

The Twenty-Seventh Amendment and Congressional Compensation Part 6: Implications for the Article V Amendment Process

March 14, 2023

This Legal Sidebar post is the last 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*.

Implications for the Article V Amendment Process

The unusual circumstances of the Twenty-Seventh Amendment's ratification more than 200 years after its proposal has raised [important questions](#) about [Article V's](#) process for amending the Constitution. One question is whether there is an [implicit time limit](#) on an amendment's ratification when Congress does not specify one in the amendment's text or the accompanying joint resolution. Although the Supreme Court in *Dillon v. Gloss* opined that, regardless of whether Congress specifies a deadline, the time period for

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LSB10935

ratification must be “reasonable,” it appears this language was subsequently regarded as nonbinding dicta in *Coleman v. Miller*.

Some scholars have argued, consistent with the dicta in *Dillon*, that Article V requires a “contemporaneous consensus” among Congress and the states in favor of an amendment, but other commentators disagree. The National Archivist’s certification of the Twenty-Seventh Amendment more than 200 years after it was proposed suggests that, if Congress does not specify a deadline for ratification, an amendment remains pending before the states until the requisite number of states have ratified it.

Another question that emerged from the Twenty-Seventh Amendment’s ratification is whether Congress has any role to play in determining whether an amendment has been ratified. After the National Archivist certified the Twenty-Seventh Amendment as part of the Constitution, the House and Senate each passed a concurrent resolution recognizing that the Amendment had been adopted. In *Coleman v. Miller*, a 1939 case involving the unratified Child Labor Amendment, the Supreme Court indicated that Congress might play a role in “promulgating” an amendment, noting that Congress had adopted a concurrent resolution recognizing that the states had ratified the Fourteenth Amendment after the Civil War. However, the Court also noted the unique circumstances surrounding the Fourteenth Amendment’s ratification. For instance, three southern states that previously rejected the Amendment had constituted new governments at Congress’s direction as a result of Reconstruction by the time they ratified it. Thus, the Court’s ruling in *Coleman* would not appear to have definitively resolved questions about Congress’s role in the ratification process. Moreover, since *Coleman*, some commentators have expressed doubts that Congress has any constitutional role in determining whether the states have ratified a proposed constitutional amendment.

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