

that the judgment of the Kansas supreme court should be reversed.

The point that the question—whether more than a reasonable time had elapsed—is not justiciable but one for Congress after attempted ratification by the requisite number of States, was not raised by the parties or by the United States appearing as *amicus curiae*; it was not suggested by us when ordering reargument. As the Court, in the *Dillon* case, did directly decide upon the reasonableness of the seven years fixed by the Congress, it ought not now, without hearing argument upon the point, hold itself to lack power to decide whether more than 13 years between proposal by Congress and attempted ratification by Kansas is reasonable.

MR. JUSTICE McREYNOLDS joins in this opinion.

CHANDLER, GOVERNOR OF KENTUCKY, ET AL. v.
WISE ET AL.

CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

No. 14. Argued October 10, 11, 1938. Reargued April 18, 1939.—
Decided June 5, 1939.

Suit was brought in a state court to restrain the Governor and other state officials from sending to the Secretary of State of the United States a certified copy of a resolution enacted by the state legislature purporting to ratify the proposed Child Labor Amendment

house of representatives has three times (1924, 1934 and 1936) defeated resolutions for ratification. In Mississippi, the Senate adopted resolution for ratification in 1934, but in 1936 another Senate resolution for ratification was adversely reported. In Nebraska, the House defeated ratification resolutions in 1927 and 1935, but the Senate passed such a resolution in 1929. In New York, ratification was defeated in the House in 1935 and 1937, and in the latter year, the Senate passed such a resolution.

to the Federal Constitution, it being alleged that such attempted ratification was illegal and void. *Held*:

That although the state court had jurisdiction *in limine*, the act of the Governor in forwarding the certification to the federal Secretary of State after the beginning of the suit and after a restraining order and summons had been issued, but before actual service and without knowledge of the pendency of the proceeding, had left no controversy susceptible of judicial determination; and that a writ of certiorari from this Court to review the final judgment should therefore be dismissed.

271 Ky. 252; 111 S. W. 2d 633, dismissed.

CERTIORARI, 303 U. S. 634, to review the affirmance by the court below of a judgment entered pursuant to its opinion on an earlier review, 270 Ky. 1. The suit was brought by individuals—citizens, taxpayers, and voters in Kentucky—to restrain the Governor and officers of the General Assembly from sending to the Secretary of State of the United States a certified copy of a resolution of the legislature purporting to ratify the proposed Child Labor Amendment, and for a judgment declaring the legislative Act to be illegal and void because of a rejection of the same proposed amendment by an earlier legislature of the State, as well as by more than a majority of the legislatures of the several States, and further because more than a reasonable time for ratification had elapsed since the amendment was first proposed.

Mr. J. W. Jones, Assistant Attorney General of Kentucky, on the reargument and on the original argument, for petitioners.

Mr. Lafon Allen on the original argument, and with *Mr. Oldham Clarke* on the reargument, for respondents.

By special leave of Court, *Solicitor General Jackson*, with whom *Mr. Paul A. Freund* was on the brief, argued the case on behalf of the United States, as *amicus curiae*, urging reversal.

By leave of Court, *Messrs. Orland S. Loomis*, Attorney General of Wisconsin, *Mortimer Levitan* and *Newell S. Boardman*, Assistant Attorneys General, filed a brief on behalf of that State, as *amicus curiae*, urging reversal.

Opinion of the Court by MR. CHIEF JUSTICE HUGHES, announced by MR. JUSTICE STONE.

In January, 1937, the legislature of Kentucky adopted a resolution purporting to ratify the constitutional amendment proposed by the Congress in 1924 and known as the "Child Labor Amendment."¹

Respondents, citizens, taxpayers and voters in Kentucky, brought this suit in the state court to restrain the Governor of the Commonwealth and the officers of the General Assembly from sending certified copies of the resolution to the Secretary of State of the United States and the presiding officers of the Senate and House of Representatives, and for a judgment declaring the action of the General Assembly to be illegal and void. The complaint stated that in 1926 the proposed amendment had been rejected by the General Assembly of the Commonwealth and also by more than a majority of the legislatures of the States, and that the General Assembly could not thereafter legally reconsider and adopt the amendment; and, further, that its action was not taken within a reasonable time after the amendment was proposed.

Upon the filing of the petition, a restraining order was granted and summons was issued. On the same day, but before the Governor was actually served with a copy of the restraining order or summons, he forwarded by mail a certified copy of the resolution to the Secretary of State. It is not claimed that the Governor then knew of the pendency of the proceeding.

Plaintiffs then filed an amended petition setting forth the action taken by the Governor and sought a mandatory

¹ 43 Stat. 670.

injunction to require him to notify the Secretary of State of the pendency of the suit and that the notice which he had sent was void and should be disregarded. That action was not taken. Defendants filed a general demurrer which was sustained in the Circuit Court but its judgment was reversed by the Court of Appeals. 270 Ky. 1; 108 S. W. 2d 1024.

The court gave opportunity on the remand to the Circuit Court, with directions to overrule the demurrer, for such further proceedings as were not inconsistent with its views. Upon that remand the defendants declined to plead further and judgment was entered in accordance with the opinion of the Court of Appeals. The judgment so entered set forth (1) that an actual controversy existed between the parties, that the plaintiffs had the right to maintain the suit and the court had jurisdiction; (2) that the resolution of the legislature purporting to ratify the proposed amendment was void, not having been ratified according to the provisions of the Constitution of the United States; (3) that the notice given by the Governor to the Secretary of State was of no effect; (4) that the clerk of the court should give official notice to the Department of State that the resolution purporting to ratify the amendment was invalid, that it had not been ratified according to the provisions of the Constitution of the United States, and that the notice given by the Governor was of no effect. The clerk was further directed to send a duly authenticated copy of the judgment to the Secretary of State by registered mail.

On appeal, that judgment was affirmed by the Court of Appeals. We granted certiorari. 303 U. S. 634.

We think that, while the state court had jurisdiction *in limine*, the writ of certiorari should be dismissed upon the ground that after the Governor of Kentucky had forwarded the certification of the ratification of the amendment to the Secretary of State of the United States there

was no longer a controversy susceptible of judicial determination.

Dismissed.

MR. JUSTICE McREYNOLDS and MR. JUSTICE BUTLER think that the judgment of the Court of Appeals of Kentucky should be affirmed on the authority of *Dillon v. Gloss*, 256 U. S. 368, and for the reasons stated in the dissenting opinion in *Coleman v. Miller*, *ante*, p. 470.

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, concurring:

For the reasons stated in concurring opinion in *Coleman v. Miller*, *ante*, p. 456, we do not believe that state or federal courts have any jurisdiction to interfere with the amending process.

We therefore concur in the dismissal.

BALDWIN ET AL., TRUSTEES, *v.* SCOTT COUNTY
MILLING CO.

CERTIORARI TO THE SUPREME COURT OF MISSOURI.

No. 650. Argued April 21, 1939.—Decided June 5, 1939.

1. Where a carrier, having been ordered by the Interstate Commerce Commission to make reparation to a shipper for tariff charges then found by the Commission to have been excessive, pays the required amount upon demand of the shipper without waiting to be sued under the disadvantages prescribed by § 16 (2) of the Interstate Commerce Act, the payment is not voluntary; and where afterwards, upon rehearing, the Commission sets aside the reparation order, because the finding of unreasonable rates upon which it was based was erroneous, the carrier may maintain a suit to recover the payment from the shipper. This accords with the policy of the Act. P. 481.

The fact that the shipper paid part of the money to an expert, who acted for it before the Commission in procuring the repara-