

D. Ratification

§ 9. Generally; Certification and Publication

Unlike a joint resolution of a legislative nature, a joint resolution proposing a constitutional amendment is not presented to the President under Article I, § 7, clause 2 of the Constitution. Rather, such a joint resolution is submitted to the States for ratification.

§ 9.1 Constitutional amendments that have passed both Houses are not presented to the President.

On Feb. 25, 1869,⁽¹⁾ Speaker Schuyler Colfax, of Indiana, overruled a point of order that a proposed constitutional amendment would have to be presented to the President for approval. The ruling of the Chair was as follows:

The SPEAKER. The gentleman having stated the point of order the Chair will decide it. It has been raised once before and decided by the Chair. He will repeat the substantial points of that decision, which he thinks will satisfy the gentleman that his point is not well taken, although based by him upon the Constitution of the United States. The question was raised dis-

tinctly in 1803 in the Senate of the United States, on a motion that the then proposed amendment to the Constitution should be submitted to the President[.] . . .

On a distinct vote of 23 to 7 the Senate voted that the Committee on Enrolled Bills should not present the proposed amendment. This is a decision made by one of the early Congresses. But the Chair is not satisfied with having it rest on that; he is disposed to present higher authority in overruling the point of order.

In 1798, a case⁽²⁾ arose in the Supreme Court of the United States depending upon the amendment to the Constitution proposed in 1794, and the counsel, in argument before the court, insisted that the amendment was not valid, not having been approved by the President of the United States. . . .

The Court, speaking through [Justice Chase] . . . observed:

“The negative of the President applies only to the ordinary cases of legislation. He has nothing to do with the proposition or adoption of amendments to the Constitution.”

As the Supreme Court of the United States has settled this question by a decision, the Chair does not need to read further authorities. . . .

The Chair, therefore, thinks that the question is settled, not only by the practice of Congress but by a decision of the Supreme Court of the United States, and therefore overrules the point of order.

1. 41 Cong. Globe 1563, 40th Cong. 3d Sess.

2. *Hollingsworth v. Virginia*, 3 U.S. (3 Dall.) 378 (1798).

§ 9.2 Enrolled joint resolutions proposing constitutional amendments are submitted to the appropriate Federal official, designated by law, for submission to the States.

Responsibility for receiving from Congress enrolled joint resolutions by which Congress proposes to the States amendments to the Constitution and for transmitting the same to the States has been vested in different officials of the executive branch over time. Currently, that responsibility is vested in the Archivist of the United States.⁽¹⁾ The delivery of such measures to the appropriate official is reported to the House originating the amendment.

An example from 1947 is as follows:⁽²⁾

ENROLLED JOINT RESOLUTION SIGNED

Mr. [Joseph] LeCOMPTE [of Kentucky], from the Committee on House Administration, reported that that committee had examined and found truly enrolled a joint resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 27. Joint resolution proposing an amendment to the Constitution of the United States relating to the terms of office of the President.

1. See § 10, *infra*, and 1 USC §106b (relating to amendments to the Constitution), and related annotations.
2. See 93 CONG. REC. 2482, 80th Cong. 1st Sess., Mar. 24, 1947.

JOINT RESOLUTION FILED WITH THE SECRETARY OF STATE

Mr. LeCOMPTE, from the Committee on House Administration, reported that that committee did on this day present to and file with the Secretary of State of the United States a joint resolution of the following title:

H.J. RES. 27. Joint resolution proposing an amendment to the Constitution of the United States relating to the terms of office of the President.

Another instance occurred on June 17, 1960:⁽³⁾

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, June 17, 1960, he presented to the Administrator, General Services Administration, the enrolled joint resolution (S.J. Res. 39) proposing an amendment to the Constitution of the United States granting representation in the electoral college to the District of Columbia.

§ 10. Submission to the States; Records of Ratification

The process by which a proposed amendment to the Constitution leaves Congress as officially proposed and eventually becomes effective as part of the Constitution has changed over the years

3. 106 CONG. REC. 13101, 86th Cong. 2d Sess.