. 3035 (1911) (1903) |
| 34 | 1904 | Iowa | Direct election of senators | 38 Cong. Rec. 4959 (1904) |
| 35 | 1905 | Missouri | Direct election of senators | 40 Cong. Rec. 138 (1905) |
| 36 | 1905 | Tennessee | Direct election of senators | 45 Cong. Rec. 7118 (1905) |
| 37 | 1905 | Montana | Direct election of senators | 39 Cong. Rec. 2447 (1905) |
| 38 | 1906 | New York | Anti-polygamy | 40 Cong. Rec. 4551 (1906) |
| 39 | 1907 | South Dakota | Direct election of senators | 41 Cong. Rec. 2497 (1907) |
| 40 | 1907 | Illinois | Direct election of senators | 42 Cong. Rec. 359 (1907) |
| 41 | 1907 | Illinois | Direct election of senators | 42 Cong. Rec. 164 (1907) |
| 42 | 1907 | Nevada | General (Direct election of senators) | 42 Cong. Rec. 163 (1907) |
| 43 | 1907 | Delaware | Anti-polygamy | 41 Cong. Rec. 3011 (1907) |
| 44 | 1907 | Iowa | Direct election of senators | 45 Cong. Rec. 7114 (1910) (1907) |
| 45 | 1907 | Missouri | General | 45 Cong. Rec. 7116 (1910) (1907) |
| 46 | 1907 | Indiana | Direct election of senators | 45 Cong. Rec. 7114 (1910) (1907) |
| 47 | 1907 | Montana | Direct election of senators | 45 Cong. Rec. 7116 (1910) (1907) |
| 48 | 1907 | New Jersey | Direct election of senators | 45 Cong. Rec. 7117 (1910) (1907) |
| 49 | 1907 | North Carolina | General (Direct election of senators) | 45 Cong. Rec. (1910) (1907) |
| 50 | 1907 | South Dakota | Direct election of senators | 45 Cong. Rec. 7118 (1910) (1907) |
| 51 | 1907 | New Jersey | Direct election of senators | 42 Cong. Rec. 164 (1907) |
| 52 | 1907 | Kansas | General | 41 Cong. Rec. 3072 (1907) |
| 53 | 1908 | Wisconsin | Direct election of senators | 45 Cong. Rec. 7119 (1910) (1908) |
| 54 | 1908 | Oklahoma | General (Direct election of senators) | 45 Cong. Rec. 7117 (1910) (1908) |
| 55 | 1908 | Michigan | Direct election of senators | 45 Cong. Rec. 7116 (1910) (1908) |
| 56 | 1908 | Kansas | General (Direct election of senators) | 45 Cong. Rec. 7115 (1910) (1908) |
| 57 | 1908 | Iowa | Direct election of senators | 42 Cong. Rec. 895 (1908) |
| 58 | 1908 | Nevada | Direct election of senators | 42 Cong. Rec. 895 (1908) |
| 59 | 1908 | Wisconsin | Direct election of senators | 42 Cong. Rec. 895 (1908) |
| 60 | 1908 | Oklahoma | General (Direct election of senators) | 42 Cong. Rec. 894 (1908) |
| 61 | 1909 | Oregon | Direct election of senators | 43 Cong. Rec. 2071 (1909) |
| 62 | 1909 | Oregon | Direct election of senators | 43 Cong. Rec. 2065 (1909) |
| 63 | 1909 | Iowa | General (Direct election of senators) | 44 Cong. Rec. 1620 (1909) |
| 64 | 1909 | Washington | Anti-polygamy | 44 Cong. Rec. 127 (1909) |
| 65 | 1909 | Washington | Anti-polygamy | 44 Cong. Rec. 50 (1909) |
| 66 | 1909 | South Dakota | Anti-polygamy | 43 Cong. Rec. 2670 (1909) |
| 67 | 1909 | Oregon | Direct election of senators | 43 Cong. Rec. 2025 (1909) |
| 68 | 1909 | Oregon | Direct election of senators | 43 Cong. Rec. 2115 (1909) |
| 69 | 1909 | South Dakota | Direct election of senators | 43 Cong. Rec. 2667 (1909) |
| 70 | 1910 | Washington | Anti-polygamy | 46 Cong. Rec. 651 (1911) (1910) |
| 71 | 1911 | Wisconsin | General | 47 Cong. Rec. 1842 (1911) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 72 | 1911 | Ohio | Anti-polygamy | 47 Cong. Rec. 85 (1911) |
| 73 | 1911 | Wisconsin | General | 47 Cong. Rec. 3087 (1911) |
| 74 | 1911 | Nebraska | Anti-polygamy | 47 Cong. Rec. 99 (1911) |
| 75 | 1911 | Tennessee | Anti-polygamy | 47 Cong. Rec. 187 (1911) |
| 76 | 1911 | Illinois | Anti-polygamy | 47 Cong. Rec. 1298 (1911) |
| 77 | 1911 | Wisconsin | General | 47 Cong. Rec. 2188 (1911) |
| 78 | 1911 | Wisconsin | General | 47 Cong. Rec. 2000 (1911) |
| 79 | 1911 | Wisconsin | General | 47 Cong. Rec. 1873 (1911) |
| 80 | 1911 | Maine | Direct election of senators | 46 Cong. Rec. 4339 (1911) |
| 81 | 1911 | Maine | Direct election of senators | 46 Cong. Rec. 4280 (1911) |
| 82 | 1911 | Ohio | Anti-polygamy | 47 Cong. Rec. 661 (1911) |
| 83 | 1911 | Montana | Anti-polygamy | 47 Cong. Rec. 98 (1911) |
| 84 | 1911 | Montana | General (Direct election of senators) | 46 Cong. Rec. 2411 (1911) |
| 85 | 1912 | Vermont | Anti-polygamy | 49 Cong. Rec. 2464 (1913) (1912) |
| 86 | 1912 | Vermont | Anti-polygamy | 49 Cong. Rec. 1433 (1913) (1912) |
| 87 | 1913 | Wisconsin | Anti-polygamy | 50 Cong. Rec. 116 (1913) |
| 88 | 1913 | Missouri | Judicial review of statutes | 50 Cong. Rec. 2428 (1913) |
| 89 | 1913 | Michigan | Anti-polygamy | 50 Cong. Rec. 2290 (1913) |
| 90 | 1913 | Illinois | Anti-polygamy | 50 Cong. Rec. 120 (1913) |
| 91 | 1913 | Wisconsin | Anti-polygamy | 50 Cong. Rec. 42 (1913) |
| 92 | 1913 | Oregon | Anti-polygamy | 49 Cong. Rec. 2463 (1913) |
| 93 | 1913 | Missouri | Judicial review of statutes | 50 Cong. Rec. 1796 (1913) |
| 94 | 1916 | South Carolina | Anti-polygamy | 53 Cong. Rec. 2442 (1916) |
| 95 | 1925 | Nevada | Repeal of prohibition | 67 Cong. Rec. 456 (1925) |
| 96 | 1927 | Idaho | Taxation of debts | 69 Cong. Rec. 455 (1927) |
| 97 | 1929 | Wisconsin | General | 71 Cong. Rec. 3856 (1929) |
| 98 | 1929 | Wisconsin | General | 71 Cong. Rec. 2590 (1929) |
| 99 | 1929 | Wisconsin | General | 71 Cong. Rec. 3369 (1929) |
| 100 | 1931 | Massachusetts | Repeal of prohibition | 75 Cong. Rec. 45 (1931) |
| 101 | 1931 | Wisconsin | Repeal of prohibition | 75 Cong. Rec. 57 (1931) |
| 102 | 1931 | New York | Repeal of prohibition | 75 Cong. Rec. 48 (1931) |
| 103 | 1932 | New Jersey | Repeal of prohibition | 75 Cong. Rec. 3299 (1932) |
| 104 | 1935 | California | Taxation of securities | 79 Cong. Rec. 10814 (1935) |
| 105 | 1935 | California | Wage/hours regulation | 79 Cong. Rec. 10814 (1935) |
| 106 | 1939 | Maryland | Limited taxation | 84 Cong. Rec. 3320 (1939) |
| 107 | 1939 | Wyoming | Limited taxation | 84 Cong. Rec. 2509 (1939) |
| 108 | 1939 | Oregon | National Recovery Plan | 84 Cong. Rec. 985 (1939) |
| 109 | 1940 | Rhode Island | Limited taxation | 86 Cong. Rec. 3439 (1940) |
| 110 | 1940 | Rhode Island | Limited taxation | 86 Cong. Rec. 3407 (1940) |
| 111 | 1941 | Michigan | Limited taxation | 87 Cong. Rec. 8904 (1941) |
| 112 | 1941 | Iowa | Limited taxation | 87 Cong. Rec. 1729 (1941) |
| 113 | 1941 | Michigan | Limited taxation | 87 Cong. Rec. 4537 (1941) |
| 114 | 1941 | Iowa | Limited taxation | 87 Cong. Rec. 3172 (1941) |
| 115 | 1943 | Pennsylvania | Limited taxation | 89 Cong. Rec. 8220 (1943) |
| 116 | 1943 | Pennsylvania | Unconditional public funds | 89 Cong. Rec. 8220 (1943) |
| 117 | 1943 | Michigan | Limited presidential term | 89 Cong. Rec. 2944 (1943) |
| 118 | 1943 | Iowa | Limited presidential term | 89 Cong. Rec. 2516 (1943) |
| 119 | 1943 | Iowa | Limited presidential term | 89 Cong. Rec. 2728 (1943) |
| 120 | 1943 | Wisconsin | Limited taxation | 89 Cong. Rec. 7524 (1943) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 121 | 1943 | Florida | World government | 89 Cong. Rec. 5690 (1943) |
| 122 | 1943 | Wisconsin | Limited presidential term | 89 Cong. Rec. 7525 (1943) |
| 123 | 1943 | Delaware | Limited taxation | 89 Cong. Rec. 4017 (1943) |
| 124 | 1943 | New Hampshire | Limited taxation | 89 Cong. Rec. 3761 (1943) |
| 125 | 1943 | Alabama | Limited taxation | 89 Cong. Rec. 7523 (1943) |
| 126 | 1949 | Connecticut | World government | 95 Cong. Rec. 7689 (1949) |
| 127 | 1949 | Connecticut | World government | 95 Cong. Rec. 7686 (1949) |
| 128 | 1949 | Florida | World government | 95 Cong. Rec. 7000 (1949) |
| 129 | 1949 | North Carolina | World government | 95 Cong. Rec. 6587 (1949) |
| 130 | 1949 | Florida | World government | 95 Cong. Rec. 6586 (1949) |
| 131 | 1949 | Michigan | Limited taxation | 95 Cong. Rec. 5628 (1949) |
| 132 | 1949 | New Jersey | World government | 95 Cong. Rec. 4571 (1949) |
| 133 | 1949 | California | World government | 95 Cong. Rec. 4568 (1949) |
| 134 | 1949 | Connecticut | World government | 95 Cong. Rec. 8285 (1949) |
| 135 | 1951 | Maine | Limited taxation | 97 Cong. Rec. 6033 (1951) |
| 136 | 1951 | Kansas | Limited taxation | 97 Cong. Rec. 2936 (1951) |
| 137 | 1951 | Florida | Limited taxation | 97 Cong. Rec. 5155 (1951) |
| 138 | 1951 | New Hampshire | Limited taxation | 97 Cong. Rec. 10716 (1951) |
| 139 | 1951 | Iowa | Limited taxation | 97 Cong. Rec. 3939 (1951) |
| 140 | 1952 | Utah | Limited taxation | 98 Cong. Rec. 947 (1952) |
| 141 | 1952 | Arkansas | Limited taxation | 98 Cong. Rec. 742 (1952) |
| 142 | 1952 | New Mexico | Limited taxation | 98 Cong. Rec. 947 (1952) |
| 143 | 1952 | Georgia | Limited taxation | 98 Cong. Rec. 1057 (1952) |
| 144 | 1952 | Georgia | Treaty powers | 98 Cong. Rec. 1057 (1952) |
| 145 | 1952 | Georgia | Limited taxation | 98 Cong. Rec. 1225 (1952) |
| 146 | 1952 | Georgia | Treaty powers | 98 Cong. Rec. 1225 (1952) |
| 147 | 1952 | Virginia | Limited taxation | 98 Cong. Rec. 1496 (1952) |
| 148 | 1952 | California | Taxes on vehicles and fuel | 98 Cong. Rec. 4003 (1952) |
| 149 | 1952 | Indiana | Limited taxation | 98 Cong. Rec. 1056 (1952) |
| 150 | 1953 | Illinois | Mode of amendment | 99 Cong. Rec. 10623 (1953) |
| 151 | 1953 | Illinois | Mode of amendment | 99 Cong. Rec. 10052 (1953) |
| 152 | 1953 | Illinois | Mode of amendment | 99 Cong. Rec. 9864 (1953) |
| 153 | 1953 | South Dakota | Mode of amendment | 99 Cong. Rec. 9180 (1953) |
| 154 | 1955 | Georgia | Independent state schools | 101 Cong. Rec. 1532 (1955) |
| 155 | 1955 | Oklahoma | Limited taxation | 101 Cong. Rec. 8397 (1955) |
| 156 | 1955 | Texas | Mode of amendment | 101 Cong. Rec. 2840 (1955) |
| 157 | 1955 | South Dakota | Mode of amendment | 101 Cong. Rec. 2840 (1955) |
| 158 | 1955 | South Dakota | Mode of amendment | 101 Cong. Rec. 2861 (1955) |
| 159 | 1955 | Oklahoma | Limited taxation | 101 Cong. Rec. 8776 (1955) |
| 160 | 1955 | Texas | Mode of amendment | 101 Cong. Rec. 2270 (1955) |
| 161 | 1955 | Georgia | Independent state schools | 101 Cong. Rec. 2086 (1955) |
| 162 | 1955 | Georgia | Independent state schools | 101 Cong. Rec. 2274 (1955) |
| 163 | 1956 | Michigan | Mode of amendment | 102 Cong. Rec. 7240 (1956) |
| 164 | 1956 | Michigan | Mode of amendment | 102 Cong. Rec. 7304 (1956) |
| 165 | 1957 | Alabama | Selection of federal judges | 103 Cong. Rec. 10863 (1957) |
| 166 | 1957 | Indiana | Balanced budget | 103 Cong. Rec. 6475 (1957) |
| 167 | 1957 | Indiana | Limited taxation | 103 Cong. Rec. 6474 (1957) |
| 168 | 1957 | Indiana | Presidential electors | 103 Cong. Rec. 6473 (1957) |
| 169 | 1957 | Indiana | Treaty procedures | 103 Cong. Rec. 6472 (1957) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 170 | 1957 | Indiana | Mode of amendment | 103 Cong. Rec. 6471 (1957) |
| 171 | 1957 | Idaho | Mode of amendment | 103 Cong. Rec. 4831 (1957) |
| 172 | 1957 | Florida | Supreme Court authority | 103 Cong. Rec. 12787 (1957) |
| 173 | 1958 | Connecticut | Interstate taxation | 104 Cong. Rec. 8058 (1958) |
| 174 | 1958 | Connecticut | Interstate taxation | 103 Cong. Rec. 8085 (1958) |
| 175 | 1959 | Georgia | Independent state schools | 105 Cong. Rec. 2793 (1959) |
| 176 | 1959 | Georgia | Independent state schools | 105 Cong. Rec. 1834 (1959) |
| 177 | 1959 | Arkansas | Validity of 14th Amendment | 105 Cong. Rec. 4398 (1959) |
| 178 | 1959 | Arkansas | Validity of 14th Amendment | 105 Cong. Rec. 4329 (1959) |
| 179 | 1959 | Alabama | Conflicting state and federal statutes | 105 Cong. Rec. 3220 (1959) |
| 180 | 1959 | Alabama | Conflicting state and federal statutes | 105 Cong. Rec. 3083 (1959) |
| 181 | 1959 | Georgia | Independent state schools | 105 Cong. Rec. 1709 (1959) |
| 182 | 1959 | Wyoming | Limited taxation | 105 Cong. Rec. 3085 (1959) |
| 183 | 1960 | Nevada | Limited taxation | 106 Cong. Rec. 10749 (1960) |
| 184 | 1961 | Georgia | Supreme Court authority | 107 Cong. Rec. 4454 (1961) |
| 185 | 1961 | Georgia | Supreme Court authority | 107 Cong. Rec. 4715 (1961) |
| 186 | 1961 | Massachusetts | Reading Bible in school | 107 Cong. Rec. 7484 (1961) |
| 187 | 1961 | Wyoming | Balanced budget | 107 Cong. Rec. 2742 (1961) |
| 188 | 1961 | Wyoming | Balanced budget | 107 Cong. Rec. 2759 (1961) |
| 189 | 1961 | Wyoming | Balanced budget | 107 Cong. Rec. 2799 (1961) |
| 190 | 1961 | Arkansas | Supreme Court authority | 107 Cong. Rec. 2154 (1961) |
| 191 | 1962 | South Carolina | Limited taxation | 108 Cong. Rec. 5051 (1962) |
| 192 | 1963 | Colorado | Presidential electors | 109 Cong. Rec. 6657 (1963) |
| 193 | 1963 | South Carolina | Mode of amendment | 109 Cong. Rec. 10441 (1963) |
| 194 | 1963 | Nevada | Apportionment | 109 Cong. Rec. 10241 (1963) |
| 195 | 1963 | Nevada | Apportionment | 109 Cong. Rec. 9942 (1963) |
| 196 | 1963 | Colorado | Limited taxation | 109 Cong. Rec. 7277 (1963) |
| 197 | 1963 | Colorado | Limited taxation | 109 Cong. Rec. 7060 (1963) |
| 198 | 1963 | Colorado | Limited taxation | 109 Cong. Rec. 6931 (1963) |
| 199 | 1963 | South Carolina | Apportionment | 109 Cong. Rec. 10441 (1963) |
| 200 | 1963 | Colorado | Presidential electors | 109 Cong. Rec. 6659 (1963) |
| 201 | 1963 | Texas | Apportionment | 109 Cong. Rec. 11852 (1963) |
| 202 | 1963 | Utah | Presidential electors | 109 Cong. Rec. 6438 (1963) |
| 203 | 1963 | Utah | Presidential electors | 109 Cong. Rec. 5947 (1963) |
| 204 | 1963 | Missouri | Mode of amendment | 109 Cong. Rec. 5868 (1963) |
| 205 | 1963 | Missouri | Apportionment | 109 Cong. Rec. 5868 (1963) |
| 206 | 1963 | Washington | Apportionment | 109 Cong. Rec. 5867 (1963) |
| 207 | 1963 | Wyoming | Apportionment | 109 Cong. Rec. 6930 (1963) |
| 208 | 1963 | South Dakota | Apportionment | 109 Cong. Rec. 14767 (1963) |
| 209 | 1963 | Wisconsin | Presidential electors | 109 Cong. Rec. 15107 (1963) |
| 210 | 1963 | Wisconsin | Presidential electors | 109 Cong. Rec. 15105 (1963) |
| 211 | 1963 | Alabama | Court of Union | 109 Cong. Rec. 5581 (1963) |
| 212 | 1963 | Wisconsin | Presidential electors | 109 Cong. Rec. 14808 (1963) |
| 213 | 1963 | Oklahoma | Apportionment | 109 Cong. Rec. 1173 (1963) |
| 214 | 1963 | South Carolina | Court of Union | 109 Cong. Rec. 10442 (1963) |
| 215 | 1963 | Wisconsin | Presidential electors | 109 Cong. Rec. 15362 (1963) |
| 216 | 1963 | South Carolina | Court of Union | 109 Cong. Rec. 10441 (1963) |
| 217 | 1963 | South Dakota | Mode of amendment | 109 Cong. Rec. 14767 (1963) |
| 218 | 1963 | South Dakota | Apportionment | 109 Cong. Rec. 14639 (1963) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 219 | 1963 | South Dakota | Mode of amendment | 109 Cong. Rec. 14638 (1963) |
| 220 | 1963 | Texas | Presidential electors | 109 Cong. Rec. 11853 (1963) |
| 221 | 1963 | Texas | Mode of amendment | 109 Cong. Rec. 11852 (1963) |
| 222 | 1963 | Texas | Apportionment and Presidential electors | 109 Cong. Rec. 11530 (1963) |
| 223 | 1963 | Wisconsin | Presidential electors | 109 Cong. Rec. 14779 (1963) |
| 224 | 1963 | Arkansas | No Reference | 109 Cong. Rec. 2765 (1963) |
| 225 | 1963 | Illinois | Mode of amendment | 109 Cong. Rec. 3788 (1963) |
| 226 | 1963 | Idaho | Apportionment | 109 Cong. Rec. 3274 (1963) |
| 227 | 1963 | Kansas | Apportionment | 109 Cong. Rec. 2769 (1963) |
| 228 | 1963 | Kansas | Mode of amendment | 109 Cong. Rec. 2769 (1963) |
| 229 | 1963 | Alabama | Court of Union | 109 Cong. Rec. 5250 (1963) |
| 230 | 1963 | Montana | Apportionment | 109 Cong. Rec. 3854 (1963) |
| 231 | 1963 | Florida | Mode of amendment | 109 Cong. Rec. 2072 (1963) |
| 232 | 1963 | Arkansas | Apportionment | 109 Cong. Rec. 2769 (1963) |
| 233 | 1963 | Idaho | Apportionment | 109 Cong. Rec. 2281 (1963) |
| 234 | 1963 | Florida | Court of Union | 109 Cong. Rec. 2278 (1963) |
| 235 | 1963 | Florida | Court of Union | 109 Cong. Rec. 2071 (1963) |
| 236 | 1963 | Oklahoma | Mode of amendment | 109 Cong. Rec. 1172 (1963) |
| 237 | 1963 | Arkansas | Presidential electors | 109 Cong. Rec. 2769 (1963) |
| 238 | 1963 | Idaho | Apportionment | 109 Cong. Rec. 2278 (1963) |
| 239 | 1963 | Arkansas | Court of Union | 109 Cong. Rec. 2768 (1963) |
| 240 | 1963 | Wyoming | Apportionment | 109 Cong. Rec. 5014 (1963) |
| 241 | 1963 | Arkansas | Mode of amendment | 109 Cong. Rec. 2768 (1963) |
| 242 | 1963 | Wyoming | Court of Union | 109 Cong. Rec. 5014 (1963) |
| 243 | 1963 | Idaho | Balanced budget | 109 Cong. Rec. 3855 (1963) |
| 244 | 1963 | Wyoming | Mode of amendment | 109 Cong. Rec. 5014 (1963)* |
| 245 | 1963 | Wyoming | Mode of amendment | 109 Cong. Rec. 5014 (1963) |
| 246 | 1963 | Wyoming | Court of Union | 109 Cong. Rec. 4900 (1963) |
| 247 | 1963 | Wyoming | Mode of amendment | 109 Cong. Rec. 4779 (1963) |
| 248 | 1963 | Wyoming | Court of Union | 109 Cong. Rec. 4778 (1963) |
| 249 | 1963 | Montana | Presidential electors | 109 Cong. Rec. 4469 (1963) |
| 250 | 1963 | Montana | Presidential electors | 109 Cong. Rec. 4457 (1963) |
| 251 | 1963 | Idaho | Balanced budget | 109 Cong. Rec. 4050 (1963) |
| 252 | 1963 | Montana | Apportionment | 109 Cong. Rec. 4050 (1963) |
| 253 | 1963 | Illinois | Mode of amendment | 109 Cong. Rec. 3982 (1963) |
| 254 | 1963 | Idaho | Balanced budget | 109 Cong. Rec. 3982 (1963) |
| 255 | 1963 | Wyoming | Apportionment | 109 Cong. Rec. 4779 (1963) |
| 256 | 1964 | Virginia | Apportionment | 110 Cong. Rec. 5922 (1964) |
| 257 | 1964 | Massachusetts | Pension for the elderly | 110 Cong. Rec. 10013 (1964) |
| 258 | 1964 | Massachusetts | Pension for the elderly | 110 Cong. Rec. 9875 (1964) |
| 259 | 1964 | Massachusetts | Reading Bible in school | 110 Cong. Rec. 7616 (1964) |
| 260 | 1964 | Massachusetts | Reading Bible in school | 110 Cong. Rec. 7371 (1964) |
| 261 | 1964 | Virginia | Apportionment | 110 Cong. Rec. 5659 (1964) |
| 262 | 1964 | Massachusetts | Reading Bible in school | 110 Cong. Rec. 7484 (1964) |
| 263 | 1965 | Virginia | Apportionment | 111 Cong. Rec. 881 (1965) |
| 264 | 1965 | Arizona | Apportionment | 111 Cong. Rec. 3061 (1965) |
| 265 | 1965 | Virginia | Mode of amendment | 111 Cong. Rec. 94 (1965) |
| 266 | 1965 | Virginia | Mode of amendment | 111 Cong. Rec. 880 (1965) |
| 267 | 1965 | Virginia | Apportionment | 111 Cong. Rec. 880 (1965) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 268 | 1965 | Texas | Apportionment | 111 Cong. Rec. 18476 (1965) |
| 269 | 1965 | Oklahoma | Presidential electors | 111 Cong. Rec. 11713 (1965) |
| 270 | 1965 | Mississippi | No reference | 111 Cong. Rec. 15764 (1965) |
| 271 | 1965 | New Hampshire | Apportionment | 111 Cong. Rec. 12853 (1965) |
| 272 | 1965 | Nebraska | Apportionment | 111 Cong. Rec. 24720 (1965) |
| 273 | 1965 | Florida | Apportionment | 111 Cong. Rec. 14163 (1965) |
| 274 | 1965 | Florida | Apportionment | 111 Cong. Rec. 14308 (1965) |
| 275 | 1965 | Florida | Apportionment | 111 Cong. Rec. 14458 (1965) |
| 276 | 1965 | Mississippi | Apportionment | 111 Cong. Rec. 15699 (1965) |
| 277 | 1965 | Mississippi | Independent state schools | 111 Cong. Rec. 15769 (1965) |
| 278 | 1965 | Oklahoma | Apportionment | 111 Cong. Rec. 1216 (1965) |
| 279 | 1965 | Mississippi | Apportionment | 111 Cong. Rec. 15769 (1965) |
| 280 | 1965 | Mississippi | Sedition laws | 111 Cong. Rec. 15770 (1965) |
| 281 | 1965 | Oklahoma | Presidential electors | 111 Cong. Rec. 11488 (1965) |
| 282 | 1965 | Texas | Apportionment | 111 Cong. Rec. 18171 (1965) |
| 283 | 1965 | Oklahoma | Presidential electors | 111 Cong. Rec. 11802 (1965) |
| 284 | 1965 | Illinois | Apportionment | 111 Cong. Rec. 18999 (1965) |
| 285 | 1965 | Illinois | Apportionment | 111 Cong. Rec. 19379 (1965) |
| 286 | 1965 | Illinois | Apportionment | 111 Cong. Rec. 19534 (1965) |
| 287 | 1965 | Nebraska | Presidential electors | 111 Cong. Rec. 19740 (1965) |
| 288 | 1965 | Nebraska | Presidential electors | 111 Cong. Rec. 19775 (1965) |
| 289 | 1965 | Nebraska | Presidential electors | 111 Cong. Rec. 20839 (1965) |
| 290 | 1965 | Nebraska | Presidential electors | 111 Cong. Rec. 21105 (1965) |
| 291 | 1965 | Nebraska | Apportionment | 111 Cong. Rec. 27482 (1965) |
| 292 | 1965 | Kentucky | Apportionment | 111 Cong. Rec. 26167 (1965) |
| 293 | 1965 | Kentucky | Apportionment | 111 Cong. Rec. 26073 (1965) |
| 294 | 1965 | Ohio | Tax refund | 111 Cong. Rec. 25237 (1965) |
| 295 | 1965 | Nebraska | Apportionment | 111 Cong. Rec. 24723 (1965) |
| 296 | 1965 | Montana | Apportionment | 111 Cong. Rec. 2777 (1965) |
| 297 | 1965 | Alabama | Apportionment | 111 Cong. Rec. 3722 (1965) |
| 298 | 1965 | Idaho | Apportionment | 111 Cong. Rec. 1216 (1965) |
| 299 | 1965 | Idaho | Apportionment | 111 Cong. Rec. 1229 (1965) |
| 300 | 1965 | Idaho | Apportionment | 111 Cong. Rec. 1402 (1965) |
| 301 | 1965 | Idaho | Apportionment | 111 Cong. Rec. 1437 (1965) |
| 302 | 1965 | Arizona | Apportionment | 111 Cong. Rec. 2948 (1965) |
| 303 | 1965 | Georgia | Independent state schools | 111 Cong. Rec. 6183 (1965) |
| 304 | 1965 | South Carolina | Apportionment | 111 Cong. Rec. 3304 (1965) |
| 305 | 1965 | South Carolina | Independent state schools | 111 Cong. Rec. 3304 (1965) |
| 306 | 1965 | Missouri | Apportionment | 111 Cong. Rec. 3304 (1965) |
| 307 | 1965 | Illinois | Tax refund | 111 Cong. Rec. 14144 (1965) |
| 308 | 1965 | South Carolina | Apportionment/state schools | 111 Cong. Rec. 3714 (1965) |
| 309 | 1965 | Minnesota | Apportionment | 111 Cong. Rec. 11163 (1965) |
| 310 | 1965 | South Dakota | Apportionment | 111 Cong. Rec. 3722 (1965) |
| 311 | 1965 | Maryland | Apportionment | 111 Cong. Rec. 5820 (1965) |
| 312 | 1965 | Arkansas | Apportionment | 111 Cong. Rec. 7259 (1965) |
| 313 | 1965 | Illinois | Tax refund | 111 Cong. Rec. 10016 (1965) |
| 314 | 1965 | Minnesota | Apportionment | 111 Cong. Rec. 10673 (1965) |
| 315 | 1965 | Missouri | Apportionment | 111 Cong. Rec. 3714 (1965) |
| 316 | 1965 | Minnesota | Apportionment | 111 Cong. Rec. 10922 (1965) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 317 | 1965 | Arkansas | Apportionment | 111 Cong. Rec. 6917 (1965) |
| 318 | 1965 | Georgia | Independent state schools | 111 Cong. Rec. 6175 (1965) |
| 319 | 1965 | Georgia | Independent state schools | 111 Cong. Rec. 5817 (1965) |
| 320 | 1965 | Maryland | Apportionment | 111 Cong. Rec. 5800 (1965) |
| 321 | 1965 | Missouri | Apportionment | 111 Cong. Rec. 4395 (1965) |
| 322 | 1965 | Utah | Apportionment | 111 Cong. Rec. 4320 (1965) |
| 323 | 1965 | Missouri | Apportionment | 111 Cong. Rec. 4083 (1965) |
| 324 | 1965 | South Dakota | Apportionment | 111 Cong. Rec. 4064 (1965) |
| 325 | 1965 | South Dakota | Apportionment | 111 Cong. Rec. 3990 (1965) |
| 326 | 1966 | Alabama | Apportionment | 112 Cong. Rec. 200 (1966) |
| 327 | 1966 | Alabama | Apportionment | 112 Cong. Rec. 43 (1966) |
| 328 | 1966 | New Mexico | Apportionment | 112 Cong. Rec. 44 (1966) |
| 329 | 1966 | Tennessee | Apportionment | 112 Cong. Rec. 44 (1966) |
| 330 | 1966 | Tennessee | Apportionment | 112 Cong. Rec. 199 (1966) |
| 331 | 1966 | New Mexico | Apportionment | 112 Cong. Rec. 199 (1966) |
| 332 | 1967 | Illinois | Presidential electors | 113 Cong. Rec. 20893 (1967) |
| 333 | 1967 | Colorado | Apportionment | 113 Cong. Rec. 18007 (1967) |
| 334 | 1967 | Texas | Tax refund | 113 Cong. Rec. 17634 (1967) |
| 335 | 1967 | Georgia | Tax refund | 113 Cong. Rec. 11743 (1967) |
| 336 | 1967 | North Dakota | Apportionment | 113 Cong. Rec. 11175 (1967) |
| 337 | 1967 | Alabama | Tax refund | 113 Cong. Rec. 10118 (1967) |
| 338 | 1967 | Nevada | Apportionment | 113 Cong. Rec. 7126 (1967) |
| 339 | 1967 | Indiana | Apportionment | 113 Cong. Rec. 6384 (1967) |
| 340 | 1967 | Indiana | Apportionment | 113 Cong. Rec. 6766 (1967) |
| 341 | 1969 | New Hampshire | Revenue sharing | 115 Cong. Rec. 35587 (1969) |
| 342 | 1969 | Florida | Revenue sharing | 115 Cong. Rec. 24116 (1969) |
| 343 | 1969 | Iowa | Apportionment | 115 Cong. Rec. 12249 (1969) |
| 344 | 1969 | Iowa | Apportionment | 115 Cong. Rec. 11987 (1969) |
| 345 | 1969 | New Hampshire | Revenue sharing | 115 Cong. Rec. 36153 (1969) |
| 346 | 1970 | New Jersey | Revenue sharing | 116 Cong. Rec. 41879 (1970) |
| 347 | 1970 | Mississippi | School attendance | 116 Cong. Rec. 6097 (1970) |
| 348 | 1970 | Mississippi | School attendance | 116 Cong. Rec. 6877 (1970) |
| 349 | 1970 | Mississippi | School attendance | 116 Cong. Rec. 6221 (1970) |
| 350 | 1971 | Massachusetts | Secular school funding | 117 Cong. Rec. 30905 (1971) |
| 351 | 1971 | West Virginia | Revenue sharing | 117 Cong. Rec. 541 (1971) |
| 352 | 1971 | West Virginia | Revenue sharing | 117 Cong. Rec. 527 (1971) |
| 353 | 1971 | Florida | Revenue sharing | 117 Cong. Rec. 2789 (1971) |
| 354 | 1971 | Michigan | School attendance | 117 Cong. Rec. 41598 (1971) |
| 355 | 1971 | Massachusetts | Secular school funding | 117 Cong. Rec. 30887 (1971) |
| 356 | 1971 | Ohio | Revenue sharing | 117 Cong. Rec. 22280 (1971) |
| 357 | 1971 | South Dakota | Revenue sharing | 117 Cong. Rec. 5303 (1971) |
| 358 | 1971 | Oregon | Revenue sharing | 117 Cong. Rec. 16574 (1971) |
| 359 | 1971 | Delaware | Tax refund | 117 Cong. Rec. 3175 (1971) |
| 360 | 1971 | North Dakota | Revenue sharing | 117 Cong. Rec. 12210 (1971) |
| 361 | 1971 | North Dakota | Revenue sharing | 117 Cong. Rec. 11841 (1971) |
| 362 | 1971 | South Dakota | Revenue sharing | 117 Cong. Rec. 4632 (1971) |
| 363 | 1971 | Ohio | Revenue sharing | 117 Cong. Rec. 21712 (1971) |
| 364 | 1971 | Massachusetts | Revenue sharing | 117 Cong. Rec. 5020 (1971) |
| 365 | 1972 | New York | Secular school funding | 118 Cong. Rec. 33047 (1972) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 366 | 1972 | Arizona | School prayer | 118 Cong. Rec. 11885 (1972) |
| 367 | 1972 | New York | Secular school funding | 118 Cong. Rec. 33259 (1972) |
| 368 | 1972 | Florida | Presiding officer of Senate | 118 Cong. Rec. 11444 (1972) |
| 369 | 1972 | Iowa | Revenue sharing | 118 Cong. Rec. 6501 (1972) |
| 370 | 1972 | Iowa | Revenue sharing | 118 Cong. Rec. 5282 (1972) |
| 371 | 1972 | Tennessee | School attendance | 118 Cong. Rec. 16214 (1972) |
| 372 | 1972 | Florida | Presiding officer of Senate | 118 Cong. Rec. 11885 (1972) |
| 373 | 1972 | Arizona | School prayer | 118 Cong. Rec. 11445 (1972) |
| 374 | 1973 | Oklahoma | School attendance | 119 Cong. Rec. 14234 (1973) |
| 375 | 1973 | Texas | School attendance | 119 Cong. Rec. 11446 (1973) |
| 376 | 1973 | New Hampshire | School prayer | 119 Cong. Rec. 18190 (1973) |
| 377 | 1973 | Nevada | School attendance | 119 Cong. Rec. 17022 (1973) |
| 378 | 1973 | Nevada | School attendance | 119 Cong. Rec. 16324 (1973) |
| 379 | 1973 | Oklahoma | School attendance | 119 Cong. Rec. 14428 (1973) |
| 380 | 1973 | Oklahoma | School attendance | 119 Cong. Rec. 14421 (1973) |
| 381 | 1973 | Maryland | School prayer | 119 Cong. Rec. 14421 (1973) |
| 382 | 1973 | Massachusetts | Secular school funding | 119 Cong. Rec. 11835 (1973) |
| 383 | 1973 | Texas | School attendance | 119 Cong. Rec. 11515 (1973) |
| 384 | 1973 | Wyoming | Limited taxation | 119 Cong. Rec. 1939 (1973) |
| 385 | 1973 | New Jersey | School prayer | 119 Cong. Rec. 11446 (1973) |
| 386 | 1973 | Virginia | School attendance | 119 Cong. Rec. 10675 (1973) |
| 387 | 1973 | Mississippi | School prayer | 119 Cong. Rec. 8689 (1973) |
| 388 | 1973 | Mississippi | School prayer | 119 Cong. Rec. 8550 (1973) |
| 389 | 1973 | Virginia | Balanced budget | 119 Cong. Rec. 8091 (1973) |
| 390 | 1973 | Mississippi | School attendance | 119 Cong. Rec. 8089 (1973) |
| 391 | 1973 | Mississippi | School attendance | 119 Cong. Rec. 7282 (1973) |
| 392 | 1973 | Massachusetts | Secular school funding | 119 Cong. Rec. 12408 (1973) |
| 393 | 1973 | Virginia | Balanced budget | 119 Cong. Rec. 7282 (1973) |
| 394 | 1975 | North Dakota | Balanced budget | 125 Cong. Rec. 10144 (1979) (1975) |
| 395 | 1975 | Arkansas | Balanced budget | 121 Cong. Rec. 5793 (1975) |
| 396 | 1975 | Virginia | Balanced budget | 121 Cong. Rec. 5793 (1975) |
| 397 | 1975 | Mississippi | Balanced budget | 121 Cong. Rec. 12168 (1975) |
| 398 | 1975 | Mississippi | Balanced budget | 121 Cong. Rec. 12175 (1975) |
| 399 | 1975 | Missouri | Right to life | 121 Cong. Rec. 12867 (1975) |
| 400 | 1975 | Missouri | Right to life | 121 Cong. Rec. 13433 (1975) |
| 401 | 1975 | Nevada | Unconditional federal funds | 121 Cong. Rec. 19117 (1975) |
| 402 | 1975 | Nevada | Unconditional federal funds | 121 Cong. Rec. 21065 (1975) |
| 403 | 1975 | Kentucky | School attendance | 121 Cong. Rec. 29630 (1975) |
| 404 | 1975 | Virginia | Balanced budget | 121 Cong. Rec. 4730 (1975) |
| 405 | 1975 | Kentucky | School attendance | 121 Cong. Rec. 27821 (1975) |
| 406 | 1976 | Massachusetts | School attendance | 122 Cong. Rec. 9735 (1976) |
| 407 | 1976 | Indiana | Balanced budget | 122 Cong. Rec. 931 (1976) |
| 408 | 1976 | Indiana | Balanced budget | 122 Cong. Rec. 1400 (1976) |
| 409 | 1976 | Georgia | Balanced budget | 122 Cong. Rec. 2740 (1976) |
| 410 | 1976 | Georgia | Balanced budget | 122 Cong. Rec. 3161 (1976) |
| 411 | 1976 | South Carolina | Balanced budget | 122 Cong. Rec. 4090 (1976) |
| 412 | 1976 | Delaware | Balanced budget | 122 Cong. Rec. 4329 (1976) |
| 413 | 1976 | Delaware | Balanced budget | 122 Cong. Rec. 5572 (1976) |
| 414 | 1976 | Virginia | Balanced budget | 122 Cong. Rec. 8336 (1976) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 415 | 1976 | Oklahoma | Unconditional federal funds | 122 Cong. Rec. 16814 (1976) |
| 416 | 1977 | Utah | Right to life | 123 Cong. Rec. 13301 (1977) |
| 417 | 1977 | Massachusetts | Right to life | 123 Cong. Rec. 22002 (1977) |
| 418 | 1977 | Arizona | Balanced budget | 123 Cong. Rec. 18873 (1977) |
| 419 | 1977 | Arizona | Balanced budget | 123 Cong. Rec. 18869 (1977) |
| 420 | 1977 | Tennessee | Limited judicial terms | 123 Cong. Rec. 18419 (1977) |
| 421 | 1977 | Tennessee | Balanced budget | 123 Cong. Rec. 18419 (1977) |
| 422 | 1977 | Rhode Island | Right to life | 123 Cong. Rec. 15808 (1977) |
| 423 | 1977 | Rhode Island | Right to life | 123 Cong. Rec. 15539 (1977) |
| 424 | 1977 | Arkansas | Right to life | 123 Cong. Rec. 14825 (1977) |
| 425 | 1977 | Maryland | Balanced budget | 123 Cong. Rec. 2545 (1977) |
| 426 | 1977 | Utah | Right to life | 123 Cong. Rec. 13471 (1977) |
| 427 | 1977 | Utah | Right to life | 123 Cong. Rec. 13057 (1977) |
| 428 | 1977 | South Dakota | Right to life | 123 Cong. Rec. 11888 (1977) |
| 429 | 1977 | South Dakota | Right to life | 123 Cong. Rec. 11048 (1977) |
| 430 | 1977 | South Dakota | Right to life | 123 Cong. Rec. 11041 (1977) |
| 431 | 1977 | New Jersey | Right to life | 123 Cong. Rec. 10481 (1977) |
| 432 | 1977 | New Jersey | Right to life | 123 Cong. Rec. 9603 (1977) |
| 433 | 1977 | Virginia | Line item veto | 123 Cong. Rec. 9289 (1977) |
| 434 | 1977 | Indiana | Re: 1973 app/right to life | 123 Cong. Rec. 4797 (1977) |
| 435 | 1977 | Massachusetts | Right to life | 123 Cong. Rec. 20659 (1977) |
| 436 | 1977 | Rhode Island | Right to life | 123 Cong. Rec. 14649 (1977) |
| 437 | 1977 | Tennessee | Line item veto | 123 Cong. Rec. 22002 (1977) |
| 438 | 1978 | Nebraska | Right to life | 124 Cong. Rec. 12544 (1978) |
| 439 | 1978 | Pennsylvania | Right to life | 124 Cong. Rec. 11103 (1978) |
| 440 | 1978 | Pennsylvania | Right to life | 124 Cong. Rec. 11438 (1978) |
| 441 | 1978 | Pennsylvania | Right to life | 124 Cong. Rec. 12011 (1978) |
| 442 | 1978 | Nebraska | Right to life | 124 Cong. Rec. 12011 (1978) |
| 443 | 1978 | Oklahoma | Balanced budget | 124 Cong. Rec. 12011 (1978) |
| 444 | 1978 | Nebraska | Right to life | 124 Cong. Rec. 12215 (1978) |
| 445 | 1978 | Delaware | General | 124 Cong. Rec. 1292 (1978) |
| 446 | 1978 | Nebraska | Right to life | 124 Cong. Rec. 12397 (1978) |
| 447 | 1978 | Delaware | General | 124 Cong. Rec. 1662 (1978) |
| 448 | 1978 | Nebraska | Right to life | 124 Cong. Rec. 12694 (1978) |
| 449 | 1978 | Kansas | Balanced budget | 124 Cong. Rec. 14193 (1978) |
| 450 | 1978 | Kansas | Balanced budget | 124 Cong. Rec. 14584 (1978) |
| 451 | 1978 | South Carolina | Balanced budget | 124 Cong. Rec. 14911 (1978) |
| 452 | 1978 | Delaware | Right to life | 124 Cong. Rec. 17055 (1978) |
| 453 | 1978 | Delaware | Right to life | 124 Cong. Rec. 19683 (1978) |
| 454 | 1978 | Oklahoma | Balanced budget | 124 Cong. Rec. 12397 (1978) |
| 455 | 1978 | Tennessee | Limited judicial terms | 124 Cong. Rec. 11437 (1978) |
| 456 | 1979 | Arkansas | Balanced budget | 125 Cong. Rec. 4372 (1979) |
| 457 | 1979 | Maryland | Balanced budget | 125 Cong. Rec. 13387 (1979) |
| 458 | 1979 | Iowa | Balanced budget | 125 Cong. Rec. 15227 (1979) |
| 459 | 1979 | Iowa | Balanced budget | 125 Cong. Rec. 15792 (1979) |
| 460 | 1979 | Iowa | Balanced budget | 125 Cong. Rec. 15852 (1979) |
| 461 | 1979 | New Hampshire | Balanced budget | 125 Cong. Rec. 11584 (1979) |
| 462 | 1979 | Georgia | Right to life | 125 Cong. Rec. 4372 (1979) |
| 463 | 1979 | New Hampshire | Balanced budget | 125 Cong. Rec. 11203 (1979) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 464 | 1979 | Nebraska | Balanced budget | 125 Cong. Rec. 4152 (1979) |
| 465 | 1979 | Iowa | Balanced budget | 125 Cong. Rec. 16351 (1979) |
| 466 | 1979 | Utah | Balanced budget | 125 Cong. Rec. 4071 (1979) |
| 467 | 1979 | Arkansas | Balanced budget | 125 Cong. Rec. 3906 (1979) |
| 468 | 1979 | Idaho | Balanced budget | 125 Cong. Rec. 3657 (1979) |
| 469 | 1979 | New Mexico | Balanced budget | 125 Cong. Rec. 3656 (1979) |
| 470 | 1979 | Nevada | Right to life | 125 Cong. Rec. 16350 (1979) |
| 471 | 1979 | South Dakota | Balanced budget | 125 Cong. Rec. 3656 (1979) |
| 472 | 1979 | Nebraska | Balanced budget | 125 Cong. Rec. 4702 (1979) |
| 473 | 1979 | Georgia | Right to life | 125 Cong. Rec. 4702 (1979) |
| 474 | 1979 | Pennsylvania | Balanced budget | 125 Cong. Rec. 4627 (1979) |
| 475 | 1979 | Utah | Balanced budget | 125 Cong. Rec. 4372 (1979) |
| 476 | 1979 | Texas | Balanced budget | 125 Cong. Rec. 5223 (1979) |
| 477 | 1979 | New Hampshire | Balanced budget | 125 Cong. Rec. 12888 (1979) |
| 478 | 1979 | Alabama | Balanced budget | 125 Cong. Rec. 5368 (1979) |
| 479 | 1979 | Alabama | Balanced budget | 125 Cong. Rec. 4861 (1979) |
| 480 | 1979 | Virginia | Balanced budget | 125 Cong. Rec. 5450 (1979) |
| 481 | 1979 | Oregon | Balanced budget | 125 Cong. Rec. 5953 (1979) |
| 482 | 1979 | Arizona | Balanced budget | 125 Cong. Rec. 7920 (1979) |
| 483 | 1979 | Arizona | Balanced budget | 125 Cong. Rec. 8108 (1979) |
| 484 | 1979 | Indiana | Balanced budget | 125 Cong. Rec. 9188 (1979) |
| 485 | 1979 | Indiana | Balanced budget | 125 Cong. Rec. 9368 (1979) |
| 486 | 1979 | Texas | Reaffirmed earlier app for balanced budget | 125 Cong. Rec. 134 (1979) |
| 487 | 1979 | Florida | Balanced budget | 125 Cong. Rec. 3427 (1979) |
| 488 | 1979 | South Dakota | Balanced budget | 125 Cong. Rec. 3427 (1979) |
| 489 | 1979 | New Mexico | Balanced budget | 125 Cong. Rec. 3322 (1979) |
| 490 | 1979 | Mississippi | Right to life | 125 Cong. Rec. 3196 (1979) |
| 491 | 1979 | North Carolina | Balanced budget | 125 Cong. Rec. 3007 (1979) |
| 492 | 1979 | Mississippi | Right to life | 125 Cong. Rec. 2936 (1979) |
| 493 | 1979 | Texas | Balanced budget | 125 Cong. Rec. 134 (1979) |
| 494 | 1979 | Florida | Balanced budget | 125 Cong. Rec. 3007 (1979) |
| 495 | 1979 | Idaho | Balanced budget | 125 Cong. Rec. 3522 (1979) |
| 496 | 1980 | Nevada | Balanced budget | 126 Cong. Rec. 1104 (1980) |
| 497 | 1980 | Arizona | Unconditional federal funds | 126 Cong. Rec. 11389 (1980) |
| 498 | 1980 | Alabama | Right to life | 126 Cong. Rec. 10650 (1980) |
| 499 | 1980 | Tennessee | Right to life | 126 Cong. Rec. 9765 (1980) |
| 500 | 1980 | Tennessee | Right to life | 126 Cong. Rec. 9337 (1980) |
| 501 | 1980 | Arizona | Unconditional federal funds | 126 Cong. Rec. 10790 (1980) |
| 502 | 1980 | Nevada | Balanced budget | 126 Cong. Rec. 909 (1980) |
| 503 | 1980 | Idaho | Right to life | 126 Cong. Rec. 6172 (1980) |
| 504 | 1980 | Idaho | Right to life | 126 Cong. Rec. 5768 (1980) |
| 505 | 1980 | South Dakota | Right to life | 126 Cong. Rec. 8306 (1980) |
| 506 | 1980 | South Dakota | Right to life | 126 Cong. Rec. 8360 (1980) |
| 507 | 1980 | Oklahoma | Right to life | 126 Cong. Rec. 8972 (1980) |
| 508 | 1981 | Alabama | Limited judicial terms | 127 Cong. Rec. 19856 (1981) |
| 509 | 1981 | North Dakota | Right to life | 127 Cong. Rec. 1524 (1981) |
| 510 | 1981 | Delaware | Right to life | 127 Cong. Rec. 761 (1981) |
| 511 | 1982 | Alaska | Balanced budget | 128 Cong. Rec. 2917 (1982) |
| 512 | 1982 | Alaska | Balanced budget | 128 Cong. Rec. 798 (1982) |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 513 | 1983 | Missouri | Balanced budget | 129 Cong. Rec. 10594 (1983) |
| 514 | 1983 | Missouri | Balanced budget | 129 Cong. Rec. 4942 (1983) |
| 515 | 1984 | Arizona | Line item veto | 130 Cong. Rec. 6892 (1984) |
| 516 | 1984 | Arizona | Line item veto | 130 Cong. Rec. 4884 (1984) |
| 517 | 1986 | South Dakota | Line item veto | 132 Cong. Rec. 1023 (1986) |
| 518 | 1986 | South Dakota | Line item veto | 132 Cong. Rec. 2548 (1986) |
| 519 | 1987 | Utah | Taxation on debts | 133 Cong. Rec. 4183 (1987) |
| 520 | 1987 | Utah | Taxation on debts | 133 Cong. Rec. 7728 (1987) |
| 521 | 1989 | South Dakota | Limited congressional terms | 135 Cong. Rec. 3233 (1989) |
| 522 | 1989 | South Dakota | Limited congressional terms | 135 Cong. Rec. 232 (1989) |
| 523 | 1989 | Idaho | Limited taxation | 135 Cong. Rec. 998 (1989) |

## THE RECESSION MYTH

Of the 567 applications submitted to Congress for a convention, forty-four are unconstitutional recessions submitted by a total of thirteen states.[1554] Twenty-five of these forty-four unconstitutional recessions have been submitted by a single state--Louisiana.[1555]

[1554] *See infra*, TABLE 3—STATE RECESSIONS, p.678.
[1555] *Id*.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

While all recessions by the states are unconstitutional,[1556] it is still interesting to note all of the states' recessions have been submitted on a one to one ratio, i.e., a specific recession "affecting" a specific application. No state has attempted to submit an all-encompassing general recession which would be designed to withdraw some or all applications in a single stroke.[1557] The intent of the states regarding the rest of the applications they have sent to Congress cannot be more clear. While the states have unconstitutionally attempted to recess certain applications, they clearly intend that all others submitted by them remain in effect.

Even if it were a not a fact that the recessions are constitutionally invalid, as the two-thirds numeric count application threshold required by the Constitution was exceeded before any recessions were submitted,[1558] the effect of these recession on a convention call would be immaterial. The recessions, if they were valid, have reduced the number of states applying for a convention by only one state. This would still leave forty-eight states applying for a convention to propose amendments. Congress would still be obligated to call a convention.

**TABLE 2—STATES APPLYING FOR A CONVENTION**

States Making Application

---

[1556] *See supra* text accompanying notes 890-920.
[1557] This fact is most clearly demonstrated by the "recessions" of the state of Louisiana in which that state in 1992 attempted to recess all its applications. In this single instance where a state has attempted to recess all its applications, the state sent a specific recession for each specific application previously filed.
[1558] *See infra*,
TABLE 8—PRE-1912 APPLICATIONS INCLUDING CAPLAN MATERIAL, p.688.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

States Making Application

1. Alabama
2. Alaska
3. Arizona
4. Arkansas
5. California
6. Colorado
7. Connecticut
8. Delaware
9. Florida
10. Georgia
11. Idaho
12. Illinois
13. Indiana
14. Iowa
15. Kansas
16. Kentucky
17. Louisiana
18. Maine
19. Maryland
20. Massachusetts
21. Michigan
22. Minnesota
23. Mississippi
24. Missouri
25. Montana
26. Nebraska
27. Nevada
28. New Hampshire
29. New Jersey
30. New Mexico
31. New York
32. North Carolina
33. North Dakota
34. Ohio
35. Oklahoma
36. Oregon
37. Pennsylvania
38. Rhode Island
39. South Carolina
40. South Dakota
41. Tennessee
42. Texas
43. Utah
44. Vermont
45. Virginia
46. Washington
47. West Virginia
48. Wisconsin
49. Wyoming


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

**TABLE 3—STATE RECESSIONS**

| | Date | State | Location | Subject |
|---|---|---|---|---|
| 1 | 1951 | Kentucky | 97 Cong. Rec. 10973 (1951) | Limited taxation |
| 2 | 1952 | Illinois | 98 Cong. Rec. 742 (1952) | Limited presidential term |
| 3 | 1952 | Illinois | 98 Cong. Rec. 742 (1952) | Limited taxation |
| 4 | 1952 | Massachusetts | 98 Cong. Rec. 4641 (1952) | Limited taxation |
| 5 | 1953 | Maine | 99 Cong. Rec. 4311, 4434 (1953) | Limited taxation |
| 6 | 1953 | Nebraska | 99 Cong. Rec. 6163 (1953) | Limited taxation |
| 7 | 1955 | New Jersey | 100 Cong. Rec. 11943 (1954); 101 Cong. Rec. 99 (1955) | Limited taxation |
| 8 | 1969 | Illinois | 115 Cong. Rec. 19353, 24111 (1969) | Apportionment. |
| 9 | 1969 | Illinois | 115 Cong. Rec. 19353, 24111 (1969) | Apportionment. |
| 10 | 1969 | North Carolina | 115 Cong. Rec. 18411, 18714 (1969) | Apportionment. |
| 11 | 1969 | North Carolina | 115 Cong. Rec. 18411, 18714 (1969) | Apportionment. |
| 12 | 1970 | Kansas | 116 Cong. Rec. 11548, 11942 (1970) | Mode of Amendment |
| 13 | 1970 | Kansas | 116 Cong. Rec. 11548, 11942 (1970) | Presidential electors |
| 14 | 1970 | Kansas | 116 Cong. Rec. 11548,11942 (1970) | Apportionment. |
| 15 | 1988 | Florida | 134 Cong. Rec. 8312 (1988) | Balanced budget |
| 16 | 1988 | Florida | 134 Cong. Rec. 8312 (1988) | Balanced budget |
| 17 | 1989 | Alabama | 135 Cong. Rec. 5485 (1989) | Balanced budget |
| 18 | 1989 | Nevada | 135 Cong. Rec. 3528 (1989) | Rescinding ? Application |
| 19 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Direct election of senators |
| 20 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | General (Direct election of senators) |
| 21 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Mode of amendment |
| 22 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Mode of amendment |
| 23 | 1992 | Louisiana | 100 Cong. Rec. 9420 (1954) | Limited taxation |
| 24 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Limited taxation |
| 25 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Limited taxation |
| 26 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Limited taxation |
| 27 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Independent state schools |
| 28 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Independent state schools |
| 29 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Apportionment |
| 30 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Taxation of debts |
| 31 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Taxation of debts |
| 32 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Sedition laws |
| 33 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Sedition laws |
| 34 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Sedition laws |
| 35 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Sedition laws |
| 36 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | School attendance |
| 37 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | School attendance |
| 38 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Tax refund |
| 39 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Revenue sharing |
| 40 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Balanced budget |
| 41 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Balanced budget |
| 42 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Right to life |
| 43 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Balanced budget |
| 44 | 1992 | Louisiana | S 529 (28JA) Cong. Rec. Index (1992) | Balanced budget |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## THE “GENERAL” AND “SPECIFIC” APPLICATIONS

The states’ applications can be divided into two categories: applications requesting a convention with no preconditions, so-called “general”[1559] applications;[1560] applications requesting a convention with one or more preconditions (such as a specific amendment), so-called “specific” applications.[1561] While politically there may be differences between the two

---

[1559] Some scholars have taken issue with the term “general” attempting to maintain the term refers only to the members attending a convention and not to its purpose.

“Some scholars have pointed to early applications requesting a ‘general’ convention as proof that only wide-ranging assemblies are contemplated by article V. Yet ‘general’ at the time primarily referred not to deliberative scope but to breadth of attendance. ... A ‘general’ convention was simply one inviting representatives from all states; a ‘partial’ convention included delegations from fewer than the total number. A wide-ranging convention was ‘plenary’ or ‘plenipotentiary,’ signaling that the delegates have received full deliberative powers from their constituents.” Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention*, (1988) p. xx (Footnotes omitted).

In this assumption, Caplan is wrong. The reason the Founders did not refer to a general convention in the sense of its purpose, i.e., a “wide-ranging convention”, or employ the terms “plenary” or “plenipotentiary”, is they did not have to. It should be obvious to all that the Founders didn’t like to repeat themselves. Once they had written something they expected others to have enough sense to put all that had been done before together.

The reason the Founders did not put the words “plenary”, “general” or “plenipotentiary” in their applications is because they didn’t have to. They had placed that language in the Constitution. A convention to propose amendments is empowered to propose *amendments*. (*See* U.S. CONST., art. V) It may propose a series of amendments, a single amendment, or no amendments. As the Constitution, either by expressed or implied language, puts no limits on what the convention may propose in the way of amendments, it follows there are no constitutional limits on what the convention may discuss. Further, there are no limits on who may or may not attend. Thus, it is a “general” convention as its *intent* is to discuss and possibly propose amendments on any subject the convention feels is warranted just as Congress may do in its proposal power. It is also a *general* convention in that all states may send delegates to attend. In granting the convention this power in the Constitution, to propose *amendments*, the Founders removed any need to repeat the power or extent of it in any other place or with any other words.

[1560] For an example of these types of applications, *see infra* APPENDIX B---EXAMPLES OF VARIOUS APPLICATIONS FILED BY THE STATES FOR A CONVENTION, p.717.

[1561] *Id.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

types of applications, constitutionally there is no distinction as all applications have the same intent, i.e., all applications request a convention. This is the sole criterion the Constitution establishes[1562] in order to have Congress call a convention, that the states request one through applications. Thus the content or "subject" of the application, as well as any other pre-conditions, are constitutionally irrelevant.

This suit asserts the only valid method for determining whether Congress must call a convention is a numeric count of the states' applications absent any political content in the applications. If the required two-thirds applying states threshold required by the Constitution is met, Congress must call a convention. Thus, a simple count of the states that have applied proves Congress must call a convention.[1563]

## THE "SAME SUBJECT" MYTH

The other method of "counting" applications proposed by most antagonists to a convention is the content-based discrimination of "same subject." This myth requires that two-thirds of the states must each submit an application to Congress concerning the same subject before Congress is obligated to call a convention. Congress, of course, is the sole discriminator of whether the states' applications satisfy the undefined term of "same subject." This leaves

[1562] U.S. CONST., art. V.
[1563] *See infra*, TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Congress free to define this vague term so as to discriminate against any number of applications needed to prevent a convention.

This suit asserts if “same subject” is construed as the proper method to “count” applications, this will only permit Congress the ability to veto this provision of the Constitution. The easiest way to prove this is to demonstrate that by using “same subject” Congress is already mandated to call as convention and has not done so. The only conclusion that may be drawn from this is Congress merely uses “same subject” as an excuse to veto the Constitution, not as a constitutional standard, however incorrect, for which it will dutifully issue a call should it be met.

The presentation of evidence showing “same subject” can be used to compel Congress to call a convention is not intended as a concession to any argument against the correct interpretation that Congress must call a convention when two-thirds of the states numerically apply. Further, it is not a concession favoring any unconstitutional pre-conditions such as same subject, contemporaneousness, etc.[1564] It is instead intended to show Congress cannot use this argument to avoid calling a convention, that no matter which version is chosen by the Court, the original intent of the Founding Fathers or the politically convenient “revisionist” interpretation, a convention must nevertheless be called.

## COMBINING GENERAL AND SPECIFIC APPLICATIONS

[1564] *See supra* text accompanying notes 437,482-490,506-521.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The proof begins by combining the applications from the states that have called for a “general” convention and those applications from the states that have applied for a “general” convention together with a particular amendment proposal.[1565] It is reasonable to merge “general”, “general with specific subject”, and “specific subject” applications (where both types of “specific subject” are the same) to arrive at the total number of “specific (or same) subject” applications made by the states as:

1. This combination of applications is implied by the state action in the applications concerning direct election for senators as the states requested a general convention while simultaneously applying for the specific subject of the direct election of senators[1566];
2. The applications for a general convention envision all possible topics, including a topic proposed by other applications, and thus it is a reasonable inference that the intent of the states in requesting a general convention assents to a convention that may discuss any amendment subject *in addition to* the specific subject mentioned in the particular application;[1567]
3. If it is appropriate for those favoring “same subject” to ignore the “general” portion of an application so as to defeat the calling of a convention by concluding less than a two-thirds threshold has been met, then the reverse must also apply: that “same subject” may be ignored leaving only the “general” applications intact in order to conclude the two-thirds threshold has been met.[1568]

---

[1565] *See infra*,
TABLE 4—GENERAL APPLICATIONS, NON SPECIFIC, p.683;
TABLE 5—GENERAL APPLICATIONS, INCLUDING SPECIFIC, p.683.

[1566] *See supra*,
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664.

[1567] *See supra* text accompanying note 945.

[1568] As the Court has ruled any interpretation of constitutional provisions must be made in order to “effectuate” them, (*See supra* text accompanying notes 551,784,1089,1276,1311,1373,1394.) the interpretation of “same subject” clearly must be held to this standard. Thus, if a reasonable method exists whereby the applications filed by the states using “same subject” can cause a convention to be called, this interpretation must be prevail. Under no circumstances can this interpretation can be ignored in order to prevent the calling of the convention as the Founders clearly intended that Congress must call if the states apply. (*See supra* text accompanying notes 505-514).

However this does not mean that a strict numeric count of states is usurped by “same subject”. In any matter involving interpretation of the Constitution, particularly where the meaning of the words in the Constitution require no interpretation, the intent of the Founding Fathers must take precedence over any modern, politically motivated “rendition” of constitutional intent. As the Founders were clear in their intent (*Id.*) that

(Footnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Table 4 shows those states that have submitted general applications to Congress with no specific provisions included in the application:

**TABLE 4—GENERAL APPLICATIONS, NON SPECIFIC**

| | State | Date |
|---|---|---|
| 1 | New York | 1789 |
| 2 | Virginia | 1789 |
| 3 | Rhode Island | 1790 |
| 4 | Texas | 1899 |
| 5 | Missouri | 1907 |
| 6 | Kansas | 1907 |
| 7 | Wisconsin | 1911 |
| 8 | Delaware | 1978 |

Table 5 shows those states that have submitted applications for a general convention in addition to those states that have requested a general convention and a specific subject application in the same application:

**TABLE 5—GENERAL APPLICATIONS, INCLUDING SPECIFIC**

| | State | Date |
|---|---|---|
| 1 | Virginia | 1789 |
| 2 | New York | 1789 |
| 3 | Rhode Island | 1790 |
| 4 | Texas | 1899 |
| 5 | Colorado | 1901 |
| 6 | Washington | 1903 |
| 7 | Illinois | 1903 |
| 8 | Kansas | 1907 |
| 9 | Missouri | 1907 |
| 10 | North Carolina | 1907 |
| 11 | Indiana | 1907 |
| 12 | Nevada | 1907 |

---

applications by the states should be counted numerically, this intent must negate any “same subject” interpretation.

The sole purpose in exploring “same subject” is to demonstrate the tyranny of Congress by proving that even when using the improper constitutional interpretation of “same subject”, the states have fulfilled even this extreme unconstitutional standard, and thus Congress must call a convention.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | State | Date |
|---|---|---|
| 13 | Louisiana | 1907 |
| 14 | Oklahoma | 1908 |
| 15 | Iowa | 1909 |
| 16 | Wisconsin | 1911 |
| 17 | Montana | 1911 |
| 18 | Delaware | 1978 |

This combination of general and general-specific applications is all that is required to prove "same subject." Putting these "general" applications with the specific subjects applied for by the states[1569] shows that several subjects have exceeded the two-thirds threshold (assuming "same subject") and thus mandating Congress call a convention, specifically one that discusses the subjects so noted together with any other subject the convention desires, i.e., a general convention. Opponents to a convention cannot have it both

[1569]All materials in TABLE 6—SAME SUBJECT APPLICATIONS, PART I, p. 685 and TABLE 6—SAME SUBJECT APPLICATIONS, PART II, p.686 are derived from TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664 which in turn is derived from the work of Senior United States District Court Judge Bruce Van Sickle except for the final subject, "Limited Taxation". The title marked with an (*) denotes material from Weber-Perry who did not provide congressional citations and thus no evidentiary proof of their assertion that thirty-five states had applied for a convention to repeal the 16th Amendment to the Constitution. Rather, they copied, without citation or credit, the ABA Report on the Constitutional Convention. *See infra* text APPENDIX C---1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, Appendix B, p.58. The general applications cited in Tables 4 and 5 were added to the thirty-five applying states cited by Weber-Perry which merely serves to raise the number of applying states to thirty-nine.

This application number not only satisfies the two-thirds *application* requirement, but the *ratification standard as well*. Hence, it is a reasonable assumption to state that at least two subjects, "Balanced Budget" and "Repeal of Federal Income Tax", should not only have triggered a convention, but have become ratified amendments. Interestingly, as these two subjects would directly limit the "life blood" of the national government, i.e., taxes, it may explain why Congress has refused to call a convention to propose amendments.

However, this suit is not concerned with the selfish political motivations of Congress. It deals with the constitutional procedure thus far ignored by Congress. Thus, this material is supplied only to prove that "same subject" has been satisfied according to several independent sources.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

ways: maintaining Congress must call a convention if “same subject” is satisfied yet ignoring those applications that the states have submitted which agree to any subject at a convention, thus becoming a proxy vote for any subject another state wishes to discuss.

**TABLE 6—SAME SUBJECT APPLICATIONS, PART I**

| Apportionment | Balanced Budget | Direct Election Of Senators | Limited Taxation |
|---|---|---|---|
| 1 Alabama | 1 Alabama | 1 Arkansas | 1 Alabama |
| 2 Arizona | 2 Alaska | 2 Colorado | 2 Arkansas |
| 3 Arkansas | 3 Arizona | 3 Delaware | 3 Colorado |
| 4 Colorado | 4 Arkansas | 4 Idaho | 4 Delaware |
| 5 Delaware | 5 Colorado | 5 Illinois | 5 Florida |
| 6 Florida | 6 Delaware | 6 Indiana | 6 Georgia |
| 7 Idaho | 7 Florida | 7 Iowa | 7 Idaho |
| 8 Illinois | 8 Georgia | 8 Kansas | 8 Illinois |
| 9 Indiana | 9 Idaho | 9 Kentucky | 9 Indiana |
| 10 Iowa | 10 Illinois | 10 Louisiana | 10 Iowa |
| 11 Kansas | 11 Indiana | 11 Maine | 11 Kansas |
| 12 Kentucky | 12 Iowa | 12 Michigan | 12 Louisiana |
| 13 Louisiana | 13 Kansas | 13 Minnesota | 13 Maine |
| 14 Maryland | 14 Louisiana | 14 Missouri | 14 Maryland |
| 15 Minnesota | 15 Maryland | 15 Montana | 15 Michigan |
| 16 Mississippi | 16 Mississippi | 16 Nebraska | 16 Missouri |
| 17 Missouri | 17 Missouri | 17 Nevada | 17 Montana |
| 18 Montana | 18 Montana | 18 New Jersey | 18 Nevada |
| 19 Nebraska | 19 Nebraska | 19 New York | 19 New Hampshire |
| 20 Nevada | 20 Nevada | 20 North Carolina | 20 New Mexico |
| 21 New Hampshire | 21 New Hampshire | 21 Oklahoma | 21 New York |
| 22 New Mexico | 22 New Mexico | 22 Oregon | 22 North Carolina |
| 23 New York | 23 New York | 23 Pennsylvania | 23 Oklahoma |
| 24 North Carolina | 24 North Carolina | 24 Rhode Island | 24 Pennsylvania |
| 25 North Dakota | 25 North Dakota | 25 South Dakota | 25 Rhode Island |
| 26 Oklahoma | 26 Oklahoma | 26 Tennessee | 26 South Carolina |
| 27 Rhode Island | 27 Oregon | 27 Texas | 27 Texas |
| 28 South Carolina | 28 Pennsylvania | 28 Utah | 28 Utah |
| 29 South Dakota | 29 Rhode Island | 29 Virginia | 29 Virginia |
| 30 Tennessee | 30 South Carolina | 30 Washington | 30 Washington |
| 31 Texas | 31 South Dakota | 31 Wisconsin | 31 Wisconsin |
| 32 Utah | 32 Tennessee | | 32 Wyoming |
| 33 Virginia | 33 Texas | | |
| 34 Washington | 34 Utah | | |
| 35 Wisconsin | 35 Virginia | | |
| 36 Wyoming | 36 Washington | | |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| Apportionment | Balanced Budget | Direct Election Of Senators | Limited Taxation |
|---|---|---|---|
| | 37 Wisconsin | | |
| | 38 Wyoming | | |

**TABLE 6—SAME SUBJECT APPLICATIONS, PART II**

| Right To Life | Anti-Polygamy | Revenue Sharing | Limited Taxation* |
|---|---|---|---|
| 1 Alabama | 1 Colorado | 1 Colorado | 1 Alabama |
| 2 Arkansas | 2 Delaware | 2 Delaware | 2 Arkansas |
| 3 Colorado | 3 Illinois | 3 Florida | 3 Colorado |
| 4 Delaware | 4 Indiana | 4 Illinois | 4 Delaware |
| 5 Georgia | 5 Iowa | 5 Indiana | 5 Florida |
| 6 Idaho | 6 Kansas | 6 Iowa | 6 Georgia |
| 7 Illinois | 7 Louisiana | 7 Kansas | 7 Idaho |
| 8 Indiana | 8 Michigan | 8 Louisiana | 8 Illinois |
| 9 Iowa | 9 Missouri | 9 Massachusetts | 9 Indiana |
| 10 Kansas | 10 Montana | 10 Missouri | 10 Iowa |
| 11 Louisiana | 11 Nebraska | 11 Montana | 11 Kansas |
| 12 Massachusetts | 12 Nevada | 12 Nevada | 12 Kentucky |
| 13 Mississippi | 13 New York | 13 New Hampshire | 13 Louisiana |
| 14 Missouri | 14 North Carolina | 14 New Jersey | 14 Maine |
| 15 Montana | 15 Ohio | 15 New York | 15 Maryland |
| 16 Nebraska | 16 Oklahoma | 16 North Carolina | 16 Massachusetts |
| 17 Nevada | 17 Oregon | 17 North Dakota | 17 Michigan |
| 18 New Jersey | 18 Rhode Island | 18 Ohio | 18 Mississippi |
| 19 New York | 19 South Carolina | 19 Oklahoma | 19 Missouri |
| 20 North Carolina | 20 South Dakota | 20 Oregon | 20 Montana |
| 21 North Dakota | 21 Tennessee | 21 Rhode Island | 21 Nebraska |
| 22 Oklahoma | 22 Texas | 22 South Dakota | 22 Nevada |
| 23 Pennsylvania | 23 Vermont | 23 Texas | 23 New Hampshire |
| 24 Rhode Island | 24 Virginia | 24 Virginia | 24 New Jersey |
| 25 South Dakota | 25 Washington | 25 Washington | 25 New Mexico |
| 26 Tennessee | 26 Wisconsin | 26 West Virginia | 26 New York |
| 27 Texas | | 27 Wisconsin | 27 North Carolina |
| 28 Utah | | | 28 Oklahoma |
| 29 Virginia | | | 29 Pennsylvania |
| 30 Washington | | | 30 Rhode Island |
| 31 Wisconsin | | | 31 South Carolina |
| | | | 32 South Dakota |
| | | | 33 Tennessee |
| | | | 34 Texas |
| | | | 35 Utah |
| | | | 36 Virginia |
| | | | 37 Washington |
| | | | 38 Wisconsin |
| | | | 39 Wyoming |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Thus, at least three subjects--apportionment, balanced budget and limited taxation (repeal of the 16th Amendment)--have satisfied the unconstitutional requirement of "same subject" thus mandating even under this unconstitutional requirement that Congress must call a convention.

However the matter does not stop there with "same subject." It is important not only to establish that "same subject" exists but also *how long* it has existed so as to truly demonstrate the extent to which Congress has maintained its tyrannical veto of the Constitution. One need look no further than to material written by Russell Caplan, an attorney for the Department of Justice.

In his book,[1570] Caplan presents evidence of applications made by the states in the Nineteenth Century. Caplan, while providing state citations for his material, fails to provide congressional citings of these applications thus raising the question of whether they were indeed submitted to Congress. However, as "same subject" is not the correct interpretation of state applications in compelling Congress to call a convention, and the only purpose of their presentation is to demonstrate under this false interpretation that ***Congress has been obligated to call a convention to propose amendments for nearly 100 years***, the veracity of this material will not be challenged.

The applications by the states previous to 1900 cited by Caplan are as follows:[1571]

---

[1570] *See supra* text accompanying note 1547.

[1571] Where Caplan has provided a congressional citation of an application not provided elsewhere, specifically the 1789 general application of New York, this application has been incorporated in the Van Sickle material shown in Tables 1,2, 4 and 5.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

**TABLE 7—CAPLAN MATERIAL, PRE-1900 APPLICATIONS**

| | Date | State | Subject | Location |
|---|---|---|---|---|
| 1 | 1789 | Virginia | General | 1 Annals of Cong. 258-61 (1789) |
| 2 | 1789 | New York | General | 1 Annals of Cong. 258-61 (1789) |
| 3 | 1832 | South Carolina | General | No Cong. Reference |
| 4 | 1832 | Georgia | General | Senate Journal, 22 Cong. 2d 65-66 (1833) |
| 5 | 1833 | Alabama | General | No Cong. Reference |
| 6 | 1860 | Delaware | Slavery | No Cong. Reference |
| 7 | 1860 | Arkansas | Slavery | No Cong. Reference |
| 8 | 1860 | Tennessee | Slavery | No Cong. Reference |
| 9 | 1861 | Indiana | Slavery | No Cong. Reference |
| 10 | 1861 | New Jersey | Slavery | No Cong. Reference |
| 11 | 1861 | Illinois | Slavery | No Cong. Reference |
| 12 | 1861 | Ohio | Slavery | No Cong. Reference |
| 13 | 1861 | Kentucky | Slavery | No Cong. Reference |
| 14 | 1863 | Delaware | Slavery | No Cong. Reference |
| 15 | 1863 | Kentucky | Slavery | No Cong. Reference |
| 16 | 1864 | Oregon | Slavery | No Cong. Reference |
| 17 | 1867 | North Carolina | Emancipation | No Cong. Reference |
| 18 | 1893 | Nebraska | Direct election of Senators | No Cong. Reference |

If the general applications made by states before 1900[1572] cited by Caplan are combined with "same subject" applications cited by Judge Van Sickle, the following table results:

**TABLE 8—PRE-1912 APPLICATIONS INCLUDING CAPLAN MATERIAL**

| | Date | State | Subject | Location | # of States In Union | 2/3rds Req. |
|---|---|---|---|---|---|---|
| 1 | 1789 | (New York) | General | 1 Annals of Congress 248 (J Gales ed. 1789) | 12 | 9 |
| 2 | 1789 | Virginia | General | 1 Annals of Congress 248 (J Gales ed. 1789) | 12 | 9 |
| 3 | 1790 | Rhode Island | General | 1 Annals of Congress 1103 (J Gales ed. 1790) | 13 | 9 |
| 4 | 1832 | (South | General | No Cong. Reference | 24 | 17 |

[1572] This includes the addition of four states: New York, 1789; Alabama, 1833; Georgia, 1832 and South Carolina, 1832. Where these states are added in other tables, they are surrounded by parentheses ().


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location | # of States In Union | 2/3rds Req. |
|---|---|---|---|---|---|---|
| | | Carolina) | | | | |
| 5 | 1832 | (Georgia) | General | Senate Journal, 22 Cong. 2d 65-66 (1833) | 24 | 17 |
| 6 | 1833 | (Alabama) | General | No Cong. Reference | 24 | 17 |
| 7 | 1899 | Texas | General | 33 Cong. Rec. 219 (1899) | 42 | 29 |
| 8 | 1901 | Arkansas | Direct election of senators | 45 Cong. Rec. 7113 (1910) (1901) | 45 | 30 |
| 9 | 1901 | Colorado | General (Direct election of senators) | 45 Cong. Rec. 7113 (1910) (1901) | 45 | 30 |
| 10 | 1901 | Idaho | Direct election of senators | 45 Cong. Rec. 7114 (1910) (1901) | 45 | 30 |
| 11 | 1901 | Michigan | Direct election of senators | 35 Cong. Rec. 117 (1901) | 45 | 30 |
| 12 | 1901 | Minnesota | Direct election of senators | 34 Cong. Rec. 2560 (1901) | 45 | 30 |
| 13 | 1901 | Montana | Direct election of senators | 35 Cong. Rec. 208 (1901) | 45 | 30 |
| 14 | 1901 | Nebraska | Direct election of senators | 35 Cong. Rec. 1779 (1901) | 45 | 30 |
| 15 | 1901 | Nevada | Direct election of senators | 35 Cong. Rec. 112 (1901) | 45 | 30 |
| 16 | 1901 | Oregon | Direct election of senators | 35 Cong. Rec. 117 (1901) | 45 | 30 |
| 17 | 1901 | Tennessee | Direct election of senators | 35 Cong. Rec. 2344 (1901) | 45 | 30 |
| 18 | 1901 | Pennsylvania | Direct election of senators | 45 Cong. Rec. 7118 (1910) (1901) | 45 | 30 |
| 19 | 1902 | Kentucky | Direct election of senators | 45 Cong. Rec. 7115 (1910) (1902) | 45 | 30 |
| 20 | 1903 | Illinois | General (Direct election of senators) | 45 Cong. Rec. 7114 (1910) (1903) | 45 | 30 |
| 21 | 1903 | Utah | Direct election of senators | 45 Cong. Rec. 7119 (1910) (1903) | 45 | 30 |
| 22 | 1903 | Washington | General (Direct election of senators) | 45 Cong. Rec. 7119 (1910) (1903) | 45 | 30 |
| 23 | 1903 | Wisconsin | Direct election of senators | 37 Cong. Rec. 276 (1903) | 45 | 30 |
| 24 | 1904 | Iowa | Direct election of senators | 38 Cong. Rec. 4959 (1904) | 45 | 30 |
| 25 | 1905 | Missouri | Direct election of senators | 40 Cong. Rec. 138 (1905) | 45 | 30 |
| 26 | 1907 | Delaware | Anti-polygamy | 41 Cong. Rec. 3011 (1907) | 46 | 31 |
| 27 | 1907 | Indiana | Direct election of senators | 45 Cong. Rec. 7114 (1910) (1907) | 46 | 31 |
| 28 | 1907 | Kansas | General | 41 Cong. Rec. 3072 (1907) | 46 | 31 |
| 29 | 1907 | Louisiana | Direct election of senators | 42 Cong. Rec. 5906 (1908) (1907) | 46 | 31 |
| 30 | 1907 | New Jersey | Direct election of senators | 42 Cong. Rec. 164 (1907) | 46 | 31 |
| 31 | 1907 | North | General (Direct | 45 Cong. Rec. 7117 (1910) (1907) | 46 | 31 |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Date | State | Subject | Location | # of States In Union | 2/3rds Req. |
|---|---|---|---|---|---|---|
| | | Carolina | election of senators) | | | |
| 32 | 1907 | South Dakota | Direct election of senators | 41 Cong. Rec. 2497 (1907) | 46 | 31 |
| 33 | 1908 | Oklahoma | General (Direct election of senators) | 42 Cong. Rec. 894 (1908) | 46 | 31 |
| 34 | 1911 | Maine | Direct election of senators | 46 Cong. Rec. 4280 (1911) | 46 | 31 |
| 35 | 1911 | Ohio | Anti-polygamy | 47 Cong. Rec. 661 (1911) | 46 | 31 |

As shown by the above table, a total of thirty-five applications were submitted by the states between 1789 and 1911. No recessions were submitted by any state, thus removing any question of continuing effect, intent or validity.[1573] For the purpose of showing the fallacy of "same subject", the applications for "anti-polygamy" will not be "counted."[1574] Under this fallacy, this leaves thirty-three applications from thirty-three states applying either for a general convention or the "same subject" of the direct election of senators.[1575]

---

[1573] *See supra*, TABLE 3—STATE RECESSIONS, p.678.

[1574] Under the precepts of "same subject" this discrimination is valid. However, as "same subject" is constitutionally invalid as it contradicts the clear intent of the Founding Fathers, all thirty-five applications should be counted toward determining whether a convention must be called by Congress.

[1575] The fact Congress submitted a proposed amendment on this subject to the states for ratification, and that this proposal was ratified by the states as the 17th Amendment in 1913, is of no consequence in regards to the calling of the convention to propose amendments. Article V does not provide that if Congress submits an amendment for a subject, it can ignore or otherwise veto the applications of the states for a convention. It is obligated to call the convention anyway. While both methods of amendatory procedure obviously deal with amending the Constitution, *they are two separate procedures for doing so*. Thus, the actions of Congress have nothing to do with the actions of a convention. There is nothing to say, for example, that the states might not have written a different amendment proposal in a convention than the one submitted by Congress, or that they might not have addressed other subjects ignored by Congress.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The critical point is what was obviously ignored by Congress. While the two-thirds threshold *today* is thirty-four states (two-thirds of the fifty states now in the union) this was not always the case *in the past*. The reason is obvious. *There were not always fifty states in the Union*. *Thus, the number of states required to fulfill the two-thirds threshold for a convention to propose amendments call was less than it is today*.

As Table 8 shows, in 1911 there were only forty-six states in the Union. The two-thirds threshold required to compel a convention *at that time was only 31 states*. Thus, e*ven under "same subject", combining "general" applications which clearly are made with the intent of applying for any subject with those of a particular subject, in this case, direct election of senators, thirty-three states had applied by 1911, thus more than satisfying the constitutional requirement*. Congress will have to look elsewhere for an excuse not to call a convention.

By no stretch of implication or interpretation does the Constitution relieve Congress of its mandated obligation to call a convention after some period of time; the obligation is ongoing and continuing on Congress.[1576] This being the case according to Caplan, an attorney for the United States Department of Justice, and Senior Federal District Judge Van Sickle, Congress

[1576] As the Founding Fathers intended that "[T]he national rulers...will have no option upon the subject" in the calling of a convention to propose amendments, it follows this intent of "no option" certainly must include prohibiting Congress not calling a convention simply by allowing time to pass without taking any action on the matter. *See supra* text accompanying notes 505-514.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

has been obligated to call a convention to propose amendments *even under the unconstitutional standard of "same subject" since 1911*.[1577]

If the Caplan applications are reintroduced into the "same subject" applications previously shown in Tables 6, parts I and II, there is no change in what subjects have satisfied "same subject" except that the number of states applying for apportionment is increased by one state, the direct election of senators is increased by three states, right-to-life is increased by one state, anti-polygamy is increased by three states, and revenue sharing is increased by three states.

**TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART I**

| Apportionment | Balanced Budget | Direct Election Of Senators | Limited Taxation |
|---|---|---|---|
| 1 Alabama | 1 Alabama | 1 (Alabama) | 1 Alabama |
| 2 Arizona | 2 Alaska | 2 Arkansas | 2 Arkansas |
| 3 Arkansas | 3 Arizona | 3 Colorado | 3 Colorado |
| 4 Colorado | 4 Arkansas | 4 Delaware | 4 Delaware |

[1577] As observed by Senior United States District Court Judge Van Sickle: "At this time more than two-thirds of the states have petitioned for a convention for proposing amendments. ...[A] total of forty-six states have applied for a convention for the purpose of proposing a particular amendment to the states for ratification. Significantly, these applications from the forty-six states do not state that the convention can only be held for the reason listed; nor do these applications contain any provision that the application is withdrawn or invalid if the convention expands its scope beyond the topic listed. Thirty-three states have submitted applications that ostensibly limit the convention to lonely the topic listed in the application, while a set of eleven states have submitted applications contain a provision that the application is withdraw or invalid if the convention expands its scope beyond the topic listed. As described above, such attempts by states to limit the convention method are invalid and without legal substance. Thus, each of the applications are rightfully considered valid applications for a convention to propose amendments. These applications derive from forty-nine states. Congress is there presently remiss in its constitutionally mandated obligation to call a convention for proposing amendments." Van Sickle, Boughey, "*A Lawful and Peaceful Revolution: Article V and Congress' Present Duty to Call a Convention for Proposing Amendments*", 14 HAM. L. REV. (1990). (Footnotes omitted).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| Apportionment | Balanced Budget | Direct Election Of Senators | Limited Taxation |
|---|---|---|---|
| 5 Delaware | 5 Colorado | 5 (Georgia) | 5 Florida |
| 6 Florida | 6 Delaware | 6 Idaho | 6 Georgia |
| 7 (Georgia) | 7 Florida | 7 Illinois | 7 Idaho |
| 8 Idaho | 8 Georgia | 8 Indiana | 8 Illinois |
| 9 Illinois | 9 Idaho | 9 Iowa | 9 Indiana |
| 10 Indiana | 10 Illinois | 10 Kansas | 10 Iowa |
| 11 Iowa | 11 Indiana | 11 Kentucky | 11 Kansas |
| 12 Kansas | 12 Iowa | 12 Louisiana | 12 Louisiana |
| 13 Kentucky | 13 Kansas | 13 Maine | 13 Maine |
| 14 Louisiana | 14 Louisiana | 14 Michigan | 14 Maryland |
| 15 Maryland | 15 Maryland | 15 Minnesota | 15 Michigan |
| 16 Minnesota | 16 Mississippi | 16 Missouri | 16 Missouri |
| 17 Mississippi | 17 Missouri | 17 Montana | 17 Montana |
| 18 Missouri | 18 Montana | 18 Nebraska | 18 Nevada |
| 19 Montana | 19 Nebraska | 19 Nevada | 19 New Hampshire |
| 20 Nebraska | 20 Nevada | 20 New Jersey | 20 New Mexico |
| 21 Nevada | 21 New Hampshire | 21 New York | 21 New York |
| 22 New Hampshire | 22 New Mexico | 22 North Carolina | 22 North Carolina |
| 23 New Mexico | 23 New York | 23 Oklahoma | 23 Oklahoma |
| 24 New York | 24 North Carolina | 24 Oregon | 24 Pennsylvania |
| 25 North Carolina | 25 North Dakota | 25 Pennsylvania | 25 Rhode Island |
| 26 North Dakota | 26 Oklahoma | 26 Rhode Island | 26 South Carolina |
| 27 Oklahoma | 27 Oregon | 27 (South Carolina) | 27 Texas |
| 28 Rhode Island | 28 Pennsylvania | 28 South Dakota | 28 Utah |
| 29 South Carolina | 29 Rhode Island | 29 Tennessee | 29 Virginia |
| 30 South Dakota | 30 South Carolina | 30 Texas | 30 Washington |
| 31 Tennessee | 31 South Dakota | 31 Utah | 31 Wisconsin |
| 32 Texas | 32 Tennessee | 32 Virginia | 32 Wyoming |
| 33 Utah | 33 Texas | 33 Washington | |
| 34 Virginia | 34 Utah | 34 Wisconsin | |
| 35 Washington | 35 Virginia | | |
| 36 Wisconsin | 36 Washington | | |
| 37 Wyoming | 37 Wisconsin | | |
| | 38 Wyoming | | |

**TABLE 9—SAME SUBJECT APPLICATIONS INCLUDING CAPLAN, PART II**

| Right To Life | Anti-Polygamy | Revenue Sharing | Limited Taxation* |
|---|---|---|---|
| 1 Alabama | 1 (Alabama) | 1 (Alabama) | 1 Alabama |
| 2 Arkansas | 2 Colorado | 2 Colorado | 2 Arkansas |
| 3 Colorado | 3 Delaware | 3 Delaware | 3 Colorado |
| 4 Delaware | 4 (Georgia) | 4 Florida | 4 Delaware |
| 5 Georgia | 5 Illinois | 5 (Georgia) | 5 Florida |
| 6 Idaho | 6 Indiana | 6 Illinois | 6 Georgia |
| 7 Illinois | 7 Iowa | 7 Indiana | 7 Idaho |
| 8 Indiana | 8 Kansas | 8 Iowa | 8 Illinois |
| 9 Iowa | 9 Louisiana | 9 Kansas | 9 Indiana |


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| Right To Life | Anti-Polygamy | Revenue Sharing | Limited Taxation* |
|---|---|---|---|
| 10 Kansas | 10 Michigan | 10 Louisiana | 10 Iowa |
| 11 Louisiana | 11 Missouri | 11 Massachusetts | 11 Kansas |
| 12 Massachusetts | 12 Montana | 12 Missouri | 12 Kentucky |
| 13 Mississippi | 13 Nebraska | 13 Montana | 13 Louisiana |
| 14 Missouri | 14 Nevada | 14 Nevada | 14 Maine |
| 15 Montana | 15 New York | 15 New Hampshire | 15 Maryland |
| 16 Nebraska | 16 North Carolina | 16 New Jersey | 16 Massachusetts |
| 17 Nevada | 17 Ohio | 17 New York | 17 Michigan |
| 18 New Jersey | 18 Oklahoma | 18 North Carolina | 18 Mississippi |
| 19 New York | 19 Oregon | 19 North Dakota | 19 Missouri |
| 20 North Carolina | 20 Rhode Island | 20 Ohio | 20 Montana |
| 21 North Dakota | 21 South Carolina | 21 Oklahoma | 21 Nebraska |
| 22 Oklahoma | 22 South Dakota | 22 Oregon | 22 Nevada |
| 23 Pennsylvania | 23 Tennessee | 23 Rhode Island | 23 New Hampshire |
| 24 Rhode Island | 24 Texas | 24 (South Carolina) | 24 New Jersey |
| 25 (South Carolina) | 25 Vermont | 25 South Dakota | 25 New Mexico |
| 26 South Dakota | 26 Virginia | 26 Texas | 26 New York |
| 27 Tennessee | 27 Washington | 27 Virginia | 27 North Carolina |
| 28 Texas | 28 Wisconsin | 28 Washington | 28 Oklahoma |
| 29 Utah | | 29 West Virginia | 29 Pennsylvania |
| 30 Virginia | | 30 Wisconsin | 30 Rhode Island |
| 31 Washington | | | 31 South Carolina |
| 32 Wisconsin | | | 32 South Dakota |
| | | | 33 Tennessee |
| | | | 34 Texas |
| | | | 35 Utah |
| | | | 36 Virginia |
| | | | 37 Washington |
| | | | 38 Wisconsin |
| | | | 39 Wyoming |

**CONGRESS' FAILURE TO CALL A CONVENTION**

Once two-thirds of the legislatures have requested a convention by application, Congress' duty to call a convention is immediate and continuing.[1578] The existence of applications from two-thirds of the state

[1578] *See supra*,
TABLE 1—STATE APPLICATIONS FOR A CONVENTION, p.664;
TABLE 2—STATES APPLYING FOR A CONVENTION, p.676.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

legislatures creates and demands congressional action.[1579] Once that point is reached, the dictates of Article V take precedence, and the states have no power to withdraw their applications or to curtail the focus of the convention.[1580] Nor is it appropriate to consider Congress' failure to call a convention to propose amendments as placing some standard of contemporaneousness upon the requirements of Article V. The Constitution--especially Article V--cannot be vetoed by an unlawful inaction of Congress. Allegations of a requirement of contemporaneousness cannot permit the dictates of the Constitution to be ignored, nor can the requirements of our Constitution be "overruled" by such bogus concepts of "same subject", "protectionism," or the absurd assertion that Congress' *laches* is self-justifying. *No part of our Constitution can be vetoed by Congress.*[1581]

---

[1579] *See supra* text accompanying notes 506-514.

[1580] Further, they possess no constitutional power to withdraw their application *previous* to the two-thirds threshold. *See supra* text accompanying notes 890-920,1352.

[1581] "The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void." Marbury v. Madison, 5 U.S. 137 (1803).

"Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should Congress, under the pretext of executing its powers, pass law for the accomplishment of objects not entrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land." McCulloch v. Maryland, 17 U.S. 316 (1819).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## SUMMATION

### THE COURT'S DILEMMA

The Court faces an interesting dilemma should it determine that the meaning and intent of Article V convention applications is "same subject", i.e., that two-thirds of the several state legislatures must apply for the same amendatory subject before Congress is obligated to call a convention and that Congress possesses the discretionary power to determine whether or not the states, if ever, have satisfied the "same subject" criterion.

This suit requests the Court to compel Congress to call a convention because the states' applications have satisfied the meaning and intent of Article V. Without an action properly brought before the Court, the Court is powerless to act. Therefore, only by affirming the request of this suit can the Court act in the matter at all. Should the Court find that Article V applications must satisfy a congressionally defined "same subject" criterion, the effect of its order would be to compel Congress to call a convention by finding Congress' current *laches* unconstitutional, yet simultaneously provide a means for Congress to veto the Court order by simply determing the applications do not satisfy Congress' own definition of "same subject." This clearly establishes a precedent that would *de facto* overrule the judicial principles established in *Marbury*.

If, on the other hand, the Court defines Article V applications as a numeric count as urged by this suit, i.e., that upon a specific number of applications submitted by the states, regardless of content, Congress is


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

obligated to call a convention with no discretion in the matter as the clear language of the Founders states, then Congress, having no discretion, cannot veto the order of the Court in any manner. Thus, there is no threat to the powers of judicial review as set forth in *Marbury*. Of course, Congress could exercise its incidental regulatory power to overthrow the state legislatures, a power that the Court has already approved in *Coleman*, thus defeating the Court's lawful order, but it will be up to the wisdom of Congress to take this fateful step. The Court can only interpret the Constitution; respect for its rulings is the only limit on raw political ambition.

The third option would be for the Court to take no action and defeat the plaintiff's motion. This result would affirm the *de facto* right of Congress to veto the expressed language of the Constitution by *laches*, i.e., to simply ignore it. This would establish the precedent of Congress, or any other branch of government so regulated by the Constitution, possessing the power to veto the Constitution at will by the least standard possible: acting as if the language didn't even exist. As the evidence in this suit shows that the states in their applications have not only satisfied the proper interpretation of numeric count, but the improper interpretation of "same subject", no other conclusion is possible. As always, it is left to the wisdom of the Court to resolve this dilemma.

## CONCLUSION


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Our Founding Founders created in the United States of America a new form of government. This government is dedicated to the proposition that free people have the right to freely govern themselves. The Founders professed this belief in the Declaration of Independence. They fought a war defending this belief. They wrote the United States Constitution embodying this belief.

In order to govern themselves, the Founding Fathers designed a national government, a kind that had never existed on earth before. This government was to be the servant of the people, not their master, limited in power and scope, subject to the will of the people. It was dedicated to the proposition that "all men are created equal and endowed with certain unalienable rights..."

The founders of the Republic knew that Tyranny is a beast that strains to break any and all chains that may bind it. Recognizing the Beast, the Founding Fathers carefully formulated and spelled out in written word a government meant to hold the Beast in check. They knew whether wielded by the many, the few or the one, however benevolent in purpose, however popular in support, Tyranny left unchecked consumes all.

The Beast comes in many forms. It may be a king. It may be a foreign power attempting to impose its will on our own. But what if that Tyranny stems from our own government? What if our government threatens the life, liberty and happiness of the people it is meant to protect?

The Founders answered this in ringing tones. "[T]hat when any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it..."

Thus, to protect this most sacred right to alter or abolish and to stem the threat of Tyranny from the government itself, the Founders established a


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

method of amendment in the Constitution completely outside the control of the national government: the convention to propose amendments. That amendatory power was written in such firm language it requires no interpretation.

The record is clear. Americans have the right to alter or abolish their government. They have spoken through their state legislatures. The states have applied. Congress has vetoed the Constitution by ignoring its clear language. Congress has ignored the will of the people. Congress has established a Tyranny.

The words of Colonel Mason have become all too prophetic:

"The plan now to be formed will certainly be defective, as the confederation has been found on trial to be. Amendments therefore will be necessary, as 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 amendmt."[1582]

Under its oath, the Court is mandated to enforce the Constitution. It must compel Congress to obey the Constitution. To do otherwise denies the most basic right of the people. Permitting Congress to deny its mandated obligation as prescribed by the Constitution transforms America from a nation ruled by law to a nation ruled by men. The Beast will have triumphed.

[1582] *See supra* text accompanying notes 362-363 (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

**APPENDIX A---EVIDENCE OF PERSONAL INJURY IN SUPPORT OF STANDING**

EXHIBIT 1

*Letter from Attorney General of Washington to Plaintiff, May 9, 1994*



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Christine O. Gregoire
ATTORNEY GENERAL OF WASHINGTON
905 Plum Street Bldg 3 • PO Box 40100 • Olympia WA 98504-0100

May 9, 1994

Bill Walker
PO Box 78548
Seattle, WA 98178

Re: Initiative No. 160 to the Legislature

Dear Mr. Walker:

You recently wrote to this office inquiring about our authority to decline to issue a ballot title for the initiative you are sponsoring, Initiative No. 160 to the Legislature.

While I was researching an answer to your letter, another attorney in our office discovered that in 1983 we issued an official opinion that an initiative may be used for the purpose of applying to Congress to call a convention for proposing amendments to the United States Constitution. Although I had looked in several places for the existence of an Attorney General Opinion on the subject, I apparently had not looked in the right place. I enclose a copy of AGO 1983 No. 4, the opinion requested.

Once we have issued a formal opinion on a subject, we do not lightly reverse ourselves. While I think there is some authority for the position I took in my previous letter, I cannot say that AGO 1983 No. 4 is poorly reasoned or wrong. Accordingly, we will keep it as our guide for the office, which means that, if you wish to resubmit Initiative 160 to the Legislature for a ballot title, we will supply a title and summary for it.

I also apologize for any inconvenience or trouble that I have caused by my failure to find this opinion before I first wrote to you.

Very truly yours,

JAMES K. PHARRIS
Senior Assistant Attorney General
(206) 664-3027

JKP/bw

Enclosure

cc: The Honorable Ralph Munro

EXIBIT 2

*Washington State AGO Opinion No. 4, 1983*



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

# OFFICE OF THE ATTORNEY GENERAL

INITIATIVE AND REFERENDUM--LEGISLATURE--CONSTITUTIONAL CONVENTION--USE OF INITIATIVE TO CALL FOR FEDERAL CONSTITUTIONAL CONVENTION

An initiative, under Article II, § 1 of the Washington Constitution, may be used for the purpose of applying to the federal Congress to call a convention for proposing amendments to the United States Constitution in accordance with Article V thereof.

- - - - - - - - - - -

March 18, 1983

Honorable Doc Hastings
St. Rep., 16th District
416 Legislative Building
Olympia, WA 98504

Cite as:
AGO 1983 No. 4

Dear Sir:

By recent letter you requested our opinion on a question which we paraphrase as follows:

> May an initiative, under Article II, § 1 of the Washington Constitution, be used for the purpose of applying to the federal Congress to call a convention for proposing amendments to the United States Constitution?

We answer the foregoing question in the affirmative.

## ANALYSIS

Article V of the United States Constitution, relating to the amendment thereof, provides as follows:

> "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." (Emphasis supplied)

Article II, § 2 of our own state constitution, which originated with the Seventh Amendment thereto in 1912, provides, in material part, that:

> "The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature.
>
> ". . ."

Our research has disclosed no cases dealing with the use of an initiative in the performance of a legislative function relating to the federal constitution's amendatory process. We have, however, a case squarely in point insofar as the availability of a referendum in that general context is concerned; namely, State ex rel. Mullen v. Howell, 107 Wash. 167, 181 Pac. 920 (1919).

In the Howell case, the question presented to the Court was whether a joint resolution of the legislature, ratifying an amendment to the United States Constitution, was an "act, bill or law" within the meaning of so much of Article II, § 1 (Amendment 7) of the state constitution, supra, as further provides:

> ". . . The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

> institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted. . . ."

The Court, after a thorough consideration of the underlying purposes of the Seventh Amendment to the state constitution, answered in the affirmative--notwithstanding that the act of ratification was in the form of a joint resolution rather than a bill. The critical point, it appears, was that the joint resolution nevertheless was of obvious legal force and effect in the implementation, by the State of Washington, of the procedures set forth in Article V of the United States Constitution, supra, relating to the amendatory process. In other words, it was not the form of the state action but, instead, its actual legal force and effect which was determinative. As stated by the Court, at page 173:

> "The contention that a resolution, although it may have the force and consequence of a formal legislative enactment and affect the people in their civil and political rights, cannot be referred arises from a misconception of the term. This case sounds in fundamentals, not in definitions. It is not the resolution, but the act of the legislature in adopting it that is to be referred. A resolution, like all acts of the legislature, is to be measured by the end accomplished. . . ." (Emphasis supplied)

In addition, the Court noted the language of Article V of the United States Constitution, supra, and it then met the contention that the reference therein to the "legislature's" contemplated formal action by the respective state legislatures themselves by saying, at pages 176-177:

> "It is argued that, inasmuch as article V of the constitution of the United States provides that a proposed amendment '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,' etc., the people have hitherto fixed the manner and form of ratification, against which the reserved power of the people of a sovereign state may not prevail. If we are to stand upon the word 'legislatures,' if that word, and that alone, is the Alpha and Omega of our inquiry, it follows that the controversy is at an end, but we are

1
2



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

cited to no instances where a great question involving the political rights of a people have been met by such technical recourse--where any court has so exalted the letter or so debased the spirit of the law." (Emphasis theirs)

Also, at page 178, the Court said:

"It is provided in the Federal constitution that proposed amendments shall be ratified by the legislatures of the states or by conventions assembled for the purpose of considering them. It cannot be urged successfully that the framers of the constitution used the words 'legislatures' and 'conventions' as terms describing then present institutions, for it is well known that, at the time the constitution was adopted, some of the states did not have legislative assemblies.

"Article V can mean no more than this: that no amendment shall be adopted unless it is sanctioned by the supreme legislative power of a sufficient number of the commonwealths, whether such ratification be by legislative assembly, convention, or such other method as might thereafter be adopted by the people in the several states."

Lastly, we note the Court's apparent acceptance, at page 183, of the following excerpt from a decision of the South Dakota Supreme Court:

"'. . . The "Legislature" of the state, in its fullest and broadest sense, signifies that body in which all the legislative power of a state reside, and that body is the people themselves, who exercise the elective franchise, and upon their power of legislation there is no limitation or restriction, except such as may be found in the federal Constitution, or such as they themselves may provide by the organic law of the state.'"

See, State ex rel. Schrader v. Polley, 26 S.D. 5, 127 N.W. 848 (1910) at pages 11-12.

In our opinion this same reasoning is equally applicable to the use of an initiative--as a form of legislative action under Article II, § 1 (Amendment 7), supra--to carry an application by the State of Washington to the United States Constitution for the



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convening of a federal constitutional convention. We would, therefore, prepare an official ballot title for such an initiative should it be presented to us for that purpose in accordance with the applicable procedures set forth in RCW 29.79.040, et seq.[1]

We trust that the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY
Attorney General

PHILIP H. AUSTIN
Senior Deputy Attorney General

mg

1 In the past, this office has declined to process, and prepare ballot titles for, initiatives which merely proposed to memorialize the United States Congress to take action on subjects over which the Congress, itself, has complete discretion--on the ground that such initiatives would be of no legal force or effect under the provisions of the United States Constitution relating to congressional action. Cf., State ex rel. Mullen v. Howell, supra. We would, however, distinguish those instances from the subject of your present inquiry because of the legal force and effect of state legislative action, on the Congress, of an application submitted pursuant to Article V of the United States Constitution, supra.

EXHIBIT 3

*Text of proposed initiative submitted by Plaintiff*

AN ACT Relating to national initiative, referendum and electronic voting; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. Be it adopted and enacted by the legislature of the state of Washington that it hereby applies to the Congress of the United States, under the authority of Article V of the United States Constitution, that Congress hereby call a constitutional convention, to be independent of, and not subject to rule by, Congress, for the purpose of considering section 3 of this act as an amendment to the United States Constitution together with consideration of any and all other proposals for amendments to the United States Constitution by the several states together with any other business the convention may deem necessary and proper for its consideration.

NEW SECTION. Sec. 2. Recognizing that no state is empowered by the Constitution to write a specific proposed amendment, that this power is specifically limited to either Congress or a constitutional convention, the legislature hereby requests the constitutional convention to consider proposing an amendment as outlined in Section 3 of this application and submitting it to the several states for their ratification.

NEW SECTION. Sec. 3. The proposed amendment shall be presented to a constitutional convention and to Congress and shall include the following provisions:

(1) All acts of Congress shall be subject to review and approval by means of electronic initiative or referendum. Electronic vote shall replace all other forms of voting and shall include the right of election and selection.

(2) All United States Supreme Court rulings, or any ruling of any inferior court, whether of the United States or of the several states, after suffering all possible court appeal, in which the ruling determines an act of the legislature, either state or national, or any regulation, executive action, or court ruling is unconstitutional and contrary to the United States Constitution, must, before becoming a final and effective ruling, be submitted to review and approval by the people in electronic ballot. If the people shall reject the court ruling, then the court's ruling shall be determined to have been overruled. There shall be no appeal to this vote except by a like vote. No electioneering shall be permitted in this vote and only those materials available to the final court of appeal in the matter shall be presented to the people for their consideration in their vote.

(3) The Supreme Court, or any inferior court, either of the United States or of the several states, are forbidden from finding any election by the people, either in federal elections or in the several states on any issue, to be void or unconstitutional and only any election by the people shall have the power to overturn an election. Elections by the people shall be considered supreme to any other act of the government. However, should the question be poised to the court regarding fraud in the election or other irregularities, the court upon so determining, may act to void the election and provide for a new election.

(4) All Presidential actions, unless they shall be specifically and expressly designated in the Constitution as powers of the President to act, must, upon the submission of a referendum questioning the same, be approved by a vote of the people through electronic ballot.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

(5) All regulation, act, rule or decision by any agency, bureau or department of the United States government, or of the several states, shall be subject to electronic initiative or referendum before such regulation, act, rule or decision may take effect and, may be changed or voided by a vote of the people at any time after such regulation, act, rule or decision is approved.

(6) Any tax increase proposed by the Congress, must, before it shall take effect, be approved by the people through electronic vote with at least sixty percent of those voting granting approval for the same. No sales tax or other tax of any description shall be levied by either the several states or Congress on any transaction carried out on the Internet, nor shall the Internet suffer any tax of any description. No vote for a tax decrease by Congress shall be required.

(7) As this amendment shall in no manner be construed to replace elections held by the several states and their political sub-divisions, it shall be mandatory upon the several states to establish regulations and other required standards of electronic voting for the various states in state and their political sub-division elections. It shall be mandatory upon Congress to establish regulations and other required standards of election voting regarding any federal electronic election. Any dispute between any state and federal regulation shall be settled in an appropriate federal court whose decision in the matter shall be considered final. It shall be mandatory upon the several states to establish criminal punishment for any person or citizen of the United States tampering, interfering or otherwise distorting any electronic vote of the people. It shall be mandatory upon Congress to establish a concurrent federal criminal punishment for any person or citizen of the United States who shall tamper, interfere or other distort any electronic vote of the people. The sentence, once determined in court, either federal or state, shall have no appeal of any type to a higher court or executive.

(8) Any tampering, interference, effectuation or distortion of any electronic vote of the people by any foreign source, either sovereign or individual, shall be considered an act of war by the United States.

(9) The Congress, by law, shall establish full access for all citizens for the purposes of electronic voting and shall appropriate such funds as are required to accomplish the same. The government shall provide full disclosure of all records it possess necessary or required for the purpose of electronic voting regarding any issue that may be raised either in initiative or referendum. A court procedure shall be established for releasing said records and the burden of proof not to release said record shall fall entirely upon the government. Information to be withheld in this manner shall be as minimal and specific as possible in nature and no generalized defense to obstruct or otherwise delay such release of records shall be allowed.

(10) This amendment shall be construed to provide the people the broadest possible control of the United States government and no action of the government shall therefore be exempt from the provisions of this amendment nor shall this amendment be construed in any way restricting the right of the people to regulate their government though lawful electronic vote.

(11) All electioneering for office either federal or among the several states, together with any electioneering regarding any issue placed for electronic vote, either in general or special election, together


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

with initiative and referendum, shall be limited to that means and method of vote.

(12) All electioneering done under electronic voting must be sourced as to the identity of the sender, and all electioneering information must be linked. All servers shall be secure.

(13) The government, except as is required to establish and maintain the specifications of electronic voting, is forbidden from otherwise regulating the medium known as the Internet or any equivalent system, unless such regulation shall first be approved by at least two-thirds of those voting in a special election. No regulation or act, in the United States or the several states, may be proposed which shall reduce or remove the right of electronic vote and its authority to regulate the government.

(14) In addition to the two methods of amendment specified in Article V of this Constitution, amendments to the United States Constitution may be proposed by electronic initiative. The proposed amendment must suffer a two-thirds vote of approval of those voting in two separate and distinct elections which shall be no less than six months apart from one another before being considered ratified. Upon ratification, such amendment shall be considered valid and in full effect to all intents and purposes as part of the United States Constitution.

(15) The power to approve treaties shall be removed from the Senate of the United States. All treaties shall be submitted for approval to a vote of the people and shall not be approved unless two-thirds of those voting shall approve.

(16) The President and Vice President may be recalled at any time by an electronic vote of the voters. Such recall shall be accomplished by the filing of electronic votes of at least one third of the registered voters of the nation which may be gathered by a method specified by law. Upon the receipt of the proper number of votes, which shall have a specific time limit of effect established by law and may not be altered except by approval of the people, a special election shall be called to place the matter before the people. There shall be no electioneering permitted. It shall require a two-thirds vote of the people voting in the election recall the President or Vice President. Such recall shall take effect immediately and such recall shall not hold the President or Vice President harmless or immune from other civil or criminal prosecutions.

(17) Any senator or representative of the United States Congress may be recalled by the voters of their respective state or district. The recall procedure shall be the same as prescribed for the President or Vice President except that the election shall be limited to only those voters who are eligible to vote in the state, in the case of a senator, or the district, in the case of a representative.

(18) The Congress, with approval of the voters as prescribed above, shall have the power to prescribe legislation for this amendment in order to carry out its provisions.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

EXHIBIT 4

*Letters to Washington State Secretary of State Munro by Plaintiff*

September 3, 1999

Ralph Munro
Secretary of State
Office of the Secretary of State
Legislative Building
PO Box 40220
Olympia, WA 98504-0220

Dear Mr. Munro,

As I am sure you are aware, the United States Congress is *required* under Article V of the United States Constitution to call a constitutional convention whenever two-thirds of the several state legislatures apply for one. As that condition now exists, I wish to notify you of my intent and desire to file for the elective office of United States Constitutional Convention Delegate.

Of course, I understand, in order to run for this elective position, I must legally and properly file first with your office. Therefore, would you please send me all necessary information regarding the cost of the filing fee for the office of United States Constitutional Convention Delegate, any state regulations regarding the terms and conditions of campaigning for this office, the date the election for such office will occur and any other relevant information I require in order to meet all state regulations for filing for the office of United States Constitutional Convention Delegate.

Thank you for your time in this matter.

Sincerely,

(signed)

Bill Walker
PO Box 698
Auburn, WA 98071-0698


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

September 21, 1999

Mr. Bill Walker
PO Box 698
Auburn, WA 98071-0698

Dear Mr. Walker:

We received your inquiries regarding filing for the position of delegate to a constitutional convention.

At this time we have not received official notification from the congress of the United states that there is a proposed constitutional amendment. In the event that the congress notifies our state of a possible constitutional amendment, the governor will issue a proclamation establishing the date of the convention. At that time we will begin the process of electing delegates to the convention.

I have enclosed a copy of the statutes covering United states Constitutional Amendment Conventions for your review. The enclosed statutes contain answers to each of your questions regarding timing and fees.

If you have any further question please feel free to contact us again.

Sincerely,

(signed)

Shawn Merchant
Voter Services Manager


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

September 22, 1999
Mr. Shawn Merchant
Voter Services Manager
Elections Division
Voters Pamphlet
Legislative Building
PO Box 40231
Olympia, WA 98504-0231

Dear Mr. Merchant,

I wanted to thank you for your September 21, 1999 letter. However, regretfully, there has been a misunderstanding. As you can see by my enclosed letter of September 3, 1999, I was requesting information for filing for *United States Constitutional Convention Delegate*.

The information you sent me concerned filing for *state delegate to a ratifying convention for a United States Constitutional amendment* The law 29.74.010 through 29.74.150 concerns this second constitutional duty but does not include the United States Constitutional Convention Delegate. To avoid further confusion, I will intrude on your patience with a paragraph of explanation which I am sure you already familiar.

Under Article V of the United States Constitution, two methods of *proposing* amendments are prescribed. The first method is through the United States Congress. The second is through a United States Constitutional Convention. According to the Constitution, this convention is called when a sufficient number of states have applied for a convention. As I'm sure you know, it is *obligatory* on Congress to call when the states apply and Congress has no discretion in the matter. This situation now exists. As with members of Congress, delegates are elected to a constitutional convention. The convention then proposes amendments. These amendments are sent to Congress who then in turn sends them to the states for the ratifying convention you sent the material on.

I am not interested in filing for state ratification convention delegate. I am attempting to file for the position of delegate to the United States Constitutional Convention *for proposing amendments*.

I am sure, just like the law 29.74.010 to 29.74.150, there is law regarding this constitutional duty and it is a simple matter of merely sending me a copy of this law rather than the copy of the law you did send so that I can file for the position I am seeking.

I hope this clarifies the matter and I apologize if my letter was unclear as to my intent. Thank you again for your time in this matter.

Sincerely,

Bill Walker
PO Box 698
Auburn, WA 98071-0698


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

October 17, 1999
Shawn Merchant
Voter Services Manager
Elections Division
Voters Pamphlet
Legislative Building
PO Box 40231
Olympia, WA 98504-0231

Dear Mr. Merchant,

It has been nearly a month since I wrote back to you asking for filing information regarding filing for Untied States Constitutional Convention Delegate. I have enclosed copies of our correspondence to date in order to conserve time in this letter. It has been over a month and a half since my first correspondence with you and STILL I have received nothing from your office in the form of information so that I may file for this important public service position.

I realize the position is not the usual one requested. I realize the laws involved may be old and rarely used *but this is no excuse to compromise my right to seek elective post by simply ignoring my request until such time as I am unable to seek elective post because filing has closed*.

If there is a problem with you supplying the information I have requested, I DEMAND a response as to why. If Congress is at fault, say so. If the state is at fault, say so. If your printing office is on strike, say so. If your secretary has been sick for a couple of weeks, please say so. But all this delay is causing is frustration on my part at wondering why you people have selected me not to be able to seek elective office.

Therefore, I again, in the strongest and most forceful terms, demand a response immediately from your office to a) provide me the information I have requested to allow me to file for the position of delegate to a United States Constitutional Convention for the purpose of proposing amendments to the United States Constitution or b) explain why you cannot do so.

I expected the filing procedure to be the easiest part of this matter and I am not interested in any legal proceedings involving it. Please do not give me further cause to change my mind in this matter.

Thank you.

Sincerely,

Bill Walker
PO Box 698
Auburn, WA 98071-0698


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

October 19, 1999
Mr. Bill Walker
PO Box 698
Auburn, WA 98071-0698

Dear Mr. Walker:

Let me apologize for the delay in my response. I thought that your question had been answered when you contacted Secretary of State Munro directly.

I looked for every state statute concerning the United States Constitution and have enclosed them with a copy of the General Index as well. The only statutes that I was able to find are the ones that I am enclosing.

After looking in the Revised Code of Washington I searched the Washington State Constitution. I have included a copy of Article 23, of the Washington State Constitution and the index page listing the process for amendments. However, these sections seem to cover only amending the State Constitution.

We are not aware of any other provisions concerning this matter.

Once again I sincerely apologize for my delay.

Sincerely,

(Signed)
Shawn Merchant
Voter Services Manager


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

STIPULATION REGARDING MATERIAL REFERRED TO IN OCT.19 LETTER

As noted in the text of Exhibit 5, Article 23 of the Washington State Constitution only relates to amending the state constitution. As to the other material mentioned, specifically a copy of Revised Code of Washington (RCW) Title 29, Chapter 29.74, Sections 29.74.010 to 29.74.150 inclusive, this code deals specifically and solely with election of delegates to a *ratification convention* as described in Article V of the United States Constitution. None of the language of Chapter 29.74 *supra* deals with the election of delegates to a United States convention that *proposes* amendments as described in Article V of the United States Constitution.

Therefore, there is no legal procedure in the State of Washington whereby a person seeking the elected position of delegate to a United States amendatory convention to propose amendments may file, campaign or otherwise engage the usual electoral activities associated with seeking elected office. Further, no state law exists whereby delegates are in any fashion or manner appointed or otherwise assigned to a convention to propose amendments in order to represent the state. Thus, as these are public documents which under Federal Rules of Evidence 1006, may be referred to in summary, it is stipulated and summarized by the plaintiff that Washington State has no legal procedure whatsoever to send delegates to a United States convention to propose amendments.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## APPENDIX B---EXAMPLES OF VARIOUS APPLICATIONS FILED BY THE STATES FOR A CONVENTION

GENERAL APPLICATION

An example of an application for a general convention is shown as follows:

Concurrent resolution, S. Con. Res. 4

DEPARTMENT OF STATE.

Whereas the Constitution of the United States of America provided that Congress, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments to said Constitution:

*Therefore, we, the senate of the State of Texas, the house of representatives of the State of Texas, concurring, do hereby petition and request the Congress of the United States of America to call a convention for proposing amendments to said Constitution as soon as the legislatures of two-thirds of the several States of the United States of America shall concur in this resolution by applying to Congress to call said convention.*

*Be it further resolved,* That the Secretary of State be, and is hereby, directed to send a copy of this resolution to the Congressmen from Texas, and to the governor of each State at once, and to the legislatures of the several States as they convene, with a request to them to concur with us in this resolution.

D.H. HARDY, *Secretary of State.*

Approved June 5, 1899.[1583]

[1583] 33 CONG. REC. 219 (1899)(emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

GENERAL APPLICATION WITH REFERENCE TO REASON FOR GENERAL CONVENTION

An example of an application for a general convention, with reference to the reason for requesting a general convention is as follows:

H.R.J. RES 9

Joint resolution of the thirty-third general assembly of the State of Iowa, making application to the Congress of the United States to call a convention for proposing amendments to the Constitution of the United States.

Whereas we believe that Senators of the United States should be directly by the voters; and

Whereas to authorize such direct election an amendment to the Constitution is necessary; and

Whereas the failure of Congress to submit such amendment to the States has made it clear that the only practicable method of securing submission of such amendment to the States is through a constitutional convention, to be called by Congress upon the application of the legislatures of two-thirds of all the States: Therefore be it

*Resolved by the general assembly of the State of Iowa:*

SECTION 1. *That the legislature of the State of Iowa hereby makes application to the Congress of the United States, under Article V of the Constitution of the United States, to call a constitutional convention for proposing amendments to the Constitution of the United States.*

SECTION 2. That the resolution, duly authenticated, shall be delivered forthwith to the President of the Senate and Speaker of the House of Representatives of the United States, with the request that the same shall be laid before the said Senate and House.

Approved April 12, A.D. 1909[1584]

[1584] 44 CONG. REC. 1620 (1909) (emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## APPLICATION FOR A CONVENTION FOR A SPECIFIC REASON

An example of an application for a convention for proposing amendments for a particular reason is as follows:

H.R. Con. Res. 2001

Whereas, the powers delegated to the federal government by the United States Constitution are limited, and those powers not delegated to the federal government are reserved to the states; and

Whereas, it is becoming increasingly the practice of the federal government to require states to enact state laws to implement federal policies by threatening to withhold or withdraw federal funds for failure to do so; and

Whereas, the federal government has imposed upon the states many programs and obligations which require funding in excess of state means, thereby making the states subservient to and dependent upon the federal government for financial assistance; and

Whereas, through the coercive force of withdrawing or withholding federal funds, or the threat of withdrawing or withholding federal funds, the federal government is indirectly imposing its will upon the states and requiring implementation of federal policies which neither Congress nor the President nor any administrative agency is empowered to impose or implement directly; and

Whereas, this coercive power of the purse is being used to extend the power of the federal government over the states far beyond the powers delegated to the federal government by the United States Constitution; and

Whereas the power of the federal government should be exercised directly by the enactment of federal law governing only those areas in which the federal government is empowered to act by the United States Constitution, and the federal government should be prohibited from usurping the authority of the states and imposing its will indirectly in those areas in which it has no power to act directly; and

Whereas, the federal government has imposed upon the states many programs and obligations which require state administration and such programs or other programs may lose federal financing if certain conditions attached to the program are not met.

Therefore, be it resolved by the House of Representatives of the State of Arizona, the Senate concurring:


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

1. *Pursuant to Article V of the Constitution of the United States, the Legislature of the State of Arizona petitions the Congress of the United States to call a convention for the purpose of proposing an amendment to the Constitution of the United States to prohibit the Congress, the President, and any agent or agency of the federal government, from withholding or withdrawing, or threatening to withhold or withdraw, any federal funds from any state as a means of requiring a state to implement federal policies which the Congress, the President, or agent or agency of the federal government has no power, express or implied, under the Constitution of the United States, to impose upon the States or implement its own action, and to limit permissible conditions of federal financing by the Congress, or the President, or any agent or agency of the federal government designed to obtain state administration of federal programs at the risk of losing federal funds for other programs if any or all conditions of the program are not met.*

2. That the Secretary of State of the State of Arizona is directed to send a duly certified copy of this Resolution to the President of the United States Senate, the Speaker of the United States House of Representatives and to each Member of Congress from the State of Arizona.[1585]

[1585] 126 CONG. REC. 11399 (1980)(emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

APPLICATION FOR A SPECIFIC TOPIC OR SUBJECT ONLY

An example of an application for a convention only for the purpose of proposing a particular amendment or raising a particular topic is as follows:

S.J. RES. 9

Whereas, millions of abortions have been performed in the United States since the decision on abortions by the United States Supreme Court on January 22, 1973, and

Whereas, the Congress of the United States has not proposed to date a "human life amendment" to the Constitution of the United States.

Now therefore:

*Be it resolved by the Legislature of Alabama, both Houses thereof concurring, that the Legislature of Alabama, 1980 Regular Session, applies to the Congress of the United States to call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution that would protect the lives of all human being [sic] including unborn children at every stage of their biological development and providing that neither the United States nor any state shall deprive any human being, from the moment of fertilization the equal protection of the laws, except where pregnancy results from rape or from incest; or where abortion is necessary to save the life of the mother or where testing revealed abnormality or deformity of the fetus.*

Be it further resolved, that this application shall constitute a continuing application for such a convention pursuant to Article V or the Constitution of the United States until such time as the Legislature of two-thirds of the States shall have made like applications and such convention shall have been called by the Congress of the United States.

Be it further resolved, that copies of this concurrent resolution be presented to the President of the Senate of the United States, the Secretary of the Senate of the United States, the Speaker of the House of Representatives of the United States, and to each member of the Congress from Alabama attesting the adoption of this concurrent resolution by the 1980 Regular Session of the Legislature of the State of Alabama.[1586]

[1586] 126 CONG. REC. 10650 (1980)(emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

APPLICATION FOR SPECIFIC SUBJECT WITH A RECESSION STIPULATION

An example of an application for a convention only for the purpose of proposing a particular amendment or raising a particular topic; and claiming the invalidity of the application if a general convention is called or the convention goes beyond the scope of the particular topic is as follows:

A JOINT RESOLUTION

Whereas, with each passing year this nation becomes more deeply in debt as its annual expenditures frequently exceed annual available revenues, so that the public debt also steadily increases to a size of inordinate proportions; and

Whereas, unified budgets do not necessarily reflect actual spending because of the exclusion of special spending outlays which are not included in the budget nor are subject to the statutory legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance; and

Whereas, we believe that fiscal irresponsibility at the federal level, with the inflation which results primarily from this policy, is the greatest threat which faces our nation, and that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by Congress whenever two-thirds of both houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing such amendments;

Be it resolved by the Senate of the State of South Dakota, the House of Representatives concurring therein:

That the Legislature does hereby make application to the Congress of the United States that procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the Legislature of the state of South Dakota hereby requests the Congress to prepare and submit to the several states 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


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

may not exceed the total of all estimated federal revenues for that fiscal year; and

*Be it further resolved, that alternatively, this Legislature hereby makes application under said Article V of the Constitution of the United States and with the same force and effect as if this Resolution consisted of this portion alone and requests that the Congress of the United States call a 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 years; and*

*Be it further resolved, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose;* and

Be it further resolved, that this application by this Legislature constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made applications for similar relief pursuant to Article V, but, if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Joint Resolution then this petition for a Constitutional Convention shall no longer be of any force or effect; and

Be it further resolved, that this Legislature also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution, or requiring the Congress to call a constitutional convention for proposing such an amendment to the Federal Constitution; and

Be it further resolved, that copies of this Joint Resolution be sent by the Secretary of State to each member of the South Dakota Congressional Delegation; and

Be it further resolved, that the Secretary of State is directed to send copies of this Joint Resolution to the presiding officers of both Houses of the Legislature of each of the other states in the Union, the Clerk of the United States of House of Representatives, Washington D.C. and the Secretary of the United States Senate, Washington D.C.[1587]

[1587] 125 CONG. REC. 3656 (1979)(emphasis added).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

**APPENDIX C---1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE**

RECOMMENDATION[1588]

WHEREAS, the House of Delegates, at its July 1971 meeting, created the Constitutional Convention Study Committee "to analyze and study all questions of law concerned with the calling of a national Constitutional Convention, including, but not limited to, the question of whether such a Convention's jurisdiction can be limited to the subject matter given rise to its call, or whether the convening of such a Convention, as a matter of constitutional law, opens such a Convention to multiple amendments and the consideration of a new Constitution"; and

WHERAS, the Constitutional Convention Study Committee so created has intensively and exhaustively analyzed and studied the principal questions of law concerned with the calling of a national constitutional convention and has delineated its conclusions with respect to these questions of law in its Report attached hereto,

[1588] Appendix C is a copy of the ABA Report referred to in this suit. Due to limitations of the word processing program used in this suit, some changes to it original printed format have had to be employed. The ABA Report's original footnotes cannot be numbered beginning with number one as they cannot be separated from previous footnotes of the brief. Therefore, the footnotes in the ABA Report have been converted to endnotes where their original numbering can be preserved. Where required therefore, such references as "*infra*" and "*supra*" used in the report have been altered so as to be correct in reference to the converted footnotes.

Further, because of spacing and other printing formats, the reproduction of this report has caused page references originally used in the report to be different than that in the original report. These references have been changed to reflect the current pages found in this suit. To minimize confusion between the original report and this reproduction, page numbering is started at page 1 rather than continuing from the last page in the brief. In Appendix A of the ABA Report, the comments of the committee originally found next to sections of proposed legislation have been changed into endnotes.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

NOW, THEREFORE, BE IT RESOLVED, THAT, with respect to the provision of Article V of the United States Constitution providing that "Congress... on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments" to the Constitution,

1. It is desirable for Congress to establish procedures for amending the Constitution by means of a national constitutional convention,
2. Congress has the power to establish procedures limiting a convention to the subject matter which is stated in the applications received from the state legislatures.
3. Any Congressional legislation dealing with such a process for amending the Constitution should provide for limited judicial review of Congressional determinations concerning a constitutional convention.
4. Delegates to a convention should be elected and representation at the conventions should be in conformity with the principles of representative democracy as enunciated by the "one person, one vote" decisions of the Supreme Court.

BE IT FURTHER RESOLVED, THAT, the House of Delegates authorizes the distribution of the Report of the Constitutional Convention Study Committee for the careful consideration of federal and state legislators and other concerned with constitutional law and commends the Report to them; and

BE IT FURTHER RESOLVED, THAT, representatives of the American Bar Association designated by the President be authorized to present testimony on behalf of the Association before the appropriate committees of the Congress consistent with this resolution.

## INTRODUCTION

There are few articles of the Constitution as important to the continued viability of our government and nation as Article V. As Justice Joseph Story wrote: "A government which . . . provides no means of change . . . will either degenerate into a despotism or, by the pressure of its inequities, bring on a revolution."[1] James Madison gave these reasons for Article V:

> "That useful alterations [in the Constitution] will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

> Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover 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."[2]

Article V sets forth two methods of proposing and two methods of ratifying amendments to the United States Constitution:

> "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 . . . ."

Up to the present time all amendments have been proposed by the Congress and all but one have been ratified by the state legislature mode. The Twenty-First Amendment was ratified by conventions called in the various states. Although there has not been a national constitutional convention since 1787, there have been more than 300 applications from state legislatures over the past 184 years seeking such a convention.[3] Every state, at one time or another, has petitioned Congress for a convention. These state applications have ranged from applications calling for a general convention to a convention dealing with a specific subject, as, for example, slavery, anti-polygamy, presidential tenure, and repeal of prohibition. The 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.

Despite the absence at the national level since 1787, conventions have been the preferred instrument for major revision of state constitutions. As one commentator on the state constitution-making process has stated: "The convention is purely American—widely tested and used."[4] There have been more than 200 conventions in the states, ranging from 15 in New Hampshire to one in


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

eleven states. In a substantial majority of the states the convention is provided for by the state constitution. In the remainder it has been sanctioned by judicial interpretation and practice.[5]

Renewed and greater efforts to call a national constitutional convention have come in the aftermath of the Supreme Court's decisions in *Baker* v. *Carr*[6] and *Reynolds* v. *Sims.*[7] Shortly after the decision in *Baker* v. *Carr,* the Council of State Governments recommended that the states petition Congress for a national constitutional convention to propose three amendments to the Constitution. One would have denied to federal courts original and appellate jurisdiction over state legislative apportionment cases; another would have established a "Court of the Union" in place of the Supreme Court; and the third would have amended Article V to allow amendments to be adopted on the basis of identically-worded sate petitions.[8] Twelve state petitions were sent to Congress in 1963 and 1964 requesting a convention to propose an amendment which would remove state legislative apportionment cases from the jurisdiction of the federal judiciary. In December 1964 the Council of State Governments recommended at its annual convention that the state legislatures petition Congress for a national constitutional convention to propose an amendment permitting one house of a state legislature to be apportioned on a basis other than population.

By 1967 thirty-two state legislatures had adopted applications calling for a constitutional convention on the question of apportionment. The wording of these petitions varied. Several sought consideration of an amendment to abolish federal judicial review of state legislative apportionment. Others sought a convention for the purpose of proposing an amendment which would "secure to the people the right of some choice in the method of apportionment of one house of a state legislature on a basis other than population alone."

A substantial majority of states requested a convention to propose a specific


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

amendment set forth *haec verba* in their petitions. Even here, there was variation of wording among a few of these state petitions.[9]

On March 18, 1967 a front page story in *The New York Times* reported that "a campaign for a constitutional convention to modify the Supreme Court's one-man, one-vote rule is nearing success." It said that the opponents of the rule "lack only two states in their drive" and that "most of official Washington has been caught by surprise because the state legislative actions have been taken with little fanfare." That article prompted immediate and considerable discussion of the subject both in and out of Congress. It was urged that Congress would be under no duty to call a convention even if applications were received from the legislatures of two-thirds of the states. Others argued that the words of Article V were imperative and that there would be such a duty. There was disagreement as to whether applications from malapportioned legislatures could be counted, and there were different views on the authority of any convention. Some maintained that, once constituted, a convention could not be restricted to the subject on which the state legislatures had requested action but could go so far as to propose an entirely new Constitution. Adding to the confusion and uncertainty was the fact that there were no ground rules or precedents for amending the Constitution through the route of a constitutional convention.

As the debate on the convention method of initiating amendments continued into 1969, one additional state[10] submitted an application for a convention on the reapportionment issue while another state adopted a resolution rescinding its previous application.[11] Thereafter, the effort to call a convention on that issue diminished. Recently, however, the filing of state applications for a convention on the school busing issue has led to a new flurry of discussion on the question of a national constitutional convention.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The circumstances surrounding the apportionment applications prompted Senator Sam J. Ervin to introduce in the Senate on August 17, 1967 a bill to establish procedures for calling a constitutional convention. In explaining his reasons for the proposed legislation, Senator Ervin has stated:

> "My conviction was that the constitutional questions involved were far more important than the reapportionment issue that had brought them to light, and that they should receive more orderly and objective consideration than they had so far been accorded. Certainly it would be grossly unfortunate if the partisanship over state legislative apportionment--and I am admittedly a partisan on the issue--should be allowed to distort an attempt at clarification of the amendment process, which in the long run must command a higher obligation and duty than any single issue that might be the subject of that process."[12]

After hearings and amendments to the original legislation, Senator Ervin's bill (S.215) passed the Senate by an 84 to 0 vote on October 19, 1971.[13] Although there was no action in the House of Representatives in the Ninety-Second Session of Congress, comparable legislation is expected to receive attention in both Houses in the future.[14]


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## ISSUES PRESENTED

The submission by state legislatures during the past thirty-five years of numerous applications for a national constitutional convention has brought into sharp focus the manifold issues arising under Article V. Included among these issues are the following:

1) If the legislatures of two-thirds of the states apply for a convention limited to a specific matter, must Congress call such a convention?
2) If a convention is called, is the limitation binding on the convention?
3) What constitutes a valid application which Congress must count and who is to judge its validity?
4) What is the length of time in which applications for a convention will be counted?
5) How much power does Congress have as to the scope of a convention? As to procedures such as the selection of delegates? As to the voting requirements at a convention? As to refusing to submit to the states for ratification the product of a convention?
6) What are the roles of the President and state governors in the amending process?
7) Can a state legislature withdraw an application for a convention once it has been submitted to Congress or rescind a previous ratification of a proposed amendment or a previous rejection?
8) Are issues arising in the convention process justiciable?
9) Who is to decide questions of ratification?

Since there has never been a national constitutional convention subsequent to the adoption of the Constitution, there is no direct precedent to look to in attempting to answer these questions. In searching out the answers, therefore, resort must be made, among other things, to the text of Article V, the origins of the provision, the intent of the Framers, and the history and workings of the amending article since 1789. Our answers appear on the following pages.[15]


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## RECOMMENDATIONS

### General

Responding to our charge, our Committee has attempted to canvass all the principal questions of law involved in the calling of a national constitutional convention pursuant to Article V. At the outset, we note that some, apprehensive about the scope of constitutional change possible in a national constitutional convention, have proposed that Article V be amended so as to delete or modify the convention method of proposing amendments.[16] On the other hand, others have noted that a dual method of constitutional change was intended by the Framers, and they contend that relative ease of amendment is salutary, at least within limits. Whatever the merits of fundamental modification of Article V, we regard consideration of such a proposal as beyond the scope of our study. In short, we take the present text of Article V as the foundation for our study.

It is the view of our Committee that it is desirable for Congress to establish procedures for amending the Constitution by the national constitutional convention method. We recognize that some believe that it is unfortunate to focus attention on this method of amendment and unwise to establish procedures which might facilitate the calling of a convention. The argument is that the establishment of procedures might make it easier for state legislatures to seek a national convention, and might even encourage them to do so.[17] Underlying this argument is the belief that, at least in modern political terms, a national convention would venture into uncharted and dangerous waters. It is relevant to note in this respect that a similar concern has been expressed about state constitutional conventions but that 184 years' experience at that level furnishes little support to the concern.[18] We are not persuaded by these suggestions that we should fail to deal with the convention


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

method, hoping that the difficult questions never arise. More than 300 applications during our constitutional history, with every state legislature represented, stand as testimony that a consideration of procedure is not purely academic. Indeed, we would ignore at great peril the lessons of the recent proposals for a convention on legislative apportionment (the one-person, one-vote issue) where, if one more state had requested a convention, a major struggle would have ensued on the adequacy of the requests and on the nature of the convention and the rules therefor.

If we fail to deal now with the uncertainties of the convention method, we could be courting a constitutional crisis of grave proportions. We would be running the enormous risk that procedures for a national constitutional convention would have to be forged in time of divisive controversy and confusion when there would be a high premium on obstructive and result-oriented tactics.

It is far more prudent, we believe, to confront the problem openly and to supply safeguards and general rules in advance. In addition to being better governmental technique, a forthright approach to the dangers of the convention method seems far more likely to yield beneficial results than would burying our heads in the sands of uncertainty. Essentially, the reasons are the same ones which caused the American Bar Association to urge, and our nation ultimately to adopt, the rules for dealing with the problems of presidential disability and a vice-presidential vacancy which are contained in the Twenty-Fifth Amendment. So long as the Constitution envisions the convention method, we think the procedures should be ready if there is a “contemporaneously felt need” by the required two-thirds of the state legislatures. Fidelity to democratic principles requires no less.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The observation that one Congress may not bind a subsequent Congress does not persuade us that comprehensive legislation is useless or impractical. The interests of the public and nation are better served when safeguards and rules are prescribed in advance. Congress itself has recognized this in many areas, including its adoption of and subsequent reliance on legislative procedures for handling such matters as presidential electoral vote disputes and contested elections for the House of Representatives.[19] Congressional legislation fashioned after intensive study, and in an atmosphere free from the emotion and politics that undoubtedly would surround a specific attempt to energize the convention process, would be entitled to great weight as a constitutional interpretation and be of considerable precedential value. Additionally, whenever two-thirds of the state legislatures had applied for a convention, it would help to focus and channel the ensuing discussion and identify the expectations of the community.

In our view any legislation implementing Article V should reflect its underlying policy, as articulated by Madison, of guarding “equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults.”[20] Legislation should protect the integrity of the amending process and assure public confidence in its workings.

Specific

It is our conclusion that Congress has the power to establish procedures governing the calling of a national constitutional convention limited to the subject matter on which the legislatures of two-thirds of the states request a convention. In establishing procedures for making available to the states a limited convention when they petition for such a convention, Congress must not prohibit the state legislatures from requesting a general convention since, as


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

we view it, Article V permits both types of conventions (pp.13-21, *infra*).

We consider Congress' duty to call a convention whenever two-thirds of the state legislatures have concurred on the subject matter of the convention to be mandatory (p.20).

We believe that the Constitution does not assign the President a role in either the call of a convention or the ratification of a proposed amendment (pp.29-32).

We consider it essential that legislation passed by Congress to implement the convention method should provide for limited judicial review of congressional action or inaction concerning a constitutional convention. Provision for such review not only would enhance the legitimacy of the process but would seem particularly appropriate since, when and if the process were resorted to, it likely would be against the backdrop of some dissatisfaction with prior congressional performance (pp.23-29).

We deem it of fundamental importance that delegates to a convention be elected and that representation at the convention be in conformity with the principles of representative democracy as enunciated by the "one-person, one-vote" decisions of the Supreme Court (pp.38-43). One member of the Committee, however, does not believe that the one-person, one-vote rule is applicable to a constitutional convention.

We believe also that a convention should adopt its own rules of procedure, including the vote margin necessary at the convention to propose an amendment to the Constitution (pp.21-23).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Our research and deliberations have led us to conclude that a state governor should have no part in the process by which a state legislature applies for a convention or ratifies a proposed amendment (pp.32-34).[21]

Finally, we believe it highly desirable for any legislation implementing the convention method of Article V to include the rule that a state legislature can withdraw an application at any time before the legislatures of two-thirds of the states have submitted applications on the same subject, or withdraw a vote rejecting a proposed amendment, or rescind a vote ratifying a proposed amendment so long as three-fourths of the states have not ratified (pp.37-38, 43).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## DISCUSSION OF RECOMMENDATIONS

### Authority of an Article V Convention

Central to any discussion of the convention method of initiating amendments is whether a convention convened under Article V can be limited in its authority. There is the view, with which we disagree, that an Article V convention would be a sovereign assemblage and could not be restricted by either the state legislatures or the Congress in its authority or proposals. And there is the view, with which we agree, 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.

The text of Article V demonstrates that a substantial national consensus must be present in order to adopt a constitutional amendment. The necessity for a consensus is underscored by the requirement of a two-thirds vote in each House of Congress or applications for a convention from two-thirds of the state legislatures to initiate an amendment, and by the requirement of ratification by three-fourths of the states. From the language of Article V we are led to the conclusion that there must be a consensus among the state legislatures as to the subject matter of a convention before Congress is required to call one. To read Article V as requiring such agreement helps assure "that an alteration of the Constitution proposed today has relation to the sentiment and felt needs of today . . . ."[22]

The origins and history of Article V indicate that both general and limited conventions were within the contemplation of the Framers. The debates at the Constitutional Convention of 1787 make clear that the convention method of proposing amendments was intended to stand on an equal footing with the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

congressional method. As Madison observed: 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."[23] The "state" method, as it was labeled, was prompted largely by the belief that the national government might abuse its powers. It was felt that such abuses might go unremedied unless there was a vehicle of initiating amendments other than Congress.

The earliest proposal on amendments was contained in the Virginia Plan of government introduced in the Convention on May 29, 1787 by Edmund Randolph. It provided in resolution 13 "that 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."[24] A number of suggestions were advanced as to a specific article which eventuated in the following clause in the Convention's Committee of Detail report of August 6, 1787:

> "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*."[25]

This proposal was adopted by the Convention on August 30. Gouverneur Morris's suggestion on that day that Congress be left at liberty to call a convention "whenever it pleased" was not accepted. There is a reason to believe that the convention contemplated under the proposal "was the last step in the amending process, and its decisions did not require any ratification by anybody."[26]

On September 10, 1787 Elbridge Gerry of Massachusetts moved to reconsider the amending provision, stating that under it "two thirds of the States may obtain a Convention, a majority of which can bind the Union to innovations that may


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

subvert the State-Constitutions altogether." His motion was supported by Alexander Hamilton and other delegates. Hamilton pointed to the difficulty of introducing amendments under the Articles of Confederation and stated that "an easy mode should be established for supplying defects which will probably appear in the new System."[27] He felt that Congress would be "the first to perceive" and be "most sensible to the necessity of Amendments," and ought also to be authorized to call a convention whenever two-thirds of each branch concurred on the need for a convention. Madison also criticized the August 30 proposal, stating that the vagueness of the expression "call a convention for the purpose" was sufficient reason for reconsideration. He then asked: "How was a Convention to be formed? by what rule decide? what the force of its acts?" As a result of the debate, the clause adopted on August 30 was dropped in favor of the following provision proposed by Madison:

> "The Legislature of the U-S- whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the U.S."[28]

On September 15, after the Committee of Style had returned its report, George Mason strongly objected to the amending article on the ground that both modes of initiating amendments depended on Congress so that "no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive . . . ."[29] Gerry and Gouverneur Morris then moved to amend the article "so as to require a convention on application of" two-thirds of the states.[30] In response Madison said that he "did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the States as to call a Convention on the like application." He added that he had no objection against providing for a convention for the purpose of


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

amendments “except only that difficulties might arise as to the form, the quorum &c. which in Constitutional regulations ought to be as much as possible avoided.”[31]

Thereupon, the motion by Morris and Gerry was agreed to and the amending article was thereby modified so as to include the convention method as it now reads. Morris then successfully moved to include in Article V the proviso that “no state, without its consent shall be deprived of its equal suffrage in the Senate.”

There was little discussion of Article V in the state ratifying conventions. In *The Federalist* Alexander Hamilton spoke of Article V as contemplating “a single proposition.” Whenever two-thirds of the states concur, he declared, Congress would be obliged 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.”[32] Madison, as noted earlier, stated in *The Federalist* that both the general and state governments are equally enabled to “originate the amendment of errors.”

While the Constitutional Convention of 1787 may have exceeded the purpose of its call in framing the Constitution,[33] it does not follow that a convention convened under Article V and subject to the Constitution can lawfully assume such authority. In the first place, the Convention of 1787 took place during an extraordinary period and at a time when the states were independent and there was no effective national government. Thomas Cooley described it as “a revolutionary proceeding, and could be justified only by the circumstances which had brought the Union to the brink of dissolution.”[34] Moreover, the Convention of 1787 did not ignore Congress. The draft Constitution was submitted to Congress, consented to by Congress, and transmitted by Congress


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

to the states for ratification by popularly-elected conventions.

Both pre-1787 convention practices and the general tenor of the amending provisions of the first state constitutions lend support to the conclusions that a convention could be convened for a specific purpose and that, once convened, it would have no authority to exceed that purpose.

Of the first state constitutions, four provided for amendment by conventions and three by other methods.[35] Georgia's Constitution provided that:

> "no alteration shall be made in this constitution without petitions from a majority of the counties, . . . at which time the assembly shall order a *convention to be called for that purpose*,[36] specifying the alterations to be made, according to the petitions referred to the assembly by a majority of the counties as aforesaid."[37]

Pennsylvania's Constitution of 1776 provided for the election of a Council of Censors with power to call a convention:

> "if there appear to them an absolute necessity of amending any article of the constitution which may be defective . . . . But the articles to be amended, and the amendment proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject."[38]

The Massachusetts Constitution of 1780 directed the General Court to have the qualified voters of the respective towns and plantations convened in 1795 to collect their sentiments on the necessity or expediency of amendments. If two-thirds of the qualified voters throughout the state favored "revision or amendment," it was provided that a convention of delegates would meet "for the purpose aforesaid."

The report of the Annapolis Convention of 1786 also reflected an awareness of the binding effect of limitations on a convention. That Convention assembled


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

to consider general trade matters and, because of the limited number of state representatives present, decided not to proceed, stating:

> "That the express terms of the powers to your Commissioners supposing a deputation from all the States, and having for object the Trade and Commerce of the United States, Your Commissioners did not conceive it advisable to proceed on the business of their mission, under the Circumstances of so partial and defective a representation."[39]

In their report, the Commissioners expressed the opinion that there should be another convention, to consider not only trade matters but the amendment of the Articles of Confederation. The limited Authority of the Annapolis Commissioners, however, was made clear:

> "If in expressing this wish, or in intimating any other sentiment, your Commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct, dictated by an anxiety for the welfare, of the United States, will not fail to receive an indulgent construction.
>
> * * *
>
> "Though your Commissioners could not with propriety address these observations and sentiments to any but the States they have the honor to Represent, they have nevertheless concluded from motives of respect, to transmit Copies of this Report to the United States in Congress assembled, and to the executives of the other States."

From this history of the origins of the amending provision, we are led to conclude that there is no justification for the view that Article V sanctions only general conventions. Such an interpretation would relegate the alternative 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.

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. At the state


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

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.[40] The rationale is that the state convention derives its authority from the people when they vote to hold a convention and that when they so vote they adopt the limitations on the convention contained in the enabling legislation drafted by the legislature and presented on a "take it or leave it" basis.[41] As one state court decision stated:

> "When the people, acting under a proper resolution of the legislature, vote in favor of calling a constitutional convention, they are presumed to ratify the terms of the legislative call, which thereby becomes the basis of the authority delegated to the convention."[42]

And another:

> "Certainly, the people, may, if they will, elect delegates for a particular purpose without conferring on them all their authority . . . ."[43]

In summary, we believe that 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; consistent with the actual history of the amending article throughout which only amendments on single subjects have been proposed by Congress; consistent with state practice under which limited conventions have been held under constitutional provisions not expressly sanctioning a substantively-limited convention;[44] and consistent with democratic principles because convention delegates would be chosen by the people in an election in which the subject matter to be dealt with would be known and the issues identified, thereby enabling the electorate to exercise an informed judgment in the choice of delegates.

## Power of Congress with Respect to an Article V Convention


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Article V explicitly gives Congress the power to call a convention upon receipt of applications from two-thirds of the state legislatures and to choose the mode of ratification of a proposed amendment. We believe that, as a necessary incident of the power to call, Congress has the power initially to determine whether the conditions which give rise to its duty have been satisfied. Once a determination is made that the conditions are present, Congress' duty is clear it "shall" call a convention. The language of Article V, the debates at the Constitutional Convention of 1787, and statements made in *The Federalist*, in the debates in the state ratifying conventions, and in congressional debates during the early Congresses make clear the mandatory nature of this duty.[45]

While we believe that Congress has the power to establish standards for making available to the states a limited convention when they petition for that type of convention, we consider it essential that implementing legislation not preclude the states from applying for a general convention. Legislation which did so would be of questionable validity since neither the language nor history of Article V reveals an intention to prohibit another general convention.

In formulating standards for determining whether a convention call should issue, there is a need for great delicacy. The standards not only will determine the call but they also will have the effect of defining the convention's authority and determining whether Congress must submit a proposed amendment to the states for ratification. The standards chosen should be precise enough to permit a judgment that two-thirds of the state legislatures seek a convention on an agreed-upon matter. Our research of possible standards has not produced any alternatives which we feel are preferable to the "same subject" test embodied in S.1272. We do feel however, that the language of


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Sections 4, 5, 6, 10 and 11 of S.1272 is in need of improvement and harmonization so as to avoid the use of different expressions and concepts.

We believe that standards which in effect required applications to be identical in wording would be improper since they would tend to make resort to the convention process exceedingly difficult in view of the problems that would be encountered in obtaining identically worded applications from thirty-four states. Equally improper, we believe, would be standards which permitted Congress to exercise a policy-making role in determining whether or not to call a convention.[46]

In addition to the power to adopt standards for determining when a convention call should issue, we also believe it a fair inference from the text of Article V that Congress has the power to provide for such matters as the time and place of the convention, the composition and financing of the convention, and the manner of selecting delegates. Some of these items can only be fixed by Congress. Uniform federal legislation covering all is desirable in order to produce an effective convention.

Less clear is Congress' power over the internal rules and procedures of a convention.[47] The Supreme Court's decisions in *Dillon* v. *Gloss*[48] and *Leser* v. *Garnett*[49] can be viewed as supporting a broad view of Congress' power in the amending process. As the Court stated in *Dillon* v. *Gloss*: "As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article V is no exception to the rule." On the other hand, the legislative history of Article V reflects a purpose that the convention method be as free as possible from congressional domination, and the text of Article V grants Congress only two express powers pertaining to a convention, that is, the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

power (or duty) to call a convention and the power to choose the mode of ratification of any proposed amendment. In the absence of direct precedents, it perhaps can be said fairly that Congress may not by legislation interfere with matters of procedure because they are an intrinsic part of the deliberative characteristic of a convention.[50] We view as unwise and of questionable validity any attempt by Congress to regulate the internal proceedings of a convention. In particular, we believe that Congress should not impose a vote requirement on an Article V convention. We are influenced in this regard by these factors:

First, it appears from our research that throughout our history conventions generally have decided for themselves the vote that should govern their proceedings. This includes the Constitutional Convention of 1787, the constitutional conventions that took place between 1776 and 1787, many of the approximately two hundred state constitutional conventions that have been held since 1789, and the various territorial conventions that have taken place under acts passed by Congress.[51] Second, the specific intent of the Framers with regard to the convention method of initiating amendments was to make available an alternative method of amending the Constitution -one that would be free from congressional domination. Third, a reading of the 1787 debates suggests that the Framers contemplated that an Article V convention would have the power to determine its own voting and other internal procedures and that the requirement of ratification by three-fourths of the states was intended to protect minority interest.[52]

We have considered the suggestion that Congress should be able to require a two-thirds vote in order to maintain the symmetry between the convention and congressional methods of initiating amendments. We recognize that the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

convention can be viewed as paralleling Congress as the proposing body. Yet we think it is significant that the Constitution, while it specifies a two-thirds vote by Congress to propose an amendment, is completely silent as to the convention vote.

## Judicial Review

The Committee believes that judicial review of decisions made under Article V is desirable and feasible. We believe Congress should declare itself in favor of such review in any legislation implementing the convention process. We regard as very unwise the approach of S.1272 which attempts to exclude the courts from any role. While the Supreme Court's decision in *Ex parte McCardle*[53] indicated that Congress has power under Article III to withdraw matters from the jurisdiction of the federal courts, this power is not unlimited. It is questionable whether the power reaches so far as to permit Congress to change results required by other provisions of the Constitution or to deny a remedy to enforce constitutional rights. Moreover, we are unaware of any authority upholding this power in cases of original jurisdiction.[54]

To be sure, Congress has discretion in interpreting Article V and in adopting implementing legislation. It cannot be gainsaid that Congress has the primary power of administering Article V. We do not believe, however, that Congress is, or ought to be, the final dispositive power in every situation. In this regard, it is to be noted that the courts have adjudicated on the merits a variety of questions arising under the amending article. These have included such questions as: whether Congress may choose the state legislative method of ratification for proposed amendments which expand federal power; whether a proposed amendment requires the approval of the President; whether Congress may fix a reasonable time for ratification of a proposed amendment by state legislatures; whether the states may restrict the power of their legislatures


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

to ratify amendments or submit the decision to a popular referendum; and the meaning of the requirement of two-thirds vote of both Houses.[55]

*Baker* v. *Carr* and *Powell* v. *McCormack* suggest considerable change in the Supreme Court's view since *Coleman* v. *Miller*[56] on questions involving the political process.

In *Coleman,* the Court held that a group of state legislators who had voted not to ratify the child labor amendment had standing to question the validity of their state's ratification. Four Justices dissented on this point. The Court held two questions non-justiciable: the issue of undue time lapse for ratification and the power of a state legislature to ratify after having first rejected ratification. In reaching these conclusions, the Court pointed to the absence of criteria either in the Constitution or a statute relating to the ratification process. The four Justices who dissented on standing concurred on non-justiciability. They felt, however, that the Court should have disapproved *Dillon* v. *Gloss* insofar as it decided judicially that seven years is a reasonable period of time for ratification, stating that Article V gave control of the amending process to Congress and that the process was "political in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point." Even though the calling of a convention is not precisely within these time limits and the holding in *Coleman* is not broad, it is not at all surprising that commentators read that case as bringing Article V issues generally within the rubric of "political questions."

In *Baker* v. *Carr,*[57] the Court held that a claim of legislative malapportionment raised a justiciable question. More generally, the Court laid down a number of criteria, at least one of which was likely to be involved in


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

a true “political question,” as follows:

> “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; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court’s undertaking independent resolution without expressing lack of respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment for multifarious pronouncements by various departments on one question.”[58]

Along with these formulas, there was additional stress in *Baker* v. *Carr* on the fact that the Court there was not dealing with Congress, a coordinate branch, but with the states. In reviewing the precedents, the Court noted that it had held issues to be nonjusticiable when the matter demanded a single-voiced statement, or required prompt, unquestioning obedience, as in a national emergency, or contained the potential embarrassment of sitting in judgment on the internal operations of a coordinate branch.

Perhaps the most striking feature of *Baker* and its progeny has been the Court’s willingness to project itself into redistricting and reapportionment in giving relief. In addition, some of the criteria stressed by the Court as determinative of “political question” issues were as applicable to Congress as to the states.

In *Powell,*[59] the Court clearly marked out new ground. The question presented was the constitutionality of the House of Representatives’ decision to deny a seat to Congressman-elect Powell, despite his having fulfilled the prerequisites specified in Article I, Section 2 of the Constitution. Even though it was dealing with Congress, and indeed with a matter of internal legislative operation, still it held that the question was a justiciable one, involving as it did the traditional judicial function of interpreting the Constitution, and that a newly elected Representative could be judged as to


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

qualifications only as to age, citizenship, and residence. The Court limited itself to declaratory relief, saying that the question of whether coercive relief was available against employees of Congress was not being decided. But the more important aspect of the decisions is the Court's willingness to decide. It stressed the interest of voters in having the person they elect take a seat in Congress. Thus, it looked into the clause on qualifications and found in the text and history that Congress was the judge of qualifications, but only of the three specified.

It is not easy to say just how these precedents apply to judicial review of questions involving a constitutional convention under Article V. It can be argued that they give three different doctrinal models, each leading to a different set of conclusions. We are inclined to a view which seeks to reconcile the three cases. *Powell* may be explained on the theory that specially protected constitutional interests are at stake, that the criteria for decisions were rather simple, and that an appropriate basis for relief could be found. *Baker* is more complex, but it did not involve Congress directly. The state legislatures had forfeited a right to finality by persistent and flagrant malapportionments, and one person, one vote supplied a judicially workable standard (though the latter point emerged after *Baker*). Thus, *Coleman* may be understood as good law so far as it goes, on the theory that Congress is directly involved, that no specially protected interests are threatened, and that the issues are not easily dealt with by the Court.

Following this approach to the three cases, some tentative conclusions can be drawn for Article V and constitutional conventions. If two-thirds of the state legislatures apply, for example, for a convention to consider the apportionment of state legislatures, and Congress refuses to call the convention, it is arguable that a *Powell* situation exists, since the purpose of the convention method was to enable the states to bring about a change in


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the Constitution even against congressional opposition. The question whether Congress is required to act, rather than having discretion to decide, is one very similar in quality to the question in *Powell*. The difficulty not confronted in *Powell* is that the relief given must probably be far-reaching, possibly involving the Court in approving a plan for a convention. There are at least two answers. The Court might find a way to limit itself to a declaratory judgment, as it did in *Powell*, but if it must face far-reaching relief, the reapportionment cases afford a precedent. In some ways, a plan for a convention would present great difficulties for a court, but it could make clear that Congress could change its plan, simply by acting.[60]

If one concludes that the courts can require Congress to act, one is likely to see the courts as able to answer certain ancillary questions of "law," such as whether the state legislatures can bind a convention by the limitations in their applications, and whether the state legislatures can force the call of an unlimited convention. Here we believe Congress has a legislative power, within limits, to declare the effects of the states' applications on the scope of the convention. Courts should recognize that power and vary their review according to whether Congress has acted.

Consequently, this Committee strongly favors the introduction in any implementing legislation of a limited judicial review.[61] It would not only add substantial legitimacy to any use of the convention process but it would ease the question of justiciability. Moreover, since the process likely would be resorted to in order to effect a change opposed by vested interests, it seems highly appropriate that our independent judiciary be involved so that it can act, if necessary, as the arbiter.

In view of the nature of the controversies that might arise under Article V,


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the Committee believes that there should be several limits on judicial consideration. First, a Congressional determination should be overturned only if “clearly erroneous.” This standard recognizes Congress’ political role and at the same time insures that Congress cannot arbitrarily void the convention process.

Second, by limiting judicial remedies to declaratory relief, the possibility of actual conflict between the branches of government would be diminished. As *Powell* illustrated, courts are more willing to adjudicate questions with “political” overtones when not faced with the institutionally destructive need to enforce the result.

Third, the introduction of judicial review should not be allowed to delay the amending process unduly. Accordingly, any claim should be raised promptly so as to result in an early presentation and resolution of any dispute. We favor a short limitation period combined with expedited judicial procedures such as the selection of a three-judge district court. The possibility of providing original jurisdiction in the Supreme Court was rejected for several reasons. Initiation of suit in the Supreme Court necessarily escalates the level of the controversy without regard to the significance of the basic dispute. In addition, three-judge district court procedures are better suited to an expedited handling of factual issues.

We do not believe that our recommendation of a three-judge court is inconsistent with the American Bar Association’s position that the jurisdiction of such courts should be sharply curtailed. It seems likely that the judicial review provided for will occur relatively rarely. In those instances when it does, the advantages of three-judge court jurisdiction


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

outweigh the disadvantages which the Association has perceived in the existing three-judge court jurisdiction. In cases involving national constitutional convention issues, the presence of three judges (including a circuit judge) and the direct appeal to the Supreme Court are significant advantages over conventional district court procedure.

## Role of Executive
### (i) President

There is no indication from the text of Article V that the President is assigned a role in the amending process. Article V provides that “Congress” shall propose amendments, call a convention for proposing amendments and, in either case, choose the mode for ratification of amendments. Article I, Section 7 of the Constitution, however, provides that “every Order, Resolution, or Vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President” for his approval and, if disapproved, may be repassed by a two-thirds vote of both Houses.

It has, we believe, been regarded as settled that amendments proposed by Congress need not be presented to the President for his approval. The practice originated with the first ten amendments, which were not submitted to President Washington for his approval, and has continued through the recently proposed amendment on equality of rights. The question of whether the President’s approval is required was passed on by the Supreme Court in *Hollingsworth* v. *Virginia*.[62] There, the validity of the Eleventh Amendment was attacked on the ground that it had “not been proposed in the form prescribed by the Constitution” in that it had never been presented to the President. Article I, Section 7 was relied upon in support of that position. The Attorney General argued that the proposing of amendments was “a substantive act, unconnected with the ordinary business of legislation, and not within the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

policy or terms of investing the President with a qualified negative on the Acts and Resolutions of Congress." It was also urged that since a two-thirds vote was necessary for both proposing an amendment and overriding a presidential veto, no useful purpose would be served by a submission to the President in such case. It was argued in reply that this was no answer, since the reasons assigned by the President for his disapproval "might be so satisfactory as to reduce the majority below the constitutional proportion." The Court held that the amendment had been properly adopted, Justice Chase stating that "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."[63] What was not pointed out, but could have been, is that had the President's approval been found necessary, it would have created the anomaly that only amendments proposed by Congress would be subject to the requirements inasmuch as Article I, Section 7 by its terms could not apply to action taken by a national constitutional convention.

Subsequent to *Hollingsworth,* the question of the President's role in the amending process has been the subject of discussion in Congress. In 1803 a motion in the Senate to submit the Twelfth Amendment to the President was defeated.[64] In 1865 the proposed Thirteenth Amendment was submitted to President Lincoln and, apparently through an inadvertence, was signed by him. An extensive discussion of his action took place in the Senate and a resolution was passed declaring that the President's signature was unnecessary, inconsistent with former practice, and should not constitute a precedent for the future.[65] The following year President Andrew Johnson, in a report to the Congress with respect to the Fourteenth Amendment, made clear that the steps taken by the Executive Branch in submitting the amendment to the state legislatures was "purely ministerial" and did not commit the Executive to "an approval or a recommendation of the amendment."[66] Since that time, no proposed amendment has been submitted to the President for his


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

approval and no serious question has arisen over the validity of amendments for that reason. Thus, the Supreme Court could state in 1920 in *Hawke* v. *Smith* that it was settled "that the submission of a constitutional amendment did not require the action of the President."

While the "call" of a convention is obviously a different step from that of proposing an amendment, we do not believe that the President's approval is required. Under Article V applications from two-thirds of the state legislatures must precede a call and, as previously noted, Congress' duty to issue a call once the conditions have been met clearly seems to be a mandatory one. To require the President's approval of a convention call, therefore, would add a requirement not intended. Not only would it be inconsistent with the mandatory nature of Congress' duty and the practice of non-presidential involvement in the congressional process of initiating amendments but it would make more difficult any resort to the convention method. The approval of another branch of government would be necessary and, if not obtained, a two-thirds vote of each House would be required before a call could issue. Certainly, the parallelism between the two initiating methods would be altered, in a manner that could only thwart the intended purpose of the convention process as an "equal" method of initiating amendments.

While the language of Article I, Section 7 expressly provides for only one exception (*i.e.,* an adjournment vote), it has been interpreted as not requiring presidential approval of preliminary votes in Congress, or, as noted, the proposal of constitutional amendments by Congress, or concurrent resolutions passed by the Senate and the House of Representatives for a variety of purposes.[67] As the Supreme Court held in *Hollingsworth,* Section 7 applies to "ordinary cases of legislation" and "has nothing to do with the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

proposition or adoption of amendments to the Constitution." Thus, the use of a concurrent resolution by Congress for the issuance of a convention call is in our opinion in harmony with the generally recognized exceptions to Article I, Section 7.

State Governor (ii)

We believe that a state governor should have no part in the process by which a state legislature applies for a convention or ratifies a proposed amendment. In reaching this conclusion, we are influenced by the fact that Article V speaks of "state legislatures" applying for a convention and ratifying an amendment proposed by either Congress or a national convention. The Supreme Court had occasion to focus on this expression in *Hawke* v. *Smith*[68] *(No. 1)* in the context of a provision in the Ohio Constitution subjecting to a popular referendum any ratification of a federal amendment by its legislature. The Court held that this requirement was invalid, reasoning that the term "legislatures" had a certain meaning. Said the Court: "What it meant when adopted it still means for the purpose of interpretation. A Legislature was then the representative body which made the laws of the people."[69] The ratification of a proposed amendment, held the Court, was not "an act of legislation within the proper sense of the word" but simply an expression of assent in which "no legislative action is authorized or required." The Court also noted that the power to ratify proposed amendments has its source in the Constitution and, as such, the state law-making procedures are inapplicable.

That the term "Legislature" does not always mean the representative body itself was made clear by *Smiley* v. *Holm.*[70] That case involved a bill passed by the Minnesota legislature dividing the state into congressional districts under Article I, Section 4. The bill was vetoed by the governor and not


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

repassed over his veto. As for the argument that the bill was valid because Article I, Section 4 refers to the state "Legislatures," the Court stated:

> "The use in the Federal Constitution of the same term in different relations does not always imply the same function . . . . Wherever the term 'legislature' is used in the Constitution it is necessary to consider the nature of the particular action in view . . . ."[71]

The Court found that the governor's participation was required because the function in question involved the making of state laws and the veto of the governor was an integral part of the state's legislative process. In finding that Article I, Section 4 contemplated the making of laws, the Court stated that it provided for "a complete code for congressional elections" whose requirements "would be nugatory if they did not have appropriate sanctions." The Court contrasted this function with the "Legislature's" role as an electoral body, as when it chose Senators, and a ratifying body, as in the case of federal amendments.

It is hard to see how the act of applying for a convention invokes the law-making processes of the state any more than its act of ratifying a proposed amendment. If anything, the act of ratification is closer to legislation since it is the last step before an amendment becomes a fundamental part of our law. A convention application, on the other hand, is several steps removed. Other states must concur, a convention them must be called by Congress, and an amendment must be proposed by that convention. Moreover, a convention application, unlike legislation dividing congressional districts, does not have the force of law or operate directly and immediately upon the people of the state. From a legal point of view, it would seem to be contrary to *Hawke* v. *Smith* and *Leser* v. *Garnett* to require the governor's participation in the application and ratification processes.[72]


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The exclusion of the governor from the application and ratification processes also finds support in the overwhelming practice of the states,[73] in the views of text-writers,[74] and in the Supreme Court's decision in *Hollingsworth* v. *Virginia* holding that the President was excluded from any role in the process by which amendments are proposed by Congress.[75]

## Article V Applications

### (i) Content

A reading of Article V makes clear that an application should contain a request to Congress to call a national convention that would have the authority to propose an amendment to the Constitution. An application which simply expressed a state's opinion on a given problem or requested Congress itself to propose an amendment would not be sufficient for purposes of Article V. Nor would an application seem proper 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.[76] A convention should have latitude to amend, as Congress does, by evaluating and dealing with a problem.

On the other hand, an application which expressed the result sought by an amendment, such as providing for the direct election of the President, should be proper since the convention itself would be left free to decide on the terms of the specific amendment necessary to accomplish that objective. We agree with the suggestion that it should not be necessary that each application be identical or propose similar changes in the same subject matter.[77]


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

In order to determine whether the requisite agreement among the states is present, it would seem useful for congressional legislation to require a state legislature to list in its application all state applications in effect on the date of its adoption whose subject or subjects it considers to be substantially the same. By requiring a state legislature to express the purpose of its application in relation to those already received, Congress would have additional guidance in rendering its determination. Any such requirement, we believe, should be written in a way that would permit an application to be counted even though the state involved might have inadvertently but in good faith failed to identify similar applications in effect.

Timeliness (ii)

In *Dillon* v. *Gloss*, the Court upheld the fixing by Congress of a period during which ratification of a proposed amendment must be accomplished. In reaching that conclusion the Court stated that "the fair inference or implication from Article V is that the ratification must be within some reasonable time after proposal, which Congress is free to fix." The Court observed that:

> "as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do."[78]

We believe the reasoning of *Dillon* v. *Gloss* to be equally applicable to state applications for a national constitutional convention. The convening of a convention to deal with a certain matter certainly should reflect the "will of the people in all sections at relatively the same period . . . ." In the absence of a uniform rule, the timeliness or untimeliness of state


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

applications would vary, it seems, from case to case. It would involve, as the Supreme Court suggested with respect to the ratification area in *Coleman* v. *Miller*, a consideration of "political, social and economic conditions which have prevailed during the period since the submission of the [applications] . . . ."[79]

A uniform rule, as in the case of ratification of proposed amendments since 1918,[80] would add certainty and avoid the type of confusion which surrounded the apportionment applications. Any rule adopted, however, must take into account the fact that some state legislatures do not meet every year and that in may states the legislative sessions end early in the year.

Although the suggestion of a seven year period is consistent with that prescribed for the ratification of recent proposed constitutional amendments, it can be argued that such a period is too long for the calling of a constitutional convention, since a long series of years would likely be involved before an amendment could be adopted. A shorter period of time might more accurately reflect the will of the people at a give point in time. Moreover, at this time in our history when social, economic and political changes frequently occur, a long period of time might be undesirable. On the other hand, a period such as four years would give states which adopted an application in the third and fourth year little opportunity to withdraw it on the basis of further reflection. This is emphasized when consideration is given to the fact that a number of state legislatures do not meet every year. Hence, a longer period does afford more opportunity for reflection on both the submission and withdrawal of an application. It also enables the people at the time of state legislative elections to express their views. Of course, whatever the period it may be extended by the filing of a new proposal.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The Committee feels that some limitation is necessary and desirable but takes no position on the exact time except it believes that either four or seven years would be reasonable and that a congressional determination as to either period should be accepted.

## Withdrawal of Applications (iii)

There is no law dealing squarely with the question of whether a state may withdraw an application seeking a constitutional convention, although some commentators have suggested that a withdrawal is of no effect.[81] The desirability of having a rule on the subject is underscored by the fact that state legislatures have attempted to withdraw applications, particularly during the two most recent cases where a large number of state legislatures sought a convention on a specific issue.[82] As a result, uncertainty and confusion have arisen as to the proper treatment of such applications.

During the Senate debates of October 1971 on S.215, no one suggested any limitation on the power to withdraw up to the time that the legislatures of two-thirds of the states had submitted proposals. Since a convention should reflect a “contemporaneously-felt need” that it take place, we think there should be no such limitation. In view of the importance and comparatively permanent nature of an amendment, it seems desirable that state legislatures be able to set aside applications that may have been hastily submitted or that no longer reflect the social, economic and political factors in effect when the applications were originally adopted. We believe Congress has the power to so provide.

From a slightly different point of view, the power to withdraw implies the power to change and this relates directly to the question of determining whether two-thirds of the state legislatures have applied for a convention to


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

consider the same subject. A state may wish to say specifically through its legislature that it does or does not agree that its proposal covers the same subject as that of other state proposals. The Committee feels that this power is desirable.

Finally, we can see no problem with respect to a state changing a refusal to request a convention to a proposal for such a convention. All states, of course, have rules of one sort or another which restrict the time at which a once-defeated proposition can be again presented. If these rules were to apply to the call of a federal convention and operate in a burdensome manner, their validity would be questionable under *Hawke* v. *Smith*.

## The Article V Convention

### (i) Election of Delegates

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 by 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 the future delegates.

### (ii)Apportionment of Delegates

Although there are no direct precedents in point, there is authority and


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

substantial reason for concluding, as we do, that the one-person, one-vote rule is applicable to a national constitutional convention. In *Hadley* v. *Junior College District,* the Supreme Court held that the rule applied in the selection of people who carry on governmental functions.[83] While a recent decision, affirmed without opinion by the Supreme Court, held that elections for the judiciary are exempt from the rule, the lower court stated that "judges do not represent people."[84] Convention delegates, however, would represent people as well as perform a fundamental governmental function. As a West Virginia Supreme Court observed with respect to a state constitutional convention: "[E]ven though a constitutional convention may not precisely fit into one of the three branches of government, it is such an essential incident of government that every citizen should be entitled to equal representation therein."[85] Other decisions involving conventions differ as to whether the apportionment of a state constitutional convention must meet constitutional standards.[86]

Of course, the state reapportionment decisions are grounded in the equal protection clause of the Fourteenth Amendment and the congressional decision in *Wesberry* v. *Sanders*[87] was founded on Article I, Section 2. Federal legislation providing for a national constitutional convention would be subject to neither of these clauses but rather to the Fifth Amendment. Yet the concept of equal protection is obviously related to due process and has been so reflected in decisions under the Fifth Amendment.[88]

Assuming compliance with the one-person, one-vote rule is necessary, as we believe it is, what standards would apply? While the early cases spoke in terms of strict population equality, recent cases have accepted deviations from this standard. In *Mahan* v. *Howell*, the Supreme Court accepted deviations of up to 16.4% because the state apportionment plan was deliberately drawn to conform to existing political subdivisions which, the Court felt, formed a


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

more natural basis for districting so as to represent the interests of the people involved.[89] In *Abate* v. *Mundt,* the Court upheld a plan for a county board of supervisors which produced a total deviation of 11.9%.[90] It did so on the basis of the long history of dual personnel in county and town government and the lack of built-in bias tending to favor a particular political interest or geographic area.

Elaborating its views on one person, one vote, the Committee believes that a system of voting by states at a convention, while patterned after the original Constitutional Convention, would be unconstitutional as well as undemocratic and archaic. While it was appropriate before the adoption of the Constitution, at a time when the states were essentially independent, there can be no justification for such a system today. Aside from the contingent election feature of our electoral college system, which has received nearly universal condemnation as being anachronistic, we are not aware of any precedent which would support such a system today. A system of voting by states would make it possible for states representing one-sixth of the population to propose a constitutional amendment. Plainly, there should be a broad representation and popular participation at any convention.

While the representation provisions of S. 1272 allowing each state as many delegates as it has Senators and Representatives in Congress are preferable to a system of voting by states, it is seriously questionable whether that structure would be found constitutional because of the great voting weight it would give to people of one state over the people of another.[91] It can be argued that a representation system in a convention which parallels the structure in Congress does not violate due process, since Congress is the only other body authorized by the Constitution to propose constitutional


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

amendments. On the other hand, representation in the Congress and the electoral college are explicit parts of the Constitution, arrived at as a result of compromises at the Constitutional Convention of 1787. It does not necessarily follow that apportionment plans based on such models are therefore constitutional. On the contrary, the reapportionment decisions make clear that state plans which deviate from the principle of equal representation for equal numbers are unconstitutional. As the Supreme Court stated in *Kirkpatrick* v. *Preisler*:

> "Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes."[92]

In our view, a system allotting to each state a number of delegates equal to its representation in the House of Representatives should be an acceptable compliance with one-person, one-vote standards.[93] We reach this conclusion recognizing that there would be population deviations of up to 50% arising from the fact that each state would be entitled to a delegate regardless of population. It would be possible to make the populations substantially equal by redistricting the entire country regardless of state boundaries or by giving Alaska one vote and having every other state elect at large a multiple of 300,000 representing its population or redistrict each state on the new population unit.[94] None of these methods, however, seems feasible or realistic. The time and expense involved in the creation and utilization of entirely new district lines for one election, especially since state election machinery is readily available, is one factor to be weighed. Another is the difficulty of creating districts crossing state lines which would adequately represent constituents from both states. There is also the natural interest of


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the voter in remaining within his state. Furthermore, the dual nature of our political system strongly supports the position that state boundaries be respected. *Abate* v. *Mundt,* although distinguishable regarding apportionment of a local legislative body, suggests an analogy on a federal level. The rationale of the Court in upholding the legislative districts within counties drawn to preserve the integrity of the towns, with the minimum deviation possible, could be applicable to apportionment of a convention. The functional interdependence and the coordination of the federal and state governments and the fundamental nature of the dual system in our government parallel the relationship between the county and towns in *Abate*. Appropriate respect for the integrity of the states would seem to justify an exception to strict equality which would assure each state at least one delegate. Thus, a system based on the allocation of Representatives in Congress would afford maximum representation within that structure.

(iii) Members of Congress as Delegates

We cannot discern any federal constitutional bar against a member of Congress serving as a delegate to a national constitutional convention. We do not believe that the provision of Article I, Section 6 prohibiting congressmen from holding offices under the United States would be held applicable to service as a convention delegate. The available precedents suggest that an "office of the United States" must be created under the appointive provisions of Article II[95] or involve duties and functions in one of the three branches of government which, if accepted by a member of Congress, would constitute an encroachment on the principle of separation of powers underlying our governmental system.[96] It is hard to see how a state-elected delegate to a national constitutional convention is within the contemplation of this


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

provision. It is noteworthy in this regard that several delegates to the Constitutional Convention of 1787 were members of the Continental Congress and that the Articles of Confederation contained a clause similar to Article I, Section 6.

We express no position on the policy question presented, or on the applicability and validity of any state constitutional bars against members of Congress simultaneously serving in other positions.

## Ratification

As part of our study, the Committee has considered the advisability of including in any statute implementing the convention method a rule as to whether a state should be able to rescind its ratification of a proposed amendment or withdraw a rejection vote. In view of the confusion and uncertainty which exists with respect to these matters, we believe that a uniform rule would be highly desirable.

The difficult legal and policy question is whether a state can withdraw a ratification of a proposed amendment. There is a view that Article V envisions only affirmative acts and that once the act of ratification has taken place in a state, that state has exhausted its power with respect to the amendment in question.[97] In support, it is pointed out that where the convention method of ratification is chosen, the state constitutional convention would not have the ability to withdraw its ratification after it had disbanded. Consequently, it is suggested that a state legislature does not have the power to withdraw a ratification vote. This suggestion has found support in a few state court decisions[98] and in the action of Congress declaring the ratification of the Fourteenth Amendment valid despite ratification rejections in two of the states making up the three-fourths.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

On the other hand, Article V gives Congress the power to select the method of ratification and the Supreme Court has made clear that this power carries with it the power to adopt reasonable regulations with respect to the ratification process. We do not regard past precedent as controlling but rather feel that the principle of seeking an agreement of public support espoused in *Dillon* v. *Gloss* and the importance and comparatively permanent nature of an amendment more cogently argue in support of a rule permitting a state to change its position either way until three-fourths of the states have finally ratified.[99] [100]

## CONCLUSION

Much of the past discussion on the convention method of initiating amendments has taken place concurrently with a lively discussion of the particular issue sought to be brought before a convention. As a result, the method itself has become clouded by uncertainty and controversy and attempted utilization of it has been viewed by some as not only an assault on the congressional method of initiating amendments but as unleashing a dangerous and radical force in our system. Our two-year study of the subject has led us to conclude that a national constitutional convention can be channeled so as not to be a force of that kind but rather an orderly mechanism of effecting constitutional change when circumstances require its use. The charge of radicalism does a disservice to the ability of the states and people to act responsibly when dealing with the Constitution.

We do not mean to suggest in any way that the congressional method of initiating amendments has not been satisfactory or, for that matter, that it is not to be preferred. We do mean to suggest that so long as the convention method of proposing amendments is a part of our Constitution, it is proper to


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

establish procedures for its implementation and improper to place unnecessary and unintended obstacles in the way of its use. As was stated by the Senate Judiciary Committee, with which we agree:

> "The committee believes that the responsibility of Congress under the Constitution is to enact legislation which makes article V meaningful. This responsibility dictates that legislation implementing the article should not be formulated with the objective of making the Convention route a dead letter by placing insurmountable procedural obstacles in its way. Nor on the other hand should Congress, in the guise of implementing legislation, create procedures designed to facilitate the adoption of any particular constitutional change."[101]

The integrity of our system requires that when the convention method is properly resorted to, it be allowed to function as intended.

Respectfully submitted,

SPECIAL CONSTITUTIONAL CONVENTION
STUDY COMMITTEE

C. Clyde Atkins, Chairman

Warren Christopher

David Dow

John D. Feerick

Adrian M. Foley, Jr.

Sarah T. Hughes

Albert M. Sacks

William S. Thompson

Samuel W. Witwer

July, 1973



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

CITATIONS

APPENDIX A

This appendix is designed to capsulize our comments regarding various principles reflected in S. 1272 and to cross-reference pertinent parts of our report. The underlining, insertions (noted by brackets) and deletions which appear in S. 1272 have been supplied by us for the purpose of illustrating our comments.[102]

93rd Congress

1st Session

S. 1272

_____

IN THE SENATE OF THE UNITED STATES

March 19, 1973

Referred to the Committee on the Judiciary

Passed the Senate July 9, 1973

_____

A BILL
To provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the “Federal Constitutional Convention Procedures Act”.

APPLICATIONS FOR CONSTITUTIONAL CONVENTION


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

SEC. 2.[103] The legislature of a State, in making application to the Congress for a constitutional convention under article V of the Constitution of the United States on and after the enactment of this Act, shall adopt a resolution pursuant to this Act stating, in substance, that the legislature requests the calling of a convention for the purpose of proposing one or more amendments to the Constitution of the United States and *stating the nature of the amendment or amendments to be proposed*.

APPLICATION PROCEDURE

SEC. 3. (a)[104] For the purpose of adopting or rescinding a resolution pursuant to section 2 and section 5, the State legislature *shall follow the rules of procedure that govern the enactment of a statute* by that legislature, but without the need for approval of the legislature's action by the governor of the State.

(b)[105] Questions concerning the adoption of a State resolution cognizable under this Act shall be [determined] ~~determinable~~ by the Congress of the United States ~~and its decisions thereon shall be binding on all others, including State and Federal courts.~~

TRANSMITTAL OF APPLICATIONS

SEC. 4 (a) Within thirty days after the adoption by the legislature of a State of a resolution to apply for the calling of a constitutional convention, the secretary of sate of the State, or if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate, and one to the Speaker of the House of Representatives.

(b) Each copy of the application so made by any State shall contain


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

(1) the title of the resolution;

[ (2)[106] to the extent practicable a list of all state applications in effect on the date of adoption whose subject or subjects are substantially the same as the subject or subjects set forth in the application;]

[3]
~~(2)~~ the exact text of the resolution signed by the presiding officer of each house of the State legislature; and

[4]
(3) The date on which the legislature adopted the resolution; and shall be accompanied by a certificate of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution.

[ (c)[107] Upon receipt, an application shall be deemed valid and in compliance with article V of the Constitution and this Act, unless both Houses of Congress prior to the expiration of 60 days of continuous session of Congress following the receipt of such application shall by concurrent resolution determine the application is invalid, either in whole or in part. Failure of Congress to act within the specified period is a determination subject to review under section 16 of this Act. Such resolution shall set forth with particularity the ground or grounds for any such determination. The 60-day period referred to herein shall be computed in accordance with section 11(b)(2) of this Act.]


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

[d][108]

~~(e)~~ Within ten days after receipt of a copy of any such application, the President of the Senate and Speaker of the House of Representatives shall report to the House of which he is the presiding officer, identifying the State making application, the subject of the application, and the number of States then having made application on such subject. [Within the 60-day period provided for in Section 4(c),] the President of the Senate and Speaker of the House of Representatives shall jointly cause copies of such application to be sent to the presiding officer of each house of the legislature of every other State and to each Member of the Senate and House of Representatives of the Congress of the United States, [provided, however, that an application declared invalid shall not be so transmitted.]

EFFECTIVE PERIOD OF APPLICATION

SEC. 5 (a)[109] An application submitted to the Congress by a State, unless sooner rescinded by the State legislature shall remain effective for seven calendar years after the date it is received by the Congress, except that whenever within a period of seven calendar years two-thirds or more of the several States have each submitted an application calling for a constitutional convention on the *same subject* all such applications shall remain in effect until the Congress has taken action on a concurrent resolution pursuant to section 6, calling for a constitutional convention.

(b)[110] A State may rescind its application calling for a constitutional convention by adopting and transmitting to the Congress a resolution of rescission *in conformity with the procedure specified* in sections 3 and 4, except that no such rescission shall be effective as to any valid application


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

made for a constitutional convention upon any subject after the date on which two-thirds or more of the State legislatures have valid applications pending before the Congress seeking amendments on the same subjects.

(c)[111] Questions concerning the recession of a State's application shall be determined by the Congress of the United States ~~and its decisions shall be binding on all others including State and Federal Courts~~.

CALLING OF A CONSTITUTIONAL CONVENTION

SEC. 6. (a)[112] It shall be the duty of the Secretary of the Senate and the Clerk of the House of Representatives to maintain a record of all applications received by the President of the Senate and Speaker of the House of Representatives from States for the calling of a constitutional convention upon each subject. Whenever applications made by two-thirds or more of the States with respect to the same subject have been received, the Secretary and the Clerk shall so report in writing to the officer to whom those applications were transmitted, and such officer thereupon shall announce on the floor of the House of which he is an officer the substance of such report. It shall be the duty of such House to determine that there are in effect valid applications made by two-thirds of the States with respect to the same subject. If either House of the Congress determines, upon consideration of any such report or of a concurrent resolution agreed to by the other House of the Congress, that there are in effect valid applications made by two-thirds or more of the States for the calling of a constitutional convention upon the same subject, it shall be the duty of that House to agree to a concurrent resolution calling for the convening of a Federal constitutional convention upon that subject. *Each such concurrent resolution shall* (1) designate the place and time of meeting of the convention, and (2) *set forth the nature of the amendment or amendments for the consideration of which the convention is called.* A copy of each such concurrent resolution agreed to by both Houses of


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the Congress shall be transmitted forthwith to the Governor and to the presiding officer of each house of the legislature of each State.

(b) The convention shall be convened not later than one year after adoption of the resolution.

DELEGATES

SEC. 7. (a)[113] A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress. In each State two delegates shall be elected at large and one delegate shall be elected from each congressional district in the manner provided by State law. Any vacancy occurring in a State delegation shall be filled by appointment of the Governor of each state.

(b) The secretary of state of each State, or, if there be no such officer, the person charged by State law to perform such function shall certify to the Vice President of the United States the name of each delegate elected or appointed by the Governor pursuant to this section.

(c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same and for any speech or debate in the convention they shall not be questioned in any other place.

(d) Each delegate shall receive compensation for each day of service and shall be compensated for traveling and related expenses. Provision shall be made


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

therefor in the concurrent resolution calling the convention. The convention shall fix the compensation of employees of the convention.

CONVENING THE CONVENTION

SEC. 8. (a) The Vice President of the United States shall convene the constitutional convention. He shall administer the oath of office of the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe to an oath by which he shall be committed during the conduct of the convention to refrain from proposing or casting his vote in favor of any proposed amendment to the Constitution of the United States relating to any subject which is not named or described in the concurrent resolution of the Congress by which the convention was called. Upon the election of permanent officers of the convention, the names of such officers shall be transmitted to the President of the Senate and the Speaker of the House of Representatives by the elected presiding officer of the convention. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as the convention may adopt.

(b) There is hereby authorized to be appropriated such sums as may be necessary for the payment of the expenses of the convention.

(c) The Administrator of General Services shall provide such facilities, and the Congress and each executive department and agency shall provide such information and assistance, as the convention may require, upon written request made by the elected presiding officer of the convention.

PROCEDURES OF THE CONVENTION


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

SEC. 9. (a)[114] In voting on any question before the convention, including the proposal of amendments, each delegate shall have one vote.

(b) The convention shall keep a daily verbatim record of its proceedings and publish the same. The vote of the delegates on any question shall be entered on the record.

(c) The convention shall terminate its proceedings within one year after the date of its first meeting unless the period is extended by the Congress by concurrent resolution.

(d) Within thirty days after the termination of the proceedings of the convention, the presiding officer shall transmit to the Archivist of the United States all records of official proceedings of the convention.

PROPOSAL OF AMENDMENTS

SEC. 10. (a)[115] Except as provided in subsection (b) of this section, a convention called under this Act may propose amendments to the Constitution by a vote of *two-thirds of the total number of delegates to the convention*.

(b)[116] No convention called under this Act may propose *any amendment or amendments of a nature different from that stated* in the concurrent resolution calling the convention. Questions arising under this subsection shall be determined ~~solely~~ by the Congress of the United States ~~and its decisions shall be binding on all others, including State and Federal courts~~.

APPROVAL BY THE CONGRESS AND TRANSMITTAL TO THE STATES FOR RATIFICATION


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

SEC. 11. (a) The presiding officer of the convention shall, within thirty days after the termination of its proceedings, submit to the Congress the exact text of any amendment or amendments agreed upon by the convention.

(b) (1)[117] Whenever a constitutional convention called under this Act has transmitted to the Congress a proposed amendment to the Constitution, the President of the Senate and the Speaker of the House of Representatives, acting jointly, shall transmit such amendment to the Administrator of General Services upon the expiration of the first period of ninety days of continuous session of the Congress following the date of receipt of such amendment unless within that period both Houses of the Congress have agreed to (a) a concurrent resolution directing the earlier transmission of such amendment to the Administrator of General Services and specifying in accordance with article V of the Constitution the manner in which such amendment shall be ratified, or (B)[118] a concurrent resolution stating that the Congress disapproves the submission of such proposed amendment to the States because such proposed amendment *relates to or includes a subject which differs from or was not included among the subjects named or described in the concurrent resolution* of the Congress by which the convention was called, or because the procedures followed by the convention in proposing the amendment were not in substantial conformity with the provisions of this Act. No measure agreed to by the Congress which expresses disapproval of any such proposed amendment for any other reason, or without a statement of any reason, shall relieve the President of the Senate and the Speaker of the House of Representatives of the obligations imposed upon them by the first sentence of this paragraph.

(2) For the purposes of paragraph (1) of this subsection, (A) the continuity of a session of the Congress shall be broken only by an adjournment of the Congress sine die, and (B) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

excluded in the computation of the period of ninety days.

(c) Upon receipt of any such proposed amendment to the Constitution, the Administrator shall transmit forthwith to each of the several States a duly certified copy thereof, a copy of any concurrent resolution agreed to by both Houses of the Congress which prescribes the time within which and the manner in which such amendment shall be ratified, and a copy of this Act.

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 12. (a) Any amendment proposed by the convention and submitted to the States in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when duly ratified by three-fourths of the States in the manner and within the time specified.

(b)[119] Acts of ratification shall be by convention or by State legislative action as the Congress may direct or as specified in subsection (c) of this section. For the purpose of ratifying proposed amendments transmitted to the States pursuant to this Act the *State legislatures shall adopt their own rules of procedure.* Any State action ratifying a proposed amendment to the Constitution shall be valid without the assent of the Governor of the State.

(c)Except as otherwise prescribed by concurrent resolution of the Congress, any proposed amendment to the Constitution shall become valid when ratified by the legislatures of three-fourths of the several States within seven years from the date of the submission thereof to the States, or within such other period of time as may be prescribed by such proposed amendment.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

(d) The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State action ratifying any proposed amendment to the Administrator of General Services.

RECISSION OF RATIFICATIONS

SEC. 13.(a)[120] Any State may rescind its ratification of a proposed amendment by the same processes by which it ratified the proposed amendment, except that no State may rescind when there are existing valid ratifications of such amendments by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal.

(c)[121] Questions concerning State ratification or rejection of amendments proposed to the Constitution of the United States, shall be determined ~~solely~~ by the Congress of the United States ~~and its decisions shall be binding on all others, including State and Federal courts.~~

PROCLAMATION OF CONSTITUTIONAL AMENDMENTS

SEC. 14. The Administrator of General Services, when three-fourths of the several States have ratified a proposed amendment to the Constitution of the United States, shall issue a proclamation that the amendment is a part of the Constitution of the United States.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## EFFECTIVE DATE OF AMENDMENTS

SEC. 15. An amendment proposed to the Constitution of the United States shall be effective from the date specified therein or, if no date is specified, then on the date on which the last State necessary to constitute three-fourths of the States of the United States, as provided for in article V, has ratified the same.

## JUDICIAL REVIEW

[SEC. 16. (a)[122] Determinations and findings made by Congress pursuant to the Act shall be binding and final unless clearly erroneous. Any person aggrieved by any such determination or finding or by any failure of Congress to make a determination or finding within the periods provided in this Act may bring an action in a district court of the United States in accordance with 28 U.S.C. § 1331 and 28 U.S.C. § 2201 without regard to the amount in controversy. The action may be brought against the Secretary of the Senate and the Clerk of the House of Representatives or, where appropriate, the Administrator of General Services, and such other parties as may be necessary to afford the relief sought. The district courts of the United States shall have exclusive jurisdiction of any proceedings instituted pursuant to this Act, and such proceedings shall be heard and determined by three judges in accordance with 28 U.S.C. § 2284. Any appeal shall be to the Supreme Court.]

[ (b)[123] Every claim arising under this Act shall be barred unless suit is filed thereon within sixty days after such claim first arises.]


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

# APPENDIX B

## *Article V Applications Submitted Since 1789*

### *PART ONE: A Tabulation of Applications by States and Subjects*

By Barbara Prager and Gregory Milmoe[124]

A General Note on the Table:

This table is offered as a comprehensive compilation of Article V applications categorized by state and by application content.[125] The table maximized the number of applications, i.e., whenever any source recognizes an application, it has been included in the table. For this reason it must be emphasized that the totals are valuable only as an overview and not for the purpose of determining whether any two-thirds of the states have applied for a convention on any given category.

Allowing for slight semantic differences among the authorities consulted, the categories used are, for the most part, generally accepted. Any readily discernable [sic] differences are set forth in the notes below. A more serious problem is the sometimes sharp disparity among the sources consulted with regard to what should be recognized as an application. Rather than attempt to make definitive judgments as to what applications should be treated as such, we have set out in the notes below the generally recognized applications followed by the applications recognized by particular sources.

A total of six sources were selected for consultation in the preparation of this table. They are:


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Buckwalter*, "Constitutional Conventions and State Legislators," 20 J.Pub.L. 543 (1971) [hereinafter cited as *Buckwalter*]; *Graham*, "The Role of the States in Proposing Constitutional Amendments," 49 A.B.A.J. 1175 (1963) [hereinafter cited as *Graham*]; E. Hutton, State Applications to Congress Calling for Conventions to Propose Constitutional Amendments (January 1963 to June 8, 1963), June 12, 1973 (Library of Congress, Congressional Research Service, American Law Division Paper)[hereinafter cited as *Library of Congress Study*]; *Hearings on S.2307 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess. 115-19 (1967) [hereinafter cited as *1967 Hearings*]; Tydings, *Federal Constitutional Convention*, S. Doc. No. 78, 71st Cong., 2d Sess. (1930) [hereinafter cited as *1930 S.Doc.*]; and W. Pullen, "The Application Clause of the Amending Provision of the Constitution," 1951 (unpublished dissertation in Univ. of North Carolina Library) [hereinafter cited as *Pullen*].

It should be noted that certain of the studies consider only limited time periods and, therefore, were consulted only for the time periods indicated: *Buckwalter* (1788-1971); *Graham* (1788-1963); *Library of Congress Study* (1963-73); *1967 Hearings* (1963-67); *1930 S. Doc.* (1788-1911); Pullen (1788-1951).


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

1

| | General | Direct Election of Senators | Anti-polygamy | Repeal of Prohibition: 21st Amend. | Limitation of Fed. Taxing; Repeal 16th Amend. | World Federal Gov't. | Limited Presidential Tenure |
|---|---|---|---|---|---|---|---|
| Alabama | | | | | **1** | | |
| Alaska | | | | | | | |
| Arizona | | | | | | | |
| Arkansas | | **3** | | | **1** | | |
| California | | **3** | **1** | | | **1** | |
| Colorado | | **1** | | | **1** | | |
| Connecticut | | | **1** | | | **1** | |
| Delaware | | | **1** | | **1** | | |
| Florida | | | | | **1** | **3** | |
| Georgia | **1** | | | | **1** | | |
| Hawaii | | | | | | | |
| Idaho | | **2** | | | **1** | | |
| Illinois | **1** | **3** | **1** | | **1** | | **1** |
| Indiana | **1** | **1** | | | **2** | | |
| Iowa | | **4** | **1** | | **2** | | **1** |
| Kansas | | **4** | | | **1** | | |
| Kentucky | **2** | **1** | | | **1** | | |
| Louisiana | | **1** | **1** | | **2** | | |
| Maine | | **1** | **1** | | **2** | **1** | |
| Maryland | | | **2** | | **1** | | |
| Massachusetts | | | | **1** | **1** | | |
| Michigan | | **1** | **1** | | **2** | | **1** |
| Minnesota | | **2** | **1** | | | | |
| Mississippi | | | | | **1** | | |
| Missouri | **1** | **3** | | | | | |
| Montana | | **6** | **1** | | **1** | | **1** |
| Nebraska | | **4** | **1** | | **1** | | |
| Nevada | | **6** | | **1** | **1** | | |
| New Hampshire | | | **1** | | **2** | | |
| New Jersey | **1** | **1** | | **1** | **1** | **1** | |
| New Mexico | | | | | **1** | | |
| New York | **1** | | **1** | **1** | | | |
| North Carolina | **1** | **2** | | | | **1** | |
| North Dakota | | **1** | **1** | | | | |
| Ohio | **1** | **2** | **1** | | | | |
| Oklahoma | | **1** | **1** | | **1** | | |
| Oregon | **1** | **6** | **1** | | | | |
| Pennsylvania | | **1** | **2** | | **1** | | |
| Rhode Island | | | | | **1** | | |
| South Carolina | **1** | | **1** | | **1** | | |
| South Dakota | | **3** | **1** | | **1** | | |
| Tennessee | | **4** | **1** | | **1** | | |
| Texas | **1** | **2** | **1** | | **1** | | |
| Utah | | **1** | | | **1** | | |
| Vermont | | | **1** | | | | |



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | General | Direct Election of Senators | Anti-polygamy | Repeal of Prohibition: 21st Amend. | Limitation of Fed. Taxing; Repeal 16th Amend. | World Federal Gov't. | Limited Presidential Tenure |
|---|---|---|---|---|---|---|---|
| Virginia | **2** | | | | **1** | | |
| Washington | **1** | **1** | **2** | | | | |
| West Virginia | | | **1** | | | | |
| Wisconsin | **2** | **3** | **1** | **1** | **1** | | **1** |
| Wyoming | | **1** | | | **2** | | |
| Totals | **18** | **75** | **30** | **5** | **42** | **8** | **5** |

1



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

1

| | Treaty Making | Revision of Article V | Exclusive state jurisdiction over schools | Supreme Court Decisions | Apportionment | Court of the Union | Prayer In Schools |
|---|---|---|---|---|---|---|---|
| Alabama | | | | | **2** | **1** | |
| Alaska | | | | | **1** | | |
| Arizona | | | | | **1** | | **1** |
| Arkansas | | **1** | | **1** | **2** | **1** | |
| California | | | | | **1** | | |
| Colorado | | | | | **2** | | |
| Connecticut | | | | | | | |
| Delaware | | | | | | | |
| Florida | **1** | **1** | | **1** | **1** | **1** | |
| Georgia | **1** | | **3** | **1** | **1** | | |
| Hawaii | | | | | | | |
| Idaho | | **2** | | | **2** | | |
| Illinois | | **2** | | | **2** | | |
| Indiana | **1** | **1** | | | **2** | | |
| Iowa | | | | | **1** | | |
| Kansas | | **1** | | | **2** | | |
| Kentucky | | | | | **1** | | |
| Louisiana | | | **1** | **1** | **1** | | |
| Maine | | | | | | | |
| Maryland | | | | | **1** | | **1** |
| Massachusetts | | | | | | | **1** |
| Michigan | | **1** | | | | | |
| Minnesota | | | | | **1** | | |
| Mississippi | | | **1** | | **1** | | |
| Missouri | | **1** | | | **2** | | |
| Montana | | | | | **2** | | |
| Nebraska | | | | | **1** | | |
| Nevada | | | | | **3** | | |
| New Hampshire | | | | | **1** | | |
| New Jersey | | | | | | | |
| New Mexico | | | | | **1** | | |
| New York | | | | | | | |
| North Carolina | | | | | **1** | | |
| North Dakota | | | | | **2** | | **1** |
| Ohio | | | | | | | |
| Oklahoma | | **1** | | | **2** | | |
| Oregon | | | | | | | |
| Pennsylvania | | | | | | | |
| Rhode Island | | | | | **1** | | |
| South Carolina | | **1** | | | **2** | **1** | |
| South Dakota | | **3** | | | **2** | | |
| Tennessee | | | | | **1** | | |
| Texas | | **2** | | | **2** | | |
| Utah | | | | | **2** | | |



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | Treaty Making | Revision of Article V | Exclusive state jurisdiction over schools | Supreme Court Decisions | Apportionment | Court of the Union | Prayer In Schools |
|---|---|---|---|---|---|---|---|
| Vermont | | | | | | | |
| Virginia | | **1** | **1** | | **2** | | |
| Washington | | | | | **1** | | |
| West Virginia | | | | | | | |
| Wisconsin | | | | | | | |
| Wyoming | | **1** | | | **1** | **1** | |
| Totals | **3** | **19** | **6** | **4** | **54** | **5** | **4** |

1



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

1

| | Redistribution of Pres. Electors | Presidential Disability Succession | Revenue Sharing | Freedom of Choice of Schools | Prohibition of Muni. Tax | Misc. | Total States |
|---|---|---|---|---|---|---|---|
| Alabama | | | 1 | | | 3 | 8 |
| Alaska | | | | | | | 1 |
| Arizona | | | | | | | 2 |
| Arkansas | 1 | | | | | 1 | 11 |
| California | | | | | | 3 | 9 |
| Colorado | 1 | 1 | | | | 1 | 7 |
| Connecticut | | | | | | 1 | 3 |
| Delaware | | | 1 | | | | 3 |
| Florida | | | 2 | | | 1 | 12 |
| Georgia | | | 1 | | | | 9 |
| Hawaii | | | | | 1 | | 1 |
| Idaho | | | | | | 2 | 9 |
| Illinois | 1 | | 1 | | | 1 | 14 |
| Indiana | | | | | | 1 | 9 |
| Iowa | | | 1 | | | | 10 |
| Kansas | 1 | | | | | | 9 |
| Kentucky | | | | | | | 5 |
| Louisiana | | | 2 | 1 | 1 | 2 | 13 |
| Maine | | | 1 | | | | 6 |
| Maryland | | | 1 | | | | 6 |
| Massachusetts | | | | | | 3 | 6 |
| Michigan | | | | 1 | | | 7 |
| Minnesota | | | | | | | 4 |
| Mississippi | | | | 2 | | 2 | 7 |
| Missouri | | | | | | 1 | 8 |
| Montana | 1 | | | | | 1 | 13 |
| Nebraska | 1 | 1 | | | | | 9 |
| Nevada | | | | 1 | | | 12 |
| New Hampshire | | | 1 | | | | 5 |
| New Jersey | | | 1 | | | 1 | 7 |
| New Mexico | | | | | | | 2 |
| New York | | | | | | 2 | 5 |
| North Carolina | | | | | | | 5 |
| North Dakota | | | 1 | | | | 6 |
| Ohio | | | 2 | | | | 6 |
| Oklahoma | 1 | | | 1 | | | 8 |
| Oregon | | | 1 | | | 1 | 10 |
| Pennsylvania | | | | | | 1 | 5 |
| Rhode Island | | | 1 | | | 1 | 4 |
| South Carolina | | | | | | | 7 |
| South Dakota | 1 | | 1 | | | | 12 |
| Tennessee | | | | | 1 | 1 | 9 |
| Texas | 1 | | 1 | 1 | | 3 | 15 |
| Utah | 1 | | | | | | 5 |
| Vermont | | | | | | | 1 |



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Virginia | | **1** | | | **1** | **1** | **10** |
| Washington | | | | | | | **5** |
| West Virginia | | | **1** | | | | **2** |
| Wisconsin | **1** | | | | | **1** | **11** |
| Wyoming | | | | | | **1** | **7** |
| Totals | **11** | **3** | **21** | **7** | **4** | **36** | **356** |

GENERAL

*Buckwalter, Pullen, 1930 S. Doc.* and *Graham* were consulted. All sources cite: Ga. 1832: Mo. 1907; N.Y. 1789: Tex. 1899; Ga. 1788; Wis. 1929.

*Buckwalter, Pullen* and *Graham* cite: Ill. 1861: Ind. 1861; Ky. 1861: Ohio 1861: Wash. 1901; Wis. 1911.

*Buckwalter* and *Graham* cite: Va. 1861.

*Pullen* cites: Ky. 1863; N.J. 1861; N.C. 1866; Ore. 1864; S.C. 1832.

*Buckwalter* apparently categorized 15 applications as “General” applications, which he also included in his “Direct Election of Senators” category. They are: Colo. 1901; Ill. 1903; Iowa 1907, 1909; Kan. 1901, 1905, 1907; La. 1907; Mont. 1911; Neb. 1907; Nev. 1907; N.C. 1907; Okla. 1908; Ore. 1901; Wash. 1903.

DIRECT ELECTION OF SENATORS

*Pullen, Graham, 1930 S. Doc.,* and *Buckwalter* were consulted. All sources cite: Ark. 1901, 1903; Cal. 1903, 1911; Colo. 1901; Idaho, 1903; Ill. 1903, 1907, 1909; Ind. 1907; Idaho 1901*; Iowa, 1904, 1909; Kan. 1907; Ky. 1902; La. 1907; Me. 1911; Mich. 1901; Minn. 1901; Mo. 1901, 1905; Mont. 1901, 1905, 1907, 1911; Neb. 1893, 1901, 1903, 1907; Nev. 1901, 1903, 1907; N.J. 1907; N.C. 1901, 1907; Ore. 1901, 1903, 1909; Pa. 1901; S.D. 1901, 1907, 1909; Tenn. 1901, 1905; Tex. 1901; Utah 1903; Wash. 1903; Wis. 1903, 1907.

*Pullen, Graham* and *Buckwalter* cite: Ark. 1911; Iowa 1907; Minn. 1911; Mo. 1903; Mont. 1903; Nev. 1905; N.D. 1903; Ohio 1908, 1911; Okla. 1908 [*1930 S. Doc.* dated this application 1909]; Tenn. 1903; Tex. 1911.

*Graham, Buckwalter* and *1930 S. Doc.* cite Kan. 1901; Wyo. 1895.

*Graham* and *Buckwalter* cite: Kan. 1905, 1909; Mont. 1908; Wis. 1908; Ore. 1907.

*Pullen, Graham* and *1930 S. Doc.* cite [as second applications] Ore. 1901, 1903.

*1930 S. Doc.* cites: [second applications] Iowa 1904.

*Pullen* cites: [second applications] Cal. 1911; Tenn. 1901; Nev. 1901; Iowa 1911; Ore. 1909.

**Graham, Pullen* and *1930 S. Doc.* note that this application proposed the direction election of the President and Vice President as well as Senators.

ANTI-POLYGAMY


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Pullen, Graham, Buckwalter* and *1930 S. Doc.* were consulted. All sources cite: Del. 1907; Ill. 1913; Mich. 1913; Mont. 1911; Neb. 1911; N.Y. 1906; Ohio 1911; S.D. 1909; Tenn. 1911; Vt. 1912; Wash. 1909; Wis. 1913.

*Pullen, Graham* and *Buckwalter* cite: Cal. 1909; Conn. 1915; Iowa 1906; La. 1916; Me. 1907; Md. 1908, 1914; Minn. 1909; N.H. 1911; Okla. 1911; Ore. 1913; Pa. 1907, 1913; S.C. 1915; Tex. 1911; W. Va. 1907.

*Graham* and *Buckwalter* cite: N.D. 1907; Wash. 1910.

## REPEAL OF PROHIBITION

*Pullen, Buckwalter* and *Graham* were consulted. All sources cite: Mass. 1931; Nev. 1925; N.J. 1932; N.Y. 1931; Wis. 1931.

## LIMITATION OF FEDERAL TAXING POWER AND REPEAL OF 16TH AMENDMENT

*Graham* and *Buckwalter* were consulted.[+] All sources cite: Ala. 1943[r]; Ark. 1943[r]; Del. 1943; Fla. 1951; Ga. 1952[(a)*]: Ill. 1943[r]; Ind. 1943, 1957; Iowa 1941[r] 1951; Kan. 1951; Ky. 1944[r]; La. 1950[r]; Me. 1941, 1951[r]; Mass. 1941[r]; Mich. 1941, 1949; Miss. 1940; Neb. 1949[r]; N.H. 1943, 1951; N.J. 1944[r]; N.M. 1951; Nev. 1960[(a)]; Okla. 1955; Pa. 1943; R.I. 1940[r]; Utah 1951; Va. 1952[(a)*]; Wis. 1943[r]; Wyo. 1939; S.C. 1962[(a)].

[+]Packard, "Constitutional Law: The States and the Amending Process," 45 A.B.A.J. 161 (1959), limiting his discussion to this subject, lists applications (undated) from: Idaho, Mont., S.D. and Tenn., none of which are cited by any other source.

*Graham* cites: Colo. 1963; La. 1960[(a)]; Md. 1939; Tex. 1961[(a)]; Wyo. 1959[(a)].

[(a)]Repeal of the 16th Amendment

**Graham* cites these as Repeal applications while *Buckwalter* merely cites them as tax limitation applications.

r= Rescinded

## WORLD FEDERAL GOVERNMENT

*Pullen, Graham* and *Buckwalter* were consulted. All sources cite: Cal. 1949*; Conn. 1949; Fla. 1949; Me. 1949; N.J. 1949*; N.C. 1949*

*Graham* and *Buckwalter* cite: Fla. 1943, 1945.

*Rescinded

## LIMIT PRESIDENTIAL TENURE

*Pullen, Graham,* and *Buckwalter* were consulted. All sources cite: Ill. 1943; Iowa.[sic] 1943; Mich. 1943; Mont. 1947; Wis. 1943.

## TREATY MAKING OF THE PRESIDENT

*Pullen, Graham,* and *Buckwalter* were consulted. All sources cite: Fla. 1945.

*Buckwalter and Graham* cite: Ga. 1952; Ind. 1957.

## REVISION OF ARTICLE V


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Buckwalter, Graham,* and *Library of Congress Study** were consulted. All sources cite: Ark. 1963; Fla. 1963; Idaho 1963; Ill. 1963; Kan. 1963[r]; Mo. 1963; Okla. 1963; S.C. 1963; S.D. 1963; Tex. 1963; Wyo. 1963.

*Buckwalter* and *Graham* cite: Idaho 1957; Ill. 1953; Ind. 1957; Mich. 1956; S.D. 1953, 1955; Tex. 1955.

*The *Graham* study continued through 1963, while the *Library of Congress Study* began in 1963.

r= Rescinded

*Buckwalter* and *Library of Congress Study* cite: Va. 1965.

GIVE STATES EXCLUSIVE JURISDICTION OVER PUBLIC SCHOOLS

*Buckwalter, Graham* and *Library of Congress Study* were consulted.

*Buckwalter* and *Graham* cite: Ga. 1955, 1959.

*Buckwalter* and *Library of Congress Study* cite: Ga. 1965, La. 1965; Miss. 1965.

*Graham* cites: Va. 1960*

*The *Graham* study continued through 1963, while the *Library of Congress Study* began in 1963.

SUPREME COURT DECISIONS

*Graham* was the only source cited.

*Graham* cites: Ark. 1961; Fla. 1957; Ga. 1961; La. 1960.

APPORTIONMENT

*Buckwalter, 1967 Hearings,* and *Library of Congress Study* were consulted. All sources cite: Ala. 1965; Ariz. 1965; Ark. 1963, 1965; Colo. 1965; Fla. 1965; Idaho 1963, 1965; Ill. 1967; Ind. 1967; Kan. 1963[r], 1965[r]; Ky. 1965; Md. 1965; Minn. 1965; Miss. 1965; Mo. 1963, 1965; Mont. 1963, 1965; Neb. 1965; Nev. 1963, 1967; N.H. 1965; N.M. 1966; N.C. 1965; N.D. 1967; Okla. 1965; S.C. 1965; S.D. 1965; Tenn. 1966; Tex. 1963, 1965; Utah 1965; Va. 1964, 1965; Wash. 1963; Wyo. 1963.

*Buckwalter* and *Library of Congress of Study* cite: Ala. 1966; Colo. 1967; Iowa 1969; Ill. 1965; N.D. 1965.

*Buckwalter* and *1967 Hearings* cite: Ga. 1965; La. 1965; S.C. 1963.

*Library of Congress Study* and *1967 Hearings* cite: S.D. 1963.

*Buckwalter* cites: Ind. 1957.

*Library of Congress Study* cites: Alaska 1965; Cal. 1965; Nev. 1965; Okla. 1963; R.I. 1965; Utah 1963.

r= Rescinded

COURT OF THE UNION


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Graham, Library of Congress Study,* and *Buckwalter* were consulted. All sources cite: Ala. 1963; Ark. 1963; Fla. 1963.

*Graham and Buckwalter* cite: S.C. 1963; Wyo. 1963.

PRAYER IN SCHOOLS

*Buckwalter* and *Library of Congress Study* were consulted. All sources cite: Mass. 1964.

*Library of Congress Study* cites: Ariz. 1972; Md. 1966; N.D. 1963.

REDISTRIBUTION OF PRESIDENTIAL ELECTORS

*Buckwalter, Graham,* and *Library of Congress Study* were consulted. All sources cite: Ark. 1963; Kan. 1963[r]; Mont. 1963; Utah 1963; Wis. 1963.

*Buckwalter* and *Library of Congress Study* cite: Neb. 1965; Okla. 1965.

*Buckwalter* and *Graham* cite: Tex. 1963.

*Buckwalter* cites: Ill. 1967.

While *Buckwalter* cites Colo. 1965 and S.D. 1965, *Graham* cites those applications as Colo. 1963 and S.D. 1963.

r= Rescinded

PRESIDENTIAL DISABILITY AND SUCCESSION

*Library of Congress Study* was the only source consulted. The study cites: Colo. 1965; Neb. 1965; Va. 1965.

REVENUE SHARING

*Buckwalter* and *Library of Congress Study* were consulted. All sources cite: Ala. 1967; Fla. 1969; Ill. 1965; Ohio 1965; Tex. 1967.

*Buckwalter* cites: N.H. 1969.

*Library of Congress Study* cites: Del. 1971; Fla. 1971; Ga. 1967; Iowa 1972; La. 1970*, 1971; Mass. 1971; N.J. 1970; N.D. 1971; Ore. 1971; S.D. 1971; Ohio 1971; W.Va. 1971.

Received by the Committee from the Attorney Generals of the respective states: Me. 1971; R.I. 1971.

*The La. 1970 application was approved by the House of Representatives only.

FREEDOM OF CHOICE IN SELECTION OF SCHOOLS

*Library of Congress Study* was the only source consulted. The study cites: La. 1970; Mich. 1971; Miss. 1970, 1973; Nev. 1973: Okla. 1973; Tex. 1973.

PROHIBIT TAXATION OF STATE OR MUNICIPAL BONDS

*Library of Congress Study* was the only source consulted. The study cites: Hawaii 1970; La. 1970; Tenn. 1970; Va. 1970.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## MISCELLANEOUS

*Alabama*
*1833*-Nullification: *1930 S. Doc.* and *Graham*.
Because the resolution of the Alabama Legislature was worded "This assembly...recommends to the Congress..." *Pullen* views it as merely a recommendation rather than a formal application.
*1957*-Selection of Federal Judges: *Graham*.
*1959*-Federal Pre-emption: *Graham*.

*Arkansas*
*1959*-Examination of 14th Amendment Ratification: *Buckwalter* and *Graham*.

*California*
*1935*-Federal Regulation of Wages and Hours: *Buckwalter* and *Graham*.
*1935*-Taxation of Federal and State Securities: *Buckwalter, Graham,* and *Pullen.*
*1952*-Distribution of Proceeds of Federal Taxes on Gasoline: *Buckwalter* and *Graham*.

*Colorado*
*1963*-Direct Election of President and Vice President: *Library of Congress Study.*

*Connecticut*
*1958*-State Tax on Income of Non-residents: *Graham.*

*Florida*
*1972*-Repalce the Vice President as Head of the Senate: *Library of Congress Study*.

*Idaho*
*1927*-Taxation of Federal and State Securities: *Buckwalter, Graham,* and *Pullen.*
*1963*-Federal Debt Limit: *Buckwalter, Graham,* and *Library of Congress Study*.

*Illinois*
*1911*-Prevention and Suppression of Monopolies: *Buckwalter, Graham*, and *Pullen.*

*Indiana*
*1957*-Balancing the Budget: *Buckwalter* and *Graham.*

*Louisiana*
*1920*-Popular Ratification of Amendments: *Buckwalter, Graham,* and *Pullen*.
*1970-* Sedition and Criminal Anarchy: *Library of Congress Study.*

*Massachusetts*
*1964*-Pensions to Persons Over 65: *Buckwalter* and *Library of Congress Study*.
*1967*-Bible reading in Public Schools: *Library of Congress Study. Buckwalter* cites this application as 1964.
*1973*-Public Funds for Secular Education: *Library of Congress Study.*

*Mississippi*
*1965*-Control Communist Party in U.S.: *Buckwalter* and *Library of Congress Study.*
*1973*-Prayer in Public Buildings.: *Library of Congress Study.*

*Missouri*
*1913*-Constitutionality of State Enactments: *Buckwalter, Graham,* and *Pullen.*


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

*Montana*
*1963*-Direct Election of President and Vice President: *Library of Congress Study.*

*New Jersey*
*1965*-Residence of members of Congress: *Library of Congress Study.*

*New York*
*1965*-Equal Rights for Women: *Library of Congress Study.*
*1972*-Public Funds for Secular Education: *Library of Congress Study.*

*Oregon*
*1939*-Townsend Plan: *Buckwalter, Graham,* and *Pullen.*

*Pennsylvania*
*1943*-Prohibition of Conditions in Grants-in-Aid: *Buckwalter, Graham,* and *Pullen.*

*Rhode Island*
*1790*-Revision of Constitution: *Graham*.

*Tennessee*
*1972*-Prohibit Interference with Neighborhood Schools: *Library of Congress Study.*

*Texas*
*1949*-Tidelands Problem: *Buckwalter, Graham,* and *Pullen.*
*1957*-Oil and Mineral Rights; *Graham*
*1957*-Preservation of States' Rights: *Graham.*

*Virginia*
*1973*-Prohibiting Deficit Spending: *library of Congress Study.*

*Wisconsin*
*1973*-Right to Life: Received by the Committee from the Attorney General of the state.

*Wyoming*
*1961*-Balancing of Budget: *Buckwalter.*

## *PART TWO: A History of Applications*

by Barbara Prager

### INTRODUCTION


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Article V of the Constitution provides that “The Congress on the Application of the Legislatures of two-thirds of the Several States shall call a Convention for proposing Amendments...” Since 1788, despite a total of more than 300 applications from every state in the Union, there has never been a convention convened by this process. The purpose of this paper is to analyze the unsuccessful attempts made to amend the Constitution by this procedure. When applicable, the following factors will be discussed: description of the problem, reasons for the use of the application process, nature of the requests, reasoning of the states declining to make application to Congress; and the resolution of the problem.

## BILL OF RIGHTS

The first group of applications was provoked by dissatisfaction with the scope of the Constitution. The Anti-Federalists felt that the Constitution had not provided for certain basic rights of mankind. During the ratification of the Constitution, the Virginia and New York legislatures submitted separate resolutions to Congress applying for a convention. The text of the Virginia resolution read in part:

> “that a convention be immediately called... with full power to take into their consideration the defects of this constitution that have been suggested by the State conventions... and secure to ourselves and our latest posterity the great and unalienable rights of mankind.[126]

Madison and Jefferson opposed the idea of a second convention. Madison expressed the view that a second convention would suggest a lack of confidence in the first. Others believed that proposing amendments to the Constitution might better be accomplished by Congress. These sentiments found support in the state legislatures. Pennsylvania and Massachusetts explicitly rejected the idea of a second convention, and the remaining states took no final action in making application to Congress.[127]


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The underlying issue was resolved in 1789 when Congress proposed the Bill of Rights.

## THE NULLIFICATION APPLICATIONS

South Carolina was in severe economic difficulty in the eighteen-twenties. Believing that this problem was a result of the high protective tariff levied by the federal government, the state developed the nullification theory, *i.e.,* that a sovereign state could declare an act of Congress null and void. James Hamilton, Jr. advocated a convention of the states to resolve this conflict and recommended to the South Carolina legislature that they apply to Congress for such a convention. South Carolina's petition and a similar application from Georgia took the form of resolutions that Congress call a convention for the purpose of resolving questions of disputed power.[128] Alabama recommended to her co-states and to Congress that a convention be called to resolve the nullification problem and to make "such other amendments and alterations in the Constitution as time and experience have discovered to be necessary."[129]

No other state petitioned for a convention. The problem was considered and the idea of a convention rejected in eight states.[130] Opposition to the South Carolina proposal was manifold. Some objecting to the terminology of the proposal, maintained that an article V convention must be a convention of the people's delegates, and not a convention of the states' representatives. Others, disagreeing with South Carolina's statement that the convention would have the power to determine the constitutional issue, asserted that the convention was limited to proposing amendments. Still others feared the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

potentially disastrous effects of a convention or considered the call of a convention impolitic, inexpedient, unnecessary, or an appalling task.

The states that declined to apply to Congress during this period apparently were not reaching the merits of the issue. Rather, they rejected the idea of a convention on two main grounds: (1) that South Carolina hoped to invest the convention with arbitration power not provided for by the Constitution; and (2) that such a body would not be subject to sufficient control and might therefore upset the existing governmental structure.

## SLAVERY

The devisive issue of slavery was the next issue to provoke state applications. In 1860 the secession of the lower southern states seemed probable. Seeking to effect a reconciliation, President Buchanan proposed that an explanatory amendment to the Constitution be initiated either by Congress or by the application procedure. In support of this suggestion several Congressmen introduced resolutions in Congress to encourage the legislatures of the states to make applications for the call of the convention. This represented the first attempt by Congress to stimulate the application process. The process received further support from newly elected President Lincoln who in his inaugural address stated:

> "the convention mode seems preferable, in that it allows amendments to originate with the people themselves; instead of only permitting them to take or reject propositions originated by others, not especially chosen for the purpose, and which might not be precisely such as they would wish to accept or refuse...[131]

The states, however, were less enthusiastic. During the entire Civil War period, only seven states took affirmative action.[132] The applications tended to be broad in scope, requesting a convention to propose amendments to the Constitution. Several resolutions were merely recommendations that Congress


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

call a convention, while others favored a convention only as a last resort and preferred to rely on Congress to propose any amendments. Many resolutions were tabled in the state legislatures or were referred to a committee which failed to report them back to the legislature. The state of Iowa observed that since eleven states were in open rebellion against the Union, no amendment could be ratified without the votes of at least two rebel states.[133]

Procedural problems played a large role in the states' failure to make successful use of the application process during the Civil War period. Given the frenetic pace of the times, the states failed either to act in strict conformity with article V or to direct their energies to the completion of the process.

## MODERN PERIOD

Since the turn of the twentieth century, the application process has been used primarily to encourage Congress to propose specific amendments.

## DIRECT ELECTION OF SENATORS

In the eighteen-nineties public sentiment grew for an amendment providing for the direct election of U.S. Senators. On several occasions from 1893 to 1902, the House passed resolutions proposing such an amendment which never came to a vote in the Senate.

In 1906, motivated by the inaction of Congress, conference of twelve states met and decided to initiate a campaign to urge applications on the direct election issue from the requisite number of states. Thirty states adopted sixty-nine applications for the call of a convention during the period from 1901 to 1911.[134] Opposition came primarily from two sources: (1) those who objected to the substance of the amendment; and (2) those who feared the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

potential power of such a convention. The latter group expressed the view that a convention would open the door to recommendations for amendments on a wide variety of sectional interests. The issue was resolved in 1912 when Congress proposed the seventeenth amendment.

## POLYGAMY

Utah was admitted into the Union in 1896 on the condition that her constitution included an irrevocable prohibition of polygamous marriages. Later, when it was brought to public attention that the state was not enforcing this provision, an anti-polygamy amendment to the Constitution which would give the United States jurisdiction of the matter was proposed as a possible solution. However, the amendment was opposed on several grounds: it would interfere with the sovereignty of the states; the subject was not of sufficient importance to merit a constitutional amendment; and the problem was susceptible of resolution by other means. The state legislatures, however, did not dismiss the problem as quickly as Congress did. From 1906 to 1916, twenty-six states made almost identical applications requesting a convention to propose an amendment prohibiting polygamous marriages.[135] But after this surge of applications, polygamy ceased to be an issue.

## REPEAL OF PROHIBITION

A movement for the repeal of prohibition began in the nineteen-twenties. Eleven states considered applications to Congress for a constitutional convention. Five adopted resolutions for a limited convention to propose the specific amendment. Congress responded to the pressure by proposing the twenty-first amendment.

## LIMITATION OF FEDERAL TAXES


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Federal taxes were greatly increased during the mid-nineteen-thirties. The American Taxpayers Association failed in its efforts to exert pressure on Congress for an amendment to limit the federal taxing power. The group then began a quiet campaign to apply pressure to use the application procedure of article V. By 1945, seventeen states had submitted resolutions for the call of a convention.[136] The movement lost momentum but was revived again at the end of the decade. Representative Wright Patman from Texas attacked the advocates of the amendment, claiming that their purpose was to make the rich richer and the poor poorer. He advised the states to rescind their applications. By 1963, there were claims that thirty-four states had made applications to Congress, thus meeting the constitutional requirements for a convention.[137] Opponents of the amendment pointed to deficiencies in these claims: twelve states had rescinded their applications;[138] some resolutions had not requested a convention, but merely had asked Congress to propose the amendment; some applications were for other purposes; and the validity of resolutions passed fifteen or twenty years earlier was questionable.

## LIMITATION OF PRESIDENTIAL TENURE

When Franklin D. Rossevelt [sic] was elected to a third term, the belief that the tenure of the office of President should be limited gained adherents. In 1943, four states submitted applications to Congress requesting a national convention to propose an amendment to that effect. A few years later, an additional state adopted a similar resolution. Congress then proposed an amendment limiting the number of successive presidential terms.

## WORLD FEDERAL GOVERNMENTS


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

At the beginning of the second world war, there was support for the ideal that the United States should commit itself to a world organization aimed at preserving peace. Twenty-three states adopted resolutions urging their representatives in Congress to support such a commitment. In 1949, six states made formal applications to Congress for a constitutional convention to propose an amendment authorizing the United States to participate in a limited world government. Within the following two years, half of the states rescinded their applications.[139]

## APPORTIONMENT

The Supreme Court decision establishing the “one-person-one vote” principle and applying it to state legislature apportionment sparked the latest bout of serious interest in a national constitution convention.

The Council of State Governments in 1962 suggested a constitutional convention to propose amendments a) removing apportionment cases from federal jurisdiction, b) establishing a “Court of the Union” to hear certain appeals from the Supreme Court, and c) easing the process whereby states themselves may initiate constitutional amendments under article V.

In 1964, the Council on State Governments suggested an amendment exempting one house of any state legislature from the “one person-one vote” rule. When an amendment to that effect failed in the Senate in 1965 (gaining a majority of the votes but not the constitutionally required two-thirds), the Council and Senator Everett Dirksen initiated a national campaign to convene a constitutional convention to deal with the apportionment problem.[140]

By 1967, thirty-two states had applied for a constitutional convention, although their applications differed in form, content, and specificity. In the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

following years, one more state petitioned for a convention, and one withdrew its original application. Since 1969, no further applications have been submitted on this issue.

Throughout the 1960's and into the present decade particularly salient issues have at one time or another provoked scattered applications for a constitutional convention; *e.g.*, school prayer in the early 1960's, revenue sharing and busing of school children to achieve integration more recently None of these issues, however, has produced applications totaling near the two-thirds required by article V.[141]

## CONCLUSION

It is submitted that the majority of applications presented issues of potentially national concern. In some instances, such as the nullification or the slavery issues, the question was initially a sectional concern, but national ramifications developed.

Another generalization that emerges from an historical analysis of the application process is that the majority of concerns raised in state applications have been resolved in some way other than by convention. In a large number of situations Congress took over the initiative and proposed the requested amendment to the Constitution. Numerous examples are readily available. The 1788 and 1789 applications of Virginia and New York for a general convention were resolved by congressional proposed amendments-the Bill of Rights. Similarly, in the twentieth century, state applications that advocated direct election of senators, the limitation of presidential tenure, presidential disability and succession and the repeal of prohibition were resolved by congressional proposed amendments. The problems raised by the


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

state applications during the slavery period were resolved in a more revolutionary way. The Civil War and ultimately the thirteenth, fourteenth, and fifteenth amendments rendered the applications moot.

However, there are a number of situations in which there has been no resolutions of the problem. In some instances, such as the issue of polygamy, a change in social attitudes over time led to the abandonment of the issue.

This example highlights a problem which may be inherent in the procedure itself: sluggishness. The problem has its roots in a fundamental distinction between the ratification process and the amendment process. While the former only requires the state legislatures to respond to an already formulated amendment the latter requires affirmative action. This is time-consuming since typically before drafting a resolution both houses of each state legislature consider all the other applications on the subject submitted to Congress by other states. The slavery period provides numerous examples of potential applications that were tabled in the state legislatures or were never reported back from committees. Action on the resolution is further delayed by the fact that state legislatures convene at different times during the year. Additional problems arise because Congress has not provided for adequate machinery to handle the applications presented to them. Thus, with the passage of time, new interests tend to replace the proposed interests, so that the issue is eventually resolved by a means other than the convention method or not resolved at all.

It is further evident that the issues that have called for a convention have been popular ones. Historically, although an individual state did not petition Congress for a convention on a particular issue, the state more often


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

than not considered submitting a resolution. The states declining to submit applications generally did not reject the application procedure based on the substantive merits of the problem. Rather, the states expressed fear of the power of a constitutional convention and its potential for revolutionary change.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

# BIBLIOGRAPHY

## Treatises


Allen, T., and Ransone, C., *Constitutional Revision in Theory and Practice* (1962).

Brown, E., *Ratification of the Twenty-First Amendment to the Constitution of the United States: State Convention Records and Laws* (1938).

Cooley, T., *The General Principles of Constitutional Law in the United States of America* 221 (3d. ed. 1898).

Curtis, G., *Constitutional History of the United States,* Vol. I., pp. 614-15, Vol. II, pp. 160-62 (1889).

Dodd, W., *The Revision and Amendment of State Constitutions* (1910).

Elliot, J., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (2d ed. 1836).

*The Federalist,* Nos. 43 and 85.

Hoar, R. S., *Constitutional Conventions: Their Nature, Powers and Limitations* (1917).

Jameson, J., *A Treatise on Constitutional Conventions: Their History, Powers and Modes of Proceeding* (4th ed. 1887).

Orfield, L., *The Amending of the Federal Constitution* (1942).

Pomeroy, J., *An Introduction to the Constitutional Law of the United States* § § 109-20 (5th ed. 1880).

Poore, B., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States,* Vol. 1, pp. 273, 383, 828, 972; Vol. 2, pp. 1293, 1310, 1328, 1409, 1541, 1548, 1627.

Story, J., *Commentaries on the Constitution of the United States* § § 1826-28 (5th ed. 1905).

*The Records of the Federal Convention of 1787,* Vol. 1, pp. 28, 117, 121, 126, 194, 202, 206, 227, 237, 478; Vol. 2, pp. 87, 133, 136, 148, 159, 174, 188, 461, 467, 555-59, 578, 602, 629-31, 662; Vol. 3, pp. 120, 121, 126, 357, 367, 400, 609, 630 (Farrand ed. 1937 and 1966 paper bound ed.).

Willoughby, W., *The Constitutional Law of the United States,* Vol. I § 331 (2d ed. 1929).


## Periodicals


Ames, “The Amending Provisions of the Federal Constitution in Practice,” 63 Proc. of the Am. Philos. Soc’y 62 (1924).

Ames, “Recent Development of the Amending Power as Applied to Federal Constitution,” 72 Proc. Of the Am. Philos. Soc’y 87 (1933).





BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Black, “The Proposed Amendment of Article V: A Threatened Disaster,” 72 Yale L.J. 957 (1963).

Bonfield, “Proposing Constitutional Amendments by Convention: Some Problems,” 39 Notre Dame Lawyer 659 (1964).

Brown, “The Ratification of the Twenty-First Amendment, 29 Am. Pol. Sci. Rev. 1005 (1935).

Buckwalter, “Constitutional Conventions and State Legislators,” 20 J. of Pub. Law 543 (1971).

Clark, “The Supreme Court and the Amending Process,” 39 Va. L. Rev. 621 (1953).

Comment, “Ratification of Proposed Federal Amendment After Prior Rejection,” 11 So. Calif. L. Rev. 472 (1938).

Corwin & Ramsey, “The Constitutional Law of Constitutional Amendment,” 26 Notre Dame Lawyer 185 (1951).

Current Legislation, “Amendment to Constitution: Ratification by State Convention,” 7 St. John’s L. Rev. 375 (1933).

Cuvillier, “Shall We Revise the Constitution?,” 77 Forum 321 (1927).

Dodd, “Amending the Federal Constitution,” 30 Yale L.J. 321 (1921).

Dowling, “A New Experiment in Ratification,” 19 A.B.A.J. 383 (1933).

Dowling, “Clarifying the Amending Process,” 1 Wash. & Lee L. Rev. 215 (1940).

Fennell, “The States Rights Amendments -Debates of the ‘Founding Fathers’ Cast Doubts on Current Proposals,” 35 N.Y.S.B.A.J. 465 (1963).

Fensterwald, “Constitutional Law: The States and the Amending Process -A Reply,” 46 A.B.A.J. 717 (1960).

Forkosch, “The Alternative Amending Clause in Article V: Reflections and Suggestions,” 51 Minn. L. Rev. 1053 (1967).

Graham, “Efforts to Amend the Constitution on Districts Gain,” N.Y. Times, March 18, 1967, at 1, col. 6.

Graham, “The Role of the States in Proposing Constitutional Amendments,” 49 A.B.A.J. 1175 (1963).

Grinnell, “Finality of State’s Ratification of a Constitutional Amendment,” 11 A.B.A.J. 192 (1925).

Grinnell, “Petitioning Congress for a Convention: Cannot a State Change Its Mind?,” 45 A.B.A.J. 1164 (1959).

Ireland, “Constitutional Amendments--Power of Conventions, 6 Tul. L. Rev. 75 (1931).

Lincoln, “Ratification by Conventions,” 18 Mass. L.Q. 287 (1933).

Loeb, “Constitution by Convention,” 33 Nat. Mun. Rev. 14 (1944).



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

MacDonald, “The Constitution of the United States Needs to be Fixed,” Esquire, Vol. LXX, p. 143 (Oct. 1968).

Martig, “Amending the Constitution--Article V: The Keystone of the Arch,” 35 Mich. L. Rev. 1253 (1937).

Martin, “The Application Clause of Article Five,” 85 Pol Sci. Q. 616 (1970).

Miller, “Amendment of the Federal Constitution: Should It Be Made More Difficult?,” 10 Minn. L. Rev. 185 (1926).

Mitchell, W.D., “Methods of Amending the Constitution,” 25 Lawyer and Banker 265 (1932).

Note, “The Constitutional Convention, Its Nature and Powers, And the Amending Procedure,” 1966 Utah L. Rev. 390.

Note, “Power to Call a Constitutional Convention Limited to Consideration of Specific Topics,” 3 Vand. L. Rev. 111 (1949).

Note, “Proposed Legislation on the Convention Method of Amending the United States Constitution,” 85 Harv. L. Rev. 1612 (1972).

Note, “Proposing Amendments to the United States Constitution by Convention,” 70 Harv. L. Rev. 1067 (1957).

Note, “Ratification of Constitutional Amendment by State Conventions,” 2 Geo Wash. L. Rev. 216 (1934).

Note, “Rescinding Memorialization Resolutions,” 30 Chi-Kent L. Rev. 339 (1952).

Oberst, “The Genesis of the Three States Rights Amendments of 1963, 39 Notre Dame Lawyer 644 (1964).

Packard, “Constitutional Law: The States and Amending Process,” 45 A.B.A.J. 161 (1959).

Packard, “Legal Facets of the Income Tax Rate Limitation Program,” 30 Chi-Kent L. Rev. 128 (1952).

Pei, “The Case for a Constitutional Convention,” Modern Age, Vol. 12, p. 8 (Winter, 1967-8).

Phillips, “Has the Congress the Power Under Article V of the Constitution to Call and Regulate the Holding of Ratifying Conventions Independent of State Legislatures?,” 6 Fla. S.B.A.L.J. 573 (1933).

Platz, “Article Five of the Federal Constitution,” 3 Geo. Wash. L. Rev. 17 (1934).

Pullen, “The Application Clause of the Amending Provision of the Constitution” (unpublished dissertation, University of North Carolina, Chapel Hill, 1951).

Quarles, “Amendments to the Federal Constitution,” 26 A.B.A.J. 617 (1940).

Scharpf, “Judicial Review and the Political Question: A Functional Analysis,” 75 Yale L.J. 517 (1966).



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Scheips, “The Significance and Adoption of Article V of the Constitution,” 26 Notre Dame Lawyer 46 (1950).

Shanahan, “Proposed Constitutional Amendments: They Will Strengthen Federal-State Relations,” 49 A.B.A.J. 631 (1963).

Smith, “Has Congress Power to Call Conventions in the States to Consider Constitutional Amendment,” 2 J. Bar Assn of Kansas 1 (1933).

Sorensen, “The Quiet Campaign to Rewrite the Constitution,” Sat. Rev., July 15, 1967, at 17.

Sprague, “Shall We Have a Federal Constitutional Convention, and What Shall It Do?,” 3 Maine L. Rev. 115 (1910).

Symposium on the Article V Convention Process, 66 Mich. L. Rev.: Bonfield, “The Dirksen Amendment and the Article V Convention Process” 949; Carson, “Disadvantages of a Federal Constitutional Convention” 921; Dirksen, “The Supreme Court and the People” 837; Dixon, “Article V: The Comatose Article of Our Living Constitution?” 931; Ervin, “Proposed Legislation to Implement the Convention Method of Amending the Constitution” 875; Kauper, “The Alternative Amendment Process: Some Observations” 903; McCleskey, “Along the Midway: Some Thoughts on Democratic Constitution-Amending” 1001 (1968).

Tugwell, “Rewriting the Constitution: A Center Report,” Center Magazine, Vol. 1, (March 1968).

Tuller, “A Convention to Amend the Constitution: Why Needed, How It May Be Obtained,” 193 N. Amer. Rev. 369 (1911).

Tydings “Speaking Out: They Want to Tamper with the Constitution; States Calling for a National Constitutional Convention,” Sat. Eve. Post, July 17, 1967, at 10.

Weinfield, “Power of Congress Over State Ratifying Conventions,” 51 Harv. L. Rev. 473 (1938).

Wheeler, “Is a Constitutional Convention Impending?,” 21 Ill. L. Rev. 782 (1927).

Wolf, “An Antireapportionment Amendment: Can It Be Legally Ratified?,” 52 A.B.A.J. 326 (1966).

## Congressional Materials

Ames, H., The Proposed Amendments to the Constitution of the U.S. During the First Century of Its History, H.R. Doc. No. 353, pt. 2, 54th Cong., 2d Sess. (1897).

Brickfield, C., Staff of House Comm. on the Judiciary, 85th Cong., 1st Sess., Problems Relating to a Federal Constitutional Convention (Comm. Print 1957).[142]

113 Cong. Rec. 7551-52, 7573-85 (March 22, 1967), 9342-43 (April 13), 10101-15 (April 19), 12267-74 (May 10).

117 Cong. Rec. S16519-35 (daily ed. Oct. 19, 1971).



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Hearings on Reapportionment of State Legislatures Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary, 89th Cong., 1st Sess. (1965).

Hearings on S.2307 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, 90th Cong., 1st Sess. (Oct. 30 and 31, 1967).

Myers, D., The Process of Constitutional Amendment, S. Doc. No. 314, 76th Cong., 3d Sess. (1940).

S. Rep. No. 92-336, 92nd Cong., 1st Sess. (July 31, 1971).

S. Rep. No. 93-293, 93rd Cong. 1st Sess. (1973).

S. Doc. No. 78, 71st Cong., 2d Sess., "Compilation Showing the Applications Made From Time to Time to the Senate by the Legislatures of Various States for the Calling of a Constitutional Convention for the Purpose of Proposing Certain Amendments to the Constitution of the United Sates" (1930).

Staff of House Comm. on the Judiciary, 82d Cong., 2d Sess., "Problems Relating to State Applications for Convention to Propose Constitutional Limitations on Federal Tax Rates (Comm. Print, 1952).

## Reports and Other Materials

Amending the Constitution to Strengthen the States in the Federal System, 36 State Gov't 10 (1963).

American Enterprise Institute For Public Policy Research, "A Convention to Amend the Constitution: Questions Involved in Calling a Convention upon Applications by State Legislatures" (Special Analysis No. 5, 1967).

Letter of Charles L. Black, Jr., to Hon. Emanuel Celler dated February 28, 1972.

Report of Committee on National Constitutional Conventions, American Bar Association Section on Individual Rights and Responsibilities (Sept. 20, 1972).

Report of Proposed Procedures for Federal Constitutional Conventions (S.215), 11 Reports of Committees of the Association of the Bar of the City of New York Concerned with Federal Legislation (1972); also reprinted in The Record of N.Y.C.B.A. 327 (May 1972).

"A Report on Three Amendments to the United States Constitution Proposed by the Council of State Governments," 2 Reports of Committees of the Association of the Bar of the City of New York Concerned with Federal Legislation 21 (1963).

Small, N.J., "Procedures for Amending the United States Constitution," Library of Congress, Legislative Reference Service, American Law Division (1965).

Yadlosky, E., "State Petitions and Memorials to Congress on the Subject of State Legislatures," Library of Congress, Legislative Reference Service Report JK140C-32/205R (to Aug. 5, 1965).



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## Supreme Court Decisions

*Dillon* v. *Gloss,* 256 U.S. 368 (1921).

*Coleman* v. *Miller,* 307 U.S. 433 (1939).

*Hawke* v. *Smith (No. 1),* 253 U.S. 221 (1920).

*Hollingsworth* v. *Virginia,* 3 U.S. (3 Dall.) 378 (1798).

*United States* v. *Sprague,* 282 U.S. 716 (1931).

*Leser* v. *Garnett,* 258 U.S. 130 (1922).

*Rhode Island* v. *Palmer (National Prohibition Cases),* 253 U.S. 350 (1920).

*Whitehill* v. *Elkins,* 389 U.S. 54, 57 (1967).

## State Constitutional Convention Materials

### Treatises and Documents

Arkansas Constitutional Revision Study Commission, *Revising the Arkansas Constitution* (Little Rock, 1968).

Bartley, E. R., "Methods of Constitutional Change," in W. Brooke Graves (ed.) *Major Problems in State Constitutional Revision* (Chicago: Pub. Adm. Ser. 1960).

Breuer, E. H., *Constitutional Developments in New York, 1777-1958; A Bibliography of Conventions and Constitutions With Selected References for Constitutional Research* (Albany; Univ. of State of N.Y., the State Education Dep't, 1958).

Citizens Research Council of Michigan, "A Comparison of Organization and Procedures of Six State Constitutional Conventions" (Detroit, 1961).

Connecticut, *Constitutional Convention 1965,* Journal (Hartford, 1965).

Connors, R.J., *The Process of Constitutional Revision in New Jersey*, 1940-1947 (Nat. Mun. L. 1970).

Cornwell, E. E., Jr., and Goodman, J. S., *The Politics of the Rhode Island Constitutional Convention* (Nat. Mun. L. 1969).

Englebert, A., *State Constitutional Revision in California* (Calif. Univ. of Bur. Gov't Res., 1961).

Friedman, R. S., *The Michigan Constitutional Convention and Administrative Organization: A Case Study in the Politics of Constitution-Making* (Inst. of Pub. Adm. Univ. of Mich. 1963).

Graves, W. B., ed., *Major Problems in State Constitutional Revision:* (Chicago: Pub. Adm. Ser., 1960).

Halevy, J., *A Selective Bibliography on State Constitutional Revision; Supplement Compiled by Myron Fink* (Nat. Mun. L. 1967).



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Maryland, *Report of the Constitutional Convention Commission* (1967).

New York Temporary State Commission on the Constitutional Convention, *Report No. 5, Convention Organization and Rules For Effective Constitutional Review* (1967).

Pollock, J. K., *Making Michigan's New Constitution, 1961-62* (Wahr. 1962).

Sturm, A. L., *Constitution-Making in Michigan, 1961-62* (Inst. of Pub. Adm. Univ. of Mich. 1963).

Sturm, A. L., & Whitaker, M., *Implementing a New Constitution: The Michigan Experience* (Mich. Inst. of Pub. Adm., 1968).

Sturm, A. L., *Methods of State Constitutional Reform* (1954).

Sturm, A. L., *Selective Bibliography on State Constitutional Revision* (Tallahassee, Fla. St. Univ. Inst. of Gov't Res. 1967).

Sturm, A. L., *Thirty Years of State Constitution Making, 1938-1968* (with an epilogue on developments in 1969) (Nat. Mun. L. 1970).

Uhl, R., Stoudmire, H., & Sherrill, G., *Constitutional Conventions; Organization, Powers, Function, and Procedures* (Bureau of Pub. Adm., Univ. of South Carolina, 1951).

Wheeler, J. P., *The Constitutional Convention; A Manual on its Planning, Organization and Operation* (Nat. Mun. L. 1961).

Wheeler, John P., ed., *Salient Issues of Constitutional Revision* (Nat. Mun. L. 1961).

Wolf, G. D., *Constitutional Revision in Pennsylvania; The Dual Tactic of Amendment and Limited Convention* (Nat. Mun. L. 1969).

Periodicals

Adrian, "Trends in State Constitutions," 5 Harv. J. of Leg. 311 (1968).

Bebout, "Organizing the Constitutional Convention," 28 Acad. of Pol. Sci. Proc. 250 (1967).

Bebout, "Recent Constitution Writing," 35 Tex. L. Rev. 1071 (1957).

Beiser, Goodman & Cornwell, "Judicial Role in a Non-Judicial Setting, Some Empirical Manifestations and Consequences," 5 Law and Soc. Rev. 571 (1971).

Braxton, "Powers of Conventions," 7 Va. L. Reg. 79 (1901).

Dixon & Hathaway, "The Seminal Issues in State Constitution Revision: Reapportionment Method and Standards," 10 W & M. L. Rev. 888 (1969).

Dodd, "Judicial Control Over the Amendment of State Constitutions," 10 Colum. L. Rev. 618 (1910).

Dodd, "State Constitutional Conventions and State Legislative Powers," 2 Vand. L. Rev. 27 (1948).

Fuld, "Court of Appeals and the 1967 Constitutional Convention," 39 N.Y.S.B.J. 99 (1967).



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Goldings, “Massachusetts Amends: A Decade of State Constitutional Revision,” 5 Harv. J. of Leg. 373 (1968).

Gooch, “The Recent Limited Constitutional Convention in Virginia,” 31 Va. L. Rev. 708 (1945).

Graves, “Current Trends in State Constitutional Revision,” 40 Neb. L. Rev. 560 (1961).

Handler & Sills, “The Imbroglio of Constitutional Revision: Another By-Product of Reapportionment,” 20 Rutgers L. Rev. 1 (1965).

Harvard, “Notes on a Theory of State Constitutional Change: The Florida Experience,” 21 J. of Pol. 80 (1959).

Hempelmann, “Convening a Constitutional Convention in Washington Through the Use of the Popular Initiative,” 45 Wash. L. Rev. 535 (1970).

Hindman, “Roadblocks to Conventions,” 37 Nat. Mun. Rev. 129 (1948).

Mogan, “The Constitutional Convention and the Courts,” N.Y.L.J., June 7, 8, 9, 1967.

J. vanden Heuvel, “Reflections on Constitutional Conventions,” 40 N.Y.S.B.J. 261 (1968).

Kaden, “The People: No! Some Observations on the 1967 New York Constitutional Convention,” 5 Harv. J. of Leg. 343 (1968).

Laub, “Issues Before the Judiciary Committee of the Pennsylvania Constitutional Convention,” 39 Penn. B.A.Q. 390 (1968).

Martineau, “The Mandatory Referendum on Calling a State Constitutional Convention: Enforcing the People’s Right to Reform Their Government,” 31 Ohio S. L. Rev. 421 (1970).

Martineau, “Maryland’s 1967-68 Constitutional Convention: Some Lessons for Reformers,” 55 Iowa L. Rev. 1196 (1970).

McGeary, “Pennsylvania’s Constitutional Convention in Perspective,” 41 Penn. B.A.Q. 175 (1970).

McKay, “Constitutional Revision in New York State: Disaster in 1967,” 19 Syracuse L. R. 207 (1967).

Mosley, “Limited Constitutional Convention,” 21 Tenn. L. Rev. 867 (1951).

Note, “Constitutional Revisions by a Restricted Convention,” 35 Minn. L. Rev. 283 (1951).

Note, “Judicial Reform Through Total Revisions of State Constitutions,” 51 Amer. Soc. Jud. 347 (1968).

Note, “State Constitutional Change: The Constitutional Convention,” 54 Va. L. Rev. 995 (1968).

Note, “State Constitutional Conventions: Limitations on Their Powers,” 55 Iowa L. Rev. 244 (1969).



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Note, “The Constitutional Convention, Its Nature and Powers, And the Amending Process,” 1966 Utah L. Rev. 390 (1966).

Note, “The Powers of Constitutional Conventions,” 29 Harv. L. Rev. 528 (1916).

Powell, “Constitutional Growth and Revision in the South,” 10 J. Pol. 354 (1948).

Sandelius, “The Kansas Experience; State Constitutional Revision and the Moral Element,” 40 Neb. L. Rev. 575 (1961).

Shull, “Legislature and the Process of Constitutional Amendment,” 53 Ken. L. J. 531 (1964).

Sidman, “Constitutional Revision in Pennsylvania: Problems and Procedures,” 71 W. Va. L. Rev. 306 (1969).

Sprague, Cornwell & Goodman, “Judicial Role in a Non-Judicial Setting: Some Survey Evidence,” 4 Law and Soc. Rev. 371 (1970).

Sturm & Craig, “State Constitutional Commissions: Fifteen Years of Increasing Use,” 39 State Govt. 56 (1966).

Sturm & Craig, “State Constitutional Conventions: 1950-1965,” 39 State Govt. 152 (1966).

Sumner, “Constitutional Revision in California,” 40 State Govt. 224 (1967).

Symposium on Constitutional Revision, 72 W. Va. L. Rev. 33: Frasure, “Constitutional Revision: The Legislature” 33; Howard, “Constitutional Revision-Virginia’s Approach” 41; Shelton, “Constitutional Revision-The Counties” 60 (1969).

Symposium on the 1964 New Hampshire Constitutional Convention, 6 N.H.B.J. 212 (1964).

Thomas, “The Electorate and State Constitutional Revision . . . An Analysis of Four Michigan Referenda,” 12 Midwest J. of Pol. Sci. 115 (1968).

Wheeler, “Constitutional Reform Fails in the Free State: The Maryland Constitutional Convention of 1967-68,” 26 Wash. & Lee 218 (1969).

White, “Amendment and Revision of State Constitutions,” 100 Penn. L. Rev. 1132 (1952).

---

ENDNOTES

[1] 2 J. Story, *Commentaries on the Constitution of the United States* (1826) (5th ed. 1905).

[2] *The Federalist No. 43,* at 204 (Hallowell; Masters, Smith & Co. ed. 1852) (J. Madison).

[3] These applications are classified by subject and state in *Appendix B;* Part One, p.58. They are also discussed generally in Barbara Prager’s paper, which is also included in *Appendix B,* Part Two, p.70.

(Endnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

[4] J. Wheeler, *The Constitutional Convention: A Manual on its Planning, Organization and Operation* xiii (National Municipal League Series 1, No. 4 1961); *see* R. Hoar, *Constitutional Conventions* 1-3 (1917).
[5] *See* A. Sturm, *Thirty Years of State Constitution Making: 1938-1968,* at 51-80, 132-37 (National Municipal League 1970).
[6] 369 U.S. 186 (1962).
[7] 377 U.S. 533 (1964).
[8] *See* Black, "The Proposed Amendment of Article V: A Threatened Disaster," 72 Yale L.J. 957 (1963); Fensterwald, "Constitutional Law: The States and the Amending Process ― A Reply," 46 A.B.A.J. 717 1960); Oberst, "The Genesis of the Three States-Rights Amendments of 1963," 39 Notre Dame Lawyer 644 (1964); Shanahan, "Proposed Constitutional Amendments: They Will Strengthen Federal-State Relations," 49 A.B.A.J. 631 (1963).
[9] *See* American Enterprise Institute, *A Convention to Amend the Constitution: Questions Involved in Calling a Convention Upon Applications by State Legislatures* (Special Analysis No. 5, 1967).
[10] Making thirty-three in all, including applications from two state legislatures made in 1963.
[11] *See* Martin, "The Application Clause of Article Five," 85 Pol. Sci. Q. 616, 626 (1970).
[12] Ervin, "Proposed Legislation to Implement the Convention Method of Amending the Constitution," 66 Mich. L. Rev. 875, 878 (1968).
[13] *See* Hearings on S. 2307 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, 90th Cong., 1st Sess. (1967); S. Rep. No. 336, 92nd Cong., 1st Sess. (1971); 117 Cong. Rec. 36803-06 (1971).
[14] S.215 was re-introduced in the Senate on March 19, 1973, as S.1272 and was favorably reported out of the Subcommittee on Separation of Powers on June 6, 1973, and passed the Senate July 9, 1973. That legislation is set forth and discussed in *Appendix A*, p.46.
[15] While we also have studied a great many related and peripheral issues, our conclusions and recommendations are limited to the principal questions.
[16] The literature in this field deals with various proposals to "reform" Article V by easing, restricting, or otherwise altering the means of proposing amendments to the Constitution through the convention method. *See, e.g.,* L. Orfield, *The Amending of the Federal Constitution,* Chap. VI (1942); McCleskey, "Along the Midway: Some Thoughts on Democratic Constitution-Amending," 66 Mich. L. Rev. 1001, 1012-16 (1968).
[17] On the other hand, some have suggested that state legislatures will be less likely to seek a national constitutional convention if they are more aware of the risks and uncertainties of the convention method. *See, e.g.,* Buckwalter, "Constitutional Conventions and State Legislators," 20 J. Pub. Law 543 (1971).
[18] J. Wheeler, *supra* note 4, at xv. There have been occasions on which state constitutional conventions have successfully exceeded limitations placed upon them. Conventions in Georgia (1789), Illinois (1862 and 1869), Pennsylvania (1872), Alabama (1901) and Michigan (1907) all violated legislative directives ― either procedural, substantive, or both. *See* R. Hoar, *supra* note 4, at 111-115.

The Virginia Convention of 1901 and the Kentucky Convention of 1890 both wrote major changes in suffrage into their creations, and then proclaimed the new constitutions as law without holding the legislatively mandated popular referenda. (Referenda conducted under the suffrage provisions of the old constitutions would have resulted in disapproval of the new instruments.)
[19] Article 1, § 5, of the Constitution gives the House of Representatives the authority to judge challenges to the election of its members. Since 1798, the

(Endnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

House has seen fit to exercise this power through procedures enacted into law. Act of Jan. 23, 1798, Ch. 8, 1 Stat. 537. Subsequent modifications of that law appear in 2 U.S.C. § § 201-226 (1970). Precedents for the use of this class of legislation, despite recognition that the rules enacted by one Congress in this area cannot bind a successor Congress, may be found in 1 Hinds, *Precedents of the House of Representatives* § § 680, 719, 833 (1907).

In 1969 Congress passed the Federal Contested Elections Act, 2 U.S.C. § § 381-96 (1970). In the House Report Accompanying that legislation appeared the following:

> Election contests affect both the integrity of the elected process and of the legislative process. Election challenges may interfere with the discharge of public duties by elected representatives and disrupt the normal operations of the Congress. It is essential, therefore, that such contests be determined by the House under modern procedures which provide efficient, expeditious processing of the cases and a full opportunity for both parties to be heard. H.R. Rep. No. 569, 91st Cong., 1st Sess. 3 (1969).

Similarly, Congress decided in 1877 to establish procedures for handling electoral vote disputes for President rather than adopt ad hoc procedures, as it did in 1876 to resolve the Presidential election dispute of that year. That ad hoc resolution led to a great deal of criticism of Congress, as many felt the issue had been decided on the basis of political bias rather than facts. *See generally* 3 U.S.C. § 15 (1970); Rosenbloom, *A History of Presidential Elections* 243 (1965).

[20] *The Federalist No. 43*, supra note 2.

[21] We, of course, are referring to a substantive role and not a role such as the agency for the transmittal of applications to Congress, or for receipt of proposed amendments for submission to the state legislature, or for the certification of the act of ratification in the state.

[22] J. Jameson, *A Treatise on Constitutional Conventions; Their History, Powers, and Modes of Proceeding* § 585, at 634 (4th ed. 1887); *cited with approval in Dillon* v. *Gloss*, 256 U.S. 368, 375 (1921).

[23] *The Federalist No. 43, supra* note 2, at 204.

[24] 1 *The Records of the Federal Convention of 1787,* at 22 (Farrand ed. 1937)(hereinafter cited as *Farrand*).

[25] 2 *Id.* 188 (emphasis added).

[26] Weinfeld, "Power of Congress over State Ratifying Conventions," 51 Harv. L. Rev. 473, 481 (1938).

[27] 2 *Farrand* 558.

[28] *Id.* 559

[29] Mason's draft of the Constitution, as it stood at that point in the Convention, contained the following notations: "Article 5th ¶ By this article Congress only have the power of proposing amendments at any future time to this constitution and should it prove ever so oppressive, the whole people of America can't make, or even propose alterations to it; a doctrine utterly subversive of the fundamental principles of the rights and liberties of the people." 2 The Records of the Federal Convention of 1787, at 629 n. 8 (Farrand ed. 1937).

[30] 2 *Farrand* 629.

[31] *Id.* 629, 630.

[32] *The Federalist No. 85,* at 403 (Hallowell; Masters, Smith & Co. ed. 1852) (A. Hamilton).

[33] This is because it was called "for the sole and express purpose of revising the Articles of Confederation and reporting . . . such alterations and

(Endnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

provisions therein as shall . . . render the federal constitution adequate to the exigencies of government and the preservation of the Union."

[34] T. Cooley, *The General Principles of Constitutional Law in the United States of America* 15, (2d ed. 1891).

[35] Georgia, Massachusetts, New Hampshire, and Pennsylvania provided for amendments by convention; Delaware, Maryland and South Carolina provided methods of amendment, but not through conventions; New Jersey, New York, North Carolina and Virginia lacked any provisions for amendment; and Connecticut and Rhode Island did not adopt constitutions at that time. The constitution of Vermont (then considered a territory) provided for amendments through convention. Weinfeld, *supra* note 26, at 479.

[36] Note the similarity between this language (emphasis ours) and the language contained in the earliest drafts of Article V (p.14-15, *supra*).

[37] Ga. Const. Art. LXIII (1777), at 1 B. Poore, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* 383 (1878) [hereinafter cited as Poore].

[38] Pa. Const. § 47 (1776), at 2 *Poore* 1548. Vermont's Constitution of 1786 contained a similar amending article.

[39] "Documents Illustrative of the Formation of the Union of the American States," H. Doc. No. 398, 69th Cong., 1st Sess. 41-43 (1927).

[40] A. Sturm, *Methods of Sate Constitutional Reform* 102 (1954); R. Hoar, *supra* note 4, at 71, 120-1; Dodd, "State Constitutional Conventions and State Legislative Power," 2 Vand. L. Rev. 27 (1948). The following state cases support the proposition: *Opinion of the Justices,* 264 A.2d 342 (Del. 1970); *Chenault* v. *Carter,* 332 S.W.2d 623 (Ky. 1960); *State* v. *American Sugar Refining Co.,* 137 La. 407, 68 So. 742 (1915); *Opinion of the Justices,* 60 Mass. (6 Cush.) 573 (1833); *Erwin* v. *Nolan,* 280 Mo. 401, 217 S.W. 837 (1920); *State ex rel. Kvaalen* v. *Graybill,* 496 P.2d 1127 (Mont. 1972); *Wood's Appeal,* 75 Pa. 59 (1874); *Wells* v. *Bain,* 75 Pa. 39 (1873); *In re Opinion of the Governor*, 55 R.I. 56, 178 A. 433 (1935); *Cummings* v. *Beeler,* 189 Tenn. 151, 223 S.W.2d 913 (1949); *Quinlan* v. *Houston and Texas Central Ry. Co.,* 89 Tex. 356, 34 S.W. 738 (1896); *Staples* v. *Gilmer,* 183 Va. 613, 33 S.E.2d 158, 158 A.L.R. 495 (1945). *See* Annot. "Power of state legislature to limit the power of a state constitutional convention," 158 A.L.R.512 (1945).

[41] Roger Hoar has expressed it this way:

> [T]here would be no convention unless the people voted affirmatively, that an affirmative vote would result in holding exactly the sort of convention in every detail provided in the act, and that the people are presumed to know the terms of the act under which they vote. The conclusion drawn from this is that the convention act in its every detail is enacted by the people voting under it. R. Hoar, *supra* note 4, at 71.

[42] *State* v. *American Sugar Refining Company,* 137 La. 407, 415, 68 So. 742, 745 (1915).

[43] *State ex rel. McCready* v. *Hunt,* 20 S.C. (2 Hill's Law) 1,271 (1834).

[44] Nearly 15% of the total number of state constitutional conventions called have been substantively limited in one or more respects. The limited or restricted state constitutional convention has been used frequently since World War II. *See* A. Sturm, *supra* note 5, at 56-60, 113; A. Sturm, "State Constitutions and Constitutional Revision, 1970-1971," in Council of State Govts', *The Book of the States, 1972-1973*, at 20 (1972).

[45] Upon receipt of the *first* state application for a convention, a debate took place in the House of Representatives on May 5, 1789, as to whether it would be proper to refer that application to committee. A number of Representatives,

(Endnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

including Madison, felt it would be improper to do so, since it would imply that Congress had a right to deliberate upon the subject. Madison said that this "was not the case until two-thirds of the State Legislatures concurred in such application, and then it is out of the power of Congress to decline complying, the words of the Constitution being express and positive relative to the agency Congress may have in case of applications of this nature." The House thus decided not to refer the application to committee but rather to enter it upon the Journals of Congress and place the original in its files. 1 Annals of Congress, cols. 248-51 (1789). Further support for the proposition that Congress has no discretion on whether or not to call a constitutional convention, once two-thirds of the states have applied for one, may be found in IV Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 178 (2d ed 1836) (remarks of delegate James Iredell of North Carolina); 1 Annals of Congress, col. 498 (1796) (remarks of Rep. William Smith of South Carolina during debate on a proposed treaty with Great Britain); Cong. Globe, 38th Cong., 2d Sess. 630-31 (1865) (remarks of Senator Johnson).

[46] See our discussion at pages 34-35, *supra.*

[47] For a related discussion, see the debates which took place at the time the Twenty-first Amendment was being formulated concerning the extent of congressional power over state ratifying conventions. *See, e.g.*, 76 Cong. Rec. 124-34, 2419-21, 4152-55 (1933); 77 Cong. Rec. 481-82 (1933); 81 Cong. Rec. 3175-76 (1937). Former Attorney General A. Mitchell Palmer argued that Congress could legislate all the necessary provisions for the assembly and conduct of such conventions, a view that was controverted at the time by former Solicitor General James M. Beck.

[48] 256 U.S. 368 (1921).

[49] 258 U.S. 130 (1922), where the Court stated: "But the function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State."

[50] As Justice Felix Frankfurter has observed: "The history of American freedom is, in no small measure, the history of procedure." *Malinski* v. *New York,* 324 U.S. 401, 414 (1945). It is not surprising, therefore, that procedural limitations on conventions have been invalidated. *See Carton* v. *Secretary of State,* 151 Mich. 337, 115 N.W. 429 (1908); *Goodrich* v. *Moore,* 2 Minn. 61 (1858). *See also* Jameson, *supra* note 22, at 364; Dodd, *supra* note 40, at 31, 33.

[51] A number of the Congressional Acts providing for territorial conventions did prescribe that the convention must determine by a majority of the whole number of delegates whether it was expedient for the territory to form a constitution and state government. No such requirement, however, was imposed on the conventions in their work of framing such constitutions and governments. *See, e.g.,* Act of April 30, 1802, ch. 40, 1 Stat. 173 (Ohio); Act of Feb. 20, 1811, ch. 21, 3 Stat. 641 (Louisiana); Act of July 16, 1894, ch. 138, 28 Stat. 107 (Utah); Act of June 16, 1906, ch. 3335, 34 Stat. 267 Oklahoma).

Among those few state constitutional conventions, for which the vote needed to govern convention proceedings was established in enabling legislation were the 1967 Pennsylvania convention, and the New Jersey conventions of 1947 and 1966. *See* Law of March 16, 1967, ch. 2 [1967] Pa. Laws 2; Act of Feb. 17, 1947, ch. 8, [1947] N.J. Laws 24; Act of May 10, 1965, ch. 43, [1965] N.J. Laws 101.

(Endnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

When Congress required that the Twenty-First Amendment (ending Prohibition) be ratified by state conventions, rather than legislatures, forty-three states enacted legislation providing for such conventions. Thirty-two of those enabling acts established the vote required of convention delegates for ratification; either a majority of those delegates present and voting (*e.g.,* New Mexico and North Carolina ✍ such acts also established a minimum quorum) or a majority of the total number of delegates (*e.g.* California and Illinois). In no case was the requirement greater than a majority of the total number of delegates. *See* E. Brown, *Ratification of the Twenty-First Amendment to the Constitution of the United States: State Convention Records and Laws* 515-701 (1938).

[52] To be noted is Gerry's criticism of the August 30, 1787 proposal, specifically, his observation that a "majority" of the states might bind the country in the convention contemplated by that proposal *See* pp.14-15, *supra.* Gerry's criticism eventually led to the inclusion of ratification requirements. *See* Weinfeld, *supra* note 26, at 482-483.

[53] 74 U.S. (7 Wall.) 506 (1869); *criticized in Glidden Co.* v. *Zdanok,* 370 U.S. 530, 605 n.11 (1962) (Douglas, J., dissenting).

[54] *See* Strong, "Three Little Words and What They Didn't Seem to Mean," 59 A.B.A.J. 29 (1973). *See generally* Fairman, "Reconstruction and Reunion, 1864-88," in VI *History of the Supreme Court of the United States* 433-514 (Freund ed. 1971).

[55] The cases are: *United States* v. *Sprague,* 282 U.S. 716 (1931); *Leser* v. *Garnett,* 258 U.S. 130 (1922); *Dillon* v. *Gloss,* 256 U.S. 368 (1921); *National Prohibition Cases,* 253 U.S. 350 (1920); *Hawke* v. *Smith (No. 1),* 253 U.S. 221 (1920); *Hollingsworth* v. *Virginia,* 3 U.S. (3 Dall.) 378 (1798).

[56] 307 U.S. 433 (1939).

[57] 369 U.S. 186 (1962).

[58] *Id.* 217.

[59] 395 U.S. 486 (1969).

[60] *See Butterworth* v. *Dempsey,* 237 F. Supp. 302 (D. Conn. 1965), involving a court-ordered state constitutional convention on the subject of reapportionment. *Cf. Sixty-Seventh Minnesota State Senate* v. *Beens,* 406 U.S. 187 (1972).

[61] *Appendix A* sets forth suggestions as to how such review might be provided for in S.1272.

[62] 3 U.S. (3 Dall.) 378 (1798).

[63] *Id.* 380 n.(a).

[64] Ill Journal of the Senate 323 (1803) (motion defeated by a vote of 23 to 7).

[65] Cong. Globe, 38th Cong., 2d Sess. 629-33 (1865). Four years earlier a proposed amendment on slavery was presented to and signed by President Buchanan. No discussion took place in Congress concerning this action and the proposed amendment was never ratified.

[66] VI J. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897*, at 391-392 (1897).

[67] The concurrent resolution is used to express "the sense of Congress upon a given subject," Watkins, C.L., & Riddick, F.M., *Senate Procedure: Precedents and Practices* 208 (1964); to express "facts, principles, opinions, and purposes of the two Houses," Deschler, L., *Jefferson's Manual and Rules of the House of Representatives* 185-186 (1969); and to take a joint action embodying a matter within the limited scope of Congress, as, for instance, to count the electoral votes, terminate the effective date of some laws, and recall bills from the President, Evins, Joe L., *Understanding Congress* 114

(Endnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

(1963); Watkins and Riddick, *supra* at 208-9. A concurrent resolution was also used by Congress in declaring that the Fourteenth Amendment should be promulgated as part of the Constitution. 15 Stat. 709-10. Other uses include terminating powers delegated to the President, directing the expenditure of money appropriated to the use of Congress, and preventing reorganization plans taking effect under general powers granted the President to reorganize executive agencies. For an excellent discussion of such resolutions, see S. Rep. No. 1335, 54th Cong., 2d Sess. (1897).

[68] 253 U.S. 221 (1920).

[69] *Id.* 227.

[70] 285 U.S. 355 (1932).

[71] *Id.* 365, 366.

[72] *See Coleman* v. *Miller,* 146 Kan. 390, 71 P.2d 518 (1937), *aff'd,* 307 U.S. 433 (1939), upholding the right of a lieutenant governor to cast the tie-breaking vote in the state senate on the ratification of the proposed child labor amendment. In affirming, the United States Supreme Court expressed no opinion as to the propriety of the lieutenant governor's participation.

[73] The results of a questionnaire-type inquiry which we sent to the fifty states indicate that a substantial majority exclude the governor from participation and that in a number that include him it is not clear whether his inclusion is simply a matter of form. Historically, it appears that the governor generally has not played a role in these processes, although there are exceptions to this rule. *See* Myers, "The Process of Constitutional Amendment," S. Doc. No. 314, 76th Cong., 3rd Sess. 18 n.47 (1940), wherein it is stated that governors gave 44 approvals in the ratifications of 15 amendments. Whether the approvals were simply a matter of form or were required as a matter of state law is not clear. In several cases there were gubernatorial vetoes of ratifications, including the governor of New Hampshire's attempted veto of his state's ratification of the twelfth amendment.

[74] H. Ames, "The Proposed Amendments to the Constitution of the United States During the First Century of Its History," H. Doc. No. 353, pt. 2, 54th Cong., 2d Sess. 298 (1897); Bonfield, "Proposing Constitutional Amendments by Convention; Some Problems," 39 Notre Dame Lawyer 659, 664-65 (1964); Buckwalter, *supra* note 17, at 551; Brickfield, Staff of House Committee on the Judiciary, 85th Cong., 1st Sess., "Problems Relating to a Federal Constitutional Convention" 7-9 (Comm. Print 1957); Note, "Proposing Amendments to the United States Constitution by Convention," 70 Harv. L. Rev. 1067, 1075 (1957). *But compare* 69 Op. Att'y Gen. of Okla. 200 (1969), in 115 Cong. Rec. 23780 (1969), *with In re Opinion of the Justices,* 118 Maine 544, 107 A. 673 (1919). *See generally* Dodd, *The Revision and Amendment of State Constitutions* 148-55 (1910); Hoar, *supra* note 4, at 90-93; Orfield, *supra* note 16, at 50 & n.30, 66 & n.89.

[75] 3 U.S. (3 Dall.) 378 (1798). *See also Omaha Tribe of Nebraska* v. *Village of Walthill,* 334 F. Supp. 823 (D. Neb. 1971), *aff'd,* 460 F.2d 1327 (8th Cir. 1972), *cert. denied,* 93 S.Ct. 898 (1973) (governor's approval not required in order for a state to cede jurisdiction over Indian residents); *Ex parte Dillon,* 262 F. 563 (1920) (when the Legislature is designated as a mere agency to discharge some duty of a non-legislative character, such as ratifying a proposed amendment, the legislative body alone may act).

[76] In commenting on the ratification process, the Supreme Court stated in *Hawke* v. *Smith (No. 1).* "Both methods of ratification, by legislatures or conventions, *call for action by deliberative assemblages* representative of the people, which it was assumed would voice the will of the people." 253 U.S. at 226-27 (emphasis added).

(Endnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

[77] Brickfield, *supra* note 74, at 11-12.
[78] 256 U.S. 368, 375 (1921).
[79] 307 U.S. 433, 453-54 (1939).
[80] Beginning with the proposal of the eighteenth amendment, Congress has, either in the amendment or proposing resolution, included a provision requiring ratification within seven years from the time of the submission to the states.
[81] *See, e.g.,* Note' "Rescinding Memorialization Resolutions," 30 Chi. Kent L. Rev. 339 (1952).
[82] That is, the reapportionment and tax limitation applications.
[83] 397 U.S. 50 (1970).
[84] *Wells* v. *Edwards,* 347 F. Supp. 453, 455 (M.D. La. 1972), *aff'd,* 93 S. Ct. 904 (1973).
[85] *Smith* v. *Gore,* 150 W. Va. 71, 143 S.E.2d 791, 794 (1965).
[86] *See Forty-Second Legislative Assembly* v. *Lennon,* 481 P.2d 330 (Mont. 1971); *Jackman* v. *Bodine,* 43 N.J. 453, 470, 476-77, 205 A.2d 713, 722, 726 (1964). In *Butterworth* v. *Dempsey,* 237 F. Supp. 302 (D. Conn. 1965), a federal court ordered, without indicating the basis for it, apportionment of convention delegates on a one-person, one-vote basis. *See also State* v. *State Canvassing Board,* 78 N.M. 682, 437 P.2d 143 (1968), where a section of the state constitution, requiring that any amendments to that constitution affecting suffrage or apportionment be approved by both 3/4 of the voters of the state as a whole *and* 2/3 of those voting in each county, was found to violate the 'one-person, one-vote' and equal protection principles, and was accordingly declared invalid. *Contra, West* v. *Carr,* 212 Tenn. 367, 370 S.W.2d 469 (1963), *cert. denied,* 378 U.S. 557 (1962), holding equal protection guarantees inapplicable to a state constitutional convention since it had no power to take any final action; *accord, Livingston* v. *Ogilvie,* 43 Ill.2d 9, 250 N.E.2d 138 (1969); *Stander* v. *Kelley,* 433 Pa. Super. 406, 250 A.2d 474 (1969), *appeal dismissed sub nom. mem., Lindsay* v. *Kelley,* 395 U.S. 827 (1969). *West, Stander and Livingston,* in reaching this result, emphasized the fact that the entire electorate would be afforded a direct and equal voice, in keeping with the 'one-person, one-vote' principle, when the convention's product was submitted for ratification.
[87] 376 U.S. 1 (1964).
[88] *See Shapiro* v. *Thompson,* 394 U.S. 618 (1969); *Schneider* v. *Rusk,* 377 U.S. 163 (1964); *Bolling* v. *Sharpe,* 347 U.S. 497 (1954). *See also United States* v. *Pipefitters,* 434 F.2d 1116, 1124 (8th Cir. 1971); *United States* v. *Synnes,* 438 F.2d 764, 771 (8th Cir. 1971); *Henderson* v. *ASCS, Macon County, Alabama,* 317 F. Supp. 430, 434-35 (M.D. Ala. 1970). *See generally Griffin* v. *Richardson,* 346 F. Supp. 1226, 1232-33 (D. Md. 1972).
[89] 93 S.Ct. 979 (1973).
[90] 403 U.S. 182 (1971).
[91] Use of an electoral-college-type formula would mean that 15 states would be over represented by 50 percent or more, with the representation rising to close to 375 percent for Alaska. California, on the other hand, would be underrepresented by nearly 20 percent.
[92] 394 U.S. 526, 531 (1968).
[93] We have not studied the District of Columbia question, although we note that the District does not have a role in the congressional method of initiating amendments or in the ratification process.
[94] The present 1970 census establishes the mean population of congressional districts as approximately 467,000. As Alaska has a population of approximately 302,000, the absolute differential is over 50%. There are similar disparities in some states with two representatives (*e.g.,* South

(Endnote Continued Next Page)


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Dakota's two Congressmen each representing 333,000 people), but they are not as great.

[95] *See United States* v. *Germaine*, 99 U.S. 508 (1878); *United States* v. *Mouat*, 124 U.S. 303 (1888); *United States* v. *Smith*, 124 U.S. 525 (1888). *See generally* 1 Hinds, *Precedents of the House of Representatives* § 493 (1907). In *Board of Supervisors of Elections* v. *Attorney General*, 246 Md. 417, 439, 229 A.2d 388, 395 (1967), the court held that a delegate to a state constitutional convention was not an "officer" so that a member of the legislature was not guilty of dual office-holding when he simultaneously served as a delegate; *accord, Livingston* v. *Ogilvie*, 43 Ill.2d 9, 250 N.E.2d 138 (1969). But *see Forty-Second Legislative Assembly* v. *Lennon*, 481 P.2d 330 (Mont. 1971); *State* v. *Gessner*, 129 Ohio St. 290, 195 N.E. 63 (1935).

[96] *See 1 Farrand 376; Reservists Comm. to Stop the War* v. *Laird*, 323 F. Supp. 833 (D.D.C. 1971).

[97] Jameson, *supra* note 22, at § § 582-584; Dodd, "Amending the Federal Constitution," 30 Yale L.J. 321, 346 (1921).

[98] *Wise* v. *Chandler,* 270 Ky. 1, 108 S.W.2d 1024 (1937) (also holding that state legislative *rejection* of a proposed constitutional amendment cannot be reconsidered); *Coleman* v. *Miller,* 146 Kan. 390, 71 P.2d 518 (1937) (dicta). The issue was discussed, though not passed on by the Court, in Chief Justice Hughes' opinion in *Coleman* v. *Miller,* 307 U.S. 433, 447-50 (1938).

[99] This rule would take precedence over the action of Congress in refusing to permit New Jersey and Ohio to rescind their ratifications of the fourteenth amendment. The right to ratify after a previous rejection would confirm precedents established in connection with the ratifications of the Thirteenth and Fourteenth Amendments. *See generally* Myers, *The Process of Constitutional Amendment,* S. Doc. No. 314, 76th Cong., 3rd Sess. (1940).

[100] These views of the Committee are in accord with the rule which is expressed in S.1272 and its predecessor, S.215, which was unanimously passed by the Senate in October 1971. See page 6, *supra*.

[101] S. Rep. No. 336, 92nd Cong., 1st Sess. 2 (1971).

[102] Our views as to the desirability of legislation implementing the convention method of initiating amendments appear at pages 8 to 10.

[103] Sec. 2 Our views as to the limitability of a convention are set forth at pages 10 to 19.

The phrase "nature of the amendment or amendments" is unclear and differs from the phraseology contained in Sections 4, 5, 6, 8, 10 and 11. Our discussion of this item appears at pages 20,21,34 and 35.

[104] Sec.3(a) For the reasons set forth at pages 32 to 34, we believe that a state governor should have no part in the process by which a state legislature applies for a convention. This section is unclear as to whether a state may on its own initiative assign a role to the governor. The phraseology concerning the governor also is different from that employed in Section 12(b) with respect to ratification. Additionally, the requirement that state statutory procedures "shall" apply to applications differs from the terminology of Section 12(b) as well as raises questions under *Hawke v. Smith*, No. 1, 253 U.S. 221 (1920), and *Leser v. Garnett,* 258 U.S. 130 (1922). See *Trombetta v. Florida*, 393 F. Supp. 575 (D. Fla. 1973).

105 (b) As discussed at pages 23 to 29, the Committee believes that limited judicial review is necessary and desirable and has specifically so provided in a new proposed Section 16. The introduction of such review requires the deletion of the language regarding the binding nature of congressional determinations. The "clearly erroneous" standard suggested in our proposed

(Endnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

Section 16 acknowledges the appropriateness of initial congressional determinations in this area but withdraws the finality of such decisions.

[106] (2) *New*. Inasmuch as each legislature receives a copy of all valid applications pursuant to Section 4(d) [4(c) in S.1272], preparation of the list would be a simple task. In doing so, the state would be able to express the purpose of its application in relation to those already received, thereby assisting Congress in rendering its determination pursuant to Section 6(a) as to whether the requisite number of applications have been received on "the same subject."

[107] (c) *New*. The adoption of judicial review requires that courts be able to define the accrual of grievances with particularity. S.1272 leaves uncertain the status of an application or rescission absent specific congressional action. Our proposed new Section 4(c) limits the period of uncertainty to 60 days. If Congress does not act upon a state transmittal within that period, it is deemed valid. The period for judicial review thus begins to run no later than 60 days after receipt of the application.

The possibility of a Senate filibuster blocking rejection of a patently defective application, thus causing the application to be deemed valid under Section 4(c), is offset by the fact that an action would lie under Section 16(a) for declaratory relief. Section 4(c) expressly notes that such a failure to act is subject to review under Section 16. State legislators as well as members of Congress would appear to qualify as "aggrieved" parties. See *Coleman v. Miller,* 307 U.S. 433 (1939).

Section 4(c) thus results in an early determination of the application's procedural aspects. Only the question of the similarity of an application's subject to the subject of other applications is reserved for later determination by Congress.

[108] (d) Same as present Section 4(c) of S.1272 except for the suggested insertions, which are designed to reflect the introduction of judicial review. The requirement for transmittal of applications to state legislatures is limited to valid applications.

[109] (a) For the reasons set forth at pages 35 to 37, the Committee agrees that some time limitation is necessary and desirable but takes no position on the exact time, except believes that four or seven years would be reasonable and that a congressional determination as to either should be accepted.

The Committee's views as to the use of the "same subject" test appear at pages 21,22,34 and 35.

[110] (b) We believe that it is desirable to have a rule such as that contained in this section permitting the withdrawal of an application. See our discussion of this point at pages 37 to 38.

As for the requirement respecting the procedures to be followed, see our comments to Section 3(a).

[111] (c) See our comments to Section 3(b).

[112] With regard to "the nature of the amendment or amendments" phraseology, see our comments to Section 2.

The concurrent resolution calling the convention may also have to deal with such questions as to when the election of delegates will take place.

The position that the President has no place in the calling process is discussed at pages 29 to 32.

[113] The Committee believes that the principle of one person, one vote applies and that Section 7(a) violates that principle. The Committee is of the view that an apportionment plan which allotted to each state a number of delegates equal to its representation in the House of Representatives should be an acceptable compliance with those standards. This subject is discussed at pages 38 to 42.

(Endnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

The persons entitled to vote for delegates could be more clearly stated to include all persons entitled to vote for members of the House of Representatives. The manner of nominating persons for delegate election might, as provided by S.1272, best be left to each state.

The question of the eligibility of members of Congress to be delegates is discussed at page 42.

[114] The Committee agrees with the principle that each delegate have one vote.

[115] (a) The Committee believes that Congress should not impose a vote requirement on a convention. It views as unwise and of questionable validity any attempt to regulate the internal procedures of a convention. It also notes that the vote requirement in S.1272 based on the total number of delegates is more stringent than that required for amendments proposed by Congress. See pages 21 to 23 of this report.

[116] (b) See our comments to Section 2 with regard to the underlining and our comments to Section 3(b) as for the deletions.

[117] (b) The position that the President has no place in this process is discussed at pages 29 to 32.

[118] As for the language "relates to or includes a subject" in (B), see our comments to Section 2.

[119] (b) It is not clear whether this section would accept any special limitation adopted by a state with respect to ratification, other than the assent of the governor or any other body. See our comments to Section 3(a).

The exclusion of the governor from the process, with which we agree, is discussed at pages 32 to 34.

[120] (a)-(b) As discussed at pages 43 to 44, the Committee agrees with the principle permitting a state to rescind a ratification or rejection vote.

[121] (c) See our comments to Section 3(b).

[122] *New*. The purpose of our proposed Section 16 is to provide limited judicial review of controversies arising under S.1272. The procedural framework of the bill sets forth clear standards for adjudication of many of the potential controversies, and to this extent judicial interpretation of the act does not differ from the normal role of the courts. Moreover, determinations such as the similarity of applications or the conformity of proposed amendments to the scope of the convention call are no more difficult than, say, interpretation of the general language of the antitrust laws or the securities acts. The fact that these questions occur in a constitutional context does not diminish the skill of the Bench to interpret and develop the law in light of the factual situations of a given controversy.

Selection of a three-judge district court as the initial forum for controversies acknowledges that many controversies may be essentially state questions. For example, Congress might reject an application because of a defect in the composition of the state legislature. *Cf., Petuskey v. Rampton,* 307 F. Supp. 231, 235 (D. Utah 1969), *aff'd.* 431 F. 2d 378 (10th Cir. 1970), *cert. denied,* 401 U.S. 913. In this instance, it seems preferable to provide that the district court, schooled in state matters, make the initial review. Appeal from three-judge courts would lie in the United States Supreme Court.

[123] *New.* This subsection would establish a short limitation period. Since the introduction of judicial review should not be allowed to delay the amending process unduly, any claim must be raised promptly. The limitations period combined with expedited judicial procedures is designed to result in early presentation and resolution of any dispute.

[124] Barbara Prager is a student at New York Law School and Gregory Milmoe a student at Fordham Law School. We are deeply grateful to them for their time and efforts in preparing this document for our Committee and are pleased to have it accompany our report. We believe it presents an excellent overview of

(Endnote Continued Next Page)



BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

the types of applications which have been submitted to Congress since the adoption of the Constitution.

[125] Note: The table provided in Appendix B of the ABA Report has been duplicated exactly except for one change. In the original report the total number of applications made by the states was listed as totaling 356 applications. However, simple arithmetic shows this figure to be in error. The correct figure is 360 applications by the states. This suit is unable to explain why the ABA Committee was unable to do basic addition or correct spelling except, in the case of incorrect addition, it would tend to explain why the committee did not understand the basic meaning and intention of the word “two-thirds”.

[126] 37 American State papers 6-7.

[127] W. Pullen, *The Application Clause of the Amending Provision of the Constitution* 22-28 (1951) (unpublished dissertation in Univ. of North Carolina Library) (hereinafter cited as *Pullen*).

[128] *Id.* at 38-39.

[129] Massachusetts General Court Committee on the Library, *State Papers on Nullification 223* (1834). The quote is from the resolution addressed to her co-states. The recommendation to Congress varies slightly.

[130] *Pullen* at 66.

[131] S. Jour., 36th Cong. Spec. Sess. 404 (1861).

[132] *Pullen* at 102.

[133] 1861 *Iowa S. Jour.* 68-69.

[134] *Pullen* at 108.

[135] *Id.* at 115.

[136] *Id.* at 119.

[137] Graham, *The Role of the States in Proposing Constitutional Amendments,* 49 A.B.A.J. 1175, 1176-77 (1963).

[138] See Appendix B.

[139] *Pullen* at 126.

[140] See Dirksen, *The Supreme Court and the People*, 66 Mich. L. Rev. 837 (1968).

[141] See Appendix B, Part One, for a complete listing.

[142] Contains an excellent bibliography at pages 104-12.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860

## APPENDIX D---REBUTTAL OF 1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE

### INTRODUCTION

Much of the support offered by proponents of a limited, same subject, congressionally regulated convention to propose amendments stems from a 1973 report by the Constitutional Convention Study Committee of the American Bar Association. This committee was formed, according to the report, to answer "the question of whether such a Convention's jurisdiction can be limited to the subject matter giving rise to its call, or whether the convening of such a Convention, as a matter of constitutional law, opens such a Convention to multiple amendments and the consideration of a new Constitution..."[1589]

While the strict constitutionally correct "convention to propose amendments" term which specifically defines and limits its powers should have been used by the ABA in its report, as opposed to the more loose, inaccurate "constitutional convention," nevertheless the ABA choose to use the more inflammatory term ignoring, in fact, not even discussing the specific language of Article V. In its desire to be constitutionally and editorially accurate, this rebuttal will use the term "convention to propose amendments" in its comments, while leaving untouched any quotes by the ABA Report with the assumption that the ABA Report most likely was addressing this portion of Article V as contrasted to a general constitutional convention which would

[1589] AMERICAN BAR ASSOCIATION CONSTITUTIONAL CONVENTION STUDY COMMITTEE REPORT (Hereinafter referred to as ABA Report), p.1 of RECOMMENDATIONS TO THE HOUSE OF DELEGATES OF THE ABA, submitted August, 1973, adopted 1974.

have the authority to propose a new constitution but which has no constitutional provision supporting this, thus making such a convention automatically unconstitutional. The ABA Report does not at any point distinguish the two, thus making it possible it could have been referring only to the latter rather than the former. Thus it is possible the ABA may have spent a great deal of time discussing a subject that is total speculation and has no constitutional validity.

In August, 1973 the committee submitted a report to the ABA House of Delegates that outlined several proposals concerning the so-called constitutional convention. In summary, the report favored a single subject, congressionally regulated convention.

*The ABA Report Proposals*

Among the more important recommendations by the ABA Committee were:

1. Congress [should] establish procedures for amending the Constitution by means of a national constitutional convention;[1590]
2. Congress has the power to establish procedures limiting a convention to the subject matter stated in the applications received from the state legislatures;[1591]
3. Any congressional legislation dealing with such a process for amending the constitution should provide for limited judicial review of congressional determinations concerning a convention;[1592]
4. Delegates to a convention should be elected, and representation at the convention should be in conformity with the principles of representative democracy as enunciated by the “one person, one vote” decisions of the Supreme Court.[1593]

[1590] ABA Report, p.2.
[1591] *Id.*
[1592] *Id.*
[1593] *Id.*

In order to focus its work, the committee posed a series of nine questions or issues which it then addressed in the report. These questions were:

1. If the legislatures of two-thirds of the states apply for a convention limited to a specific matter, must Congress call such a convention?[1594]
2. If a convention is called, is the limitation binding on the convention?[1595]
3. What constitutes a valid application which Congress must count and who is to judge its validity?[1596]
4. What is the length of time in which applications for a convention will be counted?[1597]
5. How much power does Congress have as to the scope of a convention? As to procedures such as the selection of delegates? As to the voting requirements at a convention? As to refusing to submit to the states for ratification the product of a convention?[1598]
6. What are the roles of the President and state governors in the amending process?[1599]
7. Can a state legislature withdraw an application for a convention once it has been submitted to Congress or rescind a previous ratification of a proposed amendment or a previous rejection?[1600]
8. Are issues arising in the convention process justiciable?[1601]
9. Who is to decide questions of ratification?[1602]

*Conclusions and Recommendations of the ABA Report*

CONGRESS MAY REGULATE THE CONVENTION

The ABA Committee provided both general and specific conclusions and recommendations regarding a convention to propose amendments.

---

[1594] *Id.* at p.7.
[1595] *Id.*
[1596] *Id.*
[1597] *Id.*
[1598] *Id.*
[1599] *Id.*
[1600] *Id.*
[1601] *Id.*
[1602] *Id.*

The most significant is the conclusion that Congress can regulate the convention. The report, significantly, did not present any *direct* constitutional evidence for this conclusion.[1603] In fact, the comments of the committee show a clear trend of thought as to why they recommended Congress be able to regulate the convention, despite the historic record to the contrary:[1604] that of their fear of the unknown.[1605]

## REBUTTAL

The report furnishes no substantial evidence proving the convention system is any more inherently dangerous or uncertain than any other political system in America.

---

[1603] "It is the view of our Committee that it is *desirable* for Congress to establish procedures for amending the Constitution by the national constitutional convention method." ABA Report at p.8. "Underlying this argument is the belief that, at least in modern political terms, a national convention would venture into uncharted and dangerous waters. It is relevant to note in this respect that a similar concern has been expressed about state constitutional conventions *but that 184 years' experience at that level furnishes little support to the concern*." *Id.*(emphasis added).

[1604] *See supra* text accompanying notes 497-521,675-699.

[1605] "If we fail to deal now with *the uncertainties of the convention method*, we could be courting a constitutional crisis of grave proportions. We would be running the enormous risk that procedures for a national constitutional convention would have to be forged in time of divisive controversy and confusion when there would be a high premium on obstructive and result-oriented tactics." ABA Report at p.9.

"In addition to being better governmental technique, a forthright approach to *the dangers of the convention method* seems far more likely to yield beneficial results than would burying our heads *in the sands of uncertainty*." *Id.* (emphasis added).

The report then continues:

"Essentially, the reason are the same ones which caused the American Bar Association to urge, and our national ultimately to adopt, the rules for dealing with the problem of presidential disability which are contained in the Twenty-Fifth Amendment. So long as the Constitution envisions the convention method, we think the procedures should be ready if there is a 'contemporaneously felt need' by the required two-thirds of the state legislatures." *Id.*

Great concern is expressed about the "uncertainties"[1606] or the "dangers"[1607] of the convention, but the report simultaneously debunks any fear of a national convention venturing "into uncharted and dangerous waters"[1608] by noting that "184 years experience [in state constitutional conventions]...furnishes little support to the concern."[1609]

Thus, the committee's position favoring that Congress heavily regulate the convention is born of fear of what a convention might do. Ignored in all of this is the fact that *fear of a convention was exactly what the Founding Fathers intended in the provision*. But it was not fear *of the convention*, it was *fear by the national government that any of its actions with which the people disagreed could be overturned*, thus keeping the national government in check. The Founders knew that the people would not act against their best interests. Thus, they realized that the people would not introduce amendments *limiting themselves*, but instead would introduce amendments *limiting the national government*. The proof of this fear is obvious. Congress has used every rhetorical and parliamentary weapon in its arsenal to either ignore applications for a convention, or to spread misinformation and even outright terror about what a convention might do. But this is mere sophistry. The people will not act against themselves. They understand self-government and democracy. As Franklin Roosevelt phrased it, "The only thing we have to fear, is fear itself."

---

[1606] *See supra* text accompanying note 1605.
[1607] *Id.*
[1608] *See supra* text accompanying note 1603.
[1609] *Id.*

## CURRENT APPLICATIONS DO NOT SATISFY THE TWO-THIRDS REQUIREMENT

The report notes that "[E]very state, at one time or another, has petitioned Congress for a convention",[1610] but does not feel these applications constitute the required two-thirds applications by the state legislatures as specified in Article V.[1611]

## REBUTTAL

The ABA Report clearly ignored the effect, meaning, and intent of the Gerry-Morris amendment to the language of Article V at the 1787 Convention which was to cause a convention call "on the application of two-thirds of the states..."[1612] The Gerry-Morris amendment dictated a simple numeric count for causing a convention to be called. There is no language calling for a "contemporaneously felt need" by the states.

## LEGISLATION NECESSARY FOR SAFEGUARDS

[1610] ABA Report at p.3.
[1611] "...if there is a 'contemporaneously felt need' by the required two-thirds of the states legislatures." *Id.* at p.9.
[1612] *See supra* text accompanying notes 435-437.

The report states that "one Congress may not bind a subsequent Congress"[1613] regarding legislation but this fact "does not persuade us that comprehensive legislation is useless or impractical."[1614]

The report then continues:

"The interests of the public and nation are better served when safeguards and rules are prescribed in advance. Congress itself has recognized this in many areas, including its adoption of and subsequent reliance on legislative procedures for handling such matters as presidential electoral vote disputes and contested elections for the House of Representatives. Congressional legislation fashioned after intensive study, and in an atmosphere free from the emotion and politics that undoubtedly would surround a specific attempt to energize the convention process, would be entitled to great weight as a constitutional interpretation and be of considerable precedential value."[1615]

## REBUTTAL

The report assumes any regulations controlling a convention to propose amendments that Congress might invent will somehow create a political climate that places a "high premium on obstructive and result-oriented tactics"[1616], i.e., in the Congress itself. Logically, any amendment proposed for consideration in a convention (not to mention the convention itself) will have its supporters and opponents in Congress. These people will be inclined to use whatever political tools are available to further their ends and justify their methods.

---

[1613] ABA Report at p.10.
[1614] *Id.*
[1615] *Id.*
[1616] *See supra* text accompanying note 1605.

A convention to propose amendments subject to regulation by Congress would be as vulnerable to these political ax-grinders as any other piece of legislation made in Congress. History has demonstrated time and again that political expediency often outweighs all other considerations in such political battles with justifications left to later, if attended to at all. If such regulations can be used to benefit a particular political persuasion, there is no reason to assume they will not be so used. If on the other hand, such regulations can be readily changed to benefit a particular political persuasion, there is no reason to assume this will not be done.

The most obvious use or misuse of these regulations would be to block the clear intent of the Constitution which is to allow the states the equal ability to amend the Constitution when they desire. As such regulations could be altered to block a convention with little more than a simple majority vote, it may be politically opportunistic for both opponents and proponents of a measure to change such regulations for simple political gain. The fact the clear intent of the Constitution was totally stymied in the process would be justified later, most likely on Sunday talk shows by professional spinners.

Thus, it is a very significant point that one Congress may not bind a subsequent Congress on any regulations regarding the convention, as these regulations would be based not on the Constitution, but on political considerations. In a single sentence, the ABA Report concedes that whatever regulations might be installed by Congress can just as easily be altered or uninstalled by a subsequent Congress, providing an easy method for Congress to block a convention from occurring no matter how many states apply, simply by changing the rules contained with the legislation. Or Congress may allow a

convention, but just as easily regulate it to whatever political ends it desires.

The presidency is no less susceptible to these political pressures and therefore would be equally vulnerable to their attacks. Thus, there is little if any hope the presidency would stand against such pressure. Indeed, recent political events suggest such pressure might *emanate* from the White House. It is for these reasons the convention *procedures* must be grounded in the *constitutional* rather than the *political*. Any amendments proposed at a convention must be political fair game, i.e., subject to the same public debate and deliberation that any similar proposal in Congress suffers. But, like those of Congress, the presidency and the courts, the convention procedures that allow for the orderly, fair and public disposal of public questions must be grounded within the Constitution safe from the short-sighted whims of politics.

No less short-sighted are the two examples of congressional regulation the ABA Report cites in its attempt to justify congressional regulation of the convention.[1617] The difficulty with the two examples cited by the report is

---

[1617] "Congress itself has recognized this in many areas, including its adoption of and subsequent reliance on legislative procedures for handling such matters as presidential electoral vote disputes and contested elections for the House of Representatives." ABA Report at p. 10.

The report then cites a footnote which reads:

"Article 1 § 5 of the Constitution gives the House of Representatives the authority to judge challenges to the election of its members. Since 1798, the House has seen fit to exercise this power through procedures enacted into law. Act of Jan. 23, 1798, Ch. 8, 1 Stat. 537. Subsequent modifications of that law appear in 2 U.S.C.A. §§ 201-226 (1970)." (See ABA Report, endnote 19).

Significantly, the ABA Report ignores Powell v McCormack, 395 U.S. 486 (1969) in which the Supreme Court ruled "the House could exclude him (Powell) only if it found he failed to meet the standing requirements of age, citizenship;, and residence contained in Art. I, 2 of the Constitution..."

(Footnote Continued Next Page)

that the clear language of the Founders used in the Constitution makes it abundantly clear the Founders intended *to allow for congressional regulation while the clear language of the same Founding Fathers makes it abundantly clear no such intent was meant for the convention*.[1618]

Thus, these examples actually defeat the report's argument as they present clear evidence the Founders realized the difference between discretionary and non-discretionary powers of Congress and, *where they intended such discretion, they placed textual language in the Constitution to so indicate their intentions*. Thus, as the Founders did insert such language when they intended discretion, it follows where they did not include such language, they intended no discretion. No such discretionary is included in

---

In the *Powell* ruling, the Court recognized the House had the power to regulate its members in regards to seating them, but that such regulation must be based on *specified, textual* constitutional standards and that the House could add no additional barriers against a member being seated.

As to the second example in the ABA Report, regarding presidential electors, the 12th Amendment clearly gives Congress *specific, textual* power to choose a President and Vice President should the electors reach a tie. "The House of Representatives shall choose immediately, by ballot, the President." (12th Amendment). Clearly, it is the right of Congress to establish procedures for a particular constitutional duty if the Constitution so assigns that duty to Congress *and provides discretion on the part of Congress* in the performance of that duty. In the case of the 12th Amendment, this particular authority involves discretion on the part of the House of Representatives in that it *elects* the President. Clearly, in order to perform this specific duty, Congress has discretion, from how it goes about performing the election *to whom it elects*. All of this power is implied in the term "by ballot."

These examples, however, have no bearing on the convention to propose amendments as it was the intent of the Founding Fathers that Congress have "no discretion" in the convention. The ABA Report examples clearly deal with *specified, textual* authority granted by the Constitution to Congress. Further, the two examples clearly *allow* for discretion (in choosing to seat a member based on textual standards established in the Constitution, or the election of a president) whereas no such *specified, textual* authority exists for congressional regulation of the convention. *See supra* text accompanying notes 435-437,497-521,675-699.

[1618] *See supra* text accompanying notes 497-521.

Article V regarding a convention. The conclusion on this point therefore is obvious.

## LEGISLATION PROTECTS THE CONSTITUTION

The report quotes Madison saying:

"In our view any legislation implementing Article V should reflect its underlying policy, as articulated by Madison, of guarding "equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults."[1619]

## REBUTTAL

A closer examination of this Madison quote is in order. The Madison quote is taken from FEDERALIST No. 43. When that quote is examined in its full context rather than only partially quoted, as the ABA Report did, its intent and thus its meaning are significantly different than the use obviously intended by the ABA Report. In FEDERALIST No. 43, Madison was discussing the "miscellaneous powers" of the federal government.

Madison listed these powers by quote or paraphrase from various parts of the Constitution. The partial quote used by the ABA Report above was taken from the eighth point in FEDERALIST No. 43 which stated (in full):

"8. To provide for *amendments* to be ratified by three fourths of the States under two exceptions only.

[1619] ABA Report at p. 10.

"That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode of *introducing them* should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, *equally enables* the general and *the State governments* to *originate* the *amendment of errors*, as they may be pointed out by the experience on side, or on the other."[1620]

Using the full text, it is clear Madison always discussed the amendment proposal power of the states *in the plural sense*, i.e., "amendment of *errors*", "introducing *them*", "to provide for *amendments*." Further, Madison in his quote was clearly referring to the general government (Congress) *or the states* to *equally originate amendments to the Constitution if they felt such amendments were needed* and not to some strait-jacket control by Congress over the

---

[1620] FEDERALIST No. 43. (emphasis added).

This quote by Madison has been much maligned by those favoring a single, "same subject" amendment convention. Strictly speaking, the quote *actually* deals with the power of Congress to propose *amendments*,(only in passing mentioning the states have the equal power to do so) a fact Madison took full advantage of when he later drafted the Bill of Rights (*See supra* text accompanying note 489). When the quote is taken in its full context, its true meaning becomes clear.

First, Madison clearly understood that *amendments* could be proposed by either Congress or a convention. Second, the use of the quote to support "same subject" or regulation of the convention fails with Madison's own words. Madison clearly is discussing the mode of introduction of amendments and was pointing out that by allowing Congress or a convention to propose amendments, this system guarded against two dangers. First, the two-thirds requirement, together with the three-fourths ratification prevents "the Constitution [from being] too mutable". Secondly however, as there are two methods of amendment proposal, they would serve to protect against any "perpetuate of its discovered faults." The logic of Madison is obvious: if one method of amendment failed to bring about a needed change, the other method was available to see it did happen.

Finally, the phrase "amendment of errors" had been used by many to indicate Madison thought that only one amendment could be proposed at a time by the convention. Obviously this is incorrect. As noted earlier in this footnote, Madison himself introduced *twelve simultaneous amendments* in Congress using its power to propose *amendments* (*See supra* text accompanying note 2).

Again, taken in full context, the true meaning of the statement is clear. Either the states or the federal government has the power to propose *amendments.* In other words, they can *originate* an amendment[s] to correct the error[s] of the Constitution. Madison was simply saying that either the states or the federal government have the powers to propose amendments to correct any error *or errors* they feel exist in the Constitution.

convention. The quote used by the ABA actually refers to the method of amendment, i.e., requiring a numeric number of assents before an amendment became part of the Constitution but not requiring unanimous consent in order to do so.

## SPECIFIC RECOMMENDATION---GENERAL AND LIMITED CONVENTIONS

The ABA Report then makes specific recommendations regarding the convention to propose amendments.

Its first recommendation reads:

> "It is our conclusion that Congress has the power to establish procedures governing the calling of a national constitutional convention limited to the subject matter on which the legislatures of two-thirds of the states request a convention. In establishing procedures for making available to the states a limited convention when they petition for such a convention, Congress must not prohibit the state legislatures from requesting a general convention since, as we view it, Article V permits both types of conventions."[1621]

## REBUTTAL

The report spends much time attempting to create two types of conventions: a "general" convention and a "limited" convention with the understanding that the states must apply for one type of convention or the other, and that Congress has the power to decide whether the states in their applications have satisfied this requirement.[1622]

---

[1621] ABA Report at p.10-11.
[1622] *See* ABA Report, p.13.

(Footnote Continued Next Page)

The language of Article V of the Constitution makes no distinction as to the type of convention called by Congress.[1623] Instead, Congress is required to call "a convention...on the application of two-thirds of the states..."[1624] There is nothing in the Constitution to support the idea that there can be a "limited" versus a "general" convention. Where the Founders intended to describe a specific body, they named it: a *Supreme* Court, a *Senate and House of Representatives*. Thus, as no such label is attached to the word "convention" it is clear they intended *a convention* with no other limitations. Further, as the convention is licensed certain specified sovereign power by the people, logically, it must have the power to perform these duties as specified in Article V. As such, it requires no supervision or control by Congress unless specified by the Constitution. Article V makes the convention to propose amendments equal in stature to Congress. Neither body in performing its duties may infringe upon the rights and duties of the other.[1625] As the sole duty of the convention is proposing amendments, it has only a single

---

"From the language of Article V we are led to the conclusion that *there must be a consensus* among the state legislatures *as to the subject matter of a convention* before Congress is required to call one.... "The origins and history of Article V indicate *that both general and limited conventions were within the contemplation of the Framers*." (emphasis added).

[1623] *See supra* text accompanying note 2. Just as the Constitution makes no distinction regarding the word "contract". *See supra* text accompanying note 1534.

[1624] *Id.*

[1625] Except, under the doctrine of equal protection, where whatever power of regulation by one body claimed over the other is equally applied to the body making the claim. Thus, under this doctrine, entirely ignored by the ABA Report, all proposed restrictions and regulations on the convention must be equally applied to Congress.

In specific terms this requires, for example, that if, as the report suggests, before a convention may be held, the subjects to be discussed must be agreed to by at least two-thirds of the states, translates into meaning that in Congress, before an amendment proposal can be even be discussed, two-thirds of the members of Congress must agree to do so.

function. Thus, there can be only one kind of convention to propose amendments: a “general” convention, with its purview defined and restricted by the words of Article V, not Congress.

As to the history the ABA Report describes, it is clear the Founders intended a system whereby actions of the national government could be countered and nullified by the states and the people. Allowing Congress the power to describe what sort of convention must exist, whether it shall exist at all, and under what terms it shall exist, defeats the entire purpose of this power provided by the Founders. Such discretion was not intended by the Founding Fathers.[1626]

The answer to the limited convention proposal by the ABA is obvious. The Founding Fathers provided all the power the states require to “limit” a convention. This power is the ratification vote. If thirteen states vote “no” on any proposed amendment, that proposal is dead.[1627] Thus, by this single power, the states can “limit” a convention’s proposals to a single subject, or expand it to many subjects, *if they so desire*, by a simple vote without the slightest interference by Congress. Further, there is nothing in the Constitution preventing the convention from regulating *itself to deal only with a single subject of amendment*, just as Congress is free to do the same thing. But just like Congress,[1628] the convention is free to propose *amendments* if it desires.

---

[1626] *See supra* text accompanying notes 495-513,682-685.
[1627] Assuming of course, Congress does not exercise its incidental regulatory power and override the ratification vote. *See supra* text accompanying notes 849,917,1006,1053-1073,1077,1079,1089,1094,1239,1253-1259,1333.
[1628] *See supra* text accompanying notes 489,1620.

## STATES MUST CONCUR ON A SUBJECT BEFORE CONGRESS MUST CALL A CONVENTION

The next recommendation of the report states:

"We consider Congress duty to call a convention whenever two-thirds of the state legislatures have *concurred* on the subject matter of the convention to be mandatory."[1629]

## REBUTTAL

The intent and purpose of the applications by the state legislatures is for the calling of a convention, not for a specific amendment or subject.[1630] However, more importantly, the ABA Report introduces a subtle but important difference regarding its proposals for regulating a convention to propose amendments. With this proposal, the report shifts the matter away from the subject matter of a particular amendment to the "subject matter of the convention."

In other words, the report now says Congress has a duty to call a convention only if there is concurrence by the legislatures of whatever is to be *discussed*---not just proposed—--at a convention. *Thus the ABA Report now demands not only concurrence and consensus by the states as to their positions*

[1629] ABA Report at p.11.
[1630] *See supra* text accompanying notes 682-689.

*on a specific amendment, it also insists that the subjects to be discussed must be approved by Congress before it has to call a convention.*

The report obviously holds that Congress can refuse to call a convention if the particular subject matter of the convention is not "concurred" by the states, even though the number of states that has applied for a convention may exceed the two-thirds requirement. Naturally the report *attempts* to establish Congress' right to judge whether the states are "in concurrence", to refuse to issue a convention call no matter how many states have applied, and to refuse to send a proposed amendment to the states for ratification.[1631]

## THE ROLE OF THE EXECUTIVE

The report then deals with the role of the executive in the convention:

"We believe that the Constitution does not assign the President a role *in either the call of a convention* or the ratification of proposed amendment."[1632]

## REBUTTAL

[1631] Any doubts regarding this interpretation are dispelled by the report's own language:

"In formulating standards for determining whether a convention call should issue, there is a need for great delicacy. The standards *not only will determine the call* but they *also will have the effect of defining the convention's authority* and *determining whether Congress must submit a proposed amendment to the states for ratification*." ABA Report, p. 20. (emphasis added).

[1632] *See* ABA Report, p.11.

The ABA Report states “the Constitution does not assign the President a role in...the call of a convention,” yet simultaneously holds Congress may regulate the convention.[1633] As the Constitution only provides for congressional participation through the convention call in Article V, and no such power is provided under Article I where Congress’ legislative powers are specified, the obvious question is: how can Congress legislatively regulate the convention without the participation of President of the United States? The Constitution clearly specifies that for Congress to pass a law, such as legislation regulating the convention, the President must be involved.[1634]

Based on the report’s conclusions of non-participation of the president, yet regulation by Congress, the only logical conclusion is Congress has the right to pass legislation without the participation of the President. Apparently, this is acceptable because of the “dangers” of the convention system, dangers which have never manifested themselves in 184 years of state constitutional convention history.[1635] The report does not address what dangers might occur if the entire concept of separation of powers as laid out by the Constitution is violated by such unconstitutional actions as the report advocates.

There is another alternative. This would be for Congress to attempt to regulate the convention to propose amendments using a “sense of the Congress” or other *non-binding* action that requires no presidential approval, then insisting this action has the legal force of ordinary legislation that does

---

[1633] *See ABA* Report, p.10.
[1634] *See supra* text accompanying notes 547-592,620-668,718-728.
[1635] *See* ABA Report, p.8.

pass presidential review. In something so fundamental as the amendatory process of the United States Constitution, it is probably an understatement to suggest this action might, in some legal circles, be considered constitutionally questionable.

## LIMITED JUDICIAL REVIEW OF CONGRESSIONAL ACTION REGARDING A CONVENTION

The report then recommends "limited judicial review of congressional *action or inaction* concerning a constitutional convention."[1636]

The report recommends several limits on judicial review. It recommends "a Congressional determination should be overturned only if 'clearly erroneous.'"[1637] The report then says:

"This standard recognizes Congress' political role and at the same time insures that Congress cannot arbitrarily void the convention process."[1638]

The report then says:

"[B]y limiting judicial remedies to declaratory relief, the possibility of actual conflict between the branches of government would be diminished."[1639]

## REBUTTAL

The ABA Report takes the position that the only branch of the government capable of compelling Congress to obey the Constitution as it was intended by

[1636] ABA Report at p.11. (emphasis added).
[1637] ABA Report at p.28.
[1638] *Id.*
[1639] *Id.*

the Founding Fathers should be excluded from doing so by the very branch of the government attempting to violate the Constitution. Taken in this context, limited judicial review as suggested by the report must be opposed. The reason is self-evident. When political ambition runs amok, Congress will never pass up a chance to veto the Court if it can. Integrity and Congress have been strangers for many years.

However, if the report's recommendations are taken in the context of the Court defining the meaning of the Constitution as it applies to *all* proposed amendments, ratifications and the constitutional procedures related thereto, such judicial review must be supported. It is the assigned constitutional duty of the judiciary to define these areas. The ABA Report attempts to straddle the fence in this issue. The result is it only succeeds in impaling itself on the stakes in the middle, leaving the issue unresolved and muddied.

The report states:

"The committee believes that judicial review of decisions made under Article V is desirable and feasible. We believe Congress should declare itself in favor of such review in any legislation implementing the convention process. We regard as very unwise the approach to S.1272 which attempts to exclude the courts from any role. While the Supreme Court's decision in *Ex parte McCardle* indicated that Congress has power under Article III to withdraw matters from the jurisdiction of the federal courts, this power is not unlimited. *It is questionable whether the power reaches so far as to permit Congress to change results required by other provisions of the Constitution or to deny a remedy to enforce constitutional rights.* Moreover, we are unaware of any authority upholding this power in cases of original jurisdiction."[1640]

Despite this apparent support of judicial review, the report then immediately reasserts that Congress has "*discretion* in interpreting Article V and in adopting implementing legislation."[1641] The report acknowledges that the

---

[1640] ABA Report at p.23.

[1641] *Id*. at p.23. That the report's choice of the word "discretion" to describe the power of Congress regarding the convention to propose amendments flies *directly* in the face of the *author* of Article V and his interpretation of his own writing cannot be lightly ignored. In FEDERALIST No. 85, Hamilton made it

(Footnote Continued Next Page)

convention method of amendment was intended to be free of congressional domination,[1642] but apparently doesn't believe it.[1643] The report supports allowing Congress to refuse to call a convention even if two-thirds of the states apply, to refuse to submit proposed amendments by the convention to the states for possible ratification, and to determine what subjects for amendment will be even *discussed* at a convention.[1644] The only question the report fails to answer is what it feels is *not* left to total congressional domination. There is no doubt that these three powers place the entire convention in the hands of Congress.

It is just as obvious the ABA Report wishes no judicial review of congressional control of the convention, but just doesn't want to say so. Nowhere does the report simply allow the Court to declare congressional action or inaction unconstitutional. If as the report suggests, the courts are reduced to finding matters "clearly erroneous"[1645] without any further input in

---

clear Congress was to have no discretion in the matter. *See supra* text accompanying notes 497-513.

[1642] "[T]he specific intent of the Framers with regard to the convention method of initiating amendments was to make available an alternative method of amending the Constitution—one that would be free from Congressional domination." ABA Report at p.22.

Further, the report added: "We recognize that the convention parallels Congress as the proposing body." *Id.* at p.22.

"The debates at the Constitutional Convention of 1787 *make it clear* that the convention method of proposing *amendments* was intended to stand on an equal footing with the Congressional method." *Id.* at p.13.

[1643] Otherwise how could the report hold:

"In formulating standards for determining whether a convention call should issue, there is a need for great delicacy. The standards *not only will determine the call* but they *also will have the effect of defining the convention's authority* and *determining whether Congress must submit a proposed amendment to the states for ratification*. The standard chosen should be precise enough to permit a judgment that two-thirds of the state legislatures seek a convention on an agreed-upon matter." ABA Report at p.20. (emphasis added).

[1644] *See supra* text accompanying note 1643.

[1645] ABA Report at p.28.

(Footnote Continued Next Page)

the matter, then they have no role at all. The term is clearly designed to provide Congress as much latitude as possible and still maintain *the appearance of objective judicial review*. Further, the report, rather than establishing the usual procedure of law in which Congress allows for the courts to review an area of law, then leaves it to the courts to set the standards therein, instead attempts to lay out the standard of review the courts shall follow. The only thing missing from the report is a recommendation of how the court shall phrase its rulings so as to always favor Congress in the matter.

The report's suggestion places the Court in the position of catch-up. First, Congress would propose a regulation[s] which then might be challenged in court. The Court finds the matter "clearly erroneous" but is prevented under the report's scenario from taking any further action. A subsequent Congress at some unspecified date might then make changes to the regulation[s]. But what if Congress doesn't? What if Congress merely drops the matter? The convention is now delayed, if not effectively canceled, because the regulations that would have instigated the convention have been negated,

---

"If one concludes that the courts can require Congress to act, one is likely to see the courts as able to answer certain ancillary questions of 'law,' such as whether the state legislatures can bind a convention by the limitations in their applications, and whether the state legislatures can force the call of an unlimited convention. Here we believe Congress has a legislative power, within limits, to declare the effects of the states' applications on the scope of the convention. Courts should recognize that power and vary their review according to whether Congress has acted." ABA Report at p.27.

"Second, by limiting judicial remedies to declaratory relief, the possibility of actual conflict between the branches of government would be diminished. As *Powell* illustrated, courts are more willing to adjudicate questions with 'political' overtones when not faced with the institutionally destructive need to enforce the result." ABA Report at p.28.

but Congress has not bothered to institute new ones. Meanwhile, under the report's concept of judicial authority, all the Court can do is state the matter is "clearly erroneous", and no further action by the Court to compel compliance with the Constitution can be accomplished. The Constitution therefore is neatly thwarted.

The courts are empowered by the Constitution to determine the meaning and intent of the Constitution, and any attempt to thwart that power must be rejected by the courts, particularly where obvious political considerations outweigh the Constitution.

There is no finer example of demonstrating the ABA Report's indecisiveness in this manner than to quote from the report itself. While the report maintains there should be "limited judicial review" it nevertheless states:

> "If two-thirds of the state legislatures apply, for example, for a convention to consider the apportionment of state legislatures, and Congress refuses to call the convention, it is arguable that a *Powell* situation exists, since the purpose of the convention method was to enable the states to bring about a change in the Constitution even against congressional opposition."[1646]

In *Powell*, the Court prevented down clearly politically motivated attempts by members of Congress to deny seating an otherwise properly elected representative of a congressional district. Thus, it preserved the Constitution as intended by the Founding Fathers by refusing Congress any discretion in the clear standards of admission set by the Constitution. For the report to urge congressional discretion, then cite *Powell* as an example where the report only urges the Court to have the power to declare a congressional action "clearly erroneous," is totally contradictory.

---

[1646] ABA Report at p.26.

The ABA Report would have Congress regulate the convention and for good measure have the courts sit idly by, able to do no more than simply issue useless, meaningless orders, all the while watching political opportunists tear up every shred of the separation of powers doctrine.

The only response to this suggestion by the ABA is to entirely ignore it and allow the courts to do their job and keep congressional regulation entirely out of it.

## DELEGATES ELECTED TO THE CONVENTION

The report next recommends:

"...that delegates to a convention be elected and that representation at the convention be in conformity with the principles of representative democracy as enunciated by the "one person, one-vote" decisions of the Supreme Court."[1647]

It should be noted that not all of the members of the ABA committee agreed with this position.[1648] The committee spoke in some detail regarding its suggestion that delegates to a convention to propose amendments be directly elected based on the concept of one person, one vote. As with the rest of the report, several contradictory statements are found. The committee said:

"Elaborating its view on one person, one vote, the Committee believes that a system of voting by states at a convention, while patterned after the original Constitutional Convention, would be unconstitutional as well as undemocratic and archaic. While it was appropriate before the adoption of the Constitution, at a time when the states were essentially independent, there can be no justification for a system today. Aside from the contingent election feature of our electoral college system, which has received nearly universal condemnation as being anachronistic, we are not aware of any precedent which would support such a system today. A system of voting by states would make it

[1647] ABA Report at p.11.
[1648] *Id.* at p.11.

possible for states representing one-sixth of the population to propose a constitutional amendment. Plainly, there should be a broad representation and popular participation at any convention."[1649]

## REBUTTAL

As far as its determination that the delegates to a convention to propose amendments should be chosen by election of the people of the United States, this suit has no quarrel with the committee's conclusions.

However, it does take issue with the statement by the committee that no precedent exists today that would justify voting at the convention by the delegates as states. A simple examination of Article V makes it clear that while a convention may be composed of elected delegates, these delegates must ultimately vote as states.[1650] The ratification process is done by states, and applications for such a convention are done by states. As has been pointed out in court decisions, when the Founding Fathers wished to specify the direct participation of the people, there was no doubt as to that intent.[1651] Clearly the Framers intended the amendatory process to be state-based, i.e., the actual voting done by delegates to be on a state basis. Thus, the delegates

---

[1649] *Id.* at p.40.
[1650] *See supra* text accompanying note 2.
[1651] "There can be no question that the framers of the Constitution clearly understood and carefully used the terms in which that instrument referred to the action of the Legislatures of the states. When they intended that direct action by the people should be had they were no less accurate in the use of apt phraseology to carry out such purpose." Hawke v. Smith, 253 U.S. 221 (1920).

are elected by the people of a state, and these delegates, as a group, cast the state's vote.

The committee's concerns that one-sixth of the population could propose an amendment and that this automatically means the state-based system is archaic, totally misses the point. The fact a group of states composed of small populations may propose an amendment is no more significant than the fact a single member of Congress may propose amendment, and he may represent a state with the least population in the Union. The fact is, it still requires three-fourths of the states to ratify any proposed constitutional amendment whether by Congress or convention, and any way that it is calculated, three-fourths of the states constitute a substantial mass of the population. Thus, it is not in the proposing that the question of population consent should be addressed, but in the ratification process where assent by a large measure of population is, and should be, mandated.

Secondly, voting by state is the only absolutely fair way to provide that each state, regardless of population, has equal say in the amendatory process of the Constitution at a convention. Provided the populations within the states are independently free to ascertain their own decisions regarding the amendment process, there is no problem with voting by states at a convention. If the vote is done by representation of population, then the large populous states will control any convention which is as dangerous as the supposed danger of one-sixth of the population being able to control it. Neither is acceptable, and thus both must be eliminated. The only equitable way to eliminate the dangers of both is voting by state, with population dealt with within each state delegation. Thus, the suggestion by the report that

voting in a convention be based on population must be rejected as it offers more dangers to the constitutional system of the United States than solutions.

## CONGRESSIONAL "POWER" AND THE CONVENTION

As part of its pre-condition maintaining that Congress has discretion regarding the convention, the ABA Report discusses the power of Congress with respect to an Article V Convention. The report states:

> "Article V explicitly gives Congress *the power to call* a convention upon receipt of applications from two-thirds of the states legislatures and to choose the mode of ratification of a proposed amendment. We believe that, as a necessary incident of the power to call, *Congress has the power initially to determine whether the conditions which give rise to its duty have been satisfied.* Once a determination is made that the *conditions* are present, Congress' duty is clear—it "shall" call a convention. The language of Article V, the debates at the Constitutional Convention of 1787, and the states made in THE FEDERALIST, in the debates in the state ratifying constitutions, and in Congressional debates during the early Congresses make clear the mandatory nature of this duty."[1652]

## REBUTTAL

The report assumes Congress has a "power" to call a convention. As the Founding Fathers intended that Congress has no discretion in calling a convention,[1653] then Congress does not possess a "power" but an obligation. The difficulty with the committee's use of the word "power" is the word implies that Congress has the option not to exercise that power.

---

[1652] ABA Report at p.20. (emphasis added).
[1653] *See supra* text accompanying notes 497-513.

Clearly, this is the path the committee intends, that a convention call is an option of Congress, not an obligation. As the report states:

"...Congress has the power initially to determine whether the conditions which give rise to its duty have been satisfied."

The report assumes Congress has a choice in the matter. As the Constitution only establishes a single condition to cause Congress to call a convention, that two-thirds of the states apply, and as Hamilton indicated,[1654] a numeric count is all that was intended as the standard by the Founding Fathers, obviously Congress cannot be said to have the "power" to "determine whether the *conditions*...have been satisfied" as there is only *one condition established by the Constitution to satisfy*. If the proper number of applications exists, Congress must call, and this numeric total requires no determination of *conditions* on the part of Congress. Congress is expected to know how to count and do basic fractional mathematics. The ABA Report, on the other hand, urges the creation of any number of pseudo-constitutional or political "conditions" so as to allow Congress as much latitude as possible in exercising its "power", presumably to either deny a convention call or regulate it to such an extent as to render its calling irrelevant and meaningless.

Yet in spite of this, the report furnishes convincing evidence that it was the intent of the Founding Fathers that the calling of a convention be so automatic and devoid of congressional influence that Congress wasn't even supposed to *discuss* the issue in any manner before calling.[1655]

---

[1654] *Id.*

[1655] "Upon receipt of the *first* state application for a convention, a debate took place in the House of Representatives on May 5, 1789 as to whether it would be proper to refer that application to committee. A number of

(Footnote Continued Next Page)

The ABA Report's position that Congress has "the power to call a convention" implies Congress has the power *not* to call a convention unless the states are in "concurrence"[1656] with Congress having the sole power to determine when this condition exists. This flies directly in the face of the clear intent of the Founders and thus must be rejected.

## THE HISTORIC PERSPECTIVE OF THE ABA REPORT

As part of its argument for a "single subject", congressionally regulated convention, the ABA Report attempts to use the historic record

---

Representatives, including Madison, felt it would be improper to do so, *since it would imply that Congress had a right to deliberate upon the subject*. Madison said that this 'was not the case until two-thirds of the State Legislatures concurred in such application, and then *it is out of the power of Congress to decline complying, the words of the Constitution being express and positive relative to the agency Congress may have in case of applications of this nature*.' The House thus decided not to refer the application to committee but rather to enter it upon the Journals of Congress and place the original in its files. 1 Annals of Congress, cols. 248-51 (1789)." ABA Report at p.20, endnote 45. (emphasis added).

It is important to remember that, like Morris and Hamilton, Madison was a member of the Committee of Style that wrote the final version of Article V. (*See supra* text accompanying note 427). Further, it was Madison's proposed article which served as the basis (with amendments from the convention) for Article V. (*See supra* text accompanying notes 418-458). Thus, Madison certainly understood the meaning and intent of Article V, and most especially the effect of the amendments on it by the 1787 Convention. Therefore, if Madison expressed that the matter should not even be referred to *committee in Congress, as this is where deliberations concerning a subject are carried out,* and then when two-thirds of the states had applied, expressed it [was] "out of the power of Congress to decline..." the only logical conclusion is that Madison, one of the *authors* of Article V, *meant* that Congress had no discretion, *including even the discussion of the matter.* Clearly, he meant that before the two-thirds threshold, Congress could not discuss the matter because that would imply Congress could deliberate on the matter, and after the two-thirds threshold was reached, Congress could not decline the matter simply because Constitution made it plain there was nothing to discuss.

[1656] *See supra* text accompanying note 1629.

surrounding not only the Constitutional Convention of 1787, but state constitutions written at the same time. The report states:

"Both pre-1787 convention practices and the general tenor of amending provisions of the first state constitutions lend support to the conclusions that a convention could be convened for a specific purpose and that, once convened, it would have no authority to exceed that purpose."[1657]

The report then cites specific examples in the Massachusetts, Pennsylvania and Georgia state conventions as examples of specific purpose conventions.[1658] In order to justify its interpretation of specific purpose conventions, the report attempts to defend this unconstitutional action by comparing it with the 1787 Constitutional Convention where accusations of the convention exceeding its authority were made. The report states:

"While the Constitutional Convention of 1787 may have exceeded the purpose of its call in framing the Constitution, it does not follow that a convention convened under Article V and subject to the Constitution can lawfully assume such authority."[1659]

But then the report retracts this contention that the 1787 Convention might have exceeded its authority by stating:

"Moreover, the Convention of 1787 did not ignore Congress. The draft Constitution was submitted to Congress, consented to by Congress and transmitted by Congress to the states for ratification by popularly-elected conventions."[1660]

Despite this, the ABA Report takes the position that:

"[O]rigins and history of Article V indicate that both general and limited conventions were within the contemplation of the Framers."[1661]

It then continues:

"From this history of the origins of the amending provision, we are led to conclude that there is no justification for the view that Article V sanctions only general conventions. Such an interpretation would relegate the alternative method to an "unequal" method of initiating amendments. Even if

---

[1657] ABA Report at p.17.
[1658] *Id.*
[1659] ABA Report at p.16. The report then added in endnote 33:
"This is because it was called 'for the sole and express purpose of revising the Articles of Confederation and reporting...such alterations and provisions therein as shall...render the federal constitution adequate to the exigencies of government and the preservation of the Union.'"
[1660] ABA Report at p.16.
[1661] ABA Report at p.13.

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."[1662]

The report then states:

"The necessity for a consensus is underscored by the requirement of a two-thirds vote in each House of Congress or applications for a convention from two-thirds of the states legislatures to initiate *an amendment*. From the language of Article V we are led to the conclusion that there must be a consensus among the state legislatures as to the subject matter of a convention before Congress is required to call one."[1663]

Insofar as the Convention history itself, the report, in abbreviated form, generally follows the history presented earlier in this suit.[1664] However, the report does not reach the same conclusions regarding the convention's authority to propose *amendments* and thus is not to be limited to a single subject. Instead, the report bases its pre-condition of limiting a convention to a single subject on the August 30 proposal. The ABA Report emphasizes the words "an amendment" and "for that purpose" in the August 30 draft.[1665]

Regarding post-Convention discussion, the report states:

"There was little discussion of Article V in the state ratifying conventions. In THE FEDERALIST Alexander Hamilton spoke of Article V as contemplating "a single proposition." Whenever two-thirds of the states concur, he declared, Congress would be obligated 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."[1666]

## REBUTTAL

[1662] ABA Report at p.18.
[1663] ABA Report at p.13.(emphasis added).
[1664] *See supra* text accompanying notes 310-458.
[1665] ABA Report at p.14.
[1666] ABA Report at p.16.

The major problem with the ABA Report and its support of “same subject”, insofar as its rendition of constitutional history is concerned, is not so much that the report gets history wrong, but that it ignores the history the report itself describes as the basis for its arguments.

The primary error of the report is in its loose usage of specific constitutional words such as freely substituting “amendment” for “amendments”. The Constitution clearly specifies both the Congress and the convention have the power to propose “amendments”.[1667] Article V clearly allows for *amendments* to be proposed *either by the convention or Congress*, and it is clear by the actions of Congress that this can involve the *simultaneous* proposal of *several amendments* on various subjects.[1668]

In a desperate attempt to prove the validity of its unconstitutional pre-condition, the report freely interchanges the two words with obvious disregard to the differences in their meaning and intent. Such free usage of constitutional words cannot be permitted where such “interpretation” leads to the complete misconstruement of the Constitution. The “s” in “amendments” can no more be ignored than the word “one” contained in the phrase “vested in *one* Supreme Court”[1669] or the “a” in the phrase “vested in *a* President”[1670] or “vested in *a* Congress.”[1671] Without these small words, it is possible to have more than one president, Congress or Supreme Court. Ignoring these small words would create horrendous constitutional issues and crises. The smallness of the

---

[1667] *See supra* text accompanying note 2.
[1668] *See supra* text accompanying note 489.
[1669] U.S. CONST., art. III (emphasis added).
[1670] U.S. CONST., art. II (emphasis added).
[1671] U.S. CONST., art. I (emphasis added).

letter or the word in the Constitution makes no difference as to its *effect* and cannot be ignored in any legitimate discussion concerning the intent or meaning of that document.[1672] Therefore, any legitimate pre-condition concerning the scope and power of the convention to propose amendments must begin at the point where the Constitution grants the convention the power to propose *amendments* and that these *amendments* may be simultaneously proposed and can cover a multitude of subjects.

The report's asserts that:

"The necessity for a consensus is underscored by the requirement [of the] applications for a convention from two-thirds of the states legislatures to initiate *an amendment*. ... [T}here must be a consensus among the state legislatures as to the subject matter of a convention before Congress is required to call one."

This assertion is inaccurate on its face because the language of Article V allows for *amendments*.[1673] Therefore, the only possible consensus that can exist between the states is a consensus to hold a convention in which one or more *amendments* may be proposed.

How does the ABA Report reach this erroneous conclusion? By basing its argument on an early version of Article V, *a version the report itself concedes was discarded by the Founders with the introduction of Madison's new amendatory proposal on September 10, 1787*.[1674] In this earlier version, the word "amendment" was used, but with the substitution by Madison of *an entirely new proposal and the decision by the Convention to discard the old amendatory proposal, the word "amendment" was likewise discarded in favor of* "*amendments.*" Thus, the reliance of the report on the August 30, 1787 version

---

[1672] *See supra* text accompanying notes 700-716,852-867.
[1673] *See supra* text accompanying note 2.
[1674] ABA Report at p.15.

of the amendatory proposal is entirely misplaced because that version of the amendatory proposal for the Constitution was tossed out by the Founders.

Any further action by the Founders, including the addition of the Gerry amendment to Madison's proposal which "moved to amend the article so as to *require a Convention on application of 2/3 of the Sts...*",[1675] was carried out on the Madison substitution, *not the August 30 proposal*. Thus, any language, meaning or intent of that proposal is irrelevant as it no longer was part of the 1787 Constitutional Convention process, having been discarded by that convention. The report constantly refers to the power of the convention to propose "an amendment"[1676] as if somehow repeating this misnomer will make it true. Despite the fact the report correctly notes the August 30 proposal was dropped by the delegates,[1677] a new proposal by Madison substituted in its place, that this new draft first authorized Congress,[1678] then later Congress *and* a convention,[1679] the equal power to propose *amendments* rather than *an amendment*, and this change was carried forward to the final form of Article V,[1680] the report acts as if none of these changes ever occurred.

---

[1675] *See supra* text accompanying note 437.
[1676] ABA Report at pp.13,20.
[1677] "As a result of the debate, the clause adopted on August 30 *was dropped* in favor of the following provision proposed by Madison:
"'The Legislature of the U-S- whenever two-thirds of both Houses shall deem necessary, or on the application of two-thirds of the Legislatures of the several States, shall propose *amendments* to this constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the Legislatures of the U.S.'" (emphasis added); ABA Report at p.15. *See supra* text accompanying notes 418-430.
[1678] *Id.*
[1679] *See supra* text accompanying notes 435-442.
[1680] *See supra* text accompanying note 2.

Clearly it is in the power of the *convention* to limit itself to a single subject simply by proposing only one amendment concerned with a single subject. But it is not in the power of Congress to mandate that the convention do this. The word “amendments” precludes Congress from doing so. Therefore, a single subject convention, where that convention is limited by Congress as a condition of the call, simply cannot be constitutionally supported. Critics and opponents of the convention will have to take the word *amendments* and deal with it.

The report attempts to use state conventions and constitutions as a basis to determine how the federal Constitution must be interpreted. The report maintains that in conventions of that time, single amendments and limited conventions were used in the states, and therefore this concept applies to the national amendment process. However, the Supreme Court, in rulings directly related to amendment process, has made it clear that the power of amendment derives from the federal Constitution, not the state constitutions.[1681] Thus, the interpretation of the state constitutions and their amendment processes have no bearing whatsoever on the interpretation of the federal Constitution.

Conveniently, the report sidesteps the fact that specific language in each of the examples used in the report allowed for a specific purpose convention *and that without such language a specific purpose convention could not be held. It further ignored the fact that no such specific purpose*

[1681] State of Rhode Island v. Palmer, 253 U.S. 350 (1920), Hawke v. Smith, 253 U.S. 221 (1920).

*convention language is contained in Article V of the United States Constitution.*

The report intimates the 1787 Convention "may have exceeded the purpose of its call in framing the Constitution"[1682] and that while it may have been

[1682] Madison rebutted this argument directly in FEDERALIST No. 40 by noting that no matter what the 1787 Convention did, it was advisory *until* ratified by the states and the people. *See supra* text accompanying note 796.

More significantly, Madison discussed *why* the Convention proposed a new constitution and basis for it. He said in part:

"From these two acts [Annapolis, September 1786 and Act of Congress, February, 1787] it appears, 1st, that the object of the convention was to establish, in these States, *a firm national government*;2nd that this government was to be such as would be *adequate to the exigencies of government* and *the preservation of the union*; 3rd that these purposes were to be effected by *alterations and provisions in the Articles of Confederation*, as it is expressed in the act of Congress, or by *such further provisions as should appear necessary*, as it stands in the recommendatory act from Annapolis; 4th, that the alterations and provisions were to be reported to Congress, and to the States, in order to be agreed to by the former and confirmed by the latter.

"From a comparison and fair construction of these several modes of expression, is to be deduced the authority under which the convention acted. They were to frame a *national government,* adequate to the *exigencies of government*, and *of the union*, and to reduce the articles of Confederation into such form as to accomplish these purposes.

"There are two rules of construction, dictated by plain reason, as well as founded on legal axioms. The one is, that every part of the expression ought, if possible, be allowed some meaning, and be made to conspire to some common end. The other is, that where the several parts cannot be made to coincide, the less important should give way to the more important part, the means should be sacrificed to the end, rather than the end to the means.

"Suppose then, that the expression defining the authority of the convention were irreconcilably at variance with each other, that a *national* and *adequate government* could not possibly, in the judgment of the convention, by affected by *alterations* and *provisions* in the Articles of Confederation; which part of the definition ought to have been embraced, and which rejected?"

Madison then continued:

"Let the most scrupulous expositors of delegated powers, let the most inveterate objectors against those exercised by the convention, answer these questions. Let them declare, whether it was of most importance to the happiness of the people of America, that the articles of Confederation should be disregarded, and an adequate government be provided...or than an adequate government should be omitted, and the articles of Confederation preserved."

Madison then said:

"The truth is, that the great principles of the Constitution proposed by the convention may be considered less as absolutely new, than as the expansion of principles which are found in the articles of Confederation. The misfortune under the latter system has been, that these principles are so feeble and confined as to justify all the charges of inefficiency which have been urged

(Footnote Continued Next Page)

permissible then, it does not mean a convention could do so now. The report misses the entire purpose and process of Article V. The purpose of the convention is to propose amendments and send them to Congress where that body decides by which method, legislature or state convention, they shall be ratified. As long as the convention limits itself to that single action, proposing amendments, it is entirely within the clear meaning of Article V.

As noted by Madison in FEDERALIST No. 40, the 1787 Convention was also in compliance with its instructions. The Convention was to report its actions to Congress, which it did, and such actions were without legal effect until ratified. Generally less discussed, but equally important is the fact *that Congress could have refused to send the proposed Constitution to the states and people for ratification, but that in the new Constitution such refusal was made impossible by the convention clause*. Thus, the report and Madison make it clear *that if the provisions laid out either in the act of Congress in the case of 1787 Convention, or in the case of Article V for a present convention, the convention is absolutely legal and lawful*. By this logic it follows if a

---

against it, and to require a degree of enlargement which gives to the new system the aspect of an entire transformation of the old."

Madison then said:

"Let us view the ground on which the convention stood. It may be collected from their proceedings, that they were deeply and unanimously impressed with the crisis, which had led their country, almost with one voice to make so singular and solemn an experiment for correcting the errors of a system by which this crisis had been produced; that they were no less deeply and unanimously convinced that such a reform as they have proposed was absolutely necessary to effect the purposes of their appointment... They must have reflect, that in all great changes of established governments, forms ought to give way to substance, that a rigid adherence to such cases to the former, would render nominal and nugatory the transcendent and precious right of the people to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness." FEDERALIST No. 40 (emphasis added in original).

convention *does not follow the provisions laid out by the Constitution*, it is unlawful and illegal.

As the report makes it clear using its own examples of state conventions that *specific, expressed language is needed for a convention to be a specific purpose convention*, and as the United States Constitution contains no such language, it follows that a specific purpose, or “same subject” convention cannot be constitutional, and that if attempts are made to limit the convention, they are unlawful, illegal and unconstitutional.

While it may be of some historic interest that state constitutions did have limited conventions, it should be remembered that a convention for a single state would deal with an entirely different set of political realities than would be faced in a national convention where several interests in varying subjects might come into play as they did at the 1787 Constitutional Convention. It is illogical to believe that delegates who in the very process of creating a national government so carefully crafted the balance between the state and federal, the large state versus the small, the north versus the south, anti-slavery against pro-slavery, would naïvely assume that in the future such a diversity of interests would never occur again and therefore limit the ability of the nation to deal with such diversity in its amendment process to that of a single subject and a single amendment at a time.

The ABA Report cites Hamilton’s discussion of the convention to propose amendments in FEDERALIST No. 85 in which Hamilton made it clear that Congress had no discretion regarding a convention. It completely ignores his point that

the call was to be based on numeric count rather than subject content.[1683] Further, it incorrectly stated that little discussion was done regarding the amendment process at the state conventions. The exact opposite was true.[1684]

In summary, the reliance of the ABA Report on Convention history is either inaccurate, incomplete or invalid and thus provides no merit to prove its assertions.

## A STATE VETO?

The ABA Report holds that the states should have the right to withdraw applications for a convention prior to the two-thirds application requirement being reached. It also holds states should be able to withdraw a vote rejecting a proposed amendment and rescind a vote ratifying a proposed amendment so long as three-fourths of the states have not ratified the amendment.[1685] Finally, the ABA Report says that states should have the power to determine whether they agree the subject of the application is to be

[1683] *See supra* text accompanying notes 495-513.
[1684] *See supra* text accompanying notes 491-521.
[1685] "Finally, we believe it highly desirable for any legislation implementing the convention method of Article V to include the rule that a state legislature can withdraw an application at any time before the legislatures of two-thirds of the states have submitted applications on the same subject, or withdraw a vote rejecting a proposed amendment, or rescind a vote ratifying a proposed amendment so long as three-fourths of the states have not ratified." ABA Report at p.12.

considered the same as other subjects proposed by other states in applying for a convention, thus creating a dual filtering system for all applications.[1686]

The report proposes that not only Congress must have a say on whether all applications satisfying the two-thirds requirement are for the same subject, *but each state shall have a say on whether its own application also satisfies the "same subject" pre-condition*. Thus, the situation exists where Congress could state that two-thirds of the states have applied for "same subject" only to have such a decision vetoed by a single state, thus defeating the convention procedure.

## REBUTTAL

The overall effect of these proposals in the ABA Report would be to create a chaotic veto power by the individual states over the calling of a convention to propose amendments by Congress. While it is unlikely a radical group could gain power nationally without great scrutiny,[1687] it is possible that such a group could infiltrate a single legislature or a region of legislatures. Such a group could, under the ABA proposed rules of permitting each state a *de facto* veto of any congressional call, stymie the entire

[1686] "From a slightly different point of view, the power to withdraw implies the power to change and this relates directly to the question of determining whether two-thirds of the state legislatures have applied for a convention to consider the same subject. A state may wish to say specifically through its legislature that it does or does not agree that its proposal covers the same subject as that of other state proposals. The Committee feels that this power is desirable." ABA Report at p.37.

[1687] *See supra* text accompanying note 792.

convention clause by use of a small number of legislators. This was clearly not the intention of the Founding Fathers. Indeed, much of the impetus for calling the convention, as Madison noted, had to do with disallowing a single state the ability to veto the desires of the other states.[1688]

Further, there is a clear conflict in the report itself between this proposal and its earlier position of allowing Congress to determine whether "same subject" had been satisfied.[1689] Assuming "same subject", which this suit rejects but allows solely for the purpose of this rebuttal,[1690] what the report proposes is first allowing Congress to determine whether the applications are of the same subject, then allowing each state a veto of that decision.

This would create complete constitutional chaos. If Congress called a convention, for example, then one state "changed" its mind and said its application was not of the same subject as what Congress had determined was the same subject, would the two-thirds threshold still be met? The report's

---

[1688] "The forbearance can only have proceeded from an irresistible conviction of the absurdity of subjecting the fate of twelve States to the perverseness or corruption of a thirteenth, from the example of inflexible opposition given by a *majority* of one sixtieth of the people of America to a measure approved and called for by the voice of twelve States, comprising fifty-nine sixtieths of the people, an example still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country." FEDERALIST No. 40 (J. Madison) (emphasis is original).

[1689] *See supra* text accompanying note 1643. "The standards...will determine...a judgment that two-thirds of the state legislatures seek a convention on an agreed-upon matter." ABA Report at p.20.

Compare this with ABA Report at p.37:

"A state may wish to say specifically through its legislature that it does or does not agree that its proposal covers the same subject as that of other state proposals." (*See supra* text accompanying note 1686).

[1690] As this suit holds that applications for a convention should be based solely on the numeric count application provided by the several states, the subject matter becomes irrelevant. Therefore, this constitutional trap, under the numeric count concept, is never sprung whereas if "same subject" is accepted, the issues raised here could thwart a Congress or the several states for years in any attempt at holding a convention. We would be repeating the same mistake, i.e., allowing individual states to veto the actions of other states, discovered by the Founding Fathers in the Articles of Confederation.

proposals violate the separation of powers doctrine at a fundamental level allowing individual states to veto lawful congressional actions as well as lawful actions by other states.

The situation is rendered even more chaotic in that the ABA report does not even allow the courts to repair the problem. Under the ABA proposals, the courts would be limited to merely declaring the matter "clearly erroneous" which would not be enough judicial review to answer the problem posed as above.[1691] Thus, such proposals must be rejected outright.

The question then becomes whether or not the states have the ability to rescind applications prior to the two-thirds mark required by the Constitution being reached. While this concept of state withdrawal may present some intuitive appeal, such as allowing that when only one state had applied for a convention, there can be no harm in its withdrawal of the application, that appeal quickly vanishes when it is realized that the withdrawal could come at moment timed to create substantial constitutional chaos. The withdrawal could be made just when two-thirds of the states have applied for a convention, but before Congress can respond. Fortunately, the general trend regarding state acts in relation to causing a federal function to occur seems to be a one-way street.[1692] This one-way street should be followed in the matter of applications. When voting, citizens do not have the power to withdraw their votes once cast. Likewise, state legislatures composed of citizens should be

[1691] "[T]he Committee believes that should be several limits on judicial consideration. First, a Congressional determination should be overturned only if 'clearly erroneous.'" ABA Report at p.28.
[1692] *See supra* text accompanying notes 894-881.

held to the same standard: the consideration of the action is made previous to the action, not afterwards.

This proposal by the ABA is nothing more than an attempt to allow for factions inside the state legislatures to stymie the Constitution so as to provide a back-up plan to those opposed to a convention should national opposition fail. It would in fact establish a system of vetoes by individual states that would not only stymie the wishes of Congress, but of other individual states. This kind of veto is clearly unconstitutional and thus deserves no further comment.

## ONLY AMENDMENTS ON SINGLE SUBJECTS

In its summary, the ABA Report states:

"In summary, we believe that a substantively-limited Article V convention is consistent with the purpose of the alternative method since the states and the people would have a complete vehicle *other than the Congress* for remedying specific abuses of power by the national government; consistent with the actual history of the amending article throughout which *only amendments on single subjects* have been proposed by Congress..."[1693]

## REBUTTAL

The problem with this conclusion is that it completely contradicts the report's earlier conclusions. The report clearly favors *heavy* congressional regulation of the convention, establishing congressional standards at every level, regulations that would determine whether Congress has to a call a

[1693] ABA Report at p.19. (emphasis added).

convention, the limits of the convention's authority and even whether Congress must submit a proposed amendment to the states for ratification.[1694] With such congressional control, the term "complete vehicle other than Congress" can hardly apply.

The second problem with this passage is it redefines the term "single subject." As with the rest of the report, the change is subtly, but effectively, done. If the meaning of the report is simply that no more than one amendment should be offered by a proposing body concerning any single subject at any one time, there can be no argument. To have otherwise would be constitutional chaos. Clearly, the ratification process does not allow for multiple choice amendments.

However, based on the context of the rest of the report, the report is obviously attempting an even tighter control over a convention to propose amendments. The report states incorrectly that "only amendments on single subjects"[1695] have ever been proposed by Congress or are contained in the Constitution. The implication is that this translates into a justification to limit the subjects discussed or proposed by a convention to propose amendments at any time. In truth, Congress has proposed more than one amendment at a time,[1696] and several amendments in the Constitution include several subjects within a single amendment.[1697] As Congress itself has not seen fit to limit

---

[1694] ABA Report at p.20. *See supra* text accompanying notes 1589-1693.
[1695] ABA Report at p.19.
[1696] *See supra text* accompanying note 489.
[1697] The First Amendment deals with religion, speech, assembly, the media, and the right to petition the government. While these rights can be lumped under a group heading such as "freedom of expression", nevertheless these are completely separate subjects and unrelated to one another except as they are placed together in First Amendment. The proof of this lies in the fact that the Supreme Court has interpreted each right in a different manner, i.e., it

(Footnote Continued Next Page)

itself as prescribed by the report, there is no reason to maintain that a convention equal in constitutional power and authority[1698] to Congress in proposing amendments can be so bound by such congressionally created constraints *unless such restraints are also placed on Congress*.

Such restraints would include having an outside body determine what subjects regarding amendments it may discuss, requiring two-thirds of each body of Congress to be in concurrence regarding the subject before any subject can even be discussed on the floor of Congress, and allowing an outside body the power to remove members of Congress from their duly elected offices should that outside body find disfavor or disagreement with any amendment Congress might propose. Obviously Congress would, or should, never agree to such terms but has no problem attempting to enforce them when it is they who are the regulators rather than the regulated.

The same subject pre-condition as proposed by the ABA requires two-thirds of the states to agree before a convention is convened on a particular subject, and it subjects the states' right to a convention to regulation or outright veto by Congress. It presents so many constitutional Pandora's boxes that the validity of the pre-condition is destroyed by the pre-condition itself.

---

has never formulated a generalized ruling applicable to all of these rights that is then applied across the board without further consideration.

Similarly, the 14th Amendment has at least three different subjects contained within it. The first subject is equal protection under the law, the second subject deals with congressional apportionment and the last subject of the amendment is a loyalty oath.

[1698] *See supra* text accompanying note 2.

In any event, the complexity of “same subject” falls away against the clear, simple intent of the Founding Fathers. The convention call is based on a simple numeric count of the states that desire a convention to propose amendments. Congressional power in the matter is limited strictly to the issuance of a call. The call consists of acknowledging the proper number of states has applied and the recommendation of a time and place for the convention to convene. The congressional power then terminates. The convention then proposes amendments which are neither subject to congressional review nor approval. The Congress then chooses a method of ratification, either through the state legislatures or state conventions, and the states vote on ratification of the proposed amendments. The amendments are then approved or rejected by the states and, with this vote, the matter ends.

## APPENDIX B--REBUTTAL

While the ABA Report cites several sources in its bibliography as evidence to support its arguments, a careful examination of the report leads to the conclusion that most if not all of its major conclusions are based on Appendix B of the report in which the actual applications by the states are discussed and summarized. In particular, the “same subject” proposal is basically justified in Appendix B. Thus the credibility of Appendix B is crucial to the credibility of the entire report.

It fails miserably in this important responsibility.

In such an important area as establishing national policy on a fundamental issue as the interpretation of the amendatory process of the United States Constitution, it is not unreasonable to expect those so

proposing to satisfy the bare minimums of accuracy. This is particularly true where authors of such a report are “professionals”, whose job it is to accurately express language in a precise form. In short, it is expected that lawyers know their facts and can demonstrate they have mastered the basics of an elementary school education before they attempt to tell other citizens how their Constitution should be interpreted. When it is shown that such lawyers do not have a grasp of such rudimentary skills, the credibility of their recommendations must be thrown into grave doubt if not outright disrepute.

Appendix B purports to discuss the history of applications by the states but is in fact nothing more than a slanted view of history by the author of Appendix B designed to discredit the applications. Much of Appendix B relies on a single work which, for whatever reason, was not deemed publishable at the university to which it was submitted. The author of the report does use a Library of Congress study, *but there is no indication the author actually made any intellectual effort to verify or to discover this vital information on her own.* Instead reliance was made entirely on other works, one of which was unpublished. Such reliance on unpublished works in the light of there being public record available brings the intellectual quality and value of the work into question.

This of lack of intellectual effort is particularly important in that the author creates as a centerpiece of her work a table purporting to show all the applications submitted up to 1973: some 356 applications, according to the table. The table is now entirely out of date as the states have submitted nearly 200 additional applications for a convention since 1973. However, ignoring its dated information there are major errors with the table that are

significant whether the date is 1973 or the present date: 1) the number of applying state applications provided by the author add up to a total of 360 applications not 356 applications, thus showing the author has questionable math skills, and 2) according to the author herself all applications are not universally accepted by all of the sources cited in Appendix B.

Intellectual honesty demands the author do independent research to come up with a definitive, verifiable single list of applications made by the states for a convention to propose amendments. The author apparently was unwilling to do this, and as the *primary sources of information*[1699] available to the author were obviously avoided, the credibility of the entire appendix, and thus the report, comes into the question.

There are other inaccuracies in Appendix B. One concerns the author's understanding of history. In the appendix, the report states: "In 1860 the secession of the lower southern states seemed probable."[1700] As the state of South Carolina seceded from the Union in December, 1860, the use of the word "probable" becomes laughable if it were not for the fact it indicates the author's historical knowledge, at least as demonstrated in this specific work, is questionable at best. As to the errors of the report such as President *Rossevelt* instead of President Roosevelt and using the word "devisive" meaning

---

[1699] There is no indication the author referred to the Congressional Record which is where all applications are filed by Congress, as did Senior Federal District Court Judge Bruce Van Sickle. Further, a second source ignored by the author of Appendix B would have been the secretaries of state of the individual states. As the ABA Report Committee was in existence for two years prior to its publishing of its report, it is reasonable to assume there was sufficient time for such research to have been conducted. In such a vital area of constitutional procedure, the use of one or the other of these primary sources is obligatory.

[1700] ABA Report at p.73.

"invented or contrived" when obviously the writer meant "divisive" meaning "divided", this suit merely assumes the author is simply unprofessional.

In Appendix B, the author completes the obvious attempt of the ABA Report to limit a convention to propose amendments in such a manner as to render this constitutional provision meaningless. As usual, the effort is subtle but nevertheless present. In discussing polygamy, the author implies that state applications must be identical in order to be valid. The report said:

> "From 1906 to 1916 twenty-six states made *almost* identical applications requesting a convention to propose an amendment prohibiting polygamous marriages."[1701]

The implication is obvious. If even one word is different in the application, such as a missing comma, then Congress can reject them. Based on the overall premise of the ABA Report that Congress shall have a substantial, if not total regulatory role in the convention, it is a logical conclusion that based on the report's premise (not that of this suit) that *if Congress does not act, there is no validity in any state action regarding a convention to propose amendments*. Phrased another way, the report contends it requires consent by Congress for a state application or action to be valid.

The ABA Report maintains the states have right to recess their applications prior to the two-thirds mark being reached.[1702] The states have submitted recessions of applications in the past as noted in Appendix B particularly in the effort by the states to rescind the 16th Amendment, *but if the ABA Report is to be consistent, these recessions must be considered*

---

[1701] ABA Report at p.75.
[1702] ABA Report at p.12.

*invalid until they are approved by Congress*. Congress has not approved any of them.

Thus, based on the report's own assertion of congressional approval prior to effect, it must be assumed that as Congress has not given its permission for the recessions to be valid, they are without effect, and all "same subject" applications presented in Appendix B are still in effect, the original applications simply having been ignored by Congress. This suit entirely disagrees with this conclusion. The report cannot have it both ways: it cannot hold the convention procedure requires congressional approval, then support the notion of independent state recession absent congressional approval. *Notably, Appendix B attempts to maintain that the problems the "same subject" applications attempted to solve have, in some cases, been resolved, but nowhere is it stated that these applications submitted by the states to resolve the problems noted no longer have effect*. Instead, the author attempts to justify congressional avoidance of the applications by maintaining the subject is no longer politically valid.[1703]

The logic of the report and Appendix B is flawed. If, as the report recommends, that state recession of applications must be permitted, it follows that such actions by the states are now, according to the opinion of the report and this suit, not permitted. If such actions were permissible under the Constitution, there would be no purpose for the recommendation. Hence, the report holds that the states may not recess their applications under any circumstances until their recommendations are accepted by Congress, at which

[1703] ABA Report at p.79-80.

time, such recessions will require the permission of Congress to be effective. Thus, currently, all same subject applications are valid.

What of the report's contention that Congress must pass on the content of applications before they are considered effective? As Congress has never acted on this interpretation of the report and could have done so at any time, thus dispensing with the applications by a simple legislative act, it is logical to assume Congress does not agree with the report's interpretation. True, legislation such as the Hatch Bill[1704] has attempted to establish the power of Congress, *but the plain fact is Congress has rejected such attempts and thus has rejected the report's assertions of congressional regulation*.

If all same subject applications are therefore valid, what is the effect of these applications? Unlike this suit's assertion that state applications are intended to cause the calling of a convention *and regardless of content have no further constitutional effect, the same cannot be said for same subject applications*.

In the table of Appendix B, the author states there have been forty-two applications by the states requesting repeal of the 16th Amendment. Even with the removal of duplicate applications from the same states, *this leaves thirty-five states applying for repeal of the 16th Amendment*. In addition, allowing for the removal of duplicate applications from the same state, *thirty-seven states have applied for an amendment dealing with apportionment in state legislatures.* The significance of this fact is that none of these applications are combined in Appendix B with the "general" applications shown

[1704] *See supra* text accompanying notes 596-608.

in that table. Such a combination only serves to make the above numbers larger, thus exposing the hypocrisy of the report even more.

*Thus, under the premise advanced by the ABA Report itself, at least two amendatory proposals should not have only triggered a convention to propose amendments, but should now be amendments to the Constitution of the United States.* This clear expression of the will of the people has been blocked by Congress, and despite the report's "support" of "same subject" there is no protest in the report of this action of Congress.

This point is obvious in the backpedaling of Appendix B when discussing the state applications. Intellectual honesty demands any published work have enough belief in its findings to unequivocally support them. If the authors of a work do not have enough belief in their own findings, how can it be expected others can have any faith in them?

This lack of faith is evident in Appendix B. The ABA Report asserts categorically that it "...considers[s] Congress' duty to call a convention whenever two-thirds of the state legislatures have concurred on the subject matter of the convention to be mandatory."[1705] The report further states:

> "Equally improper, we believe, would be standards which permitted Congress to exercise a policy-making role in determing whether or not to call a convention."[1706]

This suit will leave it to the authors of the report to explain how Congress cannot have "a policy-making role in determing whether or not to call a convention" yet "has the power initially to determine whether the conditions which give rise to its duty have been satisfied."[1707]

---

[1705] ABA Report at p.11.
[1706] ABA Report at p.21.
[1707] ABA Report at p.20.

In any event, based on the information provided in Appendix B, it is clear the states have satisfied “same subject”. Yet the report repudiates its entire assertion of “same subject” by maintaining its information is an “overview” only and states:

> “The table maximized the number of applications, i.e., whenever any source recognizes an application, it has been included in the table. For this reason it must be emphasized that the totals are valuable only as an overview and not for the purpose of determining whether any two-thirds of the states have applied for a convention on any given category”[1708]

If the summation of applications for “same subject” by the states cannot be used “for the purpose of determining whether any two-thirds of the states have applied for a convention on any given category,” what good is the summation? As the entire purpose of the applications, “same subject” or numeric, is for the specific purpose of amending the Constitution, the use of application records for an “overview” is entirely irrelevant, their only purpose being to cause a convention for amending the Constitution. Thus, they must be viewed in this context and no other. The report attempts instead to use Appendix B to arrive at a definite “maybe” on the validity of the applications (thus defeating them) while at the same time maintaining emphatic regulations by Congress exist, and that Congress, should the states satisfy “same subject,” must call a convention. Either the report holds the applications satisfy “same subject” or they do not.

Thus, as Appendix B repudiates this purpose with the above cited quotation, the conclusion regarding the report is obvious: like the applications it attempts to repudiate, it itself is irrelevant. The report provides an “overview” of a interpretation of the amendatory process of the

[1708] ABA Report at p.58.

Constitution that is so full of contradictions, retractions and backpedaling that even if Congress were disposed to write legislation along the lines prescribed in the report, it would be impossible. The ABA Report must be relegated to the dustbin. It serves no other useful purpose than to demonstrate what *not* to attempt in defining the intent of the Founding Fathers regarding Article V of the United States Constitution.


BILL WALKER---PRO SE
PO BOX 698, AUBURN, WA 98071-0698
TEL: (253) 735-8860