Supplementary Material

Chapter 7: The Republican Era—Foundations/Sources/Constitutions and Amendments/The Eighteenth Amendment

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

William Sprague was indicted for violating federal laws against transporting and possessing intoxicating beverages. He claimed that the National Prohibition Act was unconstitutional because the Eighteenth Amendment violated the due process clause of the Fifth Amendment and because the Eighteenth Amendment could only be ratified by state conventions rather than state legislators. A federal district court agreed that an amendment such as the Prohibition Amendment, which transferred powers from the state to the federal government, could constitutionally be ratified only by state conventions. The United States appealed to the Supreme Court.

The Supreme Court unanimously reversed the lower court decision. Justice Roberts' opinion for the Court declared that Congress was constitutionally authorized to choose whether to submit amendments to state legislatures or state conventions. Was Justice Roberts correct that this was an easy case as a matter of constitutional law? Even if Justice Roberts was correct, are some amendments better submitted to state conventions than state legislatures or is this a strictly tactical choice? What kinds of amendments might be better submitted to state conventions?

JUSTICE ROBERTS delivered the opinion of the Court.

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The United States asserts that Article V is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates that this is true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses, or, on the application of the legislatures of two-thirds of the states, must call a convention to propose them. Amendments proposed in either way become a part of the 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. . . ."

The choice, therefore, of the mode of ratification lies in the sole discretion of Congress. Appellees, however, point out that amendments may be of different kinds, as, *e.g.,* mere changes in the character of federal means or machinery, on the one hand, and matters affecting the liberty of the citizen, on the other. They say that the framers of the Constitution expected the former sort might be ratified by legislatures, since the states, as entities, would be wholly competent to agree to such alterations, whereas they intended that the latter must be referred to the people because not only of lack power in the legislatures to ratify, but also because of doubt as to their truly representing the people. Counsel advert to the debates in the convention which had to do with the submission of the draft of the Constitution to the legislatures or to conventions, and show that the latter procedure was overwhelmingly adopted. They refer to many expressions in contemporary political literature and in the opinions of this Court to the effect that the Constitution derives its sanctions from the people, and from the people alone. In spite of the lack of substantial evidence as to the reasons for the changes in statement of Article V from its proposal until it took final form in the finished draft, they seek to import into the language of the article dealing with amendments the views of the convention with respect to the proper method of ratification of the instrument as a whole. They say that, if the legislatures were considered incompetent to surrender the

people's liberties when the ratification of the Constitution itself was involved, *a fortiori* they are incompetent now to make a further grant. Thus, however, clear the phraseology of Article V, they urge we ought to insert into it a limitation on the discretion conferred on the Congress, so that it will read, "as the one or the other mode of ratification may be proposed by the Congress as may be appropriate in view of the purpose of the proposed amendment."

This cannot be done.

The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary, as distinguished from technical, meaning; where the intention is clear, there is no room for construction and no excuse for interpolation or addition.

If the framers of the instrument had any thought that amendments differing in purpose should be ratified in different ways, nothing would have been simpler that so to phrase Article V as to exclude implication or speculation. The fact that an instrument drawn with such meticulous care and by men who so well understood now to make language fit their thought does not contain any such limiting phrase affecting the exercise of discretion by the Congress in choosing one or the other alternative mode of ratification is persuasive evidence that no qualification was intended.

This Court has repeatedly and consistently declared that the choice of mode rests solely in the discretion of Congress. Appellees urge that what was said on the subject in the first three cases cited is dictum. And they argue that, although in the last mentioned it was said the "[a]mendment, by lawful proposal and ratification, has become a part of the Constitution," the proposition they now present was not before the Court. While the language used in the earlier cases was not in the strict sense necessary to a decision, it is evident that Article V was carefully examined, and that the Court's statements with respect to the power of Congress in proposing the mode of ratification were not idly or lightly made. . . .

The Tenth Amendment provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Appellees assert this language demonstrates that the people reserved to themselves powers over their own personal liberty, and that the legislatures are not competent to enlarge the powers of the federal government in that behalf. They deduce from this that the people never delegated to the Congress the unrestricted power of choosing the mode of ratification of a proposed amendment. But the argument is a complete *non sequitur*. The Fifth Article does not purport to delegate any governmental power to the United States, nor to withhold any from it. On the contrary, that Article is a grant of authority by the people to Congress, and not to the United States. It was submitted as part of the original draft of the Constitution to the people in conventions assembled. They deliberately made the grant of power to Congress in respect to the choice of the mode of ratification of amendments. Unless and until that Article be changed by amendment, Congress must function as the delegated agent of the people in the choice of the method of ratification.

The Tenth Amendment was intended to confirm the understanding of the people, at the time the Constitution was adopted, that powers not granted to the United States were reserved to the states or to the people. It added nothing to the instrument as originally ratified, and has no limited and special operation, as is contended, upon the people's delegation by Article V of certain functions to the Congress.

The United States relies upon the fact that every amendment has been adopted by the method pursued in respect of the Eighteenth. Appellees reply that all these save the Eighteenth dealt solely with governmental means and machinery, rather than with the rights of the individual citizen. But we think that several amendments touch rights of the citizens, notably the Thirteenth, Fourteenth, Fifteenth, Sixteenth and Nineteenth, and, in view of this, weight is to be given to the fact that these were adopted by the method now attacked.

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