

## E. RELATIONS WITH EXECUTIVE BRANCH

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

Amendment 25, section 2, of the Constitution<sup>(16)</sup> 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,<sup>(17)</sup> 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<sup>(18)</sup> 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:<sup>(19)</sup> 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:<sup>(1)</sup> 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.<sup>(2)</sup>

Following this action, the House received a message from the Senate announcing that body's confirmation.<sup>(3)</sup>

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.<sup>(4)</sup>

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,<sup>(5)</sup> 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.<sup>(6)</sup> 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.<sup>(7)</sup> 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.<sup>(8)</sup> 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).