

PROPOSING AN AMENDMENT TO THE CONSTITUTION
OF THE UNITED STATES

FEBRUARY 2, 1932.—Referred to the House Calendar and ordered to be printed.

Mr. RUTHERFORD, from the Committee on Election of President, Vice President, and Representatives in Congress, submitted the following:

REPORT

[To accompany S. J. Res. 14]

The Committee on Election of President, Vice President, and Representatives in Congress, to whom was referred 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, having considered the same, report thereon with a recommendation that it do pass with the following amendment:

Strike out all after the resolving clause and insert the following:

That the following amendment to the Constitution be, and hereby is, proposed to the States, to become valid as a part of said Constitution when ratified by the legislatures of the several States as provided in the Constitution:

"ARTICLE —

"SECTION 1. The terms of the President and Vice President shall end at noon on the 24th day of January, and the terms of Senators and Representatives at noon on the 4th day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

"SEC. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 4th day of January, unless they shall by law appoint a different day.

"SEC. 3. If the President elect dies, then the Vice President elect shall become President. If a President is not chosen before the time fixed for the beginning of his term, or if the President elect fails to qualify, then the Vice President elect shall act as President until a President has qualified; and the Congress may by law provide for the case where neither a President elect nor a Vice President

elect has qualified, declaring who shall then act as President, or the manner in which a qualified person shall be selected, and such person shall act accordingly until a President or Vice President has qualified.

"SEC. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice devolves upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice devolves upon them.

"SEC. 5. Sections 1 and 2 shall take effect on the 30th day of November of the year following the year in which this article is ratified."

EXPLANATION OF HOUSE RESOLUTION

The constitutional amendment which this resolution proposes will accomplish the following:

(1) The newly elected Congress will count the electoral votes, and in case a majority has not been received, the newly elected House of Representatives will choose the President, and the Senate (including the newly elected Senators) will choose the Vice President.

(2) The newly elected President, Vice President, and Members of Congress will take office approximately two months after their election.

(3) The new Congress may assemble approximately two months after the election.

(4) The power of the House of Representatives to choose a President, whenever the right of choice devolves upon it, after the time fixed for the beginning of his term (in the event that it should not be able to choose a President before that time) is preserved.

(5) The Vice President elect will become President, in the event that the President elect should die before the time fixed for the beginning of his term—a contingency not covered by any provision in the Constitution.

(6) Congress is given power to provide for the case where neither a President nor a Vice President has qualified before the time fixed for the beginning of the term, whether the failure of both to qualify is occasioned by the death of both, by the failure of the House to choose a President, if the right of choice devolves upon them, and of the Senate to choose a Vice President, if the right of choice devolves upon them, or by any other cause—these contingencies are not covered by any provisions in the Constitution.

(7) Congress is also given power to provide for the case of the death of (a) any of the three highest on the list of those whom the electors voted for for President, if the election is thrown into the House, and (b) either or both of the two highest on the list of those whom the electors voted for for Vice President, if the election of the Vice President is thrown into the Senate.

(8) The "short session" of Congress will be abolished.

(9) A necessary change will be made in the effect of the twelfth amendment and certain ambiguities will be removed.

It is obvious that the above results can be accomplished only by constitutional amendment.

COUNTING ELECTORAL VOTES BY NEWLY ELECTED CONGRESS

Under the present Constitution, the old Congress counts the electoral votes, the retiring House of Representatives chooses the President whenever the right of choice devolves upon the House, and the Senate (including the retiring Senators) chooses the Vice President whenever no person has received a majority of the electoral votes.

In order that these duties may devolve upon the new Congress, the first section of the proposed amendment provides that presidential terms shall begin on January 24 and the terms of Members of Congress on January 4. This permits the new Congress to assemble and affords it 20 days, before the terms of the President and Vice President begin, in which to count the electoral votes and to make the choice if a majority has not been received. In order to provide ample notice and opportunity to attend, and to prevent any possible retroactive interpretation, it is provided, in section 5, that this section shall take effect on the 30th day of November of the year following the year in which the amendment is ratified.

These results can be obtained only by a constitutional amendment. The new Congress must meet and the term of the new Members must begin prior to the date on which the President's term begins. Consequently, terms which are fixed in the Constitution and which now begin on March 4, must be shortened or lengthened.

CHANGING THE TERMS

Under our present system, the old Congress expires on the 4th day of March of the odd years, and the first meeting of the new Congress is on the first Monday of the following December. The newly elected Members have no opportunity for 13 months even to begin to put into effect the policies on which they were elected, unless an extraordinary session of the Congress should be called by the President before that time.

The first section of the proposed amendment provides that the terms of the newly elected President and Vice President shall begin on the 24th day of January, and that the terms of the newly elected Members of Congress shall begin on the 4th day of January. Under this provision the newly elected officers will take office and be prepared to carry out the policies on which they were elected approximately two months after their election.

A constitutional amendment is necessary to enable the newly elected officers to take office before March 4, for this necessitates a shortening or lengthening of the terms of the officers whom they succeed. Congress now has power to prescribe the day on which the Congress is to assemble. But under that power, obviously, Congress can not change the dates on which the terms begin.

SESSIONS OF CONGRESS

Under the present Constitution (Art. I, sec. 4, par. 2) the Congress is required to assemble at least once in every year, and such meeting shall be on the first Monday in December unless they shall by law appoint a different day.

Section 2 of the proposed amendment will operate as a substitute for this paragraph. It retains the requirement of an annual assembling of the Congress but changes the time of meeting to January 4. Obviously, it will be necessary, in the case of the year in which the new President and Vice President are to take office, that the Congress should meet as early as possible in January, so as to complete their organization and count the votes for President and Vice President and in case of necessity choose a President and Vice President.

The proposed section 2 will, under the proposed section 5, become effective on November 30 of the year following the year in which the amendment is ratified. Inasmuch as the second paragraph of section 4 of Article I of the present Constitution will be superseded by this section, there will be no constitutional requirement that Congress meet on the first Monday in December of that year.

FAILURE OF HOUSE TO CHOOSE A PRESIDENT OR OF SENATE TO CHOOSE A VICE PRESIDENT

Under our present Constitution there is no provision for the case where the House of Representatives fails to choose a President and the Senate fails to choose a Vice President. Section 3 of the proposed amendment authorizes Congress to provide for this situation. Power is given to Congress to provide by law who shall act as President in such case or the manner of selecting a person to act as President, but such person shall act only until a President has qualified or a Vice President has qualified.

It should be observed, however, that if the House fails to choose a President before the time fixed for the beginning of his term or if the President elect, for any reason, fails to qualify, but if the Senate has chosen a Vice President and the Vice President chosen has qualified, under the provisions of the first clause of the second sentence of the section, the Vice President will act as President, but only until the House of Representatives has chosen a President and the President has qualified.

DEATH OF THE PRESIDENT ELECT, VICE PRESIDENT ELECT, OR BOTH

A serious emergency would exist in the event of the death of the President elect, or of both the President elect and Vice President elect, for the present Constitution contains no applicable provision.

The following situations are possible:

- (1) A party nominee may die before the November elections.
- (2) A party nominee may die after the November elections and before the electors vote.
- (3) The President elect may die after the electors vote and before the votes are counted.
- (4) If the election of the President is thrown into the House, one or more of the three highest may die before the House chooses.
- (5) The President elect may die before the date fixed for the beginning of his term.
- (6) The Vice President elect may die.
- (7) If the election of the Vice President is thrown into the Senate, one or both of the two highest may die before the Senate chooses.
- (8) Both the President elect and the Vice President elect may die.

In order that the application of existing constitutional provisions and of sections 3 and 4 of the proposed amendment may be explained adequately, each of the above situations will be discussed briefly.

DEATH OF PARTY NOMINEE BEFORE NOVEMBER ELECTIONS

A constitutional amendment is not necessary to provide for the case of the death of a party nominee before the November elections. Presidential electors, and not the President, are chosen at the November election. (See 2d par., sec. 1, Art. II.) The electors, under the present Constitution, would be free to choose a President, notwithstanding the death of a party nominee.

DEATH OF PARTY NOMINEE AFTER THE NOVEMBER ELECTIONS AND BEFORE THE ELECTORS VOTE

Inasmuch as the electors would be free to choose a President, a constitutional amendment is not necessary to provide for the case of the death of a party nominee after the November elections and before the electors vote. The problem in such a case would be a political one, for if the political party did not in some manner designate a person, the electors representing that political party would probably so scatter their votes that the election would be thrown into the House.

The practical difficulties which would be encountered in either of the above cases—if, for example, only a short time remained before election day or before the meeting of the electors—could be alleviated somewhat, for Congress by general statute may postpone the day of the election or the day of the meeting of the electors.

DEATH OF THE PRESIDENT ELECT AFTER THE ELECTORS VOTE AND BEFORE THE VOTES ARE COUNTED

Two serious problems are presented in the case of the death of the person who has received a majority of the electoral votes after the electors vote and before the votes are counted:

(1) May the votes which were cast for a person, who was eligible at the time the votes were cast but who has died before the votes are counted by Congress, be counted?

(2) Would the Vice President elect become President?

It is the view of your committee that the votes, under the above circumstances, must be counted by Congress. An analysis of the functions of Congress indicates that no discretion is given and that Congress must declare the actual vote. The votes at the time they were cast were valid—so that the problem involved in the case of votes cast for a dead person is not here presented. Consequently, Congress would declare that the deceased candidate had received a majority of the votes.

But would the Vice President elect become President? The sixth paragraph of section 1 of Article II of the Constitution provides for the case of the removal, death, resignation, or inability of the President. Does this provision cover the case of the death, etc., of a President elect?

Constitutional writers say, and the wording of the paragraph supports the conclusion, that it is applicable only to those actually in office. On the other hand, if the Supreme Court were confronted with practical application of the paragraph, it is very probable that it would decide that the Vice President elect would become President.

In order to remove all possible doubt, to render unnecessary a judicial decision, and to avoid the consequent chaos during the interim, the first sentence of section 3 of the amendment proposed by this resolution provides specifically that the Vice President elect, in such case, shall become President.

It will be noted that the committee uses the term "President elect" in its generally accepted sense, as meaning the person who has received the majority of the electoral votes, or the person who has been chosen by the House of Representatives in the event that the election is thrown into the House. It is immaterial whether or not the votes have been counted, for the person becomes the President elect as soon as the votes are cast.

DEATH OF ONE OR MORE OF THREE HIGHEST WHERE ELECTION IS THROWN INTO HOUSE

If the election of the President is thrown into the House, the House, under the twelfth amendment, must proceed immediately to choose a President "from the persons having the highest numbers not exceeding three on the list of those voted for as President." If one of these persons has died, the political party which he represents would be practically disfranchised. It seems ~~certain~~ that votes cast for a dead man could not legally be counted. Under the present Constitution it would, then, be necessary for that party, through political strategy, to prevent an election by the House, and risk securing favorable results in the Senate (assuming that the election of the Vice President is thrown into the Senate, as would undoubtedly happen).

Section 4 of the amendment proposed by this resolution specifically gives Congress power to provide for this case. No attempt has been made to indicate the manner in which Congress should provide, for your committee did not feel that it should assume the responsibility of selecting one of the many possible policies which might be applicable. Under some circumstances, for example, it might be advisable to provide for a substitution of a name for the name of the deceased candidate and to permit the election by the House to proceed as it otherwise would; under other circumstances it might be advisable to provide for a reconvening of the Electoral College; again it might be necessary to provide that a designated officer shall act temporarily as President until a President can be chosen in the manner prescribed by the law; and other methods might be selected by the Congress.

DEATH OF PRESIDENT ELECT BEFORE THE BEGINNING OF HIS TERM

If the person who received the majority of the electoral votes dies after the votes are counted, or if the person who is chosen by the House in case the election of the President is thrown into the House, should die before the date fixed for the beginning of his term, the same

question arises as to whether the Vice President would become President.

The first sentence of section 3 of the proposed amendment provides that the Vice President will become President.

DEATH OF VICE PRESIDENT ELECT

There is no immediate emergency presented if a candidate for Vice President, or if the Vice President elect, should die, if the President elect qualifies upon the day fixed for the beginning of his term. The Senate has the power to elect its president pro tempore. In the event the President should die after his taking office, the laws with respect to succession to the Presidency would apply as in the case under the present Constitution where both the President and Vice President in office die. Consequently, no provision is made in the amendment.

DEATH OF ONE OR MORE OF TWO HIGHEST WHERE ELECTION IS THROWN INTO SENATE

If the election of the Vice President is thrown into the Senate, the Senate, under the twelfth amendment, must proceed to choose the Vice President "from the two highest numbers on the list." If one of these persons has died, a situation is presented similar to that discussed above in the case of the death of one of the three highest where the election is thrown into the House.

Section 4 of the amendment proposed by this resolution also gives Congress power to provide for this case.

DEATH OF BOTH PRESIDENT ELECT AND VICE PRESIDENT ELECT

There is no specific provision in the Constitution applicable to this case. Even assuming that the "necessary and proper" clause (the last paragraph of section 8 of Article I) would be interpreted as giving Congress power to act, a final decision of the Supreme Court would be necessary and several months or more required.

Section 3 of the amendment proposed by this resolution gives to Congress the power to provide for the case.

THE TWELFTH AMENDMENT

The twelfth amendment now provides that if the House of Representatives has not chosen a President, whenever the right of choice devolves upon them, "before the 4th day of March next following," the Vice President shall act as President. The phrase quoted must be changed, in order to meet the proposed change in dates, and section 3 of the proposed amendment substitutes the phrase "before the time fixed for the beginning of his term."

There is also an ambiguity in the twelfth amendment, in that it does not state whether it is the retiring Vice President or the newly elected Vice President who is to act as President if the House of Representatives fails to choose a President before March 4. Section 3 of the proposed amendment specifically provides, in accordance with the generally accepted interpretation, that in such case the newly elected Vice President shall act.

EFFECTIVE DATE

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.

Under section 5 of the proposed amendment, sections 3 and 4 will become effective immediately upon the ratification of the amendment, and sections 1 and 2 will become effective on the 30th day of November of the year following the year in which the amendment is ratified. Sections 3 and 4 should become effective immediately in order to be applicable to the first situation which might arise after the amendment is ratified. The effective date of sections 1 and 2, however, must be postponed, in order to give adequate notice of the ending of the terms, to afford ample opportunity to attend the first session of the new Congress, and to provide a sufficient period within which Congress may enact certain necessary amendments to the existing statutes.

NECESSARY STATUTORY AMENDMENTS

If the proposed amendment is ratified, certain amendments to existing statutes will be necessary. Upon the adoption of the resolution submitting the amendment for ratification a bill will be introduced proposing the necessary changes.

For purposes of convenient reference the applicable provisions of the Constitution and of various statutes are printed in the following appendix.

APPENDIX A

EXISTING PROVISIONS OF THE CONSTITUTION

I. THE PRESIDENT AND VICE PRESIDENT

- TERM

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows. (Art. II, sec. 1.)

APPOINTMENT OF ELECTORS

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress. (Art. II, sec. 1.)

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States. (Art. II, sec. 1.)

ELECTION

The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States. (Amendment XII.)

REMOVAL, DEATH, RESIGNATION, AND INABILITY

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected. (Art. II, sec. 1.)

II. SENATORS

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; * * * (Amendment XVII.)

III. REPRESENTATIVES

The House of Representatives shall be composed of Members chosen every second year by the people of the several States, * * * (Art. I, sec. 2.)

IV. TIME FOR HOLDING ELECTIONS OF SENATORS AND REPRESENTATIVES

The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators. (Art. I, sec. 4.)

V. SESSIONS OF CONGRESS

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day. (Art. I, sec. 4.)

VI. NECESSARY AND PROPER CLAUSE

The Congress shall have power * * *

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof. (Art. I, sec. 8.)

APPENDIX B

EXISTING STATUTORY PROVISIONS

I. THE PRESIDENT AND VICE PRESIDENT

BEGINNING OF TERM

The term of four years for which a President and Vice President shall be elected, shall, in all cases, commence on the fourth day of March next succeeding the day on which the votes of the electors have been given. (R. S. sec. 152.) (U. S. C., title 3, sec. 41.)

ELECTORS—NUMBER

The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives. (R. S. sec. 132.) (U. S. C., title 3, sec. 2.)

ELECTORS—DATE OF APPOINTMENT

(1) * * * the electors of President and Vice President shall be appointed in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President. (R. S. sec. 131.) (U. S. C., title 3, sec. 1.)

(2) Whenever any State has held an election for the purpose of choosing electors and has failed to make a choice on the day prescribed by law, the electors, may be appointed on a subsequent day in such a manner as the legislature of such State may direct. (R. S. sec. 134.) (U. S. C., title 3, sec. 4.)

ELECTORS—FILLING OF VACANCIES

Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote. (R. S. sec. 133.) (U. S. C., title 3, sec. 3.)

ELECTORS—DATE OF MEETING AND VOTING

That the electors of President and Vice President of each State shall meet and give their votes on the first Wednesday in January next following their appointment at such place in each State as the legislature of such State shall direct. (Sec. 1 of the act entitled "An act providing for the meeting of electors of President and Vice President and for the issuance and transmission of the certificates of their selection and of the result of their determination and for other purposes," approved May 29, 1928.) (U. S. C., Supp. III, title 3, sec. 5a.)

ELECTORS—CERTIFICATES OF ASCERTAINMENT

That it shall be the duty of the executives of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertainment, to communicate by registered mail under the seal of the State to the Secretary of State of the United States a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes

have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by section 1 of this Act to meet, six duplicates original of the same certificate under the seal of the State; and if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Secretary of State of the United States a certificate of such determination in form and manner as the same shall have been made; and the certificate or certificates so received by the Secretary of State shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection; and the Secretary of State of the United States at the first meeting of Congress thereafter shall transmit to the two Houses of Congress copies in full of each and every such certificate so received at the State Department. (Sec. 2 of the act of May 29, 1928.) (U. S. C., Supp. V, title 3, sec. 7a.)

ELECTORS—MANNER OF VOTING

The electors shall vote for President and Vice President, respectively, in the manner directed by the Constitution. (R. S., sec. 137.) (U. S. C., title 3, sec. 8.)

ELECTORS—CERTIFICATE OF VOTES

(1) That the electors shall make and sign six certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State. (Sec. 3 of the act of May 29, 1928.) (U. S. C., Supp. V, title 3, sec. 9a.)

(2) The electors shall seal up the certificates so made by them, and certify upon each that the lists of all the votes of such State given for President, and of all the votes given for Vice President, are contained therein. (R. S., sec. 139.) (U. S. C., title 3, sec. 10.)

ELECTORS—DISPOSITION OF CERTIFICATES

That the electors shall dispose of the certificates so made by them and the lists attached thereto in the following manner:

First. They shall forthwith forward by registered mail one of the same to the President of the Senate at the seat of government.

Second. Two of the same shall be delivered to the secretary of state of the State, one of which shall be held subject to the order of the President of the Senate, the other to be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection.

Third. On the day thereafter they shall forward by registered mail two of such certificates and lists to the Secretary of State at the seat of government, one of which shall be held subject to the order of the President of the Senate. The other shall be preserved by the Secretary of State for one year and shall be a part of the public records of his office and shall be open to public inspection.

Fourth. They shall forthwith cause the other of the certificates and lists to be delivered to the judge of the district in which the electors shall have assembled. (Sec. 4 of the act of May 29, 1928.) (U. S. C., Supp. V, title 3, sec. 11a.)

ELECTORS—CERTIFICATES NOT RECEIVED

That when no certificate of vote and list mentioned in this act from any State shall have been received by the President of the Senate or by the Secretary of State by the third Wednesday in the month of January after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Secretary of State shall request, by the most expeditious method available, the secretary of state of the State to send up the certificate and list lodged with him by the electors of such State; and it shall be his duty upon receipt of such request immediately to transmit same by registered mail to the President of the Senate at the seat of government. (Sec. 5 of the act of May 29, 1928.) (U. S. C., Supp. V, title 3, sec. 11b.)

That when no certificates of votes from any State shall have been received at the seat of government on the fourth Wednesday of the month of January, after the meeting of the electors shall have been held, the President of the Senate

or, if he be absent from the seat of government, the Secretary of State shall send a special messenger to the district judge in whose custody one certificate of votes from that State has been lodged, and such judge shall forthwith transmit that list by the hand of such messenger to the seat of government. (Sec. 6 of the act of May 29, 1928.) (U. S. C., Supp. V, title 3, sec. 11c.)

COUNTING OF ELECTORAL VOTES

That if any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to the said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned. (Sec. 2 of the act entitled "An act to fix the day for the meeting of the electors of President and Vice President, and to provide for and regulate the counting of the votes for President and Vice President, and the decision of questions arising thereon," approved February 3, 1887.) (U. S. C., title 3, sec. 6.)

That Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted in the manner and according to the rules in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section three of this act from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section two of this act to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section two of this act, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its laws; and in such case of more than one return or paper purporting to be a return from a

State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the Executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of. (Sec. 4 of the act of Feb. 3, 1887.) (U. S. C., title 3, sec. 17.)

That while the two Houses shall be in meeting as provided in this act the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw. (Sec. 5 of the act of Feb. 3, 1887.) (U. S. C., title 3, sec. 18.)

That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate. (Sec. 6 of the act of Feb. 3, 1887.) (U. S. C., title 3, sec. 19.)

That at such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of ten o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House. (Sec. 7 of the act of Feb. 3, 1887.) (U. S. C., title 3, sec. 20.)

SUCCESSION TO OFFICE

That in case of removal, death, resignation, or inability of both the President and Vice President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice President is removed or a President shall be elected: *Provided*, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty days' notice of the time of meeting. (Section 1 of the act entitled "An act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice President," approved January 19, 1886.) (U. S. C., title 3, sec. 21.)

Sec. 2. That the preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named, and such as are eligible to the office of President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of the office shall devolve upon them, respectively. (Sec. 2 of the act of Jan. 19, 1886.) (U. S. C., title 3, sec. 22.)

II. SENATORS—DATE OF ELECTION AND COMMENCEMENT OF TERMS

That at the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the fourth day of March next thereafter. (38 Stat. 384.) (Section 1 of the act entitled "An act providing a temporary method of conducting the nomination and election of United States Senators," approved June 4, 1914.) (U. S. C., title 2, sec. 1.)

III. MEMBERS OF HOUSE OF REPRESENTATIVES—DATE OF ELECTION AND COMMENCEMENT OF TERMS

(1) The Tuesday next after the first Monday in November, in the year eighteen hundred and seventy-six, is established as the day, in each of the States and Territories of the United States, for the election of Representatives and Delegates to the Forty-fifth Congress; and the Tuesday next after the first Monday in November, in every second year thereafter, is established as the day for the election, in each of said States and Territories, of Representatives and Delegates to the Congress commencing on the fourth day of March next thereafter. (R. S. sec. 25.) (U. S. C., title 2, sec. 7.)

(2) That section twenty-five of the Revised Statutes prescribing the time for holding elections for Representatives to Congress, is hereby modified so as not to apply to any State that has not yet changed its day of election, and whose constitution must be amended in order to effect a change in the day of the election of State officers in said State. (Section 6 of the act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes," approved March 3, 1875 (18 Stat. 400).) (U. S. C., title 2, sec. 7.)

(3) The time for holding elections in any State, District, or Territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively. (R. S. sec. 26.) (U. S. C., title 2, sec. 8.)

IV. SESSIONS OF CONGRESS

That Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors. (The first sentence of section 4 of the act entitled "An act to fix the day for the meeting of the electors of President and Vice President, and to provide for and regulate the counting of the votes for President and Vice President, and the decision of questions arising thereon," approved February 3, 1887.) (24 Stat. 373.) (U. S. C., title 3, sec. 17.)

V. RESIDENT COMMISSIONERS

(1) That at the first meeting of the Philippine Legislature created by this act and triennially thereafter there shall be chosen by the legislature two Resident Commissioners to the United States, who shall hold their office for a term of three years beginning with the fourth day of March following their election, and who shall be entitled to an official recognition as such by all departments upon presentation to the President of a certificate of election by the Governor General of said islands. (The first sentence of section 20 of the act entitled "An act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands," approved August 29, 1916.) (39 Stat. 552.) (U. S. C., title 48, sec. 1091.)

(2) That the qualified electors of Porto Rico shall at the next general election choose a Resident Commissioner to the United States, whose term of office shall begin on the date of the issuance of his certificate of election and shall continue until the fourth of March, nineteen hundred and twenty-one. At each subsequent election, beginning with the year nineteen hundred and twenty, the qualified electors of Porto Rico shall choose a Resident Commissioner to the United States, whose term of office shall be four years from the fourth of March following such general election, and who shall be entitled to receive official recognition as such Commissioner by all of the departments of the Government of the United States, upon presentation, through the Department of State, of a certificate of election of the Governor of Porto Rico. (The first two sentences of section 36 of the act entitled "An act to provide a civil government for Porto Rico, and for other purposes," approved March 2, 1917.) (39 Stat. 963.) (U. S. C., title 48, sec. 891.)

NOTE.—The statutes relating to the election of a Delegate for the Territory of Alaska (37 Stat. 512, 517; 34 Stat. 169, 170), and a Delegate for the Territory of Hawaii (34 Stat. 550), do not prescribe a specific date for the beginning of the term.

