Red Barn

April 23, 1979

Mr. Perry A. Roberts
Director of Governmental Affairs
Emerson Electric Company
8100 West Florissant Avenue
St. Louis, Missouri 63136

Dear Perry:

This is a concise article on the Constitutional amendment to require a balanced budget.

Sincerely,

John B. Rhinelander

JBR:kak
Enclosure

bcc: WPB (w/enclosure)

BALANCED BUDGET AMENDMENT: CONGRESS VS. STATES?

by Meredith McCoy

Up until January when California Governor Edmund G. (Jerry) Brown announced in his inaugural address his support for the campaign to launch a constitutional convention for the purpose of proposing a constitutional amendment to require balancing of the federal budget, only a few groups such as the National Taxpayers' Union were paying serious attention to and keeping tabs on the slow trickle of petitions coming from the States. The constitutional convention drive actually started about four years ago and began to pick up steam last summer in the wake of the controversy surrounding California's Proposition 13. Brown's subsequent declaration of support 6 weeks ago added new impetus to the drive and won for it national media attention.

The National Taxpayers' Union, the Washington-based lobbying group helping to coordinate the campaign, currently lists 28, and possibly 29 of the required 34 states as having approved a resolution. The group expects more to be passed within the coming weeks.

Of course, Congress will not begin to scrutinize the applications received unless the states continue to demand a convention on the budget issue, and once it does so, the campaign could suffer serious set backs because of unresolved questions surrounding the validity of some of the petitions. Even if the intent is clear, the existing applications represent a "hodge podge" of proposals, and at least 16 petitions call for a convention only in the face of congressional inaction on the subject. Whether such conditional requests remain valid is unknown, since the case of *Hawke v. Smith,* 253 U.S. 221 (1920), which held that a state may not condition its ratification upon the outcome of a binding popular referendum, is applicable to the proposing stages of the amending process only by analogy.

Although 5 states have passed resolutions since mid-January, the earlier gained momentum may have reached a peak partly due to the defeat of a resolution in Brown's own state, California, and partly due to a burgeoning congressional backlash, particularly by the leadership in both the House and the Senate. In addition to the hearings already held by Birch Bayh's subcommittee on the Constitution and those scheduled later by another Senate committee, chairman of the House Judiciary Committee, Peter W. Rodino, Jr., (D-N.J.), plans a cautious and very deliberate investigation into the legal, economic, and budgetary effects and ramifications of the various budget proposals introduced this year, particularly those which specifically emphasize a limit of federal spending.

As a result of the prodding effect of requests from the states, congressional response has tended to take two directions. While many members of Congress are unhappy with the balanced budget movement, most members understand that voters are concerned about inflation, high taxes, and government spending. But if Congress is apprehensive about the economic problems besetting the country, many members perceive as far more serious the threat of a wide-open constitutional convention. Because the thought of a "runaway" convention that would rewrite the country's fundamental laws is such a fearsome prospect, and because the political futures of some might depend upon the response to the balanced budget issue, the States' action thus far may prompt serious consideration of the alternatives available. Even the wide divergence among legal scholars as to the nature of a constitutional convention may not detract from the motivating effect of a convention call.

The problem Congress will try to resolve is how to prevent the states from getting

into the amending business by way of convention while offering them some means of assuring a curb on federal spending.

The special fears surrounding the use of the convention method have their source in the fact that the lack of historical and legal precedent gives rise to nothing but unanswered and unanswerable questions with respect to not only the procedural aspects of the convention method but also the knotty substantive issues such as the limits and sources of congressional power in the area.

PROPONENTS: ". . . eliminating the federal deficit would reduce inflation. . ."

Among the constitutional uncertainties which abound are a number of initial obstacles which would have to be overcome before Congress could call a convention. For example, it would have to determine whether the petitions as worded constitute a national consensus as to the necessity for an amendment; whether the requirement of timeliness is met; and whether an application is valid if conditionally phrased or, vetoed by the state governor, or improperly certified by state officials. The Constitution is silent on all these questions just as it is silent on the question of whether a state can withdraw its application once it is sent to Congress. The requirement of timeliness or contemporaneity is derived from the case of *Dillon v. Gloss,* 256 U.S. 368 (1921), which held that ratification under Article V must be within a reasonable time, and presumably, this standard would also apply to the proposing stage of the amending process.

Although most commentators agree that Congress is impliedly delegated such "housekeeping" functions as setting the time, place, and financing of a convention, many theorists are diametrically opposed as to the extent of Congress' power to regulate or govern the operations of a convention either through enactment of a regulatory statute, such as proposed by Senator Sam Ervin in 1973, or through the refusal of Congress to submit to the States for ratification a disfavored amendment produced by a convention. Could Congress limit the scope and powers of a convention? This is perhaps the most debated question on the subject and the one on which the opinions are often carried to the furthest extremes. For example, Charles L. Black, Jr., of Yale University Law School believes that a constitutional convention by definition is illimitable, but this is a minority opinion and not shared by Attorney General Griffin Bell. Others view Congress as the appropriate body for assuring uniformity of operation on issues of national importance, and therefore, the proper institution for resolution of some of the technical questions concerning procedure, but not as a supervisor of a convention once it is launched. A distinction is made between the power to establish and the power to interfere. Other unanswered questions include the method of selection and apportionment of delegates. Should the convention comport with the one man one vote rulings of the Supreme Court or be based on a congressional model?

Moreover, whether Congress acts by proposing its own amendment, enacts a regulatory statute, or simply ignores the critics from the state legislatures, there remains the final issue of judicial review. In *Coleman v. Miller,* 307 U.S. 433 (1939), four Justices stated in a concurring opinion that the amending process is political in its entirety and not subject to judicial guidance or control. Although expressly upheld in *Baker v. Carr,* 369 U.S. 186 (1962), this case and the political question doctrine as a whole do not constitute a particularly firm foundation for any absolutist view on the abstinence from judicial action on the subject. The Supreme Court has dipped into the area several times in the past, although it is sheer speculation as to how it would react, if at all, until after the initial determinations were made by Congress and subsequent action taken in reliance upon that legislative judgment.

If Congress decides to propose its own amendment instead, the difficulty would be in deducing what it is that the States really want. Several irate Members of Congress, including Senator Edmund Muskie of

Maine, have already threatened the States with an end to revenue sharing and the Federal Grants-in-aid as a means of cutting the budget. Proponents of a balanced budget amendment believe that eliminating the federal deficit would reduce inflation, thereby strengthening the dollar; while critics of this approach charge that deficit spending is necessary for flexible government, and that such deficits are not the source of the oil price increases, cost of hospital care increases, and food price increases.

But the advocates are unmoved by the threats of cuts in federal aid and steadfastly assert that only the injection of fiscal discipline into the Constitution will circumvent an economic catastrophe.

Some of the resolutions thus far introduced simply call for outlays not to exceed revenues except in the case of a national emergency. Others propose that government spending not exceed a fixed percentage of the gross national product. One proposal, the so-called Friedman amendment, propounded by the National Tax Limitation Committee from California, would tie the rate of spending growth to that of the gross national product, but if the rate of inflation exceeded 3%, the allowable spending increase would be cut. At the time of this writing, a final version of this proposal had not yet been introduced.

The myriad of questions on the effect of "constitutionalizing" economic and budget policy is equal to the legal morass surrounding the calling of a constitutional convention. First of all, what does and does not constitute the budget probably cannot be defined or characterized in a manner suitable to the forming of a constitutional amendment. If economists and budget experts have a hard time measuring and defining terms such as "gross national product" and "total outlays," then the politicians will be totally unable to agree on what would be encompassed by the phrase "national emergency." Is a national emergency a war, catastrophic weather conditions, mild recession, or severe economic depression?

If such an amendment were ratified, how would it be enforced? By presidential impoundment of funds? Or would there be a limited right of judicial review included in the amendment, as with the case of the Friedman proposal? Furthermore, if what the states are attempting in reality to achieve is a decrease in governmental intrusion into and regulation of our lives, a balanced budget is unlikely to achieve this effect. Notwithstanding the cry of the critics that a balanced budget amendment would "tie the hands of Congress," perhaps the greatest fear is that of the unknown. That is, many of the implications and potential effects on federal-state, congressional-executive, and national-foreign relations are hidden beneath the surface of the present political situation. The balanced budget gospel presently being preached belies the possibility that some of the hardest questions may not have even been asked.

OPPONENTS: ". . . deficit spending is necessary for flexible government. . ."

Meredith McCoy is a Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress, Washington, D.C.

AMENDING THE FEDERAL CONSTITUTION--PROCEDURES OF THE GENERAL SERVICES ADMINISTRATION AND OF THE STATE LEGISLATURES

STUART E. GLASS
Legislative Attorney
American Law Division

April 6, 1971

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AMENDING THE FEDERAL CONSTITUTION--PROCEDURES OF THE GENERAL SERVICES ADMINISTRATION AND OF THE STATE LEGISLATURES

I. Introduction

The purpose of this memorandum is to trace the procedures generally followed in the proposal, ratification, and certification of amendments to the Constitution of the United States, when ratification is specified to be by state legislatures.

Any discussion of the procedures involved in the amending process requires reference to Article V of the Constitution:

> The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as one of the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

In general, it may be said that any procedural requirements for passage and ratification of an amendment in addition to those specified in Article V are formalities, and are not strictly binding. It would therefore seem unlikely that ratification of an amendment could be attacked because of omission of any of these traditional procedural steps. Further, any procedural requirements which tend to restrict or impede the amending process are probably void. Nevertheless, procedures and

forms have evolved and are still evolving, through custom and usage, which lend themselves to expeditious ratification and certification of amendments, and which are therefore useful as suggestions which the states might follow.

The procedures, in brief, to be later amplified, are as follows:

After an amendment is adopted and enrolled by both Houses, Congress sends the original of the proposed amendment to the Administrator of General Services for publication in the United States Statutes at Large.

The Administrator of General Services, by letter of transmittal, sends a certified copy of the proposed amendment to the Governor of each state. The letter requests the Governor to have the proposal introduced in the state legislature and to have the legislature certify the action taken by it to the Administrator.

The proposal is then introduced in the state legislature, usually in the form of a joint resolution, where it goes through the usual legislative process and is eventually either ratified or rejected.

If the proposed amendment is ratified, a signed copy of the state resolution effecting ratification, along with the date of adoption by each house of the state legislature, is prepared and certified by the appropriate state certifying official, usually the Secretary of State, and sent to the Administrator of General Services. The actual transmittal is often made through the Governor, although his approval is not required.

All documents in the ratification process are retained in the U.S. Archives. When ratification documents have been received from three-fourths of the states (38 states), a certificate is prepared by the Administrator of General Services in accordance with Title 1, U.S.C. §106b certifying the ratification of the amendment. The certification is published in the Federal Register and the Statutes at Large.

For further amplification, the process may be broken down into four stages: proposal by Congress, transmittal to the states by GSA, action in the state legislatures, and certification by GSA.

II. Proposal of the amendment by Congress

By the terms of the Constitution, Art. V., the proposed amendment must be passed by two-thirds vote of both Houses of Congress. This has been held to mean two-thirds of a quorum present, as opposed to two-thirds of the members elected. [National Prohibition Cases, 253 U.S. 350 (1920)]. The proposal is in the form of a joint resolution, containing the language "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled..." [1 U.S.C. §103 (1947)].

Whenever one house passes the proposal, the Clerk of the House or the Secretary of the Senate, as the case may be, sends printed copies of the resolution, called the "engrossed" resolution, to the other house. The other house then deals with the engrossed resolution, in the form received. If the resolution passes the other house, the Clerk, or Secretary, signs it and returns it to the house of origin. When the resolution passes both houses, the printed copy, called the "enrolled" resolution, is signed by the presiding officer of

both houses. [1 U.S.C. §106 (1947)].

Since the proposed amendment does not require the endorsement of the President of the United States [Hollingsworth v. Virginia, 3 U.S. 378 (1798)], the enrolled resolution is not presented to the President for his signature [5 Hinds Precedents of the House of Representatives §7040], but is sent immediately to the Administrator of General Services.

III. Transmittal to the states by the Administrator of General Services

Upon receipt of the original enrolled joint resolution, the Office of the Federal Register, a department of General Services Administration, publishes the proposal as a "slip copy" and in the Statutes at Large. The office prepares 60 certified copies of the original--one for each state and a few extras.

The Administrator of General Services derives his authority to enter the proceedings at this point inferentially from Title 1, U.S.C. §106b, which states that "Whenever official notice is received at the General Services Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Administrator of General Services shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States." This function was transferred to GSA from the Department of State under Reorganization Plan 20 of 1950. Many of the customs and usages followed today were begun by the State Department.

Identical original transmittal letters are prepared for each state, and signed by the Administrator of General Services. The letter, a certified copy of the original enrolled joint resolution, a supply of slip copies of the resolution, and a copy of 1 U.S.C. §106b are sent by registered mail to the Governor of each state. The letter requests that the Governor submit the joint resolution to the legislature of the state, for such action as it may take, and that a certified copy of such action be sent to the Administrator of General Services, as required by the statute. [A copy of the letter transmitting the 18-year-old vote amendment, and a "slip copy" of the resolution are reproduced in the appendix to this memorandum; See A.]

IV. Action in the State Legislature

Once the Governor of each state receives the registered letter from the Administrator of General Services containing the certified copy of the enrolled amendment proposal and other materials, he presumably transmits the materials to the state legislature for whatever action the latter may take. This procedure is a formality, evolved through custom, and omission will not affect valid ratification of the amendment. The Constitution does not require the Governor to transmit the amendment to the state legislature; nor does it require the legislature to await transmittal by the Governor. [State of Ohio ex rel. Erckenbrecher v. Cox, (D.C. Ohio) 257 F.334 (1919)]. As is frequently the case, state legislatures will race to be first to ratify an amendment immediately after final passage of the proposal by Congress.

Obviously, this action precludes awaiting transmittal of the proposal by the Governor. Conversely, the Governor may not impede the ratification of an amendment by refusal to transmit the proposal to the legislature.

The Supreme Court of the United States has held in disfavor any attempts by the States to alter or impede the amending process by legislation or by provision in the State constitution. "The function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State." [Leser v. Garnett, 258 U.S. 130, 137 (1922).] For example, the Court has rejected a requirement by a state that the legislature submit proposed amendments to referendum prior to ratification. [Hawke v. Smith, 253 U.S. 221 (1920)]. After the decision in Coleman v. Miller, [307 U.S. 433(1939)], in which the Court decided that questions relating to the ratification of amendments were "political questions," not subject to judicial review, and that determinations thereon were to be made by Congress, the Congress might now also reject a state requirement of ratification by more than a simple majority in the legislature, or a requirement that ratification be by a legislature in which the majority has been elected subsequent to the introduction of the proposed amendment. Provisions of the latter type might be considered void at this time because of common practice. For example, the Constitutions of the States of Florida and Tennessee contain such prohibition on acts by the state legislature [Fla. Const., Art. 10, §1; Tenn. Const., Art. 2, §32];

however, legislatures in these states have acted immediately upon introduction of proposed amendments in the past, and the validity of such acts has gone unchallenged. Conversely, Congress could not compel a state legislature to act on the proposed amendment.

There is some question as to whether a state legislature, once having rejected an amendment, may later ratify. The prevailing view seems to be that a rejection is not final, whereas ratification probably is final. [Orfield, Amending the Federal Constitution, The University of Michigan Press, Ann Arbor (1942) p. 73.]

Ratification by the state legislature is most often by means of a joint resolution. The requirements as to what must be set forth in the ratification resolution are not enumerated either in Art. V of the Constitution or in statutory law, but may be determined from custom and practice. Arguably, two requirements seem to be legally indispensable in a valid ratification resolution. The first is that the resolution contain in full the exact language of every section of the proposed amendment, as it appears in the enrolled joint resolution proposing the amendment. This requirement is derived from the seeming impropriety of attaching conditions or reservations to the ratification. As a matter of historical fact, some states attempted to impose conditions upon the original ratification of the Constitution, but such leaders as Hamilton and Madison objected that this would be equivalent to rejection; as a result, each state accepted the Constitution with no reservations, "the obligation to adopt the Bill of Rights being wholly moral." [Orfield,

supra., p. 68.] In any event, GSA has rejected ratification resolutions containing the language of the proposed amendment in incorrect or changed form, or omitting certain sections. Precedent for such action seems to have originated when the ratification resolutions of the states of Kansas and Missouri, for the 15th Amendment, were considered void because the second section of the proposed amendment was inadvertently left out. Both states subsequently reratified the amendment. [The Office of the General Counsel of GSA has indicated a preference that the ratification resolution contain the entirety of the enrolled joint resolution, including the headings and the resolving clause, but probably only the language of the proposed amendment is legally indispensable.]

The second requirement, a derivative of the first, is that the ratification resolution contain a clear, unequivocal ratification clause. The Office of the General Counsel of GSA will not look behind the ratification resolution as submitted by the state to determine the intent of the state legislature in passing the resolution. Not only resolutions incorrectly or incompletely setting out the proposed amendment, but also those not clearly expressing intent to ratify the amendment are likely to suffer rejection by GSA. On the other hand, GSA would not reject a ratification resolution, valid on its face, solely on the grounds that the State legislature "jumped the gun" by a few hours, by passing the resolution before final passage of

the proposal by Congress, provided the language of the proposed amendment correctly appears in the ratification resolution and the ratification occurred on the same day as the adoption by Congress of the amendment. The state of Minnesota reportedly acted prematurely in ratifying the 18-year-old amendment shortly before final passage of the proposal in the United States House of Representatives. However, the date on the Minnesota resolution was the same as that on the enrolled joint resolution passed by Congress; the Office of the General Counsel of GSA would not look behind the state resolution to determine the hour of passage; therefore, the ratification was not rejected on the grounds of prematureness.

A third requirement, not indispensable, but suggested by the General Counsel of GSA, is that the resolution contain a clause directing that a certified copy of the ratification resolution be delivered to the Administrator of General Services. [Examples of ratification resolutions as passed by the states and accepted by GSA are contained in the appendix; See B.]

Besides these few requirements, the language of the ratifying resolution is strictly up to the disposition of the state legislature, which frequently embellishes ratification resolutions with additional clauses.

Ultimately, Congress has final power to impose requirements for ratification resolutions and to determine the sufficiency of a state's ratification, since the decision in Coleman v. Miller [supra]

has removed such questions from the jurisdiction of the courts, on the ground that they are political questions.

Once the state legislature passes the ratification resolution, endorsement by the Governor is not required, [Hollingsworth v. Virginia, supra.]; however, the Governor traditionally has a hand in the procedure of transmitting a certified copy of the resolution to the Administrator of General Services.

V. Certification of Ratification by the Administrator of General Services

When three-fourths of the states (presently, 38 states) validly ratify a constitutional amendment it goes into effect on the day on which the last of the requisite number of states passes its ratification resolution. [Dillon v. Gloss, 256 U.S. 328 (1921)]. However, custom and practice have maintained certain procedures whereby the Administrator of General Services certifies the amendment as having been ratified, and preserves the various relevant documents for posterity in the National Archives.

The certified copies of the state ratification resolutions, after receipt by the Administrator, are maintained by the Office of the Federal Register for record and information purposes. The certificate to be signed by the Administrator is prepared in advance, to be ready for his signature by the time the ratification resolution is received from the final state.

The signing ceremony may be attended by several persons who worked for ratification, and time is reserved to arrange a time and place for the ceremony. Since the 24th and 25th Amendments were signed in a White House ceremony, several weeks were needed for clearance and other details.

No law or custom requires the signature of the President of the United States on the certificate signed by the Administrator; conversely, there is no reason for the President not to sign, if he so desires. The signature of the President is thus a newly-evolving aspect of the ceremony.

The President affixes his signature under the language "The foregoing was signed in my presence on this ___ day of ___, 19__." This language was chosen so as to avoid the impropriety of having the President "attest" in the legal sense, to the signature of an inferior officer in his administration, or indicate his "approval" of the ratified amendment or endorse some formal, elaborate "proclamation" with respect to the amendment. The language merely indicates that the President was a spectator to the formalities of the Administrator of General Services, and recorded his presence by his signature on the certificate. [The certificate as signed after ratification of the 25th Amendment appears in the appendix; See C.]

After signature by the Administrator, the original certificate is sent to the Office of the Federal Register for publication in the Federal Register and in the Statutes at Large.

Stuart Glass
Legislative Attorney
American Law Division
June 21, 1971
Ext. 6006

APPENDIX A

Transmittal letter from GSA to Governor

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D.C. 20405

Honorable _____
Governor of _____

Dear Governor _____:

Enclosed is a certified copy of a resolution of Congress (S. J. Res. 7) entitled "Joint Resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens eighteen years of age or older," passed during the first session of the Ninety-second Congress of the United States.

It is requested that you submit this joint resolution to the Legislature of your State for such action as it may take, and that a certified copy of such action be sent to the Administrator of General Services, as required by section 106b, Title 1, United States Code, a copy of which is enclosed.

Please acknowledge receipt of this joint resolution.

Sincerely,

Enclosures - 3

APPENDIX A Slip Copy of enrolled resolution

S. J. Res. 7

Ninety-second Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Thursday, the twenty-first day of January, one thousand nine hundred and seventy-one

Joint Resolution

Proposing an amendment to the Constitution of the United States extending the right to vote to citizens eighteen years of age or older.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (*two-thirds of each House concurring therein*), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation."

CARL ALBERT
Speaker of the House of Representatives.

ALLEN J. ELLENDER
President of the Senate-pro Tempore

I certify that this Joint Resolution originated in the Senate.

FRANCIS R. VALEO
Secretary.

[Received by the Office of the Federal Register, National Archives and Records Service, General Services Administration, March 23, 1971]

(over)

LEGISLATIVE HISTORY:

HOUSE REPORT No. 92-37 accompanying H. J. Res. 223 (Comm. on the Judiciary).
SENATE REPORT No. 92-26 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 117 (1971):
Mar. 9, 10, considered and passed Senate.
Mar. 23, considered and passed House.

APPENDIX B — Ohio's ratification resolution of the 24th Amendment

(House Joint Resolution No. 2)

JOINT RESOLUTION

Providing for ratification of the proposed amendment to the Constitution of the United States, relative to the qualifications of electors.

WHEREAS, Both houses of the eighty-seventh congress of the United States of America, at the second session of such congress, by a constitutional majority of two-thirds of the members of each house thereof, made a proposition to amend the Constitution of the United States in the following words, to-wit:

"Joint Resolution

Proposing an amendment to the Constitution of the United States relating to the qualifications of electors.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several states within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reasons of failure to pay any poll tax or other tax.

"SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.";" therefore be it

Resolved, By the General Assembly of the State of Ohio, that the said proposed amendment to the Constitution of the United States be, and the same is hereby ratified; and be it further

Resolved, That the Secretary of State of the State of Ohio be, and he hereby is directed, to deliver to the Governor of this state a certified copy of this resolution, and such certified copy shall be forwarded at once by the Governor to the Administrator of General Services, United States Government, Washington, D.C., to the President of the Senate of the United States, to the Speaker of the House of Representatives of the United States, and to the Secretary of State of the United States.

ROGER CLOUD,
Speaker of the House of Representatives.

JOHN W. BROWN,
President of the Senate.

APPENDIX B

Adopted February 27, 1963.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 12th day of March, A.D. 1963.

TED W. BROWN,
Secretary of State.

File No. 8.

Texas's ratification resolution of the 25th Amendment

RESOLUTIONS

UNITED STATES CONSTITUTION—PRESIDENTIAL SUCCESSION

S. C. R. No. 39

ratifying the proposed amendment to the Constitution of the United States relating to succession to the Presidency and Vice Presidency and to cases where the President is unable to discharge the powers and duties of his office.

WHEREAS, The 89th Congress of the United States of America, at the first session begun and held at Washington, D. C., Monday, January 4, 1965, by a constitutional two-thirds vote in both Houses adopted a joint resolution proposing an amendment to the Constitution of the United States, to-wit:

"Joint Resolution

"Proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice Presidency and to cases where the President is unable to discharge the powers and duties of his office.

"RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED (TWO-THIRDS OF EACH HOUSE CONCURRING THEREIN), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the Legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE

"Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

"Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

APPENDIX B

"Section 3. Whenever the President transmits to the President Pro Tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

"Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President Pro Tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

"Thereafter, when the President transmits to the President Pro Tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as the Congress may by law provide, transmit within four days to the President Pro Tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office."; now, therefore, be it

RESOLVED, BY THE LEGISLATURE OF THE STATE OF TEXAS, THE SENATE AND THE HOUSE CONCURRING:

Section 1. That the Legislature of the State of Texas hereby ratifies and adopts this proposed amendment to the Constitution of the United States.

Sec. 2. That the Secretary of State of Texas notify the President of the United States, the President Pro Tempore of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Administrator of General Services of the United States, and each senator and representative from Texas in the Congress of the United States of this action of the Legislature by forwarding to each of them a certified copy of this Concurrent Resolution.

Adopted by the Senate on March 14, 1967; adopted by the House on April 25, 1967.

Approved April 29, 1967.

Filed with the Secretary of State, May 1, 1967.

APPENDIX C GSA certification of the 25th Amendment

ADMINISTRATOR OF GENERAL SERVICES

UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME,

GREETING:

KNOW YE, That the Congress of the United States, at the first session, eighty-ninth Congress begun at the City of Washington on Monday, the fourth day of January, in the year one thousand nine hundred and sixty-five, passed a Joint Resolution in the words and figures as follows: to wit--

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice Presidency and to cases where the President is unable to discharge the powers and duties of his office.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

APPENDIX C

"ARTICLE—

"Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

"Sec. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

"Sec. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

"Sec. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

APPENDIX C

"Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office."

APPENDIX C

And, further, that it appears from official documents on file in the General Services Administration that the Amendment to the Constitution of the United States proposed as aforesaid has been ratified by the Legislatures of the States of Alaska, Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

And, further, that the States whose Legislatures have so ratified the said proposed Amendment constitute the requisite three-fourths of the whole number of States in the United States.

NOW, Therefore, be it known that I, Lawson B. Knott, Jr., Administrator of General Services, by virtue and in pursuance of Section 106b, Title 1 of the United States Code, do hereby certify that the Amendment aforesaid has become valid, to all intents and purposes, as a part of the Constitution of the United States.

APPENDIX C

IN TESTIMONY WHEREOF,

I have hereunto set my hand

and caused the seal of the

General Services Administration

to be affixed.

DONE at the City of Washington

this 23rd day of February

in the year of our Lord one

thousand nine hundred and sixty-

seven.

Lawson B. Knott Jr.

LAWSON B. KNOTT, JR.

The foregoing was signed in my presence on this

22nd day of February, 1967.

93D CONGRESS : : : : 1ST SESSION

JANUARY 3–DECEMBER 22, 1973

United States. Congress. Senate

SENATE REPORTS.

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93D CONGRESS, 1st Session } SENATE { REPORT No. 93-293

FEDERAL CONSTITUTIONAL CONVENTION PROCEDURES ACT

JUNE 29 (legislative day JUNE 25), 1973.—Ordered to be printed

Mr. ERVIN, from the Committee on the Judiciary, submitted the following

REPORT

together with

SEPARATE VIEWS

[To accompany S. 1272]

The Committee on the Judiciary, to which was referred the bill S. 1272 to provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to provide the procedural machinery necessary to effectuate that part of article V of the Constitution of the United States which authorizes a convention called by the States to propose specific amendments to the Constitution. The bill does not purport to deal with the situation in which the States have issued a call for a convention to propose a general revision of the Constitution. This limited purpose of the bill derives from two considerations. First, American history since shortly after the adoption of the Constitution reveals no expression of a desire on the part of the American people for any general constitutional revision. It does reveal sporadic expressions by the people of the States of a desire to provide limited changes in the Constitution. Second, it is the committee's opinion that the machinery appropriate for a convention undertaking a complete rewriting of the Constitution calls for a greatly different procedure from that which would be appropriate for a convention called for the more limited purposes contemplated by this bill. The committee is of the opinion that a call from the States

for a general constitutional convention is so remote that there is no need, at this time, for providing the machinery for such a convention. It is the committee's view that a convention call for proposing specific amendments has from time to time, and especially recently, come near enough to fruition to make it appropriate for the provision of the necessary machinery in order to avoid the chaos that would result in the event that the call came and the procedures were not spelled out in advance.

The bill offered here is not intended to effectuate or preclude the proposing for submission to the States of any particular amendment that may, at the moment, be the subject of debate. Although the impetus for this legislation was initially provided by the public concern over accumulating petitions for a convention to consider an amendment regarding reapportionment, the committee has not considered the legislation in the narrow light of any single issue. The committee believes that the responsibility of Congress under the Constitution is to enact legislation which makes article V meaningful. This responsibility dictates that legislation implementing the artcle should not be formulated with the objective of making the Convention route a dead letter by placing insurmountable procedural obstacles in its way. Nor on the other hand should Congress, in the guise of implementing legislation, create procedures designed to facilitate the adoption of any particular constitutional change.

In recommending S. 1272 to give effect to article V, the committee has been deeply conscious that this is "constitutional legislation" which will have to meet the unforeseen circumstances of our country's future. Its concern has been with the long-term needs of America.

The committee urges passage of this bill now in order to avoid what might well be an unseemly and chaotic imbroglio if the question of procedure were to arise simultaneously with the presentation of a substantive issue by two-thirds of the State legislatures. Should artivle V be invoked in the absence of this legislation, it is not improbable that the country will be faced with a constitutional crisis the dimensions of which have rarely been matched in our history.

LEGISLATIVE HISTORY

This legislation was first introduced by Senator Ervin, Chairman of the Senate Committee on the Judiciary, Subcommittee on Separation of Powers, on August 17, 1967. Hearings on the bill, S. 2307 of the 90th Congress, first session, were held by the subcommittee on October 30 and 31, 1967, and subsequently published. Thereafter the bill was revised and reintroduced in the 91st Congress, first session, as S. 623; the Subcommittee reported S. 623 to the full Committee on the Judiciary on June 19, 1969, where no action was taken on the measure during the 91st Congress. The legislation was reintroduced in the 92d Congress on January 26, 1971, as S. 215. On April 27, 1971, the Subcommittee on Separation of Powers reported the measure to the full Committee on the Judiciary. The Committee on the Judiciary reported S. 215 on July 20, 1971, and the bill passed the Senate, with one amendment, by a vote of 84 to 0, on October 19, 1971. The amendment, in Section 10, subsection (a) provides that a convention may propose amendments to the Constitution by a vote of two-thirds of the total number of delegates to the convention, rather than by a majority of the total number of delegates, as specified in the reported bill. S. 215

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then was referred to the Judiciary Committee of the House of Representatives. No action was taken on the bill in the House during the 92d Congress.

In the 93rd Congress, 1st Session, on March 19, 1973, Senator Ervin introduced S. 1272, a bill identical to S. 215 as amended and passed by the Senate in the 92d Congress. On May —, 1973, the Subcommittee on Separation of Powers reported S. 1272 to the Committee on the Judiciary.

CONSTITUTION OF THE UNITED STATES

Article V

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

BACKGROUND OF ARTICLE V

Because so much confusion has been disseminated about the origins of article V, it is not inappropriate to set forth here, in capsule form, the development in the Convention of 1787 of the provisions of article V. In the words of Philip B. Kurland:

> However natural it may now seem for the Constitution to provide for its own amendment, we should remember Holmes's warning against confusing the familiar with the necessary. There are other, more recent, national constitutions that make no such provision. The nature of the political compromises that resulted from the 1787 Convention was reason enough for those present not to tolerate a ready method of undoing what they had done. Article V, like most of the important provisions of the Constitution, must be attributed more to the prevailing spirit of compromise that dominated the Convention than to dedication to principle.
>
> Although the original Virginia plan provided for a method of amendment, the first essential question resolved by the Convention was whether any method of amendment should be provided. Despite strong opposition from men such as Charles Pinckney of South Carolina, the Convention soon agreed in principle to the desirability of specifying a mode for amendment, with Mason, Randolph, and Madison of Virginia, Gouverneur Morris of Pennsylvania, Elbridge Gerry of Massachusetts, and Hamilton of New York leading the Con-

vention toward accepting the necessity of such a provision.

The Virginia plan not only specified an amendment process but provided also that the National Legislature be excluded from participation in that process. And it was on the question of the proper role of Congress that the second major conflict was fought. When first reported by the Committee of Detail, the provision called for amendment by a convention to be called—apparently as a ministerial action—by the National Legislature on application of the legislatures of two-thirds of the States. Although this plan was first approved, the issue was again raised on Gerry's motion for reconsideration, seconded by Hamilton, and supported by Madison. On reconsideration, Sherman of Connecticut sought to have the power given to the National Legislature to propose amendments to the States for their approval. Wilson of Pennsylvania suggested that the approval of two-thirds of the States should be sufficient, and when this proposal was lost he was able to secure consent to a requirement of three-fourths of the States. At this point Madison offered what was in effect a substitute for the Committee of Detail's amended recommendation. It read, as the final draft was to read, in terms of alternative methods. Two-thirds of each House of Congress or two-thirds of the State legislatures could propose amendments. The amendments were to be ratified when approved either by three-fourths of the State legislatures or by conventions in three-fourths of the States. This compromise eventually overcame the second difficulty. By providing for alternative methods of procedure, the Madison proposal also made possible the compromise between those who would, from fear of the reticence of the National Legislature to correct its own abuses, utilize the convention as the means of initiating change, and those who, like Mason, wanted the National Legislature to be the sole sponsor of amendments * * *

Article V, which resulted from these deliberations, must be attributed largely to Madison, with the obvious active participation of Hamilton * * * ("Article V and the Amending Process," by Philip B. Kurland, in 1, *An American Primer* 130–131 edited by Daniel J. Boorstin (1966)).

Although constitutional conventions, as used by the States, generally have been reserved for wholesale, as distinguished from piecemeal, constitutional revision, there is nothing in the record of the debates at the Philadelphia Convention which discloses any comparable intention on the part of the Framers. On the contrary, the latter refrained from any evaluation or differentiation of the two procedures for amendment incorporated into article V; they tended to view the convention merely as an alternative safeguard available to the States whenever Congress ceased to be responsive to popular will and persisted in a refusal to originate and submit constitutional amendments for ratification.

The history of the use of the amendments process also was stated briefly by Professor Kurland:

> Although the Constitution has been the subject of 24* different amendments, resort has never once been made to a national convention to initiate the process. And only once, in the case of the 21st amendment, was the State-convention process utilized for purposes of ratifying an amendment.
>
> For the most part, the amendments have been minor rather than major rearrangements of the constitutional plan. The first 10 amendments, the Bill of Rights, came so hard on the heels of the original document that they must be treated, for almost all purposes, as part of it. The only truly basic changes came in the Civil War amendments, the 13th, 14th, and 15th. Although intended primarily for the benefit of the Negroes, who ultimately were the beneficiaries, the amendments have proved to be the essential vehicles for the transfer of power from the States to the National Government and, within the National Government, to the Supreme Court, which has since exercised a veto power over the actions of the State legislatures, executives, and judiciaries * * * [T]here can be little doubt of the truth of Felix Frankfurter's observation that there has been throughout our history an "absence of any widespread or sustained demand for a general revision of the Constitution."
>
> On the other hand, it should be noted that some of the amendments have been attributable solely to the need to correct a Supreme Court construction of the Constitution. Thus, the 11th amendment was promulgated to overrule the case of *Chisholm* v. *Georgia*, 2 Dall. 419 (1793), in which the Court held that a sovereign immunity was not available as a defense to suit by a citizen of one State against another State. The necessity for the Civil War amendments derived in no small measure from the awful case of *Dred Scott* v. *Stanford*, 19 How. 393 (1857). The 16th amendment, authorizing the income tax, was a direct consequence of the Court's highly dubious decisions in *Pollock* v. *Farmers' Loan and Trust Co.*, 157 U.S. 429 (1895), 158 U.S. 601 (1895).
>
> The other major category of amendments includes those relating to the mechanics of the National Government itself. These are due, first, to the need to eliminate ambiguities that became apparent through experience and, second, to the tendency toward extension of the franchise, a movement notable in all democratic countries during the 19th and 20th centuries. In the first group fall the 12th amendment, made necessary by the tied vote for Jefferson and Burr in the 1800 election; the 20th amendment, a response to the increased efficiency of communications and transportation that made it possible to provide for the succession of the newly elected government at a date much closer to the election, as well as to the need to eliminate the ambiguities about filling a presidential vacancy; the 22d amendment, which adopted George Washington's

*Now 26.

notion that two terms were enough for any man to occupy the Presidency, an unwritten constitutional tradition broken by Franklin Delano Roosevelt's election to the office for four successive terms. In the second category, the amendments that enhance popular sovereignty, fall the 17th, providing for pupular election of Senators; the 19th, providing for women's suffrage; the 23d, giving a voice to citizens of the District of Columbia in the election of the President; and the 24th* eliminating the poll tax as a requirement for voting in national elections.

The only two other amendments are concrete evidence of the undersirability of promulgating a minority's notions of morality as part of the Nation's fundamental law. The 18th amendment, the prohibition amendment, was a ban on commerce in intoxicating liquors. The horrible results of the "noble experiment" that led an entire nation into a lawlessness from which it has never recovered caused the repeal of the 18th amendment by the 21st amendment.

Perhaps the primary importance of article V may be found in the *in terrorem* effect of an ultimate appeal to the people for the correction of the abuses of their government. But it is not a weapon ready for use and its cumbersome method is both its virtue and its vice. (Kurland, *op. cit. supra*, at 132–134.)

Although the convention route has never been used as a means of proposing amendments, it usefulness has been demonstrated. The campaign for direct elections of Senators was stymied for decades by the understandable reluctance of the Senate to propose an amendment which jeopardized the tenure of many of its Members. Frustrated by the Senate, the reform movement shifted to the States, and a series of petitions seeking to invoke the convention process were submitted to Congress. Rather than risk its fate at the hands of a convention, the Senate then relented and approved the proposed amendment, which was speedily ratified. The history of the 17th amendment illustrates the usefulness of having a method by which a recalcitrant Congress can be bypassed when it stands in the way of the desires of the country for constitutional change.

GENERAL CONSIDERATIONS

At the outset it should be noted that this bill could have been drawn to place such hurdles in the path of the process that it could never effectively be used. And there are proponents of such an approach. On the other hand, it could have been drawn in such a manner as to make easy this means of constitutional amendment. There are proponents of this attitude as well. This committee regards both approaches as inconsistent with the purpose and function of article V, which it is the committee's intention to effectuate in this bill. The bill is drawn in such a manner as to make possible, however improbable, the constitutional convention method of amendment, as it was clearly the

*The 25th amendment, providing for the filling of a vacancy in the offices of President or Vice President; and the 26th, providing for the "18-year-old vote", were adopted subsequent to the writing of the work quoted.

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intent of the drafters of the Constitution to provide. There is no evidence whatsoever that the Framers did not regard this means to be as desirable and as viable as that which allows for constitutional amendment at the initiation of Congress. On the other hand, it is equally clear that the Framers did not, with regard to either process, anticipate either frequent or easy use of article V to bring about changes in the Constitution. The effort of the committee, therefore, has been to seek a solution between that which would in fact preclude the States from initiating constitutional amendments and that which would afford a Pandora's box too easily opened.

AUTHORITY OF CONGRESS TO SPECIFY PROCEDURES FOR A CONSTITUTIONAL CONVENTION CALLED BY THE STATES

It is the opinion of the committee that Congress unquestionably has the authority to legislate about the process of amendment by convention, and to settle every point not actually settled by article V of the Constitution itself. This is implicit in article V. Obviously the 50 State legislatures cannot themselves legislate on this subject. The constitutional convention cannot do so for it must first be brought into being. All this is left, therefore, to Congress, which in any event, in respect to other issues not specifically settled by the Constitution, has the residual power to legislate on matters that require uniform settlement.

Congress has full authority to prescribe and determine what a valid application shall be and is further authorized to provide as it chooses for the selecton of delegates and the procedures that will govern the convention's operations. As to the first point, Congress is made the agency for calling the convention, and it is hard to see why Congress should have been brought into the matter at all unless it were expected to determine when sufficient appropriate applications had been received. As to the second point, the same argument is compelling; if Congress were not expected to provide for the selection and procedures of the convention, why were no provisions made for those matters in article V itself? It would have been perfectly simple for the article to have provided for delegation of those arrangements to the States. When we add to this argument the weight of the necessary and proper clause and the authority of *Coleman* v. *Miller* for the proposition that the amending process is in the congressional domain, the conclusion is inescapable. Congress has plenary power to provide for the selection and procedures of the convention. Nor is Congress hampered here by the provisions of article V relating to ratification. The States as States must give approval to proposed amendments, because that is what article V says. But the article says nothing at all about how the convention shall be chosen or operate; and, for the reasons given, that omission leave decision on those matters in the hands of Congress.

As Mr. Theodore Sorenson said in his testimony before the subcommittee:

> The constitutional authority of Congress to establish rules and procedures regularizing the use or application of principles set forth in the Constitution has been too frequently exercised to be doubted today. Moreover, because State legislatures in proposing amendments via the convention

route for performing a Federal function derived from the Federal Constitution, they could not be heard in court to complain about the imposition of reasonable standards and procedures by the Federal Congress, so long as their fundamental right to amend the Constitution is not thereby impaired. * * *

In short, I fully concur with Chairman Ervin that Congress has both the power and the duty to implement article V, to prevent the crisis and chaos that would otherwise result and to restrict any such convention to those topics that are specified in the applications of State legislatures. (Hearings, before the Subcommittee on Separation of Powers of the Committee on the Judiciary, United States Senate, 90th Congress, 1st Session, on S. 2307, p. 36.)

LIMITATION OF SUBJECT MATTER TO BE CONSIDERED BY CONVENTION

Probably the most vexing question presented to the committee was whether Congress could provide for the limitation of the subject matter to be treated by a convention called pursuant to article V. The committee is of the opinion that a failure to provide for such limitation would be inconsistent with the purposes of article V and, indeed, would destroy the possibility of the use of the convention method for proposing amendments.

As may readily be seen from the history of article V, it was intended to afford the States an opportunity for the introduction of specific amendments to the Constitution that was to parallel the opportunity of Congress to put forth such amendments. Thus, Madison, addressing himself to the subject in Federalist No. 43, wrote:

> That useful alterations will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover equally enables the General and the State Governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other.

And, in further explication of the amendment power and its exercise, Hamilton stated in No. 85:

> Every amendment to the Constitution, if one established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise in relation to any other point—no giving or taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather 10 States, were united in the desire of a particular amendment, that amendment must infallibly take place. There can, therefore, be no comparison between the facility

of affecting an amendment and that of establishing, in the first instance, a complete Constitution.

Apart from being inconsistent with the language and history of article V, the contention that any constitutional convention must be "wide open" is neither practicable nor desirable. If the subject matter of amendments were to be left entirely to the convention, it would be hard to expect the States to call for a convention in the absence of a general discontent with the existing constitutional system. This construction would effectively destroy the power of the States to originate the amendment of errors pointed out by experience, as Madison expected them to do. To suggest that the States could not propose specific amendments without risking a general constitutional convention is, in fact, in the committee's view, to destroy the desire and therefore the power of the States to initiate specific amendments by the convention process. Congress is not required to run such risks in the amendments that it would originate. There is little reason to believe that the States should be expected to do so.

The argument that the convention must have general power is also unsound from another point of view. If the convention were to be general, then it would seem that appropriate applications for a limited convention deriving in some States from a dissatisfaction for one reason, and in other States for entirely different reasons, should all be combined to make up the requisite two-thirds of the States needed to meet the requirements of artivle V. The committee does not believe that this is the type of consensus among the States that the Founders thought to be appropriate to calling for a convention. For if such disparate demands were sufficient, all the applications to date—and there are several hundred of them—should be added up to see whether, in what is considered an appropriate span of time, two-thirds of the States have made demands for a constitutional convention to propose amendments, no matter the cause for applications or the specifications contained in them. Indeed, under this theory a convention is long overdue. Since the committee believes that State applications should not be treated as a call for a convention unless they deal with the same subject—a conclusion supported by two centuries of practice—it is unreasonable to suggest that the convention resulting from 34 applications on a single subject is nonetheless free to roam at will in offering changes to the Constitution.

The attempted analogy sometimes made to the example of the Philadelphia Convention is not persuasive. First, the Articles of Confederation did not contain any effective means of amendment, as does the Constitution. Second, many of the delegates to that assembly were given credentials expressly limiting their authority to proposing individual amendments to the Articles. The Convention's decision to propose an entirely new charter was *ultra vires* and, in effect, "unconstitutional." Third, the Congress and the States retroactively approved the Convention's action of submitting and ratifying the new Constitution according to its own terms. Of course, a convention ostensibly acting under article V could ignore its authority, violate its oath, and propose amendments on subjects other than those specified. But the committee believes that such action would be unconstitutional; neither Congress nor the States would be under any obligation to give consideration to its proposals.

The interpretation of article V adopted by the committee is consistent with the literal language of the articles as well as its history and is more desirable and practicable than the alternative construction. The intent of article V was to place the power to initiate amendments in the Congress and in the State legislatures. The function of the convention was to provide the States with a mechanism for effectuating this initiative. The role of the States in filing their applications would be to identify the problem or problems that they believed to call for resolution by way of amendment. The role of the convention that would be called by reason of such action by the States would then be to decide whether the problem or problems called for correction by constitutional amendment and, if so, to frame the amendment itself, and propose it for ratification as provided in article V. The bill carries out this intention in keeping not only with the letter but also with the spirit of article V.

It is the conclusion of the committee, therefore, that the bill properly limits the scope of the convention to the subject or subjects that caused the States to seek constitutional amendment in the first place. The convention would have no authority to go beyond the subjects specified.

COMPUTATION OF REQUIRED NUMBER OF STATE APPLICATIONS

As has already been stated, applications of the States for a constitutional convention that relate to disparate subjects are not to be added together to make up the requisite two-thirds. Applications are not to be added together unless they are addressed to the solution of a common problem.

The committee is in agreement with a 1952 Report of the House Judiciary Committee which stated:

> . . . . there appears no valid reason to suppose that the language of the amendment requested in State applications must be identical with one another in wording. It should be enough that the suggested amendments be of the same general subject matter in order to be included in a congressional count of applications for a constitutional convention, bearing in mind, of course, that any or all of the States may at any time request a general convention should strong sentiment for such proceedings prevail. ("Problems Relating to State Applications for a Convention to Propose Constitutional Limitations on Federal Tax Rates," House Committee on the Judiciary, 82d Congress, second session, House committee print, page 12 (1952))

Obviously the question of whether any 34 petitions are sufficient to bring into operation article V is one for resolution by Congress. In making this determination, the 34 States could not be required to submit in their applications identical texts of an amendment. Nor could Congress define the subject so narrowly as to impose a requirement of textual uniformity which as a realistic matter could not be met by the States. It should be sufficient that the States identify a subject or problem, demanding action on it alone. The petitions should disclose a State's concern with respect to a subject and a desire for a convention to deal with the problem.

For example, the petitions could call for a convention to consider the propriety of an amendment to deal with problems raised by a series

of Supreme Court decisions, or actions by the Congress or the President, defining those actions in specific terms. The convention then would be confined to a specific subject, but would be free to consider the wisdom of any proposed amendment within that subject and what form it should take. The convention could not be deprived of deliberative freedom and confined to a yes-or-no vote on any specific proposal. To illustrate, States desiring a convention to deal with the issues raised by the Escobedo-Miranda decisions could phrase their petitions with reference to those cases, or in general terms of the problem of Federal control over State criminal procedure. The convention would be confined to that subject, but would nevertheless have great deliberative freedom to consider all possible solutions and to frame whatever amendment it deemed appropriate to respond to the issues identified by the States.

TIME WITHIN WHICH THE APPLICATIONS FOR CONSTITUTIONAL CONVENTION MUST BE FILED

Article V is silent on the question of how long a proposed amendment should remain available for ratification or rejection by the States. It is likewise silent on the question of how long applications for a convention should remain valid. There is general agreement that, to be meaningful, applications for a constitutional convention to propose an amendment on a single subject should be a contemporaneous recognition by the States of the need for solution of a constitutional problem. There is some difference of opinion about the time period that is an appropriate measure of this contemporaneity. In the recent past, in making provision for the ratification of amendments proposed by Congress, 7 years has been specified as the appropriate time period within which ratifications should take place. The bill provides that the same period—7 years—shall be the valid period. A shorter time, for instance 1 or 2 years, would not afford the States adequate time for debate and deliberation on so fundamental a question as a proposed constitutional amendment. On the other hand, a much longer time, say 15 years, would not satisfy the reasoned desire for consensus.

OBLIGATION OF CONGRESS TO CALL A CONVENTION ON APPLICATION OF REQUISITE NUMBER OF STATES

The committee is of the view that, when the requisite number of valid applications have been filed, it is the constitutional duty of Congress to call the convention; for, as Hamilton said in Federalist No. 85:

> In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possesesd. For my own part, I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; and on this account alone I think there is no weight in the observation just stated. I also think there is little weight in it on another account. The intrinsic difficulty of governing

> thirteen States at any rate, independent of calculations upon an ordinary degree of public spirit and integrity will, in my opinion, constantly *impose* on the national rules the *necessity* of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of doubt that the observation is futile. It is this: that the national rulers, whenever nine States concur, will have no option upon the subject. By the fifth article of the plan, the Congress will be *obliged*, "on the application of the legislatures of two-thirds of the States [which at present amounts to nine] to call a convention for proposing amendments which *shall be valid*, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof." The words of this article are preemptory. The Congress "*shall* call a convention." Nothing in this particular is left to the discretion of that body. And of consequence all the declamation about their disinclination to a change vanishes in air. (Emphasis in original.)

Hamilton reflects the record of the Convention itself. As Farrand records:

> It was also feared that Congress might refuse to act so Congress was *required* to call a convention on the application of two-thirds of the states. (Farrand, "Framing of the Constitution of the United States," (1913 ed.), p. 190.) (Emphasis in original.)

Concededly, the Congress cannot be forced by the courts or by the provisions of this bill to convene a convention when the constitutional prerequisites have been satisfied. And since the obligation to call the convention is given to Congress, neither the President nor the Supreme Court could act in its stead. However, every Member of Congress has taken an oath to support the Constitution and it is inconceivable that Congress would refuse to perform its duty. No adequate argument has been brought forth to suggest a different conclusion. In light of the function of the alternative methods of proposing amendments provided in article V—to assure to Congress and the States equal opportunity to do so—for Congress to veto State proposals would be an infringement on State power and a violation of the Constitution.

ROLE OF THE EXECUTIVE IN THE AMENDMENT PROCESS

After much deliberation, the committee concluded that, just as with amendments proposed by Congress, so too with those proposed by the States, neither the National Executive nor the State Executive should have a role in the amendment process. Inasmuch as the function of Congress is simply to operate the machinery to effectuate the actions of the States and the convention, there is no proper place for a Presidential role.

Moreover, article I, section 7, is not authority for Presidential assent to the concurrent resolution calling for a convention or for the congressional action of transmitting a proposed amendment to the States for ratification. The short but sufficient answer is to be found in Professor Corwin's annotation of article I, section 7:

The sweeping nature of this obviously ill-considered provision is emphasized by the single exception specified to its operation. Actually, it was impossible from the first to give it any such scope. Otherwise the intermediate stages of the legislative process would have been bogged down hopelessly, not to mention other highly undesirable results. In a report rendered by the Senate Judiciary Committee in 1897 it was shown that the word "necessary" in the clause had come in practice to refer "to the necessity occasioned by the requirement if other provisions of the Constitution, whereby every exercise of 'legislative powers' involves the concurrence of the two Houses"; or more briefly, "necessary" here means necessary if an "order, resolution, or vote" is to have the force of law. Such resolutions have come to be termed "joint resolutions" and stand on a level with "bills", which if "enacted" become statutes. But "votes" taken in either House preliminary to the final passage of legislation need not be submitted to the President, nor resolutions passed by the House concurrently with a view to expressing an opinion or to devising a common program of action (e.g., the concurrent resolutions by which during the fight over Reconstruction the Southern States were excluded from representation in the House and Senate, the Joint Committee on Reconstruction containing members from both Houses was created, etc.), or to directing the expenditure of money appropriated to the use of the two Houses. Within recent years the concurrent resolution has been put to a new use—the termination of powers delegated to the Chief Executive, or the disapproval of particular exercises of power by him. Most of the important legislation enacted for the prosecution of World War II provided that the powers granted to the President should come to an end upon adoption of concurrent resolutions to that effect. Similarly, measures authorizing the President to reorganize executive agencies have provided that a reorganization plan promulgated by him should be reported to Congress and should not become effective if one or both Houses adopted a resolution disapproving it. Also, it was settled as early as 1789 that resolutions of Congress proposing amendments to the Constitution need not be submitted to the President, the Bill of Rights having been referred to the States without being laid before President Washington for his approval—a procedure which the Court ratified in due course. (The Constitution of the United States of America: Analysis and Interpretation) 135–36 (S. Doc. No. 39, 88th Cong., first sess., 1964 ed.) Citations omitted.

The Constitution made the amendment process difficult. It certainly was not the intention of the original Convention to make it impossible. Nor is it possible to attribute to the Founders the concept that amendments originating in the States should have much more difficulty in passage than those proposed by Congress. That issue was fought out in the 1789 Convention and resolved in favor of two originating sources, not one.

Therefore, the committee has concluded that Presidential participation in the operation of article V is not required by the Constitution.

Indeed, a strong case is made out that the Constitution, as construed throughout our history, precludes such participation by the Executive in the amendment process.

Just as the National Executive is excluded from the amendment process, so the State Executives play no role. Article V assigns to the State legislatures the duty to apply for a constitutional convention just as it authorized the legislatures to be ratifying bodies. Supreme Court decisions have interpreted the term "legislatures" in the ratification clause to mean the representative lawmaking body of the State—not including the Governor—since ratification of a constitutional amendment is not an act of legislation, in the proper sense of the word.[1] The term must have the same meaning in the application clause and the ratification clause of article V.

The role of the Governor is not needed for the voice of the people to be heard in the amendment process. It is heard, first, through their legislative representatives in their State governments; second, by the requirement contained in this bill for the democratic election of convention delegates; and third, in the ratification either by State ratifying convention or State legislature. To require that, in addition to an affirmative vote by two-thirds of the legislatures of the States within a period of 7 years, those votes must be by a two-thirds majority of each legislature (or by whatever other majority is needed to overcome a veto) where the Governor disapproves, is indeed "to pile Ossa on Pelion and leaf-crowned Olympus on Ossa" to create an insuperable barrier to any effective use of this method of constitutional change.

RESCISSION OF APPLICATIONS AND RATIFICATIONS

The question of whether a State may rescind an application once made has not been decided by any precedent, nor is there any authority on the question. It is one for Congress to answer, Congress previously has taken the position that having once ratified an amendment, a State may not rescind.

The committee is of the view that the former ratification rule should not control this question and, further, should be changed with respect to ratifications. Since a two-thirds consensus among the States in a given period of time is necessary to call a convention, obviously the fact that a State has changed its mind is pertinent. An application is not a final action. A State is always free, of course, to reject a proposed amendment. On these grounds, it is best to provide for rescission. Of course, once the constitutional requirement of petitions from two-thirds of the States has been met and the amendment machinery is set in motion, these considerations no longer hold, and rescission is no longer possible. On the basis of the same reasoning, a State should be permitted to retract its ratification, or to ratify a proposed amendment it previously rejected. Of course, once the amendment is a part of the Constitution, this power does not exist.

RESOLUTION OF QUESTIONS ARISING UNDER THIS MEASURE

The Committee takes the position that all questions to be resolved by the Congress under the provisions of this measure shall be sub-

[1] *Hawke* v. *Smith*, No. 1, 253 U.S. 221, 229 (1920).

mitted preliminarily to the Senate and House Judiciary Committees.

Section 1 provides that the title of the act is the "Federal Constitutional Convention Procedures Act."

Section 2 provides that a State desiring to invoke article V to call a constitutional convention for the purpose of proposing an amendment to the Constitution must adopt a resolution pursuant to this act requesting such a convention and stating the nature of the amendment it wishes proposed. Pursuant to the requirements of this section, the measure is prospective and not retroactive in operation.

Section 3 provides that the procedure to be used by the State in adopting or rescinding a resolution is the same as that used for enacting State laws of general application except that the approval of the Governor is not required. Any questions arising as to the adoption or rescission of resolutions are matters for determination solely by the Congress as part of its responsibility to determine whether article V has been activated. Of course, Congress has no authority to examine the action of the legislature, except to assure itself that the State has used the procedure specified in section 3.

Section 4 provides that within 30 days of the adoption of a resolution the secretary of state or the equivalent officer of the State must send two certified copies to the Congress, one addressed to the President of the Senate and the other to the Speaker of the House. Each copy must contain the title of the resolution, the date upon which it was adopted, and the exact text of the resolution signed by the presiding officers of each house of the State legislature. Within 10 days of receipt, the President of the Senate and the Speaker of the House must report to their respective Houses the identity of the State making application, the subject of the application and the number of States which have thus far applied with respect to that subject. If Congress is in recess or is adjourned, the announcement would be made when Congress was again in session, and as soon thereafter as possible. The two officers must cause copies of the application to be sent to the presiding officers of each of the Houses of the other States, and to each Member of Congress.

Section 5 provides that applications for the convening of a convention are effective for 7 years from date of receipt by Congress. Whenever within a 7-year period there are in effect valid applications on the same subject from two-thirds of the States all the applications remain in effect until Congress has called the convention.

States may rescind applications by adopting resolutions of recision in accordance with the procedures of sections 3 and 4. However, attempted recisions would not be effective after applications have been received by Congress from the requisite two-thirds of the States. Questions concerning the recision of applications are determined solely by Congress.

Section 6 provides that the Secretary of the Senate and Clerk of the House shall maintain a record of the applications received upon each subject. Whenever applications upon the same subject have been received from two-thirds of the States, they must report in writing to the presiding officer of their respective Houses, and such officer shall report to that House the substance of the report. Periodic reports to each House on the nature and number of petitions received would be advisable, as well.

Each House then determines whether the recitation of the report is correct. Upon such determination it is the constitutional duty of each House under article V to agree to a concurrent resolution calling for the convening of a constitutional convention. The resolution shall set forth the nature of the amendment the convention is to consider and designate the time and place for the convention. Copies of the resolution are to be sent to the State Governors and to each House of each State legislature. The convention must be convened within 1 year of the adoption of the resolution.

Section 7 provides that each State shall elect two delegates-at-large and one additional delegate from each congressional district in the State, in accordance with its usual procedures for the election of Senators and Representatives. Vacancies are filled by appointment of the State Governor. The secretary of state of each State or equivalent officer shall certify to the Vice President of the United States the name of each delegate. Delegates will enjoy the same privileges as do members of Congress under article I, section 6. Delegates are to be compensated for service and travel and related expenses as provided for in the convening resolution.

Section 8 provides that the Vice President of the United States is to convene the convention and administer the oath of office. Each delegate is required to take an oath not to propose or vote in favor of any proposed amendment relating to a subject other than that named or described in the concurrent resolution. This is consistent with the position that the convention's authority is limited by the States' conferral of authority.

Names of the officers of the convention are to be transmitted to the Speaker of the House and President of the Senate. The convention may adopt rules of procedure not inconsistent with this act. Congress is authorized to appropriate funds for the expense of the convention: the Administrator of the General Services Administration is directed to provide the required facilities; and Congress, executive departments, and agencies are required to provide information required by the convention, except as otherwise provided by law.

Section 9 provides that each delegate to the convention has one vote. A daily verbatim record of proceedings must be kept, and the vote of each delegate must be recorded. The convention shall terminate within 1 year of the first meeting unless extended by resolution of Congress. Records of the convention's proceedings are to be transmitted to the Archives within 30 days of the termination of the convention.

Section 10 provides that amendments may be proposed by a vote of two-thirds of the total number of delegates to the convention. No amendments with respect to a subject different from that stated or described in the resolution calling the convention may be proposed and any questions relating to this point are to be determined solely by Congress.

Section 11 provides that within 30 days of the end of the convention the exact text of any amendments proposed by the Convention must be transmitted to Congress. Upon receipt of a valid proposed amendment, Congress must adopt a concurrent resolution directing the Speaker of the House and the President of the Senate to send the proposed amendment to the Administrator of the General Services

Administration. The resolution shall also prescribe the time and manner of ratification by the States. Congress may adopt a concurrent resolution disapproving the submission of the proposed amendment to the States, but only on the grounds (1) that it relates to or includes a subject different from that stated or described in the resolution calling the convention, or (2) that the procedures used by the convention were not in substantial conformity with the provisions of this act. This conforms to the fact that, under article V, Congress has no power to review or veto any action of the convention because of doubts or disapproval on the grounds of policy. Congress' sole function is ministerial. Of course, Congress is under no obligation to transmit an amendment if the convention has exceeded its authority by proposing amendments on subjects other than those designated, or if there were procedural irregularities at the convention of a substantial nature so as to make the actions of the convention ineffective.

If Congress has not adopted a concurrent resolution either transmitting or disapproving the transmission of the proposed amendment within 90 days of continuous session following its receipt, the President of the Senate and Speaker of the House nonetheless are obligated to transmit the proposed amendment to the Administrator of the General Services Administration. This is to assure that Congress may not impede or block the transmittal to the States for the reasons of disapproval of the wisdom of the proposal. The Administrator of the General Services Administration must submit to the States a certified copy of the proposed amendment and any concurrent resolution adopted by Congress setting forth the time and manner for ratification along with a copy of this act.

Section 12 provides that amendments submitted in accordance with this act are valid as a part of the Constitution when ratified by three-fourths of the States within the time and according to the manner, by State legislature or State convention, as Congress directs by concurrent resolution. If the transmittal is made in the absence of a concurrent resolution, ratification is by State legislature and within 7 years of transmittal. Ratification by a State legislature shall be according to its own rules for such actions, but does not require the approval of the Governor. Certified copies of State ratifications must be sent promptly to the Administrator of the General Services Administration.

Section 13 provides that States may rescind by the same procedure as that used for ratification, but no rescission may be made after valid ratification by three-fourths of the States. States may ratify after a previous rejection. Any questions concerning ratification or rejection are determined solely by Congress.

Section 14 provides that the Administrator of the General Services Administration shall issue a proclamation that the amendment is part of the Constitution when three-fourths of the States have ratified.

Section 15 provides that the effective date of a constitutional amendment shall be that specified in the amendment or, if none, on the date of the ratification by the last State necessary to constitute three-fourths of the States.

ADDITIONAL VIEWS OF MR. COOK AND MR. BAYH

We feel compelled to make clear that Sec. 13(a) of S. 1272 will apply only to amendments proposed after the date of enactment of this Act and will in no way affect the proposed Equal Rights Amendment presently before the States. Section 13(a) states:

> Any State may rescind its ratification of a proposed amendment by the same processes by which it ratified the proposed amendment, except that no State may rescind when there are existing valid ratifications of such amendment by three-fourths of the States.

Because this language does not specify that its application will be prospective only, we do so here. The Committee view is that this language would not apply retroactively to any attempted rescission of ratification of the Equal Rights Amendment.

We also feel compelled to emphasize what this report succinctly states on page 14:

> It [the question of rescission] is one for Congress to answer, Congress previously has taken the position that having once ratified an amendment, a State may not rescind.

Thus, Section 13(a) of this Act would clearly be a departure from the past policy of Congress that once a State ratifies an amendment, it may not rescind that ratification.

The reason for this departure, also stated on page 14 of this report, is simply to assure that under this Act, the rule for rescission of ratification conform to that of rescission of a State's application to amend the Constitution. No such reason exists with regard to the Equal Rights Amendment. Congress has already outlined the procedure of ratification in that amendment's preamble:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress: . . .

It is our hope that these separate views will avoid possible confusion in the States as to Congressional policy in this area. S. 1272 in no way modifies the past position of Congress that might well be found compelling in the case of the Equal Rights Amendment, i.e., a State

may not rescind its ratification of proposed Constitutional Amendments.[1]

MARLOW W. COOK.
BIRCH BAYH.

[1] For interesting commentary concerning the past position of Congress on the question of rescission of ratification of proposed amendments to the Constitution, see February 20, 1973, letter from J. William Heckman, Counsel, Subcommittee on Constitutional Amendments of the Senate Judiciary Committee to State Senator Shirley Marsh, Nebraska State Senate, Lincoln, Nebraska; the opinion of the Attorney General of Idaho, expressed in a January 24, 1973, letter to Representative Patricia L. McDermott, House of Representatives, Boise, Idaho; the opinion of the Attorney General of Tennessee, expressed in a March 13, 1973, letter to Representative Victor H. Ashe, State Representative, Nashville, Tenn.; and the opinion of the Attorney General of Kansas, expressed in a February 13, 1973, letter to Representative Ruth Luzzati, House of Representatives, Topeka, Kans.

Other sources in this area include two memoranda from the American Law Division of the Library of Congress. The first, dated September 12, 1972, is entitled "Court Decisions Concerning Whether a State Legislature May Rescind a Ratification of a Proposed Constitutional Amendment." The other, dated January 19, 1973, is entitled "Withdrawal of Ratification of Constitutional Amendments."

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Hon. HOWARD W. CANN
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