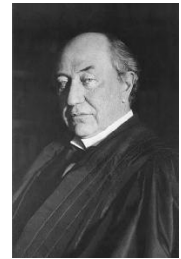


## **General Discussion**

### **GULF, C&S. F. R. Co. v. ELLIS, 165 U.S. 150 (1897)**

Gulf, C&S. F.R. Co. v Ellis, 165 U.S. 150 (1897) (hereafter Gulf) is one of several Supreme Court decisions dealing with equal protection under the law as mandated by the 14<sup>th</sup> Amendment to the Constitution. David Josiah Brewer, (Associate Justice 1890-1910), delivered the Court's split decision. The Court found that it is unlawful to discriminate between citizens of the same class unless a reasonable basis "which bears a just proper relation to the attempted classification and is not a mere arbitrary selection" for such discrimination exists.



Brewer

Justice Brewer states membership in a group does not pose a barrier to equal protection under the law. Justice Brewer said, "It is well settled that corporations are persons within the provisions of the fourteenth amendment of the constitution of the United States. The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities call 'corporations' any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations. A state has no more power to deny to corporations the equal protection of the law than it has to individual citizens."

While a convention is not a corporation, it is a group composed of individual citizens who are entitled to equal protection under the law just as members of Congress are entitled to such protection. Both groups are comprised of individual citizens. Any discrimination therefore toward either group cannot be arbitrary and must be done for reasonable cause. Moreover, as *both groups* are elected by the people, discrimination against one group or by one group against the other or by an outside group against one of the groups is even less supportable. Such discrimination affects not only the citizens of the group but those citizens who elected that group. Hence, the electorate has unequal representation in a constitutional body where the Constitution does not prescribe any discrimination or provide any basis or reason for there being discrimination.

The function of both convention and Congress is constitutionally identical, i.e., the proposal of amendments to the Constitution. The effect of the proposal, if ratified, is identical. The Constitution authorizes no other political bodies to make amendment proposal. Article V strictly and equally limits the power of amendment proposal upon both convention and Congress. Given these facts, there is no possible way to classify the two bodies differently, i.e., two legal classes, as they are identical as to authority, effect, limit, and exclusiveness. As the Constitution excludes all others from amendment proposal, there is no

constitutional basis for anybody to create a classification. There is no authority in the Constitution for any political or judicial body to do so.

The equal protection of law clause also applies to the efforts of any group attempting to effect or affect the legal class of Congress/convention including Congress itself attempting to discriminate against the convention. Specifically state or congressional attempts to control the choice of delegate selection and convention agenda by means of state felony laws or congressional legislation are discriminatory and therefore unconstitutional. At least one state has already passed state law denying the people the right to vote for convention delegates as guaranteed by both the 14<sup>th</sup> Amendment and existing federal law. These state laws hold the delegates represent, not the people, but the state legislature. According the Court's ruling in *Gulf* as well as *McCulloch* and *Dodge*, such legislative arbitrariness is unconstitutional.

The Constitution does not grant states such authority of arrest and agenda regulation vis-à-vis members of Congress. The speech and debate clause (Article I, §6 (1)) expressly forbids such state coercion. Further Article I, §2, (1) and the 17<sup>th</sup> Amendment) guarantees members of Congress are elected. Nothing in the Constitution supports such draconian measures as elimination of the electorate from choosing members of Congress when they propose amendments or allowing the states the authority to pre-determine congressional amendment agenda. No text exists in the Constitution supporting such discrimination for the convention. Accordingly, no reasonable basis for such discrimination exists. Thus, regulation of the convention in this manner violates the principles of the 14<sup>th</sup> Amendment articulated in *Gulf* by Justice Brewer. As express constitutional language provides constitutional protection to one portion of the legal class, this means the express language must equally apply to convention delegates.

As Justice Brewer (quoting Black, J., in *State v Loomis*, 115 Mo. 307, 314, 22 S. W. 350,351) states, "Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as, in the nature of things, furnish a reasonable basis for separate laws and regulations."

As both convention and Congress are equal as to constitutional authority, effect, limit and exclusiveness, it follows that which creates such authority, effect, limit and exclusiveness for one portion of the class (Congress) cannot arbitrarily limited but must be all-inclusive to the remainder of the class (the convention). Hence, as Congress is elected so must delegates to a convention. (This argument is self-evident given Congress has already specified in federal law that convention delegates are to be elected; see 18 U.S.C. 601). Under what conditions a member of Congress is elected and what portion of a state he shall

represent likewise must be equal to convention delegates. In sum, all that is required in order to place a citizen as a member of Congress empowered to propose amendments to the Constitution must equally apply to convention delegates as there is no reasonable basis to deny the equality given the circumstance of equal protection under the law as such decision would be arbitrary denying not only the delegate equal protection under the law but the citizens he is elected to represent.

However, the Constitution establishes one major difference between members of Congress and convention delegates. Members of Congress, who are assigned multiple duties beyond amendment proposal, are assigned a definite term of office, either two years or six years. The convention, on the other hand is assigned a specific, single duty—proposal of amendments to the Constitution. When those amendments are proposed, the business of the convention must terminate, as the convention has no other constitutional business to conduct. Thus the term of office for a convention delegate only exists so long as the convention conducts its single constitutional duty. When the convention terminates that duty, the term of office for delegates terminates. Therefore the Constitution itself provides a reasonable purpose for discrimination as to a different term of office for delegate and member of Congress. The discrimination is not arbitrary but is a natural outcome of the differences of constitutional function between convention delegates and the constitutional function of members of Congress outside the amendment process.

The Constitution does not provide another alternative method for reasonable determination of pragmatic questions of delegate selection, representation and so forth other than the 14<sup>th</sup> Amendment principle of equal protection under the law. Convention opponents are quick to raise questions regarding the operational aspects of a convention asserting the lack of answers justifies constitutional disobedience by Congress—that is not calling a convention when state action mandates a call. While these constitutional detractors may pose fallacious questions which ignore constitutional solutions members of the government do not enjoy this luxury.

Article V is plain: if the states apply, a convention must be called and held. Therefore any questions regarding this absolute mandate must be resolved rather than being used as excuse to veto the Constitution. This is particularly true when a procedure exists in the Constitution to accomplish the task. It is too extraordinary a proposition to suggest unconstitutional methods such as arrest, disenfranchisement or other discrimination can be employed to execute a constitutional function. Gulf affirms the Court's position in this regard.