

Sibley Rebuts Gov't Motion to Dismiss; Smith Files Reconsideration

By Bill Walker

In a strongly worded [19 page response](#) Maryland attorney Montgomery Sibley rebutted the government's motion of dismissal it submitted to DC Superior Court in the Sibley versus McConnell/Ryan lawsuit. The lawsuit, now nearly ten months old, concerns the calling of an Article V Convention by Congress which thus far has refused to call the convention despite irrefutable evidence the states have satisfied the sole constitutional requirement of two thirds submittal of applications for such a call.

At least four federal lawsuits have been filed over the years including two by this author concerning the refusal of Congress to obey the Constitution and call an Article V Convention as mandated by that document. In none of the lawsuits has the government ever challenged the assertion the states have applied in sufficient number to cause a convention call. Instead, in each case, the government has vigorously opposed any effort to have Congress obey the Constitution and call the convention as mandated by Article V of the Constitution basing its arguments primarily on the doctrine of standing. Based on this fact and the fact in my second lawsuit, Walker v Members of Congress, which individually named and sued all members of Congress as defendants, it is clear all Congress regardless of political affiliation opposes obeying the Constitution regarding calling an Article V Convention. Without doubt, this is the most blatant, documented violation of the Constitution by the government in United States history.

While Sibley's lawsuit is still in process, the result of the other three lawsuits was identical: denial of subject jurisdiction by the courts based on the doctrine of standing, a doctrine as Sibley points out in his rebuttal, only came into existence in the late 20th Century. Standing did not exist as a legal doctrine when the Constitution was created by the Founders. Over the years the Supreme Court has created a series of legal barriers collectively known as the doctrine of standing which is supposed to limit court jurisdiction to only those cases and controversies listed in Article III of the Constitution. Only within the last couple of years has standing even been recognized as existing in the Civil Rules of Federal Procedure. When I filed my lawsuits in 2000 and 2004 for example, the doctrine wasn't even mentioned in the rules but everyone knew it existed.

The fact is standing, as construed by the courts today, is unconstitutional. Without resorting to legal citations the argument of unconstitutionality can be summed thus: the doctrine of standing as created by the federal courts is based on the "cases and controversies" clause of the Constitution. The doctrine supposedly addresses whether a court has jurisdiction in a specific case based on this clause. It should be noted the Constitution does not describe nor authorize standing; not surprising as the doctrine did not exist at the time of its creation. The court created doctrine does not refer to any of the [textually expressed](#) conditions described in the cases or controversies clause in the Constitution as the basis for its standards. Indeed none of the language referred to by the courts as the standards for its doctrine of standing is contained in the Constitution.

The Constitution does not authorize the courts to “amend” the standings listed in Article III with additional standards of case, controversy or suit. Moreover the doctrine does not recognize the “suits” clause later introduced in the Seventh and Eleventh amendments both of which affect the judiciary. The introduction of the new term in the Eleventh Amendment would appear to nullify the original “cases and controversies” clause in Article III or at the very least modify it by causing the term to be “cases, controversies and suits”. Hence to base a court doctrine on language that at the very least has been constitutionally modified raises questions of constitutionality when an interpretation of that language ignores amendment modification.

In addition the Constitution expressly assigns Congress the task of defining court jurisdiction. Thus, if the doctrine were legally and constitutionally created, that task would be a legislative rather than judicial one. Further, the Supreme Court has ruled the right to petition a court for redress is a First Amendment right. As the First Amendment states Congress “shall make no law” abridging the right to petition, Congress is forbidden from legislatively creating such a doctrine as it would prevent petitioning for redress in the courts which is exactly what the doctrine accomplishes today.

As Congress has not prescribed a doctrine of standing and is forbidden from doing so, then obviously the courts by creating such a doctrine have violated not only the First Amendment but Article III as well. The fly in the ointment of course is the fact that to have standing overturned means having it reviewed by the same court system that created it. Obviously the courts are not inclined to yield up such power as this discrimination gives them absolute control over which portions of the Constitution will be enforced, which parts ignored and under what terms and conditions this tyranny occurs.

Sibley attacked standing on two fronts. First, he pointed out that there is no standing in the DC Superior Court though a [recent appeals court decision](#) contradicts this position. However all is not lost. The Appeals Court stated it is the responsibility of the plaintiff to prove standing. It further noted the Court is required to accept the plaintiff’s evidence as true. Thus Sibley’s presentation of 35 applications from 35 states and his contention that this set of applications is sufficient under the Constitution to cause a peremptory convention call must be accepted as true. Thus the court must accept the numeric count statement of Congress made on [May 5, 1789](#) as well as the fact Congress cannot decline to call once two thirds of the states have applied, as true.

The key is the fact the call is “peremptory” a legal term which means, “no excuse, absolutely mandated.” Thus, if the court accepts that a call is “peremptory” no excuse can prevent the call if it is proven the states have applied in sufficient number to satisfy Article V. Hence, “no excuse” includes using the doctrine of standing (or any other objection put forth by the government for that matter) to prevent a call. If the court accepts the call as peremptory then it must accept there can be no conditions which prevent its execution. The court therefore cannot use standing to defeat the call. The Supreme Court has expressly ruled if the proper number of states has applied, Congress must call the convention. Sibley cites one of the four Supreme Court cases where the Court has declared this in his response.

But the courts have also ruled on standing saying a court which has no jurisdiction cannot make a ruling. As noted [in an earlier article](#) however, standing has been thrown out the window by the courts when it comes to Article V. No doubt Sibley will bring this fact to the attention of the judge thus setting up a direct conflict between the doctrine of standing and obedience to the Constitution. DC Superior Court Judge [Maurice A. Ross](#) will be deciding one of the most critical constitutional questions in United States history: whether the court created doctrine of standing or the express peremptory text of the Constitution prevails when a judge is presented a choice between the two. As was stated in the seminal case Marbury v Madison, “Between these two points there is no middle ground.” One or the other must fall; either the judge will rule the court created doctrine of standing prevails over all else in the Constitution and or he will grant Sibley’s motion of mandamus as a convention call is peremptory meaning nothing, including standing, can be used to prevent Congress from calling a convention once the states have applied in sufficient number to cause the call.

Sibley also filed a [Motion for Summary Affirmance](#) in the United States Court of Appeals. Following the conclusion of his case in District Court the two defendants split the case with McConnell filing for dismissal in Superior Court. Meanwhile Ryan’s attorneys filed an appeal of the District Court ruling remanding the case from District Court where the government hoped to have the case dismissed for lack of standing, to Superior Court where standing supposedly is not applied as the court is an Article I court rather than an Article III court. In his appeal Sibley reiterated his earlier argument that the federal law under which the remand occurred is valid, presumptive and conclusive. As such, Sibley argued, there is no basis for the appeal. Therefore he argued the Appeals Court should deny the government’s appeal summarily. The motion, if successful, would terminate the appeal by the government and allow the court proceedings in Superior Court to continue without interference or delay.

In other news, Gary Smith, a federal inmate [who filed a suit](#) in November regarding an Article V Convention but was turned down by the court because the judge believed Smith lacked one element of standing, injury in fact, has filed a [motion for reconsideration](#) with the court.

Smith’s claim for reconsideration is based on the proposition that Congress has been obligated to call a convention since [Friday, March 13, 1908](#). It has not called a convention. Under the terms of the Constitution all members of Congress are required to take an oath of office swearing that they will obey the Constitution. As Congress has not called, according to Smith, every member of Congress is in violation of their oath of office. It is both a federal criminal and civil offense to violate the oath of office. Under federal law part of the penalty for failure to obey the Constitution or its provisions is any official doing so is forbidden from either holding or seeking federal office. Smith maintains as federal law forbids members of Congress from holding federal office if they violate their oaths of office and that as they have done so by not calling a convention as mandated by the Constitution, they had no legal authority to pass the law under which Smith was incarcerated having already been prohibited from holding office by federal law by their failure to obey the Constitution. Smith does not request the court to overturn or otherwise affect his incarceration. Instead he asserts the fact he was incarcerated under a law not legally enacted satisfied the missing element of standing, injury in fact.