The Misconstrued Article V Application
Making Life A Lot Simpler Regarding Article V

By Bill Walker

If people interpreted all the Constitution as they interpret the Article V convention clause, spinning its simple, plain words into whatever they please, our country would be more of a mess than it is now. The president would be a federal judge, Congress would be an army and the judiciary would be marching in the streets under command of who knows whom. Any reasonable discussion of Article V and its true meaning and intent must begin by presenting the actual words of Article V from the United States Constitution and *reading those words for what they actually state, no less and no more*:

"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."

Any discussion regarding Article V usually ignores the portion of Article V beginning with the word "Provided..." That part of Article V contains two provisions (one expired), which prohibit specific amendments to the Constitution. However, to ignore this portion of Article V sets in motion the misunderstandings most people have regarding the amendment procedure of the United States Constitution. Therefore, the intent and meaning of these two amendment prohibitions is as important to understand Article V as the rest of the Article. Further, Article V is part of a larger document, the Constitution. The Supreme Court made it clear in Marbury v Madison (5 U.S. 137 (1803)) that something either is or is not constitutional; that between these two points there is no middle ground. Hence, any "interpretation" of Article V (or any part of the Constitution for that matter) must adhere steadfastly to a specific dogma often overlooked: the interpretation must be constitutional in all respects to the *entire* Constitution rather than just a part of it. Any interpretation of any constitutional clause cannot be correct if that interpretation results in it being constitutional in one portion of the Constitution, yet unconstitutional in another.

So, what does the two often overlooked provisions of the Constitution tell us? The first provision, prohibiting an "**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**..." refers to the importation of slaves

and prohibition of a federal income tax. More importantly, this portion of Article V informs us of the ***purpose*** of Article V amendments. This purpose is so obvious statement should not be required. Experience however proves otherwise. The purpose of amendments is to amend (or affect) already existing clauses within the present Constitution. Our form of government is a limited federal government. So is our Constitution. It is a limited constitution. The Constitution does not address, nor intended to address, every issue, every subject, and every proposition a nation might face. The intent was to structure a system of government, which, in turn, can address such issues.

If, however, as is now the case, that structure was inadequate, after careful deliberations, it allowed alterations in order to remain adequate to the needs of the nation. In short, by the use of amendments altering the structure, the Constitution was to remain a "living Constitution." ***The government was not supposed to spread like primordial ooze across the countryside consuming everything in sight.*** Only by permission of amendment within the Constitution was the government intended to alter thus always keeping the government in check within the structure of the Constitution. The Founders who wrote our Constitution realized the Constitution was itself a limiting document and thus limited our amendment system to amending what they originally wrote and no more. Thus, anyone who suggests either amendment proposal system be it Congress or convention, is unlimited in scope is wrong. Neither system can constitutionally propose an amendment unless that proposed for amendment is already contained within the present Constitution.

To anyone who believes I am incorrect in this assertion I invite him or her to show where any amendment to the Constitution does not to relate to an earlier provision of the Constitution. Th rarely cited principle is so ingrained within the American legal system but is fundamental to understanding Article V. The amendment system can only amend the present Constitution and no more.

The second provision of Article V, "**that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate**" usually is referenced only to show the Senate of the United States must always exist. It is impossible to ratify an amendment depriving a state of its equal senate suffrage in compliance with constitutional requirements. The Constitution mandates amendment ratification occurs with three-fourths consent of the states. Because of language regarding senate suffrage, any proposed amendment effecting senate suffrage requires unanimous consent of the states in order to be ratified as those states not giving consent would still be entitled to "equal suffrage in the Senate meaning the senate would still exist in some form. As an amendment becomes "**valid to all Intents and Purposes, as Part of this Constitution**" at three fourths ratification by the states it follows such amendment cannot continue to be ratified once it has become "part of this Constitution" as the question of ratification is to decide *whether or not an amendment proposal will become "part of this Constitution."* Once ratified, a proposed amendment is no longer is a proposed amendment but part of the Constitution. The question of ratification therefore ends including any effect of any consent by any state that has not already addressed the issue. Thus, the plain language of Article V prevents such an amendment proposal.

What most people overlook regarding this part of Article V is the Founders based their instructions within Article V on a numeric count of states rather than subject of amendment. In order to prevent a specific amendment from ever occurring, the Founders relied, not on a specific amendment subject title, but *a numeric ratio* (1:1). By mandating amendment occur at a lower ratio (.75:1), they achieved their goal of making the specific amendment subject, described not by title but by constitutional function, *numerically impossible to achieve*. The reason is obvious. Ignoring specific issue prohibition is no more difficult than renaming it. Realizing this, the Founders based the Article V amendment process not on issue or subject, but on universally understood numeric ratios to determine whether a proposed amendment satisfies the amendment procedures of Article V. In sum, Article V describes all amendment processes by numeric ratio. By this method, the intent of the Founders remains consistent and intact instead of vulnerable to the political whims of amendment based on issue or subject.

These universally understood ratios present a clear, plain text requiring no interpretation or assumption. As no interpretation is required, no interpretation is permitted. As stated in United States v Sprague (282 U.S. 716 (1931)) the Supreme Court emphatically stated no interpretation or "rules of construction" apply to Article V. Thus, what Article V states (**and no more**) is the correct "interpretation" of Article V. Conversely, if Article V does not describe a process or issue, that issue or process is *not* part of the amendment procedure of Article V of the United States Constitution. In other words, that issue or process is unconstitutional.

In Sprague, the Supreme Court (agreeing with the United States government's position on the issue of interpretation of Article V) stated, "***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 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. ..."

Little wonder opponents and proponents reading more in Article V than it really says ***never cite Sprague***. Indeed anyone considering any statement in discussion of Article V should first ask the speaker/writer his or her opinion on Sprague. If the speaker/writer says they never heard of it, ignore them. (Of course, if you examine most opinions regarding Article V you will see virtually ***none of them*** cite any official record or reference whatsoever to back their assertions). Naturally, opponents of an Article V Convention such as the John Birch Society whose doom and gloom argument depend on Article V misinterpretations are the worst offenders. However many proponents for an Article V Convention are equally guilty of reading into Article V what they want it to say rather than what it actually states. In both cases their reason for ignoring Sprague is obvious: it prevents them from creating a fantasy world of amendment process and forces them to deal with the reality of the plain and fundamental language of Article V.

Now that it is established that no interpretation in permitted in Article V and therefore that its plain language must be read as stated, it follows the more significant portions of Article V can equally be understood. It is amazing how many people easily understand it requires a two thirds vote of both houses of Congress to propose an amendment, yet when these people discuss an Article V Convention the second use of the same word in the same sentence "two thirds" suddenly acquires a thousand different meanings. *Obviously if two thirds is a numeric ratio in one part of a sentence, the rules of grammar dictate the word must have the same definition in its second usage unless that sentence so designates otherwise.* Article V does not so designate a difference. Indeed the *only* definition of two thirds is a numeric ratio. That definition applies whether that ratio refers to the number of members of Congress in each house that must vote for an amendment proposal or the number of states that must apply for a convention call. Similarly, most people seem to understand the ratio of states (three fourths) needed to ratify a proposed amendment. In sum, for whatever reasons, people accept the concept of numeric absolutes of Article V when it comes to proposing amendments by Congress or state ratification but do not accept this concept of numeric absolute for the convention. In short, they misread Article V.

Unless one accepts virtually everyone who misreads Article V does so because they flunked grade school arithmetic and grammar, there only possible explanation for the contradiction of people clearly understanding the meaning of two thirds in one part of Article V but misunderstanding its meaning in another part. Obviously, people read more into Article V than its plain meaning allows. This is primarily because of the constant lies by John Birch Society. The lies are to obfuscate the plain language of Article V pasting all sorts of meanings to its language the Founders did not intend nor the courts permit. However, the John Birch Society cares little for the Constitution and less for the law. They focus on destroying the Constitution by spreading lies about its meaning and intent. People only accept lies as truth when they let liars do their thinking for them. People only discover the truth when they think for themselves. Americans have let JBS do their thinking for them about an Article V Convention.

A prime example of these lies is the Birch Society's complete misrepresentation of the convention clause. ***Without question the phrase "...on the application of the Legislatures of two thirds of the several States, [Congress] shall call a Convention for proposing Amendments..."has to be the most misconstrued part of the United States Constitution.*** The reason is because the John Birch Society makes everyone believe the clause says Congress "...shall call a *constitutional convention for the purpose of writing a new Constitution, throwing out all our rights and overthrowing the conservative movement putting in its place instead a bunch of liberals bent on our destruction*." The word "convention" is used only **once in the Constitution**. ***Nowhere in the entire Constitution is the term "constitutional convention" used.*** **Therefore, as the term is not used any "interpretation" using that term cannot be valid.** An Article V Convention, amendments convention or convention for proposing amendments are only correct only legitimate, valid words that can be used to describe the convention. The term of "convention for proposing amendments, and its obvious, plain meaning require no

interpretation; the purpose of a convention is to propose amendments to our present Constitution and no more. If this were not true, then the Supreme Court would have been obligated in its Sprague ruling to have stated this and interpreted it.

As the term, "convention for proposing amendments" can only mean that the purpose of the convention ***is to propose amendments to the present Constitution*** this term "limits" the convention to that sole purpose. Everyone opposing a convention says he or she want to "limit" a convention but their meaning is different from that of Article V. Limiting a convention is described by these people as meaning limiting a convention to proposal of a specific amendment issue *and forbidding the convention from consideration or passage of any other amendment issue*. The plain language of Article V prevents this sort of "limitation." The Constitution allows a convention to propose "amendments" rather than "amendment" meaning *an Article V Convention cannot be limited to proposing a single amendment issue if the convention is disposed to propose multiple amendments on different amendment issues.* Only the convention can limit itself to proposal of a single amendment issue *simply by not proposing any other amendments*.

What people *really* want when they say they want a "limited" convention is one that is "limited" to an amendment agenda **they politically favor and want to see in the Constitution**. In short, they want the game rigged. The Founders never intended the convention to be "rigged" so special interests, private or government, could control it. As with ensuring the states could never be "locked out" of the national government with their use of numeric ratio in Article V, the Founders made control of the amendment process, something earned, not given. Hence, amendment control comes not from rigging the game, but advancing the best ideas.

If amendment subject was the basis on which a convention call was determined then clearly a "limited" convention, one limited, not to a specific constitutional purpose (proposing amendments), but one "limited" to a specific, pre-determined political outcome would result. If so, why bother electing delegates to a convention that is nothing more than constitutional farce? In order to "limit" a convention to a specific issue it follows that issue *must* be more than just a subject *but a specific pre-determined amendment outcome as well; e.g., an amendment favoring abortion or opposed to gun control.* Thus, outcome is pre-written; debate precluded. Why even elect delegates in the first place? With debate decided and outcome prearranged *what would there be for the convention to deliberate*. Obviously, such circumstances do not satisfy Hawke v Smith (253 U.S. 231 (1920)) that speaks of "deliberative assemblages representative of the people..." when discussing conventions in Article V. The court said in part:

"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 conventions in a like number of states. The method of ratification is left to the choice of Congress. 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*.

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. Dodge v. Woolsey, 18 How. 331, 348. The framers of the Constitution might have adopted a different method. Ratification might have been left to a vote of the people, or to some authority of government other than that selected. *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.*" [Emphasis added]

The court ruling is clear. An Article V Convention must be "deliberative" in nature. Hence "limiting" a convention to a single amendment issue or amendment is not deliberative. In order to be "deliberative" elected delegates must have authority to consider debate and resolve amendment proposals, rejecting some, modifying others and proposing some *just as Congress has this power*. It is interesting how many people are quick to suggest a convention be "limited" but oppose placing the identical limits on Congress.

The reason, of course, people "oppose" limiting deliberations in Congress is not because they would not have it, but Article I, Section 6, Clause 1 otherwise known as the Speech and Debate Clause prevents such limitation. As noted in Findlaw, "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."' 380 So Justice Harlan explained the significance of the speech-and-debate clause, the ancestry of which traces back to a clause in the English Bill of Rights of 1689 381 and the history of which traces back almost to the beginning of the development of Parliament as an independent force. 382 '"In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders."' 383 '"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."' 384

Findlaw then continues, "The protection of this clause is not limited to words spoken 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.”’ 385 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 results but also from the burden of defending themselves.”’ 386 ... ‘“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**.” 387

The Supreme Court has mandated conventions be “deliberative” in nature. The court used the identical word describing, “other matters which the Constitution places within the jurisdiction of either House [of Congress]” (such as consideration and debate over proposing amendments). It is not much of a leap to state any effort made to “limit” a convention violates the speech and debate clause. Such a limit denies convention delegates the equal protection of the law (14th Amendment) by denying delegates equal opportunity to debate and deliberate on proposed amendments as is afforded to members of Congress.

The only way a convention should be and can be “limited” therefore, is after election, by support of two-thirds majority of those elected as delegates, those delegates, voting in state delegations then support a specific amendment issue. Thus, convention control is arrived by deliberation. First, the people deliberate who they elect to the convention vetting their views and positions. Next, the delegates, now serving as representatives of those electing them, deliberate among themselves at the convention over specific amendment proposals. Third, the delegates vote in state delegations and propose amendment(s). For those unfamiliar with this process of government, it is a ***republican form of government***. Thus, after election by the electorate, after deliberation at the convention, only *then* is control of the convention obtained. *If a convention is limited before it begins, it is not a deliberative body. Rather it is a “rigged” political event* with obvious control by special interests. How amazing opponents to an Article V Convention urge it be “limited” thus controlled by special interests. How predicable in practically the same breath they rail against special interests controlling the government.

The plain language of Article V defines the greatly misunderstood purpose of the applications by the states. Most people assume an application by a state is *for an amendment issue*. ***This is entirely incorrect. The plain language of Article V makes it irrefutably clear the purpose of an application by the state is for a convention call by Congress and not for a specific amendment proposal***. People continue to deliberately misread the clear, unambiguous language of Article V not because the language is not or clear but because *it does not allow them to advance their political agenda*. Submitting an application (or request) for a convention call is no guarantee a convention will propose any amendment issue or subject. It only means a convention will be held in which that amendment subject or issue may be discussed by the convention. “On the application...[Congress] shall call a convention...” Simple English grammar by

rearrangement of the words makes the meaning even more clear. “Congress shall call a convention on the application of two thirds of the several state legislatures.” Thus, the purpose of the application, to cause Congress to issue a convention call, is plain. The Constitution establishes that if two thirds of the states apply for a convention call, Congress must issue such a call. Hence, a convention call, being based on two thirds of applying states in order to occur must be said to be based, not on amendment subject or issue, *but on a simple numeric count of applying states*. **Thus, the Founders carry out the use of absolute mathematical ratios throughout Article V so that their intent and meaning is never misunderstood except by deliberate intent**. **The reason for doing this was to avoid any possibility of misunderstanding as numeric ratios are universally understood as to purpose and meaning and have meant the exact same thing throughout time.**

Another misreading of Article V is so-called state rescissions of applications. For years, the John Birch Society has busy at work toward state legislatures “rescinding” their convention call applications. Using scare tactic such as saying a convention will end the earth as we know it if a convention happens, JBS convinces legislators rescind their applications. At no time, however, has organization ever *proved* the states have the constitutional authority to rescind their applications. In fact, neither the states nor Congress has the authority to rescind applications for an Article V Convention call. There are several reasons for this.

In both Hawke v Smith as well as United States v Sprague, the Supreme Court made it clear that the words of Article V were “plain” in meaning and required “no rules of construction.” It is worth nothing this fact again: ***as there are no rules of construction in Article V there are no implied powers, authority or act permitted either of Congress or the states.*** Moreover, in Hawke v Smith the court added, “**It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed.”** Therefore, unless Article V actually states a power, authority or act it is not part of Article V. Hence, it is unconstitutional. ***Article V does not grant authority or power to the states to rescind applications for a convention call. Article V grant states only the authority and power to apply for a convention call. Article V does not grant Congress authority or power to rescind applications***.

In actual analysis if such rescission authority did exist Congress would have to be the one to “rescind” an application from a state. Significantly, Congress *has never officially rescinded any application based on any state rescission whatsoever.* Instead, Congress has, *just as it has done for all state applications for an Article V Convention*, recorded the rescissions, and then ignored them. The Congressional Record serves as official repository for all applications and rescissions. Only Congress has the constitutional authority to alter this public record. The Tenth Amendment prohibits alteration of the Congressional Record by the individual or collective states. *However, for Congress to rescind an application it first must acknowledge the existence of the application the state in question is requesting Congress rescind*. Beyond the fact Article V does not give Congress the authority to rescind applications, the Constitution demands *once Congress acknowledges the applications the mechanism of Article V takes precedence, as the call is*

peremptory. Thus, if there any means whereby a sufficient number of applications exist to cause a convention call, Congress must call. *Hence, this constitutional requirement nullifies any rescission by any state.*

Webster's Dictionary defines the word "acknowledge" as: "(1) to show by word or act that one has knowledge of and agrees to (a fact or truth); concede to be real or true; (2) to show by word or act that one has knowledge of and respect for the rights, claims, authority, or status of; (3) to show by word or act that one has knowledge of and regard for (a duty, obligation, or indebtedness); (4) to recognize as genuine; assent to (as a legal instrument) so as to give validity: avow or admit in legal form (acknowledge a deed)." [Emphasis added]

Any definition of the word mandates Congress first recognizes the applications then, (if it had the authority, which it does not) rescind those applications. Obviously, Congress cannot rescind an application it cannot verify exists in the first place. Given the sorry state of records regarding applications in the Congressional Record, that is, there is no set of records to refer to; such a requirement is not only logical but also obligatory.

Public record clearly shows the states had applied in sufficient numbers to cause a convention call before any state submitted any rescission of any application already submitted. Therefore, the peremptory requirement of Article V mandating Congress call an Article V Convention "on the application of two thirds of the several state legislatures" preempts any state rescission of any application. To permit a rescission under these circumstances in order to prevent a convention call when mandated by the Constitution permits a single state to veto all other states, Congress and the Constitution itself. This is impermissible. It would render the Constitution subservient to the acts of a single state rather than being supreme to all states and Congress.

The plain language of Article V makes it clear a convention call is solely the responsibility of Congress. No other political body, a single state, a government official, the courts cannot issue a convention call. Thus, Article V mandates a convention call is proprietary to Congress, but the exercise of authority to do so belongs to the states. It is a *state decision*, that is a numeric submission of state applications, which causes Congress to issue a call, instead of any decision on the part of Congress. Thus, Congress cannot on its own call a convention without the proper number of applications nor can it refuse to call if that proper number exists. As stated in Federalist 85, "the national rulers shall have no option. ... 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." [Emphasis added].

Consequently, as Congress is peremptorily required to call a convention, implied powers permitting Congress *not* to call cannot exist. Such powers grant Congress a veto of applications. The power to "rescind" applications is such a power. This power, being an implied power, can also be "interpreted" by Congress as giving it the authority to "rescind" applications ***regardless of whether the states request it or not. The effect of rescissions of applications is to increase the power of Congress and remove the power***

of the states to cause Congress to call a convention as such power permits Congress to veto or ignore applications of the states. As stated in Marbury v Madison, a legislature cannot act repugnant to the Constitution. In an Article V Convention call where Congress "shall have no option" but to call any action *giving* them an option is repugnant to the Constitution. Therefore, Congress cannot rescind any application submitted to it by the states, as they are constitutionally invalid.

In Hawke v Smith the Supreme Court stated when state legislatures perform a function in Article V, they operate ***under the authority of the United States Constitution and not under the authority of their own state constitutions.*** Thus, in this specific issue, the authority of federal Constitution equally limits and regulates state legislatures *and Congress*. Given the federal Constitution is supreme and the amendment procedure is federal in nature as well as authority, no state constitution or any other authority can therefore apply. As people generally do not understand this principle of constitutional authority, they fail to realize ***states do not have the authority to "rescind" applications for a convention call once they are submitted to Congress. Article V is "plain in meaning and requires no rules of construction." Article V does not state the states have the authority to rescind applications. Further, Article V, being plain in language and having no rules of construction or implication does not grant such implied power to Congress.***

Our country is in desperate need of a convention. We have national issues unsolvable by electing one political party or the other. Indeed, it is because we have for too long assumed all that is required to resolve these issues which are never resolved, is elect one party or the other we face this crisis. The intent of a convention is to resolve issues that *transcend* the average election cycle. It is the only constitutional mechanism we the people have for an open, public forum of *discussion* of our national issues, which, by election, are irresolvable. It is the only constitutional mechanism allowing us to *choose* a course of action about these national issues. Rather than on political rhetoric or candidate personality, a convention presents us the ability to concentrate *exclusively* on issue. It is the only constitutional mechanism capable of actually *resolving* these issues. Misunderstanding of Article V, deliberate or not, and therefore not availing its use, deprives us of our right to alter our form of government, our most fundamental right. Time is running out. Either we overcome our problems by resolution or our problems will overcome us by revolution. This is not my opinion; it is simply the sad summary of the histories of nations that have failed to do so.