



COLEMAN v. MILLER

SUPREME COURT OF THE UNITED STATES

307 U.S. 433

June 5, 1939

OPINION: Mr. Chief Justice HUGHES...In June, **1924**, the Congress proposed an amendment to the Constitution, known as the Child Labor Amendment. In January, **1925**, the Legislature of Kansas adopted a resolution **rejecting** the proposed amendment and a certified copy of the resolution was sent to the Secretary of State of the United States. In January, **1937**, a resolution known as 'Senate Concurrent Resolution No. 3' was introduced in the Senate of Kansas **ratifying** the proposed amendment. There were forty senators. When the resolution came up for consideration, twenty senators voted in favor of its adoption and twenty voted against it. The Lieutenant Governor, the presiding officer of the Senate, then cast his vote in favor of the resolution. The resolution was later adopted by the House of Representatives on the vote of a majority of its members.

This...proceeding...was then brought in the Supreme Court of Kansas by twenty-one members of the Senate, including the twenty senators who had voted against the resolution, and three members of the house of representatives, to compel the Secretary of the Senate to erase an endorsement on the resolution to the effect that it had been adopted by the Senate and to endorse thereon the words 'was not passed', and to restrain the officers of the Senate and House of Representatives from signing the resolution and the Secretary of State of Kansas from authenticating it and delivering it to the Governor. **The petition challenged the right of the Lieutenant Governor to cast the deciding vote in the Senate.** The petition also set forth the prior rejection of the proposed amendment and alleged that in the period from June, 1924, to March, 1927, the amendment had been rejected by both houses of the legislatures of twenty-six states, and had been ratified in only five states, and that by reason of that rejection and the failure of ratification within a reasonable time the proposed amendment had **lost its vitality**...

The Supreme Court [of Kansas]...held that the Lieutenant Governor was authorized to cast the deciding vote, that the proposed amendment retained its original vitality, and that the resolution 'having duly passed the House of Representatives and the Senate, the act of ratification of the

proposed amendment by the Legislature of Kansas was final and complete'...This Court granted certiorari...

1. The state court adopted the view expressed by text-writers that a state legislature which has rejected an amendment proposed by the Congress **may later ratify**. The argument in support of that view is that Article V says nothing of rejection but speaks only of ratification and provides that a proposed amendment shall be valid as part of the Constitution when ratified by three-fourths of the States; that the power to ratify is thus conferred upon the State by the Constitution and, as a ratifying power, persists despite a previous rejection. The opposing view proceeds on an assumption that if ratification by 'Conventions' were prescribed by the Congress, a convention could not reject and, having adjourned..., be reassembled and ratify. It is also premised, in accordance with views expressed by text-writers, that ratification if once given cannot afterwards be rescinded and the amendment rejected, and it is urged that the same effect in the exhaustion of the State's power to act should be ascribed to rejection; that a State can act 'but once, either by convention or through its legislature'.

Historic instances are cited. In 1865, the **Thirteenth Amendment** was rejected by the legislature of New Jersey which subsequently ratified it, but the question did not become important as ratification by the requisite number of States had already been proclaimed. The question did arise in connection with the adoption of the **Fourteenth Amendment**. The legislatures of Georgia, North Carolina and South Carolina had rejected the amendment in November and December, 1866. New governments were erected in those States (and in others) under the direction of Congress. The new legislatures ratified the amendment, that of North Carolina on July 4, 1868, that of South Carolina on July 9, 1868, and that of Georgia on July 21, 1868. Ohio and New Jersey first ratified and then passed resolutions withdrawing their consent. As there were then thirty-seven States, twenty-eight were needed to constitute the requisite three-fourths. On July 9, 1868, the Congress adopted a resolution requesting the Secretary of State to communicate 'a list of the States of the Union whose legislatures have ratified the fourteenth article of amendment', and in Secretary Seward's report attention was called to the action of Ohio and New Jersey. On July 20th Secretary Seward issued a proclamation reciting the ratification by twenty-eight States, including North Carolina, South Carolina, Ohio and New Jersey, and stating that it appeared that Ohio and New Jersey had since passed resolutions withdrawing their consent and that 'it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid and therefore ineffectual'. The Secretary certified that if the ratifying resolutions of Ohio and New Jersey were still in full force and effect, notwithstanding the attempted withdrawal, the amendment had become a part of the Constitution. On the following day the Congress adopted a concurrent resolution which, reciting that three-fourths of the States having ratified (the list including North Carolina, South Carolina, Ohio and New Jersey), declared the Fourteenth Amendment to be a part of the Constitution and that it should be duly promulgated as such by the Secretary of State. Accordingly, Secretary Seward, on July 28th, issued his proclamation embracing the States mentioned in the congressional resolution and adding Georgia.

Thus the political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the presence of an actual ratification. While there were special circumstances, because of the

action of the Congress in relation to the governments of the rejecting States (North Carolina, South Carolina and Georgia), these circumstances were not recited in proclaiming ratification and the previous action taken in these States was set forth in the proclamation as actual previous rejections by the respective legislatures. This decision by the political departments of the Government as to the validity of the adoption of the Fourteenth Amendment has been accepted.

We think that in accordance with this historic precedent the question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a **political question** pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment.

The precise question as now raised is whether, when the legislature of the State, as we have found, has actually ratified the proposed amendment, the Court should restrain the state officers from certifying the ratification to the Secretary of State, because of an earlier rejection, and thus prevent the question from coming before the political departments. We find no basis in either Constitution or statute for such judicial action. Article V, speaking solely of ratification, contains no provision as to rejection. Nor has the Congress enacted a statute relating to rejections. The statutory provision with respect to constitutional amendments is as follows:

'Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State 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'.

The statute presupposes official notice to the Secretary of State when a state legislature has adopted a resolution of ratification. We see no warrant for judicial interference with the performance of that duty.

2. The more serious question is whether the proposal by the Congress of the Amendment had **lost its vitality through lapse of time** and hence it could not be ratified by the Kansas legislature in 1937. The argument of petitioners stresses the fact that **nearly thirteen years** elapsed between the proposal in 1924 and the ratification in question. It is said that when the amendment was proposed there was a definitely adverse popular sentiment and that at the end of 1925 there had been rejection by both houses of the legislatures of sixteen States and ratification by only four States, and that it was not until about 1933 that an aggressive campaign was started in favor of the amendment. In reply, it is urged that Congress did not fix a limit of time for ratification and that an unreasonably long time had not elapsed since the submission; that the conditions which gave rise to the amendment had not been eliminated; that the prevalence of child labor, the diversity of state laws and the disparity in their administration, with the resulting competitive inequalities, continued to exist. Reference is also made to the fact that a number of the States have treated the amendment as still pending and that in the proceedings of the national

government there have been indications of the same view. It is said that there were fourteen ratifications in 1933, four in 1935, one in 1936, and three in 1937.

We have held that the Congress in proposing an amendment may fix a reasonable time for ratification. *Dillon v. Gloss*.¹ There we sustained the action of the Congress in providing in the proposed Eighteenth Amendment that it should be inoperative unless ratified within seven years. No limitation of time for ratification is provided in the instant case either in the proposed amendment or in the resolution of submission. But petitioners contend that, in the absence of a limitation by the Congress, the Court can and should decide what is a reasonable period within which ratification may be had. We are unable to agree with that contention.

It is true that in *Dillon*, the Court said that nothing was found in Article V which suggested that an amendment once proposed was to be open to ratification for all time, or that ratification in some States might be separated from that in others by many years and yet be effective; that there was a strong suggestion to the contrary in that proposal and ratification were but succeeding steps in a single endeavor; that as amendments were deemed to be prompted by necessity, they should be considered and disposed of presently; and that there is a fair implication that ratification must be sufficiently contemporaneous in the required number of States to reflect the will of the people in all sections at relatively the same period; and hence that ratification must be within some reasonable time after the proposal. These considerations were cogent reasons for the decision in *Dillon v. Gloss*, that the Congress had the power to fix a reasonable time for ratification. But it does not follow that, whenever Congress has not exercised that power, the Court should take upon itself the responsibility of deciding what constitutes a reasonable time and determine accordingly the validity of ratifications. That question was not involved in *Dillon* and, in accordance with familiar principle, what was there said must be read in the light of the point decided.

Where are to be found the criteria for such a judicial determination? None are to be found in Constitution or statute. In their endeavor to answer this question petitioners' counsel have suggested that at least two years should be allowed; that six years would not seem to be unreasonably long; that seven years had been used by the Congress as a reasonable period; that one year, six months and thirteen days was the average time used in passing upon amendments which have been ratified since the first ten amendments; that three years, six months and twenty-five days has been the longest time used in ratifying. To this list of variables, counsel add that 'the nature and extent of publicity and the activity of the public and of the legislatures of the several States in relation to any particular proposal should be taken into consideration'. That statement is pertinent, but there are additional matters to be examined and weighed. When a proposed amendment springs from a conception of economic needs, it would be necessary, in determining whether a reasonable time had elapsed since its submission, to consider the economic conditions prevailing in the country, whether these had so far changed since the submission as to make the proposal no longer responsive to the conception which inspired it or whether conditions were such as to intensify the feeling of need and the appropriateness of the proposed remedial action. In short, the question of a reasonable time in many cases would involve, as in this case it does involve, an appraisal of a great variety of relevant conditions, political, social and economic, which can hardly be said to be within the appropriate range of

¹ Case 5-2 on this website.

evidence receivable in a court of justice and as to which it would be an extravagant extension of judicial authority to assert judicial notice as the basis of deciding a controversy with respect to the validity of an amendment actually ratified. On the other hand, these conditions are appropriate for the consideration of the political departments of the Government. The questions they involve are essentially political and not justiciable. They can be decided by the Congress with the full knowledge and appreciation ascribed to the national legislature of the political, social and economic conditions which have prevailed during the period since the submission of the amendment.

Our decision that the Congress has the power under Article V to fix a reasonable limit of time for ratification in proposing an amendment proceeds upon the assumption that the question, what is a reasonable time, lies within the congressional province. If it be deemed that such a question is an open one when the limit has not been fixed in advance, we think that it should also be regarded as an open one for the consideration of the Congress when, in the presence of certified ratifications by three-fourths of the States, the time arrives for the promulgation of the adoption of the amendment. The decision by the Congress, in its control of the action of the Secretary of State, of the question whether the amendment had been adopted within a reasonable time would not be subject to review by the courts.

It would unduly lengthen this opinion to attempt to review our decisions as to the class of questions deemed to be political and not justiciable. In determining whether a question falls within that category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations. There are many illustrations in the field of our conduct of **foreign relations**, where there are 'considerations of policy, considerations of extreme magnitude, and certainly entirely incompetent to the examination and decision of a court of justice'. Questions involving similar considerations are found in the government of our **internal affairs**. Thus, under Article IV, section 4, of the Constitution, providing that the United States 'shall guarantee to every State in this Union a Republican Form of Government', we have held that it rests with the Congress to decide what government is the established one in a State and whether or not it is republican in form. *Luther v. Borden*. In that case Chief Justice Taney observed that 'when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal'. So, it was held in the same case that under the provision of the same Article for the protection of each of the States 'against domestic violence' it rested with the Congress 'to determine upon the means proper to be adopted to fulfill this guarantee'. So, in *Pacific Telephone Company v. Oregon*, we considered that questions arising under the guaranty of a republican form of government had long since been 'definitely determined to be political and governmental' and hence that the question whether the government of Oregon had ceased to be republican in form because of a constitutional amendment by which the people reserved to themselves power to propose and enact laws independent of the legislative assembly and also to approve or reject any act of that body, was a question for the determination of the Congress. It would be finally settled when the Congress admitted the senators and representatives of the State.

...[W]e think that the Congress in controlling the promulgation of the adoption of a constitutional amendment has the final determination of the question whether by lapse of time its proposal of the amendment had lost its vitality prior to the required ratifications. The state officials should not be restrained from certifying to the Secretary of State the adoption by the legislature of Kansas of the resolution of ratification.

As we find no reason for disturbing the decision of the Supreme Court of Kansas..., its judgment is affirmed...

CONCURRENCE: Justice BLACK/ ROBERTS/ FRANKFURTER/ DOUGLAS ... The Constitution grants Congress exclusive power to control submission of constitutional amendments. Final determination by Congress that ratification by three-fourths of the States has taken place 'is conclusive upon the courts.' In the exercise of that power, Congress, of course, is governed by the Constitution. However, whether submission, intervening procedure or Congressional determination of ratification conforms to the commands of the Constitution, call for decisions by a 'political department' of questions of a type which this Court has frequently designated 'political.' And decision of a 'political question' by the 'political department' to which the Constitution has committed it 'conclusively binds the judges, as well as all other officers, citizens, and subjects of...government.' **Proclamation under authority of Congress that an amendment has been ratified will carry with it a solemn insurance by the Congress that ratification has taken place as the Constitution commands. Upon this assurance a proclaimed amendment must be accepted as a part of the Constitution, leaving to the judiciary its traditional authority of interpretation.** To the extent that the Court's opinion in the present case even impliedly assumes a power to make judicial interpretation of the exclusive constitutional authority of Congress over submission and ratification of amendments, we are unable to agree.

The State court below assumed jurisdiction to determine whether the proper procedure is being followed between submission and final adoption. However, it is apparent that judicial review of or pronouncements upon a supposed limitation of a 'reasonable time' within which Congress may accept ratification; as to whether duly authorized State officials have proceeded properly in ratifying or voting for ratification; or whether a State may reverse its action once taken upon a proposed amendment; and kindred questions, are all consistent only with an ultimate control over the amending process in the courts. And this must inevitably embarrass the course of amendment by subjecting to judicial interference matters that we believe were entrusted by the Constitution solely to the political branch of government.

The Court here treats the amending process of the Constitution in some respects as subject to judicial construction, in others as subject to the final authority of the Congress. There is no disapproval of the conclusion arrived at in *Dillon v. Gloss*, that the Constitution impliedly requires that a properly submitted amendment must die unless ratified within a 'reasonable time.' Nor does the Court now disapprove its prior assumption of power to make such a pronouncement. And it is not made clear that only Congress has constitutional power to determine if there is any such implication in Article V of the Constitution. On the other hand, the Court's opinion declares that Congress has the exclusive power to decide the 'political questions' of whether a State whose legislature has once acted upon a proposed amendment may

subsequently reverse its position, and whether, in the circumstances of such a case as this, an amendment is dead because an 'unreasonable' time has elapsed. Such division between the political and judicial branches of the government is made by Article V which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the Article exclusively and completely to Congress. The process itself 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.

Since Congress has sole and complete control over the amending process, subject to no judicial review, the views of any court upon this process cannot be binding upon Congress, and insofar as *Dillon v. Gloss*, attempts judicially to impose a limitation upon the right of Congress to determine final adoption of an amendment, it should be disapproved. If Congressional determination that an amendment has been completed and become a part of the Constitution is final and removed from examination by the courts, as the Court's present opinion recognizes, surely the steps leading to that condition must be subject to the scrutiny, control and appraisal of none save the Congress, the body having exclusive power to make that final determination.

Congress, possessing exclusive power over the amending process, cannot be bound by and is under no duty to accept the pronouncements upon that exclusive power by this Court or by the Kansas courts. Neither State nor Federal courts can review that power. Therefore, any judicial expression amounting to more than mere acknowledgment of exclusive Congressional power over the political process of amendment is a mere admonition to the Congress in the nature of an advisory opinion, given wholly without constitutional authority...

DISSENT: Mr. Justice BUTLER/McREYNOLDS...The Child Labor Amendment was proposed in 1924; more than 13 years elapsed before the Kansas legislature voted, as the decision just announced holds, to ratify it. Petitioners insist that more than a reasonable time had elapsed and that, therefore, the action of the state legislature is without force. But this Court now holds that the question is not justiciable, relegates it to the 'consideration of the Congress when, in the presence of certified ratifications by three-fourths of the States the time arrives for the promulgation of the adoption of the amendment' and declares that the decision by Congress would not be subject to review by the courts. In *Dillon v. Gloss*...[w]e definitely held that Article V impliedly requires amendments submitted to be ratified within a reasonable time after proposal; that Congress may fix a reasonable time for ratification, and that the period of seven years fixed by the Congress was reasonable...Upon the reasoning of our opinion in that case, I would hold that more than a reasonable time had elapsed and 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.