CHAPTER 14

WITHDRAWAL OF STATE APPLICATIONS

May a State, once having made application for the call of a constitutional convention, withdraw or rescind its application? Some writers [1] on the subject believe that the legislatures may do so; at least one does not.[2]

The Supreme Court in Coleman v. Miller,[3] on the question of whether a State could withdraw or rescind its prior rejection of a proposed amendment to the Constitution, stated that the matter concerned a political question over which Congress had the ultimate power of decision. Congress, with respect to the 14th amendment, did not permit the States of Ohio and New Jersey to rescind their ratifications of that amendment. It has taken no position with respect to the withdrawal of State applications.

If precedent of the ratification process is followed, then it would seem that legislatures could not withdraw their applications.[3a] However, the wisdom of applying such similar reasoning may well be questioned.[3a] The rescinding resolutions of Iowa [4] in 1945 and of North Carolina [5] in 1951 both point out that their applications were being withdrawn because of the change in world conditions following World War II. It would not seem politically wise for the Congress to refuse to permit withdrawal of a State application where there was good reason to believe that a proposed amendment would be undesirable and would run counter to the public interest.

The requirement, discussed in other chapters, that applications be "contemporaneous" and related, generally, in subject matter would have reduced meaning if States were not permitted to rescind their applications. Such a requirement would not, in truth and in fact be met, since the general sentiment for a convention could not be said to exist in the necessary two-thirds of the States when one or more of those States are attempting to withdraw their applications.

The present attitude among legislators seems to be that withdrawal is a permissible procedure since 12 States in the last 12 years alone have adopted resolutions rescinding their applications.[6] The application process is, of course, distinguishable from the ratifying of proposed amendments. In the one instance, in a State application only an initiating action is sought with no one finally committed to the substantive proposition contained in the application, not even the State which submits it. In the other instance, Congress has completed its work and is committed to the position outlined in the proposed amendment. Further, 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 the slightest hope that Congress will call a convention. To hold them bound to their petitions would not be a politic or realistic approach. Since this question, like others, is a political one, Congress notwithstanding its

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their applications.

[1] Cuvillier, Shall we Revise th
Amend the Constitution—Why
pp. 383-384.
[2] See Packard, F. E., Rescindi
[3] 307 U. S. 433, 448-449 (1939).
[3a] It should be pointed out tha
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best move today.
[4] U. S., Congress, Congressiona
[5] U. S., Congress, Congressiona
[6] Alabama, Arkansas, Illinois,
Jersey, Rhode Island, Wisconsin

earlier decision on the 14th amendment could very well permit the States, when it so finds it to be in the public interest, to withdraw their applications.

CITATIONS

[1] Cuvillier, Shall we Revise the Constitution (1927), 77, Forum, pp. 321, 325; Tuller, A Convention to Amend the Constitution—Why needed—How may it be obtained (1911), 193, North American Review, pp. 383–384.

[2] See Packard, F. E., Rescinding Memorialization Resolutions. 30 Chi-Kent Law Rev. 339 (1952).

[3] 307 U. S. 433, 448–449 (1939).

[3a] It should be pointed out that the 14th amendment was adopted during the reconstruction days after the Civil War. What was then the politically wise thing for Congress to do, would not necessarily be the best move today.

[4] U. S., Congress, Congressional Record, 1945, Vol. 91, p. 2383.

[5] U. S., Congress, Congressional Record, 1951, Vol. 98, p. 4641.

[6] Alabama, Arkansas, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Nebraska, New Jersey, Rhode Island, Wisconsin; see Table 5, appendix.

PART V

RATIFICATION

CHAPTER 15

REJECTION OR RATIFICATION

The question of whether a State, having once rejected, may later ratify a proposed amendment had, until Coleman v. Miller,[1] long been the subject of controversy. Several writers had taken the position that since article V in terms provides for only affirmative acts, only such acts can have any effect; rejection would be of no more consequence than complete inaction.[2] Thus it had been argued that ratification by a State which had previously rejected a proposed amendment is valid and is as complete and as binding as though there never had been any negative expression.[3] This analysis has found support in actual practice and is evidenced by the fact that several States have effectively assented to constitutional amendments after prior rejections. In the case of the 13th amendment, New Jersey first rejected the amendment in 1865, and then adopted it the following year. In respect to the 14th amendment, four States (Georgia, North Carolina, Virginia, and South Carolina) rejected it when first presented but subsequently ratified. The ratification was treated as valid in each case.[4]

So far as can be determined, in every instance where ratification was made prior to the issuance of the Federal proclamation that the amendment had been adopted, the States which first rejected and later ratified were included in the list of States designated by the Secretary of State as ratifying. It seems clear that on the basis of actual practice, a rejection may be subsequently ratified. In addition, the proposition is sound in principle. Certainly a legislature's action of rejection ought not act with the finality of an executioner's ax. Changing social conditions, or a better educated point of view, may make it more desirable for the States to reverse their vote. As Frank W. Grinnell, writing in the American Bar Association Journal, stated:[5]

> No one knows what amendments may be submitted in the future as the result of political excitement; and, if the entire national structure is to be submitted to the hasty political action of State legislatures without an opportunity for reconsideration the country may wake up and find itself in a most serious situation some day.

This important question was finally presented to the Supreme Court in the cases of Coleman v. Miller[6] and Wise v. Chandler.[7] The State courts had reached opposite conclusions. The Kansas court in Coleman v. Miller adopted the position that a legislature could validly ratify a proposed amendment even though there had been a prior rejection. The Kentucky court, on the other hand, reasoning by analogy to "offer and acceptance" in contract law, refused such a view and held that a rejection of the congressional

offer to the proposed amendment, exhausted a State's power with respect to the particular amendment concerned. It also held, reasoning negatively, that a rejection by more than one-fourth of the States—(article V requires three-fourths approval)—renders an amendment null and void and thus no longer open to ratification.

However, the Supreme Court, when Coleman v. Miller [8] came before it on appeal ruled that the issue was essentially a political one which Congress should properly decide. The Court cited as reasons for its decision (1) the historical precedent in which the Congress declared abortive the attempts made by Ohio and New Jersey to withdraw their ratifications of the proposed 14th amendment,[9] and (2) the fact that there was a complete absence of any "basis in either Constitution or statute" for judicial interference.[10]

A question not raised in the Coleman case, supra, and still left without judicial determination is the converse one of what effect would a legislature's prior ratification have on its subsequent attempt to withdraw ratification? Putting the political question aside for the moment, it would seem to follow logically, that if a State can withdraw a prior rejection, it would be empowered to withdraw a ratification, at least until such time as the requisite number of States (three-fourths of the States) have ratified. However, there are those who say that such a withdrawal would be ineffective.[11] Many of these authorities, in support of their views, draw an analogy between the law of contracts and article V stating that an offer of a proposed amendment, once accepted, is irrevocable. They also point out that prior ratification, being a positive act, could not be withdrawn without considerable inconvenience and confusion. No State, for example, could know what the exact status of a proposed amendment is if another State is permitted to withdraw its approval. It would be difficult to know when three-fourths of the States had ratified.[12] Such a contention would seem to have little merit today. It would be a simple problem in this day and age to determine at any given time whether three-fourths of the States have ratified.

Congress has already been confronted with this question. The legislatures of Ohio and New Jersey first ratified the 14th amendment and then passed resolutions withdrawing their consent. In seeking to determine whether a sufficient number of States had ratified the amendment, Congress adopted a resolution requesting the Secretary of State to submit a list of the States whose "legislatures have ratified the 14th article of amendment." [13] Secretary Seward's report called attention to the action of Ohio and New Jersey [14] and stated that if their ratifications, notwithstanding their attempted withdrawals, were still in full force and effect, the amendment had become part of the Constitution.[15] Congress thereafter adopted a concurrent resolution which, after reciting that three-fourths of the States had ratified, including Ohio and New Jersey, declared the 14th amendment to be a part of the Constitution.[16]

The Supreme Court, in the Coleman case, noted, with approval, the above action by the Congress and the fact that Congress took it upon itself [17] to decide the questions. While the specific question of ratification followed by attempted withdrawal was not presented for decision, the reasoning of the Court clearly indicates that if the problem ever arises, it too will be classified as political. The Court no

doubt would refuse to disturb historical precedent, but could accept as final the political interpretations of Congress. The Court stated: [18]

> We think that in accordance with this historic precedent the question of the efficacy of ratifications by State legislatures, in the light of previous rejections or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment.

In the light of the Coleman case, it would seem that state court decisions and the views of law commentators on the subject have been rendered academic. Having been declared a political question, Congress, in its discretion, may permit the states to withdraw their ratifications or not, depending upon the political expediencies of the moment. As a guiding rule, Congress may well permit withdrawal of ratifications at any time prior to when three fourths of the states have applications simultaneously pending before the Congress. In this way, Congress will know what the general sentiment among the legislatures is at all times, something that a prohibition on rescinding action would not do.

CITATIONS

[1] 307 U. S. 433 (1939).
[2] Willoughby, The Constitutional Law of the United States (2d ed.; 1929) I, 593; Jameson, Constitutional Conventions (4th ed.; 1887), 628; Orfield, Procedure of the Federal Amending Powers (1930) 25 Illinois Law Review 418.
[3] See Wise v. Chandler, 270 Ky. 1, 12 (1937), affd. 271 Ky. 252. 111 S. W. 2d 633 (1937), disd. 307 U. S. 474 (1939).
[4] 14 Statutes at Large 428 (1867); 15 Statutes at Large 706, 708 (1868); Coleman v. Miller, 307 U. S. 433, 448 (1939).
[5] Grinnell, Finality of State's Ratification of a Constitutional Amendment (1925) 11 American Bar Association Journal 192, 193.
[6] 146 Kan. 390, 71 P. (2d) 518 (1937), affd. 307 U. S. 433 (1939).
[7] 270 Ky. 1, 108 S. W. (2d) 1024 (1937), affd. 271 Ky. 252. 111 S. W. 2d 633 (1937), disd. 307 U. S. 474 (1939).
[8] 307 U. S. 433 (1939).
[9] Ohio, Laws of 1867, p. 330 (ratification); Ohio, Laws of 1868, p. 280 (withdrawal); New Jersey, Acts of 1868 (withdrawal); Congressional action, 15 Stat. 708 (1868).
[10] 307 U. S. 433, 450 (1939).
[11] Jameson, Constitutional Conventions, 628–633, 576–584; Watson on the Constitution, p. 1318; Ames, Proposed Amendments to the Constitution, U. S., Congress, House, 54th Cong., House Doc. 353, 299; Willis, Constitutional Law (1936), 120; Willoughby, Constitutional Law of the United States (2d ed.: 1929), I, 593–594, sec. 329a; Orfield, The Procedure of the Federal Amending Power (1930), 25 Illinois Law Review 418, 429.
[12] See Dodd, Amending the Federal Constitution, 30 Yale Law Journal 321, 346 (1921).
[13] U. S., Congress, 40th Cong., 2d Sess., 1869, Cong. Globe, p. 3857.
[14] U. S., Congress, 40th Cong., 2d Sess., 1869, Cong. Globe, p. 4070.
[15] 15 Stat. 706, 707.
[16] 15 Stat. 709, 710.
[17] 307 U. S. 433, 450 (1939).
[18] Ibid., p. 448.

CHAPTER 16

STATE RATIFYING CONVENTIONS

Problems similar to those involved in a Federal constitutional convention may be found in the makeup of State ratifying conventions called by the Congress pursuant to article V for the purpose of ratifying proposed amendments to the Constitution. Has Congress, for example, the power to prescribe the time, place, and manner of meetings, of State ratifying conventions? May it control the proceedings? In what manner and to what extent may States participate in ratifying conventions? To what extent does article V govern these proceedings?

The congressional proceedings leading to the proposal of the 21st amendment clearly show that there was considerable doubt on the question of congressional control over State ratifying conventions. Two prominent people, Representative James M. Beck and former Attorney General A. Mitchell Palmer, presented legal briefs expressing different opinions. Representative Beck submitted that Congress was limited to directing that ratification be by either State convention or State legislative action. He believed that the details of forming a convention had to be left to the individual State legislatures.[1]

Mr. Beck's position finds support—at least in result—in Herman V. Ames' study on the amending power under the Constitution.[2] Ames noted historic precedent for such action was to be found in the ratification action of the Constitution by the original 13 States. He pointed out that neither Madison nor any other delegate to the Constitutional Convention of 1787 thought of the details of State ratifying conventions, which indicated to him that the matter ought to be left to the States.

Attorney General Palmer, contrary to the position taken by Representative Beck, argued that, since amending the Constitution was purely a Federal question, Congress had the mandate of setting up procedures and specifying the details of the convention.[3] He stated that Congress in calling conventions would—

> * * * prescribe all the essentials necessary for the nomination and election of delegates thereto, and the time, place of meeting, and conduct of the convention (p. 134).

Attorney General Palmer, like Mr. Beck, could also turn to the legal textbooks for support of his own position. In Political Science and Comparative Constitutional Law,[4] John W. Burgess states that since the Constitution itself did not elaborate the details as to the form of the convention, "it therefore impliedly leaves that to Congress" to develop under the "necessary and proper clause of the Constitution."

Congress, at the time, however, never took a determinative position on the 21st amendment and stated only that ratification was to be by "convention in the several States." [5] No doubt Congress decided that it was the wiser approach to follow the precedent set at the time the Constitution itself was originally adopted and simply place the

matter in the hands of the States. This approach not only offered an easy way out of the difficult legal problems involved, but it also permitted Congress to escape the complicated and burdensome task, in the event it decided it had such power, of setting up an elaborate procedure for establishing and controlling the conventions.

When Congress refused to decide these questions and handed the matter, carte blanche, to the States, the responsibility for determining the proper method of calling State conventions, their powers and duties, pursuant to the congressional resolution proposing the 21st amendment, was left to the courts. Several State decisions lend aid in clarifying the situation and indicate the status of State ratifying conventions. In an advisory opinion,[6] the Supreme Judicial Court of Maine decided that the State legislature had the power to call the convention and promulgate rules of procedure, but that such provisions had to be reasonable. It pointed out that a convention was to be distinguished from a legislature only in that a State convention was called for a specific purpose, while the legislature is called for general lawmaking purposes. It also stated that a convention, once organized, has the sole power to act on questions of fraud and irregularity in the election of its delegates.[7]

A question also arose in Ohio on whether State legislative action, in setting up machinery for convening a convention, is subject to a referendum to the people. The Supreme Court of Ohio, in State ex rel. Donnelly v. Myers,[8] held it was not, basing its decision on the holding of the United States Supreme Court in Hawke v. Smith.[9] Hawke v. Smith concerned an earlier Ohio case where an action was brought to restrain the Ohio secretary of state from preparing ballots for submission to the people of a referendum which, pursuant to the Ohio constitution, provided for referendum on the action of its legislature whenever it ratified an amendment to the Constitution of the United States. The United States Supreme Court held that the referendum provision of the Ohio constitution was in direct conflict with article V which does not permit the people, directly, to vote on the ratification or rejectment of any amendment. In so holding, the United States Supreme Court went on to rule that ratification of a constitutional amendment is not an act of legislation within the accepted sense of that word.[10]

The Ohio Supreme Court applied the reasoning of the Hawke case, to the question of State conventions and held that State action in setting up a convention is similar to State action by its legislature in ratifying an amendment and that the legal machinery in assembling a convention could not therefore be subject to referendum.

It might be well to point out that in the Hawke case the referendum was sought after the State legislature had ratified the constitutional amendment, whereas in the Donnelly case the question was whether the State legislature's action in setting up a convention was subject to referendum. While the Donnelly case decided that no such referendum could be had, the dissenting opinion stated that the setting up of a convention through State legislative enactments could only be viewed as a State function. The opinion argued that it is as much a matter of State legislation and State cognizance as are the laws providing for the election of the members of the legislature. While such reasoning may have logic on its side, it nevertheless appears that the

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1 U. S., Congress, House, 72d C
3 Ames, Recent Developments
Philosophical Society Proceeding
5 U. S., Congress, House, 72d C
4 Gin & Co., Boston: (1891). I,
6 U. S., Constitution. Art. XX
6 In re Opinion of the Justices,
7 Ibid., p. 497.
8 State ex rel. Donnelly v. Mye
9 Hawke v. Smith, No. 1, 253 U
10 Ibid., p. 229.
11 Leser v. Garnett, 258 U. S. 13
State ex rel. Tate v. Sevier, 63 Sc
12 Missouri, Constitution (1875)
13 Florida, Constitution (1885),

more generally accepted view in the cases follows the majority opinion that amending the Federal Constitution is a Federal function.[11]

Since a State may not require a referendum, it follows that it would have no right to impose, as a condition for ratification, a provision which is now found in the constitution of the State of Missouri that "the legislature is not authorized to adopt nor will the people of this State ever assent to any amendment or change of the Constitution of the United States which may in any wise impair the right of local self-government belonging to the people of the State."[12] So also, a State constitution would have no authority to impose limitations, as are now found in the constitutions of Florida and Tennessee, that no convention or legislature of the State shall act upon any amendment to the Constitution of the United States unless such convention or legislature shall have been elected after the amendment is submitted.[13]

It appears then that the people have no direct power in, and the State legislature may not seek a referendum in, the ratification of a proposed amendment either by a State legislature's action or by convention. The States, in line with historic precedent, may establish reasonable rules for calling and organizing State ratifying conventions, but the conventions once convened may promulgate, following the conclusions reached in chapter 5, rules to govern their own proceedings. Since ratifying conventions have only one duty to perform, that is, approving or disapproving a proposed amendment, the scope of their deliberations is limited to the particular subject matter presented to them for consideration and they may consider nothing else.

Finally, State conventions in ratifying proposed amendments are performing a Federal as distinguished from a State function. State constitutional and statutory provisions, insofar as they may conflict with a congressional resolution proposing the amendment, would, seemingly, be ineffective and of no moment.

CITATIONS

[1] U. S., Congress, House, 72d Cong., 2d Sess., 1933, 76 Congressional Record, pp. 2419–2420.
[2] Ames, Recent Developments of the Amending Power as Applied to the Federal Constitution, American Philosophical Society Proceedings (1933), 72, p. 93.
[3] U. S., Congress, House, 72d Cong., 2d Sess., 1932, 76 Congressional Record, p. 134.
[4] Gin & Co., Boston: (1891), I, 143–144.
[5] U. S., Constitution, Art. XXI.
[6] In re Opinion of the Justices, 132 Me. 491, 167 Atl. 176 (1933).
[7] Ibid., p. 497.
[8] State ex rel. Donnelly v. Myers, 127 Ohio 104, 186 N. E. 918 (1933).
[9] Hawke v. Smith, No. 1, 253 U. S. 221 (1920).
[10] Ibid., p. 229.
[11] Leser v. Garnett, 258 U. S. 130 (1922). The Donnelly case was also followed by the Missouri Court in State ex rel. Tate v. Sevier, 63 So. 2d 895 (1933), on the question of referendum.
[12] Missouri, Constitution (1875), Art. 2, Sec. 3.
[13] Florida, Constitution (1885), Art. 16, sec. 19, Tennessee, Constitution (1870), Art 2, sec. 32.

PART VI

ORGANIC LAWS OF FOREIGN NATIONS

CHAPTER 17

ORGANIC LAWS AND AMENDING PROVISIONS

Although the United States ranks as a relatively young nation among the family of nations, its Constitution is the oldest of all written national constitutions now in force.[1] Because of its success many nations have adopted written constitutions with provisions either identical or substantially similar to our own.

Of the total of 83 sovereign nations, 75, or approximately 90 percent, have written constitutions.[2] In five instances, written constitutions are in the process of being promulgated.[3]

Because of the material presented in this chapter, it would be helpful, in order to properly evaluate the data, to distinguish between those nations which have federal types of governments (a central government with sovereign political subdivisions), and those having a unitary system of government (a central government with nonsovereign political subdivisions).

About 16 nations, including the United States, may be classified as having governments of the federal or confederation type. They are:

Argentina (Constitution of the Argentine Republic, art. 1).

Australia (Constitution of the Commonwealth of Australia, arts. 1, 62–64, 71, 79).

Brazil (Constitution of the United States of Brazil, art. 1).

Canada (British North American Act, 1867, preamble).

Mexico (Political Constitution of the United States of Mexico, art. 40).

Netherlands (Constitution of the Kingdom of the Netherlands, art. 208).

Switzerland (Federal Constitution of the Swiss Confederation, art. 1).

U. S. S. R. (Constitution of the Union of Soviet Socialist Republics, art. 13).

Venezuela (Constitution of Venezuela, art. 2).

Yugoslavia (Constitution of the Federal Peoples Republic of Yugoslavia, art. 1).

India (Constitution of India (1948), Part 1).

Germany (Western Zone [art. 20] Bonn Constitution [1949]).

Pakistan (Constitution of Pakistan, Resolution, Constituent Assembly, March 7, 1949, preamble).

United States (Constitution of the United States, art. IV).

Burma (Constitution of Burma, art. 2).

Union of South Africa (Constitution of Union of South Africa, art. 4).

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Most of the nations with the so-called unitory form of government bear considerable resemblance to those with federal governments, except that their political subdivisions are not free to exercise many of the prerogatives of a sovereign state.

Of the nations, both federal and unitory, which have written constitutions, 61 contain express provisions providing for the amendment and revision of their organic instruments. As will be further noted in the following pages, 5 of the nations authorize constitutional conventions, 44 nations adopt amendments through the action of their legislative assemblies (although in many instances the assemblies do not maintain absolute control over the amendment process), and 11 nations amend their organic laws by way of referendum.

The five states which recognize the convention method of amendment are Argentina, Dominican Republic, El Salvador, Guatemala, and the Philippines:

Argentine Constitution—adopted March 16, 1949—

ART. 21. The Constitution may be amended entirely or in any of its parts. The necessity for a reform must be declared by Congress with the vote of two-thirds of its members present, but it shall not be effected except by a convention called for the purpose.

Constitution of the Dominican Republic—adopted January 10, 1949—

TITLE XVI

CONSTITUTIONAL REFORMS

ART. 108. The Constitution cannot be changed except when two-thirds of the members of each chamber so agree.

ART. 109. The necessity for the reform being declared, Congress, by a law which cannot be the subject of objections by the executive power, shall order the meeting of a revisory assembly to pass upon the reform. The articles whose reform is proposed shall be inserted in the law of convocation.

ART. 110. The election of members of the revisory assembly shall be made by direct vote of the people of the provinces, in the same proportion as for the election of deputies.

No province shall have less than two representatives.

The same qualifications are necessary in order to be elected a member of the revisory assembly as for being a deputy.

Members of the Assembly shall enjoy the same immunities as the members of the two chambers.

ART. 111. The Constitution may not be so amended as to change the form of government, which must always be civil, republican, democratic, and representative.

ART. 112. Reform of the Constitution shall be made only in the manner indicated therein and it shall never be suspended or annulled by any power or authority nor by popular acclamation.

Constitution of El Salvador—adopted August 13, 1886—

TITLE XVI

REFORM OF THE CONSTITUTION AND CONSTITUTIONAL LAWS

ART. 171. The reform of the present Constitution shall be undertaken only upon a resolution passed by two-thirds of the votes of the representatives elected to the Assembly, and this resolution shall express the article or articles which shall be amended. The resolution shall be published in the official newspapers, and shall be considered again in the session of the Assembly of the following year. If ratified by the Assembly, a constitutional convention, consisting of three delegates for each department, shall be called to meet, in order to decide about the suggested reform. But it is hereby declared that in no case shall Articles 80, 81 and 82 prohibiting the reelection of the President, Vice President, and designates and concerning the duration of the presidential term be amended.

ART. 172. The laws relating to the public press, the state of siege, the writ of amparo and the general elections shall rank as constitutional statutes.

They may be amended either by the constitutional convention, or by the ordinary assembly by a two-thirds vote; but in the latter case, the reform shall have no binding force until it has been ratified by the legislative body in the ordinary session of the following year by the same number of votes.

ART. 173. Any other method of amending the Constitution or constitutional laws different from those provided for in the preceding articles shall be illegal and void.

Constitution of Guatemala—adopted March 11, 1945—

TITLE XI

AMENDMENTS TO THE CONSTITUTION

ART. 206. Complete or partial amendment of the Constitution may be decreed only by a vote of at least two-thirds of the total number of deputies making up Congress; the vote will also indicate the article or articles to be amended.

* * * * * * *

Amendments to the Constitution may consist of modifications, suppressions, additions, substitutions or extension of Articles. * * *

ART. 207. Once the amendment is decreed, Congress will convoke elections for a Constituent Assembly which should be installed within the sixty days following the date of convocation. * * *

ART. 208. The Constituent Assembly will be composed of one representative for each forty thousand inhabitants, or fraction over twenty thousand. * * *

ART. 209. The meeting of the Constituent Assembly does not hinder the functioning of Congress.

ART. 210. Once the amendment has been decreed by the Constituent Assembly, and if there are no other constitutional decrees or laws to issue, it will dissolve itself after the promulgation.

ART. 211. This Constitution shall not lose its force or vigor even though rebellion interrupts its observance.

Constitution of the Philippines—February 8, 1935, as amended—

ARTICLE XV

AMENDMENTS

SEC. 1. The Congress in joint session assembled, by a vote of three-fourths of all the members of the Senate and of the House of Representatives voting separately, may propose amendments to this Constitution or call a convention for that purpose. Such amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification.

The following 44 states provide for the revision of their organic laws by action of their legislatures:

Belgium (art. 131).
Bolivia (art. 174–177).
Brazil (art. 217).
Bulgaria (art. 99).
Burma (art. 207–210).
Byelorussian S. S. R. (art. 122).
Chile (art. 108–110)—generally by legislative action only. If President and legislature cannot agree, President may submit question to a plebiscite.
Colombia (art. 218).
Costa Rica (art. 139–140)—legislature may amend constitution but only a constitutional assembly can effect a general review of the constitution.

Czechoslovakia (se
Ecuador (arts. 189
Egypt (arts. 157–1
Finland (Diet Act
France (arts. 90–9
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Greece (art. 108).
Haiti (arts. 145–1
Honduras (art. 2
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Iceland (art. 79)-
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Italy (arts. 138–1
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Jordan (art. 47).
Korea (art. 98).
Lebanon (arts. 76
Luxembourg (art
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Mexico (art. 135)
Venezuela (arts.
Netherlands (arts
Nicaragua (arts.
Norway (art. 112
Panama (art. 25
Peru (art. 236).
Poland (art. 30).
Portugal (arts. 1
to a plebiscite.
Rumania (arts.
Sweden (arts. 81
Syria (art. 108).
Thailand (secs.
Turkey (art. 102
Ukrainian S. S.
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Australia (art. 1
Denmark (art.
Ireland (art. 46)
Japan (art. 96).
Liberia (art. V,
Liechtenstein (
Paraguay (art.
Spain (Referen
Switzerland (ar
Uruguay (art. 2

Czechoslovakia (sec. 172).
Ecuador (arts. 189–190).
Egypt (arts. 157–158).
Finland (Diet Act art. 67).
France (arts. 90–92)—if after a second reading proposal is not adopted, then it is submitted to a referendum.
Greece (art. 108).
Haiti (arts. 145–148).
Honduras (art. 200)—total reform and the election and term of office of President can only be effected through a constitutional assembly.
Iceland (art. 79)—amendments relating to the status of the church may only be submitted to a plebiscite.
Iraq (arts. 118–119).
Italy (arts. 138–139)—under some conditions a referendum is necessary.
Jordan (art. 47).
Korea (art. 98).
Lebanon (arts. 76–77).
Luxembourg (arts. 114–115).
Mongol People's Republic (art. 95).
Mexico (art. 135).
Venezuela (arts. 248–252).
Netherlands (arts. 202–206).
Nicaragua (arts. 285–287).
Norway (art. 112).
Panama (art. 256).
Peru (art. 236).
Poland (art. 30).
Portugal (arts. 134–135)—some amendments may be submitted to a plebiscite.
Rumania (arts. 103–104).
Sweden (arts. 81–82).
Syria (art. 108).
Thailand (secs. 173–176)—plebiscite is optional with King.
Turkey (art. 102).
Ukrainian S. S. R. (art. 127).
Union of South Africa (pt. 10).
U. S. S. R. (art. 146).
Yugoslavia (art. 72).
India (Part XVI).

Ten states provide for the amendment and revision of their organic acts by referendum. They are:

Australia (art. 128).
Denmark (art. 94).
Ireland (art. 46).
Japan (art. 96).
Liberia (art. V, sec. 17).
Liechtenstein (art. 66).
Paraguay (art. 94).
Spain (Referendum Act—Oct. 22, 1945).
Switzerland (art. 118–123).
Uruguay (art. 281).

Cuba (arts. 285–286) provides for constitutional revisions in three methods—

(*a*) by the Congress alone;
(*b*) by plebiscitary assembly;
(*c*) by referendum.

Nepal (arts. 66–68) permitted the King to promulgate rules to implement the basic organic law until April 1, 1955. After that date, a Commission recommends to the King suggested changes.

CITATIONS

[1] Peaslee, Constitution of Nations (1950), I, 3.
[2] Ibid., p. 1. What constitutes a "nation" is the subject of much controversy; what is to be used as a yardstick for precisely determining a "nation" is also an item of great dispute. The list of nations cannot be limited to those belonging to the United Nations, nor can the list be as all inclusive as the membership of the Universal Postal Union, which in some instances includes territories and colonies. The above figure is based on Peaslee's estimate (Peaslee, Constitution of Nations, I, 3).
[3] Ibid., p. 4.

CHAPTER 18

ORGANIC LAWS CONTAINING CONVENTION PROVISIONS

As noted in chapter 17, five nations provide in their basic charters for amendment and revision by means of constitutional conventions. They are the Republic of Argentina, the Dominican Republic, the Republics of El Salvador, Guatemala, and the Philippines. Only one of these nations—Argentina—has ever amended its present constitution via the convention method.

The Philippines, since it has become an independent nation, has never sought to convene a convention; so also the Dominican Republic.

El Salvador has never had a constitutional convention. Its convention clauses, however, contain many provisions which are of interest to this thesis. Its earlier constitution, in addition to setting forth the authorization for a convention, authorized the National Assembly to prosecute delegates to the convention who were guilty of crimes.[1] The Constitution of 1950 assigns this duty to the National Assembly.[2] The official gazettes available in the Library of Congress point out that under the earlier constitution, the National Assembly, in enabling acts, provided for the number of delegates to be elected to the convention, the manner of election, their qualifications, compensation, privileges, etc. If nothing else, the above information indicates the wide control which the National Assembly exercises over a constitutional convention. The gazettes also point out that the National Assembly could establish the rules and procedures under which the convention was to operate, and it could expressly declare which articles were to be considered by the convention for amendment.[3]

The Constitution of Guatemala (1945), while expressly providing the only method by which the constitution itself could be changed, was nevertheless abrogated on August 11, 1954, by a so-called political statute which placed the nation under a council that governed by decrees. A decree [4] of September 21, 1954, ordered the election of a constituent assembly, which among other things, was to prepare a new constitution.[5] A new constitution was promulgated and became effective March 1, 1956. It is believed that the provision in the 1945 constitution setting forth the procedural pattern for amending a constitution by a convention (which was disregarded in 1945) is also embodied in the new constitution.

The Republic of Argentina has had two constitutional conventions, one in 1866 and another in 1898.

In accordance with the constitution, the senate and chamber of deputies, after declaring on June 9, 1866, that it was necessary to amend article 4 and section I of article 67 of the Argentinian Constitution, convoked a national convention for that purpose. Thereafter through a further enabling act, they set up the time and place where the convention was to be held, and prescribed the number and qualifications of the delegates, their pay, etc. The statute reads: [6]

> The Convention shall consider the reform of Article 4, and section one of Article 67 of the Constitution as declared to be necessary by Congress; the Con-

vention shall be composed of the same number of delegates and in the proportion that is fixed by Article 38 of the Constitution; the qualifications of the delegates of the Convention shall be the same as those required by members of Congress; the Convention shall take place in the city of Santa Fe, on September 1, 1866; the election of the delegates for the Convention shall take place on July 22, 1866; the delegates shall receive a compensation of one thousand pesos and the traveling expenses paid to members of Congress; the election of delegates to the Convention shall be held in accordance with the general election laws; the counting of the votes for the election of delegates shall take place fifteen days after their election; the executive power is authorized to spend the necessary money for the enforcement of this law.

The organization and functioning of the convention in both 1866 and 1898 adhered to the following pattern. Each convention consisted of three sessions—

(1) preparatory session at which a provisional president and two committees, the committee on powers and the committee on rules, were appointed;

(2) deliberative session where the substantive merits of the proposals were debated; and

(3) final session, called the closure session, at which the final drafts and reports were approved.[7]

Article 21 of the Argentine Constitution expressly provides that it may be amended entirely or in any of its parts. The issue was raised, at the time the congressional enabling acts were being passed, as to whether the convention itself could decide on either a piecemeal or general revision or whether such power was solely within the control of the Argentine Legislature. The result of the debate on this issue (and as the enabling acts themselves clearly indicate) was that the convention may only consider those matters stated by the legislature in the enabling act. While it has the power to determine the substance of the amendments, it cannot propose any amendment, the subject matter of which was not expressly presented to it by the legislature.

It seems clear from the foregoing that the Congress in Argentina exercises almost plenary control over the constitutional convention both as to the scope of its deliberations and as to procedure. In addition, the Congress, apparently, acts in these matters without either the concurrence or disapproval of the President. When the enabling acts of 1866 and 1898 were enacted, neither was submitted to the President for his signature upon the ground that the veto power of the President applies only to ordinary legislation.[8] This conclusion is somewhat similar to and is in line with United States Supreme Court decisions holding that resolutions of Congress proposing constitutional amendments do not require Executive approval since they are not considered ordinary legislation.[9]

CITATIONS

[1] El Salvador, Constitution (1886), amended 1945, Arts. 169, 170.
[2] El Salvador, Constitution (1950), Arts. 213, 44, 45.
[3] El Salvador, Constitution (1886), amended 1945, Art. 171.
[4] Guatemala, Decree No. 86 (September 21, 1954).
[5] Guatemala, Decree No. 134 (October 25, 1954). This assembly was ordered to study and determine: (1) tenure of office of the president; (2) ratification of treaties and state contracts; (3) preparation of a new constitution.
[6] Argentina, Coleccion de Leves Nacionales, II, 271.
[7] Argentina, Coleccion de Leves Nacionales, XI, 339.
[8] J. Gonzales Calderon, Derecho Constitucional Argentino, III, 34.
[9] Hollingsworth v. Virginia, 3 Dall. 378 (1798); Hawke v. Smith, No. 1, 253 U. S. 221 (1920).

PART V

HISTORICAL RÉSUMÉ OF A
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CHAPTER

NEW YORK STATE CONSTITU

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PART VII

HISTORICAL RÉSUMÉ OF A STATE'S CONSTITUTIONAL CONVENTIONS

CHAPTER 19

NEW YORK STATE CONSTITUTIONAL CONVENTIONS

Shortly before the Revolutionary War, the Second Continental Congress adopted legislation urging the several Colony-States, through their "respective assemblies and conventions," to adopt such constitutional government as was necessary for their safety and protection.[1] In New York the task of drafting a constitution was delegated to and performed by "The Convention of the Representatives of the State of New York"—a provisional body.[2]

This body, unlike future New York Constitutional Conventions, engaged in the actual business of government. Due to the exigencies of war, the convention operated under the most difficult conditions. It did adopt, however, a constitution—one which was, for the most part, prepared by a single committee headed by John Jay. It is known as the constitution of 1777.

Generally, the constitution of 1777 set up a system of checks and balances by establishing separate executive, judicial, and legislative branches. Under it the legislature, unlike our National Legislature, had residual, rather than delegated, powers. A so-called council of revision had the power to veto legislative acts, however.

Voting, under the 1777 constitution, was restricted by property qualifications [2a] and the instrument contained no provision providing for its amendment or revision.[2b] The constitution became effective upon its adoption by the delegates to the convention and no opportunity was afforded the electorate to vote upon it.[3] This action was no doubt due, in large part, to the fact that part of the State was in actual control of enemy British forces, rendering a popular referendum impossible.

While the original constitution was workable, it became apparent in time that clarification and revision was necessary. A second constitutional convention was called to accomplish this purpose. Foremost among the causes which gave rise to the second convention (held in 1801) was the conflict of power between the Governor and the constitutionally established council of appointment over the nominating and appointing of persons to political office. The Governor claimed that he had the exclusive right of appointment; the council of appointment denied this and claimed concurrent jurisdiction in the matter.

When attempts to resolve this major issue failed, the legislature adopted a resolution calling, as noted above, the constitutional convention of 1801. The convention was also authorized, pursuant to

a legislative resolution, to consider the advisability of reducing and limiting the number of members in the legislature (which was expanding with the population growth of the State).[4]

This the convention did, and it also adopted a provision vesting concurrent jurisdiction in the Governor and the council of appointment to make appointments to political offices.[5]

The results of this convention became effective without being submitted to the electorate for popular approval; and, like the 1777 convention, set up no provision for the constitution's future amendment.

The work of the convention in placing concurrent jurisdiction over political appointments in the council of appointment proved unfortunate. The council, it is stated, engaged to the fullest extent in the "spoils system," dispensing enormous patronage.[6]

Disappointment with the council of appointment, however, was not alone the motivating force in bringing about the third constitutional convention in 1821. A movement had been underway for some years, seeking the removal of the property qualifications on voting.[7] In addition, dissatisfaction was also expressed concerning the work of another committee—the council on revision—in its vetoing of several popular legislative enactments.[7a]

It is worthy of note that one of the revision council's last acts—vetoing an 1820 act—established a rule of conduct for subsequent constitutional conventions. It took the position that the people should have a voice in deciding whether a convention should be held. It therefore vetoed a bill which would have denied to the people the right to approve or disapprove the then proposed convention of 1821. In rejecting the measure, the council based its veto in the belief that—

> it is the most wise and safe course, and most accordant with the performance of the great trust committed to the representative powers under the Constitution, that the question of a general revision of it should be submitted to the people in the first instance, to determine whether a convention ought to be convened.[8]

These views were eventually adopted by the legislature and the question of whether or not to hold a convention was put to the people in the general election in 1821, and they voted to convene a convention.[9]

The resolution calling the convention provided unlimited revisionary powers. And, in accordance with the views of the council of revision as incorporated in the resolution, the changes proposed by the convention were submitted to the people, who approved the revised constitution.

While the entire instrument was presented for approval to the people, only a few changes were actually made to the original document. The judiciary article was revised, property restrictions on voting were made lenient, and a legislative reapportionment plan adopted.

Like its predecessors, the 1821 convention made no provision in the constitution providing for another convention. A new section did, however, provide for the constitution's amendment by amendments which could automatically become part of the constitution if recommended to the people by two successive legislatures,[10] so-called amendment by legislative initiative.

In spite of this specific method set forth in the instrument for amending the constitution, the legislature in 1845 did what has been

described as an extraconstitutional providing for a popular vote on whe vention should again be held.[11] Th approved by the people and resulted of 1846.

While it was urged that such actio tutional, in view of the fact that th only one method for its own ame nevertheless sustained on the theory by convention is a right underlyin people which, in this instance, had providing an additional method of a

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AMENDMENT BY CONSTIT

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described as an extraconstitutional act when it adopted a resolution providing for a popular vote on whether or not a constitutional convention should again be held.[11] The resolution was overwhelmingly approved by the people and resulted in the constitutional convention of 1846.

While it was urged that such action by the legislature was unconstitutional, in view of the fact that the constitution expressly provided only one method for its own amendment, the legislative act was nevertheless sustained on the theory that amending the constitution by convention is a right underlying the constitution of every free people which, in this instance, had not been renounced simply by providing an additional method of amendment in 1821.[12]

While the 1846 convention was in response to demand for several constitutional reforms, the most important concerned the question of State finances. The commercial panic of 1837 resulted in the State's credit being badly impaired. There were loud voices demanding constitutional regulation of corporations, banking, and the issuing of currency.

The convention responded. Many restraints were placed upon legislative authority; the judiciary provisions were revised, with many offices being made elective instead of appointive.[13]

One of the more important provisions adopted related to the holding of future constitutional conventions. It called for a popular referendum every 20 years, and at such other times as the legislature might decide.[14]

In accordance with this constitutional mandate, a referendum was held 20 years later and the constitutional convention of 1867 was authorized.[15] As might be imagined, the motives and reasons for holding the convention at the end of a 20-year interval were much less apparent than the reasons which inspired those of 1777, 1801, 1821, and 1846. The work of the 1867 convention, with the exception of a separately submitted judiciary article, was rejected.[16]

However, an important outgrowth of the rejection was a legislative enabling act in 1869 which authorized the governor to appoint a constitutional commission of 32 members to study constitutional problems and to submit them to the legislature so that, in turn, the legislature, if it approved the recommendations, could submit them, through the method of legislative initiative, to the people for approval or disapproval. Between the years 1872–94, several constitutional alterations were brought about through this method.[17]

Twenty years later and in 1886, the question of holding a constitutional convention was again, in pursuance of article XIII, section 2, submitted to the people and the vote was in favor of it. Due, however, to a dispute between the governor and the legislature over the election of delegates, the convention was not convened until 1894.[18]

The constitution proposed by this convention and adopted by the people remained in force until 1938.[19] It expanded the convention article (art. XIV) by providing, among other things, for the election of delegates. It also set forth convention procedures. It reads:

AMENDMENT BY CONSTITUTIONAL CONVENTION

At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, 'Shall there be a convention to revise the

Constitution and amend the same?' shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose the electors of every senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates at large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the Assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal to be kept. The convention shall have the power to appoint such officers, employees, and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns, and qualifications of its members. In case of a vacancy, by death, resignation, or other cause, of any district delegate elected to the convention, such vacancy shall be filled by the vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment, shall go into effect on the first day of January next after such approval. (Art. XIV, sec. 2, Constitution of 1894.)[20]

A reading of the above article indicates that once the question of holding a constitutional convention has been decided upon, the constitution intends that the procedures relating to the convention—indeed the work of the convention itself—should be self executing and free from legislative control. This was, of course, a complete change from the conduct attendant with earlier conventions.

The above article has clarified and settled two very important questions affecting legislative authority in New York: (1) the structure of the convention, and other details concerning it, and (2) the election of delegates. Prior to 1894, the legislature set the date on which conventions were to convene. However, a dispute in 1886 between the governor and the legislature over the details of the convention postponed the convention for some 8 years even though the people by referendum had voted to hold the convention. Under article XIV, however, once the question of holding a convention is approved, the time is automatically set for the meeting of the convention. So also, with the termination of the convention. Under former procedure the legislature would set a day certain on which the business of the convention was to be accomplished or finished. Experience had shown, however, that it was impractical to so limit the deliberations of the convention and in one instance (1867) the legislature had to pass supplementary legislation extending the time. Under article XIV any convention, once convened, remains in session "until the business of such convention shall have been completed." The only limitation with regard to this matter is the further provision that a 6 week interval must occur between the close of the convention, and the submission of its revised constitution to the people.[21]

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Under article XIV, a majority of the convention constituted a quorum both for doing business and for approving proposed amendments. This provision was inserted to prevent a "mere handful" of delegates from being able to control the affairs of the meeting. It might be observed, however, that if the convention of 1777 had had such a limitation it no doubt would not have promulgated the State's first constitution. This was for the reason that the British, in occupying different parts of the State from time to time, made it impossible for a majority of delegates to be always present.

The article also provided that the convention—not the legislature or the courts—determine the rules of its own proceedings, its officers, and all issues relating to the election of the delegates. It is readily understood why a convention should be permitted to adopt rules to govern its own proceedings. However, on the issue of election, the power is not so apparent. The reason advanced at the time this provision was adopted was that by divesting the legislature and the courts of such power, the people, through the conventions, would have, ultimately, such power. It was the only method by which the people, in the final analysis, could have a final say over the legislature and the courts. In any event this safeguard rendered the convention free from legislative control as well as from judicial interference.

A reading and study of the constitutional convention history of New York clearly indicates that a convention clause with self-executing provisions is more expeditious than convention clauses calling for legislative control. Legislative action oftentimes results in delays. The governor, for example, may send his recommendations to the legislature and have that body reject them completely, or accept them only in part. The governor, in turn, has the power of vetoing the legislative acts thereby stymying the work of that body. With self-executing provisions, the convention, once agreed to by the people, eliminates these intermediate steps with their possible resulting delays and conflicts.

The constitutional convention of 1915 was held in pursuance to the amending article of the constitution providing for a referendum at 20-year intervals. The constitution proposed by this convention was rejected upon the ground that it was "not sufficiently progressive." [22]

In 1936, the people again, pursuant to the amending article of the constitution, voted to hold a constitutional convention. This resulted in the convention of 1938. An interesting sidelight on this convention was the fact that, a convention having been decided upon by the vote of the people, the governor asked the legislature to create a special commission to perform essential preparatory work for the convention just as it had created commissions to do preliminary work for the conventions of 1894 and 1915. However, the legislature did not adopt the governor's recommendation. Thereafter, the governor established an unofficial committee, nonpartisan and nonpolitical in character, which undertook the preparation of factual data on several subjects which were certain to be considered at the convention.[23]

The 1938 convention adopted a total of 57 separate measures proposing amendments to the then constitution. To expedite matters it was decided to group 50 of the proposals, which were considered uncontroversial, into 1 amendment. Eight other proposals were submitted singly and appeared on the ballot for the people's consideration as amendments Nos. 2 to 9, inclusive. These latter proposals

were considered controversial and if the people were to reject any of them, it would not affect the remaining amendments.[24]

At the general elections of 1938, six of the proposed amendments were approved. The only change here pertinent concerned the amending article which was renumbered article XIX. The only substantive change made relating to constitutional conventions was changing the date on which to start the 20-year intervals, so that the next convention will be voted upon in 1957, a year when no impending State or National election is likely to inject its issues into the deliberations of the convention.

RÉSUMÉ

In review, there have been 8 constitutional conventions in New York State—1777, 1801, 1821, 1846, 1867, 1894, 1915, and 1938—and of these, 4 have had their work approved and adopted by the people. The work of 2 conventions became effective without ever being referred to the people, and the work of 2 conventions was rejected.

The rejection of the proposed constitution of 1867 engendered a new step in constitutional procedure, for following its rejection, the legislature created the constitutional commission of 1872 to do extensive preliminary work and thus prepare well-reasoned and well-considered proposals to the constitution. Again, because of the rejection of the proposed 1915 constitution, the legislature created a judiciary committee, a body of experts with a knowledge of judicial problems, to submit recommendations containing constitutional changes on the judicial provisions of the constitution (article VI).

Another noteworthy development has been the establishment of special commissions and committees, prior to the convening of the conventions of 1894, 1915, and 1938, to undertake to make studies and prepare statistical and other data on particular subjects for the conventions' aid and consideration when they meet.

While there have been many revisions and many changes and amendments, the New York State constitution has not been much altered in its main structure.

In its history, the legislature has restricted the scope of a convention's deliberations authorizing it to consider, in 1 instance, only 2 subjects. It has, however, authorized unlimited revision on other occasions.

The conventions in like manner have submitted completely revised instruments for approval and also piecemeal changes, even though some conventions had general revisionary powers.

This history also discloses that the trend has been away from legislative and judicial control and toward autonomy on the part of the convention, enabling it to decide for itself the scope of its deliberations as well as the number and kinds of subjects it will consider. This trend has helped in eliminating delays as well as disputes which have arisen between the legislature and the governor. Moreover, the conduct of recent conventions has indicated that there is little likelihood of a so-called runaway convention which would get out of control and promulgate proposals effecting radical, unpopular, or unwanted changes in the constitution. On the contrary, past conventions have suggested only changes which reflected the tempo of the times and only then on subjects which were in change.

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[2] Ibid.
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[7] Lincoln, ibid., I, 615.
[7a] Lincoln, ibid., I, 624–628.
[8] Lincoln, Messages from the Governors (1909), II, 1055, 1057; Lincoln
[9] Lincoln, ibid., I, 628–629.
[10] Lincoln, ibid., I, 751.
[11] New York, Debates of the 1846 Convention, reported by William Lincoln, ibid., II, 210.
[12] Dougherty, Constitutional History of the State of New York (191 question in chapter 7, supra.
[13] Lincoln, ibid., II, 9–217.
[14] New York, Constitution (1846), Art. XIII, sec. 2, Lincoln, ibid., II
[15] Lincoln, ibid., II, p. 234.
[16] Lincoln, ibid., II, pp. 288, 422.
[17] Lincoln, ibid., II, pp. 464–574.
[18] Lincoln, ibid., II, p. 682, III, pp. 1–30.
[19] New York, Constitution (1846), Art. XIII, sec. 2, provided that t for the election of delegates.
[20] Lincoln, ibid., IV, p. 797.
[21] Lincoln, ibid., III, pp. 660–678.
[22] New York, Record of the 1915 Constitutional Convention (revise N. Y., 1916), 2 Vols. There was a judicial constitutional convention i provisions revision. It was called by the legislature pursuant to the pro
[23] New York State Constitutional Convention Committee (1938), (J vol. I, pp. v–viii.
[24] New York, What's in the Proposed Constitution, published by

times and only then on subjects which were in need of constitutional change.

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[2] Ibid.
[2a] New York, Constitution (1777), Art. VII.
[2b] Lincoln, The Continental History of New York (1906), I, 606. See footnotes to page 2, supra, where eight other state constitutions promulgated during the Revolutionary period expressly provided for constitutional changes.
[3] There was, however, sentiment in favor of a submission. See W. F. Dodd, The Revision and Amendment of State Constitutions (1910), 12.
[4] Lincoln, The Constitutional History of New York (1906), I, 607–608.
[5] Lincoln, ibid., I, 610.
[6] Problems relating to legislative organization and powers, New York State Constitutional Convention Committee (1938), Albany, p. 337.
[7] Lincoln, ibid., I, 615.
[7a] Lincoln, ibid., I, 624–628.
[8] Lincoln, Messages from the Governors (1909), II, 1055, 1057; Lincoln, ibid., I, 626.
[9] Lincoln, ibid., I, 628–629.
[10] Lincoln, ibid., I, 751.
[11] New York, Debates of the 1846 Convention, reported by William G. Bishop and William H. Attree. Lincoln, ibid., II, 210.
[12] Dougherty, Constitutional History of the State of New York (1915), 171–172; see also discussion of this question in chapter 7, supra.
[13] Lincoln, ibid., II, 9–217.
[14] New York, Constitution (1846), Art. XIII, sec. 2, Lincoln, ibid., II, 210.
[15] Lincoln, ibid., II, p. 234.
[16] Lincoln, ibid., II, pp. 283, 422.
[17] Lincoln, ibid., II, pp. 464–574.
[18] Lincoln, ibid., II, p. 682, III, pp. 1–30.
[19] New York, Constitution (1846), Art. XIII, sec. 2, provided that the legislature was to provide by law for the election of delegates.
[20] Lincoln, ibid., IV, p. 797.
[21] Lincoln, ibid., III, pp. 660–678.
[22] New York, Record of the 1915 Constitutional Convention (revised record), (J. B. Lyon Co., Albany, N. Y., 1916), 2 Vols. There was a judicial constitutional convention in 1921 which dealt with the judiciary provisions revision. It was called by the legislature pursuant to the amending article.
[23] New York State Constitutional Convention Committee (1938), (J. B. Lyon Co., Albany, N. Y., 1938), vol. I, pp. v–viii.
[24] New York, What's in the Proposed Constitution, published by National Municipal League (1938).

PART VIII

CONCLUSIONS AND RECOMMENDATIONS

CHAPTER 20

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

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-seven proposed amendments have been referred to the States for ratification under the first method,[1] 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.[2]

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.[3] 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.[4] 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.[5] 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 Con-

ress were made over 168 years ago.[6] Do these
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Validity of State applications

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gress were made over 168 years ago.[6] 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 considered 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 thesis. 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.

Validity of State applications

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 function.[7] The legislature, for example, was intended to act (1) as an electoral body under article I, section 3, in the choice of United States 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 unneccessary because the State legislatures are performing a Federal function—clearly different from State lawmaking.[8] Furthermore, the Constitution speaks as of the time it was adopted,[9] and in the beginning very few of the original States granted the veto power to their governors.[10]

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.

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.[11] 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,[12] points out that when a constitution is adopted, there are in existence at the time of adoption known and settled 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,[13] the determination of their own rules of proceedings,[14] and the election and qualification of their own members.[15] These so-called inherent rights are well documented in parliamentary rules. They were recognized by the United States Supreme Court in Field v. Clark [16] 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 restrict 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.[17] 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.[18]

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

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Time limitations on the submission of State a

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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,[19] 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.[20] It was argued, on their behalf, that the people as sovereign have an "historically established right to advocate revolution" and that the Constitution recognized that "right." [21]

Judge Learned Hand, in denying that such a right exists under the Constitution, succinctly held that no government could tolerate it and exist.[22] 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.[23] The Supreme Court, in affirming the court of appeals, observed that the Constitution can only be changed by peaceful and orderly means.[24]

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.[25] 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.[26]

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.[27] 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.[28] 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.[29] 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.

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.[30] 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.[31] 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.[32]

The question of ratification came before the Supreme Court in Coleman v. Miller,[33] 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 rec
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question.[34]

Applications to limit Federal taxing power

In recent years Congress has received p
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As of June 1957, Congress had received
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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.[34]

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.[35] The amendments requested in these petitions are of 4 general types [36] but for purposes of discussion may be broken down into 2 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 June 1957, Congress had received 32 petitions from 27 different States relating in some manner to amending the Constitution so as to limit the Federal taxing power.[37] The legislatures in 12 States have reversed their previous positions, however, and have taken action rescinding their applications.[38] Three States have submitted two applications each, only one of which should be counted for each State.[39]

It might be well to mention that the petitions of 3 other States (not included in the 32 petitions above) requested that Congress itself propose a Federal tax limitation amendment.[40] Such petitions, of course, are not binding upon Congress insofar as summoning a constitutional convention is concerned.

The application of Maryland [41] 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.[42] 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.

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 18 years ago.[43] Tables 3, 4, and 5, appendix, infra, list all the petitions and indicate their present status.

Accordingly, as of June 1957, and as table 4, appendix, sets forth,[44] Congress, without discounting any applications because of the lapse of time, could well conclude that 16 States have applications validly pending for a constitutional convention limiting the Federal power of taxation. This is 16 short of the necessary 32 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.[44]

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 two occasions, 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.[45]

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 alternative method of convention. The Founding Fathers intended this method to be workable and incorporated it into the Constitution to permit the States 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 preceeding chapters of this thesis. Two draft bills have been prepared

which set up a framework for giving effect t
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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 which are set out in their entirety beginning with pages 79 and 82 provide in substance as follows:

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).

[As discussed in pp. 19–20, supra, 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)).

[As developed in chapter 5, 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, as pointed out in chapter 4, 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 (as noted in chapter 14 and p. 49), 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, as discussed in chapters 6, 7, 9, and 10, 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. 13 a).

[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. (See chapters 11 and 13.)]

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 fro
(sec. 14 (b)), and States may rescind the
to the ratification by three-fourths of th
State may also ratify an amendment
(sec. 16 (b)).

[As previously noted, and in line with court de
with other amendments, executive action is not re
Since the exact status of proposed amendments
ascertained, it is no longer necessary to hold St
unless three-fourths of the States have also ratifie
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Congress will determine all questions r
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[This provision concerns a "political question'
that Congress has the power to decide all questio
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Analysis of draft resolution amending rules
tives for processing of State applicat
Conventions

The Speaker is to refer all State applic
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Within 60 days after the beginning of e
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[The 60-day provision is to prevent delay or de
of Congress. The remainder of the section carri
4 and 5 of the draft bill.]

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applications on a particular subject, a res
in the House calling for a convention wit
set forth in the State applications (sec. 2).

[An enabling provision to initiate action by a H
requirements outlined in the draft bill have been

The resolution is to be referred to the
must report back to the House within 3
discharged (sec. 3 (a)).

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mittee and to provide for not only immediate c
the committee, but also to require the committ
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Senate; also to a separate commission. However
in over the years there would be very little work t
committee or a commission. The judiciary comm
set up to handle the work involved in State appl

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.]

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.]

LEGISLATIVE PROPOS

A BILL

To provide procedures for calling constitutional conventions for pr
tion of the United States, on application of the legislatures of two-t
V of the Constitution.

Be it enacted by the Senate and House of Represen
America in Congress assembled, That this Act m
Constitutional Convention Act."

ACTION OF STATE LEGISLA

SEC. 2. The legislature of a State, in making ap
convention under article V of the Constitution of
adopting a resolution pursuant to this Act, petit
substance, that the legislature favors the calling o
for the purpose of—

(a) proposing a general revision of the Const
(b) proposing one or more amendments
Constitution of the United States stat
amendments to be proposed.

SEC. 3. (a) For the purpose of adopting a resolu
State legislature shall adopt its own rules of proce
(b) Questions concerning the State legislativ
of the adoption of a State resolution cognizable u
by the State legislature and its decisions there
including State and Federal courts, and the Cong
(c) A State resolution adopted pursuant to this
to whether it is approved or disapproved by the

SEC. 4. (a) Within 60 days after a resolution is
State, the secretary of state of the State, or if the
who is charged by the State law with such func
gress of the United States two copies of the ap
President of the Senate, and one to the Speaker
(b) Each copy of the application shall contain
(1) the title of the resolution,
(2) the exact text of the resolution, signe
House of the legislature, and
(3) the date on which the legislature adop
and shall be accompanied by a certificate of the
such other person as is charged by the State la
that the application accurately sets forth the te

SEC. 5. (a) An application submitted to the
unless sooner rescinded by the State legislatu
calendar years after the date it is received by t
more of the several States have each submitted
stitutional convention on the same subject, in
remain in effect until the Congress has taken a
pursuant to section 8, calling for a constitution
(b) A State, upon notification to the Cong
may rescind its application calling for a Constit
State may rescind when two-thirds or more of
tions pending before the Congress seeking ame
(c) The Congress of the United States has the
a State's action to rescind its application has be

COMPOSITION AND PROCEEDINGS

SEC. 6. (a) Congress, under such rules as it
concurrent resolutions calling for the convenin
vention. It may, in such resolution designate
it shall set forth therein the particular subjects

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 certificate of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution.

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 Constitutional 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, clause 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 pro
if prior to the expiration of such period Congress h
disapproving the submission of the proposed amend
(b) Whenever the President of the Senate and t
Representatives have jointly transmitted proposed
istrator of General Services, the Administrator shall
certification thereof, exact copies of the proposed a
of the several States.

RATIFICATION OF PROPOSED AM

SEC. 13. (a) Amendments proposed by the co
accordance with the provisions of this Act shall be
poses as part of the Constitution of the United Sta
latures of three-fourths of the States. Congress,
proposal, may set the time within which the propo
ratified by the legislatures of three-fourths of the
(b) Congress may not recall a proposed amen
mitted to the States by the Administrator of the G
SEC. 14. (a) For the purpose of ratifying propose
Act the State legislatures shall adopt their own rul
acts of ratification shall be by convention or by
Congress may direct. All questions concerning t
procedure shall be determined by the legislatur
binding on all others.
(b) Any State resolution ratifying a proposed
shall be valid without regard to whether it has be
of the State.
SEC. 15. The secretary of state of the State, o
person who is charged by State law with such fu
copy of the State resolution ratifying the propo
to the Administrator of General Services.
SEC. 16. (a) Any state may rescind its ratific
except that no state may rescind when there a
the legislatures of three-fourths of the States.
(b) Any State may ratify a proposed amendme
rejected the same proposal.
(c) The Congress of the United States shall h
all questions relating to the ratification, rescis
proposed to the Constitution of the United Sta
SEC. 17. The Administrator of General Ser
legislatures of the several States have adopte
Constitution of the United States, shall issue
amendment to be a part of the Constitution o
SEC. 18. An amendment proposed to the C
shall be effective from the date on which the leg
to constitute three-fourths of the legislatures
for in article V, has ratified the same.

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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.

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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) Except as otherwise 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.

*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.

SEC. 7. Any Member may introduce a resolution
(a) whether the rescinding action of a Sta
made or is otherwise entitled to recognition
Federal Constitutional Convention Act, and
(b) whether a sufficient number of applica
to require the introduction of a resolution ca
vention.

CITATIONS

[1] Twenty-two amendments have been certified as part of the U
ments have been proposed by the Congress but have not been r
They relate to (a) the apportionment of Representatives in the H
tion of Senators and Representatives (submitted to the States i
citizens of foreign titles of nobility (submitted 1810), (d) a propos
and (e) child labor (submitted in 1924) (U. S. Congress, House, S
16–17).
[2] Farrand, The Records of the Federal Convention (1937), I
"How was a Convention to be formed? By what rule decide?
[3] See Coleman v. Miller, 307 U. S. 433 (1939).
[4] Maryland, House Journal (1939), p. 899.
[5] Pennsylvania, Session Laws (1943), p. 922.
[6] In 1789 New York and Virginia sought a Constitutional Con
[7] 285 U. S. 355, 365 (1932).
[8] Hawke v. Smith No. 1, 253 U. S. 221 (1920).
[9] Ibid., p. 227.
[10] Only two States had veto powers by the chief executive, Mas
Constitution (1780), ch. 2, sec. 1, Thorpe, American Charters C
Laws of New York (1789), ch. 11.
[11] Hawke v. Smith No. 1, 253 U. S. 221, 229 (1920).
[12] Cooley, Thomas M., A Treatise on Constitutional Limitati
[13] In re Speakership, 15 Col. 520 (1891).
[14] French v. Senate, 146 Cal. 604 (1905).
[15] People v. Mahaney, 13 Mich. 481 (1865).
[16] 143 U. S. 649 (1892).
[17] Jameson, John A., A Treatise on Constitutional Conventio
[18] Ibid., p. 10.
[19] 183 Fed. 2d 201 (2d Cir. 1950), aff'd. 341 U. S. 494 (1951).
[20] 54 Stat. (1952), 671; 18 U. S. Code, § 11 et seq.
[21] Brief of petitioners before U. S. Supreme Court, p. 267, De
[22] 183 Fed. 2d 201 (2d Cir., 1950).
[23] Ibid., p. 213.
[24] U. S. v. Dennis, 341 U. S. 494, 501 (1951).
[25] Farrand, The Records of the Federal Convention of 1787 (
[26] Mississippi v. Johnson, 4 Wall. 475 (U. S. 1866); see
Willoughby, The Constitutional Law of the United States (19
[27] Dillon v. Glass, 256 U. S. 368, 374 (1921).
[28] Orfield, Lester B., The Amending of the Federal Constitu
[29] Jameson, John A., A Treatise on Constitutional Convent
[30] Alabama, 91 Congressional Record 6631; Arkansas, 91 C
gressional Record 742; Iowa, 91 Congressional Record 2383;
Massachusetts, 98 Congressional Record 4641; Louisiana, 100
gressional Record 4311; Nebraska, 99 Congressional Record 8286; Wisconsi
11943; Rhode Island, 95 Congressional Record 6286; Congressional Globe
[31] U. S. Congress, 40th Cong., 2d sess., Congressional Globe
[32] 15 Stat. 709, 710 (1868).
[33] Coleman v. Miller, 307 U. S. 433, 438 (1939).
[34] See F. W. Grinnell, Finality of State's Ratification of
192 (1925).
[35] See Table 3, appendix.
[36] See Table 6, appendix.
[37] See Table 3, appendix.
[38] See Tables 3 and 4, appendix.
[39] See Tables 3 and 4, appendix. Since it is the number
which is controlling, only one application from each State ca
[40] Nevada, Cong. Rec. Daily, June 28, 1952, p. 8599; Mo
2613–2614 (vetoed by Gov.); Massachusetts, Cong. Rec. Dai
[41] 84 Cong. Rec. 3320 (1939).
[42] Texas, House Journal (1943), 48 Reg. Sess., pp. 2359, 28
pp. 1120–1121.
[43] See Tables 4 and 5, appendix.
[44] Tables 3, 4, and 5 should be read together.
[45] See table 1, appendix.
[46] Direct election of Senators, and prohibition of polygam

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.

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 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 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).

[2] 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?"

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

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

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

[6] In 1789 New York and Virginia sought a Constitutional Convention; see Table 1, appendix.

[7] 285 U. S. 355, 365 (1932).

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

[9] Ibid., p. 227.

[10] Only two 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.

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

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

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

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

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

[16] 143 U. S. 649 (1892).

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

[18] Ibid., p. 10.

[19] 183 Fed. 2d 201 (2d Cir. 1950), aff'd. 341 U. S. 494 (1951).

[20] 54 Stat. (1952), 671; 18 U. S. Code, § 11 et seq.

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

[22] 183 Fed. 2d 201 (2d Cir., 1950).

[23] Ibid., p. 213.

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

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

[26] 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.

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

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

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

[30] 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.

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

[32] 15 Stat. 709, 710 (1868).

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

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

[35] See Table 3, appendix.

[36] See Table 6, appendix.

[37] See Table 3, appendix.

[38] See Tables 3 and 4, appendix.

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

[40] Nevada, Cong. Rec. Daily, June 28, 1952, p. 8599; Montana, Cong. Rec. Daily, March 16, 1951, pp. 2612–2614 (vetoed by Gov.); Massachusetts, Cong. Rec. Daily, March 4, 1952, p. 1813.

[41] 84 Cong. Rec. 3320 (1939).

[42] Texas, House Journal (1943), 48 Reg. Sess., pp. 2359, 2881; Texas, Senate Journal (1943), 48 Reg. Sess. pp. 1120–1121.

[43] See Tables 4 and 5, appendix.

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

[45] See table 1, appendix.

[46] 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.
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.
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	Mar. 18	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.
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	Treaty making.
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.
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	(1)	(1)	98 Congressional Record 1057	Treaty making.
Do	1955	Jan. 20	Jan. 21	101 Congressional Record 1532, 2086, 2274	State control of school systems.
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)	Daily, Congressional Record, 4300	Revision of article 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, 1208	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	(1)	(1)	99 Congressional Record 9864, 10052, 10623	Revision of article 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	(1)	(1)	Daily Congressional Record, 5760–5761	Revision of article V.
Do	1957	(1)	(1)	Daily Congressional Record, 5761–5762	Treaty making.
Do	1957	(1)	(1)	Daily Congressional Record, 5762–5763	Reapportionment.
Do	1957	(1)	(1)	Daily Congressional Record, 5763–5764	Limitation of Federal taxing power.
Do	1957	(1)	(1)	Daily Congressional Record, 5764–5765	Balancing the budget.
Do	1904	Mar. 19	Mar. 9	38 Congressional Record, 4959	Limited to direct election of Senators.
Iowa	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.
Do	1901	(1)	(1)	(2)	General, including direct election of Senators.
Kansas	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	(1)	(1)	97 Congressional Record, 2936	Limitation of Federal taxing power.
Do	1861	(1)	(1)	Senate Journal, 189, 190, 36 Cong., 2d sess	General.
Kentucky	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.
Do	1907	Nov. 15	Nov. 20	42 Congressional Record 5906; 45 Congressional Record 7115.	General, including direct election of Senators.
Louisiana	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	1907	Feb. 24	Feb. 21	(2)	Prohibition of polygamy.
Maine	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.
			Apr. 4	85 Congressional Record 4348	World federal government.
					Limitation of Federal taxing power.
					Prohibition of polygamy.

Do	1957	(1)	(1)	Daily Congressional Record, 5760–5761	Revision of article V.
Do	1957	(1)	(1)	Daily Congressional Record, 5761–5762	Treaty making.
Do	1957	(1)	(1)	Daily Congressional Record, 5762–5763	Reapportionment.
Do	1957	(1)	(1)	Daily Congressional Record, 5763–5764	Limitation of Federal taxing power.
Do	1957	(1)	(1)	Daily Congressional Record, 5764–5765	Balancing the budget.
Iowa	1904	Mar. 19	Mar. 9	38 Congressional Record, 4059	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	(1)	(1)	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.
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 8904	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 article 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.

See footnotes at end of table, p. 88.

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
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	(2)	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.
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.
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 3209	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.
Do	1908	(1)	(1)	42 Congressional Record 894; 45 Congressional Record 7117.	General, including direct election of Senators.
Oklahoma	1911	Feb. 8	Feb. 8	(2)	Prohibition of polygamy.
Do	1955	(1)	(1)	101 Congressional Record 9941	Limitation of Federal taxing power.
Do	1901	Jan. 23	Jan. 25	34 Congressional Record 2290, 2354	General, including direct election of Senators.
Oregon	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.
Do	1901	Feb. 6	Feb. 5	34 Congressional Record 2245, 2289, 2493; 45 Congressional Record 7118.	Direct election of Senators.
Pennsylvania	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	89 Congressional Record 8220	Prohibition of conditions in grants-in-aid.
Do	1790	(1)	(1)	House Journal 148, 1st and 2d Congs	Revision of Constitution.
Rhode Island	1940	Mar. 15	Feb. 16	86 Congressional Record 3407	Limitation of Federal taxing power.
Do	1915	Feb. 15	Feb. 15	53 Congressional Record 2442	Prohibition of polygamy.
South Carolina	1901	Mar. 8	Mar. 7	34 Congressional Record 2440, 2493, 2558	Direct election of Senators.
South Dakota	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	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	(1)	(1)	101 Congressional Record 9941	Limitation of Federal taxing power.
Oregon	1901	Jan. 23	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	89 Congressional Record 8220	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 article V.
Do	1955	Feb. 15	Feb. 15	101 Congressional Record 2840, 2861, 2862	Do.
Tennessee	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 article V.
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.

See footnotes at end of table, p. 88.

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
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.
Wisconsin	1903	Apr. 20	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 eighteenth 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.

[1] Dates of passage of application in houses of legislature not obtainable.

[2] Listed in the following documents but not recorded in the Congressional Record: Federal Constitutional Conventions, 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).

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 f subject m*

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	1903
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
Do.[1]	1907
Nevada	1901
Do	1901
Do	1903
Do	1905
Do	1907
Do.[1]	1907
New Jersey	1907
North Carolina	1901
Do.[1]	1907
North Dakota	1903
Ohio	1908
Do	1911
Oklahoma [1]	1908
Oregon [1]	1901
Do	1901
Do	1903
Do	1903

See footnote at end of table, p. 91.

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
Do.[1]	1907
Nevada	1901
Do	1901
Do	1903
Do	1905
Do	1907
Do.[1]	1907
New Jersey	1907
North Carolina	1901
Do.[1]	1907
North Dakota	1903
Ohio	1908
Do	1911
Oklahoma [1]	1908
Oregon [1]	1901
Do	1901
Do	1903
Do	1903

1. Direct election of Senators (73 petitions submitted by 31 states)—Continued	
Oregon	1907
Do	1909
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 (32 petitions submitted by 27 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
Maine	1941
Do	1951
Maryland	1939
Massachusetts	1941
Michigan	1941
Do	1949
Mississippi	1940
Nebraska	1949
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

See footnote at end of table, p. 91.

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
4. General revision of Constitution (29 petitions submitted by 22 States)—Continued
   - 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 (3 petitions from 3 States):
   - Florida 1945
   - Georgia 1952
   - Indiana 1957
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

See footnote at end of table, p. 90.

TABLE 2.—*State applications to Congress subject matter*—

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. Prohibitions on grants-in-aid (1 petition from 1 State):
    - Pennsylvania 1943
16. Popular ratification of amendments (1 petition from 1 State):
    - Louisiana 1920
17. Constitutionality of State enactments (1 petition from 1 State):
    - Missouri 1913

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

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

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. Prohibitions on grants-in-aid (1 petition from 1 State):
    Pennsylvania 1943
16. Popular ratification of amendments (1 petition from 1 State):
    Louisiana 1920
17. Constitutionality of State enactments (1 petition from 1 State):
    Missouri 1913
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 (1 petition from 1 State):
    Georgia 1955

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