number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do." [30]

Continuing, the Court observed that this conclusion was the far better one, because the consequence of the opposite view was that the four amendments proposed long before, including the two sent out to the states in 1789 "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." [31]

What seemed "untenable" to a unanimous Court in 1921 proved quite acceptable to both executive and congressional branches in 1992. After a campaign calling for the resurrection of the 1789 proposal, which was originally transmitted to the states as one of the twelve original amendments, enough additional states ratified to make up a three-fourths majority, and the responsible executive official proclaimed the amendment as ratified as both Houses of Congress concurred in resolutions.[32]

That there existed a "reasonable" time limit for ratification was strongly controverted.[33] The Office of Legal Counsel of the Department of Justice prepared for the White House counsel an elaborate memorandum that disputed all aspects of the *Dillon* opinion.[34] First, *Dillon's* discussion of contemporaneity was discounted as dictum.[35] Second, the three "considerations" relied on in *Dillon* were deemed unpersuasive. Thus, the Court simply assumes that, because pro-

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[30] 256 U.S. at 374–75.

[31] 256 U.S. at 375. One must observe that all the quoted language is dicta, the actual issue in *Dillon* being whether Congress could include a time limit in the text of a proposed amendment. In Coleman v. Miller, 307 U.S. 433, 453–54 (1939), Chief Justice Hughes, for a plurality, accepted the *Dillon* dictum, despite his opinion's forceful argument for judicial abstinence on constitutional amendment issues. The other four Justices in the Court majority thought Congress had complete and sole control over the amending process, subject to no judicial review. Id. at 459.

[32] Supra, "Congressional Pay"; infra, "Twenty-Seventh Amendment."

[33] Thus, Professor Tribe wrote: "Article V says an amendment 'shall be valid to all Intents and Purposes, as part of this Constitution' when 'ratified' by three-fourths of the states—not that it might face a veto for tardiness. Despite the Supreme Court's suggestion, no speedy ratification rule may be extracted from Article V's text, structure or history." Laurence H. Tribe, *The 27th Amendment Joins the Constitution*, WALL STREET JOURNAL, May 13, 1992, A15.

[34] 16 Ops. of the Office of Legal Coun. 102 (1992) (prelim. pr.).

[35] Id. at 109–110. *Coleman's* endorsement of the dictum in the Hughes opinion was similarly pronounced dictum. Id. at 110. Both characterizations, as noted above, are correct.