

Chapter CCXVIII.¹

APPROVAL OF BILLS BY THE PRESIDENT.

1. As to resolutions requiring approval. Sections 1084, 1085.
 2. Delay in presenting bills to President. Section 1086.
 3. Approval after adjournment for a recess. Section 1087.
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1084. The question as to whether concurrent resolutions should be sent to the President for his signature.

On June 1, 1920,² the Senate was considering the concurrent resolution (S. Con. Res. 27) respectfully declining to grant to the Executive the power to accept a mandate over Armenia, as requested in the message of the President dated May 24) 1920, when Mr. Gilbert M. Hitchcock, of Nebraska, offered an amendment empowering the President to appoint American members of a joint commission to supervise certain fiscal relations of Armenia.

Mr. Henry Cabot Lodge, of Massachusetts, presented a point of order, as follows:

Mr. President, I rise to a question of order. I make the point of order that this is a concurrent resolution, and under the practice of the two Houses a concurrent resolution does not go to the President and never carries legislation. The concurrent resolution now before us carries no legislation and does not go to the President. The proposed amendment clearly is legislation requiring the assent of the President, and therefore would not be in order on a resolution which does not go to the President.

The Vice President³ said:

The Chair is aware of the fact that there have been a great many opinions expressed as to what resolutions under the Constitution should properly go to the President and what should not go to him. If any Senator can present to the Chair an opinion of the Supreme Court of the United States to the effect that a concurrent resolution need not go to the President, the Chair will be glad to be guided by it. So far as the Chair is aware, no such decision of the Supreme Court of the United States has ever been rendered; certainly none has ever been cited to the Chair. The Chair is therefore of the opinion that the amendment proposed by the Senator from Nebraska is in order, and overrules the point of order which has been made against it.

1085. The House originating a measure transmit to the President or to the Secretary of State, as the circumstances require.

¹Supplementary to Chapter XCII.

²Second session Sixty-sixth Congress, Record, p. 8072.

³Thomas R. Marshall, of Indiana, Vice President.

On July 16, 1909,¹ the Speaker announced his signature to enrolled joint resolution (S. J. Res. 40) proposing an amendment to the Constitution of the United States.

Mr. Charles L. Bartlett, of Georgia, as a parliamentary inquiry, asked:

Mr. Speaker, the Chair has just laid before the House a report of the Committee on Enrolled Bills, which states that Senate joint resolution No. 40, providing for an amendment to the Constitution giving Congress the power to levy an income tax without regard to the census or enumeration, has been signed; and I desire to know whether the Speaker will transmit that resolution to the President for his signature? I know the precedents, and I know that it has been decided by the Supreme Court of the United States in the Third Dallas—in the case of *Hollingsworth v. Virginia*. It has been heretofore ruled by a former Speaker, when the question was raised, that it was not necessary to submit the resolution to amend the Constitution to the President for his approval. I call the Chair's attention to the matter now in order that the Chair's attention may be called to the precedents in this regard, and for the other purpose, Mr. Speaker, that if it is necessary the House may take such usual and necessary methods in the premises to have the States of the Union informed of the action of the Congress in this respect. It is because of that precedent and because of the decision of the Supreme Court of the United States to which I refer which decision arose upon the eleventh amendment to the Constitution, that I have thought proper to direct the Chair's attention to the subject now.

The Speaker² said:

The Chair desires to state that this joint resolution originated in the Senate. It was passed by the House, and the joint resolution, duly enrolled, is signed by the Speaker and reported to the House, and it will be transmitted from the House to the Senate, in which body it originated, and the uniform practice is that the body originating the measure transmits it to the proper depository.

1086. A concurrent resolution to send to the President for approval bills which had passed both Houses in the previous session of the same Congress but which for want of time failed to reach him was treated as privileged.

On December 4, 1916,³ the first day of the session, Mr. Claude Kitchin, of North Carolina, offered, as privileged, the following concurrent resolution, which was agreed to by the House:

Resolved by the House of Representatives (the Senate concurring), That such bills and joint resolutions as passed both Houses at the last session of the Congress and which for want of time were either not presented to the two Houses for the signatures of their presiding officers or, having been thus presented and signed, were not presented to the President for approval be now enrolled as of this session of the Congress, reported for the signatures of the presiding officers of the two Houses, and presented to the President for his approval.

In the Senate, on the recommendation of the Committee on Rules, to which it was referred, consideration of the concurrent resolution was indefinitely postponed.

1087. An instance where the President signed bills after Congress had adjourned for a recess.

¹First session Sixty-first Congress, Record, p. 4495.

²Joseph G. Cannon, of Illinois, Speaker.

³Second session Sixty-fourth Congress, Record, p. 4.

On December 7, 1920,¹ on the reassembling of Congress after recess, the President of the United States² communicated to the House notice that he had approved sundry House bills on June 10 and June 14.

On the same day,³ in the Senate, a message was received from the President of the United States announcing the approval on June 14 of certain Senate bills.

Neither message announced the disapproval of any bill or resolution.

1088. The President, in the opinion of the Attorney General, has the power to approve bills after adjournment sine die of the Congress which has passed them, but within 10 days (Sundays excepted) after they have been presented to him.

On June 19, 1920,⁴ the Attorney General⁵ of the United States rendered to the President an opinion, from which the following is an excerpt:

SIR: I have the honor to give you my opinion on the question whether you can approve bills after adjournment sine die of the Congress which has passed them but within 10 days (Sundays excepted) after they have been presented to you.

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It thus appears that while there has been, speaking generally, a uniform practice of the several Presidents not to sign bills after the adjournment of Congress, or rather, to sign all bills of which they approved before Congress adjourned, the right to sign after adjournment was considered an open question in President Monroe's time, was asserted in the most open manner by President Lincoln, was again brought in question before President Cleveland, and was asserted for a second time in Mr. Harrison's term by the Attorney General, and presumably by the President. In considering the proper effect of a contemporaneous and continuous practical exposition of the Constitution a mere refraining from assertion of a right is a very different thing from a positive and actual assertion of it. In the former case failure to act may be due merely to disinclination to assert the right in question unless the situation urgently demands it, while no interests may be actually disturbed by mere inaction in such a manner as to justify a legal protest. In the latter case, however, where the right is asserted and action taken, interests are necessarily affected injuriously or beneficially which ought not subsequently to be disturbed by a reversal of the prior construction.

As to the right of the President to approve bills after adjournment, it may well be that an occasion for the serious consideration of it did not arise until, within comparatively recent times, the amount and far-reaching detail of Federal legislation, and consequently of such legislation passed within the last 10 days of the session became such as to make it a real burden upon the President and a danger to the public interests to require him to sign such bills as he approved during the confusion of the last hours of Congress. In my judgment, therefore, the action of Presidents Lincoln and Harrison in actually approving of bills during an adjournment of Congress outweighs any inference which may be drawn from the mere failure of other Presidents to assert the right claimed.

I have therefore reached the conclusion that, both on principle and by the great weight of authority and precedent, you have the power to approve bills after adjournment sine die of the Congress which has passed them but within 10 days (Sundays excepted) after they have been presented to you.

¹Third session Sixty-sixth Congress, Journal, p. 18.

²Woodrow Wilson, of New Jersey, President.

³Record, p. 24.

⁴Opinions of Attorneys General, Vol. XXXII, p. 225.

⁵A. Mitchell Palmer, of Pennsylvania, Attorney General.

1089. Announcement of approval of a bill by the President is transmitted to the House in which the bill originated.

On August 9, 1921,¹ in the Senate, Mr. Pat Harrison, of Mississippi, as a parliamentary inquiry, asked if a message had been received by the Senate announcing the approval by the President of the United States of the bill (H. R. 6611) to establish a veterans' bureau.

The Presiding Officer² said:

The Chair will inform the Senator that the bill having originated in the House, the House will be notified of its approval by the President. That notification would go to the House. It being a House bill, the message will go to the House and not to the Senate.

1090. The return of a bill which has gone to the President of the United States is requested by concurrent resolution, and such resolution when received from the Senate is treated as privileged.

On February 16, 1909,³ the Speaker laid before the House, as privileged, the following concurrent resolution of the Senate, which was immediately considered and agreed to:

Resolved by the Senate (the House of Representatives concurring), That the President be requested to return to the Senate the bill (S. 6891) for the relief of Maj. G.S. Bingham.

1091. A bill sent to the President but not yet signed by him was recalled by concurrent resolution.

Instance wherein an enrolled bill recalled from the President was afterwards amended.

On April 12, 1924,⁴ Mr. Nicholas Longworth, of Ohio, offered, as privileged, the following concurrent resolution, which was agreed to by the House:

Resolved by the House of Representatives (the Senate concurring), That the President of the United States be requested to return to the House of Representatives the bill (H. R. 6815) entitled "An act to authorize a temporary increase in the Coast Guard for law enforcement."

On April 15,⁵ the Speaker laid before the House a message from the President of the United States, in response to this resolution, returning the bill requested.

Thereupon Mr. John Q. Tilson, of Connecticut, submitted for immediate consideration the following concurrent resolution, which was agreed to without debate:

Resolved by the House of Representatives (the Senate concurring), That the action of the Speaker of the House of Representatives and of the President pro tempore of the Senate in signing the enrolled bill (H. R. 6815) entitled "An act to authorize a temporary increase of the Coast Guard for law enforcement" be rescinded and that in the reenrollment of the said bill the following amendment be made, viz: On page 2, line 44, after the word "enlisted," insert "warrant."

¹First session Sixty-seventh Congress, Record, p. 4745.

²Irvine L. Lenroot, of Wisconsin, Presiding Officer.

³Second session Sixtieth Congress, Record, p. 2531.

⁴First session Sixty-eighth Congress, Record, p. 6289.

⁵Record, p. 6447.

1092. An error in a bill that has gone to the President of the United States may be corrected by a joint resolution.

On August 28, 1914,¹ Mr. Joseph J. Russell, of Missouri, by unanimous consent, offered the following joint resolution (H. J. Res. 327), which was ordered to be engrossed, read a third time, and passed without debate or division.

Whereas by error in printing H. R. 12045, reported by the House Committee on Invalid Pensions, act approved July 1, 1914 (Private, No. 50), makes the designation of the military service of one David Taylor, late of Company B, Fourth Regiment Michigan Volunteer Infantry, to read "Company B, Fourteenth Regiment Michigan Volunteer Infantry"; Therefore be it

Resolved, etc., That the paragraph in H. R. 12045, approved July 1, 1914 (Private, No. 50), granting an increase of pension to one David Taylor, be corrected and amended so as to read as follows:

"The name of David Taylor, late of Company B, Fourth Regiment Michigan Volunteer Infantry, and pay him a pension at the rate of \$40 per month in lieu of that he is now receiving."

1093. The President requested a duplicate copy of a bill, lost after transmission to him, by a message addressed to the House in which the bill originated.

On January 7, 1921,² the Vice President laid before the Senate the following message from the President of the United States:

To the Senate:

Senate Joint Resolution No. 191, entitled "Joint resolution to create a Joint Commission on the Reorganization of the Administrative Branch of the Government," having been presented to me on December 17, 1920, and not having been approved by me or returned to the Senate within the 10 days prescribed by the Constitution, has become a law without my approval.

The resolution has in some way been misplaced or destroyed. In order to comply with the provisions of section 204 of the Revised Statutes of the United States that all laws be filed with and published by the Secretary of State, may I ask that a duplicate of Senate Joint Resolution No. 191 be sent to me for that purpose?

Thereupon Mr. James W. Wadsworth, jr., of New York, by unanimous consent, submitted the following concurrent resolution, which was agreed to by the Senate:

Resolved by the Senate (the House of Representatives concurring), That the President of the Senate and the Speaker of the House of Representatives be, and they are hereby, authorized to sign a duplicate copy of the enrolled joint resolution (S. J. Res. 191) to create a Joint Committee on the Reorganization of the Administrative Branch of the Government, and that the Secretary of the Senate be directed to transmit the same to the President of the United States in compliance with his request.

¹Second session Sixty-third Congress, Record, p. 14389.

²Third session Sixty-sixth Congress, Record p. 1086.