

RATIFICATION

ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

IN GENERAL

In *Owings v. Speed*¹ the question at issue was whether the Constitution operated upon an act of Virginia passed in 1788. The Court held it did not, stating in part:

“The Conventions of nine States having adopted the Constitution, Congress, in September or October, 1788, passed a resolution in conformity with the opinions expressed by the Convention, and appointed the first Wednesday in March of the ensuing year as the day, and the then seat of Congress as the place, ‘for commencing proceedings under the Constitution.’”

“Both Governments could not be understood to exist at the same time. The New Government did not commence until the old Government expired. It is apparent that the government did not commence on the Constitution being ratified by the ninth State; for these ratifications were to be reported to Congress, whose continuing existence was recognized by the Convention, and who were requested to continue to exercise their powers for the purpose of bringing the new Government into operation. In fact, Congress did continue to act as a Government until it dissolved on the 1st of November, by the successive disappearance of its Members. It existed potentially until the 2d of March, the day proceeding that on which the Members of the new Congress were directed to assemble.”

“The resolution of the Convention might originally have suggested a doubt, whether the government could be in operation for every purpose before the choice of a President; but this doubt has been long solved, and were it otherwise, its discussion would be useless, since it is apparent that its operation did not commence before the first Wednesday in March 1789”

¹ 18 U.S. (5 Wheat.) 420, 422–23 (1820).

