

Rescinding the 17th Amendment

Introduction

With the ratification of the 17th Amendment, the authors of this amendment unwittingly created a direct conflict with the Amendment Protection clauses in Article V. Research of the debates in both houses of Congress regarding this amendment revealed that the 17th Amendment was strictly focused on changing Article I Section III regarding the process of selecting a Senator. This article will provide the necessary information to prove that 1) those States that did not consent to the 17th Amendment are not obligated to adhere to it and 2) that States that previously ratified the 17th Amendment can now rescind their ratification and vote to reject the 17th Amendment. In so doing, the 17th Amendment can be rescinded without going through the arduous task of passing another Amendment.

Background

In the construction of Congress, the Legislative Branch was designed with two houses representing disparate constituents. The House of Representatives in our Republican Form of government represented the people of the independent and sovereign States not the people as a collective body. As the people of the different States selected their representatives in doing this they delegated to these Representatives their suffrage, on all matters pertaining to the House of Representatives. The Senate represented the State Legislators as their constituent. Thus, the suffrage for the State legislators or the sovereigns of the State government was delegated to their Senators to vote for and on their behalf in all matters before the Senate.

The concept of two sovereigns in both the general government and the State government was an innovation in a Republican Form of Government that had never been applied before. Several Ratification Debates of the Constitution expose this fact and clearly substantiate the disparate constituents as well as the importance for both sovereigns to be extended suffrage and representation in Congress. Roger Sherman compromise during the Constitutional Convention recognized the importance of representing the sovereignty of both the people and the State government (i.e. the State legislators). The people in each State have clearly delegated specific and some general powers to their State Legislators and government; thus, requiring bicameral legislative bodies to distribute roles and responsibilities in both houses of Congress that were appropriate for the disparate interests of each constituent or sovereign. Even though bicameral legislation was not a new concept, Roger Sherman's application was a new concept of Republicanism were two different types of sovereigns were identified to be represented and integrated into both the general government and even the State governments, with identical application.

The concept of recognizing the sub-element of government (the States at the national and the counties in the States) for specific suffrage was not only innovative, but this is what defined American republicanism. In short this concept was brilliant and was expressed as inspiration from the Divine Hand of Providence for this political paradigm was beyond the comprehension for the time and laid a foundation to create a symbiotic relationship within the general government. "Suffrage" for each constituent in each house was the critical component and this was debated during the Constitutional Convention as well as most of the States Ratification Debates of the Constitution. The Representatives in the House of Representatives were delegated suffrage for the people or citizens of each State and in the Senate the State Legislators delegated their suffrage to their Senators. This is all based upon the fundamentals of a Republican government which is a government of representation; consequently, suffrage (i.e. the right to vote) was voting by delegation for your constituent within the respective chambers of Congress as previously delineated.

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The Conflict

The Amendment protection clause in Article V clearly States “that no state, without its consent, shall be deprived of its equal ‘suffrage’ (right to vote) in the Senate.” This clause guarantees that the State (i.e. the state Legislators) which is the constituent to their Senators must consent to losing their right to vote. During the Constitutional Convention the smaller States demanded this clause because they did not trust the bigger States and they felt that over time the more populated States would try to change representation in the Senate to an apportionment to population instead of an equal standing. More importantly, State Sovereigns would have to consent to lose its suffrage altogether. If a State has been duped or coerced into believing it must to go along or even if it unwittingly goes along does not mean it is obligated to go along. If at any point in time a party in a contract recognizes for what ever reason that they are not obligated to go along with this change, then they can withdraw and in this case return to appointing Senators. There are no statute of limitations within this Amendment or the Constitution, if a party is in error or recognizes that they are not obligated then they are in error or not obligated.

In researching Congressional debates in both houses regarding the 17th Amendment there was no mention of the Article V Amendment Protection clause. Their focus was to appease the progressive States requesting a direct election of Senators without making any other changes to the Constitution. The point in fact, if a State does not “give” its consent than it cannot be “denied” its right to vote (i.e. suffrage) in the Senate by not having to adopt the 17th Amendment; thus, surrendering its suffrage to the people. Just because a State has been coerced into believing that it has lost its suffrage and surrenders its suffrage this is not consent or implicit consent. Constitutional consent with regard to the 17th Amendment is formally ratifying the Amendment. The word ratify is the formal process to accepting a contract or a change to a contract.

The Article V Amendment Protection Clause still stands to protect the States from losing its suffrage if they have not given formal consent. The fact remains that there is no evidence that anyone knew of or even discussed the Article V Protection clause or even understood this. Therefore Congress created a Constitutional conflict by passing and forwarding the 17th Amendment to the States for ratification by not including a change or removal of the Amendment Protection clause. Consequently, the following states who have not given “consent” to relinquishing its suffrage in the Senate can return to appointing their Senators:

Florida Georgia Kentucky Mississippi South Carolina Virginia Utah

There is no clause or language within the 17th Amendment that addresses the Amendment Protection Clause or the protection of the States suffrage within the Senate. Furthermore, the preamble of the 17th Amendment clearly limits the effect of this amendment by only identifying Article I Section III and changing the process for those States who consent to surrendering their suffrage to the people directly. The 17th Amendment and the Article V Amendment protection Clause are in direct conflict. Because the Amendment did not sufficiently address each part within the Constitution, there is an argument that the Amendment is an invalid one because of the conflict that it creates. Again, the aforementioned States must point to this Amendment Protection Clause in Article V and abandon their general election process in selecting Senators and return to appointing Senators once again. I assert that as the facts bear this out, I believe this conflict created is a blessing from the Divine Hand of Providence.

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Rescinding Not Repealing

As good as the blessing was that constitutionally illiterate people wrote the 17th Amendment, the Lord gave us an even greater blessing in 2010. In an effort to prove that the State of Delaware was a progressive State who originally rejected the 17th Amendment on March 18 1913, Delaware rescinded their rejection and formally voted to ratify the 17th Amendment and submitted their ratification to Congress on 1 July 2010 so that they would no longer be on the record for being one of the two States rejecting this progressive era amendment.

How is Delaware ratifying the 17th Amendment a blessing? In a nation of laws the door must swing both ways. In other words, if one State is allowed to change their position on this Amendment then any and all States who ratified or rejected this amendment can now change their position. Uniformity in application is a fundamental principle in the Constitution. Had Delaware not done this or had Congress not accepted their formal change in position then the rescinding of this amendment would not be a possibility. This is a historic opportunity. I believe those in Delaware who did this were just as ignorant of the Constitution as those who drafted and pushed the 17th Amendment in the first place.

What this means is that any of the following State can no formally rescind their ratification of the 17th Amendment and formally reject it and forward their change in position to Congress:

Massachusetts	<u>Arizona</u>	Minnesota	New York	<u>Kansas</u>	Oregon
<u>North Carolina</u>	California	Michigan	<u>Iowa</u>	<u>Montana</u>	<u>Idaho</u>
<u>West Virginia</u>	Colorado	Nevada	<u>Texas</u>	Washington	<u>Wyoming</u>
<u>Arkansas</u>	<u>Maine</u>	Illinois	<u>North Dakota</u>	Wisconsin	<u>Indiana</u>
New Hampshire	Vermont	<u>South Dakota</u>	<u>Oklahoma</u>	<u>Ohio</u>	<u>Missouri</u>
New Mexico	<u>Nebraska</u>	New Jersey	<u>Tennessee</u>	Pennsylvania	Connecticut

The underlined States above are those likely to rescind their ratification once they are aware that the door was opened for Delaware and now available to all. At the time of ratification this Amendment required 36 States to ratify because Hawaii and Alaska were not States yet. Therefore, with the aforementioned 7 States we would need only 6 states to rescind their ratification and then formally reject the amendment altogether.

Conclusion

Delaware and the Federal government made the mistake in opening the door to changing ones position for this one amendment. With regard to the nature of this matter, this is a political matter and the Legislative Branch has jurisdiction over this not the Judicial Branch. Just like the Guarantee Clause the Supreme Court should reject this issue over jurisdiction. Consequently, taking action on this would be best suited when Congress is under control of the Republican Party. This is only one minor fix to restoring our hybrid Constitutional Republic.