

# **CONGRESSIONAL EXERCISE OF CONSTITUENT POWERS**

The matter of collegial action by Congress, comprised of the Senate and the House of Representatives, generally involves at least three (3) elements: (1) the mode of conduct of a session; (2) the mode of conduct of the voting; and (3) the number of votes required.

The first element pertains to whether or not the Senate and the House of Representatives meet in **session separately or jointly** to transact business.

The second element pertains to whether or not the Senate and the House of Representatives **vote** or act, **separately or jointly**, regardless of whether or not they meet in session separately or jointly to transact business.

The third element pertains to the **number of votes required** for the Senators and the Representatives, regardless of whether or not they meet in session separately or jointly, and also regardless of whether or not they vote or act separately or jointly.

With these elements in mind, the 1987 Constitution by express provision or necessary implication, notably provides for various modes of Congressional action, as follows:

**SEPARATE SESSION, SEPARATE VOTING, SEPARATE COUNTING<sup>1</sup>**

<b>Subject</b>	<b>Provision of the 1987 Constitution</b>	<b>Mode of Session</b>	<b>Mode of Voting</b>	<b>Number of Votes Required</b>
Election of presiding officer by the Senate and House of Representatives	Art. VI, Sec. 16(1)	“The Senate ... and the House of Representatives ... by ... its respective Members”	“The Senate ... and the House of Representatives ... by ... its respective Members”	“The Senate ... and the House of Representatives ... by a <u>majority vote of all its respective Members</u> ”
Suspension or expulsion of Members of the Senate and House of Representatives	Art. VI, Sec. 16(3)	“Each house ... with the concurrence of ... its Members”	“Each house ... with the concurrence of ... its Members”	“ <u>Each house</u> ... with the concurrence of <u>two-thirds of all its Members</u> ”
Entry of <i>yeas</i> and <i>nays</i> in the Journals of the Senate and House of Representatives	Art. VI, Sec. 16(4)	“Each house ... at the request of ... the Members present”	“Each house ... at the request of ... the Members present”	“ <u>Each house</u> ... at the request of <u>one-fifth of the Members present</u> ”
Passage by Congress of bill vetoed by the President	Art. VI, Sec. 27(1)	“(S)uch House (where it originated)” and “the other House”	“(S)uch House (where it originated)” and “the other House”	“ <u>(T)wo-thirds of all the Members of such House</u> (where it originated)” and “the other House ... <u>by two-thirds of all the Members of that House</u> ”
Passage by Congress of law granting tax exemption	Art. VI, Sec. 28(4); See Art. VI, Sec. 26(2) and 27(1)	“No bill passed by either House shall become law ...” and “Every bill passed by the Congress shall before it becomes law ...”	“No bill passed by either House shall become law ...” and “Every bill passed by the Congress shall before it becomes law ...”	“(A) <u>majority of all the Members of the Congress</u> ”
Confirmation by Congress of the Vice-President nominated by the President	Art. VII, Sec. 9	“(B)y ... both Houses of the Congress, voting separately”	“(B)y ... both Houses of the Congress, voting separately”	“(B)y a <u>majority vote of all the Members of both Houses</u> of the Congress”
Determination by Congress of the inability of the President to discharge powers	Art. VII, Sec. 11	“(B)y ... both Houses, voting separately”	“(B)y ... both Houses, voting separately”	“(B)y a <u>two-thirds vote of both Houses</u> ”

<sup>1</sup> Id, Article VI, Sec. 16(1). Id, Sec. 16(3). Id, Sec. 16(4). Id, Sec. 27(1). Id, Sec. 28(4). See Id, Secs. 26(2) and 27(1). Id, Article VII, Sec. 9. Id, Sec. 11.

**JOINT SESSION, SEPARATE VOTING, SEPARATE COUNTING<sup>2</sup>**

<b>Subject</b>	<b>Provision of the 1987 Constitution</b>	<b>Mode of Session</b>	<b>Mode of Voting</b>	<b>Number of Votes Required</b>
Declaration by Congress of state of war	Art. VI, Sec. 23(1)	“The Congress ... in joint session assembled”	“The Congress ... voting separately”	“The Congress, by a vote of <u>two-thirds of both Houses</u> ”
Election by Congress of the President in case two or more shall have an equal and highest number of votes	Art. VII, Sec. 4	“the Senate and the House of Representatives in joint public session”	“the Members of both Houses of the Congress, voting separately”	“by the vote of a <u>majority of all the Members of both Houses</u> of the Congress”

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<sup>2</sup> Id, Sec. 23(1).

**INDEPENDENT SESSION, INDEPENDENT VOTING, INDEPENDENT COUNTING<sup>3</sup>**

<b>Subject</b>	<b>Provision of the 1987 Constitution</b>	<b>Mode of Session</b>	<b>Mode of Voting</b>	<b>Number of Votes Required</b>
Concurrence by the Senate to a treaty or international agreement entered into by the President	Art. VII, Sec. 21	“(B)y ... the Senate”	“(B)y ... the Senate”	“(B)y at least <u>two-thirds of all the Members</u> of the Senate”

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<sup>3</sup> Id, Sec. 21.

**DELEGATED JOINT SESSION, DELEGATED JOINT VOTING, DELEGATED CUMULATIVE COUNTING<sup>4</sup>**

<b>Subject</b>	<b>Provision of the 1987 Constitution</b>	<b>Mode of Session</b>	<b>Mode of Voting</b>	<b>Number of Votes Required</b>
Action on appointments by the Commission on Appointments (comprised of the Senate President as <i>ex officio</i> Chairman, twelve Senators and twelve Representatives)	Art. VI, Sec. 18	“The Commission ... by ... all its members”	“The Commission ... by ... all its members”	“The Commission ... by a <u>majority vote of all its members</u> ”
Meeting of the Commission on Appointments	Art. VI, Sec. 19	“The Commission ... at the call of ... its Members”	“The Commission ... at the call of ... its Members”	“The Commission ... at the call of ... a <u>majority of all its Members</u> ”

<sup>4</sup> Id, Article VI, Sec. 18. Id, Sec. 19.

**JOINT SESSION, JOINT VOTING, CUMULATIVE COUNTING<sup>5</sup>**

<b>Subject</b>	<b>Provision of the 1987 Constitution</b>	<b>Mode of Session</b>	<b>Mode of Voting</b>	<b>Number of Votes Required</b>
Revocation or extension by Congress of the proclamation of martial law or suspension of the privilege of the writ of <i>habeas corpus</i> by the President	Art. VII, Sec. 18	“The Congress, voting jointly”	“The Congress, voting jointly”	“The Congress ... by a vote of at least a <u>majority of all its Members</u> ”

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<sup>5</sup> Id, Article VII, Sec. 18.

With the specified modes of Congressional action in mind, the Constitution is however peculiarly silent on the mode required, whether by separate or joint session, or by separate or joint voting, by the Senate and the House of Representatives, with respect to the matters below, specifically the matter of proposing amendments to the Constitutions. It makes no reference whatsoever to the Senate and the House of Representatives, nor to the Senators and the Representatives.<sup>6</sup> Rather, it provides only for the requisite number of votes for the “Members” of “Congress.”<sup>7</sup>

<b>Subject</b>	<b>Provision of the 1987 Constitution</b>	<b>Mode of Session</b>	<b>Mode of Voting</b>	<b>Number of Votes Required</b>
Concurrence by Congress to the grant of amnesty by the President	Art. VII, Sec. 19	NA	NA	“(A) <u>majority of all the Members of the Congress</u> ”
Calling of a constitutional convention to amend the Constitution	Art. XVII, Sec. 1(3)	NA	NA	“The Congress ... by a vote of <u>two-thirds of all its Members</u> ”
Proposal to amend the Constitution	Art. XVII, Sec. 1(1)	NA	NA	“The Congress, upon a vote of <u>three-fourths of all its Members</u> ”
Submission to the electorate the question of calling a constitutional convention	Art. XVII, Sec. 1(3)	NA	NA	“The Congress ... by a <u>majority vote of all its Members</u> ”

<sup>6</sup> Id.

<sup>7</sup> Id, Sec. 19. Id, Article XVII, Sec. 1(1). Id, Sec. 1(3).

Under the premises, considering that the Constitution neither provides nor implies any separate or joint session, or any separate or joint voting by the Senate and the House of Representatives with respect to the matter of proposing amendments to the Constitutions,<sup>8</sup> then it reasonably follows that the underlying intent is to leave these procedural matters to the sound discretion of the Senate and the House of Representatives.

Otherwise, the constitution would have expressly provided or necessarily implied for either a separate session by “each house,”<sup>9</sup> or for a “joint session”<sup>10</sup> by “both houses,”<sup>11</sup> or for “voting separately,”<sup>12</sup> or for “voting jointly.”<sup>13</sup>

Considering also that while the Constitution is silent about any specific mode for these procedural matters, the same Constitution in contrast expressly, repeatedly and therefore deliberately refers to the delegates in a generic manner as “Members” of “Congress,” without making any distinction between the Senators and the Representatives,<sup>14</sup> then it likewise reasonably follows that the underlying intent is to count their votes in a similar generic manner, without making any distinction between the votes of the Senators and the Representatives.

Otherwise, the constitution would have referred to them as “Members” of “each House,”<sup>15</sup> or as “Members” of “both Houses.”<sup>16</sup>

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<sup>8</sup> Id, Article XVII, Sec. 1(1). Id, Sec. 1(3).

<sup>9</sup> Id, Article VI, Sec. 16(3). Id, Sec. 16(4).

<sup>10</sup> Id, Sec. 23(1).

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id, Article VII, Sec. 18.

<sup>14</sup> Id, Article XVII, Sec. 1(1). Id, Sec. 1(3).

<sup>15</sup> Id, Article VI, Sec. 16(3). Id, Sec. 16(4).

<sup>16</sup> Id, Article VII, Sec. 9. Id, Sec. 11.

The contrary view that the exercise of constituent powers by Congress presumably involves the conduct of *a joint session with separate voting and separate counting of votes*, is at best weak, because the Constitution does not expressly provide nor necessarily imply such matters.

The other contrary view that the Congressional exercise of constituent powers presumably involves the conduct of *a joint session with joint voting and cumulative counting of votes*, is also at best weak, because the Constitution likewise does not expressly provide nor necessarily imply these matters.

Notably, these contrary views do not explain why the Constitution is peculiarly silent about separate or joint session, or about separate or joint voting, by the Senate and the House of Representatives.

They also fail to explain why the Constitution expressly, repeatedly and therefore deliberately refers to “Members” of “Congress,” without making any express distinction between the Senators and the Representatives.

Under the premises, considering that the Constitution is silent about any specific mode of Congressional action, but emphatic in its generic reference to the delegates as Members of Congress without distinction, then it reasonably follows that the **better view** is to hold that Congress may propose changes to the 1987 Constitution upon a **vote** of three-fourths of all its Members, conducted **either** in a **separate or joint session** of the Senate and the House of Representatives, where the **respective votes** of the Senators and the Representatives are **counted cumulatively**, without applying any separate voting requirement for the Senate and the House of Representatives.

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