

## **General Discussion**

### **Summation of Supreme Court Rulings Concerning the Amendment Process**

A summation of the Supreme Court rulings concerning the amendment process discussed in this section is itemized below. Following the summary statement shown in parentheses ( ) is the citation(s) from which the summation is derived. Reasonable conclusions drawn from these rulings concerning a convention are asserted in *italics* underneath the summation:

- The submission of a proposed constitutional amendment does not require the action of the president. (Hollingsworth)
  - *While the court excluded the president from the process of amendment proposal, it did not exclude the vice president from participation as President of the Senate in the calling of an Article V Convention.*
- States cannot impede valid constitutional exercises of power by the Federal government. (McCulloch)
  - *Such impediment includes the submission of so-called rescissions (also prohibited by the Tenth Amendment) intended to prevent Congress calling a convention when the states have otherwise applied as prescribed by Article V.*
- The people, not the states, are source of sovereignty of this nation meaning any convention called under the authority of Article V must involve the consent of the people. (McCulloch)
  - *State legislatures are not authorized to control the agenda, selection of delegates, language of a proposed amendment or other such matters unless such control is given by consent of the people. Such consent is not authorized under Article V and therefore cannot be granted by the people. Therefore state legislatures cannot control a convention as to agenda, proposal and so forth. Instead the people acting through direct election of convention delegates express their consent as to the operation of a convention.*
- Congress is mandated to call an Article V Convention if the states apply in sufficient number to satisfy the two-thirds requirement in Article V. (Dodge, Hawke, Dillon, and Sprague)
  - *No other requirement except a numeric count of applying states for a convention is described by the Constitution and therefore Congress may attach no other conditions to the calling of a convention.*
- It is unlawful to discriminate between citizens of the same legal class unless a reasonable basis exists for such discrimination. Further

membership in a group does not pose a barrier to equal protection under the law. (Gulf)

- *As all functions of amendment proposal are identical for both Congress and convention there is no basis of discrimination between either. The convention therefore must be treated equally under the law meaning all applicable law equally applies to Congress and the convention. As Congress is an independent proposal body, this also means the convention is equally independent and equally governed by the Constitution.*
- The proposal of amendments by the proposing body is based on two-thirds of the membership present assuming a quorum of the membership (one-half and one more) is present. (Missouri)
  - *As both Congress and convention are equal under the law, the requirement of two-thirds present assuming a quorum equally applies to both. As a convention is required to be comprised of state delegations each voting as a state, this means 26 state delegations must be present in order to pass a proposed amendment.*
- States operate under the authority of the federal constitution rather than under the authority of their state constitutions when involved in the Article V amendment process. (Hawke)
  - *In the matter of a convention states are equally required to operate under the federal constitution as this is part of the amendment process.*
- All amendments must have the sanction of the people of the United States, the original fountain of power, acting through deliberative assemblages representative of the people who will voice the will of the people. (McCulloch, Hawke, Rhode Island, 18 U.S.C 601)
  - *Under federal criminal law as well as under the rulings of the Supreme Court, convention delegates shall be elected by the will of the people and not selected by any other means such as appointment by the state legislature.*
- It is not the function of courts or legislative bodies, national or state, to alter the method of ratification which the Constitution has fixed. (Hawke)
  - *The Constitution has established an amendment procedure which neither the courts, federal or state, the legislatures, national or state may alter. Thus special rules for a convention that do not equally apply to Congress or additions made to the text of Article V not appearing in that text that then are applied to the convention are unconstitutional.*

- Congress is bound to the text of the Constitution and can take no action contrary to the textual language of Article V. (Hawke)
  - *There being no language authorizing Congress to legislatively regulate a convention, such act is prohibited and unconstitutional.*
- No declaration of necessity is required of the proposing body in proposing an amendment. (Rhode Island)
  - *The Court did not exclude the convention from this determination. Therefore it equally applies to a proposed amendment by a convention.*
- State referendums of state constitutions and statutes may not be applied in the ratification or rejection of a proposed amendment to the Constitution. (Hawke, Rhode Island)
  - *The Court did not exclude the convention from this determination. Therefore it equally applies to a proposed amendment by a convention.*
- An amendment having been proposed and ratified lawfully is equal to all other clauses of the Constitution. (Rhode Island)
  - *The Court did not exclude the convention from this determination. Therefore it equally applies to a proposed amendment by a convention.*
- A time limit on ratification by the states may be included as part of the amendment by the proposing body making the proposal. (Dillon)
  - *The Court did not exclude the convention from this determination. Therefore it equally applies to a proposed amendment by a convention.*
- The subject matter (or character) of the amendment proposal shall have no affect or effect on the amendment process prescribed in Article V. (Leser, Sprague)
  - *The Court did not exclude the convention from this determination. Therefore it equally applies to a proposed amendment by a convention.*
- Once an action of the state in ratification is certified by the secretary of the state it is conclusive upon the courts and the courts will not intervene in the matter. (Leser, Hawke)
  - *The Court did not exclude the convention from this determination. Therefore it equally applies to a proposed amendment by a convention.*

- Congress is prohibited from employing the “necessary and proper” clause to legislatively “regulate” a convention. (Hollingsworth, Sprague, and Chambers)
  - *Without participation of the president as described in Hollingsworth together with denying Congress any access to the “necessary and proper” clause the ability of Congress to legislatively control a convention is strictly prohibited.*
- Article V permits no excuse for interpolation, rules of construction or addition. (Sprague)
  - *Assertions of special conditions for the calling of a convention such as rescissions, identical subject matter for applications, contemporaneousness of applications and so forth not being part of the actual text of Article V are unconstitutional and therefore prohibited.*
- The proposing body cannot adopt a proposed amendment on its own authority without consent of the people. (Chambers)..
  - *The convention, like Congress, does not have the authority to adopt a proposed amendment without consent of the people as prescribed by the terms of Article V. Further, as the Constitution does not prescribe authority for a convention to create a new constitution such an act is unconstitutional.*

◀—OR—▶

- Congress has exclusive, complete and absolute control of the amendment process but is still governed by the Constitution. (Coleman)
  - *By this decision, neither the people, the states nor a convention has any part of the amendment process despite express textual statement in the Constitution to the contrary.*
- Congress, acting under the political question doctrine, may remove state legislatures by military force and replace its members as part of the ratification process. (Coleman)
  - *The Court made no exclusion or limitation on this power of Congress that it may not be applied at the discretion of Congress. However the Court did not immunize members of Congress from the effect of any violation of appropriate federal criminal law if Congress so acts.*
- Congress may accept and refuse state ratification votes under the political question doctrine on the basis that a state may (or may not) rescind a prior ratification vote. (Coleman)
  - *As a convention call is preemptory on Congress and the Court has repeatedly ruled that Congress must call a convention and*

*expressed no terms, conditions or circumstances under which Congress can refuse to call, the Court has therefore determined there being no excuse possible under the definition of legal term peremptory, rescissions or any other term or condition which permits denial of a convention call is not permitted and is unconstitutional.*

- Any judicial expression regarding the amendment process by the Court regarding the exclusive congressional power over the amendment process is a mere admonition to Congress in the nature of an advisory opinion, given wholly without constitutional authority. (Coleman)
  - *As the Court determined its decision in Coleman was an advisory opinion it is logical to assert any powers or authority expressed by the Court in Coleman is advisory and therefore “given wholly without constitutional authority.” Therefore if Congress attempts to implement Coleman by not obeying the Constitution and calling a convention when mandated to do so or taking any other actions recommended by the Court Congress lacks any constitutional or immunity imposed by federal criminal law.*