Background Paper 79-12

AMENDMENT OF THE U.S. CONSTITUTION BY THE CONVENTION METHOD

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I

Background

The U.S. Constitution has never been amended as a result of a constitutional convention. There has never been a convention called. Therefore, no one can say with absolute certainty what the exact form of convention calls must be, how delegates would be selected or how the convention would operate. There are, however, a number of authorities on the Constitution who have given opinions both on the way a convention would work and on the advisability of a convention. In addition, the U.S. Senate twice passed legislation providing for procedures for a convention. Those bills offer guidance to Congressional thinking. It seems appropriate first to look at what the framers had to say.

In the Federalist No. 43, Madison said:

> "That useful alterations [in the Constitution] will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other."

In Federalist No. 85, Hamilton said:

> In opposition to the probability of subsequent amendments it has been urged, that the persons delegated to the administration of the national government, will always be disinclined to yield up any portion of the authority of which they were once possessed. * * * I

> think there is no weight in the observation just stated. * * * [But] there is yet a further consideration, which proves beyond the possibility of doubt, that the observation is futile. It is this, that the national rulers, whenever nine states concur, will have no option upon the subject. By the fifth article of the plan the congress will be obliged, "on the application of the legislatures of two-thirds of the states (which at present amounts to nine) to call a convention for proposing amendments, which shall be valid to all intents and purposes, as part of the constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof." The words of this article are peremptory. The congress "shall call a convention." Nothing in this particular is left to the discretion of that body.

Clearly Madison and Hamilton saw the convention method as a safety valve for those subjects on which Congress would not initiate action but about which there was considerable concern in at least two-thirds of the states. In fact, it has tended to work that way. There have been over 350 applications, representing every state, calling for a convention on one subject or another. Nevada has done this 12 times on five subjects. Texas with 15 calls, leads all states. Many of the states have used conventions for revisions of their own constitutions. There have been about 200 state constitutional conventions. The 17th amendment providing for the direct election of senators was proposed by Congress when the call for a convention was only two states short. In 1967, the call for a convention to offset in some way the effects of the several one man-one vote decisions of the Supreme Court fell only two states short. Many issues raised by calls for a convention have been disposed of by the normal amendment procedure. The Bill of Rights, prohibition and limit to presidential terms are only three examples.

II

How Would the Convention Process Work?

It was the reaction of the states to reapportionment that caused Senator Sam Ervin to introduce a bill to establish

ground rules for the convention method of amendment proposal. That was S 2307 of 1967. It was not until 1971 that a similar bill, S 215 passed the Senate 84-0. The House took no action. The Senate passed S 1272 in 1973 (see Appendix B). Again, it died in the House and no subsequent action has been taken. It is anticipated that a similar bill will be introduced this year by Senator Bayh's Constitution Subcommittee of the Senate Judiciary Committee. In a conversation with Senator Ervin, we learned that he still strongly favors such legislation and that he intends to urge the North Carolina legislature to pass a resolution calling for a convention on a balanced budget.

The 1967 hearings on Ervin's bill brought together many of the foremost constitutional scholars who offered their understandings of Article V. Unfortunately, it is a subject on which great and respected legal minds differed. Any analysis of the several questions that everyone asks on this issue can only report on the weight of opinion. There are no sure, definitive opinions. A listing of the major questions follows with a conclusion, where possible, on the weight of opinion. The conclusions are not those of the Research Division but rather of the American Bar Association's Special Constitutional Convention Study Committee.

1. If the legislatures of two-thirds of the states apply for a convention limited to a specific matter, must Congress call the convention?

   The Constitution provides for a convention on a limited subject or a general convention. In either event, Congress' duty to call the convention is mandatory.

   In the absence of statutory guidance, of course, there is room for disagreement as to whether the requisite number of state petitions are sufficiently similar to be calls for the same purpose. The Federalist Papers quoted as well as Madison's record of the Debates of the Convention all attest to the mandatory nature of Congress' responsibility.

2. If a convention is called, is the limitation binding on the convention?

   Congress has the power to make available to the states a limited convention when that is the type convention applied for. Such legislation could not prevent a call for a general convention as there is nothing in the history of Article V that would support a precluding of a general convention if the states petitioned for one. In the case of a call for a particular subject, Congress would have to define the subject at least to the extent necessary to determine if the several petititons were all on the same subject.

3. What constitutes a valid application which Congress must count and who is to judge its validity?

   The approach used in S 1272 is endorsed by the ABA. That bill would require the passage of a resolution by the state legislatures calling for a convention to propose one or more amendments. The resolution would be passed in the same manner as a statute in each state, except the governor would not have the right to veto. The ABA believes that Congress' judgment as to validity should be reviewable by the courts. S 1272 gives Congress sole authority. This is a matter of preference. The ABA does not say that the S 1272 approach is unconstitutional. A resolution would have to make it clear that a convention was being called for. A call for a convention simply to vote a proposal up or down would not likely be valid. A convention would have to have latitude. The late Professor Bickel of Yale strongly supported the latter point and Professor Phillip Kurland of the University of Chicago concurs.

4. What is the length of time applications for a convention will be counted:

   There is nothing in the history of Article V to answer this question. It is a political judgment. In S 1272, 7 years was set as the limit for a state resolution to be considered active.

5. How much power does Congress have as to the scope of a convention; as to procedures such as the selection of delegates; as to voting requirements in the convention; as to refusing to submit to the states for ratification the product of a convention?

Congress could establish the scope of a convention consistent with the resolutions calling for the convention but no more than that.

The ABA believes that delegates would have to be apportioned on a one man-one vote basis, such as seats in the House of Representatives. Other authorities cite the original constitutional convention and its votes by state. On balance, it seems that population will have to play a major role. S 1272 gives each state delegates equal to its senators and representatives, thus following the Electoral College model. Delegates would be elected one from each congressional district and two at-large in each state under S 1272.

Opinion is divided over whether the convention could be required to propose an amendment by more than a majority. The ABA feels that the voting rules of a convention must be left to the convention. S 1272 requires a two-thirds vote to propose an amendment, making the requirement analogous to that for Congress in proposing an amendment.

Expert opinion is divided on whether or not Congress has any discretion in sending an amendment proposed by convention to the states for ratification. S 1272 allows Congress, by concurrent resolution, to disapprove of an amendment outside the scope of the convention and to refuse to send it out for ratification.

6. What are the roles of the President and state governors in the amending process?

In Hollingsworth v. Virginia, the Supreme Court confirmed the prevalent practice saying in regard to the President, "* * * he has nothing to do with the proposition or adoption of amendments to the Constitution."

Most constitutional opinion agrees that this observation applies in the convention method too. The President will have a role in the approval of a bill setting up procedures for a convention, just as he would on any bill.

The experts are similarly agreed that state governors would have no role either in resolutions calling for a convention or in the ratification of amendments sent to the states. S 1272 specifically excludes governors from any role in the process.

There is no certainty as to whether or not a state may rescind its call for a convention. The ABA thinks it should be able to and the Senate in S 1272 made such a provision allowing a recission at any time prior to the receipt by Congress of petitions from two-thirds of the states. After that, recission would not be allowed.

7. Are issues arising in the convention process justiciable?

In S 1272, the Senate provided to Congress the sole role in deciding all questions arising under the convention method. It is not clear whether such an approach would, in fact, preclude a role for the courts. It is especially doubtful that the courts could be excluded if Congress refused to act in the face of the requisite number of apparently valid petitions for a convention.

8. Who is to decide questions of ratification?

Congress, under Article V, has the power to decide whether ratification will be by state legislature or state convention. Only for the repeal of prohibition were state conventions used.

III

Conclusion

In the absence of legislation passed by Congress, there are many questions about the amendment by convention method that

must remain unanswered. S 1272 at least offers a guide to probable congressional thinking and its provisions are referred to extensively in the foregoing. It is clear that Congress must convene a convention if two-thirds of the states petition. Few other matters on the subject are clear. Based on S 1272, it appears that Congress could define the subject matter of the convention, determine how delegates would be chosen and what the internal rules of the convention would be. It could also refuse to submit to the states a proposed amendment that was outside the guidance provided by Congress as to subject. Finally, Congress would determine how a proposed amendment would be submitted for ratification; by state legislatures or state conventions.

On advisability of a constitutional convention, opinions cover the full spectrum. Among those in the negative is political scientist C. Herman Pritchett saying:

> These unknowns are so serious that it would be well for Congress to adopt general implementing legislation before it is faced with a valid convention call. However, it would be preferable not to use the convention method at all. The principal support for the convention device has come from interests sponsoring proposals which could not gain congressional approval. It is an alternative attractive to manipulators of opinion who find it more congenial to work in the recesses of fifty state legislatures than in the glare of the congressional spotlight. The national interest in the amending process is best protected by leaving the responsibility for proposing amendments in the halls of Congress.*

The framers of the Constitution, of course, put the convention method in to guard against a situation in which the national government had a certain vested interest in conflict with the interests of the people or the states. In the hearings on S 2307, the predecessor of S 1272, Senator Roman Hruska said:

*Pritchett, C. Herman, The American Constitution, 3rd Ed. (McGraw-Hill, New York, 1977), p. 27.

Much in the manner of Chicken Little skittering to and fro telling all who would listen the sky is falling, much alarm has been expressed at what a Constitutional Convention might do. "The Bill of Rights will be repealed," "the Supreme Court will be abolished," are just two of the more irrational alarms being trumpeted from the rooftops by some who have felt compelled to exclaim rather than reason.

Fears of this kind have no foundation in reason, logic, or experience. They should be dismissed.

I think it is more important to recognize a Constitutional Convention for what it is and what it can do. First, it is a perfectly valid method of proposing amendments to the Constitution. It is a right reserved to the States and guaranteed by article V of the Constitution. The fact that we have never had one does not diminish the right of the people to have one if they wish.

As to what a Constitutional Convention might do to existing rights or to governmental structure, it could do nothing more than what the Congress has authority to do--it can propose amendments to the Constitution. Alone, it can make no change in the Constitution; it can change no rights. In the final analysis, three-fourths of the States, a total of 38, either by legislative action or by State convention, must ratify any amendment the Convention might propose before it becomes a part of the Constitution. Precisely the same procedure that applies to amendments proposed by the Congress must be observed so far as ratification is concerned.*

*Senate Judiciary Committee, Subcommittee on Separation of Powers, Ninetieth Congress, First Session, Hearings on S 2307, October 30 and 31, 1967, p. 220.

SOURCES

American Bar Association, Special Constitutional Convention Study Committee, Amendment of the Constitution: By the Convention Method Under Article V (American Bar Association, Chicago, IL., 1974).

Black, Charles L., Jr., "Amending the Constitution: A Letter to a Congressman," The Yale Law Journal, Vol. 82, No. 2, December 1972.

Harvard Law Review, "Proposed Legislation on the Convention Method of Amending the United States Constitution," unsigned note, Harvard Law Review, Vol. 85, No. 8, June 1972.

Pritchett, C. Herman, The American Constitution, 3rd Ed. (McGraw-Hill, New York, 1977).

Senate Judiciary Committee, Subcommittee on Separation of Powers, Hearings Before the * * *, S 2307, Oct. 30-31, 1967 (U.S. Government Printing Office, Washington, D.C., 1968).

APPENDIX A

As of January 30, 1979, the following states had passed resolutions calling for a constitutional convention to propose an amendment on balanced budget:

Alabama
Arizona
Arkansas
Colorado
Delaware
Florida
Georgia
Illinois
Kansas
Louisiana
Maryland
Mississippi
Nebraska
New Mexico
North Carolina
North Dakota
Oregon
Oklahoma
Pennsylvania
South Carolina
Tennessee
Texas
Utah
Virginia
Wyoming

Total 25

The following have resolutions introduced:

Alaska
California
Idaho
Indiana
Iowa
Montana
Nevada
South Dakota
Vermont

Total 9

APPENDIX B

The underlinings and strike-throughs in S. 1272 represent the recommendations for changes made by the American Bar Association's Special Constitutional Convention Study Committee.

93rd Congress
1st Session
S. 1272

IN THE SENATE OF THE UNITED STATES
March 19, 1973
Referred to the Committee on the Judiciary
Passed the Senate July 9, 1973

A BILL

To provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Federal Constitutional Convention Procedures Act".

APPLICATIONS FOR CONSTITUTIONAL CONVENTION

SEC. 2. The legislature of a State, in making application to the Congress for a constitutional convention under article V of the Constitution of the United States on and after the enactment of this Act, shall adopt a resolution pursuant to this Act stating, in substance, that the legislature requests the calling of a convention for the purpose of proposing one or more amendments to the Constitution of the United States and *stating the nature of the amendment or amendments to be proposed.*

APPLICATION PROCEDURE

SEC. 3. (a) For the purpose of adopting or rescinding a resolution pursuant to section 2 and section 5, the State legislature *shall follow the rules of procedure that govern the enactment of a statute* by that legislature, but without the need for approval of the legislature's action by the governor of the State.

(b) Questions concerning the adoption of a State resolution cognizable under this Act shall be [determined]
~~determinable~~ by the Congress of the United States ~~and its decisions thereon shall be binding on all others, including State and Federal courts.~~

TRANSMITTAL OF APPLICATIONS

SEC. 4 (a) Within thirty days after the adoption by the legislature of a State of a resolution to apply for the calling of a constitutional convention, the secretary of state of the State, or if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate, and one to the Speaker of the House of Representatives.

(b) Each copy of the application so made by any State shall contain—

(1) the title of the resolution;

[(2) *to the extent practicable a list of all state applications in effect on the date of adoption whose subject or subjects are substantially the same as the subject or subjects set forth in the application;*]

[3]
~~(2)~~ the exact text of the resolution signed by the presiding officer of each house of the State legislature; and

[4]
~~(3)~~ The date on which the legislature adopted the resolution; and shall be accompanied by a certificate of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution.

[(c) Upon receipt, an application shall be deemed valid and in compliance with article V of the Constitution and this Act, unless both Houses of Congress prior to the expiration of 60 days of continous session of Congress following the receipt of such application shall by concurrent resolution determine the application is invalid, either in whole or in part. Failure of Congress to act within the specified period is a determination subject to review under section 16 of this Act. Such resolution shall set forth with particularity the ground or grounds for any such determination. The 60-day period referred to herein shall be computed in accordance with section 11(b) (2) of this Act.]

[d]
~~(e)~~ Within ten days after receipt of a copy of any such application, the President of the Senate and Speaker of the House of Representatives shall report to the House of which he is the presiding officer, identifying the State making application, the subject of the application, and the number of States then having made application on such subject. [Within the 60-day period provided for in Section 4(c),] the President of the Senate and Speaker of the House of Representatives shall jointly cause copies of such application to be sent to the presiding officer of each house of the legislature of every other State and to each Member of the Senate and House of Representatives of the Congress of the United States, [provided, however, that an application declared invalid shall not be so transmitted.]

EFFECTIVE PERIOD OF APPLICATION

SEC. 5 (a) An application submitted to the Congress by a State, unless sooner rescinded by the State legislature shall remain effective for seven calendar years after the date it is received by the Congress, except that whenever within a period of seven calendar years two-thirds or more of the several States have each submitted an application calling for a constitutional convention on the *same subject* all such applications shall remain in effect until the Congress has taken action on a concurrent resolution pursuant to section 6, calling for a constitutional convention.

(b) A State may rescind its application calling for a constitutional convention by adopting and transmitting to the Congress a resolution of rescission *in conformity with the procedure specified* in sections 3 and 4, except that no such rescission shall be effective as to any valid application made for a

constitutional convention upon any subject after the date on which two-thirds or more of the State legislatures have valid applications pending before the Congress seeking amendments on the same subjects.

Questions concerning the recission of a State's application shall be determined by the Congress of the United States ~~and its decisions shall be binding on all others including State and Federal courts~~.

CALLING OF A CONSTITUTIONAL CONVENTION

SEC. 6. (a) It shall be the duty of the Secretary of the Senate and the Clerk of the House of Representatives to maintain a record of all applications received by the President of the Senate and Speaker of the House of Representatives from States for the calling of a constitutional convention upon each subject. Whenever applications made by two-thirds or more of the States with respect to the same subject have been received, the Secretary and the Clerk shall so report in writing to the officer to whom those applications were transmitted, and such officer thereupon shall announce on the floor of the House of which he is an officer the substance of such report. It shall be the duty of such House to determine that there are in effect valid applications made by two-thirds of the States with respect to the same subject. If either House of the Congress determines, upon a consideration of any such report or of a concurrent resolution agreed to by the other House of the Congress, that there are in effect valid applications made by two-thirds or more of the States for the calling of a constitutional convention upon the same subject, it shall be the duty of that House to agree to a concurrent resolution calling for the convening of a Federal constitutional convention upon that subject. *Each such concurrent resolution shall* (1) designate the place and time of meeting of the convention, and (2) *set forth the nature of the amendment or amendments for the consideration of which the convention is called.* A copy of each such concurrent resolution agreed to by both Houses of the Congress shall be transmitted forthwith to the Governor and to the presiding officer of each house of the legislature of each State.

(b) The convention shall be convened not later than one year after adoption of the resolution.

DELEGATES

SEC. 7. (a) A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress. In each State two delegates shall be elected at large and one delegate shall be elected from each congressional district in the manner provided by State law. Any vacancy occurring in a State delegation shall be filled by appointment of the Governor of each state.

(b) The secretary of state of each State, or, if there be no such officer, the person charged by State law to perform such function shall certify to the Vice President of the United States the name of each delegate elected or appointed by the Governor pursuant to this section.

(c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same and for any speech or debate in the convention they shall not be questioned in any other place.

(d) Each delegate shall receive compensation for each day of service and shall be compensated for traveling and related expenses. Provision shall be made therefor in the concurrent resolution calling the convention. The convention shall fix the compensation of employees of the convention.

CONVENING THE CONVENTION

SEC. 8. (a) The Vice President of the United States shall convene the constitutional convention. He shall administer the oath of office of the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe to an oath by which he shall be committed during the conduct of the convention to refrain from proposing or casting his vote in favor of any proposed amendment to the Constitution of the United States relating to any subject which is not named or described in the concurrent resolution of the Congress by which the convention was called. Upon the election of permanent officers of the convention, the names of such officers shall be transmitted to the President of the Senate and the Speaker of the House of Representatives by the elected presiding officer of the convention. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as the convention may adopt.

(b) There is hereby authorized to be appropriated such sums as may be necessary for the payment of the expenses of the convention.

(c) The Administrator of General Services shall provide such facilities, and the Congress and each executive department and agency shall provide such information and assistance, as the convention may require, upon written request made by the elected presiding officer of the convention.

PROCEDURES OF THE CONVENTION

SEC. 9. (a) In voting on any question before the convention, including the proposal of amendments, each delegate shall have one vote.

(b) The convention shall keep a daily verbatim record of its proceedings and publish the same. The vote of the delegates on any question shall be entered on the record.

(c) The convention shall terminate its proceedings within one year after the date of its first meeting unless the period is extended by the Congress by concurrent resolution.

(d) Within thirty days after the termination of the proceedings of the convention, the presiding officer shall transmit to the Archivist of the United States all records of official proceedings of the convention.

PROPOSAL OF AMENDMENTS

SEC. 10. (a) Except as provided in subsection (b) of this section, a convention called under this Act may propose amendments to the Constitution by a vote of *two-thirds of the total number of delegates to the convention.*

(b) No convention called under this Act may propose *any amendment or amendments of a nature different from that stated* in the concurrent resolution calling the convention. Questions arising under this subsection shall be determined ~~solely~~ by the Congress of the United States ~~and its decisions shall be binding on all others, including State and Federal courts~~.

APPROVAL BY THE CONGRESS AND TRANSMITTAL TO THE STATES FOR RATIFICATION

SEC. 11. (a) The presiding officer of the convention shall, within thirty days after the termination of its proceedings, submit to the Congress the exact text of any amendment or amendments agreed upon by the convention.

(b) (1) Whenever a constitutional convention called under this Act has transmitted to the Congress a proposed amendment to the Constitution, the President of the Senate and the Speaker of the House of Representatives, acting jointly, shall transmit such amendment to the Administrator of General Services upon the expiration of the first period of ninety days of continuous session of the Congress following the date of receipt of such amendment unless within that period both Houses of the Congress have agreed to (a) a concurrent resolution directing the earlier transmission of such amendment to the Administrator of General Services and specifying in accordance with article V of the Constitution the manner in which such amendment shall be ratified, or (B) a concurrent resolution stating that the Congress disapproves the submission of such proposed amendment to the States because such proposed amendment *relates to or includes a subject which differs from or was not included among the subjects named or described in the concurrent resolution* of the Congress by which the convention was called, or because the procedures followed by the convention in proposing the amendment were not in substantial conformity with the provisions of this Act. No measure agreed to by the Congress which expresses disapproval of any such proposed amendment for any other reason, or without a statement of any reason, shall relieve the President of the Senate and the Speaker of the House of Representatives of the obligations imposed upon them by the first sentence of this paragraph.

(2) For the purposes of paragraph (1) of this subsection, (A) the continuity of a session of the Congress shall be broken only by an adjournment of the Congress sine die, and (B) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the period of ninety days.

(c) Upon receipt of any such proposed amendment to the Constitution, the Administrator shall transmit forthwith to each of the several States a duly certified copy thereof, a copy of any concurrent resolution agreed to by both Houses of the Congress which prescribes the time within which and the manner in which such amendment shall be ratified, and a copy of this Act.

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 12. (a) Any amendment proposed by the convention and submitted to the States in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when duly ratified by three-fourths of the States in the manner and within the time specified.

(b) Acts of ratification shall be by convention or by State legislative action as the Congress may direct or as specified in subsection (c) of this section. For the purpose of ratifying proposed amendments transmitted to the States pursuant to this Act the *State legislatures shall adopt their own rules of procedure.* Any State action ratifying a proposed amendment to the Constitution shall be valid without the assent of the Governor of the State.

(c) Except as otherwise prescribed by concurrent resolution of the Congress, any proposed amendment to the Constitution shall become valid when ratified by the legislatures of three-fourths of the several States within seven years from the date of the submission thereof to the States, or within such other period of time as may be prescribed by such proposed amendment.

(d) The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State action ratifying any proposed amendment to the Administrator of General Services.

RECISSION OF RATIFICATIONS

SEC. 13. (a) Any State may rescind its ratification of a proposed amendment by the same processes by which it ratified the proposed amendment, except that no State may rescind when there are existing valid ratifications of such amendments by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal.

(c) Questions concerning State ratification or rejection of amendments proposed to the Constitution of the United States, shall be determined ~~solely~~ by the Congress of the United States ~~and its decisions shall be binding on all others, including State and Federal courts.~~

PROCLAMATION OF CONSTITUTIONAL AMENDMENTS

SEC. 14. The Administrator of General Services, when three-fourths of the several States have ratified a proposed amendment to the Constitution of the United States, shall issue a proclamation that the amendment is a part of the Constitution of the United States.

EFFECTIVE DATE OF AMENDMENTS

SEC. 15. An amendment proposed to the Constitution of the United States shall be effective from the date specified therein or, if no date is specified, then on the date on which the last State necessary to constitute three-fourths of the States of the United States, as provided for in article V, has ratified the same.

JUDICIAL REVIEW

[SEC. 16. (a) Determinations and findings made by Congress pursuant to the Act shall be binding and final unless clearly erroneous. Any person aggrieved by any such determination or finding or by any failure of Congress to make a determination or finding within the periods provided in this Act may bring an action in a district court of the United States in accordance with 28 U.S.C. § 1331 and 28 U.S.C. § 2201 without regard to the amount in controversy. The action may be brought against the Secretary of the Senate and the Clerk of the House of Representatives or, where appropriate, the Administrator of General Services, and such other parties as may be necessary to afford the relief sought. The district courts of the United States shall have exclusive jurisdiction of any proceedings instituted pursuant to this Act, and such proceedings shall be heard and determined by three judges in accordance with 28 U.S.C. § 2284. Any appeal shall be to the Supreme Court.]