

CHAPTER 13

Powers and Prerogatives of the House

A. Generally

- § 1. Scope
- § 2. Admitting States to the Union

B. War Powers

- § 3. In General
- § 4. War Powers Act
- § 5. Declarations of War
- § 6. —House Action
- § 7. —Senate Action
- § 8. Legislation Authorizing Military Action Prior to War Powers Act
- § 9. Pre-World War II Legislative Restrictions on Military Activity
- § 10. Vietnam Era Restrictions on Military Activity
- § 11. Receipt of Presidential Messages
- § 12. Presidential Proclamations

C. House Prerogative to Originate Revenue Bills

- § 13. In General
- § 14. Consideration of Objections
- § 15. Return of Senate Legislation
- § 16. Tabling Objection to Infringement
- § 17. Referring Objection to Committee
- § 18. Action on House Bill in Lieu of Senate Bill

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§ 19. Senate Action on Revenue Legislation

§ 20. Authority to Make Appropriations

D. Congress and the Budget; Impoundment

§ 21. In General; Congressional Budget Act

E. Relations With Executive Branch

§ 22. In General; Confirmation of Nomination for Vice President

§ 23. Executive Reorganization Plans

Appendix

INDEX TO PRECEDENTS

- | | |
|---|--|
| ACTION agency reorganization plan, §§ 23.1, 23.2 | Army, Navy, and Air Force, Departments of, reorganization plan affecting, § 23.9 |
| Agriculture and Interior, Departments of, reorganization plan affecting, § 23.8 | Backdoor spending, controls on, § 21 |
| Air Force, Army, and Navy, Departments of, reorganization plan affecting, § 23.9 | Bases, exchange of destroyers for, § 11.7 |
| Alaska, admission of, to Union, § 2.1 | Berlin, resolution to protect, § 8.9 |
| American forces in Iceland, announcement of arrival of, § 11.8 | Buckley v Valeo, § 22.2 |
| American ports, proclamation regarding use of, by belligerent nations, § 12.5 | Budget, Bureau of, reorganization plan affecting, § 23.3 |
| Appropriate, resolution regarding Senate authority to, § 20.1 | Budget Committee, § 21 |
| Appropriation for Department of Agriculture, Senate, § 20.2 | Budget, congressional procedure to establish, Legislative Reorganization Act of 1946 as affecting, § 21.1 |
| Appropriation for District of Columbia, Senate, §§ 20.3, 20.4 | Budget control by Congress, § 21 |
| Approval, by committee, of House bill in lieu of Senate bill, §§ 18.4, 18.5 | Bulgaria, House declaration of war as to, § 6.4 |
| Approval, on floor, of House bill in lieu of Senate bill, §§ 18.1-18.3 | Bulgaria, Hungary, and Rumania, request for declaration of war on, § 11.3 |
| | Bulgaria, Senate declaration of war as to, § 7.4 |
| | Cambodia and Laos, prohibition of military support for, § 10.2 |

- Cambodia, Laos, and North and South Vietnam, prohibition of funds for military activities in, after fixed date, § 10.4**
- Cambodia, North and South Vietnam, and Laos, prohibition of funds for military activity in, after fixed date, § 10.5**
- Cambodia, prohibition of American ground forces from, § 10.3**
- Chair, constitutional issue not decided by, § 19.1**
- Civil Aeronautics Board reorganization plan, § 23.6**
- Commerce, Department of, reorganization plan affecting, § 23.10**
- Committee approval of House bill in lieu of Senate bill, §§ 18.4, 18.5**
- Committee jurisdiction of bill incidentally producing revenue, Senate, § 19.2**
- Community Relations Service reorganization plan, § 23.7**
- Concurrent resolutions on budget, § 21**
- Congressional Budget Act of 1974, § 21**
- Congressional Budget Office, § 21**
- Congressional session, proclamation convening extraordinary, for neutrality legislation, § 12.3**
- Constitutional issue decided by Senate, § 19.1**
- Cuba missile crisis, authorization to activate reserves during, § 8.11**
- Cuba, proclamation of embargo on trade with, § 12.2**
- Cuba, resolution regarding Soviet weapons in, §§ 8.7, 8.8**
- Deletion of tariff schedule amendments by Senate, § 19.5**
- Destroyers for bases, announcement of exchange of, § 11.7**
- District of Columbia government reorganization plan, § 23.14**
- Embargo on trade with Cuba, proclamation of, § 12.2**
- Emergency, proclamation of, regarding Korea, § 12.1**
- Environmental Protection Agency reorganization plan, § 23.16**
- Executive Office of the President and federal agencies, reorganization plan affecting, § 23.15**
- Federal agencies and Executive Office of the President reorganization plan, § 23.15**
- Federal Communications Commission reorganization plan, §§ 23.17, 23.18**
- Federal Home Loan Bank Board reorganization plan, § 23.19**
- Federal maritime functions reorganization plan, §§ 23.20, 23.21**
- Federal Savings and Loan Insurance Corporation reorganization plan, § 23.22**
- Federal Security Agency, Social Security Board, and United States Employment Service reorganization plan, § 23.23**
- Federal Trade Commission reorganization plan, § 23.24**
- Floor approval of House bill in lieu of Senate bill, §§ 18.1–18.3**
- Forces, see military forces**
- Ford, Gerald R., confirmation of, as Vice President, § 22.1**
- Foreign nations and Germany, proclamation regarding war between, § 12.4**
- Formosa and Pescadores, request for authority to protect, § 11.5**
- Formosa and Pescadores, resolution to protect, §§ 8.3, 8.4**
- Funds, prohibition of, for military activities in North and South Vietnam, Laos, and Cambodia, § 10.4**
- Germany and foreign nations, proclamation regarding war between, § 12.4**

- Germany and Italy, request for declaration of war on, §11.2
- Germany, House declaration of war on, §6.2
- Germany, Senate declaration of war on, §7.2
- Germany, termination of state of war with, §3.1
- Gulf of Tonkin Resolution, §§8.1, 8.2
- Hawaii, admission of, to Union, §2.2
- Health, Education, and Welfare reorganization plan, acceleration of effective date for, §§23.33, 23.34
- Housing, Department of Urban Affairs and, reorganization plan affecting, §23.13
- Housing, lending, and insuring agencies reorganization plan, §23.25
- Hungary, Bulgaria, and Rumania, request for declaration of war on, §11.3
- Hungary, House declaration of war on, §6.5
- Hungary, Senate declaration of war on, §7.5
- Iceland, announcement of arrival of American forces in, §11.8
- Impoundment Act of 1974, §21
- Impoundment controls by Congress, §21
- Infringement of House revenue prerogative, Senate amendment to House bill as, §19.4
- Infringement of House revenue prerogative, Senate amendment to Senate bill as, §19.3
- Insuring, lending, and housing agencies reorganization plan, §23.25
- Interior and Agriculture, Departments of, reorganization plan affecting, §23.8
- Internal Revenue, Bureau of, and Department of the Treasury reorganization plan, §23.4
- Italy and Germany, request for declaration of war on, §11.2
- Italy, House declaration of war on, §6.3
- Italy, Senate declaration of war on, §7.3
- Japan, House declaration of war on, §6.1
- Japan, request for declaration of war on, §11.1
- Japan, Senate declaration of war on, §7.1
- Jurisdiction of bill incidentally producing revenue, Senate committee, §19.2
- Korea, proclamation of national emergency regarding, §12.1
- Labor, Department of, reorganization plan, §§23.11, 23.12
- Laos and Cambodia, prohibition of military support for, §10.2
- Laos and Thailand, prohibition of American ground forces from, §10.1
- Laos, Cambodia, and North Vietnam, prohibition of funds for military activities in, after fixed date, §10.4
- Laos, North and South Vietnam, and Cambodia, prohibition of military activity in, after fixed date, §10.5
- Lebanon, announcement of deployment of Marines to, §11.9
- Lending, housing, and insuring agencies reorganization plan, §23.25
- Lend-lease Act, §9.3
- Marines, announcement of deployment of, to Lebanon, §11.9
- Maritime functions, reorganization plan for federal, §§23.20, 23.21
- Middle Eastern nations, request for authority to protect, §11.4
- Middle Eastern nations, resolution to protect, §§8.5, 8.6
- Military activities, prohibition of funds for, in North and South Vietnam, Laos, and Cambodia, after fixed date, §10.4

- Military assistance to American Republics, §9.2**
- Military forces (American), announcement of arrival of, in Iceland, §11.8**
- Military forces (American), prohibition of, from Cambodia, §10.3**
- Military forces (American), prohibition of, from Thailand and Laos, §10.1**
- Military forces, inducted, limited to western hemisphere, §9.5**
- Military forces (Marines), announcement of deployment of, to Lebanon, §11.9**
- Military forces, reserve, authorization to activate, §§8.10, 8.11**
- Military forces, reserve, limited to western hemisphere, §9.4**
- Military involvement, prohibition of, in North and South Vietnam, Laos, and Cambodia after fixed date, §10.5**
- Military support for Cambodia and Laos prohibited, §10.2**
- Narcotics, Bureau of, reorganization plan, §23.5**
- National emergency, proclamation of, regarding Korea, §12.1**
- National Labor Relations Board reorganization plan, §§23.26, 23.27**
- National Oceanic and Atmospheric Administration reorganization plan, §23.28**
- Navy, Army, and Air Force, Departments of, reorganization plan affecting, §23.9**
- Neutrality Act, §9.1**
- Neutrality legislation, extraordinary congressional session convened for, §12.3**
- Neutrality legislation, request for, §11.6**
- North and South Vietnam, Laos, and Cambodia, prohibition of funds for military activities in, after fixed date, §10.4**
- North and South Vietnam, Laos, and Cambodia, prohibition of military involvement in, after fixed date, §10.5**
- Objection to Senate general surtax amendment to House excise tax bill, tabling, §16.1**
- Pescadores and Formosa, request for authority to protect, §11.5**
- Pescadores and Formosa, resolution to protect, §§8.3, 8.4**
- Ports (American), proclamation regarding use of, by belligerent nations, §12.5**
- Postponing vote on reorganization plan, §23.35**
- Prerogative to raise revenue, Senate amendment to House bill as infringement of, §19.4**
- Prerogative to raise revenue, Senate amendment to Senate bill as infringement of, §19.3**
- Prerogatives of House, infringement of, as privileged matter, §14.1**
- Prerogatives of House, timeliness of objection to alleged Senate infringement of, §14.2**
- President, Executive Office of, and federal agencies, reorganization plan affecting, §23.15**
- President's authority to exchange ships for bases, opinion of Attorney General on, §3.2**
- Privileged matter, infringement of House prerogative as, §14.1**
- Reconstruction Finance Corporation reorganization plan, §23.30**
- Referral to committee of objection to Senate authorization to use securities proceeds as debt, §17.1**
- Reorganization plans**
ACTION, §§23.1, 23.2
Agriculture and Interior, Departments of, §23.8

Reorganization plans—Cont.

Army, Navy, and Air Force, Departments of, § 23.9
 Budget, Bureau of, § 23.3
 Civil Aeronautics Board, § 23.6
 Commerce, Department of, § 23.10
 Community Relations Service, § 23.7
 District of Columbia government, § 23.14
 Environmental Protection Agency, § 23.16
 Executive Office of the President and federal agencies, § 23.15
 Federal Communications Commission, §§ 23.17, 23.18
 Federal Home Loan Bank Board, § 23.19
 Federal Savings and Loan Insurance Corporation, § 23.22
 Federal Security Agency, United States Employment Service, and Social Security Board, § 23.23
 Federal Security, Federal Works, and loan agencies and Executive Office of the President, § 23.15
 Federal Trade Commission, § 23.24
 Health, Education, and Welfare, Department of, acceleration of effective date for, §§ 23.33, 23.34
 insuring, housing, and lending agencies, § 23.25
 Internal Revenue, Bureau of, and Department of the Treasury, § 23.4
 Labor, Department of, §§ 23.11, 23.12
 lending, housing, and insuring agencies, § 23.25
 maritime functions, §§ 23.20, 23.21
 Narcotics, Bureau of, § 23.5
 National Labor Relations Board, §§ 23.26, 23.27
 National Oceanic and Atmospheric Administration, § 23.28
 Navy, Army, and Air Force, Departments of, § 23.9

Reorganization plans—Cont.

postponing vote on, § 23.35
 priority of consideration, § 23.36
 Reconstruction Finance Corporation, § 23.30
 Science, Office of, § 23.29
 Securities and Exchange Commission, §§ 23.31, 23.32
 Social Security Board, Federal Security Agency, and United States Employment Service, § 23.23
 United States Employment Service, Federal Security Agency, and Social Security Board, § 23.23
 Urban Affairs and Housing, Department of, § 23.13

Reserve forces, authorization to activate, §§ 8.10, 8.11**Reserve forces limited to Western Hemisphere, § 9.4****Return of Senate measure**

adding another tax to House bill, § 15.8
 amending Firearms Act, § 15.7
 amending Silver Purchase Act, § 15.1
 amending Tariff Act of 1930, § 15.2
 amending tariff provisions, § 15.6
 exempting olympic game receipts from taxation, § 15.3
 raising duty on fishery products, § 15.5
 redetermining sugar quota, § 15.4

Revenue-raising prerogative, Senate amendment to House bill as infringement of, § 19.4**Revenue-raising prerogative, Senate amendment to Senate bill as infringement of, § 19.3****Rumania, Bulgaria, and Hungary, request for declaration of war on, § 11.3****Rumania, House declaration of war on, § 6.6****Rumania, Senate declaration of war on, § 7.6**

- Science, Office of, reorganization plan affecting, §23.29**
- Securities and Exchange Commission reorganization plan, §§23.31, 23.32**
- Senate appropriation for Department of Agriculture, §20.2**
- Senate appropriation for District of Columbia, §§20.3, 20.4**
- Senate authority to appropriate, resolution regarding, §20.1**
- Senate bill, committee approval of House bill in lieu of, §§18.4, 18.5**
- Senate bill, floor approval of House bill in lieu of, §§18.1-18.3**
- Senate bill, return of, see Return of Senate measure**
- Senate committee jurisdiction of bill incidentally producing revenue, §19.2**
- Senate deletion of tariff schedule amendments, §19.5**
- Senate infringement of House prerogatives, timeliness of objection to, §14.2**
- Senate withdrawal of Internal Revenue Code amendments, §19.6**
- Social Security Board, Federal Security Agency, and United States Employment Service reorganization plan, §23.23**
- South and North Vietnam, Laos, and Cambodia, prohibition of funds for military activities in, after fixed date, §10.4**
- States, admission of, to Union**
Alaska, §2.1
Hawaii, §2.2
- Tabling objection to Senate general surtax amendment to House excise tax bill, §16.1**
- Thailand and Laos, prohibition of American ground forces from, §10.1**
- Timeliness of objection to alleged Senate infringement of House prerogatives, §14.2**
- Timetable for budget preparation, §21**
- Treasury, Department of, and Bureau of Internal Revenue reorganization plan, §23.4**
- United States Employment Service, Federal Security Agency, and Social Security Board reorganization plan, §23.23**
- Urban Affairs and Housing, Department of, reorganization plan, §23.13**
- Veto of War Powers Resolution, §4.1**
- Vice President, confirmation of Gerald R. Ford as, §22.1**
- Vietnam, North and South, Cambodia and Laos, prohibition of funds for military activities in, after fixed date, §10.4**
- Vietnam, North and South, Cambodia and Laos, prohibition of military activity in, after fixed date, §10.5**
- War**
Bulgaria, declaration of war on, by House, §6.4
Bulgaria, declaration of war on, by Senate, §7.4
Bulgaria, Hungary, and Rumania, request for declaration of war on, §11.3
Germany and foreign nations, proclamation regarding war between, §12.4
Germany and Italy, request for declaration of war on, §11.2
Germany, declaration of war on, by House, §6.2
Germany, declaration of war on by Senate, §7.2
Hungary, Bulgaria, and Rumania, request for declaration of war on, §11.3
Hungary, declaration of war on, by House, §6.5

War—Cont.

- Hungary, declaration of war on, by Senate, §7.5
- Italy and Germany, request for declaration of war on, §11.2
- Italy, declaration of war on, by House, §6.3
- Italy, declaration of war on, by Senate, §7.3
- Japan, declaration of war on, by House, §6.1
- Japan, declaration of war on, by Senate, §7.1
- Japan, request for declaration of war on, §11.1
- Rumania, Bulgaria, and Hungary, request for declaration of war on, §11.3

War—Cont.

- Rumania, declaration of war on, by House, §6.6
- Rumania, declaration of war on, by Senate, §7.6

War Powers Resolution

- passage of, §4.2
- veto of, §4.1

Western Hemisphere, inducted land forces limited to, §9.5**Western Hemisphere, reserve forces limited to, §9.4****Withdrawal of Internal Revenue Code amendments by Senate, §19.6**

Powers and Prerogatives of the House

A. GENERALLY

§ 1. Scope

This chapter does not exhaustively treat the powers of Congress enumerated in the Constitution. It is intended, rather, as a discussion of selected areas, including some in which issues have arisen, or may arise, as to the relative scope of authority of Congress and other branches of government.⁽¹⁾

§ 2. Admitting States to the Union

Article IV, section 3, clause 1, empowers Congress to admit new states to the Union. No new state may be formed within the jurisdiction of any other state or by the junction of two or more states, or parts of states, without the consent of the legislatures of the two

1. See Ch. 11, *supra*, for a discussion of the related subject, privilege of the House, and Ch. 24, *infra*, for a discussion of congressional vetoes.

See also 2 Hinds' Precedents §§1480–1561; and 6 Cannon's Precedents §§314–329, for treatment of precedents arising prior to 1936.

states concerned as well as the Congress.⁽²⁾

Alaska

§ 2.1 The House and Senate agreed to a bill admitting Alaska into the Union.

The House on May 28, 1958,⁽³⁾ and the Senate on June 30, 1958,⁽⁴⁾ agreed to H.R. 7999, admitting Alaska into the Union. The measure was approved on July 7, 1958.⁽⁵⁾

Hawaii

§ 2.2 The Senate and House agreed to a bill admitting Hawaii into the Union.

2. See *House Rules and Manual* §216 (1973); and *Constitution of the United States of America: Analysis and Interpretation*, S. Doc. No. 9282, 92d Cong. 2d Sess., pp. 842–845 (1973) for discussion of this provision.

3. 104 CONG. REC. 9756, 9757, 85th Cong. 2d Sess.

4. *Id.* at p. 12650.

5. 572 Stat. 339 (Pub. L. No. 85–508).

The Senate on Mar. 11, 1959,⁶ and the House on Mar. 12, 1959,⁷ agreed to S. 50 admitting Hawaii into the Union. The House agreed

to S. 50 in lieu of H.R. 4221.⁸ S. 50 was approved on Mar. 18, 1959.⁹

B. WAR POWERS

§ 3. In General

Article I, section 8, clauses 11–14 of the Constitution describe the fundamental war powers of Congress, including:

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;⁽¹⁰⁾

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces. . . .

Like all powers of Congress, the war power must also be understood in light of the general grant of legislative authority of article I, section 8, clause 18:

The Congress shall have Power . . .
To make all Laws which shall be nec-

essary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

A more general grant of authority appears in article I, section 8, clause 1, “Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States. . . .”

In addition to these powers, article I, section 8, clauses 15 and 16 grant Congress power over the militia, including:

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United

the unanimous-consent agreement to consider S. 50 in lieu of H.R. 4221.

6. 105 CONG. REC. 3890, 86th Cong. 1st Sess.

7. *Id.* at pp. 4038, 4039.

8. See 105 CONG. REC. 4005, 86th Cong. 1st Sess., Mar. 12, 1959, for

9. 73 Stat. 4 (Pub. L. No. 86–3).

10. See §5, *infra*, for a discussion of authority to declare war.

States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress. . . .

Closely related to authority to protect the states is article IV, section 4, which imposes duties on the United States without specifying a particular political department:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

Significant among constitutional grants of authority are provisions relating to raising and supporting an army and providing and maintaining a navy. Pursuant to this authority Congress prohibited use of conscripts and reserves beyond the Western Hemisphere prior to World War II⁽¹¹⁾ and prohibited expenditure or obligation of funds for military purposes in certain countries of Indochina during the conflict in Vietnam.⁽¹²⁾

Article II, section 2, clause 1 provides that, "The President shall be Commander in Chief of

- 11. See §§9.4, 9.5, *infra*, for illustrations of these restrictions.
- 12. See the precedents in §10, *infra*, for these restrictions.

the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States. . . ."

The precedents in this division focus primarily on congressional authorization of and limitations on use of force by the Commander in Chief.⁽¹³⁾

Although the Supreme Court has declined to pass on the constitutionality of the "peacetime" draft, lower courts have uniformly held that the congressional power to raise armies is not limited by the absence of a declaration of war.⁽¹⁴⁾ In upholding a statute prohibiting destruction of a selective service registrant's registration certificate, Chief Justice Warren, speaking for the court majority, observed that, ". . . the power of Congress to classify and conscript manpower for military serv-

- 13. See §§5, 8, *infra*, for discussion of the authorization of use of force by declaration of war and by statute, respectively; and §§9, 10, *infra*, for precedents relating to restrictions on use of force.
- 14. Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess., p. 331 (1973). See, for example, *Hart v United States*, 382 F2d 1020 (3d Cir. 1967), cert. denied, 391 U.S. 956 (1968); and *United States v Holmes*, 387 F2d 781 (7th Cir. 1967), cert. denied, 391 U.S. 936 (1968).

ice is 'beyond question.'"⁽¹⁵⁾ In a dissent, Justice Douglas denied that the question of peacetime conscription was settled.⁽¹⁶⁾

Wartime conscription does not deprive the states of the right to a well-regulated militia or violate the 13th amendment which prohibits involuntary servitude.⁽¹⁷⁾ In making this determination, the Supreme Court rejected the contention that congressional power to exact compulsory service was limited to calling forth the militia for the three purposes specified in the Constitution,⁽¹⁸⁾ despite the fact that none of these purposes explicitly comprehend service abroad.

The sections in this division focus on the role of Congress in

15. *United States v O'Brien*, 391 U.S. 367, 377 (1967). The internal quotation was taken from *Lichter v United States*, 334 U.S. 742, 756 (1948) which upheld the wartime renegotiation Act as a constitutional exercise of the authority of Congress to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers."
16. *United States v O'Brien*, 391 U.S. 367, 389 (1967). See his dissent to the denial of certiorari in *Holmes v United States*, 391 U.S. 936 (1968).
17. Selective Draft Law Cases, 245 U.S. 381 (1918).
18. *Id.* These purposes are to execute the laws of the Union, suppress insurrections, and repel invasions. See U.S. Const. art. I, §8, clause 15.

committing troops to hostilities, and include discussion of institutional means to insure congressional judgment in such circumstances;⁽¹⁹⁾ declarations of war;⁽²⁰⁾ authorization of use of force and activation of reserves by legislation short of declarations of war;⁽¹⁾ restrictions on use of force and deployment of troops before World War II⁽²⁾ and during the Vietnam era;⁽³⁾ receipt of Presidential messages;⁽⁴⁾ and publication of Presidential proclamations.⁽⁵⁾

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19. § 4, *infra*.

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4. § 11, *infra*.

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6. The articles in this section relate to war powers generally. See collateral references in § 4, *infra*, War Powers Act, and § 10, *infra*, Vietnam Era Restrictions on Military Activity, for articles relating to these areas.

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Termination of State of War With Germany

§ 3.1 The House and Senate agreed to a House joint reso- lution terminating the state of war between the United States and the government of Germany.

On July 27, 1951,⁽⁷⁾ the House by a vote of yeas 379, present 1, not voting 53, agreed to a House joint resolution, terminating the state of war between the United States and the Government of Germany. On Oct. 18, 1951,⁽⁸⁾ the Senate by voice vote passed the measure⁽⁹⁾ which was approved by the President in the following form:⁽¹⁰⁾

JOINT RESOLUTION 289

To terminate the state of war between
the United States and the
Government of Germany.

*Resolved by the Senate and House of
Representatives of the United States of*

7. 97 CONG. REC. 9036, 9049, 9050, 82d Cong. 1st Sess.
8. 97 CONG. REC. 13438, 13443, 82d Cong. 1st Sess.
9. See 97 CONG. REC. 13785, 82d Cong. 1st Sess., Oct. 20, 1951, for notification to the Clerk of Presidential approval.
10. This excerpt is taken from 65 Stat. 451, 82d Cong. 1st Sess. (Pub. L. No. 82-181).

America in Congress assembled, That the state of war declared to exist between the United States and the Government of Germany by the joint resolution of Congress approved December 11, 1941, is hereby terminated and such termination shall take effect on the date of enactment of this resolution: *Provided, however*, That notwithstanding this resolution and any proclamation issued by the President pursuant thereto, any property or interest which prior to January 1, 1947, was subject to vesting or seizure under the provisions of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, or which has heretofore been vested or seized under that Act, including accruals to or proceeds of any such property or interest, shall continue to be subject to the provisions of that Act in the same manner and to the same extent as if this resolution had not been adopted and such proclamation had not been issued. Nothing herein and nothing in such proclamation shall alter the status, as it existed immediately prior hereto, under that Act, of Germany or of any person with respect to any such property or interest.

Approved October 19, 1951.

Attorney General's Opinion Re- garding President's Authority to Exchange Ships for Bases

§ 3.2 The House received an opinion of the Attorney General outlining the President's authority to acquire offshore naval and air bases from Great Britain and transfer

American destroyers to Great Britain.

On Sept. 3, 1940,⁽¹¹⁾ the House received an opinion from the Attorney General⁽¹²⁾ as to the authority of the President to enter into agreements for the acquisition of offshore military bases (see below). The opinion accompanied the President's message regarding the agreements in question.⁽¹³⁾

AUGUST 27, 1940.

The PRESIDENT,
The White House.

MY DEAR MR. PRESIDENT: In accordance with your request, I have considered your constitutional and statutory authority to proceed by Executive agreement with the British Government immediately to acquire for the United States certain offshore naval and air bases in the Atlantic Ocean without awaiting the inevitable delays which would accompany the conclusion of a formal treaty.

The essential characteristics of the proposal are:

(a) The United States to acquire rights for immediate establishment and use of naval and air bases in Newfoundland, Bermuda, the Bahamas, Jamaica, Santa Lucia, Trinidad, and

British Guiana, such rights to endure for a period of 99 years and to include adequate provisions for access to and defense of such bases and appropriate provisions for their control.

(b) In consideration it is proposed to transfer to Great Britain the title and possession of certain over-age ships and obsolescent military materials now the property of the United States and certain other small patrol boats which, though nearly completed, are already obsolescent.

(c) Upon such transfer all obligation of the United States is discharged. . . . [Our Government] undertakes no defense of the possessions of any country. In short, it acquires optional bases which may be developed as Congress appropriates funds therefor, but the United States does not assume any continuing or future obligation, commitment, or alliance.

The questions of constitutional and statutory authority, with which alone I am concerned, seem to be these:

First. May such an acquisition be concluded by the President under an Executive agreement, or must it be negotiated as a treaty, subject to ratification by the Senate?

Second. Does authority exist in the President to alienate the title to such ships and obsolescent materials; and if so, on what conditions?

Third. Do the statutes of the United States limit the right to deliver the so-called mosquito boats now under construction or the over-age destroyers by reason of the belligerent status of Great Britain? . . .

Accordingly you are respectfully advised:

(a) That the proposed arrangement may be concluded as an Executive

11. 86 CONG. REC. 11355-57, 76th Cong. 3d Sess.
12. See Borchard, *The Attorney General's Opinion on the Exchange of Destroyers for Naval Bases*, 34 *American Journal of International Law* 690 (1940).
13. See §11.7, *infra*, for the text of the President's message.

agreement, effective without awaiting ratification.

(b) That there is Presidential power to transfer title and possession of the proposed considerations upon certification by appropriate staff officers.

(c) That the dispatch of the so-called mosquito boats would constitute a violation of the statute law of the United States, but with that exception there is no legal obstacle to the consummation of the transaction, in accordance, of course, with the applicable provisions of the Neutrality Act as to delivery.

Respectfully submitted.

ROBERT H. JACKSON,
Attorney General.

§ 4. War Powers Act

To ensure proper legislative branch participation in decisions to deploy American forces, legislation on war powers was introduced in the 91st and 92d Congresses.⁽¹⁴⁾

In 1973 the House approved House Joint Resolution 542. The Senate struck all after the enacting clause and inserted in lieu thereof the language of S. 440. Following a conference, a compromise between the House and Senate versions was agreed to.⁽¹⁾

14. See, for example, H.J. Res. 1355, 91st Cong. 2d Sess. (1970); S. 2956, 92d Cong. 1st Sess. (1971); H.J. Res. 1, 92d Cong. 1st Sess. (1971); S. 731, 92d Cong. 1st Sess. (1971).

1. See §4.2, *infra*, for the vote overriding the President's veto of the compromise, H.J. Res. 542.

The conferees resolved a major difference in the two measures which related to defining the authority of the Commander in Chief to deploy troops. S. 440, section 3, provided that in the absence of a congressional declaration of war armed forces could be introduced only in certain circumstances, including repulsion of an armed attack, protection of American citizens being evacuated in situations of danger abroad, and pursuant to specific statutory authorization. Sections of the Senate bill which related to reporting, period of commitment, termination dates, and congressional procedures were expressly tied to section 3. House Joint Resolution 542 did not contain a similar provision.

Section 2(c) in the "Purpose and Policy" provisions of the resolution agreed to by the conferees states:

The constitutional powers of the President as Commander in Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

Unlike the Senate bill, no subsequent section of the resolution re-

fers to section 2(c), the description of war powers of the Commander in Chief. Much of the debate on the conference report focused on whether the President could introduce troops only in the situations described in section 2(c) and in no other situation⁽²⁾ or whether that section merely stated his authority in a manner which did not limit his authority to deploy troops.⁽³⁾ The most revealing expression of the intent of the conferees on this controversy appears in two sentences in the conference report:⁽⁴⁾

Section 2(c) is a statement of the authority of the Commander in Chief respecting the introduction of United States Armed Forces into hostilities. . . . Subsequent sections of the joint resolution are not dependent upon the language of this subsection, as was the

2. Section 2(a) of the act states that insuring the collective judgment of Congress and the President in the introduction of American forces into hostilities is a purpose of the act.
3. In his veto message the President, applying the restrictive interpretation of §2(c), stated that America's effective response in the Berlin crisis of 1961, Cuban missile crisis of 1962, Congo rescue operation of 1964, and the Jordanian crisis of 1970, would have been "vastly complicated or even made impossible." (See 119 CONG. REC. 34990, 34991, 93d Cong. 1st Sess., Oct. 25, 1973.)
4. H. REPT. No. 93-547, 2 U.S. Code legis. and Adm. News, p. 2364 (1973)

case with a similar provision of the Senate bill (section 3).

This statement supports an inference that section 2(c) does not exhaustively define all circumstances in which the President may deploy troops.

A nonrestrictive interpretation of the three situations described in section 2(c) avoids the question whether Congress may define the constitutional authority of the Commander in Chief by statute rather than constitutional amendment. The President in his veto message asserted that a constitutional amendment is the only way in which constitutional authorities of another branch of government may be altered. A statutory attempt to make such alterations is "clearly without force."⁽⁵⁾ The congressional view on this matter is expressed in section 2(b) of the act. Citing and interpreting article I, section 8, clause 11, of the Constitution, section 2(b) states the constitutional provision:

. . . [P]rovided that the Congress shall have power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States or in any department or officer thereof.

Section 3 of the resolution imposes on the President a duty "in

5. See §4.1, *infra*, for the veto message.

every possible instance” to consult with Congress before introducing troops and to consult regularly after such introduction until armed forces are no longer engaged in hostilities or have been removed from such situations. The conferees explained that this provision is not a limitation upon or substitute for other provisions of the resolution. The conferees intended that consultations take place even when advance consultation is not possible.⁽⁶⁾

Section 4 provides that in the absence of a declaration of war, in any case in which United States Armed Forces are introduced in certain circumstances, the President must submit within 48 hours to the Speaker and President pro tempore specified information as well as any other information Congress requests. The President must continue to make reports periodically as long as troops are engaged in hostilities but not less often than once every six months. The objective of this section, explained the conferees, is to insure that Congress by right and as a matter of law will be provided with all the information it needs to carry out its responsibilities.

Section 5 relates to referral of the report to committee and ap-

6. See H. REPT. No. 93-547, 2 U.S. Code Legis. and Adm. News, p. 2364 (1973).

propriate action by the Congress, and requires the President to terminate use of armed forces within 60 days after submission of the report, unless Congress (1) has declared war or enacted specific authorization, (2) has by law extended the 60-day period, or (3) is physically unable to meet. The 60-day period may be extended not more than 30 days. Notwithstanding the 60-day provision, forces engaged in hostilities outside the United States, its possessions, and territories must be removed by the President if Congress so directs by concurrent resolution.⁽⁷⁾

Section 6 mandates that a joint resolution or bill declaring war or

7. *Id.* Statutes have been adopted which authorize the use of concurrent resolutions to achieve congressional purposes and which apply procedures patterned after the War Powers Act. Thus, the statute implementing the United States proposal for an early warning system in Sinai empowers Congress by concurrent resolution to remove U.S. civilian personnel from Sinai if it determines that their safety is jeopardized or that continuation of their role is no longer necessary. 22 USC §2441 note, Pub. L. No. 94-110, 89 Stat. 572, Oct. 13, 1975. The National Emergencies Act authorizes Congress by concurrent resolution to terminate a national emergency. 50 USC §1622, Pub. L. No. 94-412, 90 Stat. 1255, Sept. 14, 1976.

authorizing use of armed forces introduced at least 30 days prior to the 60-day period specified in section 5 be referred in the House to the Committee on Foreign Affairs (renamed the Committee on International Relations on Mar. 19, 1975). When reported by the committee, the measure becomes the pending business and is voted on within three calendar days thereafter unless otherwise determined by the yeas and nays. After passage in one House, the measure is to be referred to the counterpart committee of the other House and reported out not later than 14 calendar days before the expiration of the 60-day period and then voted on. In the case of disagreement between the two Houses, conferees are appointed, and the conference committee must report on the measure no later than four calendar days before the expiration of the 60-day period. If conferees cannot agree within 48 hours, they report back to their respective Houses in disagreement. Notwithstanding any rule concerning printing or delay of consideration of conference reports, the report must be acted on by both Houses not later than the expiration of the 60-day period.

Section 7 provides that a concurrent resolution introduced pursuant to section 5 directing the

President to remove forces engaged in hostilities be referred to the House Committee on Foreign Affairs or to the Senate Committee on Foreign Relations, as the case may be. Such committee must report with recommendations within 15 calendar days unless otherwise determined by the yeas and nays. Such resolution becomes the pending business of the House in question. After passage in one House, the resolution is to be referred to the counterpart committee in the other House, and is to be reported out with recommendations within 15 calendar days, at which time it becomes the pending business of that House. In the case of disagreement between the two Houses, conferees must be promptly appointed. The conference committee must report on the measure within six calendar days after referral to the committee of conference. Such report must be acted on by both Houses not later than six calendar days after the report is filed.

Section 8, relating to interpretation of the joint resolution, states that authority to introduce troops shall not be inferred from any provision of law unless such provision specifically authorizes introduction of forces, or from any treaty unless it is implemented by legislation specifically authorizing in-

trodition of forces. The joint resolution does not necessitate further specific statutory authorization to permit American participation in headquarters operations with armed forces of one or more foreign countries. The term "introduction of United States Armed Forces" is clarified. The joint resolution does not alter constitutional authority of the President or Congress. It does not grant any authority to the President which he would not have had in the absence of the joint resolution.

Sections 9 and 10 relate to separability of provisions and the effective date, respectively.

Collateral References⁽⁸⁾

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8. See also the collateral references in §3, supra, and §10, infra, relating to war powers generally and Vietnam era restrictions on military activity.

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Veto of War Powers Resolution

§ 4.1 The War Powers Resolution was vetoed by the President.

On Oct. 25, 1973,⁽⁹⁾ the President's veto message outlining his

9. 119 CONG. REC. 34990, 34991, 93d Cong. 1st Sess.

objections to the War Powers Resolution was laid before the House.

The Speaker⁽¹⁰⁾ laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I hereby return without my approval House Joint Resolution 542—the War Powers Resolution. While I am in accord with the desire of the Congress to assert its proper role in the conduct of our foreign affairs the restrictions which this resolution would impose upon the authority of the President are both unconstitutional and dangerous to the best interests of our Nation.

The proper roles of the Congress and the Executive in the conduct of foreign affairs have been debated since the founding of our country. Only recently, however, has there been a serious challenge to the wisdom of the Founding Fathers in choosing not to draw a precise and detailed line of demarcation between the foreign policy powers of the two branches.

The Founding Fathers understood the impossibility of foreseeing every contingency that might arise in this complex area. They acknowledged the need for flexibility in responding to changing circumstances. They recognized that foreign policy decisions must be made through close cooperation between the two branches and not through rigidly codified procedures. . . .

House Joint Resolution 542 would attempt to take away, by a mere legislative act, authorities which the President has properly exercised under the Constitution for almost 200 years. One of its provisions would automatically cut off certain authorities after sixty days unless the Congress extended them. An-

other would allow the Congress to eliminate certain authorities merely by the passage of a concurrent resolution—an action which does not normally have the force of law, since it denies the President his constitutional role in approving legislation.

I believe that both these provisions are unconstitutional. The only way in which the constitutional powers of a branch of the Government can be altered is by amending the Constitution—and any attempt to make such alterations by legislation alone is clearly without force.

While I firmly believe that a veto of House Joint Resolution 542 is warranted solely on constitutional grounds, I am also deeply disturbed by the practical consequences of this resolution. For it would seriously undermine this Nation's ability to act decisively and convincingly in times of international crisis. . . .

I am particularly disturbed by the fact that certain of the President's constitutional powers as Commander in Chief of the Armed Forces would terminate automatically under this resolution 60 days after they were invoked. No overt Congressional action would be required to cut off these powers—they would disappear automatically unless the Congress extended them. . . .

This Administration is dedicated to strengthening cooperation between the Congress and the President in the conduct of foreign affairs and to preserving the constitutional prerogatives of both branches of our Government. I know that the Congress shares that goal. A commission on the constitutional roles of the Congress and the President would provide a useful opportunity for both branches to work together toward that common objective.

RICHARD NIXON,
THE WHITE HOUSE,
October 24, 1973.

10. Carl Albert (Okla.).

Passage of War Powers Resolution

§ 4.2 By a two-thirds vote in each body, the House and Senate overrode the President's veto of the War Powers Resolution.

On Nov. 7, 1973, the House by a vote of yeas 284, nays 135, not voting 14,⁽¹¹⁾ and the Senate by a vote of yeas 75, nays 18,⁽¹²⁾ two-thirds in each body voting in the

11. 119 CONG. REC. 36202, 36221, 36222, 93d Cong. 1st Sess. See also 119 CONG. REC. 24707, 24708, 93d Cong. 1st Sess., July 18, 1973, for initial House approval of this joint resolution (H. Rept. No. 93-287, 93d Cong. 1st Sess. [1973]); and 119 CONG. REC. 33858, 33873, 33874, 93d Cong. 1st Sess., Oct. 12, 1973, for consideration and approval of the conference report (H. Rept. No. 93-547) by a vote of yeas 238, nays 123, not voting 73.

12. 119 CONG. REC. 36175, 36197, 36198, 93d Cong. 1st Sess. See also 119 CONG. REC. 25120, 93d Cong. 1st Sess., July 20, 1973, for unanimous-consent agreement to strike from H.J. Res. 542 all after the resolving clause and substitute therefor the text of the Senate version of the War Powers Resolution, S. 440, which the Senate had just approved (p. 25119) by a vote of yeas 72, nays 18 (S. Rept. No. 220, 93d Cong. 1st Sess. [1973]); and 119 CONG. REC. 33569, 93d Cong. 1st Sess., Oct. 10, 1973, for Senate approval of the conference report by a vote of yeas 75, nays 20.

affirmative, agreed to override the President's veto of House Joint Resolution 542, the War Powers Resolution, which became law on Nov. 7, 1973, in the following form: ⁽¹³⁾

SHORT TITLE

Section 1. This joint resolution may be cited as the "War Powers Resolution".

PURPOSE AND POLICY

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces

13. This excerpt is taken from 87 Stat. 555, 93d Cong. 1st Sess. (Pub. L. No. 93-148). It is codified at 50 USC §§ 1541 et seq.

into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President

pro tempore of the Senate a report in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

Sec. 5. (a) Each report submitted pursuant to section 4(a) (1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has ad-

journed for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a) (1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall determine by yeas and otherwise nays.

(d) In the case of any disagreement between the two Houses of Congress

with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5 (b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred

to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provi-

sion specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress

or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

Sec. 9. If any provision of this joint resolution or the application hereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

Sec. 10. This joint resolution shall take effect on the date of its enactment.

§ 5. Declarations of War

Article I, section 8, clause 11 of the Constitution authorizes Congress to declare war. Granting Congress this authority and making the President the Commander in Chief of the Army and Navy represents a compromise between the views of delegates to the Constitutional Convention who wanted to grant Congress authority to "make" war and delegates who wanted to grant such authority to the President alone, the Senate

alone, or the President and Senate together.⁽¹⁴⁾

All declarations of war since 1936 have been made by adoption of joint resolutions approved by the President.⁽¹⁵⁾ Either House may originate a joint resolution to declare war. In all cases during this period, the House suspended the rules and promptly agreed to these joint resolutions.

The provision of the House rules which requires that matters reported by committees not be considered in the House until the third calendar day on which the report has been available to Members does not apply to declarations of war.⁽¹⁶⁾

14. Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess., p. 325 (1973). Delegates Madison and Gerry, who introduced the amendment substituting "declare war" in place of "make war," which appeared in an early draft of the Constitution, noted that the change would, "leav[e] to the Executive the power to repel sudden attacks." 2 M. Farrand, *The Records of the Constitutional Convention of 1787* (New Haven: rev. ed. 1937) 318; and Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess., n. 9, p. 326 (1973).

15. See 4 Hinds' Precedents §3368; and 7 Cannon's Precedents §1038 for earlier precedents relating to declarations of war on Spain and Germany, respectively.

16 Rule XI clause 27(d)(4)(A), *House Rules and Manual* §735(d)(4) (1973).

The House Committee on Foreign Affairs has jurisdiction over legislation declaring war.⁽¹⁷⁾

Despite the constitutional provision authorizing Congress to declare war, American forces have been committed to protracted land wars in Korea and Indochina in the absence of such declarations. After North Korea attacked South Korea in June of 1950, the President without consulting Congress ordered air and sea forces to respond. He committed ground troops when the United Nations Security Council requested assistance from United Nations members. Although the President never requested a declaration of war, he proclaimed the existence of a national emergency in December of 1950, six months after the outbreak of hostilities.⁽¹⁾ Congressional acquiescence in the American involvement in the Indochina war was originally found in the Gulf of Tonkin Resolution approved by the House and Senate in August of 1964.⁽²⁾ Following express repeal of this resolution in January of 1971, Congress in most instances⁽³⁾ approved au-

17. Rule XI clause 7(f), *House Rules and Manual* §689 (1973).

1. See §12.1, *infra*, for the text of this proclamation.

2. See §§8.1, 8.2, *infra*, for discussion of this resolution.

3. See the precedents in §10, *infra*, for restrictions on use of forces.

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.⁽⁴⁾ 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”⁽⁵⁾

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.⁽⁶⁾

§ 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,⁽⁷⁾ 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⁽⁸⁾ 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.⁽⁹⁾

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

The SPEAKER:⁽¹⁰⁾ 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.⁽¹¹⁾

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 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 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,⁽¹²⁾ 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⁽¹³⁾ and approve House Joint Resolution 256, formally declaring a state of war between the United States and the Government of Germany.⁽¹⁴⁾

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:⁽¹⁵⁾ 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.⁽¹⁶⁾

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 ye 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,⁽¹⁷⁾ 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.⁽¹⁸⁾

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:⁽¹⁹⁾ 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,⁽²⁰⁾ 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⁽¹⁾ and pass House Joint Resolution 319, declaring a formal state of war between the United States and Bulgaria.⁽²⁾

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:⁽³⁾ 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,⁽⁴⁾ 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⁽⁵⁾ and pass House Joint Resolution 320, declaring a formal state of war between the United States and the Government of Hungary.⁽⁶⁾

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:⁽⁷⁾ 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,⁽⁸⁾ 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⁽⁹⁾ 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.⁽¹⁰⁾

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:¹¹ 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.

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,⁽¹²⁾ 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.⁽¹³⁾

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:⁽¹⁴⁾ 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

- 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.).

Japan and the Government and the people of the United States and making provision to prosecute the same, was read the first time by its title, and the second time at length, 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 VICE PRESIDENT: Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

MR. CONNALLY: Mr. President, on the passage of the resolution I ask for the yeas and nays.

The yeas and nays were ordered. . . .

MR. CONNALLY: . . . I therefore ask for the yeas and nays on the passage of the joint resolution.

THE VICE PRESIDENT: If there be no amendment proposed, 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 VICE PRESIDENT: The joint resolution having been read three times, the question is, Shall it pass? On that question the yeas and nays have been demanded and ordered. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

The result was announced—yeas 82, nays 0, as follows: . . .

So the joint resolution was passed.

On Germany

§ 7.2 The Senate by yeas and nays vote unanimously agreed to a Senate joint resolution declaring a state of war between the United States and the Government of Germany.

On Dec. 11, 1941,⁽¹⁵⁾ the Senate by a yeas and nays vote of yeas 88, nays 0, agreed to Senate Joint Resolution 119, declaring a state of war between the United States and the Government of Germany.⁽¹⁶⁾

Mr. Connally, from the Committee on Foreign Relations, reported an original joint resolution (S.J. Res. 119) 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, which was read the first time by its title, and the second time at length, 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

15. 87 CONG. REC. 9652, 9653, 77th Cong. 1st Sess.

16. See § 11.2, *infra*, for the President's request for a declaration of war, and § 6.2, *supra*, for House approval.

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

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, I shall presently ask unanimous consent for the immediate consideration of the joint resolution just read to the Senate. Before the request is submitted, however, I desire to say that, being advised of the declaration of war upon the United States by the Governments of Germany and Italy, and anticipating a message by the President of the United States in relation thereto, and after a conference with the Secretary of State, as chairman of the Committee on Foreign Relations, I called a meeting of the committee this morning and submitted to the committee the course I expected to pursue as chairman and the request which I expected to make.

I am authorized by the Committee on Foreign Relations to say to the Senate that after consideration of the text of the joint resolution which I have reported and after mature consideration of all aspects of this matter, the membership of the Committee on Foreign Relations unanimously approve and agree to the course suggested. One member of the committee was absent, but I have authority to express his views.

Mr. President, I ask unanimous consent for the present consideration of the joint resolution.

THE VICE PRESIDENT:⁽¹⁷⁾ Is there objection?

There being no objection, the Senate proceeded to consider the joint resolution (S.J. Res. 119) 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.

THE VICE PRESIDENT: 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 VICE PRESIDENT: The joint resolution having been read the third time, the question is, Shall it pass?

MR. CONNALLY: On that question I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

The result was announced—yeas 88, nays 0, as follows: . . .

So the joint resolution(S.J. Res. 119) was passed.

The preamble was agreed to.

On Italy

§ 7.3 The Senate by yea and nay vote unanimously agreed to a Senate resolution formally declaring a state of war between the United States and the Government of Italy.

On Dec. 11, 1941,⁽¹⁸⁾ the Senate by a vote of yeas 90, nays 0, agreed to Senate Joint Resolution 120, declaring a state of war between the United States and the Government of Italy.⁽¹⁹⁾

18. 87 CONG. REC. 9653, 77th Cong. 1st Sess.

19. See §11.2, *infra*, for the President's request for a declaration of war, and

17. John N. Garner (Tex.).

MR. [TOM T.] CONNALLY [of Texas], from the Committee on Foreign Relations, reported an original joint resolution (S.J. Res. 120) 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, which was read the first time by its title and the second time at length, 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 result [of the vote] was announced—yeas 90, nays 0, as follows:

So the joint resolution (S.J. Res. 120) was passed.

On Bulgaria

§ 7.4 After receiving a message that the House had approved the measure, the Senate by yea and nay vote unanimously agreed to a House joint resolution formally declaring a state of war between the United States and the Government of Bulgaria.

On June 4, 1942,⁽²⁰⁾ the Senate by a vote of yeas 73, nays 0,

§ 6.3, *supra*, for House approval of the Senate joint resolution.

20. 88 CONG. REC. 4851–54, 77th Cong. 2d Sess.

agreed to House Joint Resolution 319, declaring a formal state of war between the United States and the Government of Bulgaria. The House had approved the measure the previous day.⁽¹⁾

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate: . . .

H.J. Res. 319. Joint resolution 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 VICE PRESIDENT:⁽²⁾ The joint resolution having been read three times, the question is, Shall it pass?

MR. [TOM T.] CONNALLY [of Texas]: I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll. . . .

The result was announced—yeas 73, nays 0, as follows: . . .

So the joint resolution (H.J. Res. 319) was passed.

The preamble was agreed to.

On Hungary

§ 7.5 After receiving a message that the House had approved the measure, the Senate

1. See § 11.3, *infra*, for the President's request for a declaration of war, and § 6.4, *supra*, for House approval of this joint resolution.

2. John N. Garner (Tex.).

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

On June 4, 1942,⁽³⁾ the Senate by a vote of yeas 73, nays 0, agreed to House Joint Resolution 320, declaring a formal state of war between the United States and the Government of Hungary. The House had approved the measure the previous day.⁽⁴⁾

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate: . . .

H.J. Res. 320. Joint resolution 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. . . .

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, with reference to House Joint Resolution 320, declaring the fact that a state of war exists between the Government of Hungary and that of the United States, I am authorized by the Committee on Foreign Relations to report the resolution to the Senate with a recommendation that it pass. Consent has already been given for the

3. 88 CONG. REC. 4851, 4852, 4854, 4855, 77TH CONG. 2D SESS.

4. See §11.3, *infra*, for the President's request for a declaration of war, and §6.5, *supra*, for House approval of the joint resolution.

immediate consideration of the joint resolution.

THE VICE PRESIDENT:⁽⁵⁾ Consent has been given for the immediate consideration of the joint resolution.

The Senate proceeded to consider the joint resolution (H.J. Res. 320) declaring that a state of war exists between the Government of Hungary and the Government and people of the United States and making provisions to prosecute the same, which was 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. . . .

THE VICE PRESIDENT: The joint resolution having been read three times, the question is, Shall it pass?

MR. CONNALLY: I ask for the yeas and nays.

The yeas and nays were ordered, and the legislative clerk proceeded to call the roll. . . .

The result was announced—yeas 73, nays 0, as follows: . . .

So the joint resolution (H.J. Res. 320) was passed.

The preamble was agreed to.

On Rumania

§ 7.6 After receiving a message that the House had approved the measure, the Senate unanimously agreed to a House joint resolution formally declaring a state of war between the United

5. John N. Garner (Tex.).

States and the Government of Rumania.

On June 4, 1942,⁽⁶⁾ the Senate by a vote of yeas 73 to nays 0, agreed to House Joint Resolution 321, declaring a formal state of war between the United States and the Government of Rumania. The House had approved the measure the previous day.⁽⁷⁾

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate: . . .

H.J. Res. 321. Joint resolution 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 VICE PRESIDENT:⁽⁸⁾ The joint resolution having been read three times, the question is, Shall it pass?

MR. [TOM T.] CONNALLY [of Texas]: I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll. . . .

The result was announced—yeas 73, nays 0, as follows: . . .

So the resolution (H.J. Res. 321) was passed.

The preamble was agreed to.

6. 88 CONG. REC. 4851, 4852, 4855, 4856, 77th Cong. 2d Sess.
7. See §11.3, *infra*, for the President's request for a declaration of war, and §6.6, *supra*, for House approval of this joint resolution.
8. John N. Garner (Tex.).

§ 8. Legislation Authorizing Military Action Prior to War Powers Act

In several instances prior to the War Powers Act, Congress, usually in response to Presidential requests,⁽⁹⁾ granted the Chief Executive express statutory authority to use force he deemed necessary in specific areas. These so-called "area resolutions" were short of formal declarations of war, but constituted either prior or subsequent acquiescence to Presidential use of force.

A question arose in such situations as to whether, if Congress could authorize the President to use force by approving a statute short of a declaration of war, it could divest the President of that authority merely by repealing the statute. The answer to that question depended on other congressional actions. Only one area resolution, the Gulf of Tonkin Resolution,⁽¹⁰⁾ was repealed. Following repeal, the President continued to direct military operations and send troops to Vietnam, and Con-

9. The exception is the Cuba resolution which was not requested by the President. See §§8.7, 8.8, *infra*, for discussion of this resolution.
10. See §§8.1, 8.2, *infra*, for a discussion of approval and repeal of this resolution.

gress continued to approve legislation providing manpower and supplies for the war effort.

Groups of servicemen who had received orders to fight in Vietnam filed suit contending that repeal of the Gulf of Tonkin Resolution had divested the President and other executive branch officials of authority to prosecute the war. Ruling on this challenge, the Court of Appeals for the Second Circuit held that authorization could be inferred from congressional approval of authorizations and appropriations for war supplies and personnel.⁽¹¹⁾

The following precedents comprise some examples of congressional action prior to the War Powers Act, taken in most instances in response to Presidential requests for such action.

11. *DaCosta v Laird*, 448 F2d 1368 (1971); see also *Orlando v Laird*, 443 F2d 1039 (2d Cir. 1971), cert. denied 404 U.S. 869. Contra, *Mottola v Nixon*, 318 F Supp 538 (N.D. Calif. 1970) which found no ratification [reversed on grounds of lack of standing, 464 F2d 26 (9th Cir. 1972)]. The Supreme Court summarily affirmed a three-judge district court opinion which dismissed a challenge to the constitutionality of the war on political question grounds. *Altee v Richardson*, 411 U.S. 911 (1973), affg. 347 F Supp 689 (E.D.Pa. 1972).

Gulf of Tonkin Resolution

§ 8.1 The House by yeas and nays vote suspended the rules and agreed to a House joint resolution (known as the Gulf of Tonkin Resolution) supporting the President's actions to repel aggression by North Vietnam.

On Aug. 7, 1964,⁽¹²⁾ the House by a vote of yeas 416, nays 0, present 1, not voting 14, suspended the rules and agreed to House Joint Resolution 1145, known as the Gulf of Tonkin Resolution, supporting the President's action to repel aggression by North Vietnam. The resolution was approved by the President on Aug. 10, 1964, in the following form:⁽¹³⁾

JOINT RESOLUTION

To promote the maintenance of international peace and security in southeast Asia.

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels

12. 110 CONG. REC. 18538-55, 88th Cong. 2d Sess.

13. This excerpt is taken from 78 Stat. 384, 88th Cong. 2d Sess. (Pub. L. No. 88-408).

See § 8.2, *infra*, for Senate approval of this measure.

lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Sec. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Parliamentarian's Note: After conferring with the congressional leadership and others with respect to attacks by North Vietnamese torpedo boats against U.S. destroyers, President Johnson ordered retaliation against the bases from which the torpedo boats operated. In an address to the nation on radio and TV, late on Monday, Aug. 3, he stated that he had requested the Congress to support his action by a resolution. On Aug. 5, the President transmitted to the Congress a message on the developing situation in Southeast Asia and a draft of a resolution. The Committee on Foreign Affairs, to which the message was referred (H. Doc. 333), asked for and was granted permission to sit during the session of the House on Aug. 6.

Authority granted by this resolution was repealed by approval, on Jan. 12, 1971, of section 12 of an act to amend the Foreign Military Sales Act.⁽¹⁴⁾

§ 8.2 The Senate by yea and nay vote agreed to a House

14. 84 Stat. 2053, 2055, 91st Cong. 1st Sess. (Pub. L. No. 91-672).

joint resolution known as the Gulf of Tonkin Resolution supporting the President's actions to repel aggression by North Vietnam.

On Aug. 7, 1964,⁽¹⁵⁾ the Senate by a vote of yeas 88, nays 2, agreed to House Joint Resolution 1145, known as the Gulf of Tonkin Resolution, supporting the President's actions to repel aggression by North Vietnam.⁽¹⁶⁾

Authority granted by this resolution was repealed by approval, on Jan. 12, 1971, of section 12 of an act to amend the Foreign Military Sales Act.⁽¹⁷⁾

Resolution to Protect Formosa and Pescadores

§ 8.3 The House by yea and nay vote agreed to a House joint resolution authorizing the President to employ armed forces to protect the security of Formosa, the Pescadores, and related positions and territories of that area.

On Jan. 25, 1955,⁽¹⁸⁾ the House by a vote of yeas 410, nays 3, not

- 15. 110 CONG. REC. 18470, 18471, 88th Cong. 2d Sess.
- 16. See §8.1, supra, for the House vote and text of this measure.
- 17. 84 Stat. 2053, 2055 (Pub. L. No. 91672) H.R. 15628, 91st Cong. 1st Sess.
- 18. 101 CONG. REC. 659, 669, 680, 681, 84th Cong. 1st Sess.

voting 21, agreed to House Joint Resolution 159,⁽¹⁹⁾ which was approved by the President on Jan. 29, 1955, in the following form:⁽²⁰⁾

JOINT RESOLUTION

Authorizing the President to employ the Armed Forces of the United States for protecting the security of Formosa, the Pescadores and related positions and territories of that area.

Whereas the primary purpose of the United States, in its relations with all other nations, is to develop and sustain a just and enduring peace for all; and Whereas certain territories in the West Pacific under the jurisdiction of the Republic of China are now under armed attack, and threats and declarations have been and are being made by the Chinese Communists that such armed attack is in aid of and in preparation for armed attack on Formosa and the Pescadores. . . . Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be and he hereby is authorized to employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attack, this authority to include the securing and protection of such related positions and territories of that area now in friendly hands and the taking of such other measures as he

- 19. See §8.4, infra, for Senate approval of this measure.
- 20. This excerpt is taken from 69 Stat. 7, 84th Cong. 1st Sess., Ch. 4 (Pub. L. No. 84-4).

judges to be required or appropriate in assuring the defense of Formosa and the Pescadores.

This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, and shall so report to the Congress.

§ 8.4 The Senate by yea and nay vote agreed to a House joint resolution authorizing the President to employ armed forces to protect the security of Formosa, the Pescadores, and related positions.

On Jan. 28, 1955,⁽¹⁾ the Senate by a vote of yeas 85, nays 3, agreed to House Joint Resolution 159, directing the President to employ armed forces to protect the security of Formosa, the Pescadores, and related positions in the area.⁽²⁾

Resolution to Protect Middle Eastern Nations

§ 8.5 The House by yea and nay vote agreed to a House joint resolution to promote peace and stability in the Middle East by authorizing

1. 101 CONG. REC. 994, 995, 84th Cong. 1st Sess.
2. See §8.3, supra, for the text of and House vote on this measure.

the President to cooperate with and assist any nation or group of nations in that area in the development of economic strength, and to undertake programs of military assistance; the resolution further stated congressional intent with respect to using armed forces of the United States to secure and protect the territorial integrity and political independence of any nation which requests aid from armed aggression by any nation controlled by communism.

On Mar. 7, 1957,⁽³⁾ the House by a vote of 350 yeas, 60 nays, not voting 23, agreed to House Resolution 188, to accept House Joint Resolution 117, authorizing the President to cooperate with nations of the Middle East in the development of economic strength, to undertake programs of military assistance, and to employ armed forces.⁽⁴⁾

The joint resolution was approved by the President in the following form on Mar. 9, 1957:⁽⁵⁾

3. 103 CONG. REC. 3250, 3265, 3266, 85th Cong. 1st Sess.
4. See §8.6, infra, for the Senate vote on the House joint resolution.
5. This language is taken from 71 Stat. 5, 85th Cong. 1st Sess. [Pub. L. No. 85-7] (footnotes omitted).

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The President be and hereby is authorized to cooperate with and assist any nation or group of nations in the general area of the Middle East desiring such assistance in the development of economic strength dedicated to the maintenance of national independence.

Sec. 2. The President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any such nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism: *Provided*, That such employment shall be consonant with the treaty obligations of the United States and with the Constitution of the United States.

Sec. 3. The President is hereby authorized to use during the balance of fiscal year 1957 for economic and military assistance under this joint resolution not to exceed \$200,000,000 from any appropriation now available for carrying out the provisions of the Mutual Security Act of 1954, as amended, in accord with the provisions of such Act: *Provided*, That, whenever the President determines it to be important to the security of the United States, such use may be under the au-

thority of section 401(a) of the Mutual Security Act of 1954, as amended (except that the provisions of section 105(a) thereof shall not be waived), and without regard to the provisions of section 105 of the Mutual Security Appropriation Act, 1957. . . .

Sec. 5. The President shall within the months of January and July of each year report to the Congress his action hereunder.

Sec. 6. This joint resolution shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations or otherwise except that it may be terminated earlier by a concurrent resolution of the two Houses of Congress.

§ 8.6 The Senate agreed to a House joint resolution to promote peace and stability in the Middle East by authorizing the President to assist nations in that area in the development of economic strength, and to undertake programs of military assistance; the resolution also endorsed the concept of employing armed forces of the United States to secure and protect the territorial integrity and political independence of any nation which requests aid from armed aggression by any nation controlled by communism.

On Mar. 5, 1957,⁽⁶⁾ the Senate by a vote of 72 yeas to 19 nays, agreed to House Joint Resolution 117,⁽⁷⁾ authorizing the President to cooperate with and assist any nation or group of nations in that area in the development of economic strength, to undertake programs of military assistance, and to employ American Armed Forces to resist aggression as stated above. This House joint resolution was approved in lieu of Senate Joint Resolution 19.

Resolution Regarding Soviet Weapons in Cuba

§ 8.7 The Senate agreed to a Senate joint resolution expressing the position of the United States with respect to Soviet buildup of weapons in Cuba.

On Sept. 20, 1962,⁽⁸⁾ the Senate by a vote of 86 yeas, 1 nay, agreed to Senate Joint Resolution 230, expressing the position of the United States with respect to buildup of Soviet weapons in Cuba.⁽⁹⁾

6. 103 CONG. REC. 3127, 3129, 3130, 85th Cong. 1st Sess.

7. See §8.5, supra, for the text of and House vote on this measure.

8. 108 CONG. REC. 20024, 20058, 87th Cong. 2d Sess.

9. See §8.8, infra, for the text of and House vote on this measure.

§ 8.8 After rejecting a motion to recommit the measure, the House by yeas and nays vote agreed to a Senate joint resolution expressing the position of the United States with respect to Soviet buildup of weapons in Cuba.

On Sept. 26, 1962,⁽¹⁰⁾ the House by a vote of yeas 384, nays 7, not voting 44, agreed to a Senate joint resolution which was approved by the President on Oct. 3, 1962, in the following form:⁽¹¹⁾

Whereas President James Monroe, announcing the Monroe Doctrine in 1823, declared that the United States would consider any attempt on the part of European powers "to extend their system to any portion of this hemisphere as dangerous to our peace and safety"; and

Whereas in the Rio Treaty of 1947 the parties agreed that "an armed attack by any State against an American State shall be considered as an attack against all the American States . . . one of the said contracting parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self defense recognized by article 51 of the Charter of the United Nations"; and

Whereas the international Communist movement has increasingly ex-

10. 108 CONG. REC. 20859, 20909-11, 87th Cong. 2d Sess.

11. See §8.7, supra, for Senate approval of this measure. This excerpt is taken from 76 Stat. 697, 87th Cong. 2d Sess. (Pub. L. No. 87-733).

tended into Cuba its political, economic, and military sphere of influence; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States is determined—

(a) to prevent by whatever means may be necessary, including the use of arms, the Marxist-Leninist regime in Cuba from extending, by force or the threat of force, its aggressive or subversive activities to any part of this hemisphere;

(b) to prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States; and

(c) to work with the Organization of American States and with freedom-loving Cubans to support the aspirations of the Cuban people for self-determination.

Passage of the Senate joint resolution followed rejection by a vote of yeas 140, nays 251, not voting 46, of a motion to recommit with instructions which had been offered by Mr. William S. Broomfield, of Michigan.

Parliamentarian's Note: This resolution was approved prior to the Cuban missile crisis of 1962.

Resolution to Protect Berlin

§ 8.9 The House and Senate agreed to a House concurrent resolution expressing the determination of Congress to prevent by whatever means, including the use of

arms, Soviet violation of American, British, and French rights to Berlin, including ingress and egress, and to fulfill the American commitment to the people of Berlin.

On Oct. 5, 1962, the House by a vote of yeas 312, nays 0, not voting 123,⁽¹²⁾ and on Oct. 10, 1962, the Senate by voice vote,⁽¹³⁾ agreed to House Concurrent Resolution 570, expressing the sense of the Congress with respect to Berlin in the following language:

Whereas the primary purpose of the United States in its relations with all other nations is and has been to develop and sustain a just and enduring peace for all; and

Whereas it is the purpose of the United States to encourage and support the establishment of a free, unified, and democratic Germany; and

Whereas in connection with the termination of hostilities in World War II of the United States, the United Kingdom, France, and the Soviet Union freely entered into binding agreements under which the four powers have the right to remain in Berlin, with the right of ingress and egress, until the conclusion of a final settlement with the Government of Germany; and

Whereas no such final settlement has been concluded by the four powers and the aforementioned agreements continue in force: Now, therefore, be it

12. 108 CONG. REC. 22618-38, 87th Cong. 2d Sess.

13. *Id.* at pp. 22964-66.

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress—

(a) that the continued exercise of United States, British, and French rights in Berlin constitutes a fundamental political and moral determination;

(b) that the United States would regard as intolerable any violation by the Soviet Union directly or through others of those rights in Berlin, including the right of ingress and egress;

(c) that the United States is determined to prevent by whatever means may be necessary, including the use of arms, any violation of those rights by the Soviet Union directly or through others, and to fulfill our commitment to the people of Berlin with respect to their resolve for freedom.

Authorization to Activate Reserve Forces

§ 8.10 The House agreed to a Senate joint resolution authorizing the President to order units and members of the Ready Reserve to active duty for not more than 12 months.

On July 31, 1961,⁽¹⁴⁾ the House by a vote of yeas 403, nays 2, not voting 32, agreed to Senate Joint Resolution 120, authorizing the President to order units and members of the Ready Reserve into active military service. The joint

14. 107 CONG. REC. 14051, 14061, 14062, 87th Cong. 1st Sess.

resolution, passed by the Senate on a vote of yeas 75, nays 0, on July 28, 1961,⁽¹⁵⁾ and approved by the President on Aug. 1, 1961,⁽¹⁶⁾ reads as follows:⁽¹⁷⁾

JOINT RESOLUTION

To authorize the President to order units and members in the Ready Reserve to active duty for not more than twelve months, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, until July 1, 1962, the President may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve of an armed force to active duty for not more than twelve consecutive months. However, not more than two hundred and fifty thousand members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

Sec. 2. Notwithstanding any other provision of law, until July 1, 1962, the President may authorize the Secretary of Defense to extend enlistments, appointments, periods of active duty, periods of active duty for training, peri-

15. *Id.* at pp. 13930, 13942.

16. See 107 CONG. REC. 14370, 87th Cong. 1st Sess., Aug. 2, 1961, for announcement in the Senate of Presidential approval.

17. This excerpt is taken from 75 Stat. 242, 87th Cong. 1st Sess. (Pub. L. No. 87-117).

ods of obligated service, or other military status, in any component of an armed force or in the National Guard that expire before July 1, 1962, for not more than twelve months.

Parliamentarian's Note: In an address to the Nation on July 25, 1961, President John F. Kennedy requested authority to call up the Ready Reserves to respond to the Berlin crisis.⁽¹⁸⁾

§ 8.11 During the Cuban missile crisis, the Senate and House agreed to a Senate joint resolution authorizing the President to activate units and members of the Ready Reserve, for not more than 12 months.

On Sept. 13, 1962, the Senate by a vote of 76 yeas, 0 nays,⁽¹⁹⁾ and on Sept. 24, 1962, the House by a vote of 342 yeas, 13 nays, 80 not voting,⁽²⁰⁾ agreed to Senate Joint Resolution 224, authorizing the President to activate units and members of the Ready Reserve. The measure was approved on Oct. 3, 1962, in the following form: ⁽¹⁾

18. This address is reprinted at 107 CONG. REC. 13460-62, 87th Cong. 1st Sess., July 26, 1961.
 19. 108 CONG. REC. 19349, 19365, 87th Cong. 2d Sess.
 20. *Id.* at pp. 20489, 20521, 20522
 1. This excerpt is taken from 76 Stat. 710, 87th Cong. 2d Sess. (Pub. L. No. 87-736).

JOINT RESOLUTION

To authorize the President to order units and members in the Ready Reserve to active duty for not more than twelve months, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, until February 28, 1963, the President may, without the consent of the persons concerned, order any unit, or any member, of the Ready Reserve of an armed force to active duty for not more than twelve consecutive months. However, not more than one hundred and fifty thousand members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

Sec. 2. Notwithstanding any other provision of law until February 28, 1963, the President may authorize the Secretary of Defense to extend enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service or other military status, in any component of an armed force or in the National Guard that expire before February 28, 1963, for not more than twelve months. However, if the enlistment of a member of the Ready Reserve who is ordered to active duty under the first section of this Act would expire after February 28, 1963, but before he has served the entire period for which he was so ordered to active duty, his enlistment may be extended until the last day of that period.

Sec. 3. No member of the Ready Reserve who was involuntarily ordered to

active duty or whose period of active duty was extended under the Act of August 1, 1961, Public Law 87-117 (75 Stat. 242), may be involuntarily ordered to active duty under this Act.

§ 9. Pre-World War II Legislative Restrictions on Military Activity

The German invasion of Poland in September of 1939 and the subsequent declarations of war on Germany by Britain and France intensified the public debate over United States involvement or support for its traditional allies in the conflict.

Shortly after the German invasion, the President by proclamation convened an extraordinary session of Congress to act on neutrality legislation.⁽²⁾ Accepting the President's request,⁽³⁾ Congress repealed provisions of the Neutrality Acts of 1935 and 1937 which prohibited shipments of arms and ammunition to belligerent nations.⁽⁴⁾

Congress later authorized the President to provide military sup-

2. See § 12.3, *infra*, for this proclamation.
3. See § 11.6, *infra*, for a discussion of the President's address to a joint session.
4. See § 9.1, *infra*, for the discussion of the Neutrality Act of 1939.

plies to American republics.⁽⁵⁾ The concept of providing assistance to other nations which originated in the joint resolution making military assistance available to American republics was extended beyond the Western Hemisphere. The Lend-Lease Act authorized the President to direct the manufacture, lease, or loan of military and naval supplies to "the government of any country whose defense the President deems vital to the defense of the United States."⁽⁶⁾ This act permitted the United States to supply Britain and other nations in their struggle against Germany.

At the request of the President, Congress approved the first peacetime draft in the nation's history, the Selective Service Act of 1940, but prohibited the employment of inducted land forces outside the Western Hemisphere.⁽⁷⁾ An identical restriction had been imposed a month earlier in a joint resolution authorizing the President to activate reserve and retired military personnel.⁽⁸⁾ Protecting the Western Hemisphere became sig-

5. See § 9.2, *infra*, for a discussion of this measure. The Neutrality Act of 1939 did not apply to American republics.
6. See § 9.3, *infra*, for a discussion of the Lend-Lease Act.
7. See § 9.5, *infra*, for this restriction.
8. See § 9.4, *infra*, for this resolution.

nificant in actions preceding American involvement in World War II. The President justified his actions as in the interest of Western Hemisphere defense when he acted to acquire British territory in Newfoundland, Bermuda, and certain Caribbean islands for bases in exchange for out-of-date American destroyers,⁽⁹⁾ and sent American troops to replace British forces in Iceland.⁽¹⁰⁾

Legislation regulating the economy was enacted prior to and during World War II. The Priorities Act of May 31, 1941,⁽¹¹⁾ empowered the President to allocate any material where necessary to facilitate the defense effort. The Second War Powers Act⁽¹²⁾ extended this authority. These two acts furnished the statutory foundation for the extensive system of consumer rationing administered by the Office of Price Administration, as well as for the comprehensive control of industrial materials and output which was exercised by the

War Production Board.⁽¹³⁾ Under the Emergency Price Control Act,⁽¹⁴⁾ the Office of Price Administration regulated the price of almost all commodities, as well as the rentals for housing accommodations in scores of defense rental areas. The War Labor Disputes Act⁽¹⁵⁾ permitted the President to commandeer plants which were closed by strikes. The Renegotiation Act,⁽¹⁶⁾ which the Su-

9. See §11.7, *infra*. See also §3.2, *supra*, for an opinion of the Attorney General as to the constitutionality of this action taken without consulting Congress.

10. See §11.8, *infra*, for an announcement of this action.

11. 55 Stat. 236, 77th Cong. 1st Sess. (Pub. L. No. 77-92).

12. 56 Stat. 176, 77th Cong. 2d Sess. (Pub. L. No. 77-507).

13. Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess. 337 (1973).

14. 56 Stat. 23, 77th Cong. 2d Sess. (Pub. L. No. 77-421).

15. 57 Stat. 163, 78th Cong. 1st Sess. (Pub. L. No. 78-89).

16. The Supreme Court in *Lichter v United States*, 334 U.S. 742, 745 (1948) stated that the term "the Renegotiation Act" included 56 Stat. 226, 77th Cong. 2d Sess. (Pub. L. No. 77-528), the Sixth Supplemental National Defense Appropriation Act, sometimes called the First Renegotiation Act; 56 Stat. 798, 801, 77th Cong. 2d Sess. (Pub. L. No. 77-753), the Revenue Act of 1942, Title VIII, Renegotiation of War Contracts; 57 Stat. 347, 78th Cong. 1st Sess. (Pub. L. No. 78-108), Military Appropriations Act of 1944; 57 Stat. 564, 78th Cong. 1st Sess. (Pub. L. No. 78-149), an act to prevent payment of excessive fees or compensation in connection with the negotiation of war contracts; 58 Stat. 21, 78-93, 78th Cong. 2d Sess. (Pub. L. No. 78-235), Revenue Act of 1943, Title VII, Re-

preme Court found to be a proper exercise of the war powers by Congress,⁽¹⁷⁾ authorized the government to recover excessive profits realized on war contracts.

Neutrality Act

§ 9.1 The House and Senate agreed to the conference report on the Neutrality Act of 1939.

On Nov. 3, 1939, the House by a vote of yeas 243, nays 172, not voting 14,⁽¹⁸⁾ and the Senate by a vote of yeas 55, nays 24,⁽¹⁹⁾ agreed to the conference report (H. Rept. No. 1475) on House Joint Resolution 306, the Neutrality Act of 1939, to preserve the neutrality and peace of the United States and secure the safety of its citizens and their interests.⁽²⁰⁾

negotiation of War Contracts, and Title VIII, Repricing of War Contracts.

17. *Lichter v United States*, 334 U.S. 742 (1948).
18. 85 CONG. REC. 1389, 76th Cong. 2d Sess. See also pp. 1381–86, for the conference report and statement of the conferees.
19. *Id.* at p. 1356.
20. 22 USC §§441, 444, 445, 447–451, 453–457; Pub. Res. No. 54, 54 Stat. 4, Ch. 2, H.J. Res. 306, 76th Cong. 2d Sess., approved Nov. 4, 1939. Neutrality legislation had been ap-

The act, which did not apply to any American republic engaged in war against a non-American state or states, authorized the President to issue a proclamation naming foreign states as belligerents whenever he or the Congress by concurrent resolution found that a state of war existed between foreign states.⁽¹⁾ He was also authorized to require a bond from the owner or person in command of any domestic or foreign vessel which he had reason to believe was about to carry out of a port or from the jurisdiction of the United States, fuel, men, arms, ammunition, implements of war, supplies, dispatches, or information to any warship, tender, or supply ship of a belligerent state; and to promulgate rules and regulations.⁽²⁾

It was further provided that where states and areas are named as being at war in a Presidential proclamation issued pursuant to

proved on Aug. 31, 1935 (Pub. Res. No. 67, 49 Stat. 1081, S.J. Res. 173, 74th Cong. 1st Sess.), and amended on May 1, 1937 (Pub. Res. No. 27, 50 Stat. 121, S.J. Res. 251, 75th Cong. 1st Sess.).

1. See § 12.4, *infra*, for an example of this kind of proclamation.
2. This provision effectuated a request of the President to repeal embargo provisions of earlier Neutrality Acts. See § 11.6, *infra*, for a discussion of the President's message requesting the Neutrality Act of 1939.

authority granted in the act, no American vessels may lawfully carry passengers or articles to such states.⁽³⁾ Similarly, the terms of the act provided that no American citizen or vessel may lawfully proceed into an area designated by the President as a combat zone.⁽⁴⁾ Moreover, no American citizen may lawfully travel on any vessel of any such state and no American merchant vessel engaged in commerce with any foreign state may lawfully be armed.⁽⁵⁾ And no person in the United States may lawfully engage in certain financial transactions with any government or any political subdivision of such states or person acting for or on behalf of such governments.⁽⁶⁾

3. This provision, §2 of the Neutrality Act of 1939, was repealed by 55 Stat. 764, Ch. 473 §1, 77th Cong. 1st Sess. (Pub. L. No. 77-294), approved on Nov. 17, 1941.
4. This provision, §3 of the Neutrality Act of 1939, was repealed by 55 Stat. 764, Ch. 473 §1, 77th Cong. 1st Sess. (Pub. L. No. 77-294), approved on Nov. 17, 1941.
5. This provision, §6 of the Neutrality Act of 1939, was repealed by 55 Stat. 764, Ch. 473 §2, 77th Cong. 1st Sess. (Pub. L. No. 77-294), approved Nov. 17, 1941.
6. This provision, §7 of the Neutrality Act of 1939, was amended to be inoperative when the United States engages in war. 56 Stat. 95, Ch. 104,

The act also provided that no person within the United States may solicit or receive any contribution for or on behalf of a government, agency, or instrumentality of such states. Whenever the President places special restrictions on the use of ports and territorial waters of the United States, submarines and armed merchant vessels of a foreign state may not enter or depart from those ports or territorial waters.⁽⁷⁾

The act also established the National Munitions Control Board.⁽⁸⁾

Military Assistance to American Republics

§9.2 The Senate and House agreed to a joint resolution authorizing the Secretaries of War and of the Navy to assist the governments of American republics to increase their military and naval establishments.

On May 28, 1940, the Senate amended and passed,⁽⁹⁾ and on

77th Cong. 2d Sess. (Pub. L. No. 77-459), approved on Feb. 21, 1942.

7. See §12.5, *infra*, for such restrictions.
8. This provision, §12 of the Neutrality Act of 1939, was repealed by 68 Stat. 861, Ch. 937, title V §542(a) (12), 83d Cong. 2d Sess. (Pub. L. No. 83-665, H.R. 9678), approved on Aug. 26, 1954.
9. 86 CONG. REC. 6977, 76th Cong. 3d Sess.

June 5, 1940, the House agreed to Senate amendments and passed,⁽¹⁰⁾ House Joint Resolution 367, authorizing the President in his discretion to direct the Secretary of War to manufacture or otherwise procure coast-defense and antiaircraft materiel, including ammunition therefor, and to direct the Secretary of the Navy to construct vessels of war on behalf of any American republic.⁽¹¹⁾

Lend-Lease Act

§ 9.3 The Senate and House agreed to a bill further to promote the defense of the United States, known as the Lend-Lease Act, which authorized the President to direct manufacture, lease, and loan of war supplies to foreign governments.

On Mar. 8, 1941, the Senate by a vote of yeas 60, nays 31, not voting 4, amended and agreed to,⁽¹²⁾ and the House by a vote of yeas 317, nays 71, present 1, not voting 40,⁽¹³⁾ agreed to Senate amend-

ments and passed, H.R. 1776, further to promote the defense of the United States, known as the Lend-Lease Act, which authorized the President to direct manufacture of defense articles for the government of any country whose defense the President deemed vital to the defense of the United States, and to direct the lease or loan of defense articles. The act was approved in the following language:⁽¹⁴⁾

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "An Act to Promote the Defense of the United States".

Sec. 2. As used in this Act—

(a) The term "defense article" means—

(1) Any weapon, munition, aircraft, vessel, or boat;

(2) Any machinery, facility, tool, material, or supply necessary for the manufacture, production, processing, repair, servicing, or operation of any article described in this subsection. . . .

Sec. 3. (a) Notwithstanding the provisions of any other law, the President may, from time to time, when he deems it in the interest of national defense, authorize the Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government—

1941, for initial House approval of this bill by a vote of yeas 260, nays 165, not voting 6.

10. *Id.* at p. 7616. See 85 CONG. REC. 9861, 76th Cong. 1st Sess., July 24, 1939, for initial House approval of this joint resolution.

11. Pub. Res. No. 83, 54 Stat. 396 (June 15, 1940).

12. 87 CONG. REC. 2097. 77th Cong. 1st Sess.

13. *Id.* at p. 2178. See 87 CONG. REC. 815, 77th Cong. 1st Sess., Feb. 8,

14. The text is taken from 55 Stat. 31 (Pub. L. No. 77-11), Mar. 11, 1941.

(1) To manufacture in arsenals, factories, and shipyards under their jurisdiction, or otherwise procure, to the extent to which funds are made available therefor, or contracts are authorized from time to time by the Congress, or both, any defense article for the government of any country whose defense the President deems vital to the defense of the United States.

(2) To sell, transfer title to, exchange, lease, lend, or otherwise dispose of, to any such government any defense article, but no defense article not manufactured or procured under paragraph (1) shall in any way be disposed of under this paragraph, except after consultation with the Chief of Staff of the Army or the Chief of Naval Operations of the Navy, or both.
 . . .⁽¹⁵⁾

(3) To test, inspect, prove, repair, outfit, recondition, or otherwise to place in good working order, to the extent to which funds are made available therefor, or contracts are authorized from time to time by the Congress, or both, any defense article for any such government, or to procure any or all such services by private contract.
 . . .⁽¹⁶⁾

(c) After June 30, 1943, or after the passage of a concurrent resolution by the two Houses before June 30, 1943, which declares that the powers conferred by or pursuant to subsection (a) are no longer necessary to promote the defense of the United States, neither

the President nor the head of any department or agency shall exercise any of the powers conferred by or pursuant to subsection (a); except that until July 1, 1946, any of such powers may be exercised to the extent necessary to carry out a contract or agreement with such a foreign government made before July 1, 1943, or before the passage of such concurrent resolution, whichever is the earlier. . . .⁽¹⁷⁾

Sec. 5. (a) The Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government involved shall, when any such defense article or defense information is exported, immediately inform the department or agency designated by the President to administer section 6 of the Act of July 2, 1940 (54 Stat. 714), of the quantities, character, value, terms of disposition, and destination of the article and information so exported.

(b) The President from time to time, but not less frequently than once every ninety days, shall transmit to the Congress a report of operations under this Act except such information as he deems incompatible with the public interest to disclose. Reports provided for under this subsection shall be transmitted to the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, if the Senate or the House of Representatives, as the case may be, is not in session.

Sec. 6. (a) There is hereby authorized to be appropriated from time to

15. See 57 Stat. 2], 25, 78th Cong. 1st Sess. (Pub. L. No. 78-11), for an amendment to this section.

16. See 58 Stat. 222, 223, 78th Cong. 2d Sess. (Pub. L. No. 78-304), for an amendment to this provision.

17. See 59 Stat. 52, 79th Cong. 1st Sess. (Pub. L. No. 79-31); 58 Stat. 222, 223, 78th Cong. 2d Sess. (Pub. L. No. 78-304); and 57 Stat. 20, 78th Cong. 1st Sess. (Pub. L. No. 78-9), for amendments to this provision.

time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this Act.

(b) All money and all property which is converted into money received under section 3 from any government shall, with the approval of the Director of the Budget, revert to the respective appropriation or appropriations out of which funds were expended with respect to the defense article or defense information for which such consideration is received, and shall be available for expenditure for the purpose for which such expended funds were appropriated by law, during the fiscal year in which such funds are received and the ensuing fiscal year; but in no event shall any funds so received be available for expenditure after June 30, 1946. . . .⁽¹⁸⁾

Sec. 11. If any provision of this Act or the application of such provision to any circumstance shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances shall not be affected thereby.

Reserve Forces Limited to Western Hemisphere

§ 9.4 The House and Senate agreed to a provision re-

18. See 61 Stat. 449, 450, 80th Cong. 1st Sess. (Pub. L. No. 80-123), for repeal of this provision which had been amended by 59 Stat. 52, 79th Cong. 1st Sess. (Pub. L. No. 79-31); 58 Stat. 222, 223, 78th Cong. 2d Sess. (Pub. L. No. 78-304); and 57 Stat. 20, 78th Cong. 1st Sess. (Pub. L. No. 78-9).

stricting employment of reserve components of the United States Army beyond the limits of the Western Hemisphere in a Senate joint resolution authorizing the President to activate the reserves.

On Aug. 15, 1940,⁽¹⁹⁾ the House by a vote of yeas 342, nays 34, not voting 54, agreed to Senate Joint Resolution 286, authorizing the President to order members and units of reserve components and retired personnel of the Regular Army into active military service. The joint resolution, which was passed by the Senate by a vote of yeas 71, nays 7, on Aug. 8, 1940,⁽²⁰⁾ and signed by the President on Aug. 27, 1940, as Public

19. 86 CONG. REC. 10429, 10448, 10449, 76th Cong. 3d Sess. See also 86 CONG. REC. 10763, 76th Cong. 3d Sess., Aug. 22, 1940, for House approval of the conference report.

20. *Id.* at p. 10068. The Senate by a vote of yeas 31, nays 45, rejected a motion to recommit the joint resolution with instructions to report it back forthwith with an amendment substituting "continental United States and Territories and possessions of the United States" in place of the remainder of section 1 beginning with "Western Hemisphere." *Id.* at pp. 10067, 10068. See also 86 CONG. REC. 10791, 76th Cong. 3d Sess., Aug. 23, 1940, for Senate voice vote approval of this measure.

Resolution No. 96,⁽¹⁾ contained the following restriction on use of reserves:⁽²⁾

. . . [T]he members and units of the reserve components of the Army of the United States ordered into active Federal service under this authority shall not be employed beyond the limits of the Western Hemisphere except in the territories and possessions of the United States, including the Philippine Islands.

After commencement of World War II, this provision was repealed.⁽³⁾

Inducted Land Forces Limited to Western Hemisphere

§9.5 The House and Senate agreed to a provision restricting employment of inducted land forces beyond the limits of the Western Hemisphere in a conference report on the Selective Training and Service Act of 1940.

On Sept. 14, 1940,⁽⁴⁾ the House by a vote of yeas 233, nays 124,

1. See 86 CONG. REC. 11089, 76th Cong. 3d Sess., Aug. 28, 1940, for announcement in the Senate of Presidential approval.
2. This excerpt is taken from 54 Stat. 858, 859, 76th Cong. 3d Sess.
3. See 55 Stat. 799, 77th Cong. 1st Sess. (Pub. L. No. 77-338), approved Dec. 13, 1941.
4. 86 CONG. REC. 12207, 12227, 12228, 76th Cong. 3d Sess.

present 2, not voting 70, agreed to a conference report on S. 4164, the Selective Training and Service Act of 1940. This measure, passed as a conference report by the Senate on a vote of yeas 47, nays 25, on Sept. 14, 1940,⁽⁵⁾ and signed by the President on Sept. 16, 1940, as Public Law No. 783,⁽⁶⁾ contained the following restriction on use of inducted land forces:⁽⁷⁾

(e) Persons inducted into the land forces of the United States under this Act shall not be employed beyond the limits of the Western Hemisphere except in the Territories and possessions of the United States, including the Philippine Islands.

After the commencement of World War II, this provision was repealed.⁽⁸⁾

5. *Id.* at pp. 12156-61.
6. See 86 CONG. REC. 12290, 76th Cong. 3d Sess., Sept. 19, 1940, for announcement in the Senate of Presidential approval.
7. This excerpt is taken from 54 Stat. 885, 886, 76th Cong. 3d Sess.
8. See 55 Stat. 799, 77th Cong. 1st Sess. (Pub. L. No. 77-338) approved Dec. 13, 1941. The House by a vote of 203 yeas, 202 nays, had agreed to H.J. Res. 222, extending the period of conscription beyond the 12 months established in the Selective Training and Service Act of 1940. 87 CONG. REC. 6995, 7074, 7075, 77th Cong. 1st Sess., Aug. 12, 1941.

§ 10. Vietnam Era Restrictions on Military Activity

As debate over American involvement in Indochina intensified following the 1968 elections, Congress, exercising its constitutional authority to raise and support armies,⁽⁹⁾ imposed restrictions on the obligation and expenditure of funds relating to military activity in Vietnam and neighboring areas. These restrictions, which were placed in authorization⁽¹⁰⁾ as well as appropriation bills,⁽¹¹⁾ in some instances prohibited obligation or expenditure of funds in particular countries after a fixed date,⁽¹²⁾ and in other instances did not specify such a date.⁽¹³⁾

The precedents in this section comprise a few examples of the many initiatives undertaken by Congress in response to the Vietnam crisis.

Collateral References⁽¹⁴⁾

Bickel, Alexander M. *The Constitution and the War*. 54 *Commentary* 49 (July 1972).

9. U.S. Const. art. I, §8, clause 12.
10. §§ 10.2, 10.3, *infra*.
11. §§ 10.1, 10.4, *infra*.
12. §§ 10.4, 10.5, *infra*.
13. §§ 10.1–10.3, *infra*.
14. The articles in this section relate to military involvement during the Vietnam era. See collateral ref-

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Malawer, Stuart S. *The Vietnam War Under the Constitution: Legal Issues Involved in the United States Military Involvement in Vietnam*. 31 *U. of Pitt. L.R.* 205 (Winter 1969).

Meeker, Leonard C. *The Legality of United States Participation in the Defense of Vietnam*. 54 *Dept. of State Bulletin* 474 (Apr. 28, 1966).

Moore, John Norton, James L. Underwood, and Myres S. McDougall. *The Lawfulness of United States Assistance to the Republic of North Vietnam*. 112 *CONG. REC.* 15519–67, July 13, 1966.

Moore, John Norton. *Law and the Indo-China War*. Princeton University Press, Princeton, N.J. (1972).

Moore, John Norton. *Legal Dimensions of the Decision to Intercede in Cambodia*.

erences in §3, *supra*, war powers generally, and §4, *supra*, War Powers Act, for other articles relating to those subjects.

65 American J. of International Law 38 (Jan. 1971).

Norton, Patrick M. Constitutional Law—Justicability—Veto Power—Standing—No Judicially Discoverable and Manageable Standards Exist by Which to Ascertain Whether Bombing of Cambodia Required New Congressional Authorization. 15 Harv. International L. Jour. 143–17 (Winter 1974).

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Wenner, Scott J. The Indochina War Cases in the United States Court of Appeals for the Second Circuit: The Constitutional Allocation of War Powers. 7 N.Y.U. Jour. of International Law and Politics 137–61 (Spring 1974).

Prohibition of American Forces in Laos or Thailand

§ 10.1 The Department of Defense appropriations bill for fiscal year 1970 was amended to prohibit use of funds to finance introduction of ground combat troops into Laos or Thailand.

On Dec. 15, 1969,⁽¹⁵⁾ the Senate by a vote of yeas 73, nays 17, agreed to an amendment offered by Senator Frank Church, of Idaho, to House bill 15090, making appropriations for the Department of Defense for the fiscal year

15. 115 CONG. REC. 39168, 39172, 91st Cong. 1st Sess.

ending June 30, 1970. The provision appeared in the bill approved by the President in the following form:⁽¹⁶⁾

Sec. 643. In line with the expressed intention of the President of the United States, none of the funds appropriated by this Act shall be used to finance the introduction of American ground combat troops into Laos or Thailand.

Because it was a substitute for an amendment offered by Senator John Sherman Cooper, of Kentucky, this provision came to be known as the Cooper-Church amendment.

Prohibition of Military Support for Cambodia and Laos

§ 10.2 A bill authorizing appropriations for military procurement for fiscal year 1971 was amended to prohibit use of funds to support Vietnamese or other freeworld forces in actions designed to provide military support and assistance to the Government of Cambodia or Laos.

On Aug. 21, 1970,⁽¹⁷⁾ the Senate by voice vote agreed to amend-

16. 83 Stat. 469, 487, 91st Cong. 1st Sess. (Pub. L. No. 91–171).

17. 116 CONG. REC. 29686, 29688, 91st Cong. 2d Sess. See also 116 CONG. REC. 29572–83, 91st Cong. 2d Sess., Aug. 20, 1971, for debate on amend-

ment No. 812, ordered by Senator J. William Fulbright, of Arkansas, to H.R. 17123, to authorize appropriations for military procurement for the fiscal year 1971. The provision appeared in the form passed by the Senate⁽¹⁸⁾ in the bill approved by the President on Oct. 7, 1970.⁽¹⁹⁾

ment No. 812; and 116 CONG. REC. 34580-602, 91st Cong. 2d Sess., Oct. 1, 1970, for debate on and approval of the conference report in the Senate.

- 18.** See 116 CONG. REC. 33924, 33925, 33933, 91st Cong. 2d Sess., Sept. 28, 1970, for the text of the House conference report, H. Rept. No. 91-1473, which states that the House conferees agreed to the Senate amendment and deleted the words "in Vietnam" after the words "and other free world forces" and before the words "and local"; and 116 CONG. REC. 34149, 34161, 34162, 91st Cong. 2d Sess., Sept. 29, 1970, for House approval of the conference report by a vote of yeas 341, nays 11, not voting 77.
- 19.** This excerpt is taken from 84 Stat. 905, 910, 91st Cong. 1st Sess. (Pub. L. No. 91-441). The italicized sentence is the Fulbright amendment. amended, is hereby amended to read as follows:

AN ACT

To authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to authorize real estate acquisition and construction at certain installations in connection with the Safeguard anti-ballistic missile system, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled . . .

Sec. 502. Subsection (a) of section 401 of Public Law 89-367, approved March 15, 1966 (80 Stat. 37), as

"(a) (1) Not to exceed \$2,800,000,000 of the funds authorized for appropriation for the use of the Armed Forces of the United States under this or any other Act are authorized to be made available for their stated purposes to support: (A) Vietnamese and other free world forces in support of Vietnamese forces, (B) local forces in Laos and Thailand; and for related costs, during the fiscal year 1971 on such terms and conditions as the Secretary of Defense may determine. None of the funds appropriated to or for the use of the Armed Forces of the United States may be used for the purpose of paying any overseas allowance, per diem allowance, or any other addition to the regular base pay of any person serving with the free world forces in South Vietnam if the amount of such pay-

ment would be greater than the amount of special pay authorized to be paid, for an equivalent period of service, to members of the Armed Forces of the United States (under section 310 of title 37, United States Code) serving in Vietnam or in any other hostile fire area, except for continuation of payments of such additions to regular base pay provided in agreements executed prior to July 1, 1970. *Nothing in clause (A) of the first sentence of this paragraph shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance to the Governments of Cambodia or Laos.*"

Prohibition of American Ground Forces From Cambodia

§ 10.3 The Special Foreign Assistance Act of 1971 was amended to prohibit use of funds to finance introduction of United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia, and to assert that American military and economic assistance should not be construed as a commitment by the United States to Cambodia.

On Dec. 16, 1970,⁽²⁰⁾ the Senate by a vote of yeas 72, nays 22,

20. 116 CONG. REC. 41788, 91st Cong. 2d Sess. See also 116 CONG. REC 41616,

agreed to strike out all after the enacting clause of the Special Foreign Assistance Act of 1971, H.R. 19911, which had been approved by the House, and insert an amendment, described above, reported from the Committee on Foreign Relations. The provisions⁽¹⁾ became law when approved by the President on Jan. 5, 1971, in the same form as the Senate amendment:⁽²⁾

AN ACT

To provide additional foreign assistance authorizations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Special Foreign Assistance Act of 1971". . . .

Sec. 7. (a) In line with the expressed intention of the President of the

91st Cong. 2d Sess., Dec. 15, 1970, for the text of the amendment from the Committee on Foreign Relations; and 116 CONG. REC. 43221-23, 91st Cong. 2d Sess., Dec. 22, 1970, for Senate approval of the conference report by a vote of yeas 41, nays 20.

1. See 116 CONG. REC. 43133, 43134, 91st Cong. 2d Sess., Dec. 21, 1970; and 116 CONG. REC. 43342, 43343, 91st Cong. 2d Sess., Dec. 22, 1970, for the text of and House approval of the conference report in the House, respectively.
2. This excerpt is taken from 84 Stat. 1942, 1943, 91st Cong. 2d Sess. (Pub. L. No. 91-652).

United States, none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of the United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia.

(b) Military and economic assistance provided by the United States to Cambodia and authorized or appropriated pursuant to this or any other Act shall not be construed as a commitment by the United States to Cambodia for its defense.

Prohibition of Military Funds After Fixed Date

§ 10.4 A House joint resolution continuing appropriations for the fiscal year 1974 was amended to prohibit after a fixed date obligation or expenditure of funds to finance combat activities by United States military forces in, over, or off the shores of North Vietnam, South Vietnam, Laos, or Cambodia.

On June 29, 1973,⁽³⁾ during consideration of House Joint Resolu-

3. 119 CONG. REC. 22305, 22325, 22326, 93d Cong. 1st Sess. See also 119 CONG. REC. 22603, 22604, 93d Cong. 1st Sess., June 30, 1973, for Senate agreement to the conference report. Senate and House conferees agreed to modify the language of this amendment from “. . . no funds herein, heretofore or hereafter appro-

tion 636, the Senate agreed to an amendment, described above, offered by Senator J. William Fulbright, of Arkansas, on behalf of the Committee on Foreign Relations. The joint resolution as amended⁽⁴⁾ was approved by the President on July 1, 1973.⁽⁵⁾

Joint Resolution making continuing appropriations for the fiscal year 1974, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The following sums are appropriated out of any money in the Treasury not otherwise appropriated and, out of applicable corporate or other revenues, receipts, and funds, for the several de-

priated . . .” in the version which originally passed the Senate to “. . . no funds herein or heretofore appropriated . . .” in the version approved by the President.

4. See 119 CONG. REC. 21306, 21309, 21315, 21319, 21320, 93d Cong. 1st Sess., June 26, 1973, for House approval of a substitute amendment offered by Mr. George H. Mahon (Tex.), as amended by an amendment offered by Mr. Clarence D. Long (Md.), prohibiting expenditure of funds under H.J. Res. 636 to support combat activities in, over, or off the shores of Cambodia or Laos. See also 119 CONG. REC. 22632-37, 93d Cong. 1st Sess., June 30, 1973, for House approval of the conference report, H. Rept. No. 93-364.
5. This excerpt is taken from 87 Stat. 130, 93d Cong. 1st Sess. (Pub. L. No. 93-52).

partments, agencies, corporations, and other organizational units of the Government for the fiscal year 1974, namely:

Sec. 108. Notwithstanding any other provision of law, on or after August 15, 1973, no funds herein or heretofore appropriated may be obligated or expended to finance directly or indirectly combat activities by United States military forces in or over or from off the shores of North Vietnam, South Vietnam, Laos or Cambodia.

Prohibition of Military Involvement After Fixed Date

§ 10.5 The Senate and House agreed to a conference report (on the Department of State Appropriations Authorization Act of 1973) which included a provision prohibiting, after a fixed date, obligation or expenditure of funds to finance involvement of United States military forces in hostilities in, over, or off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, or to provide assistance to North Vietnam, unless specifically authorized by Congress.

On Oct. 10, 1973, the Senate⁽⁶⁾ and House⁽⁷⁾ by voice vote agreed

- 6. See 119. 33577, 33578, 93d Cong. 1st Sess., for Senate approval of the conference report.
- 7. See 119 CONG. REC. 33609, 93d Cong. 1st Sess., for House approval;

to the conference report (H. Rept. No. 93-563) to H. R. 7645, the Department of State Appropriations Act of 1973. The report included a provision prohibiting, after Aug. 15, 1973, obligation or expenditure of funds as described above. This provision, which originated in the Senate as an amendment by the Committee on Foreign Relations to S. 1248,⁽⁸⁾ was approved by the President on Oct. 18, 1973, in the following form:⁽⁹⁾

DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973

* * * * *

An Act to authorize appropriations for the Department of State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

and 119 CONG. REC. 33413-15, 93d Cong. 1st Sess., Oct. 9, 1973, for text of the conference report.

- 8. See 119 CONG. REC. 18901-03, 93d Cong. 1st Sess., June 8, 1973, for the text of this amendment, which did not set a date certain but instead made the prohibition effective ". . . upon enactment of this Act. . . ." The date was established in conference. On June 14, 1973, the Senate struck all after the enacting clause of H.R. 7645, and substituted the provisions of S. 1248 (119 CONG. REC. 19648, 93d Cong. 1st Sess.).
- 9. This excerpt is taken from 87 Stat. 451, 93d Cong. 1st Sess. (Pub. L. No. 93-126).

This Act may be cited as the “Department of State Appropriations Authorization Act of 1973” . . .

REQUIREMENTS FOR CONGRESSIONAL AUTHORIZATION FOR THE INVOLVEMENT OF AMERICAN FORCES IN FURTHER HOSTILITIES IN INDOCHINA, AND FOR EXTENDING ASSISTANCE TO NORTH VIETNAM

Sec. 13. Notwithstanding any other provision of law, on or after August 15, 1973, no funds heretofore or hereafter appropriated may: be obligated or expended to finance the involvement of United States military forces in hostilities in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, unless specifically authorized hereafter by the Congress. Notwithstanding any other provision of law, upon enactment of this Act, no funds heretofore or hereafter appropriated may be obligated or expended for the purpose of providing assistance of any kind, directly or indirectly, to or on behalf of North Vietnam, unless specifically authorized hereafter by the Congress.

§ 11. Receipt of Presidential Messages

The precedents in this section are limited exclusively to written or oral statements officially received by Congress. Presidential statements made to the public at large through the media are not included.

Request for Declaration of War on Japan

§ 11.1 The President addressed a joint session of Congress to announce the Japanese attack on Pearl Harbor and request a declaration of war.

On Dec. 8, 1941,⁽¹⁰⁾ President Franklin D. Roosevelt addressed a joint session of Congress to announce the Japanese attack on Pearl Harbor and request a declaration of war.⁽¹¹⁾

ADDRESS BY THE PRESIDENT (H. DOC. NO. 453)

The address delivered by the President of the United States to the joint meeting of the two Houses of Congress held this day is as follows:

To the Congress of the United States:

Yesterday, December 7, 1941—a date which will live in infamy—the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan. . . .

I believe I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make very certain that this form of treachery shall never endanger us again.

Hostilities exist. There is no blinking at the fact that our people, our

10. 87 CONG. REC. 9519, 9520, 77th Cong. 1st Sess. The message was referred to the Committee on Foreign Affairs.

11. See §6.1, *supra* (House declaration), and §7.1, *supra* (Senate declaration).

territory, and our interests are in grave danger. . . .

I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, a state of war has existed between the United States and the Japanese Empire.

FRANKLIN D. ROOSEVELT,
THE WHITE HOUSE,
December 8, 1941.

Request for Declaration of War on Germany and Italy

§ 11.2 The House received a written message from the President announcing that Italy and Germany had declared war on the United States, and requesting the Congress to recognize a state of war between the United States and Germany and the United States and Italy.

On Dec. 11, 1941,⁽¹²⁾ the House received a message, as follows, from President Franklin D. Roosevelt.⁽¹³⁾

DECLARATION OF WAR BY GERMANY AND ITALY AGAINST UNITED STATES (H. DOC. NO. 454)

The Speaker⁽¹⁴⁾ laid before the House the following message from the

12. 87 CONG. REC. 9665, 77th Cong. 1st Sess.
13. See §§ 6.2, 6.3, supra (House action), and §§ 7.2, 7.3, supra (Senate action), for declarations of war on Germany and Italy.
14. Sam Rayburn (Tex.).

President of the United States, which was read:

To the Congress of the United States:

On the morning of December 11, the Government of Germany, pursuing its course of world conquest, declared war against the United States.

The long known and the long expected has thus taken place. . . .

Italy also has declared war against the United States.

I, therefore, request the Congress to recognize a state of war between the United States and Germany, and between the United States and Italy.

FRANKLIN D. ROOSEVELT,
THE WHITE HOUSE,
December 11, 1941.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I move that the message of the President be referred to the Committee on Foreign Affairs, and ordered printed.

The motion was agreed to.

Request for Declaration of War on Bulgaria, Hungary, and Rumania

§ 11.3 The House received a written message from the President announcing that the Governments of Bulgaria, Hungary, and Rumania had declared war on the United States and requesting that Congress recognize a state of war between the United States and these nations.

On June 2, 1942,⁽¹⁵⁾ the House received a message, as follows, from President Franklin D. Roosevelt.⁽¹⁶⁾

MESSAGE FROM THE PRESIDENT OF
THE UNITED STATES (H. Doc. No.
761)

The Speaker⁽¹⁷⁾ laid before the House the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on Foreign Affairs and ordered to be printed:

To the Congress of the United States:

The Governments of Bulgaria, Hungary, and Rumania have declared war against the United States. . . .

Therefore I recommend that the Congress recognize a state of war between the United States and Bulgaria, between the United States and Hungary, and between the United States and Rumania.

FRANKLIN D. ROOSEVELT,
THE WHITE HOUSE,
June 2, 1942.

Request for Authority to Protect Middle Eastern Nations

§ 11.4 The President personally addressed a joint session of Congress to request au-

15. 88 CONG. REC. 4787, 77th Cong. 2nd Sess. The message was referred to the Committee on Foreign Affairs.
16. See §§ 6.4–6.6, *supra* (House action), and §§ 7.4–7.6, *supra* (Senate action), for declarations of war on Bulgaria, Hungary, and Rumania.
17. Sam Rayburn (Tex.).

thorization to cooperate with and assist any Middle Eastern nation or group of nations in the development of economic strength, undertake military assistance, and employ American Armed Forces to secure and protect the territorial integrity and political independence of nations which request aid against armed aggression from any nation controlled by communism.

On Jan. 5, 1957,⁽¹⁸⁾ President Dwight D. Eisenhower addressed a joint session of the House and Senate to request authorization to deal with aggression in the Middle East.⁽¹⁹⁾

THE PRESIDENT: Mr. President, Mr. Speaker, and Members of Congress, first may I express to you my deep appreciation of your courtesy. . . .

The action which I propose would have the following features:

It would, first of all, authorize the United States to cooperate with and assist any nation or group of nations in the general area of the Middle East in the development of economic strength dedicated to the maintenance of national independence.

It would, in the second place, authorize the Executive to undertake in the

18. 103 CONG. REC. 224–27, 85th Cong. 1st Sess. The message was referred to the Committee on Foreign Affairs.
19. See §§ 8.5, 8.6, *supra*, for House and Senate approval of the requested resolution, respectively.

same region programs of military assistance and cooperation with any nation or group of nations which desires such aid.

It would, in the third place, authorize such assistance and cooperation to include the employment of the armed forces of the United States to secure and protect the territorial integrity and political independence of such nations requesting such aid, against overt armed aggression from any nation controlled by international communism.

These measures would have to be consonant with the treaty obligations of the United States, including the Charter of the United Nations and with any action or recommendations of the United Nations. They would also, if armed attack occurs, be subject to the overriding authority of the United Nations Security Council in accordance with the charter.

The present proposal would, in the fourth place, authorize the President to employ, for economic and defensive military purposes, sums available under the Mutual Security Act of 1954, as amended, without regard to existing limitations.

Request for Authority to Protect the Pescadores and Formosa

§ 11.5 The House received a message from the President announcing military activities by the People's Republic of China against Formosa and the Pescadores and requesting a congressional resolution to authorize a Presidential response.

On Jan. 24, 1955,⁽¹⁾ the House received a written message, as follows, from President Dwight D. Eisenhower.⁽²⁾

The Speaker⁽³⁾ laid before the House the following message from the President of the United States, which was read, referred to the Committee on Foreign Affairs, and ordered to be printed:

To the Congress of the United States:

The most important objective of our Nation's foreign policy is to safeguard the security of the United States by establishing and preserving a just and honorable peace. In the Western Pacific, a situation is developing in the Formosa Straits that seriously imperils the peace and our security.

Since the end of Japanese hostilities in 1945, Formosa and the Pescadores have been in the friendly hands of our loyal ally, the Republic of China. We have recognized that it was important that these islands should remain in friendly hands.

What we are now seeking is primarily to clarify present policy and to unite in its application. . . .

For the reasons outlined in this message, I respectfully request that the Congress take appropriate action to carry out the recommendations contained herein.

DWIGHT D. EISENHOWER,
THE WHITE HOUSE,
January 24, 1955.

1. 101 CONG. REC. 625, 626, 84th Cong. 1st Sess.
2. See §§ 8.3, 8.4, supra, for approval of the requested resolution by the House and Senate, respectively.
3. Sam Rayburn (Tex.).

Request for Neutrality Legislation

§ 11.6 The President addressed a joint session of the House and Senate to explain that he had convened an extraordinary session to permit Congress to act on neutrality legislation.

On Sept. 21, 1939,⁽⁴⁾ the President addressed a joint session of the House and Senate to explain that he had convened an extraordinary session to permit Congress to act on neutrality legislation. He specifically asked Congress to repeal embargo provisions, restrict American ships from entering war zones, prevent Americans from traveling on belligerent vessels or in danger areas, and require a foreign buyer to take transfer of title in the United States to commodities purchased by belligerents. He also requested that Congress prohibit war credits to belligerents, regulate collection of funds in the United States, and maintain a license system for import and export of arms, ammunition, and implements of war.⁽⁵⁾

4. 85 CONG. REC. 9-12, 76th Cong. 2d Sess.

5. See §9.1, *supra*, and § 12.3, *infra*, for the congressional response to this address (the Neutrality Act of 1939), and the President's proclamation convening a special congressional session, respectively.

Announcement of Exchange of Destroyers for Bases

§ 11.7 The House received a written message from the President announcing that the United States had acquired from Great Britain the right to lease naval and air bases in Newfoundland, Bermuda, certain Caribbean Islands, and British Guiana. Notes between the British Ambassador outlining the terms of the lease and the American Secretary of State accepting the terms and announcing transfer of Navy destroyers were also received.

On Sept. 3, 1940,⁽⁶⁾ the House received a message from the President announcing that the United States had acquired from Great Britain the right to lease naval and air bases.

The Speaker⁽⁷⁾ laid before the House the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee of the Whole House on the State of the Union and ordered to be printed, as follows:

To the Congress of the United States:

I transmit herewith for the information of the Congress, notes ex-

6. 86 CONG. REC. 11354, 76th Cong. 3d Sess.

7. William B. Bankhead (Ala.).

changed between the British Ambassador at Washington and the Secretary of State on September 2, 1940, under which this Government has acquired the right to lease naval and air bases in Newfoundland, and in the islands of Bermuda, the Bahamas, Jamaica, Santa Lucia, Trinidad, and Antigua, and in British Guiana; also a copy of an opinion of the Attorney General, dated August 27, 1940, regarding my authority to consummate this arrangement. . . .

This is not inconsistent in any sense with our status of peace. Still less is it a threat against any nation. It is an epochal and far-reaching act of preparation for continental defense in the face of grave danger. . . .

The value to the Western Hemisphere of these outposts of security is beyond calculation. . . .⁽⁸⁾

FRANKLIN D. ROOSEVELT,
THE WHITE HOUSE,
September 3, 1940.

An opinion of the Attorney General outlining Presidential authority to acquire British offshore naval and air bases and transfer destroyers to Britain accompanied the President's message.⁽⁹⁾

8. 8. A Sept. 2, 1940, letter from the British Ambassador to Washington, and the Sept. 2, 1940, response of the Secretary of State, Cordell Hull, are omitted. The British Ambassador outlined the terms of the 99-year rent-free lease. The Secretary of State declared that the Government of the United States "gladly accepts the proposals" and as consideration for the plan "will immediately transfer to His Majesty's Government 50 United States Navy destroyers. . . ."
9. See §3.2, supra, for the text of this opinion.

Announcement of Arrival of American Forces in Iceland

§ 11.8 The House received a written message from the President announcing the arrival in Iceland of forces of the United States Navy to supplement and eventually replace British forces.

On July 7, 1941,⁽¹⁰⁾ the House received a message from the President (H. Doc. No. 307) announcing the arrival in Iceland of United States Navy forces.

The Speaker⁽¹¹⁾ laid before the House the following message from the President of the United States, which was read, and together with the accompanying papers, referred to the Committee on Foreign Affairs and ordered to be printed:

To the Congress of the United States:

I am transmitting herewith for the information of the Congress a message I received from the Prime Minister of Iceland on July 1 and the reply I addressed on the same day to the Prime Minister of Iceland in response to this message.

In accordance with the understanding so reached, forces of the United States Navy have today arrived in Iceland in order to supplement, and eventually to replace, the British forces which have until now been stationed in Iceland in order to insure the adequate defense of that country.

10. 87 CONG. REC. 5868, 5869, 77th Cong. 1st Sess.

11. Sam Rayburn (Tex.).

As I stated in my message to the Congress of September 3 last regarding the acquisition of certain naval and air bases from Great Britain in exchange for certain over-age destroyers, considerations of safety from overseas attack are fundamental. . . .⁽¹²⁾

This Government will insure the adequate defense of Iceland with full recognition of the independence of Iceland as a sovereign state.

In my message to the Prime Minister of Iceland I have given the people of Iceland the assurance that the American forces sent there would in no way interfere with the internal and domestic affairs of that country.

FRANKLIN D. ROOSEVELT,
THE WHITE HOUSE,
July 7, 1941.

Messages between the Prime Minister and President accompanied the President's message to the Congress.

Announcement of Deployment of Marines to Lebanon

§ 11.9 The House received a written message in which the President announced that he had dispatched American Marines to Lebanon to preserve that nation's independence and protect Americans.

12. See §11.7, *supra*, for the message of Sept. 3, 1940, announcing acquisition of British territory for naval and air bases and transfer of American destroyers to Great Britain.

On July 15, 1958,⁽¹³⁾ a message was received from the President, as follows:

The Speaker⁽¹⁴⁾ laid before the House the following message from the President of the United States, which was read and referred to the Committee on Foreign Affairs and ordered to be printed:

To the Congress of the United States:

On July 14, 1958, I received an urgent request from the President of the Republic of Lebanon that some United States forces be stationed in Lebanon. . . .

United States forces are being sent to Lebanon to protect American lives and by their presence to assist the Government of Lebanon in the preservation of Lebanon's territorial integrity and independence, which have been deemed vital to United States national interests and world peace. . . .

It is clear that the events which have been occurring in Lebanon represent indirect aggression from without, and that such aggression endangers the independence and integrity of Lebanon. . . .

Our Government has acted in response to an appeal for help from a small and peaceful nation which has long had ties of closest friendship with the United States. . . .

DWIGHT D. EISENHOWER,
THE WHITE HOUSE,
July 15, 1958.

13. 104 CONG. REC. 13865, 85th Cong. 2d Sess.

14. Sam Rayburn (Tex.).

§ 12. Presidential Proclamations

The precedents in this section include Presidential proclamations which relate to national security matters and appear in the *Congressional Record*.

National Emergency Regarding Korea

§ 12.1 During the conflict in Korea, the President proclaimed a national emergency which required strengthening of defenses to repel threats to the national security and fulfill responsibilities to the United Nations.

On Dec. 21, 1950,⁽¹⁵⁾ Mr. John W. McCormack, of Massachusetts, inserted in the Record the following proclamation made by the President on Dec. 16, 1950:

MR. MCCORMACK: Mr. Speaker, under leave to extend my remarks in the Record, I include the following text of President Truman's proclamation of the existence of a national emergency, issued today, taken from the New York Times of December 17, 1950:

TEXT OF EMERGENCY PROCLAMATION

Whereas recent events in Korea and elsewhere constitute a grave

15. 96 CONG. REC. A7844, 81st Cong. 2d Sess.

threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict; and

Whereas world conquest by Communist imperialism is the goal of the forces of aggression that have been loosed upon the world . . .

Now, therefore, I, Harry S. Truman, President of the United States of America, do proclaim the existence of a national emergency, which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security. . . .

In witness whereof, I have heretofore set my hand and caused the seal of the United States of America to be affixed.

Done at the city of Washington this 16th day of December in the year of our Lord 1950, and of the independence of the United States of America the one hundred and seventy-fifth.

HARRY S TRUMAN.

By the President:

DEAN ACHESON,
Secretary of State.

Embargo on Trade With Cuba

§ 12.2 A Presidential proclamation relating to an embargo of all trade with Cuba was inserted in the Congressional Record in the Senate.

On Sept. 20, 1962,⁽¹⁶⁾ the following proclamation was inserted in the Record in the Senate:

16. 108 CONG. REC. 20034, 87th Cong. 2d Sess.

EMBARGO ON ALL TRADE WITH CUBA
BY THE PRESIDENT OF THE UNITED
STATES OF AMERICA—A PROCLAMATION

Whereas the eighth meeting of consultation of Ministers of Foreign Affairs, serving as organ of consultation in application of the Inter-American Treaty of Reciprocal Assistance, in its final act resolved that the present Government of Cuba is incompatible with the principles and objectives of the inter-American system; and, in light of the subversive offensive of Sino-Soviet communism with which the Government of Cuba is publicly alined, urged the member states to take those steps that they may consider appropriate for their individual and collective self-defense. . . .

. . . Now, therefore, I, John F. Kennedy, President of the United States of America, acting under the authority of section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, do—

1. Hereby proclaim an embargo upon trade between the United States and Cuba in accordance with paragraphs 2 and 3 of this proclamation.

2. Hereby prohibit, effective 12:01 a.m., eastern standard time, February 7, 1962, the importation in the United States of all goods of Cuban origin . . .

Done at the city of Washington this third day of February in the year of our Lord 1962, and of the Independence of the United States of America the 186th.

John F. Kennedy.

By the President:

DEAN RUSK,
Secretary of State.

Extraordinary Session (Neutrality Legislation)

§ 12.3 A Presidential proclamation convening an extraordinary session of Congress to act on neutrality legislation was inserted in the Congressional Record.

On Sept. 21, 1939,⁽¹⁷⁾ the following proclamation convening the Congress in extraordinary session was read to the House:⁽¹⁸⁾

THE SPEAKER:⁽¹⁹⁾ The Clerk will read the proclamation of the President of the United States convening this extraordinary session of the Seventy-sixth Congress.

The Clerk read as follows:

CONVENING THE CONGRESS IN EXTRA
SESSION BY THE PRESIDENT OF THE
UNITED STATES OF AMERICA

A PROCLAMATION

Whereas public interests require that the Congress of the United States should be convened in extraordinary session at 12 o'clock noon on Thursday, the 21st day of September, 1939, to receive such communication as may be made by the Executive: Now, therefore,

17. 85 CONG. REC. 7, 8, 76th Cong. 2d Sess.

18. This proclamation was read in the Senate, *id.* at p. 3.

See §§9.1, 11.6, *supra*, for a discussion of the Neutrality Act of 1939 and the President's message requesting neutrality legislation, respectively.

19. William B. Bankhead (Ala.).

I, Franklin D. Roosevelt, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene in extraordinary session at the Capitol in the City of Washington on Thursday, the 21st day of September, 1939, at 12 o'clock noon, of which all persons who shall at that time be entitled to act as Members thereof are hereby required to take notice.

In witness whereof, I have hereunto set my hand and caused to be affixed the great seal of the United States.

Done at the city of Washington this 13th day of September, in the year of our Lord 1939, and of the independence of the United States of America the one hundred and sixty-fourth.

[SEAL]

FRANKLIN D. ROOSEVELT.

By the President:
CORDELL HULL,
Secretary of State.

War Between Germany and Foreign Nations

§ 12.4 A Presidential proclamation relating to a state of war between Germany and France, Poland, the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa, authorized by the Neutrality Act of 1939, was inserted in the Record.

On Nov. 3, 1939,⁽¹⁾ the following Presidential proclamation relating to a state of war between Germany and several nations as authorized by the Neutrality Act of 1939,⁽²⁾ was placed in the *Congressional Record*:

MR. [ALBEN W.] BARKLEY [of Kentucky]: Mr. President, under permission granted on November 3, 1939, page 1358, I wish to insert in the Congressional Record two proclamations issued by the President of the United States, as provided under House Joint Resolution 306, passed at the extra session of Congress, relating to neutrality, as follows:

DEPARTMENT OF STATE,
November, 1939.

PROCLAMATION OF A STATE OF WAR BETWEEN GERMANY AND FRANCE; POLAND; AND THE UNITED KINGDOM, INDIA, AUSTRALIA, CANADA, NEW ZEALAND, AND THE UNION OF SOUTH AFRICA

BY THE PRESIDENT OF THE UNITED STATES:

A PROCLAMATION

Whereas section 1 of the joint resolution of Congress approved November 4, 1939, provides in part as follows:

“That whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States

1. 85 CONG. REC. A787, 76th Cong. 2d Sess.
2. See §9.1, supra, for a discussion of the Neutrality Act of 1939.

or to protect the lives of citizens of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time, by proclamation, name other states as and when they may become involved in the war." . . .

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred on me by the said joint resolution, do hereby proclaim that a state of war unhappily exists between Germany and France, Poland, and the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa, and that it is necessary to promote the security and preserve the peace of the United States and to protect the lives of citizens of the United States. . . .

And I do hereby revoke my proclamations Nos. 2349, 2354, and 2360 issued on September 5, 8, and 10, 1939, respectively, in regard to the export of arms, ammunition, and implements of war to France, Germany, Poland, and the United Kingdom, India, Australia, and New Zealand, to the Union of South Africa, and to Canada. . . .

Done at the city of Washington this fourth day of November, in the year of our Lord nineteen hundred and thirty-nine, and of the independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT.

By the President:
CORDELL HULL,
Secretary of State.

Use of American Ports by Belligerent Nations

§ 12.5 A Presidential proclamation relating to use of ports

or territorial waters of the United States by submarines of foreign belligerent nations, authorized by the Neutrality Act of 1939, was inserted in the Record.

On Nov. 3, 1939,⁽³⁾ the following Presidential proclamation relating to use of ports or territorial waters of the United States by submarines of foreign belligerent states was inserted in the Record:

Whereas section 11 of the joint resolution approved November 4, 1939, provides:

"Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state, will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. . . .

Whereas there exists a state of war between Germany [and other nations]; and

3. 85 CONG. REC. A787, 76th Cong. 2d Sess.

See §9.1, *supra*, for a discussion of the Neutrality Act of 1939.

Whereas the United States of America is neutral in such war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority vested in me by the foregoing provision of section 11 of the joint resolution approved November 4, 1939, do by this proclamation find that special restrictions placed on the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of a foreign belligerent state, both commercial submarines and submarines which are ships of war, will serve to maintain peace between the United States and foreign states, to protect the commercial interests of the United States and

its citizens, and to promote the security of the United States;

And I do further declare and proclaim that it shall hereafter be unlawful for any submarine of [specified nations] to enter ports or territorial waters of the United States. . . .

Done at the city of Washington this fourth day of November in the year of our Lord nineteen hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT.

By the President:

Cordell Hull,
Secretary of State.

C. HOUSE PREROGATIVE TO ORIGINATE REVENUE BILLS

§ 13. In General

The precedents in sections 15–18, *infra*, relate to the constitutional prerogative of the House to originate bills to raise revenue.⁽⁴⁾ Article I, section 7, clause 1, provides that, “All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.”⁽⁵⁾

4. See 2 Hinds’ Precedents §§ 1480–1501; 6 Cannon’s Precedents §§ 314–322; and 8 Cannon’s Precedents § 2278, for earlier precedents.
5. See *House Rules and Manual* § 99 (1973).

Because questions relating to the prerogative of the House to originate revenue legislation⁽⁶⁾ involve interpretation of the Constitution⁽⁷⁾ rather than House

See also Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92–82, 92d Cong. 2d Sess. 125, 126 (1973), for discussion of this provision. And see §§ 19, 20, *infra*, for a discussion of Senate authority to amend revenue bills and make appropriations.

6. For one view on what is comprehended by the phrase “bills for raising revenue,” see J. Story, *Commentaries on the Constitution of the United States* § 880, vol. 1, Boston (1833).
7. See, for example, the discussion and cases cited in § 19.2, *infra*.

rules, they are decided by the House rather than the Chair.⁽⁸⁾ A question alleging that the Senate has invaded this prerogative is privileged⁽⁹⁾ under Rule IX,⁽¹⁰⁾ and may be raised at any time when the House is in possession of the bill and related papers in question.⁽¹¹⁾ The question may be raised pending the motion to call up a conference report on a bill⁽¹²⁾ and may be committed to conference if raised prior to conference.⁽¹³⁾

A Senate bill or joint resolution⁽¹⁴⁾ which the House determines infringes upon its prerogatives may be returned to the Senate. When such a measure is received by, or is in possession of the House, a Member may rise to a question of privilege and introduce a resolution. Such resolution normally declares that in the

8. 2 Hinds' Precedents §1490. See also §19.1, *infra*, for an analogous Senate precedent.
9. §14.1, *infra*.
10. *House Rules and Manual* §§661, 662 (1973).
11. §14.2, *infra*.
12. *Id.*
13. 2 Hinds' Precedents §1487.
14. There is precedent for the proposition that a Senate concurrent resolution may also be held to infringe upon the prerogative of the House, notwithstanding the fact that such a resolution does not have the force of law. 6 Cannon's Precedents §319.

opinion of the House the Senate measure contravenes or infringes upon the House prerogative and directs that the measure be returned to the Senate with a message communicating the resolution. After debate the resolution may be approved,⁽¹⁵⁾ tabled,⁽¹⁶⁾ or referred to committee.⁽¹⁷⁾

On several occasions, the House has chosen to pass a House bill instead of a pending Senate measure where the attention of the House was called to the impropriety of a revenue measure being included in a Senate bill.⁽¹⁸⁾

When a Senate bill or joint resolution which arguably infringes upon the House prerogative has been referred to committee, the committee may refuse to act on it and may report out its own bill in lieu of the Senate measure.⁽¹⁹⁾

The latter two procedures, vacating proceedings whereby the Senate measure had passed the House and massaging a similar House bill to the Senate, and reporting a House bill out of com-

15. See §15, *infra*, for illustrations of approval.
16. See §16.1, *infra*, for a discussion of tabling such a resolution.
17. See §17.1, *infra*, for an illustration of referral to committee.
18. See §§18.1–18.3, *infra* which illustrate this procedure.
19. See §§18.4, 18.5, *infra*, which illustrate this procedure.

mittee, effectively resolve issues relating to the prerogative of the House, because courts do not look behind the bill number. Notwithstanding the fact that a House revenue measure may have been substantially changed by Senate amendments, a bill with a House number will not be challenged in court or on the House floor on the ground that it infringes upon the prerogative of the House to originate bills for raising revenue.⁽²⁰⁾ But the House will assert its prerogative and return a House bill (not raising revenue) with a Senate revenue amendment to the Senate.⁽²¹⁾

§ 14. Consideration of Objections

Infringement of House Prerogative as Privileged Matter

§ 14.1 Infringement by the Senate on the constitutional prerogative of the House to initiate revenue measures may be raised in the House as a matter of privilege.

On May 3, 1971,⁽¹⁾ infringement by the Senate of the constitutional

20. See *Hubbard v Lowe*, 226 F 135 (S.D.N.Y. 1915) which is discussed at §§ 19.2, 20.4, *infra*.

21. See § 15.8, *infra*.

1. 117 CONG. REC. 12991, 92d Cong. 1st Sess.

prerogative of the House to initiate revenue measures (art. I, § 7) was raised in the House as a matter of privilege.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I offer a resolution (H. Res. 414) which involves the privileges of the House, and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 414

Resolved, That the bill of the Senate (S. 860) relating to the Trust Territory of the Pacific Islands in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER:⁽²⁾ The Chair recognizes the gentleman from Arkansas (Mr. Mills).

MR. [H.R.] GROSS [of Iowa]: Mr. Speaker, will the gentleman yield?

MR. MILLS: I will be glad to yield to the gentleman from Iowa.

MR. GROSS: Mr. Speaker, may we have a brief explanation of the reason for the action that is proposed?

MR. MILLS: Mr. Speaker, I will be glad to explain why I have offered this resolution. It is because the privileges of the House are actually being violated by title IV of the bill S. 860. That title includes an amendment of the Tariff Schedules of the United States,

2. Carl Albert (Okla.).

and all bills which include such amendments must originate in the House.⁽³⁾

Timeliness of Objection to Alleged Senate Infringement of House Prerogatives

§ 14.2 A question of constitutional privilege relating to the sole power of the House to originate revenue measures and alleging that the Senate, by its amendment to a House bill, has violated article I, section 7 of the Constitution, may be raised at any time when the House is in possession of the papers; and the question has been presented pending the reading of a conference report.

On June 20, 1968,⁽⁴⁾ a Member, H.R. Gross, of Iowa, raised a question of constitutional privilege when a conference report was called up.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I call up the conference report on the bill (H.R. 15414) to continue the existing excise tax

3. See §§ 15.6, 19.5, *infra*, for House and Senate disposition of this matter, respectively.

4. 114 CONG. REC. 17970, 90th Cong. 2d sess.

rates on communication services and on automobiles, and to apply more generally the provisions relating to payments of estimated tax by corporations, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The Speaker Pro Tempore:⁽⁵⁾ Is there objection to the request of the gentleman from Arkansas?

RESOLUTION OFFERED BY MR. GROSS—
PRIVILEGE OF THE HOUSE

MR. GROSS: Mr. Speaker, I rise to a question of privilege of the House and offer a resolution.

THE SPEAKER PRO TEMPORE: The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 1222

Resolved, That Senate amendments to the bill, H.R. 15414, in the opinion of the House, contravene the first clause of the seventh section of the first article of the Constitution of the United States, and are an infringement of the privileges of this House, and that the said bill, with amendments be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Gross] is recognized for 1 hour.⁽⁶⁾

5. Charles M. Price (Ill.).

6. See § 16.1, *infra*, for a precedent relating to this point of order.

§ 15. Return of Senate Legislation

Bill Amending Silver Purchase Act

§ 15.1 The House by voice vote returned to the Senate a Senate bill which proposed to amend the Silver Purchase Act, on the ground that the bill affected the revenue and therefore was an infringement of the prerogatives of the House.

On Jan. 15, 1936,⁽⁷⁾ the House agreed to a resolution returning S. 3260 to the Senate, on the ground that it affected revenue.

MR. [JERE] COOPER of Tennessee: Mr. Speaker, I rise to a question of privilege of the House and offer the following resolution.

The Clerk read as follows:

HOUSE, RESOLUTION 396

Resolved, That the bill (S. 3260) to amend Public Law No. 438, Seventy-third Congress, entitled "An act to authorize the Secretary of the Treasury to purchase silver, issue silver certificates, and for other purposes", in the opinion of this House contravenes that clause of the Constitution of the United States requiring revenue bills to originate in the House of Representatives, and is an infringement of the prerogatives of this House, and that said bill be respectfully returned to the Senate

7. 80 CONG. REC. 448, 74th Cong. 2d Sess.

with a message communicating this resolution.

The resolution was agreed to, and a motion to reconsider was laid on the table.

Bill Amending Tariff Act of 1930

§ 15.2 The House by voice vote returned a Senate bill purporting to amend the Tariff Act of 1930, on the ground that it invaded the prerogatives of the House.

On Jan. 29, 1936,⁽⁸⁾ the House returned S. 1421 to the Senate on the ground that it invaded the prerogatives of the House.

MR. [JERE] COOPER of Tennessee: Mr. Speaker, I rise to a question of the privilege of the House and present a resolution and ask for its immediate consideration.

The Clerk read the resolution, as follows:

HOUSE OF RESOLUTION 406

Resolved, That the bill (S. 1421) to amend subsection (a) of section 313 of the Tariff Act of 1930, in the opinion of this House, contravenes that clause of the Constitution of the United States requiring revenue bills to originate in the House of Representatives, and is an infringement on the prerogatives of the House, and that said bill be respectfully returned to the Senate with 3 message communicating this resolution.

8. 80 CONG. REC. 1183, 1184, 74th Cong. 2d Sess.

THE SPEAKER:⁽⁹⁾ The question is on agreeing to the resolution.

The resolution was agreed to, and a motion to reconsider was laid on the table.

Bill Exempting Olympic Game Receipts From Taxation

§ 15.3 The House by voice vote returned a Senate bill which exempted from taxation receipts from the operation of the Olympic games, on the ground that it invaded prerogatives of the House.

On Feb. 21, 1936,⁽¹⁰⁾ the House agreed to a resolution returning S. 3410 to the Senate on the ground that it infringed upon House prerogatives.

MR. [JERE] COOPER of Tennessee: Mr. Speaker, I rise to a question of the privileges of the House and present a resolution for immediate consideration.

The Clerk read the resolution, as follows:

HOUSE, RESOLUTION 425

Resolved, That the bill (S. 3410) to exempt from taxation receipts from the operation of Olympic games if donated to the State of California, the city of Los Angeles, and the county of Los Angeles, in the opinion of this House contravenes that clause of the Constitution of the United States requiring revenue bills to originate in the House of Rep-

resentatives, and is an infringement of the prerogative of this House, and that said bill be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER:⁽¹¹⁾ The question is on agreeing to the resolution.

The resolution was agreed to.

On motion of Mr. Cooper of Tennessee, a motion to reconsider the vote by which the resolution was agreed to was laid on the table.

Measure to Redetermine Sugar Quota

§ 15.4 On the ground that it infringed upon the prerogative of the House to originate bills for raising revenue, the House ordered the return of a Senate joint resolution authorizing the President to make a redetermination of the Cuban sugar quota for 1960 [which involved a tariff as well as an incentive payment].

On July 2, 1960,⁽¹²⁾ the House by voice vote agreed to House Resolution 598, returning to the Senate Senate Joint Resolution 217 which, notwithstanding the provision of the Quota Act of 1948, as amended, authorized the President to determine the quota for Cuba under that act for the bal-

9. Joseph W. Byrns (Tenn.).

10. 80 CONG. REC. 2583, 74th Cong. 2d Sess.

11. Joseph W. Byrns (Tenn.).

12. 106 CONG. REC. 15818, 15819, 86th Cong. 2d Sess.

ance of the calendar year 1960 in such amounts as he found to be in the national interest. The joint resolution was returned because it infringed upon the prerogative of the House to originate bills for raising revenue.

MR. [JOHN W.] McCORMACK [of Massachusetts]: Mr. Speaker, I offer a resolution based on the privileges of the House and ask for its immediate consideration.

The Clerk read as follows:

HOUSE RESOLUTION 598

That Senate Joint Resolution 217 in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said resolution be respectfully returned to the Senate with a message communicating this resolution.

MR. [CHARLES A.] HALECK [of Indiana]: Mr. Speaker, will the gentleman yield?

MR. McCORMACK: I yield.

MR. HALECK: Will the gentleman explain the resolution?

MR. McCORMACK: This resolution has the effect of sending back to the Senate the Senate resolution in relation to the sugar legislation. It states that the House respectfully declines to receive it on the ground that it involves revenue or affects revenue; and, under the Constitution, such legislation should originate in the House of Representatives.

THE SPEAKER: ⁽¹³⁾ The question is on the resolution.

13. Sam Rayburn (Tex.).

The resolution was agreed to.

A motion to reconsider was laid on the table.

Bill Raising Duty on Fishery Products

§ 15.5 A Senate-passed bill authorizing the President to raise the duty on fishery products was held to be an infringement of the privilege of the House, and was returned to the Senate.

On May 20, 1965,⁽¹⁴⁾ the House by voice vote agreed to House Resolution 397, returning S.1734 to the Senate, on the ground that it infringed the privileges of the House.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I rise on a question of the privileges of the House, send a resolution to the desk, and ask for its immediate consideration.

The Clerk read as follows:

HOUSE RESOLUTION 397

Resolved, That the bill of the Senate (S. 1734) to conserve and protect domestic fishery resources in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.

14. 111 CONG. REC. 11149, 11150, 89th Cong. 1st Sess.

THE SPEAKER:⁽¹⁵⁾ The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The objectionable portion of S. 1734 stated:

That when the Secretary of the Interior determines that the fishing vessels of a country are being used in the conduct of fishing operations in a manner or in such circumstances which diminish the effectiveness of domestic fishery conservation programs, the President. . . *may increase the duty on any fishery product in any form from such country for such time as he deems necessary to a rate not more than 50% above the rate existing on July 1, 1934.*" (Emphasis supplied.)

Bill Amending Tariff Schedules

§ 15.6 The Senate having passed a bill relating to the Trust Territory of the Pacific Islands containing one title amending the tariff schedules of the United States, the House held that the Senate's action constituted a violation of article I, section 7 of the Constitution, and adopted a resolution returning the bill to the Senate.

On May 3, 1971,⁽¹⁶⁾ the House by voice vote agreed to House Res-

15. John W. McCormack (Mass.).

16. 117 CONG. REC. 12991, 92d Cong. 1st Sess.

olution 414, returning S. 860 to the Senate because it contravened article I, section 7 of the Constitution and infringed upon the privileges of the House.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I offer a resolution (H. Res. 414) which involves the privileges of the House, and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 414

Resolved, That the bill of the Senate (S. 860) relating to the Trust Territory of the Pacific Islands in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER:⁽¹⁷⁾ The Chair recognizes the gentleman from Arkansas (Mr. Mills).

MR. [H.R.] GROSS [of Iowa]: Mr. Speaker, will the gentleman yield?

MR. MILLS: I will be glad to yield to the gentleman from Iowa.

MR. GROSS: Mr. Speaker, may we have a brief explanation of the reason for the action that is proposed?

MR. MILLS: Mr. Speaker, I will be glad to explain why I have offered this resolution. It is because the privileges of the House are actually being violated by title IV of the bill S. 860. That title includes an amendment of the Tariff Schedules of the United States,

17. Carl Albert (Okla.).

and all bills which include such amendments must originate in the House. . . .

The resolution was agreed to.

A motion to reconsider was laid on the table.⁽¹⁸⁾

Bill Amending Firearms Act

§ 15.7 The House returned a Senate bill to amend the National Firearms Act, on the ground that it contravened the constitutional prerogative of the House to originate bills to raise revenue.

On Mar. 30, 1937,⁽¹⁹⁾ the House by voice vote agreed to House Resolution 170, returning S. 1905 to the Senate because the Senate bill contravened the constitutional prerogative of the House under article I, section 7.

MR. [JERE] COOPER [of Tennessee]: Mr. Speaker, I offer a resolution for immediate consideration.

The Clerk read as follows:

HOUSE RESOLUTION 170

Resolved, That the bill (S. 1905) to amend the National Firearms Act, passed June 26, 1934, in the opinion of this House contravenes that clause of the Constitution of the United States requiring revenue bills to originate in the House of Representatives and is an infringement of the prerogatives of this House,

18. See § 19.5, *infra*, for Senate disposition of this matter.

19. 81 CONG. REC. 2930, 75th Cong. 1st Sess.

and that said bill be respectfully returned to the Senate with a message communicating this resolution.

The resolution was agreed to.

Substitute Adding Tax to House Bill

§ 15.8 The House held that a Senate amendment in the nature of a substitute imposing an additional tax, offered to a House bill to amend the Railroad Retirement Act, was an infringement upon the privileges of the House; and the House bill, as amended, was returned to the Senate.

On Sept. 14, 1965,⁽²⁰⁾ the House by voice vote agreed to House Resolution 578, returning H.R. 3157 to the Senate because Senate amendments to that bill contravened the constitutional prerogative of the House to originate revenue bills.

Mr. [OREN] HARRIS [of Arkansas]: Mr. Speaker, I rise to a question of the privilege of the House and offer a resolution.

The Clerk read the resolution, as follows:

H. RES. 578

Resolved, That the amendment in the nature of a substitute added by the Senate to the House bill (H.R. 3157) to amend the Railroad Retirement Act,

20. 111 CONG. REC. 23632, 89th Cong. 1st Sess.

ment Act of 1937 in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House, and that the said bill, with the amendments, be respectfully returned to the Senate with a message communicating this resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 16. Tabling Objection to Infringement

Senate Surtax Amendment

§ 16.1 The Senate having amended a House bill relating to excise tax rates by adding a general surtax on income, the House during consideration of the conference report refused to hold that the Senate's action constituted a violation of article I, section 7 of the Constitution, and laid on the table a resolution raising the matter as a question of the privileges of the House.

On June 20, 1968,⁽¹⁾ the House by a vote of yeas 257, nays 162, not voting 14, tabled House Resolution 1222 which sought to return to the Senate H.R. 15414 (a

1. 114 CONG. REC. 17970-78, 90th Cong. 2d Sess.

bill relating to excise tax rates) along with Senate amendments which added a surtax on income. The resolution was based on a contention that the Senate amendments contravened the constitutional prerogative of the House to originate revenue bills.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I call up the conference report on the bill (H.R. 15414) to continue the existing excise tax rates on communication services and on automobiles, and to apply more generally the provisions relating to payments of estimated tax by corporations, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.⁽²⁾

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:⁽³⁾ Is there objection to the request of the gentleman from Arkansas?

RESOLUTION OFFERED BY MR. GROSS—
PRIVILEGE OF THE HOUSE

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I rise to a question of privilege of the House and offer a resolution.

THE SPEAKER PRO TEMPORE: The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 1222

Resolved, That Senate amendments to the bill, H.R. 15414, in the

2. See §14.2, *supra*, for a further discussion of this precedent.
3. Charles M. Price (Ill.).

opinion of the House, contravene the first clause of the seventh section of the first article of the Constitution of the United States, and are an infringement of the privileges of this House, and that the said bill, with amendments, be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Gross] is recognized for 1 hour. . . .

REVENUE AND EXPENDITURE CONTROL ACT OF 1968—CONFERENCE REPORT

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Gross] has the floor.

MR. GROSS: . . . Mr. Speaker, the legislation now before us, H.R. 15414, represents one of the most direct attempts in the history of the Republic to cut away and destroy one of the most fundamental privileges and rights of this House—the right, the responsibility, and the duty, under the Constitution, to initiate revenue measures.

Section 7 of article I of the Constitution conferred this privilege on the Members of this body, and there are numerous precedents upholding the right of the House—and the House alone—to originate revenue bills.

For example, in 1807 the House refused to agree to Senate amendments that greatly enlarged the scope of a revenue bill. The record of the debate in the House on that day shows that John Randolph of Virginia, assailed the Senate amendments because they went far beyond merely amending the details of the bill as passed by the House.

Randolph believed, and rightly so, that under the Constitution the Senate

had no power to amend a money bill by varying the objects of that bill.

I do not claim, of course, that the Senate has no power whatsoever to amend a revenue bill of the House. But I do say it cannot, under the guise of an amendment, propose new revenue legislation. . . .

MR. MILLS: . . . If the Members of the House will turn to the Constitution to refresh their recollection of article I, section 7, clause 1, they will observe that it reads as follows:

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

There have been several instances where the question of the constitutionality involving this issue has been argued before the Supreme Court and where the Court has rendered decisions. Let me go back in history for two instances—and in these cases not as far back as the gentleman from Iowa went for his precedents in support of his argument.

I would like to point out how the Supreme Court has ruled on this matter. In *Flint v. Stone Tracy Co.*, 220 U.S. 107, 143, in 1911, the court held that the substitution of a corporate tax by the Senate for an inheritance tax passed by the House was constitutional. . . .

In another case also the Supreme Court upheld an amendment by the Senate of a tax bill. In this case the Senate added a section imposing an excise tax upon the use of foreign-built pleasure yachts. The Supreme Court in this case, *Rainey v. United States*, 232 U.S. 310 (1914), decided that the

amendment did not contravene article I, section 7, clause 1 of the Constitution. . . .

MR. GROSS: Mr. Speaker, I move the previous question on the resolution.

MR. MILLS: Mr. Speaker, I move to lay the resolution offered by the gentleman from Iowa on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Arkansas.

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

MR. MILLS: Mr. Speaker, on that question I demand the yeas and nays. The yeas and nays were ordered.

MR. [HALE] BOGGS [of Louisiana]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BOGGS: Am I correct in understanding that a vote "yea" is in favor of the motion offered by the gentleman from Arkansas, which would mean we would go back to orderly debate on this conference report?

THE SPEAKER PRO TEMPORE: The gentleman is correct. The motion is to lay the resolution on the table.

The question was taken; and there were—yeas 257, nays 162, not voting 14. . . .

So the motion to table the resolution was agreed to. . . .

A motion to reconsider was laid on the table.

MR. MILLS: Mr. Speaker, I renew my request that the statement of the managers on the part of the House be read in lieu of the report.

THE SPEAKER:⁽⁴⁾ Is there objection to the request of the gentleman from Arkansas?

There was no objection.

§ 17. Referring Objection to Committee

Senate Authorization to Use Securities Proceeds as Debt Transaction

§ 17.1 The House agreed to refer to the Committee on the Judiciary a resolution which alleged that a Senate joint resolution "authorizing the Secretary of the Treasury to use as a public-debt transaction certain proceeds of securities hereafter issued under authority of the Second Liberty Loan Act . . . to effectuate [an Anglo-American debt agreement]" infringed upon the constitutional powers of the House in the matter of revenue.

On May 14, 1946,⁽⁵⁾ the House by voice vote agreed to a motion to refer to the Committee on the Judiciary a resolution alleging that Senate Joint Resolution 138 infringed upon the constitutional prerogative of the House to originate revenue-raising bills.

MR. [HAROLD] KNUTSON [of Minnesota]: Mr. Speaker, I rise to present

5. 92 CONG. REC. 5000-12, 79th Cong. 2d Sess.

4. John W. McCormack (Mass.).

a question of the privilege of the House. . . .

THE SPEAKER:⁽⁶⁾ The gentleman from Minnesota is recognized. . . .

MR. KNUTSON: Mr. Speaker, the question of the privilege of the House is set forth in a resolution, which I send to the Clerk's desk; and on that I ask for recognition.

The Clerk read as follows:

Resolution offered by Mr. Knutson:

"Resolved, That Senate Joint Resolution 138, authorizing the Secretary of the Treasury to use as a public-debt transaction certain proceeds of securities hereafter issued under authority of the Second Liberty Loan Act, as amended, to effectuate a certain debt agreement between the United States and the United Kingdom of Great Britain, extending the purposes for which securities may be issued under that act and requiring payments of interest to the United States to be covered into the Treasury as miscellaneous receipts, is a bill to raise revenue within the meaning and intent of article I, section 7, of the Constitution of the United States requiring all such bills to originate in the House of Representatives;

"That Senate Joint Resolution 138 therefore is an infringement of the prerogatives and privileges of this House and that said bill be taken from the Speaker's table and respectfully returned to the Senate with a message communicating this resolution."

THE SPEAKER: The gentleman from Minnesota is recognized.

MR. KNUTSON: . . . In this case the Senate has not proposed or concurred

in amendments to a revenue measure, but on the contrary it has initiated a bill the sole purpose of which is the raising of revenue through the issuance of bonds or notes of the United States. . . .

. . . The rates of duty on goods imported from Great Britain in the future will be fixed in an amount which the State Department determines to be consistent with the terms of the financial agreement which this bill brings into existence.

The Senate report, on page 17, says:

The proposed credit is to enable Britain to participate in world trade without currency and trade discrimination, while she reconverts her industries to peacetime production and resumes her place in world trade.

Tariff duties are, in their very nature, trade discriminations.

The bill amends the Second Liberty Loan Act by adding to and expanding the purposes for which securities may be issued under the authority of that act. It does not merely refer to similar authority contained in some other act of Congress but explicitly authorizes bonds to be issued under authority of that act and expressly extends the scope of that act to include such bonds. The purposes for which bonds may be issued, and the authority for issuing them are strictly revenue matters.

Responding to Mr. Knutson, Mr. John W. McCormack, of Massachusetts, cited 2 Hinds' Precedents §1490, in which the House rejected a motion to return to the Senate a bill fixing the maximum amount of United States notes and providing for issuance of an

6. Sam Rayburn (Tex.).

additional amount in circulation in national banks. Mr. McCormack inserted a memorandum supporting his position that the pending bill did not infringe upon the prerogatives of the House.⁽⁷⁾

MEMORANDUM

Senate Joint Resolution 138, "to implement further the purposes of the Bretton Woods Agreements Act by authorizing the Secretary of the Treasury to carry out an agreement with the United Kingdom, and for other purposes," has originated in the Senate. The question arises, therefore, whether there is reasonable ground for sustaining a question of privilege which might be raised under article I, section 7, clause 1 of the Constitution which states: "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills." An examination of the judicial decisions, congressional decisions, and precedents in the form of similar bills leads to the conclusion that there is not sufficient basis for sustaining a question of privilege.

. . . [I]t appears to be clear that a bill to raise funds through the sale of Government obligations does not violate the privilege of the House as set forth in article I, section 7, clause 1 of the Constitution. Even if it should be concluded, however, that a bill to raise funds by selling Government bonds violates the privilege of the House, it would be necessary for the House to reach the additional conclusion that

Senate Joint Resolution 138 does provide for the raising of funds through the sale of Government obligations. Such a conclusion would be illogical. Under the Second Liberty Bond Act, as amended, the Secretary of the Treasury is already authorized for certain purposes to issue public debt obligations of the United States up to a specified maximum. Senate Joint Resolution 138 merely instructs the Secretary of the Treasury how to use funds which he is already authorized to raise under the Second Liberty Bond Act, as amended. The resolution would not increase the limit of public-debt issues, it would not authorize the Secretary of the Treasury to issue any securities not already provided for by the Second Liberty Bond Act, as amended, and it would not vary in any way the type of security which may be issued at the present time under existing law. . . .

Senate Joint Resolution 138 is not a bill providing for the raising of revenue within the meaning of article I, section 7, clause 1, of the Constitution. But even if it did provide for the raising of revenue it would fall within the class of legislation where revenue-raising provisions are only incidental to broader general purposes.⁽⁸⁾ The primary purpose of Senate Joint Resolution 138 is to authorize the execution of the financial agreement between the United States and the United Kingdom dated December 6, 1945. It is, accordingly,

8. See §13, *supra*, for discussion of the distinction between bills which primarily raise revenue and would therefore infringe on the prerogative if they originated in the Senate, and those which incidentally raise revenue and do not so infringe.

7. 92 CONG. REC. 5004, 5005, 79th Cong. 2d Sess.

legislation to make effective agreements between the two Governments regarding exchange controls, monetary policies, import controls, participation in the International Monetary Fund and the International Bank for Reconstruction and Development and participation in efforts to bring into being an international trade organization for the purpose of eliminating restrictive practices detrimental to world trade. . . .

In view of the fact that Senate Joint Resolution 138 authorizes the expenditure of funds by the Secretary of the Treasury, an examination has also been made of the practice of Congress with respect to appropriation bills. This purpose is stated in Cannon's Procedure in the House of Representatives (4th ed. 1945), as follows: ⁽⁹⁾

"Under immemorial custom the general appropriation bills (as distinguished from special bills appropriating for single, specific purposes) originate in the House of Representatives and there has been no deviation from that practice since the establishment of the Constitution." . . .

He also states that: ⁽¹⁰⁾

[B]ills providing special appropriations for specific purposes are not general appropriation bills. . . ."

It is clear, therefore, that a resolution appropriating funds for the extension of a line of credit to the United Kingdom is not a general appropriation and can originate either in the House or in the Senate. . . .

MR. MCCORMACK: Mr. Speaker, I offer a motion.

9. This passage appears on p. 20 of the 1959 edition of *Cannon's Procedure*.
10. This passage appears on p. 22 of the 1959 edition of *Cannon's Procedure*.

The Clerk read as follows:

Mr. McCormack moves to refer the resolution to the Committee on the Judiciary.

MR. KNUTSON: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The question is on the motion offered by the gentleman from Massachusetts [Mr. McCormack].

The motion was agreed to.

Parliamentarian's Note: The unnumbered House resolution was not reported back to the House. Senate Joint Resolution 138, after referral to the Committee on Banking and Currency, eventually was passed by the House and approved by the President.

§ 18. Action on House Bill in Lieu of Senate Bill

Floor Approval

§ 18.1 The House amended a Senate bill to insert provisions of a similar House-passed bill which included a tax provision, but subsequently vacated proceedings whereby the House bill had been laid on the table and the Senate bill approved, passed the House bill again, and messaged it to the Senate.

On May 4, 1959,⁽¹¹⁾ the House by unanimous consent vacated the proceedings whereby the House had tabled H.R. 5610, then amended and passed the bill again, and messaged it to the Senate. The proceedings whereby a Senate bill, S. 226, had been amended by the House to strike out Senate language and insert in lieu thereof the language of H.R. 5610, were vacated by unanimous consent.

MR. [OREN] HARRIS [of Arkansas]: Mr. Speaker, I ask unanimous consent that the proceedings whereby the bill H.R. 5610 was laid on the table, the amendment agreed to, the bill engrossed and read a third time, and passed, be vacated for the purpose of offering an amendment.

The Clerk read the title of the bill.

THE SPEAKER:⁽¹²⁾ Is there objection to the request of the gentleman from Arkansas?

MR. [JOHN B.] BENNETT of Michigan: Reserving the right to object, Mr. Speaker, will the chairman of our committee explain the purpose of this request?

MR. HARRIS: The purpose of this unanimous consent request is that the bill H.R. 5610 be reconsidered, after the vacating of the proceedings of the House of last week in connection therewith, for the purpose of agreeing to an amendment.

MR. BENNETT of Michigan: I withdraw my reservation of objection, Mr. Speaker. . . .

11. 105 CONG. REC. 7310-13, 86th Cong. 1st Sess.

12. Sam Rayburn (Tex.).

THE SPEAKER: Is there objection to the request of the gentleman from Arkansas [Mr. Harris]?

There was no objection.

MR. HARRIS: Mr. Speaker, I move to strike out all after the enacting clause and insert an amendment, which I send to the Clerk's desk.

THE SPEAKER: The Clerk will report the amendment. . . .

THE SPEAKER: The Clerk will read the amendment.

The Clerk read as follows:

Strike out all after the enacting clause and insert the following: . . .

MR. HARRIS: Mr. Speaker, for the information of the Members of the House, I have asked unanimous consent that the proceedings whereby the bill H.R. 5610 was laid on the table, the amendment agreed to, the bill engrossed and read a third time and passed, be vacated, for the purpose of offering an amendment.

The unanimous consent request was agreed to, and I have offered an amendment, which has just been read.

The amendment to the bill H.R. 5610 which I have just offered strikes out all after the enacting clause and inserts the provisions of the bill that passed the Senate last week.

You will recall that H.R. 5610, to amend the Railroad Retirement Act of 1937, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act, was considered in the House last Wednesday. A substitute was offered by the distinguished gentleman from West Virginia [Mr. Staggers]. The substitute was practically the same bill that was considered and passed by the other body, with the ex-

ception of one amendment, which had to do with section 4. Under this amendment pensions and annuities under this act or the Railroad Retirement Act of 1935 will not be considered as income for the purposes of section 522 of title 38 of the United States Code. The Senate had considered that amendment, which is not out of line with other provisions of law in other matters of this kind. So that is the matter that is before us now.

The necessity for this action is that last week after the House had taken the action it did, we, as usual, when we have a bill from the other body on the same subject on the Speaker's table, asked that that bill be taken from the Speaker's desk, that all after the enacting clause be stricken out, and that the House-passed bill be inserted. That was the usual procedure we followed, and I made the request after the House had taken its action last week. It later developed that that was not the correct action that should have been taken because there are tax provisions in this legislation. The Constitution provides, as you know, that all legislation relating directly to tax measures, revenues, must originate in the House of Representatives. Therefore, this action to vacate that proceeding is in order to comply with the constitutional provision by passing this legislation in order to accomplish what the House intended last week after it considered this matter rather extensively.

MR. [KENNETH A.] ROBERTS [of Alabama]: Mr. Speaker, the amendment to section 20 of the Railroad Retirement Act of 1937 made by section 4 of the amendment provides that payments under such act shall not be considered

as income for purposes of section 522 of title 38, United States Code. Under that section, pension for non-service-connected permanent and total disability is not paid to a veteran whose annual income exceeds \$1,400 if he has no dependents or \$2,700 if he has one or more dependents. Under existing law, certain items are disregarded in determining whether a veteran has exceeded the income limitations, and the amendment will add to the list of such items payments under the Railroad Retirement Act of 1937.

The cost of this amendment is negligible.

The amendment was sponsored in the other body by Senator Hill, of Alabama. I was happy to sponsor it in the House.

THE SPEAKER: The question is on the amendment.

The amendment was agreed to.

THE SPEAKER: The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

THE SPEAKER: The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

MR. HARRIS: Mr. Speaker, I ask unanimous consent that the proceedings whereby S. 226, an act to amend the Railroad Retirement Act of 1937, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act, so as to provide increases in benefits, and for other purposes, as amended, was read a third time, and passed, be vacated, and the bill be indefinitely postponed.

THE SPEAKER: Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Parliamentarian's Note: On Apr. 29, 1959, while the House had under consideration H.R. 5610, the Senate messaged to the House S. 226, a measure differing in only one respect from the House bill as it had been amended on the floor. After passage of H.R. 5610, a motion was adopted to strike out all after the enacting clause in S. 226 and insert the language of the House bill; the House bill was then laid on the table. The following day, shortly before the Senate bill was to be messaged to the Senate, a question was raised as to the constitutionality of the Senate-passed bill because it included a tax feature, and the delivery of the message to the Senate was stopped. The proceedings of the House on May 4, 1959, were necessitated by the requirement under the Constitution that all bills raising revenue originate in the House. Following the amendment of the House bill and the indefinite postponement of the Senate bill, the House bill, H. R. 5610, was messaged to the Senate on May 5, 1959.

§ 18.2 The House, after it had amended a Senate bill to insert provisions of a similar

House passed bill which included a revenue-raising title, vacated the proceedings whereby the House bill had been laid on the table, passed the bill again, and messaged it to the Senate.

On Dec. 7, 1970,⁽¹³⁾ the House by unanimous consent vacated the proceedings whereby the House had tabled H.R. 19504, then passed the bill again, and messaged it to the Senate.

MR. [GEORGE H.] FALLON [of Maryland]: Mr. Speaker, I ask unanimous consent that the proceedings whereby the bill (H.R. 19504) to authorize appropriations for the construction of certain highways in accordance with title 23, United States Code, and for other purposes, was read a third time, passed, and the motion to reconsider laid on the table and the bill then laid on the table, be vacated.

THE SPEAKER:⁽¹⁴⁾ Is there objection to the request of the gentleman from Maryland?

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object, I am at a loss to understand why this request is being made. What is the reason therefor?

MR. FALLON: Mr. Speaker, I will say to the gentleman from Iowa, we should not have vacated the House number and substituted the Senate bill, since title III of the bill is a revenue measure and must originate in the House.

13. 116 CONG. REC. 40096, 91st Cong. 2d Sess.

14. John W. McCormack (Mass.).

MR. GROSS: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER: Is there objection to the request of the gentleman from Maryland?

There was no objection.

The engrossed House bill (H.R. 19504) was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

Parliamentarian's Note: The House did not ask for the return to the House of the amended Senate bill, S. 4418. That bill never emerged from conference. It was the House measure which was finally enacted as Public Law No. 91-605.

§ 18.3 The House vacated the proceedings by which it added a revenue-raising amendment to a pending Senate bill, preferring to postpone further consideration of the Senate bill while sending a House bill, containing the revenue provision, to the Senate.

On May 11, 1970,⁽¹⁵⁾ the House agreed to amend S. 2694, amending the District of Columbia Police and Firemen's Salary Act of 1958 and the District of Columbia Teachers' Salary Act of 1955, by

15. 116 CONG. REC. 14951-60, 91st Cong. 2d Sess.

striking out all after the enacting clause and inserting in lieu thereof the language of H.R. 17138, a similar measure which, unlike the Senate bill, included a provision (title V) to impose new taxes. The House bill, H.R. 17138, was tabled.

MR. [DON] FUQUA [of Florida]: Mr. Speaker, I ask unanimous consent that the Committee on the District of Columbia be discharged from further consideration of S. 2694, to amend the District of Columbia Police and Firemen's Salary Act of 1958 and the District of Columbia Teachers' Salary Act of 1955 to increase salaries, and for other purposes, a Senate bill similar to that passed by the House, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

THE SPEAKER:⁽¹⁶⁾ Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2694

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—SALARY INCREASES FOR DISTRICT OF COLUMBIA POLICEMEN AND FIREMEN

* * * * *

MR. FUQUA: Mr. Speaker, I offer an amendment.

16. John W. McCormack (Mass.).

The Clerk read as follows:

Amendment offered by Mr. Fuqua: Strike out all after the enacting clause of S. 2694 and insert in lieu thereof the language of H.R. 17138, as passed, as follows:

TITLE I.—SALARY INCREASES FOR DISTRICT OF COLUMBIA POLICEMEN AND FIREMEN

* * * * *

TITLE V.—AMENDMENTS TO THE DISTRICT OF COLUMBIA REVENUE LAWS

Sec. 501. Section 3 of title VI of the District of Columbia Income and Franchise Tax Act of 1947 (D.C. Code, sec. 47-1567b(a)) is amended to read as follows:

“Sec. 3. Imposition of Tax.—In the case of a taxable year beginning after December 31, 1969, there is hereby imposed on the taxable income of every resident a tax determined in accordance with the following table: . . .”

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 17138) was laid on the table.

On May 12, 1970,⁽¹⁷⁾ the House vacated the proceedings whereby H.R. 17138 was tabled and subsequently passed the House bill.

MR. FUQUA: Mr. Speaker, I ask unanimous consent that the proceedings whereby the bill (H.R. 17138)

17. 116 CONG. REC. 15145-50, 91st Cong. 2d Sess.

to amend the District of Columbia Police and Firemen's Salary Act of 1968, and the District of Columbia Teachers' Salary Act of 1955 to increase salaries, and for other purposes, was read a third time and passed and laid on the table be vacated.

THE SPEAKER: Is there objection to the request of the gentleman from Florida?

There was no objection.

MR. FUQUA: Mr. Speaker, I ask unanimous consent for the immediate consideration of the engrossed bill.

THE SPEAKER: Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the engrossed bill.

It then vacated the proceedings of May 11, 1970, whereby S. 2694, as amended by insertion of the language of the House bill, was approved, and indefinitely postponed further action on the Senate bill.

VACATING PROCEEDINGS ON S. 2694, SALARY INCREASES FOR DISTRICT OF COLUMBIA TEACHERS, POLICEMEN, AND FIREMEN

MR. FUQUA: Mr. Speaker, I ask unanimous consent that the proceedings whereby the House considered, amended, and passed the bill of the Senate (S. 2694) to amend the District of Columbia Police and Firemen's Salary Act of 1958 and the District of Columbia Teacher's Salary Act of 1955 to increase salaries, and for other purposes, be vacated and that further proceedings on that bill be indefinitely postponed.

THE SPEAKER: Is there objection to the request of the gentleman from Florida?

There was no objection.

Parliamentarian's Note: S. 2694 as passed by the Senate did not contain a revenue provision. Title V of the House passed bill (H.R. 17138) did, however, contain a provision amending the D.C. revenue laws to impose new taxes on D.C. residents. S. 2694 was amended on May 10 to include the provisions of the House-passed bill. On the morning of May 12, before the Senate bill had been messaged back to the Senate, it was discovered that the House amendment to the Senate bill contained the revenue feature, which constituted a violation of article I, section 7 of the Constitution (requiring bills for raising revenue to originate in the House). For this reason, the House vacated the proceedings of May 11 and messaged the House bill to the Senate.

Committee Decision

§ 18.4 The Committee on Ways and Means, having voted not to recommend to the House the return of a Senate bill decreasing the debt limit as infringing on the prerogatives of the House, reported out a House bill on the same

subject, which passed the House and Senate and became a public law.

On June 6, 1946,⁽¹⁸⁾ the Committee on Ways and Means, after deciding not to recommend that the House return to the Senate a Senate bill which had been referred to it, and which sought to decrease the debt limit, reported out a bill (H.R. 2404) on the same subject, which passed the House and Senate and became Public Law No. 79-28 (59 Stat. 47).

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1760. An act to decrease the debt limit of the United States from \$300,000,000,000 to \$275,000,000,000; to the Committee on Ways and Means.

§ 18.5 Where the Senate had passed a bill which possibly infringed upon the House's constitutional prerogative to originate revenue legislation—a bill to authorize the President to extend certain privileges and immunities (including exemptions from customs duties and importation taxes) to the Organization of African Unity—the House passed an identical

18. 92 CONG. REC. 6436, 79th Cong. 2d Sess.

bill reported from the Committee on Ways and Means.

On Nov. 6, 1973,⁽¹⁹⁾ the House by a vote of yeas 340, nays 39, not voting 54, approved H.R. 8219, a bill identical to a Senate-passed bill which arguably infringed upon the constitutional prerogative of the House to originate revenue legislation.

MR. [ALBERT C.] ULLMAN [of Oregon]: Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8219) to amend the International Organizations Immunities Act to authorize the President to extend certain privileges and immunities to the Organization of African Unity.

The Clerk read as follows:

H.R. 8219

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the International Organizations Immunities Act (22 U.S.C. 288–288f) is amended by adding at the end thereof the following new section:

“Sec. 12. The provisions of this title may be extended to the Organization of African Unity in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.”

19. 119 CONG. REC. 36006–08, 93d Cong. 1st Sess.

THE SPEAKER:⁽¹⁾ Is a second demanded?

MR. [HERMAN T.] SCHNEEBELI [of Pennsylvania: Mr. Speaker, I demand a second.

THE SPEAKER: Without objection, a second will be considered as ordered.

There was no objection.

MR. ULLMAN: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of the pending bill, as reported to the House by the Committee on Ways and Means, is to provide the President with authority to extend to the Organization of African Unity and its office, officials, and employees in the United States those privileges and immunities specified in the International Organizations Immunities Act.

Under the bill, at the discretion of the President the Organization of African Unity—OAU—may be designated by the President as an international organization for purposes of the International Organizations Immunities Act. Upon such a designation the organization, to the extent so provided by the President, will be exempt from customs duties on property imported for the activities in which it engages, from income taxes, from withholding taxes on wages, and from excise taxes on services and facilities. In addition, the employees of the international organization, to the extent not nationals of the United States, may not be subject to U.S. income tax on the income they receive from OAU. OAU is an organization composed of 41 member states, representing all the independent African nations—except the Republic of

1. Carl Albert (Okla.).

South Africa—and acts to further the goals of political and economic development of Africa. It presently has a mission in New York. . . .

THE SPEAKER: The question is on the motion of the gentleman from Oregon (Mr. Ullman) that the House suspend the rules and pass the bill H.R. 8219.

The question was taken.

MR. [JOHN R.] RARICK [of Louisiana]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 340, nays 39, not voting 54, as follows: . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Parliamentarian's Note: Although it did not directly “raise” revenue, the Senate bill clearly “affected” revenue, because it granted an immunity from taxation.

§ 19. Senate Action on Revenue Legislation

In addition to its mandate that the House originate all revenue bills, article I, section 7 of the Constitution⁽²⁾ authorizes the

2. See annotation following article I, section 7, *House Rules and Manual*.

Senate to propose or concur with amendments as on other bills. Senate authority to amend revenue bills is broad, but not unlimited. A principle frequently applied is that the Senate may substitute one kind of tax for a tax that the House has proposed, but may not impose a tax if one had not originally been proposed by the House. Thus, the Supreme Court has held that a Senate amendment which substituted a corporate tax in place of an inheritance tax which had been proposed in the original House version did not contravene the constitutional provision; for the bill had properly originated in the House as a revenue-raising measure and the Senate amendment could constitutionally be added thereto.⁽³⁾

In a similar case, the House without debate and by voice vote held that a Senate amendment in the nature of a substitute infringed upon the House prerogative and returned the bill, as amended, to the Senate.⁽⁴⁾ In this case, the substitute, which was offered to a House bill to amend the Railroad Retirement Act, sought to impose a tax.

On the other hand, as a further application of the above principle,

3. *Flint v Stone Tracy Co.*, 220 U.S. 107 (1911). See also *Rainey v United States*, 232 U.S. 310 (1914).

4. See § 15.8, *supra*.

the House tabled a resolution to return to the Senate a House excise tax bill, which the Senate had amended by provision for a general surtax.⁽⁵⁾

When the issue has been raised, the Senate has generally respected the House prerogative. Thus, the Senate rejected a committee amendment changing a definition in the Internal Revenue Code which was added to a Senate bill granting independence to the Philippine Islands.⁽⁶⁾ On another occasion, the Senate sustained a point of order that a Senate amendment affecting the Revenue Act, offered to a House bill directed to administrative purposes rather than raising revenue, infringed on the prerogative.⁽⁷⁾ Moreover, after the House returned a Senate bill to the Senate on the ground that certain tariff schedule amendments infringed upon the House prerogative, the Senate deleted the amendments.⁽⁸⁾ And the Senate has deleted amendments to the Internal Revenue Code that appeared in a Senate bill.⁽⁹⁾

5. See § 16.1, *supra*.

6. See § 19.3, *infra*.

7. See § 19.4, *infra*.

8. See § 19.5, *infra*.

9. See § 19.6, *infra*.

Constitutional Issue Submitted to Senate

§ 19.1 Because it requires interpretation of the Constitution rather than the rules of the Senate, an issue as to whether a Senate amendment to a House bill infringes upon the prerogative of the House to originate bills raising revenue is decided by the Senate, not the Chair.

On Mar. 28, 1935,⁽¹⁰⁾ a question of order as to the propriety of a Senate amendment to a House bill was submitted to the Senate.⁽¹¹⁾

The Senate resumed the consideration of the bill (H.R. 6359) to repeal certain provisions relating to publicity of certain statements of income.

THE VICE PRESIDENT:⁽¹²⁾ The question is on the amendment offered by the Senator from Wisconsin [Mr. La Follette].

The amendment offered by Mr. La Follette is after line 5 insert a new section reading as follows:

Sec. 2. (a) Section 11 of the Revenue Act of 1934, relating to the normal tax on individuals, is amended by striking out "4 percent" and inserting in lieu thereof "6 percent."

10. 79 CONG. REC. 4583, 4584, 4586, 4587, 74th Cong. 1st Sess.

11. See also 84 CONG. REC. 6339-49, 76th Cong. 1st Sess., May 31, 1939, for submission of a similar issue to the Senate.

12. John N. Garner (Tex.).

(b) Section 12(b) of the Revenue Act of 1934, relating to rates of surtax, is amended to read as follows:

“(b) Rates of surtax: There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

“Upon a surtax net income of \$4,000 there shall be no surtax; upon surtax net incomes in excess of \$4,000 and not in excess of \$8,000, 6 percent of such excess. . . .”

MR. [PAT] HARRISON [of Mississippi]: Mr. President, I make a point of order against the amendment offered by the Senator from Wisconsin. I do not think I formally made it yesterday, because the Senator from Wisconsin said he desired to make a brief statement. He made that statement yesterday afternoon, and I now make the point of order that the pending bill is not, in a strict sense, a revenue bill, and that for the Senate to attach a tax proposal to the bill at this time would be contrary to that provision of the Constitution requiring all bills for raising revenue to originate in the House of Representatives. . . .

THE VICE PRESIDENT: The point of order is well taken. The Chair is ready to rule.

The present occupant of the chair has at no time declined to construe the rules of the Senate; and if this were a matter of the rules of the Senate, he would not hesitate for a moment to express his opinion about it and make a ruling.

It seems to the Chair, however, that this is purely a constitutional question; and under the rulings and under the precedents for more than a hundred years, where constitutional questions are involved as to the right of the Sen-

ate to act, the Chair has universally submitted the question to the Senate.

The Chair thinks the logic of that rule is correct, the reasoning of it is good, because the Chair might undertake to interpret the Constitution when a majority of the Senators would have a different viewpoint. So the Chair is going to follow a long line of precedents and submit to the Senate the question whether or not it is constitutional for the Senate to propose this amendment; and it occurs to the Chair that the only question involved is, Is this a bill to raise revenue?

So the Chair is going to submit to the Senate of the United States the question as to whether or not the Senate, under the Constitution, has a right to propose this amendment.

MR. [WILLIAM E.] BORAH [of Idaho]: Mr. President, must that question be determined without debate?

MR. [HUEY P.] LONG [of Louisiana]: No: it is subject to debate.

THE VICE PRESIDENT: The point of order has been made by the Senator from Mississippi [Mr. Harrison] to the amendment of the Senator from Wisconsin [Mr. La Follette]. The question before the Senate is whether or not the point of order shall be sustained. That question is debatable.⁽¹⁵⁾

In connection with his ruling on the point of order made by the Senator from Mississippi, the Chair asks unanimous consent to insert in the Record some decisions and precedents prepared by the parliamentary clerk. Is there objection? The Chair hears none.

The matter referred to is as follows:

13. See also § 19.4, *infra*, for further debate on this question.

[FROM THE CONSTITUTION OF THE UNITED STATES, AS REVISED AND ANNOTATED, 1924]

ARTICLE I SECTION 7, CLAUSE 1,
REVENUE BILLS

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

“All bills for raising revenue.”

“The construction of this limitation is practically settled by the uniform action of Congress confining it to bills to levy taxes in the strict sense of the word, and it has not been understood to extend to bills for purposes which incidentally create revenue.”

U.S. v. Norton (91 U.S. 566) [1875].

Twin City Bank v. Nebeker (167 U.S. 196) [1897].

Millard v. Roberts (202 U.S. 429) [1906].

QUESTIONS INVOLVING CONSTITUTIONALITY OF BILLS ARE SUBMITTED TO SENATE

Wednesday, January 16, 1924

The Senate, in a call of the calendar under rule VIII, reached the bill (S. 120) to provide for a tax on motor vehicle fuels sold within the District of Columbia, and for other purposes.

Mr. McKellar made a point of order against the bill on the ground that it was a revenue measure and that under the Constitution of the United States all revenue-raising measures must originate in the House of Representatives, and that the bill had no place on the Senate Calendar.

The question was argued, and Mr. Lenroot made the contention that it was not the function of the Chair to

pass upon the question of whether bills are or are not in violation of the Constitution.

After further argument, the President pro tempore (Albert B. Cummins, of Iowa) made the following ruling:

“The Chair is of the opinion that he has no authority to declare a proposed act unconstitutional. The only precedent which the Chair has been able to find since the question arose was presented to the Senate in 1830, and the Vice President then in the chair ruled in accordance with the suggestion which the Chair has just made, holding that it was a question which must be submitted to the Senate and one which could not be ruled upon by the Chair, which entirely concurs with the views of the present occupant of the chair in the matter. The question before the Senate, therefore, is, Shall the point of order which is made by the Senator from Tennessee [Mr. McKellar], which is that the bill now under consideration is unconstitutional and should have originated in the House of Representatives, be sustained? [Putting the question.] The ayes have it, and the point of order is sustained. The bill will be indefinitely postponed.”

January 22, 1925⁽¹⁴⁾

The Senate had under consideration the bill (S. 3674) reclassifying the salaries of postmasters and employees of the Postal Service, readjusting their salaries and compensation on an equitable basis, increasing postal rates to provide for such readjustment, and for other purposes.

Pending debate,

14. The incident of Jan. 22, 1925, is discussed at 6 Cannon's Precedents §317.

Mr. Swanson raised a question of order, viz, that that portion of the bill dealing with increased postal rates proposed to raise revenue, and, under the Constitution, must originate in the House of Representatives, and was therefore in contravention of the Constitution.

The Presiding Officer (Mr. Jones of Washington) held that the Chair had no authority to pass upon the constitutionality of a bill, and submitted to the Senate the question, Shall the point of order be sustained?

On the following day the Senate, by a vote of 29 yeas to 50 nays, overruled the point of order.

The bill was subsequently passed and transmitted to the House of Representatives. On February 3 the House returned the bill to the Senate with the statement that it contravened the first clause of the seventh section of the first article of the Constitution and was an infringement of the privileges of the House.

The message and bill were referred to the Committee on Post Offices and Post Roads, and no further action taken. A House bill, H.R. 11444, of an identical title, was subsequently passed by both Houses and became a law. . . .

March 2, 1931⁽¹⁵⁾

Mr. Capper moved that the Senate proceed to the consideration of the bill (S. 5818) to regulate commerce between the United States and foreign countries in crude petroleum and all products of petroleum, including fuel

15. The incident of Mar. 2, 1931, is discussed at 6 Cannon's Precedents § 320.

oil, and to limit the importation thereof, and for other purposes.

Mr. Ashurst made the point of order that the bill was a revenue-raising measure, and, under the Constitution, should originate in the House of Representatives.

The Vice President submitted the point of order to the Senate.

Mr. Capper's motion was subsequently laid on the table, and the point of order was not passed upon.

December 17, 1932

The Senate had under consideration the bill (H.R. 7233) to enable the people of the Philippine Islands to adopt a constitution and provide a government for the Philippine Islands, to provide for the independence of the same, and for other purposes.

Mr. Dickinson offered an amendment imposing on imports of pearl buttons or shells, in excess of 800,000 gross in a year, the same rates of duty imposed on like articles imported from foreign countries.

Mr. Walsh of Montana raised a question of order, viz, that the amendment proposed to raise revenue and could not, under the Constitution, originate with the Senate.

The Vice President submitted to the Senate the question, Is the point of order well taken? and

It was determined in the affirmative.

Subsequently, Mr. Dickinson stated that the amendment above indicated was identical, except as to the commodity, with the language in the bill dealing with sugar and coconut oil; when

The President pro tempore ruled that in view of the language contained

in the House text, the amendment was in order.

After debate, and other proceedings, the following occurred:⁽¹⁶⁾

MR. HARRISON: Mr. President, I ask for a vote on the point of order raised by me.

THE PRESIDING OFFICER:⁽¹⁷⁾ The question is, Shall the Senate sustain the point of order raised by the Senator from Mississippi [Mr. Harrison] against the amendment proposed by the Senator from Wisconsin [Mr. La Follette] on the ground that it contravenes the constitutional provision? [Putting the question.] The "ayes" have it, and the point of order is sustained.

Committee Jurisdiction of Bill Incidentally Producing Revenue

§ 19.2 The Presiding Officer of the Senate held that the Senate Committee on Banking and Currency did not exceed its jurisdiction in reporting an original bill with a revenue-producing measure to amend the Internal Revenue Code therein, because that measure was incidental to the main purpose of the bill, making equity capital and long-term credit more readily available for small business concerns.

16. 79 CONG. REC. 4613, 74th Cong. 1st Sess.

17. Harry S Truman (Mo.).

On June 9, 1958,⁽¹⁸⁾ the Presiding Officer, William Proxmire, of Wisconsin, held that the Senate Committee on Banking and Currency did not exceed its jurisdiction in reporting S. 3651 with a revenue producing measure to amend the Internal Revenue Code, because that measure was incidental to the main purpose of the bill.⁽¹⁹⁾

MR. [JOHN J.] WILLIAMS [of Delaware]: Mr. President, I should like to have the attention of the chairman of the committee. The text of the bill, beginning on page 50, line 10, and extending to page 52, through line 17, embraces a proposed amendment to the Internal Revenue Code. I am wondering if the committee did not make a mistake when it placed this provision in the bill, because, in the first place, measures of such nature should be considered by the Senate Finance Committee. Secondly, revenue measures should originate in the House. . . .

Mr. President, I call attention to the fact that, under paragraph (d) of rule XXV, the Committee on Banking and Currency may not deal with any revenue-producing measure. . . .

I next invite the attention of the Senate to the fact that in this bill the attempt is not made to amend an ordinary House bill; nor even a bill which deals with a revenue-raising provision; nor a bill which had been reported by the Committee on Finance; nor one

18. See the proceedings at 104 CONG. REC. 10522-25, 85th Cong. 2d Sess.

19. *Id.* at pp. 10524, 10525.

which had been considered by the Committee on Ways and Means of the House. What is attempted is an amendment of the Revenue Code on a Senate bill which has been considered only by the Banking and Currency Committee. I shall make the point of order that the Committee on Banking and Currency has exceeded its jurisdiction, and this section of the bill should be stricken. . . .

MR. [FRANCIS H.] CASE of South Dakota: Mr. President the distinguished Senator from Delaware has raised a very important question. He has raised two questions, in fact. He has raised the question of a possible violation of the rule of the Senate with respect to the jurisdiction of the Committee on Banking and Currency in reporting the pending bill. He has also raised the constitutional question as to whether a bill carrying tax provisions must originate in the House of Representatives.

I should like to have the attention of the Parliamentarian while I am speaking on this point. The question first came up in 1955, when the Committee on Public Works was considering the interstate highway bill.

At that time I consulted the Parliamentarian as to whether the Committee on Public Works could report a bill which would raise revenue for the purpose of defraying the cost of the highway program, particularly the standard interstate program. The Parliamentarian called my attention to a decision [*Hubbard v Lowe* 226 F 135 (S.D.N.Y.), appeal dismissed, 242 U.S. 654 (1916)] in the so-called Cotton Futures Act, which held that a bill which had originated in the Senate, but which had a revenue item added to it in the House of Representatives.

The Supreme Court held that that act was not valid, because they could not go behind the number of the bill. Even though in that instance the revenue feature was added by the House of Representatives, the Supreme Court held that the origin of the bill was determined by the number it carried. That bill carried a Senate number. So the Supreme Court invalidated the Cotton Futures Act because section 7 of the Constitution provides that all bills for raising revenue shall originate in the House of Representatives.

On the basis of that Supreme Court ruling, which the Parliamentarian called to my attention, the Committee on Public Works decided that it should not risk the validity of the highway bill by reporting revenue features. In fact, in 1956, when the question of a highway act again was before the Senate, because the House had failed to pass a highway bill in 1955, the Committee on Public Works decided it would defer to the action of the House, and wait until a bill could come over from the House carrying revenue features or carrying a House bill number, so that we would not run into danger. The Committee on Public Works did not want to risk invalidating the proposed legislation by placing a Senate number on a bill which included revenue features.

Under that decision of the Supreme Court, cited to me by the Parliamentarian, I cannot understand why members of the Committee on Banking and Currency would want to risk the fate of this bill by having it continue to carry tax provisions. The Senator from Delaware [Mr. Williams] has already pointed them out. For emphasis, I invite the committee's attention to the

fact that section 308 specifically refers to the Internal Revenue Code of 1954 and then, in parentheses, reads: "relating to deduction of losses." It amends section 165 of the Internal Revenue Code relating to the deduction of losses.

Further, in section 308, subparagraph (c), there is an amendment of section 243 of the Internal Revenue Code, "relating to dividends received by corporations"

In other words, the language of the bill before us very clearly changes the Revenue Code, by changing the provisions which raise revenue and the provisions relating to deductions. Certainly it must be considered a bill to raise revenue or a bill to change the code relating to revenue. Based on the opinions which the Parliamentarian gave in 1955 and 1956, I do not see how this bill, S. 3651, could carry those provisions and still be considered a valid bill. . . .

MR. WILLIAMS. Mr. President, before I raise the question of constitutionality, my first point of order is that the committee exceeded its jurisdiction. It had no authority at all to report a bill dealing with the Revenue Code. Therefore, I make the point of order against that section of the bill on that basis.

The question is, Does the Senate Committee on Banking and Currency have jurisdiction to report measures relating to the Revenue Code? If they have such jurisdiction, other committees likewise have the jurisdiction to report similar bills.

I confine my point of order, first, to that phase of the question. . .

Mr. [J. WILLIAM] FULBRIGHT [of Arkansas]: Mr. President, in regard to

the point of order, it is my position and that of the committee that the revenue provision of the bill is strictly of a subsidiary and incidental nature to the main purpose of the bill itself; that this is a very common practice; and that the point of order is invalid.

THE PRESIDING OFFICER: The Chair has been informed by the Parliamentarian that in the case of *Millard v. Roberts* (202 U.S. 429) decided in 1906, the Supreme Court of the United States made a decision which has a bearing on the present situation.

In that case, a bill which had originated in the Senate provided for the construction of a Union Station in the District of Columbia, and contained a small incidental tax provision. The constitutionality of the bill was attacked on the ground that revenue bills must originate in the House.

The Court, after citing the case of *Twin City Bank v. Nebeker* (167 U.S. 203) [1897], which quoted Mr. Justice Story as holding that "revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes, which may incidentally create revenue," said, "here was no purpose, by the act or any of its provisions, to raise revenue to be applied in meeting the expenses or obligations of the Government."

That situation applies to the bill in question. The Committee on Banking and Currency has jurisdiction over the pending bill and may report some provisions incidental to carrying out the main purposes of the bill.

There are numerous precedents for the establishment of the Small Business Administration and the method of its financing, against which no point of

order was made when bills establishing those corporations or administrations similar in their financing were under consideration in the Senate.

This is the opinion of the Parliamentarian as given to the Chair. The Chair makes it his own opinion and, therefore, the Chair overrules the point of order.⁽²⁰⁾

Amendment to Senate Bill as Infringement

§ 19.3 The Senate rejected a committee amendment to a Senate bill granting independence to the Philippines, on the ground that the amendment invaded the prerogative of the House to originate bills to raise revenue.

On May 31, 1939,⁽²¹⁾ the Senate by a vote of yeas 8, nays 54, decided that a committee amendment to S. 2390 was out of order because it invaded the prerogative of the House to originate bills to raise revenue.

MR. [MILLARD E.] TYDINGS [of Maryland]: Mr. President, I ask unanimous consent for the immediate consideration of Senate bill 2390, to amend an act entitled "An act to provide for the complete independence of the Phil-

20. See § 19.6, *infra*, for a discussion of withdrawing revenue amendments from this bill.

21. 84 CONG. REC. 6331, 6339, 6348-50, 76th Cong. 1st Sess.

ippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands, and for other purposes." . . .

The next amendment was, on page 19, after line 23, to insert a new paragraph, as follows:

"(f) Subsection (a)(1) of section 2470 of the Internal Revenue Code (I.R.C., ch. 21, sec. 2470(a)(1)), is hereby amended by striking out the comma after the words 'coconut oil,' and inserting in lieu thereof the following: '(except coconut oil rendered unfit for use as food or for any but mechanical or manufacturing purposes as provided in paragraph 1732 of the Tariff Act of 1930), and upon the first domestic processing of.' "

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, I make a point of order against the amendment.

THE PRESIDING OFFICER:⁽²²⁾ The Senator from Texas will state his point of order.

MR. CONNALLY: I make the point of order that the amendment proposed is a revenue measure, and, under the Constitution, must originate in the House of Representatives. If the Chair desires argument, I can make an argument; but it is so patent that I feel no argument is necessary.

THE PRESIDING OFFICER: The Chair will state to the Senator from Texas that the present occupant of the chair is always delighted to hear arguments from the Senator from Texas, but, under the long-established usage, practice and precedents of the Senate, a constitutional point is not decided by the Chair, but is submitted to the Senate, and the present occupant of the chair will follow that practice. . . .⁽¹⁾

22. Edwin C. Johnson (Colo.).

1. See § 19.1, *supra*, for a discussion of authorities supporting the principle

MR. [HIRAM W.] JOHNSON of California: Mr. President, I wish to fortify, if I can, the position of the Senator from Arizona. . . .

The latest edition of the Constitution of the United States of America, annotated—oh, it is a presumptuous thing to be referring to the Constitution here—contains notes under the various headings. I will read the notes for what they are worth. I shall not attempt to comment upon them in any way, shape, form, or manner. Other Senators can understand them as well as I can, although they may understand them differently:

Sec. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

The note says:

All bills for raising revenue: The construction of this limitation is practically settled by the uniform action of Congress confining it to bills to levy taxes in the strict sense of the word, and it has not been understood to extend to bills having some other legitimate and well defined general purpose but which incidentally create revenue.

Under that particular text the following cases are cited: *United States v. Norton* (91 U.S. 566) [1875], *Twin City National Bank v. Nebeker* (167 U.S. 196) [1897], *Millard v. Roberts* (202 U.S. 429) [1906].

Amendments by Senate: It has been held within the power of the

that the Senate and not the Chair decides the constitutional question relating to the prerogative of the House.

Senate to remove from a revenue collection bill originating in the House a plan of inheritance taxation and substitute therefor a corporation tax.

The following cases are cited: *Flint v. Stone Tracy Co.* (220 U.S. 107) [1911], *Rainey v. United States* (232 U.S. 310) [1914].

That is all.

MR. CONNALLY: Mr. President, I have not had the opportunity to read the decisions cited by the Senator from California; but there is no difficulty in that regard. As I understand the rule and the precedents, the language of the Constitution provides that all bills for raising revenue shall originate in the House. However, the Senate, of course, may amend them. When a revenue bill comes to the Senate, the Senate is at liberty, if it desires, to adopt a new tax which is not even contained in the House bill, because it has complete legislative powers, except for the prohibition that it shall not originate the bill.

If the doctrine asserted by Senators on the floor is sound, then the Senate need never pay attention to the constitutional provision about revenue measures, because when any bill comes over from the House a Senator may offer on the floor of the Senate an amendment cutting down the taxation, as this bill does, and say that it does not raise any revenue, and is therefore in order. The bill immediately becomes subject to amendment, and another Senator may offer an amendment raising the revenue, or adding a new tax, thus rendering absolutely nugatory the constitutional provision.

There was a reason for the constitutional provision that revenue bills

should originate in the House. The theory was that the Members of the House of Representatives are representatives of the people, and that Senators are representatives of the States, formerly being elected by the legislatures of the States. The old theory, upon which the Revolution itself was founded, was that taxation without representation was cause for revolution. Therefore, the makers of the Constitution wisely provided that no tax should be laid upon the backs of the people unless their Representatives in the House of Representatives should propose the bill seeking to levy the tax; but the Constitution says that when that bill comes to the Senate the Senate may amend it, or change it, or do what it pleases with it, once the House has opened the door.

We have before us a bill which did not even originate in the House. The whole bill originated in the Senate. It is now proposed to take off a tax. It does not make any difference whether the bill raises or lowers the tax; it is still a revenue measure. It still relates to the revenue. I could offer in a moment an amendment raising the tax, instead of repealing the 3-cent tax, as is proposed. I could offer an amendment to make it 5 cents. Such an amendment would be in order. Then we should unquestionably have a bill raising revenue.

Mr. President, we ought not to adopt the pending amendment. I think everyone ought to know that it is violative of the spirit of comity, good will, and respect for the prerogatives of the two Houses. We ought not to add a revenue measure by a committee amendment.

THE PRESIDING OFFICER: To the committee amendment the Senator from

Texas raised the point of order that the committee amendment is itself a revenue measure and may not originate in the Senate. The question now occurs, Is the committee amendment in order? Those Senators who think it is in order will vote "aye"; those who think the point of order is well taken will vote "no."

MR. [ALBEN W.] BARKLEY [of Kentucky]: Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER: The Senator will state it.

MR. BARKLEY: Is not the question whether the point of order is well taken, on which those who believe it well taken will vote "aye"?

THE PRESIDING OFFICER: The present occupant of the chair will say that he entertains the same idea as that of the Senator from Kentucky, but he submitted the question to the Parliamentarian, and the Parliamentarian advised the occupant of the chair that the better practice is to submit the question, "Is the committee amendment in order?" Therefore, so that it may be understood, the Chair will repeat the question, Is the committee amendment in order? Those who think it is in order will vote "aye," and those who think it is not in order will vote "no". [Putting the question.] By the sound, the "noes" appear to have it.

MR. [CARL] HAYDEN [of Arizona]: Mr. President, I ask for a division.

Mr. Harrison, Mr. Barkley, and Mr. La Follette called for the yeas and nays.

The yeas and nays were ordered.

The result was announced—yeas 8, nays 54, as follows: . . .

So the Senate decided the committee amendment to be out of order.

Amendment to House Bill as Infringement

§ 19.4 The Senate sustained a point of order that a Senate amendment to a House bill to repeal certain provisions relating to publicity of certain statements of income invaded the constitutional prerogative of the House to originate revenue-raising bills.

On Mar. 28, 1935,⁽²⁾ the Senate by voice vote sustained a point of order that a Senate amendment to H.R. 6359 invaded the constitutional prerogative of the House to originate revenue-raising bills.

The Senate resumed the consideration of the bill (H.R. 6359) to repeal certain provisions relating to publicity of certain statements of income.

THE VICE PRESIDENT:⁽³⁾ The question is on the amendment offered by the Senator from Wisconsin [Mr. La Follette].

The amendment offered by Mr. La Follette is after line 5 insert a new section reading as follows:

Sec. 2. (a) Section 11 of the Revenue Act of 1934, relating to the normal tax on individuals, is amended by striking out "4 percent" and inserting in lieu thereof "6 percent."

2. 79 CONG. REC. 4583-87, 4613, 74th Cong. 1st Sess.

3. John N. Garner (Tex.).

(b) Section 12(b) of the Revenue Act of 1934, relating to rates of surtax, is amended to read as follows:

"(b) Rates of surtax: There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

"Upon a surtax net income of \$4,000 there shall be no surtax; upon surtax net incomes in excess of \$4,000 and not in excess of \$8,000, 6 percent of such excess. . . ."

MR. [PAT] HARRISON [of Mississippi]: Mr. President, I make a point of order against the amendment offered by the Senator from Wisconsin. I do not think I normally made it yesterday, because the Senator from Wisconsin said he desired to make a brief statement. He made that statement yesterday afternoon, and I now make the point of order that the pending bill is not, in a strict sense, a revenue bill, and that for the Senate to attach a tax proposal to the bill at this time would be contrary to that provision of the Constitution requiring all bills for raising revenue to originate in the House of Representatives. . . .

Mr. President, I was of the opinion that perhaps the question was so clear upon its face that it would require no argument to convince anyone that we would be violating precedents and not acting in accordance with the Constitution if we should attempt to write a revenue amendment upon a bill which seeks merely to repeal the "pink slip" provision of the law.

It will be noted that the title of House bill 6359 is "To repeal certain provisions relating to publicity of certain statements of income." Those provisions deal solely with administrative purposes and features of the existing

law; in no way, not by the wildest stretch of the imagination, can they be construed to affect the raising of revenue.

Mr. Story, in section 880 of his works on the Constitution, makes this statement with reference to the constitutional provision:

What bills are properly "bills for raising revenue", in the sense of the Constitution, has been matter of some discussion. A learned commentator supposes that every bill which indirectly or consequently may raise revenue is, within the sense of the Constitution, a revenue bill. He therefore thinks that the bills for establishing the post office and the mint, and regulating the value of foreign coin, belong to this class, and ought not to have originated—as in fact they did—in the Senate. But the principal construction of the Constitution has been against his opinion. And, indeed, the history of the origin of the power already suggested abundantly proves that it has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes, which may incidentally create revenue. No one supposes that a bill to sell any of the public lands, or to sell public stock, is a bill to raise revenue, in the sense of the Constitution. Much less would a bill be so deemed which merely regulated the value of foreign or domestic coins, or authorized a discharge of insolvent debtors upon assignments of their estates to the United States, giving a priority of payment to the United States in cases of insolvency, although all of them might incidentally bring revenue into the Treasury.

In one of the most important cases decided by the courts of the United States, the case of *Twin City Bank v. Nebeker* (167 U.S. 202) [1897], the court said:

The case is not one that requires either an extended examination of precedents, or a full discussion as to the meaning of the words in the Constitution, "bills for raising revenue." What bills belong to that class is a question of such magnitude and importance that it is the part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject. It is sufficient in the present case to say that an act of Congress providing a national currency secured by a pledge of bonds of the United States and which, in the furtherance of that object, and also to meet the expenses attending the execution of the act, imposed a tax on the notes in circulation of the banking associations organized under the statute, is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives. Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue (1 Story on Constitution, sec. 880). The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question.

Throughout the decisions the same construction of the constitutional provision has been given by the courts.

I desire to cite a few precedents relative to what has been done with reference to bills which originated in the House which were not revenue bills, upon which some revenue amendment was tacked by the Senate, and the House later refused to accept the amendment, returning the bill to the Senate.

In the Sixty-fourth Congress, second session, February, March 1917, the Senate added an amendment to the naval appropriation bill (H.R. 20632) authorizing the Secretary of the Treasury to borrow certain sums on the credit of the United States and to prepare and issue bonds therefor (proposed by Mr. Swanson).

The House, on March 2, 1917, returned the bill and amendment to the Senate with the statement that it contravened the first clause of section 7 of article I of the Constitution and was an infringement of the privileges of the House.

The Senate subsequently reconsidered the vote on the passage and engrossment of the bill and amendments, and a motion was agreed to whereby the amendment providing for the bond issue was stricken from the bill. . . .

On June 30, 1864,⁽⁴⁾ the bill (H.R. 549) further to regulate and provide for the enrolling and calling out of the national forces was passed by the Senate with an amendment, among others, providing for a 5-percent duty on incomes. The House ordered the bill returned to the Senate with the statement that the amendment in question contravened the first clause of section 7 of article I of the Constitution and was an infringement of the privileges of the House.

The Senate on the same day reconsidered the bill and eliminated the objectionable amendment.

Mr. President, so it goes on down the line. I submit that the bill now before us, which deals solely with the repeal of an administrative provision of law,

namely, the pink-slip provision, affects in no way the revenues of the Government.

Mr. Justice Story and the courts say a bill must go further than incidentally to affect the revenues of the Government and must deal directly with the revenues before the Senate may take cognizance to the extent of adding revenue provisions.

It seems to me it is without question that the Senate ought to sustain the point of order, if submitted, or, if the Chair desires to rule without submitting the question to the Senate, he should sustain the point of order. Certainly the Senate of the United States ought not to assume, in view of the provision of the Constitution to which I have invited attention, the privilege and the right of writing a revenue bill in this way.

Sooner or later at the present session of Congress we may be forced to consider a revenue bill which might have a tendency to increase taxes or to extend the application of those taxes which by operation of law would otherwise lapse on June 30. Certainly, when that time comes the House ought to be given its privilege and right, which it has always exercised, to construct its own revenue bill without the Senate assuming in the beginning to write a revenue bill and send it to the House. I think the House would have just cause to feel it was an abuse of their privilege, and, so far as I am concerned, I am not willing to go that far. Therefore, I have made the point of order. . . .

THE VICE PRESIDENT: The point of order is well taken. The Chair is ready to rule.

4. This instance is discussed at 2 Hinds' Precedents § 1486.

The present occupant of the chair has at no time declined to construe the rules of the Senate; and if this were a matter of the rules of the Senate, he would not hesitate for a moment to express his opinion about it and make a ruling. . . .⁽⁵⁾

The . . . Chair is going to follow a long line of precedents and submit to the Senate the question whether or not it is constitutional for the Senate to propose this amendment; and it occurs to the Chair that the only question involved is, Is this a bill to raise revenue? . . .

MR. [WILLIAM E.] BORAH [of Idaho]: Mr. President, must that question be determined without debate?

MR. [HUEY P.] LONG [of Louisiana]: No; it is subject to debate.

After debate, and other proceedings, the following occurred:

MR. HARRISON: Mr. President, I ask for a vote on the point of order raised by me.

THE PRESIDING OFFICER:⁽⁶⁾ The question is, Shall the Senate sustain the point of order raised by the Senator from Mississippi [Mr. Harrison] against the amendment proposed by the Senator from Wisconsin [Mr. La Follette] on the ground that it contravenes the constitutional provision? [Putting the question.] The "ayes" have it, and the point of order is sustained.

Deletion of Tariff Schedule Amendments

§ 19.5 After the House returned a Senate bill con-

5. See §19.1, supra, for the full text of the ruling regarding the submission of the question for decision by the Senate on constitutional issues.
6. Harry S Truman (Mo.).

taining a provision which infringed upon the constitutional power of the House to originate revenue measures, the Senate, by unanimous consent, reconsidered the vote by which the bill had passed, adopted an amendment deleting the objectionable provision, and then passed the bill as so amended.

On May 4, 1971,⁽⁷⁾ the Senate reconsidered the vote on S. 860, deleted title 4, a tariff schedule which contravened the prerogatives of the House, and passed the bill as so amended.

MR. [MICHAEL J.] MANSFIELD [of Montana]: Mr. President, I ask that the Chair lay before the Senate a message from the House on S. 860.

The President pro tempore laid before the Senate a message from the House of Representatives that the bill of the Senate (S. 860) relating to the Trust Territory of the Pacific Islands in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.⁽⁸⁾

MR. MANSFIELD: Mr. President, I ask unanimous consent that the Senate re-

7. 117 CONG. REC. 13273, 92d Cong 1st Sess.
8. See §15.6, supra, for House disposition of this matter.

consider the vote by which S. 860 was passed, together with third reading.

THE PRESIDENT PRO TEMPORE:⁽⁹⁾ Is there objection? Without objection, it is so ordered. The bill is open to amendment.

MR. MANSFIELD: Mr. President, I send to the desk an amendment to strike title 4 of the bill.

THE PRESIDENT PRO TEMPORE: The amendment will be stated.

The amendment was read, as follows:

Beginning on page 15, line 1, strike all language through line 10, page 17.

THE PRESIDENT PRO TEMPORE: The question is on agreeing to the amendment of the Senator from Montana (Mr. Mansfield).

The amendment was agreed to.

THE PRESIDENT PRO TEMPORE: The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 860) was ordered to be engrossed for a third reading, was read the third time, and passed.

Withdrawal of Internal Revenue Code Amendments

§ 19.6 Amendments to the Internal Revenue Code, incorporated in a Senate bill designed to make equity capital and long-term credit more readily available for small business concerns, were on motion deleted from the bill during debate.

9. Allen J. Ellender (La.).

On June 9, 1958,⁽¹⁰⁾ the Chairman of the Committee on Banking and Currency, J. William Fulbright, of Arkansas, moved to delete proposed amendments to the Internal Revenue Code from S. 3651, a bill to make equity capital and long-term credit more readily available for small business concerns.

MR. [JOHN J.] WILLIAMS [of Delaware]: I now make the point of order on the ground that it is not constitutional for the Senate to originate revenue measures. Certainly this point of order should be sustained. I suggest the absence of a quorum.

The clerk proceeded to call the roll.

THE PRESIDING OFFICER:⁽¹¹⁾ A quorum is present. The Senator from Delaware has raised a point of order that the bill is not constitutional in its tax provision at page 50. . . .

. . . Does the Senator from Delaware wish to make an observation?

MR. WILLIAMS: I understand the Committee on Banking and Currency has decided that it will withdraw the disputed section of the bill, and strike it out. With that understanding I withdraw my point of order.

MR. [HOMER E.] CAPEHART [of Indiana]: Mr. President, will the Senator yield?

MR. WILLIAMS: I yield.

MR. CAPEHART: As I understand, the Senator from Delaware is withdrawing his point of order, with the under-

10. 104 CONG. REC. 10525-27, 85th Cong. 2d Sess. See also § 19.2, *supra*, for a precedent relating to committee jurisdiction of this bill.

11. William Proxmire (Wis.).

standing that the complete section will be taken out. . . .

MR. WILLIAMS: Mr. President, I withdraw the point of order. . . .

THE PRESIDING OFFICER: Will the Senator from Arkansas inform the Chair how much of the language he wishes to have stricken? . . .

MR. FULBRIGHT: All the tax provisions which are involved in this matter are included in section 308, beginning at page 50, and continuing to section 309. That is the part which, as the manager of the bill, I ask to have stricken.

MR. [JOSEPH S.] CLARK [of Pennsylvania]: And that the subsequent sections be renumbered.

MR. FULBRIGHT: Yes. . . .

THE PRESIDING OFFICER: The question is on agreeing to the motion of the Senator from Arkansas [Mr. Fulbright] to strike out section 308, beginning in line 10, on page 50, and down to and including line 17, on page 52.

The motion was agreed to.

Parliamentarian's Note: The portion of the bill, relating to the Internal Revenue Code, which was stricken by the Senate, was as follows:

TAX PROVISIONS

Sec. 308. (a) Section 165 of the Internal Revenue Code of 1954 (relating to deduction for losses) is amended by adding at the end of subsection (h) the following new paragraphs:

"(3) For special rule for losses on stock in a small business investment company, see section 1242.

"(4) For special rule for losses of a small business investment company, see section 1243."

(b) Subchapter P of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new sections:

"Sec. 1242. Losses on small business investment company stock.

"In the case of a taxpayer if—

"(1) A loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

"(2) Such loss would (but for this section) be treated as a loss from the sale or exchange of a capital asset, then such loss shall be treated as a loss from the sale or exchange of an asset which is not a capital asset.

"Sec. 1243. Loss of small business investment company.

"In the case of a small business investment company, if—

"(1) A loss is on convertible debentures (including stock received pursuant to the conversion privilege) acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

"(2) Such loss would (but for this section) be treated as a loss from the sale or exchange of a capital asset, then such loss shall be treated as a loss from the sale or exchange of an asset which is not a capital asset."

(c) Section 243 of the Internal Revenue Code of 1954 (relating to dividends received by corporations) is amended as follows:

(1) by striking from subsection (a) the following language "In the case of a corporation" and inserting in lieu thereof the following language "In the case of a corporation (other than a small business investment company operating under the Small Business Investment Act of 1958)".

(2) By adding at the end thereof the following new subsection:

“(c) Small business investment company. In the case of a small business investment company, there shall be allowed as a deduction an amount equal to 100 percent of the amount received as dividends (other than dividends described in paragraph (1) of section 244, relating to dividends on preferred stock of a public utility) from a domestic corporation which is subject to taxation under this chapter.”

(d) Section 246(b)(1) of the Internal Revenue Code of 1954 (relating to limitation on aggregate amount of deductions for dividends received) is amended by striking “243” wherever appearing and inserting in lieu thereof “243 (a) and (b)”.

§ 20. Authority to Make Appropriations

The precedents in this section relate to the efforts of the Senate to originate appropriation measures.⁽¹²⁾ Mr. Clarence Cannon has observed:⁽¹³⁾

Under immemorial custom the general appropriation bills, providing for a number of subjects⁽¹⁴⁾ as distinguished from special bills appropriating for single, specific purposes,⁽¹⁵⁾ originate in

12. See 2 Hinds' Precedents §§ 1500, 1501; and 6 Cannon's Precedents §§ 319–322, for earlier precedents.
13. Cannon's Procedure (1959) p. 20.
14. 4 Hinds' Precedents §§ 3566–3568.
15. Cannon's Precedents § 2285.

the House of Representatives and there has been no deviation from that practice since the establishment of the Constitution.

Following the view expressed by Mr. Cannon, the House has returned Senate-passed general appropriation bills.⁽¹⁶⁾

The Senate has not always accepted the view that the House has the exclusive right to originate appropriation measures.⁽¹⁷⁾

Resolution Regarding Authority to appropriate

§ 20.1 The Senate has adopted a resolution asserting that the power to originate appropriation bills is not exclusively in the House of Representatives but is shared by the Senate, and suggesting that an appropriate commission be established to study article I, section 7, clause 1, of the Constitution.

On Oct. 13, 1962,⁽¹⁸⁾ the Senate by voice vote agreed to Senate Resolution 414, asserting the

16. See § 20.3, *infra*.

17. See § 20.1, *infra*. See also Authority of the Senate to Originate Appropriation Bills, S. Doc. No. 17, 88th Cong. 1st Sess., Apr. 30, 1963.

18. 108 CONG. REC. 23470, 87th Cong. 2d Sess.

power of the Senate to originate bills appropriating money.⁽¹⁹⁾

ASSERTION OF THE POWER OF THE SENATE TO ORIGINATE BILLS APPROPRIATING MONEY FOR THE SUPPORT OF THE GOVERNMENT

MR. [RICHARD B.] RUSSELL [of Georgia]: Mr. President, I submit and send to the desk a privileged resolution, for which I request immediate consideration.

19. See 108 CONG. REC. 12898, 12899, 12904-11, 87th Cong. 2d Sess., July 9, 1962, for a resolution of the Senate Committee on Appropriations, setting forth areas of dispute between it and the House Committee on Appropriations, and resolving that among the issues to be discussed or negotiated between them was the power of the Senate to originate appropriation bills; a resolution of the House Committee on Appropriations suggesting negotiations on conference procedures between special committees of the House and Senate Committees on Appropriations; and the text of a report of the Committee on the Judiciary (H. Rept. No. 147, 46th Cong. 3d Sess., Feb. 2, 1881), in which the majority recommended adoption of a resolution stating that the Senate may originate appropriation bills and that the power to originate bills appropriating money is not exclusive in the House. 2 Hinds' Precedents § 1500 discusses this report.

For a recent discussion of this subject, see Authority of the Senate to Originate Appropriation Bills, S. Doc. No. 17, 88th Cong. 1st Sess., Apr. 30, 1963.

THE ACTING PRESIDENT PRO TEMPORE:⁽²⁰⁾ The resolution will be read.

The resolution (S. Res. 414) submitted by Mr. Russell was read, as follows:

Whereas the House of Representatives has adopted House Resolution 831 alleging that Senate Joint Resolution 234, a resolution continuing the appropriations for the Department of Agriculture, to be in contravention of the first clause of the seventh section of the Constitution and an infringement of the privileges of the House; and

Whereas this clause of the Constitution provides only that "All bills for raising revenue shall originate in the House of Representatives," and does not in anywise limit or restrict the privileges and power of the Senate with respect to any other legislation; and

Whereas the acquiescence of the Senate in permitting the House to first consider appropriation bills cannot change the clear language of the Constitution nor affect the Senate's coequal power to originate any bill not expressly "raising revenue"; and

Whereas the Committee on the Judiciary of the House of Representatives, pursuant to a directive of the House of Representatives, reported to the House in 1885 that the power to originate bills appropriating money from the Treasury did not reside exclusively in the House: Therefore be it

Resolved, That the Senate respectfully asserts its power to originate bills appropriating money for the support of the Government and declares its willingness to submit the issue either for declaratory judgment by an appropriate appellate court of the United States or to an appropriate commission of outstanding educators specializing in the study of

20. Lee Metcalf (Mont.).

the English language to be chosen in equal numbers by the President of the Senate and the Speaker of the House; and be it further

Resolved, That a copy of this resolution be transmitted to the House of Representatives.

THE ACTING PRESIDENT PRO TEMPORE: Without objection, the Senate will proceed to the immediate consideration of the resolution.

MR. RUSSELL: Mr. President, this resolution is just as self-explanatory, I believe, as the clause of the Constitution which is involved. I see no necessity for laboring it.

I move the adoption of the resolution. . . .

THE ACTING PRESIDENT PRO TEMPORE: The question is on agreeing to the resolution.

The resolution was agreed to.

Department of Agriculture Appropriation

§ 20.2 A Senate joint resolution making an appropriation out of the general funds of the Treasury was held to be an infringement of the privileges of the House, and was returned to the Senate.

On Oct. 10, 1962,⁽¹⁾ the House by a vote of yeas 245, nays 1, not voting 188, agreed to House Resolution 831, returning to the Senate Senate Joint Resolution 234, because it infringed upon the

1. 108 CONG. REC. 23014-16, 87th Cong. 2d Sess.

privileges of the House. The Senate joint resolution provided in part as follows:

That there is appropriated out of any money in the Treasury not otherwise appropriated, and out of the applicable corporate and other revenue . . . such amounts as may be necessary for continuing, during . . . 1963 . . . projects of the Department of Agriculture.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I offer a privileged resolution (H. Res. 831) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That Senate Joint Resolution 234, making appropriations for the Department of Agriculture and the Farm Credit Administration for the fiscal year 1963, in the opinion of the House, contravenes the first clause of the seventh section of the first article of the Constitution and is an infringement of the privileges of this House, and that the said joint resolution be taken from the Speaker's table and be respectfully returned to the Senate with a message communicating this resolution.

MR. CANNON: Mr. Speaker, on October 4, 1962, the other body messaged to the House Senate Joint Resolution 234, now on the Speaker's table. This joint resolution is an infringement on the privileges of the House, as stated in section 7 of article I of the Constitution, under which the House of Representatives has always maintained the right to originate the appropriation bills.

The priority of the House in the initiation of appropriation bills is buttressed by the strongest and most im-

pling of all rules, the rule of immemorial usage. As Mr. Asher Hinds relates in section 1500 of volume II of "Hinds' Precedents" at page 973—while the issue has been raised a number of times—"there has been no deviation from the practice." . . .

THE SPEAKER PRO TEMPORE:⁽²⁾ The question is on the resolution.

MR. CANNON: Mr. Speaker, on that ask for the yeas and nays.

The yeas and nays were ordered.

MR. [JOHN J.] ROONEY [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:⁽³⁾ The gentleman will state it.

MR. ROONEY: Would a yea vote be a vote to send Senate Joint Resolution 234 back to the Senate?

THE SPEAKER PRO TEMPORE: The gentleman has correctly stated the situation.

The question was taken; and there were—yeas 245, nays 1, not voting 188, as follows: . . .

So the resolution was agreed to.

District of Columbia Appropriation

§ 20.3 The House returned a Senate joint resolution which appropriated money from the District of Columbia general funds, on the ground that it invaded the prerogatives of the House.

On Mar. 12, 1953,⁽⁴⁾ the House by voice vote agreed to House Resolution

2. Carl Albert (Okla.).
3. John W. McCormack (Mass.).
4. 99 CONG. REC. 1897, 1898, 83d Cong. 1st Sess.

176, to return to the Senate Senate Joint Resolution 52, appropriating money from the District of Columbia general fund.

MR. [JOHN] TABER [of New York]: Mr. Speaker, I rise to a question of privilege of the House and offer a resolution (H. Res. 176).

The Clerk read the resolution, as follows:

Resolved, That Senate Joint Resolution 52, making an appropriation out of the general fund of the District of Columbia, in the opinion of the House, contravenes the first clause of the seventh section of the first article of the Constitution and is an infringement of the privileges of this House, and that the said joint resolution be taken from the Speaker's table and be respectfully returned to the Senate with a message communicating this resolution.

MR. TABER: Mr. Speaker, Senate Joint Resolution 52 was passed on Monday, providing an appropriation out of the general fund of the District of Columbia. It was not referred, as the rules require, to the Committee on Appropriations of the Senate, but was passed direct. This infringes the privileges of the House as set forth in section 7 of article I of the Constitution which gives the House of Representatives the privilege of initiating all appropriation bills.

This question was thoroughly discussed by the Honorable John Sharp Williams when he was a Member of the Senate back in 1912. He analyzed the authorities on that subject. The article was printed as a Senate document on July 15, 1919. The article discusses the situation in great detail, and there is no question about it. I hope that the resolution will be promptly adopted.

Pursuant to the consent granted me, I submit herewith certain parts of Senator Williams' treatise:

Mr. President, if the Senate can constitutionally originate general appropriation bills when money is in the Treasury, then it can do the same thing when there is no money in the Treasury; and thus this body, representing the States and not the people, representing chiefly the smaller States, could force either Federal insolvency, not to be thought of, or else could force the House to levy new or additional taxes; thus force the House to originate tax bills. The two things hang together. If this Senate could originate general supply bills, then it could commit the Government to a course of expenditure that would coerce the House not only into originating but into passing tax bills.

As Seward well says, speaking of the long practice under which the House always insisted upon and the Senate always conceded, the right of the House to originate general appropriation bills:

"This [practice] could not have been accidental; it was therefore designed. The design and purpose were those of the contemporaries of the Constitution itself. It evinces their understanding of the subject, which was that bills of a general nature for appropriating the public money or for laying of taxes or burdens on the people, direct or indirect in their operation, belonged to the province of the House of Representatives." (See Congressional Record, vol. 16, pt. 2, p. 959.)

He added:

"If this power be confined to the one and not to the other, that is, to the levying of taxes to get money, but not to its expenditure, then the right is useless, because we change revenue laws so seldom."

This criticism of Seward's is correct, although it was made in view of

what occurred later and not of what was in the minds of the framers of the Constitution. I believe it is not too much to say that, in the minds of the framers of the Constitution, a bill to raise revenue was a budget; that is, a bill levying taxes and at the same time appropriating the proceeds of the levy, because such was the contemporaneous practice.

Mr. Sumner, of Massachusetts, said that he regarded the Senate origination of general appropriation bills as "a departure from the spirit of the Constitution" (*ibid.*).

Mr. Hinds, in his incomparable work, in a note at the bottom of page 973, volume 2 [§1500], concerning the question of the right of the House to originate general appropriation or supply bills, says: "But while there has been a dispute as to the theory, there has been no deviation from the practice that the general appropriation bills originate in the House of Representatives." He expressly uses this phrase as contradistinguished from special bills appropriating for single, specific purposes.

It is well to remember in this connection the Hurd resolution of January 13, 1885,⁽⁵⁾ which was laid on the table in the House. The fact that it was laid upon the table has been quoted very frequently, but the resolution was directed at Senate bill 398 (the Blair educational bill). It was not a supply bill, but a bill of specific appropriation; not a bill for carrying on the Government any more than a bill making appropriation for a public building would be a bill for carrying on the Government.

Mr. Speaker, I yield to the gentleman from Missouri [Mr. Cannon].

MR. [CLARENCE] CANNON: Mr. Speaker, this is not an inconsequential

5. See 2 Hinds' Precedents §1501 for discussion of this incident, which actually occurred on Jan. 23, 1885.

matter. It is fundamental in the practice of the House and is supported by the strongest rule known in parliamentary procedure, the rule of immemorial usage. A great many precedents could be recited, but the whole matter is summed up in a comment by the former Parliamentarian of the House, Asher Hinds, who knew more about procedure and had more to do with establishing the orderly procedures of the House than any man in American history with the single exception of Vice President Jefferson. . . .

In summing up the whole question Asher Hinds said:

There has been some debate about the theory of restricting the origin of appropriation bills to the House but there has been no deviation in the practice.

As Mr. Hinds pointed out, this rule is one of the rules which came down to us from the English Parliament. . . .

[The House of] Commons through the years began to assert and eventually maintained through debate and by the sword the primacy of the House in the origin of money bills, the levying of taxes, and the appropriation and expenditure of revenues.

Whenever the Commons became too insistent on the redress of grievances and began to protest too vigorously the chronic denial of justice, the King would prorogue Parliament and send them home. But inevitably the forced loans, the sale of privileges, and the money borrowed at usurious rates of interest dwindled and as a last resort the King would be compelled to convene Parliament. In that day, as now, the control of the purse strings was the only recourse of the people. It was and

is the primary prerogative of democracy and the one effective weapon in defense of rights and liberties of a free nation.

. . . The Representatives in the House, elected by the people every 2 years, should have exclusive rights in the origination of appropriation bills. I hope the resolution of the gentleman from New York will be agreed to.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, will the gentleman yield?

MR. TABER: I yield.

MR. MCCORMACK: Mr. Speaker, I am sure when my friend, the gentleman from New York [Mr. Taber] and my friend, the gentleman from Missouri [Mr. Cannon] agree that the House of Representatives must, indeed, have a sound case. But will the gentleman, for the record, state just what part of this resolution, which has come from the other body, violates the long standing custom and usage and practice of the Congress?

MR. TABER: This resolution, Mr. Speaker, in its entirety, violates the practice. There is no part of it which could be construed as covering anything else or any other subject matter.

MR. MCCORMACK: Mr. Speaker, the gentleman's statement satisfies me.

MR. TABER: Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER:⁽⁶⁾ The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 20.4 After receiving a Senate joint resolution which had

6. Joseph W. Martin. Jr. (Mass.).

been returned on the ground that it infringed upon the prerogative of the House to originate revenue-raising bills, the Senate entertained a discussion of its prerogative to originate bills affecting the revenue of the District of Columbia.

On Mar. 16, 1953,⁽⁷⁾ the prerogative of the Senate to originate bills affecting the revenue of the District of Columbia was discussed.

MR. [ROBERT C.] HENDRICKSON [of New Jersey]: Mr. President, on Monday, March 9, the Senate passed by unanimous consent Senate Joint Resolution 52, which was thereafter transmitted to the House. This resolution appropriated \$17,000 out of the general fund of the District of Columbia for the operation of the Office of Rent Control in the District of Columbia.

On March 12 the House passed House Resolution 176, returning Senate Joint Resolution 52 to the Senate on the ground that it "contravenes the first clause of the seventh section of the first article of the Constitution and is an infringement of the privileges of this House."

I invite the attention of the Senate to a similar situation which obtained during the 82d Congress. On May 7, 1952, the Senate considered and passed S. 2703 which would increase the District of Columbia gasoline tax from 4 to 5 cents per gallon. At that time the House refused to consider S. 2703, also on the ground that it con-

travened the constitutional provision referred to in House Resolution 176.

It is suggested that the issue thus raised on two occasions within the past year by the House of Representatives involves not only a parliamentary question but a constitutional question as well.

Indeed, these recent House actions appear to constitute a challenge to the concept that home rule may be achieved in the District of Columbia by means short of a constitutional amendment.

The issue of whether such legislation can originate in the Senate was one aspect of the routine analyses the Republican calendar committee gave to these bills. Their consideration of the bills included a routine discussion of the parliamentary question with the Parliamentarian of the Senate, Mr. Charles L. Watkins. He stated that article I, section 7 of the Constitution does not apply to such bills. He reasoned that the bills do not contemplate the raising of Federal revenue; that they are limited in their application to the District of Columbia; and that, as such, like any other bill affecting the District, the Senate may initiate such legislation. . . .

Article I, section 7, paragraph 1, of the Constitution provides as follows:

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Article I, section 8, paragraph 17, provides Congress with power—

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding 10 miles square)

7. 99 CONG. REC. 1978, 1979, 83d Cong. 1st Sess.

as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States.

It is well established that the various provisions of the Constitution must be harmonized.

In expounding the Constitution of the United States every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. The many discussions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition; and shown the high talent, the caution, and the foresight of the illustrious men who framed it. Every word appears to have been weighed with the utmost deliberation, and its force and effect to have been fully understood. (*Holmes v. Jennison* ((1840) 14 Peters 540, 570); see also *Cohens v. Virginia* ((1821) 6 Wheat 264).)

There is no conflict whatever between the two provisions of the Constitution cited above, and where Congress exercises exclusive legislative power over the District of Columbia, article I, section 7, of the Constitution does not apply.

Only one case comes to hand that construes article I, section 7 of the Constitution. In *Hubbard v. Lowe* ((1915) 226 Fed. 135), the District Court for the Southern District of New York had before it a challenge to the validity of a statute dealing with contracts for cotton futures. A bill which originated in and passed the Senate called for their exclusion from the mails. The House struck out all after the enacting clause and inserted a substitute by way of a prohibitive tax. The

House version was the one which was ultimately enacted. The court in that case threw out the statute as being unconstitutional, since prior to enactment it had a Senate number—S. 1107. The question became moot because of the enactment shortly thereafter of a revenue bill which dealt with the problem of cotton futures.

It will be recalled that some years ago the Congress provided by statute for the establishment of local government in the District of Columbia. The legislative body of that government passed revenue and appropriation measures. In this connection, attention is directed to an 1885 decision in the case of the *District of Columbia v. Waggaman* (4 Mackey 328). The following is quoted from that decision:

We have to consider first, then, the validity of the act of the legislative assembly which imposed this tax on commissions earned by real-estate agents, and required a semi-annual return of those commissions and a bond to secure the performance of these and other acts prescribed by law.

In *Roach v. Van Riswick* (7 Wash. L. Rep., 496), this court held that the very broad terms in which the organic act of 1870 granted legislative powers to the legislative assembly had the effect to clothe that body with only such powers as might be given to a municipal corporation, and that it was not competent for Congress to delegate the larger powers of general legislation which it had itself received from the Constitution. We are still satisfied with that decision; but we hold, on the other hand, that the provision referred to had the effect to bestow every power of municipal legislation which could be given to a municipal corporation, and especially the power of taxation and implied or included

power to provide measures by which taxes may be enforced and collected. Section 49 of the organic act provided that "the legislative power of the District shall extend to all rightful subjects of legislation within the District, consistent with the Constitution of the United States and the provisions of this title"; and section 57 provided that "the legislative assembly shall not have power to tax the property of the United States, nor to tax the lands or other property of nonresidents higher than the lands or other property of residents."

The court referred to the legal tender cases and then went on to state that "the general grant of power to legislate on all rightful subjects, and so forth, is by inclusion, an express grant of power to legislate on this subject of taxation, except as limited in section 57." There is another case which bears on the subject, namely, *Welsh v. Cook* (97 U.S. 541, 542) [1879].

It can thus be seen that a local legislative body in the District of Columbia was given authority to enact revenue legislation affecting the District of Columbia; that pursuant to such authority that local legislative body enacted such revenue legislation; and the cited cases established judicial sanction for such enactment. If a local legislative

body can pass valid revenue legislation for the District of Columbia, it appears equally clear that the Senate of the United States has authority to initiate a revenue bill concerning the District of Columbia. That conclusion certainly would be consistent with the Senate's share of responsibility in exercising exclusive legislative power over the District under article I, section 8, paragraph 17, of the Constitution.

There is a further aspect to the issue raised by the House last week in connection with Senate Joint Resolution 52. This is the question whether an appropriation bill comes within the purview of article I, section 7, paragraph 1 of the Constitution, relating to the raising of revenue. However, the issue of whether a general appropriation bill may originate in the Senate, notwithstanding long established custom to the contrary, warrants much fuller discussion than will here be made. As a Member of the Senate, I categorically dispute the House's contention in respect to Senate Joint Resolution 52.

The Senate did not take further action on Senate Joint Resolution 52.

D. CONGRESS AND THE BUDGET; IMPOUNDMENT

§ 21. In General; Congressional Budget Act

Concern about escalating federal spending immediately after World War II resulted in enactment of a budget procedure in the

Legislative Reorganization Act of 1946. Under this procedure, the House Committee on Ways and Means and Committee on Appropriations, and the Senate Committee on Finance and Committee on Appropriations or their sub-

committees were required to meet jointly, report out a legislative budget, and submit a concurrent resolution adopting the budget.⁽⁸⁾ This procedure was designed to coordinate revenue with expenditures and thereby more readily identify and limit deficits.⁽⁹⁾

However, until the adoption of the Congressional Budget and Impoundment Control Act of 1974, the Congress lacked a comprehensive uniform mechanism for establishing priorities among its budgetary goals and for determining national economic policy regarding the federal budget. Despite periodic efforts to centralize budget authority in appropriations committees, budget responsibility re-

8. See §21.2, *infra*, for an illustration of this concurrent resolution.

9. For discussion of the role of Congress in the budget process, see, Fenno, Richard F., Jr., *The Power of the Purse*, Little, Brown and Co., Inc. (1966); Pressman, Jeffrey L., *House v Senate*, Yale University Press, New Haven, Conn. (1966); Wallace, Robert Ash, *Congressional Control of Federal Spending*, Wayne State University Press, Detroit, Mich. (1960).

This section has been compiled by Norah Schwarz, J.D., and has been drawn in part from a report of the House Committee on the Budget entitled "The Congressional Budget and Impoundment Control Act of 1974: A General Explanation," November 1974.

mained fragmented throughout the Congress. Both taxing and spending actions were taken over a period of many months and by way of many different legislative measures. The size of the budget, and whether it should be in surplus or deficit, were not subject to effective controls. The budget process was, in fact, merely the sum of dozens of isolated and usually unrelated actions. Backdoor spending—that is, spending outside the regular appropriation process—represented a significant percentage of all spending. And outlays (that is, actual expenditures) were not always controlled by Congress, since congressional budget actions often reached only to the authority to obligate funds, resulting in little direct relationship in some cases between congressional budget actions and actual expenditures in any given year.

In 1972, the Congress established a Joint Study Committee on Budget Control and directed it to study:

. . . [T]he procedures which should be adopted by the Congress for the purpose of improving congressional control of budget outlay and receipt totals, including procedures for establishing and maintaining an overall view of each year's budgetary outlays which is fully coordinated with an overall view of anticipated revenues for that year.⁽¹⁰⁾

10. Pub. L. No. 92-599, 92d Cong. 2d Sess.

The joint committee issued its final report in April 1973,⁽¹¹⁾ and legislation was introduced in both Houses to implement the report's recommendations, including the addition of anti-impoundment procedures. Both Houses overwhelmingly approved the measure, which became known as the Congressional Budget and Impoundment Control Act of 1974 (hereinafter referred to as "the Act"). The bill was signed into law July 12, 1974, as Public Law No. 93-344.

Summary of the Act

The Act⁽¹²⁾ consists of 10 titles which, for purposes of explanation, can be grouped into categories (to be discussed more fully below), as follows:

Title I and title II established new committees on the budget in both the House and the Senate, and a Congressional Budget Office designed to improve Congress' informational and analytical resources with respect to the budgetary process.

Title III and title IV set forth a timetable and new procedures for various phases of the congressional budget process. Title V provides for a new fiscal year.

Title VI spells out the information to be included in the President's budget submissions and amends section 201 of the 1921 Budget and Accounting Act to so provide. The procedures for program review and evaluation are explained in title VII.

Title VIII provides for standardization of budget terminology and availability of information to Congress, while title IX sets out the effective date for various provisions of the Act.

Title X establishes procedures for congressional review of Presidential impoundment actions.

Budget Committees

The Act establishes a new standing committee in each House known as the Committee on the Budget. The rules of the House were amended to provide for the Committee on the Budget and membership thereon.⁽¹³⁾ The House Budget Committee was originally composed of 23 members: five from the Committee on Appropriations, five from the Committee on Ways and Means, 11 from other House standing committees and one member each from the majority and minority leadership.⁽¹⁴⁾ Membership on this committee was increased to 25, pursuant to a resolution of the House⁽¹⁵⁾ which provided for 13 members to be elected from other standing committees of the House.

13. This committee was established pursuant to the Act (§101) in the 93d Congress effective July 12, 1974 (88 Stat. 299).

14. Rule X clause I(e)1, *House Rules and Manual* (1975).

15. H. Res. 5, 121 CONG. REC. 20-22, 94th Cong. 1st Sess., Jan. 14, 1975.

11. See 119 CONG. REC. 13162, 13163, 93d Cong. 1st Sess., Apr. 18, 1973.

12. See 31 USC §§1301 et seq.

Budget Timetable

Title III of the Act⁽¹⁶⁾ establishes a timetable for various phases of the congressional budget

process, prescribing the actions to take place at each stage under the new procedure:

<i>On or before</i>	<i>Action to be completed</i>
November 10	President submits current services budget.
15th day after Congress meets	President submits his budget.
March 15	Committees and joint committees submit reports to Budget Committees.
April 1	Congressional Budget Office submits report to Budget Committees.
April 15	Budget Committees report first concurrent resolution on the budget to their Houses.
May 15	Committees report bills and resolutions authorizing new budget authority.
May 15	Congress completes action on first concurrent resolution on the budget.
7th day after Labor Day	Congress completes action on bills and resolutions providing new budget authority and new spending authority.
September 15	Congress completes action on second required concurrent resolution on the budget.
September 25	Congress completes action on reconciliation bill or resolution, or both, implementing second required concurrent resolution.
October 1	Fiscal year begins.

November 10: Current Services Budget

The first element in the timetable is the President's submission by Nov. 10 of the current services budget which estimates the outlays needed to carry on existing programs and activities for the following fiscal year. Its purpose is to provide Congress with detailed information with which to begin analysis and preparation of

the budget for the forthcoming year. Budget projections are then made by the Congressional Budget Office and the House and Senate Budget Committees based on the current fiscal year's levels. To facilitate evaluation of the President's projections, the Joint Economic Committee is required by the terms of the Act⁽¹⁷⁾ to report to the budget committees on the estimates and economic assump-

16. 31 USC §§ 1321 et seq.

17. 15 USC § 1024.

tions on the current services budget.

***15th Day After Convening:
President Submits Budget***

The President's budget is due to be submitted 15 days after Congress convenes.⁽¹⁸⁾ This date remains unchanged from previous practice. Shortly after its submission, the budget committees of both Houses begin hearings on the President's budget, the economic assumptions on which it is based, the national budget priorities, and the budget in general. Testimony is taken from Members of Congress, administration officials, representatives of national interest groups, and the general public, such as the committee deem fit.⁽¹⁹⁾

***March 15: Committee Reports
Submitted to Budget Committees***

A new aspect of the budget process is the requirement that each of the standing committees of the House and Senate submits its recommendations on the proposed budget as viewed by the particular committee. These views are given to the budget committees of the House or Senate and are due on Mar. 15, one month prior to the reporting date of the

18. 31 USC § 1321.

19. 31 USC § 1322(d).

first concurrent resolution on the budget.⁽²⁰⁾

The purpose of these reports is to provide the budget committees with an early and comprehensive indication of spending plans for the coming fiscal year. The reports contain the views and estimates of the committees and joint committees on budgetary matters within their jurisdiction, and their estimates of new budget outlays to be authorized by legislation within their jurisdiction during the following fiscal year.

***April 1: Congressional Budget
Office Submits Report to
Budget Committees***

The Congressional Budget Office is required to submit its report to the budget committees on or before Apr. 1.⁽²¹⁾ This report is primarily concerned with alternative budget levels and national budget priorities. It is the first of several required of the Congressional Budget Office. It is most significant, however, in that it is timed for use in the budget committees' deliberations on the first concurrent resolution on the budget, particularly with respect to committee discussions of national budget priorities.

20. 31 USC 1322(c).

21. 31 USC § 1321.

April 15: First Concurrent Resolution Reported

The budget committees must report the first concurrent resolution on the budget to Congress by Apr. 15.⁽¹⁾ This allows each House a maximum of one month for floor consideration, conferences, and the adoption of conference reports.⁽²⁾

The first concurrent resolution on the budget provides estimates and preliminary budget targets for fiscal year beginning on Oct. 1. It must set forth: (1) the appropriate level of total budget outlays and of total new budget authority; (2) an estimate of budget outlays and an appropriate level of new budget authority in various categories; (3) the amount, if any, of appropriate budget surplus or deficit; and (4) the recommended level of federal revenues and the amount, if any, by which the aggregate level of federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees.⁽³⁾

The report of the budget committee on the resolution compares its revenue estimates and outlay levels with the estimates and amounts in the President's budg-

1. 31 USC § 1321.
2. 31 USC § 1322(d).
3. 31 USC § 1322.

et. It also identifies recommended sources of revenues, makes five-year budget projections, and spells out the economic assumptions and objectives of the resolution.⁽⁴⁾

The Act provides special procedures for House consideration of budget resolutions and conference reports on such resolutions. The Act also provides for important material to be included in the joint statement of managers accompanying the conference report. The joint statement must distribute the allocations of total budget authority and outlays contained in the resolution among the appropriate committees. For example, if the conference report allocates \$7 billion in budget authority and \$6 billion in outlays for the functional category "Community and Regional Development," the statement of managers must divide those amounts among the various committees with jurisdiction over programs and authorities covered by that functional category. Each committee to which an allocation is made must, in turn, further subdivide its allocation among its subcommittees or programs.

May 15: Reporting New Budget Authority; Completion of Action on First Concurrent Resolution

May 15 is the deadline for committees to report legislation au-

4. 31 USC § 1322(d).

thorizing new budget authority.⁽⁵⁾ It is also the deadline for the adoption of the first budget resolution by Congress.⁽⁶⁾

Consideration of bills or resolutions authorizing new budget authority reported after May 15 is permitted in the House only if an emergency waiver reported by the Committee on Rules is adopted.⁽⁷⁾

The Budget Act sets forth special procedures by which the House is to consider budget resolutions and conference reports relating thereto. Such resolutions are initially considered in the Committee of the Whole. General debate is limited to 10 hours, and motions to further limit debate are not debatable. Under the original statute, the resolution was read for amendment under the five-minute rule by sections.⁽⁸⁾

After the Committee of the Whole has reported the resolution to the House, the previous question is considered as ordered on the resolution and amendments thereto to final passage without intervening motion. The only amendment in order under the Act prior to final passage is one effecting changes necessary to achieve mathematical consistency.⁽⁹⁾

5. 31 USC § 1352.

6. 31 USC § 1322.

7. 31 USC § 1352.

8. 31 USC § 1326.

9. *Id.*

Debate on the conference report on the resolution is limited to five hours.⁽¹⁰⁾

Seventh Day After Labor Day; Action on Measures Providing New Budget or Spending Authority

The seventh day after Labor Day is the recommended deadline for completing action on regular budget authority and entitlement bills.⁽¹¹⁾ The only exception to this requirement is for appropriation bills whose consideration has been delayed because necessary authorizing legislation has not been timely enacted.⁽¹²⁾

The Congressional Budget Office issues periodic reports on the status of measures providing new budget authority and revenue and debt legislation.⁽¹³⁾

September 15, 25; Action on Second Concurrent Resolution

Sept. 15 and 25 are the dates for the adoption of the second resolution and completion of the reconciliation process, the final legislative phase of the new budget process under the Act.⁽¹⁴⁾

10. *Id.*

11. 31 USC § 1330.

12. *Id.*

13. 31 USC § 1329.

14. 31 USC § 1331.

The completion of reconciliation actions on Sept. 25 brings the budget timetable to within five days of the new fiscal year—Oct. 1.

The importance of the timely completion of this phase of the budget process is underlined by the provision of the Act which states that Congress may not adjourn *sine die* unless such action is completed.⁽¹⁵⁾

The second resolution reflects changed economic circumstances, taking into consideration the spending authority exercised by Congress and the matters contained in the first resolution, namely the “target” levels of budget authority and outlays, total revenues, and the public-debt limit. In addition, the committees with jurisdiction over the recommended changes are directed to determine and recommend such changes to the House.⁽¹⁶⁾

After adoption of the second resolution and completion of the reconciliation process, it is not in order in either House to consider any new spending legislation that would cause the aggregate levels of total budget authority or outlays adopted in that resolution to be exceeded, nor to consider a

measure that would reduce total revenues below the levels in the resolution.⁽¹⁷⁾

It should be pointed out, however, that Congress may adopt a revision of its most recent resolution at any time during the fiscal year. In addition to the May and September resolutions, Congress may adopt at least one additional resolution each year, either in conjunction with a supplemental appropriations bill or in the event of sharp revisions in revenue or spending estimates brought on by major changes in the economy.⁽¹⁸⁾

Program Review and Evaluation

The budget committees of the House and Senate are directed to study budget proposals, including program analysis and evaluation and time limits on program authorizations.⁽¹⁹⁾ These committees also make continuing studies of “off budget” agencies and periodically report their findings and recommendations. An “off budget” agency is an agency of the federal government which is exempt from the President’s budget under the Budget and Accounting Act of 1921, section 201.⁽²⁰⁾

17. 31 USC § 1332.

18. 11. Rept. No. 93-658, 93d Cong. 1st Sess. (1973).

19. 31 USC § 1303.

20. 31 USC 11b.

15. *Id.*

16. *Id.*

Impoundment Controls

Impoundment control is a companion feature of the new budget control system. In the words of the House Committee on Rules' report on the budget reform legislation:

One without the other would leave the Congress in a weak and ineffective position. No matter how prudently Congress discharges its appropriations responsibility, legislative decisions have no meaning if they can be unilaterally abrogated by executive impoundments. On the other hand, if Congress appropriates funds without full awareness of the country's fiscal condition, its actions may be used by the President to justify [his] withholding of funds. By joining budget and impoundment control in a complete overhaul of the budget process [the bill], seeks to assure that the power of appropriation assigned to the Congress is responsibly and effectively exercised.⁽²¹⁾

Impoundment is a term used to describe situations wherein the executive branch declines to enter into obligations or commitments for the full amount of funds appropriated therefor by Congress.⁽¹⁾

The statute recognizes two types of impoundment actions by the executive branch: rescissions and deferrals.⁽²⁾

21. H. Rept. No. 93-658, 93d Cong. 1st Sess. (1973).

1. Levinson and Mills, Budget Reform and Impoundment Control, 27 Vand. L. Rev. 615 (1974).

2. 31 USC §§1400 et seq.

Rescissions must be proposed by the President whenever he determines that (1) all or part of any budget authority will not be needed to carry out the full objectives of a particular program; (2) budget authority should be rescinded for fiscal reasons; or (3) all or part of budget authority provided for only one fiscal year is to be reserved from obligation for that year. In such cases, the President is to submit a special message to the Congress requesting rescission of the budget authority, explaining fully the circumstances and reasons for the proposed action. Unless both Houses of the Congress complete action on a rescission bill within 45 days of the President's submission, the budget authority must be made available for obligation.⁽³⁾

Deferrals must be proposed by the President whenever any executive action or inaction effectively precludes the obligation or expenditure of budget authority. In such cases, the President is to submit a special message to the Congress recommending the deferral of that budget authority. The President is required to make such budget authority available for obligation if either House passes an "impoundment resolution" disapproving the proposed

3. 31 USC §1402.

deferral at any time after receipt of the special message.⁽⁴⁾

Rescission and deferral messages are also to be transmitted to the Comptroller General who must review each message and advise the Congress of the facts surrounding the action and its probable effects. In the case of deferrals, he must state whether the deferral is, in his view, in accordance with existing statutory authority.”⁽⁵⁾

If budget authority is not made available for obligation by the President as required by the impoundment control provisions, the Comptroller General is authorized to bring a civil action to bring about compliance. However, such action may not be brought until 25 days after the Comptroller General files an explanatory statement with the House and Senate.⁽⁶⁾

“Backdoor” Spending

Under the Act new procedures were established for the enactment of contract and borrowing authority in order to promote a more comprehensive and consistent control over spending actions. The Act states that effective January 1976, new contract au-

thority and borrowing authority legislation, to be in order for consideration in either House, must contain a provision that such new authority is to be effective only to the extent or in such amounts as are provided in appropriations acts. In this manner, the Act prohibits the consideration of bills obligating certain types of new government spending in advance of the appropriations process. The Speaker has ruled, however, that such prohibition may be waived by a resolution reported as privileged from the Committee on Rules. The Speaker’s ruling, on Mar. 20, 1975,⁽⁷⁾ was based on the fact that the provisions of the Act in question were intended to state a rule of proceeding, and could therefore be waived or changed by the House at any time pursuant to its constitutional authority to “determine the Rules of its Proceedings.”⁽⁸⁾

The provisions of the Act described above do not apply to contract or borrowing authority in effect prior to January 1976, unless specifically implemented earlier, pursuant to section 906 of the Act.⁽⁹⁾

4. 31 USC §1403.
 5. 31 USC §1404.
 6. 31 USC §1406.

7. 121 CONG. REC. 7677, 94th Cong. 1st Sess., Mar. 20, 1975 (ruling by Speaker Carl Albert [Okla.]).
 8. U.S. Const. art. I, section 5.
 9. See 31 USC §1351.

Legislative Reorganization Act of 1946

§ 21.1 The House and Senate agreed to a provision of the Legislative Reorganization Act of 1946 which authorized certain House and Senate committees to meet jointly, report out a legislative budget, and submit a concurrent resolution adopting the budget. This provision was repealed by the Legislative Reorganization Act of 1970.

On July 25, 1946, the House by voice vote agreed to⁽¹⁰⁾ and on July 26, 1946, the Senate by voice vote concurred in,⁽¹¹⁾ a House substitute to S. 2177, the Legislative Reorganization Act of 1946. Section 138 of the substitute directed certain Senate and House committees to meet jointly, report out a legislative budget, and submit a concurrent resolution adopting the budget. The text of the provision follows:⁽¹²⁾

10. 92 CONG. REC. 10047, 10051-53, 10075, 10077-80, 10104, 79th Cong. 2d Sess.

11. *Id.* at p. 10152. See also 92 CONG. REC. 6442 (text of section 130, the budget provision of the Senate bill), and 6577, 6578 (vote), 79th Cong. 2d Sess., June 7, and June 10, 1946, respectively.

12. This excerpt is taken from 60 Stat. 812, 832, 833 (Pub. L. No. 79-601). It was codified as 2 USC § 190e.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

That (a) this Act, divided into titles and sections according to the following table of contents, may be cited as the "Legislative Reorganization Act of 1946": . . .

LEGISLATIVE BUDGET

Sec. 138. (a) The Committee on Ways and Means and the Committee on Appropriations of the House of Representatives, and the Committee on Finance and the Committee on Appropriations of the Senate, or duly authorized subcommittees thereof, are authorized and directed to meet jointly at the beginning of each regular session of Congress and after study and consultation, giving due consideration to the budget recommendations of the President, report to their respective Houses a legislative budget for the ensuing fiscal year, including the estimated over-all Federal receipts and expenditures for such year. Such report shall contain a recommendation for the maximum amount to be appropriated for expenditure in such year which shall include such an amount to be reserved for deficiencies as may be deemed necessary by such committees. If the estimated receipts exceed the estimated expenditures, such report shall contain a recommendation for a reduction in the public debt. Such report shall be made by February 15.

(b) The report shall be accompanied by a concurrent resolution adopting such budget, and fixing the maximum

amount to be appropriated for expenditure in such year. If the estimated expenditures exceed the estimated receipts, the concurrent resolution shall include a section substantially as follows: "That it is the sense of the Congress that the public debt shall be increased in an amount equal to the amount by which the estimated expenditures for the ensuing fiscal year exceed the estimated receipts, such amount being \$."

Section 138 was repealed by approval of the Legislative Reorganization Act of 1970.⁽¹³⁾

Concurrent Resolution

§ 21.2 Pursuant to the Legislative Reorganization Act of 1946, the Senate and House agreed to a concurrent resolution expressing the judgment of Congress regarding levels of revenues and expenditures for the fiscal year 1949.

On Feb. 18, 1948, the Senate by voice vote,⁽¹⁴⁾ and on Feb. 27, 1948, the House by a vote of 315 yeas, 36 nays, 79 not voting,⁽¹⁵⁾

agreed to Senate Concurrent Resolution 42, expressing the sense of Congress as to the amount of revenues and expenditures for fiscal year 1949.

Resolved by the Senate (the House of Representatives concurring), That it is the judgment of the Congress, based upon presently available information, that revenues during the period of the fiscal year 1949 will approximate \$47,300,000,000 and that expenditures during such fiscal year should not exceed \$37,200,000,000, of which latter amount not more than \$26,600,000,000 would be in consequence of appropriations hereafter made available for obligation in such fiscal year.

Senate Concurrent Resolution 42 was considered under a special order of the Committee on Rules (H. Res. 485), which provided for consideration in the Committee of the Whole and waiver of all points of order. After general debate, which was confined to the concurrent resolution and limited to two hours, the concurrent resolution was considered as having been read for amendment.

13. 84 Stat. 1140, 1172 [see 2 USC § 242 (b) (1970)].

14. 94 CONG. REC. 1398, 1399, 1408, 80th Cong. 2d Sess.

15. *Id.* at pp. 1875, 1885-87. The House agreed to this concurrent resolution after rejecting by a vote of 73 yeas,

276 nays, not voting 81, a motion to recommit it to the Joint Committee on the Legislative Budget with instructions to strike out expenditures of \$37.2 billion and insert in lieu thereof \$36.7 billion.

E. RELATIONS WITH EXECUTIVE BRANCH

§ 22. In General; Confirmation of Nomination for Vice President

Amendment 25, section 2, of the Constitution⁽¹⁶⁾ provides:

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Gerald R. Ford

§ 22.1 After adopting a rule which waived the three-day layover requirement for committee reports and provided for Committee of the Whole consideration under general debate, the House agreed to a resolution confirming the nomination of House Minority Leader Gerald R. Ford, of Michigan, as Vice President of the United States, pursuant to the 25th amendment, and then received a message announcing the Senate's confirmation of the nomination.

16. See *House Rules and Manual* §282c (1973).

On Dec. 6, 1973,⁽¹⁷⁾ after adopting House Resolution 738 (the rule for consideration which waived the three-day layover requirement), the House by voice vote agreed to House Resolution 735, confirming the nomination of Mr. Gerald R. Ford to be Vice President, pursuant to the 25th amendment.

MR. [JAMES J.] DELANEY [of New York]: Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 738 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 738

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 27(d) (4) of rule XI⁽¹⁸⁾ to the contrary notwithstanding, 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. Res. 735) confirming the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States. After general debate, which shall be confined to the resolution and shall continue not to exceed six hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the Committee shall rise and report the resolution to the House,

17. 119 CONG. REC. 39807, 39812, 39813, 39899, 93d Cong. 1st Sess.

18. *House Rules and Manual* §735(d)(4) (1973).

and the previous question shall be considered as ordered on the resolution to final passage.

THE SPEAKER:⁽¹⁹⁾ The gentleman from New York is recognized for 1 hour.

MR. DELANEY: Mr. Speaker, I yield 30 minutes of that hour to the gentleman from Illinois (Mr. Anderson) pending which I now yield myself such time as I may consume.

Mr. Speaker, this resolution makes in order consideration of House Resolution 735, a simple resolution providing for the confirmation of the Honorable Gerald R. Ford of the State of Michigan to be Vice President of the United States. The resolution provides for 6 hours of general debate. It also provides that points of order against clause 27(d)(4) of rule XI of the Rules of the House of Representatives be waived. That simply means that we are waiving the 3-day rule.

Mr. Speaker, I urge adoption of House Resolution 738 in order that we may discuss and debate House Resolution 735. . . .

THE SPEAKER: The question is on the resolution.

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

MS. [ELIZABETH] HOLTZMAN [of New York]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 389, nays 15, not voting 29, as follows: . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MR. [PETER W.] RODINO [Jr., of New Jersey]: Mr. Speaker, I 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. Res. 735) confirming the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States.

THE SPEAKER: The question is on the motion offered by the gentleman from New Jersey (Mr. Rodino).

The motion was agreed to. . . .

MR. RODINO: Mr. Chairman, I have no further requests for time.

MR. [EDWARD] HUTCHINSON [of Michigan]: Mr. Chairman, I have no further requests for time.

THE CHAIRMAN:⁽¹⁾ Under the rule the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Patman, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the resolution (H. Res. 735) confirming the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States, pursuant to House Resolution 738, he reported the resolution back to the House.

THE SPEAKER: Under the rule, the previous question is ordered.

19. Carl Albert (Okla.).

1. Wright Patman (Tex.).

The question is on the resolution.

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

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 387, nays 35, not voting 11, as follows: . . .

So the resolution was agreed to.⁽²⁾

Following this action, the House received a message from the Senate announcing that body's confirmation.⁽³⁾

A further message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate did, on November 27, 1973, pursuant to section 2 of the 25th amendment to the Constitution of the United States, confirm the nomination of the Honorable Gerald R. Ford of Michigan to be Vice President of the United States.⁽⁴⁾

2. President Nixon's nomination was referred to the Committee on the Judiciary, chaired by Mr. Rodino, on Oct. 13, 1973 (119 CONG. REC. 34032, 93d Cong. 1st Sess.). That committee reported out H. Res. 735 (H. Rept. No. 93-695) on Dec. 4, 1973 (119 CONG. REC. 39419, 93d Cong. 1st Sess.).

See also 120 CONG. REC. 41516, 41517, 93d Cong. 2d Sess., Dec. 19, 1974, for House approval, 287 yeas to 128 nays, of H. Res. 1511, confirming the nomination of Nelson A. Rockefeller to be Vice President, and 120 CONG. REC. 38936, 93d Cong. 2d Sess., Dec. 10, 1974, for Senate approval, 90 yeas to 7 nays, of this nomination.

3. 119 CONG. REC. 39900, 93d Cong. 1st Sess., Dec. 6, 1973.
4. See 119 CONG. REC. 38225, 93d Cong. 1st Sess., Nov. 27, 1973, for

Buckley v Valeo; Effect on Congressional Appointment Authority

§ 22.2 Parliamentarian's Note: In reviewing the Federal Election Campaign Act Amendments of 1974 (Pub. L. No. 93-443, 83 Stat. 1263), the United States Supreme Court held that the procedure for appointing members of the Federal Election Commission by the Speaker of the House and President pro tempore of the Senate violated article II, section 2, clause 2, the Appointments Clause, which provides that the President shall nominate, and with the advice and consent of the Senate, appoint all "Officers of the United States." In reaching this holding, the Court found that members of the commission were "Officers of the United States" whom only the President could nominate and, with the advice and consent of the Senate, appoint. This finding was based on the fact that the Federal Election Commission was granted not only investigatory and information-gathering functions

Senate confirmation by a vote of 92 yeas, 3 nays.

which may constitutionally be exercised by Congress, but also rulemaking and enforcement powers which have been delegated to other branches of government. The Speaker and President pro tempore may appoint members to commissions whose authority is restricted to investigation and information-gathering. *Buckley v Valeo*, 424 U.S. 1 (1976).

§ 23. Executive Reorganization Plans

The President was, prior to 1973, authorized to reorganize an agency or agencies of the executive department if he submitted a plan to each House of Congress. A provision contained in a reorganization plan could take effect only if the plan was transmitted before Apr. 1, 1973,⁽⁵⁾ since the authority of the President to transmit reorganization plans had not been extended beyond that date. A reorganization could be ordered to promote better execution of laws; reduce expenditures; in-

5. 5 USC § 903, 5 USC § 905(b). Reorganization authority was again extended, with certain procedural changes, in the 95th Congress. Pub. L. No. 95-17.

crease efficiency; group, coordinate, and consolidate agencies; reduce the number of agencies by consolidation; and eliminate overlapping and duplication of effort.⁽⁶⁾ These purposes could be achieved by transferring all or part of an agency or the function thereof to another agency; abolishing all or part of the functions of an agency; consolidating or coordinating the whole or part of an agency with another agency or the same agency; authorizing an officer to delegate any of his functions; or abolishing the whole or part of an agency which did not have or would not, as a consequence of the reorganization, have any functions.⁽⁷⁾ Under this statute a reorganization plan could not create, abolish, or transfer an executive department or consolidate two or more executive departments.

A reorganization plan accompanied by a declaration that the reorganization was necessary to accomplish a recognized purpose must be delivered to both Houses on the same day and to each House while in session.⁽⁸⁾ A plan

6. 5 USC § 901.

7. 5 USC § 903. See also 5 USC § 904, for other provisions of, and 5 USC § 905, for limitations on, reorganization plans.

8. 5 USC § 903(a), (b), 5 USC § 905(b).

submitted before Apr. 1, 1973, would become effective at the end of the first period of 60 calendar days of continuous congressional session after the transmittal date unless, during that period, either House passed a resolution stating in substance that it did not favor the plan.⁽⁹⁾

As an exercise of the rule-making power of the Senate and House of Representatives and with full recognition of the constitutional right of either House to change its rules,⁽¹⁰⁾ Congress provided for the form of resolutions disapproving reorganization plans,⁽¹¹⁾ reference of such resolutions to committees,⁽¹²⁾ discharge of committees considering such resolution after 20 days,⁽¹³⁾ as well as procedure after report or discharge of committee and debate on such resolutions.⁽¹⁴⁾ The procedure after reporting or discharge

9. 5 USC § 906. The form of the resolution is outlined in 5 USC § 909.

Congress could accelerate the effective date; see §§ 23.33, 23.34, *infra*, for a discussion of House and Senate approval of a joint resolution to accelerate a reorganization plan establishing the Department of Health, Education, and Welfare.

10. 5 USC § 908.

11. 5 USC § 909.

12. 5 USC § 910.

13. 5 USC § 911.

14. 5 USC § 912.

of the committee and procedure for debate is clearly stated:

(a) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(b) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

Congress also provided that motions to postpone relating to such resolutions, or to proceed to other business, should be decided without debate.⁽¹⁵⁾ Appeals from decisions of the Chair applying House or Senate rules to the consideration of resolutions disapproving reorganization plans were also to be decided without debate.⁽¹⁶⁾

Most of the precedents in this section discuss substantive as-

15. 5 USC § 913.

16. *Id.*

pects of Presidential reorganization plans.⁽¹⁷⁾ Congress may also reorganize executive agencies by statute.⁽¹⁸⁾

Statutes authorizing the President to promulgate reorganization plans were approved in 1939,⁽¹⁾ 1945,⁽²⁾ 1949,⁽³⁾ and 1966.⁽⁴⁾ Amendments to the major reorganization acts were approved in 1953,⁽⁵⁾ 1957,⁽⁶⁾ 1961,⁽⁷⁾ 1964,⁽⁸⁾

17. The exceptions are §§ 23.33–23.36, *infra*. See also Ch. 24, *infra*, for a discussion of certain procedural matters relating to resolutions of disapproval generally and *House Rules and Manual* § 1013 (1975) for a compilation of statutory “legislative veto” provisions. § 23.1, *infra*, discusses the procedure for consideration of the Presidential reorganization plan which consolidated a number of programs into one agency, ACTION.
18. See House Committee on Government Operations, *Reorganization by Plan and by Statute, 1946–1956* (May 1957) for examples of both kinds of reorganization.
 1. 53 Stat. 561, 76th Cong. 1st Sess. (Pub. L. No. 76–19).
 2. 59 Stat. 613, 79th Cong. 1st Sess. (Pub. L. No. 79–263).
 3. 63 Stat. 203, 81st Cong. 1st Sess. (Pub. L. No. 81–109).
 4. 80 Stat. 378, 89th Cong. 2d Sess. (Pub. L. No. 89–554). Note: Title 5 of the United States Code includes reorganization plans.
 5. 67 Stat. 4, 83d Cong. 1st Sess. (Pub. L. No. 83–3).
 6. 71 Stat. 611, 85th Cong. 1st Sess. (Pub. L. No. 85–286).
 7. 75 Stat. 41, 87th Cong. 1st Sess. (Pub. L. No. 87–18).
 8. 78 Stat. 240, 88th Cong. 2d Sess. (Pub. L. No. 88–351).

1965,⁽⁹⁾ 1969,⁽¹⁰⁾ and 1971.⁽¹¹⁾ In addition to the above legislation, title I of the War Powers Act of 1941,⁽¹²⁾ granted the President emergency reorganization powers to make such redistribution of functions among executive agencies as he deemed necessary during World War II.

ACTION

§ 23.1 The House by ye and nay vote rejected a resolution disapproving a Presidential reorganization plan to consolidate a number of volunteer programs into one agency, ACTION.

On May 25, 1971,⁽¹³⁾ the House under the procedures prescribed by the Reorganization Act of 1966, rejected by a vote of yeas 131, nays 224, not voting 77, House Resolution 411, disapproving Reorganization Plan No. 1 (consolidating a number of volunteer pro-

9. 79 Stat. 135, 89th Cong. 1st Sess. (Pub. L. No. 89–43).
10. 83 Stat. 6, 91st Cong. 1st Sess. (Pub. L. No. 91–5). See also Pub. L. No. 95–17.
11. 85 Stat. 574, 92d Cong. 1st Sess. (Pub. L. No. 92–179).
12. 55 Stat. 838, 77th Cong. 1st Sess. (Pub. L. No. 77–354).
13. 117 CONG. REC. 16803, 16804, 16832 16833, 92d Cong. 1st Sess.

grams into one agency, ACTION, and transmitted by the President on Mar. 24, 1971).

The Chairman of the Committee on Government Operations, Chet Holifield, of California, moved that the House resolve itself into the Committee of the Whole for consideration of the resolution disapproving the plan and proceedings ensued as indicated below:

MR. HOLIFIELD: Mr. Speaker, I 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. Res. 411) disapproving Reorganization Plan No. 1, transmitted to the Congress by the President on March 24, 1971; and pending that motion, Mr. Speaker, I ask unanimous consent that debate on the resolution may continue not to exceed 3 hours, the time to be equally divided and controlled by the gentleman from New York (Mr. Horton) and myself. . . .

THE SPEAKER:⁽¹⁴⁾ Is there objection to the request of the gentleman from California?

There was no objection.

THE SPEAKER: The question is on the motion offered by the gentleman from California.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of House Resolution 411, with Mr. [John] Brademas [of Indiana] in the chair.

14. Carl Albert (Okla.).

The Clerk read the title of the resolution.

By unanimous consent, the first reading of the resolution was dispensed with.

THE CHAIRMAN: Under the unanimous consent agreement, the gentleman from California (Mr. Holifield) will be recognized for 1½ hours, and the gentleman from New York (Mr. Horton) will be recognized for 1½ hours.

The Chair recognizes the gentleman from California.

Mr. Holifield described the plan in the Committee of the Whole:

Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, House Resolution 411 is a resolution to disapprove Reorganization Plan No. 1 of 1971 submitted to the Congress by President Nixon on March 24. Both the plan and the resolution were referred to the Committee on Government Operations under the rules of the House. The committee has reported back the resolution with a recommendation that it not be approved. This is in effect an endorsement of the plan itself which we hope will be supported by the House. The vote, however, will be on the resolution itself. Those who favor the plan should vote "no" on the resolution. Those who oppose the plan should vote "aye" on the resolution.

The President proposes in the reorganization plan to create a new agency called Action to which would be transferred:

First, Volunteers in Service to America, now in the Office of Economic Opportunity;

Second, auxiliary and special volunteer programs, now in the Office of Economic Opportunity;

Third, Foster Grandparents, now in the Department of Health, Education, and Welfare;

Fourth, the retired senior volunteer program, now in the Department of Health, Education, and Welfare; and

Fifth, the Service Corps of Retired Executives and Active Corps of Executives, both now in the Small Business Administration.

The President intends later to transfer the Peace Corps to the new agency by executive order and to similarly transfer the Office of Volunteer Action.

The President advised in his message that he also intends to submit legislation to Congress to transfer the Teacher Corps from HEW to Action.

Following this description and debate the Clerk read the resolution; the Committee of the Whole agreed to rise with the recommendation that the resolution of disapproval not be agreed to:

THE CHAIRMAN: The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 411

Resolved, That the House of Representatives does not favor the Reorganization Plan Numbered 1 transmitted to the Congress by the President on March 24, 1971.

MR. HOLIFIELD: Mr. Chairman, I move that the Committee do now rise and report the resolution back to the House with the recommendation that the resolution be not agreed to.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Brademas, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration House Resolution 411, to disapprove Reorganization Plan No. 1 of 1971, had directed him to report the resolution back to the House with the recommendation that the resolution be not agreed to.

The Clerk reported the resolution;

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GERALD R. FORD: Mr. Speaker, for the information of the Members of the House, is it true that a vote "aye" on the resolution is a vote against Reorganization Plan No. 1, and that a vote of "nay" is a vote to approve the President's reorganization plan?

The inquiry having been answered in the affirmative, the vote was taken:

THE SPEAKER: The question is on the resolution.

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

The yeas and nays were ordered.

The question was taken; and there were—yeas 131, nays 224, not voting 77, as follows: . . .

So the resolution was rejected.

§ 23.2 The Senate by yea and nay vote rejected a resolution disapproving a Presidential reorganization plan to consolidate a number of

volunteer programs into one agency, ACTION.

On June 3, 1971,⁽¹⁵⁾ the Senate by a vote of yeas 29, nays 54, rejected Senate Resolution 108, disapproving Reorganization Plan No. 1, consolidating a number of volunteer programs into one agency, ACTION, submitted by the President on Mar. 24, 1971.

Bureau of the Budget

§ 23.3 The House by a yea and nay vote rejected a resolution disapproving a Presidential reorganization plan relating to reorganization of the Bureau of the Budget.

On May 13, 1970,⁽¹⁶⁾ the House by a vote of yeas 164, nays 193, not voting 73, rejected House Resolution 960, disapproving Reorganization Plan No. 2, relating to the Bureau of the Budget (transmitted by the President on Mar. 12, 1970), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it be agreed to.⁽¹⁷⁾

15. 117 CONG. REC. 17801-04, 92d Cong. 1st Sess. See also 117 CONG. REC. 17645-72, 92d Cong. 1st Sess., June 2, 1971, for debate on this resolution.

16. 116 CONG. REC. 15297, 15298, 15331, 15332, 91st Cong. 2d Sess.

17. The name of the Bureau of the Budget has been changed to the Office of Management and Budget.

Bureau of Internal Revenue and Department of the Treasury

§ 23.4 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan relating to the Bureau of Internal Revenue and Department of the Treasury.

On Jan. 30, 1952,⁽¹⁸⁾ the House by voice vote rejected House Resolution 494 disapproving Reorganization Plan No. 1, relating to the Bureau of Internal Revenue and Department of the Treasury (transmitted by the President on Jan. 14, 1952), after the Committee of the Whole approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.

Bureau of Narcotics

§ 23.5 The House by a yea and nay vote rejected a resolution disapproving a Presidential reorganization plan relating to the creation of a new Bureau of Narcotics in the Department of Justice.

On Apr. 2, 1968,⁽¹⁹⁾ the House by a vote of yeas 190, nays 200,

18. 98 CONG. REC. 642, 643, 671, 82d Cong. 2d Sess.

19. 114 CONG. REC. 8601, 8628, 8629, 90th Cong. 2d Sess.

present 2, and not voting 41, rejected House Resolution 1101 disapproving Reorganization Plan No. 1, creating a new Bureau of Narcotics in the Department of Justice (transmitted by the President on Feb. 7, 1968), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

Civil Aeronautics Board

§ 23.6 The House by a yea and nay vote rejected a resolution disapproving a Presidential reorganization plan relating to the Civil Aeronautics Board.

On June 20, 1961,⁽²⁰⁾ the House by a vote of yeas 178, nays 213, not voting 46, rejected House Resolution 304 disapproving Reorganization Plan No. 3, relating to the Civil Aeronautics Board (transmitted by the President on May 3, 1961), after the Committee of the Whole approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

20. 107 CONG. REC. 10839-44, 87th Cong. 1st Sess.

Community Relations Service

§ 23.7 The House by yea and nay vote rejected a resolution disapproving a Presidential reorganization plan relating to the transfer of the Community Relations Service from the Department of Commerce to the Department of Justice.

On Apr. 20, 1966,⁽¹⁾ the House by a vote of yeas 163, nays 220, not voting 49, rejected House Resolution 756 disapproving Reorganization Plan No. 1, relating to the transfer of the Community Relations Service from the Department of Commerce to the Department of Justice (transmitted by the President on Feb. 10, 1966), after the Committee of the Whole by voice vote approved a motion to rise and report the resolution to the House with the recommendation that it not be agreed to.

Departments of Agriculture and Interior

§ 23.8 The House agreed to a resolution disapproving a Presidential reorganization plan relating to the Department of Agriculture and Department of the Interior.

1. 112 CONG. REC. 8498-516, 89th Cong. 2d Sess.

On July 7, 1959,⁽²⁾ the House by a vote of yeas 266, nays 124, not voting 44, agreed to House Resolution 295, disapproving Reorganization Plan No. 1, transferring from the Department of the Interior to the Department of Agriculture functions relating to minerals and forest lands. The plan had been transmitted by the President on May 22, 1959. This House action followed approval by the Committee of the Whole of a motion to report the resolution back to the House with the recommendation that it pass.⁽³⁾

Departments of Army, Navy, and Air Force

§ 23.9 The House as in Committee of the Whole by voice vote agreed to a resolution disapproving a Presidential reorganization plan relating to the Departments of Army, Navy, and Air Force.

On July 5, 1956,⁽⁴⁾ the House as in Committee of the Whole agreed to House Resolution 534, disapproving Reorganization Plan No. 1, relating to new offices in the Departments of the Army,

2. 105 CONG. REC. 12856, 86th Cong. 1st Sess.

3. 105 CONG. REC. 12740-46, 86th Cong. 1st Sess., July 6, 1959.

4. 102 CONG. REC. 11886, 84th Cong. 2d Sess.

Navy, and Air Force, transmitted by the President on May 16, 1956.

Department of Commerce

§ 23.10 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan relating to the Department of Commerce.

On May 18, 1950,⁽⁵⁾ the House by voice vote rejected House Resolution 546, disapproving Reorganization Plan No. 5, transferring all functions of all other officers of the Department of Commerce to the Secretary (with the exception of hearings examiners employed by the Department of Commerce, Civil Aeronautics Board, Inland Waterways Corporation, and the Advisory Board of the Inland Waterways Corporation), after the Committee of the Whole approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.⁽⁶⁾

Department of Labor

§ 23.11 The House by voice vote rejected a resolution

5. 96 CONG. REC. 7266-74, 81st Cong. 2d Sess.

6. Reorganization Plan No. 5 was transmitted by the President on Mar. 13, 1950.

disapproving a Presidential reorganization plan relating to the Department of Labor.

On Aug. 11, 1949,⁽⁷⁾ the House by voice vote rejected House Resolution 301, disapproving Reorganization Plan No. 2, transferring the Bureau of Employment Security, Veterans' Placement Service Board, and Federal Advisory Council to the Department of Labor (transmitted by the President on June 20, 1949), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report back to the House with a recommendation that the resolution not pass.

§ 23.12 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan relating to the Department of Labor.

On May 18, 1950,⁽⁸⁾ the House by voice vote rejected House Resolution 522, disapproving Reorganization Plan No. 6, centralizing authority for all Department of Labor functions in the Secretary of Labor (transmitted by the President on Mar. 13, 1950) after the Committee of the Whole by voice vote approved a motion that

7. 95 CONG. REC. 11296-314, 81st Cong. 1st Sess.

8. 96 CONG. REC. 7241, 7266, 81st Cong. 2nd Sess.

the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

Department of Urban Affairs and Housing**§ 23.13 The House by yea and nay vote agreed to a resolution disapproving a Presidential reorganization plan relating to the Department of Urban Affairs and Housing.**

On Feb. 21, 1962,⁽⁹⁾ the House by a vote of 264 yeas, 150 nays, 1 present, 20 not voting, agreed to House Resolution 530, disapproving Reorganization Plan No. 1, establishing a Department of Urban Affairs and Housing (transmitted by the President on Jan. 30, 1962). The Committee of the Whole had recommended that the resolution not be agreed to.⁽¹⁰⁾

District of Columbia Government**§ 23.14 The House by a yea and nay vote rejected a resolution disapproving a Presidential reorganization plan**

9. 108 CONG. REC. 2630-80, 87th Cong. 2d Sess.

10. The Department of Housing and Urban Development was approved on Sept. 9, 1965, 79 Stat. 667 (Pub. L. No. 89-174).

relating to the District of Columbia government.

On Aug. 9, 1967,⁽¹¹⁾ the House by a vote of yeas 160, nays 244, not voting 28, rejected House Resolution 512, disapproving Reorganization Plan No. 3, relating to the Government, of the District of Columbia (transmitted by the President on June 1, 1967), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report back to the House with the recommendation that the resolution not be agreed to.

Executive Office of the President; Federal Agencies

§ 23.15 The House by a yea and nay vote rejected a concurrent resolution disapproving a Presidential reorganization plan relating to the Executive Office of the President, Federal Security Agency, Federal Works Agency, and Federal Loan Agency.

On May 3, 1939,⁽¹²⁾ the House by a vote of yeas 128, nays 265, present 2, and not voting 35, rejected House Concurrent Resolution 19, disapproving Reorganiza-

11. 113 CONG. REC. 21941-76, 90th Cong. 1st Sess.

12. 84 CONG. REC. 5085, 5086, 76th Cong. 1st Sess.

tion Plan No. 1, relating to the Executive Office of the President, Federal Security Agency, Federal Works Agency, and Federal Loan Agency (transmitted by the President on Apr. 25, 1939), after the Committee of the Whole approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.

Environmental Protection Agency

§ 23.16 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan establishing the Environmental Protection Agency.

On Sept. 28, 1970,⁽¹³⁾ the House by voice vote rejected House Resolution 1209, disapproving Reorganization Plan No. 3, establishing the Environmental Protection Agency (transmitted by the President on July 9, 1970), after the Committee of the Whole by voice vote approved a motion to rise and report the resolution back to the House with the recommendation that it be rejected.

Federal Communications Commission

§ 23.17 The House by yea and nay vote agreed to a resolu-

13. 116 CONG. REC. 33871-84, 91st Cong. 2d Sess.

tion disapproving a Presidential reorganization plan relating to the Federal Communications Commission.

On June 15, 1961,⁽¹⁴⁾ the House by a vote of yeas 323, nays 77, not voting 36, agreed to House Resolution 303 disapproving Reorganization Plan No. 2, relating to the Federal Communications Commission (transmitted by the President on Apr. 27, 1961), after the Committee of the Whole approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it be agreed to.⁽¹⁵⁾

§ 23.18 The House having agreed to a resolution disapproving a Presidential reorganization plan relating to the Federal Communications Commission, the Senate Committee on Government Operations ordered reported, without recommendation, a resolution to the same effect.

On June 16, 1961,⁽¹⁶⁾ the Chairman of the Senate Committee on Government Operations, John L.

14. 107 CONG. REC. 10448-62, 87th Cong. 1st Sess.

15. See § 23.18, *infra*, for Senate disposition.

16. 107 CONG. REC. 10628, 87th Cong. 1st Sess.

McClellan, of Arkansas, made an announcement regarding Senate disposition of a Presidential reorganization plan.

MR. MCCLELLAN: Mr. President, on June 13, 1961, the Committee on Government Operations, in executive session, ordered reported, without recommendation, S. Res. 142, expressing disapproval of Reorganization Plan No. 2 of 1961.

Under section 6 of the Reorganization Act of 1949, as amended, a reorganization plan may not become effective if a resolution of disapproval is adopted by a simple majority of either House. On June 15, 1961, the House of Representatives adopted House Resolution 303, to disapprove Reorganization Plan No. 2 of 1961.⁽¹⁷⁾ Since this action results in the final disposition of the matter, it is no longer necessary either for the Committee on Government Operations to file a report on S. Res. 142, or for the Senate to take any further action.

I call attention to the fact, however, that hearings on that resolution have been held and will be available shortly for the information of Members of the Senate. Legislation to enact certain provisions of Reorganization Plan No. 2 is now pending before the Senate Committee on Commerce—S. 2034—and the House Committee on Interstate and Foreign Commerce—H. R. 7333—and the House committee has now completed hearings on H.R. 7333.

I thought it proper to make this announcement in view of the fact that the committee had voted to report the resolution as I have indicated.

17. See § 23.17, *supra*, for House disposition.

Federal Home Loan Bank Board

§ 23.19 The House by voice vote rejected a motion to discharge the Committee on Government Operations from further consideration of a resolution disapproving a reorganization plan, relating to the Federal Home Loan Bank Board.

On Aug. 3, 1961,⁽¹⁸⁾ the House by voice vote rejected a motion to discharge the Committee on Government Operations from further consideration of House Resolution 335, disapproving Reorganization Plan No. 6, relating to the Federal Home Loan Bank Board (transmitted by the President on June 12, 1961). The motion was offered by Mr. H. R. Gross, of Iowa, who qualified as being in favor of the resolution.⁽¹⁹⁾

Federal Maritime Functions

§ 23.20 The House by yea and nay vote rejected a motion to

18. 107 CONG. REC. 14548-54, 87th Cong. 1st Sess.

19. See 63 Stat. 203, 207, 81st Cong. 1st Sess. (Pub. L. No. 81-109, §204b), for the requirement that the Member making the motion to discharge must qualify as favoring the resolution of disapproval. This provision was later codified as 5 USC §911(b) (1970), 80 Stat. 397, Sept. 6, 1966 (Pub. L. No. 89-554).

discharge the Committee on Government Operations from further consideration of a resolution disapproving a reorganization plan relating to federal maritime functions.

On July 20, 1961,⁽²⁰⁾ the House by a vote of yeas 184, nays 208, not voting 35, rejected a motion to discharge the Committee on Government Operations from further consideration of House Resolution 336, disapproving Reorganization Plan No. 7, relating to the Federal Maritime Administration, Federal Maritime Board, and the Federal Maritime Commission⁽¹⁾ (transmitted by the President on June 12, 1961). The motion was offered by Mr. H. R. Gross, of Iowa, who qualified as favoring the resolution of disapproval.

§ 23.21 The Senate on a roll call vote rejected a resolution disapproving a Presidential reorganization plan relating to maritime functions.

On Aug. 10, 1961,⁽²⁾ the Senate by a vote of yeas 35, nays 60, rejected Senate Resolution 186, dis-

20. 107 CONG. REC. 13084-97, 87th Cong. 1st Sess.

1. See §23.21, *infra*, for Senate disposition of this plan.

2. 107 CONG. REC. 15460, 15461, 87th Cong. 1st Sess.

approving Reorganization Plan No. 7, relating to the Federal Maritime Administration, Federal Maritime Board, and Federal Maritime Commission.⁽³⁾

Federal Savings and Loan Insurance Corporation

§ 23.22 The House as in Committee of the Whole agreed to a resolution disapproving a Presidential reorganization plan creating the Federal Savings and Loan Insurance Corporation.

On July 5, 1956,⁽⁴⁾ the House as in Committee of the Whole by voice vote agreed to House Resolution 541, disapproving Reorganization Plan No. 2, creating the Federal Savings and Loan Insurance Corporation (transmitted by the President on May 17, 1956).

Federal Security Agency, Social Security Board, and United States Employment Service

§ 23.23 The House by voice vote agreed to a concurrent resolution disapproving a Presidential reorganization plan relating to the Federal

3. See § 23.20, supra, for House disposition of this resolution.

4. 102 CONG. REC. 11886, 84th Cong. 2d Sess.

Security Agency, Social Security Board, and United States Employment Service.

On June 10, 1947,⁽⁵⁾ the House by voice vote agreed to House Concurrent Resolution 49, disapproving Reorganization Plan No. 2, relating to the Federal Security Agency, Social Security Board, and United States Employment Service (transmitted by the President on May 1, 1947), after the Committee of the Whole approved a motion to rise and report back to the House with the recommendation that it be agreed to.

Federal Trade Commission

§ 23.24 The House by yeas and nays vote rejected a resolution disapproving a Presidential reorganization plan relating to the Federal Trade Commission.

On June 20, 1961,⁽⁶⁾ the House by a vote of yeas 178, nays 221, not voting 38, rejected House Resolution 305, disapproving Reorga-

5. 93 CONG. REC. 6722-40, 80th Cong. 1st Sess. See appendix, infra, which indicates that concurrence of both Houses was required to disapprove reorganization plans prior to June 20, 1949, the effective date of the relevant provision of the Congressional Reorganization Act of 1949.

6. 107 CONG. REC. 10844-56, 87th Cong. 1st Sess.

nization Plan No. 4, relating to the Federal Trade Commission (transmitted by the President on May 9, 1961), after the Committee of the Whole approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

Housing, Lending, and Insuring Agencies

§ 23.25 The House as in Committee of the Whole by voice vote agreed to a concurrent resolution disapproving a Presidential reorganization plan relating to housing, lending, and insuring agencies.

On June 18, 1947,⁽⁷⁾ the House as in Committee of the Whole by voice vote agreed to House Concurrent Resolution 51, disapproving Reorganization Plan No. 3, relating to housing, lending, and insuring agencies, transmitted by the President on May 27, 1947.

7. 93 CONG. REC. 7252, 80th Cong. 1st Sess. See appendix, *infra*, which indicates that concurrence of both Houses was required to disapprove reorganization plans prior to June 20, 1949, the effective date of the relevant provision of the Congressional Reorganization Act of 1949.

National Labor Relations Board

§ 23.26 The House by a yeay and nay vote agreed to a resolution disapproving a Presidential reorganization plan relating to the National Labor Relations Board.

On July 20, 1961,⁽⁸⁾ the House by vote of yeas 231, nays 179, present 2, not voting 25, agreed to House Resolution 328, disapproving Reorganization Plan No. 5, relating to the National Labor Relations Board (transmitted by the President on May 24, 1961), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.⁽⁹⁾

§ 23.27 The Senate indefinitely postponed further consideration of a resolution disapproving a reorganization plan relating to the National Labor Relations Board, after the House agreed to a resolution of disapproval (thereby terminating the plan).

8. 107 CONG. REC. 13069-78, 87th Cong. 1st Sess.

9. See § 23.27, *infra*, for Senate disposition.

On July 20, 1961,⁽¹⁰⁾ the Senate indefinitely postponed Calendar No. 545, Senate Resolution 158, disapproving Reorganization Plan No. 5, relating to the National Labor Relations Board (transmitted by the President on May 24, 1961), after the House agreed to disapprove the plan.⁽¹¹⁾

National Oceanic and Atmospheric Administration

§ 23.28 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan creating the National Oceanic and Atmospheric Administration within the Department of Commerce.

On Sept. 28, 1970,⁽¹²⁾ the House by voice vote rejected House Resolution 1210 disapproving Reorganization Plan No. 4, creating the National Oceanic and Atmospheric Administration within the Department of Commerce (transmitted by the President on July 9, 1970), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to

10. 107 CONG. REC. 13027, 87th Cong. 1st Sess.

11. See § 23.26, supra, for House disposition.

12. 116 CONG. REC. 33885-96, 91st Cong. 2d Sess.

the House with the recommendation that it be rejected.

Office of Science

§ 23.29 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan relating to the Office of Science after the Committee of the Whole adversely reported the measure.

On May 16, 1962,⁽¹³⁾ the House by voice vote rejected House Resolution 595, disapproving Reorganization Plan No. 2 of 1962 establishing the Office of Science and Technology in the Executive Office of the President (transmitted by the President on Mar. 29, 1962), after the Committee of the Whole by voice vote approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.

Reconstruction Finance Corporation

§ 23.30 The House by a yea and nay vote rejected a resolution disapproving a Presidential plan reorganizing the Reconstruction Finance Corporation.

13. 108 CONG. REC. 8468-73, 87th Cong. 2d Sess.

On Mar. 14, 1951,⁽¹⁴⁾ the House by a vote of yeas 200, nays 198, not voting 35,⁽¹⁵⁾ failed to agree to House Resolution 142, disapproving Reorganization Plan No. 11, relating to the Reconstruction Finance Corporation (transmitted to the Congress on Feb. 19, 1951), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

Securities and Exchange Commission

§ 23.31 The House by yeas and nays vote rejected a resolution disapproving a Presidential reorganization plan relating to the Securities and Exchange Commission.

On June 15, 1961,⁽¹⁶⁾ the House by a vote of yeas 176, nays 212, not voting 48, rejected House Res-

14. 97 CONG. REC. 2409-18, 82d Cong. 1st Sess.

15. *Parliamentarian's Note*: Under 5 USC §§ 1332-1334 an affirmative vote of a majority of the authorized membership of the House was required to adopt a resolution disapproving a Presidential reorganization plan. This requirement was deleted on Sept. 4, 1957, by approval of 71 Stat. 611 (Pub. L. No. 85-286).

16. 107 CONG. REC. 10463-71, 87th Cong. 1st Sess.

olution 302, disapproving Reorganization Plan No. 1, relating to the Securities and Exchange Commission (transmitted by the President on Apr. 27, 1961), after the Committee of the Whole approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.⁽¹⁷⁾

§ 23.32 The Senate by roll call vote agreed to a resolution disapproving a Presidential reorganization plan relating to the Securities and Exchange Commission.

On June 21, 1961,⁽¹⁸⁾ the Senate by a vote of yeas 52, nays 38, agreed to Senate Resolution 148, disapproving Reorganization Plan No. 1, relating to the Securities and Exchange Commission (transmitted by the President on Apr. 27, 1961).⁽¹⁹⁾

Acceleration of Effective Date for Department of Health, Education, and Welfare Reorganization Plan

§ 23.33 Instead of following the procedure prescribed by the

17. See § 23.32, *infra*, for Senate disposition of this plan.

18. 107 CONG. REC. 11003, 87th Cong. 1st Sess.

19. See § 23.31, *supra*, for House disposition of this plan.

Reorganization Act of 1949 to vote on a resolution disapproving a Presidential reorganization plan, the House approved a House joint resolution effectuating a plan to create the Department of Health, Education, and Welfare 10 days after enactment of the joint resolution, rather than 60 days after submission of the plan as provided in the act.

On Mar. 13, 1953,⁽²⁰⁾ the House agreed to House Joint Resolution 223, effectuating Presidential Reorganization Plan No. 1, creating the Department of Health, Education, and Welfare from the Federal Security Agency, 10 days after enactment of the joint resolution. Approval of this joint resolution did not follow the procedures prescribed by the Reorganization Plan of 1946, which provided that a Presidential reorganization plan would become effective 60 days after its submission to Congress unless either House agreed to a resolution disapproving the plan. The following House joint resolution and amendment were approved:

Resolved, etc., That the provisions of Reorganization Plan No. 1 of 1953, submitted to the Congress on March

12, 1953, shall take effect 10 days after the date of the enactment of this joint resolution and its approval by the President, notwithstanding the provisions of the Reorganization Act of 1949 as amended, except that section 9 of such act shall apply to such reorganization plan and to the reorganization made thereby. . . .

Amendment offered by Mr. [William C.] Lantaff [of Florida]: Page 1, line 4, after the numbers "1953" insert the words "except the words in section 7 thereof which read: 'The Secretary may from time to time establish central administrative services in the field of procurement, budgeting, accounting, personnel, library, legal, and services and activities common to the several agencies of the Department'." . . .

THE SPEAKER:⁽¹⁾ Under the rule the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

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 the third time.

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

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 291, nays 86, answered "present" 3, not voting 51, as follows:

So the House joint resolution was passed.⁽²⁾

1. Joseph W. Martin, Jr. (Mass.).
2. The report on this joint resolution is H. Rept. No. 166. See §23.34, *infra*,

20. 99 CONG. REC. 2086–2113, 83d Cong. 1st Sess.

House Joint Resolution 223, was considered under the following rule (H. Res. 179):⁽³⁾

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 House Joint Resolution 223, providing that Reorganization Plan Numbered 1 of 1953 shall take effect 10 days after the date of the enactment of this joint resolution. After general debate, which shall be confined to the joint resolution, and shall continue not to exceed 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, the joint resolution shall be read for amendment under the 5-minute rule. At the conclusion of the consideration 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

for Senate approval of this joint resolution.

See Pub. Res. No. 75, 76th Cong. 3d Sess. (H.J. Res. 551) for a joint resolution providing that Reorganization Plan No. 5, relating to the Immigration and Naturalization Service and the Department of Labor and transmitted by the President on May 22, 1940, should take effect on the 10th day after enactment of the joint resolution. The joint resolution was approved on June 4, 1940.

3. 99 CONG. REC. 2086, 83d Cong. 1st Sess.

joint resolution and amendments thereto to final passage without intervening motion except one motion to recommit.

§ 23.34 Instead of following the procedure prescribed in the Reorganization Act of 1949, to vote on a resolution disapproving a Presidential reorganization plan, the Senate approved a House joint resolution effectuating a plan to create the Department of Health, Education, and Welfare 10 days after enactment of the joint resolution rather than 60 days after submission of the plan as provided in the act.

On Mar. 30, 1953,⁽⁴⁾ the Senate agreed to House Joint Resolution 223, as amended by the House,⁽⁵⁾ creating the Department of Health, Education, and Welfare from the Federal Security Agency.⁽⁶⁾

Postponing Vote

§ 23.35 The House may postpone voting on a resolution to disapprove a reorganiza-

4. 99 CONG. REC. 2448-59, 83d Cong. 1st Sess.
5. See § 23.33, *supra*, for the text of the joint resolution and amendment.
6. The report on this resolution is S. Rept. No. 126.

tion plan by disagreeing to the highly privileged motion that the House resolve itself into the Committee of the Whole for consideration of such resolution.

On June 8, 1961,⁽⁷⁾ the House postponed voting on a resolution to disapprove a reorganization plan by disagreeing to the motion that the House resolve itself into the Committee of the Whole for consideration of such resolution.

MR. [H.R.] GROSS [of Iowa]: Mr. Speaker, is it in order and proper at this time to submit a highly privileged motion?

THE SPEAKER PRO TEMPORE:⁽⁸⁾ If the matter to which the gentleman refers is highly privileged, it would be in order.

MR. GROSS: Then, Mr. Speaker, under the provisions of section 205(a) Public Law 109, the Reorganization Act of 1949, I submit a motion. . . .

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALLECK: As I understand, there is a motion pending to call up what is known as Reorganization Plan No. 2.

THE SPEAKER PRO TEMPORE: The chair would state that the gentleman from Iowa indicated he would submit

such a motion, but it has not been reported.

MR. HALLECK: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALLECK: The majority leader, the gentleman from Massachusetts [Mr. McCormack], talked to me yesterday about scheduling this matter for the consideration of the House of Representatives and indicated to me that it would be scheduled in due time upon agreement between the majority and the minority Members. In view of this I would like to inquire whether or not we could have any assurance from the leadership on the Democratic side, including the acting majority leader and the chairman of the Committee on Government Operations, as to when this matter might be called, if this motion now does not prevail.

MR. [HALE] BOGGS [of Louisiana]: Mr. Speaker, in reply to the gentleman, in the absence of the majority leader, I can only say that I can give the assurance that the plan will be called up. It is my understanding that the chairman of the committee has indicated that he will confer with the majority leader on calling it up next Thursday. In the absence of the majority leader I cannot give a date positive, but I can give assurance that it will be called up. . . .

MR. HALLECK: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALLECK: If the pending motion is voted down, would it still be in order at a subsequent date to call up a motion rejecting plan No. 2 for another

7. 107 CONG. REC. 9775-77, 87th Cong. 1st Sess.

8. Oren Harris (Ark.).

vote? I ask that because I am opposed to plan No. 2. The committee has reported adversely in respect to plan No. 2. I am going to vote against that plan and in support of the resolution of the committee. But under my responsibility as the minority leader and under my agreement with the majority leader, I do not see how I could vote today unless, under the situation as it exists, that vote today would be conclusive as to plan No. 2. . . .

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, under the Reorganization Act, it could be called up at a subsequent date.

MR. HALLECK: In other words, the action that would be taken today would not be final?

THE SPEAKER PRO TEMPORE: The gentleman is correct. . . .

MR. [CLARENCE J.] BROWN [of Ohio]: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BROWN: As I understand the parliamentary situation the motion would be to take up the resolution of rejection; is that correct?

THE SPEAKER PRO TEMPORE: The Chair would like to state that the motion has not yet been reported; but the Chair understands that the motion is for the House to go into Committee of the Whole House for the consideration of it.

MR. BROWN: If that should be defeated, of course, we would not have the resolution of rejection before us.

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. BROWN: And therefore the vote would be simply on whether we want to take it up today or take it up later?

THE SPEAKER PRO TEMPORE: The gentleman is correct. . . .

The Chair feels that this matter has probably gone far enough.

The Clerk will report the motion offered by the gentleman from Iowa.

The Clerk read as follows:

Mr. Gross moves that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of H. Res. 303 introduced by Mr. Monagan disapproving Reorganization Plan No. 2 transmitted to the Congress by the President on April 27, 1961.

THE SPEAKER PRO TEMPORE: The question is on the motion.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HOFFMAN of Michigan: Mr. Speaker, if I vote to postpone this; am I then on record as approving the plan?

THE SPEAKER PRO TEMPORE: Of course, that is not a parliamentary inquiry.

MR. [BYRON G.] ROGERS of Colorado: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. ROGERS of Colorado: Mr. Speaker, is a motion to lay this motion on the table in order?

THE SPEAKER PRO TEMPORE: It would not be in order at this time.

The question is on the motion offered by the gentleman from Iowa [Mr. Gross].

The motion was rejected.⁽⁹⁾

9. See §23.17, *supra*, for a discussion of the House vote on this plan to reor-

Priority of Consideration

§ 23.36 The House having agreed that consideration of the general appropriation bill of 1951 take priority over all business except conference reports, it was held that such agreement gave a higher privilege to the appropriation bill than consideration of resolutions disapproving reorganization plans of the President.

On May 9, 1950,⁽¹⁰⁾ Speaker pro tempore John W. McCormack, of Massachusetts, ruled that a unanimous-consent agreement that consideration of the general appropriation bill of 1951, a bill combining all appropriations measures, take priority of all business except conference reports, gave a higher priority to the appropriation bill than consideration of resolutions disapproving Presidential reorganization plans.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Speaker, I make the point of order that the House is not proceeding in the regular order because under section 205a of the Reorganization Act, which is Public Law 109 of the Eighty-first Congress, first session, any Member of the House is privileged, and this

ganzize the Federal Communications Commission.

10. 96 CONG. REC. 6720-24, 81st Cong. 2d Sess.

is a highly privileged motion, to make the motion that the House proceed to the consideration of House Resolution 516.

The gentleman from Michigan being on his feet to present this highly privileged motion, the regular order is that he be recognized for that purpose that the motion be entertained and the question put before the House, and my motion is that the House proceed to the consideration of House Resolution 516.

THE SPEAKER PRO TEMPORE: That is the resolution disapproving one of the reorganization plans?

MR. HOFFMAN of Michigan: That is right, House Resolution 516 disapproving plan No. 12.⁽¹¹⁾

And, Mr. Speaker, I ask unanimous consent to revise and extend my remarks in connection with the point of order. . . .

Mr. Speaker, may I be heard further on the point of order?

THE SPEAKER PRO TEMPORE: The Chair is glad to hear the gentleman from Michigan.

MR. HOFFMAN: . . . [O]n the 3d of April the gentleman from Missouri [Mr. Cannon] asked unanimous consent "that time for general debate be equally divided, one-half to be controlled by the gentleman from New York [Mr. Taber] and one-half by myself [Mr. Cannon]; that debate be confined to the bill and that following the reading of the first chapter of the bill, not to exceed 2 hours of general debate be had before the reading of each subsequent chapter, one-half to be con-

11. This plan related to the National Labor Relations Board.

trolled by the chairman and one-half by the ranking minority member of the subcommittee in charge of the chapter."

The gentleman from Texas [Mr. Mahon] cites page 4835 of the daily Record of April 5, which reads as follows:

Mr. Cannon. I ask unanimous consent that the general appropriation bill for the fiscal year 1951 have right-of-way over all other privileged business under the rules until disposition, with the exception of conference reports.

Still later and on April 6, the gentleman from Missouri [Mr. Cannon] asked unanimous consent that the Record be corrected. His request was as follows—pages 4976–4977 of the daily Record:

Mr. Cannon. Mr. Speaker, on page 4835 of the Record of yesterday, the first column carrying the special order made by the House last night reads that the general appropriation bill shall be a special order privileged above all other business of the House under the rule until disposition. The order made was until final disposition. I ask unanimous consent that the Record and Journal be corrected to conform with the proceedings on the floor of the House yesterday.

There was no objection. . . .

Furthermore, while appropriation bills have a privileged status, but under the subsequent rule of the House, adopted in the reorganization bill, a motion to consider a resolution is highly privileged. Certainly that has priority over this ordinary privilege or special privilege which the gentleman from Missouri [Mr. Cannon] secured.

How can unanimous consent secured by the gentleman from Missouri [Mr.

Cannon] on either the 3d, the 5th, or the 6th of April, even though the corrected request states "that the general appropriation bill shall be a special order privileged above all other business of the House under the rule until final disposition," have priority over Public Law No. 109, Eighty-first Congress, when, under title II, we find the following:

Sec. 201. The following sections of this title are enacted by the Congress:

(a) As an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in such House in the case of resolutions (as defined in section 202); and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(b) With full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House. . . .

Sec. 205. (a) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a reorganization plan, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. No amendment to such motion shall be in order and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to. . . .⁽¹²⁾

12. Subsequent material—several *Congressional Record* excerpts from the

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The gentleman from Michigan makes a point of order, the substance of which is that the motion he desires to make or that someone else should make in relation to the consideration of a disapproving resolution of one of the reorganization plans takes precedence over the appropriation bill insofar as recognition by the Chair is concerned. The gentleman from Michigan raises a very serious question and the Chair feels at this particular time that it is well that he did so.

The question involved is not a constitutional question but one relating to the rules of the House and to the Legislative Reorganization Act of 1949 which has been alluded to by the gentleman from Michigan and other Members when addressing the Chair on this point of order. The Chair calls attention to the language of paragraph (b) of section 201 of title II of the Reorganization Act of 1949 which reads as follows: "with full recognition of the constitutional right of either House to change such rules so far as relating to procedure in such House at any time in the same manner and to the same extent as in the case of any other rule of such House."

It is very plain from that language that the intent of Congress was to recognize the reservation to each House of certain inherent powers which are necessary for either House to function to

debate on reorganization plan provisions of the Reorganization Act of 1949, which indicate that the intent of the framers was to ensure a congressional veto power over such plans—is omitted here.

meet a particular situation or to carry out its will.

On April 5, the gentleman from Missouri [Mr. Cannon], chairman of the Committee on Appropriations, submitted a unanimous-consent request to the House, which was granted, which has the force of a rule, and which relates to the rules of the House governing the consideration of the omnibus appropriation bill while it is before the House and, of course, incidentally affecting other legislation. The consent request submitted by the gentleman from Missouri was "that the general appropriation bill for the fiscal year 1951 have right-of-way over all other privileged business under the rules until disposition, with the exception of conference reports."

That request was granted by unanimous consent. On the next day, the gentleman from Missouri [Mr. Cannon], in correcting and interpreting the consent request granted on April 5, submitted a further unanimous-consent request.

The daily Record shows, on page 4976, April 6, that the gentleman from Missouri [Mr. Cannon] said:

Mr. Speaker, on page 4835 of the daily Record of yesterday, the first column carrying the special order made by the House last night reads that the general appropriation bill shall be a special order privileged above all other business of the House under the rule until disposition. The order made was until final disposition. I ask unanimous consent that the Record and Journal be corrected to conform with the proceedings on the floor of the House yesterday.

The Record further shows that the Speaker put the request and there was no objection.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: Let the Chair finish.

MR. RANKIN: Mr. Speaker, I would like to propound a parliamentary inquiry at this time.

THE SPEAKER PRO TEMPORE: The Chair is in the process of making a ruling.

MR. RANKIN: That is the reason I want to propound the inquiry right at this point.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman.

MR. RANKIN: We for the first time this year have all the appropriations in one bill. Now, if they drag out consideration under the 5-minute rule beyond the 24th, would that not shut the Congress off entirely from voting on any of these recommendations? So we do have a constitutional right to consider these propositions without having them smothered in this way.

THE SPEAKER PRO TEMPORE: The Chair will state that the House always has a constitutional right and power to refuse to go into the Committee of the Whole on any motion made by any Member, so that the House is capable of carrying out its will whatever may be the will of the majority of the House.

Continuing, the Chair will state that in the opinion of the present occupant, in view of the unanimous-consent request made by the gentleman from Missouri and granted by the House, if any member of the Appropriations Committee moves that the House resolve itself into the Committee of the Whole on the State of the Union to

consider the appropriation bill, that motion has preference over any other preferential motion. It is a matter that the House decides when the motion is made as to what it wants to do and it has an opportunity when that motion is made to carry out its will.

MR. [ARTHUR L.] MILLER of Nebraska: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. MILLER of Nebraska: I understood the statement of the gentleman from Missouri on April 6 was that the appropriation bill would take precedence over all legislation and special orders until entirely disposed of. Does that include conference reports?

THE SPEAKER PRO TEMPORE: A conference report is in a privileged status in any event.

MR. [JOHN] TABER [of New York]: They were specifically exempted.

THE SPEAKER PRO TEMPORE: They were specifically exempted. In relation to the observation made by the gentleman from Michigan [Mr. Hoffman] that because other business has been brought up and that therefore constitutes a violation of the unanimous-consent request, the Chair, recognizing the logic of the argument, disagrees with it because that action was done through the sufferance of the Appropriations Committee and, in the opinion of the Chair, does not constitute a violation in any way; therefore does not obviate the meaning and effect of the unanimous-consent request heretofore entered into, and which the Chair has referred to.

For the reasons stated, the Chair overrules the point of order.

POWERS AND PREROGATIVES OF THE HOUSE **Ch. 13 §23**

MR. HOFFMAN of Michigan: Mr. Speaker, a further point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HOFFMAN of Michigan: The point of order is the same as I raised before; but, to keep the Record clear, I wish to make the same point of order regarding House Resolution 522, House Resolution 545, and House Res-

olution 546, that is, that the House proceed to the consideration of each of those resolutions in the order named, assuming, of course, that the ruling will be the same, but making a record.

THE SPEAKER PRO TEMPORE: The Chair will reaffirm his ruling in relation to the several resolutions the gentleman has referred to.

APPENDIX

On Apr. 3, 1939, the President signed into law H.R. 4425 [Pub. L. No. 76-19] which authorized the President to submit plans for reorganization of the executive branch of the government to the Congress. Section 5(a) of that law provided that such plans would become effective after expiration of 60 calendar days unless Congress, by concurrent resolution, disapproved such plan. This law was in effect until June 20, 1949, when the Reorganization Act of 1949, H.R. 2361 [Pub. L. No. 109] was approved. Until that date, the concurrence of both Houses was required to disapprove plans. After that date, plans could be disapproved by agreeing to a simple resolution of disapproval by either House.

Reorganization Plans From 1939 to 1973

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 1 of 1939 ...	Yes (53 Stat. 1423)	Executive Office of President, Federal Security Agency, Federal Works Agency, and lending agencies.	H. Con. Res. 19—adverse report from Select Committee on Government Organization; disagreed to May 3, 1939.
No. 2 of 1939 ...	Yes (53 Stat. 1431)	Department of State, Department of the Treasury, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, and Executive Office of President.	S. Con. Res. 16—adverse report; disagreed to May 12, 1939, in Senate.
No. 3 of 1940 ...	Yes (54 Stat. 1231)	Department of the Treasury, Department of the Interior, Department of Agriculture, Department of Labor, and Civil Aeronautics Authority.	No action.
No. 4 of 1940 ...	Yes (54 Stat. 1234)	Department of State, Department of the Treasury, Department of Justice, Post Office Department, Department of the Interior, Department of Commerce, Department of Labor, Maritime Commission, and Federal Security Agency.	H. Con. Res. 60—Select Committee discharged by unanimous consent May 7, 1940; agreed to in House May 8, 1940. S. Con. Res. 43—reported adversely in Senate; no Senate action.
No. 5 of 1940 ...	Yes (54 Stat. 1238)	Immigration and Naturalization Service.	H.J. Res. 551—passed House May, 27, 1940. Pub. Res. 76-75.

Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 1 of 1946 ...	No	Department of State, Office of Inter-American Affairs, U.S. High Commissioner to the Philippine Islands, Department of the Treasury, Department of Agriculture, Office of War Mobilization and Reconversion, National Housing Agency, and Federal Deposit Insurance Corporation..	H. Con. Res. 155—reported and agreed to in House, June 28, 1946; agreed to in Senate, July 15, 1946.
No. 2 of 1946 ...	Yes (60 Stat. 1095)	Federal Security Agency, Department of Labor.	H. Con. Res. 151—reported and agreed to in House, June 28, 1946; disagreed to in Senate, July 15, 1946.
No. 3 of 1946 ...	Yes (60 Stat. 1097)	Department of the Treasury, U.S. Coast Guard, Bureau of Customs, Departments of War and Navy, Department of the Interior, Department of Agriculture, Department of Commerce, National Labor Relations Board, Smithsonian Institution, and U.S. Employment Service.	H. Con. Res. 154—reported and agreed to in House, June 28, 1946; disagreed to in Senate, July 13, 1946.
No. 1 of 1947 ...	Yes (61 Stat. 951; amended, 63 Stat. 399).	Alien Property Custodian, President, Office of Contract Settlement, Department of Justice, Bureau of Internal Revenue, Department of Agriculture, Federal Deposit Insurance Corporation, and War Assets Administration.	No action.
No. 2 of 1947 ...	No	Department of Labor, Federal Security Agency.	H. Con. Res. 49—reported and agreed to in House, June 10, 1947; agreed to in Senate, June 30, 1947.
No. 3 of 1947 ...	Yes (61 Stat. 954)	Housing and Home Finance Agency.	H. Con. Res. 51—disapproval reported June 12, 1947; agreed to June 18, 1947; disagreed to in Senate, July 22, 1947.
No. 1 of 1948 ...	No	Department of Labor, Federal Security Agency.	H. Con. Res. 131—reported Feb. 9, 1948; passed House Feb. 25, 1948; passed Senate Mar. 16, 1948.
No. 1 of 1949 ...	No	Federal Security Agency (Department of Welfare).	S. Res. 147 (disapproval)—passed Senate Aug. 16, 1949.

Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 2 of 1949 ...	Yes (63 Stat. 1065)	Department of Labor, Federal Security Agency, and Veteran's Placement Service Board.	H. Res. 301 (disapproving)—reported—failed of passage Aug. 11, 1949; S. Res. 151—failed of passage Aug. 17, 1949.
No. 3 of 1949 ...	Yes (63 Stat. 1066)	Post Office Department	No action.
No. 4 of 1949 ...	Yes (63 Stat. 1067)	Executive Office of the President (National Security Council, National Security Resources Board).	No action.
No. 5 of 1949 ...	Yes (63 Stat. 1067)	U.S. Civil Service Commission ..	No action.
No. 6 of 1949 ...	Yes (63 Stat. 1069)	Maritime Commission	No action.
No. 7 of 1949 ...	Yes (63 Stat. 1070)	Federal Works Agency, Department of Commerce (Public Roads Administration).	S. Res. 155—reported and failed of passage, Aug. 17, 1949.
No. 8 of 1949 ...	No	National Military Establishment	Congress adjourned before plan became effective.
No. 1 of 1950 ...	No	Department of the Treasury	S. Res. 246—agreed to May 11, 1950.
No. 2 of 1950 ...	Yes (64 Stat. 1261)	Department of Justice	No action.
No. 3 of 1950 ...	Yes (64 Stat. 1262)	Department of the Interior	No action.
No. 4 of 1950 ...	No	Department of Agriculture	S. Res. 263—agreed to May 18, 1950.
No. 5 of 1950 ...	Yes (64 Stat. 1263; amended, 68 Stat. 430).	Department of Commerce	H. Res. 546—reported and disagreed to May 18, 1950; S. Res. 259—reported and disagreed to May 23, 1950.
No. 6 of 1950 ...	Yes (64 Stat. 1263)	Department of Labor	H. Res. 522—reported and disagreed to May 18, 1950.
No. 7 of 1950 ...	No	Interstate Commerce Commission.	H. Res. 545—reported; no action in House; S. Res. 253—reported and agreed to May 17, 1950.
No. 8 of 1950 ...	Yes (64 Stat. 1264)	Federal Trade Commission	S. Res. 254—reported and disagreed to May 22, 1950.
No. 9 of 1950 ...	Yes (64 Stat. 1265)	Federal Power Commission	S. Res. 255—reported and disagreed to May 22, 1950.
No. 10 of 1950	Yes (64 Stat. 1265)	Securities and Exchange Commission.	No action.
No. 11 of 1950	No	Federal Communications Commission.	S. Res. 256—reported and agreed to May 17, 1950.
No. 12 of 1950	No	National Labor Relations Board	H. Res. 516—reported; no action; S. Res. 248—reported and agreed to May 11, 1950.
No. 13 of 1950	Yes (64 Stat. 1266)	Civil Aeronautics Board	No action.
No. 14 of 1950	Yes (64 Stat. 1267)	Department of Labor	No action.
No. 15 of 1950	Yes (64 Stat. 1267)	General Services Administration, Department of the Interior.	No action.

Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 16 of 1950	Yes (64 Stat. 1268)	General Services Administration, Federal Security Agency.	No action.
No. 17 of 1950	Yes (64 Stat. 1269)	General Services Administration, Housing and Home Finance Agency.	S. Res. 271—reported and disagreed to May 23, 1950.
No. 18 of 1950	Yes (64 Stat. 1270)	General Services Administration	H. Res. 539—reported; no Action in House; S. Res. 270—reported and disagreed to May 23, 1950.
No. 19 of 1950	Yes (64 Stat. 1271)	Federal Security Agency, Department of Labor.	No action.
No. 20 of 1950	Yes (64 Stat. 1272)	Department of State, General Services Administration.	No action.
No. 21 of 1950	Yes (64 Stat. 1273)	U.S. Maritime Commission, Department of Commerce.	S. Res. 265—reported and disagreed to May 19, 1950.
No. 22 of 1950	Yes (64 Stat. 1277)	Reconstruction Finance Corp., Housing and Home Finance Agency.	S. Res. 299—reported and disagreed to July 6, 1950.
No. 23 of 1950	Yes (64 Stat. 1279)	Reconstruction Finance Corp., Housing and Home Finance Agency.	No action.
No. 24 of 1950	No	Reconstruction Finance Corp., Department of Commerce.	H. Res. 648—reported and disagreed to June 30, 1950; S. Res. 290—reported and agreed to July 6, 1950.
No. 25 of 1950	Yes (64 Stat. 1280)	National Security Resources Board.	No action.
No. 26 of 1950	Yes (64 Stat. 1280)	Department of the Treasury	No action.
No. 27 of 1950	No	Federal Security Agency (Department of Health, Education, and Welfare).	H. Res. 647—reported and agreed to July 10, 1950; S. Res. 302—reported, no action.
No. 1 of 1951 ...	Yes (65 Stat. 773)	Reconstruction Finance Corp	H. Res. 142—reported and disagreed to Mar. 14, 1951; S. Res. 76—reported and disagreed to Apr. 13, 1951.
No. 1 of 1952 ...	Yes (66 Stat. 823; amended, 69 Stat. 182).	Department of the Treasury (Bureau of Internal Revenue).	H. Res. 494—reported and disagreed to Jan. 30, 1952; S. Res. 285—reported and disagreed to Mar. 13, 1952.
No. 2 of 1952 ...	No	Post Office Department	S. Res. 317—reported; Congress adjourned July 7, 1952, before plan became effective.
No. 3 of 1952 ...	No	Department of the Treasury (Bureau of Customs).	S. Res. 331—reported; Congress adjourned July 7, 1952, before plan became effective.
No. 4 of 1952 ...	No	Department of Justice	S. Res. 330—reported; Congress adjourned July 7, 1952, before plan became effective.

Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 5 of 1952 ...	Yes (66 Stat. 824; amended, 69 Stat. 182).	District of Columbia Government.	No action.
No. 1 of 1953 ...	Yes (67 Stat. 631)	Federal Security Agency, Department of Health, Education, Welfare.	H.J. Res. 223—passed House Mar. 18, 1953; passed Senate Mar. 30, 1953, Pub. L. No. 83-13.
No. 2 of 1953 ...	Yes (67 Stat. 633)	Department of Agriculture	H. Res. 236—motion to discharge not agreed to June 3, 1953; S. Res. 100—reported and disagreed to June 27, 1953.
No. 3 of 1953 ...	Yes (67 Stat. 634)	Office of Defense Mobilization (National Security Resources Board), Departments of Army, Navy, and Air Force, Department of the Interior, General Services Administration, and Department of Defense.	No action.
No. 4 of 1953 ...	Yes (67 Stat. 636)	Department of Justice	No action.
No. 5 of 1953 ...	Yes (67 Stat. 637)	Export-Import Bank of Washington.	No action.
No. 6 of 1953 ...	Yes (67 Stat. 638)	Department of Defense	H. Res. 295—reported and disagreed to June 27, 1953.
No. 7 of 1953 ...	Yes (67 Stat. 639)	Foreign Operations Administration, Institute of Inter-American Affairs, and Department of State.	H. Res. 261—adverse report; disagreed to July 17, 1953.
No. 8 of 1953 ...	Yes (67 Stat. 642; amended, 69 Stat. 183).	United States Information Agency, Department of State.	H. Res. 262—adverse report; disagreed to July 17, 1953.
No. 9 of 1953 ...	Yes (67 Stat. 644)	Executive Office of the President (Council of Economic Advisers).	H. Res. 263—adverse report; no action in House.
No. 10 of 1953 ..	Yes (67 Stat. 644)	Civil Aeronautics Board, Post Office Department.	H. Res. 264—adverse report; no action in House.
No. 1 of 1954 ...	Yes (68 Stat. 1279)	Foreign Claims Settlement Commission, War Claims Commission, International Claims Commission, and Department of State.	No action.
No. 2 of 1954 ...	Yes (68 Stat. 1280)	Reconstruction Finance Corp., Export-Import Bank of Washington, and Federal National Mortgage Association.	No action.
No. 1 of 1956 ...	No	Departments of Army, Navy, and Air Force.	H. Res. 534—reported and agreed to July 5, 1956.

Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 2 of 1956 ...	No	Federal Savings and Loan Insurance Corporation, Federal Home Loan Bank Board.	H. Res. 541—reported and agreed to July 5, 1956.
No. 1 of 1957 ...	Yes (71 Stat. 647)	Reconstruction Finance Corp	No action.
No. 1 of 1958 ...	Yes (72 Stat. 1799; amended 72 Stat. 535, 72 Stat. 861; 75 Stat. 630 (1961); 75 Stat. 788 (1961))..	Office of Civil and Defense Mobilization.	No action.
No. 1 of 1959 ...	No	Department of the Interior, Department of Agriculture.	H. Res. 295—reported and agreed to July 7, 1959.
No. 1 of 1961 ...	No	Securities and Exchange Commission.	H. Res. 302—reported and disagreed to June 15, 1961; S. Res. 148—reported and agreed to June 21, 1961.
No. 2 of 1961 ...	No	Federal Communications Commission.	H. Res. 303—reported and agreed to June 15, 1961.
No. 3 of 1961 ...	Yes (75 Stat. 837)	Civil Aeronautics Board	H. Res. 304—reported and disagreed to June 20, 1961; S. Res. 143—reported and disagreed to June 29, 1961.
No. 4 of 1961 ...	Yes (75 Stat. 837)	Federal Trade Commission	H. Res. 305—reported and disagreed to June 20, 1961; S. Res. 147—reported and disagreed to June 29, 1961.
No. 5 of 1961 ...	No	National Labor Relations Board	H. Res. 328—reported and agreed to July 20, 1961.
No. 6 of 1961 ...	Yes (75 Stat. 838)	Federal Home Loan Bank Board	No action.
No. 7 of 1961 ...	Yes (75 Stat. 840)	Federal Maritime Commission ..	H. Res. 336—motion to discharge not agreed to July 20, 1961.
No. 1 of 1962 ...	No	Housing and Home Finance Agency, Federal National Mortgage Association.	H. Res. 530—adverse report; agreed to Feb. 21, 1962.
No. 2 of 1962 ...	Yes (76 Stat. 1253)	Office of Science and Technology, National Science Foundation.	H. Res. 595—adverse report; disagreed to May 16, 1962.
No. 1 of 1963 ...	Yes (77 Stat. 869)	Secretary of the Interior, Administrator of General Services.	H. Res. 372—reported; no action in House.
No. 1 of 1965 ...	Yes (79 Stat. 1317)	Bureau of Customs, Secretary of the Treasury.	H. Res. 347—adverse report; no action in House; S. Res. 102—adverse report; disagreed to in Senate, May 24, 1965.

Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 2 of 1965 ...	Yes (79 Stat. 1318)	Weather Bureau (Chief), Coast and Geodetic Survey (Director), Secretary of Commerce, and Environmental Science Services Administration (Administrator).	No action.
No. 3 of 1965 ...	Yes (79 Stat. 1320)	Interstate Commerce Commission, Director of Locomotive Inspection.	No action.
No. 4 of 1965 ...	Yes (79 Stat. 1321)	National Housing Council, National Advisory Council on International Monetary and Financial Problems, Board of Foreign Service, Board of Examiners for the Foreign Service, Civilian-Military Liaison Commission, Civil Service Commission, Advisory Council on Group Insurance, Small Business Administration, Loan Policy Board, Department of the Interior, Bonneville Power Advisory Board, Attorney General, Atomic Weapons Awards Board, and Department of Health, Education, and Welfare.	No action.
No. 5 of 1965 ...	Yes (79 Stat. 1323)	National Science Foundation	No action.
No. 1 of 1966 ...	Yes (80 Stat. 1607)	Department of Commerce (Community Relations Service), Department of Justice.	H. Res. 756—adverse report; disagreed to Apr. 20, 1966; S. Res. 220—adverse report; disagreed to Apr. 6, 1966.
No. 2 of 1966 ...	Yes (80 Stat. 1608)	Department of Health, Education, and Welfare, Secretary of the Interior, Federal Water Pollution Control Administration, Water Pollution Control Advisory Board, Surgeon General, Assistant Secretary of the Interior, and Assistant Secretary of Health, Education, and Welfare.	H. Res. 827—adverse report; no action in House.

Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 3 of 1966 ...	Yes (80 Stat. 1610)	Department of Health, Education, and Welfare, Public Health Service, Bureau of Medical Services, Bureau of State Services, National Institutes of Health, and Office of Surgeon General.	No action.
No. 4 of 1966 ...	Yes (80 Stat. 1611)	Board of Commissioners of the District of Columbia, Smithsonian Institute.	No action.
No. 5 of 1966 ...	Yes (80 Stat. 1611)	National Capital Regional Planning Council.	No action.
No. 1 of 1967 ...	Yes (81 Stat. 947)	Secretary of Commerce, Secretary of Transportation.	No action.
No. 2 of 1967 ...	No	U.S. Tariff Commission, Chairman of the U.S. Tariff Commission.	H. Res. 405—adverse report; no action in House; S. Res. 114—reported and agreed to May 15, 1967.
No. 3 of 1967 ...	Yes (81 Stat. 948)	District of Columbia (local self Government).	H. Res. 512—adverse report; disagreed to Aug. 9, 1967.
No. 1 of 1968 ...	Yes (82 Stat. 1367)	Attorney General, Department of the Treasury, Department of Health, Education, and Welfare, Department of Justice (Bureau of Narcotics and Dangerous Drugs), and Bureau of Narcotics.	H. Res. 1101—adverse report; disagreed to Apr. 2, 1968.
No. 2 of 1968 ...	Yes (82 Stat. 1369)	Secretary of Transportation, Department of Housing and Urban Development, and Urban Mass Transportation Administration.	No action.
No. 3 of 1968 ...	Yes (82 Stat. 1370)	Commissioner of the District of Columbia, District of Columbia Recreation Board.	No action.
No. 4 of 1968 ...	Yes (82 Stat. 1371)	Commissioner of the District of Columbia, District of Columbia Redevelopment Land Agency.	No action.
No. 1 of 1969 ...	Yes (83 Stat. 859)	Interstate Commerce Commission.	No action.
No. 1 of 1970 ...	Yes (84 Stat. 2083)	Office of Telecommunications Policy, Director of Telecommunications, and Executive Office of the President.	H. Res. 841—reported; no action in House.

Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 2 of 1970 ...	Yes (84 Stat. 2085)	Bureau of the Budget, Domestic Council, Office of Management and Budget, Executive Office of the President.	H. Res. 960—reported; disagreed to May 13, 1970.
No. 3 of 1970 ...	Yes (84 Stat. 2086)	Council on Environmental Quality, Department of Agriculture, Environmental Protection Agency, Department of the Interior, Department of Health, Education, and Welfare, Atomic Energy Commission, and Federal Aviation Council.	H. Res. 1209—adverse report; disagreed to Sept. 28, 1970.
No. 4 of 1970 ...	Yes (84 Stat. 2090)	Department of Commerce, National Oceanic and Atmospheric Administration, Department of the Interior, Secretary of Defense, Environmental Science Service Administration and Bureau of Commercial Fisheries.	H. Res. 1210—adverse report; disagreed to Sept. 28, 1970; S. Res. 433—reported and disagreed to Oct. 1, 1970.
No. 1 of 1971 ...	Yes (85 Stat. 819)	Executive Office of the President, ACTION, Office of Economic Opportunity, Department of Health, Education, and Welfare, and Small Business Administration.	H. Res. 411—reported and disagreed to May 25, 1971.
No. 1 of 1973 ...	Yes (87 Stat. 1089)	Executive Office of the President, Office of Emergency Preparedness, National Science Foundation, Office of Science and Technology, and Civil Defense Advisory Council.	No action.
No. 2 of 1973 ...	Yes (87 Stat. 1091)	Bureau of Narcotics and Dangerous Drugs, Drug Enforcement Administration, Bureau of Customs, Department of the Treasury, Department of Justice, Office of Drug Abuse Law Enforcement, and Office of National Narcotics Intelligence.	H. Res. 382—reported and disagreed to June 7, 1973.

NOTE.—“Adverse report” means adverse report on disapproval resolution, not on plan.