
Seth Barrett Tillman
THE CONSTITUTION OF THE UNITED STATES OF AMERICA

ANALYSIS AND INTERPRETATION

2010 SUPPLEMENT

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ARTICLE I

Section 2. House of Representatives

[Pp. 148-49, substitute for entire section:]

The purpose of clause 3, the Orders, Resolutions, and Votes Clause (ORV Clause), is not readily apparent. For years it was assumed that the Framers inserted the clause to prevent Congress from evading the veto clause by designating as something other than a bill measures intended to take effect as laws.¹ Why a separate clause was needed for this purpose has not been explained. Recent scholarship presents a different possible explanation for the ORV Clause – that it was designed to authorize delegation of lawmaking power to a single House, subject to

presentment, veto, and possible two-House veto override. If construed literally, the clause could have bogged down the intermediate stages of the legislative process, and Congress made practical adjustments. At the request of the Senate, the Judiciary Committee in 1897 published a comprehensive report detailing how the clause had been interpreted over the years. Briefly, it was shown that the word “necessary” in the clause had come to refer to the necessity for law-making; that is, any “order, resolution, or vote” must be submitted if it is to have the force of law. But “votes” taken in either House preliminary to the final passage of legislation need not be submitted to the other House or to the President, nor must concurrent resolutions merely expressing the views or “sense” of the Congress.

Although the ORV Clause excepts only adjournment resolutions and makes no explicit reference to resolutions proposing constitutional amendments, the practice and understanding, beginning with the Bill of Rights, have been that resolutions proposing constitutional amendments need not be presented to the President for veto or approval. Hollingsworth v. Virginia, in which the Court rejected a challenge to the validity of the Eleventh Amendment based on the assertion that it had not been presented to the President, is usually cited for the proposition that presentation of constitutional amendment resolutions is not required.

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4 3 U.S. (3 Dall.) 378 (1796).
5 Although Hollingsworth did not necessarily so hold (see Tillman, supra), the Court has reaffirmed this interpretation. See Hawke v. Smith, 263 U.S. 221, 229 (1920) (in Hollingsworth "this court settled that the submission of a constitutional amendment did not require the action of the President"); INS v. Chadha, 462 U.S. 919, 955 n.21 (1983) (in Hollingsworth the Court "held Presidential approval was unnecessary for a proposed constitutional amendment").
ARTICLE V
AMENDMENT OF THE CONSTITUTION
Proposing a Constitutional Amendment
- Proposals by Congress
[P. 941, substitute for n.20:]

In *Hollingsworth v. Virginia*, 3 U.S. (3 Dall.) 378 (1798), the Court rejected a challenge to the Eleventh Amendment based on the argument that it had not been submitted to the President for approval or veto. The Court's brief opinion merely determined that the Eleventh Amendment was "constitutionally adopted." Id. at 382. Apparently during oral argument, Justice Chase opined that "[t]he negative of the President applies only to the ordinary cases of legislation; he has nothing to do with the proposition, or adoption, of amendments to the Constitution." Id. at 381. See Seth Barrett Tillman, *A Textualist Defense of Art. I, Section 7, Clause 3: Why Hollingsworth v. Virginia was Rightly Decided, and Why INS v. Chadha was Wrongly Reasoned*, 53 Tex. L. Rev. 1265 (2005), for extensive analysis of what Hollingsworth's delphic pronouncement could mean. Whatever the Court decided in *Hollingsworth*, it has since treated the issue as settled. See Hawke v. Smith, 253 U.S. 221, 229 (1920) (in *Hollingsworth*, "this court settled that the submission of a constitutional amendment did not require the action of the President"); INS v. Chadha, 462 U.S. 919, 955 n.21 (1983) (in *Hollingsworth*, "the Court held Presidential approval was unnecessary for a proposed constitutional amendment . . .").