

C. Senate Consideration; House-Senate Relations

§ 6. Senate Consideration

In the Senate, as in the House, although only a simple majority vote is required to amend a joint resolution proposing a constitutional amendment, a two-thirds majority vote is required for passage. The Senate has converted, by amendment, a legislative joint resolution into a proposed constitutional amendment (such a resulting joint resolution requiring a two-thirds vote for passage). In addition, the Senate has entertained, to a joint resolution proposing a constitutional amendment, amendments to achieve a legislative purpose instead.

Vote Required for Passage

§ 6.1 The vote required in the Senate for passage of a joint resolution proposing an amendment to the Constitution is two-thirds of those present and voting, a quorum being present, and not two-thirds of the total membership.

The vote required in the Senate is the same as that required in the House,⁽¹⁾ as the proceedings of

1. See § 5.1, *supra*.

Feb. 26, 1869,⁽²⁾ illustrate. On that day, the Senate concluded consideration of a conference report on a joint resolution proposing a constitutional amendment regarding suffrage. The proceedings relating to the announcement of the outcome of the vote were as follows:

The PRESIDENT *pro tempore*.⁽³⁾ The question is on concurring in the report of the committee; and on this question the yeas and nays must be called.

The question being taken by yeas and nays resulted—yeas 39, nays 13; as follows: . . .

The PRESIDENT *pro tempore*. On this question the yeas are 39, and the nays are 13. Two thirds of the Senators present having voted in the affirmative, the report is agreed to.

Mr. [George H.] WILLIAMS [of Oregon] obtained the floor.

Mr. [Garrett] DAVIS [of Kentucky]. I rise to a question of order. I ask the Chair what the number of votes was announced to be.

The PRESIDENT *pro tempore*. The yeas were 39, and the nays were 13; being two thirds.

Mr. DAVIS. The question of order that I make is that the decision of this question has not been announced by the Chair according to the Constitution. The Chair has announced that

2. 41 CONG. GLOBE 1641, 1642, 40th Cong. 3d Sess. This precedent is also carried at 5 Hinds' Precedents § 7028.

3. Benjamin F. Wade (OH).

the proposition has received the vote of two thirds of the Senate, and therefore that it has passed. I controvert that fact. There are now thirty-seven States in the Union. They are entitled to seventy-four members of the Senate.

Mr. [James W.] NYE [of Nevada]. The honorable Senator will allow me to correct him. The Chair did not make the announcement that the honorable Senator says he did. He said it received two thirds of the votes of all the members present. That was the announcement by the Chair. . . .

The PRESIDENT *pro tempore*. The Chair desires the Senator to understand what the Chair said in the announcement of the vote. It was that two thirds of the Senators present had voted in the affirmative. That is the way in which it was announced by the Chair.

Mr. DAVIS. But then the conclusion was—

The PRESIDENT *pro tempore*. That the report was concurred in.

Mr. DAVIS. That is just as I understood it. Now, the conclusion does not follow the vote which the Chair announced, because the Senate consists of seventy-four members, and to constitute two thirds of the Senate a vote of fifty is necessary. My point of order is, that when a less number than two thirds of the Senate is required by the Constitution for any purpose, for instance to ratify a treaty or to confirm a nomination, the Constitution expressly says that it shall be two thirds of the members present. In voting upon a proposition to amend the Constitution, the Constitution does not limit the number of two thirds by reciting that it is two thirds of the members present. . . .

Mr. [Lyman] TRUMBULL [of Illinois]. If the Chair will indulge me a moment, this very point was raised in regard to a constitutional amendment some years ago, and the Senate decided by a vote, almost unanimously, that two thirds of the Senators present were sufficient to carry a constitutional amendment. I think that the Presiding Officer upon reflection will recollect it. It was the constitutional amendment that was proposed before the war. I myself made the point for the purpose of having it decided, and it was decided, I think by a nearly unanimous vote, that two thirds of the Senators present, a quorum being present, was sufficient to carry a constitutional amendment. . . .

Mr. WILLIAMS. I ask for a decision on the question of order.

The PRESIDENT *pro tempore*. I believe it has been decided according to all the precedents. . . .

Vote Required to Amend Joint Resolution

§ 6.2 In the Senate, when a joint resolution proposing an amendment to the Constitution is under consideration, an amendment to the joint resolution is adopted by a majority vote.

On Oct. 2, 1970,⁽¹⁾ the Presiding Officer of the Senate,⁽²⁾ in response to parliamentary inquiries, advised the Senate of the vote required to adopt amendments, or

1. 118 CONG. REC. 34755, 91st Cong. 2d Sess.
2. Clifford P. Hansen (WY).

amendments thereto, to joint resolutions proposing constitutional amendments. Proceedings were as follows:

Mr. [Howard H.] BAKER [Jr., of Tennessee]. A further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. Do I correctly understand that the amendment in the nature of a substitute now proposed by the distinguished Senator from North Carolina could be adopted as a substitute by a simple majority vote, and not require a two-thirds vote?

The PRESIDING OFFICER. That is right.

Mr. BAKER. And by that same token, a new substitute to the resolution itself, striking the amendment in the nature of a substitute, could also be adopted by a majority vote?

The PRESIDING OFFICER. Any amendment to the substitute of the pending resolution could be adopted by a simple majority vote.

Vote Required When Joint Resolution Proposing Legislation is Pending

§ 6.3 In the Senate, a joint resolution that is legislative in nature may be amended by majority vote to convert the joint resolution into one proposing an amendment to the Constitution. Upon adoption of such an amendment, a two-thirds vote is required

for passage of the joint resolution.

On Mar. 27, 1962,⁽¹⁾ when the Senate was considering Senate Joint Resolution 29, proposing a national monument, Mr. Spessard L. Holland, of Florida, offered an amendment that would propose a constitutional amendment instead.

THE ALEXANDER HAMILTON NATIONAL MONUMENT — AMENDMENT TO THE CONSTITUTION DEALING WITH POLL TAXES

The Senate resumed consideration of the joint resolution (S.J. Res. 29) providing for the establishing of the former dwelling house of Alexander Hamilton as a national monument.

Mr. [Mike] MANSFIELD [of Montana]. Mr. President, what is the pending question?

The VICE PRESIDENT.⁽²⁾ The question is on agreeing to the amendment of the Senator from Florida [Mr. HOLLAND], striking out all after the resolving clause, as amended, of Senate Joint Resolution 29, and inserting in lieu thereof certain other words.

Mr. MANSFIELD. This is a proposed constitutional amendment seeking to abolish the poll tax in the several States, is it?

Before putting the question to the Senate on a point of order against the Holland amendment based on constitutional grounds,

1. 110 CONG. REC. 5072-106, 87th Cong. 2d Sess.

2. Lyndon B. Johnson (TX).

the Chair responded to a parliamentary inquiry concerning the vote required to adopt the Holland amendment.

Mr. [Carl T.] CURTIS [of Nebraska]. If the resolution were to be amended by the Holland amendment, it has been stated it would require a two-thirds vote for passage. My question is, Will it require a two-thirds vote to adopt the Holland amendment to Senate Joint Resolution 29?

The VICE PRESIDENT. Only a majority vote is required in acting upon an amendment.

After the Senate tabled the point of order and the Holland amendment was adopted, the Senate voted on passage of the amended joint resolution.

The PRESIDING OFFICER.⁽³⁾ The joint resolution having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The Chief Clerk called the roll. . . .

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the joint resolution is passed.

Yeas and Nays Not Required

§ 6.4 The yeas and nays are not required in the Senate on the question of passing a joint resolution proposing an amendment to the Constitution.

3. Lee Metcalf (MT).

On June 27, 2006,⁽¹⁾ the Senate ordered the yeas and nays on Senate Joint Resolution 12, proposing an amendment to the Constitution regarding physical desecration of the flag, as follows.

The PRESIDING OFFICER.⁽²⁾ The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution, as amended, pass?

Mr. [Orrin G.] HATCH [of Utah]. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The yeas and nays were ordered.

§ 7. Conference Reports

Differences between the two Houses on a joint resolution proposing a constitutional amendment may be committed to a committee of conference,⁽¹⁾ the report thereof requiring a two-thirds vote for adoption.⁽²⁾ As with the vote on initial passage of the joint resolution,⁽³⁾ the yeas and nays are

1. 152 CONG. REC. 12654, 109th Cong. 2d Sess.
2. Lamar Alexander (TN).
1. See 5 Hinds' Precedents § 7037.
2. *Id.* at § 7036.
3. See § 5.4, *supra*.