SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 796

ROLLA W. COLEMAN, W. A. BARRON, CLAUDE C. BRADNEY, ET AL., PETITIONERS,

vs.

CLARENCE W. MILLER, AS SECRETARY OF THE SENATE OF THE STATE OF KANSAS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

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—5384

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 33,459

ROLLA W. COLEMAN, W. A. BARRON, CLAUDE C. BRADNEY, J. B. Carter, Wilfrid Cavaness, Kirk W. Dale, Jesse C. Denious, Benjamin F. Endres, Ewing Herbert, W. E. Ireland, Walter F. Jones, Walter E. Keefe, Fred R. Nuzum, Ernest F. Pihlblad, G. W. Schmidt, Thale P. Skovgard, Harry M. Tompkins, Ray G. Tripp, Robert J. Tyson, N. B. Wall, Raimon G. Walters, George W. Plummer, Frank C. Pomery and A. W. Relihan, Plaintiffs,

vs.

CLARENCE W. MILLER, as Secretary of the Senate of the State of Kansas; William M. Lindsay, Lieutenant-Governor and President ex-officio of the Senate of the State of Kansas; H. S. Buzick, Jr., as Speaker of the House of Representatives of the State of Kansas; W. T. Bishop, as Chief Clerk of the House of Representatives of the State of Kansas, and Frank J. Ryan, as Secretary of the State of Kansas, Defendants

Be it Remembered, that on the 26th day of February, 1937, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, a Petition for Writ of Mandamus, a copy of which Petition for Writ of Mandamus (omitting signatures) appears at pages one (1) to eleven (11) inclusive of the Abstract of the Record prepared by the plaintiff, incorporated herein.

[fol. b] Be it Further Remembered, that afterward and on the 19th day of May, 1937, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, an Abstract of the Record, prepared by the plaintiff herein, a copy of which Abstract of the Record, is in the words and figures as follows, to-wit:

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 33,459.

ROLLA W. COLEMAN, W. A. BARRON, CLAUDE C. BRADNEY, J. B. CARTER, WILFRID CAVANESS, KIRKE W. DALE, JESSE C. DENIOUS, BENJAMIN F. ENDRES, EWING HERBERT, W. E. IRELAND, WALTER F. JONES, WALTER E. KEEF, FRED R. NUZMAN, ERNEST F. PIHLBLAD, C. W. SCHMIDT, THALE P. SKOVGARD, HARRY M. TOMPKINS, RAY C. TRIPP, ROBERT J. TYSON, N. B. WALL, RAIMON C. WALTERS, GEORGE W. PLUMMER, FRANK C. POMEROY and A. W. RELIHAN,
Plaintiffs,

vs.

CLARENCE W. MILLER as Secretary of the Senate of the State of Kansas, WILLIAM M. LINDSAY, as Lieutenant-Governor and President ex-officio of the Senate of the State of Kansas, H. S. BUZICK, JR., as Speaker of the House of Representatives of the State of Kansas, W. T. BISHOP as Chief Clerk of the House of Representatives of the State of Kansas, and FRANK J. RYAN as Secretary of State of the State of Kansas; and the STATE OF KANSAS,
Defendants.

ORIGINAL PROCEEDINGS IN MANDAMUS.

ABSTRACT OF RECORD.

On the 26th day of February, 1937, the plaintiffs filed in this court their petition in the above entitled action, which was as follows:

Come now the plaintiffs and for their cause of action against the defendants allege that:

I.

Each and all of said plaintiffs and defendants are residents and citizens of the State of Kansas; that each of them is and at all times hereinafter referred to was a duly elected, qualified and acting member of either the Senate of the State of Kansas or of the House of Representatives of the State of Kansas, as indicated below. The postoffice address and official position of each of the plaintiffs is as follows:

Name	Official Position	Postoffice Address
Rolla W. Coleman	Senator	Overland Park
W. A. Barron	Senator	Phillipsburg
Claude C. Bradney	Senator	Columbus
J. B. Carter	Senator	Wilson
Wilfrid Cavaness	Senator	Chanute
Kirke W. Dale	Senator	Arkansas City
Jesse C. Denious	Senator	Dodge City
Benjamin F. Endres	Senator	Leavenworth
Ewing Herbert	Senator	Hiawatha
W. E. Ireland	Senator	Yates Center
Walter F. Jones	Senator	Hutchinson
Walter E. Keef	Senator	Glen Elder
Fred R. Nuzman	Senator	Ottawa
Ernest F. Pihlblad	Senator	Lindsborg
G. W. Schmidt	Senator	Junction City
Thale P. Skovgard	Senator	Greenleaf
Harry M. Tompkins	Senator	Council Grove
Ray G. Tripp	Senator	Herington
Robert J. Tyson	Senator	Parker
N. B. Wall	Senator	Sedan
Raimon G. Walters	Senator	Garden City
George W. Plummer	Representative	Perry
Frank C. Pomeroy	Representative	Holton
A. W. Relihan	Representative	Smith Center

The defendant, Clarence W. Miller, is and at all times hereinafter referred to was the duly elected, qualified and acting Secretary of the Senate of the State of Kansas.

II.

The legislature of the State of Kansas consists of a Senate and a House of Representatives. The Senate of the State of Kansas consists of forty members, each elected from a separate senatorial district in the State of Kansas.

III.

On June 2, 1924, the sixty-eighth Congress of the United States proposed the following amendment to the Constitution of the United States:

> "Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age."
>
> "Section 2. The power of the several states is unimpaired by this article except that the operation of state laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress."

IV.

After, to-wit, on or about the 30th day of January, 1925, the legislature of the State of Kansas, in regular session assembled, adopted the following resolutions:

> "RELATING TO REJECTING THE PROPOSED CHILD LABOR AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.
> House Concurrent Resolution No. 5.
>
> In Relation to rejecting the proposed child labor amendment to the constitution of the United States.
>
> WHEREAS, The congress of the United States has proposed an amendment to the constitution of the United States of America, in the following words, to-wit:

'JOINT RESOLUTION.

'Proposing an amendment to the constitution of the United States of America in congress assembled (two-thirds of each house concurring therein), that the following article is proposed as an amendment to the constitution of the United States, which when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:

"Article ——.

"Section 1. That congress shall have power to limit, regulate and prohibit the labor of persons under eighteen years of age.

"Sec. 2. That power of the several states is unimpaired by this article, except that the operation of the state laws shall be suspended to the extent necessary to give effect to legislation enacted by the congress."

THEREFORE BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF KANSAS, THE SENATE CONCURRING THEREIN:

Section 1. That the said proposed amendment to the constitution of the United States of America be and the same is hereby rejected by the legislature of the state of Kansas.

Sec. 2. That certified copies of this concurrent resolution be forwarded by the governor of this state to the secretary of state at Washington, D. C., to the presiding officer of the United States senate, and to the speaker of the house of representatives of the United States.

Approved January 30, 1925."

Certified copies of said resolution were thereupon duly forwarded by the governor of the State of Kansas to the Secretary of State at Washington, D. C., to the presiding officer of the United States Senate, and to the Speaker of the House of Representatives of the United States, where they were placed upon file.

V.

Thereafter, to-wit: on January 13, 1937, Senator Ratner introduced the following resolution in Senate of the State of Kansas, to-wit:

"SENATE CONCURRENT RESOLUTION NO. 3.

A CONCURRENT RESOLUTION relating to and ratifying the proposed amendment to the constitution of the United States relating to the limitation of age.

WHEREAS, At the first session of the sixty-eighth congress it was resolved by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each house concurring therein), that the following article be proposed as an amendment to the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the said constitution, viz.:

"JOINT RESOLUTION proposing an amendment to the constitution of the United States.

"RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED (two-thirds of each house concurring therein), That the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:

"ARTICLE ——.

"Section 1. The Congress shall have power to limit, regulate and prohibit the labor of persons under eighteen years of age.

"Section 2. The power of the several states is unimpaired by this article except that the operation of state laws shall be suspended to the extent necessary to give effect to legislation enacted by Congress."

WHEREAS, Said resolution has been submitted to the various states of the United States for ratification, in accordance with the provisions of the constitution of the United States: Now, Therefore,

BE IT RESOLVED BY THE SENATE OF THE STATE OF KANSAS, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN, That the foregoing and above recited amendment to the constitution of the United States be, and the same is hereby ratified by said legislature of the state of Kansas as a part of, and amendment to, the constitution of the United States.

BE IT FURTHER RESOLVED, That the governor of the state of Kansas forthwith forward to the secretary of state of the United States an authenticated copy of the foregoing resolution."

Thereafter, to-wit: on February 15, 1937, said resolution came up for consideration in the Senate of the State of Kansas, and upon roll call twenty senators voted against the adoption and twenty senators voted in favor of the adoption of said resolution. The members voting in the affirmative were:

Allen	Benson	Calvert	Cron
Grant	Hackney	Hansen	Harris
Hodgson	Jones	Lemon	Logan
McDonald	Miller	Ratner	Richard
Seuser	Todd	Waggener	Warren

The members voting in the negative were:

Barron	Bradney	Carter	Cavaness
Coleman	Dale	Denious	Endres
Herbert	Ireland	Keef	Nuzman
Pihlblad	Schmidt	Skovgard	Tompkins
Tripp	Tyson	Wall	Walters

Thereupon, one of the senators, to-wit: Senator McDonald, asked W. M. Lindsay, who was at that time presiding in the Senate and was Lieutenant-Governor of the State of Kansas, but who was not a member of the Senate, if he desired to vote upon the said resolution. Thereupon, Senator Coleman, one of the plaintiffs herein, rose to a point of order and stated that he objected to the president voting upon the resolution or exercising any prerogative to vote because of a tie, and protesting any declaration as to the result of the vote other than that it had failed to carry by reason of its failure to receive a constitutional majority in accordance with the requirements of the constitution of the United States and the constitution of the State of Kansas. The said Lieutenant-Governor, over the objection of said Senator Coleman and against his protest, did then assume the right to and did vote upon said resolution, casting his vote in favor thereof, and then declared that the resolution had received a constitutional majority.

Plaintiffs aver that said resolution did not then and never has received the vote of a majority of said senators, and by reason of that fact did not carry and was lost.

VI.

Afterwards, to-wit: on the — day of February, 1937, Clarence W. Miller, Secretary of the Senate, defendant herein, erroneously and under a misapprehension of the law, messaged said resolution to the House of Representatives where it was afterward considered, and upon

roll call on February 25, 1937, received a majority of the votes of said House of Representatives, to-wit: sixty-five (65) votes in favor thereof, and said resolution was thereafter messaged back to the Senate with the information above stated.

VII.

Said Clarence W. Miller, Secretary of the Senate, is about to have the said resolution enrolled preparatory for the signature of the Lieutenant-Governor, the said Secretary of the Senate, said Speaker of the House of Representatives, and said Clerk of the House of Representatives, and thereafter to send the same to the Secretary of State for authentication and delivery to the Governor of the State of Kansas for transmissal to the Secretary of State of the United States, as provided by the terms of said resolution. If said enrollment, affixing of signatures, authentication and transmissal should take place and the same be filed by the Secretary of State of the United States, plaintiffs fear that it will then be impossible to rectify the erroneous record to the effect that said resolution had passed the Senate of the State of Kansas, when in fact it had failed to receive a majority of the votes of the members of the Senate; and these plaintiffs will be irreparably damaged because the said resolution which twenty members of the Senate to-wit: one-half thereof, refused to support will have become a part of the fundamental law of the United States in case three-fourths of the legislatures including Kansas shall have ratified the same, and these plaintiffs are without any remedy at law.

VIII.

An actual controversy has arisen between the parties hereto with respect to the action taken by the Senate, it being claimed on one hand that the Lieutenant-Governor was entitled to cast the deciding vote upon said resolution and that the resolution was therefore adopted

by the Senate. On the other hand, it is claimed that the Lieutenant-Governor did not have a right to vote on said resolution; that in casting a vote thereon he usurped an authority which he was not entitled to exercise, and that said resolution failed to be adopted.

On the one hand, it is claimed that the defendant, Clarence W. Miller, as Secretary of the Senate, should endorse on said resolution that it was passed while the plaintiffs claim that he should now and immediately endorse thereon the statement that the resolution was not passed, or words to that effect.

IX.

Unless restrained by this court, the said defendant, Clarence W. Miller, Secretary of the Senate, will not endorse upon said resolution that it was not passed but will cause said bill to be enrolled and said W. M. Lindsay, Lieutenant-Governor of the State of Kansas, and said Clarence W. Miller, Secretary of the Senate, will sign said enrolled bill, and said H. S. Buzick, Jr., Speaker of the House of Representatives, and said W. T. Bishop, Chief Clerk of the House of Representatives of the State of Kansas, will sign said enrolled bill and the said Frank J. Ryan, Secretary of State of the State of Kansas, will authenticate said resolution so enrolled together with the signatures affixed thereto and will deliver the same to the Governor of the State of Kansas, to be forwarded by said Governor to the Secretary of State of the United States.

X.

By reason of the premises, the plaintiffs are entitled to a writ of mandamus against the said defendant, Clarence W. Miller, as Secretary of the Senate, directing him to erase the endorsement heretofore made upon said resolution to the effiect that it was adopted by the Senate and to endorse thereon the words "Was not passed" or words to that effect, and directing him to hold said reso-

lution without further action thereon; and a mandatory injunction against him and each and all of the other defendants from causing said resolution to be enrolled, signed, certified, published, delivered to the Governor or transmitted to the Secretary of State of the United States.

Wherefore, plaintiffs pray that a writ of mandamus issue from this court against the said defendant, Clarence W. Miller as Secretary of the Senate, directing him to erase the endorsement heretofore made upon said resolution to the effect that it was adopted by the Senate and to endorse thereon the words, "Was not passed" or words to that effect, and directing him to hold said resolution without further action thereon unless and until the Senate might take further action in respect thereto; that a mandatory injunction issue against him and each and all of the other defendants enjoining them from causing said resolution to be enrolled, signed, certified, published, delivered to the Governor or transmitted to the Secretary of State of the United States unless and until the Senate might duly and regularly take action thereon; that the court enter a declaratory judgment as provided by statute in such case declaring the law with respect to the right of the legaslature of the State of Kansas under the premises to further consider any resolution after having once rejected said amendment, and after the long lapse of time since the said amendment was first proposed by Congress, and more especially to declare the law with respect to the right of the Lieutenant-Governor of the state to cast a vote, even in case of tie on such resolution in the Senate;

That a restraining order be issued to the said defendants and each of them, restraining the said Clarence W. Miller, as Secretary of the Senate, from causing said resolution to be enrolled and from signing said resolution when it is enrolled; restraining the said W. M. Lindsay, as Lieutenant-Governor of the State of Kansas and President of the Senate, from signing said en-

rolled resolution; restraining the defendant, H. S. Buzick, Jr., as Speaker of the House of Representatives, and said W. T. Bishop, as Chief Clerk of the House of Representatives, from signing said enrolled resolution; restraining the said Frank J. Ryan, as Secretary of State, from authenticating said resolution or any copy thereof and delivering the same to the Governor of the State of Kansas; that said defendants and each of them show cause on a day to be fixed by this court why a temporary injunction should not be issued and why such injunction should not be made permanent; and for such other and further relief as to the court may seem equitable and just; and for the costs of this action.

The above petition was duly verified by Rolla W. Coleman.

Thereafter and before answer, the plaintiffs with permission of the court filed the following amendment to their petition:

(To be inserted in Application for Mandamus by interlineation at the end of paragraph IX as IXa.)

AMENDMENT.

IXa.

Said joint resolution proposing an amendment to the constitution of the United States was adopted on June 2, 1924. Afterwards, action was taken on the proposed amendment by the legislatures of respective states as shown by Exhibit A hereto attached and made a part of said application. The amendment was rejected originally from June 2, 1924, to March 18, 1927, by both houses of the legislatures of twenty-six (26) states and by the action of one house of the legislature in twelve (12) states. During that period, it was ratified in only five (5) states. By reason of said rejection by said

twenty-six (26) states, said proposed amendment was defeated and definitely rejected by the legislatures of the respective states and thereby lost its vitality.

Said amendment lost its vitality by reason of the fact that it has not been ratified within a reasonable time after its submission to the states by Congress on June 2, 1924. When the 18th amendment was proposed on December 19, 1917, Congress placed a time limit in said proposed amendment, namely, seven (7) years, as the reasonable time within which it should be ratified. In proposing the 20th amendment on March 3, 1932, and in proposing the 21st amendment on February 20, 1933, Congress followed the precedent established in proposing the 18th amendment, and in each instance fixed seven (7) years as the time within which the proposed amendment must be ratified. Said provision was and is a declaration by Congress that seven (7) years is a reasonable time within which a proposed amendment to the constitution of the United States should be ratified, and said limitation is in fact a reasonable time within which a proposed amendment should be ratified; any period longer than that would violate the spirit of the constitution of the United States because it is contemplated that the proposal and ratification should not be treated as unrelated acts but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time, the reasonable implication being that when proposed they are to be considered and disposed of presently; and since the ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the states, there is a fair implication contained in said Article 5 that it must be sufficiently contemporaneous in that number of states to reflect the will of the people in all sections at relatively the same period, which would not be true if such ratification were scattered through a long series of years.

IXb.

Under and by the terms of Article 5 of the constitution of the United States, it is provided that amendments to the constitution of the United States must be ratified by the legislatures of the several states. The lieutenant-governor of Kansas is not a member of the legislature of Kansas and had no right to vote upon the ratification of said proposed amendment. The casting of his vote and the counting thereof constituted a violation of the provisions of the constitution of the United States, and for that reason should not be permitted by this court.

PROPOSED "CHILD LABOR" AMENDMENT

(Released April 20, 1935, by The Department of State)

By joint resolution of Congress of June 2, 1924, the following amendment to the Constitution of the United States (commonly known as the "child labor" amendment) was proposed:

"Article ——.

"Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

"Sec. 2. The power of the several States is unimpaired by this article except that the operation of State Laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress."

The records of the Department of State show action taken on the proposed amendment by the legislatures of the respective States as follows:

State	Action	Date of receipt of notification by the Dept. of State
Alabama	No record of action	
Arizona	Ratification by resolution of Jan. 28, 1925, approved Jan. 29, 1925.	Feb. 4, 1925
Arkansas	Ratification by resolution approved June 28, 1924.	July 2, 1924
California	Ratification by resolution of Jan. 8, 1925.	Mar. 5, 1925
Colorado	Ratification by resolution filed in the Office of the Secretary of State of Colorado on Apr. 28, 1931.	May 2, 1931
Connecticut	Joint resolution of Congress Proposing the amendment rejected in the Senate of Connecticut Feb. 3, 1925, and in the House of Representatives of Connecticut Feb. 11, 1925.	Feb. 18, 1925
Delaware	Resolution proposing ratification of proposed amendment rejected in the House of Representatives of Delaware by 32 votes to none, 3 absent, Jan. 28, 1925.	Feb. 20, 1925
	Resolution proposing ratification of proposed amendment rejected in the Senate of Delaware by 17 votes to none, Feb. 2, 1925.	Feb. 5, 1925
Florida	Rejection by resolution filed in the Office of the Secretary of State of Florida on May 14, 1925.	Mar. 19, 1926
Georgia	Rejection by resolution approved Aug. 6, 1924.	Dec. 15, 1924
Idaho	Resolution proposing ratification of proposed amendment was lost in the House of Representatives of Idaho on Feb. 7, 1925, by a vote of 18 yeas, 38 nays, with 6 absent.	Mar. 24, 1925
	Ratification by resolution of Feb. 7, 1935.	Feb. 18, 1935
Illinois	Ratification by resolution of June 30, 1933.	Aug. 21, 1933

Indiana	In the Senate of Indiana on Feb. 5, 1925, the joint resolution of Congress proposing the amendment was "indefinitely postponed and rejected" by a vote of 32 yeas, 16 nays. In the House of Representatives of Indiana on Mar. 5, 1925, a motion "prevailed" that the joint resolution of Congress proposing the amendment be rejected.	Apr. 9, 1925
	Ratification by resolution of Feb. 8, 1935.	Feb. 21, 1935

EXHIBIT A—p. 1

State	Action	Date of receipt of notification by the Dept. of State
Iowa	On Mar. 11, 1925, the House of Representatives of Iowa "indefinitely postponed House Joint Resolution No. 2," which had for its purpose the ratification of the proposed amendment to the Constitution of the United States.	Mar. 13, 1925
	Ratification by resolution of Dec. 5, 1933.	Dec. 21, 1933
Kansas	Rejection by resolution of Jan. 27, 1925, approved Jan. 30, 1925.	Feb. 2, 1925
Kentucky	Rejection by resolution approved Mar. 24, 1926.	Nov. 15, 1926
Louisiana	Resolution of ratification of the proposed amendment rejected in the House of Representatives of Louisiana on June 27, 1924 by yeas, 23; nays, 55; absent, 21. No action taken by the Senate of Louisiana.	Feb. 12, 1925
Maine	Rejection by resolve of Apr. 10, 1925.	Sept. 8, 1925
Maine	Ratification by resolve of Dec. 16, 1933, approved Dec. 16, 1933.	Dec. 21, 1933
Maryland	Rejection by resolution approved Mar. 18, 1927.	Mar. 21, 1927

Massachusetts	Act of the Commonwealth of Massachusetts approved June 5, 1924, placing "upon the ballot to be used at the biennial State election in the current year the following question: Is it desirable that the general court ratify the following proposed amendment to the Constitution of the United States."	June 11, 1924
	The Senate of Massachusetts on Feb. 16, 1925, rejected the proposed amendment by a vote of 33 yeas to 1 nay.	Mar. 2, 1925
	The House of Representatives of Massachusetts on Feb. 19, 1925, adopted, by a vote of 204 yeas to 9 nays, resolutions rejecting the proposed amendment.	Nov. 10, 1933
Michigan	Ratification by resolution of May 10, 1933.	May 17, 1933
Minnesota	Rejection by resolution of Apr. 14, 1925.	Apr. 17, 1925
	Ratification by resolution of Dec. 14, 1933, approved Dec. 14, 1933.	Dec. 18, 1933
Mississippi	No record of action.	
Missouri	Rejection by resolution of Mar. 20, 1925.	Mar. 26, 1925
Montana	Ratification by resolution approved Feb. 11, 1927.	Feb. 15, 1927
Nebraska	No record of action.	
Nevada	No record of action.	
New Hampshire	Rejection by resolution of Mar. 18, 1925.	Mar. 28, 1925
	Ratification by resolution of May 17, 1933.	May 23, 1933
New Jersey	Ratification by resolution of June 12, 1933.	June 15, 1933
New Mexico	No record of action.	
New York	No record of action.	
North Carolina	Rejection by resolution of Aug. 23, 1924.	Nov. 22, 1924
North Dakcta	Certificate dated Jan. 28, 1925, that the Senate of North Dakota, by vote of 32 to 17, resolved not to ratify the proposed amendment to the Constitution.	Jan. 31, 1925

	Ratification by resolution filed in the Office of the Secretary of State of North Dakota on Mar. 4, 1933.	Aug. 17, 1933
Ohio	Ratification by resolution of Mar. 22, 1933.	May 31, 1933
Oklahoma	Ratification by resolution of July 5, 1933.	July 13, 1933
Oregon	Ratification by resolution of Jan. 31, 1933.	July 12, 1933
Pennsylvania	Rejection by resolution of Apr. 16, 1925.	May 23, 1925
	Ratification by resolution of Dec. 21, 1933.	May 25, 1934

EXHIBIT A—p. 2

State	Action	Date of receipt of notification by the Dept. of State
Rhode Island	No record of action.	
South Carolina	Rejection by resolution of Jan. 27, 1925.	Feb. 21, 1925
South Dakota	Certificate dated Feb. 24, 1925, that the proposed amendment to the Constitution of the United States having been duly proposed by a joint resolution in the Senate and the House of Representatives of South Dakota during its nineteenth legislative session "failed of passage." In the Senate of South Dakota the vote was: Yes, 5; no, 36; absent and not voting, 1; excused, 3. In the House of Representatives of South Dakota the vote was: Yes, 26; no, 73; absent and not voting, 1; excused, 3.	Mar. 2, 1925
	The South Dakota Legislature again rejected the proposed amendment to the Constitution of the United States at its special session which convened July 31, 1933. This was by House Resolution No. 1, the vote being: Yes, 43; no, 48; absent and not voting, 11; excused, 1.	Mar. 17, 1934

Tennessee	Rejection by resolution of Feb. 4, 1925.	Feb. 11, 1925
Texas	Rejection by resolution of Jan. 27, 1925, approved Feb. 2, 1925.	Mar. 2, 1925
Utah	Rejection by resolution of Feb. 4, 1925.	Feb. 12, 1925
	Ratification by resolution of Feb. 5, 1935.	Feb. 11, 1935
Vermont	Rejection by resolution certified Feb. 26, 1925.	Feb. 28, 1925
Virginia	Rejection by resolution of Jan. 22, 1926.	Mar. 3, 1926
Washington	Ratification by resolution of Feb. 3, 1933.	May 24, 1933
West Virginia	Ratification by resolution of Dec. 12, 1933.	Jan. 8, 1934
Wisconsin	Ratification by resolution filed in the Office of the Secretary of State of Wisconsin Feb. 25, 1925.	Feb. 28, 1925
Wyoming	Ratification by resolution of Jan. 31, 1935, approved Feb. 1, 1935.	Mar. 2, 1935

EXHIBIT A—p. 3

An alternative writ was allowed and service was duly had upon the several defendants except the State of Kansas.

Thereafter, upon suggestion of counsel, the court made the following order:

ORDER.

WHEREAS, the Court's attention has been called to the fact that the final adjournment of the Legislature of the State of Kansas has been fixed for March 23, 1937; and

WHEREAS, this case has been set by the Court for April 5, 1937; and

WHEREAS, this Court, by its order heretofore made, has enjoined the officers of the Legislature from com-

pleting their official acts in connection with the certifying of Senate Concurrent Resolution Number Three, involved in this action; and

WHEREAS, it is the sense of the Court that the rights of all parties shall not be affected by adjournment of the Legislature;

IT IS THEREFORE CONSIDERED AND ORDERED BY THIS COURT, that all of the defendants, except the defendant, Frank J. Ryan, Secretary of State, are ordered and directed to carry out the procedure established by the Legislature for the passage of Concurrent Resolutions in relation to Senate Concurrent Resolution No. Three, being the resolution involved; and provided said resolution already has been enrolled, then that all of said defendants, except Frank J. Ryan, as Secretary of State, who does not sign until after the Governor, shall perform such acts and affix such signatures to the enrolled resolution as is above provided for the original resolution; and that after having performed such acts in accordance with this order, that said original resolution and enrolled resolution be delivered to the Clerk of this Court to be held by said clerk until the further order of this Court.

IT IS FURTHER ORDERED that the order heretofore made in this cause be and remain in full force and effect, except as modified herein.

IT IS FURTHER ORDERED that no prejudice shall result to any party by reason of this order; and that the rights of plaintiffs and defendants shall be and remain the same as at the filing of this action.

Afterwards, and on March 30, 1937, the Senate of the State of Kansas, by a vote of twenty-five to thirteen, passed the following resolution:

SENATE RESOLUTION No. 26.

WHEREAS, Twenty-one members of this Senate have joined as plaintiffs in a suit in the Supreme Court entitled Rolla W. Coleman, et al. versus Clarence W. Miller as Secretary of the Senate of the State of Kansas, et al., being original proceedings in said court numbered 33,459 for the purpose of determining whether or not senate concurrent resolution No. 3 was legally introduced and passed by the senate; and

WHEREAS, The State of Kansas and all of the citizens thereof are interested in a determination of the questions involved in said lawsuit; and

WHEREAS, It further appears that the attorney general has declined to enter the appearance of the State of Kansas, as is required by Section 75-702, G. S. Kansas 1935: Now, therefore,

BE IT RESOLVED, That the attorney general is hereby directed and required to enter the appearance of the State of Kansas and to appear for the State of Kansas in said action and proceedings and to represent the state as its interests may appear therein.

ADOPTED March 30, 1937.

Thereupon, the court made the following order:

ORDER MAKING THE STATE OF KANSAS, ex rel., CLARENCE V. BECK, AS ATTORNEY GENERAL A PARTY DEFENDANT.

Now on this 3rd day of April, 1937, the Application of Clarence V. Beck, as Attorney General of and for the State of Kansas, to be made a party defendant, having been considered and granted, it is ordered that the State of Kansas, ex rel. Clarence V. Beck, as Attorney General, be and it hereby is made a party defendant herein.

Afterward, to-wit, on the — day of ————, 1937, the lieutenant-governor filed his answer as follows:

ANSWER.

Comes now the defendant, William N. Lindsay, Lieutenant-Governor of the State of Kansas, and president ex officio of the Senate of the State of Kansas, and for his separate answer to the petition filed herein alleges and states:

I.

That the court is without jurisdiction to try this cause for the reason that the issues raised by the petition are political and not judicial.

II.

That the plaintiffs have no legal capacity to maintain this action.

III.

That the answering defendant denies generally and specifically each, every, and all of the allegations and averments in the petition contained, except such allegations as are hereinafter expressly admitted.

IV.

This answering defendant expressly admits the allegation of fact contained in the first and third paragraphs of plaintiffs' petition.

V.

This answering defendant further expressly admits the allegation of fact contained in paragraph four of plaintiffs' petition; that the proposed Child Labor Amendment to the Constitution of the United States was rejected, between June 2, 1924, and March 18, 1927, by

the legislatures of twenty-six states and that during the same period it was ratified by five states.

But plaintiff alleges that the issue attempted to be raised by reason of the facts admitted, in this the fifth paragraph of this answer, are wholly redundant and immaterial and do not raise any issue upon which the court may grant any relief in this cause for the reason that the officers who are made defendants herein have no power or authority to pass on or determine the validity of the resolution passed.

VI.

For a further answer to the petition filed herein, this answering defendant alleges and states that Senate concurrent resolution No. 3 was, on the 13th day of January, 1937, introduced in the Senate of the State of Kansas according to the rules regularly adopted by said body and, in accordance with such rules, said resolution came before the Senate of the State of Kansas on the 15th day of February, 1937, and after full consideration, it came on regularly for the vote of the Senate.

Thereupon, the chair stated the question: "Shall the resolution be adopted?"

Thereupon, the roll of the Senate was called. Twenty senators voted in favor of the adoption of the resolution and twenty senators voted against the adoption of the resolution. Thereupon, the announcement was made that the Senate was equally divided on the adoption of the resolution. Thereupon, Senator McDonald, a member of the Senate, requested the president of the Senate, this answering defendant, to vote on the resolution.

Thereupon, Senator Coleman, a member of the Senate, rose to a point of order and stated: "As a senator in this body I object to the president voting upon this resolution or exercising any alleged prerogative to vote because of a tie. And I further protest any other declaration as to the result of this vote other than it has

failed to carry by reason of its failure to receive a constitutional majority in accordance with the requirement of the constitution of the United States and the constitution of the State of Kansas, and I desire to be heard on that point of order."

The president of the Senate replying to the objection of Senator Coleman stated: "Under the constitution of Kansas it becomes the duty of the president of the Senate to cast a vote only in the event of a tie. Since it has come to this point, in the opinion of the chair, it is his duty to cast a vote on Senate concurrent resolution No. 3, I want to say that he is casting it after having given the subject considerable study. The president of the Senate votes Aye on Senate concurrent resolution No. 3."

Thereupon, Senator Coleman renewed his objection to which the president of the Senate replied: "It is still the opinion of the chair that the president of the Senate is a part of the Senate, and that the constitution sets out his duties and it becomes his duty to vote when a vote is tied on questions coming before this Senate."

Thereupon, Senate concurrent resolution No. 3 was declared carried and no appeal was taken from the decision of the president of the Senate.

The officers of the Senate, including the secretary of the Senate, duly certified and sent Senate concurrent resolution No. 3 to the House of Representatives for its consideration, in accordance with the laws of the state and rules of the Senate, and the resolution came on for consideration in the House of Representatives and on the 25th day of February, 1937, said resolution was adopted by the House of Representatives of the State of Kansas, sixty-five members voting in favor of the adoption of the resolution which was more than a majority of the members of said House; and, said resolution as thus adopted became the valid act of the legislature of the State of Kansas.

VII.

This answering defendant further states that Senate Rule No. 48 with reference to the procedure for concurrent resolutions, which was fully complied with in the passage of Senate concurrent resolution No. 3 is as follows:

> "Resolutions shall be of the following classes: (1) Senate resolutions, (2) Senate concurrent resolutions, and (3) Senate joint resolutions. In acting on them, the Senate shall observe the following procedure:
>
> 1. Senate resolutions shall be in writing, shall be read and shall lie over one day; they shall not be printed unless ordered by the Senate. There shall be no roll call unless ordered.
>
> 2. Senate concurrent resolutions shall be in writing, shall be read, and shall lie over one day. All Senate concurrent resolutions shall be printed, and shall require a roll call on motion to adopt. Propositions to amend the constitution shall be submitted by concurrent resolutions, to conform to section 1, article 14, of the constitution: PROVIDED, That all concurrent resolutions amending the constitution shall be referred to the proper committees.
>
> 3. Senate joint resolutions shall follow the same procedure as bills, shall be read a first, second and third time, and shall take the regular course of bills on the Calendar, and shall when passed on roll call be signed by the governor.
>
> "All House joint and House concurrent resolutions, when in the Senate, shall follow the same procedure as Senate resolutions of the same class.
>
> "This rule shall not apply to resolutions relating to the business of the day, nor to resolutions for adjournment."

VIII.

This answering defendant further states that Senate resolution No. 59, defining the duties of the secretary of the Senate, is as follows:

> "It is the duty of the secretary to call the roll; report correctly the result of all balloting, aye and no and division votes; read the Journal or cause the same to be read; read all bills, resolutions, petitions or other papers which the Senate may require; deliver all messages to the House of Representatives; certify all enrolled bills, and present the same to the president of the Senate for his signature; endorse upon every paper presented in the Senate the successive stages of action had thereon, and see that proper records be made of the transmission of every paper from one house to the other, or from one office to another; certify to the auditor of state the time of service of members and officers of the Senate, and attend generally to such other matters as his office may require. For the purpose of securing uniformity and system, the following clerks and their assistants shall be under the supervision and control of the secretary, to-wit: The docket clerk, the journal clerk, bookkeeper, calendar clerk and bill clerk."

IX.

This answering defendant further states that Senate Rule No. 74 is as follows:

> "In all cases where these rules do not apply, the rules of parliamentary law laid down in Robert's Rules of Order shall govern."

And that Robert's Rules of Order, article 4, section 21, among other things provides:

> "An appeal may be made from any decision of the chair (except when another appeal is pending),

but it can be made only at the time the ruling is made."

Plaintiffs in this action failed to take any appeal from the decision of the president of the Senate which under the rules of the Senate they had the right to do, and are by reason thereof, estopped from questioning the correctness of the ruling of the president of the Senate.

X.

This answering defendant further states that the lieutenant-governor, by virtue of his office, is a member of the legislature of the State of Kansas, as that term is used in the Constitution of the United States, for the purpose of voting where the Senate is equally divided.

Therefore, this defendant prays that the prayer of plaintiffs' petition be denied.

The defendant, H. S. Busick, Jr., filed his answer as follows:

ANSWER OF THE DEFENDANT H. S. BUZICK, JR., AS SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF KANSAS.

Comes now the defendant, H. S. Buzick, Jr., as Speaker of the House of Representatives of the State of Kansas, and for his answer states that the House of Representatives of the State of Kansas completed its action on Senate Concurrent Resolution number three prior to the filing of this action; that no controversy has arisen concerning the action of the House of Representatives of the State of Kansas with regard to the passage of said Senate Concurrent Resolution number three; and that no order is sought against this answering defendant compelling him to perform or do any act; but only that he be restrained from doing anything further with Senate Concurrent Resolution number three.

Therefore, this answering defendant stands ready to abide the further orders of this Court, and prays that he have and recover his costs.

Similar answers were filed by each of the other defendants, except the State of Kansas, which failed to plead.

To the answer of the lieutenant-governor, plaintiffs filed the following reply:

REPLY OF PLAINTIFFS TO WILLIAM N. LINDSAY AS LIEUTENANT-GOVERNOR OF THE STATE OF KANSAS AND PRESIDENT EX OFFICIO OF THE SENATE OF THE STATE OF KANSAS.

Now come the plaintiffs in the above cause and for their reply to the answer of the said William N. Lindsay as Lieutenant-Governor of the State of Kansas and President ex officio of the Senate of the State of Kansas and deny generally and specifically each and every allegation set out in defendants' answer except such as are herein expressly admitted, and state:

I.

That they deny the allegations contained in the defendant Lindsay's answer, as set out in paragraph one thereof, to-wit:

That the issues raised by the plaintiffs' petition are political and not judicial. Plaintiffs assert that the issues raised are judicial because the question at issue is whether or not the resolution in controversy was legally passed.

II.

That the plaintiffs deny the allegation of the defendant that the plaintiffs have no legal capacity to maintain this action, but state that:

First, the plaintiffs have the legal right to maintain this action because they have a special interest in the

performance of their duty and in the votes which they have cast becoming effective and not nullified by the unlawful counting of said votes.

Second, that plaintiffs as members of the State Senate, have a peculiar and inherent right to have their functions as such members of the Senate and as prescribed by the Constitution and the Laws of this State, protected; and that their rights as such legislators be not usurped or contravened.

III.

Further replying to the defendant Lindsey's answer as set out in paragraph 5, plaintiffs deny that the issues raised by the plaintiffs in paragraph 4 of their petition is redundant and immaterial and do not raise any issue wherein the court may grant any relief in this cause but aver that the officer, Clarence W. Miller, as secretary of the Senate of the State of Kansas, does have the power in this particular case to certify or not to certify as to whether or not the said resolution had been passed by the Senate of the State of Kansas, and that said paragraph does raise a clear and distinct issue as to whether or not his certification was correct and as to whether or not this court should determine the correctness or incorrectness of such certification and whether or not an order should be made, requiring a correct certification to be made.

IV.

Plaintiffs further replying admit that the procedure as set out in paragraph 6 of defendants' answer is substantially correct except that they deny that the officers of the Senate, including the secretary of the Senate, duly certified and sent Senate Concurrent Resolution No. 3 to the House of Representatives for its consideration in accordance with the laws of the State of Kansas and deny that said resolution as adopted by the House be-

came the valid act of the Legislature of the State of Kansas.

V.

Plaintiffs further replying to the defendants' answer, admit the substantial correctness of the rules of the Senate as set out in defendants' answer in paragraph 7.

VI.

Plaintiffs further replying to the defendants' answer, admit that the statement as to the duties of the secretary of the Senate, as set out in defendants' answer in paragraph 8 is substantially correct.

VII.

Plaintiffs further replying to the answer of the defendant Lindsay, state that the Senate rules as set out in paragraph 9, are substantially correct but plaintiffs deny that the failure upon the part of the plaintiffs to take any appeal from the decision of the president of the Senate did in any way estop the plaintiffs from questioning the correctness of the ruling of the president of the Senate. Plaintiffs state that they are not estopped because of such failure for the reason that the question of the right of the Lieutenant-Governor to vote in this instance is not a parliamentary question over which the Senate had control, and because an appeal, though successful, would have been in vain. That the Senate might have control over the interpretation of its own rules but that the action of the presiding officer in this instance was based upon an alleged constitutional right and not upon any right imposed by the Senate rules or Robert's Rules of Order.

VIII.

Plaintiffs further answering deny the statement of the defendant as set out in his answer in paragraph 10, that as Lieutenant-Governor and by virtue of his office

he is a member of the Legislature of the State of Kansas and deny that the Lieutenant-Governor, the defendant, had any right to vote on the Concurrent Resolution No. 3, the subject of this suit; but on the contrary, is specifically eliminated by the constitution of the State of Kansas from having the right or power to vote on the question of the passage of a bill, a joint resolution or a concurrent resolution affecting the ratification of a proposed amendment of the Constitution of the United States.

WHEREFORE, the plaintiffs fully replying to the answers of all the defendants in the above cause, do renew their prayer for a judgment as prayed for in their petition.

Formal replies were filed by plaintiffs to the respective answers of the Secretary of State, the Speaker of the House, and the Chief Clerk of the House.

The foregoing is a true and correct abstract of the record in the above entitled case.

ROLLA W. COLEMAN,
Olathe, Kansas,
ROBERT STONE,
JAMES A. McCLURE,
ROBERT L. WEBB,
BERYL R. JOHNSON,
RALPH W. OMAN,
Topeka, Kansas,
Attorneys for Plaintiff.

The cost of printing this abstract amounts to $———.

[fol. 34] Be it Further Remembered, that afterward and on the 11th day of June, 1937, the same being one of the regular judicial days of the January, 1937, term of the Supreme Court of the State of Kansas, said court being in session in its court room in the city of Topeka, the following proceedings among others was had and remain of record in the words and figures as follows, to-wit:

[fol. 35] IN THE SUPREME COURT OF THE STATE OF KANSAS

Topeka, Friday, June 11, 1937.

No. 33,459

ROLLA W. COLEMAN et al., Plaintiffs,

vs.

CLARENCE W. MILLER et al., Defendants

This cause comes on for hearing upon the pleadings filed herein and thereupon after oral argument by Rolla W. Coleman and Robert Stone for the plaintiffs; and E. R. Sloan, Payne Ratner and C. V. Beck, Attorney General, for the defendants said cause is submitted upon brief of both parties and taken under advisement by the court.

[fol. 36] Be it Further Remembered, that afterward and on the 16th day of September, 1937, the same being one of the regular judicial days of the July, 1937, term of the Supreme Court of the State of Kansas, said court being in session in its court room in the city of Topeka, the following proceedings among others was had and remain of record, in the words and figures as follows, to-wit:

[fol. 37] IN THE SUPREME COURT OF THE STATE OF KANSAS

Topeka, Thursday, September 16, 1937.

No. 33,459

ROLLA W. COLEMAN et al., Plaintiffs,

vs.

CLARENCE W. MILLER et al., Defendants

This cause comes on for decision and thereupon after due consideration by the court it is ordered and adjudged

that the peremptory writ of mandamus prayed for herein be denied.

It is further ordered that the plaintiff pay the costs of this proceeding taxed at $— and hereof let execution issue.

Allen, J. delivered the opinion of the court. Hutchison, J. dissenting. Dawson, C. J.; Harvey, J.; Smith, J.; Thiele, J.; Wedell, J. and Allen, J. concurring. Smith, J. concurring specially.

[fol. 38] Be it Further Remembered, that on the 16th day of September, 1937, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, the Opinion of the Court with the Syllabus attached, a copy of which Opinion and Syllabus is in the words and figures, as follows, to-wit;

No. 33,459

SUPREME COURT
STATE OF KANSAS

JULY TERM, 1937

PRESENT:

HON. JOHN S. DAWSON, CHIEF JUSTICE

HON. W. W. HARVEY,
HON. WM. EASTON HUTCHISON,
HON. WILLIAM A. SMITH,
HON. WALTER G. THIELE,
HON. HUGO T. WEDELL,
HON. HARRY K. ALLEN,
} JUSTICES.

Coleman v. Miller

Opinion Filed September 16, 1937

No. 33,459

ROLLA W. COLEMAN, W. A. BARRON, CLAUDE C. BRADNEY, J. B. CARTER, WILFRID CAVANESS, KIRKE W. DALE, JESSE C. DENIOUS, BENJAMIN F. ENDRES, EWING HERBERT, W. E. IRELAND, WALTER F. JONES, WALTER E. KEEF, FRED R. NUZMAN, ERNST F. PIHLBLAD, C. W. SCHMIDT, THALE P. SKOVGARD, HARRY M. TOMPKINS, RAY C. TRIPP, ROBERT J. TYSON, N. B. WALL, RAIMON C. WALTERS, GEORGE W. PLUMMER, FRANK C. POMEROY and A. W. RELIHAN, *Plaintiffs*, v. CLARENCE W. MILLER, as Secretary of the Senate, WILLIAM M. LINDSAY, as Lieutenant Governor and President ex officio of the Senate, H. S. BUZICK, JR., as Speaker of the House of Representatives, W. T. BISHOP, as Chief Clerk of the House of Representatives, and FRANK J. RYAN, as Secretary of State; and the STATE OF KANSAS, *Defendants*.

SYLLABUS BY THE COURT

1. STATUTES—*Enactment of Bills and Resolutions—Lieutenant Governor's Right to Vote.* Upon the passage of a bill or joint resolution, where the senate is equally divided, the lieutenant governor, under section 12 of article 1, and section 13 of article 2 of the constitution, is not entitled to vote.
2. SAME—*Concurrent Resolution—Nature and Effect.* Where upon the passage of a senate concurrent resolution ratifying the proposed child-labor amendment to the constitution of the United States, the senate was equally divided, it is held that as such measure was not an act of legislation having the force of law, but a mere expression of assent of the legislature to the proposed amendment, under the above sections of the constitution of Kansas, the lieutenant governor was entitled to cast the deciding vote on such concurrent resolution.
3. CONSTITUTIONAL LAW — *Amendments — Ratification by States — Validity.* Where the legislature has rejected an amendment to the constitution of the United States proposed by congress, it may later reconsider its action and give its approval to such proposed amendment.
4. SAME—*Amendments—Time for Ratification.* The child-labor amendment to the constitution of the United States, proposed by congress by resolution adopted by that body on June 2, 1924, retained its vitality as a proposed amendment, and the action of the state senate on February 15, 1937, in adopting the senate concurrent resolution ratifying such proposed amendment was valid and binding.

Original proceeding in mandamus. Opinion filed September 16, 1937. Writ denied.

Rolla W. Coleman, of Olathe, *Robert Stone, James A. McClure, Robert L. Webb, Beryl R. Johnson* and *Ralph W. Oman*, all of Topeka, for plaintiffs.

E. R. Sloan, of Topeka, for William M. Lindsay, lieutenant governor.

C. V. Beck, attorney general, and *Payne H. Ratner,* of Parsons, for Frank J. Ryan, secretary of state.

Harry Fisher, J. S. Parker, C. V. Beck, all of Topeka, for H. S. Buzick, speaker of the house, and W. T. Bishop, chief clerk.

The opinion of the court was delivered by

ALLEN, J.: This is an original proceeding in mandamus brought by twenty-one members of the state senate and three members of the house of representatives to compel Clarence W. Miller, secretary of the state senate, to erase an endorsement on senate concurrent resolution No. 3 (generally known as the child-labor amendment resolution) to the effect that the same was adopted by the senate, and to compel him to endorse thereon the words "was not passed."

There is no dispute as to the facts. On June 2, 1924, the sixty-eighth congress of the United States proposed the following amendment to the constitution of the United States:

"SECTION 1. The congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

"SECTION 2. The power of the several states is unimpaired by this article except that the operation of state laws shall be suspended to the extent necessary to give effect to legislation enacted by the congress."

On January 13, 1937, a resolution known as "senate concurrent resolution No. 3" was introduced into the state senate. This resolution, after the preamble setting forth the joint resolution of congress in proposing an amendment to the constitution of the United States, commonly known as the child-labor amendment, provided:

"*Be it resolved by the senate of the state of Kansas, the house of representatives concurring therein,* That the foregoing and above-cited amendment to the constitution of the United States be, and the same is hereby ratified by said legislature of the state of Kansas as a part of, and amendment to, the constitution of the United States."

On February 15, 1937, this resolution came up for consideration in the senate, and upon roll call, twenty senators voted against the adoption and twenty senators voted in favor of the adoption of the resolution. Thereupon W. M. Lindsay, the lieutenant governor of the state, the presiding officer, over the protest of one of the senators, cast his vote in favor of the adoption of the resolution.

As stated, this proceeding in mandamus was brought to compel the secretary of the senate to erase the endorsement on the resolution

that the same was passed, and to make an endorsement thereon that it had not passed.

An alternative writ was allowed and answers filed by all the defendants except the state of Kansas.

At the threshold we are confronted with the question raised by the defendants as to the right of the plaintiffs to maintain this action. It appears that on March 30, 1937, the state senate adopted a resolution directing the attorney general to appear for the state of Kansas in this action. It further appears that on April 3, 1937, on application of the attorney general, an order was entered making the state of Kansas a party defendant. The state being a party to the proceedings, we think the right of the parties to maintain the action is beyond question. (G. S. 1935, 75-702; *State, ex rel., v. Public Service Comm.*, 135 Kan. 491, 11 P. 2d 999.)

Plaintiffs contend: First, The amendment was not ratified by the senate because the lieutenant governor was not a member of the senate and had no right to vote; that the resolution did not receive a vote of a majority of the members of the senate and was lost; second, when the legislature, on January 30, 1925, adopted a resolution to reject the amendment and filed notification thereof with the secretary of state, it exhausted its power with reference to the proposed amendment.

Did the lieutenant governor have the right to cast the deciding vote on senate concurrent resolution No. 3 when the senate was equally divided? In the solution of this question we first look to the constitution of the United States.

Article 5 of the constitution of the United States provides:

"The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; *provided,* That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate."

It is settled beyond controversy that the function of a state legislature in ratifying a proposed amendment to the constitution of the United States, like the function of congress in proposing an amendment, is a federal function derived from the federal constitution;

and it transcends any limitation sought to be imposed by the people of a state. The power to legislate in the enactment of the laws of a state is derived from the people of the state, but the power to ratify a proposed amendment to the federal constitution has its source in that instrument. The act of ratification by the state derives its authority from the federal constitution, to which the state and its people alike have assented.

(*Leser v. Garnett*, 258 U. S. 130, 42 S. Ct. 217, 66 L. Ed. 505; *Hawke v. Smith*, 253 U. S. 221, 40 S. Ct. 495, 64 L. Ed. 871, 10 A. L. R. 1504; *Rhode Island v. Palmer*, 253 U. S. 350, 40 S. Ct. 486, 64 L. Ed. 946.)

If the legislature, in ratifying a proposed amendment, is performing a federal function, it would seem to follow that ratification is not an act of legislation, in the proper sense of that term. It has been so held. In *Hawke v. Swith*, supra, it was said: "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." (p. 229.)

The function of the legislature being merely to register the assent or approbation of the state to such proposed amendment, in what manner must such assent be manifested? As the legislature of Kansas is a parliamentary body, we must look to the law by which proceedings in that body are governed.

Under section 2 of article 2 of the constitution of Kansas, and G. S. 1935, 4-101, the senate shall consist of forty members, and the house of representatives of one hundred and twenty-five members. (*State, ex rel., v. Francis, Treas.*, 26 Kan. 724.) As it is conceded that senate concurrent resolution No. 3 duly passed the house, our attention must be directed to the action in the senate.

Under the constitution of Kansas (sec. 1, art. 1) the lieutenant governor is a member of the executive department of the state.

Parliamentary action in the senate is governed by two provisions of the constitution. These provisions are:

"The lieutenant governor shall be president of the senate, and shall vote only when the senate is equally divided . . ." (Sec. 12, Art. 1.)

"A majority of all the members elected to each house, voting in the affirmative, shall be necessary to pass any bill or joint resolution." (Sec. 13, Art. 2.)

It is argued on behalf of the plaintiffs that senate concurrent resolution No. 3 did not receive a vote of a majority of the members of the senate, that the lieutenant governor is not a member of the sen-

ate, hence the resolution did not pass. This view finds a conflict in the two sections, and by placing emphasis on section 13, article 2, virtually expunges section 12 of article 1 from the constitution.

On the other hand, defendants contend that the lieutenant governor is entitled to vote as a member of the senate on the final passage of bills and joint resolutions. As he was not elected as a member of the senate, this theory writes with invisible ink an amendment to section 13 of article 2, and ignores section 1 of article 1, which specifies that the lieutenant governor is a member of the executive department of the state.

It is evident, therefore, that both plaintiffs and defendants in this controversy find an irreconcilable conflict in the two provisions of the state constitution.

In I Cooley's Constitutional Limitations, 8th Ed., p. 128, the rule of construction is stated as follows:

"The rule applicable here is that *effect is to be given, if possible, to the whole instrument,* and to every section and clause. If different portions seem to conflict, the courts must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory.

"This rule is applicable with special force to written constitutions, in which the people will be presumed to have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, leaving as little as possible to implication. It is scarcely conceivable that a case can arise where a court would be justified in declaring any portion of a written constitution nugatory because of ambiguity. One part may qualify another so as to restrict its operation, or apply it otherwise than the natural construction would require if it stood by itself; but one part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together. Every provision should be construed, where possible, to give effect to every other provision."

Applying these rules of construction, we think the two provisions of the constitution may be harmonized, hence it is not necessary to make a choice between undesirable alternatives. We think the lieutenant governor had a right to vote on the concurrent resolution, for the simple reason that *the vote was not on a bill or joint resolution,* that is, it was not on an act of legislation having the force of law. The vote was merely on a measure expressing assent to the proposed amendment.

Under section 12 of article 1, the lieutenant governor "shall vote only when the senate is equally divided." He may vote, then, in some cases. When? Obviously in all cases of equal division of the

senate, except when his right to vote is expressly denied. By section 13 of article 2, a majority of all members elected to the senate, voting in the affirmative, is necessary to pass any bill or joint resolution. The lieutenant governor was not elected to the senate. The constitution gives him the right to vote when the senate is equally divided, but denies this right in two cases—when the equal division is on a bill or a joint resolution.

The fundamental fallacy in the argument presented on behalf of plaintiffs is in the unwarranted assumption that because the lieutenant governor cannot vote on a bill or joint resolution, he is denied the right to vote in all cases. In effect, plaintiffs insist that the legislature in acting on the resolution for ratification of the proposed amendment to the federal constitution was engaged in an act of legislation having the force of law.

Article 5 of the constitution of the United States provides that congress, when two thirds of both houses deem it necessary, shall propose amendments to the constitution which, when ratified by the legislatures of three fourths of the states, shall become a part of the constitution. It is not necessary that such proposed amendment be approved by the president, nor that the act of ratification be approved by the governor of a state. Ratification is not an act of legislation; it is merely an expression of the assent of the state to the proposed amendment.

As stated above, the real question for our determination is how that assent may be manifested by the legislature. The vehicle used by the legislature was a concurrent resolution. While concurrent resolutions are not mentioned in the constitution, the constitution does use the expression "bill or joint resolution." In legislative practice a distinction is made between "joint resolutions" and "concurrent resolutions." Senate rule No. 48 reads as follows:

"Resolutions shall be of the following classes: (1) senate resolutions, (2) senate concurrent resolutions, and (3) senate joint resolutions. In acting on them, the senate shall observe the following procedure:

"1. Senate resolutions shall be in writing, shall be read and shall lie over one day; they shall not be printed unless ordered by the senate. There shall be no roll call unless ordered.

"2. Senate concurrent resolutions shall be in writing, shall be read, and shall lie over one day. All senate concurrent resolutions shall be printed, and shall require a roll call on motion to adopt. Propositions to amend the constitution shall be submitted by concurrent resolutions, to conform to section 1, article 14, of the constitution: *Provided*, That all concurrent resolutions amending the constitution shall be referred to the proper committee.

"3. Senate joint resolutions shall follow the same procedure as bills, shall be read a first, second and third time, and shall take the regular course of bills on the calendar, and shall when passed on roll call be signed by the governor."

In Legislative Procedure in Kansas, by Guild and Snider, pp. 77-80, it is said:

"Concurrent resolutions are used to express the will or sentiment of both houses of the legislature, and therefore must be acted upon by both houses. There has been considerable confusion in Kansas and in many other states concerning the distinction between concurrent and joint resolutions, and in Kansas the practice is far from standardized. A study of precedents, however, shows that concurrent resolutions are always used in two classes of cases. The first general group concerns the mere expression of an opinion or sentiment by the legislature. Resolutions memorializing congress, relating to the death of a public man, or expressing an opinion on any subject in contrast to passing a law thereon are regularly in the form of concurrent resolutions. In the second group, definite action is taken, binding, however, solely upon the legislature itself and its officers, and not affecting directly the rights of any persons not members of the legislature. Illustrations of such action are: Providing for a joint meeting of the two houses; the appointment of joint committees; agreeing upon final adjournment or setting a date for the introduction or consideration of bills; creating a commission of legislators to investigate public offices. In both of the above groups the general practice in Kansas appears to be to act by concurrent resolutions."

. . . . . .

"A joint resolution pertains to business between the two branches of the legislature and must be acted upon by both houses. A joint resolution has the same binding effect as a law. It is, however, used to accomplish a temporary purpose, and its force is at an end when that purpose has been accomplished. Hence it is now the form prescribed by the rules for appropriations."

. . . . . .

"Joint resolutions take the same course as bills, requiring three readings, roll call upon final passage, passage by a constitutional majority of both houses, enrollment and signature by the governor."

The constitution (section 20, article 2) provides that no law shall be enacted except by bill. The structural part of a bill consists of the title, the enacting clause and the body or subject matter. Bills and joint resolutions must be signed by the governor. (Const., sec. 14, art. 2.) No bill shall contain more than one subject, which shall be clearly expressed in the title. (Const., sec. 16, art. 2.) The constitution provides for the form of the enacting clause of all laws (sec. 20, art. 2), and that no law of a general nature shall be in force until the same shall be published. (Sec. 19, art. 2.)

Thus both by the constitution and by legislative practice, bills

and joint resolutions when duly passed and signed by the governor become legislative enactments, with the force of law. If the senate, on the passage of a bill or joint resolution, should be equally divided, the lieutenant governor, under section 13 of article 2, cannot cast the deciding vote. But it is equally clear that if a proposition other than a bill or joint resolution is before the senate, and on the passage of such measure the senate should be equally divided, then, under section 12 of article 1 of the constitution, the lieutenant governor may cast the deciding vote. Otherwise, section 12 of article 1 would be as futile as a painted ship on a painted sea.

In so holding we are far from intimating that the title of a resolution, whether "joint" or "concurrent," governs its nature. That must be determined by the purpose and object of the resolution. If the measure has the characteristics of a law, if it appears to have been passed by the law-making power within the scope of its authority as such, and to furnish a general rule of action binding upon individuals, it may be classed as an act of legislation. (Jameson on Constitutional Conventions, 4th ed., sec. 547.) Two cases will illustrate this proposition.

In *State, ex rel., v. Knapp,* 102 Kan. 701, 171 Pac. 639, a resolution entitled "house concurrent resolution" was held to be a bill—that as it had all the characteristics of a legislative act it was a bill within the meaning of the constitution. In that case the court said:

"The inference seems clear that a joint resolution which is approved by the governor after its adoption by the legislature thereby becomes a law, although this is not declared in so many words. If a law can be enacted only by a bill, and a joint resolution may become a law, it should seem that a joint resolution must be a bill, or may in some instances be regarded as a bill."

. . . . . .

"Whether or not legislation may ordinarily be accomplished by means of adoption of a proposition submitted in the form of a resolution, we conclude that the process used in the case now under consideration amounted to the enactment of a law by bill. While the instrument acted upon by the two houses and the governor described itself as a concurrent resolution, it had every characteristic, in form and treatment, of such a bill as by the combined action of the legislature and the governor becomes a law. It had a title which clearly expressed its subject to be the appropriation of money to pay for the Lincoln statue. It was read on three separate days in each house. It contained a provision declaring that 'this act' should take effect upon its publication. In each house it received the votes of a majority of the members elected, and the result of the roll call was entered in full on the journal. It

was submitted to and approved by the governor, and published in the official state paper and in the statute book. 'Joint resolutions,' which may sometimes become laws, are required by the constitution to be adopted by a majority of the membership in each house (art. 2, § 13), by a recorded vote (art. 2, § 10), as well as to be approved by the governor, and 'acts' of the legislature must take effect at a prescribed time, and be published (art. 2, § 19); but, save for these requirements, no mere resolution needs to have a title, to be read on three separate days, to show when it takes effect, to be adopted by a yea-and-nay vote entered on the journal, to be approved by the governor, or to be published. The treatment given this measure seems to show that it was regarded by the legislature and the governor as a 'bill.' It ought to be given effect as such, unless some insuperable obstacle is interposed. The fact that it is styled a concurrent resolution, rather than a joint resolution or bill, is not in itself especially important. It should be classified by its essential qualities rather than by what it happens to have been called." (p. 704.)

But this construction did not meet the unanimous approval of the court; three members of the court dissented. In the dissenting opinion of Justice Dawson it was said:

"A house concurrent resolution is not a law. The constitution takes no cognizance of such a resolution and does not define it. A resolution is a declaration of opinion, or the expression of a purpose—nothing more. In the Session Laws of 1917 are concurrent resolutions expressing the compliments of the house and senate to Hon. Charles F. Scott (ch. 339); expressing condolences on the death of Frank Edimer McFarland (ch. 345); requesting the Kansas senators and representatives in congress to vote for woman suffrage (ch. 351), etc. There are twenty-eight pages of concurrent resolutions in the Session Laws of 1913, the subject matter ranging all the way from memorials to the president on the high cost of living (ch. 341), to denunciations of 'log rolling' and 'pork barrel' raids on the national treasury (ch. 340). And the decision in this case raises all that sort of stuff to the dignity of legislation." (p. 708.)

A similar question arose in the case of *Kelley v. Secretary of State*, 149 Mich. 343, 112 N. W. 978. The Michigan constitution provided:

"No bill or joint resolution shall become a law without the concurrence of a majority of all the members elected to each house."

"The lieutenant governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate all questions; and when there is an equal division he shall give the casting vote." (p. 346.)

Upon the passage of a resolution entitled "concurrent resolution" the senate, consisting of thirty-two members, was equally divided. Thereupon the lieutenant governor voted for the resolution and declared it adopted. The court held the title "concurrent resolution" was unimportant—that its nature and purpose showed that it was

intended as a legislative act, and therefore the lieutenant governor could not vote thereon. The court said:

"But the resolution, if effective, is none the less a law. It is a law for the procurement of such information. If effective, it imposes legal duties upon the secretary of state (and, if it did not, relator is not entitled to relief), upon the clerks, sheriffs, and boards of election commissioners of the several counties of the state, and upon all the canvassing boards in the state. It undertakes—and, if effective, it succeeds in that undertaking—to provide a legal election not otherwise provided for, and to surround the same with all the safeguards of law." (p. 346.)

"It is also open to the construction—and this is the construction placed upon it by the attorney general—that the right of the lieutenant governor to give a casting vote is limited to the proceedings in the committee of the whole. *And it is, perhaps, open to the construction that he also has the right to give the casting vote upon the passage of resolutions which do not have the force of law,* if, as relator contends, there are such resolutions." (p. 347.) (Italics inserted.)

"Whether his right to give such casting vote is limited to proceedings in committee of the whole, *or extends to resolutions, if there be such, which do not have the force of law,* is a question which is not before us and which we do not determine." (p. 348.) (Italics inserted.)

But since there is no valid ground for the contention that senate concurrent resolution No. 3, now before us, was intended as an act of legislation with the force of law, neither the Kansas case of *State, ex rel., v. Knapp,* nor the Michigan case of *Kelley v. Secretary of State,* noted above, has any bearing on the question in this controversy. The distinction is not between a joint resolution and a concurrent resolution; the line is drawn between a measure that has the force of law, and a motion or resolution that is not an act of legislation.

Under article 5 of the constitution of the United States the legislature of Kansas had a right to express its assent to the proposed child-labor amendment. The method adopted was senate concurrent resolution No. 3. This was in no sense an act of legislation in the proper sense of that term; it was the mode in which the legislative assent or approbation was manifested. The senate being equally divided, the lieutenant governor was authorized to cast the deciding vote.

The next question to be considered arises out of the action of the legislature on the 30th day of January, 1925, in rejecting the proposed amendment. On that date the legislature adopted a resolution entitled "house concurrent resolution No. 5," which provided:

"That the said proposed amendment to the constitution of the United States of America be and the same is hereby rejected by the legislature of the state of Kansas."

Certified copies of this resolution were duly forwarded to the Secretary of State at Washington, D. C., and to the presiding officer of each house of congress.

Plaintiffs contend that when Kansas adopted this resolution rejecting the proposed child-labor amendment, it completed its action and exhausted its power with reference to the proposed amendment, and pray that this court enter a declaratory judgment declaring the law with respect to the right of the legislature of the state of Kansas to further consider any resolution, having once rejected said amendment.

It is generally agreed by lawyers, statesmen and publicists who have debated this question that a state legislature which has rejected an amendment proposed by congress may later reconsider its action and give its approval, and that a ratification once given cannot be withdrawn.

In Jameson on Constitutional Conventions, 4th edition, sections 576 and 577, a history of the adoption of the 13th and 14th amendments to the federal constitution is given:

"A question of much interest has several times arisen, whether, when a state legislature has once passed upon an amendment to the federal constitution proposed by congress, its action can afterwards be reconsidered by it, or by its successor, and reversed. It may be useful to consider this question in the two cases, 1, where the action of the legislature was negative, rejecting, and 2, where it was affirmative, ratifying, an amendment.

"1. The question in its negative form first arose, in 1865, in New Jersey, in relation to the thirteenth amendment.

"The amendment was rejected by the legislature of that state December 1, 1865, and notice thereof was duly given to the Secretary of State at Washington. That officer published his certificate December 18, 1865, declaring that the amendment had been adopted by the votes of twenty-seven states, and had become a part of the constitution. In this certificate no mention was made of New Jersey. January 23, 1866, the legislature of New Jersey reversed its previous action, and approved the amendment. The same question arose again in North Carolina, South Carolina, and Georgia, in relation to the fourteenth amendment, submitted by congress to the states on the 16th of June, 1866. The legislatures of those states, together with those of five others, Texas, Virginia, Kentucky, Delaware, and Maryland, rejected the amendment. Afterwards, the governments of ten of the rebel states, including the three first named, were, by the act of congress of March 2, 1867, and the acts supplementary thereto, declared to be illegal, and new governments were erected therein under the direction of congress. By the new legislatures of North Carolina and South Carolina, the former on the 4th and the latter on the 9th of July, 1868, resolutions were passed ratifying the fourteenth amendment. These resolutions were certified to the Secretary of State, and the votes of

those states were, in pursuance of a resolution of congress, counted by that officer as valid votes, and the amendment was on the 20th of July, 1868, in a certificate of that date, proclaimed by him to have been duly ratified. The new legislature of Georgia, in like manner, on the 21st of July, 1868, receded from its vote rejecting the amendment, and passed a resolution ratifying it, and that state was included by the Secretary of State amongst the ratifying states in a second certificate, issued July 28, 1868.

"Were the legislatures in receding thus, and ratifying after having once rejected the amendment, acting within the scope of their powers? The subsequent recognition of the votes by congress, and by the Secretary of State, as valid, must, we think, settle this question in the affirmative."

It would seem, then, that a state legislature which has rejected an amendment proposed by congress may later reconsider its action and give its approval. (Willoughby on the Constitution, sec. 329a.)

In a release from the department of state under date of April 20, 1935, attached as an exhibit to plaintiff's petition in this case, giving the status of the child-labor amendment, it appears that in five states, Indiana, Minnesota, New Hampshire, Pennsylvania and Utah, after the proposed amendment had been rejected, each of the states later adopted a resolution of ratification. When these states rejected the amendment, was their power with reference to the proposed amendment exhausted? If so, the subsequent ratification would be void. Is it to be seriously argued that the Secretary of State could not count these five states in making up the total number of states necessary to adopt the amendment?

Thus it appears to be an historical fact that many states have rejected proposed amendments, and have later ratified them.

Aside from the historical facts, and the practical construction by the states as to the right to ratify after a former rejection, Judge Jameson argues that upon principle the right is unquestionable. We quote from sections 579, 581 and 583 of his work on Constitutional Conventions:

"But, whether this decision is authority upon the question now considered or not, the right of a state legislature, after a negative vote has once been passed, to recede from it and ratify an amendment, is, we think, upon principle, unquestionable. The language of the constitution is, that amendments proposed by congress, in the mode prescribed, 'shall be valid to all intents and purposes, as part of this constitution, *when ratified by the legislatures of three fourths of the several states*,' etc. By this language is conferred upon the states, by the national constitution, a special power; it is not a power belonging to them originally by virtue of rights reserved or otherwise. When exercised, as contemplated by the constitution, by ratifying, it ceases to be a power, and any attempt to exercise it again must be nullity. But, until so

exercised, the power undoubtedly, for a reasonable time at least, remains." (§ 579.)

"To the conclusion that rejection forms no barrier in the way of afterwards ratifying an amendment it may be objected that it recognizes power in the states to ratify, but no power to reject a proposed amendment. This objection is specious, but it has no real foundation. To say that a state has no power to reject would be untrue; for it is an historical fact that, in point of form, many states have rejected amendments, and it would be puerile to contend that a right to pass upon a proposition does not involve a right either to reject or to ratify it. The real question here is what, under the constitution, is the consequence of rejection? Does it, or does it not, as to the rejecting state, definitely settle the fate of the amendment? What we insist upon is, that a state has a right at some time to ratify an amendment submitted to it. That is precisely what is asked of it by congress, and it is that which the constitution empowers it to do. The authority charged with inspecting such votes, therefore, cannot refuse to receive one, certainly if offered within a reasonable time, until after a ratifying vote shall have been received. This view of the question was well presented by Governor Bramlette, of Kentucky, to whom the resolutions above mentioned rejecting the thirteenth amendment had been communicated for his approval, in a message to the legislature of that state. Declining to return the same with his dissent, on the ground that the action of the legislature was complete without his approval, but yet expressing his dissatisfaction with them, and his regret that the amendment had not been ratified, he undertook, as requested in the second resolution, to forward them to the President and to the presiding officers of the two houses of congress. In the course of his message he said:

" 'Rejection by the present legislative assembly only remits the question to the people and the succeeding legislature. Rejection no more precludes future ratification than refusal to adopt any other measure would preclude the action of your successors. When ratified by the legislatures of three fourths of the several states, the question will be finally withdrawn, and not before. Until ratified it will remain an open question for the ratification of the legislatures of the several states. When ratified by the legislature of a state, it will be final as to such state; and, when ratified by the legislatures of three fourths of the several states, will be final as to all. Nothing but ratification forecloses the right of action. When ratified all power is expended. Until ratified the right to ratify remains.' " (§ 581.)

It is also true that a state having once ratified an amendment, a subsequent rejection is void. On this point Jameson says:

"Waiving the consideration of principles, however, the question may be regarded as settled by authority, if a resolution of congress upon it is to be taken as decisive. We have seen that when the votes upon the fourteenth amendment were canvassed by the Secretary of State, doubts were entertained by him whether those of New Jersey and Ohio, whose legislatures had first adopted, and then attempted to reject, that amendment, were to be counted as having adopted it. This doubt was settled by congress, which

declared by resolution that they were to be counted among the ratifying states, which was accordingly done." (§ 584.)

From the foregoing and from historical precedents, it is also true that where a state has once ratified an amendment it has no power thereafter to withdraw such ratification. To hold otherwise would make article 5 of the federal constitution read that the amendment should be valid "when ratified by three fourths of the states, each adhering to its vote until three fourths of all the legislatures shall have voted to ratify."

It is clear, then, both on principle and authority, that a proposed amendment once rejected by the legislature of a state may by later action of the same legislature be ratified; and that when a proposed amendment has once been ratified the power to act on the proposed amendment ceases to exist.

We hold that the legislature of Kansas had power to act on senate concurrent resolution No. 3, and that the resolution having duly passed the house of representatives and the senate, the act of ratification of the proposed amendment by the legislature of Kansas was final and complete.

Finally it is urged that the proposed amendment has lost its potency by old age. This question was considered by Judge Jameson in his work on the constitution, and we quote from sections 585 and 586:

"The same consideration will, perhaps, furnish the answer to the second question. The constitution gives to congress the power to submit amendments to the states; that is, either to the state legislatures or to conventions called by the states for this purpose, but there it stops. No power is granted to prescribe conditions as to the time within which the amendments are to be ratified, and hence to do so would be to transcend the power given. The practice of congress in such cases has always conformed to the implied limitations of the constitution. It has contented itself with proposing amendments, to become valid as parts of the constitution, according to the terms of that instrument. It is, therefore, possible, though hardly probable, that an amendment, once proposed, is always open to adoption by the nonacting or nonratifying states.

"The better opinion would seem to be that an alteration of the constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by congress. (§ 585.)

"We discuss this question here merely to emphasize the dangers involved in the constitution as it stands, and to show the necessity of legislation to make certain those points upon which doubts may arise in the employment

of the constitutional process for amending the fundamental law of the nation. A constitutional statute of limitation, prescribing the time within which proposed amendments shall be adopted or be treated as waived, ought by all means to be passed." (§ 586.)

In submitting the proposal for the eighteenth amendment, congress interpolated a limitation that it should be inoperative unless ratified "within seven years from the date of the submission hereof." A similar provision as to the time of ratification was contained in the submission of the twentieth and twenty-first amendments.

The power of congress to fix such a limitation was challenged in *Dillon v. Gloss,* 256 U. S. 368, 41 S. Ct. 510, 65 L. Ed. 994. The court held that congress had power to fix the limitation within some reasonable time and that seven years was a reasonable time. This was the decision in the case. The court, *obiter,* said:

"These considerations and the general purport and spirit of the article lead to the conclusion expressed by Judge Jameson 'that an alteration of the constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by congress.' That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the states many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more states to make three fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from article 5 is that the ratification must be within some reasonable time after the proposal.

"Of the power of congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the constitution speaks in general terms, leaving the congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and article 5 is no exception to the rule. Whether a definite period for ratification shall be fixed, so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified." (p. 375.)

It will be observed that the supreme court in its opinion quoted with approval the statement of Jameson that a proposed amendment

"has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived."

The struggle over the child-labor problem is a part of the recent history of the United States. The attempt of congress to solve the problem under the commerce clause of the constitution came before the supreme court in 1918 in *Hammer v. Dagenhart*, 247 U. S. 251, 38 S. Ct. 529, 162 L. Ed. 1101. The act was held unconstitutional.

Following its failure to control the evil of child labor under the commerce clause, congress turned to the taxing power. This second act of congress was declared unconstitutional in 1922 in *Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 42 S. Ct. 449, 66 L. Ed. 817. Following these vain attempts to control the problem, congress in 1924 proposed the child-labor amendment.

The history of the agitation over the child-labor question since the proposed amendment is a matter of common knowledge. We have no concern with the wisdom of the proposed amendment, but of necessity must hold that the proposal "has relation to the sentiment and felt needs of today" which seems to be the criterion adopted by the supreme court in *Dillon v. Gloss*, supra. We therefore hold the proposed amendment retains its original vitality, and that the assent of the legislature was legally manifested by the adoption of senate concurrent resolution No. 3. The writ of mandamus is denied.

HUTCHISON, J., dissenting.

SMITH, J. (concurring specially): I concur in the judgment that the writ should be denied, but do not agree altogether with what is said in the opinion as to the reasons therefor, especially with reference to the second paragraph of the syllabus.

The opinion in effect places its conclusion upon a distinction between a joint resolution and a concurrent resolution. The holding is that had this been a joint resolution the lieutenant governor could not have voted on its passage. I can see no reason why this should be true. What is there about a joint resolution that its passage should be expedited, while the passage of a concurrent resolution should be made more difficult? If any distinction should be made it seems to me that as important a step as a change in the federal constitution should be hedged about with more safeguards than a

resolution expressing the opinion of the two houses of the legislature on some public question.

I prefer the view that the president of the senate has the right to vote on any matter that comes before the senate when the senate is equally divided. I believe this position may be maintained by an examination of the language of the constitution.

In the first place section 13 of article 2 does provide that a majority of all the members elected to each house voting in the affirmative shall be necessary to pass any bill or joint resolution. It is true that the president of the senate is not elected to the senate, that is, he is not elected to it as a senator, but it is hardly correct to say that he is not elected to it at all.

We must consider all the sections of the constitution. Section 1, article 1, provides for the executive branches of the state and government. Among the officers provided for are the governor and lieutenant governor. Then follow some sections that define the duties and powers of the governor. Then article 1, section 11, provides that in case of the death, impeachment, resignation, removal or other disability of the governor, the power and duties of the office for the residue of the term or until the disability shall be removed shall devolve upon the president of the senate. It should be noted that this section does not say "lieutenant governor"—it says "president of the senate." The next section is as follows:

"The lieutenant governor shall be president of the senate, and shall vote only when the senate is equally divided. The senate shall choose a president pro tempore, to preside in case of his absence or impeachment, or when he shall hold the office of governor."

The language should be noted carefully. The first statement is that the lieutenant governor "shall be president of the senate." With this provision in the constitution it is plain that when the people elect a lieutenant governor they are electing a president of the senate. Indeed, with a single exception, only one lieutenant governor ever did anything more than act as president of the senate. That is the occasion when Nathaniel Greene succeeded Governor Samuel J. Crawford, who resigned as governor in 1868 to accept a commission as colonel of the 19th Kansas Volunteers to fight Indians on the western frontier of our state.

Let us examine the next statement in the first sentence of this section. It says that the president of the senate shall vote only when the senate is equally divided. The section does not say that

the president of the senate shall not vote on the passage of a bill or a joint resolution, but it says he shall vote only when the senate is evenly divided. A fair inference to be drawn from this language is that he could vote on any matter before the senate when the senate is equally divided.

We thus have a constitution, the various provisions of which it is our duty to construe together. When this is done I have no difficulty in reaching a conclusion that the lieutenant governor is a part of the senate and has the right to vote on any matter that comes before the senate where the senate is equally divided. I do not concur in the language in the opinion wherein it is stated that the action of the senate was not a legislative act. To my mind it was a legislative act of a high degree of importance.

[fol. 58] Be it Further Remembered, that afterward and on the 6th day of October, 1937, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, a Motion for Rehearing, prepared by the Plaintiff herein, a copy of which Motion for Rehearing is in the words and figures as follows, to-wit;

[fol. 59] IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 33459

ROLLA W. COLEMAN et al., Plaintiffs,

vs.

CLARENCE W. MILLER et al., Defendants

PETITION FOR REHEARING

Filed Oct. 6, 1937. E. E. Clark, Clerk Supreme Court

Come now the plaintiffs in the above entitled action and respectfully petition the Court for a rehearing herein for the following reasons:

1. Under the opinion filed herein and the conclusions of law and the facts found by the court, the lieutenant governor was not entitled to vote upon the resolution to ratify the proposed amendment.

2. The court erred in holding that where the legislature has rejected an amendment to the constitution proposed by Congress it may later reconsider its action and give its approval to such proposed amendment.

3. The court erred in holding that the proposed amendment retained its validity after it had been rejected by a majority of the states.

4. The court erred in holding that the proposed amendment retained its validity although more than 12 years had elapsed since its original submission by Congress.

[fol. 60] In support of the above, the plaintiffs respectfully suggest the following:

1. In its opinion filed herein this court has correctly held

(a) That the action of the state legislature in ratifying an amendment to the constitution is performing a federal function and not an act of legislation. In its opinion the court says that such action by the state legislature

"like the function of Congress in proposing an amendment is a federal function derived from the federal constitution and it transcends any limitation sought to be imposed by the people of a state."

"If the legislature in ratifying a proposed amendment, is performing a federal function, it would seem to follow that ratification is not an act of legislation, in the proper sense of that term."

This is almost a direct quotation from Hawke vs. Smith, 253 U. S. 221.

"Ratification is not an act of legislation; it is merely an expression of the assent of the state to the proposed amendment."

(b) That there is distinction between an act of legislation and the federal function which is performed by the legislature in ratifying the proposed amendment. The court in its opinion says:

"The power to legislate in the enactment of the laws of a state is derived from the people of the state, but the power to ratify a proposed amendment to the federal constitution has its source in that instrument."

"The act of ratification by the state derives its authority from the federal constitution, to which the state and its people alike have assented."

(c) Quotes Article 5 of the constitution of the United States which provides that a proposed amendment shall be valid

"when ratified by the legislatures of three-fourths of the several states."

(d) "* * * That the lieutenant governor is a member of the executive department of the state. * * *"

The defendants contend he

"* * * is entitled to vote as a member of the senate [fol. 61] on the final passage of bills and joint resolutions.

As he was *not elected as a member of the senate,* this theory writes with invisible ink an amendment to section 13 of article 2, and ignores section 1 of article 1, which specifies that the lieutenant governor is a member of the executive department of the state."

"The lieutenant governor was not elected to the Senate."

The court in its opinion, therefore, has laid down three rules, two of which are well supported by decisions of the Supreme Court of the United States.

(a) that the act of ratification is a federal function and not a legislative function,

(b) that it is governed by provisions of the United States constitution and transcends any limitation sought to be imposed by the people of a state, and

(c) that the lieutenant governor is a member of the executive branch of government and was not elected a member of the Senate.

The conclusion of the court that he has a right to vote as a member of the legislature upon the resolution to ratify the proposed amendment is a non sequitur.

The constitution of the United States provides that a proposed amendment shall be valid

"when ratified by the legislatures of three-fourths of the several states."

If the lieutenant governor is not a member of the legislature, then he cannot participate in the vote to ratify. It has been held that the adoption of a resolution by Congress proposing an amendment to constitution does not need the signature of the president because it is not a legislative act. He cannot veto the proposal. He does not need to sign the proposal. The governor of the state cannot veto a resolution to ratify or reject and his signature is not necessary to the resolution to ratify or reject. He is no part of the legislature which performs this federal func- [fol. 62] tion of ratification.

The action of the Secretary of State in certifying the resolution is not a legislative act. The only persons entitled to participate in the ratification of the proposed amendment are the members of the legislature and nothing

that Kansas can do can impose any condition or put any limitation upon the exercise of that power because as this court says

"It is a federal function derived from the federal constitution; and it transcends any limitation sought to be imposed by the people of a state. The power to legislate in the enactment of the laws of a state is derived from the people of the state, but the power to ratify a proposed amendment to the federal constitution has its source in that instrument."

The constitution of the United States requires a ratification by the legislature and therefore only those elected to be members of the legislature are entitled to vote. This court holds the lieutenant governor is not elected to be a member of the Senate. If he be not a member of the legislature, Kansas is powerless to give him a right to vote to ratify.

In regard to Numbers 2, 3 and 4 we respectfully call the court's attention to the fact that under the pleadings it is agreed that Kansas adopted an affirmative resolution rejecting the amendment and that a majority of the states shortly after the amendment was proposed by Congress, adopted similar resolutions rejecting the amendment. The proposed amendment was adopted by Congress on June 2, 1934. Without reiterating our former arguments upon these questions, we call the court's attention to a recent decision, a copy of which we have not yet been able to obtain but of which we desire to submit in support hereof, in the case of Wise, et al. vs. Chandler, et al. by the Court of Appeals of Kentucky. We have sent for a copy of the opinion and will file it for the information of the court. The Associated Press report thereon is as follows:

"Kentucky's Court of Appeals held the proposed child-labor amendment to the United States constitution was no longer before the people in an opinion today invalidating [fol. 63] Kentucky's ratification of the proposal early this year.

"The conclusions of the entire court were that a state having once acted on an amendment, whether ratifying or rejecting it, cannot thereafter change its vote without a resubmission of the question by Congress; that the proposed amendment was rejected definitely and withdrawn

from further consideration when more than one-fourth of the states had rejected it; and that more than a reasonable time had elapsed since submission of the proposal by Congress in 1924.

"Kentucky's legislature rejected the proposal in 1926 but reconsidered and ratified it at a special session early this year. At one time, more than one-fourth of the states had rejected the amendment, although some of them reconsidered. Ratification by thirty-six states is necessary before an amendment proposal becomes part of the Constitution."

With all due respect to the court we wish to suggest that the court apparently overlooked the language of Judge Van Devanter in the Rhode Island case quoted in our brief at page 38 in which he places rejection of amendments upon the same level as ratification of amendments, and the language of Senator Davis in 1870 to the same effect, to-wit:

"The power to reject is in all respects parallel to the power to ratify,"

quoted on page 36 of our brief. This court, we believe, has given a wrong interpretation to the action of the legislatures of southern states in ratifying the fourteenth amendment. In that matter the Congress ignored utterly the former action of the legislatures of those states in rejecting the fourteenth amendment because as Congress viewed it those states were not properly constituted. The action of the states in rejecting was regarded as a nullity because the legislature as constituted had no power whatever. It was only the action of the reconstructed states which Congress would recognize. Therefore, the action to ratify the fourteenth amendment was not a reversal of previous actions of the legislatures of those states. As Seward stated in his proclamation,

"The six states next thereafter named as ratified the said proposed amendment by duly constituted and legislative bodies, etc."

[fol. 64] We respectfully submit that the position taken by Governor Bramette and loosely stated by Judge Jameson is not the true doctrine, but that the doctrine that rejection of an amendment is just as potent and conclusive as

the adoption of an amendment as stated by Senator Davis and by implication supported by the Supreme Court in the Rhode Island case, is the true doctrine. This is very clearly stated by Professor Grinnell in his article quoted in our original brief at page 40.

The court apparently overlooks the language of Judge Jameson in his work on the Constitution in which he says:

"The better opinion would seem to be that an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress."

The Supreme Court of the United States, Dillon vs. Gloss, 256 U. S. 368, 41 S. C. 510, quotes this language of Judge Jameson with approval and calls attention to the fact that

"* * * four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the states many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more states to make three-fourths by representatives of the present or some future generation."

And again in the same case:

"We do not find anything in the article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time."

In this connection it must be remembered that within three years from the time this proposal was submitted by Congress it was rejected by twenty-six states. This was an [fol. 65] expression by the states of their sentiment upon this resolution contemporaneous with the time of its submission. Since that time the amendment has been repeat-

edly rejected by other states. The record of action of the states is found in the abstract of record at pages 14 to 18. The court has indicated a judicial recognition of present public sentiment. We are, therefore, entitled to call the court's attention to the fact that since the first day of January, 1937, seventeen state legislatures have rejected or failed to ratify this so-called child-labor amendment and only three states, Kentucky, Nevada and New Mexico, not including Kansas, have voted to ratify. In some of the seventeen states the resolution to ratify was not even introduced. In others the resolution was either voted down or not acted upon. We attach hereto a short statement of the action of these legislatures.

We respectfully petition the court to grant a rehearing in the above entitled matter.

Rolla W. Coleman, Olathe, Kansas; Robert Stone, James A. McClure, Robert L. Webb, Beryl R. Johnson, Ralph W. Oman, Topeka, Kansas, Attorneys for Plaintiff.

[fol. 66] Detailed Action of State Legislatures on the So-called "Child Labor Amendment"

From January 1, 1937 to June 15, 1937

Rejected or Failed to Ratify

Alabama.—Special session adjourned on February 26 without amendment being introduced.

Connecticut.—Rejected in the House on March 18 by vote of 174 to 83. Ratified in Senate on March 31 by vote of 17 to 16. Regular session adjourned June 9.

Delaware.—Rejected in the House on April 14, by vote of 13 to 13 with 8 not voting. Reconsidered and ratified in House on April 19 by vote of 20 to 13. Regular session adjourned on April 21, with no action being taken on amendment in the Senate.

Florida.—House Constitutional Amendments Committee on April 15 voted 13 to 5 against reporting a resolution for ratification. Regular session adjourned on June 4.

Georgia.—Resolution for ratification reported favorably by Industrial Relations Committee in the House, but was allowed to die on the House Calendar with adjournment of the regular session on March 25.

Maryland.—Rejected in the House on April 2 by vote of 76 to 31. Regular session adjourned on April 5.

Massachusetts.—Rejected in the House on March 23 by vote of 188 to 13. Rejected in the Senate on March 30 by vote of 30 to 6. Regular session adjourned on May 29.

Missouri.—Rejected in the House on April 7, by vote of 74 to 51. Regular session adjourned on June 8.

Nebraska.—Rejected by the Unicameral legislature on March 26 by overwhelming viva voce vote. Regular session adjourned on May 15.

New York.—Rejected in the Assembly on March 9 by vote of 102 to 42. Ratified in the Senate on February 2, by vote of 38 to 12. Regular session adjourned May 7.

North Carolina.—Rejected in the House on February 1, by vote of 58 to 47. Regular session adjourned March 23.

Rhode Island.—Amendment died in Judiciary Committee of House with adjournment of regular session on April 24.

South Carolina.—Regular session adjourned on May 21 without amendment being introduced.

South Dakota.—Rejected in the House on February 11, by vote of 70 to 28. Regular session adjourned on March 5.

Tennessee.—Rejected in the House on May 7 by vote of 58 to 32. Regular session adjourned on May 21.

Texas.—Rejected in the Senate on February 23, by vote of 19 to 10. Regular session adjourned on May 22.

Vermont.—Regular session adjourned on April 10 without amendment being introduced.

[fol. 67] Ratifications

Kansas.—Ratified in the Senate on February 15 by vote of 21 to 20, with the Lieutenant-Governor casting the deciding vote. Ratified in the House on February 24 by vote of 64 to 52. A suit is pending to test the validity of ratification.

Kentucky.—Ratified at special session—in the Senate on January 12 by vote of 19 to 14 and in the House on January 13 by vote of 59 to 24. A suit is pending to test the validity of ratification.

Nevada.—Ratified by the Senate on January 27 by vote of 10 to 7. Ratified in the House on January 29 by vote of 30 to 8.

New Mexico.—Ratified in the Senate by vote of 14 to 10 and in the House by vote of 27 to 17 on February 11.

NOTE.—All of the foregoing are regular sessions unless otherwise indicated.

[Endorsed:] No. 33459. In the Supreme Court of the State of Kansas. Rolla W. Coleman et al., Plaintiffs, vs. Clarence W. Miller et al., Defendants. Petition for Rehearing. Filed Oct. 6, 1937. E. E. Clark, Clerk Supreme Court. Rolla W. Coleman, Olathe, Kas. Stone McClure, Webb, Johnson & Oman, 807 National Reserve Building, Topeka, Kansas, Attorneys for Plaintiffs.

[fol. 68] Be it Further Remembered, that afterward and on the 16th day of October, 1937, the same being one of the regular judicial days of the July, 1937, term of the Supreme Court of the State of Kansas, said court being in session in its court room in the city of Topeka, the following proceedings among others was had and remains of record in the words and figures as follows, to-wit:

[fol. 69] IN THE SUPREME COURT OF THE STATE OF KANSAS

Topeka, Saturday, October 16, 1937.

No. 33,459

ROLLA W. COLEMAN et al., Plaintiffs,

vs.

CLARENCE W. MILLER et al., Defendants

Now comes on for decision the motion for a rehearing of this cause and thereupon after due consideration by the court it is ordered that said motion be denied.

[fol. 70] Be it Further Remembered, that afterward and on the 19th day of October, 1937, the same being one of the regular judicial days of the July, 1937, term of the Supreme Court of the State of Kansas, said court being in session in its court room in the city of Topeka, the following proceedings among others was had and remain of record in the words and figures as follows, to-wit;

[fol. 71] IN THE SUPREME COURT OF THE STATE OF KANSAS

Topeka, Tuesday, October 19, 1937.

No. 33,459

ROLLA W. COLEMAN, W. A. BARRON, CLAUDE C. BRADNEY, J. B. Carter, Wilfrid Cavaness, Kirke W. Dale, Jesse C. Denious, Benjamin F. Endres, Ewing Herbert, W. E. Ireland, Walter F. Jones, Walter E. Keef, Fred R. Nuzman, Ernest F. Pihlblad, C. W. Schmidt, Thale P. Skovgard, Harry M. Tompkins, Ray C. Tripp, Robert J. Tyson, N. B. Wall, Raimon C. Walters, George W. Plummer, Frank C. Pomeroy, and A. W. Relihan, Plaintiffs,

vs.

CLARENCE W. MILLER, as Secretary of the Senate of the State of Kansas; William M. Lindsay, as Lieutenant Governor and President Ex-officio of the Senate of the State of Kansas; H. S. Buzick, Jr., as Speaker of the House of Representatives of the State of Kansas; W. T. Bishop as Chief Clerk of the House of Representatives of the State of Kansas, and Frank J. Ryan as Secretary of State of the State of Kansas; and the State of Kansas, Defendants

ORDER STAYING THE EXECUTION AND ENFORCEMENT OF THE DECREE OF THIS COURT TO ENABLE SAID APPELLANTS TO APPLY FOR AND OBTAIN WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE UNITED STATES

It is Ordered that the judgment of this court be and the same hereby is stayed pending plaintiffs' petition in the Supreme Court of the United States for a writ of certiorari to this court; provided said petition for certiorari be presented in said Supreme Court within the time required by law.

[fol. 72] IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 33,459

ROLLA W. COLEMAN et al., Plaintiffs,

vs.

CLARENCE W. MILLER et al., Defendants

The clerk of the court will please prepare transcript of the record in the above entitled case, including therein a copy of the printed abstract filed on May 19, 1937, and omitting from said transcript copies of all pleadings, orders and resolutions therein contained in said abstract.

Rolla W. Coleman, Robert Stone, James A. McClure, Robert L. Webb, Beryl R. Johnson, Ralph W. Oman, Attorneys for Plaintiffs.

Indorsed on Back: 33459. Coleman et al. v. Miller et al. Præcipe for Transcript. Filed Oct. 25, 1937. E. E. Clark, Clerk Supreme Court.

[fol. 73] SUPREME COURT

STATE OF KANSAS, ss:

I, E. E. Clark, Clerk of the Supreme Court of the State of Kansas, do hereby certify that the foregoing numbered pages 1 to 71 inclusive, constitutes a full, true and complete transcript of the record and proceedings had in the case of Rolla W. Coleman, et al., Plaintiffs vs. Clarence W. Miller as Secretary of the Senate of the State of Kansas, et al., etc., Defendants and also of the opinion of the court rendered thereon as the same now appear of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at my office in the city of Topeka, this 28th day of October, A. D. 1937.

E. E. Clark, Clerk of the Supreme Court of the State of Kansas. (Seal Supreme Court, State of Kansas.)

[fol. 74] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. —

ROLLA W. COLEMAN et al., Petitioners,

vs.

CLARENCE W. MILLER et al.

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT OF CERTIORARI

On consideration of the motion of counsel for petitioners in the above entitled cause, and good cause therefor having been shown,

It Is Ordered that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby, extended for a period of Sixty (60) days from December 15, 1937.

Pierce Butler, Associate Justice of the Supreme Court of the United States.

Dated this 29th day of November, 1937.

[fol. 75] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 28, 1938

The petition herein for a writ of certiorari to the Supreme Court of the State of Kansas is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.