Congress Signals Intent to Disobey Constitution

By Bill Walker

In what can only be described as Walker v Members of Congress 3.0, Deja-vu all over again, members of Congress have once again signaled their intent to disobey the Constitution in regards to calling an Article V Convention.

In papers filed earlier this month in United States District Court for the District of Columbia, attorneys for Mitch McConnell, Senate Majority Leader and John Boehner, Speaker of the House stated they intended to move to dismiss an action brought by Montgomery Sibley (Sibley v McConnell, CV-00730). This is the same action taken by the government in my earlier lawsuits Walker v United States and Walker v Members of Congress filed in 2000 and 2004.

It must be emphasized: AT NO TIME DURING THE ENTIRE WALKER LAWSUITS DID CONGRESS ONCE INDICATE IT WOULD OBEY THE CONSTITUTION AND CALL A CONVENTION AS MANDATED BY THE CONSTITUTION DESPITE OVERWHELMING EVIDENCE THE STATES HAD SATISFIED THE ONLY REQUIREMENT OF THE CONSTITUTION REQUIRING CONGRESS TO CALL.

The Sibley-McConnell lawsuit appears to be headed down the same path with leaders of Congress obviously not even CONSIDERING obeying the Constitution in their response. The same tired arguments will be used by the government in their attempt to dismiss the Sibley action. After first remanding the case from Federal Superior Court in Washington DC where it was first filed to Federal District Court in Washington DC the government now intends to use the difference between the courts to dismiss the case: standing to sue.

In basic terms standing to sue is a court created standard whereby a court authorized under Article III of the Constitution maintains it lacks jurisdiction because the plaintiff bringing the suit lacks "standing." While there are many variations which have been created over the years by the federal judiciary the generally accepted rules of standing require the plaintiff have: (1) an injury in fact which is concrete and particularized; (2) an injury traceable to defendant's conduct and (3) the injury is redressable by a favorable judicial decision.

It is a typical action of the government which it frequency employs to avoid judicial confrontations over subjects it would rather not address. By the same token the judiciary has shown a history of avoiding issues confronting it by issuing decisions declaring the plaintiff in the case lacks standing. As there is no statutory law defining standing it is typical that whenever the judiciary wishes to avoid an issue it simply creates a new version of "standing" to do so and summarily dismisses the case. It is equally true that whenever a judge wishes to rule on an issue presented in a case, the extremes taken to justify standing on the part of a plaintiff can be described as almost comical. Thus, if a plaintiff lacks standing, the district court lacks jurisdiction and therefore cannot hear (or rule) on the merits of the case before it.

The comical examples of standing can easily be demonstrated in the Walker lawsuit. There the court ruled the plaintiff lacked standing then proceeded to issue a ruling anyway by applying a court ruling (Coleman v Miller, 1939) to an Article V Convention (an action never undertaken before) to state Congress controlled the convention method of amendment proposal in addition to its own amendment proposal power *despite* the fact the Founders *clearly intended Congress never have such power*.

However in the case of the Sibley lawsuit, a unique argument has been offered in a motion to remand the case back to Superior Court (which federal law describes as a "state" court). Unlike the District Court which is based on Article III of the Constitution, the Superior Court functions much like any state court only it deals with legal matters in the District of Columbia; it was created under the authority of Article I of the Constitution. The difference between the Superior Court and the District Court *is like any state court the Superior Court does not require standing on the part of a plaintiff to pursue a lawsuit*. Further the federal statute creating the Superior Court of the District of Columbia describes it as a court of general jurisdiction. Thus, any issue can be brought before the court *without* consideration of standing.

The argument by Sibley is elegantly simple: he acknowledges he lacks standing and therefore the District Court can have no jurisdiction. If the district court lacks jurisdiction the court cannot issue any ruling *including* a decision to dismiss the case because it has no jurisdiction to do. Instead Sibley points out that the case must be remanded back to Superior Court which can properly hear the case *because Sibley lacks standing and standing is not required in Superior Court and therefore this is the only court which legally can hear his case as it does have jurisdiction.*

The problem for the government is how to respond to the argument. In sum Sibley has put the cart before the horse by admitting ahead of time that which the government sought is true and in fact cutting the usual standing/dismissal stunt at the pass. If the government, as is its custom, states Sibley lacks standing then they will, in fact, be reinforcing his argument thus justifying his motion to remand the case back to superior court. If, on the other hand, they assert the district court has jurisdiction then they are in fact stating Sibley must have standing despite his assertion to the contrary. Sibley has several options in this case, not the least of which is demanding the government prove Sibley's standing. Sibley's motion was received by the District Court on May 22, 2015. Under court rules the defendants have 10 days from that date to respond meaning a response is due June 1, 2015 as the tenth day falls on a Sunday. However motions for extension of time have been filed by both defendants and agreed to by Sibley; thus the response may come several days later.

Perhaps it would be a good idea for the defendants to carefully consider their position before advancing headlong down its usual standing/dismissal lawsuit stance. This is neither 2000 nor 2004. The plaintiff not a pro-se but rather an experienced attorney whom some have described as brilliant. Thus for the first time in history a real attorney with full knowledge of the federal legal system is arguing for the court mandating Congress obeying the Constitution. Further, unlike myself who had several disadvantages as to evidence and law in his two lawsuits, Sibley has the advantage of knowing how the government responded, what cases and arguments it presented and so forth. So far the government has shown no deviation from what it presented in the Walker

lawsuits nor is it likely to change meaning Sibley knows what's coming before the government attorneys even present it. No doubt he will put this knowledge to good use. It should be noted both Boehner and McConnell were named defendants in the Walker lawsuits. Therefore any evidence obtained in those lawsuits can be applied to the two defendants in the Sibley lawsuit. Thus Sibley has evidence not available in 2000 and 2004 which the Walker lawsuits created. In short, Sibley is in a much better position legally to pursue this action than was the case in 2000 and 2004.

Further the political pressures surrounding a convention call as well as the general public knowledge about the massive number of state applications which exist is entirely different. In 2000 and 2004 nearly everyone accepted the lies of the John Birch Society about a convention. Thus there was great, if totally unfounded, opposition to a convention. Today, those arguments have been destroyed. In 2000 there was no source showing the massive number of state applications. Today anyone can visit the FOAVC website and read the 766 applications from 49 states and realize that it only takes 34 of those applications to cause a convention call. In 2000 many people did not feel there was a real need for amendments to make corrections in the government; today most people, while they may differ on what is needed, strongly support the need for amending the Constitution to curb numerous government abuses.

In short McConnell and Boehner might be smart to instruct their lawyers to tell the court their clients intend to obey the Constitution and that Congress will move forward to do so. If they don't it is possible these two leaders may celebrate a short-lived victory but one which I fear they may come soon to regret. The American people only have so much patience and I fear that patience is wearing paper thin. Amendments bring change through a peaceful political process; that is why the Founders created that process. But leaders like Boehner and McConnell have demonstrated a shortsightedness that will be costly in the long run. As has been shown many times in history—those who would prevent a nation from change through evolution are bound to witness it through revolution.