

this House and take copies of any documents or papers and the Clerk is authorized to supply certified copies of such documents and papers in possession or control of said Clerk that the court has found to be material and relevant, except minutes and transcripts of executive sessions, and any evidence of witnesses in respect thereto which the court or other proper officer thereof shall desire, so as, however, the possession of said documents and papers by the said Clerk shall not be disturbed, or the same shall not be removed from their place of file or custody under said Clerk; and be it further

Resolved, That copy of these resolutions be transmitted to the said court as a respectful answer to the subpoena aforementioned.

Expressing Sympathy

§ 6.18 The Senate agreed to a resolution wishing a speedy recovery to the wife of a Colombian official who was confined to a hospital while visiting the United States with her husband.

On June 25, 1962,⁽⁷⁾ the Senate considered and agreed to the following resolution (S. Res. 355):

Whereas the newly elected President of Colombia, the Honorable Guillermo Valencia, is now a visitor to the United States; and

Whereas Mr. Valencia has served with distinction for 20 consecutive

7. 108 CONG. REC. 11653, 87th Cong. 2d Sess.

years as a Senator in his country, from which position His Excellency was elected President, both of which facts Members of the United States Senate have taken due and appreciative notice; and

Whereas the gracious wife and companion of President-elect Valencia is now hospitalized in the United States: Be it

Resolved, That the Senate sends to Mrs. Valencia greetings and welcome, and best wishes for early recovery; and be it further

Resolved, That a bouquet of American roses be purchased from the contingent fund of the Senate and be taken by special courier to Mrs. Valencia, as a token of the Senate's esteem for her, for her distinguished husband, and for the people of Colombia.

§ 7. Resolutions of Approval or Disapproval of Executive Plans; the "Legislative Veto"

Congress has, from time to time, provided procedures whereby it has by statute reserved to itself the right to disapprove certain executive actions. These procedures envision some form of congressional action on a simple or concurrent resolution of disapproval or approval.⁽⁸⁾ This prac-

8. Resolutions of approval or disapproval fall into three categories: those in which the resolution must be acted upon by either or both Houses and which are privileged for consideration; those in which the

tice has come to be known as the “legislative (or congressional) veto,” and has been used extensively as a congressional device to maintain control over executive plans and actions authorized by statute. This procedure has been employed only when it has been authorized by a specific statute and for the specific purpose stated in such statute, there being no inherent power under the Constitution by which the Congress may nullify a duly authorized function of the executive branch. The procedure prescribed by a given statute in this respect varies according to the extent of control the Congress wished to exercise.

The constitutionality of these legislative veto provisions has been questioned since their earliest use.⁽⁹⁾ The Supreme Court has in fact invalidated the one-House legislative veto mechanism

resolution must be acted upon by either or both Houses but which are not privileged; and those in which the resolution need only be acted upon by designated committees of either or both Houses. See *House Rules and Manual* §1013 (1981). All three types are in a sense “non-legislative” in that none are presented to the President for his approval or disapproval pursuant to Art. I, §7 of the Constitution.

9. See President Carter’s message on the subject of legislative vetoes, June 21, 1978, H. Doc. 95-357.

contained in section 244(d)(2) of the Immigration and Nationality Act in *Immigration and Naturalization Service v Chadha et al.* decided June 23, 1983.⁽¹⁰⁾ The opinion of the Court is to the effect that the constitutional requirement of bicameral consideration and presentment to the President is an absolute requirement for all exercises of legislative power.

The precedents contained in this section must be considered in light of the Court’s ruling. They are retained because of their historic significance and because they may yet have precedential value in other contexts and in the event future legislative mechanisms are devised to overcome the constitutional infirmities recognized in *Chadha*.

Under some statutes enacted prior to the *Chadha* decision, the branch or agency of the government affected must submit certain of its decisions or plans to the Houses of Congress or directly to the appropriate congressional committees for a stated period, and such decisions or plans will not go into effect if the Congress passes a concurrent resolution stating in substance that it does not favor the proposed action.⁽¹¹⁾

10. 462 U.S.—.

11. For example, the Atomic Energy Act of 1954 (42 USC §2074) provides

Such provisions are to be distinguished from those statutes under which Congress is entitled to receive periodic reports from an agency on its plans or programs, but does not have direct authority to disapprove of them.⁽¹²⁾ However, the congressional committee receiving reports under such a statute may exercise an informal negotiating procedure with the agency involved in order to bring its decisions into conformity with the views of the committee. The Internal Revenue Code, for example, provides that whenever the Internal Revenue Service determines that a taxpayer is entitled to a tax refund or credit in excess of \$100,000 it shall not award the money to the taxpayer until 30 days after it has submitted a report of its decision to the Joint

that the Atomic Energy Commission must submit to the Joint Committee on Atomic Energy, for a period of 60 days before becoming effective, its determination as to the distribution of certain "special nuclear material". The proposals do not become effective if the Congress passes a concurrent resolution expressing its disapproval thereof.

12. See 18 USC §3771 and 28 USC §2072. The Supreme Court approved, by way of dictum, the validity of the waiting period requirement regarding the adoption of new court rules in *Sibbach v Wilson & Co.*, 312 U.S. 1, 15 (1941).

Committee on Internal Revenue Taxation.⁽¹³⁾

The staff of the joint committee then reviews each report it receives from the Internal Revenue Service to decide whether or not it agrees with the service's determination. Frequently a tax refund or credit case will not become final until the joint committee and the service have through consultation agreed on the proper determination.

In addition to expressing its disapproval by resolution the Congress may choose to amend the law under which the decision or plan was submitted, or by statute suspend the action of the reporting agency. For example, during the 83d Congress the Supreme Court drafted and submitted to the Congress under a mandatory 90-day waiting period new rules of evidence for federal courts and amendments to the federal rules of civil and criminal procedure.

Under other statutes, the agency involved must come into agreement with the appropriate congressional committees regarding the final terms of such plan. Thus, a 1949 statute authorizing the establishment of a joint long-range proving ground for guided missiles contained the following language:

. . . Prior to the acquisition under the authority of this section of any

13. 26 USC §6405.

lands or rights or other interests pertaining thereto, the Secretary of the Air Force shall come into agreement with the Armed Services Committees of the Senate and the House of Representatives with respect to the acquisition of such lands, rights, or other interests.⁽¹⁴⁾

The “come-into-agreement” clause was used during and after World War II, but in recent years it has fallen into disuse because of strong Presidential protest. For example, in 1954 President Eisenhower vetoed a bill (H.R. 7512, 83d Cong.) authorizing the transfer of federally owned land within Camp Blanding Military Reservation, Florida, to the State of Florida after the Secretary of the Army had come into agreement with the Committees on Armed Services of the Senate and House of Representatives regarding the terms of such transfer. In his veto message the President said:

The purpose of this clause is to vest in the Committees of Armed Services of the Senate and House of Representatives power to approve or disapprove any agreement which the Secretary of the Army proposes to make with the State of Florida pursuant to section 2(4). The practical effect would be to place the power to make such agreement jointly in the Secretary of the Army and the members of the Committees on Armed Services. In so doing, the bill would violate the fundamental

constitutional principle of separation of powers prescribed in articles I and II of the Constitution which place the legislative power in the Congress and the executive power in the executive branch.

The making of such a contract or agreement on behalf of the United States is a purely executive or administrative function, like the negotiation and execution of Government contracts generally. Thus, while Congress may enact legislation governing the making of Government contracts, it may not delegate to its Members or committees the power to make such contracts, either directly or by giving to them a power to approve or disapprove a contract which an executive officer proposes to make. Moreover such a procedure destroys the clear lines of responsibility for results which the Constitution provides.⁽¹⁵⁾

15. H. Doc. No. 403, 83d Cong. 2d Sess. (May 26, 1954). See also the memorandum of Mr. J. V. Rankin of the Department of Justice expressing disapproval of a come-into-agreement clause in proposed amendments to the Public Building Act of 1949. 100 CONG. REC. 4878, 4879, 83d Cong. 2d Sess., Apr. 8, 1954.

President Eisenhower made even stronger objection in his budget message of 1960 to another come-into-agreement statute: “In the budget message for 1959, and again for 1960, I recommended immediate repeal of section 601 of the Act of September 28, 1951 (65 Stat. 365). This section prevents the military departments and the Office of Civil and Defense Mobilization from carrying out certain transactions involving real

14. Pub. L. No. 81-60, §2, 63 Stat. 66.

Another procedural device found in agency authorization statutes is the clause providing that the agency charged with general executive authorization under a statute must consult the committees of both Houses that have jurisdiction over the subject matter of the statute before taking certain of the specific actions authorized under it. For example, the statute pertaining to the disposition of naval petroleum reserves declares that:

property unless they come into agreement with the Committees on Armed Services of the Senate and the House of Representatives. As I have stated previously, the Attorney General has advised me that this section violates fundamental constitutional principles. Accordingly, if it is not repealed by the Congress at its present session, I shall have no alternative thereafter but to direct the Secretary of Defense to disregard the section unless a court of competent jurisdiction determines otherwise." Budget Message of the President for fiscal year 1961. H. Doc. No. 255, 86th Cong. 2d Sess., and 106 CONG. REC. 674, 86th Cong. 2d Sess., Jan. 18, 1960. That same year the Congress amended the statute that the President found objectionable by changing the come-into-agreement clause to one permitting a committee resolution of disapproval of military real estate transactions. Act of June 8, 1960, Pub. L. No. 86-500, title V, §511(1), 74 Stat. 186; 10 USC §2662.

The Committee on Armed Services of the Senate and the House of Representatives must be consulted and the President's approval must be obtained before any condemnation proceedings may be started under this chapter. . . .⁽¹⁶⁾

Still other statutes provide that an affirmative resolution of approval must be adopted by the congressional committees having jurisdiction of the subject matter before a plan drafted under the provisions of such statute by an executive agency shall go into effect. This affirmative approval procedure has usually been tied to the appropriation process. Thus, a statute will read that "no appropriation shall be made" until the particular projects authorized under it have been drafted by an agency concerned, submitted to the appropriate congressional committees, and approved by them by means of committee resolution.⁽¹⁷⁾

16. 10 USC §7431.

17. See §7 of the Public Building Act of 1959 (40 USC §606), and §2 of the Watershed Protection and Flood Control Act of 1954, as amended (16 USC §1002). The Public Building Act of 1954 provided that if a project approved by committee resolution receives no appropriation within a year the committee may rescind their approval at any time thereafter before an appropriation has been made. See *House Rules and Manual* §1013

The legislative veto came into use in the modern practice of the Congress with the passage of the Reorganization Act of 1939.⁽¹⁸⁾ Under the act the President is authorized to draft plans for the reorganization of the executive branch. Such plans will go into effect upon their completion and 60 days after the President has submitted them to the Congress. However, if during that 60-day period⁽¹⁹⁾ “. . . either House passes a resolution stating in substance that the House does not favor the reorganization plan”,⁽²⁰⁾ the plan

(1981) for compilation of “Legislative Veto” provisions contained in recent public laws.

18. Apr. 3, 1939, Ch. 36, 53 Stat. 561; 5 USC §§901–913.
19. The 60-day period must be continuous during a session of the Congress. It is broken only by an adjournment of the Congress *sine die*, and it does not include adjournments of more than three days within a session of Congress. 5 USC §906(b).
20. 5 USC §906(a). The act originally provided that disapproval must be expressed by concurrent resolution (53 Stat. 562, 563). However, the requirement was changed to a simple resolution by the 1949 amendments (June 20, 1949, Ch. 226, §6, 63 Stat. 205).

Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective or, if both

shall not go into effect. The act also sets forth the procedure by which such resolutions shall be considered in the House and Senate as exceptions to the regular rules of procedure.⁽²¹⁾

The use of the resolution of disapproval has not been limited to reorganization plans of the President. It is found in other statutes as well, as illustrated by the following examples.

The Immigration and Nationality Act of 1952 provides that when the Attorney General determines that certain classes of aliens are to be deported he may suspend the deportation after reviewing the petitions filed by the individuals affected. Such suspensions, however, will not become final until the Attorney General has reported his determination to the Congress and neither the Senate nor the House of Representatives has passed a simple resolution, before the end of the session following the session in which the report is received, disapproving such determination. The law further provides that in cases involving certain classes of aliens sus-

Houses have defeated a resolution of disapproval, may be effective at a time earlier than the expiration of the 60-day period mentioned above. 5 USC §906(c).

21. 5 USC §§908–913.

pension of deportation may be finalized before the end of the following session of Congress by the adoption of a concurrent resolution approving the Attorney General's findings.⁽¹⁾

The resolution of disapproval may take the form of a committee resolution. For example, the Small Projects Reclamation Act of 1956⁽²⁾ provides that no appropriation shall be made for participation in certain projects under the act prior to 60 days after the Secretary of the Interior has submitted his findings and approval for such projects to the Congress, ". . . and then only if, within said sixty days, neither the House nor the Senate Interior and Insular Affairs Committee disapproves the project proposal by committee resolution."⁽³⁾

Some statutes have provided that the entire authority granted therein may be terminated by a concurrent resolution of the Congress prior to the stated expiration date of the act, if one is provided. Thus, the Lend-Lease Act provided:

After June 30, 1943, or after the passage of a concurrent resolution by the two Houses before June 30, 1943,

1. 8 USC § 1254 (1970 ed.)
2. 70 Stat. 1044.
3. 70 Stat. 1045, §4(c), 43 USC § 422d(d) (1970 ed.).

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.⁽⁴⁾

4. Act of Mar. 11, 1941, Ch. 11, §3(c), 55 Stat. 32. See also the Selective Service Extension Act of Aug. 18, 1941, Ch. 362, §2, 55 Stat. 626; the Emergency Price Control Act of June 30, 1942, Ch. 26, §1(b), 56 Stat. 24; the Economic Cooperation Act of Apr. 3, 1948, Ch. 169, title I, §122, 62 Stat. 155; the "Gulf of Tonkin Resolution" of Aug. 10, 1964, Pub. L. No. 88-408, §3, 78 Stat. 384; and the War Powers Resolution of Nov. 7, 1973, Pub. L. No. 93-148, §5(c), 87 Stat. 556-557.

President Franklin D. Roosevelt objected to the inclusion of such a concurrent resolution disapproval provision in the Lend-Lease Act. However, he did not make his objections public because he felt the measure was urgently needed and he feared endangering its passage by his own pronouncement. R. H. Jackson, A Presidential Legal Opinion, 66 Harv. L. Rev. 1353, at 1356 (1953).

For a compilation of the views of a number of Presidents on the various forms of the legislative veto, see

Collateral References

- Congressional Adaptation: The Come-into-Agreement Provision. 37 *Geo. Wash. L. Rev.* 387 (1968).
- Cooper, Joseph and Ann. The Legislative Veto and the Constitution. 30 *Geo. Wash. L. Rev.* 467 (1962).
- Harris, Joseph P. *Congressional Control of Administration*, CH. 8, The Legislative Veto. The Brookings Institution, Washington, D.C. (1964).
- Jackson, Robert H. A Presidential Legal Opinion. 66 *Harv. L. Rev.* 1353 (1953).

Terminating Authority by Concurrent Resolution**§ 7.1 The House adopted a joint resolution relating to preservation of peace in Southeast Asia, authorizing the President to repel aggression by North Vietnam, and providing that the Congress may terminate such authority by concurrent resolution.**

On Aug. 7, 1964,⁽⁵⁾ the House considered and passed the following joint resolution (H.J. Res. 1145):

Whereas naval units of the Communist regime in Vietnam, in violation

Hearings on the Separation of Powers Doctrine Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 90th Cong. 1st Sess., pp. 215-228 (1967).

5. 110 CONG. REC. 18538, 18539, 88th Cong. 2d Sess.

of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels 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 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 of 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.

Approval of Executive Plan

§ 7.2 The House passed a Senate joint resolution expressing approval of a report of the Department of the Interior on the construction of a dam and reservoir, and then tabled a similar House concurrent resolution called up on the Consent Calendar.

On Aug. 18, 1958,⁽⁶⁾ Mr. Wayne N. Aspinall, of Colorado, sought and obtained unanimous consent that a Senate joint resolution be considered in lieu of a similar House concurrent resolution on the Consent Calendar.⁽⁷⁾ The Senate joint resolution (S.J. Res. 190) was passed, and the House concurrent resolution was laid on the table. The proceedings were as follows:

The Clerk called the resolution (H. Con. Res. 301) to approve the report of

- 6. 104 CONG. REC. 18290, 18291, 85th Cong. 2d Sess.
- 7. H. Con. Res. 301, 85th Cong. 2d Sess. (1958).

the Department of the Interior on Red Willow Dam and Reservoir in Nebraska.

THE SPEAKER PRO TEMPORE [John W. McCormack, of Massachusetts]: Is there objection to the present consideration of the concurrent resolution?

MR. ASPINALL: Mr. Speaker, I ask unanimous consent that a similar Senate resolution, Senate Joint Resolution 190, be considered in lieu of the House Concurrent Resolution.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Colorado?

There being no objection, the Clerk read the Senate joint resolution, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the report of the Secretary of the Interior demonstrating economic justification for construction and operation of the Red Willow Dam and Reservoir is hereby approved.⁽⁸⁾

Changing Effective Date of Executive Plan

§ 7.3 The House adopted a House joint resolution chang-

- 8. *Parliamentarian's Note*: Pub. L. No. 84-505 (70 Stat. 126), provided that there should be no expenditure of funds for construction of the Red Willow Dam until the Secretary of the Interior, with the approval of the President, had submitted to the Congress a report and the Congress had approved such report. Following research as to the meaning of the word "Congress" in the statute, it was decided that the approval should take the form of a joint resolution for Presidential signature.

ing the effective date of a reorganization plan.

On May 23, 1940,⁽⁹⁾ the House considered and passed the following joint resolution (H.J. Res. 551):

Resolved, etc., That the provisions of Reorganization Plan No. V, submitted to the Congress on May 22, 1940, shall take effect on the tenth day after the date of enactment of this joint resolution, notwithstanding the provisions of the Reorganization Act of 1939.

Sec. 2. Nothing in such plan or this joint resolution shall be construed as having the effect of continuing any agency or function beyond the time when it would have terminated without regard to such plan or this joint resolution or of continuing any function beyond the time when the agency in which it was vested would have terminated without regard to such plan or this joint resolution.

§ 7.4 The House passed a Senate joint resolution changing the date when certain reorganization plans of the President would go into effect.

On June 1, 1939,⁽¹⁰⁾ by direction of the Select Committee on Government Organization, Mr. John J. Cochran, of Missouri, called up a joint resolution (S.J. Res. 138) which the House considered and passed:

Resolved, etc., That the provisions of reorganization plan No. I, submitted to

9. 86 CONG. REC. 6713, 76th Cong. 3d Sess.
10. 84 CONG. REC. 6527, 76th Cong. 1st Sess.

the Congress on April 25, 1939, and the provisions of reorganization plan No. II, submitted to the Congress on May 9, 1939, shall take effect on July 1, 1939, notwithstanding the provisions of the Reorganization Act of 1939.⁽¹¹⁾

Disapproval of Executive Plan

§ 7.5 Formerly, a privileged concurrent resolution was used to express disapproval of an executive reorganization plan.

On May 3, 1939,⁽¹²⁾ the House considered and rejected the following concurrent resolution:

HOUSE CONCURRENT RESOLUTION 19

Resolved by the House of Representatives (the Senate concurring), That the Congress does not favor the Reorganization Plan No. I, transmitted to Congress by the President on April 25, 1939.⁽¹³⁾

11. See also 86 CONG. REC. 6712, 76th Cong. 3d Sess., May 23, 1940.
12. 84 CONG. REC. 5085, 76th Cong. 1st Sess.
13. See also 93 CONG. REC. 7252, 80th Cong. 1st Sess., June 18, 1947; 93 CONG. REC. 6898, 80th Cong. 1st Sess., June 12, 1947; and 86 CONG. REC. 6027-49, 76th Cong. 3d Sess., May 14, 1940. The Reorganization Act of 1949 changed from concurrent to simple the form of resolution used in disapproving reorganization plans. June 20, 1949, Ch. 226, § 6, 63 Stat. 205; 5 USC § 906(a).

Discharge by Unanimous Consent

§ 7.6 The Select Committee on Reorganization was discharged from further consideration of a resolution disapproving a reorganization plan by unanimous consent.

On May 7, 1940,⁽¹⁴⁾ Mr. Clarence F. Lea, of California, moved to discharge the Select Committee on Government Organization from further consideration of House Concurrent Resolution 60 (disapproving Reorganization Plan No. IV):⁽¹⁵⁾

14. 86 CONG. REC. 5676, 76th Cong. 3d Sess.
15. 5 USC §911(a) at that time provided that a motion to discharge a committee from further consideration of a resolution disapproving a reorganization plan of the President was privileged when the resolution had been before the committee for 10 calendar days. 5 USC §911 at present provides that if the committee to which is referred a resolution as specified has not reported such resolution or identical resolution at the end of 45 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved. Pub. L. No. 81-109 as amended by Pub. L. No. 95-17 and extended by Pub. L. No. 96-230.

THE SPEAKER:⁽¹⁶⁾ The Clerk will report the resolution.

The Clerk read as follows:

HOUSE CONCURRENT RESOLUTION 60

Resolved by the House of Representatives (the Senate concurring), That the Congress does not favor the Reorganization Plan No. IV transmitted to Congress by the President on April 11, 1940.

MR. [JOHN J.] COCHRAN [of Missouri]: Mr. Speaker, the majority members of the Select Committee on Organization are in accord with the gentleman from California, and I ask unanimous consent that the motion of the gentleman from California to discharge the select committee be considered as having been agreed to.

THE SPEAKER: Without objection, it is so ordered.

There was no objection.

Parliamentarian's Note: The motion here was privileged, but was agreed to by unanimous consent to avoid debate and a vote on the discharge motion.

Qualification to Offer Motion to Discharge Resolution

§ 7.7 A Member must qualify as being in favor of a resolution disapproving a reorganization plan in order to move to discharge a committee from further consideration thereof.

16. Sam Rayburn (Tex.).

On Aug. 3, 1961,⁽¹⁷⁾ Mr. H. R. Gross, of Iowa, offered the following motion:

Mr. Gross moves to discharge the Committee on Government Operations from further consideration of House Resolution 335, introduced by Mr. Monagan, disapproving Reorganization Plan No. 6, transmitted to Congress by the President on June 12, 1961.

THE SPEAKER:⁽¹⁸⁾ Is the gentleman in favor of the resolution?

MR. GROSS: Mr. Speaker, I am in favor of the disapproving resolution, yes.

THE SPEAKER: The gentleman is entitled to 30 minutes.⁽¹⁹⁾

Debate on Motion to Discharge

§ 7.8 Debate on a motion to discharge a committee from further consideration of a resolution disapproving a reorganization plan is limited to one hour and is equally divided between the Member making the motion and a Member opposed thereto.

On Aug. 3, 1961,⁽²⁰⁾ Mr. H. R. Gross, of Iowa, offered a privileged motion:

The Clerk read as follows:

Mr. Gross moves to discharge the Committee on Government Oper-

17. 107 CONG. REC. 14548, 87th Cong. 1st Sess.

18. Sam Rayburn (Tex.).

19. See 5 USC §911.

20. 107 CONG. REC. 14548, 87th Cong. 1st Sess.

ations from further consideration of House Resolution 335, introduced by Mr. Monagan, disapproving Reorganization Plan No. 6, transmitted to Congress by the President on June 12, 1961.

THE SPEAKER:⁽¹⁾ Is the gentleman in favor of the resolution?

MR. GROSS. Mr. Speaker, I am in favor of the disapproving resolution, yes.

THE SPEAKER: The gentleman is entitled to 30 minutes.

The gentleman from Florida will be recognized for 30 minutes.⁽²⁾

Parliamentarian's Note: The Member opposed must also qualify.

§ 7.9 Debate on a motion to discharge the Committee on Government Operations from consideration of a resolution disapproving a reorganization plan was, by unanimous consent, extended from one to two hours to be controlled and divided by the proponent of the motion and a Member designated by the Speaker.

On July 18, 1961,⁽³⁾ Mr. John W. McCormack, of Massachusetts, made the following unanimous-consent request:

MR. MCCORMACK: Mr. Speaker, I ask unanimous consent that in the event a

1. Sam Rayburn (Tex.).

2. See 5 USC §911(b).

3. 107 CONG. REC. 12774, 87th Cong. 1st Sess.

motion is made to discharge the Committee on Government Operations on the resolution disapproving Reorganization Plan No. 7, that the time for debate be extended from 1 hour to 2 hours, one-half to be controlled by the proponent of the motion and one-half by a Member designated by the Speaker.

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

There was no objection.⁽⁵⁾

§ 7.10 The Presiding Officer ruled that in the Senate the one hour of debate on a motion to discharge a committee from further consideration of a resolution disapproving a reorganization plan is inclusive of time consumed by quorum calls, parliamentary inquiries, and points of order.

On Feb. 20, 1962,⁽⁶⁾ during consideration of a motion to discharge the Committee on Government Operations from further consideration of Senate Resolution 288,

4. Sam Rayburn (Tex.).
5. Debate on motions to discharge resolutions disapproving reorganization plans is limited to one hour (63 Stat. 207, 5 USC §911(b)) rather than 20 minutes under the normal discharge procedure (Rule XXVII clause 4, *House Rules and Manual* §908 (1981)).
6. 108 CONG. REC. 2528, 87th Cong. 2d Sess.

opposing Reorganization Plan No. 1 of 1962, Senator Mike Mansfield, of Montana, raised a parliamentary inquiry:

Mr. President, I should like to raise a parliamentary inquiry of my own: I should like to have a ruling from the Chair as to the appropriate procedure for a motion of this kind.

THE VICE PRESIDENT: ⁽⁷⁾ The understanding of the Chair is that debate on the motion is limited to 1 hour, to be equally divided. If a point of order is made or if there is a quorum call or if the Senator from Montana or any other Senator obtains the floor and speaks, the time available under the motion will be running.

Parliamentarian's Note: The ruling in the House would be to the contrary. Under the precedents, since debate is not set by the clock, votes, quorum calls, etc., do not come out of the time.

Motion to Consider Resolution of Disapproval

§ 7.11 A motion that the House resolve itself into the Committee of the Whole for the consideration of a resolution disapproving a reorganization plan is highly privileged and may be called up by any Member.

On June 8, 1961,⁽⁸⁾ Mr. H. R. Gross, of Iowa, raised a parliamentary inquiry:

7. Lyndon B. Johnson (Tex.).
8. 107 CONG. REC. 9775-77, 87th Cong. 1st Sess.

Mr. Speaker, is it in order and proper at this time to submit a highly privileged motion?

THE SPEAKER PRO TEMPORE:⁽⁹⁾ 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,⁽¹⁰⁾ I submit a motion. . . .

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.⁽¹¹⁾

Consideration of Resolution of Disapproval

§ 7.12 The following procedure was employed in the House in considering a resolution disapproving a reorganization plan of the President.

9. Oren Harris (Ark.).
10. Section 205 of the Reorganization Act of 1949 (68 Stat. 207, 5 USC §912(a)) provided "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."
11. 107 CONG. REC. 9777, 87th Cong. 1st Sess.

On June 10, 1947,⁽¹²⁾ Mr. Clare E. Hoffman, of Michigan, made the following statement regarding a resolution disapproving the President's Reorganization Plan No. 2 of 1947:

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 House Concurrent Resolution 49; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to 3 hours, the time to be equally divided and controlled by the gentleman from Alabama [Mr. Manasco] and myself.

THE SPEAKER:⁽¹³⁾ Is there objection to the request of the gentleman from Michigan?

There was no objection.

THE SPEAKER: The question is on the motion offered by the gentleman from Michigan?

The motion was agreed to.

§ 7.13 After a committee has reported a resolution disapproving a reorganization plan, any Member may move that the House proceed to consideration thereof, and a Member is not required to qualify as being in favor of the resolution in order to move that the House resolve into the Committee of the Whole to consider it.

12. 93 CONG. REC. 6722, 80th Cong. 1st Sess.
13. Joseph W. Martin, Jr. (Mass.).

On July 19, 1961,⁽¹⁴⁾ Mr. Dante B. Fascell, of Florida, moved 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. 328) disapproving Reorganization Plan No. 5 transmitted to the Congress by the President on May 24, 1961. Mr. H. R. Gross, of Iowa, raised a parliamentary inquiry based on his contention that a Member so moving must qualify as being in favor of such resolution.

MR. GROSS: . . . Is the gentleman from Florida in favor of the resolution, or does he disfavor the resolution?

THE SPEAKER:⁽¹⁵⁾ Under the rules, the gentleman does not have to qualify in that respect on this particular motion.⁽¹⁶⁾

Precedence of Consideration

§ 7.14 Consideration of resolutions disapproving reorganization plans of the President does not take precedence over a grant of unanimous consent for the consideration of an appropriation bill, unless the Committee on Appropriations yields for that purpose.

- 14. 107 CONG. REC. 12905, 12906, 87th Cong. 1st Sess.
- 15. Sam Rayburn (Tex.).
- 16. See 5 USC Sec. 912(a).

On May 9, 1950,⁽¹⁷⁾ Mr. Clare E. Hoffman, of Michigan, raised a point of order against the consideration of the general appropriation bill of 1951 (H.R. 7786):

MR. 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 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:⁽¹⁸⁾ That is the resolution disapproving one of the reorganization plans?

MR. HOFFMAN of Michigan: That is right, House Resolution 516 disapproving plan No. 12. . . .

THE SPEAKER PRO TEMPORE: Does the gentleman from Texas desire to be heard on the point of order?

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, on April 5, 1950, as shown at page 4835 of the daily record of that day, the chairman of the Committee on Appropriations, the gen-

- 17. 96 CONG. REC. 6720-24, 81st Cong. 2d Sess.
- 18. John W. McCormack (Mass.).

tleman from Missouri [Mr. Cannon] asked and received unanimous consent that the appropriation bill should have the right-of-way over other privileged business under the rules until disposition, with the exception of conference reports. Therefore, I believe the regular order would be to proceed with the further consideration of H.R. 7786.

Mr. Speaker, I believe that the Record would speak for itself. . . .

MR. [JOHN] TABER [of New York]: Under the established rules of practice of the House, when a special order like that is granted, like that which was granted at the request of the gentleman from Missouri [Mr. Cannon], if those in charge of the bill do not present on any occasion a motion to go into Committee of the Whole, it is in order for the Speaker to recognize other Members for other items that are in order on the calendar. That does not deprive the holder of that special order of the right, when those items are disposed of, to move that the bill be considered further in Committee of the Whole.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. RICH: If the 21 resolutions that were presented to the House by the President, a great many of which have been considered by the Committee on Expenditures in the Executive Departments—of which the chairman is a member, and which have been acted on by that committee—are not presented to the House before the twenty-fourth of this month, they become law. The general appropriation bill does not nec-

essarily have to be passed until the 30th of June, but it is necessary that the 21 orders of the President be brought before the House so they can be acted on by the twenty-fourth of this month, and it seems to me that they ought to take precedence over any other bill.

THE SPEAKER PRO TEMPORE: The gentleman has made a statement of fact, not a parliamentary inquiry.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER PRO TEMPORE: The Chair will hear the gentleman.

MR. RANKIN: I was going to say that if this is of the highest constitutional privilege it comes ahead of the present legislation.

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 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. RANKIN: 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. TABER: 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.

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 Resolution 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.

MR. [HERMAN P.] EBERHARTER [of Pennsylvania]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. EBERHARTER: I believe I am correct, Mr. Speaker, in stating that since the unanimous-consent request of the gentleman from Missouri [Mr. Cannon] was granted, that the House took up a measure under the new 21-day rule. I would like to know, Mr. Speaker,

whether or not that was taken up because of its high privilege or whether it was taken up because of the sufference of the chairman of the Committee on Appropriations, the gentleman from Missouri (Mr. Cannon).

THE SPEAKER PRO TEMPORE: The present occupant of the Chair, of course, is unable to look into the mind of the Speaker who was presiding at the time. But from the knowledge that the Chair has, which, of course, is rather close, it was because the chairman of the Committee on Appropriations permitted it to be done through sufference. In other words, if the chairman of the Committee on Appropriations had insisted on going into the Committee of the Whole House on the State of the Union, and if the present occupant of the chair had been presiding, there is nothing else that could have been done under the unanimous-consent request, in the Chair's opinion, but to recognize the motion.

MR. EBERHARTER: A further parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. EBERHARTER: As I understand the unanimous-consent request of the gentleman from Missouri, it was that the appropriation bill would take preference over any other matters having a high privilege. My understanding of the new 21-day rule is that that is a matter of the highest privilege, and therefore I am wondering whether the same rule applies.

THE SPEAKER PRO TEMPORE: The gentleman is correct, but that rule can be changed just like any other rule of the House can be changed.

MR. EBERHARTER: But the gentleman from Missouri did not insist on all

matters having the highest privilege. According to the Record, he only made his request with respect to motions having a high privilege.

THE SPEAKER PRO TEMPORE: The unanimous-consent request, I might advise the gentleman from Pennsylvania, appears in the Record of April 6, 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."

§7.15 The Speaker permitted consideration and debate on a conference report to intervene between consideration of two resolutions disapproving of two Presidential reorganization plans where the original papers accompanying the conference report were messaged from the Senate before consideration of the second resolution had begun.

On Sept. 28, 1970,⁽¹⁹⁾ the Speaker⁽¹⁾ recognized a Member to call up a conference report on a bill dealing with railroad safety (S. 1933) after consideration of the first of two reorganization plans and before debate was to begin on the second.⁽²⁾ He announced his intention to do so as follows:

19. 116 CONG. REC. 33870, 91st Cong. 2d Sess.

1. John W. McCormack (Mass.).
2. The House was considering H. Res. 1209, disapproving of Reorganization

The Chair has been informed and understands that the original papers on the next conference report have not been messaged over to the House as yet. They will be here shortly.

The Chair will recognize the gentleman from California (Mr. Holifield) in connection with the first reorganization plan, and if the papers [on the conference report] arrive between consideration of the first and second reorganization plans, the Chair will recognize the gentleman from West Virginia at that time.

Limitations on Time for Debate

§7.16 Debate on resolutions disapproving reorganization plans is fixed by statute, and the Senate rule relative to the time for debate on usual propositions does not apply.

On May 14, 1940,⁽³⁾ the Senate considered a concurrent resolution (S. Con. Res. 43) disapproving a Presidential reorganization plan. The Vice President⁽⁴⁾ made the following statement:

Let the Chair make a statement with reference to the statutory and parliamentary situation. The statute, as the Chair understands it, and as it was interpreted by the President pro tempore yesterday—and the Chair thinks he was correct—divides the

Plan No. 3 and H. Res. 1210, disapproving of Plan No. 4.

3. 86 CONG. REC. 6027, 76th Cong. 3d Sess.
4. John N. Garner (Tex.).

time equally between those for and those against the pending resolution. The Parliamentarian advises the Chair that those favoring the resolution have 2 hours and 4 minutes and those opposed to it have 1 hour and 56 minutes. Ordinarily, under the rules of the Senate, when a Senator is recognized he may continue to address the Senate indefinitely. In this case, however, the statute limits the time. Any Senator recognized now can continue until the limitation of time for his side would take him from the floor. The Chair is going to recognize the Senator from Vermont. He has 2 hours and 4 minutes on his side. When he ceases, some other Senator then will be recognized. The Chair thought he ought to make this statement, so that the Senate may understand the parliamentary situation.

§7.17 By unanimous consent, debate on a resolution disapproving Reorganization Plan No. 1 of 1959, was limited to two hours in lieu of the 10 hours allowed under the Reorganization Act of 1949.

On July 1, 1959,⁽⁵⁾ Mr. Neal Smith, of Iowa, asked unanimous consent that debate on House Resolution 295 disapproving Reorganization Plan No. 1 of 1959 scheduled for consideration on the following Monday be limited to two hours, one-half of the time to be

5. 105 CONG. REC. 12519, 86th Cong. 1st Sess.

controlled by the majority and one-half of the time to be controlled by the minority.

There was no objection.⁽⁶⁾

§ 7.18 A resolution disapproving a reorganization plan was called up and debated for two hours in the Committee of the Whole under a previous unanimous-consent agreement.

On July 6, 1959,⁽⁷⁾ Mr. Dante B. Fascell, of Florida, moved that the House resolve itself under the Committee of the Whole House on the state of the Union for the consideration of the resolution (H. Res. 295) disapproving Reorganization Plan No. 1 of 1959. The proceedings in the Committee of the Whole were as follows:

THE CHAIRMAN:⁽⁸⁾ Under the consent agreement of Wednesday, July 1,⁽⁹⁾ 2 hours of general debate are allowed on the resolution, to be equally divided between the majority and the minority.

At the conclusion of debate Mr. Fascell moved:

Mr. Chairman, I move that the Committee do now rise and report the reso-

6. Section 205 of the Reorganization Act of 1949 (63 Stat. 207, 5 USC §912) permits 10 hours of debate on such a resolution.
7. 105 CONG. REC. 12740-46, 86th Cong. 1st Sess.
8. Stewart L. Udall (Ariz.).
9. 105 CONG. REC. 12519, 86th Cong. 1st Sess.

lution back to the House with the recommendation that it do pass.

The motion was agreed to.

§ 7.19 A resolution disapproving a reorganization plan of the President was, by unanimous consent, considered in the House as in Committee of the Whole, debated for only five minutes, and passed.

On June 18, 1947,⁽¹⁰⁾ the House considered a concurrent resolution disapproving Reorganization Plan No. 3 of the President. The proceedings were as follows:

REORGANIZATION PLAN NO. 3

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, I move that the House proceed to take up House Concurrent Resolution 51, which does not favor Reorganization Plan No. 3 of May 27, 1947, and, pending that motion, I ask unanimous consent that the resolution may be considered in the House as in the Committee of the Whole and that general debate be limited to 5 minutes.

THE SPEAKER:⁽¹¹⁾ Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the resolution, as follows:

Resolved by the House of Representatives (the Senate concurring),

10. 93 CONG. REC. 7252, 80th Cong. 1st Sess.
11. Joseph W. Martin, Jr. (Mass.).

That the Congress does not favor the Reorganization Plan No. 3 of May 27, 1947, transmitted to Congress by the President on the 27th day of May 1947.

THE SPEAKER: The gentleman from Michigan is recognized for 5 minutes.

MR. HOFFMAN: Mr. Speaker, I understand there is no objection to this resolution.

I yield to the gentleman from Alabama [Mr. Manasco], ranking minority member of the committee, to explain the resolution and any opposition, if any there be.

MR. [CARTER] MANASCO: Mr. Speaker, a similar plan was sent up during the Seventy-ninth Congress and rejected by the House.

This plan reorganizes the housing agencies of the Government. Our committee thinks these agencies should be reorganized but we do not think the lending and insuring agencies should be placed in the same organization with the construction agency.

I have no requests for time on this side. That is the only issue involved.

MR. HOFFMAN: Mr. Speaker, I have no further requests for time.

I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

§ 7.20 In considering three resolutions disapproving three reorganization plans of the President, the House agreed by unanimous consent that the three resolutions be considered together, that debate be limited to three hours,

and that after debate the resolutions be voted on separately.

On June 28, 1946,⁽¹²⁾ Mr. Carter Manasco, of Alabama, made the following unanimous-consent request regarding resolutions of disapproval of the President's Reorganization Plans Nos. 1, 2, and 3:

REORGANIZATION PLANS NO. 1, NO. 2,
AND NO. 3

MR. MANASCO: Mr. Speaker, I call up House Concurrent Resolution 155, and I ask unanimous consent that House Concurrent Resolutions 154 and 151 be considered; that the debate be limited on the three resolutions to 3 hours, the time to be divided equally between myself and the ranking minority member of the Committee on Expenditures in the Executive Departments; that after 3 hours of general debate on the resolutions, the resolutions be voted on separately.

MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Mr. Speaker, reserving the right to object, as I understand it, in these 3 hours a Member may talk about any one of the three resolutions.

THE SPEAKER:⁽¹³⁾ That is correct.

MR. MARTIN of Massachusetts: And that at the end of general debate the resolutions will be voted on separately.

MR. MANASCO: Each resolution separately.

Mr. Speaker, I ask unanimous consent also that the plans be voted on in

12. 92 CONG. REC. 7886, 79th Cong. 2d Sess.

13. Sam Rayburn (Tex.).

their order, plan 1 first; plan 2, second; and plan 3, third.

MR. [WILLIAM A.] PITTENGER [of Minnesota]: Mr. Speaker, reserving the right to object, it is the resolutions that must be voted on.

MR. MANASCO: That is correct.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Reserving the right to object, the gentlemen have agreed on time, which is very satisfactory. The only suggestion I have to make is that I hope they do not use the entire 3 hours.

THE SPEAKER: The gentleman from Alabama ask unanimous consent that there be 3 hours of general debate on these resolutions, at the end of which time the resolutions are to be voted on separately in this order: Plan No. 1, plan No. 2, and plan No. 3.

Is there objection?

There was no objection.

Consideration Without Debate

§ 7.21 A resolution disapproving a reorganization plan was considered in the House as in the Committee of the Whole by unanimous consent and agreed to by voice vote without debate.

On July 15, 1956,⁽¹⁴⁾ Mr. William L. Dawson, of Illinois, asked unanimous consent that House Resolution 534 disapproving Reorganization Plan No. 1 be consid-

14. 102 CONG. REC. 11886, 84th Cong. 2d Sess.

ered in the House as in the Committee as the Whole.

THE SPEAKER:⁽¹⁵⁾ Is there objection to the request of the gentleman from Illinois?

There was no objection.

THE SPEAKER: The question is on the resolution.

The question was taken.

THE SPEAKER: In the opinion of the Chair, the resolution having received an affirmative vote of a majority of the authorized membership of the House, the resolution is agreed to.⁽¹⁶⁾

Control of Time in Opposition

§ 7.22 The Member calling up a resolution disapproving a reorganization plan announced that the majority and minority members of the Committee on Government Operations (both in favor of the plan) would yield half of their time to Members opposed to the resolution, who would in turn control the time in opposition.

On Aug. 9, 1967,⁽¹⁷⁾ the House resolved itself into the Committee of the Whole House on the state of

15. Sam Rayburn (Tex.).

16. A similar procedure was employed to adopt a resolution (H. Res. 541) disapproving Reorganization Plan No. 2 of 1956. See 102 CONG. REC. 11886, 84th Cong. 2d Sess., July 5, 1956.

17. 113 CONG. REC. 21941, 90th Cong. 1st Sess.

the Union for the consideration of House Resolution 512 disapproving Reorganization Plan No. 3 of 1967. The Chairman⁽¹⁸⁾ then made the following announcement:

Under the unanimous-consent agreement of Thursday, August 3, 1967, general debate on the resolution will continue for not to exceed 4 hours, to be equally divided and controlled by the gentleman from Minnesota [Mr. Blatnik] and the gentlewoman from New Jersey [Mrs. Dwyer].

The Chair recognizes the gentleman from Minnesota. . . .

MR. [PORTER] HARDY [Jr., of Virginia]: I wonder if we could have an understanding now so that there will not be any confusion as to how the time will be divided. I am sure the gentleman from Minnesota has already indicated what he plans to do, but I think it might be well if we had that cleared up now, if the gentleman would not mind?

MR. [JOHN A.] BLATNIK: I will be pleased to do so and I think the gentleman has made a very proper request.

What we have done by agreement of the leadership on both sides of the House, and by agreement with the majority and minority leadership of the House Committee on Government Operations and of the Committee on the District of Columbia is that we have agreed to divide the time equally between the proponents and the opponents as follows:

The minority will divide their time with 1 hour allocated to the opponents and 1 hour for the proponents.

The majority on our side have done the same thing, to allocate 1 hour to the proponents and 1 hour to the opponents.

The time for the opponents on the majority side will be handled by the gentleman from Virginia [Mr. Hardy], and I shall handle the time for the proponents.

I understand the gentleman from Illinois [Mr. Erlenborn] will handle the time on the minority side for the proponents on their side and the gentleman from Minnesota [Mr. Nelsen] will handle the time for the opponents.⁽¹⁹⁾

Amendment of Resolution

§ 7.23 A motion that the Committee of the Whole rise and report a resolution to disapprove a reorganization plan back to the House, with the recommendation that the enacting clause be stricken out, was held not in order on the ground that there would be no amendment stage during which to offer the motion.

On June 27, 1953,⁽²⁰⁾ during consideration in the Committee of the Whole of a resolution (H. Res.

19. Under the law debate on a resolution disapproving a reorganization plan is divided equally between the proponents and opponents of the resolution. 5 USC §912(b).

20. 99 CONG. REC. 7482, 83d Cong. 1st Sess.

18. William L. Hungate (Mo.).

295) disapproving Reorganization Plan No. 6, Mr. W. Sterling Cole, of New York, made the following motion:

Mr. Chairman, I offer a preferential motion.

The Clerk read as follows:

Mr. Cole of New York moves that the Committee do now rise with the recommendation that the enacting clause be stricken.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Chairman, I make the point of order that the motion is not in order.

THE CHAIRMAN:⁽¹⁾ The Chair is compelled to agree with the gentleman from Michigan. The resolution is not amendable and, therefore, the preferential motion is not in order.⁽²⁾

House Consideration of Report of Committee of the Whole

§ 7.24 When the Committee of the Whole has reported back to the House its recommendation regarding the adoption or rejection of a resolution disapproving a reorganization plan, the question in the House recurs on the adoption of the resolution of disapproval and not on concurring in the committee's recommendation.

On Feb. 21, 1962,⁽³⁾ the Committee of the Whole House on the

1. Leslie C. Arends (Ill.).

2. See 5 U.S.C. 912(b).

3. 108 CONG. REC. 2679, 2680, 87th Cong. 2d Sess.

state of the Union considered a resolution (H. Res. 530) disapproving Reorganization Plan No. 1 transmitted to the Congress by the President on Jan. 30, 1962, and reported the resolution back to the House with the recommendation that it not be agreed to.

The Speaker⁽⁴⁾ ordered the resolution read by the Clerk and announced that the question was on the adoption of the resolution.

Voting on Resolutions of Disapproval

§ 7.25 An affirmative vote of a majority of the authorized membership of the House is required to adopt a resolution disapproving a reorganization plan of the President, and such vote may be had by viva voce, by division, or by the yeas and nays.

On Aug. 11, 1949,⁽⁵⁾ during consideration in the House of a resolution (H. Res. 301) disapproving Reorganization Plan No. 2 of 1949 and adversely reported from the Committee on Expenditures in the Executive Departments, Mr. Charles A. Halleck, of Indiana, raised a parliamentary inquiry:

Further, Mr. Speaker, do I understand correctly that under the terms of

4. John W. McCormack (Mass.).

5. 95 CONG. REC. 11314, 81st Cong. 1st Sess.

the Reorganization Act under which we are operating the proponents of the resolution who by that resolution would seek to disapprove Reorganization Plan No. 2 would have to have 218 votes actually present and voting in order to carry the resolution?

THE SPEAKER:⁽⁶⁾ That is correct; that is the law, and the Chair will take this opportunity to read the law:

Sec. 6. (a) Except as may be otherwise provided pursuant to subsection (c) of this section, the provisions of the reorganization plan shall take effect upon the expiration of the first period of 60 calendar days of continuous session of the Congress, following the date on which the plan is transmitted to it; but only if, between the date of transmittal and the expiration of such 60-day period there has not been passed by either of the two Houses by the affirmative vote of a majority of the authorized membership of that House, a resolution stating in substance that that House does not favor the reorganization plan.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BROWN of Ohio: How will the Chair determine whether there are 218 votes cast in favor of the resolution?

THE SPEAKER: By the usual method: Either by a viva voce vote, division vote, or a vote by the yeas and nays.

The question is on the resolution.

The question was taken.

THE SPEAKER: In the opinion of the Chair the resolution not having received the affirmative vote of a majority of the authorized membership of

the House, the resolution is not agreed to.

So the resolution was rejected.

Rejection by House as Affecting Senate Action

§ 7.26 Where the House disagrees to a reorganization plan submitted by the President, it notifies the Senate of its action, and the Senate may indefinitely postpone further consideration of a resolution disapproving the same reorganization plan.

On July 20, 1961,⁽⁷⁾ there was received in the Senate a message from the House announcing that the House had agreed to a resolution (H. Res. 328) disapproving Reorganization Plan No. 5 transmitted to Congress by the President on May 24, 1961.

Senator Mike Mansfield, of Montana, subsequently moved that Senate Resolution 158, disapproving Reorganization Plan No. 5, be indefinitely postponed.

The motion was agreed to.⁽⁸⁾

§ 7.27 The House having agreed to a resolution disapproving a reorganization plan, the Senate Committee on Government Operations

7. 107 CONG. REC. 13017, 87th Cong. 1st Sess.

8. *Id.* at p. 13027.

6. Sam Rayburn (Tex.).

ordered reported, without recommendation, a resolution to the same effect.

On June 16, 1961,⁽⁹⁾ Senator John L. McClellan, of Arkansas, made the following statement in the Senate:

Mr. President, on June 13, 1961, the Committee on Government Operations, in executive session, ordered reported, without recommendations, 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. 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.

9. 107 CONG. REC. 10628, 87th Cong. 1st Sess.

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.

§ 8. Resolutions of Inquiry

The resolution of inquiry⁽¹⁰⁾ is a simple resolution making a direct request or demand of the President or the head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch. The practice is nearly as old as the Republic,⁽¹¹⁾ and is based on principles of comity between the executive and legislative branches rather than on any specific provision of the Constitution that a federal court may be called upon to enforce.

The resolution of inquiry is privileged, i.e. it may be considered at any time after it is properly reported or discharged from committee.⁽¹²⁾

The resolution must be directed to the President or the head of an executive department,⁽¹³⁾ and it

10. See also Ch. 15, Investigations and Inquiries, *supra*.

11. See 3 Hinds' Precedents Sec. 1856 et seq.

12. See 8.6, *infra*.

13. 3 Hinds' Precedents §§1861–1864; and 6 Cannon's Precedents §Sec. 406.