

## **Sibley's Olive Branch Letter Spurned "We didn't get the Memo" Say Defendants**

**By Bill Walker**

A November 19, 2015 hand delivered [letter](#) from Maryland attorney Montgomery Sibley to Senate Majority Leader Mitch McConnell and Speaker of the House Paul Ryan, defendants in the Sibley v McConnell/Ryan lawsuit, offering to negotiate the issue of Congress calling an Article V Convention was apparently rejected by the defendants. Sibley offered to negotiate ahead of formal court action after lawyers for McConnell and Ryan asserted in court papers their clients "cannot affirm or deny" they received an [earlier letter](#) sent them by Sibley on March 5, 2015 demanding Congress call the convention.

In his latest letter Sibley included a copy of his earlier letter sent by [USPS Signature Confirmation](#) which requires either the intended person or his agent sign for the document. Ryan, recently elected Speaker of the House following the October resignation of John Boehner, original defendant in the case, could have asserted he, Ryan, did not receive a copy of the March, 2015 letter as it was not addressed to him as he not speaker then. Despite this option, Ryan's attorney joined the McConnell legal team with the Nixon-style evasion of "cannot affirm or deny."

Letters, emails and phone calls to Speaker Ryan requesting clarification on his position on the issue of calling a convention have all been ignored or answered with evasive non-responses. Meantime the lawsuit continues leaving only one conclusion: Ryan supports disobeying the Constitution and favors the Coleman doctrine of absolute control of the amendment process and military overthrow of state legislatures to achieve a desired ratification vote. The Coleman doctrine comes from the 1939 Supreme Court decision Coleman v Miller in which the Court stated Congress had such powers under court-created political question doctrine.

This "cannot confirm or deny" ploy simply won't work for Ryan or McConnell however. The fact is whether they received Sibley's March letter is irrelevant. They already had knowledge that two thirds of the several state legislatures have applied for an Article V Convention thus mandating a convention call. All three members of Congress named in Sibley's lawsuit were in office in 2004. All were named defendants in the Walker v Members of Congress lawsuit filed by this author. All were served with the required legal papers stating this fact of public record regarding applying states. Their attorney of record acknowledged receipt of the legal papers by formally stating to the Court she represented all members of Congress in the lawsuit which included McConnell, Boehner and Ryan.

Sibley need only refer to this public record to prove these members of Congress had full knowledge of the state applications and thus their obligation to call a convention. The Walker suit ultimately was appealed to the Supreme Court. The attorney of record for all members of Congress at that juncture, including the three defendants, stipulated under Supreme Court rules that two thirds of the state legislatures had submitted applications for an Article V Convention. Under the terms of the Constitution, Congress is preemptorily required to call the convention if two thirds of the states apply.

Sibley's November letter states, "We are still at a stage where resolution can be had on a consensual basis and I am open to such." Sibley requested to "meet in person with a member of your respective staffs rather than just your legal counsel as I want to insure that my message regarding the duty to call an Article V Convention to Propose Amendments is received by you unfiltered through your legal counsel." He states a court order forcing Congress to call a convention would "surely have a substantial negative political impact upon each Member of Congress found to be in breach of their Article V duty."

Sibley's comment may be in reference to the fact the attorney of record in Walker lawsuit at the Supreme Court also admitted failure to call a convention when mandated by the Constitution is a violation of oath of office, a criminal offense. If so, Sibley spoke with tongue in cheek; obviously being convicted of a federal crime and having to spend a year in federal prison can have a "substantial negative political impact upon each Member of Congress found to be in breach of their Article V duty."

Despite Sibley's offer to negotiate there is little to negotiate. Either Sibley wins or Ryan and McConnell win. Either Congress obeys the Constitution and calls the convention or it does not. Assuming Ryan and McConnell act on Sibley's offer, the best course would be for these defendants to inform Congress the states have applied in sufficient number to satisfy Article V (something Congress has known [since at least 1930](#)).

According to [statements made in Congress](#) by those who wrote the Constitution, Congress has no power of debate, vote or even a committee as to a convention call. Thus, Sibley is entirely correct. Any decision by Congress in regards to a call is already determined by the Constitution. Hence any other action by Congress intended to not call is a breach of their "Article V duty." As Congress has no vote, debate or committee the usual rules of congressional procedure do not apply. It's a new ballgame; the act being preemptory and thus pre-determined means a single member of Congress can cause Congress to act either by voluntarily informing Congress of something they already know or being forced to do so by court order, called a mandamus.

Sibley's request for a court mandamus forcing the issue can therefore consist of no more than an order requiring the two defendants to read Sibley's March 15, 2015 letter completely including the list of 35 state applications from 35 states to all members of Congress. As the Constitution mandates a call based on numeric count of applying states with no other terms or conditions, this is all that is needed. Under the terms of the Constitution and the rule Congress established on May 5, 1789, Congress must then call the convention.

It appears unlikely the requested meeting will take place however. On Friday, November 20, attorneys for McConnell filed a [motion for dismissal](#), [supporting brief](#) and [evidentiary exhibits](#) in District of Columbia Superior Court. Speaking from experience, the arguments of the defendants' counsels are so predictable you already know what they write before you read the material. They are almost step by step recreating what they did in my two lawsuits of 2000 and 2004. This gives Sibley a tremendous advantage. First, he knows exactly what's coming from the government meaning he can prepare ahead of time for them. He has had years to do this. Second, this is not 2000 or 2004. A lot of evidential material unavailable to me at the time of my lawsuits

is now available to Sibley who, no doubt, will use every particle of it which may explain why he offered to negotiate with McConnell and Ryan directly. Often lawyers get in the way of resolving problems that otherwise can be solved by the parties just sitting down and talking directly to one another especially when one side has overwhelming evidence and the other side has none and is handicapped by the fact they will expose themselves to tremendous political blowback should they “win” and the court determines they have the right to veto the Constitution.

In its exhibits the government presents two items: the ruling by District Court Judge Boasberg referring the case from district court to superior court because Sibley lacked Article III court standing and the Coughenor ruling from Walker v United States/Members of Congress. The government’s case relies heavily upon the lack of standing by Sibley. The problem is [DC Superior Court](#) is an [Article I court](#), not an Article III court, that is, a court was created under authority granted Congress in Article I of the Constitution and codified under the [DC \(District of Columbia\) Codes](#). While subject to some controversy over the years, the fact is the primary difference insofar as the Sibley case is concerned between an Article I court and an Article III court is that standing is reserved to Article III courts. Hence there is no doctrine of standing in an Article I court because under federal law (the same law Sibley used to have the case remanded to Superior Court, the District Court is considered a ["state" court](#) (see section d(6)). State courts do not require standing.

More significantly perhaps is the 2000 Walker v United States Coughenour ruling the government provides in its exhibit. The repeated use of this ruling by the government only serves to enforce the proposition Judge Coughenor issued a ruling rather than a dismissal in the case. The doctrine of standing is clear: courts cannot rule on the merits of a case if they lack jurisdiction to do so. This lack of jurisdiction is usually established by the court determining the plaintiff lacks standing to sue. Hence, according to the court’s own rules there can be no ruling whatsoever on any portion of the merits of the case. Yet the government provides an example of a court ruling on the merits of the case when the court already determined it lacked jurisdiction to do so because of lack of standing. The government itself ignores this fact by only citing the ruling—“complaint seeking judicial order to compel Congress to call a Constitutional Convention under Article V raises political question more properly within the province of Congress” (see page 13).

The government cannot have it both ways: either Walker was a dismissal and therefore there was no ruling on the merits due to lack of jurisdiction meaning the convention is not subject to the political question doctrine as the court has never ruled on this matter or it was a ruling on the merits and the dismissal for lack of standing had no bearing whatsoever on the jurisdiction of a court to issue the ruling that convention is subject to the political question doctrine. The government obviously believes the ruling occurred regardless of standing scenario; otherwise it would not have presented the case. More importantly for Sibley it proves standing has no bearing whatsoever on whether a court can rule on the merits of the case when it concerns an Article V Convention call. Hence Sibley need only refer to the Walker lawsuits and show by the government’s own evidence that it believes lack of standing has no bearing whatsoever on the jurisdiction of the court to rule on the merits of a case and he defeats the entire proposition of lack of standing advanced by the government in the Sibley suit.

Combined with his showing the Supreme Court created a special class of lawsuit for Article V, an advisory opinion, based on the [previously discussed](#) (see page 32) Coleman ruling which established any court ruling is advisory. Advisory opinions do not require standing, and the government is then forced to argue on the merits of the case. The government brief specifically refers to the 2004 Walker v Members of Congress lawsuit. This reference opens the door to Sibley to present all evidence related to both Walker lawsuits including [any admissions made by the government](#) made during appeal. As already noted when the government has to deal with the merits of the case, it loses. In sum, Sibley can turn the argument and evidence presented by the government against them.

Some may argue an advisory opinion would have no legal effect and therefore be meaningless. However remember this is a political question not a legal question according to the government. Hence it is the political rather than legal effect that Sibley is after. Note the mention in his letter of “negative” political effects, not legal ones. No member of Congress can be found by a court to be in violation of the Constitution let alone having committed a crime, convicted or not. The opposition would kill them at the polls. Sibley knows this. What Judge Coughenor either didn’t comprehend or more likely didn’t care about was that by his placing control of the convention process under the political control of Congress he stripped those members of Congress entirely of all political cover. The present government attorneys don’t seem to give a damn either as to the political effect this will have on their clients.

To use modern language, the Founders gave Congress 100% political cover when it came to the convention. It was peremptory. It was pre-determined. Congress had no say in it. Therefore Congress could not be politically blamed in the slightest for anything that might occur. Of course Congress still had its amendment proposal power so if things got too bad, it could come in like a political white knight with its own proposal and save the day. Coughenor removed all that and the government attorneys of McConnell and Ryan seem bound to repeat the mistake. When the political cover is removed it exposes Congress to 100% political blame. If the convention goes screwy, thanks to the Coughenor decision (and assuming McConnell/Ryan win) then everything that happens will be the fault of Congress whether Congress calls or not.

Consider how the JBS works and reverse it. JBS bases its entire anti-convention campaign on every negativity they can imagine. Read what they state. Often it contains the phrase, “imagine what can happen...” (They do this of course because they have no facts to back up their charges). Now consider the reverse. Instead of negative, political opponents begin blaming Congress for the positive effects of a convention and their deliberate action of preventing it. “This idea (proposal, amendment etc.) could have solved this problem but this member of Congress prevented it from happening by blocking a convention and now you suffer...” How does a member of Congress politically deal with the fact he will be blamed entirely for stopping a dream from happening? He can’t. He can only stand by and watch the political avalanche fall his way as he stands up holding his Coughenor/Sibley decision and his 9 to 13 percent approval rating against a 98% approval rating of the Constitution. Frankly, if I were in Ryan’s or McConnell’s place I’d be telling my people to call Sibley and set up a meeting—NOW!

You think me wrong? Consider this for just one amendment proposal. The public record of applications shows 39 states have requested repeal of federal income tax by repealing the 16<sup>th</sup>

Amendment. That is one more state than necessary for ratification of an amendment to remove federal income tax. (Even the JBS would be forced to go along with this one as their entire movement is based on getting rid of the 16<sup>th</sup> Amendment). Consider this when you look at your next paycheck. Congress is preventing every person reading this article from getting an immediate, permanent pay increase of 20 to 30 percent. That is the average amount of money taken each year by income tax for most Americans. Think what you could do with an extra paycheck each month for the rest of your life and then tell me Congress stopping that dream won't have political blowback. Now consider that people a lot more politically connected and savvy than me can use this same approach for all 50 amendment subjects now before a convention. Ever seen how fast soft butter melts in a hot pan—that's what the hopes for re-election will be like for the members of Congress when the people find out how much they have been politically screwed.

On the other hand if McConnell/Ryan hold a meeting with Sibley and by some miracle did call the convention (and publicly renounce the Coughenor ruling) then they again assume the mantle of 100% political cover (not to mention the added political bonus of constitutional statesmanship always important in an election year). They bask in the political moment but if things go politically south they can always say they have no choice. In any event for them it is a win-win political situation; they are politically immune and in the perfect political position to be the white knight if needed.

There is more. Sibley can be playing possum on standing drawing the government into a trap. As I've said, and based on my own experience, the government's action is predictable. The fact is Sibley can assert standing any time he wants during the case. The evidence on which he would do so has been thoughtfully provided by the government in its presentation of the District Court's ruling.

In that ruling, Judge Boasberg spends much of his time berating Sibley in general before finally conceding Sibley is correct regarding federal law and remands the case from District Court to Superior Court as mandated by federal law. Much of the government's (and judge's) criticism stems from the fact Sibley was disbarred both in the state of Florida and under federal court rules in the District of Columbia. While Sibley has thus far asserted he lacks standing nothing in the law prevents Sibley from asserting standing at any time he desires prior to the court ruling on the case.

As discussed in my last article, "[Plethora of AVC Activity Marks First Week in November](#)" Gary Smith, a federal inmate, recently filed a federal lawsuit regarding the failure of Congress to call a convention. The District Court judge dismissed the suit on lack of standing stating Smith had suffered no personal injury. As I pointed out however Congress has violated federal criminal law in its refusal to obey the Constitution and call a convention and this fact has been admitted by Congress' attorney of record. Under federal civil law anyone violating their federal oath of office can neither legally seek nor hold federal office. Civil law requires no court action for it to have force and effect. This then brings into question the validity and legality of any law enacted by such persons as federal law states they have no business being there in the first place.

As with Smith, Sibley is the victim of federal law/regulation in regards to his employment and status in the community. He was disbarred in federal court based on a federal law which created the court rules under which he was disciplined. As with Smith this action raises the question of whether those who passed the law (assuming the law under which he was reprimanded was created or has since been modified since Friday, March 13, 1908) were legally authorized to do so as they are not legally entitled to hold federal office. If so, then Sibley has suffered a personal injury in fact. Due to the actions by those not legally entitled to hold federal office passing legislation they were not constitutionally authorized to create as they had no right to hold office in the first place (nor appoint the judges that actually ruled on Sibley's case) Sibley was held up to public ridicule (which continued in Sibley's lawsuit by both the government and the judge thus bringing the issue directly to the case presently before the court), deprived of income he might have otherwise enjoyed and no doubt suffered great personal tribulation as a result of the disbarment. That's about as personal an injury as you can get. As to the other two prongs of standing the government has advanced (the action is not traceable to the two named defendants and the court cannot provide redress) both are easily defeated.

As already noted, there is no vote or debate regarding calling a convention. It is preemptory. Thus the preemptory requirement trumps all other considerations—including any a court may attempt to establish to overthrow the preemptory requirement for whatever it attempts to establish. Otherwise it is not preemptory and all agree a call is preemptory. "The national rules shall have no option." Federalist 85 does not state, "Congress shall have no option," it states, "the national rulers." Obviously this includes members of the judiciary who certainly by their power of office, have effect as to the direction of this nation. Thus it is not a stretch to label them as national leaders. It also doesn't state, "The national rules shall have no option unless they can figure out a way in court to get around this."

The government of course ignores the fact members of Congress have violated their oath of office and asserts the Speech and Debate Clause as part of its defense. But the Clause contains exemptions and one of them is felony. Members of Congress cannot be "questioned in any other place" except in the case of felony. By refusing to call a convention the members have violated their oaths of office, a criminal offense. The government's argument falls to the ground as a result of this exclusion. All Sibley need do is point this exemption out to the judge and maintain under this circumstance he does have the right to "question" the acts of McConnell/Ryan in another place.

To give some idea of what Sibley may elect to use as evidence in his case, a sample examination of the government brief is in order. First the government refers to a "constitutional convention" throughout its brief. Sibley can argue the entire government brief is not germane as it refers to an issue not before the Court. This issue before the Court is Congress calling an Article V Convention or convention for proposing amendments. The term "constitutional convention" does not appear in the Constitution. Hence, any reference to that term or any argument based on that term in a brief is not germane as it does not relate to the issue before the court.

Second, the government discusses Sibley's "Article III standing". As previously discussed, this argument is meaningless. According to federal law the District Court is an "Article I" or "state" court that does not recognize standing. If the court did assume Article III standing, it would be in



direct violation of federal law (and the Constitution) designating the District Court as an Article I court, rather than an Article III court.

Third, the government ignores Congress' own prior determination on how it must deal with a convention when McConnell's lawyer, on page 3, refer to the "court...ordering a Member of Congress to vote to call a Constitutional Convention." As shown by [a statement](#) of a member of Congress, there is no vote in a convention call, nor debate or even a committee. The member of Congress that made this statement is James Madison, the author of Article V. This fact of original evidence from the person most certainly best qualified to understand the meaning and intent of Article V defeats the second argument of the government—immunity under the Speech and Debate Clause. As there is no debate, speech or vote, the clause cannot apply to the instance of calling an Article V Convention because no debate, speech or anything else protected by the clause is permitted. It is as simple as that. The convention call is "peremptory." Sibley can cite Federalist 85 and the record of the 1787 convention showing the Founders did not intend Congress have the power of veto (or even discussion) in calling an Article V Convention. Thus it never was intended Congress have a "vote to call a Constitutional Convention" as the McConnell lawyers phrase it.

Fourth, the government asserts the "separation of powers" doctrine. But that doctrine is based on the presumption of the branch of government in question obeying the Constitution, not thwarting it. The separation of powers doctrine also referred to as "check and balance" means each branch of the government has the authority (and the obligation) to check the excessive use of power by the others. It is self-evident if a branch of the government operates within the textual confines of the Constitution it cannot be in violation of the Constitution. Hence it has the protection and immunity of the "separation of powers" doctrine.

But what if a branch of government is a transgressor of the Constitution, that is, operates outside the boundaries of the Constitution by either action or inaction such as refusing to call a convention when mandated to do so by the Constitution? Can that branch then assert the immunity of separation of powers doctrine as a defense against any encroachment by another branch whose sole purpose is to place that branch back within the boundaries of the Constitution? Obviously not as this would entirely defeat the fundamental purpose of the doctrine; keeping all branches in obedience and within the confines of the limits prescribed by the Constitution.

Therefore the second, often overlooked power of check and balance comes into play. If a branch of government in its action (or inaction) exceeds a constitutional mandate then clearly under the "separation of powers" doctrine the other branches are empowered to take such steps as their powers permit to correct the offending branch and place its actions back in compliance of the Constitution. Without such power of check and balance the entire concept of check and balance and therefore separation of powers fails because in fact there is no separation of power as the irresistible urge common to all in power to seize more power lies open without limit and none of the other branches are empowered to prevent it. Hence the "check" part becomes meaningless.

So in this sense the matter is a case of "separation of powers" doctrine—just not in the way the government intends. As usual the government has provided Sibley the opening he requires to

address this fact. The [Coleman doctrine](#) which the government repeatedly refers in its brief and on which the Walker ruling encompassing the convention into the political question doctrine is based, is the Achilles heel of the government's case. True, in Justice Hugo Black's concurring opinion (as well as the Court opinion) the Court did grant the powers of absolute control and military overthrow previously referred to, but Black also stated, "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." In other words Congress must act in accordance with the Constitution; it doesn't get a free pass because it's the amendatory process. (I'll leave it to others to justify the obvious contradiction between Black's "accordance with the Constitution" and the military overthrow of state legislatures and absolute control of the amendment process). In this instance the governance of the Constitution mandates a "peremptory" response by Congress in which there is no "debate, vote or committee."

Finally, the government makes another major mistake on page 10 of its brief. The government attorneys Channing D. Phillips, Daniel F. Van Horn and Peter R. Maier obviously missed a day at law school. They stated, "Because Article V of the Constitution expressly assigns to the Houses of Congress the legislative power [emphasis added] to "call a Convention for proposing Amendments..." Article V does not assign "legislative power" to Congress as Congress is using its amendatory power which, since the [1798 Hollingsworth v Virginia](#) (see page 26) Supreme Court decision has been clearly separated from legislative power. Indeed with the prohibition by the Court (which has been strenuously obeyed by all presidents) of presidential participation in the amendment process, Congress has no legislative power whatsoever. In order to pass legislation, it must suffer presidential review. The Court has stated this cannot be as the president shall have no part of the amendment process: hence, no legislative power. Other Supreme Court decisions, no doubt quite familiar to Sibley, have since reinforced this position.

In other court events, the Superior Court [granted a stay](#) (in part) to defendant Ryan (referred to as Boehner in the order) meaning the Court will stay, or hold back, any ruling it makes until Ryan's appeal of the District Court ruling remanding the case back to Superior Court is resolved. There is a problem however. Sibley may elect to request a reconsideration of the stay on the grounds (as noted by McConnell's attorneys) that Article V mandates both "Houses of Congress" call the convention. The stay therefore may be unconstitutional. The reason: it presents the Court the situation where it may determine the Senate is obligated to call the convention but meanwhile the Appeals Court finds the case against the House may be dismissed for lack of standing. The Court ruling of course would be in line with the Constitution. The Appeals Court ruling would be contrary to the express language of the Constitution together with numerous Supreme Court rules and statements by Congress and the Founders.

Based on the seminal ruling of *Marbury v Madison* the Superior Court judge would have to decide whether to allow an unconstitutional ruling to stand and a constitutional ruling made by himself to be set aside. *Marbury* is clear: the judge would have no choice but to overturn the appeals decision and maintain his ruling in favor of Sibley. Thus the Superior Court would be in the position of having to overturn the ruling of a higher appeals court, the complete opposite of the usual procedure. The fact such a scenario is possible is why a stay in this instance is



unconstitutional; the two houses in this case are tied at the hip because of the precise language of Article V. Any court ruling applies to Congress not the individual houses of Congress. Hence, the judge cannot allow one house of Congress to thwart the Constitution while mandating the other house obey it. Nor can he endorse an action clearly in contradiction of the Constitution and therefore must, as prescribed by his oath of office and stated in Marbury declare any action the government undertakes contrary to the Constitution unconstitutional. Hence he cannot stay the suit, in part or otherwise, as both houses of Congress are peremptorily equally affected by Article V and therefore cannot be excluded by any means from any ruling he makes which causes them to obey that article. He therefore has no choice but to remove the stay and continue on with the case.

Actually this consequence is not unexpected. In the original Walker v United States (2000) Judge Coughenour established the power of lower courts to overturn higher court rulings [when he ruled](#) on my lawsuit. Coughenour quoted a statement made in my brief but ignored the Supreme Court rulings which supported its contention of peremptory obligation; a total of four Supreme Court rulings each one of which emphatically stated Congress must call a convention if the states apply in sufficient numbers to satisfy Article V. One of the decisions, United States v Sprague (1931) was advanced by the United States. Thus the position of peremptory obligation by Congress vis-à-vis a convention call was the one the United States Government took before the Supreme Court as to the intent of Article V.

Coughenour ignored these four rulings to determine the convention amendatory process was under the political question doctrine, something not stated in the four decisions as they clearly supported the peremptory obligation I stated in my brief. Thus these decisions defeated the proposition that the convention is regulated by Congress by means of the political question doctrine. As things stand right now it may be déjà-vu all over again for Sibley. I do not support the right of lower courts overturning Supreme Court decisions under any circumstance. However when it comes to constitutional obedience by Congress, the Walker lawsuits and an Article V Convention nothing much surprises me; based on its actions to date the government will do whatever it takes to avoid calling the convention.

Having established the spurious argument of legislative authority for Congress the government then attempts to use this argument to argue Congress to obey the Constitution is a non-justiciable question as the calling a convention as mandated by the Constitution and the power of the Senate to try impeachments or to “‘Judge’ the Elections, Qualifications and Returns of its Members” is “‘materially” identical. The government states on page 12 of its brief the matter cannot be decided by the judiciary because the Constitution does not provide a “time limit” of the time allowed between the submission of the first and last application for a convention call. In short the government resorts to the “contemporaneous” theory of call, that all applications must be submitted within a prescribed time limit (which as demonstrated by the government’s argument is entirely controlled by Congress). This means all Congress need do to defeat a call is simply set a time limit less than that of the time period whatever it may be, between the submission of the first and last application. This is why the Founders made the call peremptory, to prevent Congress having such authority.

It is also why the Founders did provide a time factor constraining Congress despite any government objections to the contrary. Article V reads, in part, "...or, on the application of two thirds of the several state legislatures [Congress] shall call a convention for proposing amendments..." A simple grammatical examination of the phrase plus common logic (and I realize assigning logic to the government is a stretch) yields the obvious solution. First and most obvious, Congress must call a convention if two thirds of the state legislatures so apply meaning just as obviously Congress shall not call a convention unless two thirds of the states apply. Thus a time frame is created by the submission of the last application. Until that precise moment no time frame exists as Congress is under no constitutional obligation to call a convention. The frame is extraordinarily narrow. Any more applications submitted by other states beyond the necessary two thirds do not modify, reduce or most importantly, negate the obligation created by the set of applications already submitted reaching the two thirds mark because there is no such provision in Article V. Instead these new applications begin a new set of applications that ultimately results in a second (or more) convention call. Think of a convention call like a sausage machine with the applications forming a continual stream of material. Every once in a while the sausage gets so long and is automatically cut off and you have a call. New applications then create another sausage.

The Supreme Court ruled on this interpretation (though it skipped the sausage analogy) in *United States v Sprague* (1931) when it determined there were no rules of interpretation, interpolation or addition permitted in regards to Article V. This meant, as the Court explained in its ruling, that what was stated in Article V is exactly what is intended by the Founders. The Court stated the reason for this is Article V is a procedure of amendment. As such it prescribes exactly how an amendment is proposed and ratified and under what terms and conditions this occurs. The Court has made it clear that neither the judiciary, state or federal nor the legislatures, national or state can alter this procedure. Hence Congress must obey Article V as written with no change permitted except by process of amendment.

Thus unless Article V expressly states Congress has legislative control, it has none. According to Supreme Court rulings if its words require an action the meaning of these words must be interpreted in their common and usual meaning. Thus the phrase, "on the application" provides all the time instructions required. Webster's Dictionary defines the word "on" as being a word "used as a function word to indicate position with regard to place, direction, or time; especially occurrence at the same time as or following or as a result of something; "will send a check on receipt of the book." Thus the word "on" means whenever the final application is submitted, the convention call shall occur "at the same time." The government argument is defeated by nothing more than a simple read of the Constitution.

There are other details of the government's brief which Sibley will no doubt exploit as he has a great deal of rebuttal material at his disposal. Much of it is available because the government has removed any possibility of objection by introducing the evidence themselves in court. The government will be hard pressed to refute it as much of it comes from Congress itself.

The experience of my lawsuit proves when the government is able to use the hypocrisy of standing it won the argument in lower court. As then, the government now relies on that hypocrisy as their primary defense. Sibley is no fool however. He knows what happened when

my lawsuit reached the Supreme Court and Court rules forced the government to actually address the merits of the issue without having the ability to use standing as an argument. They folded and conceded I was correct as to fact and law. Sibley has found a way to bring the merits of this issue to the lower court level while still reserving the right to assert standing any time he chooses in the proceedings. Therefore every argument the government presents in its limited arsenal can be defeated. There is every chance Sibley will prevail in this lawsuit.