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72^D CONGRESS }
1st Session }

SENATE

} REPORT
No. 26

FIXING THE COMMENCEMENT OF THE TERMS OF THE PRESIDENT AND VICE PRESIDENT AND MEMBERS OF CONGRESS

JANUARY 4, 1932.—Ordered to be printed

Mr. NORRIS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. J. Res. 14]

The Committee on the Judiciary, having had under consideration the joint resolution (S. J. Res. 14) proposing an amendment to the Constitution of the United States fixing the commencement of the terms of President and Vice President and Members of Congress and fixing the time of the assembling of Congress, report the same to the Senate with the recommendation that the same do pass.

This resolution is in exactly the same form as it passed the Senate in the Seventy-first Congress and in practically the same form as it passed the Senate in five preceding Congresses. There is practically unanimous sentiment in the country in favor of this amendment. No logical objection has ever been made to the constitutional changes suggested, and its passage again by the Senate will be only a response to a patriotic sentiment, country-wide, for the proposed amendment.

In practically the same form as here reported this resolution passed the Senate the first time on February 13, 1923 (S. J. Res. 253, 67th Cong.). On the 22d day of February, 1923, it received a favorable report from the House committee and was placed on the House Calendar. No action was taken by the House, and it died on the 4th day of March, 1923, because of the adjournment of Congress. It passed the Senate the second time on the 18th day of March, 1924 (S. J. Res. 22, 68th Cong.), and on the 15th day of April, 1924, it was favorably reported by the House committee. It remained on the calendar of the House, without any action being taken thereon, from the 15th day of April, 1924, until the expiration of the Sixty-eighth Congress on the 4th day of March, 1925. It again passed the Senate in the Sixty-ninth Congress (S. J. Res. 9) on February 15, 1926. It was again favorably reported by the House committee on the 24th day of February, 1926, and remained on the House Calendar, without

2 FIXING TERMS OF PRESIDENT, VICE PRESIDENT, AND CONGRESS

any action thereon, from said date until the expiration of the Sixty-ninth Congress on the 4th day of March, 1927. In the Seventieth Congress the resolution (S. J. Res. 47) passed the Senate on January 4, 1928, and was referred to the House committee, from which it received a favorable report. On March 9, 1928, the House acted on it, and, while it received a large majority of those voting, it failed to receive the two-thirds majority required by the Constitution.

In the Seventy-first Congress, on June 7, 1929, the resolution (S. J. Res. 3), in exactly the same form as it is here reported, passed the Senate. On the next day, June 8, 1929, it was sent to the House of Representatives. However, it was not referred to a committee but remained on the Speaker's table until the 17th day of April, 1930. On that date the Speaker referred the joint resolution to the committee having jurisdiction of the subject matter (Committee on the Election of President, Vice President, and Representatives in Congress). In the meantime, other resolutions similar to this one were introduced by Members of the House of Representatives and referred to this committee for action and on the 8th day of April, 1930, the committee reported one of these House resolutions (H. J. Res. 292) to the House of Representatives. After this had been done, the Senate resolution was taken from the Speaker's table and referred to the committee. No action was ever taken by the committee on the Senate resolution, but, on the 24th day of February, 1931, the House of Representatives took up the House resolution (H. J. Res. 292) and, by unanimous consent, the Senate resolution (S. J. Res. 3) was taken from the committee and laid before the House, when it was amended by striking out all after the enacting clause and inserting the House resolution, which, in many respects, was practically the same as the Senate resolution. In this form it passed the House of Representatives on the same day, February 24, 1931. Conference committees were at once appointed by the Senate and the House of Representatives, but no agreement was reached and the resolution failed when the Seventy-first Congress ended on the 4th day of March, 1931.

The resolution proposes to amend the Constitution of the United States by fixing the beginning of the terms of President and Vice President at noon on the 15th day of January, and the terms of Senators and Representatives at noon on the 2d day of January following their election in the preceding November. Under existing conditions a new Congress does not actually convene in regular session until a year and one month after its Members have been elected. When our Constitution was adopted there was some reason for such a long intervention of time between the election and the actual commencement of work by the new Congress. We had neither railroads nor telegraphic communication connecting the various States and communities of the country. Under present conditions, however, the result of elections is known all over the country within a few hours after the polls close, and the Capital City is within a few days' travel of the remotest portions of the country.

Originally, Senators were elected by the legislatures, and as a rule the legislatures of the various States did not convene until after the beginning of the new year, and it was difficult and sometimes impossible for Senators to be elected until February or March. Since the adoption of the seventeenth amendment to the Constitution, however, Senators have been elected by the people at the same election at

which Members of the House are elected. There is no reason, therefore, why the Congress elected in November should not be sworn in and actually enter upon the duties of office at least as soon as the beginning of the new year following their election.

The only direct opportunity that the citizens of the country have to express their ideas and their wishes in regard to national legislation is the expression of their will through the election of their representatives at the general election in November. During the campaign that precedes this election the great questions demanding attention at the hands of the new Congress are discussed at length before the people and throughout the country, and it is only fair to presume that the Members of Congress chosen at that election fairly represent the ideas of a majority of the people of the country as to what legislation is desirable. In a Government "by the people" the wishes of a majority should be crystallized into legislation as soon as possible after these wishes have been made known. These mandates should be obeyed within a reasonable time.

Under existing conditions, however, more than a year elapses before the will of the people expressed at the election can be put into statutory law. This condition of affairs is not only unfair to the citizenship at large, who have expressed their will as to what legislation they desire, but it is likewise unfair to their servants whom they have elected to carry out this will. It is true that it is within the power of the President to call an extraordinary session of Congress at an earlier date than the one provided by law, but the new Congress can not be called into extraordinary session until after the 4th of March, which would not give the new Congress very much time for the consideration of important national questions before the summer heat in the Capital City makes even existence difficult and good work almost impossible. It is conceded by all that the best time for legislatures to do good work is during the winter months. Practically all the States of the Union recognize this fact and provide for the meeting of their legislatures near the 1st of January. Moreover, the wishes of the country having been expressed at an election should not be dependent for their carrying out upon the will of the President alone. Provision should be made by law so that the new Congress could begin the performance of its important duties as soon after election as possible and under conditions that are most favorable for good work. Under existing conditions a Member of the House of Representatives does not get started in his work until the time has arrived for renominations in his district. He has accomplished nothing and has not had an opportunity to accomplish anything because Congress had not been in session. He had made no record upon which to go before his people for election. It is unfair both to him and to the people of his district. In case of a contest over a seat in the House of Representatives, history has shown that the term of office has practically expired before the House is able to settle the question as to who is entitled to the contested seat. During all this time the occupant of the seat has been drawing the salary, and if it is decided in the end that the occupant was wrongfully seated, then the entire salary must again be paid to the person who has been unjustly deprived of his seat. Double pay is therefore drawn from the Treasury of the United States and the people of the district have not been represented by the Member

4 FIXING TERMS OF PRESIDENT, VICE PRESIDENT, AND CONGRESS

whom they selected for that purpose. No reason has been given why a new Congress elected at a general election to translate into law the wishes of the people should not be installed into office practically as soon as the results of the election can be determined.

Another effect of the amendment would be to abolish the so-called short session of Congress. If the terms of Members of Congress begin and end in January instead of on the 4th of March, as heretofore, and Congress convenes in January, there would be no such thing as a short session of Congress. Every other year, under our Constitution, the terms of Members of the House and one-third of the Members of the Senate expire on the 4th day of March. The session begins on the first Monday in December and because of the expiration of such terms it necessarily follows that the session must end not later than the 4th of March. Experience has shown that this brings about a very undesirable legislative condition. It is a physical impossibility during such a short session for Congress to give attention to much general legislation for the reason that it requires practically all of the time to dispose of the regular appropriation bills. The result is a congested calendar both in the House and the Senate. It is known in advance that Congress can give attention to but a very small portion of the bills reported from the committees. The result is a congested condition that brings about either no legislation or illy considered legislation. In the closing days of such a session bad laws get through and good laws are defeated on account of this condition and the want of time to give proper consideration to anything and the result is dissatisfaction not only on the part of Members of Congress but on the part of the people generally. Jokers sometimes get on the statutes because Members do not have an opportunity, for the want of time, to give them proper consideration. Mistakes of a serious nature creep into all kinds of statutes which often nullify the real intent of the lawmakers, and the result is disappointment throughout the country. Such a congested condition in the National Legislature can not bring about good results. However diligent and industrious Members of Congress may be, it is a physical impossibility for them to do good work. Moreover, it enables a few Members of Congress to arbitrarily prevent the passage of laws simply by the consumption of time. In every way it brings about an undesirable legislative condition, and it is not surprising that results are so often disappointing.

There is another very important reason why this change should be made. Under the Constitution as it now stands, if it should happen that in the general election in November in presidential years no candidate for President had received a majority of all the electoral votes, the election of a President would then be thrown into the House of Representatives and the membership of that House of Representatives called upon to elect a President would be the old Congress and not the new one just elected by the people. It might easily happen that the Members of the House of Representatives, upon whom involved the solemn duty of electing a Chief Magistrate for four years, had themselves been repudiated at the election that had just occurred, and the country would be confronted with the fact that a repudiated House, defeated by the people themselves at the general election, would still have the power to elect a President who would be in control of the country for the next four years. It is

quite apparent that such a power ought not to exist; and that the people having expressed themselves at the ballot box should through the Representatives then selected, be able to select the President for the ensuing term. If the amendment we have proposed is adopted and becomes a part of the Constitution, such a condition could not happen, and in such a case the new House of Representatives fresh from the people would be the one upon which would devolve the power to select the new President.

Section 3 of the proposed amendment gives Congress the power to provide by law who shall act as President in a case where the election of a President has been thrown into the House of Representatives and the House has failed to elect a President and the Senate has likewise failed to elect a Vice President. The importance of this can be understood when we realize that under the present Constitution if the election of President and Vice President should be thrown into Congress on account of a failure of the Electoral College to elect, and that the House should fail within the time specified in the Constitution to elect a President, and the Senate should likewise fail during such time to elect a Vice President, the country would be left entirely without a Chief Magistrate and without any means of selecting one. This condition has, it is true, never happened in the history of the country, and while it may never happen, it does seem very important that some constitutional provision be enacted by which this most dangerous emergency may be avoided. The present Constitution gives power to Congress to provide who shall act as President when there is a vacancy both in the President's office and the Vice President's office caused by death, removal, or resignation, but there is no provision in the present Constitution that gives to Congress or any other authority the power to select an acting President in cases where the election has been thrown into the House of Representatives and where the House of Representatives has failed to elect a President, and the Senate has likewise failed to elect a Vice President. If such a contingency should occur, and it is liable to occur after any presidential election, the country would find itself in a condition where it would be impossible for a Chief Magistrate to be selected. The committee has corrected this defect by giving to Congress in section 3 of the proposed amendment the authority to select the acting President in such an emergency.

The question is sometimes asked, Why is an amendment to the Constitution necessary to bring about this desirable change? The Constitution does not provide the date when the terms of Senators and Representatives shall begin. It does fix the term of Senators at six years and of Members of the House of Representatives at two years. The commencement of the terms of the first President and Vice President and of Senators and Representatives composing the First Congress was fixed by an act of Congress adopted September 13, 1788, and that act provided "that the first Wednesday in March next be the time for commencing proceedings under the Constitution." It happened that the first Wednesday in March was the 4th day of March, and hence the terms of the President and Vice President and Members of Congress begin on the 4th day of March. Since the Constitution provides that the term of Senators shall be six years and the term of Members of the House of Representatives two years,

6 FIXING TERMS OF PRESIDENT, VICE PRESIDENT, AND CONGRESS

it follows that this change can not be made without changing the terms of office of Senators and Representatives, which would in effect be a change of the Constitution. By another act (the act of March 1, 1792) Congress provided that the terms of President and Vice President should commence on the 4th day of March after their election. It seems clear, therefore, that an amendment to the Constitution is necessary to give relief from existing conditions.

