sons for excluding persons from offices, who have been concerned in creating them, or increasing their emoluments, are to take away, as far as possible, any improper bias in the vote of the representative, and to secure to the constituents some solemn pledge of his disinterestedness. The actual provision, however, does not go to the extent of the principle; for his appointment is restricted only 'during the time, for which he was elected'; thus leaving in full force every influence upon his mind, if the period of his election is short, or the duration of it is approaching its natural termination."[471]

In 1909, after having increased the salary of the Secretary of State,[472] Congress reduced it to the former figure so that a Member of the Senate at the time the increase was voted would be eligible for that office.[473] The clause became a subject of discussion in 1937, when Justice Black was appointed to the Court, because Congress had recently increased the amount of pension available to Justices retiring at seventy and Black's Senate term had still some time to run. The appointment was defended, however, with the argument that, because Black was only fifty-one at the time, he would be ineligible for the "increased emolument" for nineteen years and it was not as to him an increased emolument.[474] In 1969, it was briefly questioned whether a Member of the House of Representatives could be appointed Secretary of Defense because, under a salary bill enacted in the previous Congress, the President would propose a salary increase, including that of cabinet officers, early in the new Congress, which would take effect if Congress did not disapprove it. The Attorney General ruled that, as the clause would not apply if the increase were proposed and approved subsequent to the appointment, it similarly would not apply in a situation in which it was uncertain whether the increase would be approved.[475]

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[471] 2 J. Story, Commentaries on the Constitution of the United States § 864 (1833).

[472] 34 Stat. 948 (1907).

[473] 35 Stat. 626 (1909). Congress followed this precedent when the President wished to appoint a Senator as Attorney General and the salary had been increased pursuant to a process under which Congress did not need to vote to approve but could vote to disapprove. The salary was temporarily reduced to its previous level. 87 Stat. 697 (1973). *See also* 89 Stat. 1108 (1975) (reducing the salary of a member of the Federal Maritime Commission in order to qualify a Representative). For a discussion of other examples where salaries of offices were reduced to avoid the strictures of the clause, see J. O'Connor, *The Emoluments Clause: An Anti-Federalist Intruder in the Federalist Constitution*, 24 Hofstra L. Rev. 89 (1995).

[474] The matter gave rise to a case, *Ex parte* Albert Levitt, 302 U.S. 633 (1937), in which the Court declined to pass upon the validity of Justice Black's appointment. The Court denied the complainant standing, but strangely it did not advert to the fact that it was being asked to assume original jurisdiction contrary to Marbury v. Madison, 5 U.S. (1 Cr.) 137 (1803).

[475] 42 Op. Atty. Gen. 381 (Jan. 3, 1969).