Assigned Judge:Coughenour

UNITED STATES DISTRICT COURT,

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

BILL WALKER, PLAINTIFF, v. THE UNITED STATES OF AMERICA Defendant	REPLACEMENT BRIEF IN SUPPORT OF MOTION SEEKING DECLARATORY AND INJUNCTIVE RELIEF IN FINDING UNCONSTITUTIONAL THE FAILURE OF CONGRESS TO CALL A CONVENTION TO PROPOSE AMENDMENTS UPON RECEIPT OF PROPER NUMBER OF APPLICATIONS BY THE SEVERAL STATES AS PRESCRIBED IN ARTICLE V OF THE UNITED STATES CONSTITUTION. C. A. No. COO-2125C

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1361.

Venue is proper in this District under 28 U.S. C. § 1391 (e) (3).

Article V of the United States Constitution provides for two methods of amendment proposal: the congressional and the convention method.[1] Article V provides a single numeric standard of two-thirds of the applying state legislatures, which then obligates Congress to call a convention. The obligation is non-discretionary. This has been recognized by the Supreme Court in several cases.[2]

The Congressional Record demonstrates all 50 states have submitted applications for a convention.[3] There is no time limit set in Article V that the states must satisfy in their applications, nor does Article V permit recession of any application. Article V does not demand the applications deal with the same issue, nor does it establish any other requirement upon the legislatures other than a numeric count.

As 50 states have submitted applications for a convention to propose amendments and as this exceeds the two-thirds requirement of Article V, the two-thirds requirement is thus satisfied.

It was the clear intent of the Founding Fathers that Congress have no discretion in the matter of calling a convention.[4] Contrary to this clear intent, Congress has ignored all applications by the states and thus violated the clear language and plain intent of Article V. The United States Government has admitted Article V requires no interpretation and is plain in its meaning.[5]

The central issue facing the Court in this matter is the definition of the word “shall” as used in the Constitution. If the Court defines the word as obligatory, then Congress is mandated to call. If the Court defines the word as optional, then Congress is not mandated to call a convention. Under the terms of the equal protection clause, however, such definition must extend to all uses of the word throughout the entire Constitution.

By the use of the word “foregoing”, the terms of the necessary and proper clause clearly preclude congressional interference outside the scope of Article I.[6] Thus, regulation of the convention by means of legislative enactment is

unconstitutional. Further, as the Court has ruled that the President of the United States may not participate in the amendatory process, legislative enactment by Congress is clearly precluded.[7]

Under the expressed terms of qualification provided in the Constitution, members of Congress must be United States citizens. Under the terms of the 14th Amendment, all citizens are entitled equal protection of all immunities and privileges of citizenship. A privilege granted the elected offices of Representative and Senator is to propose amendments to the Constitution. Hence, any other citizens so empowered to propose amendments must be granted the identical privileges and immunities afforded members of Congress as they constitute a class of citizens which must be treated equally under the law.[8] Thus, these citizens must be elected to their position and upon election, obtain equal status under the terms of the 14th Amendment. Under the terms of the speech and debate clause, their business cannot be regulated by an outside body such as Congress.

As the state legislatures have applied for a convention, and as Congress is obligated under the terms of Article V to call a convention, it is clear the next step in the process is the election of delegates to such a convention. In refusing to call a convention when so mandated, Congress has therefore not only violated the right of the states, but the people as well in their right to alter or abolish.

The people’s right to alter or abolish is the basis of sovereignty of this nation as no other provision in the Declaration of Independence satisfies the generally accepted definition of sovereignty regardless of the form of that sovereignty.[9] Sovereignty was granted this nation under the terms of the Treaty of Paris. As the Supreme Court has ruled, the terms of a treaty must be mutually understood by both parties to such a treaty.[10] Thus, the term “sovereignty” as employed in the Treaty of Paris must be identical in meaning to both parties. As no other government document was provided by the United States defining their understanding of sovereignty, it must be assumed such definition was contained in the Declaration of Independence and Great Britain, in signing the Treaty of Paris, agreed to the definition so contained within

that document. Further, as several textual examples of violations of the right to alter or abolish are cited in the Declaration of Independence[11] and as the declaration deals with the rights of American citizens, it is a reasonable inference that Madison, who cited this right as “transcendental” in nature,[12] and who wrote the Bill of Rights, intended this as one of the unenumerated rights referred to in the Ninth Amendment. Thus the action of Congress violates the Ninth Amendment.

One of the people’s instruments to effect the right to alter or abolish is the right to vote. In refusing to call the convention, Congress prevents an election mandated by the Constitution from occurring. Thus the plaintiff cannot vote in this election. His right to vote in an election, therefore, is entirely negated by this action of Congress.

In refusing to call the convention, Congress has permitted false information regarding the terms under which a convention must be called to be accepted by the general public as fact. This has in turn produced a chilling effect on the plaintiff as to gathering signatures for petitions and to conduct other reasonable political activities usually associated with political movements and activities.

As the convention system of amendment is a form of redress provided to the people via elected representatives, the failure to call when mandated to do so, constitutes a denial of the right of redress and of the right of the citizens to petition the government (in this case delegates to a convention) for redress of their grievances. As the plaintiff is entitled under the 14th Amendment to equal access to such redress of grievance, denial by Congress in this manner is a violation of his right of redress.

As previously established in this brief, delegates to a convention must be elected by the people. As a citizen the plaintiff is entitled to seek public office including that of delegate to a convention. As Congress has refused to call, this precludes the plaintiff from exercising his basic right to seek public office, a violation of his rights. Proof of this allegation is demonstrated by the fact the State of Washington does not even have a law allowing for the election of delegates, even though the convention is mandated

by the Constitution.[13] The chilling effect of congressional veto of the plain language of the Constitution is thus obvious.

In refusing to call a convention, Congress assumes sovereignty not granted it under the doctrine of separation of powers. Indeed, it has been argued this action permits Congress to assume all sovereign power of this nation as it allows Congress to regulate, control and otherwise dictate the terms of the amendatory process of the Constitution, the law of the land. He who controls that process controls all. This is a clear violation of the intent of the Founders as well as the plain language of the Constitution.

The issues of standing presented by the plaintiff in this brief present the Court a unique dilemma. In order to determine whether plaintiff's rights have been violated, the issue of the brief must simultaneously be addressed. The plaintiff raises of the issue of denial of right to vote due to the government not holding an election mandated by the Constitution. To determine whether this is true, it must be determined whether an election must be held. This in turn dictates determining whether Congress is obligated to call, the central issue of this action. Thus standing and issue are in fact simultaneous and inseparable.

The issue of political question is inapplicable in this instance. While Congress is named to issue the call, it is clear such a call is to be done without discretion on the part of Congress thus rendering that body to that of a miniscule clerical role. Hence the textual assignment clause of the political question doctrine is of little use as the *intent* of the convention clause is to cause a convention, not provide the means for Congress to prevent it.[14] Judicial standards regarding the matter are discoverable. The Courts have ruled on all parts of this issue in the past hence proving discoverability. All that is required here is essentially a compilation by the Court regarding this already well established decisions. As the Court will be essentially defining the meaning of words such as "shall" as employed in the Constitution, this clearly prevents the Court establishing a policy of nonjudicial discretion. The issue of lack of respect does not apply as the Court is merely required to define the intent and meaning of a clause of the Constitution, one in which discretion on

the part of Congress is minimal and excluded. Thus, there are no powers for the Court to offend. There is no political decision already made by Congress in this matter. The only law in question in this case is the words of the Constitution. Congress has never passed any legislation in any form regarding a convention or the call, preferring instead the obscurity of the doctrine of *laches* to veto the Constitution. As the intent of the Constitution does not permit discretion on the part of Congress and thus precludes debate and even vote by Congress in this matter, the speech and debate clause is ineffectual in this matter.

Due to the fact that the compact clause allows for full discretion on the part of Congress as to delegation of funds[15] and such principle also applies to the states, it is clear the intent of Article V precludes financing of the convention by either the states or Congress as they would be able to employ their financial discretion to regulate the convention. This would defeat Article V and thus is unconstitutional. As the convention has only the power to propose amendments, it has no power of credit or tax so it may not raise its own funds or use the credit of the states or the United States. Thus, the only financial method left for the convention is for the individual delegates to finance the convention, and as the ability to finance cannot be added to the terms of office, it is clear the cost to the delegates must be zero. As the convention must be held as mandated by the Constitution, it follows it must meet in such a manner as to have no cost to any delegate. The only conceivable possibility to satisfy this, is a meeting on the Internet. Thus the convention must meet on the Internet and the call tailored accordingly.

Brief in replacement of overlength brief submitted but refused by Court respectively submitted by plaintiff.

[1] "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,…" Article V, United States Constitution.

[2] *See generally* Dodge v. Woolsey, 59 U.S. 331 (1855); Hawke v. Smith, 253 U.S. 221 (1920); Dillon v. Gloss, 256 U.S. 368 (1921); United States v. Sprague, 282 U.S. 716 (1931); Coleman v. Miller, 307 U.S. 433 (1939).
[3] *See* 1 Annals of Congress, 1789, 1790 and Congressional Record, 33-135 inclusive. Summary of applications provided under Federal Rule of Evidence 1006.
[4] *See* Federalist 85 Hamilton's comments regarding, "the national rulers shall have no discretion." *See also generally* M. Farrand, The Records of the Federal Convention of 1787 (1911), "Elbridge Gerry of Massachusetts "moved to amend the article [Article V] so as to require a Convention on application of 2/3 of the Sts…" p.629.
[5] *See* United States v. Sprague, 282 U.S. 716 (1931).
[6] *See* McCulloch v. Maryland, 17 U.S. 316 (1819).
[7] *See* Hollingsworth v. Virginia, 3 U.S. 378 (1798).
[8] *See* Missouri v. Lewis, 101 U.S. 22 (1879); Barbier v. Connolly, 113 U.S. 27 (1884); Hayes v. State of Missouri, 120 U.S. 68 (1887); Marchant v. Pennsylvania R.R. Co., 153 U.S. 380 (1894).
[9] "The supreme, absolute, and uncontrollable power by which any independent state is governed…" For full definition *see* Black's Law Dictionary 6th ed. (1990) quoting City of Basbee v. Chochise County, 52 Ariz. 1, 78 P.2d 982, 986.
[10] *See* El Al Israel Airlines, Ltd. V Tsui Yuan Tseng, 525 U.S. 155 (1999).
[11] *See generally* complaints of long train of abuses including "taking away our charters", "suspending our legislatures", "…subject us to a jurisdiction foreign to our constitution…".
[12] *See* Federalist No. 40.
[13] *See* attached letter from Washington Secretary of State's office.
[14] *See* Martin v. Hunter's Lessee, 14 U.S. 304 (1809); "Where there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightly be preferred" U.S. v. Classic, 313 U.S. 299 (1941).
[15] *See* Knote v. United States, 95 U.S. 149 (1877); Cincinnati Soap Co. v. United States, 301 U.S. 308 (1937).