Because "[i]mplied repeals of statutes by later constitutional provisions are not favored," every reasonable construction must be resorted to in order to save existing statutes from being repealed by implication by later constitutional amendments. 16 Am. Jur. 2d Constitutional Law § 51 (2009); Henslee v. Madison Guar. Sav. & Loan, 760 S.W.2d 842, 846 (Ark. 1988) ("a basic and fundamental rule when considering the effect of both statutes and constitutional amendments is that repeal by implication is not favored."). Thus, in determining whether a later constitutional amendment repeals existing statutes by implication, courts will indulge every possible presumption in favor of the constitutionality of the statutes, and courts will construe the statutes in a manner that renders them valid and enforceable if there is any reasonable basis for doing so. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009); Kneip v. Herseth, 214 N.W.2d 93, 101 (S.D. 1974); Cass v. Dillon, 2 Ohio St. 607, 610-11 (1853).

To this end, courts will make every effort to construe existing statutes as if they were amended to conform with a new constitutional provision, rather than construing them as being repealed by implication. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009). Accordingly, "[w]herever such a construction is possible, a new constitutional amendment must be held to amend existing statutory law to agree with such amendment, and those parts of a statute which do not conflict with a constitutional provision retain their validity." Id. at § 50; DeKalb County v. Allstate Beer, Inc., 192 S.E.2d 342, 346 (Ga. 1972) ("an amendment of the constitution must be held to amend the existing statute law to agree with such an amendment.").

To determine whether an existing statute is repealed by implication by a new constitutional provision, courts ask whether "the Legislature under the new constitutional provision could validly have enacted the same statute." State ex rel. Agnew v. Schneider, 253 N.W.2d 184, 196 (N.D. 1977). If the Legislature could have validly enacted the same statute under the new constitutional provision, the existing statute is valid and enforceable, even though the Legislature may have originally enacted the existing statute under a different constitutional provision. Id. at 195-96. In other words, if an existing statute "is sufficiently consistent with the new Constitution to have been capable of passage after the new Constitution took effect . . . the statute cannot be said to have been repealed by implication." State ex rel. Stokes v. Probate Ct., 246 N.E.2d 607, 611-12 (Ohio Ct. App. 1969).

When these rules are applied to the constitutional amendments proposed by S.J.R. 15, we believe that the existing statutes governing the net proceeds tax will not be repealed by implication if S.J.R. 15 becomes effective because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10. Therefore, if S.J.R. 15 becomes effective, it is the opinion of this office that the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

S.J.R. 15 will repeal the property tax exemption in Article 10, Section 1(1) for mines and mining claims. However, there is another source of constitutional authority in Article 10, Section 1(6) which would authorize the existing property tax exemption for net proceeds of minerals extracted. Under Article 10, Section 1(6), the Legislature is required to exempt business inventories from the property tax. More importantly, Article 10, Section 1(6) also provides that "[t]he Legislature may exempt any other *personal property*, including livestock." Nev. Const. art. 10, § 1(6) (emphasis added).

Because the net proceeds of extracted minerals are personal property, the Legislature would have the authority under Article 10, Section 1(6) to exempt such net proceeds from the property tax even after the repeal of the property tax exemption for mines and mining claims in Article 10, Section 1(1). And because every reasonable construction must be resorted to in order to save existing statutes from being repealed by implication by later constitutional amendments, it is the opinion of this office that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax would have to be construed as being enacted under the authority of Article 10, Section 1(6) to save them from being repealed by implication. In other words, because the Legislature could have validly enacted the same statutes under the authority of Article 10, Section 1(6), it is the opinion of this office that the existing statutes governing the net proceeds tax will remain valid and enforceable if S.J.R. 15 becomes effective, even though the Legislature may have originally enacted the statutes under the constitutional provisions being repealed by S.J.R. 15.

S.J.R. 15 will also repeal the provisions of Article 10, Section 5 which prohibit the Legislature from imposing additional taxes on minerals or their proceeds. Without the constitutional limitation in Article 10, Section 5, the Legislature would have the authority to impose taxes on mineral production, which are often called production taxes, severance taxes or extraction taxes. 5 American Law of Mining §§ 192.01-192.03 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2010 & 2011). Because every reasonable construction must be resorted to in order to save existing statutes from being repealed by implication by later constitutional amendments, we believe that if S.J.R. 15 becomes effective, the existing statutes governing the net proceeds tax would have to be construed as a valid and enforceable tax on mineral production given that there is a reasonable basis for doing so.

It is well established that "[t]he power to tax all the property and business within this state is an essential attribute of its sovereignty, and there is no restraint upon its exercise when within constitutional limits, except the responsibility of the members of the legislature to their constituents." Ex parte Robinson, 12 Nev. 263, 268-69 (1877). As further explained by the Nevada Supreme Court:

> [T]he legislature is vested with all governmental powers not expressly denied to it by the Constitution of the United States and the Constitution of Nevada. This

> principle was first declared with respect to taxation in Gibson v. Mason, 5 Nev. 283, 292 (1869), and has been reasserted from time to time.

Matthews v. State ex rel. Tax Comm'n, 83 Nev. 266, 268 (1967). Thus, but for the limitations imposed by Article 10, Section 5, the Legislature would have the power to tax all aspects of mineral production.

According to the legislative history of Article 10, Section 5, one of the purposes of the constitutional provision was to ensure that the Legislature did not have the power to impose any mineral production, severance or extraction taxes in addition to the net proceeds tax authorized by that section. Legislative History of S.J.R. 22, 64th Reg. Sess. & 65th Reg. Sess. (Nev. LCB Research Library 1987 & 1989).[3] During the legislative hearings on Article 10, Section 5, it was emphasized that "a severance tax would be prohibited because [it] would be a tax on the mineral." Id. at 309. Thus, as understood by the framers of Article 10, Section 5, the constitutional provision prohibits the Legislature from imposing any mineral production, severance or extraction taxes in addition to the net proceeds tax authorized by that section.

This interpretation of Article 10, Section 5 is consistent with the contemporaneous legislation enacted by the Legislature in 1989 to implement the constitutional provision. Senate Bill No. 61, 1989 Nev. Stat., ch. 25, at 31-52; see Hendel v. Weaver, 77 Nev. 16, 20 (1961) ("contemporaneous legislation may always be considered in force in constitutional interpretation."); Halverson v. Miller, 124 Nev. 484, 489 (2008) ("this court looks to the Legislature's contemporaneous actions in interpreting constitutional language to carry out the intent of the framers of Nevada's Constitution."). In the 1989 legislation, the Legislature enacted a statement of legislative intent in which it declared that "the proposed constitutional limitations upon the taxation of minerals and their proceeds preclude a tax upon . . . *[t]he extraction and ordinary mining processes involved in the extraction of minerals.*" 1989 Nev. Stat., ch. 25, § 1, at 31-32 (emphasis added).

If S.J.R. 15 becomes effective, the Nevada Constitution will no longer contain a limitation which restricts the power of the Legislature to impose taxes on mineral production. Without the constitutional limitation in Article 10, Section 5, the Legislature would be restored to its full power to tax all aspects of mineral production, and there would be a reasonable basis for construing the existing statutes governing the net proceeds tax as a valid and enforceable tax on mineral production if such a construction would save the existing statutes from being repealed by implication.

---

[3] Article 10, Section 5 originated in Senate Joint Resolution No. 22 (S.J.R. 22), which was passed by the Legislature in 1987 and 1989 and approved by the voters at a special election held on May 2, 1989.

Generally speaking, a tax on mineral production embraces "all exactions, however denominated, that are imposed on an event or an activity associated with mineral production and that are measured by the value or quantity of the mineral produced. Such levies are frequently called severance or production taxes, but they are also labeled as privilege, license, occupation, conservation, and other measures." 5 American Law of Mining § 192.01 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2010). Typically, a tax on mineral production has the following characteristics: (1) it is a statewide levy with a single statewide rate structure, instead of being a local levy with varying rate structures depending on the rates fixed annually by each local taxing district; (2) it is administered by the state department of revenue or taxation, instead of being administered by local tax officials; (3) it is collected by the state department of revenue or taxation, usually at monthly or quarterly intervals, instead of being collected by local tax officials annually; and (4) the proceeds of the tax do not necessarily inure to the benefit of the local taxing district where the production activities are conducted. 5 American Law of Mining §§ 191.03[1][a] & 192.01-192.03 (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984 & Supp. 2005, 2010 & 2011).

Based on our examination of Nevada's existing statutes governing the net proceeds tax in NRS Chapter 362, we believe that those existing statutes reasonably can be construed as containing most of the typical characteristics of a tax on mineral production. In particular, Nevada's existing net proceeds tax is a statewide levy with a single statewide rate structure, instead of being a local levy with varying rate structures depending on the rates fixed annually by each local taxing district. NRS 362.140. The tax is administered and collected by the State Department of Taxation, instead of being administered and collected by local tax officials, but the tax is collected annually, rather than monthly or quarterly. NRS 362.100 to 362.240, inclusive. Finally, only a portion of the proceeds of the tax are appropriated to the local taxing district where the production activities are conducted. NRS 362.170. The remainder of the proceeds belong to the State.

Given that the existing statutes governing the net proceeds tax contain most of the typical characteristics of a tax on mineral production, it is the opinion of this office that there would be a reasonable basis for construing the existing statutes as a valid and enforceable tax on mineral production after the repeal of Article 10, Section 5. Therefore, it is the opinion of this office that such a reasonable construction would save the existing statutes governing the net proceeds tax from being repealed by implication if S.J.R. 15 becomes effective.

In sum, even though S.J.R. 15 will repeal the provisions of Article 10 concerning the taxation of mines and mining claims, it is the opinion of this office that the existing statutes governing the net proceeds tax will not be repealed by implication because the existing statutes would be capable of being construed consistently with the remaining provisions of Article 10. Consequently, if S.J.R. 15 becomes effective, it is the opinion of this office that the State will have the authority to collect the net proceeds tax at the same rates that are presently authorized by NRS Chapter 362 and that the State will not be required to assess and tax the net proceeds as personal property at the rates authorized by NRS Chapter 361.

II. If S.J.R. 15 becomes effective, will patented and unpatented mines and mining claims have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361?

A person who acquires rights to an unpatented mine or mining claim has only a possessory interest in the minerals underlying the public land and, in most cases, does not have any interest in the land's surface because the government retains fee title to the land. 1 American Law of Mining § 30.05[6] (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984); N. Alaska Envtl. Ctr. v. Lujan, 872 F.2d 901, 904 n.2 (9th Cir. 1989); Hydro Res. Corp. v. Gray, 143 N.M. 142, 145 n.1 (N.M. 2007); Ford v. United States, 101 Fed. Cl. 234, 238 n.6 (Fed. Cl. 2011). Even though an unpatented mine or mining claim is only a possessory interest in the minerals underlying the public land, that possessory interest is a species of real property for the purposes of the property tax. NRS 361.035 & 361.075; Hale & Norcross Gold & Silver Mining Co. v. Storey County, 1 Nev. 104, 106-07 (1865).

Under the existing provisions of Article 10, Section 1(1), unpatented mines and mining claims are exempt from the property tax. To implement the constitutional exemption for unpatented mines and mining claims, the Legislature enacted a corresponding statutory exemption in NRS 361.075 which exempts unpatented mines and mining claims from the property tax in NRS Chapter 361.

When a person who has rights to an unpatented mine or mining claim takes the steps necessary to obtain a patent for the mine or mining claim, the person gets full ownership of the land pursuant to a grant of fee title from the government, and the patent merges the person's possessory interest in the underlying minerals with full legal title to the land. 1 American Law of Mining § 30.06[5] (Rocky Mt. Min. L. Inst. ed., 2d ed. 1984); Clouser v. Espy, 42 F.3d 1522, 1525 n.2 (9th Cir. 1994); Hoefler v. Babbitt, 952 F. Supp. 1448, 1452 n.1 (D. Or. 1996). Because patented mines and mining claims consist of an ownership interest in land, they are a species of real property in Nevada for the purposes of the property tax. NRS 361.035 & 362.030.

Under the existing provisions of Article 10, Section 1(1), patented mines and mining claims are exempt from the property tax. However, under the existing provisions of Article 10, Section 5, patented mines and mining claims must be assessed and taxed as other real property is assessed and taxed, subject to two exceptions. First, no value may be attributed to any mineral known or believed to underlie the patented mine or mining claim. Second, no value may be attributed to the surface of the patented mine or mining claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment. Based on these two exceptions, if the labor requirement is satisfied, patented mines and mining claims are exempt from the property tax in NRS Chapter 361. To implement the constitutional exemption for patented mines and mining claims, the Legislature enacted a corresponding statutory exemption in NRS 362.030 to 362.095,

inclusive, which exempts patented mines and mining claims from the property tax in NRS Chapter 361 upon the recording of an affidavit of labor verifying that the labor requirement has been satisfied.

Thus, both patented and unpatented mines and mining claims are a form of real property in Nevada for the purposes of the property tax. However, based on the existing constitutional provisions in Article 10, patented and unpatented mines and mining claims are entitled to exemptions from the property tax. But if S.J.R. 15 becomes effective, it will repeal the existing constitutional provisions which authorize the property tax exemptions for patented and unpatented mines and mining claims. Given that S.J.R. 15 will repeal these constitutional provisions, the legal issue that arises is whether the repeal of these constitutional provisions will also repeal by implication the corresponding statutory provisions which exempt patented and unpatented mines and mining claims from the property tax.

As a general rule, when the authority for an existing statute comes from a specific constitutional provision and that provision is repealed by a later constitutional amendment, courts usually hold that the existing statute is repealed by implication. Wren v. Dixon, 40 Nev. 170, 184-193 (1916); United States v. Chambers, 291 U.S. 217, 222-23 (1934). However, courts will not hold that the existing statute is repealed by implication when the statute can be construed consistently with the state constitution even after the constitutional amendment. 16 Am. Jur. 2d Constitutional Law §§ 50-51 (2009).

Under the Nevada Constitution, the Legislature cannot exempt any property from the property tax unless the exemption is authorized by a specific constitutional provision. State v. Carson City Sav. Bank, 17 Nev. 146, 151 (1882); State ex rel. U.S. Lines Co. v. Dist. Ct., 56 Nev. 38, 52-53 (1935); Gen. Elec. Credit Corp. v. Andreen, 74 Nev. 199, 202 (1958); Hendel v. Weaver, 77 Nev. 16, 18-19 (1961). Therefore, if S.J.R. 15 becomes effective and repeals the existing constitutional provisions which authorize the property tax exemptions for patented and unpatented mines and mining claims, the corresponding statutory exemptions will be repealed by implication unless there is another specific constitutional provision which would authorize the statutory exemptions and save them from being repealed by implication. As a result, we must examine the Nevada Constitution to determine whether there is such a constitutional provision.

Article 10, Section 1(6) authorizes the exemption of personal property from the property tax. Because the net proceeds extracted from mines and mining claims are a form of personal property, we have already concluded that Article 10, Section 1(6) provides a source of constitutional authority which would save the existing statutory exemption for the net proceeds from being repealed by implication if S.J.R. 15 becomes effective. However, unlike the net proceeds, the mines and mining claims are a form of real property, not personal property. Therefore, because Article 10, Section 1(6) only authorizes the exemption of personal property, we do not believe that it would provide a source of constitutional authority

to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Article 10, Section 1(8) authorizes the Legislature to exempt "property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Under most circumstances, patented and unpatented mines and mining claims are not used for municipal, educational, literary, scientific or other charitable purposes. However, because some patented and unpatented mines and mining claims are used for geothermal operations, there would be a reasonable basis for concluding that those patented and unpatented mines and mining claims are used "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy" as contemplated by Article 10, Section 1(8). See NRS 362.010(2), 362.100(2)(c) & 362.140(4). Therefore, we believe that Article 10, Section 1(8) would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims that are used for geothermal operations. But outside of this limited context, we do not believe that Article 10, Section 1(8) would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Finally, Article 10, Section 6 prohibits the Legislature from enacting property tax exemptions without making certain findings to support the exemptions. In particular, Article 10, Section 6 provides that:

> 1. *The Legislature shall not enact an exemption from any ad valorem tax on property* or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail *unless the Legislature finds that the exemption:*
>
> (a) Will achieve a bona fide social or economic purpose and the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and
>
> (b) Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

Nev. Const. art. 10, § 6 (emphasis added).

Based on the plain language of Article 10, Section 6, that section is not an independent source of constitutional authority for the Legislature to enact property tax exemptions. Rather, it establishes procedural limitations which the Legislature must observe when it enacts property tax exemptions that are authorized by other constitutional provisions. Therefore, we

do not believe that Article 10, Section 6 would provide a source of constitutional authority to save the existing statutory exemptions for patented and unpatented mines and mining claims from being repealed by implication if S.J.R. 15 becomes effective.

Accordingly, based on our examination of the Nevada Constitution, it is the opinion of this office that the existing statutory property tax exemptions for patented and unpatented mines and mining claims will be repealed by implication if S.J.R. 15 becomes effective, except with regard to patented and unpatented mines and mining claims that are used for geothermal operations. Therefore, if S.J.R. 15 becomes effective, it is the opinion of this office that patented and unpatented mines and mining claims will have to be assessed and taxed as other real property is assessed and taxed pursuant to the property tax in NRS Chapter 361, unless the patented and unpatented mines and mining claims are used for geothermal operations.

III. Is S.J.R. 15 subject to the provisions of Article 4, Section 18 of the Nevada Constitution which provide that an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form?

Since the ratification of the Nevada Constitution in 1864, Article 16, Section 1 has contained provisions which authorize the Legislature to propose any amendment or amendments to the Constitution. Under those provisions, if the proposed amendment or amendments are "*agreed to by a Majority of all the members elected to each of the two houses*, such proposed amendment or amendments shall be entered on their respective journals, with the Yeas and Nays taken thereon, and referred to the Legislature then next to be chosen." Nev. Const. art. 16, § 1 (emphasis added). If, in the next Legislature, the proposed amendment or amendments are "*agreed to by a majority of all the members elected to each house*, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe." Id. (emphasis added). If the people approve and ratify the proposed amendment or amendments, "such amendment or amendments shall . . . become a part of the Constitution." Id.

Although Article 16, Section 1 authorizes the Legislature to propose constitutional amendments, it does not specify the type of legislative measure that must be used to make such proposals. When a state constitution does not specify the type of legislative measure that must be used to propose constitutional amendments, the general rule is that the legislative body may use a resolution adopted by both Houses to make such proposals. Mason's Manual of Legislative Procedure § 145(2) (2010).

Consistent with this general rule, the Legislature has from its earliest sessions proposed constitutional amendments by the use of resolutions. See Senate Journal, 3rd Sess., at 43, 48

(Nev. 1867); Senate Journal, 4th Sess., at 17, 27 (Nev. 1869). For example in 1871, the Assembly used Assembly Concurrent Resolution No. 110 to propose amending Article 10, Section 1 by striking therefrom the words "except mines and mining claims, the proceeds of which alone shall be taxed." Assembly Journal, 5th Sess., at 94 (Nev. 1871).[4]

Although the Legislature has consistently used resolutions to propose constitutional amendments, it has not consistently used the same term to describe the resolutions. In the legislative sessions before 1919, the Legislature employed multiple terms to describe such resolutions, including "concurrent resolution," "joint resolution," "joint and concurrent resolution," "conjoint resolution" and "proposal to amend the Constitution," and sometimes the Legislature employed several of these terms within the same legislative session.[5] However, beginning with the 1919 legislative session, it appears that the Legislature adopted the practice of using only the term "joint resolution" to describe resolutions proposing constitutional amendments, and it appears that the Legislature has consistently followed that practice for the past 94 years. See, e.g., 1919 Nev. Stat., file nos. 6, 19 & 20, at 478 & 486-87; 2011 Nev. Stat., file no. 44, at 3871-72.

When the Nevada Constitution was ratified in 1864, Article 4, Section 18 provided that "*a majority of all the members elected to each House* shall be necessary to pass every bill or *joint resolution.*" Nev. Const. art. 4, § 18 (1864) (emphasis added). Thus, as originally ratified by the voters, both Article 4, Section 18 and Article 16, Section 1 required the same number of votes to pass legislation or to propose a constitutional amendment—a majority of all the members elected to each House.

In 1994 and 1996, however, the voters approved several amendments to Article 4, Section 18 that were proposed by an initiative petition pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that "an affirmative vote of not fewer than *two-thirds of the members elected to each House* is necessary to pass a bill or *joint resolution* which creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2) (emphasis added). The amendments also include an exception which provides that "*[a] majority of all of the members elected to each House* may refer any measure which

---

[4] The Assembly Journal from 1871 does not show any further action on Assembly Concurrent Resolution No. 110 after it was introduced and referred to committee.

[5] See, e.g., 1869 Nev. Stat., file nos. 1 & 2, at 307 ("Proposal to Amend the Constitution"); 1877 Nev. Stat., file no. 6, at 213-14 ("Conjoint Resolutions"); 1877 Nev. Stat., file no. 23, at 221 ("Concurrent Resolution"); 1879 Nev. Stat., file no. 6, at 149 ("Concurrent Resolution"); 1879 Nev. Stat., file no. 7, at 149 ("Conjoint Resolution"); 1879 Nev. Stat., file no. 26, at 166 ("Concurrent Resolution"); 1903 Nev. Stat., file no. 13, at 232 ("Joint and Concurrent Resolution"); 1903 Nev. Stat., file no. 23, at 240 ("Concurrent Resolution").

creates, generates, or increases any revenue in any form to the people of the State at the next general election." Nev. Const. art. 4, § 18(3) (emphasis added).

Because the two-thirds voting requirement in Article 4, Section 18 refers to "joint resolutions," we must consider two legal issues. First, we must consider whether the two-thirds voting requirement applies to joint resolutions proposing constitutional amendments given that Article 16, Section 1 contains its own specific voting requirement which requires only a majority of all the members elected to each House to propose constitutional amendments. Second, even if the two-thirds voting requirement applies to joint resolutions proposing constitutional amendments, we must consider whether those joint resolutions qualify for the exception from the two-thirds voting requirement because the proposed constitutional amendments become effective only if approved by voters.

To date, there are no reported decisions from the Nevada Supreme Court that have addressed these legal issues. In the absence of any controlling decision from the Nevada Supreme Court, we must apply the rules of constitutional construction, and we must consider historical evidence, case law from other jurisdictions and other legal sources for guidance in this area of the law.

In 1798, the United States Supreme Court addressed a similar legal issue in a case where the plaintiffs argued that Congress did not validly propose the Eleventh Amendment to the Federal Constitution. Hollingsworth v. Virginia, 3 U.S. 378 (1798). The plaintiffs argued that when Congress exercised its power to propose the Eleventh Amendment under the Amendments Article of the Federal Constitution, Congress failed to submit the proposed amendment to the President for approval or disapproval under the Legislative Article, which provides that:

> *Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary* (except on a question of Adjournment) *shall be presented to the President of the United States*; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

U.S. Const. art. I, § 7 (emphasis added).

The Supreme Court rejected the plaintiffs' argument and held that the Eleventh Amendment was constitutionally adopted. 3 U.S. at 382. Although the Supreme Court did not provide any explanation in its opinion for rejecting the plaintiffs' argument, Justice Chase stated that "[t]here can, surely, be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution." Id. at 381 n.