AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal and Great Society Era – Federalism

**Smiley v. Holm, 285 U.S. 355** (1932)

*In the 1930 census, the state of Minnesota lost one seat in the U.S. House of Representatives. The next year, the Republican-controlled state legislature passed an apportionment bill providing for the elections for the remaining nine House seats but the bill was vetoed by the Populist governor. The legislature nonetheless proceeded as if the new districting plan had been adopted. A Minneapolis lawyers filed suit as a citizen and voter against the secretary of state in state court seeking to have the redistricting bill declared invalid and to block any elections from being held under its provisions. The state supreme court dismissed the suit, contending that the federal constitutional provision stating that the “Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof” meant that the state governor had no role to play in the rulemaking for federal elections. The U.S. Supreme Court unanimously reversed that judgment, holding that the Constitution meant to refer to the state lawmaking process not to the state legislature as an autonomous entity. To the extent that the state constitution gave the governor a lawmaking role, the federal constitution incorporated that role into its authorization of the states to set the time, place and manner of federal elections. Following a federal statute, the Court declared that without a new redistricting plan in place the remaining nine congressional seats in Minnesota would be filled by at-large elections. After the 1930 elections, Republicans held nine of the ten Minnesota House seats. After the 1932 at-large elections, the Republicans retained only three seats.*

CHIEF JUSTICE HUGHES, delivered the opinion of the Court.

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. . . . We do not understand that the Supreme Court of the State has held that, under these provisions, a measure redistricting the State for congressional elections could be put in force by the legislature without participation by the Governor, as required in the case of legislative bills, if such action were regarded as a performance of the function of the legislature as a lawmaking body. No decision to that effect has been cited. It appears that “on seven occasions” prior to the measure now under consideration, the legislature of Minnesota had “made state and federal reapportionments in the form of a bill for an act which was approved by the Governor.” . . . [Nonetheless,] the court reached the conclusion that the legislature in redistricting the State was not acting strictly in the exercise of the lawmaking power but merely as an agency, discharging a particular duty in the manner which the Federal Constitution required. . . .

The question then is whether the provision of the Federal Constitution, thus regarded as determinative, invests the legislature with a particular authority and imposes upon it a corresponding duty, the definition of which imports a function different from that of lawgiver and thus renders inapplicable the conditions which attach to the making of state laws. . . . The question here is not with respect to the 'body' as thus described but as to the function to be performed. The use in the Federal Constitution of the same term in different relations does not always imply the performance of the same function. The legislature may act as an electoral body, as in the choice of United States Senators under Article I, section 3, prior to the adoption of the Seventeenth Amendment. It may act as a ratifying body, as in the case of proposed amendments to the Constitution under Article V. It may act as a consenting body, as in relation to the acquisition of lands by the United States under Article I, section 8, paragraph 17. Wherever the term 'legislature' is used in the Constitution it is necessary to consider the nature of the particular action in view. The primary question now before the Court is whether the function contemplated by Article I, section 4, is that of making laws.

Consideration of the subject matter and of the terms of the provision requires affirmative answer. The subject matter is the "times, places and manner of holding elections for Senators and Representatives." It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved. And these requirements would be nugatory if they did not have appropriate sanctions in the definition of offenses and punishments. . . .

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The term defining the method of action, equally with the nature of the subject matter, aptly points to the making of laws. . . .

As the authority is conferred for the purpose of making laws for the State, it follows, in the absence of an indication of a contrary intent, that the exercise of the authority must be in accordance with the method which the State has prescribed for legislative enactments. We find no suggestion in the Federal constitutional provision of an attempt to endow the legislature of the State with power to enact laws in any manner other than that in which the constitution of the State has provided that laws shall be enacted. Whether the Governor of the State, through the veto power, shall have a part in the making of state laws is a matter of state polity. Article I, section 4, of the Federal Constitution, neither requires nor excludes such participation. And provision for it, as a check in the legislative process, cannot be regarded as repugnant to the grant of legislative authority. . . .

The practical construction of Article I, section 4, is impressive. General acquiescence cannot justify departure from the law, but long and continuous interpretation in the course of official action under the law may aid in removing doubts as to its meaning. This is especially true in the case of constitutional provisions governing the exercise of political rights and hence subject to constant and careful scrutiny. Certainly, the terms of the constitutional provision furnish no such clear and definite support for a contrary construction as to justify disregard of the established practice in the States. . . . That practice is eloquent of the conviction of the people of the States, and of their representatives in state legislatures and executive office, that in providing for congressional elections, and for the districts in which they were to be held, these legislatures were exercising the lawmaking power and thus were subject, where the state constitution so provided, to the veto of the Governor as a part of the legislative process. . . .

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It clearly follows that there is nothing in Article I, section 4, which precludes a State from providing that legislative action in districting the State for congressional elections shall be subject to the veto power of the Governor as in other cases of the exercise of the lawmaking power. . . .

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The judgment is *reversed*. . . .

JUSTICE CARDOZO took no part in the consideration or decision of this case.