

Regarding the Fourth Week of July

By Bill Walker

Whether by coincidence or design the fourth week of July 2014 will go down in history as one of the most important in the Article V Convention movement. The time of events advancing an Article V Convention call being measured in months or years is gone. Now events happen within days of one another. For example on July 21, 2014 the debate between Mr. Trent England and I occurred. My comments regarding it follow later in this column.

Equally important, if not more so, were the events of July 22, 2014. John Guise's [petition to Congress](#) in regards to its violation of oath of office together with a [list of applications](#) proving that as of Friday, March 13, 1908, the states reached the two-thirds mark required by the Constitution mandating Congress call a convention appeared in the Congressional Record. This is the second post by Congress noting petitions showing the states have reached the two-thirds mark mandated by Article V in less than a year.

In 1908 there were approximately 40 applications on file with Congress. Today that number (including publicly announced but yet to appear in the Congressional Record applications) is at least 750 from 49 states. Since our country began all public officials in government have been required to take an oath of office to support the Constitution. Read that as obeying the Constitution as that's what the courts have ruled the oaths of office mean. As is true today in 1908 the oath of office taken every member of Congress contained criminal penalties for failure to obey the specifications of the Constitution. This means Congress was required to call the convention. Congress didn't call then and hasn't since. John Guise and others have finally got it—Congress is violating federal criminal law by not calling a convention. The ironic thing is as I will show, the government agrees.

July 22, 2014 also saw the sending of a [second letter](#) by Dan Marks to Congress regarding the apparent lack of action on [his original letter](#) listing 42 applications (taken from the 750 already mentioned) requesting Congress provide a count of the applications it has on record. Like the Guise petition, Mr. Marks' first letter was referred to the Judiciary Committee of the House where it has remained unanswered. This over a year long delay in responding for no apparent reason served as the basis for the second letter.

This time Mr. Marks did not sign the letter by himself. The letter, of which I was one of the signatories, included distinguished members from the international community as well as members of the international press. Further details about the letter can be found [at this link](#). In the past the United States has frequently objected to various foreign governments violating the civil rights of their citizens. Usually the offending nation's constitution "guaranteed" such rights but was ignored by that government. The consequences in many instances have been severe on an offending nation.

The same principle of civil right holds true in this nation. The people have the right to alter or abolish their form of government. Article V provides two methods whereby the people can exercise that right within the limits prescribed by that article. The alternative means, a

convention, cannot be prevented by Congress. Yet Congress is doing just that. Therefore the civil rights of the people is being violated by the government of the United States. Given this level of disobedience with Article V the United States may face similar treatment in the international community that other nations have suffered for violations of their constitutions. Even the possibility of the international community discussing sanctions against the United States for failure to obey its constitution can have serious consequences for our government. It is very hard to argue a nation should obey its constitution when you're not doing it yourself. Hence our prestige, which is to say our influence in the international community, may suffer. Thus the fact members from governments in the international community are beginning to show concern about Congress not obeying Article V brings additional political pressure on Congress to call the convention as mandated.

The fourth week in July saw the debate between Trent England and me over the subject of an Article V Convention. To summarize Mr. England had earlier expressed concerns about an Article V Convention [in an interview on the Daily Caller](#). Thanks to Dave Campbell's [Clarity From Chaos](#) Mr. England and I were [able to debate](#) the issues he raised. Those issues included: (1) Constitutional amendments are not the solution; (2) a convention plays into the current liberal dialogue (3) proposed amendments are easy to stop; (4) no knows how an actual convention will function; (5) the solution is a renewed respect for the Constitution.

Frankly I don't think there was a "winner" or "loser" in the debate. Instead a lot of information was presented giving many people a lot to think about. One of the major points made by me was the fact Congress officially disposed of the question of a so-called "runaway" convention TEN DAYS after the 1787 convention concluded on September 17, 1787. As I pointed out in the debate, the first motion before Congress when it began its debate on September 27, 1787 as to whether to present the proposed Constitution to the states was by Richard Henry Lee of Virginia. That motion expressed the usual mantra of "runaway" convention advocates—the convention exceeded its authority in proposing the Constitution.

Congress defeated the proposal nearly unanimously (Lee got four votes) and later went so far as to strike the motion from the record. The 1787 Congress was in the absolute best position to resolve this question. That Congress was the same Congress which had issued the original call for a convention on February 21, 1787. Therefore that Congress knew exactly what it intended the words of that call to mean. It also means that Congress knew exactly what it *did not* intend the words of that call to mean. Several members of that Congress were convention delegates. Therefore these members had first-hand knowledge of all events occurring during the convention. Naturally they reported back to Congress after the convention. Thus that Congress was fully aware of whether or not the convention exceeded the intent of its original February call or the confines of the Articles of Confederation (which many of this same Congress had helped write). The 1787 Congress considered the question days after the event when all involved were alive and memories complete giving it the best possible judgment position on whether or not the convention was a "runaway." Finally that Congress took official action to dispose of the charge which they found entirely unsubstantiated. (Little wonder given the 1787 Congress repeatedly referred to the convention as a committee of Congress).

Because of the information the 1787 Congress possessed on which they made their decision there is no basis for second guessing that Congress today. Indeed their official vote precludes this. It resolves the question emphatically: officially there never was a “runaway” convention. There is no basis in fact therefore to create or believe a lie like the JBS has done when those present at the time of the events in question were in full possession of the facts and based on those facts by official vote utterly refuted the ludicrous charge the 1787 convention was a runaway convention. Moreover there is no justification whatsoever to regulate a convention today based on this false premise as ALEC and the Convention of States are attempting to do. These people know the truth. They just don’t want you to know it. So as their premise of a “runaway” convention is false, their purpose for attempting to “regulate” convention is false. Rather it is a smokescreen intended to mask their real purpose—seizure of the convention process for selfish political gain.

If there is any doubt on this point consider the policy ALEC and COS are advancing regarding delegate selection—total exclusion of the people from the process, dictatorial control of the convention agenda and felony arrest of any delegate failing to obey “instructions” given them by the state legislature. ALEC and COS say they are basing this policy on the work of Robert Natelson who in turn says he is based it on colonial history. This is inaccurate. As I will show historic events of tyrannical control occurring in this nation following the Civil War is the model ALEC and COS are emulating. Naturally they make a point not mentioning this fact to an uneducated public.

In the debate I pointed out another fallacy often made by convention opponents and uneducated proponents. The fallacy is states can propose amendments through their applications. Therefore, so the fallacy goes before Congress is obligated to call a convention the states must submit 34 identical applications on the same amendment subject. Both premises are false. I cited *United States v. Sprague* (1931) and *Leser v. Garnett* (1922) as proof. Both decisions were emphatic: the subject of an amendment shall have no bearing whatsoever on the amendment process. I also pointed out according to Max Farrand’s “The Records of the Federal Convention of 1787 (Vol. II, pp. 629-30) the convention *removed* the authority of states to propose amendments (meaning any state application submitted would be required to be identical to 33 others in order for it to “count”) and instead substituted the requirement of a simple numeric count of applying states (two-thirds) peremptorily causing Congress to call a convention for proposing amendments *regardless* of any amendment subject contained in any application.

Mr. England’s main theme in the debate was “my” view was not based in reality. Nothing could be further from the truth. I have done nothing in the Article V Convention movement but deal in reality. It is others who dwell in the fantasy (such as creating a runaway convention when none ever existed or reading into Article V terms and conditions of a call that do not exist). I filed real federal lawsuits in a real federal court before a real federal judge. I appealed to the real Supreme Court of the United States. I gathered copies of application from the real public record for the first time in history. I have made it a mantra to provide real documented public record as reference for every statement about the convention and its issues I have ever reported.

Thus “my” views are not “my” views at all. They are simply my reporting of the public record. It is not “I” who states, for example, that a convention call is based on a simple numeric ratio of applying states with no preconditions or terms. Rather it is the Solicitor General of the United

States who acknowledged this at the Supreme Court during my second lawsuit *Walker v. Members of Congress*. That position of Solicitor General reflected numerous Supreme Court rulings I have discussed here in previous columns. Thus “my” position is the position of official government proceedings which is as “real” as you can get. If the JBS and others like them wish to take positions that “my” views contradict which in the end make them look like liars, idiots or fools in public then so be it—they are fighting public record and can never win.

I do not count Mr. England among the above described group. Rather like many others Mr. England has simply failed to educate himself sufficiently on the facts to render an intelligent, reasoned and most especially *accurate* conclusion about a convention. Any lawyer, who apparently has not bothered to acquaint himself with the law when commenting on a legal subject simply has not, educated himself. Mr. England is part of a large group that simply doesn't know the facts about a convention. The debate I hope stirred interest in a convention which will lead these people to find out about it and hence, get educated.

For example, Mr. England tried to suggest the “real” world of politics (a blatant oxymoron) is not ready for a convention. Therefore until the “real” world of politics is satisfied a convention should or will not be held. As I suggested in the debate the Constitution and criminal law trumps the politic. People expect the government to obey the Constitution. Those in power who neglect this fact run a grave risk of incurring the wrath of the American people not to mention facing criminal charges for refusing to do so. Hence it is a good idea the Constitution be obeyed by those in the “real” world of politics. Fortunately as I will demonstrate, that “real” world of politics however reluctantly, agrees.

As I mentioned in the debate Mr. England's interpretation of political events may not be accurate. The rules of the debate mandated debaters provide references proving their assertions. I believe I was adequate in this regard but I can't say the same for Mr. England. For example Mr. England did not provide references proving his assertion of political opposition by Congress to an Article V Convention, such as quotes from members of Congress stating they intend not to obey the Constitution and will not call the convention. Without reference Mr. England's assertion was nothing more than fanciful speculation.

Mr. England's overall theme throughout was that my “theory” about a convention did not address political reality. However he ignored political reality to reach his conclusion. As stated in the debate the fact Congress has not called a convention does not mean they will not call. The matter is being addressed in committees of both houses of Congress. Politically, if Congress did not want to call in the first place the best course is to ignore everything thus giving them, “plausible deniability.” But Congress hasn't done this. Instead they've recorded recent efforts asking for counts of the applications in the public record. There is no mandate in Congress which states if someone sends Congress a letter it must be posted in the Congressional Record. Congress *chooses* to do so and thus make the letter a matter of public record. Why take this action if there is no intention to count the applications? The only logical reason is Congress politically does plan to count and is laying the groundwork to do so.

My guess is Congress will count the applications after a sufficient amount of evidence proves the states have satisfied the Constitution. In this way, if as some critics like Mr. England charge, the

entire matter goes south, Congress has “plausible deniability.” The ruse—“we had no choice but to call a convention; don’t blame us, blame the states.” Still it is highly unlikely the people would give Congress a pass in all of this given its abysmal single digit polling record. So, logically Congress is taking it slow in order to get it right. If Congress is indeed more interested in getting something right for a change rather than concerning itself with political consequences then by all means this must be encouraged. Perhaps it will become a welcomed habit in DC.

Mr. England, a conservative, took the usual course of politics today and blamed the liberals for everything accusing them of wanting a convention to further their own political agenda. I countered by simply reading the list of subjects state applications include: an anti-gay marriage amendment, right to life amendment, balanced budget amendment, repeal of federal income tax amendment, federal revenue sharing with states amendment, school prayer amendment, anti-flag desecration amendment, public funding of private schools amendment, review of Supreme Court rulings by states amendment, debt limitation amendment, reading of Bible in public schools amendment, anti-communism amendment, school prayer amendment, posse comitatus amendment addressing illegal immigration and of course an anti-gun control amendment. In sum, the public record shows the convention agenda is decidedly conservative. So in fact conservatives like Mr. England are opposing effectuating their own agenda.

I also pointed out that today’s conservative leadership doesn’t need the liberals to politically foul things up for the conservative movement. As previously discussed in this column, in 2012 as one of its party planks the [Republican Party](#), requested party membership, which includes members of the government, oppose an Article V Convention. In other words the GOP asked its party members to violate their oaths of office and overthrow our constitutional form of government which mandates a convention call by these same party members. Mr. England provided no adequate response in my mind to justify the actions of the major conservative movement in this nation. Thus the *political reality* is that one of the two major political parties, the party representing the conservative movement, is on record as opposing constitutional obedience went unchallenged.

Here is political reality for Mr. England worth repeating from the debate. You don't win elections by promising to overthrow the constitutional form of government designed to protect the rights of the people you are asking to elect you to office. But this is exactly what the GOP has done. The liberals were nowhere in sight in all of this. The conservatives did it to themselves. With such political logic as employed by the GOP is it any wonder conservatives have been taking a beating at the polls?

There was a final portion of the debate which I believe was very important but which I believe Mr. England and most people just didn’t “get.” This was the discussion about *Coleman v Miller* (1939). In that decision the Supreme Court ruled Congress has “*exclusive*” control of the amendment process under the political question doctrine. Thus any question about the process was assigned to Congress to resolve rather than the courts. Further, the Supreme Court declared any opinion a court might issue in regards to the amendment process was an “advisory opinion.” The court stated, “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.”

The court used ratification of the 14th amendment as the basis for its ruling that Congress has exclusive power over the amendment process. Not many realize that following the Civil War Congress *legislatively* converted the states in the former confederacy into military districts. In order for the former states to “regain” their status as states, the law mandated those states ratify the proposed 14th amendment *while still classified as military districts*. Article V does not allow for ratification of proposed amendments by military districts. Several elected state legislatures refused to ratify the proposed 14th Amendment. In answer Congress removed those legislatures by military force and replaced them with people of their choosing who then “ratified” the 14th Amendment.

The significance of Coleman, as I pointed out in the debate, was that my two federal lawsuits Walker v United States (2000) and Walker v Members of Congress (2004) were the first two *post-Coleman* lawsuits filed in federal court. Thus the cases were a testing ground not only as to how the court would react but the government as well. There was the *real* possibility the government would assert Congress exclusively controlled the amendment process, had the authority to remove state legislatures by military force in order to arrive at a desired ratification vote and controlled all aspects of an Article V Convention including a convention. The possibility was not that far-fetched given the government ominously requested in Walker v United States a decision “analogous” to Coleman. Thus if the government accepted the 1939 Supreme Court’s version of the [1933 Enabling Act](#) it was entirely possible it would declare itself a tyranny.

District Court Judge John C. Coughenour granted the government’s request and used Coleman as the basis for his ruling going so far as quoting from my assertion of constitutional obedience in my brief but eclipsing four contrary Supreme Court decisions used as reference to buttress the assertion. The government literally had tyranny in its grasp but it never closed its fist.

I am sure Mr. England is competent attorney. But being an attorney has its drawbacks. One is Mr. England has been indoctrinated to accept certain premises commonly taught in all law schools. One of these premises: all Supreme Court decisions have legal and constitutional effect. However when I spent time in the debate discussing the admission of the Solicitor General who represented all members of Congress in Walker v Members of Congress, obviously he just didn’t “get it.”

Obviously his indoctrination took over his thinking: the court did not issue an actual ruling in Walker. Therefore nothing of consequence occurred. Quite the contrary. The court established in Coleman an “advisory” role for itself in the amendatory process. This meant any subsequent ruling by a court (and I would argue this included Coleman itself) has no legal effect *because the ruling was and is “advisory—given wholly without constitutional authority.”* Trent England didn’t “get it” because the concept that a Supreme Court decision had no relevance in a case before it simply was beyond his ability to grasp because of his indoctrination.

What Mr. England didn't take into account was the fact is the Supreme Court threw out the rule book in Coleman and created a unique area of law just for the amendment process. In this area of law the court affirmatively excluded itself from its customary position of final determination and more importantly *closed the door permanently to its ability to reverse itself in this new area of law*. Instead it handed the controls permanently to Congress. Therefore a simple court procedure required prior to the Supreme Court considering certiorari was the crux of the case not whether the Supreme Court ruled or not.

Rule 15.2 of the Supreme Court rules mandates the plaintiff and defendant in any case before the court must agree on what are the facts and relevant law about the case *before* the court rules on granting certiorari (meaning the court will hear arguments on the case and issue a formal ruling regarding it). The rule further mandates the defendant, in this case the government, *must assert in a reply brief any misstatements of fact and law made by the plaintiff if the defendant believes such misstatements have been made*. The Walker lawsuits asserted that a convention call was peremptory on Congress (meaning they had to obey the text of the Constitution), was based on a numeric count of applying states with no preconditions or terms, that a sufficient number of states had applied to cause a convention call and that in failing to call a convention when the states had applied in sufficient number to meet the two-thirds requirement, the members of Congress violated federal criminal law.

It was at this point in court proceedings that the *government* declared its policy in regards to Coleman. This was what *really* mattered in Walker—not whether the Supreme Court issued a ruling which by its own terms had no constitutional effect whatsoever, *but whether or not the government given the opportunity for the first time since Coleman to assent Coleman's tyrannical specifications would assert that ruling as its policy or reject that ruling in favor of prior Supreme Court rulings which supported Article V as written meaning Congress shares power and authority with both the states and people in the amendment process and can only amend the Constitution by the process prescribed in Article V*. Obviously if the government asserted Coleman as its policy such statements as made in Walker would be entirely contrary to the court concept of “exclusive” congressional power over the amendment process and therefore the government as required by Rule 15.2 would have to state the assertions made by the plaintiff were incorrect as to fact and law.

Such exclusivity meant the government asserted neither the people, the states, or any part of the government had any say whatsoever in the amendment process. In sum, the Coleman gave Congress carte blanche. Only one sentence in Coleman stood in the way, “In the exercise of that power, Congress, of course, is governed by the Constitution.” Given the oxymoron of the Coleman ruling since none of the powers the court assigned Congress are even implied in the Constitution, the sentence is meaningless in its context. Yet it did exist. Would the government be “governed by the Constitution?”

The other side blinked. It waived a response meaning that under Rule 15.2 it determined nothing I stated was contrary to *fact or law* which in this case meant the law of Article V and the four Supreme Court rulings used in Walker v United States ignored by Judge Coughenour to reach his conclusion were the prevailing law in regards to Article V. Hence the convention retained its autonomous position in the Constitution allowing the people to alter or abolish their form of

government (within the confines expressed in Article V) *without government censorship*. Also remaining intact was the obligation of Congress to call a convention when the terms of Article V were satisfied. In sum the government asserted in the Walker lawsuits it was bound to the terms of the Constitution, not Coleman.

The irony is this: the Coughenour ruling asserting “exclusive” congressional control of the convention occurred after Coleman and was therefore “given wholly without constitutional authority.” Hence it was itself advisory. This left the government a choice: the original four Supreme Court decisions (and others) made prior to Coleman mandating obedience to the expressed amendment procedure set forth in Article V *or the declaration of a tyranny*. None of these decisions described themselves as advisory unlike the Coleman ruling. They were issued with the same constitutional authority attached to all Supreme Court rulings which Mr. England has been trained to customarily understand.

The similarities between Coleman and the goals of ALEC and COS should be obvious to all. ALEC and COS should abandon them before it is too late. ALEC and COS should realize as the government has *publicly declared its policy* federal criminal laws intended to ensure obedience to the Constitution will be enforced. One of the four court rulings used in my brief which Judge Coughenour ignored was *Hawke v Smith*. That ruling as well as federal criminal law, mandates convention delegates *are* elected. Those state legislatures which have passed legislation effectuating delegate selection as previously described, along with ALEC and COS urge the creation of a tyranny. The federal government will not allow it. It would be best before the government imposes criminal sanctions on the leaders behind the ALEC/COS tyranny push that they change their own direction and avoid the consequences.

When Mr. England suggested several times in the debate I was not aware of the political reality of “my” position on Article V, I had to grin. I’d already stared down the government and made it refute Coleman thus preserving our constitutional form of government. I hasten to add the government has had several opportunities since to officially change its mind and assert the dictatorship of Coleman and not done so. This is why I believe there will be a convention call—because if politically Congress wanted not to call; it could have gotten out of its constitutionally mandated obligation in the Walker lawsuits with a single declaration based on Coleman, the Supreme Court’s Enabling Act of 1939. To my relief it did not and has not. I knew the risk I was taking when I started my lawsuits. Believe me when I say it was as real as real can get.