

The Twenty-Seventh Amendment and Congressional Compensation Part 4: Proposal and Ratification

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This Legal Sidebar post is the fourth in a six-part series that discusses the [Twenty-Seventh Amendment to the Constitution](#), which prevents laws that modify Members of Congress's compensation from taking effect until after an intervening congressional election. During the [117th Congress](#), the Sergeant at Arms fined three Members of the House of Representatives for entering the House Chamber without wearing masks during the COVID-19 pandemic. The Members declined to wear masks to protest a House [resolution](#) and policy requiring them to do so. Because the fines were deducted from their salaries without an intervening House election, the Members challenged the mask policy in federal court as a violation of the Twenty-Seventh Amendment. In [Massie v. Pelosi](#), a D.C. federal district court judge dismissed the Members' complaint, determining that the mask policy was consistent with the Twenty-Seventh Amendment because the disciplinary fines did not modify the Members' annual salaries designated in the [Ethics Reform Act of 1989](#). (In August 2022, a federal judge dismissed a [similar challenge](#) to fines for violating rules on security screening.)

As a result of these federal district court decisions, which have been appealed to the U.S. Court of Appeals for the D.C. Circuit, Congress may be interested in the history and scope of the most recently ratified amendment to the Constitution. Additional information on this topic is published in the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#).

Proposal and Ratification of the Twenty-Seventh Amendment

Early in the First Congress, James Madison, then a Virginia congressman, [introduced](#) a series of resolutions proposing to amend the Constitution. Many of these resolutions drew from the recommendations of the state ratifying conventions and were intended to assuage Anti-Federalists' concerns that the new federal government would usurp state power and stifle individual rights. The third resolution, initially proposed as a revision to the Congressional Compensation Clause rather than as a standalone, supplementary article, [provided](#) that "[n]o law varying the compensation last ascertained shall operate before the next ensuing election of Representatives."

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In explaining the need for this amendment, Madison [stated](#) that, although it was unlikely that Congress would abuse its spending power when determining its compensation, there was nonetheless “a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets.” He contended that the Congressional Pay Amendment would ensure that Members would not modify their compensation solely for their own benefit.

Madison’s proposed amendments [underwent various revisions](#) in the House and Senate before final passage and submission to the states. Records of congressional debates in the House of Representatives include a [brief discussion](#) of the proposed Congressional Pay Amendment. During this discussion, Representative Theodore Sedgwick of Massachusetts expressed general concern that Members of Congress would reduce their pay, thereby discouraging qualified people from serving in the House. Madison stated that the Amendment might not be “absolutely necessary,” but that it would not affect Congress’s ability to attract a sufficient number of qualified Members.

On September 25, 1789, after Congress approved the Congressional Pay Amendment by a vote of two-thirds of both Houses, it was submitted to the states as [one of twelve proposed amendments](#) to the Constitution, including the 10 proposals that would later become the Bill of Rights. By the end of 1791, 6 of the then-existing 14 states [had ratified](#) the Pay Amendment, leaving it short of the 11 state legislatures needed to constitute a three-fourths majority for purposes of ratification at the time. In 1873, the Ohio legislature ratified the Amendment to protest a congressional pay raise. Thereafter, the compensation amendment lay dormant until the late 20th century.

In 1982, [Gregory D. Watson](#), an undergraduate student at the University of Texas at Austin, wrote about the Congressional Pay Amendment in a paper for a political science class. Watson argued that the states could adopt the Amendment because Congress had not imposed a deadline on its ratification. Watson’s instructor gave him a grade of “C” on the paper, reportedly telling him that the Amendment was a “dead letter.” Thereafter, Watson mounted a campaign to obtain the state legislatures’ ratification of the Amendment.

From the mid-1980s to the early 1990s, more than 30 state legislatures [ratified the Amendment](#), responding to public opposition to congressional pay increases. On May 18, 1992, National Archivist Don W. Wilson, on the advice of attorneys in the Department of Justice’s Office of Legal Counsel, [proclaimed](#) the Amendment to have been ratified on May 7, 1992. Although the Constitution does not require Congress to confirm that an amendment has been ratified, the [House](#) and [Senate](#) each subsequently passed a concurrent resolution recognizing that the Amendment had been adopted.

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