Book review

SIX AMENDMENTS: HOW AND WHY WE SHOULD CHANGE THE CONSTITIUTION

John Paul Stevens

This book, published in 2014 by retired Supreme Court Justice John Paul Stevens,
…pertinent to both the proposed update to the LWV Constitutional Amendment position and, in Chapter Three, the proposed update for the League's Money in Politics position.
Stevens spent over 40 years on the Court.

Prologue:

- *US constitution itself as a product of compromise; two methods for proposing new amendments;*
- *successful amendments have been very few—spells out what they are and when, why they were adopted;*
- *Why this book: thought only one amendment to the Constitution has been adopted in the last 40 years "rules crafted by a slim majority of the members of the Supreme Court have had such a profound and unfortunate impact on our basic law that resort to the process of amendment is warranted.";*
- *his solution—6 amendments—4 that nullify judge-made rules;"the fifth would expeditethe demise of the death penalty"; the sixth would confine coverage of the Second Amendment to the original intent of its authors.*

My complaint is with the way the chapters are organized. The issues most important to lay political junkies should have been address first…..Chapters organized in a way that may make logical sense to a lawyer-author and lawyer-readers, but at the expense of holding on to the rest of us.

Chapter one. The "Anti-Commandeering" Rule.
A very unfortunate, jargony title for the first chapter.

- ***Issue addressed**: Art VI of Constitution, ("Supremacy Clause"), states that the constitution is "the supreme Law of the Land; and the **Judges** in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."Does this mean that Congress can enact laws that require state officials **other than judges** to enforce or administer federal law?*
- ***Judge-made rule**: In 1997 in a 5-4 decision in Prinz v United States, the Supreme Court said "no", announcing what has come to be known as the "anti-commandeering rule": though the constitution requires state judges to be bound by federal law, the federal government cannot force **state officials** to enforce federal laws, because this would impair the states' ability to act as "sovereigns".*
- ***Effects of the rule**: participation by states in the federal background check system prior to purchasing firearms is **voluntary**. Mandatory participation could have prevented the mass shooting at Virginia Tech and a number of others.* What would happen if we got into a war and congress wanted to reimplement a draft? Since draft boards exist at the county level, could some counties "opt out" of drafting their citizens? Immigration "sanctuary cities"? Federal labor laws such as Fair Labor Standards Act (federal minimum wage? Environmental laws that may be

implemented more effectively by relying in part on state personnel instead of enlarging the federal bureaucracy?

- ***Why an amendment is warranted*** "…potential hazards associated with the rule are sufficiently serious to justify amending the Constitution to eliminate the rule…" by adding to Article IV four words after the word "Judges in the Supremacy Clause" so that it reads:
  PROPOSED AMENDMENT "This Constitution…shall be the supreme Law of the Land; and the Judges ***and other public officials*** in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Chapter two: Political Gerrymandering

- ***Issue addressed:*** *Should federal judges apply the same rules in cases challenging political gerrymandering as they apply to racial gerrymandering?*
- ***Judge*-made rule:** Chief Justice Earl Warren's 1964 opinion in Reynolds v Sims held that the "one person one vote" rule requires legislative districts with equal numbers of voters.
- ***Effects of the rule:*** "Exclusive focus on size of districts would often require abandonment of natural or historic boundary lines and…provide 'an open invitation to partisan gerrymandering' ".
- **Why an amendment is warranted:** congressional gridlock results in things like the 2013 government shutdown. "No reason why partisans should be permitted to draw lines that have no justification other than inhancing their own power…If departure from compactness cannot be explained by reference to a natural factor (rivers, county boundary etc) or change in district's population, the district should be redrawn."
  PROPOSED AMENDMENT **"**Districts represented by members of Congress, or by members of any state legislative body, shall be compact and composed of contiguous territory. The state shall have the burden of justifying any departures from this requirement by reference to neutral criteria such as natural, political or orther historic boundaries or demographic changes. The interest in enhancing or preserving the political power of the party in control of the state government is not such a neutral criterion.

Chapter three: Campaign finance (Citizens United

- ***Issue addressed:*** Is election-related speech by nonvoters always entitled to at least as much protection under the First Amendment as speech about other issues? Is the speaker's identity (as a corporation or as a noncitizen) an impermissible basis for regulating campaign speech?
- **Judge-made rule** Corporations have an unlimited constitutional right to finance campaign speech.
- **Effects of the rule** Gives nonvoters the power "to control the outcome of elections" through the unlimited right to make campaign expenditures.
- **Why an amendment is warranted** 1. Though can't censor political speech to enhance the persuasive appeal of either side of a debate, rules limiting the quantity of speech can by justified by interest in giving both sides an equal chance to persuade the decision-maker of its side of the argument. 2. When campaign spending limits are too low, incumbents have a big advantage, so equalizing expenditures might handicap candidates w/o name recognition or exposure. 3. Public perception that money determines outcome of election discourages voter participation.

PROPOSED AMENDMENT: Neither the First Amendment nor any other provision of this Constitution shall be construed to prohibit the Congress or any state from imposing reasonable limits on the amount of money that candidates for public office, or their supporters, may spend in election campaigns.
I'd make it more specific—how about nonvoters can't spend money to advocate for or against a particular candidate.

Chapter four: Sovreign immunity—less compelling to non-lawyers than the others. This may have been bugging him for a long time, but nothing in the news makes this issue compelling for the average reader. You really have to dig long and hard to find out which judge-made rules he's objecting to here.

- ***Issue addressed:***
- **Judge-made rule** In 1974, in *Edleman v Jordan,* Justice Rehnquist dramatically expanded the "sovereign immunity" defense, in his opinion that held that the Eleventh Amendment prohibits recovery for damages by private individuals against a state for its past violations of federal law. And in *Fitzpatrick v Bitzer,* that Congress could nullify by statute the Eleventh Amendment in order to further the enforcement of the Fourteenth Amendment.
- **Effects of the rule**
- **Why an amendment is warranted** "simple interest in establishing justice" justifies ending "a doctrine that never should have been adopted in the first place."
  PROPOSED AMENDMENT Neither the Tenth Amendment, the Eleventh Amendment nor any other provision of this Constitution, shall be construed to proved any state, state agency, or state officer with an immunity from liability for violating any act of Congress, or any other provision of this Constitution.