

Sibley Files Final Response, Case Now in Hands of Judge

By Bill Walker

With the filing of [a response](#) early last week by plaintiff Montgomery Sibley, the first round of charges and countercharges in the case Sibley v McConnell came to an end for the plaintiff. The government filed [their final responses](#) on Friday July 10. The matter now rests with District Court Judge James E. Boasberg.

The Sibley lawsuit was filed earlier this year by Maryland attorney Montgomery Sibley and seeks to cause Congress to call an Article V Convention by means of a court order known as a writ of mandamus, literally “we command.” According to the terms of Article V of the Constitution, Congress “shall” call a convention if “two-thirds” or 34 states submit applications for a convention call. The [public record](#) shows that presently 49 states have submitted a total of 766 applications for a convention call. Sibley presented evidence of 35 state applications to the court [in his complaint](#).

Sibley brought his original lawsuit against Senate Majority Leader Mitch McConnell and Speaker of the House John Boehner. Sibley later [amended his complaint](#) to include a class action lawsuit against all members of Congress for failure to call an Article V Convention.

While the issue concerns the obligation of Congress to call a convention is the subject of the Sibley lawsuit, this first round of filings concerned the procedural issue of which court the case will be heard. Sibley originally filed his case in the Superior Court of the District of Columbia, the federal equivalent of a state superior court. Because that court was created under the authorization of Article I of the United States Constitution, the court does not require the plaintiff prove what is known as standing to sue in order to bring his suit. Federal law defines the court as a “state” court even though in all aspects (jurisdiction, judges and so forth) the court is federal.

[Federal law](#) allows federal defendants to remand (or transfer) any suit brought in a “state” court against federal officials to a federal district court, in this case the United States District Court for the District of Columbia. However this same law also demands that if the district court finds at any time it lacks subject matter jurisdiction it must remand the case back to the “state” court in which it was originally filed.

Sibley has admitted, and the government agrees, that Sibley lacks standing to sue. Under court rules if a plaintiff lacks standing to sue this means the court lacks subject matter jurisdiction. Under such circumstance the law, if obeyed by the court, mandates the district court remand the case back to the Superior Court where it will then be heard on its merits as it does not require standing to sue in order for a case to be heard by the court.

However the government, which has adamantly opposed calling a convention, [has asserted](#) that under the terms of the Speech and Debate clause Congress has immunity from being compelled by court order to call a convention even if the states apply in sufficient number to cause a convention call. They also assert the issue before the court constitutes a political question,

meaning an issue that is political in nature and therefore not subject to judicial review. They are asking the case be dismissed on the basis of immunity.

The problem Judge Boasberg faces is whether or not to grant the government's motions which is to accept their arguments just long enough to declare the court lacks jurisdiction and dismiss the case all the while ignoring [a law](#) which demands if the court "at any time" before final judgment "it appears the district court lacks subject matter jurisdiction, the case shall be remanded." So it becomes a simple matter of the cart before the horse or the horse before the cart; the horse being Sibley's and the government's agreement that as Sibley lacks standing the court lacks subject matter jurisdiction; the cart being the government's argument that dismissal of the case should be granted before the court determines it has the authority to do so.

If Judge Boasberg puts the cart before the horse, the court will dismiss the case on the basis of lack of subject matter jurisdiction but ignore the federal law mandating it be remanded back to Superior Court where it still remains viable. On the other hand, if the judge puts the horse before the cart he will accept the admission from both sides that Sibley lacks standing and therefore the District Court lacks subject matter jurisdiction and remand the case back to Superior Court in accordance with federal law.

A decision by Judge Boasberg is expected by the end of July.