

Appendix I

PROPOSED LEGISLATION TO ESTABLISH CONVENTION PROCEDURES

99th CONGRESS
1st SESSION
S.40

To provide procedures for calling federal constitutional conventions under article V for the purpose of proposing amendments to the United States Constitution.

IN THE SENATE OF THE UNITED STATES

January 3, 1985

MR. HATCH (for himself, MR. THURMOND, and MR. DECONCINI) introduced the following bill, which was read twice and referred to the Committee on the Judiciary.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That this Act may be cited as the "Constitutional Convention Implementation Act of 1985."

APPLICATIONS FOR CONSTITUTIONAL CONVENTION

SEC. 2. (a) The legislature of a State, in making application to the Congress for a constitutional convention under article V of the Constitution of the United States, for the purpose of proposing one or more specific amendments, shall adopt a resolution pursuant to this Act stating, in substance, that the legislature requests the calling of a

convention for the purpose of proposing one or more specific amendments to the Constitution of the United States and stating the subject matter of the amendment or amendments to be proposed.

(b) The procedures provided by this Act are required to be used whenever application is made to the Congress, under article V of the Constitution of the United States, for the calling of any convention for the purposes of proposing one or more specific amendments to the Constitution of the United States, each applying State stating in the terms of its application the subject matter of the amendment or amendments to be proposed. This Act is not intended to apply to applications requesting a convention for any other purpose under article V of the Constitution.

APPLICATION PROCEDURE

SEC. 3. (a) The rules of procedure governing the adoption or withdrawal of a resolution pursuant to section 2 and section 5 of this Act are determinable by the State legislature, except that the assent of the Governor as to any application or withdrawal shall be unnecessary.

(b) Questions concerning compliance with the rules governing the adoption or withdrawal of a State resolution cognizable under this Act are determinable by the State legislature, except that questions concerning the fact of final approval of such resolution by no less than a majority vote of each House of such legislature shall be determinable by the Congress of the United States.

TRANSMITTAL OF APPLICATIONS

SEC. 4. (a) Within thirty days after the effective date of the resolution adopted by the legislature of a State calling for a constitutional convention, the secretary of state of the State, or, if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate and one to the Speaker of the House of Representatives.

(b) Each Copy of the application so made by any State shall contain—

(1) the title of the resolution, the exact text of the resolution signed by the presiding officer of each house of the State legislature, the date on which the legislature adopted the resolution, and a certificate of the secretary of state of

the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution; and

(2) to the extent practicable, and if desired, a list of all State applications in effect on the date of adoption whose subject matter are substantially the same as the subject matter set forth in the application.

(c) Within ten days after receipt of a copy of any such application, the President of the Senate and Speaker of the House of Representatives shall report to the House of which he is presiding officer, identifying the State making application, the subject matter of the application, and the number of States then having made application on such subject. The President of the Senate and Speaker of the House of Representatives shall jointly cause copies of such application to be sent to the presiding officer of each house of the legislature of every other State and to each Member of the Senate and House of Representatives of the Congress of the United States.

EFFECTIVE PERIOD OF APPLICATION

SEC. 5. (a) An application submitted to the Congress by a State, unless sooner withdrawn by the State legislature, shall remain effective for the lesser of the period specified in such application by the State legislature or for a period of seven calendar years after the date it is received by the Congress, except that whenever within a period of seven calendar years two-thirds or more of the several States have each submitted an application calling for a constitutional convention on the same subject matter all such applications shall remain in effect until the Congress has taken action on a concurrent resolution, pursuant to section 6 of this Act, calling for a constitutional convention: *Provided however*, that those applications which have not been before the Congress for more than twelve years on the effective date of this Act shall be effective for a period of not less than two years.

(b) A State may withdraw its application calling for a constitutional convention by adopting and transmitting to the Congress a resolution of withdrawal in conformity with the procedures specified in sections 3 and 4 of this Act, except that no such withdrawal shall be effective as to any valid application made for a constitutional convention upon any subject after the date on which two-thirds or more of the State legislatures have valid applications pending before the Congress seeking amendments on the same subject matter.

CALLING OF A CONSTITUTIONAL CONVENTION

SEC. 6. (a) It shall be the duty of the Secretary of the Senate and the Clerk of the House of Representatives to maintain a record of all applications received by the President of the Senate and Speaker of the House of Representatives from States for the calling of a constitutional convention upon each subject matter. Whenever applications made by two-thirds or more of the States with respect to the same subject matter have been received, the Secretary and the Clerk shall so report within five days, in writing to the officer to whom those applications were transmitted, and such officer, no later than the fifth day subsequent to the receipt of such report during which the House of which he is an officer is in session, shall announce its substance on the floor of such House. It shall then be the duty of such House to determine whether there are in effect valid applications made by two-thirds of the States with respect to the same subject matter. If either House of the Congress determines, upon a consideration of any such report or of a concurrent resolution agreed to by the other House of the Congress, that there are in effect valid applications made by two-thirds or more of the States for the calling of a constitutional convention upon the same subject matter, it shall be the duty of that House, within forty-five calendar days following the day on which the report of the Clerk or the Secretary was announced on the floor of that House, to agree to a concurrent resolution calling for the convening of a Federal constitutional convention upon that subject matter. Each such concurrent resolution shall (1) designate the place and time of meeting of the convention, and (2) set forth the subject matter of the amendment or amendments for the consideration of which the convention is called. A copy of each such concurrent resolution agreed to by both Houses of the Congress shall be transmitted forthwith to the Governor and to the presiding officer of each house of the legislature of each State.

(b) The convention shall be convened not later than eight months after adoption of the resolution.

DELEGATES

SEC. 7. (a) In each State two delegates shall be elected on an at-large basis and one delegate shall be elected from each congressional district in the manner provided by State law. No Senator or Representative, or person holding an office or trust or profit under the United

States, shall be elected as delegate. Any vacancy occurring in a State delegation shall be filled by appointment of the legislature of that State.

(b) The secretary of state of each State, or, if there be no such officer, the person charged by State law to perform such function, shall certify to the President of the Senate and the Speaker of the House of Representatives the name of each delegate elected or appointed by the legislature of the State pursuant to this section.

(c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same; and for any speech or debate in the convention they shall not be questioned in any other place.

CONVENING THE CONVENTION

SEC. 8. (a) The President pro tempore of the United States Senate and the Speaker of the United States House of Representatives shall jointly convene the constitutional convention. They shall administer the oath of office of the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe to an oath by which he shall be committed during the conduct of the convention to comply with the Constitution of the United States. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as the convention may adopt by vote of three-fifths of the number of delegates who have subscribed to the oath of office.

(b) There is hereby authorized to be appropriated such sums as may be necessary for the payment of the expenses of the convention, including payment to each delegate of an amount of pay equal to that for Members of Congress prorated for the term of the convention, as well as necessary travel expenses for such delegates. In the event that such sums are not appropriated in a timely manner, or are appropriated subject to additional conditions, the convention shall be authorized to apportion its costs among the States.

(c) The Administrator of General Services shall provide such facilities, and the Congress and each executive department, agency, or authority of the United States shall provide such information and assistance as the convention may require, upon written request made by the elected presiding officer of the convention.

PROCEDURES OF THE CONVENTION

SEC. 9. (a) In voting on any question before the convention, including the proposal of amendments, each delegate shall have one vote.

(b) The convention shall keep a daily verbatim record of its proceedings and publish the same. The vote of the delegates on any question shall be entered on the record.

(c) The convention shall terminate its proceedings within six months after convening unless the period is extended by concurrent resolution of the Congress of the United States upon request from the convention.

(d) Within thirty days after the termination of the proceedings of the convention, the presiding officer shall transmit to the Archivist of the United States all records of official proceedings of the convention.

PROPOSAL OF AMENDMENTS

SEC. 10. No convention called under this Act may propose any amendment or amendments of a subject matter different from that stated in the concurrent resolution calling the convention.

APPROVAL BY THE CONGRESS AND TRANSMITTAL TO THE STATES FOR RATIFICATION

SEC. 11. (a) The presiding officer of the convention shall, within thirty days after the termination of its proceedings, submit to the Congress the exact text of any amendment or amendments agreed upon by the convention.

(b) Whenever a constitutional convention called under this Act has transmitted to the Congress a proposed amendment to the Constitution, the Congress shall in as expeditious a manner as possible, but in any case within six months thereafter, adopt a concurrent resolution—

(i) directing the Administrator of General Services to transmit forthwith to each of the several States a duly certified copy thereof, and a copy of any concurrent resolution agreed to by both Houses of Congress which prescribes the mode in which such amendment shall be ratified and the time within which such amendment shall be ratified in the event that the amendment itself contains no such provision. In no case shall such a resolution prescribe a period for ratification of less than four years; or

(ii) stating that the Congress does not direct the submission of such proposed amendment to the States because such proposed amendment relates to

or includes subject matter which differs from or was not included in the subject matter named or described in the concurrent resolution of the Congress by which the convention was called.

(c) In the event that the Congress has not passed a concurrent resolution under subsection (b)(i) within the time prescribed therein, during the thirty days following any State may commence an action under section 15 of this Act seeking a declaration that the proposed amendment is consistent with the concurrent resolution by the Congress by which the convention was called and directing its submission to the States for ratification.

(d) Notwithstanding the issuance of such order, the mandate of the court shall not issue prior to the expiration of the first period of thirty days following the date on which such order is issued. Congress may during such thirty-day period, adopt a concurrent resolution prescribing the mode in which such amendment shall be ratified, and the time within which the amendment shall be ratified in the event that the amendment itself contains no such provision. In no case shall such a resolution prescribe a period for ratification of less than four years.

(e) In the event that the Congress has not adopted a concurrent resolution under subsection (d) within the time prescribed therein, the mandate for such order shall issue forthwith. The mode for ratification in such case shall be by action of the legislatures of three-fourths of the States within a period of seven years, unless the amendment itself contains a different period.

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 12. (a) Any amendment proposed by the convention and submitted to the States in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when duly ratified by three-fourths of the States in the manner and within the time specified consistent with the provisions of article V of the Constitution of the United States.

(b) The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State action ratifying any proposed amendment to the Administrator of General Services.

RESCISSION OF RATIFICATIONS

SEC. 13. (a) Any State may rescind its ratification of a proposed amendment by the same procedures by which it ratified the proposed

amendment, unless other procedures are specified by such State, except that no State may rescind when there are existing valid ratifications of such amendment by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal or may have rescinded a prior ratification thereof.

PROCLAMATION OF CONSTITUTIONAL AMENDMENTS

SEC. 14. The Administrator of General Services, when three-fourths of the several States have ratified a proposed amendment to the Constitution of the United States, shall issue a proclamation that the amendment is a part of the Constitution of the United States.

JUDICIAL REVIEW

SEC. 15. (a) Any State aggrieved by any determination or finding, or by any failure of Congress to make a determination or finding within the periods provided, under section 6 or section 11 of this Act may bring an action in the Supreme Court of the United States against the Secretary of the Senate and the Clerk of the House of Representatives or, where appropriate, the Administrator of General Services, and such other parties as may be necessary to afford the relief sought. Such an action shall be given priority on the Court's docket.

(b) Every claim arising under this Act shall be barred unless suit is filed thereon within sixty days after such claim first arises.

(c) The right to review by the Supreme Court provided under subsection (a) does not limit or restrict the right to judicial review of any other determination or decision made under this Act or such review as is otherwise provided by the Constitution or any other law in the United States.

EFFECTIVE DATE OF AMENDMENTS

Sec. 16. An amendment proposed to the Constitution of the United States shall be effective from the date specified therein or, if no date is specified, then on the date on which the last State necessary to constitute three-fourths of the States of the United States, as provided for in article V, has ratified the same.

Appendix II

THE FEDERALIST NO. 40¹ JAMES MADISON, JANUARY 18, 1788

To the People of the State of New York.

The *second* point to be examined is, whether the Convention were authorised to frame and propose this mixed Constitution.

The powers of the Convention ought in strictness to be determined, by an inspection of the commissions given to the members by their respective constituents. As all of these however had reference, either to the recommendation from the meeting at Annapolis in September, 1786, or to that from Congress in February, 1787, it will be sufficient to recur to these particular acts.

The act from Annapolis recommends the "appointment of commissioners to take into consideration, the situation of the United States, to devise *such further provisions* as shall appear to them necessary to render the Constitution of the Federal Government *adequate to the exigencies of the Union*; and to report such an act for that purpose, to the United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the Legislature of every State, will effectually provide for the same."

The recommendatory act of Congress is in the words following:

¹From *The New-York Packet*, January 18, 1788. This essay appeared on January 19 in both *The Independent Journal* and *The Daily Advertiser*. It was numbered 40 in the McLean edition and 39 in the newspapers.