

ISSUE BRIEF

“Information to Action”

Topic: The 17th Amendment

Title: *THE STORY BEHIND THE 17TH AMENDMENT* by Joshua Charles

The 17th amendment to the Constitution was proposed by Congress in 1912, and ratified on April 8, 1913, when three-quarters of state legislatures approved it.

Prior to the amendment, Article I, Section 3 of the Constitution provided that Senators from each state would be “chosen by the Legislature thereof.” The 17th amendment changed this to “the people thereof.” Senators would henceforth be directly elected by the people themselves, just as members of Congress were.

A more minor but nonetheless substantive change was also made with respect to the authority of state governors. Previously, governors simply appointed Senators when any vacancy took place between elections. Under the 17th amendment, however, governors were required to “issue writs of election to fill such vacancies.” These are known today as “special elections.” If their state legislature allowed, governors could fill the vacancy with a temporary appointment, contingent on the results of an election.

When the Constitution was originally ratified, the only Founding Father who believed Senators should be elected by popular vote was James Wilson. All the others firmly believed that the state legislatures playing such a role in the Senate would help preserve the federal, dual-sovereignty foundation of the Constitution.

The basic idea behind Senators being appointed by state legislatures was the importance of the states being represented in the federal government as, themselves, sovereign entities.

However, by the early 20th century, some raised concerns about both corruption, and deadlock in state legislatures over the appointment of Senators. Prior to the 17th amendment, there had been several cases where state legislatures were unable to come to an agreement on who should be appointed a Senator, and those states’ Senate seats remained vacant for a time. Most famously, this had occurred in both Indiana and New Jersey.

The charge of corruption was largely popularized by the famous publisher William Randolph Hearst, who hired the novelist David Graham Phillips to write a series of articles called “The Treason of the Senate.” These articles asserted a largely fictional account of industrialists and bankers corrupting Senate elections, and thus the need for direct election of Senators by the people.

Therefore, the 17th amendment was meant to bypass legislative deadlock and corruption. In doing so, it necessarily weakened some of the intrinsically federal elements of the Senate founded on the notion of dual sovereignty that was so important to the Founders.

Whether this tradeoff remains valid and beneficial will be for the American people to decide. State legislatures are empowered by the Constitution to propose and ratify amendments. Should they decide the 17th Amendment is more troublesome than beneficial, then it can be abolished in favor of the original more federalist arrangement of the Constitution—or partially abolished, and other reforms put in place to address the original concerns of those who favored it.