

## CHAPTER 34

# *Constitutional Amendments*

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# *Constitutional Amendments*

## **A. Introduction**

### **§ 1. In General**

Article V of the Constitution provides as follows:

“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; . . .”

It is thus that the Constitution provides the methods by which that governing document may be amended.

Although States have from time to time submitted memorials requesting a constitutional convention for the purpose of discussing amendments on specified subject matters,<sup>(1)</sup> no convention has been

held under Article V. This chapter therefore focuses on precedents regarding proposed constitutional amendments originating in the Congress.<sup>(2)</sup>

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Some States have submitted memorials rescinding prior applications for conventions. See, *e.g.*, 149 CONG. REC. 11131, 108th Cong. 1st Sess., May 9, 2003 (memorial from Arizona rescinding all of the State’s previous calls for a constitutional convention); 135 CONG. REC. 19782, 101st Cong. 1st Sess., Sept. 7, 1989 (memorial from Alabama rescinding a previous call for a constitutional convention to propose an amendment requiring that Federal spending not exceed estimated Federal revenues). See also 145 CONG. REC. 18782, 106th Cong. 1st Sess., July 30, 1999 (memorial from Oregon urging Congress to disregard calls for a constitutional convention on the subject of a balanced Federal budget out of concern that such a convention might intrude into other constitutional revisions).

2. For discussion in the House on the method of amending the Constitution by convention, see 76 CONG. REC. 124-134, 72d Cong. 2d Sess., Dec. 7, 1932. See also hearing of the Subcommittee on the Constitution, Committee on the Judiciary, *Proposing an Amendment to the Constitution of the United States to Provide a Procedure by which the States*

1. See, *e.g.*, 147 CONG. REC. 6129, 107th Cong. 1st Sess., Apr. 24, 2001.

## § 2. Form of Action

Proposals originating in the Congress for amendments to the Constitution are made in the form of joint resolutions, which have their several readings and, if passed by both Houses, are enrolled and signed by the presiding officers of the two Houses but are not presented to the President for approval.<sup>(1)</sup>

The form of the resolving clause for such a joint resolution is as follows:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),*

This adheres to the form for the resolving clause for all joint resolutions<sup>(2)</sup> with the addition of the parenthetical phrase relating to

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*may Propose Constitutional Amendments*, Mar. 25, 1998 (regarding H.J. Res. 84, 105th Congress).

1. *House Rules and Manual* § 191 (2007).
2. See 1 USC § 102.

the constitutional requirement of a two-thirds margin in each House for passage of such a joint resolution, which has been included in all joint resolutions proposing constitutional amendments that have been ratified.<sup>(3)</sup>

3. See, *e.g.*, H.J. Res. 27 of the 80th Congress, which became the 22d Amendment, the resolving clause of which is set out at 93 CONG. REC. 863, 80th Cong. 1st Sess., Feb. 6, 1947; S.J. Res. 39 of the 86th Congress, which became the 23d Amendment, the resolving clause of which is set out at 106 CONG. REC. 1257, 86th Cong. 2d Sess., June 14, 1960; S.J. Res. 29 of the 87th Congress, which became the 24th Amendment, the resolving clause of which is set out at 108 CONG. REC. 17655, 87th Cong. 2d Sess., Aug. 27, 1962; S.J. Res. 1 of the 89th Congress, which became the 25th Amendment, the resolving clause of which is set out at 111 CONG. REC. 7969, 89th Cong. 1st Sess., Apr. 13, 1965; and S.J. Res. 7 of the 92d Congress, which became the 26th Amendment, the resolving clause of which is set out at 111 CONG. REC. 7570, 89th Cong. 1st Sess., Mar. 23, 1971.

**B. House Consideration**

**§ 3. Committee Jurisdiction**

Under Rule X clause 1,<sup>(1)</sup> jurisdiction in the House of Representatives over joint resolutions proposing amendments to the Constitution is vested in the Committee on the Judiciary. That jurisdiction was established by the amendments to the standing rules of the House made by the Legislative Reorganization Act of 1946.<sup>(2)</sup> Before the revisions to House committee jurisdiction made by that law, other committees had exercised jurisdiction over joint resolutions proposing amendments to the Constitution,<sup>(3)</sup> and the House on occasion had changed the referral of such a resolution from another committee to the Committee on the Judiciary.<sup>(4)</sup>

1. *House Rules and Manual* § 729 (2007).
2. 60 Stat. 812, 818, ch. 753, Aug. 2, 1946.
3. See § 3.1, *infra*. See also 4 Hinds' Precedents § 4247 (former Committee on Labor reported a resolution in 1884 proposing an amendment to the Constitution limiting the hours of labor).
4. In 1900, and again in 1932, the House, by unanimous consent, re-referred a joint resolution proposing an amendment to the Constitution addressing taxation from the Com-

In recent practice, jurisdiction in the House over joint resolutions proposing amendments to the Constitution has been vested solely in the Committee on the Judiciary.<sup>(5)</sup> That committee also has jurisdiction over memorials from States either requesting the calling of a constitutional convention or for the rescinding of such a request.<sup>(6)</sup>

**§ 3.1 Proposed amendment regarding elections and terms of office referred to former Committee on Election of the President, Vice President, and Representatives in Congress.**

On Mar. 29, 1933,<sup>(1)</sup> the Speaker referred to the Committee on

mittee on Ways and Means to the Committee on the Judiciary. See 4 Hinds' Precedents § 4056; 7 Cannon's Precedents § 1780.

5. See § 3.2, *infra*.
6. See examples in footnote 1 of § 1, *supra*.
1. H. Jour. p. 122 (1933). The Legislative Reorganization Act of 1946 abolished the Committee on Election of the President, Vice President, and Representatives in Congress and vested the jurisdiction of that committee in the new Committee on House Administration. 60 Stat. 812, 818, ch. 753, Aug. 2, 1946.

Election of the President, Vice President, and Representatives in Congress a joint resolution proposing an amendment to the Constitution relating to the election of the President and Vice President. That committee reported the joint resolution to the House with an amendment on June 13, 1933.<sup>(2)</sup>

**§ 3.2 In recent practice, all joint resolutions proposing amendments to the Constitution have been referred to the Committee on the Judiciary.**

The Legislative Reorganization Act of 1946 reduced the number of standing committees of the House from 48 to 19 and consolidated and further delineated their jurisdiction. In so doing, the House made express the jurisdiction of the Committee on the Judiciary over the subject matter of constitutional amendments.

Before 1946, Rule XI [now Rule X] read, in relevant part, as follows:

POWERS AND DUTIES OF COMMITTEES.

All proposed legislation shall be referred to the committees named in the preceding rule, as follows, viz, subjects relating . . .

4. To judicial proceedings, civil and criminal law—to the Committee on the Judiciary.<sup>(1)</sup>

2. H.J. Res. 136 of the 73d Congress. See H. Jour. p. 421 (1933).

1. *House Rules and Manual* §§ 675, 680 (1945).

In the *House Rules and Manual* (1945), the annotations to that rule included the following: “The committee [on the Judiciary] also has general but not exclusive jurisdiction over joint resolutions proposing amendments to the Constitution.”<sup>(2)</sup> Thus it was that most but not all joint resolutions proposing amendments to the Constitution were referred to the Committee on the Judiciary.

Section 121(b) of the Legislative Reorganization Act of 1946<sup>(3)</sup> amended Rule XI [now Rule X] to read, in relevant part, as follows:

POWERS AND DUTIES OF COMMITTEES

(1) All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively . . .

(l) Committee on the Judiciary.

1. Judicial Proceedings, civil and criminal, generally.

2. Constitutional amendments.

3. Federal courts and judges.

*Parliamentarian’s Note:* The practice since the enactment of the Legislative Reorganization Act of 1946 has been to recognize sole jurisdiction in the Committee on the Judiciary over matters relating to amendments to the Constitution, regardless of the subject matter of a proposed amendment.

2. *Id.* at § 680. See also 4 Hinds’ Precedents § 4056.

3. 60 Stat. 812, 818, ch. 753 (Aug. 2, 1946).

**§ 4. Procedures for Floor Consideration**

The House has used a number of procedures to consider joint resolutions proposing amendments to the Constitution. Most of the procedures used for any other variety of legislative measure have been used, but special conditions have been applied in some circumstances.

The House has considered joint resolutions proposing amendments to the Constitution—

(1) under suspension of the rules (under Rule XV clause 1),<sup>(1)</sup>

(2) under a special order-of-business resolution reported from the Committee on Rules (pursuant to Rule XIII clause 6(a)),<sup>(2)</sup>

(3) pursuant to a motion to discharge the Committee on the Judiciary from further consideration of the joint resolution (pursuant to Rule XV clause 2),<sup>(3)</sup> and

(4) under a special order-of-business resolution from which the Committee on Rules has been discharged (pursuant to Rule XV clause 2).<sup>(4)</sup>

1. *House Rules and Manual* § 885 (2007).

2. *Id.* at § 857.

3. *Id.* at § 892.

4. *Ibid.*

***Suspension of the Rules***

**§ 4.1 The joint resolution proposing the amendment to the Constitution that became the 24th Amendment (abolishing the poll tax) was considered by the House under suspension of the rules.**

On Aug. 27, 1962,<sup>(1)</sup> after the Journal had been read in full and four quorum calls had been completed or dispensed with by roll call votes, Emanuel Celler, of New York, chairman of the Committee on the Judiciary, moved that the House suspend the rules and pass a Senate joint resolution proposing an amendment to the Constitution. The motion and related debate, particularly concerning the propriety of the use of a motion for suspension of the rules for consideration of such a joint resolution, were as follows:

Mr. [Emanuel] CELLER [of New York]. Mr. Speaker, I move to suspend the rules and pass Senate Joint Resolution 29, proposing an amendment to the Constitution of the United States relating to qualifications of electors.

Mr. [Thomas Gerstle] ABERNETHY [of Mississippi]. Mr. Speaker, a point of order.

The SPEAKER.<sup>(2)</sup> The gentleman will state his point of order.

1. 108 CONG. REC. 17654–70, 87th Cong. 2d Sess.

2. John W. McCormack (MA).

Mr. ABERNETHY. Mr. Speaker, I make the point of order that this is District Day, that there are District bills on the calendar, and as a member of the Committee on the District of Columbia I respectfully demand recognition so that these bills may be considered.

Mr. [Carl] ALBERT [of Oklahoma].<sup>(3)</sup> Mr. Speaker, may I be heard on the point of order?

The SPEAKER. The Chair is prepared to rule, but the gentleman may be heard.

Mr. ALBERT. Mr. Speaker, by unanimous consent, suspensions were transferred to this day, and under the rules the Speaker has power of recognition at his own discretion.

Mr. ABERNETHY. Mr. Speaker, I respectfully call the attention of the chairman to clause 8, rule XXIV, page 432 of the House Manual, which reads as follows; and I respectfully submit it is a mandatory rule:

The second and fourth Mondays in each month, after the disposition of motions to discharge committees and after the disposal of such business on the Speaker's table as requires reference only, shall, when claimed by the Committee on the District of Columbia, be set apart for the consideration of such business as may be presented by said committee.

Mr. Speaker, I submit that rule is clear that when the time is claimed and the opportunity is claimed the Chair shall permit those bills to be considered.

Therefore, Mr. Speaker, I respectfully submit my point of order is well

3. Representative Albert was the Majority Leader.

taken, and that I should be permitted to call up bills which are now pending on the calendar from the Committee on the District of Columbia.

Mr. [Howard W.] SMITH of Virginia.<sup>(4)</sup> Mr. Speaker, I should like to be heard on this point of order.

The SPEAKER. The Chair will hear the gentleman.

Mr. SMITH of Virginia. Mr. Speaker, the rules of the House on some things are very clear, and the rules of the House either mean something or they do not mean anything.

Mr. Speaker, the gentleman from Mississippi [Mr. ABERNETHY], has just called the Chair's attention to clause 8 of Rule XXIV. Nothing could be more clear; nothing could be more mandatory. I want to repeat it because I hope the Chair will not fall into an error on this proposition:

The second and fourth Mondays in each month, after the disposition of motions to discharge committees and after the disposal of such business on the Speaker's table as requires reference only—

And that is all; that is all that you can consider—disposition of motions to discharge committees—

and after the disposal of such business on the Speaker's table as requires reference only—

That is all that the Chair is permitted to consider.

Mr. Speaker, after that is done the day—

4. Representative Smith was chairman of the Committee on Rules.

shall, when claimed by the Committee on the District of Columbia, be set apart for the consideration of such business as may be presented by said committee.

Mr. Speaker, I know the majority leader bases his defense upon the theory that the House having given unanimous consent to hear suspensions on this Monday instead of last Monday when they should have been heard—and I doubt if very many Members were here when that consent order was made and I am quite sure that a great number of them had no notice that it was going to be made, and certainly I did not—now the majority leader undertakes to say that having gotten unanimous consent to consider this motion on this day to suspend the rules, therefore, it gives the Speaker carte blanche authority to do away with the rule which gives first consideration to District of Columbia matters.

Mr. Speaker, there was no waiver of the rule on the District of Columbia. That consent did not dispose or dispense with the business on the District of Columbia day. The rule is completely mandatory. The rule says that on the second and fourth Mondays, if the District of Columbia claims the time, that the Speaker shall recognize them for such dispositions as they desire to call.

The SPEAKER. The Chair is prepared to rule.

Several days ago on August 14 unanimous consent was obtained to transfer consideration of business under suspension of the rules on Monday last until today. That does not prohibit the consideration of a privileged motion and a motion to suspend the rules

today is a privileged motion. The matter is within the discretion of the Chair as to the matter of recognition.

The Chair overrules the point of order.<sup>(5)</sup>

The Clerk read the resolution (S.J. Res. 29) as follows:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:*

“ARTICLE—

“SECTION 1. The right of citizens of the United States to vote in a primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any

5. *Parliamentarian's Note*: When more than one Member seeks to call up privileged business, it is within the discretion of the Speaker as to which of those Members the Chair recognizes. District of Columbia business was privileged under Rule XXIV clause 8 [now Rule XV clause 4, *House Rules and Manual* § 894 (2007)]. The motion to suspend the rules was equally privileged pursuant to a unanimous-consent agreement making suspensions in order on that day [now in order on certain days under Rule XV clause 1, *House Rules and Manual* § 885 (2007)].

State by reason of failing to pay any poll tax or other tax.

“SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.” . . .

The SPEAKER. The gentleman from New York [Mr. CELLER] is recognized for 20 minutes.

Mr. CELLER. . . .

I regret that this constitutional amendment is brought up under suspension of the rules with only 40 minutes of debate. I applied for a rule. A rule was not forthcoming. A discharge petition was filed but not processed. Such a petition is rarely used and has its attendant difficulties if not embarrassments. Hence the suspension of the rules. . . .

Mr. [John V.] LINDSAY of New York. Mr. Speaker, I am very much opposed to poll taxes, and therefore I will vote for this bill, but I do so with a heavy heart.

This is probably the greatest piece of political gamesmanship that has come to the floor of the House in the 87th Congress. . . . First of all, this is a fantastic procedure under which to amend the Constitution—an up or down vote, no amendments permitted, no motion to recommit possible, a total of 40 minutes of debate. . . .

The leadership on the majority side who are running this show, Mr. Speaker, ought to be proud of themselves for handing us this dish of tea. Under this kind of gag procedure they casually and cynically tinker with the U.S. Constitution, for political reasons, to get off the hook on civil rights. . . .

Mr. SMITH of Virginia. Mr. Speaker, 4 minutes; 4 minutes. I have been here a long time. I hope the walls of this

Hall will never ring with the kind of a farce that has been put on here today, with the Constitution of the United States to be amended, when no one can offer an objection or an amendment to it, when no one can raise his voice in extended debate, but 20 minutes for it and 20 minutes supposedly against it. It is unprecedented in the annals of this Government for an amendment to the Constitution, no matter how insignificant it may be, to be considered under this procedure.<sup>(6)</sup>

. . . [T]his resolution could have been brought up here in the regular way. Some of you will remember that just 18 months ago the leadership of this House packed the Committee on Rules so that they would have a majority vote on it. They could have gotten it out of the Committee on Rules with a majority vote if they wanted to do it in the democratic way and permit the House to vote on it. Yet, this House is going to vote for this extraordinary situation, and they are going to do it under political pressure to please a minority group. . . .

Mr. HALLECK. Mr. Speaker, I do not want to get into any controversy with any of my colleagues, but I just want it clearly stated for the record and understood that today is the regular day for considering legislation under suspension of the rules under the arrangement made last Monday;

6. *Parliamentarian's Note*: A joint resolution proposing an amendment to the Constitution had been considered by the House under a motion to suspend the rules on at least one previous occasion. See 76 CONG. REC. 7, 12, 13, 72d Cong. 2d Sess., Dec. 5, 1932.

and so far as suspensions are concerned, it was within the province of the Speaker and the majority leadership to schedule them, and that is what has been done. . . .

Mr. [Seymour] HALPERN [of New York]. . . .

Mr. Speaker, I would much prefer that the poll tax be outlawed by statute rather than by amendment to the Constitution, as this House has authorized five times previously. There is a big question as to the effectiveness of going the amendment route—obtaining approval of three-fourths of the State legislatures is a long, difficult, and tedious process, to say the least.

We are now, however, faced with no other alternative under the rule and the circumstances here today but to support this constitutional amendment. Despite the question of the effectiveness of this method, I definitely shall support this Senate joint resolution. . . .

Mr. [Byron Giles] ROGERS of Colorado. Mr. Speaker, I regret that the gentleman from Virginia should say that we were placed under a gag rule, that we could not present the matter to the House so that this constitutional proposal could be amended. I want to direct attention to and read a letter from the gentleman from Virginia, addressed to the chairman of our committee, which reads as follows:

HOUSE OF REPRESENTATIVES, U.S.,  
COMMITTEE ON RULES  
*Washington, D.C., June 15, 1962.*

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House Office Building, Washington,*  
*D.C.*

DEAR MR. CHAIRMAN: This will acknowledge your letter of June 14 requesting that the Committee on Rules schedule a hearing on Senate Joint Resolution 29, proposing an amendment to the Constitution of the United States relating to qualifications of electors.

I shall endeavor to schedule a hearing on this measure at the earliest possible time and shall be glad to advise you when a date has been set.

Sincerely,  
HOWARD W. SMITH,  
*Chairman.*

If the gentleman from Virginia and others are interested and do not want the Constitution amended, or us to have an opportunity to say how it should be amended, why did he not, upon the request of the chairman of this committee grant a rule so that we could come in here and discuss it in every particular? . . .

Mr. ABERNETHY. . . .

There are resolutions and bills which may be properly and satisfactorily considered under a time limitation of 40 minutes as the rule under which we are now operating provides. There are resolutions and bills of such simple character that amendments thereto would be unworthy. But, Mr. Speaker, indeed a resolution which has the effect of changing, altering, amending, defacing, or whatever you may call it, the Constitution of our great country should never be submitted to and swept through this House in such a ruthless and tornado-like fashion. What a terrible precedent. . . .

Mr. John Bell WILLIAMS [of Mississippi]. Mr. Speaker, this is a sad day for those who believe in constitutional government. It is a sadder day

for those who believe in representative government and those who have had faith in the House of Representatives and its historical tradition of justice.

Under the current suspension procedure which we are operating today, we are considering a far-reaching amendment to the Constitution in only 40 minutes.

The U.S. Constitution will be 175 years old on September 17. During that time, the Congress and the respective States have amended it only 23 times. Nevertheless, the leadership of this body, in the New Frontier tradition of running roughshod over those who disagree, has taken the unusual step of limiting debate on such a historical step to less than an hour. What will future generations think of such behavior? . . .

Mr. [Joseph P.] ADDABBO [of New York]. Mr. Speaker, I rise in support of Senate Joint Resolution 29, a constitutional amendment to abolish the poll tax.

Although I believe a serious question involving an amendment to the Constitution should be brought up under the regular order of the House and sufficient time be given for debate and amendment, to fully protect the rights of all voters. It is our responsibility when such process is stopped by the power of one man and a small minority to take this action to protect the right of all qualified to vote, even though under present laws only a few may be denied this right because of a poll tax. . . .

The SPEAKER. The time of the gentleman from Colorado has expired; all time has expired.

The question is, Will the House suspend the rules and pass the resolution, Senate Joint Resolution 29?

Mr. ABERNETHY. Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 294, nays 86, answered “present” 1, not voting 54, as follows:

[Roll No. 202] . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

**§ 4.2 When the House considered a joint resolution proposing a constitutional amendment under a motion to suspend the rules, a Member objected to various unanimous-consent requests associated with such consideration (namely, to revise and extend remarks).**

On Nov. 15, 1983,<sup>(1)</sup> as the House was considering under a motion to suspend the rules a joint resolution proposing an amendment to the Constitution, Mr. Robert S. Walker, of Pennsylvania, objected to a request of the manager of the joint resolution for unanimous consent to revise and extend his remarks and announced his intention to object to all similar unanimous-consent requests for the duration of the debate on that measure.

The proceedings were as follows:

1. 129 CONG. REC. 32668, 98th Cong. 1st Sess.

Mr. [Peter W.] RODINO [of New Jersey]. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 1) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

The Clerk read as follows:

H.J. RES. 1

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of both Houses concurring therein), That the following article is proposed as an amendment to the Constitution of the United States of America, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:*

“ARTICLE—

“SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

“SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

“SECTION 3. This article shall take effect two years after the date of ratification.”

The SPEAKER pro tempore.<sup>(2)</sup> Pursuant to the rule, a second is not required on this motion.

The gentleman from New Jersey (Mr. RODINO) will be recognized for 20 minutes and the gentleman from Wisconsin (Mr. SENSENBRENNER) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from New Jersey (Mr. RODINO).

2. James C. Wright, Jr. (TX).

Mr. RODINO. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. WALKER. Mr. Speaker, I reserve the right to object.

The SPEAKER pro tempore. The gentleman from Pennsylvania reserves the right to object.

Mr. WALKER. Mr. Speaker, I reserve the right to object, because a process was determined here and the process says that there is going to be 20 minutes for the entire case to be made. There are many of us in this House who feel that that was not an appropriate kind of a decision to be made.

So therefore, I am reserving the right to object to tell the Members that I am going to object to all unanimous-consent requests, both to revise and extend remarks, as well as for the purpose of getting general leave, so that the entire debate on this matter will take place on the Democratic side within the 20 minutes allotted.

Mr. Speaker, I do object.

The SPEAKER pro tempore. Objection is heard.

Despite Mr. Walker’s announced intent to object to all such requests, the Speaker himself was granted leave to revise and extend his remarks made from the floor during debate,<sup>(3)</sup> and other Members obtained individual permission to insert remarks in the debate.

3. 129 CONG. REC. 32675, 98th Cong. 1st Sess.

Mr. RODINO. Mr. Speaker, I yield the balance of the time to the distinguished Speaker of the House, the gentleman from Massachusetts (Mr. O'NEILL).

(Mr. O'NEILL asked and was given permission to revise and extend his remarks.)

Mr. [Thomas P.] O'NEILL, [Jr., of Massachusetts]. I rise in support of the resolution. . . .

Later the same day,<sup>(4)</sup> after debate had concluded and the House had moved on to other business, Mr. Leon E. Panetta, of California, obtained, by unanimous consent, general leave for all Members to revise and extend their remarks on the joint resolution:

Mr. PANETTA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on House Joint Resolution 1.

The SPEAKER pro tempore.<sup>(5)</sup> Is there objection to the request of the gentleman from California?

There was no objection.

Still later the same day, the order obtained by Rep. Panetta was vacated by unanimous consent at the request of Rep. Walker:<sup>(6)</sup>

Mr. WALKER. Mr. Speaker, I ask unanimous consent that the

motion regarding House Joint Resolution 1 made by the gentleman from California (Mr. PANETTA) be vacated.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

### *Special Rule*

**§ 4.3 The House may consider a joint resolution proposing an amendment to the Constitution pursuant to a special order-of-business resolution reported by the Committee on Rules, and such an order-of-business resolution may provide for an amendment in the nature of a substitute to the joint resolution to be considered in the House.**

On June 3, 2003,<sup>(1)</sup> the House considered, pursuant to a special rule, a joint resolution proposing an amendment to the Constitution addressing physical desecration of the flag. The proceedings were as follows:

Mr. [John] LINDER [of Georgia]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 255 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

1. 149 CONG. REC. 13492, 13497, 108th Cong. 1st Sess.

4. *Id.* at p. 32719.

5. Ronald Coleman (TX).

6. 129 CONG. REC. 32746, 98th Cong. 1st Sess., Nov. 15, 1983.

H. RES. 255

*Resolved*, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the joint resolution (H.J. Res. 4) proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States. The joint resolution shall be considered as read for amendment. The previous question shall be considered as ordered on the joint resolution and on any amendment thereto to final passage without intervening motion except: (1) two hours of debate on the joint resolution equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; (2) an amendment in the nature of a substitute offered by Representative Conyers of Michigan or his designee, which shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent;<sup>(2)</sup> and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore.<sup>(3)</sup> The gentleman from Georgia (Mr. LINDER) is recognized for 1 hour.

Mr. LINDER. . . .

Mr. Speaker, House Resolution 255 is a modified closed rule that provides for the consideration of H.J. Resolution 4, legislation proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the American flag.

2. *Parliamentarian's Note*: The rule did not specify the text of the amendment permitted under the rule, nor did it waive any points of order against the amendment.
3. Lee Terry (NE).

This rule provides for 2 hours of debate in the House, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. House Resolution 255 waives all points of order against consideration of the joint resolution.

It makes in order an amendment in the nature of a substitute, if offered by the gentleman from Michigan (Mr. CONYERS) or his designee, which shall be separately debatable for 1 hour, equally divided between the proponent and an opponent.

Finally, this rule provides for one motion to recommit, with or without instructions. . . .

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.<sup>(4)</sup>

**§ 4.4 A special order-of-business resolution may provide for a joint resolution proposing a constitutional amendment to be considered in the Committee of the Whole, may make in order**

4. The House proceeded to consider the joint resolution and, after rejecting the amendment in the nature of a substitute offered by a designee of Mr. Conyers, passed the joint resolution by a vote of 300–125. 149 CONG. REC. 13497–524, 108th Cong. 1st Sess., June 3, 2003. The Senate took no action on the House-passed joint resolution.

**more than one amendment in the nature of a substitute to the joint resolution, and may provide that, if more than one such amendment is adopted, only the last such amendment adopted shall be reported to the House.**

On Oct. 1, 1982,<sup>(1)</sup> the House considered a special order-of-business resolution reported by the Committee on Rules providing for consideration in the Committee of the Whole of a joint resolution proposing an amendment to the Constitution regarding the Federal budget process and making in order two amendments in the nature of a substitute to the joint resolution.

Mr. [Richard] BOLLING [of Missouri]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 604 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 604

*Resolved*, That upon adoption of this resolution the House shall re-

1. 128 CONG. REC. 27172, 27178, 97th Cong. 2d Sess. For a similar special order-of-business resolution providing for five amendments in the nature of a substitute, see 138 CONG. REC. 14225-359, 102d Cong. 2d Sess., June 10, 1992. For more information on this type of amendment procedure, sometimes informally referred to as "king of the hill," see Ch. 30 §58.5, *supra*.

solve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 350) proposing an amendment to the Constitution altering Federal budget procedures, and the first reading of the joint resolution shall be dispensed with. After general debate, which shall be confined to the joint resolution and to the amendments made in order by this resolution and shall continue not to exceed two hours, to be equally divided and controlled by a Member in favor of the joint resolution and a Member opposed, the joint resolution shall be considered as having been read for amendment under the five-minute rule. No amendment to the joint resolution shall be in order in the House or in the Committee of the Whole except the following amendments which shall be considered only in the following order and which shall not be subject to amendment but shall be debatable as provided herein:

(1) an amendment in the nature of a substitute printed in the Congressional Record of September 30, 1982, by, and if offered by, Representative Alexander of Arkansas, and said amendment shall be debatable for not to exceed one hour, to be equally divided and controlled by Representative Alexander and a Member opposed thereto; and

(2) an amendment in the nature of a substitute consisting only of the text of H.J. Res. 350 as introduced if offered by Representative Conable of New York, and said amendment shall be debatable for not to exceed one hour, to be equally divided and controlled by Representative Conable and a Member opposed thereto, and said amendment shall be in order even if the amendment designated (1) above has been adopted. At the conclusion of the consideration of the joint resolution for amendment, the Committee shall rise and report the

joint resolution to the House, but only the last amendment adopted shall be considered as having been finally adopted and reported back to the House. The previous question shall be considered as ordered on the joint resolution and on the amendment if adopted to final passage without intervening motion except one motion to recommit.

SEC. 2. The resolution (H. Res. 450) providing for the consideration of the joint resolution (H.J. Res. 350) proposing an amendment to the Constitution altering Federal budget procedures is hereby laid on the table.<sup>(2)</sup> . . .

Mr. BOLLING. . . .

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

2. *Parliamentarian's Note:* H. Res. 450 was the object of a discharge petition that on Sept. 29, 1982, had received the requisite number of signatures for floor consideration. That resolution provided for consideration of H.J. Res. 350 and precluded consideration of any amendments to that joint resolution. H. Res. 604 was reported by the Committee on Rules to provide for consideration of that joint resolution under procedures allowing consideration of a specified amendment in the nature of a substitute. And, in order to provide a vote that would be the equivalent of proceeding under the discharge process, H. Res. 604 made in order an amendment consisting of the underlying text of H.J. Res. 350 that would be in order even if the first amendment in the nature of a substitute were adopted.

*Parliamentarian's Note:* During consideration of H.J. Res. 350 pursuant to H. Res. 604, the first amendment in the nature of a substitute that was made in order under the rule was not adopted, and so the second one, which contained the same text as the underlying joint resolution, was not offered. The joint resolution then failed to receive the requisite two-thirds majority for passage.<sup>(3)</sup>

**§ 4.5 A special order-of-business resolution providing for consideration of a House joint resolution proposing a constitutional amendment may also discharge a House committee from consideration of a similar Senate joint resolution and make in order a motion to amend the Senate measure with the text of the House joint resolution as passed by the House.**

The proceedings of Apr. 13, 1965,<sup>(1)</sup> are illustrative of this proposition:

3. 128 CONG. REC. 27254, 27255, 97th Cong. 2d Sess., Oct. 1, 1982.
1. 111 CONG. REC. 7931, 89th Cong. 1st Sess. A special order-of-business resolution also may prospectively make in order a motion by a Member to consider a comparable joint resolution if passed by the Senate and, if necessary, to move to strike all after the resolving clause of the Senate

Mr. [John A.] YOUNG [of Texas]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 314 and ask for its immediate consideration.

The Clerk read as follows:

HOUSE RESOLUTION 314

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H.J. Res. 1) proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office. After general debate, which shall be confined to the resolution and shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the resolution shall be read for amendment under the five-minute rule. At the conclusion of such consideration the Committee shall rise and report the resolution to the House with such amendments as may have been adopted, and any member may demand a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the resolution or committee substitute. The previous question shall be considered as ordered on the resolution and amendments to final passage without intervening motion except one motion to recommit, with or without instructions. After the passage of

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joint resolution and substitute the text of the House-passed joint resolution therefor. See 138 CONG. REC. 14225, 102d Cong. 2d Sess., June 10, 1992 [H. Res. 450].

H.J. Res. 1, the Committee on the Judiciary shall be discharged from further consideration of S.J. Res. 1, and it shall then be in order in the House to move to strike out all after the resolving clause of said Senate joint resolution and to insert the provisions of H.J. Res. 1 as passed by the House.

*Parliamentarian's Note:* Following adoption of H. Res. 314, the House proceeded to consider H.J. Res. 1. After agreeing to an amendment adopted by the Committee of the Whole and rejecting a motion to recommit, the House passed the measure by a vote of 386–29. Immediately following that vote, the manager of the resolution called up S.J. Res. 1 for immediate consideration, as made in order by the rule, and offered an amendment to strike the text of the Senate measure and insert the text of H.J. Res. 1 as passed by the House. The amendment was adopted by a voice vote and then the Senate joint resolution, as amended by the House, was passed by the House. The vote on passage, although a voice vote, carried with two-thirds of those voting having voted in the affirmative.<sup>(2)</sup>

**§ 4.6 Where a special order-of-business resolution provided that general debate on a**

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2. 111 CONG. REC. 7968, 7969, 89th Cong. 1st Sess., Apr. 13, 1965.

**joint resolution proposing an amendment to the Constitution be divided between a Member in favor and a Member opposed, and the joint resolution had not been reported from committee, the Chairman of the Committee of the Whole recognized the ranking minority member of the committee of jurisdiction to control the time in favor and the chairman of that committee to control the time in opposition.**

After the House had adopted a special order-of-business resolution providing for consideration of a joint resolution proposing an amendment to the Constitution regarding Federal budget procedures where the joint resolution had not been reported by the committee to which it had been referred (the Committee on the Judiciary) and where the special order-of-business resolution specified that time for general debate would be divided between a Member in favor and a Member opposed to the unreported joint resolution (as opposed to specifying that time for general debate would be divided between the chairman and ranking minority member of the committee of jurisdiction),<sup>(1)</sup> the Chairman of the

1. For the text of this special order-of-business resolution, see § 4.4, *supra*.

Committee of the Whole accorded the time in favor of the joint resolution to the ranking minority member of the committee of jurisdiction and the time opposed to the chairman of that committee.<sup>(2)</sup>

The SPEAKER.<sup>(3)</sup> Pursuant to the provisions of House Resolution 604, the House resolves itself into the Committee of the Whole House of the State of the Union for the consideration of the joint resolution (H.J. Res. 350) proposing an amendment to the Constitution altering Federal budget procedures.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution, House Joint Resolution 350, with Mr. [Edward Patrick] BOLAND [of Massachusetts] in the chair.

The Clerk read the title of the joint resolution.

The CHAIRMAN. Pursuant to the rule, the first reading of the joint resolution is dispensed with.

Is the gentleman from Illinois (Mr. McClORY) in favor of the joint resolution?

Mr. [Robert] McClORY.<sup>(4)</sup> Mr. Chairman, yes, I favor House Joint Resolution 350.

The CHAIRMAN. The gentleman qualifies.

2. 128 CONG. REC. 27178, 27179, 97th Cong. 2d Sess., Oct. 1, 1982.
3. Thomas P. O'Neill, Jr. (MA).
4. Mr. McClory was the ranking minority member of the Committee on the Judiciary.

Is the gentleman from New Jersey (Mr. RODINO) opposed to the joint resolution?

Mr. [Peter W.] RODINO, [Jr.].<sup>(5)</sup> I am opposed, Mr. Chairman.

The CHAIRMAN. The gentleman qualifies.

The gentleman from Illinois (Mr. McCCLORY) will be recognized for 1 hour, and the gentleman from New Jersey (Mr. RODINO) will be recognized for 1 hour.

The Chair now recognizes the gentleman from Illinois (Mr. McCCLORY).<sup>(6)</sup>

**§ 4.7 Where a special order-of-business resolution providing for consideration of a joint resolution proposing an amendment to the Constitution divided control of time for general debate among three named Members, the Chair determined that recognition for the purpose of closing debate would be accorded to the Member who**

5. Mr. Rodino was the chairman of the Committee on the Judiciary.
6. Although in this case a member of the majority controlled the time for general debate in opposition to the joint resolution and a member of the minority controlled the time in favor, a member of the minority who was opposed to the joint resolution nevertheless had priority of recognition to offer a motion to recommit, in accordance with the general rules applicable to motions to recommit. 128 CONG. REC. 27254, 27255, 97th Cong. 2d Sess., Oct. 1, 1982.

**was the primary sponsor of the measure.**

On June 10, 1992,<sup>(1)</sup> the House proceeded to consider a joint resolution proposing an amendment to the Constitution pursuant to the terms of a special order-of-business resolution. The special order-of-business resolution had been introduced by Mr. Charles W. Stenholm, of Texas, and was the object of a successful discharge petition filed by him. The resolution provided for general debate on the joint resolution in the Committee of the Whole to be divided among three named Members, the chairman and ranking minority member of the Committee on the Judiciary and Mr. Stenholm, the primary sponsor of the joint resolution under consideration. Although the Chair ordinarily recognizes Members to close general debate in the reverse order of opening, in this case the Chairman of the Committee of the Whole nevertheless determined that the right to close general debate in this circumstance would be accorded to Mr. Stenholm, the primary proponent of the measure.

Proceedings were as follows:

Mr. STENHOLM. Mr. Speaker, pursuant to the unanimous consent agreement offered by the gentleman from

1. 138 CONG. REC. 14225, 102d Cong. 2d Sess.

Missouri (Mr. GEPHARDT) and the order of the House of Thursday, June 4, 1992, I call up the resolution (H. Res. 450) providing for the consideration of the joint resolution (H.J. Res. 290) proposing an amendment to the Constitution to provide for a balanced budget for the U.S. Government and for greater accountability in the enactment of tax legislation, and ask for its immediate consideration.

H. RES. 450

*Resolved*, That immediately upon the adoption of this resolution the House shall resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 290) proposing an amendment to the Constitution to provide for a balanced budget for the United States Government and for greater accountability in the enactment of tax legislation, all points of order against the joint resolution and against its consideration are hereby waived, and the first reading of the joint resolution shall be dispensed with. After general debate, which shall be confined to the joint resolution and which shall not exceed four and one-half hours, to be equally divided and controlled by Representative Brooks of Texas, Representative Fish, of New York, and Representative Stenholm of Texas, or their designees, the joint resolution shall be considered for amendment under the five-minute rule. . . .

Following adoption of the resolution, the House resolved into the Committee of the Whole to consider the joint resolution.<sup>(2)</sup>

The SPEAKER pro tempore (Mr. [G.V. (Sonny)] MONTGOMERY (of Mis-

2. 138 CONG. REC. 14235, 102d Cong. 2d Sess.

issippi). Pursuant to House Resolution 450, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the joint resolution, House Joint Resolution 290.

□ 1255

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution, House Joint Resolution 290, proposing an amendment to the Constitution to provide for a balanced budget for the U.S. Government and for greater accountability in the enactment of tax legislation, with Mr. [RAYMOND HOYT] THORNTON [Jr., of Arkansas] in the chair.

The CHAIRMAN. Pursuant to the rule, the joint resolution is considered as having been read the first time.

Pursuant to the order of the House of Thursday, June 4, 1992, the gentleman from Texas [Mr. BROOKS], or his designee, the gentleman from Missouri [Mr. GEPHARDT], will be recognized for 3 hours;<sup>(3)</sup> the gentleman from New York [Mr. FISH] will be recognized for 3 hours; and the gentleman from Texas [Mr. STENHOLM] will be

3. In the order of the House entered into pursuant to the unanimous-consent agreement providing for consideration of H. Res. 450, time for general debate on H.J. Res. 290 was increased from the four and one-half hours specified in the resolution to nine hours. 138 CONG. REC. 13617, 13618, 102d Cong. 2d Sess., June 4, 1992.

recognized for 3 hours. The Chair will attempt to rotate recognition in a manner mutually agreeable to the managers.

The Chair recognizes the gentleman from Missouri (MR. GEPHARDT).<sup>(4)</sup>

Richard M. Gephardt, of Missouri, the Majority Leader, was the designee of Mr. Jack Brooks, of Texas, the chairman of the Committee on the Judiciary, and was recognized first for general debate in the Committee of the Whole. Following the expiration of the debate time for Mr. Brooks and Mr. Hamilton Fish, Jr., of New York, the ranking minority member of the Committee on the Judiciary, the Chairman recognized Mr. Stenholm to close debate.

The CHAIRMAN pro tempore.<sup>(5)</sup> . . .

The Chair recognizes the gentleman from Texas (MR. STENHOLM) to close debate.<sup>(6)</sup>

***Discharge Petition With Respect to Joint Resolution Proposing an Amendment to the Constitution***

**§ 4.8 A joint resolution proposing an amendment to the Constitution may be the ob-**

4. *Id.* at p. 14235.

5. Kweisi Mfume (MD).

6. 117 CONG. REC. 14331, 102d Cong. 2d Sess.

**ject of a discharge petition, as in the case of any other measure, and a discharge petition with respect to such a joint resolution need garner only 218 signatures, a majority of the total membership of the House, as in the case of any other measure.**

Following the introduction of a joint resolution proposing an amendment to the Constitution and after the completion of the requisite period of time, Mr. Chalmers P. Wylie, of Ohio, filed a discharge petition on the measure pursuant to Rule XXVII clause 3.<sup>(1)</sup> The discharge petition received the requisite number of signatures on Sept. 21, 1971.<sup>(2)</sup>

The motion was as follows:

MOTION TO DISCHARGE COMMITTEE

APRIL 1, 1971.

To the CLERK OF THE HOUSE OF REPRESENTATIVES:

Pursuant to clause 4 of rule XXVII<sup>(3)</sup> I, CHALMERS P. WYLIE, move to discharge the Committee on the Judiciary

1. This rule was later renumbered as Rule XV clause 2, *House Rules and Manual* § 892 (2007).
2. 117 CONG. REC. 32576, 32577, 92d Cong. 1st Sess.
3. *Parliamentarian's Note*: During its deliberations preparatory to the convening of the 98th Congress (1983-85) with respect to changes to the standing rules of the House for that

from the consideration of the joint resolution (H.J. Res. 191) entitled "A joint resolution proposing an amendment to the Constitution of the United States with respect to the offering of prayer in public buildings," which was referred to said committee January 22, 1971, in support of which motion the undersigned Members of the House of Rep-

Congress, the Democratic Caucus (the majority membership for that Congress) considered and rejected a change to the House rules to provide that, with respect to any joint resolution proposing an amendment to the Constitution, two-thirds of the House membership (rather than a majority) would be the requisite number for signatures on a discharge petition, as well as for adoption of a special order-of-business resolution providing for consideration of such a joint resolution. On Jan. 3, 1983, the date of the convening of the 98th Congress, the Majority Leader, James C. Wright, Jr. [TX], in explaining to the House the proposed changes in the standing rules recommended by the majority party caucus, made the following statement: "I should announce at the outset for the benefit of any of those who are unfamiliar with the fact that [an additional] change was considered by the Democratic Caucus. . . . That proposal which was omitted was the one which would have required that two-thirds of the Members should have the requisite signatures on a discharge petition in order to discharge a constitutional amendment from the committee of jurisdiction." 129 CONG. REC. 35, 98th Cong. 1st Sess.

representatives affix their signatures, to wit:

1. Chalmers P. Wylie.
2. John E. Hunt. . . .
217. Floyd V. Hicks.
218. Charles J. Carney.

**§ 4.9 Upon adoption of a motion to discharge a committee from consideration of a public bill or resolution (including a joint resolution proposing an amendment to the Constitution) following the securing of the requisite number of signatures on a discharge petition, a motion to proceed to the immediate consideration of the measure is privileged, if made by a Member who signed the discharge petition, and is decided without debate.**

On Nov. 8, 1971,<sup>(1)</sup> Speaker Carl Albert, of Oklahoma, recognized a signatory to a successful discharge petition<sup>(2)</sup> to move to discharge the Committee on the Judiciary from further consideration of a joint resolution proposing an amendment to the Constitution.

The proceedings were as follows:

PRAYER AMENDMENT

Mr. [Chalmers P.] WYLIE [of Ohio].  
Mr. Speaker, pursuant to clause 4, rule

1. 117 CONG. REC. 39885, 39886, 92d Cong. 1st Sess.
2. See § 4.8, *supra*.

XXVII,<sup>(3)</sup> I call up motion No. 1 to discharge the Committee on the Judiciary from the further consideration of House Joint Resolution 191, a proposed amendment to the Constitution of the United States relative to the offering of prayer in public buildings.

The SPEAKER. Did the gentleman sign the motion?

Mr. WYLIE. Yes, Mr. Speaker, I signed the motion.

The SPEAKER. The gentleman from Ohio calls up a motion to discharge the Committee on the Judiciary from the further consideration of the joint resolution (H.J. Res. 191) which the Clerk will report by title.

The Clerk read the title of the joint resolution. . . .

#### PRAYER AMENDMENT

The SPEAKER. Under the rule, the gentleman from Ohio (Mr. WYLIE) will be recognized for 10 minutes, and the gentleman from New York (Mr. CELLER) will be recognized for 10 minutes.

The motion to discharge was debated and agreed to. The Speaker then recognized the same Member to offer a motion that the House proceed to consider the measure.<sup>(4)</sup>

Mr. WYLIE. Mr. Speaker, pursuant to the provisions of clause 4, rule XXVII, I move that the House now proceed to the immediate consideration of House Joint Resolution 191.

3. Now Rule XV clause 2, *House Rules and Manual* § 892 (2007).

4. 117 CONG. REC. 39889, 92d Cong. 2d Sess., Nov. 8, 1971.

The SPEAKER. The Clerk will report the joint resolution.

The Clerk read the joint resolution as follows:

#### H.J. RES. 191

Joint resolution proposing an amendment to the Constitution of the United States with respect to the offering of prayer in public buildings

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

#### “ARTICLE—

“SECTION 1. Nothing contained in this Constitution shall abridge the right of persons lawfully assembled, in any public building which is supported in whole or in part through the expenditure of public funds, to participate in nondenominational prayer.

“SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.”

The SPEAKER. The question is on the motion offered by the gentleman from Ohio (Mr. WYLIE).

The motion was agreed to.

### § 4.10 A joint resolution proposing an amendment to the

**Constitution is considered in the House, not in the Committee of the Whole, when considered in consequence of a discharge petition.**

On July 24, 1979,<sup>(1)</sup> the requisite number of signatures having been obtained, the House agreed to a motion to discharge the Committee on the Judiciary from further consideration of House Joint Resolution 74, proposing an amendment to the Constitution regarding school busing. The House having adopted that motion, it was then in order for a Member who had signed the motion to discharge to move that the House proceed to the immediate consideration of the joint resolution. Proceedings after the motion to discharge was agreed to were as follows:

Mr. [Ronald M.] MOTTLE [of Ohio].  
Mr. Speaker, pursuant to the provisions of clause 4, rule 2,<sup>(2)</sup> and the

1. 125 CONG. REC. 20358, 20362, 96th Cong. 1st Sess. In general, joint resolutions proposing constitutional amendments are not required to be considered in the Committee of the Whole. 8 Cannon's Precedents §2395.
2. *Parliamentarian's Note*: Although the *Congressional Record* states that Mr. Mottl's motion referred to "clause 4, rule 2," the reference clearly should have been to "clause 4, rule 27," the "Discharge Rule,"

order of the House of June 28, 1979, I move that the House proceed to the immediate consideration of House Joint Resolution 74.

The SPEAKER.<sup>(3)</sup> The question is on the motion offered by the gentleman from Ohio (Mr. MOTTLE).

The motion was agreed to. . . .

The Clerk read the joint resolution. . . .

The SPEAKER. The gentleman from Ohio (Mr. MOTTLE) is recognized for 1 hour.

**§ 4.11 A joint resolution proposing an amendment to the Constitution that is considered pursuant to a successful motion to discharge the committee of jurisdiction is susceptible to the motion to recommit.**

On Aug. 10, 1970,<sup>(1)</sup> Mrs. Martha W. Griffiths, of Michigan, moved to discharge the Committee on the Judiciary from the further consideration of House Joint Resolution 264, the requisite number of signatures having been obtained for such a motion to be in order. After an affirmative vote on the motion to discharge, a subsequent affirmative vote on a motion for immediate consideration

now Rule XV clause 2, *House Rules and Manual* §892 (2007). See Mr. Mottl's discharge motion,

3. Thomas P. O'Neill, Jr. (MA).
1. 116 CONG. REC. 27999, 28000, 28004, 28036, 91st Cong. 2d Sess.

of the joint resolution, and debate on the joint resolution, Mr. William M. McCulloch, of Ohio, moved to recommit the joint resolution to the Committee on the Judiciary.

The proceedings in the House were as follows:

Mrs. GRIFFITHS. Mr. Speaker, pursuant to clause 4, rule XXVII, I call up motion No. 5, to discharge the Committee on the Judiciary from the further consideration of House Joint Resolution 264, proposing an amendment to the constitution of the United States relative to equal rights for men and women.<sup>(2)</sup>

The SPEAKER.<sup>(3)</sup> Did the gentleman sign the motion?

Mrs. GRIFFITHS. Yes, Mr. Speaker, I signed the motion.

The SPEAKER. The gentlewoman qualifies. The gentlewoman from Michigan calls up a motion to discharge the Committee on the Judiciary from the further consideration of the joint resolution (House Joint Resolution 264) which the Clerk will report by title.

The Clerk read the title of the joint resolution.

2. The motion to discharge obtained the requisite 218 signatures and was entered on the Discharge Calendar on July 20, 1970, pursuant to Rule XXVII clause 4. *House Rules and Manual* § 908 (1969) [now Rule XV clause 2, *House Rules and Manual* § 892 (2007)]. 116 CONG. REC. 24999, 25000, 91st Cong. 1st Sess., July 20, 1970.
3. John W. McCormack (MA).

#### PARLIAMENTARY INQUIRY

Mr. [Emanuel] CELLER [of New York].<sup>(4)</sup> Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. CELLER. Mr. Speaker, I understand the rule provides for 20 minutes of debate, 10 minutes on either side. Is it correct that the chairman of the Judiciary Committee, being opposed to the discharge petition, will be allocated 10 minutes?

The SPEAKER. The gentleman's statement is correct that the rule provides for 20 minutes of debate, 10 minutes on each side. If the gentleman from New York (MR. CELLER) is opposed to the motion, the Chair will recognize him for 10 minutes.

Is the gentleman opposed to the motion?

Mr. CELLER. I am opposed to the motion, Mr. Speaker.

The SPEAKER. Under the rule, the gentlewoman from Michigan (Mrs. GRIFFITHS) will be recognized for 10 minutes, and the gentleman from New York (MR. CELLER) will be recognized for 10 minutes. . . .

The gentlewoman from Michigan (Mrs. GRIFFITHS) is recognized for 10 minutes.

Mrs. GRIFFITHS. . . .

I ask you, Mr. Speaker, to support the discharge motion; to vote for the motion for immediate consideration; to support the previous question; to vote against any motion to recommit with or without instructions and to vote for the amendment. . . .

4. Mr. Celler was the chairman of the Committee on the Judiciary.

The SPEAKER. The question is on the motion offered by the gentlewoman from Michigan (Mrs. GRIFFITHS) to discharge the Committee on the Judiciary from further consideration of House Joint Resolution 264. . . .

So the motion to discharge was agreed to. . . .

Mrs. GRIFFITHS. Mr. Speaker, pursuant to the provisions of clause 4, rule XXVII, I move that the House proceed to the immediate consideration of House Joint Resolution 264.

The SPEAKER. The question is on the motion offered by the gentlewoman from Michigan (Mrs. GRIFFITHS).

The motion was agreed to.

The SPEAKER. The Clerk will report the joint resolution.

The Clerk read as follows:

H.J. RES. 264

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:*

“ARTICLE —

“SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

“SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States.

“SEC. 3. This amendment shall take effect one year after the date of ratification.”

The SPEAKER. The gentlewoman from Michigan is recognized for 1 hour. . . .

Mrs. GRIFFITHS. Mr. Speaker, I move the previous question on the joint resolution.

The previous question was ordered.

The SPEAKER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time and was read a third time.

The SPEAKER. The question is on the passage of the joint resolution.

MOTION TO RECOMMIT

Mr. [William M.] MCCULLOCH [of Ohio]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the joint resolution?

Mr. MCCULLOCH. I am in its present form, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. MCCULLOCH moves that House Joint Resolution 264 be re-committed to the Committee on the Judiciary with instructions that said committee shall promptly hold appropriate hearings thereon. . . .

The SPEAKER. The question is on the motion to recommit.

The question was taken; and the Speaker announced that the noes appeared to have it. . . .

So the motion to recommit was rejected.

*Discharge of Special Rule*

**§ 4.12 When there has been pending before the Committee on the Judiciary for the requisite period a joint resolution proposing an amendment to the Constitution, a special order-of-business resolution providing for consideration of that joint resolution that has been pending before the Committee on Rules for the requisite time may be the object of a discharge petition.**

On Dec. 14, 1937,<sup>(1)</sup> proceedings in the House relative to the referral of a discharge motion to the Discharge Calendar were as follows:

MOTION TO DISCHARGE COMMITTEE  
APRIL 6, 1937.

*To the Clerk of the House of Representatives:*

Pursuant to clause 4 of rule XXVII, I, Hon. LOUIS LUDLOW, move to discharge the Committee on Rules from the consideration of the resolution (H. Res. 165) entitled "A resolution to make House Joint Resolution 199, a joint resolution proposing an amendment to the Constitution of the United States to provide for a referendum on war, a special order of business," which was referred to said committee March 24, 1937, in support of which motion

1. 82 CONG. REC. 1517, 1518, 75th Cong. 2d Sess.

the undersigned Members of the House of Representatives affix their signatures, to wit:

1. Louis Ludlow. . . .
218. Dudley White.

This motion was entered upon the Journal, entered in the CONGRESSIONAL RECORD with signatures thereto, and referred to the Calendar of Motions to Discharge Committees, December 14, 1937.

After Mr. Hamilton Fish, of New York, announced to the House that the petition had received the requisite 218 signatures, the following exchange took place:<sup>(2)</sup>

Mr. LUDLOW [of Indiana]. Mr. Speaker, I have just arrived in the Chamber. I understand the gentleman from New York has announced the completion of the signing of names to the discharge petition to bring before the House the resolution (H. J. Res. 199) which proposes to give the people of America the right to vote on participation in foreign wars. . . .

Mr. [Hatton W.] SUMNERS [of Texas]. Mr. Speaker, will the gentleman yield?

MR. LUDLOW. I yield to the gentleman from Texas.

Mr. SUMNERS of Texas. Can the gentleman tell me how much time is allowed for discussion under the rule?

Mr. LUDLOW. I may say to the gentleman the petition has been filed so long I have almost forgotten the terms of the resolution, but I believe the rule provides for 6 hours of debate. . . .

2. *Id.* at pp. 1516, 1517.

Mr. SUMNERS of Texas. Mr. Speaker, a parliamentary inquiry.

The SPEAKER.<sup>(3)</sup> The gentleman will state it.

Mr. SUMNERS of Texas. How much time is allowed for debate on a motion to discharge a committee from further consideration of a measure?

The SPEAKER. The Chair may state, in answer to the inquiry of the gentleman from Texas, that under the discharge rule only 20 minutes are allowed on the motion to discharge the Committee on Rules from the consideration of the resolution, one-half controlled by those in favor of and one-half those opposed to the motion to discharge the committee.

The Chair has before him the resolution pending before the Committee on Rules and observes that the resolution itself provides not to exceed 6 hours of general debate in the event the matter should be considered.

Mr. [William I.] SIROVICH [of New York]. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. SIROVICH. If the Ludlow resolution comes before the House and a vote is finally taken, is a two-thirds vote of the House required to pass the resolution?

The SPEAKER. Under the Constitution of the United States any proposal to amend the Constitution requires a two-thirds vote of the House of Representatives.

Mr. SIROVICH. Therefore, in order to pass the Ludlow resolution the House will have to pass it by a two-thirds vote?

The SPEAKER. Undoubtedly.

Mr. [Wright] PATMAN [of Texas]. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. PATMAN. It is my understanding this resolution may come up on the second or fourth Monday of the month, providing 7 legislative days have elapsed before such second or fourth Monday. This being so, the resolution could not come up for consideration until the second Monday in January, in view of the fact that the fourth Monday in December will be the 27th.

The SPEAKER. The Chair may state to the gentleman the Chair has no calendar before him, but it is a matter of calculation. The Chair may say further the 7 days begin to run as of this date.

Mr. PATMAN. It is improbable we shall be in session on the 27th.

The SPEAKER. The Chair can make no statement as to that.

Mr. [John J.] O'CONNOR of New York. Mr. Speaker, am I correct in understanding this discharge petition is aimed at the Committee on Rules?

The SPEAKER. The resolution seems to be aimed in that direction.

Mr. O'CONNOR of New York. Mr. Speaker, I ask unanimous consent to proceed for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. O'CONNOR of New York. Mr. Speaker, this is another example of the anomalous situation caused by the method of legislating by petition. There is a great deal of confusion about that in the minds of representatives of the press as well as Members of the

3. William B. Bankhead (AL).

House. The Committee on Rules was never intended to be included in any such discharge rule, because no bills are ever before the Committee on Rules. It is not a legislative committee. For instance, the committee has never heard of this matter. The bill has not been reported by the Committee on the Judiciary. How the Rules Committee can be discharged in any reasonable or parliamentary sense I cannot imagine.

Take the case of the wage and hour bill. That bill was pending on the calendar and would have been reached in the ordinary course of the business of the House. I do not know yet from what the Rules Committee was discharged; but as to this monstrosity, the present petition, this bill is still pending in the Committee on the Judiciary; it has never come before the Rules Committee, which has never heard or had any knowledge of it. How the Committee on Rules can be discharged from the consideration of such a bill I cannot divine. Nor can I conceive of any reason for the existence of such an anomalous parliamentary procedure.

Mr. SNELL and Mr. LUDLOW rose.

Mr. O'CONNOR of New York. I yield to the gentleman from New York.

Mr. [Bertrand H.] SNELL [of New York]. The gentleman has stated the parliamentary inquiry I was about to submit to the Speaker with respect to how they can discharge the Rules Committee from the consideration of this bill.

Mr. O'CONNOR of New York. Well, we are living in strange days of parliamentary procedure, I will admit.

Mr. LUDLOW. Mr. Speaker, will the gentleman yield?

Mr. O'CONNOR of New York. I yield.

Mr. LUDLOW. I may say to the gentleman from New York that the rules of the House are elaborately set forth in the book of rules. This is one of the rules of the House and we are following a perfectly proper parliamentary procedure.

Mr. O'CONNOR of New York. Why did not the gentleman direct his petition against the recalcitrant committee which has his bill? [Laughter.]

Mr. SNELL. I do not understand how we can discharge the Rules Committee when the bill is before the Judiciary Committee and there is nothing pending before the Committee on Rules.<sup>(4)</sup>

The motion to discharge was not called from the calendar until after the third session of the 75th Congress had convened.

On Jan. 10, 1938,<sup>(5)</sup> proceedings relative to this matter were as follows:

#### REFERENDUM ON WAR

The SPEAKER. The Chair recognizes the gentleman from Indiana [Mr. LUDLOW].

Mr. LUDLOW. Mr. Speaker, pursuant to rule XXVII, I call up the motion

4. *Parliamentarian's Note*: Although the joint resolution proposing a constitutional amendment was not directly before the Committee on Rules, the motion to discharge was directed at a simple resolution proposing to provide for consideration of the joint resolution that had been referred to that committee.

5. 83 CONG. REC. 276-283, 75th Cong. 3d Sess.

to discharge the Committee on Rules from further consideration of House Resolution 165.

The SPEAKER. The gentleman from Indiana calls up a resolution, which the Clerk will report by title.

The Clerk read as follows:

Resolution to make House Joint Resolution 199, a joint resolution proposing an amendment to the Constitution of the United States to provide for a referendum on war, a special order of business.

The resolution is as follows:

*Resolved*, That upon the day succeeding the adoption of this resolution a special order be, and is hereby, created by the House of Representatives for the consideration of House Joint Resolution 199, a public resolution which has remained in the Committee on the Judiciary for 30 or more days without action. That such special order be, and is hereby, created, notwithstanding any further action on said joint resolution by the Committee on the Judiciary or any rule of the House. That on said day the Speaker shall recognize the Representative from Indiana, LOUIS LUDLOW, to call up House Joint Resolution 199, a joint resolution proposing an amendment to the Constitution of the United States to provide for a referendum on war, as a special order of business, and to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of said House Joint Resolution 199. After general debate, which shall be confined to the joint resolution and shall continue not to exceed 6 hours, to be equally divided and controlled by the Member of the House requesting the rule for the consideration of said House Joint Resolution 199 and the Member of the House who is opposed to the said House Joint Resolution 199, to be

designated by the Speaker, the joint resolution shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the joint resolution for amendment the Committee shall rise and report the joint resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the joint resolution and the amendments thereto to final passage without intervening motion, except one motion to recommit. The special order shall be a continuing order until the joint resolution is finally disposed of. . . .

The SPEAKER. The question is on the motion of the gentleman from Indiana [Mr. LUDLOW] to discharge the Committee on Rules from further consideration of the resolution (H. Res. 165).

The question was taken, and the Speaker announced that the noes seemed to have it.

Mr. LUDLOW. Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 188, nays 209, answered “present” 4, not voting, 30[.] . . .

So the motion was rejected.

**§ 4.13 After the requisite 218 Members have signed a petition to discharge the Committee on Rules from consideration of a special order-of-business resolution providing for consideration of a joint resolution proposing an amendment to the Constitution but before the call of the Discharge Calendar, the House may consider the resolution by unanimous consent.**

On May 20, 1992,<sup>(1)</sup> a motion to discharge the Committee on Rules from further consideration of a resolution providing for consideration of a joint resolution proposing a constitutional amendment received the requisite number of signatures.

The motion was as follows:

MOTION TO DISCHARGE A COMMITTEE

MAY 20, 1992

TO THE CLERK OF THE HOUSE OF REPRESENTATIVES:

Pursuant to clause 4, rule XXVII, I, CHARLES W. STENHOLM, move to discharge the Committee on Rules from the consideration of the resolution (H. Res. 450) providing for the consideration of the joint resolution (H.J. Res. 290) proposing an amendment to the Constitution to provide for a balanced budget for the United States Government and for greater accountability in the enactment of tax legislation, which was referred to said committee May 6, 1992, in support of which motion the undersigned Members of the House of Representatives affix their signatures, to wit:

1. Charles W. Stenholm.
2. Robert F. (Bob) Smith. . . .
  
217. Jim Chapman.
218. Timothy J. Penny.

Before the motion to discharge became eligible to be called up on a day when such business was in order,<sup>(2)</sup> the House, by unanimous

1. 138 CONG. REC. 12222, 12223, 102d Cong. 2d Sess.
2. Under former Rule XXVII clause 3 (current Rule XV clause 2), discharge

consent, dispensed with such business and provided for consideration of the resolution under terms similar to those specified in the discharge petition.<sup>(3)</sup>

The unanimous-consent request for such consideration was as follows:

Mr. [Richard] GEPHARDT [of Missouri]. Mr. Speaker, I ask unanimous consent that the business in order pursuant to clause 3 of rule XXVII on Monday, June 8, 1992, be dispensed with, and that it be in order on Wednesday, June 10, 1992, for Representative STENHOLM or his designee, to call up House Resolution 450 for consideration under the same terms as if discharged from the Committee on Rules pursuant to clause 3 of rule XXVII.

Further, I ask unanimous consent that the period of general debate provided for in House Resolution 450, if adopted, be expanded to 9 hours, to be equally divided and controlled by Representative BROOKS of Texas, Representative FISH of New York, and Representative STENHOLM of Texas, or their designees.

The SPEAKER pro tempore.<sup>(4)</sup> Is there objection to the request of the gentleman from Missouri?

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petitions that have received 218 signatures and have laid over on the calendar of motions to discharge for seven legislative days may be called up on the second or fourth Mondays of each month. *House Rules and Manual* § 892 (2007).

3. 138 CONG. REC. 13617, 13618, 102d Cong. 2d Sess., June 4, 1992.
4. Allen B. Swift (WA).

Mr. [Charles] STENHOLM [of Texas]. Mr. Speaker, reserving the right to object, it is not my intent to object. I would like to ask the majority leader if I am correct in my understanding that this unanimous-consent agreement will allow for the consideration of the leading balanced budget constitutional amendment under the rule, House Resolution 450, exactly as outlined in House Resolution 450, the rule discharged on May 20, with two exceptions:

No. 1, the general debate will be increased to 9 hours, with the division of time maintained proportionally as it is in House Resolution 450; and No. 2, consideration of this matter will begin on Wednesday, June 10, rather than the discharge day of Monday, June 8.

Would the gentleman please confirm this understanding?

Mr. GEPHARDT. Mr. Speaker, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from Missouri.

Mr. GEPHARDT. Mr. Speaker, that is correct.

Mr. STENHOLM. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

On June 10, 1992, the House proceeded to consider both the special order-of-business resolution and the joint resolution proposing the constitutional amendment.<sup>(5)</sup>

**§ 4.14 After the requisite 218 Members sign a petition to**

5. Proceedings carried at § 4.7, *supra*.

**discharge the Committee on Rules from further consideration of a special order-of-business resolution providing for consideration of a joint resolution proposing an amendment to the Constitution but before the call of the Discharge Calendar, that committee may report another special order-of-business resolution providing for consideration of the subject joint resolution and laying on the table the special order-of-business resolution that is the object of the motion to discharge.**

On Sept. 29, 1982,<sup>(1)</sup> Discharge Petition 18, petitioning for discharge of the Committee on Rules from further consideration of House Resolution 450, received the requisite number of signatures for placement on the Discharge Calendar. The petition was as follows.

SEPTEMBER 29, 1982.

To the CLERK OF THE HOUSE OF REPRESENTATIVES.

Pursuant to clause 4 of rule XXVII, I, BARBER B. CONABLE, JR., [of New York] move to discharge the Committee on Rules from the consideration of the resolution (H. Res. 450) entitled,

1. 128 CONG. REC. 26127, 26128, 97th Cong. 2d Sess.

“A resolution providing for the consideration of the resolution (H.J. Res. 350) proposing an amendment to the Constitution altering Federal budget procedures” which was referred to said committee May 4, 1982, in support of which motion the undersigned Members of the House of Representatives affix their signatures, to wit:

1. Barber B. Conable, Jr. . . .

218. Charles Pashayan.

House Resolution 450, a resolution providing for the consideration of the resolution (H.J. Res. 350) proposing an amendment to the Constitution altering Federal budget processes, had been introduced by Mr. Conable on May 4, 1982, and referred to the Committee on Rules.<sup>(2)</sup>

Having received the requisite number of signatures, the motion to discharge was placed on the Discharge Calendar on Sept. 29, 1982.<sup>(3)</sup> However, under Rule XXVII clause 4<sup>(4)</sup> the motion could not be called up until the second or fourth Monday of the month after having been on that calendar for at least seven days. Because of a planned adjournment for the November 1982 congressional election, the motion would not have been eligible to be called

2. 128 CONG. REC. 8659, 97th Cong. 2d Sess.

3. See *Id.* at pp. 26127, 26128.

4. Now Rule XV clause 2, *House Rules and Manual* § 892 (2007).

up until after the election. Because the subject of the proposed constitutional amendment, the so-called “Balanced Budget Amendment,” was a matter of significant public interest and there was concern that the President might call Congress back into session to force a vote on the matter before the election, the Committee on Rules reported a special order-of-business resolution allowing for consideration of the proposed constitutional amendment before the planned adjournment but on terms different from those provided in House Resolution 450, the object of the discharge petition.

On Oct. 1, 1982,<sup>(5)</sup> the House considered House Resolution 604, which (1) provided for consideration of House Joint Resolution 350, and (2) laid on the table House Resolution 450, the object of the discharge petition.<sup>(5)</sup>

### *The Amendment Process*

**§ 4.15 A motion to recommit a bill reported by one committee with instructions to report the bill back to the House in the form of a joint resolution proposing to**

5. 128 CONG. REC. 27172, 27178, 97th Cong. 2d Sess.

6. The text of H. Res. 604 is set forth in § 4.4, *supra*.

**amend the Constitution to accomplish the purpose of the bill was held not in order on the ground that the instructions were not germane, inasmuch as a constitutional amendment would lie within the jurisdiction of another committee.**

On July 26, 1949,<sup>(1)</sup> the House was considering H.R. 3199, making unlawful the requirement for the payment of a poll tax. The bill had been reported by the Committee on House Administration. A motion was offered to recommit the bill to that committee with instructions that would have con-

1. 95 CONG. REC. 10247, 81st Cong. 1st Sess. See also Ch. 28, §23.8, *supra*. In addition, when a proposed constitutional amendment concerning one subject is under consideration, an amendment to address another subject is not in order under House Rule XVI clause 7 *House Rules and Manual* §928 (2007) (the “germaneness rule”). See, *e.g.*, 151 CONG. REC. 13538–42, 109th Cong. 1st Sess., June 22, 2005 (amendments regarding the budget of the United States Government and a Social Security trust fund offered to a proposed constitutional amendment regarding physical desecration of the flag); 117 CONG. REC. 35813, 35814, 92d Cong. 1st Sess., Oct. 12, 1971 (amendment proposing to add “race, creed or color” to a proposed constitutional amendment regarding equality of rights on account of sex).

verted the bill into a joint resolution proposing to amend the Constitution. A point of order was made against the motion. The Speaker, Sam Rayburn, of Texas, ruled that the motion was not in order as the instructions were not germane as such instructions addressed matter within the jurisdiction of the Committee on the Judiciary.

The proceedings in the House were as follows:

Mr. [Robert] HALE [of Maine]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. HALE. I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. HALE moves to recommit the bill H.R. 3199 to the Committee on House Administration with directions that they report the legislation back to the House in the form of a joint resolution amending the Constitution to make illegal payment of poll taxes as a qualification for voting.

Mr. [Vito] MARCANTONIO [of New York]. Mr. Speaker, a point of order.

The SPEAKER. The gentleman will state it.

Mr. MARCANTONIO. I make the point of order that the language which is carried in the motion to recommit is not germane to the bill. The motion calls for a constitutional amendment.

The SPEAKER. The Chair is inclined to agree with the gentleman for the simple reason that a constitutional

amendment involving this question would lie within the jurisdiction of the Committee on the Judiciary and not within the Committee on House Administration.<sup>(2)</sup> The Chair sustains the point of order.

**§ 4.16 Where a joint resolution is under consideration in the House and the Member controlling the time yields to another Member for the purpose of amendment, a third Member seeking to move the previous question on the joint resolution is entitled to recognition for that purpose in preference to the Member seeking to offer the amendment.**

On Nov. 8, 1971,<sup>(1)</sup> the House, pursuant to a motion to discharge, was considering in the House the joint resolution, House Joint Resolution 191, proposing an amendment to the Constitution relative to nondenominational prayer in public buildings. The manager, Chalmers P. Wylie, of Ohio, yielded to another Member for the purpose of offering an amendment, whereupon Mr. Emanuel Celler, of New York, moved the previous question on the joint resolution. Because the motion for the pre-

2. For discussion of committee jurisdiction, see § 3, *supra*.

1. 117 CONG. REC. 39945, 92d Cong. 1st Sess.

vious question is preferential to the motion to amend, the Speaker<sup>(2)</sup> first recognized Mr. Celler.

The proceedings were as follows:

Mr. WYLIE. Mr. Speaker, I yield to the gentleman from Alabama (Mr. BUCHANAN) for the purpose of offering an amendment.

Mr. [John] BUCHANAN. Mr. Speaker, I have an amendment at the desk.

The SPEAKER. Does the gentleman realize he will lose control of the time?

Mr. WYLIE. The gentleman realizes he loses control of the time. I do yield to the gentleman from Alabama for the purpose of offering an amendment.

The SPEAKER. The gentleman has yielded the floor.

MOTION OFFERED BY MR. CELLER

Mr. CELLER. Mr. Speaker, I move the previous question on House Joint Resolution 191.

The SPEAKER. The motion is completely and highly privileged and is in order.

PARLIAMENTARY INQUIRY

Mr. [Gerald R.] FORD [of Michigan]. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. Gerald R. FORD. Mr. Speaker, if the previous question is voted down, does that permit the offering of an amendment by the gentleman from Alabama (Mr. BUCHANAN)?

The SPEAKER. If it is voted down, any proper motion can be made.

The question is on the motion offered by the gentleman from New York (Mr. CELLER).

2. Carl Albert (OK).

The motion was rejected.

AMENDMENT OFFERED BY MR.  
BUCHANAN

Mr. BUCHANAN. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUCHANAN: Page 2, lines 1 and 2, strike out the word “nondenominational” and insert in lieu thereof the word “voluntary”; and on page 2, line 2, strike out the period and add the words “or meditation.”<sup>(3)</sup>

**§ 4.17 When the resolving clause of a joint resolution proposing an amendment to the Constitution is not in the requisite form, an amendment offered from the floor included a correction to the resolving clause.**

On June 11, 1992,<sup>(1)</sup> the House proceeded to consider a joint resolution proposing an amendment to the Constitution relating to providing for a balanced budget. The resolving clause of the resolution was not in the requisite form.<sup>(2)</sup>

3. The House adopted the amendment offered by Mr. Buchanan and then rejected the joint resolution. 117 CONG. REC. 39945, 39957, 39958, 92d Cong. 1st Sess., Nov. 8, 1971.
1. 138 CONG. REC. 14392, 14393, 102d Cong. 2d Sess.
2. The form for the resolving clause of joint resolutions is set forth in section 102 of title 1, United States Code. By usage, the resolving clause for a joint resolution proposing an

The proceedings were as follows:

PROPOSING AN AMENDMENT TO THE CONSTITUTION TO PROVIDE FOR A BALANCED BUDGET

The SPEAKER pro tempore (Mr. McNULTY).<sup>(3)</sup> Pursuant to House Resolution 450, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the joint resolution (H.J. Res. 290).

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the joint resolution, (H.J. Res. 290) proposing an amendment to the Constitution to provide for a balanced budget for the United States Government and for greater accountability in the enactment of tax legislation, with Mr. [RAYMOND] THORNTON [Jr., of Arkansas] in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, June 10, 1992, all time for general debate had expired.

Without objection, the joint resolution is considered as having been read under the 5-minute rule.

There was no objection.

The text of House Joint Resolution 290 is as follows:

amendment to the Constitution includes a parenthetical statement as follows: “(two-thirds of each House concurring therein).” See § 2, *supra*.

3. Michael R. McNulty (NY).

H.J. RES. 290

*Resolved* [sic],

ARTICLE—.

SECTION 1. Prior to each fiscal year, the Congress and the President shall agree on an estimate of total receipts for the fiscal year by enactment of a law devoted solely to that subject. Total outlays for that year shall not exceed the level of estimated receipts set forth in such law, unless three-fifths of the whole number of each House of Congress shall provide, by a rollcall vote, for a specific excess of outlays over estimated receipts. . . .

The CHAIRMAN. No amendments to the joint resolution are in order except the following amendments, which shall be considered only in the following order, which shall not be subject to amendment, and which shall be debatable for 60 minutes, equally divided and controlled by the proponent and an opponent of the amendment:

First, an amendment in the nature of a substitute offered by the gentleman from New York [Mr. FISH] or his designee; . . .

Fifth, an amendment in the nature of a substitute offered by the gentleman from Texas [Mr. STENHOLM] or his designee[.]

The amendment in the nature of a substitute offered by Mr. Charles W. Stenholm, of Texas, included a correction to the form of the resolving clause and added, before the text of the proposed amendment itself, the customary text proposing the matter to the States.<sup>(4)</sup>

4. The form of the amendment in the nature of a substitute offered by Mr.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. STENHOLM

Mr. STENHOLM. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. STENHOLM: Strike all after the word “Resolved” and insert the following:

*by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:*

“ARTICLE—

“SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote. . . .

The CHAIRMAN. Pursuant to the rule, the gentleman from Texas [Mr.

Stenholm differed from that typically used in the case of an amendment in the nature of a substitute in that it did not propose to “strike all after the resolving clause” and insert new text. Rather, in this case, the amendment proposed to “strike all after the word ‘Resolved’” and insert new text. That formulation allowed for the addition of new text as part of (and at the end of) the resolving clause. 138 CONG. REC. 14435, 102d Cong. 2d Sess., June 11, 1992.

STENHOLM] will be recognized for 30 minutes, and a Member opposed, the gentleman from California [Mr. PANETTA], the chairman of the Committee on the Budget, will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas [Mr. STENHOLM].

### § 5. Voting

Under Article V of the Constitution, passage of a joint resolution proposing an amendment to the Constitution requires a two-thirds majority of each House.<sup>(1)</sup> Such a joint resolution may be passed by each House only with a quorum present. During consideration of such a joint resolution by either House, only a simple majority (not a two-thirds majority) is required for adoption of an amendment to the joint resolution, including an amendment to the text of the proposed amendment to the Constitution itself. The Chair puts the question on final passage of such a joint resolution first to a voice vote, as the yeas and nays are not required.

1. The relevant portion of Article V reads as follows: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution. . . ."

### *Vote Required on Final Passage*

**§ 5.1 The vote required in the House for adoption of a joint resolution proposing an amendment to the Constitution is two-thirds of those Members present and voting, a quorum being present, and not two-thirds of the total membership.**

On Sept. 18, 1969,<sup>(1)</sup> the House was considering House Joint Resolution 681, proposing an amendment to the Constitution relating to the election of the President and Vice President. After consideration was completed, the Speaker<sup>(2)</sup> put the question on passage. The Speaker then responded to parliamentary inquiries as follows:

The SPEAKER. The question is on the passage of the joint resolution.

PARLIAMENTARY INQUIRIES

Mr. [Durward] Hall [of Missouri]. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state the parliamentary inquiry.

Mr. HALL. Mr. Speaker, in view of article V of the Constitution, am I correct in my calculation that it requires 289 Members voting for passage?

The SPEAKER. The answer to the gentleman's parliamentary inquiry is

1. 115 CONG. REC. 26007, 91st Cong. 1st Sess.
2. John W. McCormack (MA).

that it requires two-thirds of the Members present and voting thereon, a quorum being present.

Mr. HALL. Mr. Speaker, a further parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HALL. Mr. Speaker, is this consistent with article V which says:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution.

Would that be two-thirds of the total membership or two-thirds of those present and voting?

The SPEAKER. In accordance with the precedents of the House<sup>(2)</sup> and decisions of the Supreme Court,<sup>(3)</sup> it requires two-thirds of those present and voting thereon, a quorum being present.

The Chair's response to the gentleman's parliamentary inquiry is that it requires two thirds of those present and voting thereon, a quorum being present.

The question is on the passage of the joint resolution.

**§ 5.2 A two-thirds vote is required to pass a joint resolution proposing an amendment to the Constitution when the joint resolution is considered under the discharge process.**

2. See, *e.g.*, 5 Hinds' Precedents §§ 7027, 7029, 7030 and 8 Cannon's Precedents § 3503.
3. See, *e.g.*, National Prohibition Cases, 253 U.S. 350 (1920).

On Dec. 14, 1937,<sup>(1)</sup> Speaker William B. Bankhead, of Alabama, in response to a parliamentary inquiry, stated that the requirement for a two-thirds vote to pass a joint resolution proposing a constitutional amendment applied even when the joint resolution was the object of a successful discharge petition. The proceedings are discussed in § 4.12, *supra*.

***Vote Required to Amend Joint Resolution***

**§ 5.3 An amendment to a joint resolution proposing an amendment to the Constitution is adopted by a majority vote.**

On Feb. 24, 1931,<sup>(1)</sup> the House was considering House Joint Resolution 292, a joint resolution proposing an amendment to the Constitution addressing the assembly of Congress. The Speaker,<sup>(2)</sup> in response to a parliamentary inquiry, stated that only a majority of the House (and not two-thirds) was required to adopt an amendment to the joint resolution.

The SPEAKER. The previous question is ordered under the rule.

1. 82 CONG. REC. 1517, 75th Cong. 2d Sess.
1. 74 CONG. REC. 5906, 71st Cong. 3d Sess. See also 5 Hinds' Precedents § 7031 (point of order) and 8 Cannon's Precedents § 3504 (parliamentary inquiry).
2. Nicholas Longworth (OH).

The question is on the amendment.

Mr. [Lamar] JEFFERS [of Alabama] and Mr. [Charles] CRISP [of Georgia] demanded the yeas and nays.

The yeas and nays were ordered.

Mr. [John] KETCHAM [of Michigan]. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. KETCHAM. Will the Chair please advise the Members by what majority the amendment would have to carry? Is a two-thirds majority necessary?

The SPEAKER. No; a majority is only necessary on an amendment.

***Yeas and Nays Not Required***

**§ 5.4 The yeas and nays are not required on the question of passing a joint resolution proposing an amendment to the Constitution.**

On Mar. 9, 1928,<sup>(1)</sup> the Speaker, Nicholas Longworth, of Ohio, responded to an inquiry by Mr. John Q. Tilson, of Connecticut, as to whether the yeas and nays were required on joint resolutions proposing amendments to the Constitution, as follows:

The SPEAKER. There is no rule which provides for a yea-and-nay vote, and the Chair will quote from the Manual, section 224:<sup>(2)</sup>

Ayes and nays not required to pass a resolution amending the Constitution

The question is on the passage of the resolution.

1. 70 CONG. REC. 4430, 70th Cong. 1st Sess. See also 5 Hinds' Precedents §§ 7038, 7039.
2. Now *House Rules and Manual* § 192 (2007) ("The yeas and nays are not required to pass a joint resolution proposing to amend the Constitution. . . .").

## C. Senate Consideration; House-Senate Relations

### § 6. Senate Consideration

In the Senate, as in the House, although only a simple majority vote is required to amend a joint resolution proposing a constitutional amendment, a two-thirds majority vote is required for passage. The Senate has converted, by amendment, a legislative joint resolution into a proposed constitutional amendment (such a resulting joint resolution requiring a two-thirds vote for passage). In addition, the Senate has entertained, to a joint resolution proposing a constitutional amendment, amendments to achieve a legislative purpose instead.

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#### *Vote Required for Passage*

**§ 6.1 The vote required in the Senate for passage of a joint resolution proposing an amendment to the Constitution is two-thirds of those present and voting, a quorum being present, and not two-thirds of the total membership.**

The vote required in the Senate is the same as that required in the House,<sup>(1)</sup> as the proceedings of

1. See § 5.1, *supra*.

Feb. 26, 1869,<sup>(2)</sup> illustrate. On that day, the Senate concluded consideration of a conference report on a joint resolution proposing a constitutional amendment regarding suffrage. The proceedings relating to the announcement of the outcome of the vote were as follows:

The PRESIDENT *pro tempore*.<sup>(3)</sup> The question is on concurring in the report of the committee; and on this question the yeas and nays must be called.

The question being taken by yeas and nays resulted—yeas 39, nays 13; as follows: . . .

The PRESIDENT *pro tempore*. On this question the yeas are 39, and the nays are 13. Two thirds of the Senators present having voted in the affirmative, the report is agreed to.

Mr. [George H.] WILLIAMS [of Oregon] obtained the floor.

Mr. [Garrett] DAVIS [of Kentucky]. I rise to a question of order. I ask the Chair what the number of votes was announced to be.

The PRESIDENT *pro tempore*. The yeas were 39, and the nays were 13; being two thirds.

Mr. DAVIS. The question of order that I make is that the decision of this question has not been announced by the Chair according to the Constitution. The Chair has announced that

2. 41 CONG. GLOBE 1641, 1642, 40th Cong. 3d Sess. This precedent is also carried at 5 Hinds' Precedents § 7028.

3. Benjamin F. Wade (OH).

the proposition has received the vote of two thirds of the Senate, and therefore that it has passed. I controvert that fact. There are now thirty-seven States in the Union. They are entitled to seventy-four members of the Senate.

Mr. [James W.] NYE [of Nevada]. The honorable Senator will allow me to correct him. The Chair did not make the announcement that the honorable Senator says he did. He said it received two thirds of the votes of all the members present. That was the announcement by the Chair. . . .

The PRESIDENT *pro tempore*. The Chair desires the Senator to understand what the Chair said in the announcement of the vote. It was that two thirds of the Senators present had voted in the affirmative. That is the way in which it was announced by the Chair.

Mr. DAVIS. But then the conclusion was—

The PRESIDENT *pro tempore*. That the report was concurred in.

Mr. DAVIS. That is just as I understood it. Now, the conclusion does not follow the vote which the Chair announced, because the Senate consists of seventy-four members, and to constitute two thirds of the Senate a vote of fifty is necessary. My point of order is, that when a less number than two thirds of the Senate is required by the Constitution for any purpose, for instance to ratify a treaty or to confirm a nomination, the Constitution expressly says that it shall be two thirds of the members present. In voting upon a proposition to amend the Constitution, the Constitution does not limit the number of two thirds by reciting that it is two thirds of the members present. . . .

Mr. [Lyman] TRUMBULL [of Illinois]. If the Chair will indulge me a moment, this very point was raised in regard to a constitutional amendment some years ago, and the Senate decided by a vote, almost unanimously, that two thirds of the Senators present were sufficient to carry a constitutional amendment. I think that the Presiding Officer upon reflection will recollect it. It was the constitutional amendment that was proposed before the war. I myself made the point for the purpose of having it decided, and it was decided, I think by a nearly unanimous vote, that two thirds of the Senators present, a quorum being present, was sufficient to carry a constitutional amendment. . . .

Mr. WILLIAMS. I ask for a decision on the question of order.

The PRESIDENT *pro tempore*. I believe it has been decided according to all the precedents. . . .

***Vote Required to Amend Joint Resolution***

**§ 6.2 In the Senate, when a joint resolution proposing an amendment to the Constitution is under consideration, an amendment to the joint resolution is adopted by a majority vote.**

On Oct. 2, 1970,<sup>(1)</sup> the Presiding Officer of the Senate,<sup>(2)</sup> in response to parliamentary inquiries, advised the Senate of the vote required to adopt amendments, or

1. 118 CONG. REC. 34755, 91st Cong. 2d Sess.
2. Clifford P. Hansen (WY).

amendments thereto, to joint resolutions proposing constitutional amendments. Proceedings were as follows:

Mr. [Howard H.] BAKER [Jr., of Tennessee]. A further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. Do I correctly understand that the amendment in the nature of a substitute now proposed by the distinguished Senator from North Carolina could be adopted as a substitute by a simple majority vote, and not require a two-thirds vote?

The PRESIDING OFFICER. That is right.

Mr. BAKER. And by that same token, a new substitute to the resolution itself, striking the amendment in the nature of a substitute, could also be adopted by a majority vote?

The PRESIDING OFFICER. Any amendment to the substitute of the pending resolution could be adopted by a simple majority vote.

***Vote Required When Joint Resolution Proposing Legislation is Pending***

**§ 6.3 In the Senate, a joint resolution that is legislative in nature may be amended by majority vote to convert the joint resolution into one proposing an amendment to the Constitution. Upon adoption of such an amendment, a two-thirds vote is required**

**for passage of the joint resolution.**

On Mar. 27, 1962,<sup>(1)</sup> when the Senate was considering Senate Joint Resolution 29, proposing a national monument, Mr. Spessard L. Holland, of Florida, offered an amendment that would propose a constitutional amendment instead.

THE ALEXANDER HAMILTON NATIONAL MONUMENT — AMENDMENT TO THE CONSTITUTION DEALING WITH POLL TAXES

The Senate resumed consideration of the joint resolution (S.J. Res. 29) providing for the establishing of the former dwelling house of Alexander Hamilton as a national monument.

Mr. [Mike] MANSFIELD [of Montana]. Mr. President, what is the pending question?

The VICE PRESIDENT.<sup>(2)</sup> The question is on agreeing to the amendment of the Senator from Florida [Mr. HOLLAND], striking out all after the resolving clause, as amended, of Senate Joint Resolution 29, and inserting in lieu thereof certain other words.

Mr. MANSFIELD. This is a proposed constitutional amendment seeking to abolish the poll tax in the several States, is it?

Before putting the question to the Senate on a point of order against the Holland amendment based on constitutional grounds,

1. 110 CONG. REC. 5072-106, 87th Cong. 2d Sess.

2. Lyndon B. Johnson (TX).

the Chair responded to a parliamentary inquiry concerning the vote required to adopt the Holland amendment.

Mr. [Carl T.] CURTIS [of Nebraska]. If the resolution were to be amended by the Holland amendment, it has been stated it would require a two-thirds vote for passage. My question is, Will it require a two-thirds vote to adopt the Holland amendment to Senate Joint Resolution 29?

The VICE PRESIDENT. Only a majority vote is required in acting upon an amendment.

After the Senate tabled the point of order and the Holland amendment was adopted, the Senate voted on passage of the amended joint resolution.

The PRESIDING OFFICER.<sup>(3)</sup> The joint resolution having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The Chief Clerk called the roll. . . .

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the joint resolution is passed.

***Yeas and Nays Not Required***

**§ 6.4 The yeas and nays are not required in the Senate on the question of passing a joint resolution proposing an amendment to the Constitution.**

3. Lee Metcalf (MT).

On June 27, 2006,<sup>(1)</sup> the Senate ordered the yeas and nays on Senate Joint Resolution 12, proposing an amendment to the Constitution regarding physical desecration of the flag, as follows.

The PRESIDING OFFICER.<sup>(2)</sup> The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution, as amended, pass?

Mr. [Orrin G.] HATCH [of Utah]. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The yeas and nays were ordered.

**§ 7. Conference Reports**

Differences between the two Houses on a joint resolution proposing a constitutional amendment may be committed to a committee of conference,<sup>(1)</sup> the report thereof requiring a two-thirds vote for adoption.<sup>(2)</sup> As with the vote on initial passage of the joint resolution,<sup>(3)</sup> the yeas and nays are

1. 152 CONG. REC. 12654, 109th Cong. 2d Sess.
2. Lamar Alexander (TN).
1. See 5 Hinds' Precedents § 7037.
2. *Id.* at § 7036.
3. See § 5.4, *supra*.

not required on the vote on adopting the conference report in the House.<sup>(4)</sup>

## § 8. Amendments Between the Houses

When one House has passed a joint resolution proposing a constitutional amendment and has transmitted it to the other House, the House receiving the joint resolution may adopt amendments by a simple majority vote, but a two-thirds vote is required for passage.<sup>(1)</sup> If one House passes with amendments such a joint resolution that originated in the other House, a two-thirds vote is required in the House in which the joint resolution originated in order to concur in the amendments of the other House.<sup>(2)</sup> In the rare case where one House amends and passes a joint resolution of

4. See, *e.g.*, 111 CONG. REC. 15212–16, 89th Cong. 1st Sess., June 30, 1965. The same is true in the Senate, although on one occasion, upon putting the question on agreeing to a conference report proposing an amendment to the Constitution, the Presiding Officer announced that the “yeas and nays must be called.” 41 Cong. Globe 1638, 1641, 40th Cong. 3d Sess., Feb. 26, 1869 (proceedings carried in § 6.1, *supra*).

1. See § 8.1, *infra*.

2. See §§ 8.2, 8.3, *infra*.

the other House by a two-thirds vote and then recedes from that amendment by a simple majority vote, the joint resolution is not considered as having been passed.<sup>(3)</sup>

### § 8.1 Vote required to adopt an amendment before passage of other House’s joint resolution.

On Apr. 13, 1965,<sup>(1)</sup> the House agreed to an amendment to a joint resolution proposing a constitutional amendment that had originated in the Senate. The amendment was adopted by a simple majority vote and the Senate joint resolution, as amended, was then passed by the requisite two-thirds vote. Proceedings were as follows:

The Clerk read the title of the Senate joint resolution, as follows:

S.J. RES. 1

Joint resolution proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office[.] . . .

The SPEAKER.<sup>(2)</sup> The Clerk will report the amendment.

3. See 5 Hinds’ Precedents § 7035.

1. 111 CONG. REC. 7969, 89th Cong. 1st Sess.

2. John W. McCormack (MA).

The Clerk read as follows:

Amendment offered by Mr. [Emanuel] CELLER [of New York]: "Strike out all after the resolving clause of Senate Joint Resolution 1 and insert the provisions of House Joint Resolution 1, as passed by the House."

The SPEAKER. The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the third reading of the Senate joint resolution.

The Senate joint resolution was ordered to be read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the Senate joint resolution.

The question was taken; and (two-thirds having voted in favor thereof) the Senate joint resolution was passed.

A motion to reconsider was laid on the table.

A similar joint resolution (H.J. Res. 1) was laid on the table.

**§ 8.2 A two-thirds vote is required in the House to adopt a motion that the House concur in Senate amendments to a House joint resolution proposing an amendment to the Constitution.**

On Mar. 21, 1947,<sup>(1)</sup> the House concurred in Senate amendments to House Joint Resolution 27, proposing a constitutional amendment regarding the term of office

1. 93 CONG. REC. 2389, 2392, 80th Cong. 1st Sess.

of the President of the United States, by a two-thirds vote. Proceedings were as follows:

Mr. [Earl] MICHENER [of Michigan]. Mr. Speaker, I ask the Speaker to lay before the House for immediate consideration House Joint Resolution 27, a joint resolution proposing an amendment to the Constitution of the United States relating to the terms of office of the President, with Senate amendments.

The SPEAKER.<sup>(2)</sup> The Clerk will report the title of the joint resolution and the Senate amendments.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendments[.] . . .

Mr. MICHENER. Mr. Speaker, this bill with the Senate amendment was returned to the House on March 13. It was taken informally before the full Committee on the Judiciary, and I am instructed by that committee to call the resolution up at this time for the purpose of agreeing to the Senate amendment. I have followed precedent and cleared through the majority leader and the minority leader.

I therefore move that the House concur in the Senate amendment.

The SPEAKER. The Clerk will report the motion.

The Clerk read as follows:

Mr. MICHENER moves that the House concur in the Senate amendment.

The SPEAKER. The gentleman from Michigan is recognized for 1 hour. . . .

Mr. MICHENER. Mr. Speaker, I move the previous question.

2. Joseph W. Martin, Jr. (MA).

The previous question was ordered.

The question was taken; and on a division (demanded by Mr. [Robert] THOMASON [of Texas]) there were—ayes 81, noes 29.

Mr. [Aime J.] FORAND [of Rhode Island]. Mr. Speaker, I object to the vote on the ground a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. The Chair will count.

Mr. FORAND. Mr. Speaker, I withdraw the point of order.

So (two-thirds having voted in favor thereof) the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

**§ 8.3 A two-thirds vote is required in the Senate to adopt a motion that the Senate concur in House amendments to a Senate joint resolution proposing an amendment to the Constitution.**

On Dec. 18, 1917,<sup>(1)</sup> the Senate had under consideration Senate

1. 56 CONG. REC. 477, 65th Cong. 2d Sess. See also 106 CONG. REC.

Joint Resolution 17, proposing a constitutional amendment prohibiting the manufacture, sale, or transportation of intoxicating liquors, with House amendments thereto. After a motion was made that the Senate concur in the House amendments, Mr. William E. Borah, of Idaho, asked as a parliamentary inquiry whether a two-thirds vote was required to agree to the motion.

The VICE PRESIDENT.<sup>(2)</sup> That is the opinion of the Chair. It is the view of the Chair that an amendment to a resolution proposing an amendment to the Constitution of the United States needs only a majority in order to be adopted; but the resolution having once been adopted by the Senate and gone to the House and returned here for the final action of the Senate, it is necessary to have a two-thirds vote on the amendments of the House, for this constitutes the final passage of the resolution.

12850–58, 86th Cong. 2d Sess., June 16, 1960.

2. Thomas R. Marshall (IN).

**D. Ratification**

**§ 9. Generally; Certification and Publication**

Unlike a joint resolution of a legislative nature, a joint resolution proposing a constitutional amendment is not presented to the President under Article I, § 7, clause 2 of the Constitution. Rather, such a joint resolution is submitted to the States for ratification.

**§ 9.1 Constitutional amendments that have passed both Houses are not presented to the President.**

On Feb. 25, 1869,<sup>(1)</sup> Speaker Schuyler Colfax, of Indiana, overruled a point of order that a proposed constitutional amendment would have to be presented to the President for approval. The ruling of the Chair was as follows:

The SPEAKER. The gentleman having stated the point of order the Chair will decide it. It has been raised once before and decided by the Chair. He will repeat the substantial points of that decision, which he thinks will satisfy the gentleman that his point is not well taken, although based by him upon the Constitution of the United States. The question was raised dis-

tinctly in 1803 in the Senate of the United States, on a motion that the then proposed amendment to the Constitution should be submitted to the President[.] . . .

On a distinct vote of 23 to 7 the Senate voted that the Committee on Enrolled Bills should not present the proposed amendment. This is a decision made by one of the early Congresses. But the Chair is not satisfied with having it rest on that; he is disposed to present higher authority in overruling the point of order.

In 1798, a case<sup>(2)</sup> arose in the Supreme Court of the United States depending upon the amendment to the Constitution proposed in 1794, and the counsel, in argument before the court, insisted that the amendment was not valid, not having been approved by the President of the United States. . . .

The Court, speaking through [Justice Chase] . . . observed:

“The negative of the President applies only to the ordinary cases of legislation. He has nothing to do with the proposition or adoption of amendments to the Constitution.”

As the Supreme Court of the United States has settled this question by a decision, the Chair does not need to read further authorities. . . .

The Chair, therefore, thinks that the question is settled, not only by the practice of Congress but by a decision of the Supreme Court of the United States, and therefore overrules the point of order.

1. 41 Cong. Globe 1563, 40th Cong. 3d Sess.

2. *Hollingsworth v. Virginia*, 3 U.S. (3 Dall.) 378 (1798).

**§ 9.2 Enrolled joint resolutions proposing constitutional amendments are submitted to the appropriate Federal official, designated by law, for submission to the States.**

Responsibility for receiving from Congress enrolled joint resolutions by which Congress proposes to the States amendments to the Constitution and for transmitting the same to the States has been vested in different officials of the executive branch over time. Currently, that responsibility is vested in the Archivist of the United States.<sup>(1)</sup> The delivery of such measures to the appropriate official is reported to the House originating the amendment.

An example from 1947 is as follows:<sup>(2)</sup>

ENROLLED JOINT RESOLUTION SIGNED

Mr. [Joseph] LeCOMPTE [of Kentucky], from the Committee on House Administration, reported that that committee had examined and found truly enrolled a joint resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 27. Joint resolution proposing an amendment to the Constitution of the United States relating to the terms of office of the President.

1. See § 10, *infra*, and 1 USC §106b (relating to amendments to the Constitution), and related annotations.
2. See 93 CONG. REC. 2482, 80th Cong. 1st Sess., Mar. 24, 1947.

JOINT RESOLUTION FILED WITH THE SECRETARY OF STATE

Mr. LeCOMPTE, from the Committee on House Administration, reported that that committee did on this day present to and file with the Secretary of State of the United States a joint resolution of the following title:

H.J. RES. 27. Joint resolution proposing an amendment to the Constitution of the United States relating to the terms of office of the President.

Another instance occurred on June 17, 1960:<sup>(3)</sup>

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, June 17, 1960, he presented to the Administrator, General Services Administration, the enrolled joint resolution (S.J. Res. 39) proposing an amendment to the Constitution of the United States granting representation in the electoral college to the District of Columbia.

**§ 10. Submission to the States; Records of Ratification**

The process by which a proposed amendment to the Constitution leaves Congress as officially proposed and eventually becomes effective as part of the Constitution has changed over the years

3. 106 CONG. REC. 13101, 86th Cong. 2d Sess.

and occasionally has included actions by the President not necessary to the effectiveness of the amendment. For example, the two Houses by concurrent resolution asked the President to transmit copies of the proposed 15th Amendment to the executives of the States,<sup>(1)</sup> and the President informed Congress of the promulgation of the ratification of the 15th Amendment.<sup>(2)</sup> The President was officially involved only in the first 11 amendments<sup>(3)</sup> and the 15th.<sup>(4)</sup>

The ministerial functions of transmitting proposed amendments to the States, receiving the notices of ratification by States, and, in some instances, declaring an amendment effective have been carried out successively by the Secretary of State,<sup>(5)</sup> the Administrator of General Services,<sup>(6)</sup> and the Archivist of the United States.<sup>(7)</sup>

**Early Practice**

**§ 10.1 President communicated ratification of Bill of Rights to Congress.**

1. 5 Hinds' Precedents § 7043. Such a concurrent resolution is not privileged in the House. 8 Cannon's Precedents § 3508.
2. 5 Hinds' Precedents § 7044.
3. See §§ 10.1, 10.2, *infra*.
4. 5 Hinds' Precedents § 7044.
5. See § 10.2, *infra*.
6. See § 10.3, *infra*.
7. See § 10.4, *infra*.

The President notified the Congress of the ratification of the first 10 amendments (the Bill of Rights) by message as follows:<sup>(1)</sup>

The following Message from the President of the United States was received:

*Gentlemen of the Senate, and of the House of Representatives:*

I lay before you a copy of the ratification, by the Commonwealth of Virginia, of the articles of amendment proposed by Congress to the Constitution of the United States; and a copy of a letter which accompanied said ratification, from the Governor of Virginia.

G. WASHINGTON  
UNITED STATES, December 30, 1791.

The papers referred to in the Message are as follows:

COUNCIL CHAMBER,  
*Richmond, Dec. 22, 1791.*

Sir: The General Assembly, during their late session, have adopted, on the part of this Commonwealth, all the amendments proposed by Congress to the Constitution of the United States; their ratification whereof I do myself the honor herewith to transmit.

I have the honor to be, &c.

HENRY LEE.  
*The* PRESIDENT of the United States.

VIRGINIA:

General Assembly, begun and held at the Capitol, in the city of Richmond, on Monday, the 17th day of October, in the year of our Lord 1791.

MONDAY, December 5, 1791.

1. 1 Annals of Cong. 54, 2d Cong. 1st Sess., Dec. 30, 1791.

*Resolved*, That the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth articles of the amendments proposed by Congress to the Constitution of the United States, be ratified by this Commonwealth.

December 15th, 1791: Agreed to by the Senate.

JOHN PRIDE,

S[ecretary]. [of the] S[enate].

THOS. MATTHEWS,

S[ecretary]. [of the] H[ouse of] D[elegates].

Examined.

The House received the same message:<sup>(2)</sup>

A message, in writing, was received from the President of the United States, by Mr. Lear, his Secretary, as followeth:

UNITED STATES,

*December 30th 1791.*

*Gentleman of the Senate and the House of Representatives:*

I lay before you a copy of the ratification, by the Commonwealth of Virginia, of the articles of amendment proposed by Congress to the Constitution of the United States, and a copy of a letter which accompanied said ratification from the Governor of Virginia.

G. WASHINGTON.

The papers referred to in the said message were read, and ordered to lie on the table.

2. H. Jour., Vol. 1, p. 483, 2d Cong. 1st Sess, Dec. 30, 1791.

**§ 10.2 President declares 11th Amendment; Secretary of State assumes record-keeping responsibility.**

The Senate adopted a resolution setting out the history of ratification of the first 13 proposed amendments and requesting the President to ascertain whether any States other than those recorded had ratified the 11th Amendment: <sup>(1)</sup>

Mr. [Henry] Tazewell [of Virginia] reported, from the committee on the subject of amendments to the constitution of the United States, which was read, as follows:

“That, of the twelve amendments proposed by Congress, at their session begun and held in New York on the 4th of March, 1789, the following States ratified the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, prior to the first day of March, 1791, viz. New Jersey, Maryland, North Carolina, South Carolina, New Hampshire, Delaware, New York, Pennsylvania, and Rhode Island; which States making three-fourths of the then thirteen United States, the said amendments have become a part of the constitution.

“That the first amendment was ratified prior to the first day of March, 1791, by the following States, viz. New Jersey, Maryland, North Carolina, South Carolina, New Hampshire, New York, and Rhode Island, and, subsequent to that period, by Pennsylvania, Virginia, and Vermont; which number

1. S. Jour. Vol. 2, pp. 315, 316, 4th Cong. 2d Sess., Jan. 31, 1797.

not making three-fourths of the States at the period of ratification, the said amendment has not as yet become a part of the constitution.

“That the second amendment was ratified prior to the 1st day of March, 1791, by the following States: Maryland, North Carolina, South Carolina, Delaware, and, subsequent to that period, by Virginia and Vermont; which number not making three-fourths of the States, the said amendment has not become a part of the constitution.”

“That the amendment respecting the suability of States, which has been proposed by Congress since March, 1791, has been ratified by the following States: New York, Massachusetts, Vermont, New Hampshire, Georgia, Delaware, Rhode Island, and North Carolina, as appears by authentic documents returned to Congress. The committee have strong reasons to believe that other States have ratified this latter amendment, and that the evidences of the fact have not been as yet returned to the proper departments of the government; wherefore, as the number returned do not amount to three-fourths of the States, the said amendment cannot, under present circumstances, be reported as forming a part of the constitution.

Whereupon,

*Resolved*, by the Senate and House of Representatives of the United States, That the President be requested to adopt some speedy and effectual means of obtaining information from the States of Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Kentucky, Tennessee, and South Carolina, whether they have ratified the amendment proposed by Congress

to the constitution concerning the suability of States; if they have, to obtain the proper evidences thereof.

*Ordered*, That the Secretary desire the concurrence of the House of Representatives in this resolution.

The House agreed to the resolution on Feb. 24, 1797.<sup>(2)</sup>

The President transmitted to the Congress a message not only indicating that a particular State had ratified an amendment, but also declaring that the amendment had become part of the Constitution. The Journal recorded receipt of the message as follows:<sup>(3)</sup>

A message, in writing, was received from the President of the United States, by Mr. Taylor, Chief Clerk in the Department of State, as followeth:

*Gentleman of the Senate and Gentleman of the House of Representatives:*

I have now an opportunity to transmit to Congress a report of the Secretary of State, with a copy of an act of the Legislature of the State of Kentucky, consenting to the ratification of the amendment of the Constitution of the United States, proposed by Congress in their resolution of the second day of December, one thousand seven hundred and ninety-three, relative to the suability of States. This amendment having been adopted by three-fourths of the several States, may now be declared to be a part of the Constitution of the United States.

**JOHN ADAMS.**

UNITED STATES, *January 8th*, 1798.

2. H. Jour. Vol. 2, p. 718, 4th Cong. 2d Sess.
3. H. Jour. Vol. 3, p. 126, 5th Cong. 2d Sess., Jan. 8, 1798.

The said message, and papers referred to therein, were read, and ordered to lie on the table.

The message also indicates that the President directed the Secretary of State to keep records on the ratification of amendments by the States, beginning an historical pattern that continued until the Reorganization Plan No. 20 of 1950 transferred the responsibility from the Secretary of State.<sup>(4)</sup>

***Certification, Publication, and Preservation Functions Vested in the Administrator of General Services***

**§ 10.3 A Presidential reorganization plan transferred responsibility for certification, publication, and preservation of constitutional amendments from the Secretary of State to the Administrator of General Services.**

Under the authority of the Reorganization Act of 1949,<sup>(1)</sup> President Harry S Truman transmitted Reorganization Plan No. 20 of 1950<sup>(2)</sup> to the Congress on Mar. 13, 1950.

4. See § 10.3, *infra*. For an example of a State's certificate of ratification sent to the Secretary of State with a copy laid before the House, see 76 CONG. REC. 35, 72d Cong. 2d Sess., Dec. 5, 1932.
1. 63 Stat. 203
2. 5 USC App. Reorganization Plan No. 20 of 1950.

The plan, in pertinent part, read as follows:

**STATUTES AT LARGE AND OTHER MATTERS**

**SECTION 1. FUNCTIONS TRANSFERRED FROM DEPARTMENT OF STATE TO ADMINISTRATOR OF GENERAL SERVICES**

There are hereby transferred to the Administrator of General Services the functions of the Secretary of State and the Department of State with respect to: . . .

(c) The certification and publication of amendments to the Constitution of the United States (. . . [1 U.S.C. 106b]) and the preservation of such amendments;

The message of the President transmitting the reorganization plan included the following:

Since its establishment in 1789 the Department of State has performed certain routine secretarial and record-keeping functions for the Federal Government which are entirely extraneous . . . to the conduct of foreign relations. While these activities do not properly belong in the Department, they were assigned to it and continued under its jurisdiction for want of an appropriate agency for their performance. . . .

Through the National Archives and Records Service the General Services Administration is especially staffed and equipped for the conduct of activities of these types.

***Functions Vested in the Archivist of the United States***

**§ 10.4 Archivist charged with printing and certifying adoption of amendments.**

Effective Apr. 1, 1985, section 106b of title 1, United States Code, <sup>(1)</sup> was amended<sup>(2)</sup> to transfer from the Administrator of General Services to the newly established Archivist of the United States the responsibility for publishing and certifying the adoption of amendments to the Constitution.

The Archivist of the United States first executed this responsibility under § 106b of title 1, United States Code, in 1992 when the 27th Amendment was published and certified as having been adopted.<sup>(3)</sup>

1. Section 106b of title 1, United States Code, reads as follows:

**§ 106b. Amendments to Constitution**

Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

2. Section 107(d) of the National Archives and Records Administration Act of 1984 (Pub. L. No. 98-497; Oct. 19, 1984, 98 Stat. 2291).
3. *House Rules and Manual* § 258, footnote 18 (2007).

## § 11. State Consent; Withdrawal and Rescission of Withdrawal

Under Article V of the Constitution, the approval of three-fourths of the States is required to ratify an amendment to the Constitution. Whether a State may rescind its ratification of a constitutional amendment has been the subject of discussion<sup>(1)</sup> and litigation.<sup>(2)</sup> A State, having previously rescinded its ratification before the effectiveness of an amendment, has later ratified the amendment (after it had become effective). For example, on Mar. 12, 2003,<sup>(3)</sup> the Ohio General Assembly passed a joint resolution ratifying the 14th Amendment. The joint resolution recited the history of Ohio's action with respect to the 14th Amendment, as follows: Ohio ratified the amendment on Jan. 11, 1867, but rescinded such ratification on Jan. 15, 1868 (the amendment becoming effective six months later).

1. See 5 Hinds' Precedents § 7042.
2. For relevant case law, see *House Rules and Manual* § 192 (2007).
3. The memorial was noted at 150 CONG. REC. 100, 108th Congress 2d Sess., Jan. 20, 2004. See also *Id.* for a memorial from New Jersey revoking an earlier attempt to withdraw its ratification of an amendment.

## § 12. Time Limits on Ratification

Beginning with what became the 18th Amendment, Congress has generally imposed a time limit on the period for State ratification of a proposed amendment. The customary time limit is seven years from the date of the submission of the proposed amendment to the States by Congress. Initially, these time limitations were made part of the text of the proposed amendment.<sup>(1)</sup> In recent practice, the limitation has been made part of the text of the joint resolution preceding the text of the proposed amendment, rather than part of the text of the amendment. In one case, a simple majority in both Houses extended the limitation when it was contained in the joint resolution rather than the amendment itself.<sup>(2)</sup> In the case of the 27th Amendment, the ratification of which spanned an unusually long interval, each House of Congress separately declared the amendment duly ratified.<sup>(3)</sup>

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### § 12.1 A proposed amendment to the Constitution may con-

1. See, *e.g.*, U. S. Const. amend. 18 § 3.
2. See § 12.3, *infra*.
3. See § 12.4, *infra*.

### tain a limit on the period for State ratification.

The 18th Amendment was submitted to the States with the following limitation on ratification:

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

### § 12.2 Congress may include a limitation on the time for State ratification of a proposed amendment to the Constitution in the joint resolution proposing the amendment rather than in the body of the amendment itself.

Rather than including a period for State ratification in the text of a proposed constitutional amendment itself, Congress may set forth such a limitation in the text of the joint resolution proposing such amendment. An example of this form of limitation on a ratification period was included in Senate Joint Resolution 7 of the 92d Congress, which was considered by the House on Mar. 23, 1971,<sup>(1)</sup> and which became the 26th

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1. See 117 CONG. REC. 7570, 92d Cong. 1st Sess.

Amendment. That resolution read as follows:

S.J. RES. 7

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:*

“ARTICLE —

“SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

“SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

**§ 12.3 The House by majority vote passed a joint resolution extending the ratification period for a constitutional amendment previously submitted to the States.**

A proposed constitutional amendment regarding equal rights on account of sex was submitted to the States on Mar. 22, 1972,<sup>(1)</sup> upon the passage by the

1. 118 CONG. REC. 9598, 92d Cong. 2d Sess. The House had passed the joint resolution by the requisite two-thirds

Senate of House Joint Resolution 208 of the 92d Congress by the requisite two-thirds majority. That joint resolution included in its text a seven-year ratification limitation preceding the text of the proposed amendment. The text of the joint resolution was as follows:

H.J. RES. 208

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:*

“ARTICLE —

“SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

“SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

“SEC. 3. This amendment shall take effect two years after the date of ratification.”

During 1978, with the ratification deadline for the proposed amendment approaching and with

majority and transmitted it to the Senate on Oct. 12, 1971. 117 CONG. REC. 35815, 92d Cong. 1st Sess.

fewer than the requisite number of States having ratified the proposed amendment, Congress considered various proposals to extend the ratification period. On Aug. 15, 1978,<sup>(2)</sup> the House considered a joint resolution to extend<sup>(3)</sup> the ratification period. Before the joint resolution was considered, the House considered, and laid on the table, a resolution considered as a question of the privileges of the House declaring that a two-thirds vote was necessary to pass the joint resolution extending the ratification period. The House then passed the joint resolution by majority vote.

The proceedings were as follows:

Mr. [James] QUILLEN [of Tennessee]. Mr. Speaker, I rise to a question of the privileges of the House and offer a privileged resolution (H. Res. 1315) involving a question of the privileges of the House, and I ask for its immediate consideration.

2. 124 CONG. REC. 26203, 26204, 26239, 26265, 95th Cong. 2d Sess.
3. *Parliamentarian's Note*: Rule XIII clause 3 (the Ramseyer Rule), does not apply to a joint resolution extending the period for State ratification when the joint resolution does not specifically, by amendment, change the text of the ratification deadline in the joint resolution by which Congress submitted the amendment to the States but rather extends the period by a superseding provision. *Id.* at p. 26204.

After holding that the resolution did present a question of the privileges of the House under Rule IX,<sup>(4)</sup> the Speaker, Thomas P. O'Neill, Jr., of Massachusetts, directed the Clerk to report the resolution. The resolution was as follows:

H. RES. 1315

Whereas H.J. Res. 638 of this Congress amends H.J. Res. 208 of the 92nd Congress, proposing an amendment to the Constitution;

Whereas H.J. Res. 208 of the 92nd Congress was passed by an affirmative vote of two-thirds of the Members present and voting, as required by Article V of the Constitution, and submitted for ratification on March 22, 1972;

Whereas the integrity of the process by which the House considers changes to H.J. Res. 208 of the 92nd Congress would be violated if H.J. Res. 638 were passed by a simple majority of the Members present and voting;

Whereas the constitutional prerogatives of the House to propose amendments to the Constitution and to impose necessary conditions thereto in accordance with Article V of the Constitution would be abrogated if H.J. Res. 638 were passed by a simple majority of the Members present and voting;

*Resolved*, That an affirmative vote of two-thirds of the Members present and voting, a quorum being present, shall be required on final passage of H.J. Res. 638.

The privileged resolution was laid on the table. The House then resolved itself into the Committee

4. *House Rules and Manual* § 698 (2007).

of the Whole to consider House Joint Resolution 638. The joint resolution read as follows:<sup>(5)</sup>

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provision of House Joint Resolution 208 of the Ninety-second Congress, second session, to the contrary, the article of amendment proposed to the States in such joint resolution shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within fourteen years from the date of the submission by the Congress to the States of such proposed article of amendment.*

After debate and adoption of an amendment striking the matter beginning “within fourteen years” and all that follows and inserting “not later than June 30, 1992.”, the House passed the joint resolution by a simple majority vote.<sup>(6)</sup>

**§ 12.4 The House adopted a concurrent resolution declaring the ratification of a constitutional amendment.**

On Sept. 25, 1789,<sup>(1)</sup> the First Congress submitted to the States

5. 124 CONG. REC. 26239, 95th Cong. 2d Sess., Aug. 15, 1978.
6. After passage by the Senate, the joint resolution was signed by the President but not assigned a public law number. Upon receipt of the joint resolution, the Archivist notified the States of its passage.
1. S. Jour. Vol. 1, p. 88, 1st Cong. 1st Sess.

for ratification 12 proposed amendments. Of those 12, 10 were ratified by Dec. 15, 1791,<sup>(2)</sup> and became the Bill of Rights. These amendments were proposed without a deadline for ratification, and the remaining two remained pending before the States. In May of 1992, one of those proposed amendments, to limit the power of Congress to increase the salaries of its Members, was ratified by the 38th State (the number of States needed to constitute ratification by the requisite three-fourths of the States) and on May 18, 1992, was declared by the Archivist of the United States to have been ratified. In light of the unprecedented period of time between submission of the amendment to the States and the ratification by the final State necessary for adoption of the amendment, and in order to quell speculation over the efficacy of a ratification process spanning two centuries, the House adopted<sup>(3)</sup> a concurrent resolution<sup>(4)</sup> declaring the ratification of the amendment. The concurrent resolution read as follows:

2. See § 10.1, *supra*.
3. 138 CONG. REC. 12051, 102d Cong. 2d Sess., May 20, 1992. The concurrent resolution was debated on the preceding day, May 19, 1992, *Id.* at pp. 11779–85.
4. The concurrent resolution was considered under suspension of the

**Ch. 34 § 12**      DESCHLER-BROWN-JOHNSON PRECEDENTS

H. CON. RES. 320

*Resolved by the House of Representatives (the Senate concurring),* That Congress declares that the proposed article of amendment providing as follows:

“No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.”

has been ratified by a sufficient number of the States and has become a part of the Constitution.

On the same day, the Senate adopted both a simple and a concurrent resolution to the same ef-

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rules. The House had previously considered by unanimous consent a similar measure declaring the 14th Amendment ratified. See H. Jour. 1126, 1127, 40th Cong. 2d Sess., July 21, 1868.

fect.<sup>(3)</sup> Neither body acted on the measure of the other.<sup>(4)</sup>

3. S. Res. 298 and S. Con. Res. 120 at 138 CONG. REC. 11869, 11870, 102d Cong. 2d Sess., May 20, 1992. The Senate adopted the two resolutions by a single, en bloc vote of 99–0. Earlier, the Senate had adopted a resolution requesting the Archivist to transmit to the Senate a list of States having ratified the amendment. S. Res. 295, at 138 CONG. REC. 11010, 102d Cong. 2d Sess., May 12, 1992.
4. For Supreme Court decisions relevant to the ratification process generally, see *Dillon v. Gloss*, 256 U.S. 368 (1921) (ratification must be within a reasonable time after proposal); *Coleman v. Miller*, 307 U.S. 433 (1939) (efficacy of State ratification of proposed amendments is a political question upon which Congress must make the final determination).

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