When Congress sends a proposed Amendment to the States for ratification, can its terms provide a deadline by which it must be ratified if it is to succeed?

DILLON v. GLOSS
SUPREME COURT OF THE UNITED STATES
256 U.S. 368
May 16, 1921

OPINION: Mr. Justice VAN DEVANTER…This is an appeal from an order denying a petition for a writ of habeas corpus. The petitioner was in custody…on a charge of transporting intoxicating liquor in violation of [the National Prohibition Act**]…[He contends] that the Eighteenth Amendment to the Constitution…is invalid because the congressional resolution proposing the amendment declared that it should be inoperative unless ratified within seven years…**

Article 5…says nothing about the time within which ratification may be had—neither that it shall be unlimited nor that it shall be fixed by Congress. What then is the reasonable inference or implication? Is it that ratification may be had at any time, as within a few years, a century or even a longer period, or that it must be had within some reasonable period which Congress is left free to define? Neither the debates in the federal convention which framed the Constitution nor those in the state conventions which ratified it shed any light on the question.

The proposal for the Eighteenth Amendment is the first in which a definite period for ratification was fixed. Theretofore 21 amendments had been proposed by Congress and seventeen of these had been ratified by the Legislatures of three fourths of the states—some within a single year after their proposal and all within four years. Each of the remaining 4 had been ratified in some of the states, but not in a sufficient number. Eighty years after the partial ratification of one, an effort was made to complete its ratification, and the Legislature of Ohio passed a joint resolution to that end, after which the effort was abandoned. Two, after ratification in one less than the required number of states had lain dormant for a century. The other, proposed March 2, 1861, declared:

> 'No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any state, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said state.'

Its principal purpose was to protect slavery and at the time of its proposal and partial ratification it was a subject of absorbing interest, but after the adoption of the Thirteenth Amendment it was generally forgotten. Whether an amendment proposed without fixing any time for ratification, and which after favorable action in less than the required number of states had lain dormant for many years, could be resurrected and its ratification completed had been mooted on several occasions, but was still an open question.

These were the circumstances in the light of which Congress in proposing the **Eighteenth Amendment** fixed **seven years** as the period for ratification. Whether this could be done was questioned at the time and debated at length, but the prevailing view in both houses was that some limitation was intended and that seven years was a reasonable period.

That the Constitution contains no express provision on the subject is not in itself controlling; for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed. An examination of article 5 discloses that it is intended to invest Congress with a wide range of power in proposing amendments. Passing a provision long since expired, it subjects this power to only two restrictions: one that the proposal shall have the approval of two-thirds of both houses, and the other excluding any amendment which will deprive any state, without its consent, of its equal suffrage in the Senate. A further mode of proposal—as yet never invoked—is provided, which is, that on the application of two-thirds of the states Congress shall call a convention for the purpose. When proposed in either mode amendments to be effective must be ratified by the Legislatures, or by conventions, in three-fourths of the states, 'as the one or the other mode of ratification may be proposed by the Congress.' Thus the people of the United States, by whom the Constitution was ordained and established, have made it a condition to amending that instrument that the amendment be submitted to representative assemblies in the several states and be ratified in three-fourths of them. The plain meaning of this is (a) that all amendments must have the sanction of the people of the United States, the original fountain of power, acting through representative assemblies, and (b) that ratification by these assemblies in three-fourths of the states shall be taken as a decisive expression of the people's will and be binding on all.

We do not find anything in the article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefore that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the states, there is a fair implication that it must be sufficiently contemporaneous in that number of states to reflect the will of the

people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. These considerations and the general purport and spirit of the article lead to the conclusion expressed by Judge Jameson 'that an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress.' That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, **four amendments proposed long ago**—two in 1789, one in 1810 and one in 1861—**are still pending and in a situation where their ratification in some of the states many years since by representatives of generations now largely forgotten may be effectively supple-mented in enough more states to make three-fourths by representatives of the present or some future generation.** To that view few would be able to subscribe, and in our opinion it is quite untenable. **We conclude that the fair inference or implication from article 5 is that the ratification must be within some reasonable time after the proposal.**

Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and article 5 is no exception to the rule. Whether a definite period for ratification shall be fixed, so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified…Final order affirmed.