

SUBJECT: Post-ratifying 24th Amendment to the U.S. Constitution barring a poll tax

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — Berman, England, Anchia, Burnam, Farias

0 nays

2 absent — Bohac, C. Howard

WITNESSES: For — John Courage, True Courage Action Network; Sonia Santana, ACLU-Texas; (*Registered, but did not testify*: Joy Arthur, People for the American Way; Ken Bailey, Texas Democratic Party; Kathryn Dean, ACLU; Dana Debeauvoir, County and District Clerks Legislative Committee; Luis Figueroa, Mexican American Legal Defense and Education Fund (MALDEF); Mary Finch League of Women Voters of Texas; Marc House, United Auto Workers; Paula Littles, Texas AFL-CIO; Garland Pruitt; Joe Sanchez, AARP-Texas)

Against — None

BACKGROUND: The U.S. Constitution, Art. 5 sets forth procedures for amendment. The U.S. Constitution has been amended 27 times. The first 10 amendments, which constitute the Bill of Rights, were added in 1791. The last constitutional amendment was ratified 15 years ago.

Congress must first approve language for a proposed amendment to the U.S. Constitution. A proposed amendment must be adopted by a two-thirds vote of both houses. Unlike most acts of Congress, a proposal for an amendment does not directly involve the president. After adoption by Congress, a proposed amendment goes to the Office of Federal Register at the National Archives. Upon receipt, the National Archives prepares certified copies of the language of the proposed amendment for each state.

Three-fourths of the states must ratify a proposed amendment in order for it to take effect. The Office of the Federal Register at the National Archives tracks states' actions and maintains the official count. Once a state ratifies an amendment, its legislature must send to the National Archives the enacted legislative document, which must contain identical

language to the proposed amendment, and the ratification form with the required authenticating signatures.

State ratification of a proposed amendment adopted by Congress requires a majority vote in each legislative chamber. A state legislature may make no changes to the language, or its ratification is invalid. A state legislature that has rejected an amendment may return subsequently to it and vote favorably for the ratification. On the other hand, it is generally held that once a state legislature has voted affirmatively, it cannot rescind ratification. Just as the President has no formal role in proposing amendments, a governor has no constitutional role in the ratification process; a governor's signature on the resolution is not technically necessary.

Whenever the requisite number of states (38 of 50) have ratified a proposed amendment, the national archivist proclaims it as a new amendment to the U.S. Constitution. Certification is published immediately in the Federal Register and eventually in the U.S. Statutes-at-Large.

Post-ratification is considered symbolic and requires a similar procedure to ratification, although there are no federal statutory requirements. Both chambers of a legislature would have to approve the amendment's language and follow procedures for submitting it to the Federal Register at the National Archives.

The 87th Congress on August 27, 1962, in S.J.R. 29, proposed an amendment to the states prohibiting the denial or abridgement of the right to vote for failure to pay any poll tax or other tax. The 38th state, constituting three-fourths of the several states, ratified the amendment on January 23, 1964. By proclamation dated February 4, 1964, published at 29 *Federal Register* 1715-16 and 78 *Statutes at Large* 1117-18, the amendment was declared ratified, becoming the 24th Amendment to the U.S. Constitution pursuant to Art. 5.

Virginia post-ratified the 24th Amendment in 1977. North Carolina approved the ceremonial post-ratification in 1989, and Alabama approved post-ratification in 2002. Each of these was reflected in the *Congressional Record* shortly after adoption.

DIGEST:

HJR 39 would post-ratify the 24th Amendment to the U.S. Constitution prohibiting the denial or abridgment of the right to vote for failure to pay any poll tax or other tax. The 24th Amendment was approved by the 87th Congress in S.J.R. 29 on August 27, 1962, and proposed to the legislatures of the several states. On February 4, 1964, the Administrator of General Services, in the presence of President Lyndon B. Johnson, declared that the amendment had been ratified by 38 of the 50 states and became the 24th Amendment to the U.S. Constitution. The amendment reads as follows:

“SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

“SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.”

HJR 39 would authorize post-ratifying the 24th Amendment and direct the Texas secretary of state to notify the national archivist of the action by the 80th Legislature by forwarding to the archivist an official copy of the resolution. The joint resolution would instruct the secretary of state also to forward official copies of the resolution to both U.S. senators from Texas, all U.S. representatives from Texas, the U.S. Vice President as presiding officer of the U.S. Senate, and the speaker of the U.S. House of Representatives with the request that it be printed in full in the *Congressional Record*.

The joint resolution relates congressional history associated with the proposed amendment, the ratification process and proclamation, and post-ratification by three states. The resolution would maintain that clear precedent would grant Texas the opportunity to post-ratify the amendment similar to the actions of lawmakers in three other states.

SUPPORTERS
SAY:

HJR 39 would allow Texas to post-ratify the 24th Amendment to the U.S. Constitution, an official gesture that is long overdue.

In August 1962, while Congress was deliberating the poll tax amendment, President John F. Kennedy urged the U.S. House of Representatives to propose the amendment for consideration by the states, “to finally

eliminate this outmoded and arbitrary bar to voting. American citizens should not have to pay to vote.”

When the proclamation on ratification of the 24th Amendment was declared on February 4, 1964 in his presence, President Lyndon B. Johnson, the first Texan to be president, said that abolishing the tax requirement, “reaffirmed the simple but unbreakable theme of this Republic. Nothing is so valuable as liberty, and nothing is so necessary to liberty as the freedom to vote without bans or barriers. ... A change in our Constitution is a serious event. ... There can now be no one too poor to vote.”

Eleven Southern states, including Texas in 1902, enacted poll taxes after Reconstruction as a measure to prevent poor black and white people from voting. In 1964, Texas was one of only five states still levying a poll tax. Following the recommendation of Gov. John B. Connally, the Legislature had proposed an amendment in 1963 repealing the poll tax provision in the Texas Constitution, but it was rejected by the voters. The Legislature submitted a second amendment repealing the poll tax in 1966, which voters approved, although the issue had been rendered moot by ratification of the 24th Amendment for federal offices and the 1966 U.S. Supreme Court decision in *Harper v. Virginia Board of Elections*, 383 U.S. 663, invalidating poll taxes for state and local elections. The Legislature still has never approved the 24th Amendment. Officially supporting the ratification of this amendment now would be a gesture that would help Texas put its discriminatory past behind it.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

An identical resolution, HJR 84 by Allen, was filed in the 79th Legislature, but died in the Elections Committee.