

## ARTICLE V CASELAW ON CONSTITUTIONAL CONVENTIONS

As we all know, a federal constitutional convention has not been called since 1787, when a convention was called only to amend the Articles of Confederation. Accordingly, there has been very little opportunity to litigate and develop the issues in this area of the law. Nevertheless the following areas have been examined to a limited degree:

- **Convention Cannot Be Requested by State Referendum or Initiative**

Article V states that 2/3 of the state legislatures must request a constitutional convention for a Congress to be required to call one. The U.S. Supreme Court term has concluded that the term “legislature” in Article V means the deliberative, representative bodies that make the laws for the people of the respective States; direct action by the people is foreclosed. See Hawke v. Smith, 253 U.S. 221, 227-28 (1920). <https://casetext.com/case/hawke-v-smith-no-1#summary>

“Ratification by a State of a constitutional amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the State to a proposed amendment.”

Id., at 229. See also, Petuskey v. Rampton, 307 F. Supp. 235, 250 (D. Utah, 1969) <https://casetext.com/case/petuskey-v-rampton-3>

Although this discussion relates directly to ratification of amendments proposed by Congress, a federal district court in Utah held that a state application for a federal constitutional convention is likewise an act of the legislature under Article V, which can only be made by the state legislative body, not by referendum. See Petuskey, 307 F. Supp. at 250, <https://casetext.com/case/petuskey-v-rampton-3>. The California Supreme Court came to the same conclusion in AFL-CIO v. Eu, 36 Cal. 3d 687 (Cal. 1984 (en banc)). The U.S. Supreme Court dismissed an appeal of that decision in 1985.

- **President Cannot Veto a Call for a Constitutional Convention**

Since the power of the President to veto legislation “applies only to the ordinary cases of legislation” and does not extend to “the proposition or adoption of amendments to the constitution,” (Hawke v. Smith, 253 U.S. at 230), the President presumably also lacks the authority to veto the constitutionally mandated congressional response of calling a constitutional convention in response to petitions by 2/3 of the states.

- **A Governor Cannot Veto the State Legislature’s Application for a Constitutional Convention**

The Supreme Court recently stated that, when state legislatures ratify a proposed amendment to the Constitution under Article V, they are exercising a function other than lawmaking, which is not subject to veto by the state governor. See Arizona State Legislature v. Arizona Independent Redistricting Comm’n, No. 13-1314 at 21, 23 (U.S. June 29, 2015) <https://casetext.com/case/arizona-state-legislature-v-arizona-independent-redistricting-commn>.

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