

A Proposed Thirteenth Amendment to the Constitution (1861)

Introduction

When Republican Abraham Lincoln, who had opposed expanding the practice of enslavement during the campaign, was elected president in 1860, the pro-slavery southern states started withdrawing from the Union. During the 16 weeks between Lincoln's election on November 6, 1860, and his inauguration on March 4, 1861, seven states, led by South Carolina, seceded and formed the independent Confederate States of America.

While still in office until Lincoln's inauguration, Democratic President James Buchanan declared secession to be a constitutional crisis and asked Congress to come up with a way to reassure the southern states that the incoming Republican administration under Lincoln would not outlaw slavery.

Specifically, Buchanan asked Congress for an "explanatory amendment" to the Constitution that would clearly confirm the right of the states to allow slavery. A three-member committee of the House of Representatives headed by Rep. Thomas Corwin of Ohio was established to explore possible compromise measures.

After considering and rejecting 57 draft resolutions introduced by a host of Representatives, the House approved Corwin's version of the proposed Thirteenth Amendment on February 28, 1861, by a vote of 133 to 65. The Senate passed the resolution on March 2, 1861, by a vote of 24 to 12. These totals just barely met the constitutional requirement of a 2/3 vote for proposal of a constitutional amendment for consideration by the states -- 132 votes being required in the House and 24 votes in the Senate. Having already announced their intent to secede from the Union, representatives of the seven pro-slavery states refused to vote on the resolution.

This proposed Thirteenth Amendment is known as the Corwin Amendment.

Out-going President James Buchanan took the unprecedented and unnecessary step of signing the Corwin Amendment resolution. While the president has no formal role in the constitutional amendment process, and his or her signature is not required on joint resolutions as it is on most bills passed by Congress, Buchanan felt his action would show his support for the amendment and help convince the southern states to ratify it.

While philosophically opposed to slavery, President-elect Abraham Lincoln, still hoping to avert war, did not object to the Corwin Amendment. Stopping short of actually

endorsing it, Lincoln, in his first inaugural address on March 4, 1861, said of the amendment:

“I understand a proposed amendment to the Constitution—which amendment, however, I have not seen—has passed Congress, to the effect that the Federal Government shall never interfere with the domestic institutions of the States, including that of persons held to service. To avoid misconstruction of what I have said, I depart from my purpose not to speak of particular amendments to say that, holding such a provision to now be implied constitutional law, I have no objection to its being made express and irrevocable.”

Just weeks before the outbreak of the Civil War, Lincoln transmitted the proposed amendment to the governors of each state along with a letter noting that former-President Buchanan had signed it.

The seceded southern states expressed no interest in this amendment, and the proposed amendment never became a part of the Constitution. The legislatures of Kentucky (1861), Ohio (1861), Rhode Island (1861), Maryland (1862), and Illinois (1863) did ratify it, although Ohio rescinded its ratification in 1864. (Maryland rescinded its ratification over 150 years later, in 2014).

In 1865, near the end of the war, a very different constitutional amendment, bearing the same numerical designation, was proposed and finally passed; the ratified Thirteenth Amendment ended slavery throughout the United States.

JOINT RESOLUTION TO AMEND THE CONSTITUTION OF THE UNITED STATES.

Resolved, By the Senate and House of Representatives of the United States, of America in Congress assembled, that the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid, to all intents and purposes, as part of the said Constitution, viz:

ARTICLE XIII.

No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic

institutions thereof, including that of persons held to labor or service by the laws of said State.

WILLIAM PENNINGTON,
Speaker of the House of Representatives.

JOHN BRECKINRIDGE,
*Vice President of the United States, and
President of the Senate.*

Approved March 2, 1861.

JAMES BUCHANAN.