

Handout F: The Story of Amendment 27, 1992

This excerpt comes from Richard B. Bernstein, The Sleeper Wakes: The History and Legacy of the Twenty-Seventh Amendment, 61 Ford. L. Rev. 497 (1992) For further discussion, see Richard b. Bernstein, AMENDING AMERICA: IF WE LOVE THE CONSTITUTION SO MUCH, WHY DO WE KEEP TRYING TO CHANGE IT? (1993), Chapter 13.

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The modern story of the ratification of the compensation amendment begins with Gregory D. Watson, an aide to Texas state senator Ric Williamson. Convinced that the amendment was still “live,” Watson waged a lonely ten-year campaign to add it to the Constitution despite the conventional wisdom—shared by most politicians, historians, and legal scholars—that the 1789 proposal was a dead letter.

In 1982, while a sophomore majoring in economics at the University of Texas-Austin, Watson was looking for a paper topic for a government course; he discovered the unratified compensation amendment of 1789, which seemed to him to have abiding relevance. Watson confirmed the ratifications by Maryland, North Carolina, South Carolina, Delaware, Vermont, and Virginia that occurred between 1789 and 1791, when the Bill of Rights was added to the Constitution and the compensation amendment seemingly passed

away. But Watson also discovered Ohio’s action on the amendment in 1873. He concluded that the 1789 amendment was still validly before the states principally because, unlike most recent proposed amendments, it has no internal time limit. Intrigued, he wrote a paper reporting and analyzing his discovery and urging that the amendment be adopted. But Watson received only a “C” from his instructor, who told him that the amendment was a dead letter and never would become part of the Constitution.

Despite the cold reception his paper received, Watson began and pursued a solitary, self-financed quest to revive the compensation amendment, encouraging state legislators throughout the United States to work for its ratification. Beginning with Maine in 1983 and Colorado in 1984, the states gradually responded to his arguments, and many of those legislatures that did ratify the amendment cited his point that the lack of a time limit confirms the amendment’s “live” status...

On May 7, 1992, the legislatures of Michigan and New Jersey raced to supply the needed thirty-eighth ratification. Michigan acted first; New Jersey’s legislators, disappointed that they missed the honor of putting the amendment into the Constitution, nonetheless ratified the amendment as the thirty-ninth state, overturning their predecessors’ decision in 1789 to reject it.