87th Congress, 1st Session

House

STATE APPLICATIONS ASKING CONGRESS TO CALL A FEDERAL CONSTITUTIONAL CONVENTION

1961

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LETTER OF TRANSMITTAL

JULY 1, 1961.

To the Members of the House Committee on the Judiciary:

Article V of the Constitution provides two methods for amending the United States Constitution. First the Congress itself may propose an amendment to the Constitution by presenting the proposal to the States for ratification. The second method is that Congress, on the application of the legislatures of two-thirds of the States, shall call a constitutional convention for the purpose of amending the Constitution. The instant study deals with the second method of amendment.

Since the Constitution's adoption 171 years ago, there have been over 200 State applications calling for conventions to amend the Constitution on a wide variety of subjects, including the direct election of Senators, Federal income taxes, prohibition of polygamy, repeal of the 18th amendment, and the general or complete revision of the Constitution itself. Despite this number of applications, the constitutional convention method of amendment has never been employed.

No doubt many of these State petitions are no longer valid. Petitions, for example, for the direct election of Senators and the repeal of the 18th amendment have been rendered null by reason of the 17th and 21st amendments, respectively, to the Constitution. In addition, the lapse of time and other reasons may well have rendered other applications invalid.

In recent years, however, Congress has been in receipt of a number of petitions from various States requesting the call of a convention to amend the Constitution limiting the power of the Federal Government over the taxation of income.

The problem of constitutional conventions is a matter of serious concern to the House Committee on the Judiciary since rule XXII and rule XI, clause 12(e) of the Rules of the House of Representatives direct, among other things, that applications for conventions be referred to this committee for appropriate action. Unfortunately, there is no statutory authority or rule of Congress to guide this committee or the Congress in classifying applications or in counting them, nor is there any statutory guidance for the calling of a convention.

The instant document was prepared by Mr. Cyril F. Brickfield and brings up to date the various tables contained in his doctoral thesis entitled, "Problems Relating to a Federal Constitutional Convention." In addition, he has included a separate table setting forth the State applications calling for a convention, which were received in the 86th Congress. There is also included a summary, based on his doctoral dissertation, which discusses the legal as well as practical problems presented by a conventional method of amendment and among other things suggests means to dispose of these problems.

Of course the views expressed in the summary, and the conclusions reached therein, are those of Mr. Brickfield and do not necessarily represent the views of any of the members of the committee. The material, however, in addition to detailing the history of the State applications, forms a permanent record of the applications which have been received over the years and, in particular, during the 86th Congress.

EMANUEL CELLER, *Chairman.*

ARTICLE V

(Amending clause)

of

United States 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 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.

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SUMMARY OF PROBLEMS RELATING TO A FEDERAL CONSTITUTIONAL CONVENTION

Introduction [1]

Article V provides two methods for amending the Constitution: (1) Congress itself may propose amendments for ratification by three-fourths of the States; or (2) on application of the legislatures of two-thirds of the States, Congress shall call a constitutional convention for proposing amendments.

Twenty-eight proposed amendments have been referred to the States for ratification under the first method,[2] but there has never been, since the adoption of our Constitution, a constitutional convention. Because of the growing number of petitions submitted to Congress during recent years for a convention under the second method, and because of the complex issues involved, the question of when and how Congress shall call a convention creates considerable problems which should be faced and solved by responsible Government officials.

Article V of the Constitution is silent as to how and when conventions are to be convened and it does not state how conventions are to be formed or what rules of procedure are to govern their acts. In seeking answers to these problems, little aid can be obtained from the Constitutional Convention of 1787 which raised the issues but left them unanswered.[3]

Further, court decisions furnish little more than signpost assistance. They have relegated the matter of constitutional amendment to that area of constitutional law known as political questions.[4] While this leads one to believe that Congress alone may determine the matter there is nonetheless little guidance as to how and for what purposes constitutional conventions shall be convened.

Article V, for example, sets no requirements concerning what a State application must contain or what standards it must meet in order to be considered as validly made. One petition from the State of Maryland, for instance, was submitted by its house of delegates only.[5] It seems that such a petition is not an application from the "legislature"—both houses—of the State

One application of a State legislature was vetoed by its Governor.[6] This raises the question of whether the Constitution requires action solely by the houses of a State legislature or whether applications must be processed in accordance with procedures for enacting State laws which usually includes action by the State's chief executive.

Another question is, When have two-thirds of the legislatures made application for the calling of a convention? Some petitions to Congress were made over 170 years ago.[7] Do these petitions remain permanently alive or do they lapse after a reasonable period of time?

Article V is also silent on the subject matter which may be con-

[1] Footnotes are set forth on p. 9, infra.

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sidered by conventions, as well as on whether States, once having made application, may later rescind their actions.

Other important questions are whether, after the requisite number of petitions have been submitted, an unwilling Congress could be required to call a convention and, if called, whether it could control a convention with regard to its procedures and the scope of its deliberations. The latter issue is further complicated with respect to the extent to which the States themselves may influence and control the actions of a convention.

These problems and others are discussed at length in the doctoral thesis.[8] This summary states the conclusions on the more important ones. Many of these questions can be resolved or otherwise rendered academic by the Congress through the adoption of statutes setting up guides and standards to govern (1) the submission of State applications, and (2) the procedures of constitutional conventions.

Gubernational consent not needed

Article V states that Congress shall call a convention on the application of the "legislatures of two-thirds of the several States" but does not indicate whether the term "legislature" means the usual channels for statutory enactments, including the assent of the Governors.

The term "legislature" in different relations does not always imply, as noted in *Smiley* v. *Holm*, the performance of the same functions.[9] The legislature, for example, was intended to act (1) as an electoral body under article I, section 3, in the choice of U.S. Senators; (2) as a ratifying body, under article V, with respect to proposed amendments; and (3) as a consenting body with regard to the acquisition of land by the Federal Government under article I, section 8. Wherever, therefore, the term "legislature" is used in the Constitution, it is necessary to consider the nature of the particular action in view.

The Supreme Court, while never directly deciding, has indicated that in matters pertaining to the amending process, the assent of State Governors is unnecessary because the State legislatures are performing a Federal function—clearly different from State lawmaking.[10] Furthermore, the Constitution speaks as of the time it was adopted,[11] and in the beginning very few of the original States granted the veto power to their Governors.[12]

As further indicia that gubernatorial action was not intended, the Constitution uses both the term "executives" and the term "legislatures" in its text. If the framers of the Constitution had intended that "legislature" include gubernatorial action, they could have used the word "State" which could include the Governor, or some other expression such as "the legislature with the approval of the executive." Both terms are in no way novel and both are used in other provisions of the Constitution.

Control of State procedures

Another question pertaining to State applications is whether Congress may regulate State procedure in proposing constitutional amendments. It is well established that the amending power is manifestly a Federal function in which the States take part in proposing conventions and ratifying amendments.[13] At the same time, however, State legislatures are not subject to absolute congressional control. While the act of petitioning or ratifying is a Federal function, the legislature performing the act is nevertheless the State legislature and a clear

distinction must be made between acts which are necessary and proper for Congress to carry out constitutional requirements, and those which seek to restrict the free will of State legislatures. Clearly Congress may not dictate to the States what they may or may not suggest in proposing a constitutional amendment or when they may propose it.

Cooley, in his book on constitutional limitations,[14] points out that when a constitution is adopted, there are in existence at the time of adoption known and settled customs, rules, and usages, which form a part of the law of the State in reference to which the constitution is evidently framed.

The Founding Fathers framed the Constitution against a background of existing colonial laws, legislatures, and customs. Historic precedents have left to legislatures the choosing of their own officers,[15] the determination of their own rules of proceedings,[16] and the election and qualification of their own members.[17] These so-called inherent rights are well documented in parliamentary rules. They were recognized by the U.S. Supreme Court in *Field* v. *Clark* [18] which held, among other things, that courts may not look behind legislative acts, once certified to as correct by their presiding officers, to determine whether their rules of procedure have been complied with.

While no doubt Congress could impose its will on the internal workings of State legislatures by refusing to recognize their actions if they do not comply with congressional mandates, it would be more prudent in the light of precedents to recognize that deliberative bodies regulate their own proceedings, and to accept State petitions when certified to, as having been validly adopted.

Control of constitutional conventions

Probably the most vital question relates to the power of Congress to bind a constitutional convention, or conversely, the power of a convention to ignore congressional acts seeking to restirct the scope of its deliberations. Assuming the right of Congress, for example, to call a convention into being, has it the further right to impose restrictions upon its actions and subject it to restraints?

Before considering the power and scope of a constitutional convention, it is important to distinguish between a revolutionary convention and a constitutional convention. A revolutionary convention is part of the apparatus of a revolution. Jameson says it consists of those bodies of men who, in times of political crisis, assume or have cast on them, provisionally, the function of government.[19] They supplant the existing government.

A constitutional convention on the other hand, as its name implies, is constitutional and, as Jameson states it, "ancillary and subservient and not hostile and paramount" to existing governments.[20]

A constitutional convention, therefore, that disregards the limits imposed upon it by its creators and seeks to exercise revolutionary powers, would cease to be a constitutional convention.

While the power of Congress to control a convention has never been determined by the courts or by the Congress, it seems that the whole scheme, history, and development of our Government, its laws, and institutions, require control. Since a convention is called by Congress at the request of the States, and since both, in the final analysis, represent the people, the ultimate source of power, a Federal constitutional convention, to act validly, would have to stay within the

designated limits of the congressional act which called it. This does not mean that the convention may not exercise its free will on the substantive matters before it; it means only that its free will shall be exercised within the framework set by the act calling it into being.

It may be asked whether the convention, once convened, may adopt extralegal means in proposing amendments? A theory being urged today especially by the Communist Party in America, is the so-called right of revolution. According to its supporters, the "right of revolution" is a concept recognized by our Constitution and protected by it.

If such a theory be valid, it could be argued, since it presupposes changing our form of government in a manner other than that provided for in article V, that a constitutional convention, once convened, could disregard congressional directions and article V and adopt extra legal means in establishing a new and revised Constitution.

This doctrine was denounced in *Dennis* v. *United States*,[21] where the petitioners, leaders in the Communist Party in the United States, were indicted for conspiring to teach and advocate the overthrow of the United States by force and violence.[22] It was argued, on their behalf, that the people as sovereign have a "historically established right to advocate revolution" and that the Constitution recognized that "right."[23]

Judge Learned Hand, in denying that such a right exists under the Constitution, succinctly held that no government could tolerate it and exist.[24] He stated that revolutions are often "right" but a "right of revolution" is a contradiction in terms, for a society which acknowledged it would have to tolerate conspiracies to overthrow it.[25] The Supreme Court, in affirming the court of appeals, observed that the Constitution can only be changed by peaceful and orderly means.[26]

Time limitations on the submission of State applications

A convention, under article V, after the constitutional application, does not automatically come into being. It must be called by Congress. The Founding Fathers intended that Congress should be required to call a convention and expressly provided in article V that Congress "shall call a convention." Among other reasons, they wanted to insure the right of the States to change the Constitution in the event Congress was unwilling to act.[27] It is doubtful, however, that there is any legal process or machinery to compel Congress to perform its duty if it is unwilling to do so. Courts, most likely, would refuse to entertain actions to accomplish this end for the same reason they have refused to issue mandamus writs on the President of the United States—the doctrine of separation of powers.[28]

However, whether Congress, assuming it is willing, should act and when, raises still further problems. Does an application remain always alive, or can it become legally ineffective because of a lapse of time or another intervening factor?

In dealing with an analogous question, the Supreme Court thought that ratification of a proposed amendment by the States ought to be reasonably related in time and that Congress could set up a "reasonable time" within which the States might act.[29] Applying this test to State petitions seeking a convention, an application once made, would be valid for a reasonable time.

This conclusion raises the further question of what constitutes a "reasonable time." Orfield feels it should not be more than a generation.[30] Jameson takes the position that proposals for amending the Constitution reflect the sentiment of the people at a particular time, and action must be taken while the sentiment is fairly supposed to exist.[31] Congress, in proposing recent amendments, set a specific time limit of 7 years.

Since this issue involves an appraisal of a great variety of political, social, and economic conditions, it would seem that any time period wherein conditions remain substantially unchanged would be an acceptable period. History has shown that 7 years was acceptable, and in all probability longer periods of time would be reasonable too, so long as the political, social, and economic conditions do not change too greatly.

State power to withdraw applications

Concerning withdrawal of State applications, the present attitude among legislators at least, indicates that such action is permissible. Twelve States in the last 12 years alone have adopted resolutions rescinding previously made applications.[32] Furthermore, many States submit applications for the sole purpose of prodding Congress into taking action on a proposed amendment pending in the Congress, without ever having any real hope that Congress would call a convention. To hold these States bound to their petitions would not be politic or realistic. It would seem proper to permit withdrawal at least at any time prior to the time when two-thirds of the States have submitted applications for a convention on the same subject matter.

Ratification or rejection

Several writers had taken the position that since article V in terms provides for only affirmative acts, once having ratified or rejected a proposed amendment, a State cannot change its action.

Congress has previously been confronted with these questions. The Legislatures of Ohio and New Jersey first ratified the 14th amendment and then passed resolutions attempting to withdraw their consent. This Congress refused to permit them to do.[33] On the other hand, New Jersey, in connection with the 13th amendment, and Georgia, North Carolina, Virginia, and South Carolina, in connection with the 14th amendment, at first rejected these amendments but subsequently ratified them. These ratifications were treated as valid in each case.[34]

The question of ratification came before the Supreme Court in *Coleman* v. *Miller*,[35] and was declared to be a political question, subject to determination not by the courts but by Congress.

Because of the highly developed means of communication today, Congress, as a practical and political matter, could permit States to withdraw their ratifications, and conversely, to ratify proposals which they had previously rejected, up until such time as three-fourths of the States had ratified the proposed amendment. The old argument that such action would create uncertainty as to the exact status of a proposal at any given time loses merit in the light of today's speedy communication systems.

While Congress refused to permit Ohio and New Jersey to withdraw their approvals of the 14th amendment, it should be pointed out that that amendment was adopted during the reconstruction days after the

Civil War and Congress' action under those peculiar political conditions can hardly be accepted as a final settlement of this far reaching question.[36]

Applications to limit Federal taxing power

In recent years Congress has received petitions requesting a constitutional convention to propose amendments to the Constitution which would limit the power of the Federal Government to tax incomes, gifts, and inheritances.[37] The amendments requested in these petitions are of four general types [38] but for purposes of discussion may be broken down into two classifications. First are those petitions seeking an amendment which would limit the maximum rate of Federal taxation of income, gifts, and inheritances to 25 percent with a proviso in a number of such petitions that the limitation may be removed by a three-fourths vote of both Houses of Congress during time of war. The second group of applications contain amendments which would limit the Federal taxing power, not by stipulating a maximum rate of levy, but by maintaining several funds into which there would be paid specified portions of all taxes collected by the Federal Government. Provision is made for the distribution of the moneys in these funds to the several States in designated amounts and proportions.

As of January 1961, Congress had received 35 petitions from 28 different States relating in some manner to amending the Constitution so as to limit the Federal taxing power.[39] The legislatures in 12 States have reversed their previous positions, however, and have taken action rescinding their applications.[40] Three States have submitted two applications each, only one of which should be counted for each State.[41]

It might be well to mention that the petitions of three other States (not included in the 35 petitions above) requested that Congress itself propose a Federal tax limitation amendment.[42] Such petitions, of course, are not binding upon Congress insofar as summoning a constitutional convention is concerned.

The application of Maryland [43] transmitted to the Congress consisted of a resolution passed by its house of delegates only and may be discounted as not emanating from a State "legislature" as contemplated by article V.

The two houses of the Legislature of the State of Texas passed identical resolutions on the subject of limiting the Federal taxing power but neither house ever concurred in the resolution of the other.[44] Since no agreement between the two legislative chambers was ever reached and since no resolution was transmitted to the Congress, it would appear that the action of the State of Texas would not be an application of a State legislature within the meaning of article V.

The Tennessee Legislature in 1957 adopted a convention petition but it was vetoed by the Governor and not transmitted to Congress.

How long all these petitions on tax limitation should remain valid has never been determined. The earliest petition on this subject was submitted by the State of Wyoming in 1939—about 22 years ago.[45] Tables 3, 4, and 5, appendix, infra, list all the petitions and indicate their present status.

Accordingly, as of January 1961, and as table 4, appendix, sets forth,[46] Congress, without discounting any applications because of the lapse of time, could well conclude that 18 States have applications validly pending for a constitutional convention limiting the Federal power of taxation. This is 16 short of the necessary 34 applications required by the Constitution for the calling of a constitutional convention.

Conclusions and recommendations

A compilation of the various State applications calling for a constitutional convention discloses that over 200 applications have been made since 1789. These applications have covered many subjects: direct election of Senators, limitation on Federal taxing power, prohibition of polygamy, general revision of the Constitution, world federal government, repeal of the 18th amendment, Presidential tenure, treatymaking, taxation of Federal and State securities, protective tariff, wages and hours, gasoline tax, tidelands problem, control of trusts, grants-in-aid, popular ratification of amendments, constitutionality of State enactments, revision of article V, and the Townsend plan.[47]

If the Constitution requires merely that two-thirds of the States submit applications, a convention has been long overdue. Even if the petitions were classified according to subject matter, a convention would be overdue since on one occasion, at least, more than the necessary two-thirds of the States of the number of States then comprising the Union had submitted applications seeking a convention on the same subject matter.[48]

However, other considerations have a controlling effect on these issues. The Supreme Court has indicated that applications ought to be reasonably related in time, so as to reflect a widespread sentiment among the States during a given period in history. It has announced that the burden of deciding what constitutes a reasonable time is on the Congress of the United States.

In addition to the question of being reasonably related in time, some argue that applications should relate only to a complete or substantial revision of the Constitution. This argument is somewhat unrealistic since it would negate amendment by the constitutional convention method. The Founding Fathers intended this method to be workable and incorporated it into the Constitution to permit the State to initiate changes if Congress became oppressive or unwilling to act. Certainly such an intention contemplated piecemeal amendment as well as general revision. This view is supported not only by the constitutional debates at the time of the Convention in 1787, but by many eminent legal authorities since then. Furthermore as a matter of historical precedent, the States have been submitting applications on specific subjects over the years with the number of applications for limited conventions far outnumbering applications for general conventions.

Even with these questions out of the way, there are many procedural questions to be dealt with, among them such matters as the effect of the Governor's veto of an application, a State's rescinding action after it has submitted its application, the physical act of forming a convention, providing for its membership, rules of order, and most important of all, outlining the scope of the convention's deliberations.

Inasmuch as the courts have indicated that many of these issues fall into the category of "political questions," not justiciable, Congress may resolve many of them by enacting implementing legislation, containing provisions setting up standards and guides to govern constitutional conventions.

These and other issues have already been discussed in the preceding pages and in the thesis. Two draft bills have been prepared which set up a framework for giving effect to the application procedure in accordance with the provisions of article V of the Constitution. The first draft bill provides a procedure for processing State applications for a constitutional convention in the Congress, and for convening conventions. The second draft amends the rules of the House so as to make provision for the processing of the applications once they have been submitted. The two pieces of legislation together with an analysis of their provisions are set out in this report beginning with pages 34 and 39.

CITATIONS

[2] 23 amendments have been certified as part of the U.S. Constitution. 5 amendments have been proposed by the Congress but have not been ratified by a sufficient number of States. They relate to (*a*) the apportionment of Representatives in the House (submitted 1789), (*b*) the compensation of Senators and Representatives (submitted to the States in 1789), (*c*) acceptance by U.S. citizens of foreign titles of nobility (submitted 1810), (*d*) a proposal relating to slavery (submitted in 1861), and (*e*) child labor (submitted in 1924) (U.S. Congress, House, 83d Cong., 1st sess., 1953, H. Doc. 211, pp. 16–17).

[3] Farrand, "The Records of the Federal Convention" (1937), II, 558. Madison posed these questions: "How was a convention to be formed? By what rule decide? What the force of its acts?"

[4] See *Coleman* v. *Miller*, 307 U.S. 433 (1939).

[5] Maryland, House Journal (1939), p. 899.

[6] Pennsylvania, session laws (1943), p. 922.

[7] In 1789 New York and Virginia sought a constitutional convention; see table 1, appendix.

[8] "Problems Relating to a Federal Constitutional Convention," by Cyril F. Brickfield, S.J.D., dissertation, George Washington University, Washington, D.C., 1957, committee print of the House Judiciary Committee, 1957.

[9] 285 U.S. 355, 365 (1932).

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

[11] Ibid., p. 227.

[12] Only 2 States had veto powers by the chief executive, Massachusetts and New York, Massachusetts Constitution (1780), ch. 2, sec. 1, Thorpe, "American Charters Constitutions and Organic Laws, III," 1899, laws of New York (1789), ch. 11.

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

[14] Cooley, Thomas M., "A Treatise on Constitutional Limitations" (8th ed.; 1927), I, 267.

[15] In re speakership, 15 Col. 520 (1891).

[16] *French* v. *Senate*, 146 Cal. 604 (1905).

[17] *People* v. *Mahaney*, 13 Mich. 481 (1865).

[18] 143 U.S. 649 (1892).

[19] Jameson, John A., "A Treatise on Constitutional Conventions" (4th ed.; 1887), p. 6.

[20] Ibid., p. 10.

[21] 183 Fed. 2d 201 (2d Cir. 1950), aff'd. 341 U.S. 494 (1951).

[22] 54 Stat. (1952), 671; 18 U.S. Code, sec. 11 et seq.

[23] Brief of petitioners before U.S. Supreme Court, p. 267, *Dennis* v. *United States*, 341 U.S. 494 (1951)

[24] 183 Fed. 2d 201 (2d Cir., 1950).

[25] Ibid., p. 213.

[26] *U.S.* v. *Dennis*, 341 U.S. 494, 501 (1951).

[27] Farrand, "The Records of the Federal Convention of 1787" (Rev. ed., 1937), I, 203.

[28] *Mississippi* v. *Johnson*, 4 Wall. 475 (U.S. 1866); see also on political, nonjusticiable questions, Willoughby, "The Constitutional Law of the United States" (1929), I, 597.

[29] *Dillon* v. *Glass*, 256 U.S. 368, 374 (1921).

[30] Orfield, Lester B., "The Amending of the Federal Constitution," Chicago, Callahgan & Co. (1942), p. 42.

[31] Jameson, John A., "A Treatise on Constitutional Conventions" (4th ed.; 1887), p. 634.

[32] Alabama, 91 Congressional Record 6631; Arkansas, 91 Congressional Record 1209; Illinois, 98 Congressional Record 742; Iowa, 91 Congressional Record 2383; Kentucky, 97 Congressional Record 10973; Massachusetts, 98 Congressional Record 4641; Louisiana, 100 Congressional Record 9420; Maine, 99 Congressional Record 4311; Nebraska, 99 Congressional Record 6283; New Jersey, 100 Congressional Record 11943; Rhode Island, 95 Congressional Record 8286; Wisconsin, 91 Congressional Record 3266.

[33] U.S. Congress, 40th Cong., 2d sess., Congressional Globe, p. 4070.

[34] 15 Stat. 709, 710 (1868).

[35] *Coleman* v. *Miller*, 307 U.S. 433, 438 (1939).

[36] See F. W. Grinnell, "Finality of State's Ratification of a Constitutional Amendment," 25 A.B.A.J. 192 (1925).

[37] See table 3, appendix.

[38] See table 6, appendix.

[39] See table 3, appendix.

[40] See tables 3 and 4, appendix.

[41] See tables 3 and 4, appendix. Since it is the number of States rather than the number of petitions which is controlling, only 1 application from each State can be considered valid.

[42] Nevada, Congressional Record Daily, June 28, 1952, p. 8599, Montana, Congressional Record Daily, Mar. 16, 1951, pp. 2612–2614 (vetoed by Governor); Massachusetts, Congressional Record Daily, Mar. 4, 1952, p. 1813.

[43] 84 Congressional Record 3320 (1939).

[44] Texas, House Journal (1943), 48 regular session, pp. 2359, 2381; Texas, Senate Journal (1943), 48 regular session, pp. 1120–1121.

[45] See tables 4 and 5, appendix.

[46] Tables 3, 4, and 5 should be read together.

[47] See table 2, item 1, appendix.

[48] Direct election of Senators, and prohibition of polygamy, table 2, appendix, items 1 and 3.

APPENDIX

TABLE 1.—*State applications to Congress to call conventions to propose constitutional amendments (1787–1957)*

State	Year	Passed House	Passed Senate	Source of reference	Amendment to be presented
Alabama	1833	(1)	(1)	23 Senate Journal 194	Against protective tariff.
Do	1943	June 24	July 1	89 Congressional Record 7523	Limitation of Federal taxing power.
Do	1957	(1)	(1)	103 Congressional Record 10863	Selection of Federal judges.
Do	1959	Feb. 18	Feb. 18	105 Congressional Record 3220	Federal preemption.
Arkansas	1901	Apr. 15	Apr. 16	45 Congressional Record 7113	Direct election of Senators.
Do	1903	Mar. 2	Feb. 27	(2)	Limited to direct election of Senators.
Do	1911	Apr. 24	Apr. 28	(2)	Do.
Do	1943	Mar. 1	Mar. 2	98 Congressional Record 742	Limitation of Federal taxing power.
Do	1959	Feb. 17	Feb. 5	105 Congressional Record 4398	Constitutionality of 14th amendment.
California	1903	Feb. 16	Feb. 24	(2)	Limited to direct election of Senators.
Do	1909	Mar. 13	Mar. 18	(2)	Prohibition of polygamy.
Do	1911	Mar. 26	...do...	47 Congressional Record 2000	Direct election of Senators.
Do	1935	June 16	June 14	79 Congressional Record 10814	Taxation of Federal and State securities.
Do	1935	...do...	...do...	79 Congressional Record 10814	Federal regulation of wages and hours of labor.
Do	1949	Mar. 24	Mar. 31	95 Congressional Record 4568	World federal government.
Do	1952	Apr. 1	...do...	98 Congressional Record 4003–4004	Distribution of proceeds of Federal taxes on gasoline.
Colorado	1901	Mar. 31	Jan. 17	35 Congressional Record 112; 45 Congressional Record 7113.	General, including direct election of Senators.
Connecticut	1915	Mar. 4	Mar. 11	(2)	Prohibition of polygamy.
Do	1949	May 13	May 3	95 Congressional Record 7689	World federal government.
Do	1958	Apr. 18	Apr. 18	104 Congressional Record 8058, 8085	State taxation power over income of nonresidents.
Delaware	1907	Jan. 23	Feb. 1	41 Congressional Record 3011, 3591	Prohibition of polygamy.
Do	1943	Apr. 9	Mar. 25	89 Congressional Record 4017	Limitation of Federal taxing power.
Florida	1943	May 19	May 26	89 Congressional Record 5690	World federal government.
Do	1945	Apr. 25	Apr. 26	Florida Journal (1945)	Do.
Do	1945	May 3	May 2	91 Congressional Record 4965	Treatymaking.
Do	1949	May 6	May 9	95 Congressional Record 7000	World federal government.
Do	1951	Apr. 27	Apr. 20	97 Congressional Record 5155	Limitation of Federal taxing power.
Do	1957	May 21	Apr. 30	103 Congressional Record 12787	Supreme Court decisions.
Georgia	1832	(1)	(1)	23 Senate Journal 65	General.
Do	1952	Jan. 21	Jan. 22	98 Congressional Record 1052	Limitation of Federal taxing power.
Do	1952	Jan. 17	Jan. 21	98 Congressional Record 1057	Treatymaking.
Do	1955	Jan. 20	Jan. 21	101 Congressional Record 1532, 2086, 2274	State control of school systems.
Do	1959	Feb. 4	Feb. 5	105 Congressional Record 2793	State control of public education.

See footnotes at end of table, p. 16.

TABLE 1.—*State applications to Congress to call conventions to propose constitutional amendments (1787–1957)*—Continued

State	Year	Passed House	Passed Senate	Source of reference	Amendment to be presented
Idaho	1901	Feb. 21	Feb. 14	35 Congressional Record 306; 45 Congressional Record 7114.	Direct election of President and Senators.
Do	1903	Mar. 3	Feb. 28	(2)	Limited to direct election of Senators.
Do	1927	Mar. 1	Feb. 18	69 Congressional Record 455	Taxation of Federal and State securities.
Do	1957	(1)	(1)	103 Congressional Record 4831	Revision of art. V.
Illinois	1861	(1)	(1)	Laws of Illinois (1861) 281	General.
Do	1903	Apr. 9	Feb. 10	45 Congressional Record 7114	General, including direct election of Senators.
Do	1907	May 9	May 10	42 Congressional Record 164, 359	Limited to direct election of Senators.
Do	1909	Apr. 1	Apr. 7	(2)	Do.
Do	1911	Feb. 24	May 11	47 Congressional Record 1298	Control of trusts.
Do	1913	Mar. 12	Feb. 27	50 Congressional Record 120–121	Prohibition of polygamy.
Do	1943	Mar. 17	Mar. 10	89 Congressional Record 2516	Limitation of Presidential tenure.
Do	1943	May 5	May 26	98 Congressional Record 742	Limitation of Federal taxing power.
Do	1953	June 3	June 25	99 Congressional Record 9864, 10052, 10623	Revision of art. V.
Indiana	1861	(1)	(1)	Senate Journal 420, 421, 36 Cong., 2d sess	General.
Do	1907	Feb. 26	Feb. 28	45 Congressional Record 7114	Direct election of Senators.
Do	1943	Mar. 2	Mar. 6	98 Congressional Record 1056	Limitation of Federal taxing power.
Do	1957	Feb. 15	Mar. 7	103 Congressional Record 6471	Revision of art. V.
Do	1957	---do---	---do---	103 Congressional Record 6472	Treatymaking.
Do	1957	Feb. 19	---do---	103 Congressional Record 6473	Reapportionment.
Do	1957	---do---	---do---	103 Congressional Record 6474	Limitation of Federal taxing power.
Do	1957	---do---	Mar. 9	103 Congressional Record 6474	Balancing the budget.
Iowa	1904	Mar. 19	Mar. 9	38 Congressional Record 4959	Limited to direct election of Senators.
Do	1906	Apr. 3	Mar. 31	(2)	Prohibition of polygamy.
Do	1907	Feb. 28	Feb. 13	42 Congressional Record 204, 895; 45 Congressional Record 7114.	General, including direct election of Senators.
Do	1909	Apr. 3	Apr. 9	44 Congressional Record 1620; 45 Congressional Record 7114.	Do.
Do	1941	Feb. 17	Apr. 10	67 Congressional Record 3172	Limitation of Federal taxing power.
Do	1943	Mar. 12	Mar. 16	89 Congressional Record 2728	Limitation of Presidential tenure.
Do	1951	Mar. 28	Mar. 28	97 Congressional Record 3939	Limitation of Federal taxing power.
Kansas	1901	(1)	(1)	(2)	General, including direct election of Senators.
Do	1905	(1)	(1)	39 Congressional Record 3466	Do.
Do	1907	Jan. 23	Feb. 5	41 Congressional Record 2925, 2929, 3005, 3072	Do.
Do	1909	(1)	(1)	45 Congressional Record 7114	Direct election of Senators.
Do	1951	Mar. 21	Feb. 5	97 Congressional Record 2936	Limitation of Federal taxing power.
Kentucky	1861	(1)	(1)	Senate Journal 189, 190, 36 Cong., 2d sess	General.
Do	1902	Jan. 15	Jan. 17	45 Congressional Record 7115	Direct election of Senators.
Do	1944	Mar. 8	Mar. 14	90 Congressional Record 4040	Limitation of Federal taxing power.
Louisiana	1907	Nov. 15	Nov. 20	42 Congressional Record 5906; 45 Congressional Record 7115.	General, including direct election of Senators.
Do	1916	May 31	May 30	(2)	Prohibition of polygamy.
Do	1920	May 26	June 23	60 Congressional Record 31	Popular ratification of amendments.
Do	1950	June 12	June 12	99 Congressional Record 320	Limitation of Federal taxing power.
Do	1960	(1)	(1)	106 Congressional Record 12310, 14315	Decisions of Supreme Court.
Do	1960	(1)	(1)	106 Congressional Record 14401	Repeal 16th amendment, prohibit Federal Government business atctivities and liquidation of facilities used in such activities, invalidating treaties in conflict with Constitution.
Maine	1907	Feb. 24	Feb. 21	(2)	Prohibition of polygamy.
Do	1911	Feb. 22	---do---	46 Congressional Record 4280, 4339	Limited to direct election of Senators.
Do	1941	Apr. 17	Apr. 15	87 Congressional Record 3370	Limitation of Federal taxing power.
Do	1949	Apr. 1	Apr. 4	95 Congressional Record 4348	World federal Government.
Do	1951	May 15	May 15	97 Congressional Record 6033	Limitation of Federal taxing power.
Maryland	1908	Mar. 30	Mar. 26	(2)	Prohibition of polygamy.
Do	1914	Apr. 4	Mar. 17	(2)	Do.
Do	1939	(1)	(1)	84 Congressional Record 3320	Limitation of Federal taxing power.
Massachusetts	1931	Mar. 13	Mar. 10	75 Congressional Record 45	Repeal of 18th amendment.
Do	1941	Apr. 29	Apr. 24	87 Congressional Record 3812	Limitation of Federal taxing power.
Michigan	1901	May 8	Apr. 9	35 Congressional Record 117, 293; 45 Congressional Record 7116.	Limited to direct election of Senators.
Do	1913	Apr. 16	Apr. 21	50 Congressional Record 2290	Prohibition of polygamy.
Do	1941	May 16	Apr. 29	87 Congressional Record 3904	Limitation of Federal taxing power.
Do	1943	Mar. 16	Mar. 12	89 Congressional Record 2944	Limitation of Presidential tenure.
Do	1949	Apr. 7	Apr. 11	95 Congressional Record 5628	Limitation of Federal taxing power.
Do	1956	Mar. 22	Apr. 4	102 Congressional Record 7240, 7241, 7304	Revision of art. V.
Minnesota	1901	Feb. 2	Jan. 31	34 Congressional Record, 2560, 2615, 2680, 2796; 45 Congressional Record 7116.	Limited to direct election of Senators.
Do	1909	Apr. 2	Mar. 24	(2)	Prohibition of polygamy.
Do	1911	Mar. 1	Jan. 27	(2)	Direct election of Senators.
Mississippi	1940	Apr. 29	Apr. 29	86 Congressional Record 6025	Limitation of Federal taxing power.
Missouri	1901	Feb. 11	Mar. 8	(2)	Direct election of Senators.
Do	1903	Mar. 3	Mar. 13	(2)	Do.
Do	1905	Feb. 17	Mar. 14	40 Congressional Record 137	Do.
Do	1907	Feb. 27	Jan. 30	45 Congressional Record 7116	General convention.
Do	1913	Mar. 13	Mar. 21	50 Congressional Record 1796	Constitutionality of State enactments.
Montana	1901	Feb. 11	Feb. 19	35 Congressional Record 208	Direct election of Senators.
Do	1903	Feb. 20	Feb. 26	39 Congressional Record	Do.
Do	1905	Jan. 20	Jan. 27	39 Congressional Record 2447	Do.
Do	1907	(1)	(1)	45 Congressional Record 7116	Do.
Do	1908	Feb. 20	Feb. 11	42 Congressional Record 225, 712	Do.
Do	1911	Jan. 30	Jan. 12	46 Congressional Record 2411	General, including direct election of Senators.
Do	1911	Feb. 14	Feb. 27	47 Congressional Record 98	Prohibition of polygamy.
Do	1947	Feb. 10	Feb. 22	(3)	Limitation of Presidential tenure.
Nebraska	1893	Apr. 7	Mar. 30	(2)	Direct election of Senators.
Do	1901	Jan. 28	Feb. 19	35 Congressional Record 1779	Do.
Do	1903	Mar. 18	Mar. 11	45 Congressional Record 7116	Do.
Do	1907	Apr. 2	Mar. 8	(2)	General, including direct election of Senators.
Do	1911	Mar. 9	Feb. 24	47 Congressional Record 99	Prohibition of polygamy.
Do	1949	May 25	----------	95 Congressional Record 7893	Limitation of Federal taxing power.

See footnotes at end of table, p. 16.

TABLE 1.—*State applications to Congress to call conventions to propose constitutional amendments (1787–1957)*—Continued

State	Year	Passed House	Passed Senate	Source of reference	Amendment to be presented
Nevada	1901	Mar. 16	Mar. 16	35 Congressional Record 112	Direct election of Senators.
Do	1901	Mar. 12	Mar. 6	(2)	Do.
Do	1903	Feb. 13	Feb. 20	37 Congressional Record 24	Do.
Do	1905	Feb. 18	Feb. 7	(2)	Do.
Do	1907	Feb. 15	Feb. 21	42 Congressional Record 163, 895	Do.
Do	1907	(1)	(1)	42 Congressional Record 163	General, including election of Senators.
Do	1925	Feb. 17	Feb. 18	67 Congressional Record 456	Repeal of 18th amendment.
Do	1960	Mar. 11	Mar. 1	106 Congressional Record 10749	Repeal 16th amendment, prohibit Federal Government's business activities and liquidation of facilities used in such activities, invalidating treaties in conflict with Constitution.
New Hampshire	1911	Mar. 9	Mar. 7	(2)	Prohibition of polygamy.
Do	1943	Apr. 13	Apr. 21	89 Congressional Record 3761	Limitation of Federal taxing power.
Do	1951	Aug. 21	Aug. 21	97 Congressional Record 10716	Do.
New Jersey	1907	Apr. 12	Mar. 6	42 Congressional Record 164; 45 Congressional Record 7117.	Direct election of Senators.
Do	1932	Jan. 25	Jan. 12	75 Congressional Record 3299	Repeal of 18th amendment.
Do	1944	Mar. 27	Feb. 25	90 Congressional Record 6141	Limitation of Federal taxing power.
Do	1949	Mar. 31	Apr. 8	95 Congressional Record 4571	World federal government.
New Mexico	1951	Feb. 28	Mar. 10	98 Congressional Record 947	Limitation of Federal taxing power.
New York	1789	(1)	(1)	House Journal (1789) 29, 30	General.
Do	1906	Mar. 2	Mar. 1	40 Congressional Record 4551	Prohibition of polygamy.
Do	1931	Feb. 16	Mar. 18	75 Congressional Record 48	Repeal of 18th amendment.
North Carolina	1901	Mar. 11	Mar. 12	(2)	Direct election of Senators.
Do	1907	Feb. 25	Mar. 11	45 Congressional Record 7117	General, including direct election of Senators.
Do	1949	Apr. 11	Apr. 18	95 Congressional Record 6587	World federal government.
North Dakota	1903	Feb. 27	Feb. 25	(2)	Direct election of Senators.
Do	1907	(1)	(1)	41 Congressional Record 4633, 4672	Prohibition of polygamy.
Ohio	1861	(1)	(1)	58 Laws of Ohio (1861) 181	General.
Do	1908	Apr. 15	Apr. 28	House joint resolution	Direct election of Senators.
Do	1911	Mar. 6	Mar. 8	46 Congressional Record 2413; 47 Congressional Record 660, 661.	Do.
Do	1911	Feb. 17	Mar. 7	47 Congressional Record 85, 114, 148, 660	Prohibition of polygamy.
Oklahoma	1908	(1)	(1)	42 Congressional Record 894; 45 Congressional Record 7117.	General, including direct election of Senators.
Do	1911	Feb. 8	Feb. 8	(2)	Prohibition of polygamy.
Do	1955	May 23	May 11	101 Congressional Record 9941	Limitation of Federal taxing power.
Oregon	1901	Jan. 28	Jan. 25	34 Congressional Record 2290, 2354	General, including direct election of Senators.
Do	1901	Feb. 23	Feb. 23	35 Congressional Record 112, 117	Direct election of Senators.
Do	1903	Feb. 18	Feb. 16	36 Congressional Record 2597; 45 Congressional Record 7118.	Do.
Do	1903	Jan. 27	Jan. 26	45 Congressional Record 7118	Do.
Do	1907	Jan. 22	do	41 Congressional Record 2928, 3599	Do.
Do	1909	do	Jan. 19	43 Congressional Record 2065, 2071, 2075, 2115, 2116	Do.

Do	1913	Jan. 16	Jan. 15	49 Congressional Record 2463	Prohibition of polygamy.
Do	1939	Jan. 24	Jan. 24	84 Congressional Record 985	Townsend plan.
Pennsylvania	1901	Feb. 6	Feb. 5	34 Congressional Record 2245, 2289, 2493; 45 Congressional Record 7118.	Direct election of Senators.
Do	1907	May 1	May 1	(2)	Prohibition of polygamy.
Do	1913	Feb. 11	June 23	(2)	Do.
Do	1943	May 5	May 8	89 Congressional Record 8220	Limitation of Federal taxing power.
Do	1943	May 7	do	do	Prohibition of conditions in grants-in-aid.
Rhode Island	1790	(1)	(1)	House Journal 148, 1st and 2d Congs	Revision of Constitution.
Do	1940	Mar. 15	Feb. 16	86 Congressional Record 3407	Limitation of Federal taxing power.
South Carolina	1915	Feb. 15	Feb. 15	53 Congressional Record 2442	Prohibition of polygamy.
South Dakota	1901	Mar. 8	Mar. 7	34 Congressional Record 2440, 2493, 2558	Direct election of Senators.
Do	1907	Jan. 19	Jan. 31	41 Congressional Record 2492, 2497, 2621; 45 Congressional Record 7118.	Do.
Do	1909	Jan. 28	Feb. 4	43 Congressional Record 2667, 2670	Do.
Do	1909	do	do	43 Congressional Record 2670	Prohibition of polygamy.
Do	1953	Mar. 5	Feb. 20	99 Congressional Record 9180, 9181	Revision of art. V.
Do	1955	Feb. 15	Feb. 15	101 Congressional Record 2840, 2861, 2862	Do.
Tennessee [3]	1901	Jan. 18	Jan. 19	35 Congressional Record 2344, 2338, 2382, 2707	Direct election of Senators.
Do	1901	Mar. 20	Mar. 18	(2)	Do.
Do	1903	Mar. 9	Feb. 12	(2)	Do.
Do	1905	Mar. 14	Mar. 8	45 Congressional Record 7119	Do.
Do	1911	Feb. 16	Feb. 15	47 Congressional Record 187	Prohibition of polygamy.
Texas	1899	May 19	Feb. 22	33 Congressional Record 219, 280	General.
Do	1901	Mar. 12	Apr. 5	45 Congressional Record 7119	Direct election of Senators.
Do	1911	Feb. 15	Feb. 15	(2)	Do.
Do	1911	Feb. 13	Mar. 10	(2)	Prohibition of polygamy.
Do	1949	Jan. 20	Jan. 19	101 Congressional Record 2840	Tidelands problem.
Do	1955	Mar. 1	Feb. 1	101 Congressional Record 2840	Revision of art. V.
Do	1957	May 23	May 14	103 Congressional Record 8265	Oil and mineral rights.
Do	1957	Nov. 21	Nov. 27	Daily Congressional Record, p. 35, Jan. 7, 1958	Preservation of States rights.
Utah	1903	Mar. 6	Mar. 10	45 Congressional Record 7119	Direct election of Senators.
Do	1951	June 15	June 15	98 Congressional Record 947	Limitation of Federal taxing power.
Vermont	1912	Dec. 13	Dec. 17	49 Congressional Record 1433, 2464	Prohibition of polygamy.
Virginia	1788	(1)	(1)	Annals of Congress 248	General.
Do	1861	(1)	(1)	Senate Journal 149	Do.
Do	1952	Feb. 5	Feb. 21	98 Congressional Record 1496	Limitation of Federal taxing power.
Do	1960	Feb. 25	Mar. 8	106 Congressional Record 5516	State control of public education.
Washington	1901	Mar. 12	Mar. 12	(2)	General.
Do	1903	Feb. 19	Mar. 7	45 Congressional Record 7119; 46 Congressional Record 3035.	General, including direct election of Senators.
Do	1909	Feb. 24	Feb. 2	44 Congressional Record 50, 127; 46 Congressional Record 651.	Prohibition of polygamy.
Do	1910	(1)	(1)	46 Congressional Record 651	Do.
West Virginia	1907	Jan. 23	Jan. 22	(2)	Do.

See footnotes at end of table, p. 16.

TABLE 1.—*State applications to Congress to call conventions to propose constitutional amendments (1787–1957)*—Continued

State	Year	Passed House	Passed Senate	Source of reference	Amendment to be presented
Wisconsin	1903	Apr. 29	Apr. 16	37 Congressional Record 276	Direct election of Senators.
Do	1907	June 28	June 20	42 Congressional Record 165	Do.
Do	1908	(1)	(1)	45 Congressional Record 7119, 7120	Do.
Do	1911	May 13	Apr. 17	47 Congressional Record 1842, 1866, 1873, 1875, 1876, 1948, 2000, 2188, 3087.	General.
Do	1913	Mar. 18	Mar. 11	50 Congressional Record 42, 117	Prohibition of polygamy.
Do	1929	May 27	Apr. 23	71 Congressional Record 2590	General.
Do	1931	Apr. 13	Apr. 17	75 Congressional Record 57	Repeal of 18th amendment.
Do	1943	May 7	June 14	89 Congressional Record 7524	Limitation of Federal taxing power.
Do	1943	June 4	June 15	89 Congressional Record 7524	Limitation of Presidential tenure.
Wyoming	1895	(1)	(1)	(2)	Direct election of Senators.
Do	1939	Feb. 10	Feb. 16	84 Congressional Record 1973	Limitation of Federal taxing power.
Do	1959	(1)	(1)	105 Congressional Record 3085	Repeal 16th amendment, prohibit Federal Government's business activities and liquidation of facilities used in such activities; invalidate treaties in conflict with Constitution.

[1] Dates of passage of application in Houses of legislature not available.

[2] Listed in the following documents but not recorded in the Congressional Record: Federal Constitutional Convention, S. Doc. 78, 71st Cong., 2d sess. (1930), William Russell Pullen, "The Application Clause of the Amending Provision of the Constitution" (an unpublished dissertation), University of North Carolina, 1951, and House Judiciary Committee staff report, "Problems Relating to State Applications for a Convention To Propose Constitutional Limitations on Federal Tax Rates" (1952).

[3] Tennessee Legislature adopted a petition for convention limiting the Federal taxing power in 1957 (H.J. Res. 39, House Journal 1253, 1255, 1499, 1505, Mar. 14, 1957; Senate Journal 1131, 1132, Mar. 18, 1957) but the measure was vetoed by the Governor (Apr. 1, 1957, House Journal 1749–1751) and has not been submitted to Congress.

RESCISSIONS.—A number of the applications listed in this tabulation have subsequently been rescinded by the States which filed them. Resolutions purporting to effect such rescissions have not been included herein.

TABLE 2.—*State applications to Congress for constitutional conventions, listed by subject matter*

1. Direct election of Senators (73 petitions submitted by 31 States):	
Arkansas	1901
Do	1903
Do	1911
California	1903
Do	1911
Colorado [1]	1901
Idaho	1901
Do	1903
Illinois [1]	1903
Do	1907
Do	1909
Indiana	1907
Iowa	1904
Do [1]	1907
Do [1]	1909
Kansas [1]	1901
Do [1]	1905
Do [1]	1907
Do [1]	1909
Kentucky	1902
Louisiana [1]	1907
Maine	1911
Michigan	1901
Minnesota	1901
Do	1911
Missouri	1901
Do	1903
Do	1905
Montana	1901
Do	1903
Do	1905
Do	1907
Do	1908
Do [1]	1911
Nebraska	1893
Do	1901
Do	1903
Nevada	1901
Do [1]	1907
New Jersey	1901
North Carolina	1901
Do	1903
Do	1905
Do [1]	1907
North Dakota	1903
Ohio	1908
Do	1911
Oklahoma [1]	1908
Oregon [1]	1901
Do	1901
Do	1903
Do	1903
Do	1907
Do	1909

1. Direct election of Senators (73 petitions submitted by 31 States)—Continued	
Pennsylvania	1901
South Dakota	1901
Do	1907
Do	1909
Tennessee	1901
Do	1901
Do	1903
Do	1905
Texas	1901
Do	1911
Utah	1903
Washington [1]	1903
Wisconsin	1903
Do	1907
Do	1908
Wyoming	1895
2. Limitation of Federal taxing power (35 petitions submitted by 28 States; see also tables 3, 4, and 5, this appendix):	
Alabama	1943
Arkansas	1943
Delaware	1943
Florida	1951
Georgia	1952
Illinois	1943
Indiana	1943
Do	1957
Iowa	1941
Do	1951
Kansas	1951
Kentucky	1944
Louisiana	1950
Do	1960
Maine	1941
Do	1951
Maryland	1939
Massachusetts	1941
Michigan	1941
Do	1949
Mississippi	1940
Nebraska	1949
Nevada	1960
New Hampshire	1943
Do	1951
New Jersey	1944
New Mexico	1951
Oklahoma	1955
Pennsylvania	1943
Rhode Island	1940
Utah	1951
Virginia	1952
Wisconsin	1943
Wyoming	1939
Do	1959

See footnotes at end of table, p. 19.

TABLE 2.—*State applications to Congress for constitutional conventions, listed by subject matter*—Continued

3. Prohibition of polygamy (30 petitions submitted by 27 States):
   - California 1909
   - Connecticut 1915
   - Delaware 1907
   - Illinois 1913
   - Iowa 1906
   - Louisiana 1916
   - Maine 1907
   - Maryland 1908
   - Do 1914
   - Michigan 1913
   - Minnesota 1909
   - Montana 1911
   - Nebraska 1911
   - New Hampshire 1911
   - New York 1906
   - North Dakota 1907
   - Ohio 1911
   - Oklahoma 1911
   - Oregon 1913
   - Pennsylvania 1907
   - Do 1913
   - South Carolina 1915
   - South Dakota 1909
   - Tennessee 1911
   - Texas 1911
   - Vermont 1912
   - Washington 1909
   - Do 1910
   - West Virginia 1907
   - Wisconsin 1913

4. General revision of Constitution (29 petitions submitted by 22 States):
   - Colorado [2] 1901
   - Georgia 1832
   - Illinois 1861
   - Do [2] 1903
   - Indiana 1861
   - Iowa [2] 1907
   - Do [2] 1909
   - Kansas [2] 1901
   - Do [2] 1905
   - Do [2] 1907
   - Kentucky 1861
   - Louisiana [2] 1907
   - Missouri 1907
   - Montana [2] 1911
   - Nebraska [2] 1907
   - Nevada [2] 1907
   - New York 1789
   - North Carolina [2] 1907
   - Ohio 1861
   - Oklahoma [2] 1908
   - Oregon [2] 1901
   - Texas 1899
   - Virginia 1788
   - Do 1861
   - Washington 1901
   - Do [2] 1903
   - Wisconsin 1911
   - Do 1929

5. World federal government (8 petitions from 6 States):
   - California 1949
   - Connecticut 1949
   - Florida 1943
   - Do 1945
   - Do 1949
   - Maine 1949
   - New Jersey 1949
   - North Carolina 1949

6. Repeal of 18th amendment (5 petitions from 5 States):
   - Massachusetts 1931
   - Nevada 1925
   - New Jersey 1932
   - New York 1931
   - Wisconsin 1931

7. Limitation of Presidential tenure (5 petitions from 5 States):
   - Illinois 1943
   - Iowa 1943
   - Michigan 1943
   - Montana 1947
   - Wisconsin 1943

8. Treaty making (6 petitions from 6 States):
   - Florida 1945
   - Georgia 1952
   - Indiana 1957
   - Louisiana 1960
   - Nevada 1960
   - Wyoming 1959

9. Taxation of Federal and State securities (2 petitions from 2 States):
   - California 1935
   - Idaho 1927

10. Against protective tariff (1 petition from 1 State):
    - Alabama 1833

11. Federal regulation of wages and hours of labor (1 petition from 1 State):
    - California 1935

12. Federal tax on gasoline (1 petition from 1 State):
    - California 1952

13. Tidelands problem (1 petition from 1 State):
    - Texas 1949

14. Control of trusts (1 petition from 1 State):
    - Illinois 1911

15. Probitions on grants-in-aid (1 petition from 1 State):
    - Pennsylvania 1943

16. Popular ratification of amendments (1 petition from 1 1 State).
    - Louisiana 1920

17. Constitutionality of State enactments (1 petition from 1 State):
    - Missouri 1913

See footnotes at end of table, p. 19.

TABLE 2.—*State applications to Congress for constitutional conventions, listed by subject matter*—Continued

18. Townsend plan (1 petition from 1 State):
    - Oregon 1939

19. Revision of art. V (7 petitions from 6 States):
    - Idaho 1957
    - Illinois 1953
    - Indiana 1957
    - Michigan 1956
    - South Dakota 1953
    - Do 1955
    - Texas 1955

20. Reapportionment (1 petition from 1 State):
    - Indiana 1957

21. Balancing the budget (1 petition from 1 State):
    - Indiana 1957

22. Distribution of proceeds of Federal taxes on gasoline (1 petition from 1 State):
    - California 1952

23. State control of schools and public education (1 petition from 3 States):
    - Georgia 1955
    - Do 1959
    - Virginia 1960

24. Selection of Federal judges (1 petition from 1 State):
    - Alabama 1957

25. Decisions of U.S. Supreme Court (2 petitions from 2 States):
    - Florida 1957
    - Louisiana 1960

26. Taxation of nonresident income (1 petition from 1 State):
    - Connecticut 1958

27. Oil and mineral rights (1 petition from 1 State):
    - Texas 1957

28. Preservation of States rights and Federal preemption (2 petition from 2 States):
    - Texas 1952
    - Alabama 1959

29. Constitutionality of 14th Amendment (1 petition from 1 State):
    - Arkansas 1959

30. Prohibiting Federal Government business activities (3 petitions from 3 States):
    - Louisiana 1960
    - Nevada 1960
    - Wyoming 1959

[1] Petition also called for general revision of Constitution.
[2] Petition also called for direct election of Senators.

TABLE 3.—*State applications to Congress seeking convention to limit Federal income taxing powers*

State	Petitions							Rescissions						
	Resolution No.	Passed			Committee referred to	Congressional Record citation	Nature†	Resolution No.	Passed			Committee referred to	Congressional Record citation	Nature
		Year	Upper chamber	Lower chamber					Year	Upper chamber	Lower chamber			
Alabama	H.J. Res. 66	1943	July 1	June 24	H. Judiciary S. Judiciary	89 Congressional Record, pp. 7523–7524.	A	H.J. Res. 10	1945	June 13	June 6	H. Judiciary	91 Congressional Record, pp. 6631–6632.	Rescinds prior action of legislature.
Arkansas	S. Con. Res. 10.	1943	Mar. 2	Mar. 1	S. Judiciary H. Judiciary	98 Congressional Record, p. 742.	C	H. Con. Res. 3	1945	Feb. 9	Jan. 16	S. Finance	91 Congressional Record, p. 1209.	Res. 3 rescinds prior resolution.
Delaware	S. Con. Res 6.	1943	Mar. 25	Apr. 9	S. Judiciary H. Judiciary	89 Congressional Record, p. 4017.	C							
Florida	S. Con. Res. 206.	1951	Apr. 20	Apr. 27	S. Judiciary H.Judiciary	97 Congressional Record, pp. 5155–5157.	A*	H. Con. Res. 596.	1953	May 4	May 4			H. Con. Res. 596—never transmitted to Congress.[2]
Georgia	H. Res. 218	1952	Jan. 22	Jan. 21	S. Judiciary H. Judiciary	98 Congressional Record, p. 1057.	A*							
Illinois	H.J. Res. 32	1943	May 26	May 5	S. Judiciary H. Judiciary	98 Congressional Record, p. 742.	A	H. J. Res. 7	1945	Mar. 28	Mar. 13	S. Judiciary H. Judiciary	98 Congressional Record. p. 742.	Expresses opposition to application and intent of prior resolution.
Indiana	H. Con. Res. 10.	1943	Mar. 6	Mar. 2	S. Judiciary H. Judiciary	98 Congressional Record, pp. 1056–1057.	C							
	H. Con. Res. 8.	1957	Mar. 7	Feb. 19	S. Judiciary	103 Congressional Record, p. 6474.	C							
Iowa	H. Con. Res. 15.	1941	Apr. 10	Feb. 17	S. Judiciary H. Judiciary	87 Congressional Record, p. 3172; 3232–3233.	C	H. Con. Res. 9.	1945	Mar. 14	Feb. 14	S. Judiciary	91 Congressional Record, pp. 2383–2384.	Rescinds H. Con. Res. 15 (1941), and opposes amending Constitution re income taxes.
	S. Con. Res. 11.	1951	Mar. 28	Mar. 28	S. Judiciary H. Judiciary	97 Congressional Record, pp. 3939–3940.	D							
Kansas	S. Con. Res. 4.	1951	Feb. 15	Mar. 21	H. Ways and Means. S. Judiciary	97 Congressional Record, p. 2936.	A							
Kentucky	H. Con. Res. 79.	1944	Mar. 14	Mar. 8	S. Judiciary	90 Congressional Record, pp. 4040–4041.	A	S. Res. 43	1946	Mar. 13	Mar. 31	S. Judiciary H. Judiciary	97 Congressional Record, p. 10973.	H. Res. 79 is repudiated, retracted, and withdrawn.
Louisiana	H. Res. 24	1950	June 12	June 12	S. Judiciary H. Judiciary	99 Congressional Record, pp. 320–321.	A	S. Con. Res. 15.	1954	June 23	June 24	S. Judiciary H. Judiciary	100 Congressional Record, p. 9420.	Rescinds H. Con. Res. 24.
Do	H. Con. Res. 22	1960			H. Judiciary	106 Congressional Record, p. 14401.	F							
Maine	J. Res.	1941	Apr. 15	Apr. 17	S. Judiciary H. Judiciary	87 Congressional Record, pp. 3370–3371.	A	J. Res.	1953	Apr. 22	Apr. 21	S. Judiciary H. Judiciary	99 Congressional Record, pp. 4311, 4435.	Rescinds J. Res. of 1941.
	J. Res.	1951	May 15	May 15	S. Judiciary H. Judiciary	97 Congressional Record, pp. 6033–6034.	D							
Maryland [1]														
Massachusetts	S. 658	1941	Apr. 24	Apr. 24	S. Judiciary H. Judiciary	87 Congressional Record, pp. 3812–3813.	A	Res.	1952	Apr. 22	Apr. 3	H. Judiciary S. Judiciary	98 Congressional Record, p. 4641.	Rescinds S. 658 (1941).
Michigan	S. Con. Res. 20.	1941	Apr. 29	May 16	S. Finance H. Judiciary	87 Congressional Record, p. 8904.	A							
	H. Con. Res. 26.	1949	Apr. 11	Apr. 7	S. Judiciary H. Judiciary	95 Congressional Record, pp. 5628–5629.	D							
Mississippi	S. Con. Res. 14.	1940	Apr. 29	Apr. 29	S. Judiciary H. Judiciary	86 Congressional Record, p. 6025.	C*							
Nebraska	Leg. Res. 32	1949	Uni-cam-eral.	May 25	S. Judiciary	95 Congressional Record, pp. 7893–7894.	D	Leg. Res. 27	1953	Uni-cam-eral.	June 2	S. Judiciary H. Judiciary	99 Congressional Record, pp. 6163, 6283.	Rescinds Leg. Res. 32.
Nevada	S.J. Res. 7	1960	Mar. 1	Mar. 11	H. Judiciary	106 Congressional Record p. 10749.	F							
New Hampshire	H. Con. Res.	1943	Apr. 21	Apr. 13	S. Finance	89 Congressional Record, pp. 3761–3762.	C							
	H. Con. Res.	1951	Aug. 21	Aug. 21	S. Judiciary H. Judiciary	97 Congressional Record, pp. 10716–10717.	D							
New Jersey	J. Res. 5	1944	Feb. 25	Mar. 27	S. Judiciary H. Judiciary	90 Congressional Record, p. 6141.	B	S.J. Res. 4	1954	May 3	June 28	S. Judiciary H. Judiciary	100 Congressional Record, p. 11943.	Rescinds J. Res. 5.
New Mexico	H.J. Res. 12	1951	Mar. 10	Feb. 28	S. Judiciary H. Judiciary	98 Congressional Record, pp. 947–948.	D							
Oklahoma	S.J. Res. 15	1955	May 11	May 23	H. Ways and Means.	101 Congressional Record, p. 8397–8398. 8776. 9941.	E							

TABLE 3.—*State applications to Congress seeking convention to limit Federal income taxing powers*—Continued

State	Petitions							Rescissions						
	Resolution No.	Passed			Committee referred to	Congressional Record citation	Nature†	Resolution No.	Passed			Committee referred to	Congressional Record citation	Nature
		Year	Upper chamber	Lower chamber					Year	Upper chamber	Lower chamber			
Pennsylvania	Con. Res. 7	1943	May 8	May 5	S. Judiciary H. Judiciary	89 Congressional Record p. 8220.	C (Vetoed 6-7-43)							
Rhode Island	S. 80	1940	Feb. 16	Mar. 15	S. Judiciary H. Judiciary	86 Congressional Record p. 3407.	A							
Tennessee [3]								H. Res. 548	1949	Apr. 27	Mar. 30	S. Judiciary	95 Congressional Record p. 8286.	Repeals prior resolution.
Utah	H.J. Res. 3	1951	June 15	June 15	S. Judiciary H. Judiciary	98 Congressional Record p. 947.	A							
Virginia	H.J. Res. 32	1952	Feb. 21	Feb. 5	S. Judiciary H. Judiciary	98 Congressional Record p. 1496.	A*							
Wisconsin	J. Res. 55, A	1943	June 14	May 7	S. Judiciary H. Judiciary	89 Congressional Record p. 7524.	A	J. Res. 11, A	1945	Feb. 20	Feb. 14	S. Judiciary H. Judiciary	91 Congressional Record p. 3266.	Rescinds prior resolution.
Wyoming	H.J. Mem. 4	1939	Feb. 16	Feb. 10	S. Judiciary H. Judiciary	84 Congressional Record pp. 1973; 2509-2510.	C*							
Do	H.J. Res. 2	1959			H. Judiciary	105 Congressional Record 3085.	F							

[1] The House of Delegates of the General Assembly of the State of Maryland adopted a resolution requesting that Congress call a constitutional convention to limit the maximum rate of taxation to 25 percent on Mar. 15, 1939. Despite the fact that only 1 chamber of the legislature had adopted the proposal, the petition was forwarded to Congress and referred to the Senate Finance Committee and the House Judiciary Committee (84 Congressional Record 3320 (1939)).

[2] Florida's rescinding resolution has not been transmitted to Congress.

[3] Tennessee Legislature adopted a petition for convention limiting the Federal taxing power in 1957 (H.J. Res. 39, House Journal 1253, 1255, 1499, 1505, Mar. 14, 1957; Senate Journal 1131, 1132, Mar. 18, 1957) but measure was vetoed by Governor (Apr. 1, 1957, House Journal 1749–1751) and has not been submitted to Congress.

†EXPLANATORY NOTES

A—Petitions make application for a constitutional convention to propose an amendment which would repeal the 16th amendment and place a maximum limitation on the rate of Federal taxation of incomes, inheritances, and gifts of 25 percent; provided, however, that in case of war the limitation may be lifted for yearly periods by a ¾ vote of each House of Congress.

A*—Petitions are identical with A petitions save only that the limitation on rates of taxation in the proposed amendment is automatically suspended during a state of war declared by Congress and may be increased for yearly periods in time of grave national emergency by a ¾ vote of each House of Congress.

B—Petitions make application for a constitutional convention to propose an amendment which would repeal the 16th amendment and place a maximum limitation on the rate of Federal taxation on incomes, gifts, and inheritances of 25 percent, except that in time of war the limitation on the taxation of incomes may be suspended for yearly periods by a vote of ¾ of each House of Congress.

C—Petitions make application for a constitutional convention to propose an amendment which would repeal the 16th amendment and place a maximum limitation of 25 percent on the rate of taxation of incomes, gifts, and inheritances.

C*—Petitions identical with C petitions except for the omission of a single section relating to the effective date of a provision and the following clause in the proposed amendment: "Nothing contained in this article shall effect the power of the United States to collect any tax on any devolution or transfer occurring prior to the taking effect of section 3, laid in accordance with the terms of any law then in effect."

D—Petitions make application for a constitutional convention to propose an amendment which would place limitations on the Federal power of taxation, except during a state of war and except when the legislatures of ¾ of the States otherwise provide, as follows:

(1) 25 percent of all taxes collected by the United States and all moneys collected in taxes in excess of 50 percent of personal income and 38 percent of corporate income shall be placed respectively in 2 separate funds after 20 percent of such sums shall have first been used to make payments on the principal of the national debt.

(2) Moneys from the 2 separate funds shall be annually divided pro rata among the several States as specified.

(3) A minimum deduction of $600 for each dependent and for each person reporting a separate income shall be allowed in levying income taxes.

The proposed amendment contained in these petitions provides also:

(1) That the number of new States which may be formed from the Territories and possessions of the United States shall be limited to 3 except upon the express consent of the legislatures of ¾ of the several States.

(2) That the dollar shall be the unit of currency.

(3) That the gold content of the dollar as of Jan. 1, 1949, shall not be decreased.

E—Petition seeks, in the alternative, a convention to shift some of the taxing power from the Federal Government to the States and their subdivisions so as to bring about less reliance upon Federal grants in aid for State and local functions.

F—Petition's seek repeal of 16th amendment 3 years after adoption of amendment and thereafter Congress may not levy taxes on personal incomes, estates, and/or gifts.

TABLE 4.—*Present status of State applications submitted requesting a constitutional convention to propose amendments limiting the Federal power of taxation* [1]

Applications for convention pending	Applications rescinded	Applications otherwise ineffective
Delaware.	Alabama.	Indiana.[2]
Florida.	Arkansas.	Michigan.[2]
Georgia.	Illinois.	New Hampshire.[2]
Indiana.[2]	Iowa.	Maryland.[3]
Iowa.	Kentucky.	Tennessee.[4]
Kansas.	Louisiana.	
Louisiana.	Maine.	
Maine.	Massachusetts.	
Michigan.[2]	Nebraska.	
Mississippi.	New Jersey.	
New Hampshire.[2]	Rhode Island.	
New Mexico.	Wisconsin.	
Nevada.		
Oklahoma.		
Pennsylvania.		
Utah.		
Virginia.		
Wyoming.		

[1] Submitted since 1939.
[2] State submitted 2 applications only 1 of which should be considered as validly pending.
[3] Adopted by only 1 house of the State legislature.
[4] Measure not submitted to Congress and vetoed by Governor.

TABLE 5.—*Chronological sequence of the actions of the State legislatures relating to limiting the taxing powers of the Federal Government*

Year	Legislatures passing resolutions	Legislatures rescinding resolutions	Year	Legislatures passing resolutions	Legislatures rescinding resolutions
1939	Wyoming.	None.	1946	None.	Kentucky.
1940	Mississippi.	Do.	1949	Michigan.	Rhode Island.
	Rhode Island.			Nebraska.	
1941	Iowa.	Do.	1950	Louisiana.	None.
	Maine.		1951	Florida.	Do.
	Massachusetts.			Iowa.	
	Michigan.			Kansas.	
1943	Alabama.	Do.		Maine.	
	Arkansas.			New Hampshire.	
	Delaware.			New Mexico.	
	Illinois.			Utah.	
	Indiana.		1952	Georgia.	Massachusetts.
	New Hampshire.			Virginia.	
	Pennsylvania.		1953	None.	Maine.
	Wisconsin.				Nebraska.
1944	Kentucky.	Do.	1954	None.	Louisiana.
	New Jersey.				New Jersey.
1945	None.	Alabama.	1955	Oklahoma.	None.
		Arkansas.	1957	Indiana.	Do.
		Illinois.	1959	Wyoming.	Do.
		Iowa.	1960	Louisiana.	Do.
		Wisconsin.		Nevada.	

TABLE 6†

TYPES OF AMENDMENTS CONTAINED IN APPLICATIONS SUBMITTED BY THE SEVERAL STATES RELATING TO AMENDING THE CONSTITUTION SO AS TO LIMIT THE FEDERAL POWER OF TAXATION

TYPE A

SECTION 1. The sixteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration: *Provided*, That in no case shall the maximum rate of tax exceed 25 per centum.

SECTION 3. The maximum rate of any tax, duty, or excise which Congress may lay and collect with respect to the devolution or transfer of property, or any interest therein, upon or in contemplation of or intended to take effect in possession or enjoyment at or after death, or by way of gift, shall in no case exceed 25 per centum.

SECTION 4. The limitations upon the rates of said taxes contained in sections 2 and 3 shall, however, be subject to the qualification that in the event of a war in which the United States is engaged creating a grave national emergency requiring such action to avoid national disaster, the Congress by a vote of three-fourths of each House may for a period not exceeding 1 year increase beyond the limits above prescribed the maximum rate of any such tax upon income subsequently accruing or received or with respect to subsequent devolutions or transfers of property, with like power, while the United States is actively engaged in such war, to repeat such action as often as such emergency may require.

SECTION 5. Sections 1 and 2 shall take effect at midnight on the 31st day of December following the ratification of this article. Nothing contained in this article shall affect the power of the United States after said date to collect any tax on incomes for any period ending on or prior to said 31st day of December laid in accordance with the terms of any law then in effect.

SECTION 6. Section 3 shall take effect at midnight on the last day of the sixth month following the ratification of this article. Nothing contained in this article shall affect the power of the United States to collect any tax on any devolution or transfer occurring prior to the taking effect of section 3, laid in accordance with the terms of any law then in effect.

(Contained in resolutions of the States of Alabama, Illinois, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Rhode Island, Utah, Wisconsin.)

TYPE A*

Same as type A, differing only in that the limitation on taxation is automatically suspended during a war declared by Congress, and Congress, during a period of national emergency, may likewise suspend the limitation for yearly periods by a vote to three-months of each House.

(Contained in resolutions of the States of Florida, Georgia, and Virginia.)

TYPE B

SECTION 1. The sixteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. The maximum aggregate rate of all taxes, duties, and excises which the Congress may lay or collect on, with respect to, or measured by income, however, shall not exceed 25 per centum. In the event that the United States shall be engaged in a war which creates a national emergency so grave as to necessitate such action to avoid national disaster, the Congress by a vote of three-fourths of each House, may while the United States is so engaged, suspend, for periods not exceeding 1 year each, such limitation with respect to income subsequently accruing or received.

SECTION 3. The maximum aggregate rate of all taxes, duties, and excises which the Congress may lay or collect with respect to the devolution or transfer of property, or any interest therein, upon or in contemplation of or intended to take

†Table 6, as revised in this thesis, is from table set out on pp. 24-27 of House Judiciary Committee staff report: "Problems Relating to State Applications for a Convention To Propose Constitutional Limitations on Federal Tax Rates" (1952).

effect in possession or enjoyment at or after death, or by way of gift, shall not exceed 25 per centum.

SECTION 4. Sections 1 and 2 shall take effect at midnight on the 31st day of December following the ratification of the article. Nothing contained in the article shall affect the power of the United States after said date to collect any tax on, with respect to, or measured by, income for any period ending on or prior to said 31st day of December laid in accordance with the terms of any law then in effect.

SECTION 5. Section 3 shall take effect at midnight on the last day of the sixth month following the ratification of this article. Nothing contained in this article shall affect the power of the United States after said date to collect any tax with respect to any devolution or transfer occurring prior to the taking effect of section 3, laid in accordance with the terms of any law then in effect.

(Contained in resolution of the State of New Jersey.)

TYPE C

SECTION 1. The sixteenth amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The Congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration; *Provided*, That in no case shall the maximum rate of tax exceed 25 per centum.

SECTION 3. The maximum rate of any tax, duty, or excise which Congress may lay and collect with respect to the devolution or transfer of property, or any interest therein, upon or in contemplation of death or intended to take effect in possession or enjoyment at or after death, or by way of gift, shall in no case exceed 25 per centum.

SECTION 4. Sections 1 and 2 shall take effect at midnight on the 31st day of December, following the ratification of this article. Nothing contained in this article shall affect the power of the United States after said date to collect any tax on any devolution or transfer occurring prior to the taking effect of section 3, laid in accordance with the terms of any law then in effect.

SECTION 5. Section 3 shall take effect at midnight on the last day of the sixth month following the ratification of this article. Nothing contained in this article shall affect the power of the United States to collect any tax on any devolution or transfer occurring prior to the taking effect of section 3 laid in accordance with the terms of any law then in effect.

(Contained in resolutions of the States of Arkansas, Delaware, Indiana, Iowa, New Hampshire, and Pennsylvania.)

TYPE C*

Identical with type C, except that section 5 is omitted and section 4 does not contain the sentence: "Nothing contained in this article shall affect the power of the United States to collect any tax on any devolution or transfer occurring prior to the taking effect of section 3, laid in accordance with the terms of any law then in effect."

(Contained in resolutions of the States of Mississippi and Wyoming.)

TYPE D

SECTION 1. The power to levy taxes and appropriate the revenues therefrom heretofore granted to the Congress by the States in the several articles of this constitution is hereby limited.

SECTION 2. This article shall be in effect except during a state of war, hereafter declared, when it shall be suspended. The suspension thereof shall end upon the termination of the war but not later than 3 months after the cessation of hostilities, whichever shall be earlier. The cessation of hostilities may be declared by proclamation of the President or by concurrent resolution of the Congress or by concurrent action of the legislatures of 32 States.

SECTION 3. Notwithstanding the provisions of article V, this article may be suspended for a time certain or amended at any time by concurrent action of the legislatures of three-fourths of the States.

SECTION 4. There shall be set aside in the Treasury of the United States a separate fund into which shall be paid 25 percent of all taxes collected by authority derived from the sixteenth amendment to this Constitution, except as provided

in section 5, and 25 percent of all sums collected by the United States from any other tax levied for revenue.

SECTION 5. There shall be set aside in the Treasury of the United States a separate fund into which shall be paid all sums received from taxes levied on personal incomes in excess of 50 percent thereof and from taxes levied on income or profits of corporations in excess of 38 percent thereof.

SECTION 6. Before paying any sums into the funds created by sections 4 and 5 hereof, the Treasurer of the United States shall deduct therefrom 20 percent which shall be used in payment of the principal of the national debt of the United States.

SECTION 7. No tax shall hereafter be imposed on that portion of the incomes of individuals which does not exceed, in the case of unmarried persons, the sum of $600 per annum, and in the case of married persons the sum of $1,200 per annum jointly. A minimum deduction of $600 per annum shall be allowed for each dependent.

SECTION 8. The Treasurer of the United States shall once in each year, from the separate fund created by section 4 hereof, pay to each of the several States ¼ of 1 percent of said fund and from the remainder of said fund shall pay to each State a portion of such remainder determined by the population of each State in ratio to the entire population of the several States according to the last Federal decennial census or any subsequent general census authorized by law.

SECTION 9. The Treasurer of the United States shall, from the separate fund created by section 5 hereof, pay to each State, once in each year, a sum equal to the amount of money in such fund which was collected from persons or corporations within such State.

SECTION 10. Any sums paid hereunder to the several States shall be available for appropriation only by the legislatures thereof. The legislatures may appropriate therefrom for any purpose not forbidden by the constitutions of the respective States and may appropriate therefrom for expenditures within the States for any purpose for which appropriations have heretofore been made by the Congress except such purposes as are specifically reserved by this Constitution for the exclusive power of the Congress. The people of each State may limit the expenditures of funds herein made available to the legislature, but shall not direct the appropriation thereof.

SECTION 11. Each legislature shall have power by rule or resolution to provide for the assembly thereof in special sessions for the purpose of considering amendments to, the suspension of, or the ratification of amendments proposed to this article.

SECTION 12. Each legislature shall have power to elect one or more persons to represent such legislature in any council or convention of States created by concurrent action of the legislatures of 32 States for the purpose of obtaining uniform action by the legislatures of the several States in any matters connected with the amendment of this article.

SECTION 13. The Congress shall not create, admit, or form new States from the territory of the several States as constituted on the 1st day of January 1949, and shall not create, form, or admit more than three States from the Territories and insular possessions under the jurisdiction of the United States on the 1st day of January 1949, or from territory thereafter acquired without the express consent of the legislatures of three-fourths of the several States.

SECTION 14. On and after January 1, 1949, the dollar shall be the unit of the currency. The gold content of the dollar as fixed on January 1, 1949, shall not be decreased.

SECTION 15. Concurrent action of the legislatures of the several States as used herein shall mean the adoption of the same resolution by the required number of legislatures. A limit of time may be fixed by such resolution within which such concurrent action shall be taken. No legislature shall revoke the affirmative action of a preceding legislature taken therein.

SECTION 16. During any period when this article is in effect the Congress may, by concurrent resolution adopted by two-thirds of both Houses wherein declaration is made that additional funds are necessary for the defense of the Nation, limit the amount of money required by this article to be returned to the several States. Such limitation shall continue until terminated by the Congress or by concurrent action of a majority of the legislatures of the several States. Upon termination of any such limitation the Congress may not thereafter impose a

limitation without the express consent by concurrent action of a majority of the legialatures of the several States.

SECTION 17. This article is declared to be self-executing.

(Contained in resolutions of the States of Iowa, Maine, Michigan, Nebraska, New Hampshire, and New Mexico.)

TYPE E

SECTION 1. That sound public tax policy requires greater reliance upon State and local sources of revenue for necessary State and local improvements, with less dependence upon Federal appropriations, and the lower Federal taxes which such a policy will make possible.

SECTION 2. That Federal participation in the cost of State and local improvements (in which the Federal Government may have a legitimate interest) would be continued automatically, as long as State and local taxes paid by each taxpayer are deductible in computing the Federal income tax, and that this form of Federal assistance is preferable to outright grants-in-aid, with their accompanying Federal controls and additional costs.

SECTION 3. That such a shift in tax policy can only be instituted and accomplished by action of the Congress, followed by corresponding State and local action, rather than the other way around.

SECTION 4. That the Congress of the United States is therefore respectfully petitioned to institute such a fiscal policy, restudying the financial relationship of the three levels of Government so as to bring about less reliance upon Federal grants-in-aid for traditionally State and local functions of government, and to take appropriate action either to submit a constitutional amendment limiting the taxing powers of Congress (except in time of war or grave national emergency) or to call a constitutional convention for such purpose.

(Contained in resolution of the State of Oklahoma.)

TYPE F

[Section 1, 2, and 3 of petitions ask constitutional conventions to prohibit Federal Government business activities, liquidate facilities used in such activities, and invalidate treaties in conflict with the Constitution.]

SECTION 4. Three years after ratification of this amendment the sixteenth article of amendments to the Constitution of the United States shall stand repealed and thereafter Congress shall not levy taxes on personal incomes, estates, and/or gifts.

TABLE 7.—*State constitutional conventions* [1]

State	Number of conventions [2]	Procedure for calling a convention [3]		Popular ratification (convention proposals)
		Vote in legislature	Referendum vote	
Alabama	6	Majority members elected.	Majority voting at election.	No provision.
Arizona	1	Majority vote	Majority vote on question.	Majority vote on proposals.
Arkansas	6			
California		⅔ members elected	Majority vote on question.	Majority vote cast at special election.
Colorado	1	do	do	Majority vote at election which may be special election.
Connecticut	2			
Delaware	5	⅔ members elected	Majority vote on question.	No provision.
Florida	5	⅔ all members	do	Do.
Georgia	12	do	No referendum	Majority vote on proposals in State as a whole and majority vote of local electors in subdivision affected.
Idaho	1	⅔ members elected	Majority of electors voting in next general election.	"Adopted by people."
Illinois	5	⅔ each house	Majority voting at next general election.	Majority vote at special election.
Indiana	2			
Iowa	3	Question mandatory every 10 years beginning 1870; legislature may provide for submission of question.	Majority voting on the question.	No provision.
Kansas	4	⅔ members elected	Majority voting at next general election.	Do.
Kentucky	6	Majority members elected, 2 successive sessions.	Majority vote on question at least ¼ qualified voters at last election.	Do.
Louisiana	10	No constitutional provision; practice is proposal by legislature, approved by referendum vote.	No constitutional provision; practice is proposal by legislature, approved by referendum vote.	
Maine	1	⅔ both houses		Do.
Maryland	4	Question mandatory every 20 years beginning 1930.	Majority voting at election.	Majority vote on proposals.
Massachusetts	5	No constitutional provision; but legislature has submitted question of calling convention to people under its general powers.	Majority voting on question.	
Michigan	[4] 5	Question mandatory every 16 years beginning 1926.	Majority voting at election.	Do.
Minnesota	1	⅔ members elected	do	No provision.
Mississippi	7			
Missouri	6	Question mandatory every 20 years.	Majority vote on question.	Majority vote on proposals.
Montana	1	⅔ members elected	do	Majority vote at elections.
Nebraska	4	do	Majority voting at election.	Majority vote on proposals.
Nevada	2	do	do	No provision.
New Hampshire	[5] 14	Question mandatory every 7 years.	Majority voting in town meetings.	⅔ voting in annual town meetings.
New Jersey	4			
New Mexico	1	⅔ members elected	Majority vote on question.	"Ratified by people."
New York	8	Majority of legislature. Question mandatory every 20 years beginning in 1957.	do	Majority vote on proposals.
North Carolina	6	⅔ members elected	Majority voting at election.	No provision.
North Dakota	1			

See footnotes at end of table, p. 30.

TABLE 7.—*State constitutional conventions* [1]—Continued

State	Number of conventions [2]	Procedure for calling a convention [3]		Popular ratification (convention proposals)
		Vote in legislature	Referendum vote	
Ohio	4	⅗ members elected. Question mandatory every 20 years beginning 1932.	Majority vote on question.	Majority vote on proposals.
Oklahoma		Majority vote of legislature. Question mandatory every 20 years beginning 1907.	do	Do.
Oregon	2	Majority of legislature or initiative petition of 8 percent of legal voters.	do	No provision.
Pennsylvania	[4] 5 (n)			
Rhode Island	6	Majority votes of legislature.	Majority votes on question.	According to terms of act calling convention.
South Carolina	7	⅗ members elected	Majority voting at election.	No provision.
South Dakota	1	do	do	Do.
Tennessee	4	Majority members elected.	Majority voting on question.	Do.
Texas	5			
Utah	1	⅗ members elected	Majority voting at next general election.	Majority vote at next general election.
Vermont	11			
Virginia	[4] 9	Majority members elected.	Majority vote on question.	No provision.
Washington	1	⅗ members elected	Majority voting at election.	"Adopted by people."
West Virginia	2	Majority members elected.	Majority voting at election which can be a special election.	"Ratified by voters."
Wisconsin	1	Majority of legislature	Majority vote on question.	No provision.
Wyoming	1	⅗ members elected	Majority voting at next general election.	"Adopted by people."
Guam				
Hawaii	1	Question mandatory every 10 years.	Majority voting at election.[5]	Majority vote on proposals.[4]
Puerto Rico	1			
Virgin Islands				

[1] Source: "The Book of the States," 1954-55, vol. X. Council of State Governments, Chicago.
[2] For dates of conventions and action taken at each, see "The Book of the States," 1941-42, pp. 48-55, and subsequent volumes. Constitutional conventions for the purpose of proposing amendments were held in New Hampshire in 1930, 1938, 1941, and 1948. In New Hampshire 8 proposed amendments were drafted by the limited constitutional convention meeting April-July, 1953. They will be submitted to the people on Nov. 3, 1953, and a majority of those voting will be sufficient to ratify each of the 8 proposals. A single amendment to Virginia's constitution was effected by a convention on May 2, 1945.
[3] In the States which make no provision for revision or amendment by constitutional convention, it appears that such conventions have been held permissible as an inherent right of the people acting through elected representatives.
[4] 1 of these was not a convention, but a special constitutional commission appointed by the Governor, under authority of an act of the legislature.
[5] Majority vote must constitute 35 percent of total vote cast at general election, or of registered voters at special election.

TABLE 8.—*State applications received in 86th Cong. asking Congress to convene a Federal constitutional convention*

State	State bill No.	Year	Source of reference	Amendment to be presented
86TH CONG., 1ST SESS.				
Alabama	S.J. Res. 2	1959	105 Congressional Record 3220	Federal preemption.
Arkansas	H. Con. Res. 24	1959	105 Congressional Record 4398	Constitutionality of 14th amendment.
Georgia	H.R. 99	1959	105 Congressional Record 2793	State control of public education.
Wyoming	H.J. Res. 2	1959	105 Congressional Record 3085	Repeal 16th amendment; prohibit Federal Government's business activities and liquidation of facilities used in such activities; invalidating treaties in conflict with Constitution.
86TH CONG., 2D SESS.				
Louisiana	S. Con. Res. 5	1960	106 Congressional Record 12310, 14315	Decision of Supreme Court.
Do	H. Con. Res. 22	1960	106 Congressional Record 14401	Repeal 16th amendment; prohibit Federal Government's business activities and liquidation of facilities used in such activities; invalidating treaties in conflict with Constitution.
Nevada	S.J. Res. 7	1960	106 Congressional Record 10749	Repeal 16th amendment, prohibit Federal Government's business activities and liquidation of facilities used in such activities; invalidating treaties in conflict with Constitution.
Virginia	H.J. Res. 7	1960	106 Congressional Record (Daily) 5516	State control of public education.

Present Federal Procedure for Transmitting Proposed Constitutional Amendments to the States for Ratification

Originally, Revised Statute 205 contained the procedure for transmitting resolutions containing constitutional amendments to States. By its authority, the State Department performed this function.

In 1950, however, Reorganization Plan No. 20 (5 U.S.C. 133z), effective May 24, 1950, transferred the functions to the General Services Administration.

In 1951, Congress enacted section 106b of title 1, United States Code, which repealed Revised Statute 205 and reflected the changes brought about by Reorganization Plan No. 20 of 1950.

The following procedure is not wholly statutory. It has been developed through the years:

(1) When Congress adopts a resolution proposing a constitutional amendment, certified copies are sent to the General Services Administration.

(2) The General Services Administration transmits copies of the resolution with covering letter to the Governors asking them to advise the State legislatures. Receipt acknowledgment is obtained from the Governors.

(3) When the State legislature approves or disapproves a proposed amendment, General Services Administration receives notification either from (*a*) the Governor, or (*b*) the State legislature.

(4) When it is evident that nearly three-fourths of the States have ratified a proposed amendment, General Services Administration keeps in constant touch with the remaining States, especially those whose legislatures are in session.

(5) When the legislatures of three-fourths of the States have ratified a proposed amendment, the Administrator of General Services issues a proclamation declaring the proposal to be officially part of the United States Constitution.

LEGISLATIVE PROPOSAL

A BILL 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

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

Action of State Legislatures

SEC. 2. The legislature of a State, in making application for a constitutional convention under article V of the Constitution of the United States, shall, after adopting a resolution pursuant to this Act, petition the Congress stating, in substance, that the legislature favors the calling of a constitutional convention for the purpose of—

(a) proposing a general revision of the Constitution of the United States; or

(b) proposing one or more amendments of a particular nature to the Constitution of the United States stating the specific nature of the amendments to be proposed.

SEC. 3. (a) For the purpose of adopting a resolution pursuant to section 2, the State legislature shall adopt its own rules of procedure.

(b) Questions concerning the State legislative procedure and the validity of the adoption of a State resolution cognizable under this Act are determinable by the State legislature and its decisions thereon are binding on all others, including State and Federal courts, and the Congress of the United States.

(c) A State resolution adopted pursuant to this Act is effective without regard to whether it is approved or disapproved by the Governor of the State.

SEC. 4. (a) Within 60 days after a resolution is adopted by the legislature of the State, the secretary of state of the State, or if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate, and one to the Speaker of the House.

(b) Each copy of the application shall contain—

(1) the title of the resolution,

(2) the exact text of the resolution, signed by the presiding officer of each House of the legislature, and

(3) the date on which the legislature adopted the resolution,

and shall be accompanied by a certificte of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution.

SEC. 5. (a) An application submitted to the Congress pursuant to this Act, unless sooner rescinded by the State legislature, shall remain effective for 15 calendar years after the date it is received by the Congress, unless two-thirds or more of the several States have each submitted an application calling for a constitutional convention on the same subject, in which event the application shall remain in effect until the Congress has taken action on a concurrent resolution, pursuant to section 8, calling for a constitutional convention.

(b) A State, upon notification to the Congress in accordance with section 4, may rescind its application calling for a Constitutional Convention except that no State may rescind when two-thirds or more of the State legislatures have applications pending before the Congress seeking amendments on the same subject.

(c) The Congress of the United States has the sole power of determining whether a State's action to rescind its application has been timely made.

Composition and Proceedings of the Convention

SEC. 6. (a) Congress, under such rules as it may deem necessary, shall adopt concurrent resolutions calling for the convening of a Federal Constitutinal Convention. It may, in such resolution designate the place and time of meeting and it shall set forth therein the particular subjects which the convention is to consider.

(b) When no place or time is specified in the concurrent resolution calling the convention, the convention shall be held in the District of Columbia not later than two years after the adoption of the resolution.

SEC. 7. (a) A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Representatives in Congress. Each delegate is to be elected or appointed in the manner provided by State law. Alternate delegates, in the number established by State law, shall be elected or appointed at the same time and in the same manner. Any vacancy occurring in the State delegation shall be filled by appointment of one of the alternate delegates in the manner provided at the time of his election or appointment as an alternate delegate. No alternate delegate shall take part in the proceedings of the convention unless he is appointed a delegate.

(b) The Secretary of State of each State, or, if there be no such officer, the person charged by State law to perform such function, shall certify to the Chief Justice of the United States the name of each delegate and alternate delegate appointed or elected pursuant to this section.

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

(d) Each delegate shall receive compensation at the rate of $50 per day for each day of service and shall be compensated for traveling and related expenses in accordance with the Travel Expense Act of 1949, as amended. The convention shall decide the compensation of alternate delegates and employees of the convention.

(e) The Congress shall appropriate moneys for the payment of all expenses of the convention.

SEC. 8. (a) The Chief Justice of the United States shall convene the constitutional convention. He shall administer the oath of office to the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe an oath not to attempt to change or alter any section, caluse or article of the Constitution or propose additions thereto which have not been proposed or fixed by the resolution calling the convention. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as it may adopt.

(b) The performance of the duties required of the Chief Justice of the United States under this Act, shall not be deemed to disqualify him from participating in any case or controversy before the United States Supreme Court.

SEC. 9. (a) Each State shall have one vote. The vote of each State shall be cast on any question before the convention as the majority of the delegates from that State, present at the time, shall agree. If the delegates from any State present are evenly divided on any question before the convention, the vote of that State shall not be cast on the question.

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

(c) The convention shall terminate its proceedings within one year after the date of its first meeting unless the period is extended by the Congress by concurrent resolution.

SEC. 10. (a) Except as provided in subsection (b) of this section, a convention called under this Act may propose amendments to the Constitution by a majority of the total vote cast on the question.

(b) No convention called under this Act to propose an amendment of a limited nature may propose any amendment or amendments, the general nature of which differs from that stated in the concurrent resolution calling the convention. All controversies arising under this subsection shall not be justiciable but shall be determined by the Congress of the United States.

SEC. 11. The presiding officer of the convention, within 1 month after the termination of its proceedings, shall submit the exact text of the amendments agreed upon at the convention to the Congress for approval and transmission to the several States for their ratification.

Transmittal of Proposed Amendments

SEC. 12. (a) The President of the Senate and the Speaker of the House of Representatives, acting jointly, shall transmit the proposed amendments to the Constitution to the Administrator of General Services for submission to the States upon the expiration of the first period of 3 months of continuous session of the Congress following the date on which such proposals are received, but only if prior to the expiration of such period Congress has not adopted a resolution disapproving the submission of the proposed amendments to the States.

(b) Whenever the President of the Senate and the Speaker of the House of Representatives have jointly transmitted proposed amendments to the Administrator of General Services, the Administrator shall forthwith transmit, with his certification thereof, exact copies of the proposed amendments to the legislatures of the several States.

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 13. (a) Amendments proposed by the convention pursuant to and in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when ratified by the legislatures of three-fourths of the States. Congress, in the resolution adopting the proposal, may set the time within which the proposal shall be inoperative unless ratified by the legislatures of three-fourths of the States.

(b) Congress may not recall a proposed amendment after it has been submitted to the States by the Administrator of the General Services Administration.

SEC. 14. (a) For the purpose of ratifying proposed amendments pursuant to this Act the State legislatures shall adopt their own rules of procedure except that the acts of ratification shall be by convention or by State legislative action as the Congress may direct. All questions concerning the validity of State legislative procedure shall be determined by the legislatures and their decisions shall be binding on all others.

(b) Any State resolution ratifying a proposed amendment to the Constitution shall be valid without regard to whether it has been assented to by the Governor of the State.

SEC. 15. The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State resolution ratifying the proposed amendment or amendments to the Administrator of General Services.

SEC. 16. (a) Any state may rescind its ratification of a proposed amendment except that no state may rescind when there are existing valid ratifications by the legislatures of three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it had previously rejected the same proposal.

(c) The Congress of the United States shall have the sole power of determining all questions relating to the ratification, rescission, or rejection of amendments proposed to the Constitution of the United States.

SEC. 17. The Administrator of General Services when three-fourths of the legislatures of the several States have adopted a proposed amendment to the Constitution of the United States, shall issue a proclamation proclaiming the amendment to be a part of the Constitution of the United States.

SEC. 18. An amendment proposed to the Constitution of the United States shall be effective from the date on which the legislature of the last State necessary to constitute three-fourths of the legislatures of the United States, as provided for in article V, has ratified the same.

Analysis of draft bill for calling a constitutional convention

Applications for a convention may request either a general convention or a convention to propose specific amendments (sec. 2).

[The form of our government warrants a general revision of the Constitution if the people so wish it. In fact, the first two petitions submitted within two years after the Constitution's adoption were petitions calling for a general revision of the Constitution. Specific amendment is also authorized and the history of petitions submitted in the last fifty years clearly indicates a recognition of this form of amendment by a convention.]

State legislatures will determine all questions connected with the adoption of State applications (sec. 3(b)).

[Parliamentary precedents and court decisions recognize the rule that legislative bodies should have control over their own proceedings.]

Approval of Governor is not to be required in application process (sec. 3(c)).

[Court decisions indicate, and the history of amendments to the Constitution show, that the action of the executive power is not required in the amending process.]

Applications must contain certain basic data including the exact text of the State resolution (sec. 4(a)).

[In order that amendments may be properly classified and counted, it is proposed that the exact text of the State petitions be submitted so that the subject matter of each petition may be authoritatively established, and also to make certain that applications meet the procedural requirements set out in this draft legislation. It is not the underlying intention of this provision, however, to require that the text of applications be identical to be classified together. If they relate generally to the same subject they are to be classified together, since a convention, if called, would be free to adopt its own language in drafting a proposal on the subject.]

An application, once submitted, shall remain valid for 15 years and for such longer time as Congress deems necessary if two-thirds of the States have submitted applications on the same subject (sec. 5(a)).

[In line with court decisions that proposals should not remain everlastingly alive, but must be "contemporaneous," a 15-year cutoff date was inserted. The same time limitation has been adopted in recent House resolutions and in some State petitions calling for the revision of article V itself.]

States may rescind their applications at any time except when two-thirds of the States have valid applications pending on the same subject (sec. 5(b)).

[While Congress has never allowed a State, once having ratified, to withdraw its ratification of an amendment, it is believed that because of the present-day means of speedy communications, and the distinguishing features between applications for conventions and ratifications of amendments, withdrawals should be permitted.]

Congress, when the requisite number of applications have been received, shall call a constitutional convention (sec. 6(a)), and the Chief Justice of the United States shall preside until the convention is organized (sec. 8).

[The first part of this provision repeats the mandate of article V of the Constitution. Further, a high Government official would seem to be the most appropriate person to initiate the tremendously important task of actually calling a convention to order, and it is believed that the office of Chief Justice of the United States, who is to act as a temporary chairman only, is sufficiently removed from active politics to avoid criticism.]

Delegates are to be elected in accordance with State law (sec. 7(a)), and each State shall have as many delegates as it has Representatives in Congress (sec. 7(a)).

[This provision places election procedures in the States, in line with the practice approved by Congress when it proposed the 20th amendment to the Constitution. In providing that delegates should be chosen on the same geographical basis as Congressmen, it is felt that this method, on a national basis, is the most representative and best proportioned.]

Each State is to have one vote to be cast as the majority of its delegates decide (sec. 9(a)).

[Section 7 provides for representation on a proportional basis; this section gives each State equal suffrage. This procedure is in line with the 12th amendment and article 2, section 1, clause 3, of the United States Constitution which directs the House of Representatives in cases of tie in the electoral votes for President to vote by States, each having one vote.]

The convention will be limited to the consideration of those subjects set out in the congressional resolution calling the convention into being (sec. 8).

[The purpose of this provision is to give Congress and the States control over the scope and work of constitutional conventions, and to prevent so-called runaway, extra-legal, or revolutionary conventions.]

The convention will be in session not more than 1 year (sec. 9(c)), and its proposals will be transmitted through Congress to the States for ratification (sec. 11).

[To limit the time of the convention and also to provide for congressional control and approval of the convention's work. This procedure was used by the Constitutional Convention of 1787.]

The presiding officers in Congress must transmit a convention's proposals to the States within 3 months of their receipt but only if Congress does not by affirmative action disapprove the proposals (sec. 12(a)).

[This procedural provision follows the method adopted by Congress in considering reorganization acts. The burden is placed on the Congress to take action. If it does not the measure is automatically processed by the presiding officers.]

Amendments proposed by the convention must be ratified by the States within the time set by Congress for ratification (sec. 13a).

[Under the provision Congress may set up a reasonable time limitation. It has limited the time for ratifying in the adoption of the 18th, 20th, 21st, and 22d amendments to the Constitution.]

Congress may not recall a proposed amendment (sec. 12(b)).

[Jameson states that the power to submit proposals to the States does not include the power to recall them; otherwise, in recalling proposals, Congress would also have the power to definitively reject such proposals.]

Gubernatorial action is removed from the ratification process (sec. 14(b)), and States may rescind their action at any time prior to the ratification by three-fourths of the States (sec. 16(a)). A State may also ratify an amendment it has previously rejected (sec. 16(b)).

[As previously noted, and in line with court decisions and the practice adopted with other amendments, executive action is not requisite in the amending process. Since the exact status of proposed amendments may now be easily and quickly ascertained, it is no longer necessary to hold States bound to their ratifications unless three-fourths of the States have also ratified the same proposal. Rejection of an amendment presents no real problem since Congress, in the past, has permitted States who have rejected an amendment to later ratify the same.]

Congress will determine all questions relating to ratification (sec. 16(c)), and the Administrator of General Services, when the requisite number of States have ratified, will officially proclaim the new amendment to be part of the Constitution (sec. 17).

[This provision concerns a "political question" and it is generally recognized that Congress has the power to decide all questions relating to ratification. Official proclamation by the Administrator of General Services is a procedural provision and follows the present law relating to amendments.]

LEGISLATIVE PROPOSAL

HOUSE RESOLUTION* To provide rules for the processing of State applications for a Federal Constitutional Convention in the House of Representatives

Be it resolved in the House of Representatives of the United States of America, That—

(a) The Speaker of the House of Representatives shall refer each application submitted, pursuant to the Federal Constitutional Convention Act, to the House Committee on the Judiciary.

(b) Within sixty days after the commencement of each regular session of the Congress of the United States, the House Committee on the Judiciary shall report to the House concerning the applications received pursuant to the Federal Constitutional Convention Act during the preceding fifteen calendar years. The reports shall be printed in the Congressional Record and shall state—

(1) the total number of applications calling for a convention to propose a general revision of the Constitution,

(2) the total number of applications calling for conventions to propose specific amendments of a limited nature to the Constitution, together with the total number received with respect to each such amendment,

(3) the date of receipt of each application,

(4) the particular State applications, if any, on which states have taken rescinding action, and

(5) such other information as the committee considers appropriate.

SEC. 2. If, during a fifteen year period, applications are received from the legislatures of two-thirds of the several States and

(a) each application seeks the calling of a convention to propose an amendment generally revising the Constitution of the United States, or

(b) each application seeks the calling of a convention to propose an amendment of the same general nature as each other application,

the chairman of the Committee on the Judiciary of the House of Representatives shall, and any other Member may, introduce a concurrent resolution calling for a Constitutional Convention within two years for the purpose sought in the applications.

SEC. 3. (a) Concurrent resolutions calling a convention shall be referred to the Committee on the Judiciary. The committee shall report on the resolution within thirty calendar days after its introduction. If it does not report the resolution before the expiration of thirty calendar days after its introduction, the committee shall be automatically discharged from all further consideration of the measure.

(b) When the committee has reported or has been discharged from further consideration of such a concurrent resolution, it shall, at any time thereafter, be in order for a Member to move to proceed for the immediate consideration of such resolution.

SEC. 4. (a) A concurrent resolution calling for a Constitutional Convention may be adopted by the affirmative vote of a majority of those present and voting.

(b) ~~[illegible]~~except as ~~other~~wise provided in this resolution, the rules of the House of Representatives shall govern the conduct of the proceedings hereunder

SEC. 5. If, prior to the passage by it of a concurrent resolution, the House of Representatives receives from the Senate a resolution calling for a Constitutional Convention for proposing the same amendment, it shall proceed to consider its own resolution and, if favorably acted upon, shall substitute and adopt the resolution of the Senate therefor with such amendment as it deems necessary to reflect its own action.

SEC. 6. Where no similar resolution with respect to such amendment as shall be received from the Senate has been introduced or referred to the Committee on the Judiciary, the resolution from the Senate shall be treated in the same manner as concurrent resolutions under section 3.

SEC. 7. Any Member may introduce a resolution to determine—

(a) whether the rescinding action of a State legislature has been timely made or is otherwise entitled to recognition under the provisions of the Federal Constitutional Convention Act, and

(b) whether a sufficient number of applications have been submitted as to require the introduction of a resolution calling for a constitutional convention.

*This draft is drawn to reflect changes in the Rules of the House of Representatives. A similar resolution would be needed to provide for Senate procedure.

Analysis of draft resolution amending rules of the House of Representatives for processing of State applications seeking constitutional conventions

The Speaker is to refer all State applications for a constitutional convention to the House Judiciary Committee (sec. 1(a)).

[This provision follows the present practice for referral of State applications to a congressional committee.]

Within 60 days after the beginning of each session of Congress, the Judiciary Committee must report to the House the number of petitions, according to subject matter, which have been received during the preceeding 15 years (sec. 1 (b)), together with the number of States which have rescinded their applications (sec. 1(b)).

[The 60-day provision is to prevent delay or deferring of action by a committee of Congress. The remainder of the section carries out the provisions of sections 4 and 5 of the draft bill.]

If, during a 15-year period, two-thirds of the States have submitted applications on a particular subject, a resolution must be introduced in the House calling for a convention within 2 years for the purpose set forth in the State applications (sec. 2).

[An enabling provision to initiate action by a House of Congress once the formal requirements outlined in the draft bill have been met.]

The resolution is to be referred to the Judiciary Committee which must report back to the House within 30 days or be automatically discharged (sec. 3(a)).

[To give preference to this legislation over other matters pending in committee and to provide for not only immediate consideration of the measure by the committee, but also to require the committee to take final action without delay. Consideration was given to setting up a joint committee of the House and Senate; also to a separate commission. However, since applications only trickle in over the years there would be very little work to justify the existence of a joint committee or a commission. The judiciary committees of the Congress are ideally set up to handle the work involved in State applications.]

The resolution is to be considered immediately by the House (sec. 3(b)), and may be passed by a simple majority vote (sec. 4).

[To give measure highest priority on floor of the House, and at the same time require only a simple majority vote of the Members present at time measure is considered.]

If, prior to taking action on a House resolution, the Senate passes a similar resolution, the House will nevertheless consider the House resolution, and, if acted upon favorably, shall then constitute the House resolution for the Senate resolution and adopt the same (sec 5).

[This provision is similar to the present Rules of the House of Representatives with regard to separate but similar measures which are considered on the floors of both Houses of Congress at the same time or approximately the same time.]

In the absence of a House resolution, a Senate resolution shall be processed in the same manner as though it had been introduced as a House resolution (sec. 6).

[Follows present House rules with regard to a measure which has passed the Senate and on which there is similar measure pending in the House.]

A Congressman may, at any time, inquire whether a sufficient number of applications have been submitted requiring the calling of a convention (sec. 7).

[To authorize Members of Congress to require an accounting by the Judiciary Committee if there is doubt concerning the present status of applications.]

85th Congress, 1st Session

PROBLEMS RELATING TO A FEDERAL CONSTITUTIONAL CONVENTION

BY

CYRIL F. BRICKFIELD

COMMITTEE PRINT

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FOREWORD

This study on problems relating to a Federal Constitutional Convention was prepared by Mr. Cyril F. Brickfield of the committee staff in partial fulfillment of the requirements of the degree of Doctor of Juridical Science at the George Washington University School of Law. It discusses the legal as well as practical problems presented by a constitutional convention method of amendment and suggests means, in the form of draft bills, to dispose of these problems.

Article V of the United States Constitution provides that Congress, on the application of the legislatures of two-thirds of the States, shall call a constitutional convention for the purpose of amending the Constitution. Since the Constitution's adoption, 168 years ago, there have been over 200 State applications calling for conventions to amend the Constitution on a wide variety of subjects including the direct election of Senators, Federal income taxes, prohibition of polygamy, repeal of the 18th amendment, world federal government, and the general or complete revision of the Constitution itself. Despite this number of applications, the constitutional convention method of amendment has never been employed.

Many of these applications no doubt are no longer valid. Petitions, for example, for the direct election of Senators, and the repeal of the 18th amendment, have been rendered moot by reason of the 17th and 21st amendments respectively to the Constitution. In addition, the lapse of time may well have rendered other applications invalid. In recent years, however, Congress has been in receipt of a number of petitions from various States requesting the call of a convention to amend the Constitution limiting the power of the Federal Government over the taxation of income. In 1952 the staff of this committee prepared a report on the status of State applications directed to that subject.

The problem of constitutional conventions is a matter of serious concern to the House Committee on the Judiciary since rule XXII and Rule XI, clause 12 (e), of the rules of the House of Representatives direct, among other things, that petitions for conventions be referred to this committee for appropriate action. Unfortunately there is no statutory authority to guide this committee or the Congress in classifying applications or in counting them, nor is there any statutory guidance for the calling of a convention.

Mr. Brickfield's dissertation discusses these problems and suggests procedures to be followed in processing applications and for governing the scope of a constitutional convention's deliberations. Of course, the views expressed and the conclusions reached herein are those of the author and do not necessarily represent the views of any of the members of the committee. The material, however, gives in detail the history and problems relating to the convention method of amending the Constitution, and can be of immeasurable aid to the Congress in considering possible statutory clarification of this problem and in taking positive action on a long-neglected but vital problem.

EMANUEL CELLER, *Chairman.*

PREFACE

Article V of the United States Constitution provides two methods for amending the Constitution: (1) Congress may propose amendments to the Constitution for ratification by three-fourths of the States, or (2) on application of the legislatures of two-thirds of the several States, Congress shall call a constitutional convention. Twenty-seven amendments have been referred to the States for ratification under the first method,[1] but there never has been, since the adoption of our Constitution, a constitutional convention. Because of the growing number of petitions submitted to Congress by the several States during recent years calling for a convention under the second method, and because of the complex problems involved it is the intention of the writer to direct this dissertation to the problems and issues involved in a Federal constitutional convention.

Article V is silent as to how and when conventions are to be convened and it does not state how the convention is to be formed or what rules of procedure are to guide its acts. In order to present a clear view of the general problem there follows, in outline form, several of the more obvious issues connected with calling a constitutional convention.

Article V, while providing that the States may make application to Congress for the calling of a convention, sets no requirements concerning what provisions each State application must contain or what standards each application must meet in order to be considered as validly made. One application, for instance, while it passed the State legislature, was vetoed by its governor.[2] This raises the question of whether the Constitution contemplates action solely by the houses of a State legislature or whether applications must be processed in accordance with procedures for enacting State laws which usually include action by the State's chief executive.

Another question is: When have two-thirds of the legislatures of the several States made application for the calling of a convention? Some petitions to Congress were made 168 years ago.[3] Do these petitions and others remain permanently alive or do they lapse after a reasonable period of time?

Article V is also silent on the subject matter of applications. A constitutional convention can be construed to mean that subjects on many and varied topics may be considered looking toward a general reformation of the Constitution. Yet, there are legal commentators who support the proposition that all petitions, in order to be counted, should be identical or at least relate to a single specific subject matter; for example, a proposed amendment pertaining solely to the subject of limiting the Federal Government's power over the taxation of income.

A question of importance is the power of a State to rescind its application once it has been submitted to Congress. The view has been expressed that since a State legislature is competent to make

application for a constitutional convention, it is obviously competent to withdraw its application. It may be well to point out, however, that Congress refused to allow the States of Ohio and New Jersey to rescind their ratifications of the 14th amendment.[4] And conversely, Congress permitted North Carolina, South Carolina, Georgia, and Virginia which at first rejected the 14th amendment, to subsequently ratify the same.[5] Whether rescission of an application petitioning for a Federal constitutional convention should be considered in the same light as rejection in the course of ratification is, of course, another matter which adds to the complexity of the problem.

Once convened, a question which presents itself is whether the convention may discuss any and all subjects relative to the Constitution or whether Congress may restrict the scope of its deliberations to a particular subject or at least to a limited number of subjects. Many believe that once convened, a convention could rewrite the entire Constitution if it so desires. Others, however, adopt the view that Congress would have the power to determine the areas of deliberations to which the convention would be confined. This would be especially so if Congress convened the convention for the sole purpose of taking up a particular subject.

The problem is further complicated when one seeks to determine the extent to which the States themselves may control the actions of a convention.

An interesting question is how can the provisions of article V be enforced if the Congress fails or refuses to act in the event there are a sufficient number of State applications submitted?

Another question which looms large throughout the entire problem is whether many of the issues are of a justiciable nature open to determination by the courts, or whether they are political questions beyond the limits of the courts' jurisdiction and therefore subject to determination by the Congress?

It is believed that Congress can resolve and otherwise render academic many of these questions by setting up, through implementing legislation, statutory provisions containing standards and guides to govern the submission of State applications. The subject of amending the Constitution is one which has, over the years, engendered much learned comment. However, in recent years, one of the more significant happenings has been the submission of 32 applications to the Congress from 27 States all relating to the same subject matter, namely, a constitutional convention to consider the problem of limiting the power of the Federal Government in the taxation of incomes, gifts, and inheritances. It may be well at this time to look ahead and seek to provide legislation which will not only contain the answers to the legal problems involved but which will also resolve the practical ones as well.

Scope of dissertation

While this dissertation is concerned with problems relating to constitutional conventions, it may be well to note, briefly, highly publicized controversies in recent years over whether the Constitution may be amended by means other than those provided for in article V. For example, Senator John W. Bricker of Ohio feels that treaties made under authority of the United States can and do result in changing the provisions of the Constitution. Further, it has been argued that the United States Supreme Court, by judicial decisions, has also

substantially changed the meaning and original intent of many of the provisions of our Constitution. This view gathered additional support as the result of the recent school segregation case.[6]

At first impression, these controversies might appear to be proper subjects for discussion here since article V is the amending article, and the underlying purpose of constitutional conventions is amendment and revision. However, amendment by treaties or by judicial decisions cover fields of constitutional law which are so broad that many learned commentaries have been written on them alone.[7] To attempt any discussion of them here may well be inappropriate. Furthermore, it is felt that such subjects are not really pertinent to this undertaking. We are here dealing with amending the Constitution by means of a constitutional convention. Whether it may be amended by constitutional means other than those expressly provided for in article V would not in any way affect amending the Constitution by means of a constitutional convention.

Basically, however, it is felt that article V provides the only methods for the Constitution's amendment. As is discussed in the following chapters, changes in our basic law can only be made in a legal or constitutional manner. Our courts have consistently recognized the principle that, aside from revolution, the only method of effecting changes is pursuant to some procedural provision of the Constitution.[8]

The framers of our Constitution gave serious consideration to the problem of providing a method of amendment. They wished the Constitution to be open to improvement as exigencies in the future should require. It was essential, in drafting a provision regulating the mode of amending the Constitution, that consideration be given to devising a practical but not too easy method of making changes With this understanding, they adopted article V.[9] In the discussions in the constitutional convention concerning article V, not a single word was uttered to indicate that article V was not to be all embracing on the subject of amendments. Having thus provided a particular method of effecting amendments to the Constitution, the Founding Fathers certainly cannot be assumed to have left the door open to vicarious amendment—treaty or otherwise.

Five or 6 years ago, Senator Bricker started a movement in Congress to curtail the treatymaking powers upon the ground that treaties could cut across the face of, and change, the Constitution. This movement received enthusiastic support from certain segments of the American Bar Association and from leading lawyers.[10] However, the issue has become dormant. Many people who originally supported the movement have changed their positions. Secretary of State John Foster Dulles, for example, supported the movement in 1952 [11] and opposed it is 1953.[12] Originally 64 Senators joined Senator Bricker in sponsoring his legislation. Ordinarily such a manifestation of solidarity would lead one to believe that the legislation would be assured of passage in the Senate. But such was not the case and the measure was lost in the 83d Congress. Apparently, full discussion of the problem in the Senate and in legal periodicals throughout the United States helped erase the fears that treaties can change the Constitution.

Without attempting, for the reasons stated above, to discuss these issues at too great length, it may be noted that the Supreme Court has never held that a treaty or judicial decision can expand or subtract

from the Constitution, nor has it ever held that the Constitution may be amended in any other way than in accordance with the amending power contained in article V.[13]

Be that as it may, there are still those who believe to the contrary. Almost without exception, the proponents of these resolutions cite the opinion of Mr. Justice Holmes in the Migratory Bird case.[14]

In order to evaluate this celebrated case intelligently, it is necessary to recall the factual background. In 1913 Congress enacted a law prohibiting the destruction of migratory birds.[15] Thereafter, in a criminal prosecution brought under regulations promulgated by the Department of Agriculture in pursuance to the act, the court held that migratory birds were not the property of the Government, but of the several States in their sovereign capacity. It concluded that there was no provision in the Constitution authorizing Congress to regulate or protect migratory wild game when in a State.[16]

It should be noted that this is only a lower district court case. No appeal was taken from its decision. It should also be noted that the only contention urged by the Government was that Congress had power to regulate and protect property belonging to the United States.[17] The Government did not contend that the legislation may well have been permissive under the commerce clause.[18]

There was also another district court case which handed down a similar decision and from which no appeal was taken.[19]

Thereafter, President Wilson in 1916 proclaimed a convention for the protection of migratory birds between the United States and Great Britain (on behalf of Canada), and in 1918 Congress enacted the Migratory Bird Treaty Act to implement the convention and which, in effect, was somewhat similar to the earlier enactment of Congress which the lower district courts had held unconstitutional.

A short time later, two residents of Missouri were separately indicted for violation of the Federal statute. They asked for a dismissal of the indictments on the ground that the act was unconstitutional. After the return of the indictment, the State of Missouri filed a bill in equity seeking to restrain the United States game warden, Holland, from enforcing the act in that State. The district court dismissed the bill in equity.[20]

On appeal to the United States Supreme Court, Mr. Justice Holmes delivered the much discussed and sometimes misinterpreted opinion of the Court.[21] The Justice stated that the question involved in the case was "whether the treaty and statute are void as an interference with the rights reserved to the States." He pointed out that although the 10th amendment reserves the powers not delegated to the United States, the power to make treaties was expressly delegated. And if the treaty was valid the statute was also valid under the "necessary and proper" legislative power.

It might be well to state first that the Court upheld the treaty and the statute as valid. The Court, in so doing, decided this—and nothing more: "The treaty in question does not contravene any prohibitory words to be found in the Constitution," nor was it "forbidden by some invisible radiation from the general terms of the 10th amendment."

One of the grounds advanced by those who argue that a treaty need not conform to the Constitution is that in the Migratory Bird case, Holmes is supposed to have held that article VI of the Constitution

requires that statutes be "pursuant" to the Constitution, but treaties need merely be made under the "authority" of the United States. Such a holding, even if it could be interpreted as an express statement by Holmes that treaties need not conform to the Constitution, would not be controlling inasmuch as it had no bearing upon the decision in the case. The controlling rule was that the treaty in question did "not contravene any prohibitory words to be found in the Constitution" and was not forbidden by some invisible radiation from the general terms of the 10th amendment. That is the entire basis of Holmes' opinion and is, of course, contrary to the holding imputed to him.

Nor has the Supreme Court considered Holmes' statement to mean that a treaty could be superior to the Constitution. Four years after the Migratory Bird case the Court cited the Migratory Bird decision as one of its authorities for the proposition that the treatymaking power is not superior to the Constitution.[22]

Another supposed holding of the case is that although Congress had no power under the Constitution to legislate on migratory birds, once a treaty was made on the subject, it could legislate to implement the treaty. Here again the argument falls short for there is no evidence in the opinion that the Supreme Court considered the congressional act unconstitutional except for the treaty. The two cases arising under the statute prior to the treaty did not reach the Supreme Court and consequently there is no holding by that Court, but only by the district courts on that statute. Holmes pointed out that "whether the two cases were decided rightly or not they cannot be accepted as a test of the treaty power." Clearly that statement cannot be construed as a holding that the prior statute was unconstitutional. Even if Holmes had stated—which he did not—that the earlier act was unconstitutional it would not have been authoritative since that statute was not involved in this case.

It may be said, in summary, that the decision did not hold that a treaty does not have to conform to the Constitution; nor that the statute enacted prior to the treaty was unconstitutional; nor that Congress could legislate in a field which prior to the treaty it could not constitutionally legislate; nor, finally, that a treaty may change the Constitution.

Probably the best way of concluding this discussion on whether a treaty may validly conflict, supersede, modify, or otherwise amend the Constitution is to quote the Supreme Court itself in a case handed down over 80 years ago. In litigation involving a treaty with the Cherokee Nation of Indians, the Court aptly stated: [23]

> It need hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our Government.

No doubt as world conditions change, we may experience another cycle of events which will give cause for another reconsideration of this problem. However, as Mr. Dulles noted, the Constitution has served well over the last century and a half and there is no present need to change the amending processes of article V.[24]

CITATIONS

[1] Twenty-two amendments have been certified as part of the United States Constitution. Five amendments have been proposed by the Congress but have not been ratified by a sufficient number of States. They relate to (*a*) the apportionment of Representatives in the House (submitted in 1789), (*b*) the compensation of Senators and Representatives (submitted to the states in 1789), (*c*) acceptance by United States

citizens of foreign titles of nobility (submitted in 1810), (*d*) a proposal relating to slavery (submitted in 1861), and (*e*) child labor (submitted in 1924). (U. S., Congress, House, 83d Cong., 1st Sess., 1953, House Doc. 211, pp. 16–17.)

[2] Pennsylvania, Session Laws (1943) p. 922.

[3] See States of New York and Virginia, Table I, Appendix.

[4] U. S., Statutes at Large, vol. 15, 706–710. Secretary Seward, in a communication to Congress, stated that if Ohio and New Jersey's ratifications were still effective notwithstanding their subsequent purported withdrawals, a sufficient number of States had ratified Article XIV (15 Stat. 707). Congress, citing both States in its resolution, declared the amendment adopted as having been ratified by the necessary number of States (15 Stat. 709, 710).

[5] U. S., Congress, House, Ames, The Proposed Amendments to the Constitution of the United States During the First Century of Its History, 54th Cong., 2d Sess., 1897, House Doc. 353, Pt. 2, pp. 299–300.

[6] Brown v. Board of Education, 347 U. S. 483 (1954).

[7] Zinn, Charles J., "The Exercise of the Treaty-Making Power Cannot Effect the Denial or Abridgement of Any Right Enumerated in the Constitution" (unpublished S. J. D. dissertation, Georgetown University, 1954); Allen, Florence E., The Treaty as an Instrument of Legislation (New York: Macmillan Co., 1952); Tucker, Henry St. George, Limitations on the Treaty-Making Power (Boston: Little Brown & Co., 1915); Bricker, John W., U. N. Blueprint for Tyranny, The Freeman (Jan. 28, 1952); Chafee, Zechariah, Stop Being Terrified of Treaties: Stop Being Scared of the Constitution, 38 Amer. Bar Assoc. Journ. 731 (Sept. 1952); Holman, Frank E., Treaty Law-Making: A Blank Check for Writing a New Constitution, 36 Amer. Bar Assoc. Journ. (Sept. 1950).

[8] Weston, Political Questions, 38 Harvard Law Review, 296, 305 (1925).

[9] Madison, The Federalist, No. 43.

[10] U. S. Congress, Senate, 83d Cong., 1st sess., 1953, S. J. Res. 1; Holman, Treaty Law Making: A Blank Check for Writing a New Constitution, 36 Amer. Bar Assoc. Journ. 707 (1950).

[11] Dulles, Speech at American Bar Association regional meeting, Louisville, Kentucky, April 11, 1952; Cong. Rec., May 15, 1952, Vol. 98, p. 5306 (Daily): "* * * treaty law can override the Constitution."

[12] Dulles, Testimony before Senate Subcommittee on S. J. Res. 1, 83d Cong., April 6, 1953; Department of State Bulletin, April 20, 1953, p. 591: "The Constitution, as it is, has served well in the field of foreign relations. * * * there is no present need for a Constitutional change."

[13] Zinn, Charles J. The Exercise of the Treaty-Making Power Cannot Effect the Denial or Abridgement of Any Right Enumerated in the Constitution, unpublished S. J. D. dissertation, Georgetown Univ. Washington, D. C., 1954.

[14] Missouri v. Holland, 252 U. S. 416 (1920).

[15] Act, March 4, 1913, ch. 154, 37 Stat. 828, 847. "All wild geese, wild swans, * * * and all other migratory game * * * which in their northern and southern migration pass through or do not remain permanently the entire year within the borders of any State or Territory, shall hereafter be deemed to be within the custody and protection of the Government of the United States, and shall not be destroyed or taken contrary to regulations hereinafter provided for."

[16] United States v. Shauver, 214 Fed. 154 (1914).

[17] U. S. Constitution, Art. IV, Sec. 3, cl. 2.

[18] U. S. Constitution, Art. I, Sec. 8, cl. 3. United States v. Shauver, 214 Fed. 154 (1914).

[19] United States v. McCullogh, 221 Fed. 288 (1915).

[20] United States v. Samples; United States v. DeLapp, State of Missouri v. Holland, 258 Fed. 479 (1919).

[21] 252 U. S. 416 (1920).

[22] Asakura v. Seattle, 265 U. S. 332, 341 (1924).

[23] The Cherokee Tobacco, 11 Wall. 616, 620–621 (U. S. 1870).

[24] Testimony before Senate Judiciary Committee on S. J. Res. 1, 83d Cong., April 6, 1953; see also footnote 12 above.

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CHAPTER 1 *

LAW PRIOR TO CONSTITUTIONAL CONVENTION OF 1787

Uniqueness of amending clause

The Constitution of the United States provides for its own amendment. Article V states:

> 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.

The idea of an amending clause in the organic instrument of a sovereignty is peculiarly American. Although our States base their organic laws on English and, in some instances, continental conceptions, such is not the case in the fundamental matter of altering or amending their constitutions.[1]

England, of course, never had a written constitution. It has what is known as a cumulative constitution developed over the centuries from accumulated usages, common-law principles, decisions of its courts, compacts, and statutes.[2] Its laws are evolved gradually as the needs of national life require.

However, in America in the years preceding the Revolutionary War, the political life of the colonists was such that they were unable to develop civil institutions which could grow in an environment of normalcy reflecting the developments and customs of the colonists themselves. Instead, their institutions were subjected to, and thus reflected, the almost complete and abusive domination of England. When they did break away from the mother country, there was no time for the slow development of a form of government built on custom and usage; rather the colonies had to adopt a type of government which would give them immediate political stability. They adopted written constitutions. Jameson, in his treatise on Constitutional Conventions, was of the opinion that the most appropriate way for creating a new government, under circumstances in which our forebears found themselves, was by written constitution. He noted that when the political life of a people has been—

> unpropitious for the foundation and growth of civil institutions [written constitutions] however slow, superficial, or deficient * * * give civic dignity and political

*Footnotes are at end of each chapter.

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consciousness to a people [and] form, in times of political apathy * * * a passage, a bridge to pass over to better times.[3]

So, although the colonists were familiar with English and continental systems, they did not and, because of the exigencies of the times, could not follow them.

Since the people were sovereign, however, it followed that they could not only enact a constitution but, as a necessary corollary, they could also amend and revise it.[4] It is in this latter aspect that American constitutional systems are completely distinguishable from those of other countries. While some European countries had written codes or constitutions, none, at the time of the American Revolution, had organic laws containing express provisions providing for their own amendment or alteration. It was purely an American concept.

Interestingly enough, our Founding Fathers, in making provision for amendments, at the same time restricted the manner and mode by which changes could be made. This was done to prevent rash and impassioned attempts to bring about wholesale changes in our form of government once it had been adopted. Jameson in his treatise aptly describes the purpose: [5]

The idea of the people thus restricting themselves in making changes in their constitutions is original, and is one of the most signal evidences that amongst us liberty means, not the giving of rein to passion or to thoughtless impulse, but the exercise of power by the people for the general good, and, therefore, always under the restraints of law.

Amending clause in early State constitutions and Articles of Confederation

The first State constitutions were the immediate results of the Revolutionary War. Soon after the Declaration of Independence the Continental Congress recommended that the people of the Colonies meet for the purpose of forming independent governments. Of the 13 constitutions which were first framed, 6 made provisions for their future revision and amendment.[6] By the time the Federal Constitutional Convention met in 1787, two additional States had express provisions in their constitutions for their amendment or revision.[7]

In Delaware, Maryland, and South Carolina, use of the amending process was reserved to the legislatures.[8] In Georgia, Massachusetts, New Hampshire, Pennsylvania, and Vermont, amendments were to be made by conventions.[9]

At the Constitutional Convention of 1787 both methods were embodied into one instrument.

Since, at the time of the Revolution, it was felt that a strong union of the States was highly desirable if not imperative, the Continental Congress adopted a plan of confederation on November 15, 1777, and submitted it to the States for ratification.[10] It became effective on March 1, 1787, and was known as the Articles of Confederation. It contained the following provisions providing for its own amendment:

ARTICLE 13

* * * And the articles of this Confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration, at any time hereafter, be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every state.[11]

Thus, in this first concerted effort on the part of all the States, there was set out an express provision relating to the articles' future amendment and alteration.

Our colonial States experienced growing pains and, as with other provisions of the Articles of Confederation, there were experimentations with the amendment clause. In fact, article XIII, quoted above, because of its restrictive provisions, was instrumental in defeating the purpose of the confederation. Under it, a single State could prevent any change in the confederation. Oliver Ellsworth, speaking before the Connecticut convention, clearly pointed up the difficulty:

> How contrary, then, to republican principles, how humiliating, is our present situation! A single state can rise up, and put a *veto* upon the most important public measures. We have seen this actually take place. A single state has controlled the general voice of the Union; a minority, a very small minority, has governed us. So far is this from being consistent with republican principles, that it is, in effect, the worst species of monarchy.[12]

CITATIONS

[1] Orfield, The Amending of the Federal Constitution (1942), p. 1.

[2] See for discssion of written and unwritten constitutions Jameson, Constitutional Conventions (4th ed., 1887), pp. 80-81; Borgeaud, Adoption and Amendment of Constitutions in Europe and America (1895), pp. xv-xvi.

[3] Jameson, Constitutional Conventions (4th ed., 1887), p. 79, quoting Lieber, Political Ethics, Pt. I, pp. 394-395.

[4] Orfield, The Amending of the Federal Constitution (1942), p. 1.

[5] Jameson, Constitutional Conventions (4th ed., 1887), p. 549.

[6] Delaware, Constitution (1776), Art. 30; Poore, United States Charters and Constitutions (2d ed.; 1878), I, 273-278; Pennsylvania, Constitution (1776), Sec. 47; Poore, ibid., II, 1540-1548; Maryland, Constitution (1776), par. LIX; Poore, ibid., I, 815-828; Georgia, Constitution (1777), Art. LXIII; Poore, ibid., I, 377-383; Vermont, Constitution (1777), Sec. XLIV; Poore, ibid, II, 1857-1865; Massachusetts, Constitution (1780), Art. VI; Poore, ibid., I, 956-972.

[7] New Hampshire, Constitution (1784); Poore, ibid., II, 1280-1293; South Carolina, Constitution (1778), par. XLIV; Poore, ibid., II, 1620-1627.

[8] Poore, ibid., I, 278, 828; Poore, ibid., II, 1627.

[9] Poore, ibid., I, 383, 972; Poore, ibid., II, 1292, 1548, 1865.

[10] Elliott's Debates (1937 facsimile of 1836 ed.), I, 79.

[11] Ibid., p. 84.

[12] Ibid., II, 197. Ellsworth was referring to Rhode Island's action in defeating amendments proposed by the Congress on February 1, 1781, and on April 18, 1783, which would have authorized Congress to levy certain import duties. Both of the amendments had been ratified by the other twelve states.