In determining whether a lawsuit is non-justiciable because it raises a political question, courts must commence by examining the language of the relevant provision(s) of the Constitution to determine "whether and to what extent the issue is textually committed [to either the Legislative or executive branch of the government]." *Nixon*, 506 U.. at 228; 113 S.Ct at 735. The concept of textual commitment of an issue to another branch of government is related to the other principal inquiry involved in political question analysis, the concept of judicially discoverable and manageable standards for resolving the issue at bar. *Id*. In other words, in the absence of an express commitment of an issue to another branch, the lack of judicially discoverable and manageable standards may strengthen the conclusion that there is an implicit textual commitment of the issue to a coordinate branch. *Id*. At 228-229; 113 S.Ct. at 735.

While the Constitution in Article V unequivocally commits to the discretion of Congress the manner by which amendments to the Constitution shall be ratified by the states, the Constitution does not expressly address the myriad procedural questions surrounding the Convention method of amendment. The complete absence of any judicially discoverable and manageable standards applicable to a process in which Congress obviously plays so pivotal a role, strongly implies that congress was meant to be the final arbiter of when the conditions precedent set forth in Article V have bee complied with sufficiently to warrant convening a Convention.

Support for this proposition can be found in the Supreme Court's analogous decision in *Coleman v. Miller*, 307 U.s. 433, 59 S.Ct. 972 (1939), wherein the Court held that the questions of how long a proposed constitutional amendment remained open to ratification and what effect, if any, a prior rejection had on a subsequent ratification were

"committed to congressional resolution and involved criteria of decision that necessarily escaped the judicial grasp." *Baker*, 369 U.S. at 214; 82S.Ct. at 708 (interpreting *Coleman*). The United States submits that the same logic dictates that the kinds of issues raised by this lawsuit – *i.e.*, whether the applications plaintiff alleges have been made by two-thirds of the States are sufficiently contemporaneous and whether the subject matter of the applications are sufficiently related – are similarly non-justiciable, because they, too, raise political questions best left to Congress to resolve.[3]

Conclusion

For all of the reasons set forth above, plaintiff's Motion for declaratory and Injunctive Relief must be denied and the United States' Motion to Dismiss should be granted.

Dated this 24th day of January, 2001

Respectfully submitted,

KATRINA C. PFLAUMER
UNITED STATES ATTORNEY

(Signature)

HAROLD MALKIN
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[3] The Speech and Debate Clause of the Constitution, art. I § 6, cl 1, and the doctrine of sovereign immunity furnish additional grounds for dismissal. The Speech and Debate Clause has been held to immunize legislative activity, and by extension inactivity, related to consideration and passage or rejection of propose legislation or other maters, such as the amendatory process, which the Constitution places within the jurisdiction of either the House of Representatives or the Senate. *See Gravel v. United States*, 408 U.S. 606, 625, 92 S.Ct. 2614, 2627 (1972). Similarly, suits against Congress attempting to compel