

General Discussion

UNITED STATES v. SPRAGUE, 282 U.S. 716 (1931)



Roberts

Owen Josephus Roberts, (Associate Justice 1930-45), delivered the opinion of the Court in *United States v. Sprague*, 282 U.S. 716 (1931) (hereafter *Sprague*). The issue before the Court was whether criminal charges brought against alleged bootleggers for illegal transportation and sale of intoxicating liquors were valid. Appellees argued the 18th Amendment had been improperly ratified as ratification was by state legislature rather than state ratification conventions. Appellees argued the amendment subject, prohibition—prohibiting the right of the people to consume alcohol, dictated by which means ratification must occur. Appellees argued removal of a right could only occur if the people themselves consented. This, they said, could only be accomplished in elected state ratification conventions as state legislatures were “incompetent” to do this. As Congress had not chosen this method of ratification, appellees asserted the amendment was invalid. Therefore any federal law derived from the authority of that amendment was also invalid. Appellees therefore could not be convicted under that law.

Appellees’ argument permitted the Court the opportunity to explore the amendatory process of Article V in detail. The Court began by examining the amendatory proposal process. It then applied these findings as grounds for its ratification conclusions. *Sprague* contains no discriminatory language separating proposal conclusions from ratification or mode of proposal from mode of ratification; the grounds are common to both and therefore apply equally.

For a second time in the Court’s history, (the first time in *Leser v. Garnett*), appellees argued subject matter (or “character”) of a proposed amendment affects execution of the amendment process, i.e., how, when or if a part of the amendatory process is executed. Speaking for a unanimous Court, Justice Roberts wrote:

“They [appellees] say that it was the intent of the framers, and the Constitution must, therefore, be taken impliedly to require, that proposed amendments conferring on the United States new direct powers over individuals shall be ratified in conventions; and that the Eighteenth is of this character. They reach this conclusion from the fact that the framers thought that ratification of the Constitution must be by the people in convention assembled and not by legislatures, as the latter were incompetent to surrender the personal liberties of the people to the new national government. From this and other considerations, hereinafter noticed, they ask

us to hold that article 5 means something different from what it plainly says. ... “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.”

Neither the appellees nor the Court excluded the convention application process or the convention proposal process in their arguments to the Court or in the adjudication by the Court. The Court was emphatic and unequivocal. It included all the amendatory proposal process in its statement “Article V contains no ambiguity and calls for no resort to rules of construction.” The Court did not say “except in the case of convention applications in which case the subject matter of the application affects execution of the process.” Leser and Sprague are explicit: the subject (or “character”) of an amendment has no bearing on the amendment process. It must therefore be disregarded by Congress, the courts and the states when executing any portion of that process including the convention process as well as the application process. Sprague further states:

“The choice, therefore, of the mode of ratification, lies in the sole discretion of Congress. Appellees, however, point out that amendments may be of different kinds, as e.g., mere changes in the character of federal means or machinery, on the one hand, and matters affecting the liberty of the citizen on the other. They say that the framers of the Constitution expected the former sort might be ratified by legislatures, since the States as entities would be wholly competent to agree to such alterations whereas they intended that the latter must be referred to the people because not only of lack of power in the legislatures to ratify, but also because of doubt as to their truly representing the people. ... In spite of the lack of substantial evidence as to the reasons for the changes in statement of article 5 from its proposal until it took final form in the finished draft, they seek to import into the language of the article dealing with amendments, the views of the convention with respect to the proper method of ratification of the instrument as a whole. ... Thus however, clear the phraseology of article 5, they urge we ought to insert into it a limitation on the discretion conferred on the Congress, so that it will read, ‘as the one or the other mode of ratification may be proposed by the Congress, as may be appropriate in view of the purpose of the proposed amendment.’ This can not be done.”

The Court emphatically stated the “final form of article 5” is the only basis for determination of its meaning rather than any earlier versions of that article discussed by the 1787 Federal Convention. Therefore any earlier draft of Article V which contained language allowing states to propose amendments for example, is irrelevant as the final version of Article V does not describe such authority. Thus, according to the Court only what was ratified by representative approbation of the people as finally proposed by the convention has any bearing on the meaning or intent of Article V. The Court stated:

“The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary and distinguished from technical meaning; where the intention is clear there is no room and no excuse for interpolation or addition. *Martin v. Hunter’s Lessee*, 1 Wheat. 304; *Gibbons v. Ogden*, 9 Wheat. 1; *Brown v. Maryland*, 12 Wheat. 419; *Craig v. Missouri*, 4 Pet. 410; *Tennessee v. Whitworth*, 17 U.S. 139, 6 S. Ct. 649; *Lake County v. Rollins*, 13 U.S. 662, 9 S. Ct. 651; *Hodges v. United States*, 203 U.S. 1, 27 S. Ct. 6; *Edwards v. Cube R. Co.*, 268 U.S. 628, 45 S. Ct. 614; *The Pocket Veto Case*, 279 U.S. 655, 49 S. Ct. 463; *Story on the Constitution* (5th Ed.) 451; *Cooley’s Constitutional Limitations* 2d Ed.) pp.61, 70.”

Based on a long line of precedent, the Court emphatic statement of “no rules of construction, interpolation or addition” terminated all theories (such as “same subject”, “contemporaneousness”, “rescission” et.al.) which depend for validity on either inference or additional textual conditions not found in Article V either to condition a convention call or enable regulation of a convention. As with all other amendatory decisions the Court did not discriminate between modes of ratification or modes of proposal—the sweeping prohibition encompasses *all* of Article V. The text of Article V *as it reads and states* is the sole basis for any term, condition or circumstance of an Article V Convention or call.

Further, Sprague resolved finally any question of congressional use of the “necessary and proper” clause as a basis of authority to regulate the convention. As discussed earlier Hollingsworth banned the president from any participation in the “proposition” of amendments—including review of any legislation aimed at regulating a convention as delegate selection, agenda, proposed amendment language and so forth. However, the portion of the necessary and proper clause granting Congress legislative power to “all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof” was unaffected by Hollingsworth. The Court terminated this oversight in the “necessary and proper” clause by stating, “The fifth article does not purport to delegate any governmental power to the United States, nor to withhold any from it.” Thus the Court found Article V does not vest any power in the Government of the United States nor in any department or officer thereof removing any possibility of the necessary and

proper clause being used by Congress to legislatively regulate a convention or any part of the amendatory process.

The Sprague decision makes several points clear about an Article V Convention. The most important is the Court viewed the convention and the congressional proposal process as synonymous that is, rules or interpretation applied to one equally apply to the other. Second, the Court rejected any question of ambiguity surrounding Article V meaning Article V's direct text as is normally read dictates the amendment process. Third, the Court emphatically stated unless expressed in Article V by actual text, no inference exists meaning no theory which depends on such inference is valid as it requires insertion of words into Article V which cannot be permitted.

Fourth, the Court rejected any proposition of amendment subject matter (or "character") influencing the amendment process in any respect. Fifth, the Court stated the convention, not the states, proposes amendments. Sixth, the Court stated a convention proposes *amendments* and cannot be limited to a single *amendment* proposal except by restraint of the convention itself. Seventh, in combination with Hollingsworth the Court eliminated any possibility of Congress using the "necessary and proper" clause to legislatively control the convention.

Eighth, the Court rejected any proposition that earlier versions of Article V drafted in the 1787 Federal Convention or any other form of ratification contained in the Constitution have any bearing on the amendment process meaning only the final language of Article V is relevant to that process. Ninth, the Court reaffirmed no mode of amendment may occur except by representative approbation of the people meaning any attempt to propose or ratify an amendment without approbation of the people is unconstitutional. Tenth, the Court established that whatever is ruled in ratification by the Court equally applies in proposal and visa versa; further the Court held that a ruling in one mode of the amendment process applies to all modes of the process.