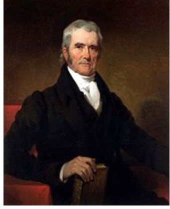
Introduction
An Analysis of Supreme Court Rulings Relevant to an Article V Convention

An Article V Convention is a department of government created by the United States Constitution which is assigned a limited constitutional task—the proposal of amendments to the federal Constitution. Thus a convention is a constitutionally *limited* governmental power as the Constitution *limits* the convention to a single purpose—proposal of *amendments*. Many have suggested, and this will be discussed in greater detail later in this Appendix, that a convention can be *limited* as to agenda and amendments proposed. However this is an incorrect interpretation as the Constitution clearly grants the convention the authority to propose *amendments* meaning multiple subjects. Clearly multiple proposals mean a multiple agenda as the opposite, a convention repeatedly proposing the same amendment is too absurd to contemplate.. The clearest example of the right to propose *amendments* is the action of Congress following ratification of the Constitution when that body proposed *twelve* amendments simultaneously on numerous subjects.

As will be shown in this section, the courts do not agree with the interpretation of the term *limited* that is, pre-determination of agenda and amendment subject for the convention. It should be also noted that while convention critics are quick to suggest a "limited" convention as to agenda and subject, none have ever proposed Congress can also be limited to such a standard. The courts have made it clear, and this will be demonstrated, that what applies to Congress equally applies to a convention. Hence, if Congress cannot be limited by the states as to agenda, amendment subject or proposal, then neither can the convention be so limited.

The courts have held the people *limit all government* through constitutional provisions meaning the Constitution limits both extremes of government: if the Constitution mandates an act, government must perform it. If the Constitution prohibits an act, it cannot be executed. Therefore a convention to propose *amendments* cannot be limited to a single amendment proposal *unless the convention itself so determines this choice as their action is representative of the people and not the states.*

As explained by John Marshall, (Chief Justice 1801-35, United States Secretary of State (1800-01), member of Congress (1799-1800), in Marbury v Madison, 5 U.S. 137 (1803) (hereafter Marbury) :



Marshall

"It cannot be presumed that any clause in the constitution is intended to be without effect; and therefore such construction is inadmissible …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 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 organizes the government, and assigns to different departments their respective powers. It may either stop here; or establish certain limits not 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 to writing; if these limits may, at any time, be passed by those intended to be restrained? … 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.

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. … 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. … This doctrine [the constitution is level with legislative acts] 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 those limits may be passed at pleasure. … This is too extravagant to be maintained."

Employing the principle of constitutional supremacy established in Marbury which specifies no department of government may either ignore or subvert any

constitutional clause the Supreme Court, tasked with interpretation of the Constitution, has, and throughout its history issued several rulings relevant to an Article V Convention. These rulings have defined the "narrow limits" of the amendment process both convention, Congress and the states.

Notably, while these rulings deal with a question of the amendment process as it relates congressional action *the Court does not affirmatively exclude the convention from its interpretation such that the effect of the ruling does not equally apply to both Congress and convention*. Further in nearly all rulings, the Court quotes from Article V and includes that portion of the article referring to a convention. From this action can be drawn the inference the Court intended its ruling apply to both Congress and convention; otherwise why include the convention process at all? Why not simply ignore that language or better still, note explicitly the ruling in question only applied to Congress and had no bearing whatsoever on the operation of a convention.

In aggregate, therefore these rulings answer nearly all of the operational and constitutional questions about an Article V Convention. Many people erroneously assume because the convention clause is found in the text of Article V, only that text applies to a convention. As with all departments of government created by the Constitution, as Marshall explains, the convention is limited by *all* constitutional clauses. No clause may be exceeded or ignored by any entity described in the Constitution *including the convention*. Thus, any constitutional question about a convention requires the examination of *all* constitutional clauses and may therefore be answered by one or number of clauses located elsewhere in the Constitution. Under this principle the courts have addressed all issues surrounding the convention providing the necessary interpretations required allowing the convention the ability to function constitutionally and operationally.

In the case of an Article V Convention, the courts, as will be shown have determined Article V is a specific, set procedure which when followed ultimately results an amendment to the Constitution. The courts have made two points abundantly clear through repeated rulings: (1) the people are the source of sovereignty (re-affirming the statement made in the Declaration of Independence that it is the right of *the people* to alter or abolish our form of government) and (2) that the procedure specified in Article V may not be modified by either state or federal court or legislatures. In sum, the people must be part of the amendment process and cannot be excluded from that process and unless Article V *textually states* as part of its specified procedure an act or power of a designated entity, such power or act does not exist. Likewise, if the Article *does textually state* as part of its specified procedure an act or power of a designated entity, said entity *cannot* refuse to comply with the constitutional command by any means of evasion whatsoever.

This section examines several relevant Supreme Court rulings related to an Article V Convention. Each Court ruling will be presented with a discussion page preceding it explaining the significance of that Court ruling. In some instances other relevant material will be presented along with the decision. In some instances, due to the length of the ruling, only the relevant portion of that ruling is presented. This will be noted as appropriate. Rulings of shorter duration will be presented in full length.