

### C. YEAS AND NAYS AND OTHER VOTES OF RECORD

#### § 23. The Yeas and Nays; In General

The only method of voting expressly incorporated in the Constitution is voting by the yeas and nays.<sup>(1)</sup> The yeas and nays are taken on the “Desire of one fifth of those [Members] Present,” a computation which may result in more or fewer Members than the number required to constitute one-fifth of a quorum. One-fifth of a quorum is the necessary number to second a demand for a recorded vote in the House under Rule I clause 5(a).

If a Member desires a vote to be recorded by name, showing whether a Member responds yes or no to a vote, he can pursue several options: when a voice vote is taken, any Member not liking the result announced by the Speaker, can ask for a division. If those who stand and are counted for and against the proposition do not constitute a quorum of the House, the Member can make a point of order that a quorum is not present and object to the vote under Rule XV clause 4. If a quorum does appear on the vote, or if the Speaker counts and declares a quorum present, it has

1. U.S. Const. art. I, §§ 5, 7.

been possible, since 1971, to ask for a recorded vote.<sup>(2)</sup> If that request is not supported by one-fifth of a quorum of the House (or 44 Members), then it is still possible to ask for the yeas and nays which can be ordered by one-fifth of those present.<sup>(3)</sup>

2. See § 30, *infra*.

3. See the proceedings of Oct. 14, 1978, for an occasion where voice and division votes were taken in sequence, then objected to under Rule XV clause 4; and when a quorum was found to be present, and a recorded vote refused by an insufficient second, the yeas and nays were finally ordered by one-fifth of those present. 124 CONG. REC. 38553, 95th Cong. 2d Sess.

An interesting example of the use of the yeas and nays occurred on Nov. 4, 1983, when, during special-order speeches at the end of the day, a Member made an unexpected motion to adjourn. On a division vote, demanded by the proponent of the motion to adjourn, there were only four Members present and the vote was 3-1 in the affirmative. The majority, in an effort to protect those Members whose special order had not yet been called and to retain the option of filing a privileged report from the Committee on Rules before adjournment, then objected to the vote on the ground that a quorum was not present. Since a quorum is not required on an affirmative motion to adjourn, that objection was not in order. A recorded vote was

The Constitution requires a vote on reconsideration of a Presidential veto to be taken by the yeas and nays.<sup>(4)</sup> Certain rules of the House also require that the yeas and nays be taken: in Rule XV clause 7 specifies that the yeas and nays shall be considered as ordered on passage of a bill making general appropriations, increasing federal income tax rates and on the final adoption of the budget or any conference report thereon.<sup>(5)</sup> Rule XXVIII clause 6, requires a roll call vote on any motion to close a conference meeting.<sup>(6)</sup> There are also some instances in law which attempt to mandate a yea and nay vote on an issue before the House

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then requested, but obviously, 44 Members (one-fifth of a quorum) were not present. The only alternative to adjourning was then to demand the yeas and nays, which were ordered by one-fifth of those present. On that vote, taken by electronic device, a quorum responded and the motion to adjourn was defeated by a vote of 99 to 120, with one Member answering present. 129 CONG. REC. 30946, 30947, 98th Cong. 1st Sess.

4. U.S. Const. art. I, § 7, clause 2.
5. See H. Res. 6, adopting the rules of the House for the 104th Congress. 141 CONG. REC. p. \_\_\_\_\_, 104th Cong. 1st Sess., Jan. 4, 1995.
6. This rule was first adopted on Jan. 4, 1977 (H. Res. 5, 123 CONG. REC. 53-70, 95th Cong. 1st Sess.).

(see, e.g., the provisions of the Legislative Reorganization Act of 1970, which requires a vote *not* to adjourn for the August recess to be taken by the yeas and nays).

The emergence of electronic voting<sup>(7)</sup> has substantially modified the actual voting process. While the Speaker may, in his discretion,<sup>(8)</sup> order that the vote be taken by the traditional approach<sup>(9)</sup> in which the Clerk calls the roll, and each Member votes on the question as he answers to his name,<sup>(10)</sup> the Chair usually employs the electronic voting system. In the latter situation, Members have “not less than fifteen minutes from the ordering of the roll call. . . .”<sup>(11)</sup> in which to have their vote or presence recorded which is accomplished by inserting a plastic card in one of many voting “stations” and depressing the appropriate (i.e., “Yea,” “Nay,” or “Present”) pushbutton.

Regardless of which method is utilized, the Clerk is required<sup>(12)</sup> to:

7. See §31, *infra*.
8. Rule XV clause 5, *House Rules and Manual* §774b (1995).
9. *Id.*
10. The roll is called twice, and Members appearing after their names are called may still vote providing the result of the vote has not been announced.
11. Rule XV clause 5, *House Rules and Manual* §774b (1995).
12. *Id.*

. . . enter in the Journal and publish in the Congressional Record in alphabetical order in each category, a list of names of those Members recorded as voting in the affirmative, of those Members recorded as voting in the negative, and of those Members answering present, as the case may be, as if their names had been called. . . .

### *Constitutional Origins*

#### **§ 23.1 The Constitution specifies that one-fifth of the Members present may order a ye and nay vote.**

On Jan. 4, 1965,<sup>(13)</sup> a resolution (H. Res. 1) directing the Speaker to administer the oath of office to the gentleman from Mississippi was under discussion. Following a few preliminary inquiries, Mrs. Edith S. Green, of Oregon, initiated the discussion below with the Chair:

MRS. GREEN of Oregon: Mr. Speaker, will the gentleman yield for a parliamentary inquiry?

MR. [CARL] ALBERT [of Oklahoma]: I yield for a parliamentary inquiry.

MRS. GREEN of Oregon: Since the rules of the House have not been adopted, am I correct in understanding that it would require 20 percent of the Members here to stand for a ye-and-nay vote?

THE SPEAKER:<sup>(14)</sup> The Chair will state that under the Constitution, it

13. 111 CONG. REC. 19, 89th Cong. 1st Sess.

14. John W. McCormack (Mass.).

would require one-fifth of the Members present to rise to order a ye-and-nay vote.<sup>(15)</sup>

*Parliamentarian's Note:* The yeas and nays may be demanded (1) while the Speaker is putting the question to a voice vote or (2) is announcing the result of a division, (3) as a vote by tellers is being demanded, and (4) even after the announcement of the vote if the demand is diligently made and the House has not passed to other business.

#### **§ 23.2 The Constitution requires in all cases that a vote to pass a bill over the President's veto must be had by the yeas and nays.**

On Oct. 20, 1951,<sup>(16)</sup> the Speaker<sup>(17)</sup> laid before the House the

15. This prerogative emanates from art. I, §5, clause 3 of the Constitution which states, in its entirety: "Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal."

See also §26.4, *infra*, and especially §26.10, *infra*, where the yeas and nays were refused after 20 percent of those voting had seconded the demand, but the Chair noted that, counting himself, 20 percent of those present had not supported the demand.

16. 97 CONG. REC. 13736, 13737, 13745, 13746, 82d Cong. 1st Sess.

17. Sam Rayburn (Tex.).

following message from the Senate:

The Senate having proceeded to reconsider the bill (S. 1864) entitled "An act to authorize payments by the Administrator of Veterans' Affairs on the purchase of automobiles or other conveyances by certain disabled veterans, and for other purposes." returned by the President of the United States with his objections, to the Senate, in which it originated, it was

*Resolved*, That the said bill do pass, two-thirds of the Senators present having voted in the affirmative.

The Clerk then read the President's veto message after which debate ensued until Mr. John E. Rankin, of Mississippi, moved the previous question. The previous question then being ordered, the Chair proceeded, stating:

The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

Under the Constitution, this vote must be determined by the yeas and nays.<sup>(18)</sup>

**18.** U.S. Const. art. I, §7, clause 2:

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approves he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal,

## § 24. Demands

### *Precedence of Yeas and Nays Over Demand for Tellers*

#### **§ 24.1 A demand for the yeas and nays in the House under article I, section 5 of the Constitution takes precedence over a demand for tellers.**

On Dec. 10, 1963,<sup>(19)</sup> during consideration in the House of the conference report (and amendments remaining in disagreement) on the bill H.R. 8747, making appropriations for various independent ex-

and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return in which Case it shall not be a Law."

**19.** 109 CONG. REC. 23949, 23950, 23952, 88th Cong. 1st Sess.