

# My Symposium Speech To Cooley Law School

By Bill Walker

On September 16, 2010, I was one of several invited speakers at the Thomas M. Cooley Law School in Lansing, Michigan. The school sponsored a [symposium](#) entitled, “Renewing the compact: How Article V empowers the people of all the states.” The following is a copy of my remarks.

## Introduction

Good morning. First, I would like to thank Cooley Law School for inviting me to address you. Most speakers at such events have a legal background. Mine is journalism, finding facts and reporting them. While many are qualified to discuss the theory of an Article V Convention, my expertise lies in the reality of an Article V Convention.

I am the only person in United States history ever to have filed federal lawsuits, *Walker v United States* in 2000 and *Walker v Members of Congress* in 2004 dealing with the obligation of Congress to call an Article V Convention. The latter suit, *Walker v Members of Congress*, was appealed to the Supreme Court. I helped found FOAVC, Friends of the Article V Convention, a non-partisan group dedicated to educating the public about an Article V Convention, correcting information, which is either misconstrued or outright lied about. To that end, I was instrumental in collecting for the first time in United States history, photographic copies of the 750 applications submitted to Congress for a convention call by 49 states. The Constitution mandates a convention call if 34 states submit 34 applications.

## The FOAVC Website

This is the FOAVC website. [<http://www.foavc.org/>] showing an example of a state application. [[http://foavc.org/file.php/1/Amendments/071\\_cg\\_r\\_03369\\_1929\\_HL.JPG](http://foavc.org/file.php/1/Amendments/071_cg_r_03369_1929_HL.JPG)]

As stated in Federalist 85, “The national rulers will have no option upon the subject. By the fifth article of the plan, the Congress will be obliged “on the application of the legislatures of two thirds of the States to call a convention for proposing amendments...” 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.” The public record is emphatic. The states have applied. A convention call is peremptory.

The Constitution mandates Congress call a convention. Legal scholars and even convention opponents say Congress must call. The Supreme Court has declared in four separate decisions, without dissent, Congress must call. Despite this, Congress has never obeyed the Constitution. It has never even compiled the applications into a single public

record. Aided by convention opponents like the John Birch Society as well as a complacent judiciary, Congress has buried the applications in the Congressional Record thus deliberately and willfully vetoing the Constitution.

### **The Four Lies of Convention Opponents**

Convention opponents use four lies to support Congress vetoing the Constitution, which I will briefly discuss.

#### **The Runaway Convention Lie**

The first lie is the 1787 Convention was a “runaway” convention that is, it exceeded its authority in creating the Constitution and then forced this new form of government down the throats of the American people. To avoid this, as we might not be so lucky next time, opponents say we should not hold a convention. Public record disproves this lie. That record shows the convention obeyed the law of the land at that time to the letter. Further, after the convention disbanded, the states had nearly 150 votes to accept the proposed Constitution. A single ‘no’ vote would have defeated the proposal.

#### **The Burger Letter Lie**

[\[http://www.sweetliberty.org/issues/concon/burger.htm\]](http://www.sweetliberty.org/issues/concon/burger.htm)

The second lie is the so-called Burger letter, which warns of the “dangers” of a convention. This letter allegedly written in 1983 by Chief Justice Warren Burger was “discovered” by a JBS member. It served as the centerpiece of “evidence” by JBS until FOAVC proved, by use of public record, the letter is a phoney. For example, the letter is dated June 22, 1983 and refers to Burger as “retired.” In 1983, Burger was still Chief Justice. Further, Burger is on public record supporting a convention. [See also:

<http://www.nolanchart.com/article5838.html> ;  
<http://www.nolanchart.com/article6024.html> ]

#### **The Balanced Budget Amendment Lie**

The third lie concerns the actual number of applications submitted by the states. JBS only discusses a single amendment issue; a balanced budget amendment saying 32 states have applied for this amendment thus implying this is all the applications there are. In this way, JBS avoids mentioning the other 718 applications. Public record shows 36 states have applications listing balanced budget in them. Thus, if same subject issue were the basis of a convention call, a sufficient number of applications on this issue alone means a convention call.

#### **The Constitutional Convention Lie**

The fourth JBS lie is an Article V Convention is a constitutional convention and will write a new constitution. Public record, history and the Constitution disprove this. An Article V Convention may only propose amendments, just like Congress. It cannot write

a new constitution. Amendments still must be ratified before becoming part of the Constitution. Anyone saying differently has not read the Constitution.

### **The Federal lawsuits**

Now I would like to discuss the research behind my two amendatory lawsuits. As we all know amendatory law consists of civil, constitutional and criminal law. My suits addressed Congress' obligation to call a convention and whether sufficient law exists to deal with the exigencies of a convention.

Many legal experts state there is no law regarding a convention. Thus, we cannot hold a convention. My research into public law proves this incorrect. As a journalist, I probably did not find as much law as a trained attorney might. After five years of research, [see: <http://www.foavc.org/file.php/1/Articles/Brief.pdf>] I was only able to find 208 Supreme Court rulings dealing with the legal issues of an Article V Convention. It appears I am the only person who has ever bothered to actually check public law rather than assuming no law exists so my work is unique.

Thus far, my work has had little effect in the convention debate as most people still are in the emotional rather than reason state. The only group I have persuaded is the United States government. That group has officially and formally acknowledged my conclusions are correct to fact and law, the only official action thus far taken by the government in regards to a convention.

### **What The Constitution Tells Us About An Article V Convention**

There is a basic constitutional principle entirely ignored by the legal establishment when discussing law and the convention. Article V is part of the Constitution and thus effects all the Constitution. Conversely, all parts of the Constitution effect Article V. As stated in *Marbury v Madison*, 5 U.S. 137 (1803) something either is constitutional or is not constitutional. Between these two points, there is no middle ground.

In *United States v Sprague*, 282 U.S. 716 (1931) the Supreme Court, agreeing with the United States, said Article V was "clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction". Article V therefore cannot be construed to mean anything but what it expressly states. This ruling however does not preclude applicable portions of the Constitution used to effect or achieve the clear statement and meaning of Article V. Thus, the rest of the Constitution answers the questions of law about a convention.

Central to this is the 14<sup>th</sup> Amendment principle of equal protection under the law. It is well settled law all members of a clearly defined legal class must be treated equally under the law. The Constitution permits only specific citizens to propose amendments to the Constitution; elected members of Congress and convention delegates. This forms a clearly defined legal class. Equally important is the Supreme Court principle in *Hollingsworth v Virginia*, 3 U.S. 378 (1798) that the president shall have no part of the

amendatory process. This prevents Congress from legislative despotic control of the convention. Thus, we know the following:

1. Public record show Congress lacks authority to commit, debate or even vote on a convention call “because it would seem to imply that the House had a right to deliberate on the subject...which it does not.” All applications are considered tabled until a sufficient number of states apply which they have. Congress, immediately forming itself into a committee of the whole, is then required to take the applications off the table, decide the time and location of the convention and issue the call. It has no other authority in this matter.
2. As members of Congress are elected subject to federal and state election laws, so must convention delegates. Equally, both are subject to criminal laws and oath of office laws. Both must satisfy terms of office set in the Constitution, which are age, citizenship and residency. As there are two sets of terms, one house, one senate, equal protection demands the least standard, the house, for delegates to satisfy.
3. Article V mandates “A” convention for proposing amendments rather than “conventions”. Equal protection of representation in Congress mandates a delegate number equal to that of the house, 435 delegates elected within already established districts. One difference. A convention lacks tax power. Its delegates therefore are non-partisan, volunteer and hold office only during the term of the convention.
4. The convention is caused by state application. States must therefore be represented. Equal protection mandates each delegate’s vote be equal. Given the population disparity between the states, a greater population obviously carries more weight than a lesser. Equal protection forbids this. Delegates will vote, not as individuals, but within state delegations with each state having one vote. Two thirds of the states or 34 are required for amendment proposal passage as equal protection mandates delegates have no advantage over their congressional counterparts. As in 1787, to avoid control by a single state delegation, motions will require a second from a second state delegation.
5. Like Congress, the convention appoints it own officers, sets its own rules and maintains a journal of proceedings. Unlike Congress which strenuously avoids the people having any real say in their government, the convention will be interactive using the Internet to allow citizens to propose amendments for delegates to consider. Simple public pressure will cause this.
6. Unlike the parliamentary tricks of congressional rules, convention rules will be basic. A convention has one purpose; all delegates have equal seniority. Thus no gimmicks such as a committee chairman setting amendment policy by holding proposals in committee will occur.

7. While Congress is eternal, a convention is short term, a few weeks at most. Rather than dealing with ego centric congressional personalities focused on nothing but reelection and given the two-thirds vote required, delegates will quickly dispense with convention business with most proposals falling by the way side.
8. In election, the voter will vet delegates in ways Congress avoids. We all know during election members promise anything but once elected deliver nothing. A convention deals with written amendment issues. The voter will demand to read the texts a prospective delegate supports or opposes. Delegate positions are absolute; they support or they oppose. The voters will focus on the sole issue of a convention: what amendments, if any, becomes part of the Constitution. The vote on delegates also means a referendum on amendment proposals. In short, it is all issues.

Thus given the information the Constitution provides as to convention law any person saying there is none is simply incorrect.

### **The False Premises: Limiting A Convention, Application Recessions**

Many say they would support a convention if it could be limited. 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..." is the most misconstrued phrase in the Constitution. Many read it as meaning a "constitutional convention" empowered to write a new constitution. The term "convention for proposing amendments" is plain as to meaning and intent thus requiring no rules of construction as expressed in *U.S. v Sprague*.

This term "limits" a convention to proposing amendments to our present Constitution. However, what people really mean when describing a "limited" convention is they want a convention limited to a political agenda they favor. This means politically rigging the convention so their special interests control it.

The plain language of Article V prevents this "limitation." It is a convention for proposing "amendments" not "amendment." Only the convention can limit itself to a single amendment proposal. However, the states can limit a convention, not by pre-set agenda, but by pre-disposed ratification. Thus, by 13 states declaring they will only ratify specific issues, a convention may be limited. There is nothing in Article V that specifies when a state can vote on ratification. Thus it may do so at any during the process including before a convention even proposes an amendment.

If the convention is politically limited it follows it is not limited just to specific issue but specific political outcome, i.e., opposing gun control or pro abortion. If so, why hold a convention at all? What would delegates debate? On what would the voter decide given the pre-decided outcome? Such circumstances do not satisfy *Hawke v Smith* 253 U.S. 231 (1920) that speaks of "deliberative assemblages representative of the people..." in discussing Article V conventions. In order to be "deliberative" elected delegates must

debate and resolve amendment proposals as is done in Congress. Not that people would not like to also “limit” Congress save for the Speech and Debate clause.

In *Gravel v. United States*, 408 U.S. 606 (1972) the court said, “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 ... processes by which Members participate ... with respect to the consideration and passage or rejection of ... other matters which the Constitution places within the jurisdiction of either House.”

The court mandates conventions are “deliberative.” It uses the same word describing, “other matters which the Constitution places within the jurisdiction of either House” such as debating proposed amendments. It is not much of a leap to state any effort to “limit” a convention violates the speech and debate clause. To do so denies delegates the equal opportunity to debate proposed amendments as is afforded members of Congress.

The only way a convention should be “limited” is by election. The people elect delegates with particular amendment positions. At convention, after debate, these delegates prevail. For those unfamiliar with this process it is known as a republican form of government.

### **The Mistaken Concept of Application Recession**

People assume the purpose of state applications is applying for a particular amendment proposal. Black’s Law Dictionary defines an “application” as a “request” or “petition.” Simple rearrangement and substitution of synonym permitted by English grammar clarifies the meaning and intent even to those who will not read it: “On the request of two thirds of the several state legislatures, Congress shall call a convention...” The purpose of an application is to cause a convention call, not to propose an amendment. All state applications request a convention call and therefore are in full force and effect.

For years, JBS has gone about convincing state legislatures to “rescind” their applications with no legal proof such rescissions are even constitutional. The results are dubious. Since JBS began its campaign in the 1980’s, the states have submitted nearly half of the 750 applications now in public record.

Rescissions are invalid because:

1. In both *Hawke v Smith* and *United States v Sprague*, the court stated Article V is plain in meaning and requires no rules of construction. Thus, there are no implied powers. As noted in *Hawke*, when acting in the amendment process, states operate under authority and limitation of Article V not their own state constitutions. Article V grants no authority for either Congress or the states to rescind applications. Therefore, such rescissions are unconstitutional.
2. If such implied power existed Congress rather than the states would rescind the application. Only Congress can remove items from the Congressional Record. As the power is implied, Congress could easily interpret it as authority to rescind applications even the states did not request it.

3. Congress has never officially rescinded any application. *Marbury v Madison* states a legislature cannot act repugnant to the Constitution. Public record shows the states submitted sufficient applications for a convention call prior any rescission being submitted. Therefore, the convention call being peremptory preempts any state rescission as the terms for a convention were already satisfied.

## **The Walker Lawsuits**

### **Standing**

Some have suggested my suits lacked standing and therefore are meaningless. Without question standing is a legislative power, not judicial as demonstrated in *McConnell v FEC* 540 U.S. 93 (2003) where Congress defined standing legislatively. Nonetheless, there is no law defining the terms and conditions of standing. As such standing has a dubious history of consistency. Even Chief Justice Rehnquist in *Elk Grove Unified School District v Newdow*, 542 U.S. 1 (2004) spoke of the “novel prudential standing principle” raised by the court to “avoid reaching the merits of the constitutional claim.”

There is one consistency however. If a party lacks standing, the court lacks jurisdiction to make a ruling. Standing is based on the “cases and controversies” clause of Article III. On these, two rocks of legal dogma the doctrine of standing rests. There are problems however.

First, the Constitution describes three legal petitions that can be brought before a court not two: cases, controversies and suits. Suits are described in both the Seventh and Eleventh amendments. I’m sure all here know the well settled principle of law as expressed for example in *Wright v U.S.*, 302 U.S. 583 (1938) that in the Constitution “every word must have its due force and appropriate meaning.” Thus, suits are a distinct form of legal petition permitted by the Constitution. Further, the Eleventh Amendment directly amended Article III. Hence, the correct constitutional term is cases, controversies and suits. Despite this, the Supreme Court has never addressed suits in any ruling on standing. The only possible conclusion given these circumstances is standing is not required to file a suit.

I filed suits and designated them as such. Therefore, I required no standing. Moreover, my suits dealt exclusively with the amendatory process. In *Coleman v Miller*, 307 U.S. 433 (1939) the court ruled any court opinion in the amendatory process is advisory which, of course, requires no standing. Then there is the fact member of Congress refusing to call a convention violates federal criminal law. No standing is required in criminal law. Public record proves 39 states have applied for repeal of federal income tax one state more than is needed for ratification. Congress’ refusal to call violates the Constitution and prevents repeal thus allowing continued collection of the tax. Income tax law permits reparation if such tax is collected in violation of the Constitution. I sought reparation under federal income tax law, which grants standing to those seeking reparation.

## **The Four Court Decisions**

The Supreme Court has ruled in four decisions Congress must call a convention if the states apply: *Dodge v Woolsey*, 59 U.S. 331 (1855); *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). The words in these four decisions make it impossible to reach any conclusion but that Congress has no option but to call a convention if the states apply.

In *Walker v United States*, the district court nullified the words of these four court decisions by simply eclipsing them out in a reference it quoted that used them. Second, the court applied the political question doctrine in *Coleman* to justify the nullification. Political question doctrine has never been applied to a convention call, as it is peremptory. The only possible interpretation of the two rulings is the court believed under the political question doctrine Congress has the option *not* to call a convention despite the direct language of the Constitution. Before my suit, a convention call was peremptory with Congress having no option. Afterwards, a convention call was optional with Congress having the authority under the political question doctrine to veto the direct language of the Constitution. Clearly, the court ruled meaning if nothing else I had implied standing.

## **Coleman v Miller**

*Coleman v Miller* usually is characterized as a plurality decision and thus is assumed to be of dubious authority. What is missed is the decision is based on ALL reasons given by the justices and therefore all parts apply making its authority the same as any other decision. Only one part of *Coleman* discusses the constitutional amendment process as opposed to ratification. As the district court used *Coleman* this portion must be the basis of its ruling. In that portion, the Supreme Court assigned Congress “exclusive, sole, complete, undivided control” of the amendatory process.

The court stated, “Congress, possessing exclusive power over the amending process, cannot be bound by and is under no duty to accept the pronouncements upon the exclusive power by this Court. ... Therefore any judicial expression amounting to more than mere acknowledgment of exclusive Congressional power over the political process of amendment is a mere admonition to the Congress in the nature of an advisory opinion, given wholly without constitutional authority.”

If I am incorrect, then the four previous decisions prevail. Either Congress must obey the peremptory language of Article V or does not have to. There is no middle ground in this.

## **Walker v Members of Congress**

My second lawsuit, *Walker v Members of Congress* established the official, formal position of the members of Congress on a convention call and presented the issues to the Supreme Court including criminal violations by Congress. To that end, I filed

individually against all members of Congress. Members were allowed to “opt out” by declaring support of Article V. No member did this. Thus, for the first time in United States history Congress chose to express public opposition to obeying the Constitution.

Trial was held at the Ninth Circuit Court of Appeals as the United States choose not to appear at district court. The district court reaffirmed the ruling in Walker v United States. At trial, the U.S. Attorney refused to answer who they represented and under what federal law the Department of Justice had authority to appear. After several motions, the court ordered the United States to answer these questions.

The attorney stated in writing she had letters from both house and senate counsels instructing her to oppose my lawsuit. Under federal law house and senate counsels cannot act without votes of Congress instructing them to do so. Further, federal law mandates before the DOJ can represent any member of Congress, each much individually request such representation. Therefore, I can state every member of Congress determined of his own volition to oppose obeying the Constitution and instructed their attorneys of record to proceed on that basis. When that decision became public record, the members of Congress violated their oaths of office. Executive Order 10450 defines the terms of violation of oath of office as described in 5 U.S.C. 7311 and provides “the alteration of the form of the government of the United States by unconstitutional means” is a violation of oath of office. Our form of government prescribes two methods of amendment proposal, not one. It does not give Congress authority to refuse calling a convention.

I appealed to the Supreme Court, which ultimately denied me certiorari meaning the court upheld, without review, the lower court’s decision that based on the advisory opinion of Coleman Congress could veto the Constitution under the political question doctrine.

### **What Did Walker v Members of Congress produce?**

However, before the court ruled on certiorari Supreme Court Rule 15.2 demanded for the first time in the proceedings the United States address the issues of fact and law raised in the suit. The rule states:

"A brief in opposition ... in addition to presenting other arguments for denying petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition."

This rule forced the government to actually address the issues presented rather than hiding behind standing. The United States either had to state I was correct as to fact and law or I was not. I stated the following in my brief:

1. A convention call is preemptory
2. There are sufficient applications already on record to cause a convention call

3. A convention call is based on a simple numeric count of applying states with no other terms or conditions such as recessions, same subject, contemporaneous and so forth
4. By refusing to obey the Constitution and so advocating the same in a public forum, the members of Congress violated their oaths of office and other federal criminal laws.

The Solicitor General of the United States acting in both his official capacity and as official attorney of record for all members of Congress, after consultation required by federal law with those members, formally and officially waived response to my brief. Thus, he formally and officially acknowledged what I had stated in my brief was and is correct as to fact and law. This is what I mean when I state the only group I've been able to persuade is the United States government as this is the only official government act on the convention call in United States history.

As to the criminal offenses I have mentioned; 5 U.S. 7311, Violation of oath office one year in prison forbids any person "from holding or accepting federal office." As public record shows Congress has refused to call a convention over an extended period of years involving numerous members, 18 U.S.C. 371 Conspiracy to defraud the United States, five years in prison applies. According the Congressional Research Service, conspiracy need not be about money or property. "The scheme may be designed to deprive the United States of money or property, but it need not be so; a plot calculated to frustrate the functions of a governmental entity will suffice." The governmental entity in this case is the convention which is clearly assigned specific authority and power by law, and one whose function is frustrated by the conspiracy of members of Congress.

Then is obstruction of government proceedings, under 18 U.S.C. 1505, another five years in prison. The convention call is a proceeding pending before Congress. The law states, "Whoever corruptly ... obstructs, or ... endeavors to ... obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States shall be fined under this title or imprisoned not more than 5 years." By obstructing the convention call, members violate federal criminal law.

### **Summation**

For years, Congress and the judiciary have played a tennis match with the convention call. Congress says the judiciary must rule before it acts yet oppose any suit allowing the court to do so. The judiciary says a call is a political question for Congress to decide. The tennis match continues, both Congress and judiciary void the Constitution, and the people are screwed.

This tennis match needs stopping by changing the game. The game is now about civil and constitutional law which both sides side step. Criminal law is clearly the purview of the judiciary. Given the criminal offenses, the issue is no longer about a convention call but

whether the judiciary will permit Congress to commit criminal acts. If not, a call will result. If so, the Constitution is reduced to no more than advisory text.

How is the game changed? You simply say, “Your honor, I wish to present you evidence that members of Congress have violated federal criminal laws and formally request you undertake, as required by your oath of office, such actions as necessary to bring those people responsible to justice.” After that, it is up to the judiciary to decide whether the Constitution continues to exist. Then you simply sit down.