Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

The Twenty-Seventh Amendment and Congressional Compensation Part 5: Scope of the Amendment

March 14, 2023

This Legal Sidebar post is the fifth 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*.

Scope of the Twenty-Seventh Amendment

The Supreme Court has not decided any cases interpreting the Twenty-Seventh Amendment. However, in 1994, one federal court of appeals panel rejected a Twenty-Seventh Amendment challenge to congressional pay legislation. In *Boehner v. Anderson*, Representative John Boehner contended that various provisions in the Ethics Reform Act of 1989 violated the Twenty-Seventh Amendment. These provisions automatically adjust salaries and pensions for Members of Congress each year to account for increases in the cost of living unless Congress declines the adjustment. Boehner argued, among other things, that half of the annual adjustments (i.e., those taking effect in odd-numbered years) were "laws"

Congressional Research Service
https://crsreports.congress.gov
LSB10934

that would modify pay for Members of Congress without an intervening election, violating the Twenty-Seventh Amendment.

The D.C. Circuit Court of Appeals held that the cost-of-living adjustment mechanism did not violate the Twenty-Seventh Amendment. Assuming, without deciding, that the Amendment applied to a law enacted before the Amendment's ratification in 1992, the court determined that the Ethics Reform Act of 1989 "did not cause any adjustment to congressional compensation until after the election of 1990 and the seating of the new Congress." Thus, the court determined that the relevant "law" for purposes of the Twenty-Seventh Amendment was the Ethics Reform Act provision, enacted in 1989, rather than each subsequent automatic, annual pay adjustment. Because the Act, enacted in the 101st Congress, had taken effect after the seating of a new Congress on January 1, 1991, no Twenty-Seventh Amendment violation had occurred.

Because of a lack of Supreme Court precedent, it is unclear whether various novel statutory mechanisms for regulating Members' pay might comply with the Twenty-Seventh Amendment. For example, in 2013, Congress enacted the "No Budget, No Pay Act of 2013." After a certain date, the Act would have temporarily withheld the payment of Senators' or Representatives' salaries until a Member's respective house of Congress had agreed to "a concurrent resolution on the budget for fiscal year 2014 pursuant to section 301 of the Congressional Budget Act of 1974." In an effort to comply with the Twenty-Seventh Amendment, the Act would have released the funds for Members' salaries on the last day of the 113th Congress if no budget resolution had been adopted in accordance with the Act's terms. Because each chamber passed a budget resolution prior to the Act's deadline, Members' pay was not withheld pursuant to the Act. As a result, the law was never tested in court.

Click here to continue to Part 6.

Author Information

Brandon J. Murrill
Legislative Attorney

Disclaimer