

SENATE JOINT RESOLUTION NO. 10
INTRODUCED BY J. O'NEIL

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DECLARING AS DEFECTIVE THE CURRENT PROCESS OF CHOOSING UNITED STATES SENATORS; REQUESTING CONGRESS TO TRANSMIT FOR CONSIDERATION BY STATES OF THE UNITED STATES AN AMENDMENT TO THE 17TH AMENDMENT TO THE UNITED STATES CONSTITUTION THAT PROVIDES FOR STATE LEGISLATURES TO ELECT MEMBERS OF THE UNITED STATES SENATE; AND INFORMING THE PRESIDENT OF THE UNITED STATES SENATE, THE SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, AND EACH MEMBER OF THE MONTANA CONGRESSIONAL DELEGATION OF THE REQUEST FOR AN AMENDMENT TO THE 17TH AMENDMENT TO THE UNITED STATES CONSTITUTION.

WHEREAS, the Founding Fathers came to a great compromise at the Constitutional Convention of 1787 and provided for proportional representation in the House of Representatives of the United States and equal representation for the states in the Senate of the United States; and

WHEREAS, the Founding Fathers determined that equal representation of the states in the Senate of the United States recognized the individual sovereignty of each state; and

WHEREAS, Alexander Hamilton in the Federalist Papers, Number 27, concluded that because the legislatures were "select bodies of men", the choice of United States Senators would generally be made "with peculiar care and judgment" by the legislatures, a selection process originally provided for in Article I, Section 3, Clause 1, of the Constitution of the United States; and

WHEREAS, the 10th amendment declared a division of authority between the states and the United States and was for the first 140 years of this nation invoked by the Supreme Court of the United States as a constitutional limit of congressional power as against the powers of the several states; and

WHEREAS, the election of the United States Senators by the State Legislatures was the political mechanism against congressional encroachment into the sovereignty of the states; and

WHEREAS, one of the essential aspects of the states' exercise of this political mechanism is the United States Senate's advice and consent for treaties and appointments of executive and judicial officers made by the President of the United States; and

WHEREAS, the ratification of the 17th amendment in 1913 changed the election of the United States

Senators from the State Legislatures to the popular vote of the people of the states, thereby divesting the states of any direct voice in the federal government; and

WHEREAS, because of the differing modes of representation and election in the House and the Senate prior to 1913, each branch provided a balance of legislative power against, and an independent check upon, the other; and

WHEREAS, prior to 1913, history reveals that in choosing their Senators, the individual State Legislatures supported the federal government, thereby providing harmony between the governments of the states and the government of the United States; and

WHEREAS, the Congress of the United States has, since the ratification of the 17th amendment, steadily encroached upon the sovereignty of this and the other states united by and under the Constitution of the United States; and

WHEREAS, a Senator's general responsibility is to represent state government and the State Legislature; and

WHEREAS, the State Legislature has a role in compelling accountability from United States Senators; and

WHEREAS, a state has the right to prescribe its own procedures regarding the selection process for United States Senators, including appointments in the case of deadlock.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature of the State of Montana find and declare to be defective the current process of electing United States Senators, which fails to represent the interests of the individual states.

(2) That Congress, in accordance with Article V of the Constitution of the United States, immediately transmit to the several states for ratification an amendment to the 17th amendment of the United States Constitution, as described in subsection (3), resolving the procedural problems, particularly the problem of the deadlocked State Legislature, inherent in the original concept;

(3) That the amendment read as follows:

"Section 1. The Senate of the United States shall be composed of two Senators from each State, selected by the legislature of each State. Each Senator shall serve a six-year term and may be reappointed. Each Senator shall have one vote.

Section 2. Senators are subject to removal by the State Legislature. Removal of a Senator requires a

majority of each House of the State Legislature.

Section 3. Congress is precluded from enacting any legislation affecting the senatorial selection process. Each State Legislature shall enact rules and procedures, consistent with this amendment, related to the selection and removal of Senators. A State Legislature may implement a selection procedure whereby the State Legislature selects a Senator by a plurality vote rather than a majority. If a State Legislature fails to enact a selection procedure, then the State Legislature shall sit as a single body and shall select a Senator by a plurality vote. Irrespective of the procedures followed by the State Legislature, if the State Legislature does not choose a Senator within 30 days after a vacancy, the Governor of the State shall select the Senator.

Section 4. This amendment shall not be construed in a way that affects the term of, or future method of voting for, any Senator chosen before the amendment becomes valid as part of the United States Constitution. All state legislative proceedings, including but not limited to those concerning procedural issues and the selection and removal of a Senator, are open to the public."

(4) That the Secretary of State of the State of Montana transmit certified copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Montana Congressional Delegation.

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