

An Article V Convention Call— Tennis Anyone?

By Bill Walker

An FOAVC member, Mr. Ric Johns of Gering, Nebraska, recently sent a series of emails to his [United States Senator Ben Nelson](#) asking why he Congress has not obeyed Article V and issued a convention call as required by the Constitution.

Mr. Johns asked, “I wanted to get out thoughts on the lawsuits brought against the United States in 2000 [[Walker v United States Brief](#), [Walker v United States](#)] and the Members of Congress in 2004 [[Walker v Members of Congress](#)] by Bill Walker. I understand that these lawsuits pertain to the congress not following the Constitution by ignoring Article V. The research I did unveiled that all 50 states at some point have petitioned the congress for an Amendment convention, for a total of 523 times. Whereas Article V allows; ‘where upon the application of the legislatures of two thirds of the several states, the congress, shall call convention for proposing amendments.’ Whereas two thirds of the 50 states would be 34 needed to apply and we have had 523. I’m curious what the hold up is.”

(At the time of Mr. Johns’ original email, FOAVC was still compiling photographic copies of the Congressional Record, which show the actual texts of the applications from the states for an Article V Convention. The number of applications has risen from 523 to [750 applications](#) since the time of the email.)

Mr. Johns continued in his email, “Our elected officials should not get to pick and choose what parts of the Constitution they will follow and which they will not. We are a nation of laws, and with the United States Constitution being the foundation for those laws. We the People cannot have that foundation being chipped away by anyone. The foundation must be solid. Everything without foundation collapses. I would urge you to check into this. Get the media coverage needed and pound on desks to get the convention started.”

Mr. Johns received no response from Senator Ben Nelson who apparently was too busy to respond to one of his own constituents. Undaunted, Mr. Johns sent a second email a few months later to the senator which read, “The Supreme Court has in the past shown an opinion on Article V of the U.S. Constitution. With these opinions in mind and setting precedence, I would urge the congress to establish a way for the applications presented by the states to be counted and when the magic number is reached, to do as our constitution demands. Any thing less is a violation of the oath of office. Simply waiting for the Supreme Court for a new opinion on a lawsuit they classified as pending 2.5 years ago is just an excuse to postpone representing the state of Nebraska and the people within it. Other than a loss of power over the states, I see no reason to put this off any longer. No comment on a pending lawsuit is understandable. Would you comment on an Article V Amendment Convention?”

Senator Ben Nelson finally responded to Mr. Johns in a return email.

The senator stated, “Dear Ric, Thank you for your recent e-mail inquiring about lawsuits brought against the United States and members of Congress. As you know the government of the United States is separated into three branches, each with a limited scope of authority. Any interpretation of pending litigation or interpretation of the United States Constitution would fall under the purview of the United States Judiciary. It would be inappropriate for me, as a United States Senator and member of the legislative branch, to intervene in a matter under the purview of another branch of government. Therefore, I encourage you to contact an attorney to discuss the legal proceedings you have mentioned. Thank you again for writing. I regret I am unable to be of more direct assistance.”

Senator Nelson’s Pontius Pilate attempt to disown an Article V Convention call by blaming the judiciary fails in light of public record. First, Senator Ben Nelson was a *named defendant in Walker v Members of Congress*. For him to assert he has no understanding of the lawsuit is therefore ludicrous. Second, the federal courts concluded the lawsuits referred to by Mr. Johns before he sent any email to Senator Nelson. Hence, there was no restriction preventing the senator from commenting on them. His separation of powers excuse is bogus. Members of Congress comment on court lawsuits all the time; just listen to the news.

The facts of the Walker lawsuit explain why Senator Nelson avoided Mr. Johns’ questions about an Article V Convention. The lawsuit stated all members of Congress (including Senator Nelson) were in violation of violated federal criminal law by refusing to call an Article V Convention. The suit allowed for a member of Congress publicly advocated calling a convention as required by the Constitution not be a defendant in the case. No member of Congress, including Senator Nelson, took advantage of this exclusion. All members of Congress chose to join against the lawsuit.

As *Walker v Members of Congress* asserted members of Congress were in criminal violation of their oath of office for refusing to obey Article V, logically, to avoid criminal liability, the senator and other members of Congress would simply obey the Constitution and call a convention. Beyond question Senator Nelson, as well as all members of Congress, under the terms of [federal law](#) voluntarily joined against the lawsuit to declare a right to scrap the Constitution. This decision to publicly advocate a belief that members of Congress have the right to overthrow our constitutional form of government by refusing to obey Article V constituted the actual violation of criminal law.

The Solicitor General of the United States acted in his official capacity as solicitor general and served as attorney of record for all members of Congress, including Senator Nelson. In this dual capacity the Solicitor General acknowledged formally and officially before the Supreme Court a convention call is [peremptory](#) upon Congress. He acknowledged the basis of a convention call is a simple numeric count of applying states with no other terms or conditions. He acknowledged refusal of the members of Congress to issue such a call is a criminal violation of the members’ oaths of office. Given the

position of Congress' own attorney, logic seems to dictate members of Congress would want to obey the Constitution. However, in this instance, Congress decided to commit a criminal act rather than obey the Constitution.

Perhaps political considerations motivated Senator Nelson and his fellow criminal cohorts to scrap the Constitution rather than obey it. This is unlikely. In most congressional decisions, the political effects (read that political risk) on members of Congress are the primary consideration in any decision of Congress. Such things as constitutional compliance are seldom if ever considered in the political equation in the Beltway. However, a convention call establishes a new set of rules. It is preemptory. This fact nullifies all political risk for the members of Congress. Regardless of any political consequence, Senator Nelson and the members of Congress can claim, as a call is preemptory, any blame attached to a convention belongs with the states that submitted the applications, not them. In short, Nelson and his criminal cohorts can play the role of Pontius Pilate again. However, these politicians must hope everyone ignores the fact an Article V Convention is contained within the Constitution thus making it simultaneously federal as well as state in nature meaning both share equally in any blame or success. A future column will explore this aspect of the convention.

Given this fact obeying the Constitution avoids the criminal issue altogether, only Senator Nelson can explain why he decided to join against Walker v Members of Congress and commit a criminal act. Only Senator Nelson can answer why he believes he as a United States senator has the authority to veto the Constitution. Only Senator Nelson can provide the unique, intimate knowledge information he, as a defendant, received. As a defendant, Senator Nelson was privy to all details of the suit. As the court imposed no gag rule, the senator was free to discuss any detail once the court concluded the suit. As a defendant, the senator received all documentation in the lawsuit filed in federal court. He received all communication from his attorney of record. In his official capacity as United States senator, Nelson also received any official communication required by federal law related to the lawsuit.

Part of this official communication included a [530d Report](#) required by [federal law](#), circulated among the members of Congress by the Justice Department before the members decided to join against the lawsuit. This federal law requires the Justice Department to legally justify to Congress why Congress has the right to veto the Constitution regarding an Article V Convention call. Obviously, Congress has used this justification since the Walker v Members of Congress lawsuit in such unconstitutional acts as purchasing private corporations or regulating health care where no constitutional provision permits such government acts. As the report justified why Congress had the right to veto the Constitution and Senator Nelson obviously supported its findings by his deciding to join against the lawsuit, why didn't the senator simply refer Mr. Johns to this report instead of making some bogus separation of powers statement? In short, why didn't Senator Nelson answer the question using *clearly legislative material instead of trying to divert the inquiry by erroneously blaming the judiciary for something that is clearly entirely the fault and responsibility of Congress*? Only Senator Nelson can give that answer.

Why does the government keep this report secret when it serves as the basis not only to veto Article V but other parts of the Constitution as well? How do we know this report is the basis for other constitutional violations? Because long before the government began buying up American enterprises, planning how to regulate individual American lives through health care regulation, it determined it had the right to veto the Constitution and refuse to call an Article V Convention despite the express provisions of Article V mandating it do so.

As [public record shows](#), since early in the 20th Century, Congress has been obligated to call an Article V Convention. This public record proves the decision to remove the right of the people to correct violations by the government through constitutional means was the first target of those in government bent on that document's destruction. Aiding and abetting this conspiracy are such groups as the [John Birch Society](#) who preaches a convention threatens our Constitution. The JBS wants people to ignore the fact that to accept the premise a convention can scrap the Constitution first means accepting the Constitution can be scrapped at all. By accepting a convention must not be called when the Constitution mandates it, the JBS succeeds in having people scrap the Constitution *without a convention ever been held at all*.

Senator Nelson was a named defendant in a federal lawsuit specifically addressing the issue of a convention call. It is inconceivable before asserting his "right" to veto the Constitution, he and all members of Congress congressional staffs costing taxpayers [billions of dollars](#) annually, would not research the legal opinions of the Supreme Court. The research, easily obtainable at any competent law library or Internet site would have shown the peremptory obligation of Congress to call an Article V Convention under the terms of Article V is well settled law. The Supreme Court has expressed numerous [general opinions](#) that the government must obey the Constitution. Further, the court has ruled no less than three times (without a single dissenting vote) Congress must call a convention. The court has specifically stated in three separate opinions ([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)) if the states apply for a convention call, Congress must call a convention.

The courts have stated a peremptory convention call is the responsibility of Congress, terming the language of Article V, "plain in meaning requiring no need to resort to rules of construction." In other words, what you read is what you get. As such, the response of Senator Nelson to Mr. Johns is like a badly played game of tennis. Neither side wants the ball to remain on their side of the court. The senator deflected the Article V Convention ball out of the congressional side of the court (where it belongs) into the Supreme Court side of the court with his response all the while the Supreme Court attempts to do send the ball back with its decisions. Meantime, the ultimate goal of Senator Nelson and his fellow congressional criminal cohorts maintain their ultimate goal: to thwart and scrap the Constitution.

Given the facts of an Article V Convention call, clearly not only does Senator Nelson, and others have a lot to explain about scrapping the Constitution, he has an obligation to stop playing tennis with this constitutional obligation. Even the senator's own attorney has admitted he has committed a criminal act. Isn't it time the senator as well as the rest of Congress came clean with the American people about an Article V Convention?