Findings of Court Cases Related to Article V of the United States Constitution

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Covering relevant state, federal and US Supreme Court cases that either involved or apply to Article V of the US Constitution. Written in laymen's language for the general public with the key findings in each case as it relates to an Article V Convention in bold print. The name and reference of the case itself is the citation, the footnotes provide additional information pertinent to the case reference.

1) *AFL-CIO v. Eu*, 686 P. 2d 609 (Cal. 1984)

Financial penalties on delegates or legislators are invalid. Article V "envisions legislators must be free to vote their best judgment." Rejected the "political question doctrine" (see *Coleman v. Miller* below). Also held that ballot initiatives to force an Article V Convention are not permissible.

2) *Barker v. Hazeltine*, 3 F. Supp. 2d 1088 (D.S.D. 1998)

Article V is the only constitutional method of amending the US Constitution. Initiatives and referenda are not permissible (the case involved setting congressional term limits) as citizens do not possess a direct role in amending. Use of ballot notation of either the support or non-support of term limits constituted a violation of the Speech and Debate Clause in the US Constitution.

3) *Coleman v. Miller*, 307 U.S. 433 (1939)

This case has been called "an aberration" by law professors and constitutional scholars such as Walter Dellinger.[1] Dictum in this case **produced the "political question doctrine"** wherein the Supreme Court will not address an issue that the Court sees as of a political nature and not of a constitutional law nature and is therefore, not justiciable. The political question doctrine has been applied erratically. Decision included the topic of the time limitation for ratification. Ruling held, "But it does not follow that, whenever Congress has not exercised that power, the Court should not take it upon itself the responsibility of deciding what constitutes a reasonable time and determine accordingly the validity of ratifications." Also, disavowed the "staleness" language of the prior *Dillon* decision.

4) *Dillon v. Gloss*, 256 U.S. 368 (1921)

Ratifications, to be valid, must occur within the time frame that Congress has specified. This stipulation, however, appears to apply only to those proposed amendments that congress has made and sent to the States and not to those proposed amendments that originate in an Article V Convention.[2]

[1] Walter Dellinger, *The Legitimacy of Constitutional Change: Rethinking the Amendment Process*. 97 Harvard Law Review 386, 389 (1983)

[2] Robert G. Natelson, Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers (Part 3 of 3), Goldwater Institute Report No. 11-02, 22 Feb 2011, p.19

The day that the last required state ratifies the proposed amendment, that amendment becomes part of the Constitution and takes effect.

5) *Dodge v. Woolsey*, 59 U.S. 331 (1855)

Amendatory conventions may be single issue. The Court determined that the amendment process was an act by the States and not the people, who are represented by the delegates/commissioners or by the Congress depending on the mode of consideration and passage.[3] The usual interpretation of the ruling is that **the States and/or the people cannot dictate the amendments** as that power rests in the hands of either Congress or the convention delegates. Dodge is often cited as an early proof of the inviolable validity of state applications as no branch is empowered to overrule the Constitution. Therefore, **a state application is valid solely because it was made by the state.**[4]

6) *Donovan v. Priest*, 931 S.W. 2d 119 (Ark. 1996)

Ruling requires that any assembly be more than a rubber stamp for pre-written amendment. **The assembly must engage on "intellectual debate, deliberation, or consideration" of any proposed amendment.** Applies to an Article V Convention. Also, rejected ballot labeling similar to *AFL-CIO v. Eu* and *League of Women Voters of Maine.*

7) *Dyer v. Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975)

Per now Justice Stevens, who presided over the case and wrote the opinion, "the delegation [from Article V] is not to the States but rather to the designated ratifying bodies." Stevens explicitly rejected the "political question" portion of *Coleman* in this decision. Thus, **state constitutional provisions that cover legislative supermajorities and referenda do not apply to Article V applications**; only the Article V convention itself may impose such restrictions on itself.

8) *Gralike v. Cooke*, 191 F. 3d 911 (8th Cir. 1999) affirmed on other grounds sub nom. *Cook v. Gralike*, 531 U.S. 510 (2001)

"Article V envisions legislatures acting as freely deliberative bodies in the amendment process and resists any attempt by the people of a state to restrict the legislature's actions." Thus, **Article V Conventions cannot be prohibited from deliberation and consideration of a proposed amendment and thereby limited to pre-written wording.**

9) *Hawke v. Smith*, (I) 253 U.S. 221 (1920), (II) 253 U.S. 231 (1920)

Article V is a bestowal of power on the state legislature for ratification and for the selection of delegates. **The legislative ratification method cannot be replaced by public referendum.** No legislature of convention itself has the power to alter the ratification procedure – that is fixed by Article V.

[3] Found at p.348
[4] James Madison, *The Federalist*, No. 85.

10) *Hollingsworth v. Virginia,* 3 U.S. (3 Dall.) 378 (1798)

Since the Constitution does not specify a role for the executive in the amendment process, the Presentment Clause does not apply. **No signature of the President is required for a constitutional amendment to be valid and complete.** The precedent was established with the passage and adoption of the Bill of Rights in 1791.[5]

11) *Idaho v. Freeman,* 529 F. Supp. 1107 (D. Idaho 1981) vacated as moot by *Carmen v. Idaho,* 459 U.S. 809 (1982)

Congress may not manipulate or change the ratification process. Article V makes clear that there are only two methods of ratification and Congress must choose one or the other mode. The ruling is similar to that of *U.S. v. Sprague*. Congress had first set a time limit of seven years for ratification of the Equal Rights Amendment, then, failing to achieve the necessary ¾ of the States ratifications, extended the time period. Also, **a state may withdraw its application any time before two-thirds of the states have applied.**

12) *In Re the Opinion of the Justices*, 132 Me. 491, 167 A. 176 (1933)

The state may rely on custom to select delegates to ratifying conventions. By implication, they may also rely on their own particular customs to choose how to select their delegates to Article V Conventions. Along with this power is the ability to establish the convention's rules, elect its own officers, fix the hours of sitting, judge the credentials of the members, and other housekeeping. Held that the ratification convention has the power to determine questions relating to the qualifications of the delegates and to fill vacancies. Case stems from the attempt to use a public referendum to bind a ratifying convention and prevent deliberation.

13) *In Re Opinion of the Justices,* 204 N.C. 306, 172 S.E. 474 (1933)

An Article V Convention may be limited in purpose to a single issue or to a fixed set of issues. Thus, the state may limit the authority of the ratifying convention.

14) *Jarrolt v. Moberly*, 103 U.S. 580 (1880)

Any attempt to suppress a state application due to its timeliness, age, subject matter, or any other reason is in violation of Article V. "A constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed."

15) *Kimble v. Swackhamer*, 439 U.S. 1385, appeal dismissed 439 U.S. 1041 (1978)

Held that **any public referendum was advisory only** and could not dictate to the delegates. (See also *AFL-CIO v. Eu*.)

[5] Robert G. Natelson, Learning from Experience: How the States Used Article V Applications in America's First Century (Part 2 of 3), Goldwater Institute, 4 Nov 2010, p.7

16) *League of Women Voters of Maine v. Gwadosky*, 966 F. Supp. 52 (D. Me. 1997)

Similar to *AFL-CIO v. Eu* in the attempt to force term limits by ballot initiative. Court rejected claim saying that, "**A direct role in the constitutional amendment process for "citizens" was not envisioned by the Framers**. The citizen's function is to elect competent legislators, who in turn, when necessary, can amend the Constitution pursuant to the authority granted under Article V."

17) *Leser v. Garnett,* 258 U.S. 130 (1922)

The Supreme Court held that the ratification of the 15th Amendment was no longer open to question. This was addressed in relation to the validity of the 19th Amendment. Additionally, **the state legislature's discretion could not be supplanted by the rules imposed by a third party.** When a convention acts under Article V, it performs a "federal function" and this transcends any state limitations.

18) *Miller v. Moore,* 169 F. 3d 1119 (8th Cir. 1999)

Another ballot labeling case with the twist that a First Amendment claim to the right to influence elected representatives through 'popular instructions' is made. Court found that this issue was addressed in the Grand Convention of 1787 and **rejected as stifling debate and compromise**.

19) *National Prohibition Cases*, 253 U.S. 350, 40 S. Ct. 486, 64 L. Ed. 946 (1920)

Congress is empowered to set the threshold in vote percentage for passage of an amendment within the houses of Congress. Covered seven cases lumped together that all involved the 18th Amendment and the Volstead Act. Also, referendum provisions of state constitutions and statutes do not apply in the ratification and rejection of proposed amendments.

20) *Opinion of the Justices to the Senate*, 373 Mass. 877, 366 N.E. 2d 1226 (1977)

The governor plays no role in the approval process of an Article V Convention application from the state. He cannot therefore veto the application. The Article confers powers on the assemblies not the executives. Additionally, the Founders expected that the States would specify the purpose and subject matter of the applications.

21) *Prigg v. Commonwealth of Pennsylvania*, 41 U.S. 539 (1842)

No one is authorized to question the validity of a state's application for an Article V Convention. To attempt to do so is an attempt to circumvent the Convention Clause. "The Court may not construe the Constitution so as to defeat its obvious ends when another construction, equally accordant with the words and sense thereof, will enforce and protect them."

22) *Prior v. Noland*, 68 Colo. 263, 188 P. 727 (1920)

Referendums may not be used to ratify amendments.

23) *Smith v. Union Bank of Georgetown,* 30 U.S. 518 (1831)

An Article V Convention is a "convention of the States" and is therefore endowed with the powers of an interstate convention as were all of its many predecessors. The case itself dealt with a probate issue but specifically referred to changing the existing law through an amendment by a convention of the states.[6]

24) *State ex rel. Donnelly v. Myers,* 127 Ohio St. 104, 186 N.E. 918 (1933)

Other enumerated powers in the Constitution have certain "incidental" authority or implied powers, likewise, so do the powers of Article V. This can be understood as an application of the "Necessary and Proper Clause" which grants the power requisite to carry out the Article V Convention. This includes, but is not limited to, the ability to set its hours, judge credentials of delegates, determine its agenda and order of business, elect its own officers and establish its own rules, among other powers.

25) *State ex rel. Harper v. Waltermire*, 213 Mont. 425, 691 P. 2d 826 (1984)

The people of the state have no power to limit the deliberative process of the convention, therefore any limitations imposed by an initiative or referendum is invalid.

26) *State ex rel. Tate v. Sevier*, 333 Mo. 662, 62 S.W. 2d 895 (1933) cert denied 290 U.S. 679 (1933)

When Congress proposes ratification by conventions for an amendment, though it does not provide how and by whom such conventions shall be assembled, **Congress' direction necessarily implies authority to provide for assembling of such conventions.**

27) *State of Ohio ex rel. Erkenbrecher v. Cox,* 257 F. 334 (D. Ohio 1919)

There is no duty on the part of the governor of a state to forward the proposed amendment promulgated by Congress and accompanied by the ratification method prescription on to the state legislature. It is for this reason that the Congress usually sends a copy of the Joint Resolution of Congress to the state legislatures.

28) *State of Rhode Island v. Palmer,* 253 U.S. 320 (1920)

This is one of the National Prohibition Cases. The two-thirds vote required in Congress for proposing amendments is two-thirds of a quorum present and voting, not of the entire membership of the legislative body. Therefore, **the Article V Convention will require only two-thirds of the quorum present to conduct business.**

29) *Trombetta v. State of Florida*, 353 F. Supp. 675 (M.D. Fla. 1973)

An action by a state to delay consideration of a proposed constitutional amendment until after some criterion is met by the legislature is unconstitutional.

[6] Found at p. 528 of the record in 30 U.S. (5 Pet.) 518.

30) *Ullmann v. United States*, 350 U.S. 422 (1956)

The amendment and ratification processes cannot be changed to circumvent the Article V Convention. "Nothing new can be put into the Constitution except through the amendatory process, and nothing old can be taken out without the same process."

31) *United State v. Chambers*, 291 U.S. 217 (1934)

The Supreme Court considers it to the "province and duty" of the Court to determine what the Constitution is including amendments. If an amendment is putative, or alleged, the Court will determine its validity. In this case, the ratification of the 21st Amendment was questioned and the Court settled the issue. This case serves as a counter point to *Coleman*.

32) *United States ex rel. Widenmann v. Colby,* 265 F. 398 (D.C. Cir. 1920) affirmed 257 U.S. 619 (1921)

The functions of an Article V Convention are complete when the convention has fulfilled its stated purpose. There is no requirement for any other officials to proclaim that completion or closure of the convention.

33) *United States v. Sprague,* 282 U.S. 716 (1931)

The power granted by Article V is to the Congress specifically and not to the federal government as a whole. Similarly, the power granted by Article V is to the amendatory convention. "The fifth article does not purport to delegate any governmental power to the United States…On the contrary… that article is a grant of authority by the people to the Congress, and not to the United States." It should be noted that "Sprague addressed specifically not the entirety of Article V, but only unambiguous language where no construction or supplement was necessary."[7] Also, the congressional authority over calling a convention is less than that over ratification process. **The selection by Congress of the mode of ratification is unreviewable.**

34) *United States v. Thibault,* 47 F.2d 169 (2d Cir. 1931)

The federal or national government is not concerned with how an Article V Convention of a state legislature is constituted. Therefore, **the Article V Convention is empowered to organize and conduct its business as the delegates or commissioners see fit.**

Disclaimer: This Findings Summary was compiled and researched by the members of the Wisconsin GrandSons of Liberty. We are not attorneys or professors of law; for the most accurate and current information, consult with legal professionals.

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[7] Robert G. Natelson, Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers (Part 3 of 3), Goldwater Institute Report No. 11-02, 22 Feb 2011, p.29