Judge: Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BILL WALKER, Plaintiff, vs. MEMBERS OF CONGRESS OF THE UNITED STATES, et al. Defendants	CASE NO. C04-1977RSM BRIEF IN SUPPORT OF COMPLAINT AND MOTIONS FOR REPARATION OF INCOME TAX BY WRIT OF EXECUTION, ASSERTION OF CRIMINAL ACTS AND CIVIL WRONGS BY DEFENDANTS AND WRIT OF MANDAMUS TO REDRESS SUCH WRONGS

ARGUMENT SUMMARY

Members of Congress have vetoed provisions of the Constitution in violation of federal criminal and civil law. This suit seeks redress for these acts.

RELIEF SOUGHT

Claiming a right to veto clauses of the Constitution of the United States (hereafter Constitution)[1], specifically the convention to propose amendments clause (hereafter convention) of Article V of the Constitution (hereafter Article V) in order to gain dictatorial control of the Constitution, these Members of Congress (hereafter Congress or defendants) have publicly advocated

[1] All phrases noted as (hereafter…) shall apply to all documents of this suit.

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the overthrow of our constitutional form[2] of government in violation of federal criminal and civil laws (hereafter federal law(s)).

This suit seeks relief by: (1) punishment of Congress for these violations as prescribed by federal law; (2) restoration of constitutional supremacy and authority by Writ of Mandamus; (3) reparation by Writ of Execution of income tax payments extorted from Plaintiff by Congress under color of law in the amount of $7333.00.[3]

VENUE, JURISDICTION

Venue is asserted under 28 U.S.C. 1391 (e)(1),(3) and 28 U.S.C. 1402(a)(1),(b). Jurisdiction is asserted under 28 U.S.C. 1331, 1340, 1343(1),(3),(4), 1346(1)(2), and 1361. Further, jurisdiction is asserted under all U.S.C. statutes referenced by Plaintiff describing such court jurisdiction in his Response To Show Cause Order issued by this court on October 8, 2004. Beyond these assertions, it is axiomatic the redress of criminal actions falls under court jurisdiction and are therefore is also asserted by Plaintiff.

STANDING

Standing[4] is asserted or addressed on the following grounds:

(1). The Supreme Court (hereafter Court) has recognized two axioms relating to the amendatory procedure of Article V. The Court stated:

> "*The language of the article [5] is plain, and admits 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." Hawke v. Smith, 253 U.S. 221 (1920) (hereafter Hawke). (Emphasis added).

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[2] "Form. 4. The particular way of being that gives something its nature or character; the combination of qualities making something what it is; intrinsic character; as, democracy and autocracy are two *forms* of government." Webster's New Twentieth Century Dictionary, Second Edition. (Hereafter *Webster's*).

[3] Under 26 U.S.C. 6511, reparation is requested for the past three years of tax payments, the limit allowed under law. As shown in Evidence Appendix, Summary Of Plaintiff's Federal Income Tax Payments-Tax Years 2001,2002, 2003 pp.11-16, Plaintiff paid $2809 in income tax in tax year 2001, $2106 in tax year 2002 and $2418 in tax year 2003 for a total of $7333.

[4] In addition to the issues of standing addressed here, as Coleman v. Miller, 307 U.S. 433 (1939) has substantial effect on standing in this suit, it will be discussed separately later in this brief.

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Hence, the Court unequivocally ruled that neither legislatures nor the courts, state or federal, posses the right to alter the amendatory process from what the Constitution unambiguously sets out. Therefore, as Article V demands Congress call a convention "on the application of the Legislatures of two-thirds of the several states", Congress does not possess the authority to alter, veto or ignore what "the Constitution has fixed." Clearly the two modes of proposal, convention and congressional, are part of the "plain…language of article [5]…which the Constitution has fixed" and therefore, like ratification, cannot be ignored by legislative or judicial whim.

The second axiom concerns convention elections. The Court stated:

> "Both methods of ratification, by Legislatures or conventions, *call for deliberative assemblages representative of the people*, which it was assumed would voice the will of the people." (Hawke) (Emphasis added).

As the Court defined the word "conventions" as used in the Constitution to mean "deliberative assemblages representative of the people" this ruling demands the election of convention delegates by the people to be mandatory. The Court did not exclude, exempt nor separate the *amendatory* proposal convention from this election standard. As the Constitution demands a convention must occur, and election of delegates to such a convention must occur, it follows Congress' refusal to call such a convention not only violates the Constitution but federal election laws as well. Plaintiff is a registered voter in the state of Washington.[5] He is eligible to vote in any election within the state of Washington, including an election to choose delegates to a convention. By its illegal actions, under color of law, Congress has prevented such an election from occurring thus violating the voting rights of the Plaintiff. Under 42 U.S.C. 1983 and 42 U.S.C. 1973i(a), and 42 U.S.C. 1973j(c), Plaintiff has the right to recover full use of his voting rights and vote in all elections permitted under the Constitution including voting for delegates to a convention. As Plaintiff has been denied his right to vote in an election required by the Constitution in which he is eligible to vote, Plaintiff's rights has been injured by this denial. Restoration of

[5] See Evidence Appendix, Plaintiff's Voter Registration Card, p. 11.

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voting rights is judiciable and supported by federal law. The remedy is concrete and individualized as Plaintiff only seeks the restoration of *his* voting right. Standing is satisfied.

(2). It is axiomatic in the United States the people are sovereign.[6] The people employ their sovereignty, through the Constitution, to create a subservient government designed to protect their rights and execute their sovereign powers.[7] Therefore, any and all government power derives from people's sovereignty and may not exceed those powers granted by the people. Hence, no part of the government can be said to be sovereign. This axiom is based on the Declaration of Independence (1776), which states (in part):

> "We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; *that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it*, and to institute new government, laying its foundation on such principles, and *organizing its powers in such form*, as to them shall seem most likely to effect their safety and happiness."(Emphasis added).

If the rights of life, liberty and pursuit of happiness are unalienable, and hence axiomatic, it follows the means whereby these unalienable rights are secured, the right of alter or abolish, must also be unalienable and therefore also axiomatic. This axiom is reinforced by the Treaty of Paris (1783) (hereafter Treaty) in which the King of England "acknowledged" the sovereignty of the individual states in Article 1: ("His Britannic Majesty acknowledges the said United States, viz. … (The names of the 13 colonies)… to be free sovereign and independent states, that he treats with them as such,") But actual peace was made with the people of the United States, as well as the individual states, *a power long recognized as only possessed by a sovereign state*.

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[6] "The constitution of the United States is to be considered as emanating from the people and not as the act of sovereign and independent states." McCulloch v. State of Maryland, 17 U.S. 316 (1819).

[7] "The government of the United States is one of limited powers, and no department possesses any authority not granted by Constitution." Hepburn v. Griswold, 75 U.S. 603 (1869).

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Hence, the sovereignty of the people of the United States was recognized. Article 7 of the Treaty states:

> "*There shall be a firm and perpetual peace* between his Britannic Majesty and the said states, *and between* the subjects of the one and *the citizens of the other*, wherefore all hostilities both by sea and land shall from henceforth cease." (Emphasis added).

As the Treaty recognized the people of the United States were sovereign in that it was required Britain *make peace with them* as well as the states in order to end the Revolutionary War [8] their sovereignty became law of the land when the treaty was incorporated into the Constitution under Article VI § 2 which states (in part):

> "*[A] ll treaties made*, or which shall be made, under the Authority of the United States, *shall be the supreme Law of he Land*; and the Judges in every States shall be bound thereby. …" (Emphasis added).

Further, the right of alter or abolish is protected by the Ninth Amendment of the Constitution which states:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Clearly, the purpose of an amendment to the Constitution is to alter, (e.g., 17th Amendment altering election of senators) or abolish (e.g., 18th Amendment abolishment by the 21st Amendment). Article V language limits amendments to these two purposes; neither Congress nor a convention can create a new constitution.[9] The people created an amendatory process in which they play an essential, if indirect, part: the election of the deliberative assemblages representing their collective political will, be it state legislature, Congress, ratification convention or proposal convention. Without this participation the amendatory process in Article V as envisioned by the

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[8] As actual peace to end hostilities of the Revolutionary War between those parties waging war, a sovereign power, is only described in this article and nowhere else in the Treaty no other conclusion is possible.

[9] The text of Article V limits amendments to apply only to the current Constitution with the phrase, "…Amendment, which, in either Case, shall be valid to all Intents and Purposes, *as part of this Constitution*…" (Emphasis added). However, this estoppel is only effective if Congress is required to *obey* the Constitution. If *Walker* allows Congress does not have to obey the Constitution and can thus write a new Constitution when it wishes the estoppel falls. Having revised Article V without formal amendment, Congress has written a new Constitution, allegedly something everyone fears.

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Founders is impossible. For Congress to prevent amendment by one of the methods provided by the Constitution violates the right of the people to alter or to abolish their form of government by means of the amendatory process, which they have an unalienable right to do. As a United States citizen, Plaintiff claims his right to alter or abolish by participating in the amendatory process, has been injured by Congress. Such action violates federal laws 5 U.S.C. 7311, 18 U.S.C. 241, 242, and 42 U.S.C. 1983 specifically intended to preserve and protect from disparagement (thus enforcing the Ninth Amendment) any violation of rights guaranteed by the Constitution. As these federal laws address specific judicial remedies for violations of "*any right or immunity secured under the Constitution*" and as the right to alter or abolish is such a right, standing is satisfied if there is demonstration of a right being infringed which is established in this brief by Congress' refusal to call a convention.

(3). It is axiomatic any act by the United States Government (hereafter Government) which conflicts with the Constitution must fall.[10] It is a fact no federal court ruling regarding standing has ever addressed the effects of the amendments to the Constitution on this doctrine, limiting their rulings instead solely to the "cases and controversies" clause of Article III, without acknowledging that, as with the rest of the Constitution, these amendments have altered this limited interpretation.

In terms of its actual effect, what is the intent of standing? Essentially, standing is no more than the issuance of a license by the court permitting a citizen to exercise his First Amendment right to petition the Government for a redress of grievances in a federal court of law.[11] The license and its conditions of issuance rest entirely with the court. Without this license, the citizen is denied court access, his petition is summarily dismissed and goes unredressed. The

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[10] See Marbury v. Madison, 5 U.S. 137 (1803), generally.

[11] "Congress shall make no law respecting … the right of the people … to petition the Government for a redress of grievances." U.S. Constitution, First Amendment (In part).

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citizen has no recourse as to this license. There is no "secondary" federal court system the citizen may employ having been denied license to the "primary" federal court system. He cannot appeal to the legislative or executive branches for relief, either for remedy for denial of issuance of the license or for equal effect for solution of his grievance, which he achieves in a court of law. The legislature may create law but lack enforcement authority for the law it creates. The executive may bring action of redress to enforce the law, but without court consent, there is no redress. In the final analysis in our current system of government, only the courts actually redress a grievance.

The Constitution divests sovereign powers to various entities, i.e., legislative power to Congress, executive power to the President, judicial power to the courts and so forth. The purpose of the first ten amendments to the Constitution is to continue this dispersion of sovereign power originally assigned in the first seven articles, modifying, creating or clarifying them as required. Thus, the right to petition for redress of grievances is a sovereign power *specifically assigned to the people* by the First Amendment. Under the terms of the Tenth Amendment, as the right to petition for redress is a sovereign power assigned to the people, it is therefore *denied* to the Government.[12] Standing is a determination by a Government court whether or not a petition of redress will be accepted by that Government court thus deciding (based on which petitions it accepts) which clauses of the Constitution as well as other law, it will enforce. Hence, the Government court determines whether the people *can* petition rather than resolving the issue of grievance *of* the petition. It is this choice by the Government of deciding whether or not the citizen *can* petition the Government that is unconstitutional. The Court has addressed such arbitrary rules stating (in part):

"'*It is settled by a long line of recent decisions of this Court that an ordi-*

[12] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." U.S. Constitution, Tenth Amendment.

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> *nance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the controlled will of an official-as by requiring a permit or license which may be granted or withheld in the discretion of such official- is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.'* And our decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license." Shuttlesworth v Birmingham 394 U.S. 147 (1969). (Hereafter Shuttlesworth) (Emphasis added).

Hence, Plaintiff's *right to petition* the Government for a redress of grievances cannot be unconstitutionally restrained on the basis of standing as that doctrine violates of the First and Tenth Amendments.

Due process of law specified in the Fifth Amendment implies obvious fundamentals: written codification of law, so the law may be examined by all; creation of law by public act of legislature so the people have a voice in its formation; specificity of law as to definition, process, intent and meaning so the law may be clearly understood and interpreted; equitable universal application of law so as to avoid discrimination. Without these fundamental characteristics of law there can be no due process. The doctrine of standing fails to meet even to these minimum standards and therefore violates due process. Standing is unsupported by any legislation enacted by Congress unlike all other federal law including civil, criminal, judicial procedure, rules of evidence and federal court rules to cite a few examples. No chapter of United States Code authorizes the courts to create standing or codifies it as to definition, limits, parameters or application.[13] Further, there is no guarantee what one federal judge determines is standing will be accepted by another federal judge.[14] This fact raises the issue of equal protection under the Fourteenth Amendment.

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[13] In *McConnell v. FEC*, 02-1674, (2003) for example, Congress established exemption of members of Congress from the then existing standards of standing so as to permit members of Congress to bring suit in the new campaign finance law. The Court did not dispute Congress' right to legislatively define standing thus establishing Congress' right to legislate standing.

[14] For example in *Walker*, Plaintiff asserted his right to vote in an election-- *a long recognized basis of standing by the courts*—was rejected by the court as a basis of standing. Therefore, the court made an arbitrary decision, deter-

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All language in the Constitution must be considered to have effect.[15] Thus, the terms "suit in law and equity"[16] in the Eleventh Amendment must be considered to have effect. The only possibility is the cases and controversies clause of Article III as nowhere in the Constitution are legal actions discussed. As the amendment does not say "cases and controversies in law and equity" or such similar language, the term "suit(s)" cannot be construed as shorthand for the "cases and controversies" clause of Article III. As the words have effect and are contained in amendments to the Constitution, there are only two possibilities: (1) the entire clause of "cases and controversies" including all limitations therein has been amended to simply "suits in law and equity" or (2) the term "suit(s)" has been added by amendment to the cases and controversies clause. If the former circumstance is correct, then all court rulings regarding standing no longer apply as the constitutional language they are based on no longer exists. If the latter is true, then "suit" is a class of legal action not subject to standing doctrine as it has never been addressed by court ruling. Either way the doctrine of standing is affected. Thus, as this action is a suit in law and equity, it is exempt from standing under the terms of the Eleventh Amendment, the terms of which have never been addressed by any court ruling concerning standing.[17]

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mining the one citizen's right to vote deserved court protection and enforcement while another citizen's right to vote did not. In a more recent example, *Elk Grove Unified School District v. Michael A. Newdow* 02-1624, (2003) the Court erected a new principle in standing, the prudential issue, which is whether the Court *should* rule on the issue before it. The new principle was "erect[ed]… in order to avoid reaching the merits of the constitutional claim" (quoting Chief Justice Rehnquist, in dissent). Thus, by its own admission, standing is used by the Court as a license to regulate the right of the people to petition "to avoid reaching the merits of the constitutional claim."

[15] "It cannot be presumed that any clause in the constitution is intended to be without effect." Marbury v. Madison, 5 U.S. 137 (1803).

[16] Suit. "[An] action to secure justice in a court of law; *attempt to recover a right* or claim through legal action…" *Webster's* (emphasis added). "A generic term, of comprehensive signification, referring to any proceeding by one person or person against another or others in a court of law in which the plaintiff pursues, in such court, *the remedy which the law affords him* for the redress of an injury *or the enforcement of a right*, whether at law or in equity. Kohn v. U.S., 91 U.S. 367, 375, 23 L.Ed. 449; Weston v. Charleston, 27 U.S. (2 Pet.) 440, 464, 7 L.Ed. 481; Syracuse Plaster Co. v. Agostini Bros. Bldg. Corporation, 169 Misc. 564, 7 N.S.S.2d 897. It is, however, seldom applied to a criminal prosecution. And it was formerly sometimes restricted to the designation of a proceeding in equity to distinguish such proceeding form an action at law." Black's Law Dictionary, 6th Edition, (1990)(emphasis added). (Hereafter *Black's*).

[17] This argument is reinforced by the fact the word "suits" is also employed in the Seventh Amendment, which directly addresses civil actions. The amendment states (in part): "In *suits* at common law, where the value in contro-

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In sum, as standing violates several constitutional amendments and thus is unconstitutional, Plaintiff is entitled to ignore the doctrine of standing under *Shuttlesworth* and proceed with his suit.

(4). The reporting of criminal activity by federal officials to other federal officials empowered by federal law to prosecute such criminal activity does not require standing on the part of the reporting citizen and may be reported by that citizen in any manner he shall choose. The court may not use lack of standing on the part of the citizen to refuse to act on such reports under penalty of law i.e., conspiracy 18 U.S.C. 371, and obstruction of justice 18 U.S.C. 1512(a)(3), (c)(2).[18] As Plaintiff is reporting criminal activity in his suit, he requires no standing.

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versy shall exceed twenty dollars, the right of trial by jury shall be preserved…" (Emphasis added). Hence, the Founders themselves, in proposing the first changes to their own original work, amended the term "cases and controversies" to include "suits". As nothing may be taken out of the Constitution except by amendment, the court cannot ignore the word, nor another word be substituted in its place. See *infra*, fn. 39 ¶ 5. Thus, to suggest another word or combination of words such as "action" replaces "suits" is constitutionally invalid. Finally, the statutory language of 42 U.S.C. 1983 recognizes "suit in equity" and therefore provides statutory relief and thus court jurisdiction for this amendment language. 42 U.S.C. 1983 does not however state there must be standing for such relief and therefore, as noted by the court in its Order To Show Cause, "They [federal courts] possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Therefore to require standing under 42 U.S.C. 1983 would be expanding the limited jurisdiction of the court by judicial decree and thus a suit under 42 U.S.C. 1983 can proceed without standing.

[18] 18 U.S.C. 371 states: "*If two or more person conspire either to commit any offense against the United States*, or to defraud the United States, or any agency thereof in any manner or for any purpose, *and one or more of such persons do any act to effect the object of the conspiracy*, each shall be fined under this title or imprisoned not more than five years, or both. (Emphasis added). 18 U.S.C. 1512 (b)(3) states: Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to (3) hinder, delay, *or prevent the communication to a* law enforcement officer or *judge of the United States of information relating to the commission or possible commission of a Federal offense* or a violation of conditions of probations, parole, or release pending judicial proceedings; shall be fined under this title or imprisoned not more than ten years, or both. 18 U.S.C. 1512 (c) (2) states: "*Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from (2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings; or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both*." (Emphasis added). Further, section (e) of 18 U.S.C. 1512 states: For the purposes of this section an official proceeding need not be pending or about to be instituted at the time of the offense; and the testimony or *the record*, document, or other object *need not be admissible in evidence or free of a claim of privilege*." (Emphasis added). The law is plain. The term "free of a claim of privilege" make it clear that Plaintiff's reporting of federal crime cannot be ignored by the court because it finds defendants in the case, of whom Plaintiff is reporting, have a privilege under law including standing, constitutional clause or otherwise. Any assertion of dismissal regardless of its basis therefore violates this statute.

As federal judges are required to take the same oath of support to the Constitution as members of Congress, (see *infra* fn. 39 ¶ 5) it follows that should a judge issue a ruling contrary to the clear, unambiguous language of the

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(5). Congress has barred several amendments from adoption by refusing to call a convention thus obstructing the lawful amendatory process of the Constitution. Such congressional action is illegal under federal law.

Most notable among these obstructed amendments is the repeal of the 16th Amendment, which is usually recognized as authorizing the Government to levy and collect federal income tax. The record of convention applications to Congress by the states[19] clearly shows repeal of the 16th Amendment and thus federal income tax, to be a constitutional certainty prevented only by illegal congressional intervention.

As Congress has illegally and unconstitutionally barred the amendatory process from functioning in order to collect income tax which otherwise would not be collected, due to the repeal of the authorizing amendment, Congress has committed extortion[20] under color of law.[21] This extortion extends to the Plaintiff. He has been forced and intimidated, under threat of imprisonment or fine, to pay income tax that had Congress obeyed the Constitution, he would not have to pay. Plaintiff seeks reparation of this illegally paid income tax as permitted under federal law and seeks civil and criminal penalties against Congress as also permitted by law.[22] As this recovery is individualized, concrete and judiciable, standing is satisfied. Further, standing is im-

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Constitution, they can face the same charges as Congress for such an act. See 5 U.S.C. 3331, "An individual…elected or appointed to an office of honor or profit *in the civil service* shall take the following oath…" 5 U.S.C. 2101 (1) "For the purposes of this title (1) the 'civil service' *consists of all appointive positions* in the executive, *judicial* and legislative *branches of the Government of the United States*…" 5 U.S.C. 2104 "For the purpose of this title 'officer' …means a justice or judge of the United States and an individual who is (1) required by law to be appointed in the civil service by one of the following acting in an official capacity (A) the President; (2) engaged in the performance of a Federal function under authority of law…and (3) subject to the supervision of … the Judicial Conference of the United States, while engaged in the performance of the duties of his office." (Emphasis added).

[19] See Evidence Appendix, Table Summarizing Applications For A Convention To Propose Amendments, pp. 6-8; Record Of Applications In Regards To Subject Matter, pp. 8-11.

[20] 26 U.S.C. (a)(1); 18 U.S.C. 872.

[21] "Extortion. The obtaining of property from another *induced by wrongful use of actual or threatened force* violence, or fear, *or under color of official right.* 18 U.S.C.A. § 871 et seq.: § 1951. "A person is guilty of theft by extortion if he purposely obtains property of another by threatening to: … (4) *take or withhold action as an official, or cause an official to take or withhold action*; Model Penal Code, § 223.4." *Black's* (emphasis added).

[22] See 26 U.S.C. 7422, generally.

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plied under 26 U.S.C. 7422 granting the Plaintiff the right to pursue his claim. In sum, a statute intended to allow recovery by a citizen of illegally collected tax money in a court of law implies standing in that court to do so.

Moreover, standing is established for Plaintiff by the doctrine expounded in Flast v. Cohen, 392 U.S. 83 (1968) (hereafter *Flast*). The Court stated:

> "…. *[W]e hold that a taxpayer will have standing consistent with Article III to invoke federal judicial power when he alleges that congressional action under the taxing and spending clause is in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power. The taxpayer's allegation in such cases would be that his tax money is being extracted and spent in violation of specific constitutional protections against such abuses of legislative power.* Such an injury is appropriate for judicial redress, and the taxpayer has established the necessary nexus between his status and the nature of the allegedly unconstitutional action to support his claim of standing to secure judicial review. Under such circumstances, we feel confident that the questions will be framed with the necessary specificity, that the issues will be contested with the necessary adverseness and that the litigation will be pursued with the necessary vigor to assure that the constitutional challenge will be made in a form traditionally thought to be capable of judicial resolution." (Emphasis added).

Obviously, the amendatory process of Article V is intended to "operate to restrict the exercise of the taxing and spending power" of Congress. The taxing and spending power can be modified, expanded or removed entirely, by amendment, if the people desire it. Proof of this assertion is exemplified by the 16th Amendment[23] creating federal income tax, a major expansion of the taxing and spending power of Congress. However, the states have since applied in sufficient number to cause a convention to remove federal income tax, thus restricting the taxing and spending power of Congress. Congress has illegally failed to obey the Constitution to call a convention as peremptorily required by the Constitution. The nexus of the derogation of the conven-

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[23] Other examples include the First Amendment, which was the example the Court discussed in *Flast*, the 13th Amendment removing slavery as a source of tax revenue by outlawing the practice of slavery, the 14th Amendment §4 discussing liability of public debt thus limiting spending by Congress, the 18th Amendment removing liquor as a source of tax revenue, the 21st Amendment, which restored this source of tax revenue, the 24th Amendment removing poll tax as a source of revenue and the 27th Amendment, limiting spending by Congress on its own salaries. In fact, all limits on taxing and spending by Congress found in the Constitution are contained in its amendments.

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tion clause by illegal congressional abuse of legislative authority against a constitutional clause intended "to restrict the exercise of the taxing and spending power of Congress" is clear and obvious. Indeed, the amendatory process is intended to *directly* restrict this power (along with all other Government powers) while the employment of other constitutional clauses, such as the First Amendment Establishment clause can only rise to the level of implication. It is illogical to hold an amendment meets the *Flast* doctrine of standing while asserting the process which created that amendment does not. Such an assertion would mean the amendatory process does not have the authority to create such an amendment thus defeating the *Flast* doctrine.

Income tax is being extracted from all citizens including the Plaintiff and spent in violation of a specific constitutional clause intended to protect against such abuses of legislative power. If Congress obeys that clause the tax and abuse is curtailed. Thus, the nexus is established and standing under the *Flast* doctrine is satisfied.

ARGUMENT

On March 19, 2001, Chief United States District Judge John C. Coughenour (hereafter Judge Coughenour) issued a ruling in Walker v. United States, C00-2125C (2001)(hereafter *Walker*) in United States District Court, Western District of Washington.[24] *Walker* dealt directly with the fundamental question of whether the Congress must obey the meaning, intent, and written language of the Constitution by calling a convention as prescribed in Article V when the proper number of states applies. Article V states:

> "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, …" (Emphasis added).

[24] See Evidence Appendix, Walker v. United States (C00-2125C)(2001), p.1.

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The Constitution articulates two autonomous forms of amendatory proposal: by Congress and by convention. The Founding Fathers were unambiguous regarding the meaning and intent of the Article V convention language. As stated in Federalist 85:

> "In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; and on this account alone, I think there is no weight in the observation just stated.
>
> … But there is yet a further consideration, which proves beyond the possibility of a doubt, that the observation is futile. It is this that the national rulers, whenever nine States concur, will have no option upon the subject. *By the fifth article of the plan, Congress will be obliged 'on the application of the legislatures of two thirds of the states, which at present amount to nine, to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof.' 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.* And of consequence, all the declamation about the disinclination to a change vanishes in air.
>
> *If the foregoing argument is a fallacy, certain it is that I am myself deceived by it, for it is, in my conception, one of those rare instances in which a political truth can be brought to the test of a mathematical demonstration.*"
>
> Alexander Hamilton, author.) (Footnotes omitted.) (Emphasis added.)

Alexander Hamilton chaired the Committee of Style during the 1787 Constitutional Convention. His committee's responsibility was to author the final written language of the Constitution reflecting the meaning and intent of the Founders. Thus, Hamilton can be viewed as the author of Article V. Hamilton's Federalist 85 text makes it clear the Founders did not intend the convention call to be "a political question" that was "the province of Congress" to decide.[25] The word "peremptory"[26] precludes this interpretation. Thus the Founders intent is, upon the proper

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[25] "The numbers of the Federalist are entitled to weight in any discussion as to the true intent and meaning of the provisions of the fundamental law of the United States." Wheeling, P.C. Transport Co. v. City of Wheeling, 99 U.S. 273 (1878).

[26] "Peremptory, 1. *In law, barring further action, debate, question, etc*; final; absolute; decisive. 2. *That cannot be denied, changed, delayed, opposed, etc.* as a command." *Webster's*; "Peremptory. Imperative; final; decisive; abso-

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number of applying states, a call on the part of Congress for a convention is peremptory, obligatory, and non-discretionary. Furthermore, the text makes it clear there is no other requirement in the language of the Constitution for the states to satisfy, other than a two-thirds numeric count, in order to compel Congress to call a convention. Hence, the subject matter of an application, (if any) its contemporaneous or any other so-called standard is constitutionally invalid. All fifty states have applied to Congress to call a convention, submitting 567 applications.[27] This number of state applications and the number of states submitting them, more than satisfies the language of Article V.

Congress has ignored all state applications, refusing to call a convention. Thus, by its actions, Congress claims the right to veto the meaning, intent and written language of the Constitution thus overthrowing our constitutional form of government. The Government did not repudiate this fact during *Walker* deliberations. Indeed, through their legal counsel as part of its defense, the Government asserted Congress' right to veto by substituting a single amendatory process exclusively controlled by Congress. This assertion vetoes the Constitution, "overthrows our constitutional form of government" and allows Congress to assume dictatorial control of the Constitution. The assertion violates federal laws.

Terming the convention call a "political question" Judge Coughenour ruled it was the "province of Congress" to decide if Congress had to obey the Constitution. Thus, *Walker* established Congress is not obligated to obey the meaning, intent or written language of the Constitution, thus vetoing it. Additionally, *Walker* established Congress possesses exclusive amendatory control of the Constitution. As a result of the these new powers, federal courts no longer pos-

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lute; conclusive, positive; *not admitting of question, delay, reconsideration or of any alternative*. Self-determined; arbitrary; not requiring any cause to be shown. Wolfe v. State, 147 Tex.Cr.R. 62, 178 S.W.2d 274, 279." *Black's*. (Emphasis added).

[27] See Evidence Appendix, Table Summarizing Applications For A Convention To Propose Amendments, p.6.

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sesses the authority to declare an act of Congress or the Government unconstitutional as the Court ruling on which this authority is based, the Constitution, is nullified by *Walker*.

Judge Coughenour's ruling repudiated the Founders' meaning, intent and written language of the Constitution. He did not rule Congress must call a convention if the states applied in sufficient numeric count to satisfy Article V as stated in Federalist 85. Instead, despite the obligatory language of the Constitution and the clear intent of the Founders, the ruling affirmed Congress has the authority to ignore the 567 applications from all fifty states and not call a convention, thus vetoing the language of the Constitution.

As the issue before Judge Coughenour, whether Congress shall call a convention when mandated to do so by the Constitution, was absolute in proposition as well as an affirmative/negative in disposition, his order cannot be considered a dismissal. Instead, he ruled in favor of the Government and its claimed veto of the Constitution. In applying Coleman v. Miller 307 U.S. 433 (1939) (hereinafter *Coleman*) to determine control of the convention amendatory process was "the province of Congress," a judicial finding never before asserted, Judge Coughenour clearly ruled on the issue before him.

In citing *Coleman*, Judge Coughenour placed the convention process of amendment under Congress' exclusive control relying on that part of *Coleman* that states:

> "The Court here treats the amending process of the Constitution in some respects as subject to judicial construction, in others as subject to the final authority of the Congress. There is no disapproval of the conclusion arrived at in Dillon v. Gloss, that the Constitution impliedly requires that a properly submitted amendment must die unless ratified with a 'reasonable time.' Nor does the court now disapprove its prior assumption of power to make such a pronouncement. And it is not made clear that only Congress has constitutional power to determine if there is any such implication in Article V of the Constitution. On the other hand, the Court's opinion declares that Congress has the exclusive power to decide the 'political questions' of whether a State whose legislature has once acted upon a proposed amendment may subsequently reverse its position, and whether, in the circumstances of such a case as this, an amendment is dead because an 'unreasonable 'time has elapsed. *Such division between the political and judicial branches of the government is made by Article V which grants power over the amending of*

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> *the Constitution to Congress alone. Undivided control of that process has been given by the article exclusively and completely to Congress. The process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control, or interference at any point.*
>
> *Since Congress has sole and complete control over the amending process, subject to no judicial review, the views of any court upon this process cannot be binding upon Congress*, and insofar as Dillon v. Gloss, supra, attempts judicially to impose a limitation upon the right of Congress to determine final adoption of any amendment, it should be disapproved. If Congressional determination that an amendment has been completed and become a part of the Constitution is final and removed from examination by the courts, as the Court's present opinion recognizes, surely the steps leading to that condition must be subject to the scrutiny, control and appraisal of none save the Congress, the body having exclusive power to make that final determination.
>
> *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 or by the Kansas courts. Neither State nor Federal courts can review that power. 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.*" (Emphasis added).

Using such words as "exclusive," "completely" or "undivided" to describe congressional control of the Article V amendatory *process* i.e., the constitutional procedure under which a proposed amendment becomes part of the Constitution, as opposed to an amendment *proposal* submitted by Congress which is subservient to that constitutional procedure, the Court recognized no exceptions, such as the peremptory authority of the convention process as expressed in Federalist 85, or the states' role in that process.[28] Until *Coleman*, Court rulings recognized two autonomous constitutional forms of amendment.[29] *Coleman* created a single mode, evidently intended by the Court to be the alpha and omega of national Government amendatory authority.

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[28] Article V gives the states the sole power of ratification without which a proposed amendment cannot become part of the Constitution as well as the authority to *independently* propose amendments through a convention. Hence, while Congress can designate which method of ratification may be used by the states, the states, not the federal government, retains the power to control the amendatory process as they may propose and ratify amendments *without federal government consent* whereas the federal government *cannot* amend the Constitution *without* state consent. *Walker* of course voids this language of Article V turning the entire process to the control of Congress.

[29] See Evidence Appendix, Court Rulings Mandating A Convention Call By Congress, p.4.

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There is an obvious conflict between Federalist 85, representing the original intent of the Founders as to Congress' role in the convention amendatory process, which is Congress, shall have "no discretion" and *Coleman*, which is Congress, shall have "exclusive power." *Coleman* represents the "living constitution" doctrine of constitutional law. Judge Coughenour faced the decision which constitutional doctrine "living constitution," or "original intent" he should use to rule on the convention amendatory process. He chose "living constitution." His choice simultaneously endorsed unilateral control of the amendatory process by Congress and congressional veto of the meaning, intent and written language of a clause of the Constitution as intended by the Founders. Despite this, the worst accusation Judge Coughenour faces is interpreting *Coleman* in its obvious and literal meaning. Judge Coughenour ignored all other Court rulings to the contrary.[30]

As *Coleman* did not specifically address the convention amendatory process, Judge Coughenour was required extend *Coleman*, i.e., legally determine the convention process was under congressional control. In *Walker* the Government referred to *Coleman* as an "analogous" decision rather than precedent. Clearly, even the Government required a court ruling in order for that doctrine to be extended. Therefore, to extend *Coleman* to include the convention process, Judge Coughenour obviously was required to rule on the central question of congressional obligation. Moreover, he was required to nullify several Court opinions favoring the convention amendatory process as autonomous of congressional dictate and obligating a call in order to prevent a convention call.[31]

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[30] See Evidence Appendix, Omission By Judge Coughenour In Order, p.4.
[31] See Evidence Appendix, Omission By Judge Coughenour In Order, p.4; Court Rulings Mandating A Convention Call By Congress, p.4.

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Nothing in *Coleman* precludes Judge Coughenour's conclusions.[32] Indeed, its language stating "Congress possessing exclusive power over the amending process" entirely supports Judge Coughenour's ruling, which was in fact, no more than an affirmation of an already existing situation. As Congress has "exclusive" power over the amendatory process, it is consistent to assert Congress is free to act in any manner it wishes in regards to that process. Hence, Congress can reject, or veto, any portion of that process at its political whim despite the fact such a veto was never intended by the Founders. Congress has vetoed the convention amendatory process for nearly a century but more importantly has asserted such a right in public record in *Walker*.[33] These facts establish the axiom Congress have the power to veto written clauses of the Constitution if it desires where no such veto was intended. If Congress can veto the Constitution where the Founders did not intend such authority, then clearly *Walker* creates new congressional powers.

While the judicial ruling sanctioning these new powers is a mere formality, nevertheless the formalization creates official public record of a Government policy legally enforced by a written federal court ruling which is also public record. As the veto authority claimed by Congress is not granted by sovereign authority of the Constitution, it follows such authority is derived from outside the Constitution. The only possible source is Congress' own sovereignty giving it the power to decide whether to obey the meaning, intent, and written language of the Constitution. In short, with the consent of the judiciary, Congress now has the right to alter or abolish the Constitution, i.e., the form of government, a sovereign right previously claimed by the people

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[32] As the subject of *Coleman* was congressional amendment process not convention amendment process thus meaning the Court did not did not discuss it, this fact is actually not surprising. The issue is that Judge Coughenour *by his own initiative and judicial decree* extended *Coleman* to include the convention amendment process where the Court had not done so.

[33] See Evidence Appendix, Table Summarizing Applications For A Convention To Propose Amendments, pp.6-8; Record of Applications In Regards To Subject Matter, pp.8-11.

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since the time of the Declaration of Independence, but now firmly in the hands of the Government.

In obeying the "province of Congress" portion of *Walker*, which affirms Congress' veto power, and amendatory control of the Constitution, this act by Congress validates *Walker* as a legal court ruling. If *Walker* is not a ruling, then its conclusion, that the convention amendatory process is "the province of Congress," is not valid as the ruling granting Congress the right to veto the Constitution and control the amendatory process ceases to exist. Congress' independent sovereignty also ceases to exist. Logically, Congress must then obey the original meaning, intent, and written language of the Constitution, which is intended to regulate the actions of Congress, and issue a convention call, which Congress has not done. Therefore, any lingering doubt that *Walker* is a ruling is defeated by the incontrovertible fact Congress has refused to call a convention to propose amendments despite the overwhelming number of applications requiring it to do so.

The Supreme Court is explicit: standing to sue is obligatory before a federal court may rule on an issue before it. Despite the language of Judge Coughenour's order that Plaintiff lacked standing thus preventing a ruling by that court, the District Court nevertheless issued a ruling granting new powers to the Government. As standing is obligatory and the District Court rejected Plaintiff's assertions of standing, it follows in order to make its ruling, the District Court granted the Plaintiff implied standing. This implied standing permitted the District Court to be in compliance with the Court rules so as to permit the District Court to issue its ruling. This implied standing is separate and independent of any standing assertions made by the Plaintiff. This rejection by the District Court constitutes a separate ruling on the admissibility those issues of standing before a federal court. Therefore, Plaintiff claims the same standing in this suit as was recognized by the court in *Walker* allowing it to make its ruling. If the court or defendants assert there was no standing, then it follows there was no ruling. This fact does not bode well for the defen-

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dants as no political question doctrine has ever been decided in their favor, nor has *Coleman* ever been extended to include the convention amendatory process. Hence, the courts have not ruled. Therefore they have no protection whatsoever from criminal and civil law violations.

Despite any language to the contrary, a dismissal of *Walker* on the basis of standing to sue was impossible for several reasons. A decision by a court on lack of standing does not nullify the original intent of the Constitution. Indeed, such action implies the original intent of the Constitution remains intact, as it has not been affected by court action. Therefore, if Judge Coughenour only employed standing as the basis to dismiss the case, he would have still been obligated to enforce the original intent of the Constitution. Hence, he would have compelled to order a convention call.[34]

If the Plaintiff had no standing, then it follows there was no ruling on political question immunity for Congress. Hence, they have no defense, as the court has never ruled on political question immunity. The original intent of the Constitution must prevail. With no immunity, Congress must be found guilty of all charges brought in this suit. However, for the court to find them

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[34] Beyond the words of the Constitution there are several Court rulings affirming this obligation. The Constitution states: "This Constitution, and the Laws of the United States, which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, *shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby*." (Article VI, § 2), in conjunction with the next clause in the same article, "The Senators and Representatives before mentioned, and the members of the several State legislatures, and *all executive judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution*…" (Article VI, § 3) (Emphasis added).

Court rulings include: " An act of congress that is repugnant to the constitution cannot be become a law", "An act of the legislature which is repugnant to the constitution is void." Marbury v. Madison, 5 U.S. 137 (1803); "The constitution is the supreme law of the land and no act of Congress is of any validity which does not rest on the authority conferred by the instrument." U.S. v. Germaine, 99 U.S. 508 (1878); "Where legislation is prohibited by the constitution, it must be disregarded by all courts recognizing the constitution as the paramount law of the land." Wolff v. City of New Orleans, 103 U.S. 358 (1880).

It is inconceivable that any sitting federal judge today is unaware of the supremacy clause of the Constitution. Hence, there is only one conclusion: Judge Coughenour intended to establish Congress may veto the Constitution and wrote his ruling accordingly.

Thus, by judicial decree Judge Coughenour amended the Constitution creating a single amendatory process controlled by a single branch of the government entirely contrary to the explicit language of the Constitution. "It is a fundamental principle of jurisprudence that federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which *is not to be expanded by judicial decree*." Order to Show Cause, p.2, Walker v. Members of Congress, 04-1977 RSM, October 8, 2004, citations omitted. No clause of the Constitution, nor any statute grants the federal courts the power of amendment or amending the Constitution.

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innocent also dictates the court must rule they are immune from civil, criminal and judicial review if they veto the Constitution by refusing to obey it, which the laws in question would otherwise penalize them for doing. Such a ruling creates a dictatorship, as Congress shall then have no restraints of law whatsoever. Such an act itself violates these same civil and criminal laws. Hence, the court is obliged to declare itself immune from such laws so as to suffer no legal repercussions.

The Founders employed the word "peremptory" to describe the authority of the convention clause vis-à-vis congressional and Government obligation. An clause is not "peremptory" if it can be avoided by some means. Thus, the peremptory convention clause must nullify standing, unless a court ruling nullifies that peremptory clause. If the court intended to enforce original intent, it would be bound to find Congress was obligated to call a convention regardless of standing. Only by repudiating the Founder's original intent through a ruling, could the District Court prevent a convention call. Judge Coughenour therefore invoked *Coleman*. However, *Coleman* is not without affect on standing to sue.

Coleman creates a special class of lawsuit, the advisory opinion. Two properties of an advisory opinion are that no one is actually sued and, by itself, the opinion is without force of law. Moreover, as it is advisory, there is no issue of subject jurisdiction. Hence, where the *Coleman* doctrine on amendatory process is invoked by a federal court such as in *Walker*, standing to sue cannot be employed by that court as a basis on which to dismiss as no one is actually sued. Therefore standing to sue does not exist. Further, the courts are free advise on any subject they choose. The court can thus advise a political question doctrine giving Congress veto of the Constitution. But such advice runs afoul of federal law by advocating the overthrow of our constitutional form of government. Potentially, the court faces the liability of criminal charges as Congress.

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Coleman permits advisory opinions. Thus no standing is required. Subject matter jurisdiction is also nullified as the court may advise on any subject it pleases. It is clear the language of *Coleman* only permits advisory opinions, which require no standing to sue as no one is actually sued. If the court asserts that Plaintiff must have standing, or subject jurisdiction, such as it has in its Order To Show Cause, it follows it has rejected the *Coleman* doctrine of exclusive congressional control of the amendatory process and the advisory opinion option on the court. This in turn can only mean the court recognizes Congress does not control the convention process of amendment and that the original language of the Constitution must prevail. But if the court employs standing so as to permit Congress to veto the Constitution by not issuing a call for a convention, it is possible the court has "set on foot" an act of insurrection against the authority of the United States, the Constitution, an act the defendants have obviously already committed. Hence, as the amendatory procedure is directly discussed in this suit, neither standing nor subject matter jurisdiction is required for it to proceed.

However, court recognition of *Coleman* is not without peril. In *Coleman* the Court limited rulings on the amendatory process to advisory opinions only. Therefore, Congress can consider any ruling on that process, including rulings on its new powers, as advisory which it is free to accept or not. Congress is not obligated to heed any opinion of the courts seeking to restore the Founders' original intent. Therefore, *Coleman* means the courts require Congress' consent in order for their ruling to have substance. Obviously, this means the Court in *Coleman* extended congressional sovereign immunity *ad infinitum*. Moreover, the District Court ruling affirming the right to veto clauses of the Constitution is equally irreversible for the same reasons.

As of 1911, long before *Coleman* or *Walker*, Congress asserted its right to veto the Constitution[35] disregarding four Supreme Court decisions specifically addressing the obligation of

[35] See Evidence Appendix, Table Summarizing Applications For A Convention To Propose Amendments, p.6.

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Congress to call a convention to propose amendments.[36] Such disregard ended, of course, when *Coleman* and *Walker* altered the judicial position on congressional obedience to the Constitution from earlier Court opinions. These two cases endorse a veto power already claimed by Congress and extend total congressional dominance over the amendatory process thus altering the meaning, intent and written language of the Constitution.

Judge Coughenour stated it was "unambiguously clear" the convention amendatory process, and hence, the decision whether to obey the constitutional clause compelling such a convention, was "the province of Congress." As employed by the Court in *Coleman*, such words as "exclusive" or "undivided" were obviously intend to be the ultimate grant of unilateral congressional authority. Once granted by court ruling, retraction of unrestrained authority is impossible, as any return is severed by the grant itself. By whatever legal reasoning the court attempts to circumvent the word "exclusive", for example, only justifies Congress' circumvention of the word "shall." "Shall" is the operative word employed by the Founders throughout the Constitution to compel absolute obligation or a particular action on the part of Congress or the Government, i.e., "Congress shall make no law…". Indeed, both "exclusive" and "shall" normally are words absolute in meaning and intent providing no room for interpretation. However, Judge Coughenour's ruling clearly holds while the word "exclusive" is absolute in meaning the word "shall" is not.

The Constitution describes itself as Supreme Law. The constitutional clause obligating Congress to call a convention to propose amendments exists only in the Constitution and has no comparable federal statute. Courts deal with matters of law. In the instance of *Walker*, the Constitution was the only law a court of law could address. Consequently, any modification of that law by court order must alter or amend the Constitution. Clearly, *Walker* revised the meaning, intent and written language of the Constitution as intended by the Founders. Thus, *Walker*

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[36] See Evidence Appendix, Court Rulings Mandating A Convention Call By Congress, p.4.

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amended the Constitution establishing courts orders can amend the written language of the Constitution.

The Constitution contains no savings or compulsion clause stating Congress or the Government must obey any part of it. Even if it did, *Walker* permits Congress and the Government to veto it. *Walker* therefore cannot and does not conflict with the Constitution. There is no limitation in Judge Coughenour's ruling granting Congress' veto power or unilateral amendatory control of the meaning, intent, and written language of the Constitution as the amendatory portion permits total control of the Constitution. Further, as a court order established Congress and the Government may veto clauses of the Constitution, even if they do, all that can be asserted is these political bodies are obeying a federal court order.

Despite the amendment procedure prescribed in Article V, such judicial amendment by the District Court is a necessary and proper power. Such power is required in order for Congress to obey court's ruling. This ruling altered the unambiguous Founders' intent from a peremptory, obligatory, and non-discretionary action on the part of "the national rulers", a term obviously meant to include Congress, the counts and the Government, to a non-peremptory, non-obligatory and entirely discretionary act entirely within "the province of Congress" to ignore at its political whim.

The convention clause was intended to check national Government abuse at the amendatory level by providing an independent amendatory process outside congressional control. However, if Congress unilaterally controls the Constitution with no possible restraint from any outside political body, this point of law is inconsequential. These checks no longer exist. It has been judicially nullified giving Congress unilateral control of the Constitution. Certainly, this control nullifies the proposition of checks and balances and thus any threat of law against members of Congress.

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This congressional immunity applies to both judicial and state action. If *Walker* was overturned by judicial decree yet that decree did not compel Congress to call a convention as envisioned by the Founders i.e., no discretion or regulation by the National Rulers, *Walker* still remains in force. The ruling addressed obedience of Congress to the Constitution. Only the reestablishment of that obedience can nullify *Walker.*

All members of Congress were defendants in *Walker*. As such, Congress was aware of all possible consequences of *Walker*. It is a legal axiom that legal counsels execute their client's intent. It is therefore a reasonable assumption Congress instructed their legal counsel, the U.S. Attorney, as to the legal action they desired in *Walker*. Their counsel publicly advocated this accordingly.[37] No member of Congress has ever repudiated any conclusion concerning *Walker*. This fact alone demonstrates Congress' complete agreement with its conclusions.

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[37] This assertion becomes fact when the law, 2 U.S.C 118 authorizing U.S. Attorney entrance *Walker* is examined. The text states the U.S. Attorney may enter "an action" only "on being thereto requested by the officer sued." The text states:

"*In any action brought against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty*, in executing any order of such House, *the United States attorney for the district within which the action is brought, on being thereto requested by the officer sued, shall enter an appearance in behalf of such officer*; and all provisions of the eighth section of the Act of July 28, 1866, entitled "An Act to protect the revenue, and for other purposes", and also all provisions of the sections of former Acts therein referred to, so far as the same relate to the removal of suits, the withholding of executions, and the paying of judgments against revenue or other officers of the United States, shall become applicable to such action and to all proceedings and matters whatsoever connected therewith, *and the defense of such action shall thenceforth be conducted under the supervision and direction of the Attorney General.*" 2 U.S.C. 118. (Emphasis added).

Under this law, all 535 members of Congress must therefore *individually* request defense of their acts by the U.S. Attorney, as there is neither group exemption nor presumptive assumption of authority to defend before request in the law. All did so in *Walker*. The record of *Walker* proves this fact: no other legal representative except the U.S. Attorney represented Congress. To request defense logically implies a conscious decision by Congress that some act by them must be defended. In the case of *Walker* the act had to be the decision by Congress *not to obey* the Constitution and the conscious decision by Congress to continue this illegal, criminal act. As the law requires the U.S. Attorney to defend Congress as their legal representative, it follows such a relationship becomes attorney/client. Hence, the ethics and rules of conduct that apply to any attorney arise. Such relationship includes privilege, thus binding the attorney from actions against his client. Most of Congress is composed of attorneys who of course know these limits and how to use them to their advantage. By requesting defense, Congress premeditatedly entrapped the U.S. Attorney using this law to defend their illegal criminal acts while knowing the rules of attorney/client privilege prevented any other action by the U.S. Attorney, i.e. charging them with the crimes they had committed. In this way the U.S. Attorney could not charge them criminally for the acts he knew were criminal. Such conspiracy by Congress is a violation of federal laws: "If two or more person conspire … to commit any offense against the United States…in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both." 18

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It is a self-evident truth Congress is a political body packed with politically ambitious people. These ambitions are frequently thwarted by constitutional limitations usually imposed by the Court. Clearly Congress coveted new powers not granted by the Founders to remove the Constitution as obstacle to these ambitions.[38] *Walker* achieved this.

Walker and *Coleman* assign all amendatory power to Congress. This power includes proposal, ratification and promulgation as well as control of the convention amendatory process. Congress can also veto constitutional clauses, which obviously includes the amendatory clause itself. Thus it may amend the Constitution by whatever means it pleases. Hence, any legislation enacted by Congress must be viewed, in light of *Walker* and *Coleman*, as no more than a constitutional amendment Congress intends to make. Therefore no conflict with the Constitution can exist, as an amendment is never unconstitutional. An amendment is always assumed to alter that which it conflicts with.

Plainly, Congress possessing both unilateral veto and amendatory control over the Constitution cannot suffer review by any power within the Constitution intended to restrain it. Congress can simply veto that restraint as it has with the convention amendatory clause, which was intended to restrain the Government on an amendatory level. Immunity from a standard grants an exemption of judgment by that standard.

This fact removes court authority to rule any action of Congress is unconstitutional. The basic principles by which the Court granted itself authority to determine such matters are constitutional supremacy and immunity from alteration by legislative whim. The Court wrote:

> "The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily,

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U.S.C. 371; "Whoever corruptly…endeavors to influence…any… officer in or of any court of the United States, in the discharge of his duty…or corruptly…influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b) [which is] imprisonment for not more than 10 years, a fine under this title or both." 18 U.S.C. 1503.

[38] See Evidence Appendix, Record of Applications In Regards To Subject Matter, p.8.

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> not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.
>
> *That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected.* The exercise of this original right is a very great exertion, nor can it nor ought it to be frequently repeated. The principles, therefore, so established are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent.
>
> *This original and supreme will organized the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.*
>
> *The government of the United States is of the latter description.* The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. *To what purpose are powers limited, and to what purpose is that limitation committed writing; if these limits may, at any time, be passed by those intended to be restrained?* The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. *It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.*
>
> *Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.*
>
> If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable."
>
> Marbury v. Madison, 5 U.S. 137 (1803). (Emphasis added.)

In its *Walker* ruling, the District Court simply amended the authority of the Constitution from a "superior, paramount law, unchangeable by ordinary means," to that of a document "on level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it." As there is no middle ground, these two states of the Constitution resemble a switch. The premise of judicial review is based on the switch being in the "paramount" position. Therefore, it follows when the switch is altered to the opposite "ordinary" state, the remainder of the premise on which judicial review rests, naturally must fall and therefore is nullified.

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Once any part of the Constitution is allowed to be vetoed by Congress, it follows such authority extends to entire the Constitution. The axiom is clear: as no middle ground exists between the supremacy of the Constitution and its subservience to legislative whim, neither can there be a middle ground with a veto. As supremacy applies to all the Constitution, so must a veto. As veto power is now assigned to the Congress, such existence logically mandates the veto must trump any obligation as the choice of obedience, i.e., the choice to employ the exercise of its veto, rests with Congress. *Walker* creates a perfect legal defense for Congress. Any assertion of compliance is refuted by the fact it may be vetoed. Congress controls the Constitution through its unilateral amendatory power and may veto its clauses. Under these circumstances, no action of Congress can violate the Constitution. Hence there is no real need for judicial review as there can never be any violation to review.

The nullification of Court authority by the District Court is entirely proper. A power created by a court order unsupported by specific constitutional language can be nullified by a subsequent court order interpretating the non-specific constitutional language differently. Indeed, under the terms of the original *Walker* decision, court ruling that any part of Government must obey the Constitution could be in contempt of *Walker*. The executive branch of the Government, acting through its legal counsel in the Justice Department, proposed these new powers for Congress in *Walker*. It is a reasonable conclusion the Government supports what it proposes. Beyond political ambition, Congress now has another reason to be recalcitrant in obedience to the Constitution. Having defied the Constitution so dramatically, its members face civil and criminal charges should they retreat on this advocacy.

Walker is the "living constitution" concept of constitutional law taken by federal court order to its ultimate and logical conclusion. This concept is no more than a pretext to employ relative interpretation rather than absolute law. "Living constitution" neatly avoids obeying the Constitution as meant, intended and written by simply ignoring it, substituting instead whatever a

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judge, lawyer or politician wishes the Constitution to be. This action is justified by asserting the Constitution is old and requires rapid updating in order to meet the needs of today's changing society. The fact the Constitution contains two perfectly workable methods of amendment to correct such failures due to age is ignored in the name of expediency.

Whenever a law in meaning, intent and written language is ignored by those that law is intended to regulate, there is no law. Such is the case with the Constitution. The issue *Walker* addressed exists strictly within the Constitution. Those it was intended to regulate have vetoed its law. Those it was intended would preserve the absolute, supreme law have sanctioned the veto. The "living constitution" concept of constitutional law thus pervades.

As unilateral control of the Constitution has been assigned to a single political body entirely contrary to the meaning, intent, and written language of the Constitution and such change has been judicially sanctioned, it follows the Constitution's effectiveness as the supreme law of the land has been irrevocably terminated. While the Constitution may continue to possess some intrinsic historic value, as an effective legal document, it is dead. As the Constitution is dead, its original intent is dead and the court's authority to review violations of the Constitution also dies. Judgment can only be rendered when absolute standards on which to base them exist. The court cannot hold an act of the Government violates standards the Government is not required to obey.

THE PROBLEM WITH ALL THIS

These new powers of Congress overthrow our constitutional form of government and therefore violate federal criminal and civil law.[39] These laws exist in order to preserve our consti-

[39] "An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he (1) advocates the overthrow of our constitutional form of government; (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government…" 5 U.S.C. 7311; "Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability or propriety of overthrowing or destroying the government of the United States…shall be fined under this title or imprisoned not

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tutional form of government. Thus, those who violate these criminal laws, in this case Congress, must be punished according to law in order to safeguard our constitutional form of government.

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more than twenty years, or both, and shall be ineligible for employment by the United states or any department or agency thereof, for the five years next following his conviction." 18 U.S.C. 2385; "Whoever violates the provision of section 7311 of title 5 that an individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he (1) advocates the overthrow of our constitutional form of government; (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government; shall be fined under this title or imprisoned not more than one year and a day or both." 18 U.S.C. 1918.

Any doubt that Congress ignoring the amendatory process of Article V by vetoing its provisions does not fall under the provisions of these federal laws is defeated by Executive Order No. 10450, April 27, 1953 which cites 5 U.S.C. 3333 and 5 U.S.C. 7311 as part of its authority: Executive Order No. 10450 states (in part):

"Whereas the interest of the national security require that all persons privileged to be employed in…the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States…it is hereby ordered as follows:

(a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment…of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(4) Advocacy of use of force or violence to overthrow the government of the United States, or *of the alteration of the form of government of the United States by <u>unconstitutional</u> means.*" (Emphasis added).

There is only one constitutional means by which the *form* of government of the United States may be altered, by formal amendment to the Constitution as specified in Article V. Clearly, ignoring a clause in the amendatory process of Article V of the Constitution in order for the defendants to gain exclusive control of that process when such control clearly was not intended by the Founders is an "alteration of the form of government of the United States by *unconstitutional* means." Defendants have not offered a formal amendment to Article V granting them exclusive control of the Constitution by one of the two amendatory processes allowed by that article. They have not submitted such a proposition to either state legislatures or conventions for ratification. Instead, they have chosen to veto the Constitution by surreptitious and criminal means instead of availing themselves of the Constitution.

The Court has addressed the matter succinctly: "Nothing new can be put into the constitution except through the amendatory process, and nothing old can be taken out without the same process." Ullmann v. U.S., 350 U.S. 422 (1956). While not cited in the court's Order to Show Cause, October 8, 2004, this statute and executive order serves as a statutory limit on judicial authority preventing that branch from amendment by judicial decree. See supra, fn.17,34 and Order to Show Cause, 04-1977RSM, October 8, 2004, p.2.

The defendants clearly are subject to 5 U.S.C. 7311. 2 U.S.C. 21 and 2 U.S.C. 25 requires that all members of Congress take oaths of office. 5 U.S.C. 2906 requires that "The oath of office taken by an individual under section 3331 of this title shall be delivered by him to, and preserved by, the House of Congress, agency, or court to which the office pertains." 5 U.S.C. 3331 describes the oath of office of the members of Congress which states: "An individual, except the President, *elected* or appointed *to an office of honor* or profit in the civil service or uniformed services, shall take the following oath: 'I, AB, *do solemnly swear* (or affirm) *that I will support* and defend *the Constitution of the United States* against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; *that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office* on which I am about to enter. So help me God.'" (Emphasis added). 5 U.S.C. 3333 states: "…an individual *who accepts office* or employment *in the Government of the United States…shall execute an affidavit within 60 days after accepting the office* or employment *that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is prima facie evidence that the acceptance and holding of office or employment by the affiant does not or will not violate section 7311 of this title*." (Emphasis added). Section 7311 referred to in 5 U.S.C. 3333 is of course 5 U.S.C. 7311 referenced above.

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Federal law requires only a record of public advocacy such as the Congressional Record, which record all of the applications for a convention by the states, or a court record, such as *Walker*, for conviction. Regardless of its legal outcome, *Walker* is a public record and thus any position by Congress however represented, is public advocation. The salient fact that Congress has refused to call a convention to propose amendments despite the clear language of the Constitution is public record. Such public advocation violates federal law.

In this case, actions literally speak louder than words. Simply put, the convention clause was intended by the Founders to be "peremptory."[40] Because the word is all-inclusive, the Founders required no text elaboration in the language, meaning or intent of the Constitution. The clause is the ultimate in legal brevity. Hence, by written design, with regard to the convention clause, "peremptory" is an integral part of our constitutional form of government. Thus, any action by Congress other than a call, even the assertion of political question or standing in a court suit so as to avoid obeying the Constitution, defeats the explicit language of the Constitution. Any assertion by the defendants other than a call overthrows our constitutional form of government. Any advocacy for the defendants of any description, be it court technicality or state application qualification where such assertions prevent a call by Congress violates federal criminal law.[41] A lack of standing on the part of a plaintiff in a civil case does not excuse criminal acts by Congress nor does it permit a veto of the Constitution by Congress.

The convention call is peremptory. The applications are public record. The refusal to obey the Constitution as shown in *Walker* is public record. Under these circumstances, the act

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[40] See *supra*, fn. 25.

[41] See *supra*, fn. 39. Violation of 5 U.S.C. 7311 can be either by publicly advocating the overthrow of our constitutional form of government or belonging to a group that so advocates such overthrow. As Congress as a group refuses to obey the Constitution, thus overthrowing the Constitution by act of veto, its members, the defendants, have violated the law. If it is urged particular defendants were not original defendants in *Walker*, this does not matter. These defendants are members of a group that does advocate the overthrow of our constitutional form of government, Congress, As members of that group, that body had continued to refuse to obey the Constitution thus making them equally guilty of violation of 5 U.S.C. 7311 by alteration of the form of government of the United States by unconstitutional means.

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itself of not calling a convention satisfies the definition of "advocate."[42] But the advocacy of the overthrow of our constitutional form of government goes even further.

In its *Walker* arguments, the U.S. Attorney, acting under instructions from his clients to avoid obeying the Constitution,[43] stated it was "well settled that it cannot be successfully urged the government must act in accordance with law."[44] The convention clause exists exclusively in the Constitution, the only law discussed in *Walker*. Thus the U.S. Attorney, the legal representative of Congress, who is assigned by law[45] to present their position on obeying the Constitution, the supreme law of this nation, asserted Congress was not required to obey the Constitution and thus not obey its peremptory clause.[46] Such public advocation, whether by a legal representative charged by law to represent Congress in a public lawsuit for public record or by the recalcitrant refusal of Congress when public record,[47] the Constitution and federal law[48]demands such action,

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[42] "Advocate, 1. To plead in favor of; to defend by argument before a tribunal or the public; to support or vindicate; be in favor of; as, to *advocate* total abstinence." *Webster's*; "Advocate. To speak in favor of or defend by argument. To support, vindicate, or recommend publicly." *Black's*.

[43] See *supra*, fn. 37, and p. 26 of this brief: "All members of Congress were defendants in *Walker*. ..."

[44] *See Walker*, C00-2125C, United States' Memorandum in opposition to Plaintiff's motion for Declaratory and Injunctive Relief and in Support of Cross-motion to Dismiss, p.3, ¶ 2, allegedly quoting Allen v. Wright, 468 U.S. 737 (1984) (hereafter *Allen*). An examination of *Allen* reveals the Court did not say this so-called quote. What the Court specifically stated was, "This Court has repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, *standing alone*, to confer jurisdiction on a federal court." As the Plaintiff in *Walker* cited several standings, such as disenfranchisement, the record is clear Plaintiff did not rely solely on the criminal acts of the government disobeying the Constitution alone for his standing. Hence the statement by U.S. Attorney does not refer to standing as the facts of *Walker* refute that meaning. Thus, it is clear defendants interpreted the *Allen* statement as the right to veto the Constitution *carte blanche* in regards to disobeying its clauses intended to regulate their acts. Hence, they refuse to call despite an explicit constitutional mandate to do so. This public declaration of disobedience and veto by the defendants is a far cry from the Court's obvious meaning in *Allen* that a plaintiff must bring more to the judicial table than just a complaint the government is not obeying the Constitution. However as the convention call was designated by the Founders as peremptory, it is clear the *Allen* doctrine cannot apply and that an assertion Congress has failed to call is, in this specific constitutional instance, sufficient grounds alone for judicial intervention as the peremptory nature of the clause removes all such legal barriers the court has erected.

[45] See *supra*, fn. 37.

[46] If the convention clause is not peremptory on Congress, then the people, who established the Constitution with the objective of limiting government power, have no effective mechanism to regulate their government that is independent of government control. The entire purpose of the Constitution, its limitations and delegation of power (see Madison v. Marbury, generally) is defeated. Our nation becomes a dictatorship. As these facts are well known to Congress, clearly this result is their objective.

[47] All applications by the states for a convention are recorded in the Congressional Record, a public document required to be maintained by Congress under Article I, § 4 (3) of the Constitution. For Congress to refuse to act on these applications as required by Article V of the Constitution is as much a public advocation and thus a violation of

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Congress violates federal criminal law which only requires proof of public advocation for conviction.

This low standard of proof is reasonable given the constitutional circumstances. The Founders, as well as earlier sessions of Congress which created these laws intended to preserve our Constitution, understood the greatest threat to that Constitution were acts of insurgence against our constitutional form of government by those charged by the Constitution to preserve it.[49] Obviously, by their acts of constitutional defiance, the defendants have rejected this sacred responsibility in favor of furthering their own political and personal power.

The subject of *Walker* was the supremacy of law in the Constitution, which describes itself as "supreme law of the land." The convention clause, (hence the law of that clause) exists nowhere but in the Constitution, the "supreme law of the land." Thus, an assertion by Congress they do not have to obey "the law" assumes an entirely new meaning. The assertion of the Government as expressed then becomes one of overthrow of our constitutional form of government. In any event, Congress' public action of refusing to call a convention when demanded so by the Constitution is by itself damning. Because the matter is peremptory, any assertion by the Government, regardless of its basis, simply provides further evidence of the intent of Congress to

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federal law (see *supra*, fn. 39) as an assertion by Congress' legal representative in open public court of its refusal to obey the Constitution in *Walker*. Both acts alter the government of the United States by unconstitutional means.

[48] See *supra*, fn.39.

[49] The words of Colonel Mason, the delegate at the Constitutional Convention who lead the effort to incorporate the convention amendatory proposal into Article V and opposed congressional consent in order to have a convention called are unambiguous:

"The plan [Constitution] now to be formed will certainly be defective, as the confederation has been found on trial to be. Amendments therefore will be necessary, as it will be better to provide for them, in an easy, regular and Constitutional way than to trust to chance and violence. *It would be improper to require the consent of the Natl. Legislature, because they may abuse their power, and refuse their consent on that very account.* The opportunity for such an abuse, may be the fault of the Constitution calling for amendmt." (Emphasis added).

As a result of these remarks, the convention delegates added the convention amendatory process to Article V. Clearly, therefore, the original intent of the Constitution by the Founders *was not to allow Congress the power to decide if a convention would be called or have control over it in any manner*.

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overthrow our constitutional form of government as it attempts to create a premise to refuse to obey the Constitution.

The courts have spoken on Congress' advocacy that it is not subject to obey the Constitution in plain, simple language:

> "[I]t is axiomatic that all persons, … are subject to the Constitution and laws of the United States." Donnell v. Town of Palm Beach et al. (03-81150-CIV) United States District Court Southern District of Florida (2003).
> The Court has also addressed this matter:
>
> "[C]onvenience and efficiency are not the primary objectives—or the hallmarks—of democratic government… The choices … made in the Constitutional Convention impose burden on the governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choices were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked. *There is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit Constitutional standards may be avoided, either by the Congress or by the President.* With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution."
> Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983). (Footnotes omitted.) (Emphasis added.)

As best, in refusing to call as demanded by the Constitution, Congress treats the convention call as a license it grants to citizens before these citizens can formally propose amendments to their Constitution by the convention process. Congress, by its actions, asserts it controls the terms and conditions of this license, taking whatever time it pleases to issue such license, if ever. Under these circumstances, such prior restrain is unconstitutional, as the courts have made clear:

> "As a form of prior restraint, licensing schemes commonly contain two defects; discretion and the opportunity for delay. *An ordinance that gives public officials the power to decide whether to permit expressive activity must contain precise and objective criteria on which they must make their decisions; an ordinance that gives too much discretion to public officials is invalid.* See Shuttlesworth v City of Birmingham, 394 U.S. 147, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969). Licensing ordinances must also require prompt decisions. *An ordinance that permits public officials to effectively deny an application by sitting on it indefinitely is also invalid.* See Freedman v. Maryland, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965)." Lady J. Lingerie, Inc. v. City of Jacksonville, 98-2088, 98-2207 U.S.

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Court of Appeals, Eleventh Circuit (1999) (Emphasis Added).[50]

The facts cannot be ignored. The states have applied for a convention. The Constitution demands a peremptory convention call. Congress refuses to call a convention claiming the right to veto the Constitution. They have publicly advocated this so-called right in *Walker*. *Walker* addressed whether Congress has a choice in obeying the meaning, intent, and written language of the Constitution. Judge Coughenour ruled Congress was not constrained to obey the Constitution, endorsing its claimed veto. *Walker* allows Congress to amend or veto the Constitution at its political whim rendering the Constitution meaningless. Such advocation by Congress violates federal criminal laws. The court's authority depends on the Government's obedience to the Constitution, which *Walker* says the Government may veto. If the court affirms in this suit the *Walker* doctrine, it terminates its own authority as well as that of the Constitution itself.

Congress has committed numerous felonies stemming from their refusal to call a convention. Neither standing nor political question provide immunity for these felonies.[51] Simply put, there is no lack of standing in criminal law permitting courts to dismiss the crime. Political question is a court determination of which branch Government shall, within the confines of the Con-

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[50] This same circuit court has addressed the issue on a federal level, as has the Court. The 11th Circuit said:

"A prior restraint on expression exists when the government can deny access to a forum for expression before the expression occurs. See Ward v. Rock Against Racism, 41 U.S. 781, 795 n.5, 109 S. Ct. 2746, 2756 n.5 (1989)." United States v. Frandsen, 98-2174 (2000). In the same case the court referenced FW/PBS, Inc. v. Dallas, 493 U.S. 215 (1990) where the Court stated: "The failure to confine the time within which the licensor must make a decision contains the same vice as a statute delegating excessive administrative discretion. Where the licensor has unlimited time within which to issue a license, the risk of arbitrary suppression is as great as the provision of unbridled discretion."

[51] Article I § 6 [1] states (in part): "They [members of Congress] shall in all cases, *except* treason, *felony* and breach of peace, *be privileged from arrest* during their attendance at the session of their respective Houses, and in going to and returning from the same…" (Emphasis added).

"Legislative immunity. The Constitution grants two immunities to members of Congress, first, that except for treason, felony, and a breach of peace, there are 'privileged from Arrest during their Attendance' at session of their body…(Art. I § 6, cl. 1). The first immunity is of little practical value, for its exceptions withdraw all criminal offenses and arrests therefor from the privilege, and it does not apply to the service of any process in a civil or criminal matter." (*Black's*). (Emphasis added). As no immunity for felonies exists, it follows no court doctrine may override the Constitution to permit the commission of such felonies by any member of Congress or to grant immunity for their commission.

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stitution and federal law, *obey* that law to execute a constitutional power.[52] It does not apply where criminal acts by federal officials are involved, such as overthrowing our constitutional form of government.

Walker is of no help either. *Walker* is based on the *Coleman* doctrine of exclusive congressional control of the amendatory process.[53] Until *Coleman,* all Court rulings on the amendatory proposal process favored the Founders original intent of two autonomous amendatory proposal processes. Thus, to nullify the convention clause, Judge Coughenour could only employ the *Coleman* doctrine, which the Court termed "advisory" in nature. Hence, by its own terms *Coleman* is an advisory opinion and therefore has no legal authority. The previous Court decisions, as they were not specifically addressed in *Coleman* and therefore not overturned are binding case law and *all say Congress must call*.

In contrast to the court issuing a binding ruling derived from constitutional authority, in issuing an advisory opinion a court relinquishes its traditional role of binding interpreter of law and instead permits the final interpreter to be the addressee of its advice who retains the option of whether to consent to that advice. Thus, in the final analysis, in an advisory opinion the court derives its authority from the sovereignty of the addressee rather than from the law itself as that addressee is given the authority by the court to ultimately decide whether or not it will be bound by the law in question rather than be compelled to obey the law as is usual in court procedure. Thus, the *Walker* decision is based not on the Constitution, but instead relies on *congressional sovereignty for its ultimate authority, as reliance on the Constitution would mean obedience to*

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[52] For example, in the area of congressional qualifications for office, in Powell v McCormack, 395 U.S. 486 (1969), the Court determined Congress could not add qualifications for membership in the House or Senate to those contained in the Constitution rejecting such political question arguments.

[53] As noted earlier in this brief however, (see fn. 17) judicial authority cannot be extended except by statute or constitutional clause. There are two distinct and separate methods of amendments proposal created by the Constitution which the Founders obviously intended only one of which would be under congressional control. This is why the convention clause was not discussed in *Coleman as it was never intended to be under congressional control*.

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that sovereignty consequently compelling Congress to obey it and therefore resulting in a convention call.

The problem is that as a legal ruling *Walker* is invalid. There is no such thing as congressional sovereignty; it is axiomatic sovereignty resides with the people and hence, the Constitution, not Congress. Further, *Walker* is void because it entraps Congress to commit criminal acts.[54] Thus, Congress cannot rely on *Walker* to extract it from the morass its contempt for the Constitution has created. For whatever reason Judge Coughenour entrapped Congress into thinking refusing to call was neither a criminal act nor had any constitutional consequence. Both premises are false. The evidence[55] proves the defendants guilty as alleged by Plaintiff. Any assertion of innocence on their part because of entrapment may be valid, but *should they or their legal representatives persist with any objection of any description which in any way attempts to permit Congress any option not to obey the peremptory convention clause of the Constitution, then it is clear they have willfully committed the criminal acts charged, forfeited any innocent assumption, and leave the court no choice but to refer the matter for prosecution as moved and requested in this suit.*[56]

The impact of Congress' position, that an elected official may willfully violate a law or the Constitution anytime he or she believes it is politically expedient, has profound and unsettling implications. This view, if accepted, would mean that Congress is a law unto itself possess-

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[54] "Entrapment. The act of officers or agents of the government in inducing a person to commit a crime not contemplated by him… A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if… he induces or encourages another person to engage in conduct constituting such offense by… (a) making knowingly false representations designed to induce the belief that such conduct is not prohibited… Model Penal Code § 2.13" *Black's.*

[55] See Evidence Appendix, Court Rulings Mandating A Convention Call By Congress, p. 4; Record Of Applications In Regards To Subject Matter, p. 8.

[56] In issuing it Show Cause Order of October 8, 2004 the court has already established its recognition of the supremacy of the Constitution as the request for proof of court jurisdiction is ultimately based on the Constitution and its obedience by the court to its clauses. It has therefore rejected the premises of *Coleman* and *Walker* creating sovereignties above that of the Constitution in favor of the supremacy of the Constitution which in turn allows *no discretion regarding the call of a convention nor that Congress may veto the Constitution in any manner*.

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ing political power that is incompatible with a democratic form of government based on the rule of law. The defendants took an oath to uphold the law and support the Constitution. They have knowingly and deliberately violated the plain and unambiguous language of the Constitution regarding calling a convention. Any attempt to disregard the plain law of the land by elected officials should be viewed for what it is- criminal acts that must be brought to justice. The Constitution *must* be obeyed or it ceases to exist. No other reason than this need be given for Plaintiff's motions to be granted by the court.

Dated this 20th day of October, 2004

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