Thus, it may be that, if the *Dillon v. Gloss* construction is found persuasive, Congress would have constitutional standards to guide its decision on the validity of rescission. At the same time, if these precedents reviewed above are adhered to and strictly applied, it appears that the congressional determination to permit or to disallow rescission would not be subject to judicial review.

Adoption of the alternative view, that Congress has no role but that the appropriate executive official has the sole responsibility, would entail different consequences. That official, now the Archivist, appears to have no discretion but to certify once he receives state notification.[63] The official could, of course, request a Department of Justice legal opinion on some issue, such as the validity of rescissions. That is the course advocated by the executive branch, naturally, but it is one a little difficult to square with the ministerial responsibility of the Archivist.[64] In any event, there would seem to be no support for a political question preclusion of judicial review under these circumstances. Whether the Archivist certifies on the mere receipt of a ratification resolution or does so only after ascertaining the resolution's validity, it would appear that it is action subject to judicial review.[65]

Congress has complete freedom of choice between the two methods of ratification recognized by Article V: by the legislatures of the states or by conventions in the states. In *United States v. Sprague*,[66] counsel advanced the contention that the Tenth Amendment recognized a distinction between powers reserved to the states and powers reserved to the people, and that state legislatures were competent to delegate only the former to the National Government;

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rence thought the Court "treated the amending process of the Constitution in some respects as subject to judicial review, in others as subject to the final authority of Congress" and urged that the Dillon v. Gloss "reasonable time" construction be disapproved. Id. at 456, 458.

[63] United States ex rel. Widenmann v. Colby, 265 F. 998, 999 (D.C. Cir. 1920), *aff'd mem.* 257 U.S. 619 (1921); United States v. Sitka, 666 F. Supp. 19, 22 (D. Conn. 1987), *aff'd*, 845 F.2d 43 (2d Cir.), *cert. denied*, 488 U.S. 827 (1988). *See* 96 CONG. REC. 3250 (Message from President Truman accompanying Reorg. Plan No. 20 of 1950); 16 Ops. of the Office of Legal Coun. 102, 117 (1992) (prelim. pr.).

[64] 16 Ops. of the Office of Legal Coun. at 116–118. Thus, OLC says that the statute "clearly requires that, before performing this ministerial function, the Archivist must determine whether he has received 'official notice' that an amendment has been adopted 'according to the provisions of the Constitution.' This is the question of law that the Archivist may properly submit to the Attorney General for resolution." Id. at 118. But if his duty is "ministerial," it seems, the Archivist may only notice the fact of receipt of a state resolution; if he may, in consultation with the Attorney General, determine whether the resolution is valid, that is considerably more than a "ministerial" function.

[65] No doubt under the Administrative Procedure Act, 5 U.S.C. §§ 701–706, although there may well be questions about one possible exception—the "committed to agency discretion" provision. Id. at § 701(a)(2).

[66] 282 U.S. 716 (1931).