Nos. 02-1674 & Consolidated Cases

In The

Supreme Court of the United States

Mitch McConnell, United States Senator, et al.
Appellants

v.

Federal Election Commission, et al.
Appellees

On Writs of Certiorari to the United States District Court
for the District of Columbia
(02-581, 02-582, 02-633)

(Cases Consolidated Under McConnell, p. iii)

AMICUS BRIEF IN SUPPORT OF APPELLEES REGARDING THE EFFECT OF *WALKER v. UNITED STATES* ON *MCCONNELL et al. v. FEC et al.* FOR BELOW SIGNED PETITIONER, AS *AMICI CURIAE*

BILL WALKER,
PRO SE, AMICUS

QUESTIONS PRESENTED

Whether Congress and the United States Government (hereinafter the Government) must obey the meaning, intent, and written language of the United States Constitution (hereafter the Constitution).

Whether *Walker v. United States* C00-2125C (hereafter *Walker*) grants judicial sanction to Congress and the Government as to whether these political bodies must obey the meaning, intent and written language of the Constitution.

Whether *Walker* creates the authority for Congress and the Government to veto clauses of the Constitution at their political whim.

Whether *Walker* gives unilateral amendatory authority exclusively to Congress regardless of any meaning, intent or written language of the Constitution.

Whether the Supreme Court of the United States (hereafter the Court) as a result of *Walker* possess the authority to judicially review acts and actions of Congress and the Government and declare such acts and actions unconstitutional if such acts and actions conflict with the meaning, intent, or written language of the Constitution.

Whether the justices of the Court are in contempt of an lawful court order specifically *Walker* issued by the United States District Court for Western Washington at Seattle (hereafter the District Court) in their determination that the acts and actions of Congress and the Government must be judged according to the meaning, intent and written language of the Constitution.

Whether the new authority of Congress and the Gov-

ernment granted through *Walker* precludes a favorable verdict for the appellants in Mitch McConnell, United States Senator, et al. v. Federal Election Commission, et al., 02-581, 02-582, 02-633 (D.D.C.) (02-1674) (hereafter *McConnell*).

CASES CONSOLIDATED UNDER MCCONNELL v. FEDERAL ELECTION COMMISSION, 02-1674

02-1675: National Rifle Association, et al., v. Federal Election Commission, et al.

02-1676: Federal Election Commission, et al., v. Mitch McConnell, United States Senator, et al.

02-1702: John McCain, United States Senator, et al., v. Mitch McConnell, United States Senator, et al.

02-1727: Republican National Committee, et al. v. Federal Election Commission, et al.

02-1733: National Right to Life Committee, Inc., et al., v. Federal Election Commission, et al.

02-1734: American Civil Liberties Union, v. Federal Election Commission, et al.

02-1740: Victoria Jackson Gray Adams, et al., v. Federal Election Commission, et al.

02-1747: Ron Paul, United States Congressman, et al., v. Federal Election Commission, et al.

02-1753: California Democratic Party, et al., v. Federal Election Commission, et al.,

02-1755: American Federation of Labor and Congress of Industrial Organizations, et al., v. Federal Election Commission, et al.,

02-1756: Chamber of Commerce of the United States, v. Federal Election Commission, et al.

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

Federal Rules of Civil Procedure:

CONSTITUTIONAL PROVISIONS

United States Constitution:

MOTION BEFORE COURT

Whereas, below petitioner respectfully moves to the Court leave to file an amicus brief in favor of the Appellees under Supreme Court Rules 21 § 2(b) and 37 § 3(b). This motion and supporting legal arguments in the form of a brief are herein attached in compliance with Supreme Court Rules 21 § 1, 29 §1, 2, 3, 4, 5c, 33 § 1 and 37 § 5.

Bill Walker, pro se, Amici

BRIEF FOR *AMICI CURIAE* IN SUPPORT OF APPELLEES

Bill Walker pro se, Amici (hereinafter Amici) respectfully submits this amicus brief in support of Appellees pursuant to Supreme Court Rule 37 § 3(b). Pursuant to Supreme Court Rule 37 § 6, Amici hereby declares he has authored this amicus brief and no person or entity other than Amici has made any monetary contribution to the preparation or submission of this brief.

INTEREST OF *AMICI CURIAE*

The interest of the Amici requesting leave from the Court to file an amicus brief in *McConnell* is to ensure that all federal court rulings bearing on *McConnell* are presented to the Court for its consideration. Based on the actions of the *McConnell* legal counsels Amici believes these counsels desire to obscure federal court rulings detrimental to their case from the Court. (See Appendix, pp. XXI-XLVII.)

One such federal court ruling is *Walker*. (See Appendix, p. II.) The interest of the Amici is to present to the Court the effects of *Walker* on the Constitution, the Court and *McConnell*. Amici is not seeking a rehearing of *Walker*. *Walker* is *res judicata*. Amici is interested in ensuring a federal court ruling bearing on *McConnell* and the Court is enforced and believes the Court shares this belief, that all legal federal court orders must be obeyed.

MCCONNELL COUNSELS' RESPONSE TO *AMICI CURIAE* REQUEST

In compliance with Supreme Court Rule 37 § 3(a), a letter dated April 27, 2002 with the *Walker* order attached, was sent by Amici to the *McConnell* legal counsels requesting permission to file an amicus brief before the Court. (See Appendix, p. XXI.)

In a May 23, 2002 letter, only Mr. James Bopp Jr., legal counsel for one *McConnell* appellant (National Right to Life, et al. v. FEC, 02-1733) responded, refusing Amici permission to file a brief. No other *McConnell* counsel responded to the amicus request. Mr. Bopp gave no legal reasoning for his denial, i.e., refuting any assertion or conclusion made by Amici. (See Appendix, p. XLVII.) Such a denial of permission to file an amicus brief without providing any legal reasoning for the denial can only be interpreted as an attempt by appellants to deny the Court knowledge of a federal court ruling that negatively affects their complaint.

SUMMARY OF ARGUMENT

Walker deals directly with the fundamental question of whether Congress and the Government must obey the meaning, intent, and written language of the Constitution. *Walker* establishes neither Congress nor the Government is obligated to obey the meaning, intent, or written language of the Constitution thus acquiring the authority to veto the meaning, intent, and written language of the Constitution. Additionally, *Walker* establishes Congress possesses exclusive amendatory control of the Constitution.

As a result of the these new powers, the Court no longer possesses the authority to declare an act of Congress or the Government unconstitutional as the Court ruling on which this authority is based has been nullified by *Walker*. The Court therefore has no alternative but to rule entirely in favor of the appellees in *McConnell*.

Because the Court bases their rulings on the premise Congress and the Government must act in compliance with the meaning, intent, and written language of the Constitution, the justices of the Court are in direct conflict with *Walker* and thus in contempt.

ARGUEMENT

I. *COLEMAN* AND *WALKER* CREATE AMENDATORY AND VETO POWERS FOR THE GOVERNMENT NULLIFYING ANY CHALLENGE TO ITS ACTS

On March 27, 2002, President George W. Bush signed the Bipartisan Campaign Reform Act, Public Law No.107-155 (hereinafter BCRA) into law. As provided under BCRA § 403 (a)(1), the BCRA was challenged on constitutional grounds by numerous plaintiffs in United States District Court for the District of Columbia. These challenges were consolidated under *McConnell* which is appealed directly to the Court as provided by BCRA § 403 (a)(3). The Court is obligated to "expedite…its review" as required by BCRA § 403 (a)(4). These sections clearly preclude any choice of review by the Court as such review is mandated by statute.

In December 2000, *Walker* was filed in District Court in Seattle. *Walker* was not addressed by any *McConnell* legal counsel during district court deliberations. *Walker* sought a ruling deciding whether Congress had the authority to refuse to call a convention to propose amendments as required in the United States Constitution, Article V, the pertinent part of which 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, …"
>
> United States Constitution, Article V (In part.) (Emphasis added.)

All fifty states have applied to Congress to call a con-

vention to propose amendments, submitting 567 applications. (See Appendix, p. VI.) This number of states more than satisfies the meaning, intent and written language of Article V which requires only two-thirds of the states apply for a convention to propose amendments and compels Congress to call such a convention. Congress has ignored all state applications, refusing to issue a convention call. Thus, Congress claims right to veto the meaning, intent, and written language of the Constitution. These facts were not reputiated by the Government during the *Walker* deliberations. Indeed, the Government asserted its right to veto as part of its defense. (See Amicus Brief, p. 24.)

The Founding Fathers were unambiguous regarding the meaning, intent, and written language of Article V. 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."
>
> (Federalist 85, 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. In sum, their interpretation was that upon the proper number of applying states, a call for a convention to propose amendments was peremptory, obligatory, and non-discretionary on the part of Congress. Furthermore, the text makes it clear there is no other requirement in the meaning, intent, or written 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 to propose amendments.

On March 19, 2001, Chief United States District Judge John C. Coughenour (hereafter Judge Coughenour) issued his ruling in *Walker*. (See Appendix, p. II.) As the issue before him, whether Congress shall call a convention to propose amendments when mandated to do so by the Constitu-

tion, 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.

His ruling repudiated the Founders' intent, meaning and written language of the Constitution. Judge Coughenour did not rule Congress must call a convention to propose amendments if the states applied in sufficient numeric count to satisfy Article V of the Constitution 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 meaning, intent, and written language Constitution.

In citing *Coleman*, Judge Coughenour placed the convention process of amendment under Congress' exclusive control relying on that part of *Coleman* which 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 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."
>
> (*Coleman v. Miller*, 307 U.S. 433 (1939.) (Footnotes omitted.) (Emphasis added.)

Using such words as "exclusive," "completely" or "undivided" to describe congressional control of the Article V amendatory *process* i.e., the method whereby an amendment becomes part of the Constitution, as opposed to an amendment *proposal* submitted by Congress subservient to that process, the Court recognizes no exceptions, such as the peremptory authority of the convention process as expressed in Federalist 85, or the states' role in that process. Until *Coleman*, Court rulings recognized two autonomous modes of amendment. (See Appendix, p. IX.) *Coleman* created a single mode, evidently intended to be the alpha and omega of national Government amendatory authority.

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 tree" doctrine of constitutional law. Judge Coughenour faced the decision which constitutional doctrine "living tree," or "original intent" he should use to rule on the convention amendatory process. He chose "living tree." 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 inter-

preting *Coleman* in its obvious and literal meaning.

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, several Court opinions favoring the convention amendatory process as autonomous of congressional dictate and obligating a call required nullification in order to prevent a convention call. (See Appendix, p. VIII.)

Nothing in *Coleman* precludes Judge Coughenour's conclusions. 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. (See Appendix, p. VIII, XI.) These facts establish the axiom Congress has 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 Government policy legally enforced via a written federal court ruling. 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 since the time of the Declaration of Independence, but now firmly in the hands of the Government.

As of 1911, long before *Coleman* or *Walker*, Congress asserted its right to veto the Constitution. (See Appendix, p. II.) Over the years Congress disregarded four Supreme Court rulings which specifically addressed the obligation of Congress to call a convention to propose amendments. (See Appendix, p. IX.) Such disregard ended, of course, when *Coleman* and *Walker* altered the judicial position on congressional obedience to the Constitution from earlier Supreme 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 Con-

gress 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. As such, the constitutional objections raised in *McConnell* regarding First Amendment or other clause violations are without merit as the operative word "shall" and any prohibitions thereof are nullified.

The Court in *Coleman* 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.

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* amended 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 lawful 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 Court 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.

In obeying the "province of Congress" portion of *Walker* which affirms Congress' veto power and amendatory control of the Constitution, this act of 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 supposed to regulate the actions of Congress, and issue a convention call which it clearly 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.

As *Walker* is a valid federal court ruling, this fact clearly affects the constitutional questions raised by the *McConnell* appellants. *Walker* addressed whether the Government has a choice as to obeying meaning, intent, and written language of the Constitution. Judge Coughenour ruled Congress and the Government were not constrained to obey the Constitution. Indeed, these political bodies can veto or amend the Constitution at their political whim. *McConnell* asserts obedience to the Constitution as intended by the Founders. *Walker* says such obedience does not exist. As *Walker* is more fundamental in its question, as it addresses the Constitution as a whole via the amendatory process, it must be the prevailing precedent, hence defeating the *McConnell* appellants' case.

II. DUE TO THE PEREMPTORY NATURE OF THE CONVENTION CLAUSE IMPLIED STANDING WAS GRANTED IN *WALKER* IN ORDER FOR THE DISTRICT COURT TO RULE WHICH EFFECTS THE STANDING OF THE *MCCONNELL* APPELLANTS

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. (See Appendix, p. XV.)

The Founders employed the word "peremptory" to describe the authority of the convention clause vis-à-vis congressional and government obligation. An act 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 as will be discussed later.

The 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 the 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.

One standing asserted in *Walker* rejected by the District Court was the right to politically associate, i.e., gather petitions, make political contributions, and conduct other reasonable political activities, the same standing asserted by *McConnell* appellants. The Court has recognized amendment conventions shall be elected, e.g., *Hawke v. Smith*, 253 U.S. 221, (1920): "Both methods of ratification, by Legislatures or *conventions, call for action by deliberative assemblages representative of the people*, which it was assumed would voice the will of the people." (Emphasis added.) Both *McConnell* and *Walker* attempt to use constitutional clauses, First Amendment and Article V respectively, to achieve lawful political change through the electoral process. As such they form an

identical legal class. Equal protection requires parties in an identical legal class be treated equally. Thus, if standing is rejected for one, it must be rejected for the other. The District Court rejected the right to politically associate as a basis of standing. Such rejection must apply to the appellants as they are part of the same identical legal class.

III. THE UNIFICATION OF AMENDATORY AND VETO POWERS VIA *COLEMAN* AND *WALKER* GIVES CONGRESS IMMUNITY FROM ANY ALLEGED UNCONSTITUTIONAL ACTS

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. As such, there can be no unconstitutional legislation passed by Congress such as the BCRA as the *McConnell* appellants allege. Any such legislation 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.

IV. CONGRESSIONAL GOALS VIS-À-VIS *WALKER* ARE TOTAL CONTROL OF THE AMENDATORY PROCESS AND VETO OF CONSTITUTIONAL CLAUSES

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 Con-

gress instructed their legal counsel as to the legal action they desired in *Walker* and their counsel acted accordingly. No member of Congress, including *McConnell* appellants, has ever repudiated any conclusion concerning *Walker*. (See Appendix, p. LXXXII.) This fact alone demonstrates Congress' complete agreement with its conclusions.

It is a self evident truth that Congress is a political body packed with politically ambitious people. These ambitions have been 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. *Walker* achieved this.

V. *WALKER* NULLIFIES THE JUDICIAL REVIEW OF ANY ACT OR ACTION OF THE GOVERNMENT

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 the authority of the Court to rule that any action of Congress or the Government is unconstitutional. The basic principles by which the Court granted itself the authority to determine such matters are the premises of the supremacy of the Constitution and its immunity from change by legislative whim. In granting itself such authority, 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, not of an intricacy propor-

tioned 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). (Footnotes omitted.) (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, must naturally fall and therefore is nullified.

This nullification of Supreme Court authority by the District Court is entirely proper. A power created by a court order not supported by specific constitutional language can be nullified by a subsequent court order.

VI. *WALKER* GRANTS IMMUNITY TO CONGRESS FROM BOTH JUDICIAL AND STATE ACTION

The executive branch of the Government, acting through its legal counsel in the Justice Department, proposed these new powers for Congress in *Walker*. Therefore, it

is a reasonable conclusion the Government supports that which it proposed. Beyond political ambition Congress has another reason to be recalcitrant in obedience to the Constitution. Having defied the Constitution so dramatically, its members, past and present, face possible charges of criminal insurrection should they and the Government which proposed this action, retreat on this issue.

Federal criminal law is clear on this matter:

> "Whoever incites, *sets on foot*, assists, or *engages in any* rebellion or *insurrection against the authority of the United States or the laws thereof*, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and *shall be incapable of holding any office under the United States*."
>
> United States Code, Title 18, Part I, Chapter 15, § 2383. (Footnotes omitted.) (Emphasis added.)

Any proposition that this law is inapplicable to members of Congress violating constitutional clauses is defeated by the Constitution itself:

> "*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, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
>
> *United States Constitution,* Article VI, Clause 2. (Emphasis added.)

The Constitution's text establishes it as law as well as the authority of the United States. The insurrection statute therefore applies to members of Congress.

The Court has addressed this matter saying:

> "[C]onvenience and efficiency are not the primary objectives—or the hallmarks—of democ-

> ratic 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.)

However, as the Constitution is unilaterally controlled by Congress with no possible restraint from any outside political body, this point of law is inconsequential. These checks no longer exist. The convention clause was intended to check national government abuse at the amendatory level. 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.

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 would remain in force. The ruling addressed obedience of Congress to the

Constitution. Only the reestablishment of that obedience can nullify *Walker*, an unlikely proposition given the present circumstances as noted earlier.

Besides the judiciary, the states have shown their support of *Walker*. Some states, citing fears of a "constitutional convention," have submitted recessions of their applications to Congress attempting to lower the number of applying states below the two-thirds threshold specified in the Constitution. (See Appendix, p. XCIII.) The Constitution only recognizes a convention to propose amendments. Hence, a "constitutional convention" cannot exist. The Constitution does not grant states authority to rescind applications. Therefore, such state recessions are invalid. They are merely claims by the states of their right to veto the Constitution. Further, Congress asserts the right to veto any state application, including recessions. Clearly, Congress does not recognize the validity of any such state recessions. To recognize recessions opens the door to the validity of all applications, thus validating the convention clause. Given these circumstances, if the states submit recessions, such acts serve only to affirm the right of Congress and the states to veto the Constitution.

The convention amendatory process was intended to give the states equal amendatory authority of the Constitution and hence equal sovereign power with the Government. But the states have reputiated this power, refusing to defend it when threatened by Government exploitation. They have conceded the amendatory process which was theirs is now "exclusively" "the province of Congress." Obviously the states covet a subservient, non-sovereign, role vis-à-vis Congress and the Government. (See Appendix, p. XXI.) Thus, any portion of the BCRA which the states claim impinges their "sovereignty" is invalid. The states agreed to such regulation by the Government in repudiating their amendatory authority. They no longer have a say in the Constitution nor in its application used to create their subjugation.

VII. *WALKER* ESTABLISHES THE JUSTICES OF THE COURT ARE LIABLE FOR CONTEMPT IN HOLDING THE CONSTITUTION MUST BE OBEYED

As citizens of the United States, the justices of the Court are not immune from the consequences of any legal federal court order issued by a federal judge, including those orders which alter their authority as justices of the Court.

As the Court has stated:

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance, with impunity. All the officers of the Government, from the highest to the lowest, are creatures of the law and are bound to obey it.
>
> It is the only supreme power in our system of government, and every man who, by accepting office, participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."

United States v. Lee, 106 U.S. 196 (1882).

The Constitution contains no specific written language granting the Court the authority to decide if any act by Congress or the Government is "constitutional." Even if such specific constitutional language did exist, *Walker* grants Congress the power to veto it.

The Court *en masse* cannot claim any form of immunity from a contempt action as its own rulings indicate; e.g., *Butz v. Economou*, 438 U.S. 478 (1978) or *Nixon v. Fitzgerald*, 457 U.S. 731 (1982). In the first place, a king cannot exempt himself from a law to which he himself consents. The Court created *Coleman*, the bedrock on which *Walker* rests. As no justice has ever opposed *Coleman*, it is logical to assume the Court unanimously supports its own ruling including any

consequences thereof. Second, any claim of immunity, judicial or otherwise, is based ultimately on a constitutional clause, all of which the District Court held in *Walker* Congress can veto. Hence, any infringement on Congress' ultimate right of veto, such as immunity, must fall as the clause on which the immunity is based can be vetoed. Third, *Nixon*, *Butz* and other similar cases dealt with the execution of legal constitutional duties. The Constitution is no longer as an effective legal document due to *Walker*. Hence, there can be no immunity for those attempting to defend something that no longer exists. Finally, contempt is a criminal rather than a civil action. The Court has acknowledged no immunity exists for any federal official who violates federal criminal law e.g., United States v. Nixon, 418 U.S. 683 (1974).

In spite of these facts, since the *Walker* decision of March 19, 2001, the justices of the Court have issued several opinions holding actions of the Government conflicted with the Constitution. They ruled these acts unconstitutional basing their opinions on an applicable clause of the Constitution. Hence, they based their opinion on the premise the Government must obey clauses of the Constitution. *Walker* clearly rejected this premise. Thus the justices, in issuing these opinions, are in conflict with *Walker*. (See Appendix, p. XIX.)

Under United States Code, the District Court may hold anyone in contempt that demonstrates by their actions "disobedience or *resistance* to its lawful… orders." (See Appendix p. XIX.) (Emphasis added.) In January 2002, each justice of the Court received a letter describing the effect of *Walker* on the Court together with an attached copy of *Walker* (hereafter Court Letter). (See Appendix, p. XLVIII.) The Court Letter informed the justices their current practice of ruling Congress must obey the Constitution, or actions by the Government were to be judged according to standards based on actual language or interpretations of the Constitution, both conflicted with *Walker*. The justices have

continued to issue opinions based on Government obedience to the Constitution. Clearly, the justices intend to offer resistance to *Walker*. Such resistance is grounds for contempt under United States Code.

The justices should not take this matter lightly. An overlength brief of over 800 pages presenting more than 200 Court rulings supporting the premise Congress was obligated to call a convention to propose amendments because it is obligated to obey the Constitution was first submitted to Judge Coughenour. He rejected this brief, but there is nothing to suggest he did not first read its contents. In that brief, Judge Coughenour was warned of the consequences of the ruling he eventually made. In subsequent briefs accepted by Judge Coughenour, he rejected four Court rulings supporting an peremptory convention call and was again warned of the consequences of the ruling he eventually made. (See Appendix, pp. V, XII.)

In its District Court arguments, the Government referenced *Allen v. Wright* 468 U.S. 737 (1984) terming the matter "well settled" that it cannot be successfully urged "the government must act in accordance with law." As the convention clause only exists in the Constitution, such a claim can only mean the Government asserted it is not required to obey the Constitution. This conclusion is further buttressed by the motion of the Government to dismiss based on Rule 12 (b)(1) Federal Rules of Civil Procedure, dismissal for lack of subject matter jurisdiction, which Judge Coughenour accepted. Thus, the judge ruled the Court lacks jurisdiction to compel the Government to obey the Constitution.

Judge Coughenour has shown he is not bound by Supreme Court rulings which disagree with his opinion. However, in defense of Judge Coughenour, *Coleman* nullified the 200 Supreme Court rulings asserting anyone subject to the Constitution is obligated to obey it. He would likely assert all he did was carry out the "unambiguously clear" instructions of the Court set forth in *Coleman*. The justices may be

inclined to reject these assertions of Amici by some legal maneuvering. However that is accomplished, they cannot outmaneuver the facts. The states have applied. The Constitution demands a convention. Congress has refused to call a convention. Congress and the Government claim the right to veto the Constitution. A federal judge has endorsed this veto thus legitimizing it. The Court's authority depends on the Government's obedience to the Constitution which the Government may veto.

The Court replied to the Court Letter through the office Mr. Stephen Gura, Staff Counsel of The Legal Office of the Supreme Court of the United States. The Court's letter (hereafter Gura Letter) cited Supreme Court rules, federal law, and the Constitution preventing the Court from informally commenting on *Walker* or its consequence on the Court. (See Appendix, p. XCI.) The Gura Letter did not deny, dispute, or refute any assertion or conclusion, including contempt, made in the Court Letter.

The Gura Letter ignored the Court's own *Coleman* ruling where the Court conceded the amendatory process was "exclusively" controlled by Congress and that the Court was limited to an advisory opinion which Congress was not obligated obey. *Coleman* thus nullifies the Gura Letter citations. Therefore, according to *Coleman*, if a letter is sent to the Court discussing a federal ruling on the amendatory procedure, the Court can discuss it informally. Moreover, the Gura Letter citations apply only to cases under appeal. *Walker* was not appealed and therefore not subject to the Gura Letter citations.

There is a conflict between *Coleman* and the Gura citations. *Coleman* is unambiguous. Congress and the Government have the option to consider a Supreme Court opinion as advisory. The Gura Letter citations state the Court cannot issue an advisory opinion. Either the Court can issue advisory opinions, or it cannot. Federal law says a court ruling must be obeyed and prescribe penalties for failure to do so.

(See Appendix, p. XIX.) Either the Court's rulings are obeyed or they are not. Either the Court enforces the *Coleman* doctrine granting the Government option to obey a court order or it does not. Either the Constitution is obeyed by the Government or it is not. Either what the Court wrote in *Coleman* is true or what they wrote in the Gura Letter is true. The Court cannot have it both ways.

The Gura Letter's concerns over Supreme Court rules are actually of little consequence. BCRA §403 (a)(3) and § 403 (a)(4) effectively nullifies them. These sections establish the principle that Congress may regulate the Court's docket by federal statute determining which specific cases the Court hears as well as when it will decide them. As Congress claims the right to decide which specific cases the Court will hear, it follows Congress can determine which specific cases the Court may not hear. Congress thus claims control of the "cases and controversies" clause of the Constitution, rather than the judiciary, an example of Congress employing its *Walker* authority. The fact the Court is hearing *McConnell* at all shows its agreement with this assertion.

The Court Letter was plain: the justices face contempt. The Gura Letter citations do not apply in that circumstance. Any defendant, including the justices, has the right to refute or respond to any charge brought against him without limitation. Thus, whether by personal right or thru *Coleman*, the justices are free to comment on *Walker*. These facts are certainly known to them. Their refusal to comment informally indicates the justices' desire to respond formally. Their comment of course is non-binding. *Walker* was not appealed to the Court. But *Walker* still possesses legal force and effect. Therefore, this amicus is made to the Court presenting *Walker* "properly filed with the Clerk's Office," after having "been considered by the lower courts" in order to allow the Court an opportunity to preset its formal, non-binding, comment.

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.

Only *Coleman* permits exclusive congressional control of the amendatory process. All other Supreme Court rulings on the amendatory process favor the original intent of the Founders: two autonomous amendatory processes. Thus, to nullify the convention clause, the District Court had to use *Coleman*. If Congress takes the District Court's advice as it has in *Walker*, the authority of law is conferred by congressional sovereignty, a sovereignty independent of the Constitution. If Congress chooses to extend the advice as it has in the BCRA, it is free to do so. Congress, not the courts, has assumed the traditional role of interpretation of the law. A court, in issuing an advisory opinion, has relinquished this function. As judicial authority has been removed, all that remains is a group of citizens, or citizen, expressing their or his informal opinion in a formal setting, i.e., the courtroom. Nevertheless, the authority of the law and court ruling via Congress remains as *Walker* was issued as a District Court order. The District Court is obligated to enforce its order. Otherwise the District Court risks questions of validity of its orders having demonstrated unwillingness to enforce them. No court can have that situation. Hence, resistance to the District Court order must be prevented by that court.

If the Court declines comment on *Walker* by refusal of this *amicus* brief, such action is a consent for the District Court ruling and the conclusions of this brief. This is the usual interpretation of Court denials: that it finds nothing of

sufficient constitutional grounds to object to. If the Court holds it can only comment on *Walker* if appealed to them, rather than presented as an amicus, this decision does not vacate their contempt. Appeal is not required for a federal court order to be legal and binding. Judge Coughenour issued his ruling "with prejudice." *Walker* has completed all judicial consideration necessary to make it a legal federal court order. Whether the Court comments is irrelevant to its effective legality. Therefore, resistance to *Walker*, a legal federal court order, is grounds for contempt.

VIII. *WALKER* REQUIRES THE COURT TO FIND ENTIRELY FOR THE APPELLEES IN *MCCONNELL*

Once any part of the Constitution is allowed to be vetoed by the Government, it follows such authority extends to all 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 a veto. As supremacy applies to all the Constitution, so must a veto. As veto power is now assigned to the Government, 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 the Government.

Hence, the assertions of constitutional violations by the appellants in *McConnell* are invalid as *Walker* trumps any such complaint however legitimate it might otherwise be. For in the final analysis, all Congress has done with the passage of the BCRA is exercise its legitimate veto power of the First Amendment. Because of the powers granted Congress in *Walker*, the BCRA as passed by Congress is constitutional, if such a term still has validity. Congress possesses the power, authority, and immunity to veto any clause of the Constitution, as well as unilaterally amending it, hence giving it any interpretation Congress chooses.

Such power clearly extends to the First Amendment

which through BCRA Congress may regulate as it sees fit. This regulation includes denying any rights previously granted through Supreme Court interpretations of the First Amendment made before *Walker*, including regulation of right of political association, political influence, control of media content or playing field advantages for congressional incumbents.

Walker was legally issued by a federal court judge. It is the only official United States Government policy on the convention amendatory process. The fact *Walker* received no press coverage, is politically disfavored or was not appealed does not diminish its legality. Congress, in vetoing the convention amendatory process or in amending the First Amendment with the BCRA, is acting in full compliance with this legal federal court order which is based on a long standing Court ruling never refuted by any Court justice.

Walker creates a perfect defense for the United States. 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 including the BCRA making the appellant's case entirely without merit.

CONCLUSION

Walker is the "living tree" 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 tree" neatly avoids obeying the Constitution as meant, intended and written by simply ignoring it, substituting instead whatever a 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 Constitu-

tion 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. Its law has been vetoed by those it was intended to regulate. The veto has been sanctioned by those it was intended would preserve the absolute, supreme law. The "living tree" 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. For this reason above all, the Court must rule in favor of the Appellees.

Respectfully submitted,
Bill Walker, pro se, Amici

APPENDIX

II

WALKER v. UNITED STATES COURT ORDER

The following is the text of *Walker v. United States*, COO 2125C. Per Supreme Court Rule 33 § 1 (b) all quoted text in this appendix has been indented.

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BILL WALKER, Plaintiff,
v.
UNITED STATES OF AMERICA, Defendant

CASE NO. C00-2125C

ORDER

X Filed X Lodged X Entered
MAR 21 2001
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

Presently before the Court is Plaintiff's 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 Prescribed in Article V of the United States Constitution. Defendant has made a Cross-Motion to Dismiss. Having reviewed each motion and responses on file, the Court denies Plaintiff's motion and grants Defendant's cross-

motion for the following reasons.

Plaintiff initially filed a 781 page motion along with a motion for overlength brief. The Court denied the motion for overlength brief, and Plaintiff filed a shorter motion in accordance with the local rules of the Court. In accordance with the rules, once the decision was made to deny the overlength brief, the 781 page motion was no longer before the Court to consider. Only the shorter replacement brief could properly be considered by the Court.

Plaintiff's motion for declaratory and injunctive relief is essentially a request for the Court to order Congress to call a convention to propose amendments to the constitution in accordance with Article V of the United States Constitution. Plaintiff, who is appearing pro se, states:

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. … * The Congressional Record demonstrates all 50 states have submitted applications for a convention. 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 father that Congress have no discretion

in the matter of calling a convention."

Plaintiff's Replacement Brief in Support of Motion seeking Declaratory and Injunctive Relief at 2 (citations omitted.)

Defendant properly filed its cross-motion to dismiss before filing any answer to Plaintiff's complaint, because it is for the Court to determine whether the Court has jurisdiction over the subject matter of the complaint before Defendant responds to the allegations in a complaint. It is unambiguously clear that the Court does not have subject matter jurisdiction in this case due to the fact that Plaintiff does not have standing to bring this suit and his complaint raises political questions that are more properly the province of Congress. Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992); Baker v. Carr, 369 U.S. 186 (1962); Coleman v. Miller, 307 U.S. 433 (1939).

Therefore, Plaintiff's 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 Prescribed in Article V of the United States Constitution is hereby DENIED, and Defendant's Cross-Motion to Dismiss is hereby GRANTED. Plaintiff' Motion for Default Judgment is also DENIED.

The complaint is dismissed with prejudice since the Court finds that it would be futile to allow Plaintiff an opportunity to amend his complaint. The Clerk of the Court is direct to enter judgment accordingly.

DATED, March 19th, 2001.

V

s/John C. Coughenour
Chief United States District Judge
#####

*Judge Coughenour created an ellipse in quoting the plaintiff, omitting one sentence. The omitted sentence read: "This has been recognized by the Supreme Court in several cases." The sentence was footnoted as follows:

"*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.)"

#####

Except for *Coleman* in his "province of Congress" statement, Judge Coughenour therefore deliberately ignored any Supreme Court rulings favoring the position that the Government must obey the Constitution as originally intended obviously interpreting *Coleman* as overturning these previous Supreme Court opinions. (See Amicus brief p. 6; Appendix p. IX.)

VI

TABLE SUMMARIZING STATE APPLICATIONS FOR A CONVENTION TO PROPOSE AMENDMENTS

The following table presented under Rule 1006 Federal Rules of Civil Procedure summarizes states applying for a convention, the first year of application, and total number of applying states. Sources are:

ABA Constitutional Convention Report, August 1973;

A Lawful and Peaceful Revolution: Article V and Congress' Present Duty to Call a Convention for Proposing Amendments, Judge Bruce M. Van Sickle, Senior United States District Court Judge for the District of North Dakota, Hamline Law Review, Volume 14, Fall 1990;

1 Annuals of Congress 248 (J. Gales ed. 1789);

Congressional Record, Volumes 33 (1899) to 135 (1989.)

State	Date of First App.	Total Apps. Submitted	Total Applying States
VA	1789	17	1
RI	1790	6	2
TX	1899	17	3
MN	1901	7	4
NE	1901	18	5
NV	1901	18	6
MI	1901	10	7
OR	1901	10	8
MT	1901	10	9
TN	1901	13	10
AR	1901	16	11
CO	1901	7	12
ID	1901	18	13
PA	1901	7	14
KY	1902	6	15
WI	1903	21	16

State	Date of First App.	Total Apps. Submitted	Total Applying States
IL	1903	20	17
UT	1903	12	18
WA	1903	6	19
IA	1904	17	20
MO	1905	14	21
NY	1906	5	22
SD	1907	27	23
DE	1907	10	24
KS	1907	10	25
NJ	1907	9	26
LA	1907	26	27
IN	1907	14	28
NC	1907	5	29
OK	1908	17	30
ME	1911	4	31*
OH	1911	5	32**
VT	1912	2	33
SC	1916	11	34***
MA	1931	16	35
CA	1935	4	36
WY	1939	15	37
MD	1939	6	38
NH	1943	9	39
FL	1943	19	40
AL	1943	15	41
CT	1949	5	42
NM	1952	5	43
GA	1952	20	44
AZ	1965	12	45
MS	1965	16	46
ND	1967	5	47
HI	1970	1	48

State	Date of First App.	Total Apps. Submitted	Total Applying States
WV	1971	2	49
AK	1982	2	50
Total	----	567	----

* In 1911, there were 46 states in the Union. Two-thirds of 46 is 30.67. Under the terms of Article V, the two-thirds required threshold was reached with the application of Maine which became the thirty-first state to apply for a convention to propose amendments.

** In 1911, Ohio became the thirty-second state to apply for a convention to propose amendments. Two-thirds of 48 is 31.99. This means the two-thirds threshold for 48 states had been met even before two states, New Mexico and Arizona, were admitted to the Union the following year in 1912.

*** In 1916, the number of applying states reached 34 with the application of South Carolina. This number satisfied the two-thirds requirement for 50 states even though it would be 43 years before Alaska and Hawaii joined the Union. Since 1916, the number of applying states has continued to increase until, in 1982 with the application of Alaska, every state in the Union had applied at least once for a convention to propose amendments.

There is significance in these thresholds for the Court. As of 1911, under the terms of Article V, Congress was obligated was call a convention to propose amendments. At that time, the Court had already expressed in a ruling that Congress must call a convention. (See Appendix, p. IX.) This ruling was ignored by Congress. Therefore, by this action, Congress claimed the right to veto clauses of the Constitution irrespective of any Supreme Court ruling. It would be another 28 years before the *Coleman* decision would provide any legal basis for such a congressional veto.

IX

COURT RULINGS MANDATING A CONVENTION CALL BY CONGRESS

The Court has specifically addressed the obligatory nature of the convention clause in Article V in case. The interpretation was always the same: Congress must call. There has never been a single dissent on the Court in regards to this interpretation.

In Dodge v. Woolsey the Court said:

> "The departments of the government are legislative, executive and judicial. They are coordinate in degree to the extent of the powers delegated to each of them. Each, in the exercise of its powers, is independent of the other, but all, rightfully done by either, is binding upon the others. The constitution is supreme over all of them, because the people who ratified it have made it so; consequently, any thing which may be done unauthorized by it is unlawful. … It is supreme over the people of the United States, aggregately and in their separate sovereignties, because they have excluded themselves from any direct or immediate agency in making amendments to it, and have directed that amendments should be made representatively for them, by the congress of the United States, when two thirds of both houses shall propose them; *or where the legislatures of two thirds of the several States shall call a convention for proposing amendments*, which, in either case, become valid, to all intents and purposes, as a part of the constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths of them, as one or the other mode of ratification may be proposed by congress."

Dodge v. Woolsey, 59 U.S. 331 (1855.) (Footnotes Deleted.) (Emphasis added.)

In Hawke v. Smith, Supreme Court said:

"The framers of the Constitution realized that it might in the progress of time and the development of new conditions require changes, and they intended to provide an orderly manner in which these could be accomplished; to that end they adopted the fifth article.

This article makes provision for the proposal of amendments either by two-thirds of both houses of Congress or *on application of the Legislatures of two-thirds of the states*; thus securing deliberation and consideration before any change can be proposed. …

The fifth article is a grant of authority by the people to Congress. The determination of the method of ratification is the exercise of a national power specifically granted by the Constitution; that power is conferred upon Congress, and is limited to two method, by the action of the Legislatures of three-fourths of the states, or conventions in a like number of states. The framers of the Constitution might have adopted a different method. Ratification might have been left to a vote of the people, or to some authority of government other than that selected. *The language of the article 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.) (Footnotes omitted.) (Emphasis added.)

In *Dillon v. Gloss*, the Court reaffirmed its previous interpretations of Article V saying:

> "An examination of article 5 discloses that it is intended to invest Congress with a wide range of power in proposing amendments. Passing a provision long since expired, it subjects this power to only two restrictions: one that the proposal shall have the approval of two-thirds of both houses, and the other excluding any amendment which will deprive any state, without its consent, of its equal suffrage in the senate. *A further mode of proposal – as yet never invoked – is provided, which is, that on the application of two thirds of the states Congress shall call convention for the purpose*."
>
> *Dillon v. Gloss* 256 U.S. 368 (1921.) (Footnotes omitted.) (Emphasis added.)

The final Supreme Court case before Coleman was United States v. Sprague where the Court said:

> "The United States asserts that article 5 is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates that this is true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses, or, on the application of the legislatures of two-thirds of the States, must call a convention to propose them."
>
> *United States v. Sprague*, 282 U.S. 716 (1931.) (Footnotes omitted.) (Emphasis added.)

These decisions obviously reinforce the interpretation of Article V expressed by Hamilton in Federalist 85 but which were refuted by *Coleman* and *Walker*.

More importantly, however, the timeline of these decisions indicates a significant fact: A clear interpretation of the action of Congress vis-à-vis the convention call was specified by the Court *prior* to there being sufficient states to compel

Congress to call a convention to propose amendments. (See Appendix, p. VIII.) After there were sufficient states applying to compel such a call, the Court addressed the matter in an identical fashion three more times. Congress ignored all such rulings.

This fact proves if the Court were to determine Congress must call, i.e., obey the Constitution as was intended, meant and written, Congress would ignore this determination in favor of *Walker* asserting its right to veto the Constitution at its political whim.

EXCERPTS OF BRIEFS PRESENTED IN *WALKER* TO THE DISTRICT COURT DISCUSSING THE EFFECTS OF AN UNFAVORABLE RULING

Judge Coughenour was informed of the effect *Walker* before he issued his ruling. The consequences were described both in a brief he rejected and in briefs he allowed. Nowhere in his ruling did Judge Coughenour refute these warnings or conclusions. The first brief stated:

> "The Court faces an interesting dilemma should it determine that the meaning and intent of Article V convention applications is 'same subject', i.e., that two-thirds of the several state legislatures must apply for the same amendatory subject before Congress is obligated to call a convention and that Congress possesses the discretionary power to determine whether or not the states, if ever, have satisfied the 'same subject' criterion.
>
> This suit requests the Court to compel Congress to call a convention because the states' applications have satisfied the meaning and intent of Article V. Without an action properly brought before the Court, the Court is powerless to act. Therefore, only by affirming the request of this

suit can the Court act in the matter at all. Should the Court find that Article V applications must satisfy a congressionally defined "same subject" criterion, the effect of its order would be to compel Congress to call a convention by finding Congress' current laches unconstitutional, yet simultaneously provide a means for Congress to veto the Court order by simply determing the applications do not satisfy Congress' own definition of "same subject." This clearly establishes a precedent that would de facto overrule the judicial principles established in *Marbury*.

If, on the other hand, the Court defines Article V applications as a numeric count as urged by this suit, i.e., that upon a specific number of applications submitted by the states, regardless of content, Congress is obligated to call a convention with no discretion in the matter as the clear language of the Founders states, then Congress, having no discretion, cannot veto the order of the Court in any manner. Thus, there is no threat to the powers of judicial review as set forth in *Marbury*. Of course, Congress could exercise its incidental regulatory power to overthrow the state legislatures, a power that the Court has already approved in *Coleman*, thus defeating the Court's lawful order, but it will be up to the wisdom of Congress to take this fateful step. The Court can only interpret the Constitution; respect for its rulings is the only limit on raw political ambition.

The third option would be for the Court to take no action and defeat the plaintiff's motion. This result would affirm the de facto right of Congress to veto the expressed language of the Constitution by laches, i.e., to simply ignore it.

> This would establish the precedent of Congress, or any other branch of government so regulated by the Constitution, possessing the power to veto the Constitution at will by the least standard possible: acting as if the language didn't even exist. As the evidence in this suit shows that the states in their applications have not only satisfied the proper interpretation of numeric count, but the improper interpretation of 'same subject', no other conclusion is possible. As always, it is left to the wisdom of the Court to resolve this dilemma."
>
> Walker v. United States Brief In Support Of Convention General Brief Arguments pp. 699-700. (Footnotes omitted.) (Emphasis added.)

Even though Judge Coughenour refused the first brief submitted, there is no evidence he did not read it before refusing it. In the replacement brief, it was stated:

> "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.
>
> *Walker v. United States* Brief in Support of Convention General Brief Arguments p. 2. (Footnotes omitted.)

In the same brief, the matter was again addressed:

> "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 the issues 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 to provide the means for Congress to prevent it. (1)"
>
> *Walker v. United States* Brief in Support of Convention General Brief Arguments, p. 5. (Emphasis in original.) (Footnote (1) follows):
>
> "*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).

The matter was again discussed in Plaintiff's Response to the United States Motion to Dismiss brief, which stated:

> "Defendant United States does not give *Coleman* its fair due. Assuming the defendant wishes to win his case, then it should allow *Coleman* its full flower. *Coleman* goes much farther than just holding the judiciary has no place in the amenda-

tory process, not even to the extent of interpreting the meaning of the words of the Constitution, a clearly recognized power of judicial review. Using the ratification of the 14th Amendment as the basis of its decision where Congress legislated how states shall ratify a specific amendment, *Coleman* emphatically states that:

'Such division between the political and judicial branches of the government is made by Article V which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the article exclusively and completely to Congress.'

The conclusion of this statement by the Supreme Court is obvious. The language of Article V speaks of two separate methods of amendment with at least two groups (the national government and the states or a convention to propose amendments and the states or one of the proposing bodies and the people) having to agree in a supermajority both at proposal and ratification level before the proposed amendment can take effect. *Coleman's* language replaces Article V with a politically motivated system where the entire process can be legislated by Congress. As the Supreme Court based its decision on the 14th Amendment, it is clear the Court meant to give Congress the power to legislatively dictate the outcome of a ratification vote by the states, employ military force to enforce that political desire and even allow for Congress to overthrow the legislature and replace it with members of its choosing should it vote contrary to Congress' desires. Obviously, this power is all-inclusive and thus provides Congress all the power it ever needs to

regulate the ratification process. Therefore, under the principle of necessary and proper, Congress requires no more power in the amendatory process as is advocated by defendant United States to regulate the convention to propose amendments because it has total control of the ratification process.

The only portion of Article V Coleman did not address was a convention to propose amendments. Defendant United States asks the Court now to close this gap by giving Congress dictatorial powers over the entire amendatory process. It asks its veto of the clear and plain language of the Constitution, which it has admitted requires no interpretation, be sanctioned by the Court as no more than a "political question." Nothing in defendant's language in its motion to dismiss gives the slightest assurance that such a veto of the written language of the Constitution will stop at this point of merely gobbling up Article V.

Once this power is established with the blessing of the Court, Congress will be able to decide which constitutional language, i.e., the law, it will obey. Congress "knows" someone is guilty of a crime (assuming it even bothers with the guarantees of a trial at all) and forces them to testify against themselves. Congress doesn't like guns, so it simply removes them. It doesn't like political criticism, so it silences it. It doesn't like a Court ruling, so it ignores it. If the possibility of a runaway convention at all concerns the Court, perhaps it should weigh the alternative of a runaway Congress before ruling in defendant United States favor.

Plaintiff can allege this alternative because

the law at stake in this instance is nothing less than the expressed written language of the Constitution which Congress has vetoed. There is no other law or statute at issue as is usually the case in most constitutional questions. The Constitution stands along in this instance. Thus, defendant's assertion that the government is not required to act in accordance with [the] law, it can only mean defendant United States holds it is not bound to obey the Constitution at all."

Walker v. United States, Plaintiff's Response To Cross Motion to Dismiss, pp. 24-26. (Footnotes omitted.) (Emphasis added.)

In the same brief, plaintiff continued:

"In all of this it must be remembered the United States is attempting to commit an unlawful and illegal act. The Constitution is above all else, law. The United States has violated that law. Like all fugitives when caught in the act, it does not own up to its misdeeds. Instead, it seeks to "get off" by involving the Court as an accomplice in its conspiracy.

The Constitution, like a chain, is only as strong as its weakest link. Once the court has sanctioned, by whatever means, the "right" of the government to veto the Constitution that chain is broken and any restraints on the government shift from the people to the convenience of the government. As noted above, there is nothing to say the first target of that emancipated government will not be to ignore all future court orders, rulings and findings which seek to otherwise regulate a government gone wild with power."

Walker v. United States, Plaintiff's Response to Cross Motion to Dismiss, p. 29. (Footnotes omit-

ted.) (Emphasis Added.)

Clearly, Judge Coughenour was aware of the consequences of his judicial order. Neither Judge Coughenour nor the Government refuted or disputed these assertions. Hence, it can only be assumed Judge Coughenour agreed with these conclusions and thus supports them. Therefore, it is likely he will enforce his order and issue contempt against anyone violating it.

COURT RULINGS SHOWING RESISTANCE TO *WALKER v. UNITED STATES*

> "A court of the United States shall have the power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as disobedience *or resistance to its lawful* writ, process, *order*, rule, decree, or command."
>
> United States Code, Title 18, Part I, Chapter 21, § 401(3).(Emphasis added.)

Walker is "unambiguously clear." The Government does not have to obey the meaning, intent, or written language of the Constitution. Hence, as asserted by the Government and affirmed in *Walker*, any rule, regulation, law, court order, (except *Walker*) or constitutional clause based on the premise of constitutional obedience can be ignored without penalty. (See Amicus brief, p. 24; Appendix, p. II.)

The following Supreme Court opinions, all decided since *Walker*, held the actions of the Government were unconstitutional, i.e., the Government had failed to comply with the Constitution in some manner. Despite *Walker*, the justices of the Court have continued to rule the Government must act in accordance with the meaning, intent or written language of the Constitution or laws derived from the authority thereof employing that standard as a basis for their judgments. Hence, they have prevented the Government

from acting in a manner entirely consistent with *Walker*. This action demonstrates a clear resistance to *Walker* and thus the justices of the Court are in contempt of *Walker*. Amici does not claim the justices erred in their opinions, only that the actual action of rendering a judgment conflicts with *Walker* and therefore is grounds for contempt.

Hoffman Plastic Compounds, Inc. v. NLRB, 00-1595

Decided March 27, 2002. The Court held the NLRB cannot force a company to make back pay to an illegal alien when the NLRB ordered the company to do so. The Court overrode the NLRB's interpretation of the equal protection clause of the Constitution.

Ashcroft v. Free Speech Coalition, 00-795

Decided April 16, 2002. The Court found provisions of the Child Pornography Prevention Action of 1996 (CPPA) specifically CPPA §§ 2256 (8)(B) and CPPA §§ 2256 (8)(D) were "overbroad and unconstitutional." The decision was based on First Amendment protections designed to protect the "production of works protected by the First Amendment."

Thompson v. Western States Medical Center, 01-344

Decided April 29, 2002. The Court found provisions of the Food and Drug Administration Modernization Act of 1997(FDAMA) which restrict solicitation of advertisement of certain prescription drugs was "unconstitutional restrictions on commercial speech" a form of free speech protected by the First Amendment.

Franconia Associates v. United States, 01-455

Decided June 10, 2002. The Court ruled the Government must honor its financial obligations and may not breach financial contracts, an obligation derived from the contract

clause of the Constitution.

BE&K Construction Co. v. NLRB, 01-518

Decided June 24, 2002. The Court held the NLRB's "standard for imposing liability (on BE&K) is invalid." The decision was based on "[t]he right to petition…safeguarded by the Bill of Rights."

THE STATES' RENUNCIATION OF THE CONVENTION CLAUSE CREATS A SUBSERVIENT NON-SOVEREIGN ROLE FOR THE STATES

Below is the text of a letter sent by the plaintiff in *Walker* individually addressed to all fifty state attorney generals requesting their aid at the District Court level in defending the right to a convention to propose amendments. The letter to the attorney general of Alabama is provided as a sample. Following this letter are texts of replies to the letter in alphabetical order from the states. In sum, the states' response was either to ignore the request entirely or refuse to join. Such action can only be interpreted as the states repudiating any Article V amendatory authority claim. Without such amendatory authority, the states have no say in the Constitution nor in the actions of the national government in the application of that Constitution on them.

December 23, 2000
Mr. Bill Pryor
Attorney General
Alabama State House
11 S. Union St.
Montgomery, AL
36130

Dear Mr. Pryor,

Today before the Federal District Court in Seattle, Washington is a most significant lawsuit you may not be aware of. No matter which way this case is decided, it will affect your state.

The suit (case: C00-2125C) is the first of its kind in the history of the United States. It is an attempt by a private citizen to have the federal courts rule on the calling of a convention to propose amendments as specified in Article V of the United States Constitution.

The convention is the ultimate tool of the states and the people to regulate the national government through proposing amendments to the Constitution. I am sure you are aware the states have applied some 564 times to Congress to exercise this constitutional right and that Congress has ignored all attempts by the states to convene a convention. I'm sure you are aware the plain language of the Constitution makes this action on Congress obligatory and non-discretionary. Yet in spite of this fact, Congress continues to ignore the Constitution, thus vetoing it. In their applications, the states have not only satisfied the required numeric two-thirds count specified in the Constitution (all 50 states have applied), the sole standard set by Article V, but have also met all the pseudo-constitutional standards that Congress has set up to prevent the call but refuses to pass as law. In short, by any standard Congress must call a convention and has not done so. It follows, therefore, that Congress holds it may veto the Constitution with impunity.

I am fighting a one-man battle to stop this, to

return to the states and people of this nation that which is theirs, not the national government's—the right to control their own destiny under the Constitution and not have it controlled from Washington D.C. This is why I have spent the past five years of my life writing this brief, an admittedly long piece of work containing over 200 United States Supreme Court rulings supporting my position that a convention is a workable, legal, legitimate and necessary constitutional function of our form of government.

I would hope recent events in Florida would make it crystal clear why issues in our Constitution require attention and why a convention, carefully structured, can help solve some of them. As to my lengthy attention to detail in the brief, imagine another Florida in all 50 states with control of the Constitution at stake. I have aimed to prevent that, and I feel I have succeeded. My brief, using long-established and recognized constitutional principles, sets up the basic rules and operation of the convention in a fair and just manner so that an open, public and fair convention results, one that can conduct the people's business and address their concerns.

I would hope you would join me in this fight by filing a brief in Federal District Court in support of my motion to compel Congress to call a convention as is mandated under the terms of the United States Constitution. You may view my brief, motion and order at www.article5.org. This is a critical issue in the area of state and citizen rights. Should I lose, Congress will certainly take this as a sign from the federal courts that they endorse this illegal veto power.

While some state legislatures have submitted recessions of applications to Congress, an act my brief proves is not constitutionally valid, the vast majority of the states, a number more than sufficient to satisfy all conditions, constitutional or otherwise, have not filed such recessions. Their desire for a Convention to Propose Amendments remains unquestioned. However, any federal court ruling against my motion would also be a ruling against the expressed action of your own state legislature. For this reason also, I urge you to file a brief in support of my motion.

The address of the Federal District Court is 215 U.S. Courthouse, Seattle, Washington, 98104. Again I urge you to read my brief and to support my motion by filing a brief in support so as to protect this most important state and citizen right.

Thank you for your time in this matter.

Sincerely,

s/Bill Walker

XXV

THE STATES' RESPONSE TO THE REQUEST TO JOIN *WALKER* TO PROTECT THE RIGHT TO A CONVENTION TO PROPOSE AMENDMENTS

CALIFORNIA

State of California
Office of the Attorney General
Bill Lockyer
Attorney General
1300 I Street, Suite 1740
Sacramento, California 95814

February 1, 2001

Mr. Bill Walker

Dear Mr. Walker,

Thank you for your recent letter regarding your filing in the federal district court. We have read and considered your brief. While it is a prodigious effort to which you have obviously devoted considerable time and energy, we are not inclined to join your cause.

Sincerely,

s/Bill Lockyer
Attorney General

NEVADA

State of Nevada
Office of the Attorney General
100 N. Carson
Carson City, Nevada 89701-4717

January 10, 2001

W.R. Walker

Dear Mr. Walker:

Thank you for your December 23, 2000 letter in which you provide the information regarding your lawsuit in Federal District Court in Seattle, Washington. Based upon the information that we have reviewed and because of the limited resources of this office, we will not be filing a brief in support of your motion in federal court.

Thank your taking the time to write. We wish you the best.

Sincerely,

s/David Wasick
Special Assistant Attorney General

XXVII

NEW MEXICO

Attorney General of New Mexico
Patricia A. Madrid
Attorney General
PO Drawer 1508
Santa Fe, New Mexico 87504-1508

Mr. Bill Walker

Dear Mr. Walker:

Your letter dated December 23, 2000 to Attorney General Patricia Madrid has been referred to me for response. You are requesting support of a brief you have written urging the federal court to rule on the calling of a convention to propose amendments as specified in Article V of the United States Constitution. *This letter will outline the duties of the New Mexico Attorney General's Office*.

The Attorney General's Office provides legal advice and representation to state government, state agencies and state employees. See NMSA 1978 §§ 8-5-2, 8-5-4, 8-5-15. *This office has specific statutory authority to provide legal opinions only to state legislators, state officers and district attorneys*. § 8-5-2 (D). Based on these statutes and limited financial and personnel resources, we generally do not provide legal opinions or representation to private individuals, local governments or other local entities and associations.

The Attorney General's office is granted au-

thority to enforce certain state laws, such as the Open Meetings Act and the Inspection of Public Records Act, that apply to local governments. Accordingly, we will review and respond to requests for advice or investigations under those laws from local governmental bodies and private individuals.

Thank you for writing and sharing information regarding your brief on Article V. I hope this letter sufficiently responds to your inquiry. If you have any additional questions about this matter, please let me know.

Sincerely,

s/Samantha M. Metheny
Assistant to the Civil Division Director
(Emphasis Added)

****

On November 6, 2002, the state of New Mexico joined with several other states in filing an *amicus curiae* brief in district court supporting the *McConnell* defendants/appellees. While such support is useful, the Court should note the fact that according to the above letter from New Mexico's attorney general, such an action is illegal under New Mexico state law. The letter makes it clear state law prohibits the state attorney general from joining a lawsuit on a federal level. Such a filing by the state attorney general exceeds the authority granted that official by state law. That official is allowed "to provide legal opinions *only* to state legislators, state officers and district attorneys." The defendants/appellees in *McConnell* are none of these. Neither is the Court. The issue is clearly federal and thus New Mexico may not comment in any manner on it under state law. Therefore, any such *amicus* must be ignored by the Court as the state acted illegally un-

der its own state laws in filing such an *amicus* brief.

XXX

OKLAHOMA

January 2, 2001

W.A. Drew Edmondson
Attorney General of Oklahoma
2300 N. Lincoln Blvd., Suite 112
Oklahoma City, OK
73105-4894

Mr. Bill Walker

Re: Case No. C00-2125C

Dear Mr. Walker:

Thank you for your letter regarding the above lawsuit. I appreciate the information, but, Oklahoma is not interested in joining a brief support a constitutional convention.

I appreciate hearing from you and hope you will feel free to contact me if I may be of any other service.

Sincerely,

s/W.A. Drew Edmondson
Attorney General

XXXI

TEXAS

January 5, 2001

Office of the Attorney General
State of Texas
John Cornyn
P.O. Box 12548
Austin, Texas 78711-2548

Mr. Bill Walker

Dear Mr. Walker:

Thank you for your recent letter about your brief. We appreciate your contacting the Office of the Attorney General. I have forwarded your letter for review.

Again thank you for contacting us. Please feel free to contact the Office of the Attorney General if we may be of further assistance.

Sincerely,

s/Lisa A. Frick
Public Information & Assistance
Office of the Attorney General of Texas

XXXII

WASHINGTON

Christine O. Gregoire
Attorney General of Washington
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

February 13, 2001

Mr. Bill Walker

Dear Mr. Walker:

Thank you for your letter of December 23, 2000, to the Attorney General. We appreciate your taking the time to share your views.

Sincerely,

s/Michael E. Grant
Assistant Attorney General

LETTER TO *MCCONNELL* LEGAL COUNSELS REQUESTING *AMICUS* TO THE COURT

On April 27, 2002 a letter requesting permission to file an amicus brief with the Court of the United States was sent to all legal counsels listed in the District Court docket at that time. Because additional parties later joined *McConnell* as plaintiffs, two follow-up letters were sent out. Amici received only one response from one legal counsel contacted. (See Appendix, p. XLVII.)

April 27, 2002
Mr. Kenneth W. Starr
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, DC 20005

Dear Mr. Starr,

I understand you, together with other legal counsel listed at the end of this letter, represent numerous plaintiffs in the now consolidated case of *McConnell, et al v. FEC, et al* (02-CV-582) challenging the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA) in United States District Court, Washington, DC. This list of counsel also includes Roscoe C. Howard Jr., United States Attorney for the District of Columbia who will represent the United States, the various agencies and individuals in their official capacities who are named as defendants in this case.

I also understand that due to provisions in the BCRA, challenges to the constitutionality of the BCRA are to be expedited to the Supreme

Court. According to a press statement by your client, Senator Mitch McConnell, a decision is expected from the highest court within months. Because of this accelerated timetable, I believe my request under Rule 37 of the Rules of the Supreme Court of the United States to be granted permission to file amicus curiae in this matter with that court is entirely proper and timely. Therefore, I hereby formally request such consent of all counsel involved to file an amicus curiae brief with the United States Supreme Court in regards to this case.

Rule 37 states that "an amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court." After reviewing the arguments set forth by the various parties in their complaints, it is clear my amicus brief satisfies this requirement.

Specifically, my amicus brief will discuss effect of *Walker v. United States*, a recent federal case, on all plaintiffs' arguments, which have been asserted. As Senator Mitch McConnell as well as Representatives Barr, Paul and Pence, were defendants in this case I am sure the ruling is familiar to them. As you and other counsel may not be, I have enclosed a copy of the decision for your reference. The remainder of this letter summarizes the various effects of this ruling. While legal citations and other reference material will be minimally used in this letter in order to conserve space, rest assured I can fully document all statements made herein. These will of course appear in my amicus brief which will be prepared in full compliance with all applicable Supreme Court

rules.

In sum, *Walker v. United States* repudiates all the arguments of all plaintiffs. Consequently, the BCRA is entirely "constitutional," if, in light of *Walker v. United States*, such a term is still relevant. The issue before the district court in *Walker v. United States* was the Article V convention clause in the United States Constitution, the first such case in the history of the nation. As such, any decision by the court had to deal directly with the actual written language of the Constitution. Therefore, the court was denied the benefit of the usual filter of court interpretations that accompany other constitutional issues allowing it to modify an interpretation instead of actual language. This meant the ruling, which directly refuted the original intent and meaning of the Founders, can be viewed as nothing less than an amendment to the Constitution by judicial decree, a new judicial power. Because of the absolute nature of the clause (i.e., that there is a convention on the application of the states), combined with the clear, emphatic, and unambiguous language of the Founders, the court was placed in the unusual position of having to rule on the question presented regardless of its determination of standing. This fact became inevitable when the government raised the political question doctrine in an attempt *not* to obey the obligatory language of Article V. Thus, while Judge Coughenour may have written a dismissal based on the unconstitutional grounds of standing, in fact, he actually issued a ruling regarding the central issue of the case. Technically, he nullified his dismissal and gave the plaintiff, myself, implied standing in or-

der to issue his ruling.

First, *Walker v. United States* repudiates the plaintiffs as to their standing to sue. The following First Amendment standings were asserted in *Walker v. United States*: the right of a citizen to vote in a public election; the right of a citizen to politically associate for the purpose of gathering petitions and conducting other reasonable political activities (i.e., making political contributions); the right of a citizen to exercise his right of redress as provided in the Constitution of the United States and, the right of a citizen to seek elected public office. Further, it was asserted that Congress had assumed sovereign powers not granted to by the Founders by unconstitutionally failing to follow the provisions of Article V.

The decision of the district court was to find all these First Amendment assertions, as well as the assertion of unconstitutional assumption of power, lacked standing. No explanation of why these assertions did not satisfy standing was provided by the court in its ruling. Nevertheless, the doctrine of equal protection, which holds identical classes must be treated identically under the law, means the same protection of standing must apply to the same standing assertions. The plaintiffs in the present case have used the same assertions as were made in *Walker v. United States*. Therefore, the protection of standing is identical: none. In short, if my right to vote in a public election or to politically associate is not worthy of standing, neither are the plaintiffs asserted rights worthy of standing.

Second, *Walker v. United States* completes a series of Supreme Court rulings transferring all

amendatory power to Congress regardless of the actual language in the Constitution. The actual language clearly specifies a clear separation of powers between Congress, the states and a convention so that no single political body can amend the Constitution unilaterally. It also mandates a call for a convention with no option on the part of Congress if the proper number of states apply. However, with the ruling in *Walker v. United States* combined with these previous decisions, for the first time in United States history, a single political body (Congress) now controls all aspects of the amendatory process. This control includes both methods of proposal, ratification, and promulgation. What this means for the plaintiffs in the present case is that regardless of the language in the Constitution, Congress may amend the Constitution without going outside its own political circle to do so. Thus, any legislation passed by Congress since the *Walker v. United States* ruling that in any way "conflicts" with the Constitution or some provision thereof, must be regarded as no more than an amendment to the Constitution intended by Congress. Consequently, such "conflict" cannot exist as the Constitution has been amended to suit whatever political whim Congress chooses. Even your own client, Senator McConnell, favored this congressional power. He voiced no opposition to the proposition when it was asserted by the government in the trial phase of *Walker v. United States*. In fact, no member of Congress has ever repudiated this or any other assertion made regarding the effect of *Walker v. United States*. How then Senator McConnell can complain about Congress amending the Constitu-

tion by legislative decree when he supported the court case permitting it to do so.

Third, as noted earlier, the Founders were clear, emphatic and unambiguous that the national rulers, i.e., Congress and the judiciary, should have no option or discretion in calling a convention should the states apply and that a simple numeric count of the applying states compelled this action. This is most clearly stated in Federalists 85 by Alexander Hamilton, the author of Article V. (An examination of Federalists 85 can be found in my overlength brief, pp. 256-264, fn. 497-514 and p. 280, fn 559 which can be downloaded at www.article5.org.) Thus, the original intent and meaning of the actual language of the Constitution is that Congress must call a convention and has no discretion or option in the matter. It is a matter of public record the states have applied in more than sufficient number to satisfy the two-thirds requirement specified in Article V of the United States Constitution. In fact, all the states have applied for a convention. (Please see my overlength brief pp. 667-697 for a summation of the applications. The tables are from an article written by Senior Federal District Court Judge Bruce Van Sickle in which he asserts Congress must call a convention.

Despite these writings by the Founding Fathers and, based on his interpretation of the political question doctrine, Judge Coughenour ruled Congress is not obligated to issue a convention call despite the proper number of applications having been submitted, a direct contradiction of the original intent and meaning of the Constitution. So far as I can determine, Judge Coughenour

is the first person in the history of the United States who has ever written on the subject to express Congress is *not* obligated call on the proper number of applications by the states. Nevertheless, because his opinion is a court order, it is official government policy and thus is law of the land. However he arrived at his opinion, it is clear Judge Coughenour ruled Congress is not obligated to obey the actual language of the Constitution and thus can veto it for political reasons. Once this power of Congress is established, it is clear this veto power may be freely used by Congress, or any other part of the government, to any other clause of the Constitution or any court interpretations of that actual language. Thus, Congress is free to veto any First Amendment language or court interpretation of it that it sees fit to do. Combined with its total control of the amendatory process, there is no gap between these two poles. The Congress is thus free to amend the Constitution whenever it sees politically fit without consultation or review of any other political body or bodies, and, even if there is a conflict between the action of Congress and a specific constitutional provision, there still can be no issue, as Congress is free to ignore those provisions anyway.

As to the applications, it would be a waste of time for the various state legislatures to now "withdraw" their state applications as a result of *Walker v. United States*. All this would serve to do is affirm and recognize the right and power of Congress to veto the Constitution thus providing even more concrete evidence of the arguments presented. Indeed, such action could be inter-

preted as a de facto amendment of the Constitution.

Fourth, the Supreme Court of the United States no longer has the authority to declare any part of the BCRA unconstitutional. *Walker v. United States* has removed the power of judicial review and the right of the court to find an act of the government "unconstitutional." In sum, that which is exempted from a standard cannot be judged by that standard. As Congress is exempt from the provisions of the Constitution, the Court does not have the authority to judge it by those provisions of the Constitution. I have in my possession a letter from the Supreme Court of the United States acknowledging the legal validity of the arguments I have presented in this letter.

I am sure the plaintiffs will attempt to utterly reject the above arguments. However, there is the final argument they cannot refute. This is actual *action* of Congress. If your plaintiffs are to successfully assert the above arguments are invalid, logic requires they also surmount the fact Congress has refused to call a convention despite the overwhelming number of applications from *all* the states and thus is acting in compliance with this interpretation of *Walker v. United States*. In short, it is *obeying* the court order. By this action, Congress (including your client) has claimed the de facto right to veto the actual language of the Constitution. A federal judge has affirmed this claim thus making it law of the land. Bluntly, Congress' actions speak louder than any of the plaintiffs' words.

Only a Supreme Court order overturning *Walker v. United States* and compelling Congress

to call a convention might possibly reverse its effect. This will not happen. First, the order was not appealed and thus is a final court order. By its own rules, the Supreme Court can only act if a matter is appealed to them though they are not immune from the effects of a court order that is not appealed. Second, the Supreme Court will never issue such a ruling because of the political fallout it would suffer. Third, an amicus brief does not permit the Court to rule on the matter presented in that brief. As long as Congress refuses to obey a provision of the Constitution, then *Walker v. United States* as explained above is in effect, as no other conclusion is possible.

Clearly then, for the reason presented, the plaintiffs do not have a valid action against the BCRA as the terms and conditions of the Constitution are now entirely in the control of Congress. As such, for all practical purposes the Constitution no longer exits. However Congress chooses to transform the First Amendment in regards to campaign financing is its own business and no one has anything to say about it. The court has no choice but to find entirely in favor of the United States, if the plaintiffs choose to take the matter that far. Thank you for your time and consideration in this matter.

Sincerely,

s/Bill Walker

cc: Floyd Abrams, Heidi K. Abegg, Richard Blair Bader, Jan Witold Baran, G. Hunter Bates, James Bopp Jr., Bobby R. Burchfield, Charles J. Cooper, Valle

Simms Dutcher, James J. Gilligan, Laurence E. Gold, Joel M. Gora, David J. Harth, James M. Henderson Sr., Roscoe C. Howard Jr., Mark J. Lopez, Cleta Mitchell, Donald J. Mulvihill, Burt Neuborne, William J. Olson, Bradley S. Phillips, Trevor Potter, Jay Alan Sekulow, Kathleen M. Sullivan, Herbert W. Titus, Seth P. Waxman, David A. Wilson, Roger M. Witten, Richard O. Wolf, Sherri L. Wyatt.

XLIII

SECOND LETTER TO *MCCONNELL* LEGAL COUNSELS REQUESTING *AMICUS*

On May 19, 2002, a second letter to Mr. Starr was sent, as there had been no response to the first letter. In addition, as noted in the letter, additional parties and legal counsels had joined *McConnell*, requiring an update of the request.

May 19, 2002
Kenneth W. Starr
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, DC 20006

Dear Mr. Starr,

On April 27, 2002 this year I sent you a letter by regular mail requesting I be permitted to file under United States Supreme Court rule 34, an amicus brief in connection with *McConnell et al v. FEC et al.* regarding the effect of a federal court decision, *Walker v. United States*, on the *McConnell* case. I sent my letter listing the attorneys who I understood would be involved in the matter following its consolidation by court order.

However, since that time, it has come to my attention that I failed to send my letter of request to all parties involved in this case. I am doing this now to correct this oversight. Therefore, I am sending copies of my April 27, 2002 letter and ruling to the following counsels:

Floyd Abrams, Richard Blair Bader, Jan Witold Baran, James Bopp, Jr., Bobby R. Burchfield, Charles J. Cooper, James J. Gilligan, Laurence E.

Gold, James M. Henderson, Sr., Mark J. Lopez, Cleta Mitchell, William J. Olson, Sherri L. Wyatt, Roger M. Witten.

As a result, I have modified the letter I sent to you and other copied counsel on April 27, 2002 to include these names in the cc: list at the end of the letter that I am sending to the above named list.

I would also like to take this opportunity to note that as of this date I have yet to receive any response from your office regarding my request. I look forward to a speedy and affirmative response to my request. Thank you for your time in this matter.

Sincerely,

s/Bill Walker

THIRD LETTER TO *MCCONNELL* LEGAL COUNSELS REQUESTING *AMICUS*

On May 27, 2002 a third letter was sent to all parties again updating the legal representatives involved and again requesting an answer to the request for an amicus to the Court.

May 27, 2002
Kenneth W. Starr
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, DC 20006

Dear Mr. Starr,

On April 27, 2002 this year I sent you a letter by regular mail requesting I be permitted to file under United States Supreme Court rule 34, an amicus brief in connection with *McConnell et al v. FEC et al.* regarding the effect of a federal court decision, *Walker v. United States*, on the *McConnell* case. I sent my letter listing the attorneys who I understood would be involved in the matter following its consolidation by court order based on the court's docket listing counsel involved.

On May 19, 2002, I sent a letter to you updating the list of counsel I had sent my original letter to due to new filings. On the same day I sent my letter to you, I received a copy of the filing of interrogatories by James Matthew Henderson Sr. of The American Center for Law and Justice who included additional counsel in his filing that I was not aware of. Therefore, I am sending copies of my April 27, 2002 letter and ruling to the following counsels with the sincere hope this is the last update required:

G. Hunter Bates, Valle Simms Dutcher, David J. Harth, Donald J. Mulvihill, Bradley S. Phillips, Trevor Potter, Richard O. Wolf, Joel M. Gora, David A. Wilson, Kathleen M. Sullivan, Herbert W. Titus, Burt Neuborne and Jay Alan Sekulow.

As a result, I have modified the letter I sent to you and other copied counsel on April 27, 2002 to include these names in the cc: list at the end of the letter that I am sending to the above named list.

Please be advised I have attempted to contact your office on two occasions to verify you have received my letter of April 27, 2002. I have been directed on both occasions to a Ms. Martinez whom I believe is your secretary. Despite my

leaving my phone number and e-mail address on both occasions in her voice mail, my requests to her to respond as to whether or not your office has received my correspondence have gone unanswered. My purpose in doing so was not to determine if you had reached a decision in this matter but simply to verify my mail had reached your office.

However, I would point out to you ignoring my request *does not* provide "reasons" for refusal of my request under Supreme Court rules and that at some point in the near future I will undertake a direct request to the Court to allow my amicus should I continue to be stonewalled. Considering all Ms. Martinez is required to do is leave a single sentence of acknowledgement on my phone machine or send a single e-mail, I am beginning to believe this is the case.

Sincerely,

s/Bill Walker

XLVII

MCCONNELL LEGAL COUNSELS' RESPONSE TO *AMICUS* REQUEST

The single response from the *McConnell* legal counsels to file an *amicus curiae* brief with the Court is as follows:

Bopp, Coleson & Bostrom
Attorneys At Law
1 South Sixth Street
Terre Haute, Indiana 47807-3510
May 23, 2002

Mr. Bill Walker

Re: Your Letter of May 19, 2002

Dear Mr. Walker:

On behalf of the plaintiffs we represent, we do not grant permission for you to file an amicus curiae brief in the case of *Mitchell v. McConnell*, [sic] 02-CV-582 (D.D.C).

Sincerely,
BOPP, COLESON & BOSTROM

s/James Bopp, Jr.
Richard E. Coleson

XLVIII

COURT LETTER ON THE EFFECT OF *WALKER*

The following is the text of a letter sent to the Court describing the effect of *Walker* and requesting the Court to comply with that federal court order. Copies of the letters referred to in this letter together with copies of certified mail receipts follow.

January 13, 2002
The Honorable Chief Justice William H. Rehnquist
United States Supreme Court
1 First Street, N.E.
Washington D.C. 20543

Dear Chief Justice Rehnquist,

This letter is not a request of certiorari to the United States Supreme Court, or an attempt to circumvent the standard appeals process of the federal court system. Rather, it is to inform you of the effect of a federal court ruling on your court. *Walker v. United States* was decided in March 2001 by Chief Judge John C. Coughenour in Seattle. The case is a final ruling. No attempt is made to alter that fact.

Included with this letter is a copy of the ruling by Judge Coughenour and copies of two letters sent to high-ranking members of Congress and the administration about the effect of this ruling. Also included are copies of certified mail receipts proving those members received the letters. These letters were intentionally written to provoke a strong denial from those government officials contacted. None have reputiated a single as-

sertion made in either letter. The only logical conclusion to be drawn from this fact is they agree with those assertions. The dates of mailing prove sufficient time has been allowed for reply and the mailing of this letter. Further, as these letters were sent well in advance of the events of September 11, there can be no excuse from Congress or the administration on that account.

Specifically, the constitutional issue before Judge Coughenour was the convention clause of Article V that heretofore mandated Congress must call a convention to propose amendments to the Constitution if two-thirds of the state legislatures apply. However, because of Judge Coughenour's decision, *Walker v. United States* instead dealt with the most fundamental question in constitutional law: is the government of the United States government constrained by the actual written language of the United States Constitution which created it, or is it free agent able to ignore that written language at its discretion? Judge Coughenour's ruling clearly establishes the government is free to ignore the actual written language of the Constitution whenever it pleases. In short: the government no longer has to do what the Constitution says.

The basis for this conclusion that the government no longer is required to obey the actual written language of the Constitution is that portion of Judge Coughenour's ruling concerning the political question doctrine. By use of this doctrine, Judge Coughenour created an option for Congress where no option was intended by the Founders to exist. This option, at the minimum, can only mean Congress has the choice whether it will

call a convention or not regardless of the actual written language of the Constitution which is clearly obligatory and without option. This portion of the ruling remains permanently in effect even if, due to the constitutionally questionable issue of standing, *Walker v. United States* was dismissed. The reasons for this conclusion are obvious.

According to your own court rulings, standing is in no way related to the political question doctrine. Thus, a ruling concerning one does not affect the other. Secondly, the specific motion before Judge Coughenour required him to determine whether or not Congress was required to call a convention as specified in Article V. To defeat the motion before the court, it must be assumed the political question doctrine option referred to in his order must be intended by Judge Coughenour to remain permanently in effect. Otherwise, if the dismissal of the case based on standing simultaneously terminated the political question doctrine option of refusal created by Judge Coughenour's ruling, then Congress again falls under the original intent and meaning of Article V and thus must call a convention *regardless of standing because the language itself is supreme to any issue of standing and clearly requires Congress to act in that prescribed manner*. Hence, while *Walker v. United States* was dismissed due to standing, it still has legal effect because, regardless of standing, the judge ruled on the central issue of the case before him. In short, the case was only *partly* dismissed.

Had Judge Coughenour not invoked the political question doctrine he would have been

forced to rule that the case was dismissed due to lack of standing, but Congress was compelled to call anyway due to obligatory language of the Constitution. Because of the specific language of the Constitution, Judge Coughenour could not avoid ruling in this matter. The choice was stark: either the language was obeyed or it was not. Therefore, Judge Coughenour had no choice but to issue the political question doctrine portion of his ruling, in which he said it was "unambiguously clear" that Congress is not obligated to obey the actual written language or intent of the Constitution. As Judge Coughenour issued his order "with prejudice," it is an absolute indication he is utterly resolved in this matter to provide the government the ability to ignore the actual written language of the Constitution.

In arguments before Judge Coughenour, the government did not dispute the original meaning and intent of Article V as clearly expressed in Federalist 85 by Alexander Hamilton, who also authored Article V. In Federalist 85 Hamilton wrote: "the national rulers shall have no option" regarding a convention call if two-thirds of the states apply. Nor did the government dispute that two-thirds of the states have applied for a convention. If you desire to read a more extensive discussion of Hamilton's meaning, please see pages 256-264 of my overlength brief available on my web page at www.article5.org. In fact, the public federal records prove *all* states have applied for a convention thus well exceeding the constitutional requirement. A record of these applications is summarized in my overlength brief, pp. 667-680. Instead of refuting the meaning or that Congress

had received the proper number of applications, the government instead asserted Congress has the right to refuse to obey the Constitution based on the political question doctrine. Thus, by its own actions, the government conceded that unless granted the freedom of the political question doctrine, Congress must call a convention. This assertion is further reinforced by the discussion of Judge Coughenour in his ruling of the obligatory nature of the convention clause followed by his employment of the political question doctrine ruling nullifying that obligation.

It cannot be overstressed until the ruling by Judge Coughenour, it was a universal opinion shared among the Founders (including those who opposed the ratification of the Constitution), constitutional scholars, attorneys, members of Congress and even your own court that, based on the language of Article V, that it was obligatory Congress call a convention if two-thirds of the states applied. In the case of your court this opinion was stated, without dissent, in several published cases beginning as early as 1855 in *Dodge v. Woolsey* (59 U.S. 331) and as late 1931 in *United States v. Sprague* (282 U.S. 716.) Your court has been overruled. The universal opinion has now been repudiated by an official government policy created by a federal judge. This policy, by the way, is the first official policy on the subject in United States history.

The most significant aspect about the convention call clause is that it exists only in the Constitution, the supreme law of the land. Hence, the Constitution itself is the only law concerning it. Logically therefore, any change in the law concerning a convention call must effect the Constitu-

tion. It follows therefore any judicial ruling opposed to the original intent and meaning of the language in the Constitution which provided the government shall have no option or discretion on the convention call, must be construed as amending or voiding the Constitution, i.e., the law. At the minimum therefore, this ruling establishes an important new power of the judiciary claimed by Judge Coughenour: that it can nullify or amend the actual written language of the Constitution absent the usual amendment process called for in Article V with no more than the employment of a court order in federal district court.

The significance of this nullification is profound. In the final analysis I'm sure you agree the Constitution is, after all, nothing more than a contract between the people and the government they created as to what powers their government shall have over them. Once it is established the government is exempted from the written provisions of a contract which were intended to bind it, or that by simply citing the political question doctrine as created in this decision in a court of law, it may release itself from any specific language of that contract, then obviously the government can no longer be said to be held to the standards of that contract.

There is no logic that demands that once the government is granted this contractual freedom of obligation, it is required to ever again request this grant before ignoring any other provision of the contract. The Constitution contains no savings clause. Thus, nothing in Judge Coughenour's order confines his nullification exclusively to Article V nor logically, could it. Maintaining the govern-

ment is constrained to a certain course of action as prescribed by a specific word whose meaning is commonly understood by all, carries with it the logical implication that wherever the word appears in the contract so does the obligation. Otherwise, the obligation becomes meaningless and thus, without effect. The granting of discretionary power to the government of deciding if it will affected by this obligation when called on to do so by that specific word contained in that contract obviously defeats the obligatory sense and intent of the word. Where such obligatory function extends through an entire document to create obligation, clearly all obligation is affected and thus nullified. Hence, that which is exempt from a standard, in this case the government from the entire Constitution, can no longer be judged by that standard because the standard no longer exists.

This fact directly affects your court and its authority under the doctrine of judicial review. In the final analysis, judicial review is based on nothing more than the absolute meaning of the most simplest of word used in the Constitution: the unequivocal, obligatory meaning of the word "shall". For example, a person *shall* not be compelled to testify against himself, authorities *shall* obtain a search warrant before a search, or Congress *shall* call. Even your own court's existence in the Constitution depends on this word: there *shall* be a Supreme Court. It is the fundamental meaning and intent of this word that Judge Coughenour, by judicial order, amended in the Constitution altering its meaning from that of obligatory to discretionary in addition to his

amending the obvious intent of Article V. While it true your court has *interpreted* certain phrases of the Constitution as to *the extent* of their meaning, never to my knowledge, has it ever ruled contrary to the actual written language of the Constitution. Thus, a person *shall* not be compelled to testify against himself, has not been interpreted as, a person *shall* be compelled to testify against himself.

There is an inherent conflict with Judge Coughenour's ruling saying the government no longer has to do what the Constitution says and the authority of judicial review created by the Supreme Court ruling *Madison v. Marbury* where Chief Justice Marshall stated the exact opposite. For example, *Marbury* states:

"Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have

deemed the greatest improvement on political institutions—a written constitution, would of itself be sufficient, in America where written constitutions have been viewed with so much reverence, for rejecting the construction."

It is by *interpretation of* rather than *actual* constitutional language in *Madison v. Marbury* that your court claimed the authority to declare actions of the government, unconstitutional, or in conflict with the actual written language of the Constitution and its original intent and meaning. Judge Coughenour's ruling holds the government is not bound to the actual written language of the Constitution and its original intent and meaning. As such, any judicial interpretation of the actual written language is also effected by *Walker v. United States* as that interpretation of the Constitution is based on the actual written language and original intent and meaning of that language. It is noteworthy that Judge Coughenour cites Supreme Court rulings, or interpretations of the meaning of the Constitution by your court, to justify his ruling, but the fact is none of these rulings cited by Judge Coughenour even discussed the convention clause of Article V. Further, all of the cases cited by Judge Coughenour in his order were presented and discussed in the overlength brief which Judge Coughenour disallowed. Technically, therefore, he could not use them as a basis on which to render his decision as he had already disallowed them as evidence. Regardless of how Judge Coughenour arrived at his conclusion, his ruling, being a lawful court order and thus law of the land, has a direct affect on your court's authority due to this inherent conflict.

LVII

Part of the authority of judicial review expressed in *Madison v. Marbury* is based on the premise that the judiciary is bound by oath to support the Constitution. Therefore, judges are unable to act in any judicial capacity except in support of those provisions of the Constitution and its original intent and meaning. As stated in *Marbury*:

"[I]t is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government?"

I have no doubt that Judge Coughenour felt he was consistent with his oath of office to support the Constitution which nullified the actual written language of that document thus nullifying its restraint on the government. Further, Judge Coughenour's decision has overturned Marshall's most significant interpretation; that an act of Congress or lack of it in this case, repugnant to the Constitution is void. As stated in *Marbury*:

"It is a proposition too plain to be contested that the constitution controls an 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. … Certainly all those who have famed written constitution contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature repugnant to the constitution is void."

Clearly, Judge Coughenour's ruling reverses this formerly prevailing rule of *Marbury*, placing the political question doctrine and its options for the national government above that of the actual written word of the Constitution. Implicit in the premise of constitutional supremacy prescribed in *Madison v. Marbury* is the inherent supposition that the government is obligated to obey the Constitution, and may not act in any manner contrary to its written provisions or intent. Judge Coughenour's ruling eliminates this supposition. Without this supposition, the premise of *Marbury* itself is eliminated. If the court rules the government must obey the Constitution in a case because an act it has or has not taken is in violation of the Constitution and therefore cannot act in that manner, but the government has been given the court-mandated option not to obey the Constitution in another case, the court ruling mandating compliance has no effect because the government, in clear compliance with a court order, can ignore it. Thus *Marbury*, and your authority of judicial review derived from it, has been nullified by

court order. Obviously, once a judicial decision, which nullifies the obligation of government to the Constitution, grants it the power to ignore the provisions of that Constitution, the court no longer possesses the authority to judge that government's action in relation to the requirements of the Constitution as the government is no longer required to comply with them.

This conclusion is appropriate. Judicial review, the ability of the court to demand the government act in compliance with the provisions of the Constitution, is universally recognized as having been created by *Marbury v. Madison*. It is quite clear what the judiciary has the power to create; it has the power to destroy. *Marbury* created the power by court order; *Walker v. United States* has eliminated it by court order.

You may gather from the overall tenor of this letter that I do not agree with Judge Coughenour's ruling. Nevertheless, there is superior principle that I am sure you support as I; that a court order must be obeyed even if a citizen does not agree with its conclusions. As I stated in the beginning of this letter no attempt is being made to alter *Walker v. United States*. It is a final court order and as it directly effects the Constitution, i.e., alters it intent and meaning, under the terms of that document, is therefore law of the land. To my knowledge, there is not a more recent federal court ruling regarding whether or not the government has discretion to obey the actual written language of the Constitution. Indeed, as I have indicated, even if there were, the government can simply ignore it. In fact, their continued refusal to call a convention in light of an over-

whelming number of applications is all that is required to demonstrate their obvious commitment of Judge Coughenour's decision.

As I am sure you realize even if you occupy a high judicial seat, a court order still can affect you as a citizen of the United States. I'm sure you also realize your court can only alter the effect of a federal court ruling if that ruling is appealed before your court. As *Walker v. United States* has not been appealed, you as citizens are affected by it, but are powerless to alter it.

Simply put the law of the land is now that the government does not have to do what the Constitution says, or, that which is exempted from a standard cannot be judged by that standard. As citizens, you have the responsibility to obey that law even if you disagree with it. To do otherwise simply reinforces Judge Coughenour's premise of repudiation of heretofore-legal authority by establishing citizens have a right to refuse to obey lawful court orders. As the authority of *Marbury v. Madison* has been overturned by this lawful court order, and in order to bring your court in compliance with the new standard prescribed by Judge Coughenour, I have no choice but to request your court immediately cease all actions which conflict with Judge Coughenour's order. This specifically includes any rulings by your court which purport the government is obligated in any manner to obey the actual written language of the Constitution or its original intent and meaning. It also includes any rulings on your part that the government's actions may be judged on the basis of that actual written language or original intent and meaning. In short, while your court may continue

to issue rulings, you can't use the Constitution as the legal basis on which to do so nor can you hold the government to its standards.

If your court does not immediately desist in its current course of issuing rulings which judge government actions on the basis of the language, original intent and meaning of the Constitution thus holding the government to that standard, I will have no alternative but to seek a contempt action from Judge Coughenour enforcing his order against you and your fellow justices as citizens of the United States. I remind you that anyone can ask the court to enforce its ruling, that such a request is not illegal and that there is no issue of standing in a contempt order as it is based this case on a final court order. Further, you should consider that there would be no help from the government in this matter should you fail to comply. After all, it is their proposition of repudiation of the Constitution that Judge Coughenour assented. Hence, they are obligated to argue *in favor* of its enforcement. Therefore, I am sure you will join me in obeying this lawful court order because I know, like myself, your court believes court orders are to be obeyed.

The irony in all of this is the thing most feared by people about a convention is that it would lead to the overthrow of the entire Constitution. Thanks to Judge Coughenour the government has accomplished by court order, what a convention could never do: the elimination of the Constitution as an effective means of control of the government. If a convention were to attempt this, it would required the conspiracy of literally hundreds of delegates and state legislators who

would have to publicly state their intent and thus alert the public, who most certainly would oppose it and certainly defeat it. By their use of the political question doctrine, however, it only required one federal judge and less than a sentence to accomplish this fact.

Sincerely,

s/Bill Walker

Cc: Associate Justice John Paul Stevens
Associate Justice Sandra Day O'Connor
Associate Justice Antonin Scalia
Associate Justice Anthony Kennedy
Associate Justice David Souter
Associate Justice Clarence Thomas
Associate Justice Ruth Bader Ginsburg
Associate Justice Stephen Breyer

(Emphasis in original letter.) (Citation emphasis added.)

TEXT OF FIRST LETTER CITED IN COURT LETTER

The following are the texts of letters referred to in the Court Letter. These letters were sent to various members of Congress. No member of Congress has refuted or denied any allegation in these letters. One member who received the letter is Congressman Ron Paul, an appellant in *McConnell*. Congressman Paul claims protection under clauses in a Constitution that no more than a year ago he supported Con-

gress having the right to veto. This letter was included in the letter sent to the Court and is therefore reprinted here. Copies of certified mail receipts proving receipt of the letter to members of Congress follow.

April 29, 2001
Washington D.C.

Dear Vice President Cheney, Speaker Hastert,
Senators Murray and Hatch:

As you are aware, a United States Federal District Court Judge recently rendered a decision in *Walker v. United States* C00-2125c. As no appeal was made in this case the order became final as of April 17, 2001. A copy of this order is enclosed with this letter. You can view all other court papers in PDF format including the overlength brief referred in the order to at www.article5.org if you are interested. Frankly, considering what you have gained, I doubt you will review the material. Nevertheless, the offer is made. As Congress is granted new powers by Judge Coughenour, I'd like to take a few moments to discuss the effect of this decision and point out some issues that may not have been considered. I will finish by posing a question regarding these new congressional powers.

First, I'd like to explain why you are receiving this letter. In his role as president of the Senate, Vice President Cheney is the logical choice to inform as a representative of the Senate. This reasoning also applies to Speaker of the House Hastert. Senator Hatch was chosen because of a bill he sponsored in the Senate aimed at total congressional control of a convention. I feel it's ap-

propriate he should know that now, thanks to a single sentence in a federal district court order, he has his wish. Senator Murray was chosen because she represents the opposition party and in addition, is from my home state.

Actually, it doesn't matter which Washington politicians are contacted in this matter. All Washington politicians regardless of party have shown a remarkable bi-partisanship and unanimity in this issue. All have adamantly opposed a convention call thus working diligently toward establishing this new power for themselves as well as Congress. Indeed, to my knowledge, other than James Madison when he was a member of Congress, no member of Congress has ever supported the calling of a convention based on the intent and meaning of the Founders as expressed in Article V of the Constitution. Of course now, with this court order, that language and intent of the Founders, has been nullified. Henceforth, Congress need no longer concern itself with constitutional language or original intent.

As members of Congress, I assume United States Attorney Harold Malkin, alerted Congress to this suit, and asked how Congress wished to proceed, i.e., whether to fight, or concede. To suggest otherwise would mean Congress left it to an Assistant United States Attorney in Seattle to determine by himself the fate of the United States Constitution and the Congress without him even consulting that body. In short, your lawyer decided how his client would plead without even discussing it with him. Hardly a creditable position. Therefore, Congress *intended* to defeat this suit and acquire the additional power it created.

This case deals *specifically* with the calling of a convention to propose amendments under the terms of Article V. This is the first case of this kind in the history of the United States. All other court cases dealing with the amendatory process dealt with the congressional amendatory process but none of these cases ever extended their rulings to include the convention process. That is no longer true. As there is no other ruling, nor any federal law on the subject, and as a ruling of a federal judge extends throughout the entire federal system, this case is ruling law.

Obviously, whichever political entity or entities control the amendatory process of the United States Constitution controls the United States Constitution and thus the entire nation. As of April 17, 2001, that control passed *exclusively, irrevocably, and entirely* to Congress. This means neither the People, the courts, the states nor the president participate in the amendatory process, i.e., the control of the United States Constitution The courts have only allowed Congress to control the amendatory process. This is the first time in United States history that any constitutional process has been placed *entirely* under the control of a single political body. Because amendatory power controls all other constitutional processes, it is reasonable to state this nation is no longer a Republic. It is now an oligarchy, composed of the members of Congress.

If you believe the Founders intended for Congress to have this power, I suggest you read my overlength brief. I refer particularly to Mason's comments at the 1787 Convention specifically directed at congressional amendatory power

and whether it should be entirely in the hands of Congress. Also I suggest you read what specific action the Founders took in response to his comments.

As this matter stems from an order from a United States Federal District Court judge, this letter doesn't concern political theory or speculation. It is a reasonable interpretation of a legal and binding court order that affects Congress. In that order are described powers none of which Congress possessed by court interpretation previous to the order taking effect. In short, we are discussing new law, and for the first time in history, official government policy on the convention call and Congress' role in it.

While Judge Coughenour cited several cases in his order which gave Congress option in the matter of a convention call and by reasonable interpretation, the other effects I am about to discuss, the fact is that while these sources may have made the matter "unambiguously clear" to Judge Coughenour, *none* of them specifically mentioned or dealt with a convention call. Thus, Judge Coughenour is himself responsible for the decision to grant option to Congress as to a convention call and, in turn, apply the other effects to which I will refer. In our federal legal system, absent appellant review such as in this case, one judge's opinion is all that is required for there to be legal effect. As there is no other case of this kind and because its effect extends throughout the entire federal court system, it has as much legal impact as a Supreme Court ruling. In fact, as I'm sure you know, all the appellant system does is review district court rulings, affirming or re-

versing them as is needed, but the authority of the ruling comes from the district court, not the appellant system.

Of course, you will consult with your legal staff on this. They will say this case only concerns the standing of the plaintiff, myself, and therefore means nothing. Were the judge to have only dealt with standing, I would agree with them. You would not be reading this letter. *However, while the judge did dismiss the case due to lack of standing, he did not stop at standing in his ruling. Instead, he invoked the political question doctrine and assigned the discretion of that doctrine solely to Congress---not to the states and Congress. That part of the order remains in effect for reasons explained below.*

Technically speaking, the judge ruled I had no standing in my case and thus there was no case. He dismissed the case. Then he proceeded to rule on the central issue of the case anyway: that under the then prevailing language of the Constitution, Congress was obligated to call a convention on the basis of the number of applications from the state legislatures and had no option in this matter. If two-thirds of the states applied, Congress had to call. In fact, Judge Coughenour had no choice but to rule as he did regardless of his determination of standing. Under the old interpretation of the Constitution as expressed in Federalist 85, the convention clause is obligatory on Congress. This fact is mentioned in the judge's order. If he had not addressed this issue of obligation, he would have ruled I had no standing, but the issue I was presenting to the Court was obligatory on Congress and thus must be obeyed. To rule my case had no standing, but that what I

asserted as plaintiff was correct and obligatory on Congress is an obvious contradiction of logic. Hence, he would have defeated his own order regarding standing or had to rule in my favor despite finding I had no standing. This fact was pointed out to him in my brief. To defeat the argument of obligation, the judge had to reinterpret the Constitution. Thus, he had to rule on the issue of obligation on the part of Congress, the central issue of this case. He did this by assigning political discretion to Congress under the political question doctrine. It must remain in effect for the case to be dismissed.

The political question doctrine has nothing to do with standing. A plaintiff may have standing in court but still run afoul of the political question doctrine which heretofore was nothing more than the separation of powers doctrine restated in a new form. With the creation of a unified amendatory process under a single political body the question of whether the doctrine of separation of powers still exists, I will leave to others to wrangle out. Nevertheless, the political question doctrine is a separate issue and hence is a separate ruling by the Court.

In ruling on political question doctrine, Judge Coughenour clearly *removed* the control of the convention, i.e., the decision of whether it shall occur from the states. Instead, he granted a new power to Congress to decide whether or not it would call a convention *regardless of the actions of the states*. This conclusion is based on the simple fact he assigned the political question, i.e., political discretion, to Congress alone and *not* to Congress *and* the states or just to the states alone.

Clearly in granting political question, Judge Coughenour obviously intended Congress have discretion as to a convention call which of course means deciding *whether or not a convention will exist at all*. If Congress asserts this Court ruling has no effect on the convention clause, then it follows what the Founders asserted must be the ruling law in this case. The record is clear here. The United States Attorney did not refute my assertion in this case that the language of the Constitution made the calling of a convention obligatory on Congress with no discretion on their part if the states apply in sufficient number, which they have. Further, he did not refute a single application by any state.

Regardless of whether you read Federalist 85 or the Anti-Federalist Papers *all* authors during the time of the Founders, agreed Congress must call a convention if the states applied in sufficient number. Federalist 85 particularly spells out the intent and meaning of the convention clause as to what was to cause Congress to call and the options Congress was to have in this process. Alexander Hamilton, the author of Article V as well as Federalist 85, stated the call was to be based on a simple numeric count of the states and Congress had no option as to issuing convention call. Therefore, this is clearly the intent and meaning of the convention clause as envisioned by the Founding Fathers. As to why the Founders were so adamant about this point, you may find the portion in Federalist 85 discussing the reluctance of national leaders being unwilling to give up their power most enlightening.

The decision by Judge Coughenour also

clearly refutes all modern day interpretations of the clause which is Congress must call if the states satisfy certain unwritten conditions (which they have by the way) not contained in the Constitution. Thus even in the modern era where the notion of same subject and other conditions have been asserted, (none of which were contemplated by the Founders) the interpretation by those who have studied the matter is that if the states satisfy these standards, Congress must call and has no option in this regard. This court order refutes that assertion entirely leaving the decision of whether to call entirely in the hands of Congress regardless of what the states do.

With his order, the judge has directly and specifically amended the Constitution of the United States by altering its meaning in order to provide Congress, complete political discretion, i.e., the power to refuse to call even if the states do apply and in addition, the power to regulate the convention in every aspect of its function, if Congress deems it appropriate to call at all. Under this interpretation, there is nothing to prevent Congress from simply declaring itself a convention and writing a new constitution or even just skipping the convention step entirely and simply dictating the ratification of a new constitution has occurred.

The record speaks for itself. As shown in the overlength brief, the states have applied in sufficient number to satisfy the numeric requirement of Article V. Congress has been petitioned by states to call on this basis and has ignored these requests. The states have also satisfied every other so-called standard Congress has ever established

and still Congress refuses to call as specified by Article V. In short, Congress has *de facto* vetoed the Constitution for the purposes of maintaining its own political power. This court order means Congress need no longer worry about maintaining appearances. It can simply veto, or "amend," the Constitution outright with no one able to stop it.

To be frank, I don't expect you as members of Congress to respond to this letter. I have written to other members of Congress before and received no response. Assuming you do reply telling me Congress always obeys the Constitution as intended by the Founders and will continue to do so, that would, under the circumstances, not only be a false statement, but hypocrisy as well. At least now, your refusal is law of the land. This brings up another point. The order establishes that constitutional clauses can be declared "dead letter" by a simple court order. What a wonderful device for pruning political inconvenience. I have no doubt in the coming years this fact will be taken advantage of time and again by those inside the Beltway in the name of political expedience.

The new powers granted Congress by the Court are significant and warrant review. They are:

Complete control of the convention process of amendment proposal, which at the minimum prevents any amendment to the Constitution unless Congress approves. (*Walker v. United States*, assignment of political question solely to Congress.)

Complete control of the ratification process with the legal ability to dictate the ratification

vote of the states of a proposed amendment by simple legislative fiat. (*Coleman v. Miller*, 307 U.S. 433 (1939) referred to in *Walker v. United States* by Judge Coughenour. In *Coleman*, the Supreme Court stated that Congress controls all aspects of the amendatory process through the political question doctrine then cited the "ratification" of the 14th Amendment where Congress legislated how states would ratify an amendment. Nothing in *Walker* removed this power from Congress nor does it refute the actions of the government in having a double standard regarding recessions of ratification, disallowing two such recessions in the north while permitting two recessions in the south. This matter is discussed in detail in the overlength brief.)

Control of the promulgation of an amendment, that is, giving Congress a veto of an amendment even if it should be ratified by the states. (*Coleman v. Miller*. If there is any doubt as to Congress' intention to control the entire amendatory process, I refer you to U.S. Code, Title 1, Chapter 2, Section 106b in which Congress has permitted the national archivists to publish a ratified amendment as part of the Constitution upon "official notice" but fails to describe in any manner who gives the archivists official notice. Thus, this power is reserved to Congress. Therefore, under this law, if Congress does not give "official notice" an amendment, even if ratified, cannot become part of the Constitution until Congress consents by giving it "official notice." Hence Congress can veto an amendment simply by not giving "official notice.")

Removal of the court review of any amenda-

tory action. (*Coleman v. Miller and Walker v. United States*. This includes any state challenges to a convention call or lack of it. The Court will reject them due to lack of standing. If Congress exercises its discretionary control in not calling a convention, or dictates the outcome of a ratification vote of the states, of refuses to give official notice of ratification, there is no way it can be asserted any state is harmed because Congress is simply exercising powers granted to it by the Court. As this is a proper use of power under Court interpretation, it can't be said that its use creates harm. Hence, no state can said to have standing to sue.)

Removal of any independent state action in the amendatory process. (*Walker v. United States* assigned political question solely to Congress for the convention method of amendment. *Coleman v. Miller* did the same for the congressional method of amendment proposal.)

Removal of any presidential veto or participation in the amendatory process. (*Hollingsworth v. Virginia*, 3 U.S. 378 (1798) discussed at length in the overlength brief. Coupled with power granted Congress in *Walker v. United States*, it is now possible for Congress to pass any legislation it chooses by simply labeling it an amendment and declaring Congress a convention. Your attorney in this case proposed the state legislatures had the authority to declare themselves delegates to a convention and thus skip any elective role on the part of the People. So, as it was your side that suggested this and as Judge Coughenour did not refute it, it is not a far stretch to assume Congress can now use the identical power. Because the convention is strictly under congressional control,

Congress can declare what vote is required in order for a proposed "amendment" to pass. (Add to that your legislative power to decree the ratification vote in advance and viola! The "amendment" is passed.)

The most important point about all this how the Court reinterpreted the Constitution and the overall effect on the Constitution. In sum, the court order altered the customary meaning of the word "shall" as used in the Constitution. In order for the Court to arrive at its conclusion, it had to reject any argument which, based on the clear language of the Founders, held that the word "shall" made a convention call obligatory. Now, in place of the usual obligatory sense of the word "shall" heretofore understood by all, is the new definition of non-obligatory sense. This new definition must apply throughout the Constitution for there is nothing to indicate Judge Coughenour's ruled otherwise. Even if there were such intent, the total control of the Constitution through the amendatory process granted by Judge Coughenour in his political question assignment defeats such a limited interpretation.

Hence, such phrases as, "The right to vote *shall* not be abridged on account of sex," or "The House of Representatives *shall* be composed of Members chosen every second year by the People of the several States…" or "The executive Power *shall* be vested in a President of the United States," or "The judicial Power of the United States, *shall* be vested in one supreme Court…" can no longer be construed as being obligatory on the government. In short, there is nothing guaranteeing the right to vote exists or that Congress will

continue to be elected or even allow the other branches to exist if it finds any of the above-cited examples to be a political inconvenience. I could provide numerous more examples of supposed obligation on the part of the government, but I think you get the idea. And in all of this, I remind you this is based on a binding court order, not wild speculation. With the elimination of the obligatory "shall" in Constitution, this document has been reduced to no more than advice, which the government is free to ignore. If Congress is not going to obey the Constitution, what value is it?

Any doubt that Congress attended to assault of heretofore assumed rights on the part of citizens is quickly dispensed by simply reading the arguments presented by your attorney in maintaining the violation of these so-called rights were not the basis of standing to which Judge Coughenour agreed. You can read the full text of these arguments at www.article5.org web page by clicking on the appropriate link. But to sum the assertions of standing made, which now of course the court established are not valid, I asserted the following:

That my right to vote in an election had been denied. Please note I asserted not my right as a voter, but *my right to vote in an election*. As I assumed at the time of my suit that delegates to a convention would be elected by the People and as the states had applied in sufficient number to cause a convention call, it seemed logical to me that my right to vote in an election had been abridged by Congress. As the judge offered no explanation or limitation on his ruling, it can only

be assumed he intended to include all elections in this ruling therefore nullifying the right to vote as a basis of redress in the courts. I suggest therefore your civil rights legislation e.g., U.S. Code, Title 42, Section 20 protecting the right to vote in elections, has been voided by Judge Coughenour. But, assuming you are disposed to, these "rights" can be put back into force with your new amendatory power.

That my right to seek political office had been denied. Presuming again that there would be an election for delegates, I asserted it was my right to seek that elective office if I chose to do so and that Congress not calling abridged this right. Here Judge Coughenour not only ruled that delegates would not be elected by the People, but that the government reserves the right to determine who seeks political office thus essentially removing that right from the voter. By endorsing the refusal of Congress to call a convention despite the number of states that have applied, the judge ruled Congress may deny people seeking an elected office by simply withholding the election or regulating it so heavily as to render it meaningless. I am certain as members of Congress you can see the political advantage to you personally now that you can determine who, if anyone, will be your opponent in any election you may choose to conduct. If you feel you have a powerful opponent who may win election, you simply withhold the election.

That the people's right to alter or abolish their government has been denied. The decision of Judge Coughenour to deny this right, which is the basis of sovereignty in this nation, is signifi-

cant. In brief, the question of whether or not this nation's sovereignty still rests with the people or, as I believe, now rest entirely with Congress has been answered. It now rests with Congress. As such, the people no longer have the right to alter or abolish the government as they may feel is appropriate. The matter is more fully examined in the overlength brief but the fact Judge Coughenour refuted language contained in the Declaration of Independence is, to say the least, remarkable.

That my right to politically associate had been violated. As Judge Coughenour gave no direction in this area, it is clear that proof of compelling state interest that usually limits government interference does not apply in the amendatory process. Thus, if Congress simply refuses to call, that itself is sufficient state interest not to do so. Naturally, through the amendment process, this interference can be extended indefinitely.

That Congress failing to call a convention has violated avenues of redress guaranteed in the Constitution. The convention was intended to redress wrongs committed by the national government on a constitutional level by proposing amendments to counter these wrongs. Now this right of redress has been eliminated by the order of the federal court. It is quite clear the judge endorsed the option of the government simply ignoring avenues of political redress such as a convention or even elections supposedly guaranteed in the Constitution.

There is a double whammy in this issue of standing. First, the judge eliminated these heretofore-recognized rights as a basis of standing. In

addition, all of these rights somehow derive their substances from the obligatory use of the word shall in the Constitution. To reach his decision, Judge Coughenour had to eliminate the obligatory form of the word "shall." Clearly, therefore, the official position of the government from now on is the "rights" guaranteed in the Constitution are in effect *only* upon the consent, not of the governed, but by the consent of the government. We have arrived at where this nation began. All rights were controlled by the government, i.e., a king and were only dispensed to the people as that he saw fit.

Now to the question I referred to at the beginning of this letter. Now that Congress has acquired all this power, what do you intend to do with it? For example:

Are you going to suspend criminal and civil rights by congressional decree in order to eliminate our drug problem and simply execute those using drugs without trial?

Is it your intention to assume previous executive control of the military?

Will Congress officially "dead letter" the 10th amendment or will it simply privately notify the states they are no longer sovereigns? Clearly, the language of the 10th Amendment is in conflict with Judge Coughenour's ruling because a convention was considered a state power and now the order assigns that power *exclusively* to Congress. The reserve clause of this amendment thus is nullified.

Will Congress continue to hold free elections? Oligarchies are a form of dictatorship. Dictatorships, by their nature and design, do not lend

themselves to approval by vote of the masses as these masses might tend to throw out such government should it be in their best interest to do so. (I think I read that in the Declaration of Independence somewhere, something to do with the right to alter or abolish, I believe.) Of course, Congress can simply do as many countries do: hold elections, but alter the results so as to achieve the desired result of the "election." In this way, you can maintain the *appearance* of a Republic. If you think about it, there really is no difference between controlling an election and controlling an amendatory procedure. They are just different forms of the same thing.

Because of this court order, question like this no longer are the stuff of political fiction, speculation or are happen only in other countries. These and many other such questions now face Congress squarely in this new form of government that you have carved out.

Realizing that a government might not always be responsive to the needs of a people and, as was said by one American politician, that which will not be achieved by evolution will be gained by revolution, the Founders designed a convention outside the control of the national government so as to allow the people to peacefully make changes to the republic form of government instead being forced to resort to violent revolution to achieve the same goal. That system has now been abrogated. All the judge did in this case was eliminate a method of change, not the desire and need of the people *to* change. The intent of the Founders was to have the convention obligatory on the national government so as to

prevent the government from essentially committing political suicide by shortsighted assumptions of power.

I expect the more liberal of you are now doing handstands about your office. Think about it. Through total control of the amendatory process, you now have total control of the Constitution and thus control of every so-called citizen of the United States. In short, total government domination of every aspect of human life in the United States. Did you ever think you would achieve your goal by a simple court order? As to the more conservative of you, you have no choice in this issue either. You believe in obeying the law and now this is the law.

Finally, I would like to point out that if you state you don't agree with what I have asserted in this letter, it follows you must agree with my assertion in the brief, that Congress is obligated to call a convention as the states have applied in sufficient number to compel a convention call. Either there is a convention or there is not. This issue allows no room for the usual political spin doctoring of Washington politics. The issue is absolute because men who believed in absolute values created it. It appears they no longer fit in this relativist's world. If you did believe as I do that Congress must call a convention, you would call a convention. This you will never do. Thus, by your silence and inaction you will affirm Judge Coughenour's ruling and the reasonable conclusions I have outlined above.

Best wishes in the New World Order.

LXXXI

Sincerely,

s/Bill Walker

(Emphasis in original.) (Case emphasis added.)

TEXT OF SECOND LETTER CITED IN COURT LETTER

August 8, 2001
Robert Schulz
We The People Foundation For
Constitutional Education, Inc.
2458 Ridge Road,
Queensbury, NY 12804

Dear Mr. Schulz,

I recently received an Internet press release from your organization concerning the recent agreement by members of the federal government to hold a two-day hearing in September to discuss the validity of the 16th Amendment to the United States Constitution. The hearing is sponsored by your organization. I understand your organization maintains that due to irregularities in the ratification process, the 16th Amendment is invalid. Further, I understand your organization maintains United States citizens are not obligated to pay income taxes because of constitutional questions surrounding the validity of the 16th Amendment.

While from a strictly personal point of view I would welcome not paying federal income tax, the fact is a recent federal court decision in which I was involved *completely refutes* any challenge to the legality of the 16th Amendment. In sum, this case, *Walker v United States*, in combination with other judicial rulings grants Congress complete control over the amendatory process of the Constitution and thus complete control of the entire

Constitution itself. Specifically, the case addressed the convention clause of Article V of the United States Constitution, but due to the language of the ruling the power of Congress is now unlimited. A copy of this ruling is included with this cover letter.

There is a direct link between your organization's issue and *Walker v United States*. Long before your organization even existed, the states were attempting to repeal the 16th Amendment by submitting applications for a convention as specified under Article V of the United States Constitution. In fact, the repeal of the 16th Amendment has received more applications for a convention from the states than any other subject in the history of this nation. In total, 39 states have applied to Congress for a convention to repeal the 16th Amendment. As Congress has not acted to accept any recessions of these applications, it is clear these applications remain in effect to this date. (Please see pages 689, 776 in the overlength brief referred to in the accompanying court order for more specific information. This brief can be downloaded at website www.article5.org.) The total of 39 states is at least one more state than is required for *ratification* of an amendment repealing the 16th Amendment and *five more states* that are required for a convention to be called for that purpose.

It cannot be overstressed that until the ruling by Chief Judge Coughenour in *Walker v United States* it was universal opinion, based on the language of Article V, *that it was obligatory Congress call a convention* if the proper number of states applied. Alexander Hamilton, the author of Article

V, most forcefully expressed this in Federalist 85. (Please see pages 256-264 of the overlength brief for a more extensive discussion of Hamilton's writing.) However, because there had been a judicial ruling in this matter this universal opinion that was shared among constitutional scholars, attorneys and even members of Congress has now been replaced by an official government policy entirely contrary to that opinion.

That basic policy is Congress may ignore any directive of the Constitution imposed on it by the word "shall." In short, Congress or any agency created by it is not bound by the Constitution. In his ruling Judge Coughenour altered the meaning of the word "shall" from its previous obligatory meaning to that of an option on the part of the government. He did this by declaring Congress has discretion regarding whether to call a convention under the political question doctrine where the Founders intended no such discretion. (Please refer to the letter sent to members of Congress in April of this year for a further explanation of this assertion.) Judge Coughenour thus assumed the right of the judiciary to actually amend the Constitution by judicial decree. As to his cogitative reasoning in this regard, I suggest a careful reading of his order is appropriate. I especially direct your attention to paragraph two of his order where he discusses the overlength brief and "overlength motion." I remind anyone reading this letter there is no such thing as an overlength motion. If there were, the local rules of the Court would address it and they do not. Regardless of his reasoning, the ruling by Judge Coughenour is now the prevailing law of the land as it is the lat-

est ruling determining who controls the amendatory process of the Constitution. Obviously, whoever controls this process controls the Constitution and thus the nation. This is why the Founders never intended such power rest with a single political body but Judge Coughenour's decision has accomplished exactly that.

It is an infinitesimal step from this ruling to the heart of your issue. Clearly if Congress is now in complete control of the amendatory process, it certainly possesses the power to determine whether an amendment regardless of its ratification history, or even if it was ratified at all as in the case of the 14th Amendment, is an amendment to the Constitution. (Please see pages 395, 401 (footnote 917), 461 (footnote 1079), 463 (footnote 1080) of the overlength brief for a discussion of the questionable ratification history of the 14th Amendment.) Indeed, under the *Walker v United States* ruling, there is nothing to prevent Congress from passing an "amendment" to the Constitution *with the issue never even being submitted to the states or people for ratification.*

Therefore, if the IRS states the 16th Amendment is legal, that agency as a representative of Congress is correct regardless of any facts to the contrary. The IRS nor any other agency of national government need no longer worry about the expressed language of the Constitution or its intent. As part of a dictatorship, the IRS free to do whatever it pleases. Thus, whatever level of participation in this hearing the IRS or Congress chooses make will be for public relations purposes only as they have no other legal obligation to this nation in regards to satisfying the language

of the Constitution.

The best can be said of Judge Coughenour's ruling is that it created an oligarchy of the national government removing the sovereign power of this nation entirely from the people and placing that sovereign power totally in the hands of the national government. Thus, any "right" granted to the people in the Constitution from voting, to free speech, to trial rights are totally at the discretion of the government as they all are expressed by the word "shall" in the Constitution and thus are now merely options controlled entirely by the national government.

In his press release to your organization Congressman Ron Paul said, in part, "…[T] he right to a formal response is inherent in the constitutional right to petition the government." In order to verify whether or not Congress truly participated and desired the dictatorial powers granted them by Judge Coughenour, I sent a letter (copy enclosed) by certified mail (copy of certified mailing enclosed) to key members of Congress describing the case and its effect. In sum my letter accused Congress of desiring to become a dictatorship by assuming complete control of the amendatory process contrary to the expressed plan of the Founders and that Congress knew a favorable decision in *Walker v United States* would achieve this goal. Further, Congress approved of the legal tactics used by the local United States Attorney to achieve this goal. None of the officials contacted have refuted a single allegation made in that letter.

I doubt any government official who receives this letter and its accompanying material will re-

fute any allegation made here or in my other letter. Hence, there will be no formal response from Congress. The problem is, as noted in my longer letter, their silence and inaction in regards to calling a convention as specified under the terms of Article V of the Constitution only serves to prove these allegations true and thus becomes their formal response. As noted in my first letter to Congress, there either is a convention or there is not a convention. The Constitution is either obeyed or it is not obeyed. The states have applied in sufficient number to cause a convention and thus repeal the 16th Amendment. Congress has chosen not to obey the Constitution and thus prevents the repeal of that amendment. The judiciary has affirmed this decision. In doing so, the judiciary has also negated any challenge to the 16th Amendment by use of the same logic it employed to defeat the obligatory language of Article V. The Coughenour ruling establishes the fact even if your organization is correct about the validity of the 16th Amendment it is immaterial. Your position will simply be ignored by the national government and such action is entirely legal.

Hence, based on the decision in *Walker v United States*, Congress, and the IRS, may tax as they please regardless of whether the 16th Amendment was legally ratified or not.

I have elected to send this information via certified mail to both sides of the issue of the legality of the 16th Amendment and to other interested parties. Thank you for your time.

LXXXVIII

Sincerely,

s/Bill Walker

Cc: Dan Bryant, DOJ
Charles Rossotti, IRS
Connie Brod, C-Span
Roscoe Bartlett, U.S. Congress
Ron Paul, U.S. Congress
(Emphasis in original text.)

THE GURA LETTER

The following is the text of a letter written by Stephen Gura, Staff Counsel to the Supreme Court of the United States responding to the Court Letter regarding *Walker*. (See Appendix, p. XLVIII.)

Supreme Court of the United States
Washington D.C.
The Legal Office
March 6. 2002

Mr. W.R. Walker

Dear Mr. Walker:

Your letter of January 13, 2002, addressed to Chief Justice Rehnquist, has been referred to this office for a reply.

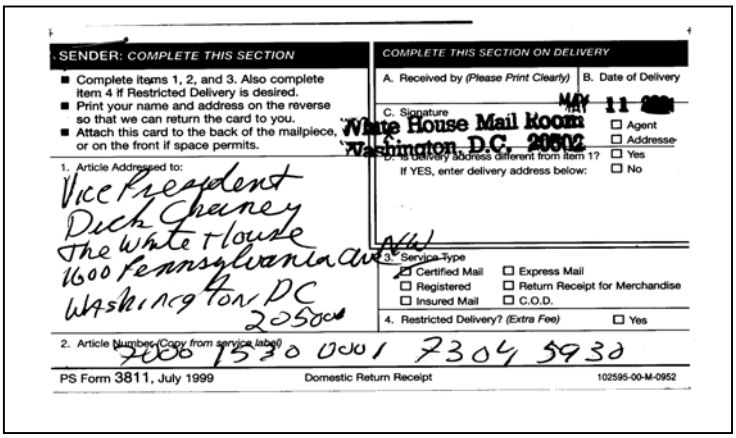
Under Article III of the United States Constitution, federal law, and the Rules of this Court, the Court may consider only cases properly filed with the Clerk's Office, generally after they have been considered by the lower courts. It is not possible to give advice or assistance, answer questions, or consider legal observations presented in correspondence.

I regret that I cannot be more helpful.

Sincerely yours,
s/Stephen Gura
Staff Counsel
(202) 479-3282

CERTIFIED MAIL RECEIPTS PROVING RECEIPT OF ABOVE LETTERS TO MEMBERS OF CONGRESS AND THE GOVERNMENT

Below are copies of certified mail receipts showing receipt of the above letters by members of Congress, some of whom are parties to *McConnell*.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Vice President
Dick Cheney
The White House
1600 Pennsylvania Ave
Washington DC
20500

COMPLETE THIS SECTION ON DELIVERY

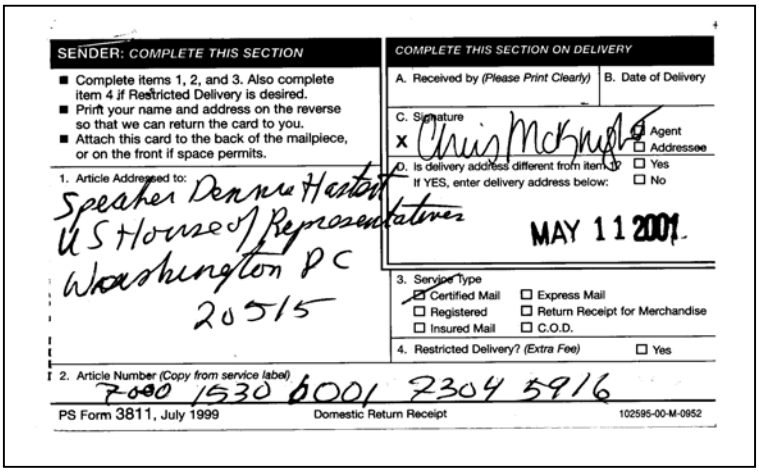
A. Received by (Please Print Clearly) B. Date of Delivery
MAY 11 2001
C. Signature
White House Mail Room
Washington, D.C. 20502
☐ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label) 7000 1530 0001 7304 5930

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Speaker Dennis Hastert
US House of Representatives
Washington DC
20515

COMPLETE THIS SECTION ON DELIVERY

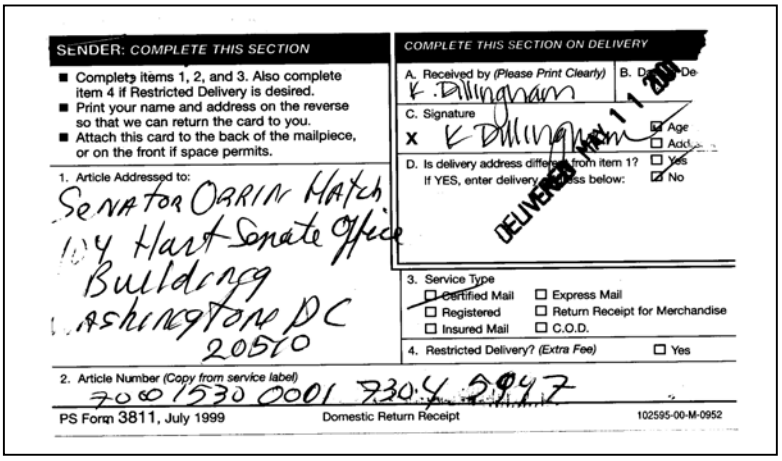
A. Received by (Please Print Clearly) B. Date of Delivery
MAY 11 2001
C. Signature
X
☐ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label) 7000 1530 0001 7304 5916

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Senator Orrin Hatch
104 Hart Senate Office Building
Washington DC
20510

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) K. Dillingham — B. Date of Delivery MAY 11 2001

C. Signature
X K Dillingham — ☑ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

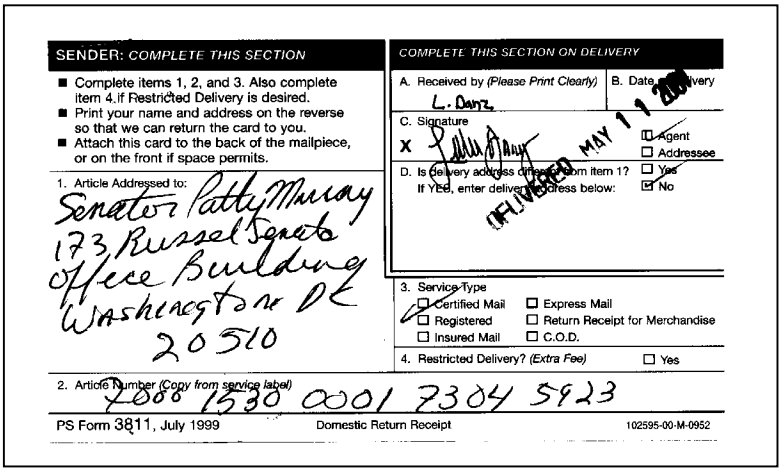
DELIVERED MAY 11

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7000 1530 0001 7304 5947

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Senator Patty Murray
173 Russel Senate Office Building
Washington DC
20510

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) L. Danz — B. Date of Delivery MAY 11 2001

C. Signature
X Patty A Murray — ☐ Agent ☑ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

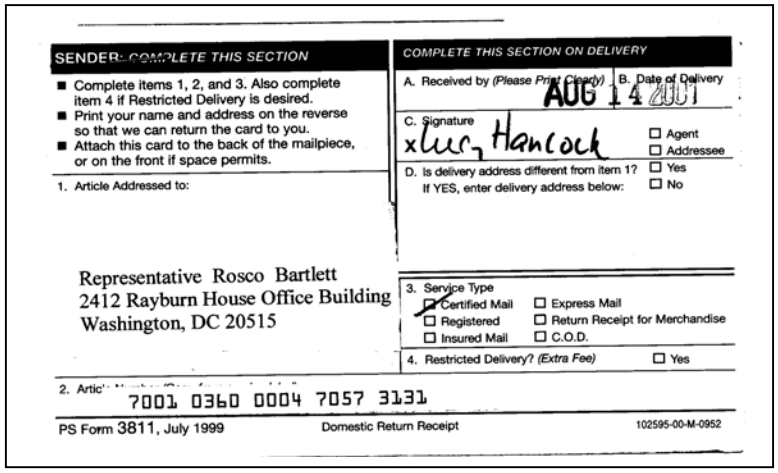
DELIVERED MAY 11

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7000 1530 0001 7304 5923

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Representative Rosco Bartlett
2412 Rayburn House Office Building
Washington, DC 20515

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
AUG 14 2007

C. Signature
x Lucy Hancock ☐ Agent ☐ Addressee

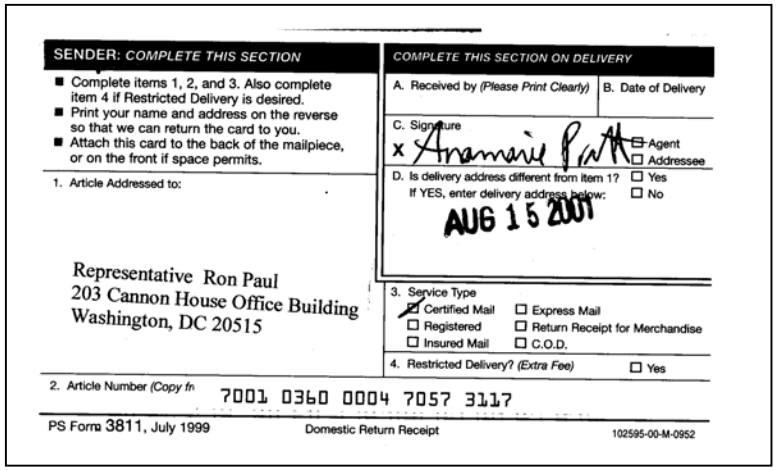
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Artic... 7001 0360 0004 7057 3131

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Representative Ron Paul
203 Cannon House Office Building
Washington, DC 20515

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature
x Aramarie Pratt ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
AUG 15 2007

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy fr... 7001 0360 0004 7057 3117

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

XCIII

EXAMPLE OF "CONSTITUTIONAL CONVENTION" RECESSION BY THE STATES

The following is an example of a "constitutional convention" recession submitted to Congress by one of the states:

> Whereas, the Legislature of the state of Utah, acting with the best intentions, has, at various times, previously made applications to the Congress of the United States of America for one or more constitutional conventions for general purposes or for the limited purposes of considering amendments to the Constitution of the United States of America on various subjects and for various purposes;
>
> Whereas, former Justices of the United States Supreme Court and other leading constitutional scholars are in general agreement that a constitutional convention, notwithstanding whatever limitations have been specified in the applications of the several states for a convention, would have within the scope of its authority the complete redrafting of the Constitution of the United States of America, thereby creating an imminent peril to the well-established rights of the people and to the constitutional principles under which we are presently governed;
>
> Whereas, the Constitution of the United States of America has been amended many times in the history of the nation and may yet be amended many more times, and has been interpreted for 200 years and been found to be a found to be a sound document which protects the rights and liberties of the people without the need for a constitutional convention;

Whereas, there is no need for—rather, there is great danger in—a new constitution, the adoption of which would only create legal chaos in America and only begin the process of another two centuries of litigation over its meaning and interpretation; and

Whereas, such changes or amendments as may be needed in the present Constitution may be proposed and enacted, pursuant to the process provided therein and previously used throughout the history of this nation, without resort to a constitutional convention: Now, therefore, be it

Resolved by the legislature of the state of Utah, That any and all existing applications to the Congress of the United States of America for a constitutional convention or conventions heretofore made by the Legislature of the state of Utah under Article V of the Constitution of the United States of America for any purpose, whether limited or general, be hereby repealed, rescinded, and canceled and rendered null and void to the same effect as if the applications had never been made; be it further

Resolved, That the Legislature of the state of Utah urges the legislatures of each and every state which have applied to Congress for either a general or a limited constitutional convention to repeal and rescind the applications; be it further

Resolved, That a copy of this resolution be sent to the presiding officers of both houses of the legislatures of each of the other states of the Union, to the President of the United States Senate, to the speaker of the United States House of Representatives, and to the members of Utah's congressional delegation.

House Joint Resolution No. 15, Congressional Record, p. S10387 (107th Congress), (emphasis in original.

There are several points about this recession language deserving Court attention. The language of Article V of the Constitution only authorizes a "convention to propose amendments" which is limited in its constitutional authority to proposing amendments to the present Constitution. Clearly, the "redrafting" or the writing of a new constitution, cannot be construed as amending the present Constitution. Indeed, the recession language indicates this fact by its separate discussion of "redrafting" and "amending" the Constitution. Thus it can be concluded the new constitution discussed in the recession is intended to replace the present Constitution and is therefore not an amendment to the present Constitution. Thus a "constitutional convention" and a convention to propose amendments are two separate entities with two separate functions. The latter has specific, legal, limited constitutional authority granted it by expressed written language in the Constitution. The former has no such written support in the Constitution has therefore questionable legal and constitutional validity and by the recession's own admission, unlimited power.

The recession attempts to recess a different entity than what the original application requested. A recession cannot effect any application if that recession attempts to recesses something which cannot constitutionally exist in the first place. Any recession of an application for a convention to propose amendments authorized under Article V based on the broader powers of a "constitutional convention" is therefore legally invalid. Of course, as *Walker* has nullified all of Article V, such distinctions are moot technicalities.

Based on the recession language that "a convention would have within the scope of its authority the complete redrafting of the Constitution of the United States of Amer-

ica" and "a new constitution, the adoption of which would…", clearly the states claim the right of secession from the Union via a new "constitutional convention" constitution. Adoption of such a constitution is presumed by the use of the phrase "which would" rather than "if adopted." Therefore the Utah legislature must possess knowledge of where significant political support exists to adopt such a document. Why else offer it in the first place? Such secession support ignores history and repudiates Court rulings, e.g., Texas v. White, 74 U.S. 700 (1868) which specifically ruled any form of secession by the states is unconstitutional. This fact has obviously been ignored by those in the state legislatures favoring secession for their own political gain.

The recession asserts the "authority" of a "constitutional convention" but ignores the convention to propose amendments authority granted it by the Constitution. It ignores the fact if a "constitutional convention" has such "authority" then so has Congress. However, a convention to propose amendments requires no further powers to check and stem the abuse of power by the state and national governments other than amendment. By amendment power alone, (presuming ratification which is by no means guaranteed thus acting as a check on any excesses within the convention itself, and no interference by the national government) the convention to propose amendments can restore any transgression of the Constitution the states or national government may commit. Hence, there is no need for a new constitution and thus no need for such unlimited power as is possessed by a "constitutional convention." Hence, there is no real constitutional need for the recession.

Walker has nullified this amendment authority however except in the case of Congress. Such nullification is supported by unanimous consensus of both national and state governments. There is no opposition by any sector of the national government to *Walker*, nor has any state opposed

Walker. As such, a de facto convention has been held creating in a new form of government, replacing the Constitution as originally intended by the Founders, a goal the recession allegedly opposes. Yet, the actions of the national and state governments in refusing to preserve the Constitution as originally intended, clearly shows unanimous support for such a goal or government policy. Such a government policy enhances the political position of those able to benefit from it, such as political incumbents. This fact bears directly on *McConnell* which must be viewed by the Court as no more than a natural outgrowth of political power for incumbents stemming from *Walker*, a final court ruling the Court cannot alter and therefore must accept. To do otherwise places the Court in contempt of *Walker*.

While the opinions of former Supreme Court justices and constitutional scholars are significant in a scholarly sense, the fact is *Walker* removes the issue from scholarly comment to official government policy. Policy supercedes unofficial scholarly opinion. *Walker* assigns unilateral amendatory control of the Constitution to Congress and removes it from the states. The states therefore have no authority to amend the Constitution, let alone create a new one, regardless of whatever political support may exist. Finally, as Congress has maintained the right to veto a convention for nearly a hundred years, a right sanctioned by the United States judiciary, whether it is an illegitimate "constitutional convention" or the legitimate convention to propose amendments, any scholarly opinion regarding the "scope of authority" of an entity that will never exist in the first place is entirely irrelevant.