

Chapter CCLXXV.¹

AMENDMENTS TO THE CONSTITUTION.

1. Construction of the requirement of a two-thirds vote. Sections 3503–3505.
 2. Yeas and nays not essential to passage. Sections 3506, 3507.
 3. General precedents. Section 3508.
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3503. The vote required for passage of a joint resolution proposing an amendment to the Constitution is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership.—On May 13, 1912,² the House was considering the Senate amendments to the joint resolution (H. J. Res. 39) proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States.

A motion by Mr. William W. Rucker, of Missouri, that the House concur in the Senate amendment being put, and the yeas and nays being ordered, the yeas were 238, nays 39, answering present 5, not voting 110.

Mr. Thomas U. Sisson, of Mississippi, submitted that the constitutional requirement had not been complied with and the motion had not been agreed to. He cited Article V of the Constitution providing that two-thirds of the two Houses might submit amendments to the Constitution and took the position that under this provision more than 260 votes would be required for affirmative action, whereas only 238 had voted in the affirmative.

The Speaker³ said:

Two-thirds of the House means two-thirds of a quorum.

It has been held uniformly, so far as the Chair knows, that two-thirds of the House means two-thirds of those voting a quorum being present.

When the phrase or collocation of words, “the House of Representatives,” is used, it means a quorum of the House. If it can do one thing with a bare quorum it can do anything; and what precedents there are, both of the Supreme Court and of the Speaker—because Mr. Speaker Reed rendered an opinion—held that in a situation like this “two-thirds” meant two-thirds of those voting, provided it was a quorum.

By the vote just taken the House votes to recede from its disagreement to the Senate amendment and to concur in the Senate amendment, two-thirds having voted therefor.

¹Supplementary to chapter CXLV.

²Second session Sixty-second Congress, Record, p. 6368.

³Champ Clark, of Missouri, Speaker.

3504. Proposed amendments to the Constitution may be amended by a majority vote.—On February 24, 1931,¹ the House had under consideration the joint resolution (H. J. Res. 292) proposing an amendment to the Constitution of the United States, fixing the commencement of the terms of the President and Vice President and Members of Congress and fixing the time of the assembling of Congress.

The sixth section of the joint resolution having been read, Mr. John J. O'Connor, of New York, proposed an amendment changing the requirement that at least one branch of the ratifying legislatures be elected subsequent to the date of submission of the proposed amendment, to a requirement that all branches should have been elected prior to the date of submission.

The question being put by the Speaker, Mr. John C. Ketcham, of Michigan, submitted a parliamentary inquiry as to whether the amendment required a majority vote or a two-thirds vote for agreement.

The Speaker² held that a majority vote was sufficient.

3505. A two-thirds vote is required to agree to amendments of the other House to joint resolutions proposing amendments to the Constitution.—On December 18, 1917,³ the Vice President laid before the Senate with House amendments the joint resolution (S. J. Res. 17) proposing an amendment to the Constitution of the United States, prohibiting the manufacture, sale, or transportation of intoxicating liquors.

Mr. Morris Sheppard, of Texas, moved that the Senate concur in the amendments of the House.

Whereupon, Mr. William E. Borah, of Idaho, rising to a parliamentary inquiry, asked if a two-thirds vote was required to agree to the motion.

The Vice President⁴ replied:

That is the opinion of the Chair. It is the view of the Chair that an amendment to a resolution proposing an amendment to the Constitution of the United States needs only a majority in order to be adopted; but the resolution having once been adopted by the Senate and gone to the House and returned here for the final action of the Senate, it is necessary to have a two-thirds vote on the amendments of the House, for this constitutes the final passage of the resolution.

3506. The yeas and nays are not necessarily taken on the passage of a resolution proposing an amendment to the Constitution.—On March 9, 1928,⁵ the House was considering the joint resolution (S. J. Res. 47) proposing an amendment to the Constitution of the United States fixing the time of the assembling of Congress.

Consideration having been concluded and the question being on the passage of the joint resolution, Mr. John Q. Tilson, of Connecticut, inquired if a yea-and-nay vote was not required on resolutions proposing amendments to the Constitution.

¹Third session Seventy-first Congress, Record, p. 5906.

²Nicholas Longworth, of Ohio, Speaker.

³Second session Sixty-fifth Congress, Record, p. 477.

⁴Thomas R. Marshall, of Indiana, Vice President.

⁵First session Seventieth Congress, Record, p. 4430.

The Speaker¹ said:

There is no rule which provides for a yea-and-nay vote, and the Chair will quote from the Manual, section 224:

“The ayes and nays are not required to pass a resolution amending the Constitution.”
The question is on the passage of the resolution.

3507. The original notice of ratification of a constitutional amendment by a State is transmitted to the Secretary of State and a copy to the House, where it is laid before the House by the Speaker and filed in its archives.

On December 5, 1932,² the Speaker laid before the House a communication from the Governor of Alabama announcing the ratification by that State of the proposed twentieth amendment to the Constitution fixing the terms of the President, Vice President, and Members of Congress and the time of the assembling of Congress.

Mr. Charles L. Underhill, of Massachusetts, as a parliamentary inquiry, asked if the notice of ratification should not properly go to the Secretary of State rather than to the House of Representatives.

The Speaker³ said:

The original goes to the Secretary of State and a copy comes to the House of Representatives for its archives.

3508. The law makes no provision for notifying the States of the submission of a constitutional amendment and a concurrent resolution requesting the President to transmit to the States such proposed amendments is without privilege.—On July 19, 1909,⁴ Mr. Charles L. Bartlett, of Georgia, asked unanimous consent for the consideration of concurrent resolution (H. Con. Res. 20) as follows:

Resolved by the House of Representatives (the Senate concurring), That the President of the United States be, and he is, requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the State legislatures to amend the Constitution of the United States, passed July 12, 1909, as contained in Senate joint resolution No. 40, providing that “the Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration,” to the end that said States may proceed to act upon the said article of amendment; and that he request the executives of each State that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification.

Consent for consideration being denied, Mr. Bartlett again proposed consideration of the concurrent resolution on June 23⁵ and was again refused.

On July 26, however, the concurrent resolution (S. Con. Res.) identical in language with the House concurrent resolution proposed by Mr. Bartlett, was messaged over from the Senate and by unanimous consent was taken from the Speaker’s table and agreed to.

¹Nicholas Longworth, of Ohio, Speaker.

²Second session Seventy-second Congress, Record, p. 35.

³John N. Garner, of Texas, Speaker.

⁴First session Sixty-first Congress, Record, p. 4514.

⁵Record, p. 4597.