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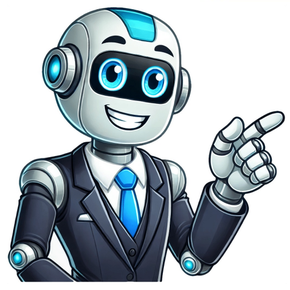

Photo courtesy of Examiner.com by: Matthew Andersen, 1L Contributor In the wake of President Barack Obama’s re-election victory on Nov. 6, nearly 1 million Americans, from all 50 states, have signed petitions to secede from the United States of America. The ironic part of signing petitions for secession is that it is all being done through the White House’s “We the People” website, which was created by the Obama Administration. Once a petition gains 25,000 signatures, the Administration has pledged to review the petition and file a formal response. As of Monday evening, a petition has been filed from all 50 states. Texas has gained nearly 118,000 signatures, which is the most signatures of any secession petition, and the most signatures of any open petition on the website. Currently 11 states, including Georgia, Louisiana, South Carolina, Missouri, North Carolina, Tennessee, Oklahoma, Alabama, Florida, Ohio and Texas, have secession petitions that have reached the requisite number of signatures to gain an official review and response from the Obama Administration. Now, for what you have all been waiting for, the legal analysis: At the culmination of the Civil War, the United States Supreme Court decided Texas v. White, which started as a dispute over bonds issued in Texas during the war. Texas attempted to leave the United States when it supported the Confederacy, where it supplied troops to fight with the rebel forces. The United States Supreme Court established a new constitutional principle in Texas v. White, holding that states cannot unilaterally secede. Chief Justice Salmon P. Chase stated: “When Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the state. The Act, which consummated her admission into the Union, was something more than a compact; it was the incorporation of a new member into the political body. And it was final.” If it doesn’t seem hard enough to secede, some constitutional scholars say that secession could be considered treason under the Articles of the Constitution. In an article for the Kansas City Star, Akhil Reed Amar, Sterling Professor of Law and Political Science at Yale University, discussed the Supremacy Clause in Article 6 of the United States Constitution. “What the Constitution says repeatedly is once you’re in (as a state), you’re in. If people want to secede, they are allowed to leave; they just can’t take the land and the water with them. There is a lawful way to secede – it’s called emigration. They can move to Canada,” Amar wrote. This is not the first time Americans have tried to secede from the United States, and it most likely will not be the last. One is left to wonder whether the publicity that this issue has received has a direct connection with the increasing number of social media users and American citizens’ increasing urge to express political angst on the Internet. Share your thoughts on seceding from old Red, White and Blue with us at @JurisDuqLaw or on our Facebook page. First Inaugural Address March 4, 1861 I hold that, in contemplation of universal law, and of the Constitution, the union of these States is perpetual....It follows....that no State, upon its own mere motion, can lawfully get out of the Union; that resolves and ordinances to that effect are legally void; and that acts of violence, within any State or States, against the authority of the United States, are insurrectionary or revolutionary, according to circumstances. I, therefore, consider that, in view of the Constitution and the laws, the Union is unbroken. First Inaugural Address March 4, 1861 We find the proposition that, in legal contemplation, the Union is perpetual confirmed by the history of the Union itself. The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And, finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was "to form a more perfect Union." Message to Congress in Special Session July 4, 1861 The States have their status in the Union, and they have no other legal status. If they break from this they can only do so against law and by revolution. _____ Back to Lincoln on Secession Back to History and Culture Few words are perceived to be more politically incorrect in America than the s-word, secession. Thanks mostly to Abraham Lincoln, secession is considered to be a complete anathema by liberals and conservatives alike. Although most Americans believe the Civil War proved once and for all that secession is illegal and unconstitutional, nothing could be further from the truth. In his book A Constitutional History of Secession (2002), John Remington Graham traces the history of secession in America back to Britain’s glorious revolution in 1689 when the Crown passed from James II to William and Mary without armed conflict and in defiance of the constitution of England. “Whenever any form of government becomes destructive, it is the right of the people to alter or abolish it, and to institute new government,” said Thomas Jefferson in the Declaration of Independence. Just as a group has a right to form, so too does it have a right to disband, to subdivide itself, or withdraw from a larger unit. Thomas Jefferson and James Madison held that the U.S. Constitution was a compact of sovereign states which had delegated very specific powers but not sovereignty to a central government-powers which could be recalled any time. By international law sovereignty cannot be surrendered by implication, only by an express act. Nowhere in the U.S. Constitution is there any express renunciation of sovereignty by the states. source: wikipedia In an article entitled “The Foundations and Meaning of Secession” which appeared in the Stetson Law Review (1986), Pepperdine University Law Professor H. Newcomb Morse provides convincing evidence that the American states do indeed have the right to secede and that the Confederate states did so legally. First, three of the original thirteen states-Virginia, New York, and Rhode Island-ratified the U.S. Constitution only conditionally. Each of these states explicitly retained the right to secede. By accepting the right of these three states to leave the Union, has the United States not tacitly accepted the right of any state to leave? Second, over the years numerous states have nullified acts of the central government judged to be unconstitutional. These instances where national laws have been nullified give credence to the view that the compact forming the Union has already been breached and that states are morally and legally free to leave. Third, and most importantly, the U.S. Constitution does not forbid a state from leaving the Union. According to the tenth amendment to the Constitution, anything that is not expressly prohibited by the Constitution is allowed. Therefore, all states have a Constitutional right to secede. However, two new constitutional questions concerning secession emerged shortly after the Civil War ended. First, under military occupation and control, six former Confederate states were coerced into enacting new constitutions containing clauses prohibiting secession. But in the eyes of most legal scholars, agreements of this sort made under duress are voidable at the option of the aggrieved party. Furthermore, there is absolutely nothing to prevent these six states from amending their constitutions again. source: clickondetroit.com During this same period of time and also under duress, the fourteenth amendment to the Constitution was ostensibly ratified. Although this amendment does not explicitly forbid secession, some have argued that it does so implicitly. However, the fourteenth amendment is tainted by the highly questionable legality of the Union’s invasion of the South. Some legal scholars question whether the fourteenth amendment was ever constitutionally ratified. According to the Declaration of Independence, we are endowed by our Creator with “certain unalienable rights” including life, liberty, and the pursuit of happiness. If that is the case, then it is not much of a stretch to argue that the right of secession is such a right. Ultimately, whether or not a state is allowed to secede is neither a legal question nor a constitutional question, but rather a matter of political will. How strong is the will of the people in the departing state to be free and independent of the control of the world’s only superpower? How far will the U.S. government be prepared to go in imposing its will on a breakaway republic? Only time will tell! Long live the Second Vermont Republic! Aryan MarxaneyDec 8, 20216 min readOpinions on the constitutionality of secession vary, but from the time before and during the Civil War, secession had arguments both for and against its constitutionality, whilst after the Civil War and the 14th amendment it became clear that secession was unconstitutional. It often proves an easy solution to impose our modern world views on the issue of whether secession was constitutional, but at the time before and during the Civil War different interpretations of the Constitution, Articles of Confederation and the relationships between the two founding documents allowed for both pro and anti-secession arguments to form. Therefore, although by modern terms secession was unconstitutional, arguments can be made both ways as to whether the South had a right to secede when looking from the perspective of before and during the Civil War.In the period before and during the Civil War, the South brought convincing arguments towards their rights to secession, many of which were based on their understanding that the Constitution replaced the Articles of Confederation – and was not simply an extension of the Articles of Confederation. One of the key arguments towards the South’s belief in their right to secession was that of the federal government exerting tyrannical powers over the colonies was not permitted by the Declaration of Independence, which declared exactly these tyrannical powers as being the reason for the colonies’ willingness to fight for their independence. In other words, the South believed in “the right of a people to abolish a Government when it becomes destructive of the ends for which it was instituted” (Confederate States of America). This aspect of the South’s argument towards its right of succession largely depends on subjectivity: although the South believed that the federal government was abusing its power, the North believed the contrary. Another key point which the South presented towards its argument of its right to secede from the Union was their belief that they could leave the Union established by the Constitution just as they had entered it. Although the Articles of Confederation had argued that the Union was perpetual, the Constitution did not state this explicitly and it was unclear as to whether the Constitution had entirely replaced the Articles of Confederation (which would imply that the Union was no longer necessarily perpetual) or if the Constitution had simply been an extension of the Articles of Confederation (in which case the Union would be perpetual, and secession would therefore be unconstitutional) (Manning). Since Southerners believed that the Constitution had essentially replaced the Articles of Confederation, they argued that it was not a perpetual union, and therefore believed that “if ratification by convention is legal, then UN-ratification by convention is also legal” (Symonds). The belief that the Constitution had replaced the Articles of Confederation was essential in all of the South’s points towards secession: since they considered that the union could be broken, they decided that it was entirely constitutional to vote on the matter or to leave the union because they believed that they had been unfairly treated by it. A final key argument towards the constitutionality of secession which was heavily endorsed by the South was that the non-slaveholding North had not kept to its part of the Constitution. Whilst the Constitution had called for “No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due” (Confederate States of America), the North’s encouragement of abolitionism and of slave rebellions (and their refusal to return fugitive slaves) allowed Southerners to argue that the North was not holding to the rules established by the Constitution, and that they therefore had the right to leave the Union. Since, according to their belief in the relationship between the Constitution and Articles of Confederation, the South did not have to remain in the Union, they considered that leaving the Union was perfectly constitutional. The South’s arguments of the relationship between the Constitution and Articles of Confederation, their belief that the North was in breach of the contract for all states and their subjective view of the tyrannical powers which were being asserted by the federal government all led the South to push for secession and demonstrate that the South’s claim towards the constitutionality of secession was not baseless.The North also had much support towards their argument of the unconstitutionality of secession from the union, which also bore heavy support from their belief that the Constitution added to the Articles of Confederation and did not replace the original Articles of Confederation. One of the key arguments of the North against secession and the South’s belief in its constitutionality was that the North believed that the Union was perpetual. This claim was based on the belief that the Articles of Confederation had not been replaced by the Constitution, but instead that the Constitution was simply an addition to the pre-existing Articles of Confederation, and also that “the Articles of Confederation declared the Union to be “perpetual”” (Manning). Another key argument which the North brought against secession was that the Constitution nor the Articles of Confederation had ever established any policy for leaving the Union. As expressed by Lincoln when he stated that “no government proper ever had a provision in its organic law for its own termination” (Holzer), no legislation was ever created for the nation regarding its separation, implying that a certain part of a nation simply trying to leave would break apart the nation and would thereby in itself violate any nation-binding document like the Constitution. Thereby, the Northerners were clearly able to develop their position that the act of seceding from the Union was unconstitutional through their opinion on the Union’s perpetuality, the link between the articles of Confederation and the Constitution and the basic idea of a nation.Finally, a modern interpretation of Southern secession again gives us a different outlook on secession - we would most definitely consider that secession is unconstitutional. As expressed by Farber, “School children today pledge allegiance "to the flag of the United States of America, and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all"” (Farber). This view of citizenship and allegiance to the USA over an individual state, and its nature as “indivisible” implies that secession is impossible. The 14th amendment to the Constitution further confirmed this viewpoint, which means that most people looking back from today will regard secession as something against the values of the Constitution. The 14th amendment makes it clear that the loyalty of citizens should be first and foremost to the nation and not to their state, which comes together with the pledge of allegiance to show that seceding from the Union was unconstitutional. However, although we may today believe in the unconstitutionality of secession, neither the pledge of allegiance nor the 14th amendment existed before or during the Civil War, so it is clear why the constitutionality of secession could be understood in both ways by people at the time.In conclusion, the interpretation of the constitutionality of secession is difficult and results in different perspectives lending different opinions. Whilst a modern perspective tells us that secession was clearly unconstitutional, the perspectives before and during the Civil War greatly varied due to the flexibility in the interpretation of agreements and the relationships between them. Thereby, the arguments for or against secession’s constitutionality during and before the Civil War were each not baseless, but the variety of interpretations meant that essentially the only way of forever deciding about secession’s constitutionality was through a war or a compromise – and in the end, a war was the chosen option. Confederate States of America. "Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union." 24 December 1860. Yale Law School Avalon Project. 30 November 2021.Farber, Daniel A. "The Fourteenth Amendment and the Unconstitutionality of Secession." 2012. Akron Law Review. 30 November 2021.Holzer, Harold. Did South Carolina Have a Constitutional Right to Secede? 23 November 2010. 30 November 2021.Manning, Chandra. Did South Carolina have a Constitutional Right to Secede? 23 November 2010. 30 November 2021.Symonds, Craig. Did South Carolina Have a Constitutional Right to Secede? 23 November 2010. 30 November 2021. I was asked a question the other day that I thought would make a good article. Did the southern states have a right to secede from the union? And what does that mean for those talking about the state of Texas seceding today?There is no language in the Constitution about secession, no standards for when a state may secede, and no process for one to do so. Yet states are sovereign entities. Since they joined the union voluntarily, should they not be able to exit the union as well? Finding nothing in the Constitution, I went to my next go-to reference, the Federalist and Anti-Federalist Papers. The Anti-Federalist did not mention secession at all. However, James Madison in Federalist #58, thought that having too many members in the House of Representatives would foster the “baneful practice of secessions“.Next, I went to the constitutional debates and searched for discussions on secession. Early in the debates about the changes needed to the Articles of Confederation, a concern was raised by the fact that the commissions for the delegates from Delaware prevented them from agreeing to any change to the rules of suffrage for the states. Gouvenor Morris noted:that the valuable assistance of those members could not be lost without real concern, and that so early a proof of discord in the convention as a secession of a State, would add much to the regret;The Records of the Federal Convention of 1787 [Farrand’s Records, Volume 1, p. 37]The idea that early in the process a state would leave the convention, much less the union, would be a real problem. It would show so much discord in the convention as to make it unworkable. During a rather raucous debate about a comment about the powers larger states may wield over smaller ones, Elbridge Gerry said:If no compromise should take place what will be the consequence. A secession he foresaw would take place; for some gentlemen seem decided on it; two different plans will be proposed, and the result no man could foresee. If we do not come to some agreement among ourselves some foreign sword will probably do the work for us.The Records of the Federal Convention of 1787 [Farrand’s Records, Volume 1, p. 532]Rather than concern over their reputation and effectiveness, John Francis Mercer was concerned that secession of a state from the convention could be used at a critical moment to endanger the government itself.Later, while debating how many of the members of the House of Representatives would constitute a quorum, Mr. Mercer stated:So great a number will put it in the power of a few by seceding at a critical moment to introduce convulsions, and endanger the Governmt.The Records of the Federal Convention of 1787 [Farrand’s Records, Volume 2, p. 252]The idea of a state seceding from the union was considered a bad one. It could be used for political machinations, and states willing to do so would possess undue influence on the union.So why did the Founding Fathers not provide a way for a state to leave the union? I believe the answer comes from Mr. Mercer’s quote above. If a state were given a method of seceding, it would be human nature for that power to be used, in effect, to blackmail the rest of the states. As Gouvernor Morris noted:Besides other mischiefs, if a few can break up a quorum, they may sieze a moment when a particular [part] of the Continent may be in need of immediate aid, to extort, by threatening a secession, some unjust & selfish measure.The Records of the Federal Convention of 1787 [Farrand’s Records, Volume 2, p. 252]The power to secede would give a single state the ability to coerce the other states. It would allow the tyranny of the minority over the majority. Think of how the U.S. Senate works today: A minority of Senators can thwart the will of the majority for whatever reason they wish, or for no reason at all. Imagine if states had this power?This was tried in 1860 when 11 states claimed the authority to secede from the union. Although the states were sovereign, they’d agreed to the compact that is the Constitution, which did not give them a method for for exiting. At the very least, since states can only be added to the union by Congress (Article VI, Section 3), an argument can be made that they can only be released from their obligations by Congress, something that did not happen in 1860. There has often been talk about Texas seceding. It is noted that since Texas was a republic, i.e., its own nation, before it joined the union, it is uniquely positioned to leave it. However, each of the original 13 states were also their own nations before joining the union. Regardless of the state of land prior to joining the union, they agreed to be bound by the Constitution and give it supremacy over their own laws and constitutions (Article VI, Clause 2).In 1860, states which were unhappy with the new President, Abraham Lincoln, started talking about secession. Labeled an act of war by some, and predicting armies coming to steal their property (Dred Scott v. Sandford, 1857), several states unhappy with the current political environment in Washington, D.C., illegally broke away from the union rather than continue with the political process, and by this action started a war. Now look at the political discourse in Washington, D.C. today. We have states that are unhappy with our current President, Donald Trump. We have claims about corruption and the illegal use of federal power. And we have threats of impeachment, with as yet no evidence presented of the claims against the President. Now imagine if states had the authority to secede, what do you think would happen? If those in political power will use impeachment as a tool to overturn an election for political reasons, is it not conceivable they would use the threat of secession as well? Imagine if states like New York and California could threaten to secede from the union if the Representatives from other states did not vote for impeachment and Senators vote for conviction. Do you think Washington, D.C. would be more or less dysfunctional under those circumstances?Contrary to what some have said, there is no legal way for states to secede from the union. I, for one, am very thankful for that fact. It pressures states unhappy with the current circumstances to continue to work through the process rather than just take the ball and go home.