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PASSAGE AND RATIFICATION OF THE TWENTY-SIXTH AMENDMENT

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REPORT OF

CONSTITUTIONAL AMENDMENTS SUBCOMMITTEE

BY

Senator BIRCH BAYH, *Chairman*

TO THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

SEPTEMBER 1971

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CONTENTS

	Page
Introduction	1
The case for 18-year-old voting	1
History of efforts to lower the voting age	3
Action by the States	3
Earlier action by the Congress	4
The 1970 hearings	4
The Votings Rights Act of 1970	6
The Supreme Court's decision in *Oregon* v. *Mitchell*	8
The problems of dual-age voting	9
Action in the 92d Congress	13
In the Senate	13
In the House of Representatives	15
Ratification by the States	16
Appendices:	
Appendix A.—Role of General Services Administration in ratification	19
Appendix B.—Letter transmitting the Joint Resolution to the States for ratification	24
Appendix C.—Certification of ratification by Administrator of General Services Administration	26
Appendix D.—Library of Congress analysis and interpretation of the amendment provisions of the Constitution	27

CONTENTS

PASSAGE AND RATIFICATION OF THE TWENTY-SIXTH AMENDMENT

Introduction

The 26th Amendment became a part of the Constitution on July 1, 1971, when action by the legislature of the 38th State, North Carolina, completed the ratification process. Soon thereafter, on July 5, 1971, the Amendment was officially certified to have been duly ratified by the Administrator of the General Services Administration, as required by law. The Amendment, as ratified, reads as follows:

Amendment XXVI

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

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

The Subcommittee on Constitutional Amendments has received numerous inquiries regarding the legislative development of this Amendment and about the procedures for ratifying a proposed amendment. This report is issued to answer those inquiries and to provide in one document a concise history of the legislative development, the passage by the Congress, and the ratification by the States of the 26th Amendment.

THE CASE FOR 18-YEAR-OLD VOTING

In recent years, we have achieved a nationwide political consensus favoring a lowering of the voting age to 18. This consensus has emerged from a series of convincing arguments supporting an extension of the franchise to younger voters.

First, these younger citizens are fully mature enough to vote. There is no magic to the age of 21. The 21 year age of maturity is derived only from historical accident. In the eleventh century 21 was the age at which most males were physically capable of carrying armor. But the physical ability to carry armor in the eleventh century clearly has no relation to the intellectual and emotional qualifications to vote in twentieth century America. And even if physical maturity were the crucial determinant of the right to vote, 18-year-olds would deserve that right: Dr. Margaret Mead and others have shown that the age of physical maturity of American youth has dropped more than three years since the eighteenth century. As Vice President Agnew said recently in endorsing a lowered voting age, "young people today are better educated and they mature physically much sooner than they did even 50 years ago."

Our younger citizens today are mentally and emotionally capable of full participation in our democratic form of government. Today more than half of the 18- to 21-year-olds are receiving some type of higher education. Today nearly 80 percent of these young people are high school graduates. It is interesting to compare these recent

statistics with some from 1920, when less than 10 percent went on to college and less than 20 percent of our youngsters actually graduated from high school.

Second, our 18-year-old citizens have earned the right to vote because they bear all or most of an adult citizen's responsibilities. Of the nearly 11 million 18- to 21-year-olds today, about half are married and more than 1 million of them are responsible for raising families. Nearly 1 million are serving their country in the Armed Forces. And tens of thousands of young people have paid the supreme sacrifice in the Indochina War over the past five years.

Today more than 3 million young people, ages 18 to 21, are full-time employees and taxpayers. As former Attorney General Ramsey Clark has pointed out:

> We subject 10-12 million young citizens between 17 and 21 years of age to taxation without representation. This is four times the population of the Colonies the night the tea was dumped in Boston harbor. . . . It exceeds the population of all but several of the States of the union.

In 26 States persons at the age of 18 can make wills. In 49 States, they are treated as adults in criminal courts of law. It is difficult to justify holding a person legally responsible for his or her actions in a criminal court of law when we continue to refuse to consider that same person responsible enough to take action in a polling booth. Our younger citizens have willingly shouldered the responsibilities we have put on them. It would be wrong to deprive these citizens of the vote. By their actions, they clearly have earned the right to vote.

Third, these younger voters should be given the right to full participation in our political system because they will contribute a great deal to our society. Although some of the student unrest of recent years has led to deplorable violence and intolerance, much of this unrest reflects the interest and concern of today's youth over the important issues of our day. The deep commitment of those 18 to 21 years old is often the idealism which Senator Barry Goldwater has said "is exactly what we need more of in the country . . . more citizens who are concerned enough to pose high social and moral goals for the nation." Professor Paul Freund of the Harvard Law School recently wrote:

> I believe that the student movement around the world is nothing less than the herald of an intellectual and moral revolution, which can portend a new enlightenment and a wider fraternity, or if repulsed and repressed can lead to a new cynicism and even deeper cleavages. The student generation, disillusioned with absolutist slogans and utopian dogmas, has long since marked the end of ideology: wars of competing isms are as intolerable to them as wars of religion became centuries ago. Youth turned to pragmatism, to the setting of specific manageable tasks and getting them done. But that has proved altogether too uninspiring, and youth has been restless for a new vision, a new set of ideals to supplant the discarded ideologies.

We must channel these energies into our political system and give young people the real opportunity to influence our society in a peaceful and constructive manner. The President's Commission on the Causes and Prevention of Violence explored the relationships between campus unrest and the ability of our younger citizens to take a constructive part in the political process:

> The nation cannot afford to ignore lawlessness. . . . It is no less permissible for our nation to ignore the legitimate needs and desires of the young. . . .

. . . We have seen the dedication and conviction they brought to the Civil Rights movement and the skill and enthusiasm they have infused into the political process, even though they lack the vote.

The anachronistic voting-age limitation tends to alienate them from systematic political processes and to drive them in to a search for an alternative, sometimes violent, means to express their frustrations over the gap between the nation's ideals and actions. Lowering the voting age will provide them with a direct, constructive and democratic channel for making their views felt and for giving them a responsible stake in the future of the nation.

It is right to extend the vote to 18-year-olds in all elections: because they are mature enough in every way to exercise the franchise; because they have earned the right to vote by bearing the responsibilities of citizenship and because our society has so much to gain by bringing the force of their idealism and concern and energy into the constructive mechanism of elective government.

HISTORY OF EFFORTS TO LOWER THE VOTING AGE

Action by the States

Before the adoption of the 26th Amendment, nine States had voting ages under 21, although only three of these had reduced the voting age to 18. Georgia was the first to act. In 1943 its voters ratified an 18-year-old voting amendment by more than a 2 to 1 margin. In 1955 the voters of Kentucky approved a referendum—by almost a 2 to 1 margin— which lowered that State's voting age to 18. Hawaii joined the Union in 1959 and carried with it its 1950 constitution, which allowed its residents to vote once they became 20. When Alaska was admitted to the Union, its constitution—which was overwhelmingly approved by its voters on April 24, 1956—contained a 19-year-old voting age. In 1969 the State legislature proposed lowering the age to 18. This amendment was approved by the State's voters in the 1970 elections and took effect before the 20th Amendment was ratified.

Several other changes in State constitutions relating to voting ages were approved by the voters in the 1970 elections. Maine voters agreed to enfranchise their 20-year-olds. Massachusetts voters extended the vote to those 19 and over. Minnesota and Montana did the same thing. Nebraska lowered its voting age to 20.

In at least three other States there was recent legislative action to lay the groundwork for a State constitutional amendment, but in these States the voting age remained 21 because the amendment process had not been completed. In Delaware the State legislature approved a 19-year-old vote proposal, but final ratification required the approval of a subsequent State legislature. The New York State Assembly twice approved an 18-year-old vote amendment.

The California constitutional commission had recommended lowering the voting age to 19, but the legislature had yet to take action.

In addition to the above action, there had been recent popular referenda and legislative action on the issue of lowering the State voting age in the following additional States: Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Maryland, Michigan, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Washington, and Wyoming.

Earlier action by the Congress

The idea of amending the Federal Constitution to lower the voting age to 18 for both Federal and State elections is not new. In modern times the first joint resolutions proposing such a change in the Constitution were submitted in the 77th Congress on October 19, 1942, by Senator Vandenberg and Representative Wickersham. On October 21, 1942, Jennings Randolph, then a Member of the House of Representatives, introduced such a resolution. Since that time, more than 150 similar proposals have been introduced, at least one in each subsequent Congress. Over the years, Congressional support for lowering the voting age has become increasingly strong.

Since the introduction of the first proposal, the issue of lowering the voting age to 18 has been thoroughly studied in the Congress. Congressman Celler, then the ranking majority member of the House Judiciary Committee, conducted hearings on the Randolph proposal on October 30, 1943. Senate Judiciary Committee hearings were conducted in the 82nd, 83rd, 87th, 90th and 91st Congresses.

While there has been thorough committee study over the years, prior to the 92d Congress only one such proposal was reported out of committee. In the 83rd Congress, Senate Joint Resolution 53 was reported out of the Senate Judiciary Committee (S. Rep. No. 1075) and debated on the floor of the Senate. It failed on a vote of 34 to 24, five votes short of the required two-thirds majority. (For floor debate see Cong. Record, vol. 100, pp. 6911, 6956, 6963, 6969.)

The 1970 hearings

Comprehensive hearings on this amendment were held by the Senate Subcommittee on Constitutional Amendments on February 16 and 17 and March 9 and 10 of 1970. "Lowering the Voting Age to 18," *Hearings before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, United States Senate*, 91st Congress, 2d Session (1970). At the hearings, support was heard from witnesses representing all parts of the political spectrum as well as from representatives of a great variety of organizations.

Senator Randolph was the first witness at the hearings. He described his efforts since 1942 on behalf of granting 18-year-olds the vote. He said that allowing participation by these younger voters would have the beneficial result of forcing us all to take a "fresh look" at our political system. He pointed out that the history of this country has to a great extent been a history of efforts to expand the franchise and to expand the political base of our democratic processes. He said:

> We should extend our base by giving to young people not only the opportunity, but I repeat again and again, the responsibility for this active, this full participation. The future in large part belongs to young people. It is imperative that they have the opportunity to help set the course of that future.

Former Presidential Assistant Theodore Sorensen brought to the Subcommittee's attention the conclusion of the Cox Commission which studied the student disruptions at Columbia University, That Commission called the present generation "the most intelligent," the "most idealistic," the "most sensitive to public issues," and with a "higher level of social conscience than preceding generations." Mr. Sorensen described the question of whether to lower the voting age as raising a "moral issue." He said: "For the very essence of democracy requires that its electoral base be as broad as the standards of fairness and logic permit."

Dr. W. Walter Menninger testified in support of lowering the voting age as a representative of the National Commission on the Causes and Prevention of Violence. He pointed out that the Commission in its final report had recommended a constitutional amendment to lower the voting age to 18.

Dr. Menninger also reminded the Subcommittee about the statement Senator Mansfield had made during the Subcommittee's 1968 hearings: "The age of 21 is not simply the automatic chronological door to the sound judgment and wisdom that is needed to exercise the franchise of the ballot." He went on to point out that it is at 18 that young people traditionally "try it on their own," and "become responsible for themselves and others." It is at 18 that "the citizen has fresher knowledge and a more enthusiastic interest in government processes."

Dr. Menninger explored the experiences other jurisdictions have had with lowering the voting age. He said that "nothing in the recent history of states which allow those under 21 to vote has indicated that the college-age vote is irresponsible or 'radical.' " And he pointed out that, according to the studies of the 1963 Commission on Voting, "where 18-year-olds were allowed to vote, they voted in larger proportions than the remainder of the population." He believed that this evidence supported his thesis that lowering the voting age would allow the younger voters to take an active part in the system when they are still subject to the "stimulation" of courses in citizenship and American history and reverse the presently poor turnout of voters in the 21 to 40 category.

Dr. S. I. Hayakawa, the President of San Francisco State University, stated that "lowering of voting age is just one of many measures that are necessary to involve young men and women from 18 years onward more and more into the life of government, of business, of the world of work in general, so that they have decisions to make that count in the world." He said that the vote, aside from its role in the democratic process, had a "symbolic meaning." For the young citizen voting is "like an initiation rite, acknowledging adulthood."

Deputy Attorney General Richard Kleindienst conveyed President Nixon's views about the wisdom of lowering the voting age. He said:

> America's 10 million young people between the ages of 18 and 21 are better equipped today than ever in the past to be entrusted with all of the responsibilities and privileges of citizenship. Their well-informed intelligence, enthusiastic interest, and desire to participate in public affairs at all levels exemplifies the highest qualities of mature citizenship.

Kleindienst also pointed out to the Subcommittee that those States that have had experience with voting at 18 have found that "their experience with young voters has been constructive and positive."

Former Attorney General Ramsey Clark urged speedy enactment of a constitutional amendment to lower the voting age. He pointed out that while the United States has allowed more citizens to participate in the democratic process over the years, it has done so only "slowly, ineffectively, and begrudgingly." He thought that the amendment should be passed "in the name of fairness and justice." And he added: "But there is a more urgent reason. That reason is need, and that need is to involve the young people in our processes and to learn the message that they have to tell us." Mr. Clark believes that by letting

young people vote soon after high school we can "involve them in our system" and "keep them in meaningful participation in the system."

Senator Goldwater appeared before the Subcommittee and said that as a result of his repeated travels to universities in every part of the country over the past few years, he is convinced that "this generation of young people is the finest generation that has ever come along." He said, "to give a direct answer, I see no reason, from the point of judgment, why our young people should not be allowed to vote, and I am talking about 18-year-olds, in State as well as Presidential elections. . . . I have confidence in these people."

Senator Edward M. Kennedy said in his testimony that:

> I believe the time has come to lower the voting age in the United States, and thereby to bring American youth into the mainstream of our political process. To me, this is the most important single principle we can pursue as a nation if we are to succeed in bringing our youth into full and lasting participation in our institutions of democratic government.

Dr. Margaret Mead, the noted anthropologist, appeared before the Subcommittee and particularly emphasized the fact that today's young people "are not only the best educated generation that we have ever had, and the segment of the population that is better educated than any other group, but also they are more mature than young people in the past."

Testimony was heard and statements were received from individuals representing countless organizations, including: Youth Franchise Coalition; National Education Association; American Federation of Teachers; National Association for the Advancement of Colored People; American Civil Liberties Union; the American Jewish Committee; and the Association of the Bar of the City of New York.

The Voting Rights Act of 1970

After the first series of 18-year-old voting hearings before the Senate Subcommittee on Constitutional Amendments in the 91st Congress, Senator Kennedy suggested that Congress might have the constitutional power to lower the voting age in all elections by statute, thus making a constitutional amendment unnecessary. Senator Mansfield—joined by Senators Magnuson, Kennedy, and other supporters—introduced such a provision as an amendment to the Voting Rights Act of 1970, which was then being debated by the Senate. Senator Cook introduced legislation designed to accomplish the same objective by a separate statute, rather than an amendment to the Voting Rights Act.

The Subcommittee immediately began a second series of hearings, devoted primarily to this issue. Support for lowering the voting age by statute was heard from a series of witnesses, including Senators Kennedy and Goldwater. The Subcommittee also studied the views of a number of experts in constitutional law. Professor Archibald Cox of the Harvard Law School, a former Solicitor General of the United States took the position that:

> States in which the voting age is twenty-one put those who are 18, 19, and 20 in a separate class from those who have reached their twenty-first birthday. Under the Fourteenth Amendment, the question is whether the classification is reasonable or arbitrary and capricious. Undoubtedly, the Supreme Court would sustain such a State rule in the absence of federal legislation. Under Section 5 of the Fourteenth Amendment, however, the Congress has the power to make its own determination.

* * * * * * *

If Congress upon reviewing these and related facts should find the classification invidious under contemporary conditions, the Court, if it adhered to *Katzenbach* v. *Morgan*, should sustain the legislation.

Testimony in opposition to this position was offered by several witnesses, including Assistant Attorney General William H. Rehnquist, representing the Department of Justice, and Dean Louis Pollak of the Yale Law School. Their position is summarized in a statement made later by Dean Pollak and Professors Alexander M. Bickel, Charles L. Black, Jr., Robert H. Bork, John Hart Ely, and Eugene V. Rostow, all of the Yale Law School Faculty:

Those who believe Congress can lower the voting age by statute argue in substance that Congress can declare that the 46 states with a minimum voting age of 21 are denying younger would-be voters the equal protection of the laws.

Reliance is placed on *Katzenbach* v. *Morgan*, where the Supreme Court sustained a Federal statute barring states from denying the vote to Americans of Puerto Rican origin literate in Spanish but not in English. *Katzenbach* v. *Morgan* makes sense as part of the main stream of 14th Amendment litigation, policing state restrictions on ethnic minorities. But it has little apparent application to a restriction affecting all young Americans in 46 states.

There is a further, and to us conclusive, reason why *Katzenbach* v. *Morgan* is unavailing: The long-ignored Section 2 of the 14th Amendment explicitly recognizes the age of 21 as a presumptive bench mark for entry into the franchise. It surpasses belief that the Constitution authorizes Congress to define the 14th Amendment's equal-protection clause so as to outlaw what the Amendment's next section approves.

In response, Professor Cox and Professor Paul Freund, also of the Harvard Law School faculty, argued that:

Katzenbach v. *Morgan* recognizes that under Section 5 of the Fourteenth Amendment, Congress has the power—and we think the responsibility—to make its own investigation and findings on the constitutionality of state voting classifications, which is conclusive if the Court can "perceive a basis upon which the Congress might resolve the conflict as it did."

To limit *Katzenbach* v. *Morgan* to policing state restrictions on ethnic minorities" is to ignore the fact that the equal protection clause, which Section 5 gives Congress power to enforce, condemns, in the words of the Supreme Court, "any unjustified discriminaion in determining who may participate in political affairs or the selection of public officials." Indeed, Section 5 is the primary, if not only source of authority for eliminating all literacy tests and reducing residency requirements as proposed by the Department of Justice.

Section 2 of the Fourteenth Amendment. . . provides for a reduction of Congressional representation whenever a state denies the franchise to any male citizen "being 21 years of age." The sanction was directed at restriction of the franchise; it has nothing to do with enlargement as is apparent from state laws reducing the voting age below 21. The most that can be inferred is that in 1866–68, Congress and the state legislatures were willing to accept 21 years as a reasonable measure of the maturity and responsibility necessary to vote *at that time*. It is nowise inconsistent to conclude that *in our time* a 21-year requirement unreasonably discriminates against eighteen, nineteen, and twenty-year-olds because of changed conditions—the spread and improvement of education, the age at which young people take jobs, pay taxes, marry and have children, and their interest in public affairs. Since Section 2 did not set an age limit and conditions do change—as all must agree—it did not bind all future Congresses in discharging their responsibilities under Section 5.

After three days of debate, the Senate adopted Senator Mansfield's Amendment No. 545 by a vote of 64 to 17, on March 12, 1970. The Amendment added Title III—providing for an 18-year-old vote in all elections, Federal, State, and local, general and primary—to the Voting Rights Act of 1970. The bill passed the Senate the following day, March 13, 1970. and was returned to the House, where it was again debated on April 8. On June 17, the House accepted the Senate amendments.

The Voting Rights Act of 1970, Public Law 91–285, was signed by the President on June 22, 1970. At that time the President issued a statement indicating that he signed the bill despite reservations about the constitutionality of lowering the voting age by statute. He gave his support for lowering the voting age by amending the Federal Constitution, concluding that: "The time has come to give 18 year olds the vote, as I have long urged. The way to do this is by amending the Constitution. . . . The Constitutional amendment now pending before the Congress should go forward to the states for ratification now."

THE SUPREME COURT'S DECISION IN OREGON *v.* MITCHELL

After passage of the Voting Rights Act of 1970, prompt Supreme Court tests of the constitutionality of the Act were sought by the Department of Justice, several States, and interested private parties. Four suits were finally consolidated by the Court for determination of all major issues presented. Two of the suits, *Oregon* v. *Mitchell* (No. 43 Original) and *Texas* v. *Mitchell* (No. 44 Original), were initiated by the States to invalidate Titles II and III of the Act. The other two, *United States* v. *Arizona* (No. 46 Original) and *United States* v. *Idaho* (No. 47 Original) were brought by the Department of Justice seeking a declaration that the Act was constitutional and an order forcing the States to enforce the Act. The Court heard oral argument on October 19, 1970, and handed down its decision on December 21, 1970. See 400 U.S. 112 (1970). Excerpts from a Library of Congress analysis of the case follow:

> The best capsulization of the Court's solution of the age reduction of Title III is probably to note that four Justices thought the Title wholly constitutional and four thought it wholly unconstitutional. Justice Black's resolution of the issue caused him to side with the former group insofar as federal elections were concerned and with the latter group insofar as State and local elections were concerned.
>
> The opinion by Justice Brennan, for himself and Justices White and Marshall followed the equal protection-congressional enforcement power analysis first put forward by Justice Brennan in his opinion for the Court in *Katzenbach* v. *Morgan*. . . .
>
> * * * * * * *
>
> Congress . . . is empowered by section 5 of the Fourteenth Amendment to enforce the equal protection clause and it has the resources and the ability to examine the factual basis underlying a State legislative classification and determine when that basis fails to support that classification. When there is a conflict between State resolution of such an issue and congressional resolution, the Federal resolution prevails if the Court can perceive any basis for it.
>
> Justice Brennan asked whether a national basis existed to support the congressional determination that denial of the franchise to those between 18 and 21 was unnecessary to promote the States' compelling interest in assuring intelligent and responsible voting. Emphasizing the lengthy hearings and the extended consideration given the issue by Congress and the facts known to Congress, . . . the three Justices thought Congress could well have rationally reached the conclusion it did.
>
> Justice Douglas, in a separate opinion, was the fourth Justice to find Title III wholly constitutional.
>
> * * * * * * *
>
> Central to Justice Harlan's conclusion that Title III was wholly unconstitutional is his view, expressed in earlier dissents and documented at length in this opinion, that the framers of the Fourteenth Amendment, the 39th Congress which referred it to the States, and the legislatures which ratified it, never under-

stood that the Amendment related at all to "political" rights, most especially suffrage rights.

* * * * * *

Therefore, . . . the Fourteenth Amendment was no restriction on the power of the States to prescribe voting qualifications. It did not permit or authorize the Court itself to strike down the voting qualifications as it had done in *Harper*, *Kramer*, and the like, nor to interfere with apportionment schemes. And if the Court could not do so, Congress certainly could not.

Even leaving aside this interpretation of the Fourteenth Amendment, the Justice continued, Congress had no power to override the suffrage qualifications the States had set and to fix its own.

* * * * * *

Justice Stewart's opinion, for himself and the Chief Justice and Justice Blackmun, rejected *Katzenbach* v. *Morgan* as authority for the age reduction. He viewed the matter simply as a question where power had been vested. He did not think the Fourteenth Amendment had been intended to vest in Congress the power to set voting qualifications or to interpret the equal protection clause in such a manner as to assume the power.

Although he had dissented from *Katzenbach* v. *Morgan*, Justice Stewart thought that even taking the case as a given, it did not furnish support. That case, in his view, had recognized the authority of Congress to override State laws that in fact were instruments of discrimination. But Title III did not reach laws which discriminated against "any discrete and insular minority." Only if the case were interpreted as vesting in Congress not only the power to provide the names of eradicating situations which amounted to a violation of equal protection but also the power to determine substantively that a situation itself was an equal protection violation and whether a State has a compelling interest, would it support the age reduction.

Justice Black . . . cast the deciding vote in the partial validation—partial voiding of Title III. . . .

* * * * * *

In its meeting of July 28, 1970, the Senate Subcommittee on Constitutional Amendments had reported the 18-year-old vote proposals to the full Judiciary Committee with the understanding that they would remain in the full Committee pending the outcome of the Supreme Court test, but the Court's decision came too late in the Congress to allow action by either House before the end of the session.

THE PROBLEMS OF DUAL-AGE VOTING

Following the Supreme Court's decision in *Oregon* v. *Mitchell*, the Subcommittee on Constitutional Amendments undertook a survey of the impact and problems arising out of the decision. *See* "Lowering the Voting Age to 18—a Fifty-State Survey of the Costs and Other Problems of Dual-Age Voting," Report of the Constitutional Amendments Subcommittee, by Senator Birch Bayh, Chairman, to the Committee on the Judiciary, United States Senate, 92d Congress, 1st Session, February 1971 (committee print). This survey was released on February 12, 1971, and made available as a committee print for the use of members of the Committee and other interested parties.

The *Survey* showed that, as a result of the Court's decision, 47 States faced the possibility of having to administer the 1972 election under a sysem of dual-age voting—voting at age 18 in Federal elections and at a greater age in State and local elections. Such a system of dual-age voting was morally indefensible and patently illogical. And the election officials contacted were of the view that such a system would be dangerously complicated and inordinately

expensive as well—officials estimated costs amounting to at least 10 to 20 million dollars.

As the *Survey* pointed out, there was no basis whatsoever, in logic, in policy, or in practice, for denying 18-year-olds the right to vote in State and local elections when they may vote in Federal elections. All of the arguments advanced in favor of lowering the voting age apply with equal force to State and local elections and to Federal elections. Indeed, many of the areas in which young people have expressed the greatest interest—for example, the quality of education and the state of the environment—are primarily matters of local concern. In a time of increasing interest in the decentralization of government programs and resources, there was simply no justificaton whatsoever for excluding young people from participation in State and local elective politics when we permitted them full participation on the Federal level.

The administrative problems of creating and maintaining a system of dual-age voting led election officials to raise the danger of profound confusion and delay in the election process. In the 47 States which had not yet extended the franchise to 18-year-olds, separate systems of registration and voting had to be established for nearly 10 percent of the previous voting age population—more than 10 million young people. The Attorney General of Oregon characterized the result as "an intolerable administrative burden on the States." John D. Rockefeller, IV, Secretary of State of West Virginia, said that the situation at the polling places on election day might amount to "a jumble of confusion." Louisiana State Attorney General Jack Gremillion feared "chaos and confusion" in the next general election. And a memorandum prepared for the Secretary of State of Minnesota predicted "a nightmare at best" in the process of instructing voters in the 1972 elections.

Some jurisdictions expected to meet the problem of dual-age voting primarily by the purchase of new voting machines. However, such a solution would create what one election official referred to as a "suffocating expense." And there is substantial doubt as to whether a sufficient number of machines could have been ordered, financed, and delivered in time for the 1972 elections. Other jurisdictions expected to resolve the problem by the use of "lock-out" devices on voting machines—where feasible—or the use of separate paper ballots. Both of these approaches would have required a substantial increase in manpower, either to perform and supervise the lock-out function or to administer the paper ballots. Moreover, the use of paper ballots—a possibility being considered by many jurisdictions, including the States of Michigan, Montana, and North Dakota and the City of Chicago—raised the possibility and the temptation of vote fraud often associated with the use of paper ballots.

Whatever approach individual jurisdictions took to meet the problem, many election officials feared that the confusion and complications of dual-age voting would lead to delay at the polls. James C. Kirkpatrick, the Secretary of State of Missouri, suggested that "probably most important of all" the consequences of dual-age voting was the possibility that "the confusion may well result in long lines at the polling places on election day," causing voters "to decide against voting rather than be forced to stand in line for a long time—especially

in bad weather." It would have been ironic indeed if in this manner the Voting Rights Act discouraged the exercise of the franchise.

Based on the estimates of election officials, the total cost of implementing a system of dual-age voting appeared to be no less than 10 to 20 million dollars—and possibly substantially more. Such estimates varied widely among jurisdictions. In jurisdictions contemplating the use of separate voting machines, at a cost of approximately $2,000 apiece, the initial cost would have been staggering—1.3 million dollars in Connecticut, 3.5 million dollars in New York City. In jurisdictions choosing to use voting machine "lock-out" where possible, or paper ballots, the costs were harder to estimate because they involved primarily the use of additional personnel; but election officials were nevertheless concerned about the magnitude of the expense required. A few examples of responses from election officials follow:

Paul Marston, Recorder of Maricopa County—including Phoenix, Arizona—predicted a possible expense on the order of $60,000 resulting from dual-age voting.

California State Assemblyman John Briggs reported that, according to the California Secretary of State, it would cost more than 1.5 million dollars to implement dual-age voting in California. The Registrar-Recorder of Los Angeles County estimated that "dual-age voting would cost approximately $400,000 to $500,000 additional" in the county.

Mrs. Gloria Schaffer, the Secretary of the State of Connecticut has estimated that the State would have to spend $1,300,000 on voting machines alone to implement dual-age voting.

In Illinois, Secretary of State John W. Lewis estimated that there would be a 40 to 50 percent increase in election costs because of the need to keep two sets of registration books, two sets of ballots, and the like. The chairman of the Chicago Board of Election Commissioners put the extra cost for his city alone at between $150,000 and $200,000.

The Indiana State Election Board has predicted that it would cost $170,000 for separate registration facilities, and for the printing and casting of paper ballots.

In Iowa, dual-age voting could have cost $125,000 to $150,000, but Secretary of State Melvin D. Synhorst added that if voting machines had to be purchased, this figure "could rise considerably higher."

According to Allen J. Beerman, the Secretary of State of Nebraska, the implementation of *Oregon* v. *Mitchell* could easily have resulted in a 30 percent increase in election costs—an additional $300,000.

New Mexico Secretary of State Betty Fiorina expected the cost of implementing dual-age voting to total approximately $200,000.

Maurice J. O'Rourke, the President of the New York City Board of Elections stated that such a dual-age voting procedure "would cost the city $5,000,000 minimally. We would need 1,500 new voting machines, which cost $2,000 each, and we would have to spend, at least $2,000,000 for additional permanent personnel to set up and maintain the two sets of registration books necessary for two categories of voters."

Ward Fowler, of Oklahoma's State Election Board, predicted extra costs arising from dual-age voting of "$50,000 to $150,000 per election year."

Rhode Island relies heavily on voting machines, and as a result Secretary of State August P. LaFrance expected that additional expenses could total nearly "two million dollars."

Director of Election Jack M. Perry of Shelby County Tennessee, which includes Memphis, made a "rough estimate" that the extra expenses of dual-age voting would amount to "around $800,000."

A. Ludlow Kramer, Washington's Secretary of State, gave a careful estimate of all the expenses that dual-age voting would entail and concluded that it would cost the State $425,000, a "suffocating expense," especially when his State is "desperately struggling to avoid bankruptcy."

The difficulty of determining just what constitutes a Federal election might have caused substantial disruption of State political party organization and prolonged confusion and delay in the courts. *Oregon* v. *Mitchell* granted the right to vote in all Federal primary elections to all 18-year-old voters. However, in many States the selection of nominees for Federal office is not performed in a primary but by delegates elected to State conventions. Unless young voters are able to vote for these delegates, they will have no voice in the selection of the Federal nominees who will represent their party. However, many of these elected delegates also choose nominees for State-wide office and perform other State functions, and 18-year-olds were precluded by law in 47 of the 50 States from voting for State officials. If excluded from party elections which affect—directly or indirectly—the choice of Federal officials, 18-year-old voters would have been certain to challenge their exclusion in court, and very substantial disruption and delay would have occurred before the numerous separate and differing problems across the country were resolved.

The *Survey* concluded that a Federal constitutional amendment offered the only realistic hope in most States for 18-year-old voting before the 1972 elections. Of the 47 States with voting ages in excess of 18, only eight had reported that it would be possible to lower their voting age by State action before the 1972 general election without resorting to some extraordinary procedure, such as a special State-wide election. Most of the remaining States faced delays that would preclude final action lowering the voting age before that date. Ratification of a Federal constitutional amendment, on the other hand, appeared to be a realistic possibility by 1972. At least 40 State legislatures were scheduled to meet in 1972 alone, in the absence of any special sessions, and the reapportionment required by the 1970 census seemed likely to make the fall of 1971 and the spring of 1972 an active period for special sessions. As the *Survey* noted, the three amendments proposed by Congress in the 1960s—the 23rd, 24th and 25th—were ratified in an average time of approximately 15 months; it was thought that an amendment lowering the voting age to 18 would stand an excellent chance of ratification within a similar period.

ACTION IN THE 92D CONGRESS

In the Senate

Senate Joint Resolution 7 was introduced on January 25, 1971, by Senator Jennings Randolph, together with 86 cosponsors. The proposed resolution was referred to the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee. Senate Joint Resolution 7 is substantially identical to resolutions introduced by Senator Randolph in the 91st Congress (S.J. Res. 7; S.J. Res. 147) and in earlier Congresses.

On March 2, 1971, the Subcommittee on Constitutional Amendments met to consider Senate Joint Resolution 7. Senator Bayh proposed the three technical amendments set out below in order to conform the preamble of Senate Joint Resolution 7 to the precise language of the preamble to the most recently ratified constitutional amendment, the 25th Amendment:

On page 2, line 1, strike the word "hereby".

On page 2, line 3, strike the words "only if" and insert in lieu thereof the word "when".

On page 2, line 6, strike the words "to the States".

The Subcommittee adopted the following two amendments for the purpose of conforming the numbering of sections in Senate Joint Resolution 7 to the enumeration generally found in the Constitution, by setting off the enforcement power in a separate section as in the 13th, 14th, 15th, 18th, 23rd, and 24th amendments:

On page 2, line 8, insert the words "SECTION 1." before the initial word "The".

On page 2, line 12, insert the words "SEC. 2" before the word "The".

Senate Joint Resolution 7, as amended, is as follows:

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

"ARTICLE —

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

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

On March 4, 1971 the full Committee on the Judiciary met and, after adopting the technical amendments set out above, ordered Senate Joint Resolution 7 reported favorably to the Senate, with amendments, and recommended that the resolution, as amended, should pass. On March 8, 1971, Senate Joint Resolution 7 was reported to the Senate favorably, with amendments, by Mr. Bayh. See S. Rept. 92–26. On the same day, Mr. Kennedy on behalf of himself and Messrs. Eagleton, Harris, Javits, McGovern, and Mondale, sent to the desk an amendment (No. 11), which was ordered to be printed, lie on the table, and printed in the Record. That amendment would have added an additional section to the joint resolution proposing a second constitutional amendment which would have

granted voting representation in the Congress to the residents of the District of Columbia.

On March 9 and 10, 1971, the Senate debated Senate Joint Resolution 7 as reported from the Committee on the Judiciary. *See* 117 *Congressional Record* S2662–94, S2751–53 (daily ed. Mar. 9, 1971); 117 *Congressional Record* S2858–86 (daily ed. Mar. 10, 1971).

Senator Bayh, floor manager of the proposal, opened the debate by urging swift passage by Congress and speedy ratification by the States in order to lower the voting age before the next set of elections. He said that the dual-age voting system resulting from the *Oregon* v. *Mitchell* decision disenfranchised millions of 18–19– and 20–year olds, precluding them from participating in State and local governments, the levels of government which provide the greatest opportunity for meaningful and direct involvement in the democratic process. Disturbed by the number of people losing faith in the country, he said:

> By acting favorably on this constitutional amendment, we will be saying to some 11.5 million young Americans who are now treated as second class citizens and required to bear the burdens of citizenship but not given the opportunity to develop and participate in the governmental process, "Have faith, because this system is going to make itself available to you."

Senator Randolph, the chief sponsor of the joint resolution and one of the earliest advocates of extending the franchise to 18-year-olds, urged speed in passage of the resolution to avoid "a chaotic condition" in the voting process. He stated that young adults have the same concerns as their elders and should be accorded the right to participate in State and local elections. He emphasized that only swift action by the Congress would make it possible for ratification to take place before the 1972 elections.

Senators Byrd of Virginia, Byrd of West Virginia, Allen, Fannin, Hruska, and Thurmond all felt that only the States have the rights to determine their voting ages. They all made it clear that they fully supported lowering the voting age by amending the Federal Constitution because the States would be establishing the voting age limit in the ratification process.

Senator Percy spoke in favor of the resolution, saying it was the only way to avoid "an administrative nightmare" which faced State and local election boards. Recognizing the concern of young Americans in public affairs, he stated that extending to younger citizens the right to vote would strengthen their commitment to the viability of our political system by providing a peaceful means to effect change.

Senators Cook and Cooper pointed out that the State of Kentucky lowered its voting age to 18 in 1955 and has been fully satisfied with the experience. Believing that all arguments in favor of enfranchising this age group apply to both Federal and State elections, the Senators from Kentucky urged support for the resolution.

Senator Mondale declared that it was a "senseless travesty" to withhold from 18-year olds the right to vote in State and local elections. His support was based on his conviction that "the way to breathe life into our political institutions at every level is to engage in the political process the energy, the idealism, the critical intelligence, and the fresh integrity of our young people."

Several other Senators also rose to express their support for the joint resolution and to commend Senator Randolph for his longtime leadership in the effort to extend the franchise to younger voters.

On March 10, 1971, after two hours of debate, the Senate tabled the Kennedy amendment relating to representation for the District of Columbia in the Congress by a vote of 68 yeas to 23 nays. *See* 117 *Congressional Record* S2872 (daily ed. Mar. 10, 1971). Then, after additional debate, it proceeded to approve unanimously, by a 94–0 vote, Senate Joint Resolution 7, without further amendment.

In the House of Representatives

House Joint Resolution 223 was introduced on January 29, 1971 by Congressman Celler on behalf of himself and others.

The House Committee on the Judiciary decided that hearings on the resolution were not necessary because comprehensive hearings that focused on the merits of a constitutional amendment to lower the minimum voting age were held in February and March 1970 by the Senate Subcommittee on Constitutional Amendments. In this context, and in recognition of the need for expeditious action, a House Judiciary Subcommittee, to which 26 resolutions to amend the Constitution to lower the voting age had been referred, concluded that additional hearings at this time would be undesirable and recommended that House Joint Resolution 223 be favorably reported to the House by the full Committee.

On March 2, 1971, the full Committee on the Judiciary approved House Joint Resolution 223 in executive session and ordered it favorably reported without amendment by a vote of 32 yeas, 2 nays.

Congressmen Wiggins and Mayne were the two members of the House Committee on the Judiciary who dissented from the majority's action. They explained their position by including dissenting views in the Committee Report (H.R. Rep. No. 92–37), which was filed on March 9, 1971. Wiggins and Mayne said that although both had urged lowering of the voting age in their respective States:

> We do oppose, however, the imposition of an unwanted voting standard in State and local elections by others unaffected by that standard. In short, as the law is presently interpreted, States have the right to fix nondiscriminatory voter qualifications for their own elections and we believe it should remain that way.

They felt that if the States wished to avoid the confusion and expense of dual-age voting, they could "change their laws to conform to the Federal standards" by amending their own constitutions. For these reasons they urged rejections of the proposed joint resolution.

On March 23, 1971, the House of Representatives opened debate on House Joint Resolution 223, which was identical to Senate Joint Resolution 7 as approved by the Senate. For the debate *see* 117 *Congressional Record* H1819–57 (daily ed. Mar. 23, 1971).

Mr. Celler, sponsor of the joint resolution, urged speedy approval because the amendment would guarantee uniformity in State and Federal voting age requirements by the 1972 national elections. He stated that approval would "represent another step in the American tradition of enlarging the franchise."

Statements by many Congressmen indicated their support for the amendment. Mr. Poff and others approved of the amendment because

it enabled the States to determine voting age qualifications by deciding whether or not to ratify the resolution. Many Congressmen stated their desire to eliminate the discrepancies and contradictions in voting rights which stemmed from the *Oregon* v. *Mitchell* Supreme Court decision. Adoption would allow full participation of all citizens in all levels of the government.

During the debate, one amendment to the joint resolution was offered by Mr. Howard. It would have added the following language to the joint resolution:

> Section 2. Neither the United States nor any State shall make or enforce any law which shall have the effect of treating as other than a person who has attained the age of legal majority any citizen of the United States who is eighteen years of age or older.

Mr. Celler made a point of order on the grounds that the proposed amendment was non-germane. The point of order was sustained.

A motion to recommit House Joint Resolution 223 to the Committee on the Judiciary was rejected.

On March 23, 1971, the House of Representatives, by a 400–19 vote, overwhelmingly approved House Joint Resolution 223, without further amendment. At this point Senate Joint Resolution 7, an identical measure, was brought up and passed after a third reading. House Joint Resolution 223 was then laid on the table. *See* 117 *Congressional Record* H1856–57 (daily ed. Mar. 23, 1971).

RATIFICATION BY THE STATES

On March 23, 1971, after final passage by the House, the joint resolution was duly enrolled, signed by the Speaker of the House and the President pro tempore of the Senate, and sent to the Administrator of the General Services Administration for transmission to each of the 50 State legislatures. A Library of Congress memorandum explaining the role of the General Services Administration in the ratification of proposed amendments is included in the Appendix.

On the next day the Administrator of G.S.A., Mr. Robert L. Kunzig, sent a letter to the governor of each State, enclosing a certified copy of the joint resolution to his State's legislature for ratification. He also requested that certified copies of any action taken by each legislature be sent to him, as required by section 106b of Title 1 of the United States Code. The letter, the joint resolution as transmitted, and the relevant statutes are included in the Appendix.

The Amendment became part of the Constitution when ratified by the 38th State. See *Dillon* v. *Gloss*, 256 U.S. 368, 376 (1921). The official certification of ratification required by Section 106b of Title 1 of the United States Code is reprinted in the Appendix to this Report. The list of the States ratifying the 26th Amendment, as compiled by the General Services Administration, follows:

List of States ratifying the 26th amendment to the Constitution of the United States

	Date of Ratification
Connecticut	Mar. 23, 1971
Delaware	Do.
Minnesota	Do.
Tennessee	Do.
Washington	Do.
Hawaii	Mar. 24, 1971
Massachusetts	Do.
Montana	Mar. 29, 1971
Arkansas	Mar. 30, 1971
Idaho	Do.
Iowa	Do.
Nebraska	Apr. 2, 1971
New Jersey	Apr. 3, 1971
Kansas	Apr. 7, 1971
Michigan	Do.
Alaska	Apr. 8, 1971
Maryland	Do.
Indiana	Do.
Maine	Apr. 9, 1971
Vermont	Apr. 16, 1971
Louisiana	Apr. 17, 1971
California	Apr. 19, 1971
Colorado	Apr. 27, 1971
Pennsylvania	Do.
Texas	Do.
South Carolina	Apr. 28, 1971
West Virginia	Do.
New Hampshire	May 13, 1971
Arizona	May 14, 1971
Rhode Island	May 27, 1971
New York	June 2, 1971
Oregon	June 4, 1971
Missouri	June 14, 1971
Wisconsin	June 22, 1971
Illinois	June 29, 1971
Alabama	June 30, 1971
Ohio	Do.
North Carolina	July 1, 1971
Oklahoma	Do.
Virginia	July 8, 1971
Wyoming	Do.

APPENDICES

APPENDIX A

Role of General Services Administration in Ratification

The Library of Congress,
Washington, D.C., March 18, 1971.

To: Senate Constitutional Amendments Subcommittee.
From: American Law Division.
Subject: Submission and Ratification of Constitutional Amendments: G.S.A.'s Role.

This is in response to your inquiry of March 12, 1971, requesting copies of statutes and regulations pertaining to G.S.A.'s role in the submission and ratification of amendments to the U.S. Constitution.

The only pertinent statutes are contained in 1 U.S.C. §§ 106(b), 112. These provisions relate only to: the issuance of a certificate by the Administrator of G.S.A. upon ratification of a proposed amendment, and the requirement that proposed or ratified amendments be published in the Statutes at Large.

We have been informed by Mr. Nivert, Assistant to the Director of the Office of the Federal Register, General Services Administration, that the procedures for submitting proposed amendments to the States evolved primarily from custom and usage. Consequently, there is no statutory or regulatory authority for such procedure.

We have been further advised by Mr. Nivert that the following procedure has been established. Upon passage of the constitutional amendment (joint resolution) and certification of such passage by the presiding officer of both Houses of Congress, the amendment is transmitted to the Office of Federal Register, G.S.A., to be published in slip form and in the Statutes at Large (1 U.S.C. § 112). At this time, the Office of Federal Register also prepares certified copies of the amendment and transmittal letters, which are forwarded to the Administrator of General Services for his signature. After signing and enclosing the transmittal letters, the Administrator sends copies of the proposed amendment to the Governors of each of the fifty states (prior to 1950, when the Reorganization Plan No. 20 was approved, transmission to the States was accomplished by the Secretary of State) for submission to the legislatures.

"Whenever official notice is received at the General Services Administration that any amendment proposed to the Constitution of the United States has been adopted . . . the Administrator shall forthwith cause the amendment to be published with his certificate", specifying the States which have adopted the amendment and also that the amendment has become valid as a part of the Constitution. 1 U.S.C. § 106(b). It should also be noted that the effective date of the amendment is the date when three-fourths of the states have ratified it and not the date of the ratification declaration or the certification of validity (see *Dillon* v. *Gloss*, 256 U.S. 368, 376 (1921).

We have enclosed for your consideration the following materials, which relate to the function of G.S.A. with respect to constitutional amendments:

(1) Hinds, *Precedents of the House of Representatives* §§ 7039–44 (1907);
(2) A copy of 1 U.S.C. §§ 106b, 112 (1964); and
(3) An abstract from the U.S. Government Organization Manual, which describes the function of the Office of Federal Register in publishing and certifying constitutional amendments.

Arthur P. Endres, Jr.,
American Law Division.

§ 7039. On January 30, 1869,[1] the House was considering the joint resolution of the House (H. Res. 402) proposing an amendment to the Constitution of the United States (suffrage amendment), and the question was on the passage of the resolution.

Mr. Robert C. Schenck, of Ohio, rising to a parliamentary inquiry, asked if the Constitution did not require the vote to be taken by yeas and nays.

The Speaker [2] said:

"It does not. The only imperative requirement of the yeas and nays under the Constitution is in regard to a veto, where a concurrent vote of two-thirds of each House by yeas and nays is required. On all other questions requiring a two-thirds vote, such as proposed amendments to the Constitution and relief from political disabilities, the Constitution does not command the vote to be taken by yeas and nays any more than on bills which only require a majority vote. On bills relieving from disability under the fourteenth amendment the Chair has ruled, with the assent of the House, that the Constitution does not require the yeas and nays, but that the result must be arrived at by a two thirds vote, to be declared by the Chair. On constitutional amendments, however, on account of their gravity and the value of the record, the usage has been to take the vote by yeas and nays."

The yeas and nays were then demanded by one-fifth of those present.

§7040. It has been conclusively settled that a joint resolution proposing an amendment to the Constitution should not be presented to the President for his approval.—On February 25, 1869,[3] Mr. George S. Boutwell, of Massachusetts, presented the report of the committee of conference on the disagreeing votes of the House and Senate on the resolution (S. No. 8) proposing an amendment to the Constitution of the United States (suffrage amendment).

Mr. George W. Woodward, of Pennsylvania, made the point of order that the subject of the report of the committee would have to be sent to the President of the United States for his approval, under that clause of the Constitution which provides that—

> Every order, resolution, or vote on which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, etc.

The Speaker [2] said:

"The gentleman having stated the point of order, the Chair will decide it. It has been raised once before and decided by the Chair. He will repeat the substantial points of that decision, which he thinks will satisfy the gentleman that his point is not well taken, although based by him upon the Constitution of the United States. The question was raised distinctly in 1803 in the Senate of the United States, on a motion that the then proposed amendment to the Constitution should be submitted to the President:

" 'On motion that the Committee on Enrolled Bills be directed to present to the President of the United States for his approbation the resolution which has been passed by both Houses of Congress, proposing to the consideration of the State legislatures an amendment to the Constitution of the United States respecting the mode of electing President and Vice-President thereof, it was decided in the negative, yeas 7, nays 23.'

"On a distinct vote of 23 to 7 the Senate voted that the Committee on Enrolled Bills should not present the proposed amendment. This is a decision made by one of the early Congresses. But the Chair is not satisfied with having it rest on that; he is disposed to present higher authority in overruling the point of order.

"In 1798 a case arose in the Supreme Court of the United States depending upon the amendment to the Constitution proposed in 1794, and the counsel, in argument before the court, insisted that the amendment was not valid, not having been approved by the President of the Unted States. The Attorney-General, Mr. Lee, in reply to this argument, said:

" 'Has not the same course been pursued relative to all other amendments that have been adopted? And the case of amendments is evidently a substantive act, unconnected with the ordinary business of legislation, and not within the policy or terms of investing the President with a qualified negative on the acts and resolutions of Congress.'

"That was the remark of the Attorney-General. But the Chair does not rest his decision upon that. He sustains it by the decision of the Supreme Court of

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[1] Third session, Fortieth Congress, Globe, p. 745; Journal, p. 237.
[2] Schuyler Colfax, of Indiana, Speaker.
[3] Third session Fortieth Congress, Globe, p. 1563.

the United States. The court, speaking through Chase, justice, in reply to the Attorney-General. observed:

"'There can surely be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation. He has nothing to do with the proposition or adoption of amendments to the Constitution.'

"As the Supreme Court of the United States has settled this question by a decision, the Chair does not need to read further authorities. But this question came before the Senate of the United States recently, since the recent exciting questions have been before the country, and the chairman of the Judiciary Committee of the Senate (Mr. Lyman Trumbull, of Illinois) offered the following resolution:

"'*Resolved*, That the article of amendment proposed by Congress to be added to the Constitution of the United States respecting the extinction of slavery therein having been inadvertently presented to the President for his approval, it is hereby declared that such approval was unnecessary to give effect to the action of Congress in proposing said amendment, inconsistent with former practice in reference to all amendments to the Constitution heretofore adopted, and being inadvertently done, should not constitute a precedent for the future; and the Secretary is hereby instructed not to communicate the notice of the approval of said proposed amendment by the President to the House of Representatives.'

"Upon that resolution the Senator from Maryland, Mr. Reverdy Johnson, who had been formerly Attorney-General of the United States, made a speech which the Chair will not quote, corroborating, however, the opinion of the Chair, and the Senate adopted the resolution of Mr. Trumbull without a division and without the yeas and nays.

"The Chair therefore thinks that the question is settled, not only by the practice of Congress but by a decision of the Supreme Court of the United States, and therefore overrules the point of order."

§7041. The filing with the Secretary of State and the transmission to the States of joint resolutions proposing amendments to the Constitution.—On June 18, 1866,[4] Mr. Amasa Cobb, of Wisconsin, from the Committee on Enrolled Bills, reported that the committee did, on the 16th day of June, 1866, present to and file with the Secretary of State of the United States a joint resolution of the following title, viz:

H. Res. 127. Joint resolution proposing an amendment to the Constitution of the United States.

On the same day the House considered under suspension of the rules and agreed to the following:

Resolved by the House of Representatives (*the Senate concurring*), That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the State legislatures to amend the Constitution of the United States, passed June 13, 1866, respecting citizenship, the basis of representation, disqualification for office, and validity of the public debt of the United States, etc., to the end that the said States may proceed to act upon the said article of amendment; and that he request the executive of each State that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification.

On June 19 the Speaker, by unanimous consent, laid before the House a letter from the Clerk of the House, stating that he did this day present to the President a certified copy of the concurrent resolution of the 18th instant, requesting, etc.

On June 22 a message was received from the President submitting a report of the Secretary of State relating to the submission of the amendment to the legislatures of the States calling attention to the fact that the amendment was not submitted to the President for his approval, that several States were still out of the Union, etc., and stating that the act of the administration in submitting the amendment should be regarded as purely ministerial, and not as an indorsement of it.

7042. On February 22, 1870,[5] occurred a learned and carefully considered debate in the Senate concerning the power of a State to recall its assent duly given to a constitutional amendment. This debate arose over the act of the legislature of New York in attempting to recall the assent of a previous legislature to the Fifteenth amendment.

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[4] First session Thirty-ninth Congress, Journal, pp. 859, 866, 889; Globe, pp. 3241, 3357.
[5] Second session Forty-first Congress, Globe, pp. 377, 1477.

7043. The two Houses requested the President to transmit to the States forthwith certain proposed amendments to the Constitution.—On March 2, 1869,[6] the Senate and House adopted a concurrent resolution requesting the President to transmit forthwith to the executives of the several States copies of the article of amendment proposed to the Constitution of the United States, and passed February 26, 1869, respecting the exercise of the elective franchise, in order that the States might proceed to act on the amendment, and also to request the executive of each of the States that might ratify the amendment to transmit to the Secretary of State a certified copy of the ratification.

7044. The President may notify Congress by message of the promulgation of the ratification of a constitutional amendment.—On March 30, 1870,[7] President Grant by message notified Congress of the promulgation of the ratification of the fifteenth amendment to the Constitution, saying that he was aware that such a course was not usual, but in view of the importance of the subject he transmitted the notification, with the expressed hope that Congress would take all means within their powers to promote popular education in the country.

[From the United States Code]

Title 1.—General Provisions

§ 106a. Promulgation of laws.

Whenever a bill, order, resolution, or vote of the Senate and House of Representatives, having been approved by the President, or not having been returned by him with his objections, becomes a law or takes effect, it shall forthwith be received by the Administrator of General Services from the President; and whenever a bill, order, resolution, or vote is returned by the President with his objections, and, on being reconsidered, is agreed to be passed, and is approved by two-thirds of both Houses of Congress, and thereby becomes a law or takes effect, it shall be received by the Administrator of General Services from the President of the Senate, or Speaker of the House of Representatives in whichsoever House it shall last have been so approved, and he shall carefully preserve the originals. (Added Oct. 31, 1951, ch. 655, § 2 (b), 65 Stat. 710.)

SIMILAR PROVISIONS; REPEAL; SAVING CLAUSE; DELEGATION OF FUNCTIONS; TRANSFER OF PROPERTY AND PERSONNEL

Similar provisions were contained in R. S. §204; act Dec. 28, 1874, c. 9, § 2, 18h Stat. 294; 1950 Reorg. Plan No. 20, § 1, eff. May 24, 1950, 16 F. R. 3178, 64 Stat. 1272, which with the exception of the reorganization plan, were repealed by section 56 (h) of act Oct. 31, 1951. Subsec. (1) of that section 56 provided that the repeal should not affect any rights or liabilities existing under those statutes on the effective date of the repeal (Oct. 31, 1951). For delegation of functions under the repealed statutes, and transfer of records, property, personnel, and funds, see sections 3 and 4 of 1950 Reorg. Plan No. 20, set out in note under section 133z–15 of Title 5, Executive Departments and Government Officers and Employees.

§ 106b. Amendments to Constitution.

Whenever official notices is received at the General Services Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Administrator of General Services shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States. (Added Oct. 31, 1951, ch. 655, § 2 (b), 65 Stat. 710.)

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[6] Third session Fortieth Congress, Journal, p. 502; Globe, p. 1816.
[7] Second session Forty-first Congress, Journal, p. 548.

SIMILAR PROVISIONS; REPEAL; SAVING CLAUSE; DELEGATION OF FUNCTIONS; TRANSFER OF PROPERTY AND PERSONNEL

Similar provisions were contained in R. S. § 205; 1950 Reorg. Plan No. 20, § 1, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1272. R. S. § 205 was repealed by section 56 (h) of act Oct. 31, 1951. Subsec. (l) of section 56 provided that the repeal should not affect any rights or liabilities existing under the repealed statute on the effective date of the repeal (Oct. 31, 1951). For delegation of functions under the repealed statute, and transfer of records, property, personnel, and funds, see sections 3 and 4 of 1950 Reorg. Plan No. 20, set out in note under section 133z–15 of Title 5, Executive Departments and Government Officers and Employees.

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§ 112. *Statutes at Large; contents; admissibility in evidence.*

The Administrator of General Services shall cause to be compiled, edited, indexed, and published, the United States Statutes at Large, which shall contain all the laws and concurrent resolutions enacted during each regular session of Congress; all proclamations by the President in the numbered series issued since the date of the adjournment of the regular session of Congress next preceding; and also any amendments to the Constitution of the United States proposed or ratified pursuant to article V thereof since that date, together with the certificate of the Administrator of General Services issued in compliance with the provision contained in section 106b of this title. In the event of an extra session of Congress, the Administrator of General Services shall cause all the laws and concurrent resolutions enacted during said extra session to be consolidated with, and published as part of, the contents of the volume for the next regular session.

The United States Statutes at Large shall be legal evidence of laws, concurrent resolutions, treaties, international agreements other than treaties, proclamations by the President, and proposed or ratified amendments to the Constitution of the United States therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States. (July 30, 1947, ch. 388, 61 Stat. 636; Sept. 23, 1950, ch. 1001, § 1, 64 Stat. 979; Oct. 31, 1951, ch. 655, § 3, 65 Stat. 710.)

AMENDMENTS

1951—Act Oct. 31, 1951, substituted, in first sentence, "106b of this title" for "205 of the Revised Statutes".

1950—Act Sept. 23, 1950, implemented 1950 Reorg. Plan No. 20, § 1, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1272, by transferring to the Administrator of General Services duties formerly performed by the Secretary of State.

TRANSFER OF FUNCTIONS

Functions of the Secretary of State and the Department of State under this section, except those with respect to treaties and other international agreements, were transferred to the Administrator of General Services by 1950 Reorg. Plan No. 20, § 1, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1272, set out in note under section 133z—15 of Title 5, Executive Departments and Government Officers and Employees. Section 3 of the Plan vested authority in the Administrator of General Services to delegate the transferred functions to any other officer, or to any agency or employee, of the General Services Administration. For transfer of records, property, personnel, and funds, see section 4 of the Plan.

EFFECT OF REPEAL OF SECTION 196 OF TITLE 44

This section and section 112a of this title as not affected by the repeal of section 196 of Title 44, Public Printing and Documents, which related to the same subject matter, see note under that former section.

[From the U.S. Government Organization Manual]

National Archives and Records Service

(For regulations codified under this heading, see Code of Federal Regulations, Title 41, Chapter 101, Subchapter B)

Creation and authority.—The National Archives and Records Service, under the direction of the Archivist of the United States, was established on December 11, 1949, by the Administrator of General Services to succeed the National Archives Establishment originally established by act of June 19, 1934 (48 Stat. 1122).

Purpose.—The National Archives and Records Service selects, preserves, and makes available to the Government and the public the permanently valuable noncurrent records of the Federal Government. It promotes improved records management and paperwork practices in Federal agencies. It publishes those laws, constitutional amendments, Presidential documents, and administrative regulations having general applicability and legal effect, and administers the Presidential libraries.

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Office of the Federal Register.—Files, makes available for public inspection, and publishes in the daily *Federal Register*, Presidential proclamations and Executive orders, Federal administrative regulations, orders, and notices affecting a class of the public or describing the organization, practices, and procedures, of Federal agencies. Publishes the *Code of Federal Regulations*, a codification of regulatory documents; the *United States Government Organization Manual* containing descriptions of the organization and functions of the Government; the *Public Papers of the Presidents of the United States*, annual volumes containing the text of most public messages and statements of the Presidents; and the *Weekly Compilation of Presidential Documents*, containing the text of White House releases. Also publishes constitutional amendments and acts of Congress in slip form and in the *United States Statutes at Large*, carries out the procedures for the certification of constitutional amendments, Presidential electors, and electoral votes cast for President and Vice President. Assists agencies in their rulemaking and rule-drafting activities. Maintains an information service covering the foregoing documents, publications, and procedures.

APPENDIX B

Letter Transmitting the Joint Resolution to the States for Ratification

General Services Administration,
Washington, D.C., March 24, 1971.

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

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

Please acknowledge receipt of this joint resolution.

Sincerely,

Robert L. Kunzig, *Administrator.*

Enclosures.

S. J. Res. 7

Ninety-second Congress of the United States of America

AT THE FIRST SESSION

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

Joint Resolution

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

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

"ARTICLE —

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

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

Carl Albert

Speaker of the House of Representatives.

Allen J. Ellender

Vice President of the United States and President of the Senate pro tempore

APPENDIX C

Certification of Ratification by Administrator of General Services Administration

U.S. Constitution

AMENDMENT 26

Administrator of General Services

Certification of Amendment to Constitution of the United States Extending the Right to Vote to Citizens Eighteen Years of Age or Older

To All to Whom These Presents Shall Come, Greeting:

KNOW YE, That the Congress of the United States, at the first session, Ninety-second Congress begun at the City of Washington on Thursday, the twenty-first day of January, in the year one thousand nine hundred and seventy-one, passed a Joint Resolution in the words and figures as follows: to wit—

JOINT RESOLUTION

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

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

"Article—

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

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

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

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

Now, therefore, be it known that I, Robert L. Kunzig, Administrator of General Services, by virtue and in pursuance of Section 106b, Title 1 of the United States Code, do hereby certify that the Amendment aforesaid has become valid, to all intents and purposes, as a part of the Constitution of the United States.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the General Services Administration to be affixed.

DONE at the City of Washington this 5th day of July in the year of our Lord one thousand nine hundred and seventy-one.

Robert L. Kunzig

ROBERT L. KUNZIG.

The foregoing was signed in our presence on this 5th day of July, 1971.

Richard Kleindienst

Paul J. Larmer

Joseph H. Laird Jr.

Julianne Jones

APPENDIX D

Library of Congress Analysis and Interpretation of the Amendment Provisions of the Constitution

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

(Analysis and interpretation)

Annotations of Cases Decided by the Supreme Court of the United States to June 22, 1964

MODE OF AMENDMENT

Article V

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

AMENDMENT OF THE CONSTITUTION

Scope of the amending power

When this Article was before the Constitutional Convention, a motion to insert a provision that "no State shall without its consent be affected in its internal policy" was made and rejected.[1] A further attempt to impose a substantive limitation on the amending power was made in 1861, when Congress submitted to the States a proposal to bar any future amendments which would authorize Congress to "interfere, within any State, with the domestic institutions thereof * * *."[2] Three States ratified this article before the outbreak of the Civil War made it academic.[3] Many years later the validity of both the Eighteenth and Nineteenth Amendments was challenged because of their content. The arguments against the former took a wide range. Counsel urged that the power of amendment is limited to the correction of errors in the framing of the Constitution; that it does not comprehend the adoption of additional or supplementary provisions. They contended further that ordinary legislation cannot be embodied in a constitutional amendment and that Congress cannot constitutionally propose any amendment which involves the exercise or relinquishment of the sovereign powers of a State.[4] The Nineteenth Amendment was attacked on the narrower ground that a State which had not ratified the amendment would be deprived of its equal suffrage in the Senate because its representatives in that body would be persons not of its choosing, i.e., persons chosen by voters whom the State itself had not authorized to vote for Senators.[5] Brushing aside these arguments as unworthy of serious attention, the Supreme Court held both amendments valid.

Procedure of adoption

Submission of amendment.—When Madison submitted to the House of Representatives the proposals from which the Bill of Rights evolved, he contemplated that they should be incorporated in the text of the original instrument.[6] Instead, the House decided to propose them as supplementary.[7] It ignored a suggestion that the two Houses should first resolve that amendments are necessary before

[1] 2 Madison, *Journal of United States Constitutional Convention*, 385–386 (Wait's ed., 1819).
[2] 57 Cong. Globe 1263 (1861).
[3] Ames, *Proposed Amendments to the Constitution*, 363 (1896).
[4] National Prohibition Cases, 253 U.S. 350, 386 (1920).
[5] Leser *v.* Garnett, 258 U.S. 130 (1922).
[6] 1 Annals of Congress, 433–436 (1789).
[7] Ibid. 717.

considering specific proposals.[8] In the National Prohibition Cases [9] the Supreme Court ruled that in proposing an amendment, the two Houses of Congress thereby indicated that they deemed it necessary. That same case also established the proposition that the vote required to propose an amendment was a vote of two thirds of the members present—assuming the presence of a quorum—and not a vote of two thirds of the entire membership present and absent.[10] The approval of the President is not necessary for a proposed amendment.[11]

Ratification.—Congress may, in proposing an amendment, set a reasonable time limit for its ratification. Two amendments proposed in 1789, one submitted in 1810 and one in 1861, were never ratified. In Dillon *v.* Gloss,[12] the Court intimated that proposals which were clearly out of date were no longer open for ratification. However, in Coleman *v.* Miller,[13] it refused to pass upon the question whether the proposed child labor amendment, submitted to the States in 1924, was open to ratification thirteen years later. It held this to be a political question which would have to be resolved by Congress in the event three fourths of the States ever gave their assent to the proposal. With respect to the Eighteenth, Twentieth, Twenty-first and Twenty-second Amendments, Congress included in the text of these proposed amendments a section stating that the article should be inoperative unless ratified within seven years. In Dillon *v.* Gloss the Court sustained this limitation on the ground that it gave effect to the implication of Article V that ratification "must be within some reasonable time after the proposal." [14] Congress has complete freedom of choice between the two methods of ratification recognized by Article V—by the legislatures of the States, or conventions in the States. In United States *v.* Sprague,[15] counsel advanced the contention that the Tenth Amendment recognized a distinction between powers reserved to the States and powers reserved to the people, and that State legislatures were competent to delegate only the former to the National Government; delegation of the latter required action of the people through conventions in the several States. The Eighteenth Amendment being of the latter character, the ratification by State legislatures, so the argument ran, was invalid. The Supreme Court rejected the argument. It found the language of Article V too clear to admit of reading any exceptions into it by implication.

The term "legislatures" as used in Article V means deliberative, representative bodies of the type which in 1789 exercised the legislative power in the several States. It does not comprehend the popular referendum which has subsequently become a part of the legislative process in many of the States, nor may a State validly condition ratification of a proposed constitutional amendment on its approval by such a referendum.[16] In the words of the Court: "* * * the function of a State legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State." [17]

Authentication and proclamation.—Formerly official notice from a State legislature, duly authenticated, that it had ratified a proposed amendment went to the Secretary of State, upon whom it was binding, "being certified by his proclamation, [was] conclusive upon the courts" as against any objection which might be subsequently raised as to the regularity of the legislative procedure by which ratification was brought about.[18] This function of the Secretary, purely ministerial in character, was, however, derived from an act of Congress, and has been transferred to a functionary called Administrator of General Services.[19] In Dillon *v.* Gloss,[20] the Supreme Court held that the Eighteenth Amendment became operative on the date of ratification by the thirty-sixth State, rather than on the later date of the proclamation issued by the Secretary of State, and doubtless the same rule holds as to a similar proclamation by the Administrator.

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[8] Ibid. 430.
[9] 253 U.S. 350, 386 (1920).
[10] Ibid.
[11] Hollingsworth *v.* Virginia, 3 Dall. 378 (1798).
[12] 256 U.S. 368, 375 (1921).
[13] 307 U.S. 433 (1939).
[14] 256 U.S. 368, 375 (1921).
[15] 282 U.S. 716 (1931).
[16] Hawke *v.* Smith, 253 U.S. 221, 231 (1920).
[17] Leser *v.* Garnett, 258 U.S. 130, 137 (1922).
[18] Leser *v.* Garnett, 258 U.S. 130, 137 (1922).
[19] 65 Stat. 710–711 § 3; 1 U.S.C. 112.
[20] 256 U.S. 368, 376 (1921).

Judicial review under Article V

Prior to 1939, the Supreme Court had taken cognizance of a number of diverse objections to the validity of specific amendments. Apart from holding that official notice of ratification by the several States was conclusive upon the courts, [21] it had treated these questions as justiciable, although it had uniformly rejected them on the merits. In that year, however, the whole subject was thrown into confusion by the inconclusive decision in Coleman *v.* Miller.[22] This case came up on a writ of certiorari to the Supreme Court of Kansas to review the denial of a writ of mandamus to compel the Secretary of the Kansas Senate to erase an endorsement on a resolution ratifying the proposed child labor amendment to the Constitution to the effect that it had been adopted by the Kansas Senate. The attemped ratification was assailed on three grounds: (1) that the amendment had been previously rejected by the State legislature; (2) that it was no longer open to ratification because an unreasonable period of time, thirteen years, had elapsed since its submission to the States, and (3) that the lieutenant governor had no right to cast the deciding vote in the Senate in favor of ratification. Four opinions were written in the Supreme Court, no one of which commanded the support of more than four members of the Court. The majority ruled that the plaintiffs, members of the Kansas State Senate, had a sufficient interest in the controversy to give the federal courts jurisdiction to review the case. Without agreement as to the gounds for their decision, a different majority affirmed the judgment of the Kansas court denying the relief sourght. Four members who concurred in the result had voted to dismiss the writ on the ground that the amending process "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." [23] Whether the contention that the lieutenant governor should have been permitted to cast the deciding vote in favor of ratification presented a justiciable controversy was left undecided, the Court being equally divided on the point.[24] In an opinion reported as "the opinion of the Court," but in which it appears that only three Justices concurred, Chief Justice Hughes declared that the writ of mandamus was properly denied because the question as to the effect of the previous rejection of the amendment and the lapse of time since it was submitted to the States were political questions which should be left to Congress.[25] On the same day, the Court dismissed a writ of certiorari to review a decision of the Kentucky Court of Appeals declaring the action of the Kentucky General Assembly purporting to ratify the child labor amendment illegal and void. Inasmuch as the governor had forwarded the certified copy of the resolution to the Secretary of State before being served with a copy of the restraining order issued by the State court, the Supreme Court found that there was no longer a controversy susceptible of judicial determination.[26]

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[21] Leser *v.* Garnet, 258 U.S. 130 (1922).

[22] 307 U.S. 433 (1939). *Cf.* Fairchild *v.* Hughes, 258 U.S. 126 (1922). wherein the Court held that a private citizen could not sue in the federal courts to secure an indirect determination of the validity of a constitutional amendment about to be adopted.

[23] 307 U.S. 433, 459 (1939).

[24] Ibid. 446, 447.

[25] Ibid. 450, 456.

[26] Chandler *v.* Wise, 307 U.S. 474 (1939).