

# Seventeenth Amendment

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(1913)

## WHAT IT SAYS

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.

## REPEAL THE SEVENTEENTH AMENDMENT?

In 2004, as his term in the Senate was ending, Georgia senator Zell Miller called for repeal of the Seventeenth Amendment. Miller thought that direct election of senators had upset the Constitution's careful balance between state and federal governments and made senators more susceptible to special interests from which they drew campaign contributions. "Make no mistake about it," said Miller, who had been appointed to the Senate by the governor to fill a vacancy and then had won a special election to finish the term. "It is the special interest groups and their fundraising power that elect U.S. senators and then hold them in bondage forever." Ironically, the same arguments had been made a century earlier in favor of changing the means of electing senators. In 1906, the muckraking magazine writer David Graham Phillips published a series of articles in *Cosmopolitan* under the title "The Treason of the Senate." In them, Phillips argued that special interests dominated state legislatures and sent to the Senate people who would represent those special interests rather than the public interest. Progressive reformers believed that the solution to this problem was to allow the voters themselves to select their senators directly. Some members of the House of Representatives have also suggested that the Seventeenth Amendment altered the original federalist system, in which the House would represent the people and the Senate would represent the states. They complain that the amendment severed an important link between the state legislatures and the national legislature. Regardless of such grumbling, it seems unlikely that having achieved the right to elect their own senators, the voting public would ever voluntarily give it up.

## WHAT IT MEANS

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Initially, the legislatures of each state elected their U.S. senators. In a number of instances, disagreements between the two houses of a state legislature left Senate seats vacant for protracted periods. In addition, reformers accused special interests of corrupting the process of electing senators. The Seventeenth Amendment sought to solve these problems by having senators directly elected by the voters. This change left all the Senate's constitutional powers in place, unlike reforms that took place at the same time in other parliamentary governments, such as Great Britain's, where the power of the House of Lords, or upper chamber, was curtailed. As a result, the U.S. Senate retained equal authority over legislation with the House of Representatives.

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*“The Senate of the United States has been both extravagantly praised and unreasonably disparaged, according to the predisposition and temper of its various critics. . . . The truth is, the Senate is just what the mode of its election and the conditions of public life in this country make it.”*

—Woodrow Wilson, *Congressional Government* (1885)

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# Seventeenth Amendment

## Congress regulates “time and procedure” for electing senators

→ 1866

Responding to many deadlocks in state legislatures that result in U.S. Senate seats going vacant for an entire legislative session, Congress passes a federal law that sets requirements on the methods by which state legislatures elect senators. This first change in the original process for selecting senators fails to remedy the deadlocks, which only increase in frequency.

## Populist Party calls for direct Senate elections

→ 1896

In the Presidential election of 1896, the Populist Party puts into its party platform a call for the direct election of senators. This marks the first time that a political party endorses direct election, although neither the Democrats nor the Republicans pay much notice to it.

## Muckrakers push for reform

→ 1906

Muckraking magazine writers investigating corruption in government and business call for progressive reforms. Among the most notable of these is a series of articles under the title “The Treason of the Senate” that appear in William Randolph Hearst’s *Cosmopolitan* magazine for several months in 1906. David Graham Phillips, author of the series, charges that senators represent special interests rather than the public interest.

## Congress can regulate primary elections for Senate

→ 1921

A Senate candidate in Michigan’s primary election challenges the constitutionality of the Federal Corrupt Practices Act after he is convicted of violating federal limits on the amount of money that can be used in primary and general elections. In *Newberry v. United States*, the Supreme Court rules that although the Seventeenth Amendment changed who elects senators (from state legislators to voters in each state), it did not modify Article I, section 4 of the Constitution. That provision gives Congress the power to determine the time, place, and manner of holding Senate elections.

## A Senate committee can investigate Senate elections

→ 1928

In *Reed v. County Commissioners of Delaware County*, the U.S. Supreme Court holds that a special committee of the Senate has the power to investigate a Pennsylvania Senate election. As the Seventeenth Amendment acknowledges a federal right to elect senators, the Senate is authorized to protect these rights.

## The Supreme Court requires one person, one vote

→ 1964

The U.S. Supreme Court, in *Gray v. Sanders*, strikes down Georgia’s “county unit” voting system as unconstitutional. Relying in part on the language of the Seventeenth Amendment, that senators are to be chosen “by the people,” a voter in the primary Senate election had challenged the state system in which small rural districts are treated relatively the same as larger urban districts. In this system, rural voters have a much larger impact on the outcome of the election than urban voters. The Supreme Court rules that this violates the equal protection clause of the Fourteenth Amendment.

# TIMELINE

## Oregon permits voters to designate whom they want as senator

1907

An Oregon law permits voters to designate y referenda whom they want as senator and direct the legislature to support the popular choice. Nebraska soon follows Oregon's lead and other states adopt reforms that permit voters to participate in the choice of U.S. senators. Several states call for a constitutional convention to amend the federal Constitution, if Congress does not act. Between 1893 and 1911, thirty-one of the thirty-two required states submit applications for a convention to amend the Constitution and allow the popular election of senators.

## The Senate agrees to support a constitutional change

1911

Although the House has long been advocating a change in the election of senators, the Senate resisted until 1911. By then at least twenty-nine states were nominating senators either in party primaries or general elections. Bowing to public demand, two-thirds of the Senate votes for an amendment sponsored by Senator Joseph Bristow of Kansas for direct election.

## The first direct elections of senators are held

1914

Following ratification of the Seventeenth Amendment, the first election of senators is held, with one-third of the Senate seats up for election. To the surprise of reformers, every incumbent running wins reelection.

## Residency requirements for voting are unconstitutional

1965

A district court holds that a residency requirement established by the Virginia legislature as an alternative to payment of a poll tax in federal elections is an additional qualification to voting, which violates the Seventeenth Amendment and Article I, section 2 of the Constitution. In *Harman v. Forssenius*, the Supreme Court agrees but bases its ruling of unconstitutionality on the Twenty-fourth Amendment (which outlawed poll taxes) rather than the Seventeenth Amendment.

## Independents can be barred from voting in a party primary

1986

The Connecticut Republican Party adopts a rule that permits independent voters (those not affiliated with any party) to vote in Republican primaries for federal and statewide offices. The party then challenges a Connecticut law that requires voters to register with a party before voting in its primary. In *Tashjian v. Republican Party*, the Supreme Court finds that the law denies the party and its members the right to freedom of association by limiting the number of registered voters whom the party may invite to participate in the "basic function" of selecting the party's candidates. But the Court finds that the state law does not violate the Seventeenth Amendment, as the rule establishes qualifications for voting in congressional elections that differ from the qualifications for voting in primary elections for the state legislature.

## Term limits for senators are unconstitutional

1995

In *U.S. Term Limits v. Thornton*, the Supreme Court rejects an Arkansas constitutional amendment that limits the number of times a candidate can run for the same office: two terms for U.S. senators and three terms for U.S. representatives. The Supreme Court observes that qualifications for members of Congress are determined by the U.S. Constitution and cannot be limited by the states. The Court further notes that "with the adoption of the Seventeenth Amendment, state power over the election of Senators was eliminated, and Senators, like Representatives, were to be elected directly by the people."