

THE TERM OF A SENATOR—*When Does It  
Begin and End?*

CONSTITUTION, LAWS, AND PRECEDENTS PERTAINING  
TO THE TERM OF A SENATOR



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## FOREWORD

One of the more esoteric questions presented to the Senate has been when the term of a Senator begins and when it ends. I am grateful to the Parliamentarian, Dr. Robert B. Dove, the Assistant Parliamentarian, Alan S. Frumin, and the Second Assistant Parliamentarian, Gail M. Cowper, for their research into this subject in order to present to the public this document outlining the answer to the question when does the term of a Senator begin and when does it end.

WILLIAM F. HILDENBRAND,  
*Secretary, U.S. Senate.*

# THE TERM OF A SENATOR

## WHEN DOES IT BEGIN AND END?

There are three types of terms which will be discussed in this pamphlet, full terms, unexpired terms, and short terms. Full terms are those of six years duration. Unexpired terms occur when there is a vacancy due to death or resignation and a Senator is either appointed or elected for the term remaining. Short terms are those occurring between a November election and the beginning of a new Congress the following January.

The full "terms of Senators" end "at noon on the third day of January" . . . , "and the terms of their successors shall then begin."

The pertinent sections (sections 1 and 2) of the 20th Amendment to the Constitution, declared ratified by a proclamation on February 6, 1933, are as follows:

### AMENDMENT XX

**SECTION 1.** The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d 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.

**SECTION 2.** The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Under the statutes, if a temporary appointment is made, three possibilities exist as to when the person elected to fill the remainder of the term is to begin to serve. If the person elected to succeed the appointee is: (1) elected when the Senate is in session, his term begins on the day he qualifies; (2) elected during a *sine die* adjournment of the Senate, his term begins on the day following his election; or (3) elected during a session of the Senate but does not qualify before the Senate adjourns *sine die*, his term begins on the day following the *sine die* adjournment.

### Popular Election of Senators

Today, Senators are chosen by popular election as provided for in the 17th Amendment to the Constitution, which is as follows:

### AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The

electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill their vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Title II, section 1, of the U.S. Code provides:

### § 1. Time for election of Senators

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 3d day of January next thereafter.

(June 4, 1914, ch. 103, § 1, 38 Stat. 384; June 5, 1934, ch. 390, § 3, 48 Stat. 879.)

### AMENDMENTS

1934—Act June 5, 1934 substituted "3d day of January" for "fourth day of March".

### CONSTITUTIONAL PROVISIONS

The first section of Amendment XX to the Constitution provides in part: "\* \* \* the terms of Senators and Representatives [shall end] at noon on the 3d 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."

### CROSS REFERENCES

Time for election of Senators, see Const. Art. I, § 4, cl. 1.  
Vacancies in the Senate, see Const. Amend. XVII.

### FIXING THE TIME AND PLACE FOR THE BEGINNING OF GOVERNMENT UNDER THE CONSTITUTION

On Monday, September 17, 1787, the session of the convention followed that in which the signatures were affixed to the completed draft of the Constitution, it was:

*Resolved*, That it is the Opinion of this Convention that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble and vote for the President,

and the Time and Place for commencing Proceedings under the Constitution, etc.<sup>1</sup>

NOTE.—In an opinion written April 22, 1881, the Hon. George S. Boutwell, former Member of the House of Representatives and Senator from Massachusetts, after citing the above actions, says: "It thus appears that the Continental Congress, by the resolution of September 13, 1788, and acting under and by virtue of the authority conferred upon it by the resolution of the Constitutional Convention of September 17, 1787, declared that the first Wednesday in March, 1789, should be the time for commencing proceedings under the Constitution. The first Wednesday of March in that year fell on the fourth day of that month. The first paragraph of the second section of the first article of the Constitution provides that the House of Representatives shall be composed of Members chosen every second year by the people of the several States. This implies necessarily that the term is for two years, and as the term of the Members elected to the First Congress commenced on Wednesday, the 4th day of March, 1789, their term expired, by operation of the Constitution, on the 4th day of March, 1791; and, by a like necessity, the term of their successors commenced on the same day. As that provision of the Constitution has been operative without modification from that day to this, it has not been possible to make any change in the commencement or ending of a Congress, or of the terms of Members of the House of Representatives.

"It appears also that a term of Congress is as fixed as though specific provision had been made in the Constitution that it should commence on the 4th day of March and terminate on the 4th day of March at the end of every two years."

#### A JOINT COMMITTEE DETERMINED BEGINNING AND ENDING DATES OF FIRST CONGRESS

[1st Cong., 2d sess., J., p. 136.]

MAY 3, 1790.

A message from the House of Representatives, by Mr. Beckley, their Clerk:

The House of Representatives have appointed Messrs. Benson, Clymer, Huntington, Moore, and Carroll a committee to join with a committee to be appointed by the Senate to consider and report their opinion on the question, "When, according to the Constitution, the terms for which the President, Vice President, Senators, and Representatives have been respectively chosen shall be deemed to have commenced? and also to consider of and report their opinion on such other matters as they shall conceive have relation to this question, and request the concurrence of the Senate in the appointment of a committee on their part."

*Resolved*, That the Senate do concur therein, and that Messrs. Ellsworth, King, and Morris be appointed to confer on the part of the Senate.

*Ordered*, That the Secretary acquaint the House of Representatives herewith.

[1st Cong., 2d sess., J., pp. 140, 141.]

MAY 14, 1790.

The Senate proceeded to consider the report of the joint committee appointed the 28th of April, which is as follows:

\* \* \* \* \*

<sup>1</sup> Journal of Constitutional Convention in Writings of James Madison, vol. IV, p. 504. Also, Journals of Congress, vol. 12, pp. 163, 164; vol. 4, p. 781, Edition of 1823.

That the terms for which the President, Vice President, Senate, and House of Representatives of the United States were respectively chosen did, according to the Constitution, commence on the 4th of March, 1789. And so the Senators of the first class and the Representatives will not, according to the Constitution, be entitled by virtue of the same election by which they hold seats in the present Congress, to seats in the next Congress, which will be assembled after the 3d of March, 1791. \* \* \*

The report was agreed to.

#### HOURS BECOME IMPORTANT, AS WELL AS DAYS

The 20th Amendment, set forth on page 1, removed all questions about the day or time for the beginning and ending of office, and specifically fixed the day and hour each regular annual session of Congress would begin, namely; January 3 of each year, "unless they shall by law appoint a different day" and it also stipulated that "the terms of Senators" shall end "at noon on the 3d day of January."

#### Statutes Supplement 20th Amendment

Statutes now supplement the 20th Amendment in the determination of the beginning and ending of the term of Senators appointed or elected to fill unexpired terms in the cases of death, resignation, or defeat of an appointed Senator seeking election to fill an unexpired term.

Title II, section 36, of the United States Code, relating to salaries of Senators, fixes the dates on which Senators appointed or elected to fill unexpired terms go on the payroll, which is as follows:

##### § 36. Salaries of Senators

Salaries of Senators appointed to fill vacancies in the Senate shall commence on the day of their appointment and continue until their successors are elected and qualified: *Provided*, That when Senators have been elected during a sine die adjournment of the Senate to succeed appointees, the salaries of Senators so elected shall commence on the day following their election.

Salaries of Senators elected during a session to succeed appointees shall commence on the day they qualify: *Provided*, That when Senators have been elected during a session to succeed appointees but have not qualified, the salaries of Senators so elected shall commence on the day following the sine die adjournment of the Senate.

When no appointments have been made the salaries of Senators elected to fill such vacancies shall commence on the day following their election. (Feb. 10, 1923, ch. 68, 42 Stat. 1225; Feb. 6, 1931, ch. 111, 46 Stat. 1065; June 19, 1934, ch. 648, title I, § 1, 48 Stat. 1022; Feb. 13, 1935, ch. 6, § 1, 49 Stat. 22, 23.)

#### Senate Precedents on the Term of a Senator

On January 3, 1955, Strom Thurmond was sworn in as a Senator from the State of South Carolina for the term beginning on that

day. He resigned his office, effective April 4, 1956, and Thomas A. Wofford was appointed by the Governor of that State effective April 5, 1956, to fill the vacancy. He resigned, effective as of November 7, 1956.

On November 6, 1956, Mr. Thurmond was elected without opposition to fill the unexpired term, which would end on January 2, 1961, and the Secretary of the Senate, under authority of 2 U.S.C. 36, placed his name on the payroll effective as of November 7, 1956. The Governor of the State, taking the position that, under State law, the interim appointment of Senator Wofford did not expire until noon January 3, 1957, claimed a vacancy arose in the appointive term by reason of the resignation of Senator Wofford. He therefore tendered an appointment to Senator-elect Thurmond, effective whenever the latter should accept such appointment. Senator Thurmond accepted the appointment on November 13, 1956, effective as of November 7, 1956.

On November 30, 1956, the Governor transmitted to the President of the Senate a duly signed certificate that Strom Thurmond was elected on November 6, 1956, for the term of four years, beginning on the third day of January, 1957.

The position of the Governor of South Carolina was in contravention of the Federal law; and the Vice President, in laying before the Senate the certificate of election of Mr. Thurmond, made the following statement: <sup>2</sup>

With reference to the election of a Senator from the State of South Carolina for the unexpired term ending January 3, 1961, at noon, the Chair lays before the Senate a letter of resignation from the Senate, addressed to the Governor of South Carolina by Thomas A. Wofford; a communication from the Governor of said State, enclosing a certificate, dated November 7, 1956, purporting to appoint Strom Thurmond, "effective as of the effective date of his acceptance, a Senator from said State to succeed Thomas A. Wofford, resigned, until the vacancy therein is filled as provided by law"; and a certificate, signed by the Governor and secretary of state, dated November 27, 1956, of the election on November 6, 1956, of Strom Thurmond as a Senator from said State "for the term of 4 years, beginning on the 3d day of January, 1957."

The clerk will read the documents.

The documents referred to by the Vice President were read as follows.<sup>3</sup>

*October 29, 1956.*

HON. GEORGE BELL TIMMERMAN, Jr.,  
*Governor of South Carolina, the State House, Columbia,  
S.C.*

DEAR GOVERNOR TIMMERMAN: At the time of my appointment to the United States Senate, I stated that I would submit my resignation when my successor was elected.

<sup>2</sup> Cong. Record, 85-1, pp. 3-4.

<sup>3</sup> Cong. Record, 85-1, pp. 3-4.

In compliance with this promise, I herewith submit to you my resignation from the Senate and respectfully request you to accept it effective as of November 7, 1956.

It has been a great honor for me to serve the people of South Carolina in this high office. I wish to express my deep appreciation to you for the trust you reposed in me by choosing me to serve in the Senate.

With kindest regards, I am,

Sincerely yours,

THOMAS A. WOFFORD.

(Copy to President of the Senate, Secretary of the Senate, Senator Strom Thurmond.)

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STATE OF SOUTH CAROLINA,  
EXECUTIVE OFFICE,  
*Columbia.*

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that pursuant to the power vested in me by the Constitution of the United States and the laws of the State of South Carolina, I, George Bell Timmerman, Jr., the Governor of said State, do hereby appoint J. Strom Thurmond, effective as of the effective date of his acceptance, a Senator from said State to represent said State in the Senate of the United States to succeed Thomas A. Wofford, resigned, until the vacancy therein is filled as provided by law.

Witness: His Excellency our Governor, George Bell Timmerman, Jr., and our seal hereto affixed at Columbia, as of the 7th day of November, the year of our Lord 1956.

By the Governor:

GEORGE BELL TIMMERMAN, Jr.,  
*Governor*

[SEAL]

O. FRANK THORNTON,  
*Secretary of State.*

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STATE OF SOUTH CAROLINA,  
EXECUTIVE DEPARTMENT.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that on the 6th day of November 1956, Strom Thurmond was duly chosen by the qualified electors of the State of South Carolina a Senator from said State to represent said State in the Senate of the United States for the term of 4 years, beginning on the 3d day of January 1957.

Witness: His Excellency our Governor, George Bell Timmerman, Jr., and our seal hereto affixed at Columbia this 27th day of November, in the year of our Lord 1956.



By the Governor:

GEORGE BELL TIMMERMAN, Jr.,  
Governor.

[SEAL]

O. FRANK THORNTON,  
Secretary of State.

Mr. Lyndon B. Johnson, of Texas, then majority leader of the Senate, thereupon submitted a resolution (S. Res. 1) as follows: <sup>4</sup>

*Resolved*, That, in accordance with the provisions of title 2, United States Code, section 36 (49 Stat. 22), and under the precedents of the Senate, the term of service of Thomas A. Wofford, appointed a Senator by the Governor of the State of South Carolina, to fill the vacancy in the term ending January 2, 1961, caused by the resignation of Strom Thurmond, expired on election day, November 6, 1956; and be it further

*Resolved*, That the term of service of Strom Thurmond, duly elected a Senator on said day to fill the vacancy in the said unexpired term ending January 2, 1961, commenced, under said statute and precedents, on November 7, 1956, the day following the election.

Mr. Johnson made the following statement which sets forth in general the history and practices of the Senate under the law since its enactment in 1935: <sup>5</sup>

Mr. JOHNSON of Texas. Mr. President, I have consulted with the distinguished minority leader, and he has joined me in this resolution, which is presented because, in the opinion of the Parliamentarian, it is necessary to adopt such a resolution in order to maintain the precedents of the Senate, and to comply with Federal statutes now on the books.

Senator Strom Thurmond, of South Carolina, who was elected Senator from that State for the 6-year term beginning January 3, 1955, resigned on April 4, 1956; and Thomas A. Wofford was appointed by the Governor, effective April 5, 1956, to fill the vacancy.

On October 29, 1956, Senator Wofford resigned, effective November 7, 1956. Former Senator Thurmond was elected without opposition on November 6, 1956, for the unexpired term, which will end on January 3, 1961, at noon; and, under authority of title 2, United States Code, section 36, the Senate being in sine die adjournment, the Secretary of the Senate placed Mr. Thurmond's name upon the payroll of the Senate.

I am informed that the Governor contends that, under the law of that State, the interim appointment of Mr. Wofford would not expire until noon on January 3, 1957; and that, by reason of Senator Wofford's resignation, a vacancy

<sup>4</sup> Cong. Record, 85-1, p. 4.

<sup>5</sup> Cong. Record, 85-1, pp. 4-5.

arose, which he was required by law to fill until that date. He therefore, on November 7, 1956, tendered an appointment to Senator-elect Thurmond, effective upon his acceptance, "to succeed Thomas A. Wofford, resigned, until the vacancy therein is filled as provided by law." Senator Thurmond, on November 13, 1956, accepted the appointment effective as of November 7, 1956.

The Governor, on November 27, 1956, transmitted to the President of the Senate a certificate, signed by himself and the secretary of state, that on November 6, 1956, "Strom Thurmond was duly chosen a Senator from said State for the term of 4 years, beginning on the 3d day of January, 1957."

The Federal law governing the salaries of Senators elected to fill unexpired terms is contained in title 2, United States Code, section 36 (49 Stat. 22), approved February 13, 1935, the pertinent part of which is as follows:

**SEC. 36. Salaries of Senators.**

*Provided*, That when Senators have been elected during a sine die adjournment of the Senate to succeed appointees, the salaries of Senators so elected shall commence on the day following the election.

The Senate since the adoption of this act has uniformly followed its provisions, and there have been two instances when the question was raised by the appointee when another person was elected to fill the unexpired term.

On November 8, 1938, Tom Stewart was elected a Senator from the State of Tennessee to fill the unexpired term ending January 2, 1943, which had been previously filled by an appointment of one George L. Berry. Mr. Stewart was serving as a district attorney in the State, and did not qualify as Senator until January 16, 1939. Mr. Berry contended he was entitled to draw pay until Mr. Stewart took the oath; but the Senate, on February 2, 1939, adopted a resolution that Mr. Berry's term expired on the day on which Mr. Stewart was elected, and that Mr. Berry was not entitled to receive compensation or emoluments of the office after election day.

On November 5, 1945, Kingsley A. Taft was elected Senator from the State of Ohio for the unexpired term ending January 2, 1947, to succeed James W. Huffman, who had been appointed by the Governor to fill the vacancy caused by the resignation of Senator Burton.

The financial clerk of the Senate, under the authority of the Federal law, dropped Mr. Huffman's name from the payroll as of election day, and placed Mr. Taft's name thereon as of November 6. Senator Huffman questioned this action, and brought the matter to the attention of the President pro tempore of the Senate, Hon. Kenneth D. McKeller, who concurred in the decision of the financial clerk.

In another instance, in 1936, under an identical situation, the appointee continued to maintain an office and clerical force, at his own expense, after another person had been elected to fill the remainder of the unexpired term.

In the next Congress a resolution was submitted in the Senate to reimburse him and his employees for their expenses, which was referred to the Committee on Contingent Expenses, where it died at the end of the Congress without any action thereon.

Numerous cases have arisen since the adoption of the law in 1935 where the persons were elected to succeed appointees while the Senate was in sine die adjournment, and the above rule has been uniformly followed by the financial clerk. In only the two cases above cited has a question been raised by the appointee as to his right to draw compensation after election day.

Mr. President, after conferring with the distinguished Parliamentarian and his assistant, the distinguished Secretary of the Senate, and the distinguished minority leader, and after giving the Senate all the facts with regard to the precedents, the majority leader is hopeful that this resolution will be adopted unanimously.

After the above statement, the resolution was agreed to.<sup>6</sup>

A second precedent in point was that of the certificate of election of a Senator from the State of Texas during a session of the Senate which incorrectly stated the date of the beginning of his term of service. The Senate, after the oath of office was administered to the Senator, adopted a resolution correcting the error. Note the following details:

On April 29, 1957, Mr. Johnson of Texas presented the certificate of election of Ralph W. Yarborough, chosen a Senator on April 2, 1957, to fill the vacancy in the term ending January 2, 1959, caused by the resignation of Hon. Price Daniel, who was elected Governor of that State. The certificate, in stating that Mr. Yarborough's term began on April 19, 1957 (the date of the issuance of the certificate), was in error, as is shown in the resolution subsequently presented and adopted. The certificate was read and ordered to be placed on file, as follows.<sup>7</sup>

THE STATE OF TEXAS.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that on the 2d day of April 1957, Ralph W. Yarborough was duly chosen by the qualified electors of the State of Texas a Senator from said State to represent said State in the Senate of the United States for an unexpired term beginning on the 19th day of April 1957 and expiring on the 3d day of January 1959.

Witness: His Excellency our Governor, and our seal hereunto affixed at Austin, this 19th day of April, in the year of our Lord 1957.

PRICE DANIEL,  
*Governor of Texas.*

By the Governor.

<sup>6</sup> Cong. Record, 85-1, p. 5.

<sup>7</sup> Cong. Record, 85-1, p. 6060.

[SEAL]

ZOLLIE STEAKLEY,  
*Secretary of State.*

The oath of office was administered to Mr. Yarborough, and he subscribed to the same, as required by Rule II of the Standing Rules of the Senate. Mr. Johnson then submitted a resolution (S. Res. 129), which was designed to correct the error in the date of the beginning of Mr. Yarborough's term of office. The resolution follows: <sup>8</sup>

Whereas the certificate of election of Ralph W. Yarborough, chosen a Senator on April 2, 1957, during the present session of the 85th Congress, by the qualified electors of the State of Texas to fill the vacancy in the term ending at noon on the 3d day of January 1959, caused by the resignation of Honorable Price Daniel, states that he was "duly chosen \* \* \* to represent said State in the Senate of the United States for an unexpired term beginning on the 19th day of April, 1957, and expiring on the 3d day of January 1959"; and

Whereas under title 2, section 36, of the United States Code (49 Stat. 23), and precedents of the Senate based thereon, salaries of Senators elected during a session to succeed appointees shall commence on the day they qualify; and

Whereas the said Ralph W. Yarborough has this day duly qualified by taking, in the open Senate, as provided by Rule II, the oath required by the Constitution and prescribed by law; and has subscribed to the same: Therefore, be it

*Resolved*, That the term of the service of the said Ralph W. Yarborough shall be deemed to have commenced on this the 29th day of April 1957.

Mr. Johnson then made the following statements: <sup>9</sup>

Mr. President, adoption of the resolution which has just been read will clarify the situation with respect to the beginning of the term of service of the Senator from Texas [Mr. Yarborough]. Under the law and the precedents of the Senate, while the Senate is not in sine die adjournment, a Senator elected to fill a vacancy does not commence to draw compensation until he takes the oath in the open Senate and subscribes to it. The appointee holds the office and draws the pay until the Senator-elect takes the oath, as above stated.

Unless the Senate takes action with respect to fixing the beginning of the term of the junior Senator from Texas [Mr. Yarborough], confusion will result. Adoption of the resolution will eliminate any confusion which might otherwise arise, and will be the official notice to the financial clerk of the Senate as to the beginning on this day of the

<sup>8</sup> Cong. Record, 85-1, p. 6060.

<sup>9</sup> *Ibid.*

term of service of the junior Senator from Texas [Mr. Yarborough].

Mr. President, a comparable situation exists in the case of the Senator from South Carolina [Mr. Thurmond]. On that occasion the Senate adopted a resolution similar to the one now at the desk.

I have conferred with the distinguished minority leader, and he is agreeable to the procedure I have suggested. Therefore, I ask unanimous consent that the Senate proceed to the immediate consideration of the resolution.

The resolution was considered and, together with the accompanying preamble, agreed to.<sup>10</sup>

A third precedent in point involved the credentials of a Senator from Texas who was elected to fill an unexpired term while the Senate was in session. Under this circumstance his term did not begin until he qualified regardless of the date of the election or date stipulated in the certificate of election submitted by the Governor of that State to the Senate. The Senator appointed by the Governor to fill the unexpired term until a special election could be held stayed in office until the elected Senator qualified. Note the following:

On June 15, 1961, Mr. Dirksen, of Illinois, presented the certificate of election of John G. Tower, of Texas, who had been elected on the 27th day of May, 1961, as Senator from that State to fill the vacancy in the term ending at noon on January 3, 1967, caused by the resignation of Senator Lyndon B. Johnson, who was elected Vice President. The certificate was read and ordered to be placed on file as follows:<sup>11</sup>

THE STATE OF TEXAS.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that on the 27th day of May 1961 John G. Tower was duly chosen by the qualified electors of the State of Texas as Senator from said State to represent said State in the Senate of the United States for an unexpired term beginning on the 13th day of June 1961 and expiring on the 3d day of January 1967.

Witness His Excellency our Governor, and our seal hereto affixed at Austin, this 13th day of June, in the year of our Lord 1961.

PRICE DANIEL,  
*Governor of Texas.*

By the Governor:  
[SEAL]

P. FRANK LAKE,  
*Secretary of State.*

Mr. Tower, accompanied by his colleague Senator Yarborough, presented himself at the desk, and the oath was administered to him by the Vice President.

<sup>10</sup> Ibid.

<sup>11</sup> Cong. Record. 87-1, p. 10522.

Subsequently, on the request of Mr. Mansfield, of Montana, the chairman of the Committee on Rules and Administration, the certificate was referred to that committee.<sup>12</sup>

On July 12, 1961, Mr. Mansfield, from the foregoing committee, reported an original resolution (S. Res. 178) as follows:

Whereas the certificate of John G. Tower, chosen a Senator on May 27, 1961, during the present session of the 87th Congress, by the qualified electors of the State of Texas to fill the vacancy in the term ending at noon on the third day of January 1967, caused by the resignation of Honorable Lyndon B. Johnson, states that he was "duly chosen \* \* \* to represent said State in the Senate of the United States for an unexpired term beginning on the 13th day of June nineteen hundred sixty-one and expiring on the third day of January, nineteen hundred sixty-seven"; and

Whereas under title 2, section 36, of the United States Code (49 Stat. 23), and precedents of the Senate based thereon, salaries of Senators elected during a session to succeed appointees shall commence on the day they qualify; and

Whereas the said John G. Tower on June 15, 1961, duly qualified by taking, in the open Senate, as provided by rule II, the oath required by the Constitution and prescribed by law, and has subscribed to the same: Therefore be it

*Resolved*, That the term of the service of the said John G. Tower shall be deemed to have commenced on the 15th day of June 1961.

The resolution was accompanied by a report No. 542.<sup>13</sup>

On July 17, 1961, the resolution was considered and agreed to, with the preamble.<sup>14</sup>

It should also be mentioned that on September 10, 1968, the governor of New York, Mr. Nelson Rockefeller, appointed Mr. Charles E. Goodell Senator from New York to fill the vacancy caused by the death of Robert F. Kennedy. This date being so close to the general election, no name was put on the ballot to fill that unexpired term ending January 3, 1971. Senator Goodell served the remainder of the unexpired term on that appointment; hence he took only one oath of office but he served from September 10, 1968 (having taken the oath of office on September 12) until January 3, 1971—two years and almost four months.

Note the following certificate of appointment presented to the Senate when Mr. Goodell took his oath of office:

The certificate of appointment was read and ordered to be placed on file, as follows:

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<sup>12</sup> *Ibid.*

<sup>13</sup> Cong. Record, 87-1, p. 12309.

<sup>14</sup> Cong. Record, 87-1, p. 12650.

STATE OF NEW YORK,  
*Executive Chamber.*

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of New York, I, Nelson A. Rockefeller, the Governor of said State, do hereby appoint Charles E. Goodell, a Senator from said State to represent said State in the Senate of the United States until the vacancy therein, caused by the death of Robert F. Kennedy, is filled by election as provided by law.

Witness: His excellency our Governor Rockefeller, and our seal hereto affixed at Albany, New York, this tenth day of September, in the year of our Lord 1968.

By the Governor:

NELSON A. ROCKEFELLER,  
*Governor.*

JOHN P. LOMENZO,  
*Secretary of State.*

The PRESIDENT pro tempore. If the Senator-designate will present himself at the desk, the oath of office will be administered to him.

Mr. GOODELL, escorted by Mr. Javits, advanced to the Vice President's desk; the oath of office prescribed by law was administered to him by the President pro tempore; and he subscribed to the oath in the official oath book.

In 1978 the State of Minnesota had in its statutes a provision which by its terms attempted to vary the practice set out in the 17th Amendment to the Constitution with regard to the filling of vacancies in the representation of any State in the Senate. The 17th Amendment states that, "The people fill their vacancies by election." The Minnesota statute states that any person "who is elected . . . for a regular 6-year term . . . shall also succeed . . . for the remainder of the unexpired term."

The precedents of the Senate show that the Senate has refused to allow any State by statute, executive order, or otherwise to vary the procedure for the election of Senators or to set the time or date for their service to begin.

Vice President Mondale had resigned as U.S. Senator from the State of Minnesota to assume his office.

Governor Wendell Anderson resigned his office and accepted an appointment to fill the vacancy for the unexpired term.

Minnesota provided for the filling of any vacancy, by a law which provided for the temporary appointment of an individual to hold the office (of U.S. Senator) until a successor was elected and qualified at a special election or until a successor was elected pursuant to subdivision 11 of the Minnesota law.

202A.721, subdivision 11 of the Minnesota statutes, adopted in 1978 reads as follows:

"Any person who is elected to the office of United States Senator for a regular six year term when the office is vacant or is filled by a person appointed pursuant to subdivision 10 shall also succeed to the office for the remainder of the unexpired term." (Emphasis supplied)

The 17th Amendment empowered the executive authority to make a temporary appointment to fill a vacancy and it empowered

the legislature to enact a law providing for the people to fill the vacancy by election.

The Minnesota statute stated that a single election would be for two separate and distinct purposes:

- (a) to fill unexpired term, and
- (b) for a *regular six year term*.

The people of Minnesota may not be empowered by their legislature to elect United States Senators for terms greater than that authorized by the Constitution. An election was held in Minnesota for the full six year term. No election was held for the unexpired short term of two months between Election Day and January 3, 1979.

In the Minnesota case involving the Anderson seat there were two separate terms of office to be filled and the State attempted to combine them which would allow a Senator to be elected for more than six years, in violation of the Constitution.

This attempt was not permitted and Senator Anderson continued to serve until he voluntarily resigned in December 1978.

### Forms of Certificates of Senators

The Senate agreed to the following resolution on July 17, 1961, suggesting convenient and sufficient forms of the certificates of election of a Senator for a six-year term, or an unexpired term, or for the appointment of a Senator to fill a vacancy, to be signed by the executive of that State:<sup>15</sup>

*Resolved*, That, in the opinion of the Senate, the following are convenient and sufficient forms of the certificates of election of a Senator for a six-year term, or an unexpired term, or for the appointment of a Senator to fill a vacancy, to be signed by the executive of any State in pursuance of the Constitution and the statutes of the United States:

#### "CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

*"To the President of the Senate of the United States:*

"This is to certify that on the — day of —, 19—, A— B— was duly chosen by the qualified electors of the State of — a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3d day of January, 19—.

"Witness: His excellency our governor —, and our seal hereto affixed at — this — day of —, in the year of our Lord 19—.

"By the governor:

"C—— D——,  
"Governor.

"E—— F——,  
"Secretary of State."

<sup>15</sup> Suggested forms of certificates had been provided for by previous resolutions adopted by the Senate, but this revised resolution was adopted in 1961 for clarification in certain cases of elections to fill unexpired terms. See Senate Manual, 1965, pp. 5-6.



## "CERTIFICATE OF ELECTION FOR UNEXPIRED TERM

*"To the President of the Senate of the United States:*

"This is to certify that on the — day of —, 19—, A— B— was duly chosen by the qualified electors of the State of — a Senator for the unexpired term ending at noon on the 3d day of January 19—, to fill the vacancy in the representation from said State in the Senate of the United States caused by the — of C— D—.

"Witness: His excellency our governor —, and our seal hereto affixed at — this — day of —, in the year of our Lord 19—.

"By the governor:

"E— F—,  
"Governor.

"G— H—,  
"Secretary of State."

## "CERTIFICATE OF APPOINTMENT

*"To the President of the Senate of the United States:*

"This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of —, I, A— B—, the governor of said State, do hereby appoint C— D— a Senator from said State to represent said State in the Senate of the United States until the vacancy therein, caused by the — of E— F—, is filled by election as provided by law.

"Witness: His excellency our governor —, and our seal hereto fixed at — this — day of —, in the year of our Lord 19—.

"By the governor:

"G— H—,  
"Governor.

"I— J—,  
"Secretary of State."

*Resolved*, That the Secretary of the Senate shall send copies of these suggested forms and these resolutions to the executive and secretary of each State wherein an election is about to take place or an appointment is to be made in season that they may use such forms if they see fit. (S. Jour. 17, 73-2, Jan. 4, 1934; S. Jour. 547, 87-1, July 17, 1961.)

The appropriate form, from one of the three set out above, is mailed to the Governor of each State or States by the Secretary of the Senate every time a Senator is to be appointed or elected from that said State or all States involved.