

fied, it could thereafter withdraw or rescind its ratification, precluding Congress from counting that state toward completion of ratification. Four states had rescinded their ratifications and a fifth had declared that its ratification would be void unless the amendment was ratified within the original time limit.⁴³ The issue was not without its history. The Fourteenth Amendment was ratified by the legislatures of Ohio and New Jersey, both of which subsequently passed rescinding resolutions. Contemporaneously, the legislatures of Georgia, North Carolina, and South Carolina rejected ratification resolutions. Pursuant to the Act of March 2, 1867,⁴⁴ the governments of those states were reconstituted and the new legislatures ratified. Thus, there were presented both the question of the validity of a withdrawal and the question of the validity of a ratification following rejection. Congress requested the Secretary of State⁴⁵ to report on the number of states ratifying the proposal, and the Secretary's response specifically noted the actions of the Ohio and New Jersey legislatures. The Secretary then issued a proclamation reciting that 29 states, including the two that had rescinded and the three which had ratified after first rejecting, had ratified, which was one more than the necessary three-fourths. He noted the attempted withdrawal of Ohio and New Jersey and observed that it was doubtful whether such attempts were effectual in withdrawing consent.⁴⁶ He therefore certified the amendment to be in force if the rescissions by Ohio and New Jersey were invalid. The next day Congress adopted a resolution listing all 29 states, including Ohio and New Jersey, as having ratified and concluded that the ratification process was completed.⁴⁷ The Secretary of State then proclaimed the Amendment as part of the Constitution.

In *Coleman v. Miller*,⁴⁸ the congressional action was interpreted as going directly to the merits of withdrawal after ratifica-

⁴³ Nebraska (March 15, 1973), Tennessee (April 23, 1974), and Idaho (February 8, 1977) all passed rescission resolutions without dispute about the actual passage. The Kentucky rescission was attached to another bill and was vetoed by the Lieutenant Governor, acting as Governor, citing grounds that included a state constitutional provision prohibiting the legislature from passing a law dealing with more than one subject and a senate rule prohibiting the introduction of new bills within the last ten days of a session. Both the resolution and the veto message were sent by the Kentucky Secretary of State to the General Services Administration. South Dakota was the fifth state.

⁴⁴ 14 Stat. 428.

⁴⁵ The Secretary was then responsible for receiving notices of ratification and proclaiming adoption.

⁴⁶ 15 Stat. 706, 707.

⁴⁷ 15 Stat. 709.

⁴⁸ 307 U.S. 433, 488–50 (1939) (plurality opinion). For an alternative construction of the precedent, see Corwin & Ramsey, *The Constitutional Law of Constitutional Amendment*, 27 NOTRE DAME LAW. 185, 201–204 (1951). The legislature of New