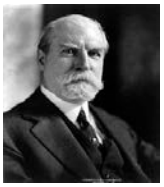
General Discussion
UNITED STATES v. CHAMBERS, 291 U.S. 217 (1934)



Hughes

Charles Evans Hughes, Sr. (Chief Justice 1930-41; Judge, Court of International Justice 1928-30; Secretary of State, 1921-25; Associate Justice 1910-16, Governor, state of New York, 1907-10) delivered the opinion of the Court in United States v. Chambers (hereafter Chambers). The issue before the Court was whether federal law authorized by an amendment to the Constitution could continue in effect if the amendment in question had been repealed. As with many of the cases before the Court concerning the amendatory process, this involved prohibition of the consumption of alcoholic beverages by the 18th Amendment and its subsequent repeal by the 21st Amendment.

The specifics of the case involved two men Clause Chambers and Byrum Gibson who were charged on June 5, 1933 with violation of the National Prohibition Act. Trail for the men was deferred until December 6, 1933. On December 5, 1933, "ratification of the Twenty-First Amendment of the Constitution of the United States, which repealed the Eighteenth Amendment, was consummated. …" The Court was explicit:

> "Upon the ratification of the Twenty-First Amendment, the Eighteenth Amendment at once became inoperative. Neither the Congress nor the courts could give it continued vitality. The National Prohibition Act, to the extent that its provisions rested upon the grant of authority to the Congress by the Eighteenth Amendment, immediately fell with the withdrawal by the people of the essential constitutional support. … The continuance of the prosecution of the defendants after the repeal of the Eighteenth Amendment … would involve an attempt to continue the application of the statutory provisions after they had been deprived of force."

The Court cited several examples where it had ruled once a law was repealed "no penalty can be enforced, nor punishment inflicted, for violations of the law committed while it was in force…" The government, which was requesting the Court allow prosecution of the defendants after repeal of the 18th Amendment then argued:

> "the general saving provision enacted by the Congress in relation to the repeal of statutes … to the effect that penalties and liabilities theretofore incurred are not to be extinguished by the repeal of a statute 'unless the repealing Act shall so expressly provide,' and to support prosecution in such cases the statute is to be treated as remaining in force."

The Court disagreed stating:

> "But this provision applies, and could only apply, to the repeal of statutes by the Congress and to the exercise by the Congress of its undoubted authority to qualify its repeal and thus to keep in force its own enactments. … Congress however is powerless to expand or extend its constitutional authority. The Congress, while it could propose, could not adopt the constitutional amendment or vary the terms or effect of the amendment when adopted. … The National Prohibition Act was not repealed by act of Congress, but was rendered in operative, so far as authority to enact its provisions was derived from the Eighteenth Amendment, by the repeal, not by the Congress but by the people, of that amendment. … Over the matter here in controversy, power has not been granted but has been taken away. The creator of the Congress has denied to it the authority it formerly possessed, and this denial, being unqualified necessarily defeats any legislative attempt to extend that authority. … The question is not one of public policy which the courts may be considered free to declare, but of the continued efficacy of legislation in the face of controlling action of the people, the source of the power to enact and maintain it. … The law here sought to be applied was deprived of force by the people themselves as the inescapable effect of their repeal of the Eighteenth Amendment. The principle involved is thus not archaic, but rather is continuing and vital-that the people are free to withdraw the authority they have conferred and, when withdrawn, neither the Congress nor the courts can assume the right to continue to exercise it."

Chambers addresses three significant points about the convention in the Chambers ruling. First, Chambers clarified the Hollingsworth/Sprague decision regarding legislative control of a convention by Congress, the states having been eliminated by Hawke which declared states operate under the federal constitution when involved in the amendment process not state constitutions. Therefore state laws attempting to regulate a convention are unconstitutional. No text in the Constitution authorizes either Congress or the states to legislatively control a convention. Hence neither body may do so. If Congress were to assume such power it is an expansion of constitutional authority. This can only occur, according to the Chambers decision, if the people, by representative approbation, give consent in the form of an amendment authorizing either the states, Congress or both to regulate the convention.

These four decisions settle the question of whether the convention is constitutionally equal to Congress or subservient to it and it is instead the

states which possess the authority in contradiction of the plain language of Article V assigning the proposal of amendments to the convention.

Meese

Many people have suggested the states possess this authority including Edwin Meese III (Attorney General 1985-88) who released a Department of Justice report in 1987 asserting the convention was subservient to Congress and the states had authority to propose amendments.

The report however did not discuss the rulings of Hollingsworth, Hawke, Sprague and Chambers which collectively repudiate that proposition. Moreover the report fails to address the history of Article V at the Federal Convention of 1787. The delegates clearly stated the states were not to have authority to propose amendments as this would simultaneously enable them to both propose and ratify an amendment. The Court rulings make it obvious: the convention, not the states, is constitutionally equal to Congress. [See:https://www.ncjrs.gov/App/publications/abstract.aspx?ID=115134].

Second the Court, without equivocation, accepted the people, acting though representative approbation, can remove previously granted authority in the Constitution by amendment. The Court stated the Article V proposing body, does not the right to impose such change on its own authority ("The Congress, while it could propose, could not adopt the constitutional amendment or vary the terms or effect of the amendment when adopted."). As with all previous decisions, the Court did not discriminate between Congress and convention. Therefore the Court determined neither proposing body may impose change in the Constitution on its own authority.

With this determination the Court interposed a second guarantee beyond the three-fourths ratification process of Article V. The Court expressly ruled any power granted the government by the people may be withdrawn by the people. The Chambers ruling is emphatic: once repeal is "consummated" any authority derived from that portion of the Constitution immediately terminates including any statutes enacted by Congress whether or not they contain a savings clause, the action of constitutional repeal being paramount to legislative enactment. The ruling underscores a constitutional protection not addressed by convention opponents—the right of the people to repeal prior amendments. With this authority the people can always correct any amendment a convention proposes—even if ratified—as the people can always repeal that amendment.

Third, while the Court did not directly address the issue of a "runaway convention" its decision nevertheless repudiated this allegation. This claim traces its roots to the 1980's when the John Birch Society (hereafter JBS) created it as part of its opposition propaganda to a convention call. JBS claims if a "constitutional convention" is called it will become a "runaway convention." JBS believes a "constitutional convention"—a term not found in the

Constitution—and an Article V Convention are synonymous. JBS, of course, ignores the language of Article V and numerous Court rulings describing that language which repudiate this contention.

According to JBS this "constitutional convention" will "remove our rights and write a new Constitution." The "runaway convention" allegation of JBS is based on their assertion the Federal Convention of 1787 delegates "exceeded their authority given them by the [Articles of Confederation] congress to revise the Articles of Confederation and instead wrote a new constitution thus becoming a "runaway" convention." [See: http://www.jbs.org/legislation/the-ultimate-argument-against-an-article-v-constitutional-convention]. In actual fact what the JBS is actually doing is accusing the members of Federal Convention of 1787, which included two future presidents (Washington and Madison) and numerous other prominent figures in American history of committing an act of insurrection against the Confederation government.

There is no difference between an act of insurrection today and one committed in 1787. Black's Law Dictionary defines insurrection as, "…any combined resistance to the lawful authority of the state, with intent to cause the denial thereof…" The Confederation was quite aware of what illegal acts constituted insurrection. Several insurrections occurred (e.g. Shay's Rebellion) during the few years of the Confederation's existence. Obviously, plotting, creating and attempting to replace the current form of government with a different form of government <u>is</u> insurrection <u>unless</u> such alteration is supported by legal process within the existing government. In such case the terms "insurrection" or "runaway convention" cannot be attached.

There is no record of any 1787 Federal Convention delegate being charged with insurrection (or similar crime) as a result of his participation in or subsequent public advocacy of the Federal Convention of 1787 proposal. The fact no charges, state or national, were ever levied against any delegate, that no such charge was publicly expressed by anyone including opponents to the Constitution against convention delegates, irrefutably prove the JBS allegation of "runaway convention" entirely unsubstantiated. Further the records of the debate in Congress prove while some members of Congress objected to the proposed Constitution, motions declaring the actions of the convention in violation of the Articles of Confederation were soundly defeated.

Given these facts the only conclusion is the Federal Convention of 1787 proposal was entirely in compliance with the laws of the Articles of Confederation as well as state laws of the time. Thus the convention was legal as was its proposed constitution. The methodology employed to ratify the Constitution and replace the Articles of Confederation as law of the land was equally legal. Any anxiety about a "runaway convention" is groundless as the alleged event never occurred in the first place.

The Chambers declaration that the proposing body (convention or Congress) cannot, on its own authority, adopt, vary or effect the Constitution dispensed with the JBS allegation of a "runaway convention" occurring today when an Article V Convention is called. Moreover the Court has repudiated the JBS charges in several of its rulings. Among these the Court ruled in Sprague no addition or interpolation of Article V language is permitted.

Thus the text describing the Article V Convention as a "convention for proposing amendments…as part of this Constitution" clearly limits the scope and purpose of the convention to the proposal of amendments to our present Constitution and does not authorize the convention to "write a new Constitution." As the term "constitutional convention" does not exist in the Constitution the Sprague ruling reduces the JBS charge to inaccurate political rhetoric having nothing to do with the Constitution. As to the charge of a convention removing any right currently enjoyed by the people, an examination of the over 550 applications from the 49 states shows not one application requests removal of a single constitutional right of the people. Indeed several applications seek to increase the rights of the people.

The Court has never expressed any constitutional reservations about the convention in any decision concerning the amendment process. It has included the convention process in all rulings without discrimination. The Court has repeatedly stated Congress must call the convention if the states apply in proper number thus clearly supporting the constitutionality of the convention process of amendment proposal. In spite of all Court rulings to the contrary JBS nevertheless urges Congress not obey Article V, disobey the Court rulings and not call a convention when mandated by state applications. JBS therefore urges members of Congress commit an act of insurrection against the United States Government by disobeying the clear directive of Article V. The problem is it appears Congress is doing just that.