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The Honorable George W. Bush

I have been researching the historic background in the adoption of Constitutional Amendments to the Constitution of the United States of America. Through my research, questions have passed my mind in regard to the roll of the executive branch of government has in the ratification of the Amendments.

At first glance, it appears that the Executive Branch has little to do with the process of adopting Constitutional Amendments. In the beginning of the history of our Country, all the Joint Resolutions that Congress passed in adopting a proposed Amendments were passed on to the Office of the President for his approbation. That was until the adoption of the Eleventh Amendment.

The question was presented to the U.S. Supreme Court in the case of Hollingsworth et.al. vs. Virginia (3 Dall. 378) wherein the court stated at 3 Dall. 379:

“The Constitution declares “every order, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the *United States*; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, &c.” (Art. I. s. 7.) Now, the Constitution, likewise declares, that the concurrence of both Houses shall be necessary to a proposition for amendments. (Art. 5.) And it is no answer to the objection,

to observe, that as two-thirds of both Houses are required to originate the proposition, it would nugatory to return it with the President's negative to be repassed by the same number; since the reasons assigned for his disapprobation might be so satisfactory as to reduce the majority below the constitutional proportion. The concurrence of the President is required in matters of infinity less importance; and whether on subjects of ordinary legislation, or of constitutional amendments, the expression is the same and equally applies to the acts of both Houses of Congress."

Looking to the case, it does not appear that the Executive Branch of Government of the United States of America made an appearance before the Court.

With rulings of the U.S. Supreme Courts (and other Federal Courts) over the last several years that the question of ratification of Constitutional Amendments are "*Political Questions*" to which Federal Courts have no subject matter jurisdiction, we must conclude that the ruling of Hollingsworth et.al. vs. Virginia is merely "*dictum*" and has no force of law.

Nowhere can it be found in the record of the Constitutional Convention that Joint Resolutions proposing Amendments to the U.S. Constitution were to be excluded from the requirement of U.S. Constitution, Article I, Section 7. This cannot be regarded as an oversight as the Members of the Constitutional Convention were meticulous in their debates and their writings of the U.S. Constitution. If they were to expressed an intention to exclude Joint Resolutions proposing Amendments to the U.S. Constitution from the Requirements of Article I, Section 7, they would have stated so in the U.S. Constitution just as they have done so in regard to the question of adjournment.

There is always the possibility that the position of the President of the United States may have an influence upon the Members of Congress to which some of the Members may reconsider their vote. The votes cast to overturn a Veto of the President may be less than the original two-thirds votes that were cast on the proposed Amendment.

As the case of Hollingsworth et.al. vs. Virginia has impacted the Office of the President of the United States in the performance of his duties of interpreting and executing the laws of the United States (U.S. Const., Art. II. Sect. 3) and as

the President of the United States has the authority to obtain legal Opinions, in writing, of the principle officer of the executive departments, (U.S. Const., Art. II, Sect. 2) it is in the best interest of the People of this Nation for the President of the United States to obtain a legal Opinion from his departmental staff on this question of law. If a legal Opinion is requested of the U.S. Attorney General, please advise me at the above address.

This question of law needs to be addressed as the Congress of the United States is considering another Constitutional Amendment to declare the intent of marriage. If the U.S. Attorney General has written a legal Opinion on this question of law, please forward a copy of the Opinion to me at the above address.

Sincerely Yours

Gordon Warren Epperly