Court Dismisses Sibley, Appeal Underway
By Bill Walker

With a one sentence dismissal on January 11, 2016, DC Superior Court Judge Maurice A. Ross kicked the federal lawsuit by Maryland attorney Montgomery Sibley into the appeal process. Sibley has already filed initial paperwork in the appeal process. In the meantime, Paul Ryan, Speaker of the House, filed a notice with the United States Court of Appeals for the District of Columbia Circuit regarding the dismissal.

Frankly, the comments from those who have dealt with Ross in court such as "falling asleep during oral argument", "he'll rule against you no matter what the law is", "biased and careless", "Should know the law. He doesn't," hardly qualify as sterling recommendations for a judge charged with one of the most critical decisions in judicial history—whether Congress must obey the Constitution. Judge Ross didn't even bother to give the slightest explanation of his reasons for his dismissal. Thus his action leaves a lot of questions unanswered. For example, if Congress must obey the Constitution and as most people agree a convention call is peremptory on Congress but the courts refuse to enforce this requirement when Congress is clearly recalcitrant, does this mean Congress has the same power of veto over all portions of the Constitution?

Hopefully, the appeals court will at least make a passing nod to the Constitution and a "decent respect for the opinion of mankind" and regardless of its determination explain how the Constitution can still have legal effect if its peremptory word "shall" is disregarded by a branch of government. This is not a small question. The word "shall" is the operative, limiting word in the Constitution. If it can be breached for whatever contrivance any branch of the government chooses to make and the courts go along with this, then the Constitution is finished as the governing document of this nation.

Sibley's lawsuit is proceeding along the exact same course as my lawsuits, Walker v United States and Walker v Members of Congress. While there is a great distance yet to go before this case reaches the Supreme Court and it will make no mistake it will reach the Court, I predict the government will face the same dilemma they faced in my lawsuits: Supreme Court rule 15.2. In sum that rule forces the government to argue the merits of the case rather than rely on standing (which is what so far all the government has argued). In briefest terms Sibley argues the Constitution mandates Congress must call a convention, has failed to do so and under these circumstances the court is required under its oath of office to enforce the Constitution and require Congress call the convention. Under Rule 15.2 the government will have to explain, finally, why it is immune from obeying the Constitution and is not permitted to use standing as an excuse for refusing to do so.

All I will observe at this time is when it came time for the government to argue against my presentation to the Supreme Court it quietly faded away and conceded as stipulated by Rule 15.2 that my presentation was correct as to fact and law meaning that a call is peremptory and based on a numeric count of applying states with no other terms or conditions. Perhaps this go-around the Court will grant certiorari and take the opportunity to air the issue on its proper stage of interpretation and also take the occasion to resolve several other unanswered questions about a convention that have plagued it thanks to such groups like the John Birch Society (JBS) who

have always been long with objection, miniscule with evidence and invisible with answers. In short, maybe the judiciary will do its constitutional job for a change.

Or perhaps the Court will run like Judge Ross did and plunge the question of the validity of the Constitution and government obedience further into the abyss. A recent survey showed nearly 75 percent of Americans are either "angry" or "frustrated" with the government. Such a condition hardly bodes well if Americans learn the Supreme Court has ruled the Constitution which has enjoyed a 98 percent favorable rating for at least 40 years no longer controls the government. It only required 33 percent (or less) of the American population to be "angry" or "frustrated" with the government to trigger a revolution. It required slightly less than a majority in certain states to trigger a civil war. So it is not all together hyperbole to suggest such an event might trigger a second civil war if a convention which is the constitutional mechanism intended to defuse such anger and channel it into constructive change of the national policies, is thwarted by the government.

Evidence of growing dissatisfaction and the use of the Article V Convention to resolve such dissatisfaction is appearing almost daily in the news. The recent endorsement of presidential candidate Senator Marco Rubio has raised the issue to national prominence (not to mention clearly demonstrating that not all in Congress support the opposition to a convention expressed by McConnell and Ryan in the Sibley lawsuit). More recently Texas Governor Greg Abbott released his proposed "Texas Plan" calling for nine amendments proposed by a convention to address perceived issues of national importance.

Beyond observing some of his proposals have already been submitted in already filed applications by the states, I will refrain from any discussion of the specific amendment proposals set forth by Abbott. However his proposal and the positive reaction it has received in many political circles are putting many in the Article V movement in a difficult position. It is no secret that many supporters of a convention do so based on the work of Robert Natelson. Summed succinctly Natelson favors a limited convention of one amendment subject with total delegate control in the hands of a few select state politicians who according to the state laws passed in several states, have the right to charge any delegate failing to obey "instructions" from these politicians with a felony crime. The amendment subject is pre-determined by these same politicians and it is important to note that these state laws only allow for a single subject amendment convention, not a multiple subject convention. Thus, if Natelson succeeds the one subject/one convention principle prevails.

In contrast the public record of the 1787 convention, statements in Congress, an official count by Congress in 1930 and several Supreme Court rulings (as well as the admissions in the Walker lawsuits) all agree the proper mode is a freely elected convention with no pre-determined agenda of amendment subject which is then able to discuss all subjects in the state applications (some 50 subjects in all) and make proposals based on these applications as well as addressing other concerns individual delegates may present.

Governor Abbott favors Natelson's position and so states in his plan. Hence he believes in order for applications to "count" such that Congress is mandated to call a convention, all applications must all be on the same amendment subject meaning the states determine the amendment subject

before a convention. Only under this circumstance is Congress mandated to call a convention according to Abbott. Ignoring the recent announcement by NARA that all applications submitted by the states to Congress are the property of Congress and hence any decision regarding same subject would be that of Congress instead of the states, Abbott's "Texas Plan" presents a very real problem to the "limited-same subject" convention advocates.

Simple mathematics leads to some very troubling conclusions: (1) as Abbott believes a convention cannot be called unless 34 applications on the identical amendment subject are submitted by the states, this means 306 new applications must be submitted to Congress by the states before his plan can even be considered by a convention or conventions. (2) As with all same subject, limited convention advocates, Abbott believes states can rescind their applications at their choosing. Ignoring the facts that Supreme Court rulings don't support this, that such power, if it existed, is congressional rather than state power, and this myth was created by the JBS to further its anti-convention campaign thus having no basis in law or Constitution, obviously, even as Abbott's underlings labor to create applications, convention opponents will be busy at work rescinding them thus lengthening the time before a call occurs (most likely by years).

(3) Based on the average current rate of one application submitted every eight months to Congress by the states this means Governor Abbott will achieve his goal of 306 new applications in approximately 240 years. This does not take into account that there is currently a 30 year moratorium on public access to these applications once they are turned over to NARA by Congress, an event that occurs at the end of each congressional session. Hence the actual time is closer to 270 years or the year 2286. (4) There is no evidence in the governor's presentation that supports same subject. Indeed the public record of the 1787 Convention clearly shows the Founders rejected the proposal of amendment by the states (allowing Congress to be the "convention") in favor of state applications causing Congress to call a convention to propose amendments meaning the purpose of the applications are to cause a convention call rather than to propose an amendment. Nevertheless died-in-the-wool same subject advocates press on despite a total lack of supporting evidence.

(5) By refusing to accept that already submitted applications "count" the governor accepts the premise that while he is spending the next 270 years gathering his applications to cause the convention or conventions to propose his "Texas Plan" they will, at some point, for some unexplained reason still fail to "count"—another condition supported by same subject advocates usually referred to as the "contemporaneous" condition. (6) As Abbott has already announced he favors the Natelson approach of limited convention/single amendment subject it is therefore obvious his "Texas Plan" will require nine conventions to address his nine amendment proposals (starting of course after the year 2286). (Even if the "Texas Plan" proponents assert that a convention could be held as each set of applications are gathered meaning the first convention would occur in approximately 52 years (22 years to gather the applications, 30 years delay before they are publically available) or the year 2068, that still is a long time to wait—Abbott (age 58) might even be out of office by then since he would be required to serve at least 13 four year terms of office and would be 110 years old).

On the other hand, if the position of a peremptory numeric count with no terms or conditions is accepted as the proper method of application count (thus eliminating the pre-determined amendment subject, rescissions and contemporaneous conditions) for both Congress and the states, and given that according the Congressional Research Service it requires, on average, one year eight months to ratify a proposed amendment conceivably the “Texas Plan” in its entirety could be in force by 2019, a difference of 267 years as the states have long since satisfied the two thirds requirement of Article V. Unfettered by same subject/single convention, the convention could consider the entire plan simultaneously. Frankly I am loathe to speak on behalf of others but if I were a same subject advocate or wanted to actually see the “Texas Plan” come into being in my lifetime I’d swallow my pride, admit I was wrong politically, legally and constitutionally and favor the elected convention/numeric count/peremptory call/no rescissions/all applications count mode. Otherwise I’d suggest those unwilling to do so begin an immediate investigation into cryogenic preservation.