Volume II: Issue 1

The BEACON *Lite*

A Condensed Curriculum of Constitutional Study

Clauses Discussed:

- Article I, Section 4, Clauses 1 & 2
- Article I, Section 5, Clause 1

Concepts Discussed:

- Congress
- Succession

Article I, Section 4 of the U.S. Constitution discusses the election of Senators and Representatives and the assembling of the States in a Congress. **Clause 1** pronounces:

> "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

The individual States have primary responsibility to prescribe normal election parameters for United States Senators and Representatives, unless trumped by congressional action seeking uniformity.

Concerning the *Time* of holding elections for Representatives, the current day of choice for elections was established in 1872 following the principle established in 1845. The "Tuesday next after the first Monday in November" was set as the day for electing Representatives.

The Federal Election Commission details that *November* was chosen for elections in a society then driven primarily by agriculture.

Tuesday was chosen to allow time for people to make any necessary journey to the polls, hopefully without the necessity of travel on Sunday. The Tuesday *after* the first Monday was chosen to keep elections from being held on November 1st (All Saint's Day for Roman Catholics) and to give merchants time to finalize their October books.

Clause 1 allows for Congress to prescribe to the States the *times* and *manner* for the election of Senators and Representatives, but not ever the *places* for choosing Senators. This wording was added at the constitutional convention on September 14, 1787, as noted by Madison:

> "in order to exempt the seats of Government in the States from the power of Congress."

U.S. Senators were chosen by State Legislatures for the first 124 years of the republic (until ratification of the 17th Amendment). State Legislatures meet at the various *seats* of State government, the State Capitols, according to their *own* discretion.

If Congress had the ability to dictate the *places* of choosing U.S. Senators, the State Legislatures could have been convened at places of *Congress*' choosing. One of the grievances against the King of Great Britain listed in the **Declaration of Independence** details the problems associated with one political body being able to assemble another:

> "He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole Purpose of fatiguing them into compliance with his measures."

Representatives are not discussed in Article I, Section 4, Clause 2 with regards to *places*, for Representatives have always been chosen by the Citizen-electors themselves within districts in a State.

Article I, Section 4, Clause 2 states;

> "The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day."

This clause helps one to understand the meaning of *Congress*: "the Congress shall assemble…and such Meeting shall be…in December". The words *Congress*, *assemble*, and *Meeting* all have an equivalent meaning; that of sovereign States assembling together in a meeting of the States — a *Congress* of the States.

Even though the Constitution mandated that Congress assemble every year on or about the first Monday in December, the legislative terms for Senators and Representatives began and ended on March 4th of *odd*-numbered years (following the first session in 1789).

The **Twentieth Article in Amendment** (ratified in January of 1933) changed the first day which Congress was to assemble from the first Monday in December to the third day of January and also prescribed the legislative *term* for Senators and Representatives to coincide with the date of assembling.

Article I, Section 5, Clause 1 states:

> "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide."

Section 5 makes each House responsible for its own affairs. Clause 1 makes each House the judge of the elections, returns and qualifications of its members.

If error, fraud, or other discrepancy occurred in the election of U.S. Representatives or Senators, the House or Senate are the proper venues for judging them (individually). The Senate and the House are the proper judges for determining whether any particular Senator or Representative is properly a member of those Houses.

Clause 1 introduces the concept of the *quorum* and makes a simple majority able to legislate even when large numbers of Congressmen are absent.

The quorum for adjournment is but a single member. The importance for the minority being able to adjourn from day-to-day can be seen in the first Congress assembling under the Constitution.

Eight members from five of the 11 States which had then ratified the Constitution assembled together in the Senate on Wednesday, March 4, 1789. These members, being insufficient to constitute a quorum, adjourned from day-to-day, until Monday, April 6, 1789, when a quorum was first present. The business of counting the votes for President and Vice-President was then able to be performed.

The first Session of Congress showcases a lack of a quorum causing a delay in *establishing* government; another threat to government due to insufficient numbers is the difficulty in the *continuation* of it.

The United States under the Constitution experienced the greatest threat to quorum requirements to *continue* government during the Civil War era.

In such a case, the continuity of government is mainly dependent on whether or not the right of *succession* is formerly recognized.

If succession is not formally recognized, then quorum numbers will continue to based upon those who are formally yet within the Union, *even if no members are present from those States wanting no part in the government of the Union*.

No mention is given within the Constitution with regards to succession; neither did the Articles of Confederation.

The establishment of the Constitution by the *ninth* ratification certainly meant demise of the Confederate Union. Being that not all of the States were necessary for the Constitution *to take effect*, this would seem to indicate that the Constitution could continue unharmed *even if some of the States left the Union*.

History shows that in 1789, a mere (super) majority of all the States re-united under new constitutional authority and left a (small) minority under old confederate authority (or, more accurately, left to disintegrate).

This end result of this course of action (that *some part of a former group remained* and *some part of a former group left* to form a new group under differing authority) is no different than if the *few united under new authority* (like the Confederate States of America during the Civil War in 1861); leaving *the many united under old authority* (the Union under the Constitution).

If anything, the *few leaving the many* causes far *less* repercussions than the *many leaving the few*, for it is far easier to *continue* government (with any necessary modification), than to *set up* new government.

While the *many leaving the few* is a principle which is more difficult to stop due to the rule of the *majority*, it is no different of a principle. The principle of o*ne group leaving* and *one group staying* is the same whether the majority stays or leaves; it is only different in *degree*; the precedent of *disunity* is set.

The Constitution, to more convincingly oppose succession, should have better supported such unity by followed the terms of the earlier government, mandating establishment of the Constitution only upon the ratification of the *thirteenth* State convention.

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