

= Seventeenth Amendment to the United States Constitution =

The Seventeenth Amendment (Amendment XVII) to the United States Constitution established the popular election of United States Senators by the people of the states . The amendment supersedes Article I , § 3 , Clauses 1 and 2 of the Constitution , under which senators were elected by state legislatures . It also alters the procedure for filling vacancies in the Senate , allowing for state legislatures to permit their governors to make temporary appointments until a special election can be held .

The amendment was proposed in the 62nd Congress in 1912 and became law in 1913 after being ratified by the required 36 state legislatures . It was implemented in special elections in Maryland (November 1913) and Alabama (May 1914) and then nationwide in the November 1914 election .

= = Text = =

The Senate of the United States shall be composed of two Senators from each State , elected by the people thereof , for six years ; and each Senator shall have one vote . The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures .

When vacancies happen in the representation of any State in the Senate , the executive authority of such State shall issue writs of election to fill such vacancies : Provided , That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct .

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution .

= = Background = =

= = = Original composition = = =

Originally , under Article I , § 3 , Clauses 1 and 2 of the Constitution , each state legislature elected its state 's senators for a six @-@ year term . Each state , regardless of size , is entitled to two senators as part of the Connecticut Compromise between the small and large states . This contrasted with the House of Representatives , a body elected by popular vote , and was described as an uncontroversial decision ; at the time , James Wilson was the sole advocate of popularly electing the Senate and his proposal was defeated 10 ? 1 . There were many advantages to the original method of electing senators . Prior to the Constitution , a federal body was one where states effectively formed nothing more than permanent treaties , with citizens retaining their loyalty to their original state . However , under the Constitution , the states were subordinated to a central government ; the election of senators by the states reassured Anti @-@ federalists that there would be some protection against the swallowing up of states and their powers by the federal government , providing a check on the power of the federal government .

Additionally , the longer terms and avoidance of popular election turned the Senate into a body that could " temper " the populism of the House . While the Representatives operated in a two @-@ year direct election cycle , making them frequently accountable to their constituents , the senators could afford to " take a more detached view of issues coming before Congress " . State legislatures retained the theoretical right to " instruct " their senators to vote for or against proposals , thus giving the states both direct and indirect representation in the federal government . The Senate was part of a formal bicameralism , with the members of the Senate and House responsible to completely distinct constituencies ; this helped defeat the problem of the federal government being subject to " special interests " . Members of the Constitutional Convention considered the Senate to be equivalent to the British House of Lords as an ' upper house ' , containing the " better men " of society ; it was hoped that they would provide more coolness and stability than the House of

Representatives due to the senators ' status .

= = = Issues = = =

According to Judge Jay Bybee of the United States Court of Appeals for the Ninth Circuit , those in favor of popular elections for senators believed that two primary problems were caused by the original provisions : legislative corruption and electoral deadlocks . There was a sense that senatorial elections were " bought and sold " , changing hands for favors and sums of money rather than because of the competence of the candidate . Between 1857 and 1900 , the Senate investigated three elections over corruption . In 1900 , for example , William A. Clark had his election voided after the Senate concluded that he had bought votes in the Montana legislature . But , analysts Bybee and Todd Zywicki believe this concern was largely unfounded ; there was a " dearth of hard information " on the subject . In more than a century of legislative elections of US senators , only 10 cases were contested for allegations of impropriety .

Electoral deadlocks were another issue . Because state legislatures were charged with deciding whom to appoint as senators , the system relied on them being able to agree . Some states could not , and thus delayed sending representatives to Congress ; in a few cases , the system broke down to the point where states completely lacked representation in the Senate . Deadlocks started to become an issue in the 1850s , with a dead @-@ locked Indiana legislature allowing a Senate seat to sit vacant for two years . Between 1891 and 1905 , 46 elections were deadlocked , in 20 different states ; in one extreme example , a Senate seat for Delaware went unfilled from 1899 until 1903 . The business of holding elections also caused great disruption in the state legislatures , with a full third of the Oregon House of Representatives choosing not to swear the oath of office in 1897 due to a dispute over an open Senate seat . The result was that the legislature was unable to pass legislation that year .

Zywicki again argues that this was not a serious issue . Deadlocks were a problem , but they were the exception rather than the norm ; many legislatures did not deadlock over elections at all . Most of those that did in the 19th century were the newly admitted western states , which suffered from " inexperienced legislatures and weak party discipline ... as western legislatures gained experience , deadlocks became less frequent . " While Utah suffered from deadlocks in 1897 and 1899 , they became " a good teaching experience , " and Utah never again failed to elect senators . Another concern was that when deadlocks occurred , state legislatures were unable to conduct their other normal business ; James Christian Ure , writing in the South Texas Law Review , notes that this did not in fact occur . In a deadlock situation , state legislatures would deal with the matter by holding " one vote at the beginning of the day ? then the legislators would continue with their normal affairs " .

State legislative elections were perceived to have become dominated by the business of picking senators . Senator John H. Mitchell noted that the Senate became the " vital issue " in all legislative campaigns , with the policy stances and qualifications of state legislative candidates ignored by voters who were more interested in the indirect Senate election . To remedy this , some state legislatures created " advisory elections " that served as de facto general elections , allowing legislative campaigns to focus on local issues .

= = = Calls for reform = = =

Calls for a constitutional amendment regarding Senate elections started in the early 19th century , with Henry R. Storrs in 1826 proposing an amendment to provide for popular election . Similar amendments were introduced in 1829 and 1855 , with the " most prominent " proponent being Andrew Johnson , who raised the issue in 1868 and considered the idea 's merits " so palpable " that no additional explanation was necessary . In the 1860s , there was a major Congressional dispute over the issue , with the House and Senate voting to veto the appointment of John P. Stockton to the Senate due to his approval by a plurality rather than a majority vote for the office . In reaction , the Congress passed a bill in July 1866 that required state legislatures to elect senators

by an absolute majority .

By the 1890s , support for the introduction of direct election for the Senate had substantially increased , and reformers worked on two fronts . On the first front , the Populist Party incorporated the direct election of senators into its Omaha Platform , adopted in 1892 . In 1908 , Oregon passed the first law that based the selection of U.S. senators on a popular vote . Oregon was soon followed by Nebraska . Proponents for popular election noted that ten states already had non @-@ binding primaries for Senate candidates , in which the candidates would be voted on by the public , effectively serving as advisory referenda instructing state legislatures how to vote ; reformers campaigned for more states to introduce a similar method .

William Randolph Hearst opened a nationwide popular readership for direct election of U.S. Senators in a 1906 series of articles using flamboyant language attacking ? The Treason of the Senate ? in his *Cosmopolitan Magazine* . David Graham Philips , one of the " yellow journalists " whom President Teddy Roosevelt called ? muckrakers ? , described Nelson Aldrich of Rhode Island as the principal ? traitor ? among the ? scurvy lot ? in control of the Senate by theft , perjury , and bribes corrupting the state legislatures to gain election to the Senate . A few state legislatures began to petition the Congress for direct election of senators . By 1893 , the House had the two @-@ thirds vote for just such an amendment . However , when the joint resolution reached the Senate , it failed from neglect , as it did again in 1900 , 1904 and 1908 ; each time the House approved the appropriate resolution , and each time it died in the Senate .

On the second national legislative front , reformers worked toward a constitutional amendment , which was strongly supported in the House of Representatives but initially opposed by the Senate . Bybee notes that the state legislatures , which would lose power if the reforms went through , were supportive of the campaign . By 1910 , 31 state legislatures had passed resolutions calling for a constitutional amendment allowing direct election , and in the same year ten Republican senators who were opposed to reform were forced out of their seats , acting as a " wake @-@ up call to the Senate " .

Reformers included William Jennings Bryan , while opponents counted respected figures such as Elihu Root and George Frisbie Hoar among their number ; Root cared so strongly about the issue that after the passage of the Seventeenth Amendment , he refused to stand for re ? election to the Senate . Bryan and the reformers argued for popular election through highlighting perceived flaws with the existing system , specifically corruption and electoral deadlocks , and through arousing populist sentiment . Most important was the populist argument ; that there was a need to " Awaken , in the senators ... a more acute sense of responsibility to the people " , which it was felt they lacked ; election through state legislatures was seen as an anachronism that was out of step with the wishes of the American people , and one that had led to the Senate becoming " a sort of aristocratic body ? too far removed from the people , beyond their reach , and with no special interest in their welfare " . The settlement of the West and continuing absorption of hundreds of thousands of immigrants expanded the sense of " the people . "

Hoar replied that ' the people ' were both a less permanent and a less trusted body than state legislatures , and that moving the responsibility for the election of senators to them would see it passing into the hands of a body that " [lasted] but a day " before changing . Other counterarguments were that renowned senators could not have been elected directly , and that since a large number of senators had experience in the House , which was already directly elected , a constitutional amendment would be pointless . The reform was considered by opponents to threaten the rights and independence of the states , who were " sovereign , entitled ... to have a separate branch of Congress ... to which they could send their ambassadors " . This was countered by the argument that a change in the mode in which senators were elected would not change their responsibilities .

The Senate freshman class of 1910 brought new hope to the reformers . Fourteen of the thirty newly elected senators had been elected through party primaries , which amounted to popular choice in their states . More than half of the states had some form of primary selection for the Senate . The Senate finally joined the House to submit the Seventeenth Amendment to the states for ratification , nearly ninety years after it first was presented to the Senate in 1826 .

By 1912 , 239 political parties at both the state and national level had pledged some form of direct election , and 33 states had introduced the use of direct primaries . Twenty @-@ seven states had called for a constitutional convention on the subject , with 31 states needed to reach the threshold ; Arizona and New Mexico each achieved statehood that year (bringing the total number of states to 48) , and were expected to support the motion . Alabama and Wyoming , already states , had passed resolutions in favor of a convention without formally calling for one .

= = Proposal and ratification = =

= = = Proposed by the Congress = = =

In 1911 , the House of Representatives passed House Joint Resolution 39 proposing a constitutional amendment for direct election of senators . It included a ? race rider ? meant to bar federal intervention in cases of racial discrimination against voters . Since the turn of the century , most blacks in the South , and many poor whites , had been disenfranchised by state legislatures passing constitutions with provisions that were discriminatory in practice . This meant that their millions of population had no political representation . Most of the South had one @-@ party states . When the resolution came before the Senate , a substitute resolution , one without the rider , was proposed by Joseph L. Bristow of Kansas . It was adopted by a vote of 64 to 24 , with 4 not voting . Nearly a year later , the House accepted the change . The conference report that would become the Seventeenth Amendment was approved by the Senate 42 to 36 on April 12 , 1912 , and by the House 238 to 39 , with 110 not voting on May 13 , 1912 .

= = = Ratification by the states = = =

Having been passed by Congress , the amendment was sent to the states for ratification and was ratified by :

Massachusetts ? May 22 , 1912
Arizona ? June 3 , 1912
Minnesota ? June 10 , 1912
New York ? January 15 , 1913
Kansas ? January 17 , 1913
Oregon ? January 23 , 1913
North Carolina ? January 25 , 1913
California ? January 28 , 1913
Michigan ? January 28 , 1913
Iowa ? January 30 , 1913
Montana ? January 30 , 1913
Idaho ? January 31 , 1913
West Virginia ? February 4 , 1913
Colorado ? February 5 , 1913
Nevada ? February 6 , 1913
Texas ? February 7 , 1913
Washington ? February 7 , 1913
Wyoming ? February 8 , 1913
Arkansas ? February 11 , 1913
Maine ? February 11 , 1913
Illinois ? February 13 , 1913
North Dakota ? February 14 , 1913
Wisconsin ? February 18 , 1913
Indiana ? February 19 , 1913
New Hampshire ? February 19 , 1913

Vermont ? February 19 , 1913
South Dakota ? February 19 , 1913
Oklahoma ? February 24 , 1913
Ohio ? February 25 , 1913
Missouri ? March 7 , 1913
New Mexico ? March 13 , 1913
Nebraska ? March 14 , 1913
New Jersey ? March 17 , 1913
Tennessee ? April 1 , 1913
Pennsylvania ? April 2 , 1913
Connecticut ? April 8 , 1913

With 36 states having ratified the Seventeenth Amendment , it was certified by Secretary of State William Jennings Bryan on May 31 , 1913 , as part of the Constitution . The amendment has subsequently been ratified by :

Louisiana ? June 11 , 1914
Alabama ? April 11 , 2002
Delaware ? July 1 , 2010 (After rejecting the amendment on March 18 , 1913)
Maryland ? April 1 , 2012
Rhode Island ? June 20 , 2014

The Utah legislature rejected the amendment on February 26 , 1913 . No action on the amendment has been completed by : Florida , Georgia , Kentucky , Mississippi , South Carolina , or Virginia .

= = = Effect = = =

The Seventeenth Amendment altered the process for electing United States Senators and changed the way vacancies would be filled . Under the original constitutional provision , state legislatures filled vacancies when a Senator left office before the end of the term ; the Seventeenth Amendment provides that state legislatures can grant governors the right to make temporary appointments , which last until a special election is provided to fill the seat . The power to call such an election can also be granted to the governor . It also had an immediate and dramatic impact on the political composition of the U.S. Senate .

Before the Supreme Court required " one man , one vote " in Reynolds v. Sims (1964) , rural counties and cities could be given equal weight in the state legislatures , enabling one rural vote to equal 200 city votes . The malapportioned state legislatures would have given the Republicans control of the Senate in the 1916 Senate elections . With direct election , each vote represented equally , the Democrats retained control of the Senate .

The reputation of corrupt and arbitrary state legislatures continued to decline as the Senate joined the House of Representatives implementing popular reforms . Judge Bybee has argued that the amendment led to complete " ignominy " for state legislatures without the props of a state @-@ based check on Congress . Progressive measures were enacted to enable the federal government to supersede the discredited states repeatedly over decades . However , Schleicher argues that the separation of state legislatures and the Senate has had a beneficial effect on the states , as it has allowed state legislative campaigns to focus on local rather than national issues .

New Deal legislation is another example of expanding federal regulation overruling the state legislatures promoting their local state interests in coal , oil , corn and cotton . Ure agrees , saying that not only is each Senator now free to ignore his state 's interests , Senators " have incentive to use their advice @-@ and @-@ consent powers to install Supreme Court justices who are inclined to increase federal power at the expense of state sovereignty " . Over the first half of the 20th century , with a popularly elected Senate confirming nominations , both Republican and Democratic , the Supreme Court began to apply the Bill of Rights to the states , overturning state laws whenever they harmed individual state citizens .

= = = First direct elections to the Senate = = =

Oklahoma , admitted to statehood in 1907 , chose a Senator by legislative election three times : twice in 1907 , when admitted , and once in 1908 . In 1912 , Oklahoma reelected Robert Owen by advisory popular vote .

New Mexico , admitted to statehood in 1912 , chose only its first two Senators legislatively . Arizona , admitted to statehood in 1912 , chose its first two Senators by advisory popular vote . Alaska , and Hawaii , admitted to statehood in 1959 , have never chosen a U.S. Senator legislatively .

The first direct elections to the Senate following the Seventeenth Amendment being adopted were : In Maryland on November 4 , 1913 : a class 1 special election due to a vacancy , for a term ending in 1917 .

In Alabama on May 11 , 1914 : a class 3 special election due to a vacancy , for a term ending in 1915 .

Nationwide in 1914 : All 32 class 3 senators , term 1915 ? 1921

Nationwide in 1916 : All 32 class 1 senators , term 1917 ? 1923

Nationwide in 1918 : All 32 class 2 senators , term 1919 ? 1925

= = = Interpretation and advocacy for reform = = =

In *Trinsey v. Pennsylvania* (1991) , the United States Court of Appeals for the Third Circuit was faced with a situation where , following the death of Senator H. John Heinz III of Pennsylvania , Governor Robert P. Casey had provided for a replacement and for a special election that did not include a primary . A voter and prospective candidate , John S. Trinsey , Jr . , argued that the lack of a primary violated the Seventeenth Amendment and his right to vote under the Fourteenth Amendment . The Third Circuit rejected these arguments , ruling that the Seventeenth Amendment does not require primaries .

Another subject of analysis is whether statutes restricting the authority of governors to appoint temporary replacements are constitutional . Vikram Amar , writing in the *Hastings Constitutional Law Quarterly* , claims that Wyoming 's requirement that its governor fill a senatorial vacancy by nominating a person of the same party as the person who vacated that Senate seat violates the Seventeenth Amendment . This is based on the text of the Seventeenth Amendment , which states that " the legislature of any state may empower the executive thereof to make temporary appointments " . The amendment only empowers the legislature to delegate the authority to the governor and , once that authority has been delegated , does not permit the legislature to intervene . The authority is to decide whether or not the governor shall have the power to appoint temporary senators , not in what fashion he should do so . Sanford Levinson , in his rebuttal to Amar , argues that rather than engaging in a textual interpretation , those examining the meaning of constitutional provisions should interpret them in the fashion that provides the most benefit , and that legislatures being able to restrict gubernatorial appointment authority provides a substantial benefit to the states .

Due to the controversy over the effects of the Seventeenth Amendment , advocates have emerged for both reform and / or repeal of the amendment . Under President Barack Obama 's administration in 2009 , four sitting Democratic senators left the Senate for appointed executive branch positions : Barack Obama (President) , Joe Biden (Vice President) , Hillary Rodham Clinton (Secretary of State) , and Ken Salazar (Secretary of the Interior) . Controversies developed about the successor appointments made by Illinois Governor Rod Blagojevich and New York Governor David Paterson . New interest was aroused in abolishing the provision for the Senate appointment by the governor .

Accordingly , Senator Russ Feingold of Wisconsin and Representative David Dreier of California proposed an amendment to remove this power ; Senators John McCain and Dick Durbin became co @-@ sponsors , as did Representative John Conyers . The Tea Party movement has been arguing for repealing the Seventeenth Amendment entirely , claiming that it would protect states ' rights and reduce the power of the federal government .

On March 2 , 2016 , the Utah legislature approved Senate Joint Resolution No. 2 asking Congress to offer an amendment to the United States Constitution that would repeal the Seventeenth

Amendment .