LIBERTY TREE

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Playing by the RULES

How Congress "ratified" the 14th Amendment, and why it matters.

Editorial by Dick Greb

Article 5 of the Constitution establishes the only methods by which that instrument might be changed:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by Congress; ...

Notice that there are two ways amendments can be proposed, and two ways they can be ratified. Also notice that Congress is given the option, no matter which method of proposing amendments is used, to prescribe the mode of

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Time to question TSA "authority"

Can the TSA demand the public go through body scanners or be groped instead? Constitutional attorney Larry Becraft can't find any such authority in the law or regulations.

Four hundred "full-body" scanners have now been rolled out by the TSA in 69 airports, just in time for a multitude of holiday travelers. By now, most Americans are aware that the Transportation Security Agency demands they be X-rayed so TSA employees can see their nude images, or be "patted down," an invasive groping of private parts by TSA personnel, or be stopped by the TSA from boarding an airplane. These are their only choices, passengers are told.

The machines and the gropings, both a total violation of the Fourth Amendment *rights* of all Americans, are raising the public's ire (*finally*). Website wewontfly.com, for example, mounted a "National Opt Out" day to educate people to resist the scanners: "If you have to fly on November 24, opt out of the virtual strip search body scanners for your own health and privacy. Say "I opt out!" Tell your friends, family and community so they know how to protect themselves, too. Be prepared for delays and intimate TSA groping. At least you will avoid the risk of cornea damage and skin, breast and testicular cancer and the humiliation of a virtual strip search."

But where does the TSA obtain its legal authority to set up these machines and conduct its Fourth-Amendment violations? It'a a good question, and one Consti-

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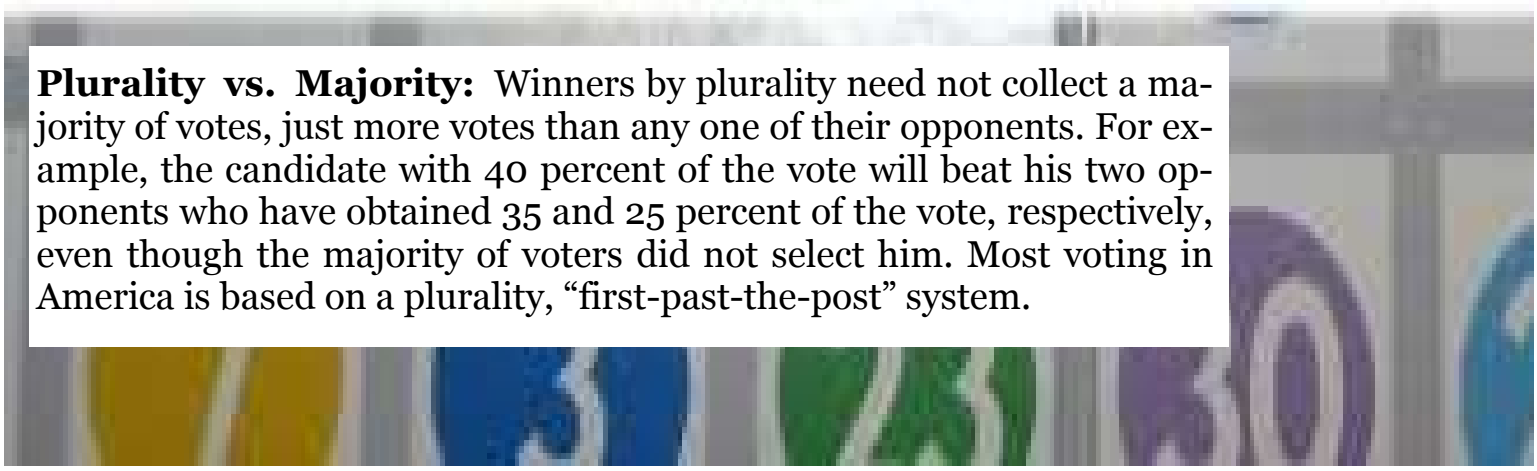

Plurality vs. Majority: Winners by plurality need not collect a majority of votes, just more votes than any one of their opponents. For example, the candidate with 40 percent of the vote will beat his two opponents who have obtained 35 and 25 percent of the vote, respectively, even though the majority of voters did not select him. Most voting in America is based on a plurality, "first-past-the-post" system.

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ratification — that is, whether they are to be ratified by State legislatures or State conventions.

The numbers necessary to amend the Constitution are purposely high, so that only those changes that are supported by what is deemed to be an appropriate majority of the people can be incorporated. This check on government power (as well as on the integrity of the agreement entered into by the States) was no doubt presumed to be sufficient, but as with all limitations against abuse, tyrants will always find ways around them. So, when a tyrannical government wants to incorporate changes that aren't supported by the required super majorities, what can it do? Why, change the rules, of course! But since even the rules for amending the Constitution can only be changed by amending the Constitution, the tyrants in our government instead opted to change how the different numbers are tabulated in order to foist unwanted changes on the people.

The story of the 16th Amendment was amply documented by researcher Bill Benson in his book, *The Law That Never Was*. However, in this article, we're going to go back a little farther and take a look at the purported ratification of the 14th Amendment. Thankfully, Justice Ellett, of the Supreme Court of Utah, laid out the many irregularities of that process in the 1968 case, *Dyett v. Turner* [1] (all emphases added):

> In regard to the Fourteenth Amendment, which the present Supreme Court of the United States has by decision chosen as the basis for invading the rights and prerogatives of the sovereign states, it is appropriate to look at the means and methods by which that amendment was foisted upon the Nation in times of emotional stress. ...
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> Joint Resolution No. 48 proposing the Fourteenth Amendment was a matter of great concern to the Congress and to the people of the Nation. In order to have this proposed amendment submitted to the 36 states for ratification, **it was necessary that two thirds of each house concur. A count of noses showed that only 33 senators were favorable to the measure, and 33 was a far cry from two thirds of 72 and lacked one of being two thirds of the 50 seated senators.**[2]

While it requires only a majority of votes to refuse a seat to a senator, it requires a two thirds majority to unseat a member once he is seated. (Article 1, Section 5, Constitution of the United States) **One John P. Stockton was seated on December 5, 1865, as one of the senators from New Jersey. He was outspoken in his opposition to Joint Resolution No. 48 proposing the Fourteenth Amendment. The leadership in the Senate not having control of two thirds of the seated senators voted to refuse to seat Mr. Stockton upon the ground that he had received only a plurality and not a majority of the votes of the New Jersey legislature.** It was the law of New Jersey and several other states that a plurality vote was sufficient for election. Besides, the Senator had already been seated. **Nevertheless, his seat was refused, and the 33 favorable votes thus became the required two thirds of the 49 members of the Senate.**

In the House of Representatives it would require 122 votes to be two thirds of the 182 members seated. Only 120 voted for the proposed amendment, but because there were 30 abstentions it was declared to have been passed by a two thirds vote of the House.

Whether it requires two thirds of the full membership of both houses to propose an amendment to the Constitution or only two thirds of those seated or two thirds of those voting is a question which it would seem could only be determined by the United States Supreme Court. However, it is perhaps not so important for the reason that the amendment is only proposed by Congress. It must be ratified by three fourths of the states in the Union before it becomes a part of the Constitution. The method of securing the passage through Congress is set out above, as it throws some light on the means used to obtain ratification by the states thereafter.

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1. 20 Utah 2d 403 (1968).
2. When the 39th Congress assembled on Dec. 5, 1865, legislative members of the 25 northern states voted to deny seats to 11 southern states. So while full Senate membership was 72, and full House membership 240, only the 50 senators and 182 congressmen from the North were seated.

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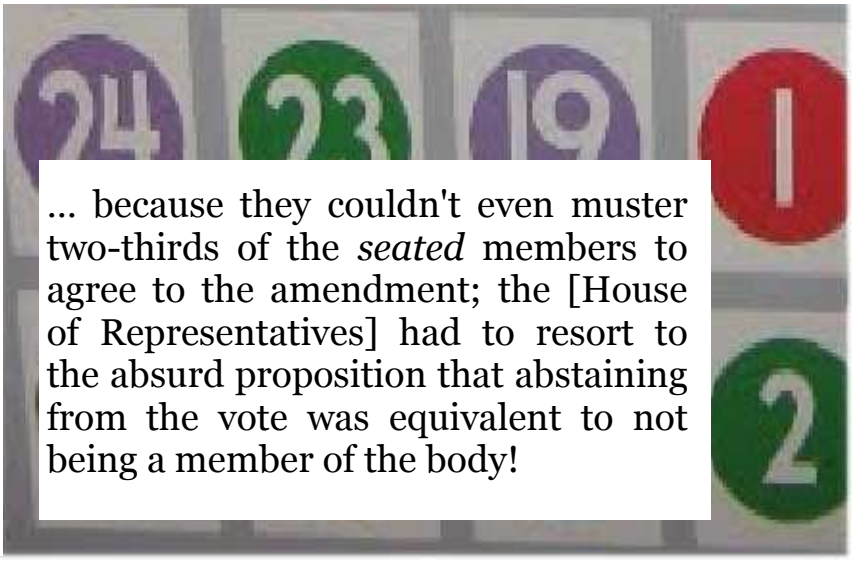
So that was how our purported representatives in Congress complied with the Constitutional requirement that "two thirds of both Houses" deem an amendment necessary in order to send it to the States for ratification. Although Justice Ellett thought the U.S. Supreme Court must determine the question of the numerical basis for proposal of an amendment, the Constitution, at Article 1, Section 3, says: "The Senate of the United States shall be composed of two Senators from each State." So, since there were an acknowledged 36 States in the Union at that time, that House consisted of 72 members, whether some of those members were refused their seats or not. To allow otherwise would be to dismantle the protection of Article 5, as was done here. It's ironic that Senator Stockton from New Jersey was ousted (illegally) for having been elected by less than a majority of that State's legislature, while the Senate's illegal scam pushed through the resolution for the 14th Amendment with less than a simple majority of the whole body.



Yet the House of Representatives had to go even farther than that, because they couldn't even muster two-thirds of the *seated* members to agree to the amendment; so they had to resort to the absurd proposition that abstaining from the vote was equivalent to not being a member of the body! Of course, abstaining from the vote is really equivalent to a vote against it, since the Constitution requires two-thirds to "deem it necessary" to propose an amendment. Therefore, if they didn't vote to propose the amendment, they obviously didn't deem it necessary.

Now that the misfeasance with respect to the proposal is known, we'll go back to Justice Ellett's recital of the irregularities in the ratification process:

> Nebraska had been admitted to the Union, and so the Secretary of State in transmitting the proposed amendment announced that ratification by 28 states would be needed before the amendment would become part of the Constitution, since there were at the time 37 states in the Union. **A rejection by 10 states would thus defeat the proposal.**
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> **By March 17, 1867, the proposed amendment had been ratified by 17 states and rejected by 10**, with California voting to take no action thereon, which was equivalent to rejection. Thus the proposal was defeated. ... Despite the fact that **the southern states had been functioning peacefully for two years and had been counted to secure ratification of the Thirteenth Amendment, Congress passed the Reconstruction Act, which provided for the military occupation of 10 of the 11 southern states.** It excluded Tennessee from military occupation, and one must suspect it was because Tennessee had ratified the Fourteenth Amendment on July 7, 1866. **The Act further disfranchised practically all white voters and provided that no senator or congressman from the occupied states could be seated in Congress until a new constitution was adopted by each state which would be approved by Congress, and further provided that each of the 10 states must ratify the proposed Fourteenth Amendment, and the Fourteenth Amendment must become a part of the Constitution of the United States before the military occupancy would cease and the states be allowed to have seats in Congress.** By the time the Reconstruction Act had been declared to be the law, three more states had ratified the proposed Fourteenth Amendment, and two-Louisiana and Delaware-had rejected it. Then Maryland withdrew its prior ratification and rejected the proposed Fourteenth Amendment. Ohio followed suit and withdrew its prior ratification, as also did New Jersey. California, which earlier had voted not to pass upon the proposal, now voted to reject the amendment. Thus 16 of the 37 states had rejected the proposed amendment.
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> By **spurious, nonrepresentative governments** seven of the southern states which had theretofore rejected the proposed amendment under the duress of military occupation and of being denied representation in Congress did attempt to ratify the proposed Fourteenth Amendment. The Secretary of State on July 20, 1868, issued his proclamation wherein he stated that it was his duty under the law to cause amendments to be published and certified as a part of the Constitution when he received official notice that they had been adopted pursuant to the Constitution.

Secretary of State William Seward's proclamation was rather noncommittal on the legitimacy of the ratification, in that he spelled out the actions of Ohio and New Jersey which had changed their votes, and the southern States, which having previously rejected the

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amendment, later "ratified [it] by newly constituted and newly established bodies **avowing themselves to be and acting as the legislatures.**" He further stated that the amendment was ratified "**if** the resolutions of the legislatures of Ohio and New Jersey ratifying the aforesaid amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification."[3] Not surprisingly, Congress wasn't satisfied with his indecisiveness, and the next day passed a joint resolution that recited the 29 States that had ratified the amendment — including Ohio and New Jersey (which first ratified, then rejected), and also including South Carolina, North Carolina, Florida, Louisiana, and Arkansas (which first rejected, then ratified) — and themselves declaring the amendment "to be a part of the Constitution of the United States of America." [4]

Clearly, a faction in Congress considered the 14th Amendment so important to impose upon the people of the United States that it was willing to break every Constitutional rule in order to claim that it was enacted. They denied seats to 24 percent of the House of Representatives and 32 percent of the Senate (including one from New Jersey, which was never even in rebellion) in order to put the proposal before the States. Then, after the unrepresented States rejected the amendment, Congress put them under martial law, reconstituted their legislatures, and refused to allow them any voice in the government until they ratified it. In doing so, Congress violated another Constitutional duty – Article 4, §4's mandate that "The United States shall guarantee to every State in this Union a Republican Form of Government." Yet, even counting those oppressed States' ratifications (after prior rejections), Congress still had to count the two States which rescinded their prior ratification in order to sustain their sham declaration. In other words, they decided that ratification after rejection was acceptable, but rejection after ratification wasn't — they had to have it both ways! It's easy to see that limiting the powers of government can't work when that same government gets to make the rules which determine the scope of those limits.

The abuse of the amendment process is not only important, but still relevant, especially when you consider that the scams used here created the template that has been used ever since. Questions have been raised about the validity of the ratification process for at least the 16th, 17th and 19th Amendments. And yet, the Supreme Court continues to allow the debasement of the supreme law of the land by pronouncing that such questions are not *judicial*, but *political*. In other words, the Supremes want to force us to use the stringent rules of the amendment process to repair the damage done by the government ignoring those same rules.

It sure is hard to win when only one team has to play by the rules.

3. See 15 Stat. 707.
4. See 15 Stat. 709.

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tutional Attorney Larry Becraft has been unable to answer.

On November 20th, LWRN host Joe Banister of the Freedom Above Fortune radio show invited Becraft to share his findings. On November 22nd, LWRN host Tommy Cryer of the Truth Attack Hour also interviewed Becraft regarding his research. Liberty Works Radio Network is not aware of anyone else even *questioning* the legal authority for the TSA's actions.

Becraft states, at his website http://home.hiwaay.net/~becraft/TSA.html, that he can find no statutory or regulatory authority that addresses the installation of body scanners in American airports. Since there is no direct statutory authority to put body scanners in American airports, how are they legally being put into place?

Becraft says his research raises even more questions: "Who are these "TSA employees": are they public or private? If they actually are official TSA employees, they are exposing the public to bodily harm without authority. Would a *Bivens* action be appropriate? But if they are private, we need to learn for whom these people work and everybody else who is involved in the manufacture and use of these harmful devices. We need this information for the inevitable lawsuits that will arise."

A gross violation of the Fourth Amendment in progress. It's past time to grope the TSA for answers.

There may be many holes in the "authority" of the TSA, and Liberty Works Radio Network intends to investigate and identify them. Perhaps we may even be able to decipher the following quote:

"While TSA has the legal authority to levy a civil penalty of up to $11,000 for individuals who choose not to complete the screening process, each case is determined on the individual circumstances of the situation," Greg Soule, Transportation Security Administration spokesman, told ABC News.[1] Really? A penalty of $11,000 just for refusing to go through screening? The questions are flowing. Stay tuned.

1. http://blogs.findlaw.com/law_and_life/2010/11/national-opt-out-day-face-11k-tsa-fine.html