posal and ratification are steps in a single process, the process must be short rather than lengthy; the argument that an amendment should reflect necessity says nothing about the length of time available, in that the more recent ratifying states obviously thought the pay amendment was necessary; and the fact that an amendment must reflect consensus does not so much as intimate contemporaneous consensus.[36] Third, the OLC memorandum argued that the proper mode of interpretation of Article V was to "provide a clear rule that is capable of mechanical application, without any need to inquire into the timeliness or substantive validity of the consensus achieved by means of the ratification process. Accordingly, any interpretation that would introduce confusion must be disfavored."[37] The rule ought to be, echoing Professor Tribe, that an amendment is ratified when three-fourths of the states have approved it.[38] The memorandum vigorously pursues a "plain-meaning" rule of constitutional construction. Article V says nothing about time limits, and elsewhere in the Constitution when the Framers wanted to include time limits they did so. The absence of any time language means there is no requirement of contemporaneity or of a "reasonable" period.[39]

Now that the Amendment has been proclaimed and has been accepted by Congress, where does this development leave the argument over the validity of proposals long distant in time? One may assume that this precedent stands for the proposition that proposals remain viable forever. It may, on the one hand, stand for the proposition that certain proposals, because they reflect concerns that are as relevant today, or perhaps in some future time, as at the time of transmission to the states, remain open to ratification. Certainly, the public concern with congressional pay made the Twenty-seventh Amendment particularly pertinent. The other 1789 proposal, relating to the number of representatives, might remain viable under this standard, whereas the other proposals would not. On the other hand, it is possible to argue that the precedent is an "aberration," that its acceptance owed more to a political and philosophical argument between executive and legislative branches and to the defensive posture of Congress in the political context of 1992 that led to an uncritical acceptance of the Amendment. In that latter light, the development is relevant to but not dispositive of the controversy. And, barring some judicial interpretation, that is likely to be where the situation rests.

---

[36] Id. at 111–112.
[37] Id. at 113.
[38] Id. at 113–116.
[39] Id. at 103–106. The OLC also referenced previous debates in Congress in which Members had assumed this proposal and the others remained viable. Id.