

thorizations and appropriations to support troops in the field. The Second Circuit Court of Appeals, applying the test “whether there is any action by the Congress sufficient to authorize or ratify the military activity” in Vietnam in the absence of a declaration of war or express statutory sanction, held that congressional authorization could be implied from approval of legislation to furnish manpower and materials of war.<sup>(4)</sup> The court observed that: “. . . neither the language nor the purpose underlying that provision [the declaration clause] prohibits an inference of the fact of authorization from such legislative action as we have in this instance”<sup>(5)</sup>

4. *Orlando v Laird*, 443 F2d 1039 (1973), cert. denied, 404 U.S. 869. Accord, *Da Costa v Laird*, 448 F2d 1369 (2d Cir. 1971). Contra, *Mottola v Nixon*, 318 F Supp 538 (N.D. Calif. 1970), reversed for lack of standing, 464 F2d 26 (9th Cir. 1972). The Supreme Court summarily affirmed a decision of a three judge district court dismissing a challenge to the constitutionality of the war on political question grounds. *Attlee v Richardson*, 411 U.S. 911 (1973), aff'g., 347 F Supp 689 (D.D.Pa. 1972).

5. *Orlando v Laird*, supra, at p. 1043. Section 8 of the War Powers Resolution (see §4.1, supra, for the text) which states that authority to introduce armed forces cannot be inferred from any provision of law or treaty unless sanction is expressly stated

Congress on several occasions has empowered the President to introduce United States Armed Forces into hostilities by specific statutory authorization short of formal declaration of war.<sup>(6)</sup>

## § 6. House Action

### *On Japan*

**§ 6.1 The House by ye and nay vote suspended the rules and approved a House joint resolution formally declaring a state of war between the United States and the Imperial Government of Japan and then vacated the proceedings and tabled the House joint resolution after agreeing to an identical Senate joint resolution.**

On Dec. 8, 1941,<sup>(7)</sup> the House by a vote of yeas 388, nays 1, not voting 41, approved a motion made by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(8)</sup> and approve House Joint

was drafted as a direct result of *Orlando v Laird*. See S. REPT. No. 220, 93d Cong. 1st Sess., at 25 (1973).

6. See § 8, infra.

7. 87 CONG. REC. 9520, 9536, 9537, 77th Cong. 1st Sess.

8. Earlier that day the Speaker was authorized by unanimous consent to recognize Members for suspension of the rules. *Id.* at p. 9519.

**Resolution 254, formally declaring a state of war between the United States and the Imperial Government of Japan.<sup>(9)</sup>**

Mr. McCORMACK: Mr. Speaker, I move to suspend the rules and pass House Joint Resolution 254, which I send to the desk.

The SPEAKER:<sup>(10)</sup> The Clerk will read the joint resolution.

The Clerk read as follows:

Declaring that a state of war exists between the Imperial Government of Japan and the Government and the people of the United States and making provisions to prosecute the same.

Whereas the Imperial Government of Japan has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

The SPEAKER: Is a second demanded?

Miss [JEANNETTE] RANKIN of Montana: I object.

9. See §11.1, *infra*, for the text of the President's request for a declaration of war.

10. Sam Rayburn (Tex.).

The SPEAKER: This is no unanimous-consent request. No objection is in order.

Is a second demanded?

Mr. [JOSEPH W.] MARTIN of Massachusetts: Mr. Speaker, I demand a second.

The SPEAKER: Without objection, a second is considered as ordered.

There was no objection.

**After debate:**

Mr. McCORMACK: Mr. Speaker, I ask for a vote, and on that I demand the yeas and nays.

Miss RANKIN of Montana: Mr. Speaker—

The SPEAKER: The gentleman from Massachusetts demands the yeas and nays. Those who favor taking this vote by the yeas and nays will rise and remain standing until counted.

The yeas and nays were ordered.

Miss RANKIN of Montana: Mr. Speaker, I would like to be heard.

The SPEAKER: The yeas and nays have been ordered. The question is, Will the House suspend the rules and pass the resolution?

Miss RANKIN of Montana: Mr. Speaker, a point of order.

The SPEAKER: A roll call may not be interrupted.

The question was taken; and there were yeas 388, nays 1, not voting 41, as follows: . . .

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

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

After receiving a message that the Senate had approved Senate

Joint Resolution 116, which was identical to House Joint Resolution 254, the House by unanimous consent passed the Senate measure and vacated the proceedings by which the House had approved the House measure, and tabled the House joint resolution.<sup>(11)</sup>

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Frazier, its legislative clerk, announced that the Senate had passed a joint resolution (S.J. Res. 116) declaring that a state of war exists between the Imperial Government of Japan and the Government and the people of the United States and making provisions to prosecute the same, in which the concurrence of the House is requested. . . .

Mr. McCORMACK: Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate Joint Resolution 116, and agree to the same.

The Clerk read the Senate joint resolution, as follows:

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared . . .

The SPEAKER: Is there objection to the request of the gentleman from Massachusetts [Mr. McCormack]?

11. 87 CONG. REC. 9537, 77th Cong. 1st Sess., Dec. 8, 1941. See §7.1, *infra*, for Senate proceedings on the Senate joint resolution.

Mr. MARTIN of Massachusetts: Mr. Speaker, reserving the right to object—and, of course, I am not going to object—this is the same declaration that we just passed?

The SPEAKER: The same.

Mr. McCORMACK: Yes.

The SPEAKER: Is there objection to the request of the gentleman from Massachusetts [Mr. McCormack]?

There was no objection.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. McCORMACK: Mr. Speaker, I ask unanimous consent that the proceedings by which the House passed House Joint Resolution 254 be vacated and that the resolution be laid on the table.

The SPEAKER: Is there objection to the request of the gentleman from Massachusetts [Mr. McCormack]?

There was no objection.

### *On Germany*

**§ 6.2 The House by yea and nay vote suspended the rules and approved a House joint resolution formally declaring a state of war between the United States and the Government of Germany and then by unanimous consent vacated the proceedings and tabled the House measure after agreeing to an identical Senate joint resolution.**

On Dec. 11, 1941,<sup>(12)</sup> the House by a vote of yeas 393, present 1, not voting 36, agreed to a motion made by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(13)</sup> and approve House Joint Resolution 256, formally declaring a state of war between the United States and the Government of Germany.<sup>(14)</sup>

Mr. McCORMACK: Mr. Speaker, I move to suspend the rules and pass House Joint Resolution 256, which I send to the desk and ask to have read.

The Clerk read as follows:

Whereas the Government of Germany has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved*, etc., That the state of war between the United States and the Government of Germany which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Government of Germany; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

- 12. 87 CONG. REC. 9665, 9666, 77th Cong. 1st Sess.
- 13. Earlier that day the Speaker was authorized by unanimous consent to recognize Members for suspension of the rules. *Id.* at p. 9665.
- 14. See §11.2, *infra*, for the President's request for a declaration of war.

The SPEAKER:<sup>(15)</sup> The question is, Will the House suspend the rules and pass the joint resolution?

Mr. McCORMACK: Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered. The question was taken; and there were—yeas 393, answered “present” 1, not voting 36, as follows: . . .

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

A motion to reconsider was laid on the table.

After receiving a message that the Senate had approved Senate Joint Resolution 119, which was identical to House Joint Resolution 256, the House by unanimous consent passed the Senate measure and vacated the proceedings by which the House had approved the House measure, and tabled the House joint resolution.<sup>(16)</sup>

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate had passed joint resolutions of the following titles, in which the concurrence of the House is requested:

S.J. Res. 119. Joint resolution declaring that a state of war exists between the Government of Germany and the Government and the people of the United States and making provision to prosecute the same. . . .

- 15. Sam Rayburn (Tex.).
- 16. 87 CONG. REC. 9666, 77th Cong. 1st Sess., Dec. 11, 1941. See §7.2, *infra*, for Senate proceedings on the joint resolution.

Mr. McCORMACK: Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate Joint Resolution 119, which is identical with the resolution just adopted by the House, and pass the Senate resolution.

The Clerk read the title of the resolution.

The SPEAKER: Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The Senate joint resolution was read a third time, and passed.

A motion to reconsider was laid on the table.

Mr. McCORMACK: Mr. Speaker, I ask unanimous consent that the action just taken by the House in the passage of House Joint Resolution 256 be vacated and that the resolution be laid on the table.

The SPEAKER: Without objection, it is so ordered.

There was no objection.

### *On Italy*

#### **§ 6.3 After receiving a message that the Senate had passed the measure, the House by yea and nay vote suspended the rules and agreed to a Senate joint resolution declaring a state of war between the United States and the Government of Italy.**

On Dec. 11, 1941,<sup>(17)</sup> the House by a vote of yeas 399, present 1,

17. 87 CONG. REC. 9666, 9667 77th Cong. 1st Sess.

not voting 30, suspended the rules and passed Senate Joint Resolution 120, declaring a state of war between the United States and the Government of Italy, after receiving a message that the Senate had agreed to the measure.<sup>(18)</sup>

#### MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate had passed joint resolutions of the following titles, in which the concurrence of the House is requested: . . .

S.J. Res. 120. Joint resolution declaring that a state of war exists between the Government of Italy and the Government and the people of the United States and making provision to prosecute the same. . . .

Mr. [JOHN W.] McCORMACK [of Massachusetts]: Mr. Speaker, I move to suspend the rule and pass Senate Joint Resolution 120, which I have sent to the Clerk's desk.

The Clerk read as follows:

Whereas the Government of Italy has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Government of Italy, which has thus been thrust upon the United States, is hereby formally declared.

. . .

THE SPEAKER:<sup>(19)</sup> The question is, Will the House suspend the rules and pass the resolution?

18. See §11.2, *infra*, for the President's request for a declaration of war; and §7.3, *infra*, for Senate approval.

19. Sam Rayburn (Tex.).

MR. McCORMACK: Mr. Speaker, on this vote I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 399, answered “present” 1, not voting 30, as follows: . . .

So, two-thirds having voted in favor thereof, the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

### *On Bulgaria*

#### **§ 6.4 The House by yea and nay vote suspended the rules and unanimously approved a House resolution formally declaring a state of war between the United States and the Government of Bulgaria.**

On June 3, 1942,<sup>(20)</sup> the House by a vote of yeas 357, nays 0, not voting 73, agreed to a motion by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(1)</sup> and pass House Joint Resolution 319, declaring a formal state of war between the United States and Bulgaria.<sup>(2)</sup>

20. 88 CONG. REC. 4816, 4817, 77th Cong. 2d Sess.

1. The Speaker had been authorized by unanimous consent to recognize Members for suspension of the rules. 88 CONG. REC. 4799, 77th Cong. 2d Sess., June 2, 1942.
2. See §11.3, *infra*, for the President's request for a declaration of war; and §7.4, *infra*, for Senate approval of this measure.

MR. McCORMACK: Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 319) declaring that a state of war exists between the Government of Bulgaria and the Government and the people of the United States and making provisions to prosecute the same.

The Clerk read as follows:

Whereas the Government of Bulgaria has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.*, That the state of war between the United States and the Government of Bulgaria, which has thus been thrust upon the United States, is hereby formally declared. . . .

MR. McCORMACK: Mr. Speaker, on that motion I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER:<sup>(3)</sup> The question is, Will the House suspend the rules and pass the joint resolution.

The question was taken; and there were—yeas 357, nays 0, not voting 73, as follows: . . .

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

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

### *On Hungary*

#### **§ 6.5 The House by yea and nay vote suspended the rules and unanimously approved a**

3. Sam Rayburn (Tex.).

**House joint resolution formally declaring a state of war between the United States and the Government of Hungary.**

On June 3, 1942,<sup>(4)</sup> the House by a vote of yeas 360, nays 0, not voting 70, agreed to a motion made by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(5)</sup> and pass House Joint Resolution 320, declaring a formal state of war between the United States and the Government of Hungary.<sup>(6)</sup>

MR. McCORMACK: Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 320) declaring that a state of war exists between the Government of Hungary and the Government and the people of the United States and making provisions to prosecute the same.

The Clerk read as follows:

Whereas the Government of Hungary has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.* That the state of war between the United States and the

4. 88 CONG. REC. 4817, 4818, 77th Cong. 2d Sess.
5. The Speaker had been authorized by unanimous consent to recognize Members for suspension of the rules. See 88 CONG. REC. 4799, 77th Cong. 2d Sess., June 2, 1942.
6. See §11.3, *infra*, for the President's request for the declaration of war; and §7.5, *infra*, for Senate approval of this joint resolution.

Government of Hungary which has thus been thrust upon the United States is hereby formally declared.

. . .

MR. McCORMACK: Mr. Speaker, on that motion I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER:<sup>(7)</sup> The question is, Will the House suspend the rules and pass the joint resolution?

The question was taken; and there were—yeas 360, nays 0, not voting 70, as follows: . . .

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

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

***On Rumania***

**§ 6.6 The House by yea and nay vote suspended the rules and unanimously agreed to a House joint resolution declaring a formal state of war between the United States and the Government of Rumania.**

On June 3, 1942,<sup>(8)</sup> the House by a vote of yeas 361, nays 0, not voting 69, agreed to a motion made by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(9)</sup> and pass House

7. Sam Rayburn (Tex.).

8. 88 CONG. REC. 4818, 77th Cong. 2d Sess.

9. The Speaker had been authorized by unanimous consent to recognize

**Joint Resolution 321, declaring a formal state of war between the United States and the Government of Rumania.**<sup>(10)</sup>

MR. McCORMACK: Mr. Speaker, I move to suspend the rules and pass the joint resolution ( H.J. Res. 321) declaring that a state of war exists between the Government of Rumania and the Government and the people of the United States, and making provisions to prosecute the same.

The Clerk read as follows:

Whereas the Government of Rumania has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Government of Rumania which has thus been thrust upon the United States is hereby formally declared. . . .

MR. McCORMACK: Mr. Speaker, on that motion I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER:<sup>11</sup> The question is, Will the House suspend the rules and pass the joint resolution?

The question was taken; and there were—yeas 361, nays 0, not voting 69, as follows: . . .

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

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Members for suspension of the rules. See 88 CONG. REC. 4799, 77th Cong. 2d Sess., June 2, 1942.

- 10. See §11.3, *infra*, for the President's request for a declaration of war, and §7.6, *infra*, for Senate approval of this measure.
- 11. Sam Rayburn ( Tex.).

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

**§ 7. Senate Action**

***On Japan***

**§ 7.1 The Senate by yea and nay vote unanimously agreed to a Senate joint resolution declaring a state of war between the United States and the Imperial Government of Japan.**

On Dec. 8, 1941,<sup>(12)</sup> the Senate by a vote of yeas 82, nays 0, agreed to Senate Joint Resolution 116, declaring a state of war between the United States and the Imperial Government of Japan.<sup>(13)</sup>

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, I introduce a joint resolution, and ask for its immediate consideration without reference to a committee.

THE VICE PRESIDENT:<sup>(14)</sup> The joint resolution will be read.

The joint resolution (S.J. Res. 116) declaring that a state of war exists between the Imperial Government of

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- 12. 87 CONG. REC. 9505, 9506, 77th Cong. 1st Sess.
  - 13. See 11. 1, *infra*, for the President's request for this declaration, and §6.1, *supra*, for House approval of the joint resolution.
  - 14. John N. Garner (Tex.).