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Joel F. Hansen, Esq. is AV rated by Martindale Hubbell, and has been named as a Preeminent Attorney by his peers. (“A” is the highest possible rating for legal ability, and “V” means ethically very high.)

**LEGAL OPINION OF JOEL F. HANSEN, ESQ., ATTORNEY FOR NEVADA FAMILIES
FOR FREEDOM REGARDING WHETHER THE PROPOSED EQUAL RIGHTS
AMENDMENT IS STILL PENDING BEFORE THE STATE LEGISLATURES WHICH
HAVE NOT RATIFIED IT OR
IS IT DEAD BECAUSE THE DEADLINE SET BY CONGRESS OF 7 YEARS, AND LATER
EXTENDED BY 3 YEARS AND 3 MONTHS, HAS PASSED AND SO NO MORE
RATIFICATIONS BY STATE LEGISLATURES HAVE ANY EFFICACY**

FEBRUARY 9, 2017

I. Introduction

Originally the ERA was given a deadline of 7 years for ratification, beginning 22 Mar 1972, and expiring on 21 Mar 1979. When the end of the seven years approached and it became clear that three-fourths of the states (38 states) would *not* ratify ERA, Congress passed an ERA Time Extension resolution to change "within seven years" to 10 years, 3 months, 8 days, 7 hours and 35 minutes, so that the time limit was extended to June 30, 1982 (instead of expiring on March 22, 1979. However, the Constitutionality of this extension was very questionable, because the extension resolution was passed by only a simple majority, while it takes a two thirds majority to adopt the original proposal). By March 21, 1979, only 35 States had ratified, and 5 of them rescinded their ratification. After the deadline was extended, no more states ratified the ERA. Therefore, depending on how you count them, the ERA fell 3 short, or 8 short, of the 38 required to obtain three fourths the States' ratifications. Whether a State can rescind has never been settled by the Supreme Court, because the Courts have said that only Congress can decide that question, because it is a political question and so the US Supreme Court will not touch the issue. But these are not the real issues before us. The real issue is raised in the Legislative Counsel's Digest of the Bill, which cites a Supreme Court decision, allegedly justifying the position that the Nevada State Legislature

still has power to add its ratification to the current 35, or 30, depending on whether the rescissions are counted.

II. The Legislative Counsel’s Digest of the Bill Currently Pending before the Nevada State Legislature is erroneous. It states:

“Under Article V of the United States Constitution, Congress has the power to propose an amendment to the federal Constitution and to determine the mode of ratification. (U.S. Const. Art. V) In 1972, Congress passed the Equal Rights Amendment and sent it to the states for ratification, imposing a 7-year time limit for ratification in the resolving clause of the Amendment, but later extended this time limit to June 30, 1982. The Equal Rights Amendment was ratified by 35 states before the deadline. Under *Coleman v. Miller*, 307 U.S. 433, 450, 456 (1939), the United States Supreme Court held that, as a political question, Congress may determine whether an amendment is valid because ratifications of the amendment are made within a reasonable period of time, *even after the deadline*. This resolution ratifies the Equal Rights Amendment, which provides for equality of rights under the law regardless of sex.” (Emphasis added.)

III. Discussion of the Coleman Decision

The Legislative Counsel’s Digest is misleading because it misconstrues, misapplies, and misquotes the Coleman decision. It appears that whoever wrote the Legislative Counsel’s Digest either failed to research the issue thoroughly, or, instead of being neutral on the issue, was bent on justifying the power of the present legislature to proceed to ratify the ERA, because clear Supreme Court opinions hold that the legislature cannot ratify an amendment **if** a deadline set by Congress has passed.

We must first understand the Coleman decision.¹ In that case, the issue was whether an amendment to the Constitution, the Child Labor Amendment, could be ratified by the State legislature of Kansas 13 years after it had been proposed by Congress. Those opposed to ratification argued that because 13 years had passed since the Amendment had been proposed by Congress, that was too long a time to be a “reasonable time” to ratify, and thus the Kansas legislature had no power to ratify it. But the Court pointed out that only Congress has the power to decide what amount of time is reasonable, and if it wants to determine that ahead of time, it imposes a deadline. Here is what the Court said:

“Our decision that the Congress has the power under Article V to fix a reasonable limit of time for ratification in proposing an amendment proceeds upon the assumption that the question, what is a reasonable time, lies within the congressional province. If it be deemed that such a question is an open one when the limit has not been fixed in advance, we think that it should also be regarded as an open one for the consideration of the Congress when, in the presence of certified ratifications by three-fourths of the States, the time arrives for the promulgation of the adoption of the amendment. The decision by the Congress, in its control of the action of the Secretary of State, of the question whether the amendment had been adopted within a reasonable time would not be subject to review by the courts.”

Coleman v. Miller, 307 U.S. 433, 452-454 (1939).

In other words, the Supreme Court decided that it has no power to determine what is, in the absence of a limitation fixed by Congress, a reasonable period within which ratification

¹ (All research cited herein is set forth below under RESEARCH).

may be made of a proposed amendment to the Federal Constitution. In fact, the decision really says that the Court has no power at all to determine what is a reasonable time. If Congress fixes a deadline, then that is the reasonable time. If it doesn't, then the Court can't decide how long the process of ratifying the Amendment can go on. Only Congress can, after the fact.

After discussing the arguments presented by the attorneys regarding what is a reasonable time, the Court stated:

These considerations were cogent reasons for the decision in *Dillon v. Gloss* that the Congress had the power to fix a reasonable time for ratification. But it does not follow that, whenever Congress has not exercised that power, the Court should take upon itself the responsibility of deciding what constitutes a reasonable time and determine accordingly the validity of ratifications. That question was not involved in *Dillon v. Gloss* and, in accordance with familiar principle, what was there said must be read in the light of the point decided.

Coleman v. Miller, 307 U.S. 433, 453 (1939). (Emphasis added.)

This quotation makes it absolutely clear that the Supreme Court held in *Dillon* that the Congress has power to fix a reasonable time for ratification by imposing a deadline.

IV. DISCUSSION OF THE DILLON DECISION

Let's take a look at what the *Dillon* decision said. In reporting Supreme Court decisions, the official reporter often writes a "syllabus" of the opinion of the Court, and he did so in this case. Here is his syllabus:

1. Article V of the Constitution implies that amendments submitted thereunder must be ratified, if at

all, within some reasonable time after their proposal. Pp. 371, 374.

2. Under this Article, **Congress**, in proposing an amendment, may fix a reasonable time for ratification. P. 375.

3. The period of seven years, fixed by **Congress** in the resolution proposing the Eighteenth Amendment, was reasonable. P. 376.

That, in a nutshell, is what the decision says. But here is some of the actual language from the decision:

“Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable ”

Dillon v. Gloss, 256 U.S. 368, 375-376 (1921).

V. CONCLUSION

Taken together, the **Dillon** and the **Coleman** decision hold that Congress has complete power over what is a reasonable time in which an amendment can be ratified. The **Coleman** decision modified the earlier **Dillon** decision by saying that, although the **Dillon** decision

had said the time must be reasonable, the **Dillon** decision implied that the Court could decide what was a reasonable time. **Coleman** says, “No, only the Congress can do that.” But the **Dillon** decision stands as to its holding that the Congress can set a deadline, and **that** defines what is the reasonable time in which the Amendment must be ratified, and it is binding, because Congress decided what was reasonable in advance. So if Congress decides in advance what that time should be, it can set a time limit for ratification of an amendment, and that deadline is binding. Attempts at ratification after the time limit has expired are null and void, because Congress, in its wisdom, can set the time limit. On the other hand, if in the enabling legislation, or in the Amendment itself, Congress sets no limit, then ratification votes by the State legislatures can go on forever until there are enough State ratifications to meet the three fourths requirement. But, in that case, Congress could decide that the length of time the States had taken to ratify the amendment was unreasonable, and so refuse to recognize the amendment as binding. The Supreme Court has clearly held that the length of time the ratification process for an Amendment can continue is a political question and must be decided by Congress, whether by setting a deadline in advance, or by deciding after enough States have ratified whether the time was reasonable or not.

Therefore, the answer to the question as to whether or not the legislature of the State of Nevada now, in 2017, which is 35 years after the deadline expired, can ratify, is clearly no. Congress set the original deadline for 1979, questionably extended it to 1982, and has not ever extended it past that time. Thus the deadline which Congress set was what Congress deemed to be a

reasonable time in which to ratify the ERA, and that deadline has long since expired.² Thus, the ERA is dead.

For an excellent discussion of the above issues, see the Wikipedia article at the end of the Research section.

VI. RESEARCH SECTION

A. *Coleman v. Miller*, 307 U.S. 433, 435, 59 S. Ct. 972, 974, 83 L. Ed. 1385, 1387, 1939 U.S. LEXIS 1066, *1, 1 Lab. Cas. (CCH) P17,046, 122 A.L.R. 695 (U.S. 1939)

The twenty senators who had voted against ratification, challenging the right of the Lieutenant Governor to cast the deciding vote in the Senate, and alleging that the proposed amendment had lost its vitality because of previous rejection by Kansas and other States and failure of ratification within a reasonable time, sought a writ of mandamus to compel the Secretary of the Senate to erase an endorsement on the resolution, to the effect that it had been adopted by the Senate, and to endorse

²The ERA is now dead, and only Congress can revive it by proposing it again and starting the process all over. So Congress would have to pass it by a 2/3 vote of both houses, and then submit it to the States for ratification by 38 States. Congress could set a deadline in advance, or not, according to its own wisdom. Of course, in this writers opinion, the people have spoken, and attempts to revive this long dead amendment are injurious to the United States and to the 50 individual states, who, according to Senator Sam Irvin, would be reduced to legislative zeroes on the map of the United States should the ERA ever get ratified.

thereon the words "was not passed," and to restrain the officers of the Senate and House of Representatives from signing the resolution and the Secretary of State of Kansas from authenticating it and delivering it to the Governor. The State entered its appearance and the State Supreme Court entertained the action, sustained the right of the plaintiffs to maintain it, but overruled their contentions, upheld the ratification, and denied the wr

Coleman v. Miller, 307 U.S. 433, 435, 59 S. Ct. 972, 974, 83 L. Ed. 1385, 1387, 1939 U.S. LEXIS 1066, *2, 1 Lab. Cas. (CCH) P17,046, 122 A.L.R. 695 (U.S. 1939)

The petition also set forth the prior rejection of the proposed amendment and alleged that in the period from June, 1924, to March, 1927, the amendment had been rejected by both houses of the legislatures of twenty-six States, and had been ratified in only five States, and that by reason of that rejection and the failure of ratification within a reasonable time the proposed amendment had lost its vitality.

Coleman v. Miller, 307 U.S. 433, 436, 59 S. Ct. 972, 974, 83 L. Ed. 1385, 1387, 1939 U.S. LEXIS 1066, *7, 1 Lab. Cas. (CCH) P17,046, 122 A.L.R. 695 (U.S. 1939)

Historic instances are cited. In 1865, the Thirteenth Amendment was rejected by the legislature of New Jersey which subsequently ratified it, but the question did not become important as ratification by the requisite number of States had already been proclaimed. The question did arise in connection with the adoption of the Fourteenth Amendment. The legislatures of Georgia, North Carolina and South Carolina had rejected the amendment in November and December, 1866. New governments were erected in those States (and in others) under the direction of Congress. [****29] The new legislatures ratified the amendment, that of North Carolina on July 4, 1868, that of South Carolina on July 9, 1868, and that of Georgia on July 21, 1868. Ohio and New Jersey first ratified and then passed [***1394] resolutions withdrawing their consent. As there were then thirty-seven States, twenty-eight were needed to constitute the requisite three-fourths. [**980] On July 9, 1868, the

Congress adopted a resolution requesting the Secretary of State to communicate "a list of the States of the Union whose legislatures have ratified the fourteenth article of amendment," and in Secretary Seward's report attention was called to the action of Ohio and New Jersey. On July 20th Secretary Seward issued a proclamation reciting the ratification by twenty-eight States, including North Carolina, South Carolina, Ohio and New Jersey, and stating [****28] that it appeared that Ohio and New Jersey had since passed resolutions withdrawing their consent and that "it is [*449] deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid and therefore ineffectual." The Secretary certified that if the ratifying resolutions of Ohio and New Jersey were still in full force and effect, notwithstanding the attempted withdrawal, the amendment had become a part of the Constitution. On the following day the Congress adopted a concurrent resolution which, reciting that three-fourths of the States having ratified (the list including North Carolina, South Carolina, Ohio and New Jersey), declared the Fourteenth Amendment to be a part of the Constitution and that it should be duly promulgated as such by the Secretary of State. Accordingly, Secretary Seward, on July 28th, issued his proclamation embracing the States mentioned in the congressional resolution and adding Georgia.

Thus the political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the presence of an actual ratification. While there were special circumstances, because of the action of the Congress in relation to the governments of the rejecting States (North Carolina, South Carolina and Georgia), these circumstances were not recited in proclaiming ratification and the previous action taken in these States was set forth in the proclamation as actual previous rejections by the respective legislatures. This [*450] decision by the political departments of the Government as to the validity of the adoption of the Fourteenth Amendment has been accepted.

[****30] [4] [4] We think that in accordance with this historic precedent *HN4* the question of the efficacy of ratifications by state legislatures, in the light of previous rejection 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.

Coleman v. Miller, 307 U.S. 433, 448-450, 59 S. Ct. 972, 979-980, 83 L. Ed. 1385, 1393-1394, 1939 U.S. LEXIS 1066, *26-30, 1 Lab. Cas. (CCH) P17,046, 122 A.L.R. 695 (U.S. 1939)

The more serious question is whether the proposal by the Congress of the amendment had lost its vitality through lapse of time and hence it could not be ratified by the Kansas [****32] legislature in 1937. The argument of petitioners stresses the fact that nearly thirteen years elapsed between the proposal in 1924 and the ratification in question. It is said that when the amendment was proposed there was a definitely adverse popular sentiment and that at the end of 1925 there had been rejection by both houses of the legislatures of sixteen States and ratification by only four States, and that it was not until about 1933 that an aggressive campaign was started in favor of the amendment. In reply, it is urged that Congress did not fix a limit of time for ratification and that an unreasonably long time had not elapsed since the submission; that the conditions which gave rise to the amendment had not been eliminated; that the prevalence of child labor, the diversity of state laws and the disparity in their administration, with the resulting competitive inequalities, continued to exist. Reference is also made to the fact that a number of the States have treated the amendment as still pending and that in the proceedings of the national government there have been indications of the same view. It is said that there were fourteen ratifications in 1933, four in 1935, [****33] one in 1936, and three in 1937

Coleman v. Miller, 307 U.S. 433, 451, 59 S. Ct. 972, 981, 83 L. Ed. 1385, 1395, 1939 U.S. LEXIS 1066, *31-33, 1 Lab. Cas. (CCH) P17,046, 122 A.L.R. 695 (U.S. 1939)

It is true that in *Dillon v. Gloss* the Court said that nothing was found in Article V which suggested that an amendment once proposed was to be open to ratification for all time, or that ratification in

some [***1396] States might be separated from that in others by many years and yet be effective; that there was a strong suggestion to the contrary in that proposal and ratification were but succeeding steps in a single endeavor; that as amendments were deemed to be prompted by necessity, they should be considered and disposed of presently; and that there is a fair implication that ratification must be sufficiently contemporaneous in the required number of States to reflect the will of the people in all sections at relatively the same period; and hence that ratification must be within some reasonable time after the proposal. These considerations were cogent reasons for the decision in *Dillon v. Gloss* that the Congress had the power to fix a reasonable time for ratification. But it does not follow that, whenever Congress has not exercised that power, the Court should take upon itself the responsibility of deciding what constitutes [*453] a reasonable time and [***35] determine accordingly the validity of ratifications. That question was not involved in *Dillon v. Gloss* and, in accordance with familiar principle, what was there said must be read in the light of the point decided.

Where are to be found the criteria for such a judicial determination? None are to be found in Constitution or statute. In their endeavor to answer this question petitioners' [**982] counsel have suggested that at least two years should be allowed; that six years would not seem to be unreasonably long; that seven years had been used by the Congress as a reasonable period; that one year, six months and thirteen days was the average time used in passing upon amendments which have been ratified since the first ten amendments; that three years, six months and twenty-five days has been the longest time used in ratifying. To this list of variables, counsel add that "the nature and extent of publicity and the activity of the public and of the legislatures of the several States in relation to any particular proposal should be taken into consideration." That statement is pertinent, but there are additional matters to be examined and weighed. When a proposed amendment [***36] springs from a conception of economic needs, it would be necessary, in determining whether a reasonable time had elapsed since its submission, to consider the economic conditions prevailing in the country, whether these had so far changed since the submission as to make the proposal no longer responsive to the conception which inspired it or whether conditions

were such as to intensify the feeling of need and the appropriateness of the proposed remedial action. In short, the question of a reasonable time in many cases would involve, as in this case it does involve, an appraisal of a great variety of relevant conditions, political, social and economic, which can hardly be said to be within the appropriate range of evidence receivable in a court of justice [*454] and as to which it would be an extravagant extension of judicial authority to assert judicial notice as the basis of deciding a controversy with respect to the validity of an amendment actually ratified. On the other hand, these conditions are appropriate for the consideration of the political departments of the Government. The questions they involve are essentially political and not justiciable. They can be decided [****37] by the Congress with the full knowledge and appreciation ascribed to the national legislature of the political, social and economic conditions which have prevailed during the period since the submission of the amendment.

[7] [7] Our decision that the Congress has the power under Article V to fix a reasonable limit of time for ratification in proposing an amendment proceeds upon the assumption that the question, what is a reasonable time, lies within the congressional province. If it be deemed that such a question is an open one when the limit has not been fixed in advance, we think that it should also be regarded as an open one for the consideration [***1397] of the Congress when, in the presence of certified ratifications by three-fourths of the States, the time arrives for the promulgation of the adoption of the amendment. The decision by the Congress, in its control of the action of the Secretary of State, of the question whether the amendment had been adopted within a reasonable time would not be subject to review by the courts.

Coleman v. Miller, 307 U.S. 433, 452-454, 59 S. Ct. 972, 981-982, 83 L. Ed. 1385, 1395-1397, 1939 U.S. LEXIS 1066, *34-37, 1 Lab. Cas. (CCH) P17,046, 122 A.L.R. 695 (U.S. 1939)

Concur by: BLACK

Concur

Concurring opinion by MR. JUSTICE BLACK, in which MR. JUSTICE ROBERTS, MR. JUSTICE FRANKFURTER and MR. JUSTICE DOUGLAS join.

Although, for reasons to be stated by MR. JUSTICE FRANKFURTER, we believe this cause should be dismissed, the ruling of the Court just announced removes from the case the question of petitioners' standing to sue. Under the compulsion of that ruling, MR. JUSTICE ROBERTS, [*457] MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS and I have participated in the discussion of other questions considered by the Court and we concur in the result reached, but for somewhat different reasons.

The Constitution grants Congress exclusive power to control submission of constitutional amendments. Final determination [****42] by Congress that ratification by three-fourths of the States has taken place "is conclusive upon the courts." In the exercise of that power, Congress, of course, is governed by the Constitution. However, whether submission, intervening procedure or Congressional determination of ratification conforms to the commands of the Constitution, calls for decisions by a "political department" of questions of a type which this Court has frequently designated "political." And decision of a "political question" by the "political department" to which the Constitution has committed it "conclusively binds the judges, as well as all other officers, citizens and subjects of . . . government." Proclamation under authority of Congress [**984] that an amendment has been ratified will carry with it a solemn assurance by the Congress that ratification has taken place as the Constitution commands. Upon this assurance a proclaimed amendment must be accepted as a part of the [*458] Constitution, leaving to the judiciary its traditional authority of interpretation. To the extent that the Court's opinion in the present case even impliedly assumes a power to make judicial interpretation of [****43] the exclusive constitutional authority of Congress over submission and ratification of amendments, we are unable to agree.

[****44] The state court below assumed jurisdiction to determine whether the proper procedure is being followed between submission and final adoption. However, it is apparent that judicial review of or pronouncements upon a supposed limitation of [***1399] a "reasonable time" within which

Congress may accept ratification; as to whether duly authorized state officials have proceeded properly in ratifying or voting for ratification; or whether a State may reverse its action once taken upon a proposed amendment; and kindred questions, are all consistent only with an ultimate control over the amending process in the courts. And this must inevitably embarrass the course of amendment by subjecting to judicial interference matters that we believe were intrusted by the Constitution solely to the political branch of government.

The Court here treats the amending process of the Constitution in some respects as subject to judicial construction, in others as subject to the final authority of the Congress. There is no disapproval of the conclusion arrived at in *Dillon v. Gloss*, that the Constitution impliedly requires that a properly submitted amendment must die unless ratified within [****45] a "reasonable time." Nor does the Court now disapprove its prior assumption of power to make such a pronouncement. And it is not made clear that only Congress has constitutional power to determine if there is any such implication in Article V of the Constitution. On the other hand, the Court's opinion declares that Congress has the exclusive power to [*459] decide the "political questions" of whether a State whose legislature has once acted upon a proposed amendment may subsequently reverse its position, and whether, in the circumstances of such a case as this, an amendment is dead because an "unreasonable" time has elapsed. No such division between the political and judicial branches of the government is made by Article V which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the Article exclusively and completely to Congress. The process itself is "political" in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point.

[****46] Since Congress has sole and complete control over the amending process, subject to no judicial review, the views of any court upon this process cannot be binding upon Congress, and insofar as *Dillon v. Gloss* attempts judicially to impose a limitation upon the right of Congress to determine final adoption of an amendment, it should be disapproved. If Congressional determination that an amendment has been completed and become a part of the Constitution is final and removed

from examination by the courts, as the Court's present opinion recognizes, surely the steps leading to that condition must be subject to the scrutiny, control and appraisal of none save the Congress, the body having exclusive power to make that final determination.

Congress, possessing exclusive power over the amending process, cannot be bound by and is under no duty to accept the pronouncements upon that exclusive power by this Court or by the Kansas courts. Neither state nor federal courts can review that power. Therefore, any judicial expression amounting to more than mere acknowledgment of exclusive [**985] Congressional power over the political process of amendment is a mere admonition to [*460] [****47] the Congress in the nature of an advisory opinion, given wholly without constitutional authority.

Coleman v. Miller, 307 U.S. 433, 456-460, 59 S. Ct. 972, 983-985, 83 L. Ed. 1385, 1398-1399, 1939 U.S. LEXIS 1066, *41-47, 1 Lab. Cas. (CCH) P17,046, 122 A.L.R. 695 (U.S. 1939)

B. Dillon v. Gloss, 256 U.S. 368

Supreme Court of the United States
Argued March 22, 1921 ; May 16, 1921

1. Article V of the Constitution implies that amendments submitted thereunder must be ratified, if at all, within some reasonable time after their proposal. Pp. 371, 374.

2. Under this Article, **Congress**, in proposing an amendment, may fix a reasonable time for ratification. P. 375.

3. The period of seven years, fixed by **Congress** in the resolution proposing the Eighteenth Amendment, was reasonable. P. 376.

4. The Eighteenth Amendment became a part of the Constitution on January 16, 1919, when, as the court notices judicially, its ratification in the **state legislatures** was consummated; not on January 29, 1919, when the ratification was proclaimed by the Secretary of State. P. 376.

5. As this Amendment, by its own terms, was to go into effect one year after being ratified, §§ 3 and 26, Title II, of the National Prohibition Act, which, by § 21, Title III, were to be in force from and after the effective date of the Amendment, were in force on January 16, 1920. P. 376.

Dillon v. Gloss, 256 U.S. 368

Supreme Court of the United States
Argued March 22, 1921 ; May 16, 1921

Reporter

256 U.S. 368 * | 41 S. Ct. 510 ** | 65 L. Ed. 994 *** | 1921 U.S. LEXIS 1612 ****

DILLON v. GLOSS, DEPUTY COLLECTOR OF UNITED STATES INTERNAL REVENUE

Prior History:

[****1] APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case Summary

Procedural Posture

Defendant appealed an order of the District Court of the United States for the Northern District of California, which denied his application for a writ of habeas corpus.

Overview

Defendant was in custody under the National Prohibition Act on a charge of transporting intoxicating liquor in violation of the Act. The district court denied his petition for a writ of

habeas corpus, and defendant appealed. The United States Supreme Court held that the Eighteenth Amendment was not invalid as it was properly ratified. The Court held that the provisions of the Act which the defendant was charged with violating and under which he was arrested had gone into effect at the time of his alleged offense and his arrest. The order was affirmed.

Outcome

The Court affirmed the order denying the petition for a writ of habeas corpus.

LexisNexis® Headnotes

Constitutional Law > Amendment Process

HNI The power to amend the U.S. Constitution and the mode of exerting it are dealt with in

U.S. Const. art. V, which reads: The **Congress**, whenever two-thirds of both Houses shall deem

it necessary, shall propose amendments of this Constitution, or, on the application of the

legislatures of two-thirds of the several states, shall call a convention for proposing amendments,

which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when

ratified by the legislatures of three-fourths of the several states, or by conventions in three-

fourths thereof, as the one or the other mode of ratification may be proposed by the **Congress**;

Provided that no amendment which may be made prior to the year one thousand eight hundred

and eight shall in any manner affect the first and fourth clauses in the ninth section of the first

article; and that no state, without its consent, shall be deprived of its equal suffrage in the

Senate. More like this Headnote

Shepardize - Narrow by this Headnote (11)

Constitutional Law > Amendment Process

Governments > Legislation > Interpretation

HN2 That the United States Constitution contains no express provision on the subject of the

period for ratification of constitutional amendments is not in itself controlling; for with the

Constitution, as with a statute or other written instrument, what is reasonably implied is as much

a part of it as what is expressed. More like this Headnot

Constitutional Law > Amendment Process

HN3 The fair inference or implication from U.S. Const. art. V is that the ratification must be

within some reasonable time after the proposal. More like this Headnote

Constitutional Law > Congressional Duties & Powers > General Overview

Constitutional Law > Amendment Process

HN4 Congress, in proposing an amendment to the United States Constitution, has the power,

keeping within reasonable limits, to fix a definite period for the ratification. More like this

Headnote

Headnotes **LAWYERS EDITION**

Constitutional law -- amendment -- ratification -- time. --

Headnote:

The fair inference or implication from U. S. Const. art. 5, providing for amendments, is that the

ratification must be within some reasonable time after the proposal.

Constitutional law -- amendments -- time limit for ratification. --

Headnote:

Congress, in proposing an amendment to the Federal Constitution, may, keeping within

reasonable limits, fix a definite period for ratification by the states, and could, therefore, validly

declare, in the resolution proposing the 18th Amendment, that it should be inoperative unless

ratified within seven years.

Evidence -- judicial notice -- ratification of constitutional amendment. --

Headnote:

The Federal Supreme Court will take judicial notice of the consummation of the ratification of

an amendment to the Federal Constitution.

Constitutional law -- amendment -- when operative. --

Headnote:

The date of the consummation of the ratification of an amendment to the Federal Constitution, which is, by its own terms, to go into effect one year after being ratified, and not the date of the proclamation of the Secretary of State, is controlling upon the question when such amendment becomes operative.

Syllabus

1. Article V of the Constitution implies that amendments submitted thereunder must be ratified, if at all, within some reasonable time after their proposal. Pp. 371, 374.
 2. Under this Article, **Congress**, in proposing an amendment, may fix a reasonable time for ratification. P. 375.
 3. The period of seven years, fixed by **Congress** in the resolution proposing the Eighteenth Amendment, was reasonable. P. 376.
 4. The Eighteenth Amendment became a part of the Constitution on January 16, 1919, when, as the court notices judicially, its ratification in the **state legislatures** was consummated; not on January 29, 1919, when the ratification was proclaimed by the Secretary of State. P. 376.
 5. As this Amendment, by its own terms, was to go into effect one year after being ratified, §§ 3 and 26, Title II, of the National Prohibition Act, which, by § 21, Title III, were to be in force from and after the effective date of the Amendment, were in force on January 16, 1920. P. 376.
- 262 Fed. Rep. 563, affirmed.

THE case is stated in the opinion.

Counsel: *Mr. Levi Cooke*, with whom [****2] *Mr. Theodore A. Bell* and *Mr. George R. Beneman* were on the brief, for appellant:

The Eighteenth Amendment is invalid because of the extra-constitutional provision of the third section. **Congress** has no power to limit the time of deliberation or otherwise control what the legislatures of the States shall do in their deliberation. Any attempt to limit voids the proposal.

The legislative history of the Amendment shows that without § 3 the proposal would not have passed the Senate. Cong. Rec., 65th Cong., 1st sess., pp. 5648-5666; Cong. Rec., 65th Cong., 2d sess., p. 477.

The same taint attended the passage of the amendment in the House, because there what is now § 3 was considered and the limitation changed from six to seven years, and it is impossible to say now that without the attempted time limitation upon the States two-thirds of the House would have assented to the proposal of the amendment.

The fact that thirty-six States thus ratified within the time emphasizes the evil that was accomplished by the limitation, and can in no way be invoked to suggest that the third section became surplusage in view of this result attained so well within the seven-year limitation [****3] attempted to be set by **Congress**. On the contrary, the fact of there being a time limitation tended to destroy any deliberation by the States and to enable the faction which was pressing for ratification of the amendment to urge immediate indeliberate action in order to avoid the possibility of the time limitation expiring without thirty-six States having made ratification.

The history of the times discloses, if the court may take judicial notice thereof, that legislators elected prior to the submission by **Congress** were urged to act forthwith, without awaiting the election of legislators by an electorate aware of the pendency of the congressional proposal, and that in some legislatures ratification was secured without debate in the precipitate action urged by the faction advocating the amendment. The speed with which the amendment was disposed of by the **state legislatures** tends to establish the absence of deliberation; and in any view the fact stands that the States were acting in the presence of a limitation fixed by **Congress**, violative of Art. V, in terms unheard of in the history of the country, and contrary to any procedure sanctioned by the organic law, with the very nature [***4] and structure of which both the **Congress** and the **state legislatures** were dealing. See 2 Story, Const., 3d ed., § 1830.

The National Prohibition Act should be found to have become effective, if at all, January 29, 1920, a year after ratification of the amendment was proclaimed and made known to the public. The proclamation of the Secretary of State must be treated as the publication of the fact of ratification, under Rev. Stats., § 205, of which all persons may be considered to be charged with knowledge.

Mrs. Annette Abbott Adams, Assistant Attorney General, for appellee.

Judges: White, McKenna, Holmes, Day, Van Devanter, Pitney, McReynolds, Brandeis, Clarke

Opinion by: VAN DEVANTER

Opinion

[*370] [**511] [***995] MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This is an appeal from an order denying a petition for a writ of *habeas corpus*. 262 Fed. Rep. 563. The petitioner was in custody under § 26 of Title II of the National Prohibition Act, c. 85, 41 Stat.

305, on a charge of transporting intoxicating liquor in violation of § 3 of that title, and by his petition sought to be discharged on several grounds, all but two of which were abandoned after [***5] the decision in *National Prohibition Cases*, 253 U.S. 350. The remaining grounds are, first, that the Eighteenth Amendment to the Constitution, to enforce which Title II of the act was adopted, is invalid because the congressional [*371] resolution, 40 Stat. 1050, proposing the Amendment, declared that it should be inoperative unless ratified within seven years; and, secondly, that, in any event, the provisions of the act which the petitioner was charged with violating, and under which he was arrested, had not gone into effect at the time of the asserted violation nor at the time of the arrest.

HNI The power to amend the Constitution and the mode of exerting it are dealt with in Article V, which reads:

"The **Congress**, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments of this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or [***6] the other mode of ratification may be proposed by the **Congress**; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

It will be seen that this article says nothing about the time within which ratification may be had -- neither that it shall be unlimited nor that it shall be fixed by **Congress**. What then is the reasonable inference or implication? Is it that ratification may be had at any time, as within a few years, a century or even a longer period; or that it must be had within some reasonable period which **Congress** is left free to define? Neither the debates in the federal convention which framed

the Constitution nor those in the state conventions which ratified it shed any light on the question.

The proposal for the Eighteenth Amendment is the [*372] first in which a definite period for ratification was fixed. Theretofore twenty-one amendments had been proposed by **Congress** and seventeen of these had been ratified by the legislatures [****7] of three-fourths of the States, -- some within a single year after their proposal and all within four years. Each of the remaining four had been ratified in some of the States, but not in a sufficient number. Eighty years after [***996] the partial ratification of one an effort was made to complete its ratification and the legislature of Ohio passed a joint resolution to that end, after which the effort was abandoned. Two, after ratification in one less than the required number of States, had lain dormant for a century. The other, proposed March 2, 1861, declared: "No amendment shall be made to the Constitution which will authorize or give to **Congress** the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State." Its principal purpose was to protect slavery and at the time of its proposal and partial ratification it was a subject of absorbing interest, but after the **adoption** of the Thirteenth Amendment it was generally forgotten. Whether an amendment [*373] proposed without fixing any time for ratification, and which after favorable action in less than [****8] the required number of States had lain dormant for many years, could be resurrected and its ratification completed had been mooted on several occasions, but was still an open question.

[****9] These were the circumstances in the light of which **Congress** in proposing the Eighteenth Amendment fixed seven years as the period for ratification. Whether this could be done was questioned at the time and debated at length, but the prevailing view in both houses was that some limitation was [**512] intended and that seven years was a reasonable period.

HN2 That the Constitution contains no express provision on the subject is not in itself controlling; for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed. An examination of Article V discloses that it is intended to invest **Congress** with a wide range of power in proposing amendments. Passing a provision long

since expired, it subjects this power to only two restrictions: one that the proposal shall have the [****10] approval of two-thirds of both houses, and the other excluding any amendment which will deprive any State, without [*374] its consent, of its equal suffrage in the Senate. [****12] A further mode of proposal -- as yet never invoked -- is provided, which is, that on the application of two-thirds of the States **Congress** shall call a convention for the purpose. When proposed in either mode amendments to be effective must be ratified by the legislatures, or by conventions, in three-fourths of the States, "as the one or the other mode of ratification may be proposed by the **Congress**." Thus the people of the United States, by whom the Constitution was ordained and established, have made it a condition to amending that instrument that the amendment be submitted to representative assemblies in the several States and be ratified in three-fourths of them. The plain meaning of this is (a) that all amendments must have the sanction of the people of the United States, the original fountain of power, acting through representative assemblies, and (b) that ratification by these assemblies in three-fourths of the States shall be taken as a decisive expression [***997] of the people's will and be [****11] binding on all.

We do not find anything in the Article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts but as succeeding steps [*375] in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the [****13] people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. These considerations and the general purport and spirit of the Article lead to the conclusion expressed by Judge Jameson "that an alteration of the

Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by **Congress.**" That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago -- two in 1789, one in 1810 and one in 1861 -- are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States [****14] to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that *HN3* the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal.

HN4* Of the power of Congress, keeping within reasonable [*376] limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests [*513] and changing conditions may require; and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress** may determine as an incident of its power to designate the mode [*15] of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified.

The provisions of the act which the petitioner was charged with violating and under which he was arrested (Title II, §§ 3, 26) were by the terms of the act (Title III, § 21) to be in force from and after the date when the Eighteenth Amendment should go into effect, and the latter by its own terms was to go into effect one year after being ratified. Its ratification, of which we take judicial notice, was consummated January 16, 1919. That the Secretary of State did not proclaim its ratification until

January 29, 1919, is not material, for the date of its consummation, and not that on which it is proclaimed, controls. It follows that the provisions [****16] of the act with which the petitioner is concerned went into effect January [*377] 16, 1920. [***998] His alleged offense and his arrest were on the following day; so his claim that those provisions had not gone into effect at the time is not well grounded.

Final order affirmed.

Footnotes

- Some consideration had been given to the subject before, but without any definite action. Cong. Globe, 39th Cong., 1st sess., 2771; 40th Cong., 3d sess., 912, 1040, 1309-1314.
- Watson on the Constitution, vol. 2, pp. 1676-1679; House Doc., 54th Cong., 2d sess., No. 353, pt. 2, p. 300.
- House Doc., 54th Cong., 2d sess., No. 353, pt. 2, p. 317 (No. 243); Ohio Senate Journal, 1873, pp. 590, 666-667, 678; Ohio House Journal, 1873, pp. 848, 849. A committee charged with the preliminary consideration of the joint resolution reported that they were divided in opinion on the question of the validity of a ratification after so great a lapse of time.
- House Doc., 54th Cong., 2d sess., No. 353, pt. 2, pp. 300, 320 (No. 295), 329 (No. 399).
- 12 stat. 251; House Doc., 54th Cong., 2d sess., No. 353, pt. 2, pp. 195-197, 363 (No. 931), 369 (No. 1025).
- Cong. [Click here to Reply or Forward](#)

C. CONGRESSIONAL RESEARCH SERVICE REPORT

CRS Report for Congress

Received through the CRS Web

Ratification of Amendments to the U.S. Constitution

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Summary

Article V of the U.S. Constitution provides two ways to propose amendments to the document and two ways to ratify them. Amendments may be proposed either by the Congress, by two-thirds votes of the House and the Senate (of those present and voting, provided a quorum is present), or by a convention called by Congress in response to applications from the legislatures of two-thirds (34) or more of the states.

Amendments must be ratified by three-quarters (38) or more of the states. The Congress can choose to refer proposed amendments either to state legislatures, or to special conventions called in the states to consider ratification. Only the 21st Amendment (repeal of Prohibition) has been ratified by conventions held in the states.

In the period beginning with the First Congress, through September 30, 1997 (105th Congress, 1st Session), a total of 10,980 proposals had been introduced to amend the Constitution. Thirty-three of these were proposed by Congress to the states, and 27 have been ratified. Excluding the 27th Amendment (Congressional Pay), which took more than 202 years, the longest pending proposed amendment that was successfully ratified was the 22nd Amendment (Presidential Tenure), which took three years, nine months, and four days. The 26th Amendment (18-year-old vote) was ratified in the shortest time: three months and 10 days. The average ratification time was one year, eight months, and seven days.

Ratification Deadlines

The practice of limiting the time available to the states to ratify proposed amendments began in 1917 with the 18th Amendment (Prohibition). All amendments proposed since then, with the exception of the 19th (Women's Suffrage) and the proposed child labor amendment, have included a deadline either in the body of the amendment proposed to the states, or in the joint resolution transmitting the amendment to the states to be ratified.

Congressional Research Service The Library of Congress

The 20th through 22nd Amendments incorporated the ratification deadline in the body of the amendment, so these amendments' deadlines are now part of the Constitution. Beginning with the 23rd Amendment, Congress began imposing the seven-year deadline in the joint resolutions transmitting the

amendments to the state legislatures in order to avoid including extraneous language in the Constitution.¹

The ratification deadline "clock" begins running on the day final action is completed in Congress (presidential approval of proposed amendments is not necessary). The amendment may be ratified at any time after final congressional action, even though the states have not been officially notified. The Archivist of the United States officially notifies the states (by registered letters to the governors) that an amendment has been proposed. The Archivist also keeps track of state ratifications and issues a proclamation when ratification is completed.²

The rules governing the consideration of proposed amendments vary among the states. Many legislatures require proposed amendments to be approved by "constitutional majorities"—a majority of the membership of the legislature (rather than a quorum for doing other legislative business). Some states require amendments to be ratified by the same margin as a proposed amendment to their state constitutions; others only require a majority of the legislators present and voting (provided a quorum is present). At least seven states require a "supermajority"³ vote in one or more "chamber, either by rule, statute, or state constitution."⁴

The unprecedented time period of the 27th Amendment's successful ratification, and the decision by the 95th Congress to extend the seven-year deadline for the proposed Equal Rights Amendment (ERA) for an additional two years, 10 months, and 16 days,⁵ has prompted speculation that Congress might have the power to revive other amendments proposed without ratification deadlines (in the body of the amendment) by enacting new ratification deadlines. At this writing, this matter is unresolved, but constitutional scholars

1

See: Walter Dellinger, "The Legitimacy of Constitutional Change: Rethinking the Amendment Process," *Harvard Law Review*, vol. 97, Dec. 1983, p. 408. Two exceptions to this practice were the 27th Amendment, because it was proposed in 1789, and the proposed District of Columbia voting representation amendment, where a seven-year time limit was included in the body of it.

2

Pursuant to 1 U.S.C. 106b. 3

A "supermajority" requires more than a simple majority (one half, plus one). A supermajority ratification requirement for proposed amendments has been recognized by a federal District Court. In *Dyer v. Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975), a federal District Court upheld an Illinois supermajority requirement for ratification of a proposed amendment to the U.S. Constitution. 4

The seven States requiring "supermajority" votes to ratify amendments are Alabama, Colorado, Delaware, Georgia, Idaho, Illinois, and Kansas. See Scott Mackey and Brenda Erickson, *The Balanced Budget Amendment: The Road to Ratification: A Preliminary Report*, (Washington: National Conference of State Legislatures, 1995), p. 4. 5

The Equal Rights Amendment was proposed on March 22, 1972. The original ratification deadline of March 21, 1979 was extended until January 30, 1982, with the adoption of H.J. Res. 638 on October 11, 1978.

distinguish the Equal Rights Amendment extension from efforts to revive amendments whose deadlines have expired because the ERA deadline was extended before the original deadline had expired.

The following tables list information about amendments that were proposed by Congress. Table 1 lists the dates of proposal and ratification, and the number of days each successful amendment was pending before the states before ratification. Table 2 provides summary statistics about amendments, and Table

3 lists the amendments Congress proposed that were not ratified by the states. Table 3 provides the date the amendment was proposed, its ratification deadline (if it had any) and the number of states that ratified it.

Table 1. Time Required to Ratify Constitutional Amendments

Amendment	Date Proposed	Date Ratified	No. of days
1—Religion, speech, assembly	25-Sep-1789	15-Dec-1791	811
2—Bear arms	"	"	811
3—Quartering soldiers	"	"	811
4—Searches and seizures	"	"	811
5—Rights of persons	"	"	811
6—Rights of accused	"	"	811
7—Civil trials	"	"	811
8—Punishment for crime	"	"	811
9—Unenumerated rights	"	"	811
10—Reserved powers	"	"	811
11—Suits against states	04-Mar-1794	07-Feb-1795	340
12—Election of Pres. & Vice Pres.	09-Dec-1803	15-Jun-1804	189
13—Slavery	31-Jan-	06-Dec-	309

	1865	1865	
14—Rights guaranteed	13-Jun- 1866	09-Jul- 1868	757
15—Right to vote	26-Feb- 1869	03-Feb- 1870	342
16—Income tax	12-Jul- 1909	03-Feb- 1913	1,302
17—Pop. election of Senators	13-May- 1912	08-Apr- 1913	330
18—Prohibition	18-Dec- 1917	16-Jan- 1919	394
19—Women's suffrage	04-Jun- 1919	18-Aug- 1920	441
20—Commencement of terms	02-Mar- 1932	23-Jan- 1933	327
21—Repeal of prohibition	20-Feb- 1933	05-Dec- 1933	288
22—Presidential tenure	21-Mar- 1947	27-Feb- 1951	1,439
23—Pres. electors for D.C.	17-Jun- 1960	29-Mar- 1961	285
24—Abolition of poll taxes	27-Aug- 1962	23-Jan- 1964	514
25—Pres. vacancy,	06-Jul-	10-Feb-	584

disability	1965	1967	
26—18-year-old vote	23-Mar-1971	01-Jul-1971	100
27—Congressional salaries	25-Sep-1789	07-May-1992	74,003

Source: For dates proposed and ratified: U.S. Congress, House. *The Constitution of the United States of America, As Amended*, H. Doc. 102-188, 102nd Cong., 2nd sess., (Washington: GPO, 1992). Time to ratify calculated by CRS.

Table 2. Range, Mean, and Median Values for Ratifying Ratifying Constitutional Amendments

(Excluding 27th Amendment)

Maximum time to ratify	22nd amend.	1,439 days
Minimum time to ratify	26th amend.	100 days
Mean and median times to ratify	Median	Mean
18th & 19th centuries	811 days	670 days
20th century	394 days	546 days
18th - 20th centuries	670 days	617 days

Table 3. Unratified Amendments

Subject	Date proposed	Ratification deadline	No. of states ratifying
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<p>APPORTIONMENT— Regulates the apportionment of Representatives among the states.</p>	<p>25-Sep-1789</p>	<p>None</p>	<p>10</p>
<p>TITLES OF NOBILITY— Revokes citizenship of people accepting titles of nobility or "any present, pension, office or emolument of any kind whatever, from any emperor, king, prince or foreign power."</p>	<p>1-May-1810</p>	<p>None</p>	<p>12</p>
<p>SLAVERY—Prohibits constitutional amendments that will authorize Congress to "abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."</p>	<p>2-Mar-1861</p>	<p>None</p>	<p>2</p>

CHILD LABOR—Gives Congress the "power to limit, regulate, and prohibit the labor of persons under 18 years of age."	2-Jun-1924	None	28
EQUAL RIGHTS— "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."	22-Mar-1972 (proposed) 11-Oct-1978 (extended)	21-Mar-1979 (original) 30-Jan-82 (extension)	35
D.C. REPRESENTATION— Treats the District of Columbia "as a State ... for the purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution."	22-Aug-1978	21-Aug-1985	16

Sources: U.S. Congress, House, *The Constitution of the United States of America As Amended*, H. Doc. No. 102-188, 102nd Cong., 2nd sess, (Washington: GPO, 1992); U.S. Library of Congress, Congressional

Research Service, *Proposed Amendments to the Constitution of United States of America Introduced in Congress from the 91st Congress, 1st Session, Through the 98th Congress, 2nd Session, January 1969-December 1984*, by Richard

D. Wikipedia:

Coleman v. Miller, 307 U.S. 433 (1939) is a landmark decision of the [United States Supreme Court](#) which clarified that if the [Congress of the United States](#)—when proposing for ratification an amendment to the [United States Constitution](#), pursuant to [Article V](#) thereof—chooses *not* to set a deadline by which the [state legislatures](#) of three-fourths of the [states](#) or, if prescribed by Congress [State ratifying conventions](#) in three-fourths of the states, must act upon the proposed amendment, then the proposed amendment remains pending business before the state legislatures (or conventions). The case centered on the [Child Labor Amendment](#), which was proposed for ratification by Congress in 1924.

The practice of limiting the time available to the states to ratify proposed amendments began in 1917 with the [Eighteenth Amendment](#). All amendments proposed since then, with the exception of the Nineteenth Amendment and the Child Labor Amendment, have included a deadline, either in the body of the proposed amendment, or in the joint resolution transmitting it to the states. In its decision the Court concluded that Congress was quite aware in 1924 that—had it desired to do so—it could have imposed a deadline upon the Child Labor Amendment and Congress simply chose not to.

According to *Coleman*, it is none other than the Congress itself—if and when the Congress should later be presented with valid ratifications from the required number of states—which has the discretion to arbitrate the question of whether too much time has elapsed between Congress' initial proposal of that amendment and the most recent state ratification thereof assuming that, as a consequence of that most recent ratification, the legislatures of (or conventions conducted within) at least three-fourths of the states have ratified that amendment at one time or another.

The *Coleman* ruling—which modified the high Court's earlier 1921 dictum in *Dillon v. Gloss*—held that the question of timeliness of ratification is a political and non-justiciable one, leaving the issue to Congress's discretion. Thus it would appear that the length of time elapsing between proposal and ratification is irrelevant to the validity of the amendment. Based upon the Court's reasoning in *Coleman*, the [Archivist of the United States](#) proclaimed the [Twenty-seventh Amendment](#) as having been ratified when it surpassed the "three fourths of the several states" plateau for becoming a part of the Constitution. Declared ratified on May 7, 1992, it had been submitted to the states for ratification on September 25, 1789, an unprecedented time period of 202 years, 7 months and 12 days.^[1]

The *Coleman* decision has been described as reinforcing the [political question doctrine](#) which is sometimes espoused by Federal courts in cases wherein the court deems the matter at hand to be properly assigned to the discretion of the legislative branch of the Federal government. In light the precedent established by this case, 3 proposed constitutional amendments, in addition to the Child Labor Amendment are considered to be still

established by this case, 3 proposed constitutional amendments, in addition to the Child Labor Amendment, are considered to be still pending before the state legislatures ([Congressional Apportionment Amendment](#), since 1789; [Titles of Nobility Amendment](#), 1810; and the [Corwin Amendment](#), since 1861), as Congress did not specify a ratification deadline when proposing them to the stat

References

1. *Huckabee, David C. (September 30, 1997). "Ratification of Amendments to the U.S. Constitution" (PDF). Congressional Research Service reports. Washington D.C.: Congressional Research Service, The Library of Congress.*

E. S.J.R. 2

SENATE JOINT RESOLUTION NO. 2—SENATORS SPEARMAN, CANCELA, CANNIZZARO,
RATTI, WOODHOUSE; ATKINSON,
DENIS, FARLEY, FORD, MANENDO, PARKS AND SEGERBLOM

PREFILED FEBRUARY 13, 2017

JOINT SPONSORS: ASSEMBLYMEN JOINER, MILLER AND SPRINKLE

Referred to Committee on Legislative Operations and Elections

SUMMARY—Ratifies the Equal Rights Amendment to the
Constitution of the United States. (BDR R-13)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

SENATE JOINT RESOLUTION—Ratifying the proposed amendment to the Constitution of the United States providing that equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Legislative Counsel’s Digest:

Under Article V of the United States Constitution, Congress has the power to propose an amendment to the federal Constitution and to determine the mode of ratification. (U.S. Const. Art. V) In 1972, Congress passed the Equal Rights Amendment and sent it to the states for ratification, imposing a 7-year time limit for ratification in the resolving clause of the Amendment, but later extended this time limit to June 30, 1982. The Equal Rights Amendment was ratified by 35 states before the deadline. Under *Coleman v. Miller*, 307 U.S. 433, 450, 456 (1939), the United States Supreme Court held that, as a political question, Congress may determine whether an amendment is valid because ratifications of the amendment are made within a reasonable period of time, even after the deadline. This resolution ratifies the Equal Rights Amendment, which provides for equality of rights under the law regardless of sex.

WHEREAS, Both houses of the 92nd Congress of the United States of America, by a constitutional majority of two-thirds, adopted the following resolution proposing to amend the United States Constitution:

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

ARTICLE.....

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification; and

WHEREAS, The 95th Congress of the United States amended the resolution of the 92nd Congress to extend the time for ratification to June 30, 1982, thereby indicating its continued support of the amendment; and

WHEREAS, The Congress of the United States adopted the 27th Amendment to the Constitution of the United States, which was proposed in 1789 by our First Congress but not ratified by threefourths of the States until May 7, 1992, and, on May 18, 1992, certified as the 27th Amendment; and

WHEREAS, The restricting time limit for ratification of the Equal Rights Amendment is in the resolving clause and is not part of the amendment which was proposed by Congress and which has already been ratified by 35 states; and

WHEREAS, Having passed a time extension for the Equal Rights Amendment on October 20, 1978, Congress demonstrated that a time limit in a resolving clause may be disregarded if it is not part of the proposed amendment; and

WHEREAS, The United States Supreme Court in *Coleman v. Miller*, 307 U.S. 433 (1939), recognized that Congress is in a unique position to judge the tenor of the nation, to be aware of the political,

– 3 –

social and economic factors affecting the nation and to be aware of the importance to the nation of the proposed amendment; and WHEREAS, If an amendment to the Constitution of the United States has been proposed by two-thirds of both houses of Congress and ratified by three-fourths of the state legislatures, it is for Congress, under the principles of *Coleman v. Miller*, to determine the validity of the state ratifications occurring after a time limit in the resolving clause, but not in the amendment itself; and

WHEREAS, The Legislature of the State of Nevada finds that the proposed amendment is meaningful and needed as part of the Constitution of the United States and that the present political, social and economic conditions demonstrate that constitutional equality for women and men continues to be a timely issue in the United States; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That the proposed amendment to the Constitution of the United States of America is hereby ratified by the Legislature of the State of Nevada; and be it further

RESOLVED, That the Secretary of the Senate prepare and transmit a copy of this resolution to the Secretary of State for her certification and transmittal to the Archivist of the United States pursuant to 1 U.S.C. §§ 106b and 112; and be it further

RESOLVED, That the Secretary of the Senate prepare and transmit a copy of this resolution to the Vice President of the United States as the presiding officer of the United States Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage.