

raised a point of order against the consideration on the Consent Calendar of the bill (H.R. 5917), for the relief of certain newspapers (for advertising services rendered the Public Health Service), that it was a private bill and not properly on the Consent Calendar.

The Chair<sup>(11)</sup> ruled that, “. . . Where a bill affects an individual, individuals, corporations, institutions, and so forth, it should and does go to the Private Calendar. Where it applies to a class and not to individuals as such, it then becomes a general bill and would be entitled to a place on the Consent Calendar. In the judgment of the Chair this bill, while affecting a class of concerns, specifies individuals, and for the purpose of the rule the Chair holds that the bill is improperly on this [Consent] Calendar and transfers it as of the date of the original reference to the Private Calendar.”

#### **§ 4. Joint Resolutions**

The joint resolution is another legislative instrument employed by the Congress in the exercise of its power under article I, section 1 of the Constitution. It is the type of measure that requires an affirmative vote by both Houses and

**11.** Earl C. Michener (Mich.).

submission to the President for approval under article I, section 7. When a joint resolution is approved by the President, or when he fails to return it to the Congress within the prescribed time, or when he vetoes it and his veto is overridden it becomes public law and it is published in the statutes-at-large as such.<sup>(12)</sup>

Thus, the joint resolution is considered in the same manner as a bill, with one important exception: where a joint resolution is used to bring about a constitutional amendment,<sup>(13)</sup> the resolution, after approval thereof by both Houses by two-thirds vote, is submitted to the states for ratification. It is not submitted to the President.<sup>(14)</sup>

There are no established rules requiring the use of a joint resolu-

**12.** 1 USC §§ 106, 106a, 112.

**13.** Since 1936 the following amendments to the Constitution have been adopted pursuant to joint resolutions: 22d amendment, H.J. Res. 27. 93 CONG. REC. 2392, 80th Cong. 1st Sess., Mar. 21, 1947; 23d amendment, S.J. Res. 39. 106 CONG. REC. 12858, 86th Cong. 2d Sess., June 16, 1960; 24th amendment, S.J. Res. 29. 108 CONG. REC. 17670, 87th Cong. 2d Sess., Sept. 14, 1962; 25th amendment, S.J. Res. 1. 111 CONG. REC. 15593, 89th Cong. 1st Sess., July 6, 1965; and 26th amendment, S.J. Res. 7. 117 CONG. REC. 7570, 92d Cong. 1st Sess., Mar. 23, 1971.

**14.** U.S. Const. art. 5.

tion rather than of a public bill, or vice versa, in the consideration and enactment of legislation. However, in practice joint resolutions are not now used for purposes of general legislation. They are used for special purposes and for such incidental matters as changing or fixing effective dates,<sup>(15)</sup> to establish joint committees or provide a commission with subpoena power,<sup>(16)</sup> or to provide continuing appropriations.<sup>(17)</sup> The joint resolution, because it permits the use of a preamble (which is not appropriate in a bill), is also used where it is necessary to set forth in the legislation the events or state of facts which prompt the measure. For this reason, declarations of war have been made by joint resolution.<sup>(18)</sup>

Chapter 2 of title I of the United States Code contains the following provision regarding the enacting clause of a joint resolution:

§102. The resolving clause of all joint resolutions shall be in the fol-

15. See §4.4 et seq., *infra*.

16. See §§4.10, 4.11, *infra*.

17. See §4.3, *infra*.

18. See §4.16, *infra*.

Note: Joint resolutions may contain preambles which are amendable after engrossment and prior to third reading of the joint resolution.

lowing form: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled."

### ***Constitutional Amendment***

**§4.1 It is permissible on the floor of the Senate, where a germaneness rule is not operating, to amend a joint resolution that is legislative in character by striking all after the resolving clause and inserting provisions of a constitutional amendment.**

On Mar. 26, 1962,<sup>(19)</sup> during consideration in the Senate of a joint resolution (S.J. Res. 29) establishing the former dwelling house of Alexander Hamilton as a national monument, Senator Spessard L. Holland, of Florida, offered an amendment in the nature of a substitute proposing to amend the Constitution to abolish the poll tax. Senator Richard B. Russell, of Georgia, raised a point of order against the amendment:<sup>(20)</sup>

. . . I take the position that the Constitution itself prescribes the method by which it may be amended, and that the pending proposal does not appear in the Constitution as a means where-

19. 108 CONG. REC. 5042, 87th Cong. 2d Sess.

20. *Id.* at pp. 5083-87 (Mar. 27).

by a proposed constitutional amendment may be submitted to the several States. I further submit that in the 173 years since the Constitution of the United States was first ratified and approved, no attempt whatever has ever been made to distort the constitutional process. This is the first time in 173 years that an effort has been made to use a piece of proposed general legislation as a vehicle for amending the Constitution of the United States and submitting that amendment to the several States. . . .

In article V we find the language to which the great interest of Congress should be devoted. Yet instead of a resolution in the form prescribed or indicated in article V, and followed for the 173 years that Congress has been meeting, an attempt is made to utilize a piece of proposed legislation, respectable enough in itself, proposing a memorial to a great American who has not yet had any memorial erected in his honor; but which requires the ordinary legislative process requiring the signature of the President or else a vote on the part of Congress to override a veto by the President.

Mr. President, the amendment of the Constitution of the United States is a procedure which is solely between the Congress and the several States. This is the only process from which the President of the United States is completely excluded. Nothing in the Constitution indicates that the President shall even see a proposed amendment of the Constitution. He has no authority to veto it. There is no requirement that he approve it. Nothing in the Constitution indicates that it shall even be brought to his attention.

Yet the Senate is undertaking to add to article V of the Constitution, with-

out any authority to do so, a third method of amending the Constitution, by saying that a proposed amendment to the Constitution can be appended to the joint resolution now under consideration.

Mr. President, this is wholly unconstitutional procedure. Nothing in the Constitution warrants it. Nothing in the precedents of the Senate justifies it, although over the years we have had almost every precedent of which the mind of man can conceive. . . .

MR. [MIKE] MANSFIELD [of Montana]: Mr. President, I think it is clear that the proposal of the Senator from Florida is entirely in accord with the Constitution of the United States and with the Senate rules. On the question of final adoption of Senate Joint Resolution 29, as amended by the Holland substitute, two-thirds of the Senate must vote in the affirmative if the resolution is to be agreed to. The same will be true in the House of Representatives. The joint resolution, as thus amended, will then be submitted to the several States for ratification. Therefore, all the requirements of the Constitution and of our rules will have been met.

Mr. President, I move that the question of constitutionality as raised by the distinguished Senator from Georgia be laid on the table, and I ask for the yeas and nays.

The motion was agreed to (58 yeas, 34 nays).<sup>(21)</sup>

#### **§ 4.2 A joint resolution proposing an amendment to the Constitution may be amend-**

21. *Id.* at pp. 5086, 5087.

**ed in the Senate by a substitute providing legislative provisions designed to accomplish the same result.**

On Feb. 2, 1960,<sup>(1)</sup> during consideration in the Senate of a joint resolution (S.J. Res. 39) to amend the Constitution to allow Governors to fill temporary vacancies in the House of Representatives, Senator Jacob K. Javits, of New York, raised the following parliamentary inquiry:

I understand that it will be in order, after action is taken on the Holland amendment, for me to move as substitute for the entire joint resolution a statutory provision to accomplish the same result. Is that correct?

THE PRESIDING OFFICER:<sup>(2)</sup> The Senator is correct.

### *Continuing Appropriations*

**§ 4.3 Measures providing continuing appropriations for a fiscal year are enacted by joint resolution, and such joint resolutions, when previously made in order by unanimous consent, are called up as privileged, even though they are not now considered general appropriations bills.**

1. 106 CONG. REC. 1747, 86th Cong. 2d Sess.
2. Edmund S. Muskie (Me.).

On Aug. 25, 1965,<sup>(3)</sup> Mr. George H. Mahon, of Texas, made the following statement:

Mr. Speaker, pursuant to the unanimous-consent agreement of yesterday, I call up the joint resolution (H.J. Res. 639) making continuing appropriations for the fiscal year 1966, and for other purposes, and ask unanimous consent that it be considered in the House as in Committee of the Whole. . . .

THE SPEAKER:<sup>(4)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

### *Fixing Date for Reorganization Plan*

**§ 4.4 A joint resolution has been used to fix the date when certain reorganization plans of the President shall go into effect.**

On June 1, 1939,<sup>(5)</sup> the House considered the following Senate joint resolution (S.J. Res. 138):

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

3. 111 CONG. REC. 21751, 89th Cong. 1st Sess.
4. John W. McCormack (Mass.).
5. 84 CONG. REC. 6527, 76th Cong. 1st Sess.

With the following committee amendment:

Page 1, after line 8, insert the following:

“Sec. 2. Nothing in such plans 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 plans 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 plans or this joint resolution.”

***Fixing Date for Convening Congress***

**§ 4.5 A joint resolution has been used to fix the day of meeting of a new session of Congress in lieu of the regular meeting date.**

On Dec. 30, 1941,<sup>(6)</sup> the House considered and passed the following joint resolution (S.J. Res. 123):

*Resolved, etc.,* That the second session of the Seventy-seventh Congress shall begin at noon on Monday, January 5, 1942, and the first session of the Seventy-eight Congress shall begin at noon on Monday, January 4, 1943.<sup>(7)</sup>

- 6. 87 CONG. REC. 10126–31, 77th Cong. 1st Sess.
- 7. The Constitution provides: “The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint

***Change in Date for Counting Electoral Votes***

**§ 4.6 A joint resolution has been used to change the date for the counting of the electoral votes.**

On Feb. 7, 1956,<sup>(8)</sup> the House considered and passed the following joint resolution (H.J. Res. 517):

Whereas January 6, 1957, is a Sunday; and

Whereas Public Law 771, 80th Congress (62 Stat. 672, 675), provides that “Congress shall be in session on the 6th day of January succeeding every meeting of the (Presidential) electors” for the purpose of counting the electoral votes: Therefore be it

*Resolved, etc.,* That the two Houses of Congress shall meet in the Hall of the House of Representatives on Monday the 7th day of January 1957, at 1 o’clock postmeridian, pursuant to the requirements of the Constitution and laws relating to the election of President and Vice President of the United States.

a different day.” U.S. Const. amend. 20, § 2.

See also 111 CONG. REC. 28563, 89th Cong. 1st Sess., Oct. 22, 1965; 105 CONG. REC. 19364, 19365, 86th Cong. 1st Sess., Sept. 12, 1959; joint resolution pocket vetoed 102 CONG. REC. 15294, 84th Cong. 2d Sess., July 27, 1956; and 93 CONG. REC. 10521, 80th Cong. 1st Sess., July 26, 1947.

- 8. 102 CONG. REC. 2220, 84th Cong. 2d Sess.

***Change in Date for Submission of Presidential Budget***

**§ 4.7 A joint resolution has been used to postpone the dates for the submission of the President's budget message and economic report.**

On Jan. 6, 1965,<sup>(9)</sup> the House considered and passed the following joint resolution (H.J. Res. 123):

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding the provisions of section 201 of the Act of June 10, 1922, as amended (31 U.S.C. 11), the President shall transmit to the Congress not later than January 25, 1965, the budget for the fiscal year 1966, and (b) notwithstanding the provisions of section 3 of the Act of February 20, 1946, as amended (15 U.S.C. 1022), the President shall transmit to the Congress not later than January 28, 1965, the Economic Report.<sup>(10)</sup>*

***Authorizing Printing of Publication***

**§ 4.8 A joint resolution has been used to authorize the**

9. 111 CONG. REC. 134, 135, 89th Cong. 1st Sess.

10. For a joint resolution postponing the dates set by law for the transmittal of the President's economic report and the report thereon by the Joint Economic Committee, see 115 CONG. REC. 40901, 91st Cong. 1st Sess., Dec. 22, 1969.

**printing of additional copies of "Senate Procedure" and making such publications subject to copyright.**

On Oct. 16, 1963,<sup>(11)</sup> the House considered and passed the following joint resolution (S.J. Res. 123):

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be printed and bound for the use of the Senate one thousand five hundred copies of a revised edition of Senate Procedure, to be prepared by Charles L. Watkins, Parliamentarian, and Floyd M. Riddick, Assistant Parliamentarian, to be printed under the supervision of the authors and to be distributed to the Members of the Senate.*

Sec. 2. That, notwithstanding any provisions of the copyright laws and regulations with respect to publications in the public domain, such edition of Senate Procedure shall be subject to copyright by the authors thereof.

**§ 4.9 The House agreed to a joint resolution providing for the printing of "Cannon's Procedure in the House of Representatives."**

On Mar. 25, 1959,<sup>(12)</sup> the House considered and passed the fol-

11. 109 CONG. REC. 19611, 88th Cong. 1st Sess.

12. 105 CONG. REC. 5259, 5260, 86th Cong. 1st Sess.

lowing joint resolution (H.J. Res. 301):

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be printed and bound for the use of the House one thousand five hundred copies of "Cannon's Procedure in the House of Representatives", by Clarence Cannon, to be printed under the supervision of the author and to be distributed to the Members by the Speaker.*

Sec. 2. That, notwithstanding any provision of the copyright laws and regulations with respect to publications in the public domain, "Cannon's Procedure in the House of Representatives" shall be subject to copyright by the author thereof.

***Establishing a Joint Committee***

**§ 4.10 The House considered a joint resolution proposing the establishment of a joint committee to investigate crime.**

On July 12, 1968,<sup>(13)</sup> the House considered the following joint resolution (H.J. Res. 1):

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there is hereby created a Joint Committee To Investigate Crime, to be composed of seven Members of the House of Representatives to be ap-*

13. 114 CONG. REC. 21012, 90th Cong. 2d Sess.

pointed by the Speaker of the House of Representatives, and seven Members of the Senate to be appointed by the President pro tempore of the Senate. In each instance not more than four members shall be members of the same political party.<sup>(14)</sup>

***Grant of Subpena Power***

**§ 4.11 The House agreed to a joint resolution granting subpoena powers to the commission appointed by the President to report on the assassination of President John F. Kennedy.**

On Dec. 10, 1963,<sup>(15)</sup> the House considered and passed a joint resolution (S.J. Res. 137) stating in part:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) for the purposes of this joint resolution, the term 'Commission' means the Commission appointed by the President by Executive Order 11130, dated November 29, 1963.*

(b) The Commission, or any member of the Commission when so authorized by the Commission, shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation

14. Investigations generally, see Ch. 15, supra; creating committees, see Ch. 17, supra.

15. 109 CONG. REC. 23941, 88th Cong. 1st Sess.

by the Commission. The Commission, or any member of the Commission or any agent or agency designated by the Commission for such purpose, may administer oaths and affirmations, examine witnesses, and receive evidence.

### *Travel Appropriations*

**§ 4.12 The House considered a joint resolution making appropriations for mileage for the Vice President, Senators, Representatives, Delegates, and Commissioners, and for pay of pages incidental to a special session of Congress.**

On Sept. 25, 1939,<sup>(16)</sup> the House considered and passed the following joint resolution (H.J. Res. 384):

*Resolved, etc.,* That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the payment of expenses incident to the second session of the Seventy-sixth Congress, namely:

For mileage of the President of the Senate and of Senators, \$51,000.

For mileage of Representatives, the Delegate from Hawaii, and the Resident Commissioner from Puerto Rico, and for expenses of the Delegate from Alaska, \$171,000.

For the payment of 21 pages for the Senate and 48 pages for the House of Representatives, at \$4 per day each, for the period commencing September 21, 1939, and ending with the last day

16. 85 CONG. REC. 16, 76th Cong. 2d Sess.

of the month in which the Seventy-sixth Congress adjourns sine die at the second session thereof, so much as may be necessary for each the Senate and House of Representatives.

### *Presidential Honors*

**§ 4.13 The House considered a joint resolution providing for a Presidential proclamation recognizing former President Truman's role in the creation of the United Nations.**

On Sept. 26, 1968,<sup>(17)</sup> the House considered and passed the following joint resolution (H.J. Res. 1459):

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States is hereby authorized and requested to issue on October 24, 1968, a proclamation recognizing the significant part which Harry S. Truman, as President of the United States, played in the creation of the United Nations.

**§ 4.14 The House considered a joint resolution providing for a joint session of Congress to commemorate the 150th anniversary of the birth of Abraham Lincoln.**

On July 24, 1958,<sup>(18)</sup> the House considered and passed the fol-

17. 114 CONG. REC. 28327, 90th Cong. 2d Sess.

18. 104 CONG. REC. 15019, 15020, 85th Cong. 2d Sess.

lowing joint resolution (H.J. Res. 648):

Whereas Thursday, February 12, 1959, will mark the 150th anniversary of the birth of Abraham Lincoln, 16th President of the United States; and

Whereas Mr. Lincoln is our best example of that personal fulfillment which American institutions permit and encourage; and . . .

Whereas on Monday, February 12, 1866, in the presence of the President of the United States, the members of his Cabinet, the Chief Justice and Associate Justices of the Supreme Court, the diplomatic corps, officers of the Army and Navy, assistant heads of departments, the governors of States and Territories, and others in authority, the two Houses of Congress convened in joint session to hear "an address upon the life and character of Abraham Lincoln, late President of the United States," pronounced by an eminent historian, the Honorable George Bancroft: Now, therefore, be it

*Resolved, etc.,* That on Thursday, February 12 next, the sesquicentennial of the birth of Abraham Lincoln shall be commemorated by a joint session of the Congress, and to that end the President of the Senate will appoint 4 Members of the Senate and the Speaker of the House will appoint 4 Members of the House of Representatives jointly to constitute a Committee on Arrangements.

The Committee on Arrangements shall plan the proceedings, issue appropriate invitations, and select a distinguished Lincoln scholar to deliver the memorial address; and be it further

*Resolved,* That the President of the United States, the Vice President of

the United States, the Chief Justice and Associate Justices of the Supreme Court, the diplomatic corps, assistant heads of departments, and the members of the Lincoln Sesquicentennial Commission be invited to join in this commemoration.

**§ 4.15 The House considered a joint resolution providing for a ceremony to commemorate the 100th anniversary of Lincoln's second inauguration.**

On June 23, 1964,<sup>(19)</sup> the House considered and passed the following joint resolution (H.J. Res. 925):

Whereas March 4, 1965, will be the one hundredth anniversary of the second inauguration of Abraham Lincoln as President of the United States; and

Whereas President Lincoln in his inaugural address looked to the end of a great fratricidal struggle and spoke, "with malice toward none and charity for all," of "a just and lasting peace among ourselves and with all nations"; and . . .

Whereas today a part of the aspirations which Abraham Lincoln held for the people of the United States has been achieved: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That on Wednesday, March 4 next, the one hundredth anniversary of Abraham Lincoln's second inauguration shall be commemorated by such observance as may be determined by the committee

**19.** 110 CONG. REC. 14699, 88th Cong. 2d Sess.

on arrangements in cooperation with the National Civil War Centennial Commission, the Civil War Centennial Commission of the District of Columbia, and the Lincoln Group of the District of Columbia.

Immediately upon passage of this resolution, the President of the Senate shall appoint four Members of the Senate and the Speaker of the House shall appoint four Members of the House of Representatives jointly to constitute a committee on arrangements.

### ***Declaration of War***

#### **§ 4.16 The House adopted a joint resolution declaring war on Japan.**

On Dec. 8, 1941,<sup>(20)</sup> the House passed the following joint resolution (H.J. Res. 254):

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 re-

sources of the country are hereby pledged by the Congress of the United States.<sup>(1)</sup>

#### **§ 4.17 The House adopted a joint resolution relating to hostilities in Southeast Asia and supporting the President's actions to repel aggression by North Vietnam.**

On Aug. 7, 1964,<sup>(2)</sup> the House considered and passed the following joint resolution (H.J. Res. 1145):

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 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

1. For other joint resolution declaring war, see also: (1) against Rumania, 88 CONG. REC. 4818, 77th Cong. 2d Sess., June 3, 1942; (2) against Hungary, 88 CONG. REC. 4817, 77th Cong. 2d Sess., June 3, 1942; (3) against Bulgaria, 88 CONG. REC. 4816, 77th Cong. 2d Sess., June 3, 1942; and (4) against Germany and Italy, 87 CONG. REC. 9665, 9666, 77th Cong. 1st Sess., Dec. 11, 1941.
2. 110 CONG. REC. 18538, 18539, 88th Cong. 2d Sess.

20. 87 CONG. REC. 9519, 9520, 77th Cong. 1st Sess.

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.

## **§ 5. Concurrent Resolutions**

Concurrent resolutions are used as a means by which the two Houses may concurrently express certain facts, or declare certain principles, opinions, or purposes. A concurrent resolution is binding on neither House until agreed to by both. They are not used in the adoption of general legislation. Concurrent resolutions are used in the adoption of joint rules, setting up joint committees, expressing the sense of Congress on propositions,<sup>(3)</sup> and in recent years as vehicles by which both Houses are permitted to approve or disapprove of certain executive actions, pursuant to laws containing mechanisms for such procedures (see *House Rules and Manual*, 97th Congress, "Congressional Disapproval" provisions contained in public laws).

The important practical consideration to be kept in mind in distinguishing joint and concurrent resolutions, in the current usage, is that only the former must be submitted to the President for his approval before taking effect. A concurrent resolution does not involve an exercise of the legislative

**3.** *Procedure in the U.S. House of Representatives* (97th Cong.) Ch. 24 § 1.3.