

The Twenty-Seventh Amendment and Congressional Compensation Part 1: Introduction

March 14, 2023

This Legal Sidebar post is the first 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*.

Historical Background

The Twenty-Seventh Amendment prevents laws that modify Members of Congress’s compensation from taking effect until after an intervening congressional election. The Supreme Court has [not decided](#) any cases interpreting the Twenty-Seventh Amendment. Nonetheless, the unusual circumstances of the Amendment’s ratification, which occurred more than 200 years after Congress initially proposed it, have [raised important questions](#) about [Article V’s](#) process for amending the Constitution.

The Twenty-Seventh Amendment’s history spans more than two centuries from the Colonial Era to the 1990s. Generally, the governments of Great Britain’s American Colonies—and, later, the state governments—followed the “ancient” British practice of [compensating legislators](#). Consistent with this

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The Declaration of Independence
The Constitution of the United States
The Bill of Rights
Amendments XI–XXVII
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practice, the Constitution's Framers determined that Members of the proposed bicameral national legislature would receive compensation for their services. However, at the 1787 Federal Convention, the Framers debated whether compensation for Members of Congress should be determined by the Constitution, the Members themselves, or the state legislatures. Ultimately, the Framers determined that the national government would [compensate Members of Congress](#) for their services in amounts set by congressional legislation.

The original Constitution, which took effect in 1789, did not prevent federal laws that increased or decreased Members' compensation from becoming operative before the next congressional election. Some delegates to the [state conventions](#) who met to consider the Constitution's ratification viewed the absence of an intervening electoral check on Congress's power to set its own pay as a flaw in the Constitution's design. When ratifying the Constitution, several state conventions recommended amendments to the nation's charter to address concerns that Members of Congress would abuse the power to set their pay.

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. The third resolution prohibited any "law varying the compensation" of Members of Congress from becoming operative "before the next ensuing election of Representatives." On September 25, 1789, Congress proposed a similarly worded Congressional Pay Amendment. It was submitted to the states for ratification along with an amendment addressing congressional apportionment and the ten amendments that became the Bill of Rights upon their ratification in 1791.

By the end of 1791, six states had ratified the Congressional Pay Amendment. In 1873, the Ohio legislature ratified the Amendment to protest a congressional pay raise. Thereafter, the Amendment lay dormant until the late 20th century when it was rediscovered by Gregory D. Watson, then an undergraduate student at the University of Texas at Austin. Watson wrote a paper for a political science class arguing that the states could still ratify the Amendment and subsequently urged state legislatures to adopt it. From the mid-1980s to the early 1990s, more than 30 state legislatures ratified the Amendment, responding to the American public's opposition to congressional pay increases. The National Archivist proclaimed the Twenty-Seventh Amendment to have been ratified on May 7, 1992, more than two centuries after Congress had initially proposed it.

Click [here](#) to continue to Part 2.

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