The BEACON SpotLight

A Study of Constitutional Issues by Topic

Issue 16: The Constitution's Unknown "Loophole"

Article I, Section 8, Clause 17 of the U.S. Constitution is a conditional clause, meaning ratification of the Constitution did not directly activate the power therein discussed, unlike the other clauses.

First of all, said Clause 17 is the clause for the District Seat (for what in time became the District of Columbia). It specifically details that (italics added):

> "Congress shall have power...To exercise exclusive Legislation in all Cases whatsoever, over such District...*as may, by Cession of particular States, and the Acceptance of Congress*, become the Seat of Government of the United States…"

Said Clause 17 specifically details an *alternate means* for transferring this special power between a State and Congress. Exclusive legislation power was later ceded by *particular* States, for *particular* purposes (for the Seat of Government [and for forts, magazines, arsenals, dockyards, and other needful buildings]).

To clarify, exclusive legislation power later ceded in conformance with this clause (by Cession of particular States) has a wholly unique and *different* set of parameters for transferring power than every other power discussed in the U.S. Constitution.

In other words, study of the remainder of the Constitution does nothing to increase understanding of this exclusive power that was later transferred.

Thus, one begins to understand just how different is this clause, which ultimately provides an unusual exception to all the normal rules of the Constitution.

Indeed, in the normal case, governmental power (once wholly contained within each State) became *divided* into State and federal authority, by each and every States' ratification of the U.S. Constitution.

But, by said Clause 17, governmental power became *unified* — in Congress — *by cession of "particular" States* (*not* all of them, but even just one).

In 1791, Maryland (and, until 1846, Virginia) ceded the land for D.C. *and the ability to govern it*, *exclusively*, to Congress and the U.S. Government.

While every State of the Union bought off on such an arrangement (by their ratification of the Constitution [which contains this clause]), only Maryland ceded the ability to govern today's District boundaries. But, Maryland's State Constitution cannot bind Congress acting in the District Seat.

Members of Congress do not have any other State-, District- or State-like Constitution to guide and direct them locally in D.C. Neither does the U.S. Constitution provide further parameters for this area. Thus, Congress must decide all exclusive legislation matters *wholly within their own discretion!*

Imagine the actions State legislators could perform if no State Constitution directed their path. Well, that is precisely the degree of discretion Congress may use in D.C. (where no State today exercises any power).

Except, that doesn't even cover it. Indeed, the U.S. Constitution also emplaces express prohibitions on "States," such as those found in Article I, Section 10.

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But, of course, the District of Columbia is *not* a "State." Thus, not even the express prohibitions the U.S. Constitution places on "States" apply to D.C.

Imagine the inherent discretion therein allowed, when the only clause of any Constitution covering this place specifically empowers Congress to exercise "exclusive" legislation "in all Cases whatsoever." That is the grant of unqualified and unlimited power, needing only to refrain from performing any action that is elsewhere prohibited (such as found in the Bill of Rights [i.e., that Congress "shall make no Law respecting an establishment of religion…"]).

And further, Article IV, Section 4 guarantees:

> "to every *State* of this Union a Republican Form of Government."

But, the District is not a "State;" thus, not even the guarantee of legislative representation applies in D.C.

The District Seat has no legislative representation in Congress, even though legislative representation is the fundamental building block of the Union.

Without any legislative representation here whatsoever, then there can be no crime or foul if members of Congress delegate exclusive legislation powers to federal bureaucrats in the executive department, or if judges thereunder "legislate from the bench."

Nor does the 10th Amendment even apply in D.C.!

Indeed, no other State has ever held local governing authority within the current boundaries of D.C. (so no other State of the Union could have ever had claim to reserved powers therein under the 10th Amendment).

And, since Maryland ceded to Congress the land and its ability to govern the land (to conform to the requirement of said Clause 17 [for members to be able to exercise "exclusive" legislation "in all Cases whatsoever"]), Maryland reserved no powers in its 1791 cession for the 10th Amendment to apply, either.

Imagine the damage capable of being done if this exclusive legislation power — without legislative representation and with no State of the Union exercising any governing power therein — ever "escaped" beyond those geographic boundaries.

Well, that is precisely what happened, in 1821, when the Supreme Court, in *Cohens v. Virginia*, ruled that:

> "The clause which gives exclusive legislation is, unquestionably, a part of the Constitution, and, as such, ***binds all the United States***."[1]

In other words, the justices held that since said Clause 17 is part of "This Constitution" — which Article VI, Clause 2 expressly declares is the "supreme Law of the Land" — *than even this clause "binds" all the States!*

In other words, when the letter and the spirit of the Constitution opposed one another (which spirit would exempt from Article VI the said Clause 17 [even without any express words {so that the remainder of the Constitution could have proper effect}]), the Court instead (perhaps understandably) chose the letter.

Only under Article I, Section 8, Clause 17 may members of Congress and federal officials exercise inherent discretion as they see fit, while ignoring the remainder of Constitutional constraints (which were never meant to limit Congress from acting within the District Seat as members saw fit).

Only by cleverly extending this inherent authority beyond its rightful confines may government servants ever become political masters throughout the Union.

The corollary to that truth is that only by accurately diagnosing the single political federal problem we face (of members of Congress and federal officials being able to ignore their constitutional constraints, with impunity) may we ever apply the appropriate cure.

To learn more about this loophole and how to close it, please see any of the 10 public domain books or numerous videos found at www.PatriotCorps.org.

At the website, readers may also follow Matt Erickson's planned DC Tractor Drive — of his plans to drive a John Deere tractor across the country starting in late 2020, to arrive in D.C. on the 200th anniversary of the *Cohens* case (March 3, 2021) — to draw appropriate attention to this important court case.

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1. *Cohens v. Virginia*, 19 U.S. 264 @ 424. 1821. Emphasis added.

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by Matt Erickson
December 6, 2019