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17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA

19  
20  
21 HENRY A. WAXMAN, et al.,

22  
23 Plaintiffs,

24  
25 v.

26 DONALD L. EVANS, Secretary of  
27 Commerce,

28 Defendant.

No. 01-04530-LGB (AJWx)

**SECRETARY'S  
MEMORANDUM IN  
SUPPORT OF MOTION  
FOR RECONSIDERATION**

Date: March 4, 2002  
Time: 10:00 a.m.  
Courtroom: No. 780  
Location: Los Angeles-Roybal

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1 Branch over access-to-information disputes without the express consent of a  
2 majority of either the House of Representatives or the Senate, the creation of such a  
3 right would be an unconstitutional exercise of Congress's Article I powers.

4 Finally, for the reasons explained below, § 2954 is a "rule of proceeding"  
5 within the meaning of Article I, § 5, cl. 2, of the Constitution, which, as a  
6 constitutional matter, has been superceded by House rules and is therefore no  
7 longer judicially enforceable.

8 While recognizing that motions for reconsideration are disfavored by the  
9 Court, the Secretary urges the Court to exercise its considerable discretion in light  
10 of the extraordinary nature of the remedy afforded by the Court in its January 22  
11 Order. The Court's ruling is likely to have a dramatic impact on relations between  
12 the Congress and the Executive Branch and on the courts. Much more is at stake  
13 here than access to the specific data sought by plaintiffs. The Court has, in effect,  
14 given a small number of members of two congressional committees the ability to  
15 circumvent the congressional subpoena process and the will of the majority and to  
16 bring routine political disputes over information production directly to the courts  
17 for resolution – disputes that have been resolved through non-judicial means, with  
18 few exceptions, since the ratification of our Constitution.

19 Moreover, the implications of the Court's ruling extend well beyond requests  
20 for information pursuant to § 2954. If every statute providing that the Executive  
21 Branch "shall" produce information to Congress (or one of its components or  
22 members) is enforceable in court, as the Court appears to suggest, the "veritable  
23 cornucopia of federal reporting requirements, involving basic interrelationships  
24 between the Article I and Article II branches" would be "appropriate grist for the  
25 judicial rule." Natural Resources Defense Council, Inc. v. Hodel, 865 F.2d 288,  
26 317 & n.30 (D.C. Cir. 1988) (counting over 150 provisions in the U.S. Code  
27 imposing congressional reporting requirements). The Court's ruling is thus "rife  
28 with the danger of flooding an already over-burdened judicial system with failure-

1 to-report cases," *id.* at 319, and "improperly and unnecessarily plung[ing]" the  
2 court into a "bitter political battle being waged between the President" and a few  
3 members of Congress. *Raines*, 521 U.S. at 827.

4 Before the Court allows a ruling with such profound implications to take  
5 effect, it should be certain that plaintiffs have constitutionally valid statutory  
6 authority to invoke the powers of the judiciary to resolve this dispute. The  
7 authority discussed below establishes that such authority is lacking and that  
8 plaintiffs' claim is therefore not legally viable.<sup>1/</sup>

## 10 ARGUMENT

### 11 **I. PLAINTIFFS LACK STANDING TO MAINTAIN THIS ACTION.**

12 "No principle is more fundamental to the judiciary's proper role in our  
13 system of government than the constitutional limitation of federal-court jurisdiction  
14 to actual cases or controversies." *Raines v. Byrd*, 521 U.S. 811, 818, *quoting* *Simon*  
15 *v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 37 (1976). A bedrock of  
16 Article III's case-or-controversy requirement is that a plaintiff must establish that  
17 he has standing to sue. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)  
18 (plaintiff bears burden of establishing standing). Standing is thus an essential  
19 element of the subject matter jurisdiction of federal courts. *See, e.g., Steel Co. v.*  
20 *Citizens for a Better Environment*, 523 U.S. 83, 93-102 (1998).

21 To meet the standing requirements of Article III, "[a] plaintiff must allege  
22 *personal* injury fairly traceable to the defendant's allegedly unlawful conduct and  
23

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24 <sup>1/</sup> The Secretary has also discovered additional legislative history that supports his  
25 position as to the proper scope of § 2954. The Senate floor debate bolsters the  
26 legislative statements previously cited by the Secretary. *See* 69 Cong. Rec.  
27 S10613-14 (daily ed. May 29, 1928) (copy attached to Declaration of Gail Walker)  
28 (Statement of Sen. Sackett, characterizing the provision later codified as § 2954 as  
a provision "under which the committee could reinstate any report [previously  
required] that was found to be needed.").

1 likely to be redressed by the requested relief." Allen v. Wright, 468 U.S. 737, 751  
2 (1984) (emphasis added). Thus, a plaintiff's complaint must establish that he has a  
3 "personal stake" in the alleged dispute, and that the alleged injury suffered is  
4 particularized as to him.<sup>2/</sup>

5 The Supreme Court has also stressed that the alleged injury must be "legally  
6 and judicially cognizable." Raines, 521 U.S. at 819. This requires, among other  
7 things, that the plaintiff have suffered "an invasion of a legally protected interest  
8 which is ... concrete and particularized," Lujan, 504 U.S. at 560, and that the  
9 dispute is "traditionally thought to be capable of resolution through the judicial  
10 process." Flast v. Cohen, 392 U.S. 83, 97 (1968).

11 The Supreme Court has always insisted on "strict compliance" with the  
12 jurisdictional standing requirement. See Raines, 521 U.S. at 819, *citing Allen*, 468  
13 U.S. at 752 (under Article III, "federal courts may exercise power only 'in the last  
14 resort, and as a necessity' ") (quoting Chicago & Grand Trunk R. Co. v. Wellman,  
15 143 U.S. 339, 345 (1892)). And the standing inquiry is to be "especially rigorous"  
16 when reaching the merits of the dispute would force the court to decide whether an  
17 action taken by one of the other two branches of the Federal Government was  
18 unconstitutional. See Raines v. Byrd, 521 U.S. at 819, *citing Bender*, 475 U.S. at  
19 542; Valley Forge Christian College v. Americans United for Separation of Church  
20 and State, Inc., 454 U.S. 464, 473-474 (1982). As the Supreme Court said in Allen,  
21 468 U.S. at 752, "the law of Art. III standing is built on a single basic idea – the  
22 idea of separation of powers."

23  
24 <sup>2/</sup> See, e.g., Lujan, 504 U.S. at 560-561 & n. 1 (to have standing, the plaintiff must  
25 have suffered a "particularized" injury, which means that "the injury must affect  
26 the plaintiff in a personal and individual way"); Bender v. Williamsport Area  
27 School Dist., 475 U.S. 534, 543-544 (1986) (school board member who "has no  
28 personal stake in the outcome of the litigation" has no standing); Simon, 426 U.S.  
at 39 ("The necessity that the plaintiff who seeks to invoke judicial power stand to  
profit in some personal interest remains an Art. III requirement").

1 Article III's standing requirement poses particular problems for the plaintiffs  
2 in this case because they seek relief for injuries suffered by them as members of  
3 Congress. The Supreme Court has ruled that injuries suffered by members of  
4 Congress in their official capacity as legislators are not cognizable under Article  
5 III. Raines v. Byrd, *supra*. The Court's decision in Raines leaves no doubt that the  
6 legislator plaintiffs in the instant suit have no standing to bring suit.

7 In Raines, the Supreme Court addressed the standing of a small number of  
8 legislators to challenge the constitutionality of the Line Item Veto Act. In finding  
9 standing lacking, the Court disagreed with a line of cases from the Court of  
10 Appeals for the District of Columbia Circuit, which applied special standing rules  
11 to permit "legislative standing" for members of Congress asserting injury to their  
12 institutional interests as legislators. The Supreme Court made clear that  
13 congressional plaintiffs hold no privileged status for purposes of the standing  
14 inquiry and that "strict compliance" with the fundamental principles of standing is  
15 required.

16 Applying these principles, the Raines Court held that congressional  
17 plaintiffs alleging a "diminution of [their] legislative power," *id.* at 821, lacked a  
18 "personal stake" in the outcome of the case and failed to allege a sufficiently  
19 concrete injury to establish Article III standing. *Id.* at 830 In making this  
20 determination, the Court noted that plaintiffs claimed only a type of "institutional  
21 injury," which was based on a loss of political power and which would affect all  
22 members of Congress equally, rather than an injury to a "private" right to which  
23 they were personally entitled.<sup>3/</sup> *Id.* at 829.

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24  
25  
26 <sup>3/</sup> The Raines court distinguished Powell v. McCormack, 395 U.S. 486 (1969), a  
27 case in which a member of Congress was found to have standing to challenge his  
28 exclusion from the House of Representatives. In Powell, plaintiff alleged both that  
he was "singled out for specially unfavorable treatment" compared to other  
members, and he alleged a loss of something to which he was personally entitled,

1 The rationale of the Raines decision is fatal to plaintiffs' standing claims in  
2 this case. First, this is plainly not a case where the private or personal rights of the  
3 legislators are at issue. Rather, plaintiffs have claimed "serious, irreparable" harm  
4 from being deprived of information allegedly needed to "engage in meaningful  
5 oversight . . . [and] develop legislation." Complaint at ¶ 19. Like the injuries  
6 alleged in Raines, these are quintessential "institutional injuries" that "damage[ ] all  
7 members of Congress and both Houses of Congress equally," and that are claimed  
8 only on the basis of plaintiffs' official capacities as legislators. Raines, 521 U.S. at  
9 821. As in Raines, plaintiffs' claim of standing is essentially "based on a loss of  
10 political power" – the inability to force compliance with a request for information  
11 directed to the Executive Branch – "not loss of any private right." Id.

12 Second, these plaintiffs share none of the exceptional characteristics that  
13 may be sufficient to confer standing on legislators seeking redress for institutional  
14 injuries.<sup>4/</sup> As a small minority of a single House committee, they do not  
15 themselves maintain the right to enact legislation pertaining to redistricting or to  
16 amend the Census Act. Nor do they have standing to allege institutional injuries on  
17 behalf of a majority of their colleagues whose votes would be sufficient to enact  
18 legislation on such matters – colleagues who have not joined plaintiffs in this suit  
19 or authorized them to bring it on their behalf. See Raines, 521 U.S. at 829  
20 (attaching "some importance to the fact that appellees have not been authorized to  
21 represent their respective Houses of Congress").

22 \_\_\_\_\_  
23 i.e., his salary and his seat as a member of Congress after his constituents had  
24 elected him. Raines, 117 S. Ct. at 2318.

25 <sup>4/</sup> In fact, it is not clear after the Court's decision in Raines whether any  
26 institutional injury alleged by congressional plaintiffs will be sufficient to confer  
27 standing, except perhaps in the limited circumstance, not applicable here, where the  
28 challenged action results in the complete nullification of a legislator's voting power.  
See Coleman v. Miller, 307 U.S. 433 (1939). See generally Separation of Powers  
— Congressional Standing, 111 Harv. L. Rev. 217 (1997).

1 Plaintiffs' suggestion (see Pls. Mem., filed Aug. 8, 2001, at 19-20) that they  
2 have standing, "[b]ecause at its core this is a case to enforce a statutory right," is  
3 unavailing. In the next section, the Secretary shows that plaintiffs do not have a  
4 statutory right to go to court to enforce 28 U.S.C. § 2954. But even if the Court  
5 concludes otherwise, this would not give plaintiffs Article III standing. As the  
6 Supreme Court reaffirmed in Raines, "Congress cannot erase Article III's standing  
7 requirements by statutorily granting the right to sue to a plaintiff who would not  
8 otherwise have standing." Raines, 521 U.S. at 820 n.3, citing Gladstone, Realtors  
9 v. Village of Bellwood, 441 U.S. 91, 100 (1979). See also Lujan, 504 U.S. at 578  
10 ("in suits against the government, at least, the concrete injury requirement must  
11 remain" and is not subject to congressional override). Indeed, in Raines, the  
12 Supreme Court found standing lacking despite a provision in the statute in question  
13 that "[a]ny Member of Congress . . . adversely affected by [the Act] may bring an  
14 action [in federal district court]. . . ." 521 U.S. at 815.

15 Plaintiffs' assertion that they have suffered a "particularized harm" from the  
16 Secretary's failure to comply with 5 U.S.C. § 2954 is also without merit. Although  
17 there is no question that § 2954 was enacted to make it clear that the Executive  
18 Branch was expected to comply with requests for information by a certain number  
19 of individual members acting without the assent of their committee, that provision  
20 was clearly enacted to augment the power of Congress as a whole to extract  
21 information from the Executive Branch, not to benefit congressmen as private  
22 individuals. Any injury arising from a failure to comply with a statutory duty  
23 imposed for the benefit of Congress and members of Congress in their official  
24 capacities as legislators is *per se* an "institutional injury" that "damages all  
25 members of Congress and both Houses of Congress equally," Raines, 521 U.S. at  
26 821, and thus insufficient to confer Article III standing.

1 **II. PLAINTIFFS LACK A STATUTORY RIGHT OF ACTION,**  
2 **EXPRESS OR IMPLIED, TO ENFORCE SECTION 2954.**

3 This Court's January 22 opinion overlooks another fundamental issue  
4 underlying this dispute: do plaintiffs have a right of action, either express or  
5 implied, under the statute they are seeking to enforce or the Administrative  
6 Procedure Act, the only other statute they allege to have been violated? If they do  
7 not, their claim must be dismissed under Fed.R.Civ.P. 12(b):<sup>5/</sup>

8  
9 <sup>2/</sup> It is fundamental that a plaintiff suing the United States or one of its officials  
10 must demonstrate – in addition to Article III standing – (1) subject-matter  
11 jurisdiction of the court where suit is brought, (2) a waiver of sovereign immunity,  
12 and (3) an express or implied cause of action in its favor. In this action, 28 U.S.C.  
13 §§ 1331 and 1361 provide the basis for the Court's exercise of subject matter  
14 jurisdiction and 5 U.S.C. § 702, as construed by the Ninth Circuit, provides a  
15 general waiver of sovereign immunity for suits seeking nonmonetary relief. See  
16 Presbyterian Church (U.S.A.) v. United States, 870 F.2d 518, 524-26 (9th Cir.  
17 1989) (construing second sentence 5 U.S.C. § 702 as waiving sovereign immunity  
18 for all claims for nonmonetary relief against the United States, its agencies or  
19 officials). The question for the Court is whether plaintiffs can point to any federal  
20 statute that creates an express or implied cause of action in their favor, an  
21 "analytically distinct" inquiry from that posed by sovereign immunity, which goes  
22 to "whether the source of substantive law upon which the claimant relies provides  
23 an avenue of relief." FDIC v. Meyer, 510 U.S. 471, 484 (1994) (reversing decision  
24 of the Ninth Circuit because it "conflate[d] the two 'analytically distinct' inquiries"  
25 of sovereign immunity and cause of action), citing United States v. Mitchell, 463  
26 U.S. 206, 218 (1983). See, e.g., Dewakuku v. Martinez, 271 F.3d 1031, 1037 (Fed.  
27 Cir. 2001) (waiver of sovereign immunity in Housing Act of 1937 did not obviate  
28 the need for plaintiff suing the Department of Housing and Urban Development to  
establish an express or implied cause of action under that Act); United States of  
Shawnee Indians v. United States, 253 F.3d 543, 550 (10th Cir. 2001) (waiver of  
sovereign immunity in 5 U.S.C. § 702 does not obviate the need for plaintiff suing  
the United States to establish an express or implied cause of action).

26 That the Court has subject matter jurisdiction over plaintiffs' claim under 28  
27 U.S.C. § 1361 – providing that district courts have original jurisdiction of any  
28 action "in the nature of mandamus" – does not eliminate the need for plaintiffs to  
establish an express or implied cause of action under either § 2954 or the APA.

1 In issuing its ruling of January 22, the Court apparently assumed that 5  
2 U.S.C. § 2954 or the APA created such a right and, indeed, indicated its belief that  
3 judicial enforcement of that provision was necessary to give effect to  
4 "congressional intent to empower Plaintiffs here to obtain the census data sought  
5 without having to invoke the authority of the full committee through a subpoena or  
6 convincing a chamber majority of the need for the information." Order at 14.

7 This assumption, however, is directly at odds with the Supreme Court's  
8 admonition that a court should not infer an intent by Congress to create a judicially  
9 enforceable right of action absent a clear indication from the statutory text or  
10 legislative history that Congress intended to create not just a right but also a  
11 judicial remedy. Alexander v. Sandoval, 532 U.S. 275, \_\_\_ (2001) (emphasis  
12  
13  
14

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15 While the Ninth Circuit has recently declined to take a position on the question, see  
16 Barron v. Reich, 13 F.3d 1370, 1375 (9th Cir. 1994), the weight of authority holds  
17 that a plaintiff who lacks a private right of action, under the statute alleged to give  
18 rise to a duty, is not entitled to mandamus relief under 28 U.S.C. § 1361. Id. at  
19 1374-75, *citing* District Lodge No. 166, Int'l Ass'n of Machinists v. TWA Servs.,  
20 Inc., 731 F.2d 711, 717 (11th Cir. 1984); Aguirre v. Meese, 930 F.2d 1292, 1293  
21 (7th Cir. 1991); Gonzalez v. INS, 867 F.2d 1108, 1110 (8th Cir. 1989). See also  
22 Mead Corp. v. United States, 490 F. Supp. 405, 407 (D.D.C. 1980) (28 U.S.C. §  
23 1361 does not in itself create substantive rights or causes of action but only confers  
24 jurisdiction on district court to hear certain kinds of cases); International Fed'n of  
25 Prof'l & Technical Engineers v. Williams, 389 F. Supp. 287, 290 (E.D. Va. 1974),  
26 *aff'd without opinion*, 510 F.2d 966 (4th Cir. 1975) (28 U.S.C. § 1361 "broadened  
27 the venue" where mandamus-type actions could be brought and did not create any  
28 new causes of action). In short, if a failure to comply with § 2954 is not otherwise  
subject to judicial review under another statute, the jurisdictional grant set forth in  
28 U.S.C. § 1361 does not create an independent right to a judicial relief. (If the  
Court disagrees and concludes that 28 U.S.C. § 1361 does give rise to an  
independent cause of action for individual members of Congress to sue the  
Executive Branch to enforce a statutory duty, that provision is unconstitutional for  
the reasons stated in Section III *supra*.)



1 added).<sup>6/</sup> As the Court recently explained in Sandoval, "like substantive federal  
2 law itself, private rights of action to enforce federal law, must be created by  
3 Congress." Sandoval, 532 U.S. at \_\_\_, 121 S.Ct. at 1519. See also Touche Ross &  
4 Co. v. Redington, 442 U.S. 560, 578 (1979) (remedies available are those "that  
5 Congress enacted into law"). Thus, the role of the judiciary is to interpret the  
6 statute Congress has passed to determine whether it "displays an intent to create not  
7 just a private right *but also a private remedy*." Sandoval, 532 U.S. at \_\_\_, 121 S.Ct.  
8 at 1519 (emphasis added), *citing* Transamerica Mortgage Advisors, 444 U.S. 11, 15  
9 (1979). See also Walls v. Wells Fargo Bank, 276 F.3d 502, 508 (9th Cir. 2002)  
10 (quoting Sandoval and adhering to this principle).

11 "Statutory intent on this latter point is determinative." Sandoval, 532 U.S. at  
12 \_\_\_, 121 S.Ct. at 1519, *citing* Virginia Bankshares, Inc. v. Sandberg, 501 U.S.  
13 1083, 1102 (1991); Merrell Dow Pharmaceuticals Inc. v. Thompson, 478 U.S. 804,  
14 812, n. 9 (1986) (and cases cited therein). See also Davis v. Passman, 442 U.S.  
15 228, 241 (1979) ("Statutory rights and obligations are established by Congress, and  
16 it is entirely appropriate for Congress, in creating these rights and obligations, to  
17 determine, in addition, who may enforce them and in what manner . . . In each  
18 case, . . . the question is the nature of the legislative intent informing a specific  
19 statute . . ."). See also Walls v. Wells Fargo Bank, 276 F.3d at 508 ("the critical  
20 inquiry is whether Congress intended to create a private right of action").

21 Without the requisite legislative intent, "a cause of action does not exist and  
22 courts may not create one, no matter how desirable that might be as a policy matter,  
23 or how compatible with the statute." Alexander, 532 U.S. at \_\_\_, 121 S.Ct. at  
24

25 \_\_\_\_\_  
26 <sup>6/</sup> See also Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 501 U.S. 350,  
27 365 (1991) ("Raising up causes of action where a statute has not created them may  
28 be a proper function for common-law courts, but not for federal tribunals.") (Scalia,  
J., concurring in part and concurring in judgment), *quoted in* Sandoval, 532 U.S. at  
\_\_\_\_\_, 121 S.Ct. at 1520).

1 1520, *citing* Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 145, 148  
2 (1985); Transamerica Mortgage Advisors, 444 U.S. at 23; Touche Ross, 442 U.S.  
3 at 575-576. *See also* Northwest Airlines, Inc. v. Transport Workers Union of  
4 America, AFL-CIO, 451 U.S. 77, 94 (1981) ("[U]nless this congressional intent  
5 can be inferred from the language of the statute, the statutory structure, or some  
6 other source, the essential predicate for implication of a private remedy simply  
7 does not exist.").<sup>2/</sup>

8 Under the rule of Sandoval, plaintiffs' claim for judicial relief fails here. An  
9 examination of both statutes which plaintiffs claim have been violated – 5 U.S.C. §  
10 2954 and the APA – demonstrates that Congress did not intend to create judicially  
11 enforceable rights to the information requested by plaintiffs.

#### 12 5 U.S.C. § 2954

13 Plaintiffs' claim for direct judicial relief under 5 U.S.C. § 2954 fails because  
14 there is no evidence that Congress intended to create a private remedy to enforce  
15 this provision. Section 2954 was enacted in 1928, nearly two decades before  
16 passage of the APA. Even at that time, congressional practice with regard to  
17 compelling disclosure of information by the Executive Branch was well-  
18 established. Then, as now, resort to the courts to compel disclosure was only done  
19 with the assent of at least a majority of a House of Congress, generally through an  
20 action to enforce a subpoena.

21 The process for gaining judicial enforcement of subpoenas exists today as it  
22 existed at the time § 2954 was enacted in 1928. *See* 2 U.S.C. § 194 (enacted in  
23 1857). It requires that, following non-compliance with a subpoena, a contempt

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24  
25 <sup>2/</sup> The Supreme Court stressed in its recent decision in Sandoval, *supra*, that it long  
26 ago abandoned the understanding of private causes of action that held sway 40  
27 years ago, as captured by the Court's statement in J.I. Case Co. v. Borak, 377 U.S.  
28 426, 433 (1964), that "it is the duty of the courts to be alert to provide such  
remedies as are necessary to make effective the congressional purpose" expressed  
by a statute. *See Sandoval*, 532 U.S. at \_\_\_, 121 S.Ct. at 1520.

1 citation must be approved by the subcommittee, the full committee, *and* the full  
2 House or Senate, or by the presiding officer if Congress is not in session, before  
3 certification to the appropriate United States Attorney for prosecution. *Id.* That  
4 process accords with the relevant interest, which is not the interest of individual  
5 members, but the interest of Congress as an institution. And it ensures that the  
6 courts' powers are only invoked when a majority believes that disclosure of  
7 information is in the public interest and when there is political accountability for its  
8 determination.<sup>8/</sup> Indeed, no House or committee rules have ever authorized  
9 ranking minority members or individual members on their own, without an  
10 authorizing Resolution, to seek judicial enforcement of a subpoena.<sup>9/</sup>

11       Nothing in the language of the statute or its history remotely suggests that  
12 Congress believed it was, for the first time, creating in individual members a  
13 judicially enforceable right to compel disclosure of a virtually unlimited category  
14 of information from the Executive Branch. Indeed, at the time of enactment, the  
15 Supreme Court had ruled that, for purposes of 5 U.S.C. § 1345,<sup>10/</sup> individual  
16 legislators had no right to invoke the power of the courts to compel the production  
17 of requested documents absent a specific and express grant of that power by their  
18 respective Chamber. See Reed v. County Commissioners of Delaware County, Pa.  
19 277 U.S. 376 (1928) (upholding dismissal of suit brought by a number of Senators  
20

21 <sup>8/</sup> A suit by individual members, in contrast, does not carry the same degree of  
22 political accountability and may seek to compel disclosure of information that the  
23 vast majority of Congress believes should not be disclosed.

24 <sup>9/</sup> The current Rules of the House of Representatives, for example, state that  
25 "[c]ompliance with a subpoena issued by a committee or subcommittee . . . may be  
26 enforced only as authorized or directed by the House." See Exhibit B to  
27 Declaration of Gail Walker, at Rule XI (m)(1)(C).

28 <sup>10/</sup> 5 U.S.C. § 1345 gives district courts original jurisdiction over "all civil actions,  
suits, or proceedings commenced by the United States, or by any agency or officer  
thereof expressly authorized to sue by Act of Congress."

1 to compel the production of ballots and other evidence where suit was not  
2 expressly authorized by the full Senate). Given that this was the state of the law at  
3 the time § 2954 was enacted, there is simply no basis for inferring that Congress  
4 intended to create a right for individual legislators to invoke the power of the courts  
5 to enforce its provisions.

6 What the legislative history cited by this Court suggests is that Congress was  
7 creating a means of allowing more specific requests for information to the  
8 Executive Branch to overcome the deficiencies in reports that were not directed to  
9 members' concerns. In providing a mechanism for streamlining information  
10 requests, Congress gave no sign that it was shifting judicially enforceable rights to  
11 small minorities so that they would be capable of overriding the collective  
12 judgment of both Houses and the Executive Branch.

13 If Congress had intended to create such rights, it would have done so  
14 explicitly, just as it has in other contexts in which it intended for compliance with  
15 requests for Executive Branch documents to be judicially enforced. For example,  
16 in the Freedom of Information Act, Congress expressly created a judicially  
17 enforceable right to government information, establishing a carefully calibrated  
18 scheme that balances a variety of common law and statutory privileges against a  
19 requester's right to information. Given that Congress has expressly authorized suit  
20 to compel disclosure of Executive Branch information in other instances, the lack  
21 of express authorization for individual members of Congress to file suit to enforce  
22 5 U.S.C. § 2954, in itself, is a strong indication that Congress did not intend for  
23 disputes between Congress and the Executive Branch arising under this provision  
24 to be resolved in court at the behest of only a few individual members. See Walls  
25 v. Wells Fargo Bank, 276 F.3d at 509 ("Had Congress meant to create a remedy for  
26 violations of [a provision of the Bankruptcy Code], it could easily have done so;  
27 that it did not is a strong indication that it did not intend any such remedy.").

28 The need for a clear statement of congressional intent is particularly

1 important where, as here, the legislator plaintiffs are suing in their official  
2 capacities as *individual* legislators and not on behalf of Congress or a congressional  
3 committee. Such a dispute is inherently political and raises fundamental questions  
4 as to the power of an individual legislator to inquire into the conduct of the  
5 Executive. A court thus should be wary of assuming that, in directing the  
6 Executive Branch to comply with requests for information by individual members,  
7 Congress intended to confer on those members the right to take the Executive  
8 Branch to court.

9 Finally, any suggestion that a private right of action in plaintiffs' favor  
10 should be inferred because they are members of "the class for whose *especial*  
11 benefit the statute was enacted," Cort v. Ash, 422 U.S. 66, 78 (1975) (emphasis in  
12 original), would be meritless. First, as the Secretary stated earlier, § 2954 was  
13 clearly enacted for the purpose of seeking information for the benefit of Congress  
14 as whole, not for congressmen as private individuals. Second, even assuming for  
15 the sake of argument that § 2954 was enacted to benefit individual members, that  
16 alone would not justify the inference that Congress intended to create right for  
17 individual members to invoke the powers of the courts to compel compliance with  
18 their requests. "[T]he mere fact that [a] statute was designed to protect [certain  
19 individuals] does not require the implication of a private cause of action . . . on  
20 their behalf . . . . The dispositive question remains whether Congress intended to  
21 create any such remedy." Transamerica Mortgage Advisors, 444 U.S. at 24. See  
22 also Walls v. Wells Fargo Bank, 276 F.3d at 508. In this instance, taking into  
23 account all the circumstances surrounding enactment of § 2954, it is clear that  
24 Congress did not so intend and that is where the inquiry must end.<sup>11/</sup>

---

25  
26 <sup>11/</sup> Supreme Court decisions since Cort v. Ash, 422 U.S. 66 (1975), make clear that  
27 the so-called Cort factors are merely guides in the central task of ascertaining  
28 legislative intent, see Transamerica Mortgage Advisors, 444 U.S. at 15; Touche  
Ross, 442 U.S. at 575-76 (1979), that they are not of equal weight, Transamerica



1 U.S. 154, 178 (1997). See also Western Radio Services Co., Inc. v. Glickman, 123  
2 F.3d at 1196-97.

3 The courts have consistently held that the submission of information to  
4 Congress does not constitute "agency action" within the meaning of the APA. See,  
5 e.g., Guerrero v. Clinton, 157 F.3d 1190, 1195-96 (9th Cir. 1998) (a report to  
6 Congress is "not agency action of the sort that is typically subject to judicial  
7 review" because "it triggers no legal consequences and determines no rights or  
8 obligations"); Chemical Weapons Group, Inc. v. United States Dep't of the Army,  
9 111 F.3d 1485, 1495 (10th Cir. 1997) (a certification to Congress not reviewable  
10 agency action). Cf. American Trucking Assoc. v. United States, 755 F.2d 1292,  
11 1297 (7th Cir. 1985) (report that is "educational undertaking" and does not "impose  
12 an obligation, determine a right or liability or fix a legal relationship" is not  
13 reviewable agency action).

14 The reasons for this are best explained by the D.C. Circuit's opinion in  
15 Natural Resources Defense Council, Inc. v. Hodel, 865 F.2d 288 (D.C. Cir. 1988),  
16 which bears quoting at length here:

17 We think the presumption [of reviewability for agency action] is  
18 inapplicable here. First, and most importantly, the nature of the  
19 "agency action" at issue is quite distinct from the prototypical exercise  
20 of agency power. In the run-of-the-mill case, the agency whose action  
21 is challenged has exercised authority delegated (at least arguably) to it  
22 by Congress. The agency in such circumstances is exercising  
23 legislative functions (via formal or informal rulemaking) or  
24 adjudicatory functions that have been specifically ordained by  
25 Congress. As a basic element of our system of checks and balances,  
26 Congress has seen fit to provide broadly for judicial review of those  
27 actions, affecting as they do the lives and liberties of the American  
28 people. This is fully in keeping with fundamental notions in our

1 policy that the exercise of governmental power, as a general matter,  
2 should not go unchecked . . . Executive responses to congressional  
3 reporting requirements [requiring that certain reports be made to  
4 Congress] represent, we believe, an entirely different sort of action.  
5 Under the reporting requirement before us, the designated Executive  
6 Branch officer is simply reporting back to the source of its delegated  
7 power in accordance with the Article I branch's instructions. Lacking  
8 a provision for judicial review, the measure before us embodies a  
9 requirement that by its nature seems singularly committed to  
10 congressional discretion in measuring the fidelity of the Executive  
11 Branch actor to legislatively mandated requirements . . . It scarcely  
12 bears more than a passing mention that the most representative branch  
13 is not powerless to vindicate its interests or ensure Executive fidelity  
14 to Legislative directives. In short, in the absence of a congressional  
15 directive for judicial review . . ., this issue seems to us quintessentially  
16 within the province of the political branches to resolve as part of their  
17 ongoing relationships.

18 *Id.* at 318-19 (emphasis in original), *quoted favorably in Guerrero v. Clinton*, 157  
19 F.3d at 1195-96.<sup>13/</sup>

20 If the submission of information to Congress is not "agency action," it  
21 follows that the failure to submit information does not fall within the definition of  
22 "agency action" either. Like a submission of information, a failure to submit  
23 information to Congress cannot be said to be agency action "by which 'rights or  
24 obligations have been determined,' or from which 'legal consequences will flow.'"  
25

---

26 <sup>13/</sup> While the plaintiffs in *Hodel* were private parties rather than legislators, and the  
27 case turned in part on a lack of meaningful standards to judge compliance with the  
28 reporting requirement in question, the D.C. Circuit's observations are equally  
applicable here.



1 Bennett v. Spear, 520 U.S. at 178. To the contrary, a failure to comply with a  
2 congressional reporting requirement is "an entirely different sort of action" that is  
3 "quintessentially within the province of the political branches to resolve as part of  
4 their ongoing relationships," Hodel, 865 F.2d at 318-19, and thus outside the scope  
5 of the APA.<sup>14/</sup>

6 \* \* \*

7 In sum, there is simply no indication whatsoever that Congress intended,  
8 when it enacted either § 2954 or the APA, to deviate from the historical means by  
9 which Congress has compelled the disclosure of information from the Executive  
10 Branch. Accordingly, there is no basis to infer a cause of action in favor of  
11 plaintiffs here.

12 Should the Court have any doubt in this regard, it should resolve those  
13 doubts in favor of finding no right of action for plaintiffs in order to avoid reaching  
14 the serious constitutional question that would arise if § 2954 or the APA (or any  
15 other statute) were construed to allow suits by individual members of Congress to  
16 compel Executive Branch compliance with a congressional request for information.  
17 See Crowell v. Benson, 285 U.S. 22, 62 (1932) (in choosing between competing  
18 versions of statutory construction, a court must choose that which avoids a  
19 constitutional question); Public Citizen v. United States Department of Justice, 491  
20 U.S. 440, 466 (1989) (reluctance to confront or decide constitutional issues "is  
21 especially great where . . . they concern the relative powers of coordinate branches  
22 of government"). In addition to raising the insurmountable Article III issues  
23 discussed above, any attempt by Congress to create such a right would also exceed  
24

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25 <sup>14/</sup> Even if a failure to comply with a reporting requirement might qualify as "final  
26 agency action" in some instances, the Court should be wary of concluding that a  
27 failure to comply with 5 U.S.C. § 2954 falls within the compass of the APA given  
28 the nature and purpose of that provision and the context in which it was enacted,  
discussed *supra*.

1 its powers under Article I of the Constitution, as discussed next.

2 **III. CONGRESS MAY NOT CONSTITUTIONALLY DELEGATE ITS**  
3 **INVESTIGATORY POWERS TO A FEW MEMBERS OF**  
4 **CONGRESS TO THE EXTENT OF ALLOWING THEM TO SUE**  
5 **THE EXECUTIVE BRANCH TO COMPEL COMPLIANCE WITH A**  
6 **REQUEST FOR INFORMATION.**

7 If the Court construes a statute enacted by Congress – be it 5 U.S.C. § 2954  
8 or the APA – to encompass a right of individual members of Congress to sue the  
9 Executive Branch for failure to comply with an investigatory request, without the  
10 express consent of their respective Chamber, that statute would be unconstitutional.  
11 Congress simply may not constitutionally delegate its investigatory powers to a few  
12 individual members in a manner that has coercive effects outside of Congress.

13 Article I of the Constitution provides that "All legislative Powers herein  
14 granted shall be vested in a Congress of the United States, which shall consist of a  
15 Senate and House of Representatives." U.S. Const., Art. I, § 1. Included in  
16 Congress' "legislative Powers," of course, is the power to conduct investigations "in  
17 aid of the legislative function." McGrain v. Daugherty, 273 U.S. 135, 175  
18 (1927).<sup>15/</sup> But that power is constitutionally assigned to each House of Congress,  
19 and not to any individual member of Congress. Given that fundamental fact, it  
20 would be unconstitutional for Congress to allow a few members of a Senate or  
21 House committee to exercise Congress's (ancillary) investigative powers to the  
22 extent of suing the Executive Branch without the express authorization or approval  
23 of a majority in either the Senate or the House, just as it would be unconstitutional  
24 for Congress to delegate its (principal) lawmaking powers to a few members of  
25 either House. Giving due respect to the separation of powers fundamental to our  
26 Constitution, the power to create a dispute of such moment, involving all three

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26 <sup>15/</sup> See also Watkins v. United States, 354 U.S. 178 (1957); Barenblatt v. United  
27 States, 360 U.S. 109 (1959); Eastland v. United States Servicemen's Fund, 421 US.  
28 491 (1975); Nixon v. Administrator of General Services, 433 U.S. 425 (1977).

1 branches of the government and invoking the coercive powers of a court to compel  
2 Executive Branch action, can be exercised only upon the deliberate decision of a  
3 House as a whole.

4       The Secretary has no quarrel with the Senate or House, as a matter of their  
5 internal rules, delegating to committees or individual members the power to make a  
6 request for documents or testimony, or to issue subpoenas to demand compliance  
7 with such a request. See McGrain v. Daugherty, 273 U.S. 135, 158 (1927) ("The  
8 committee was acting for the Senate and under its authorization and therefore the  
9 subpoenas which the committee issued . . . are to be treated as if issued by the  
10 Senate"). The ability to invoke the powers of the courts to compel compliance  
11 with such a demand or to enforce a subpoena, however, is an altogether different  
12 matter, and can only be exercised pursuant to a collective determination by the  
13 respective Chamber that such a step is truly "in aid of the legislative function,"  
14 Kilbourn v. Thompson, 103 U.S. at 204, and necessary to achieve its investigatory  
15 goals. Whatever Congress may choose to administratively delegate within its four  
16 walls, when it acts externally – whether by legislation or through its coercive  
17 investigatory powers – Article I requires that this be done only at the will of the  
18 majority.<sup>16/</sup>

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19  
20 <sup>16/</sup> This issue appears to be one of first impression, as no court previously has  
21 approved an exercise of coercive congressional power by a few individual  
22 members. Nevertheless, the judicial precedent that does exist indicates that the  
23 courts have been reluctant to provide judicial relief in access-to-information  
24 disputes at the behest of less than a majority of a House. See, e.g., Reed v. County  
25 Commissioners of Delaware County, Pa., *supra*, 277 U.S. at 388 (upholding  
26 dismissal of suit brought by a number of Senators to compel the production of  
27 ballots and other evidence where suit was not expressly authorized by the full  
28 Senate); In re Beef Industry Antitrust Litigation, 589 F.2d 786 (5th Cir. 1979) (not  
allowing Chairmen of two subcommittees of the House of Representatives to  
intervene in antitrust suit in order to gain access to documents where they had  
failed to obtain authorization from the House); Wilson v. United States, 369 F.2d

1 **IV. SECTION 2954, AS A CONSTITUTIONAL MATTER, HAS BEEN**  
2 **SUPERSEDED BY HOUSE RULES AND IS THEREFORE NO**  
3 **LONGER JUDICIALLY ENFORCEABLE.**

4 Congress's power to legislate pursuant to Article I, § 8, of the Constitution is  
5 distinct from, and addresses different matters than, the power of "[e]ach House [to]  
6 determine the Rules of its Proceedings" under Article I, § 5. Insofar as § 2954  
7 purports to establish binding law that delegates the power of the House of  
8 Representatives to "any seven members" of the House "Committee on Government  
9 Operations," § 2954 is an unconstitutional exercise of Congress's power to  
10 legislate. Moreover, by the time of the request at issue, § 2954 had been  
11 superseded by subsequent House rules and was therefore no longer effective.

12 The rule-making power of each House under Art. I, § 5, cl. 2, has been  
13 construed broadly by the courts. The Supreme Court long ago described its breadth  
14 in this way:

15 All matters of method are open to the determination of the house. . . The  
16 power to make rules is not one which once exercised is exhausted. It is a  
17 continuous power, always subject to be exercised by the house, and [unless  
18 exercised so as to ignore constitutional restraints or irrationally], absolute  
19 and beyond the challenge of any other body or tribunal.

20 United States v. Ballin, 144 U.S. 1, 5 (1892). See also INS v. Chadha, 462 U.S.  
21 919, 956 n.20 (1983) ("Each House has the power to act alone in determining  
22 specified internal matters.").

23 Each House has the constitutional power to establish, and to revise, its own  
24 rules. This power is by its very nature nondelegable: the House of Representatives

25 \_\_\_\_\_  
26 198, 203 (D.C. Cir. 1966) (reading the contempt-of-Congress statute, contrary to its  
27 literal terms, to require a vote of the full House before a witness could be found in  
28 contempt by a court, expressing concern that committees might manipulate their  
processes in order to "insulate their actions on contempt matters from any further  
consideration within the legislative branch.").

1 cannot delegate to the Senate, to the President, or to any private individual the  
2 ability to establish its rules. Nor may either House bind its successors. Indeed, the  
3 House of Representatives is not a continuous body -- it is reconstituted each  
4 Congress -- and it adopts its own rules of proceedings at the outset of each  
5 Congress.

6 The question who may exercise each House's authority to request  
7 information on its behalf is a "matter[ ] of method" related directly to the  
8 investigatory powers of the Senate and House and thus must be "open to the  
9 determination of [each] House." Ballin, 144 U.S. at 5. Section 2954 therefore  
10 addresses a matter within the rule-making power of the Senate and the House under  
11 Article I, § 5, cl. 2. It therefore is not a proper subject of Congress's legislative  
12 power.

13 Indeed, it is plain that plaintiffs' reading of § 2954 would effect an  
14 unconstitutional delegation of the House's power to make its own rules. Under  
15 plaintiffs' reading, the House of Representatives is forever barred from repealing  
16 the seven-member rule contained in § 2954 unless it obtains the consent of the  
17 Senate and of the President. In short, under this view, the House has delegated to  
18 the Senate and the President the power to block the House from revising its own  
19 rules.

20 Moreover, the House rules in effect at the time of plaintiffs' request do not  
21 incorporate § 2954.<sup>17/</sup> Therefore, even if § 2954 were initially valid, the House  
22 rules have, as a constitutional matter, superseded § 2954.

---

23  
24  
25 <sup>17/</sup> Indeed, current House Rules do not even establish a "Committee on  
26 Government Operations." Because § 2954 specifies the House "Committee on  
27 Government Operations," it is entirely unclear whether § 2954 can even be given  
28 effect under the committee structure contemplated by current rules.

1 **CONCLUSION**

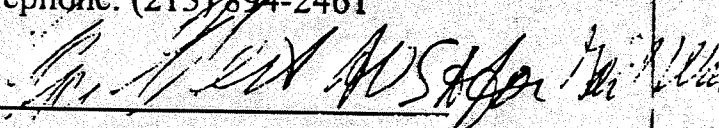
2 For the foregoing reasons, the Court should reconsider its Order granting  
3 Plaintiffs' Motion for Summary Judgment, vacate that order, and then dismiss  
4 plaintiffs' claim for lack of jurisdiction or failure to state a claim upon which relief  
5 can be granted.

6 Respectfully submitted,

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23 Dated: February 5, 2002

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17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA

19  
20  
21 HENRY A. WAXMAN, et al.,

22  
23 Plaintiffs,

24  
25 v.

26 DONALD L. EVANS, Secretary of  
27 Commerce,

28 Defendant.

No. 01-04530-LGB (AJWx)

**DECLARATION OF GAIL  
WALKER IN SUPPORT  
OF SECRETARY'S  
MOTION FOR  
RECONSIDERATION**

Date: March 4, 2002

Time: 10:00 a.m.

Courtroom: No. 780

Location: Los Angeles-Roybal

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I, Gail Walker, hereby state as follows:

1. I am one of the counsel representing the Secretary in this matter. I submit this declaration in support of the Secretary's Motion for Reconsideration.

2. Attached to this declaration are true and correct copies of the following documents:

Exhibit A: 69 Cong. Rec. S10613-14 (daily ed. May 29, 1928).

Exhibit B: Rules of the House of Representatives, 107th Congress (Jan. 3, 2001)

I declare under penalty of perjury that the foregoing is true and correct.

Gail Walker  
Gail Walker

Executed this 4th day of February, 2002.



not get the labor and they had to suffer loss or be relieved of their contract, when in some cases they had given bond. We acted in a number of such cases.

Mr. SHIPSTEAD. Mr. President, will the Senator from Utah withdraw his objection to the consideration of the bill?

Mr. KING. In the light of the statement the Senator has made, I withdraw my objection.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 5944) for the relief of Walter D. Lovell, which had been reported from the Committee on Claims with an amendment on page 1, line 8, after the words "sum of," to strike out "\$5,048.17" and to insert "\$3,548.17," so as to make the bill read:

*Be it enacted, etc.,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Walter D. Lovell, of Minneapolis, Minn., out of any money in the Treasury not otherwise appropriated, the sum of \$3,548.17, in full settlement for extra work, for which the Government has received the benefit and for which no payment has been made, and for losses suffered by reason of action of governmental agencies, by reason of increased cost of labor and materials, and other causes brought about by the late war with Germany, incurred by Walter D. Lovell, under contract for construction work at Rock Island Arsenal, Ill., dated January 19, 1917, with the Chief of Ordnance, War Department, prior to the entrance of the United States into the late war with Germany, and thereafter completed.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

B. C. MILLER

Mr. FESS. I ask unanimous consent that the Committee on the Judiciary be discharged from the further consideration of the bill (H. R. 11550) for the relief of B. C. Miller.

Mr. ROBINSON of Arkansas. Has the bill been considered by the committee?

Mr. FESS. No.

Mr. ROBINSON of Arkansas. I do not think to discharge a committee from the consideration of a bill in this manner is a good practice.

Mr. WARREN. Mr. President, let us have the remainder of the bills on the calendar called.

Mr. FESS. I withdraw the request.

MYRA MADRY

The Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 3844) for the relief of Myra Madry, which was read, as follows:

*Be it enacted, etc.,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, and in full settlement against the Government, the sum of \$500, to compensate Myra Madry, of Florence, Ala., for injuries received and caused by the stamp window of the Federal building in the city of Florence, Ala., falling upon her finger through no fault or negligence of her own.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

STATE OF OHIO

The Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 12938) for the relief of the State of Ohio, which was read, as follows:

*Be it enacted, etc.,* That the State of Ohio be, and it is hereby, relieved from all responsibility and accountability for certain quarter-master property, to the approximate value of \$5,820.64, the property of the War Department, which was lost or destroyed incident to the tornado at Lorain, Ohio, on June 28, 1924, while in the possession of troops of the National Guard, State of Ohio, and the Secretary of War is hereby authorized and directed to terminate all further accountability for said property.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILLS PASSED OVER

The bill (S. 4570) to authorize alterations and repairs to certain naval vessels was announced as next in order.

Mr. LA FOLLETTE. I should like an explanation of the bill.

Mr. MOSES. I think that bill was indefinitely postponed.

Mr. HALE. No; Senate bill 4571, being Order of Business 1357, was indefinitely postponed, a similar House bill having passed the two Houses.

Mr. LA FOLLETTE. The Senator from Maine informs me that he has no objection to Senate bill 4570 being passed over. Mr. HALE. That bill and the next bill now on the calendar, being Order of Business 1358, Senate bill 4572, may be passed over.

The VICE PRESIDENT. The bills will be passed over.

Mr. KING. I desire to make a parliamentary inquiry. What disposition was made of Order of Business 1358, being Senate bill 4572?

Mr. LA FOLLETTE. That bill has been passed over.

FRANK MURRAY

Mr. EDGE. A parliamentary inquiry, Mr. President. What became of Order of Business 1359, being Senate bill 2441, for the relief of Frank Murray?

The VICE PRESIDENT. The Chair is informed that that bill was disposed of earlier in the day.

Mr. LA FOLLETTE. It was indefinitely postponed, being similar to a House bill on the same subject which had been passed in its stead.

The VICE PRESIDENT. The Senator is correct.

THE GREAT FALLS OF THE POTOMAC RIVER

The Senate, as in Committee of the Whole, proceeded to consider the joint resolution (H. J. Res. 307) to preserve for development the potential water power and park facilities of the gorge and Great Falls of the Potomac River which was read, as follows:

*Resolved, etc.,* That, in order to preserve for development in whatever manner Congress may ultimately find most desirable, the natural resources in water, potential water power, and park and recreational facilities afforded by the falls and gorge of the Potomac River near the National Capital, the Federal Power Commission be and hereby is directed not to issue any permit, preliminary or final, to any private interest for the development of water power in the Potomac River between the mouth of Rock Creek and a point 4 miles upstream from the present intake for the water supply of Washington, until further action of Congress, after consideration of such joint report or separate reports as may be made by the National Capital Park and Planning Commission and the Federal Power Commission as to the best utilization of the said area for the public benefit.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

DISCONTINUANCE OF CERTAIN GOVERNMENTAL REPORTS

The bill (H. R. 12004) to discontinue certain reports now required by law to be made to Congress was announced as next in order.

Mr. ROBINSON of Arkansas. Mr. President, I inquire what are the reports to be discontinued?

Mr. SACKETT. There are quite a number of them.

Mr. ROBINSON of Arkansas. This bill is not on the calendar; we have no information regarding it.

Mr. SACKETT. Mr. President, this is a bill that was prepared by the committee of the House on Expenditures of the Executive Departments, due to the fact that there are a large number of reports prepared by the department that are no longer useful and the printing of which is extremely expensive. The bill was carefully prepared and gone over by the Bureau of Efficiency. Every report proposed to be discontinued was referred to the proper department and the department was asked if they had any use for it.

There is also a section under which the committee could reinstate any report that was found to be needed. It is said that the bill will save about \$50,000 a year in the printing of reports that are never used and have never been called for.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator yield?

Mr. SACKETT. With pleasure.

Mr. ROBINSON of Arkansas. I observe that the bill has 29 pages. Has the Senator personally investigated the provisions of the bill and checked them to see whether or not the reports to be discontinued are no longer needed?

Mr. SACKETT. Every one of those reports was gone over by the House committee.

Mr. ROBINSON of Arkansas. How does the Senator know what the House committee did?

Mr. SACKETT. Because we have their printed confidential report which was given to us.

Mr. LA FOLLETTE. What is there confidential about it?

Mr. WARREN. Mr. President, it is a bill that originated with the late Representative Medden.

Mr. SMOOT. It is known as the Martin-Madden bill.

Mr. ROBINSON of Arkansas.

Mr. SACKETT. It is a very good bill.  
Mr. LA FOLLETTE. Mr. President, I am not satisfied. The Senator from Kentucky informs us that the report of the House committee is confidential and it is proposed to do away with the printing of a considerable number of reports. I should like to have some explanation of what is being done.

Mr. ROBINSON of Arkansas. Why was it "confidential" in the first instance?

Mr. SACKETT. It was simply marked "confidential" at the head of the report.

Mr. ROBINSON of Arkansas. I understand that; but why was it confidential?

Mr. SACKETT. There was no reason that I know of, except custom.

Mr. LA FOLLETTE. Mr. President, I object to the consideration of the bill. I do not think any harm will be done if it shall go over until the next session.

The VICE PRESIDENT. Objection is made, and the bill will go over.

#### THOMAS A. EDISON COMMEMORATIVE MEDAL

Mr. EDGE. Mr. President, the Senator from Wisconsin has just informed me that he is prepared to withdraw his objection to House Joint Resolution 243 providing for the striking of a medal commemorative of the achievements of Thomas A. Edison. I ask unanimous consent to revert to that joint resolution and to have it considered at this time.

Mr. LA FOLLETTE. May I ask the Senator from New Jersey a question?

Mr. EDGE. Certainly.  
Mr. LA FOLLETTE. While appearing before the Banking and Currency Committee upon another matter, I was there when certain testimony was presented against the report of this joint resolution, and I desire to ask the Senator from New Jersey whether the committee made a thorough investigation of the evidence and the protest against it, and whether the committee was unanimous in its report?

Mr. EDGE. Mr. President, in answer to the question of the Senator from Wisconsin, I desire to say that the committee heard a lady who asked to be heard and whose contention was that some of the many inventions that have been credited to Mr. Edison's brain partially belonged to some other inventor. The committee heard all the testimony and voted unanimously to report the joint resolution favorably.

Mr. LA FOLLETTE. Upon that statement, I withdraw my objection.

The VICE PRESIDENT. Is there objection to the consideration of the joint resolution?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution (H. J. Res. 243) to provide for the striking of a medal commemorative of the achievements of Thomas A. Edison illuminating the path of progress through the development and application of inventions that have revolutionized civilization in the last century, which was read, as follows:

*Resolved, etc.,* That in recognition of the achievements of Thomas A. Edison, the Secretary of the Treasury is authorized and directed to cause to be struck and presented to Thomas A. Edison a gold medal with suitable emblems, devices, and inscriptions to be determined by the Secretary of the Treasury. For such purpose there is authorized to be appropriated the sum of \$1,000.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### EXTENSION OF PATENT TIME LIMITATIONS

Mr. DILL. Mr. President, I ask unanimous consent to return to order of business 1339 being the bill (H. R. 10435) providing for the extension of the time limitations under which patents were issued in the case of persons who served in the military and naval forces of the United States during the World War.

Mr. SMOOT. Mr. President, I ask for the regular order. Under the unanimous-consent agreement we are now to consider the calendar under Rule VIII.

Mr. DILL. I wish to say to the Senator from Utah that this bill passed both the House and the Senate last year and was ready to go to the President, but because of certain objections the bill was withdrawn. Those objections have been remedied by amendment.

Mr. WATSON. Mr. President, I hope the Senator from Utah will accede to the request of the Senator from Washington.

Mr. DILL. I hope the Senator will let the bill be passed.  
Mr. SMITH. May I ask the Senator from Washington if this is the bill to extend the time limitation in the case of

patents held by officers and enlisted men who served the country during the World War?

Mr. DILL. It is, and it is a very desirable and a very fair bill and I think it ought to be passed.

Mr. SMITH. Mr. President—  
Mr. WATSON. I can state what the bill is in a minute if I may be allowed to do so.

Mr. SMITH. I merely wish to say that I am a member of the committee which considered the bill; we went over it very carefully, and I think a more meritorious bill never came before this body. It simply extends the limitation as to time on patents of those who served in the military forces during the World War.

Mr. SMOOT. Mr. President, I have not had time carefully to read the bill; but I wish to say that, so far as the Senate is concerned, years ago, long before I became a Member of this body, it was agreed that there should be no extension of patents.

Mr. DILL. The circumstances were different then; there had been no World War.

Mr. SMITH. And the bill relates only to those who served in the war.

Mr. SMOOT. Senator Platt, of Connecticut, as Member of the Senate are aware, was for many years chairman of the Senate Committee on Patents. I followed him as chairman of that committee, and the one thing that he impressed upon me at the time was never to favor measures seeking to extend the time of duration for patents. I understand that this bill does not seek to accomplish what I thought it did when I objected. This bill, as I understand, extends the time only for the period during which the patentee was a soldier and was out of the country or engaged in the war.

Mr. DILL. And it only applies to those who did not receive incomes from their patents or whose incomes were reduced by reason of their service.

Mr. SMOOT. I have no objection to that, but in reading the bill when I objected I thought it provided a general extension of the time limitation as to patents, and, so far as I am concerned, I never will consent to that being done.

Mr. DILL. I have no objection to the Senator's position in that regard, but this bill does not seek to do that.

Mr. SMOOT. No; I so understand.  
Mr. WATSON. Mr. President, this bill merely provides that where the holder of a patent was a soldier and went abroad and had begun the development of his patent or had no opportunity to begin its development because of his service the life of the patent shall be extended for the number of years he was away. It does not extend it beyond that, and I hope the Senator will withdraw his objection.

Mr. SMOOT. I have no objection to the bill at all, now that I understand it.

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which was read, as follows:

*Be it enacted, etc.,* That any person who served honorably in the military or naval forces of the United States at any time between April 6, 1917, and November 11, 1918, both dates inclusive, and was subsequently honorably discharged, may within six months after the enactment of this act, upon payment of a fee of \$20, make application to the Commissioner of Patents, comprising a verified statement, accompanied by supporting evidence of the following facts:

(A) That he is the inventor or discoverer of an invention or discovery for which a specified patent was granted prior to the 11th day of November, 1918, the original term of which remains unexpired at the time of the filing of the application.

(B) That between April 6, 1917, and November 11, 1918, and also at the time of the passage of this act, he held, by ownership or contract, a right in said invention or under said patent or to income by way of royalty or otherwise therefrom, whereby an extension of the term of said patent would benefit him.

(C) That between April 6, 1917, and July 2, 1921, he was not receiving from said patent an income, or that his income therefrom was reduced by his said service.

(D) That at the time of his induction into the service he was making diligent effort to exploit the invention covered by his patent.

(E) The names of all persons, firms, or corporations, if any, holding at the time of the passage of this act, by grant, transfer, license, or contract from him, any right or interest in the invention or discovery or under the patent, and their consent to the extension for which application is made, which shall be supported by an instrument or instruments, executed by all such persons, firms, and corporations, evidencing their consent to such extension.

**RULES**  
*of the*  
**HOUSE OF REPRESENTATIVES**

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**ONE HUNDRED SEVENTH CONGRESS**

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**PREPARED BY**  
**Jeff Trandahl**  
**Clerk of the House of Representatives**  
**JANUARY 3, 2001**

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chairman and ranking minority member of the select committee. After such debate the previous question shall be considered as ordered on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Standards of Official Conduct shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Standards of Official Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of

the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence and intelligence-related activities of the Department of State.

(6) The intelligence and intelligence-related activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(j)(1) In this clause the term "intelligence and intelligence-related activities" includes--

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States, who are engaged in

political and related activities pose or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

#### RULE XI

##### PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

###### *In general*

1. (a)(1)(A) Except as provided in subdivision (B), the Rules of the House are the rules of its committees and subcommittees so far as applicable.

(B) A motion to recess from day to day, and a motion to dispense with the first reading (in full) of a bill or resolution, if printed copies are available each shall be privileged in committee and subcommittees and shall be decided without debate.

(2) Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.

(b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

(2) A proposed investigative or oversight report shall be considered as read in committee if it has been available to the members for at least 24 hours (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day).

(3) A report of an investigation or study conducted jointly by more than one committee may be filed jointly provided that each of the committees complies independently with all requirements for approval and filing of the report.

(4) After an adjournment sine die of the last regular session of a Congress, an investigative

## RULES OF THE

may be filed with the Clerk at any time, provided that a member who gives timely notice of intention to file supplemental, minority, or additional views shall be entitled to not less than seven calendar days in which to submit such views for inclusion in the report.

(c) Each committee may have printed and bound such testimony and other data as may be presented at hearings held by the committee or its subcommittees. All costs of stenographic services and transcripts in connection with a meeting or hearing of a committee shall be paid from the applicable accounts of the House described in clause 1(d)(1) of rule X.

(d)(1) Each committee shall submit to the House not later than January 2 of each odd-numbered year a report on the activities of that committee under this rule and rule X during the Congress ending at noon on January 3 of such year.

(2) Such report shall include separate sections summarizing the legislative and oversight activities of that committee during that Congress.

(3) The oversight section of such report shall include a summary of the oversight plans submitted by the committee under clause 2(d) of rule X, a summary of the actions taken and recommendations made with respect to each such plan, a summary of any additional oversight activities undertaken by that committee, and any recommendations made or actions taken thereon.

(4) After an adjournment sine die of the last regular session of a Congress, the chairman of a committee may file an activities report under subparagraph (1) with the Clerk at any time and without approval of the committee, provided that—

(A) a copy of the report has been available to each member of the committee for at least seven calendar days; and

(B) the report includes any supplemental, minority, or additional views submitted by a member of the committee.

#### *Adoption of written rules*

2. (a)(1) Each standing committee shall adopt written rules governing its procedure. Such rules—

(A) shall be adopted in a meeting that is open to the public unless the committee, in open session and with a quorum present, determines by record vote that all or part of the meeting on that day shall be closed to the public;

(B) may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House; and

(C) shall in any event incorporate all of the succeeding provisions of this clause to the extent applicable.

(2) Each committee shall submit its rules for publication in the Congressional Record not later than 30 days after the committee is elected in each odd-numbered year.

#### *Regular meeting days*

(b) Each standing committee shall establish regular meeting days for the conduct of its business, which shall be not less frequent than monthly. Each such committee shall meet for the consideration of a bill or resolution pending before the committee or the transaction of other committee business on all regular meeting days fixed by the committee unless otherwise provided by written rules adopted by the committee.

#### *Additional and special meetings*

(c)(1) The chairman of each standing committee may call and convene, as he considers necessary, additional and special meetings of the committee for the consideration of a bill or resolution pending before the committee or for the conduct of other committee business, subject to such rules as the committee may adopt. The committee shall meet for such purpose under that call of the chairman.

(2) Three or more members of a standing committee may file in the offices of the committee a written request that the chairman call a special meeting of the committee. Such request shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chairman of the filing of the request. If the chairman does not call the requested special meeting within three calendar days after the filing of the request (to be held within seven calendar days after the filing of the request) a majority of the members of the committee may file in the offices of the committee their written notice that a special meeting of the committee will be held. The written notice shall specify the date and hour of the special meeting and the measure or matter to be considered. The committee shall meet on that date and hour. Immediately upon the filing of the notice, the clerk of the committee shall notify all members of the committee that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Only the measure or matter specified in that notice may be considered at that special meeting.

#### *Temporary absence of chairman*

(d) A member of the majority party on each standing committee or subcommittee thereof shall be designated by the chairman of the full committee as the vice chairman of the committee or subcommittee, as the case may be, and shall preside during the absence of the chairman from any meeting. If the chairman and vice chairman of a committee or subcommittee are not present at any meeting of the committee or subcommittee, the ranking majority member who is present shall preside at that meeting.

#### *Committee records*

(e)(1)(A) Each committee shall keep complete record of all committee action which shall include—

(i) in the case of a meeting or hearing transcript, a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, or typographical corrections authorized by the person making the remarks involved; and

(ii) a record of the votes on a question on which a record vote is demanded.

(B)(i) Except as provided in subdivision (B)(ii) and subject to paragraph (k)(7), the result of each such record vote shall be made available by the committee for inspection by the public at reasonable times in its offices. Information so available for public inspection shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting.

(ii) The result of any record vote taken in executive session in the Committee on Standards of Official Conduct may not be made available for inspection by the public without an affirmative vote of a majority of the members of the committee.

(2)(A) Except as provided in subdivision (B), all committee hearing records, data, charts, and files shall be kept separate and distinct from the congressional office records of the member serving as its chairman. Such records shall be the property of the House, and each Member, Delegate, or the Resident Commissioner shall have access thereto.

(B) A Member, Delegate, or Resident Commissioner, other than members of the Committee on Standards of Official Conduct, may not have access to the records of that committee respecting the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House without the specific prior permission of that committee.

(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule VII. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) or clause 4(b) of rule VII, including a requirement that nonavailability of record for a period longer than the period otherwise applicable under the rule shall be approved by vote of the committee.

(4) Each committee shall make its publications available in electronic form to the maximum extent feasible.

#### *Prohibition against proxy voting*

(f) A vote by a member of a committee or subcommittee

to any measure or matter may not be cast by proxy.

#### *Open meetings and hearings*

(g)(1) Each meeting for the transaction of business, including the markup of legislation, by a standing committee or subcommittee thereof (other than the Committee on Standards of Official Conduct or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be in executive session because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House. Persons, other than members of the committee and such noncommittee Members, Delegates, Resident Commissioner, congressional staff, or departmental representatives as the committee may authorize, may not be present at a business or markup session that is held in executive session. This subparagraph does not apply to open committee hearings, which are governed by clause 4(a)(1) of rule X or by subparagraph (2).

(2)(A) Each hearing conducted by a committee or subcommittee (other than the Committee on Standards of Official Conduct or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would violate a law or rule of the House.

(B) Notwithstanding the requirements of subdivision (A), in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, a majority of those present may—

(1) agree to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger national security, would compromise sensitive law enforcement information, or would violate clause 2(k)(5); or

(ii) agree to close the hearing as provided in clause 2(k)(5).

(C) A Member, Delegate, or Resident Commissioner may not be excluded from nonparticipatory attendance at a hearing of a committee or subcommittee (other than the Committee on Standards of Official Conduct or its subcommittees) unless the House by

committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members, Delegates, and the Resident Commissioner by the same procedures specified in this subparagraph for closing hearings to the public.

(D) The committee or subcommittee may vote by the same procedure described in this subparagraph to close one subsequent day of hearing, except that the Committee on Appropriations, the Committee on Armed Services, and the Permanent Select Committee on Intelligence, and the subcommittees thereof, may vote by the same procedure to close up to five additional, consecutive days of hearings.

(3) The chairman of each committee (other than the Committee on Rules) shall make public announcement of the date, place, and subject matter of a committee hearing at least one week before the commencement of the hearing. If the chairman of the committee, with the concurrence of the ranking minority member, determines that there is good cause to begin a hearing sooner, or if the committee so determines by majority vote in the presence of the number of members required under the rules of the committee for the transaction of business, the chairman shall make the announcement at the earliest possible date. An announcement made under this subparagraph shall be published promptly in the Daily Digest and made available in electronic form.

(4) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

(5)(A) Except as provided in subdivision (B), a point of order does not lie with respect to a measure reported by a committee on the ground that hearings on such measure were not conducted in accordance with this clause.

(B) A point of order on the ground described in subdivision (A) may be made by a member of the committee that reported the measure if such point of order was timely made and improperly disposed of in the committee.

(6) This paragraph does not apply to hearings of the Committee on Appropriations under clause 4(a)(1) of

#### *Quorum requirements*

(h)(1) A measure or recommendation may not be reported by a committee unless a majority of the committee is actually present.

(2) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which may not be less than two.

(3) Each committee (other than the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than one for which the presence of a majority of the committee is otherwise required, which may not be less than one-third of the members.

#### *Limitation on committee sittings*

(i) A committee may not sit during a joint session of the House and Senate or during a recess when a joint meeting of the House and Senate is in progress.

#### *Calling and questioning of witnesses*

(j)(1) Whenever a hearing is conducted by a committee on a measure or matter, the minority members of the committee shall be entitled, upon request to the chairman by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

(2)(A) Subject to subdivisions (B) and (C), each committee shall apply the five-minute rule during the questioning of witnesses in a hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

(B) A committee may adopt a rule of motion permitting a specified number of its members to question a witness for longer than five minutes. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

(C) A committee may adopt a rule of motion permitting committee staff of its majority and minority party members to question a witness for equal specified periods. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

#### *Hearing procedures*

(k)(1) The chairman at a hearing shall announce in an opening statement the subject of the hearing.

(2) A copy of the committee rules of this clause shall be made available to each witness on request.

(3) Witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chairman may punish breaches of order and decorum and professional et

bel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) Whenever it is asserted by a member of the committee that the evidence or testimony at a hearing may tend to defame, degrade, or incriminate any person, or it is asserted by a witness that the evidence or testimony that the witness would give at a hearing may tend to defame, degrade, or incriminate the witness—

(A) notwithstanding paragraph (g)(2), such testimony or evidence shall be presented in executive session if, in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, the committee determines by vote of a majority of those present that such evidence or testimony may tend to defame, degrade, or incriminate any person; and

(B) the committee shall proceed to receive such testimony in open session only if the committee, a majority being present, determines that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

In either case the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive and dispose of requests from such person to subpoena additional witnesses.

(6) Except as provided in subparagraph (5), the chairman shall receive and the committee shall dispose of requests to subpoena additional witnesses.

(7) Evidence or testimony taken in executive session, and proceedings conducted in executive session, may be released or used in public sessions only when authorized by the committee, a majority being present.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing or inclusion in the record. The committee is the sole judge of the pertinence of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.

#### *Supplemental, minority, or additional views*

(1) If at the time of approval of a measure or matter by a committee other than the Committee on Rules) a member of the committee gives notice of intention to file supplemental, minority, or additional views for inclusion in the report to the House thereon, that member shall be entitled to at least two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) to file such views, in writing and signed by that member, with the clerk of the committee.

#### *Power to sit and act; subpoena power*

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph (3)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chairman of the committee, or a member designated by the chairman, may administer oaths to witnesses.

(3)(A)(i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chairman of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chairman of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Standards of Official Conduct, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

#### *Committee on Standards of Official Conduct*

3. (a) The Committee on Standards of Official Conduct has the following functions:

(1) The committee may recommend to the House from time to time such administrative actions as it may consider appropriate to establish or enforce standards of official conduct for Members, Delegates, the Resident Commissioner, officers, and employees of the House. A letter of reproof or other administrative action of the committee pursuant to an investigation under subparagraph (2) shall only be issued or implemented as a part of a report required by such subparagraph.

(2) The committee may investigate, subject to paragraph (b), an alleged

violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, Delegate, Resident Commissioner, officer, or employee in the performance of his duties or the discharge of his responsibilities. After notice and hearing (unless the right to a hearing is waived by the Member, Delegate, Resident Commissioner, officer, or employee), the committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any such investigation and such action as the committee may consider appropriate in the circumstances.

(3) The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the committee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of his duties or the discharge of his responsibilities that may have been disclosed in a committee investigation.

(4) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, Delegate, Resident Commissioner, officer, or employee. With appropriate deletions to ensure the privacy of the person concerned, the committee may publish such opinion for the guidance of other Members, Delegates, the Resident Commissioner, officers, and employees of the House.

(5) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XXIII.

(b)(1)(A) Unless approved by an affirmative vote of a majority of its members, the Committee on Standards of Official Conduct may not report a resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or, except as provided in subparagraph (2), undertake an investigation of such conduct.

(B)(1) Upon the receipt of information offered as a complaint that is in compliance with this rule and the rules of the committee, the chairman and ranking minority member jointly may appoint members to serve as an investigative subcommittee.

(ii) The chairman and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of a complaint

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offered as a complaint until they have established an investigative subcommittee or either of them has placed on the agenda of the committee the issue of whether to establish an investigative subcommittee.

(2) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, Delegate, Resident Commissioner, officer, or employee of the House only—

(A) upon receipt of information offered as a complaint, in writing and under oath, from a Member, Delegate, or Resident Commissioner and transmitted to the committee by such Member, Delegate, or Resident Commissioner, or

(B) upon receipt of information offered as a complaint, in writing and under oath, from a person not a Member, Delegate, or Resident Commissioner provided that a Member, Delegate, or Resident Commissioner certifies in writing to the committee that he believes the information is submitted in good faith and warrants the review and consideration of the committee.

If a complaint is not disposed of within the applicable periods set forth in the rules of the Committee on Standards of Official Conduct, the chairman and ranking minority member shall establish jointly an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if at any time during those periods either the chairman or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

(3) The committee may not undertake an investigation of an alleged violation of a law, rule, regulation, or standard of conduct that was not in effect at the time of the alleged violation. The committee may not undertake an investigation of such an alleged violation that occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(4) A member of the committee shall be ineligible to participate as a member of the committee in a committee proceeding relating to the member's official conduct. Whenever a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker shall designate a Member, Delegate, or Resident Commissioner from the same political party as the ineligible member to act in any proceeding of the committee relating to that conduct.

in an investigation of the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to be disqualified. If the committee approves and accepts such affidavit of disqualification, the chairman shall so notify the Speaker and request the Speaker to designate a Member, Delegate, or Resident Commissioner from the same political party as the disqualifying member to act in any proceeding of the committee relating to that case.

(6) Information or testimony received, or the contents of a complaint or the fact of its filing, may not be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(7) The committee shall have the functions designated in titles I and V of the Ethics in Government Act of 1976, in sections 7342, 7351, and 7353 of title 5, United States Code, and in clause 11(g)(4) of rule X.

(c)(1) Notwithstanding clause 2(g)(1) of rule XI, each meeting of the Committee on Standards of Official Conduct or a subcommittee thereof shall occur in executive session unless the committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting to the public.

(2) Notwithstanding clause 2(g)(2) of rule XI, each hearing of an adjudicatory subcommittee or sanction hearing of the Committee on Standards of Official Conduct shall be held in open session unless the committee or subcommittee, in open session by an affirmative vote of a majority of its members, closes all or part of the remainder of the hearing on that day to the public.

(d) Before a member, officer, or employee of the Committee on Standards of Official Conduct, including members of a subcommittee of the committee selected under clause 5(a)(4) of rule X and shared staff, may have access to information that is confidential under the rules of the committee, the following oath (or affirmation) shall be executed:

"I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Standards of Official Conduct, any information received in the course of my service with the committee, except as authorized by the committee or in accordance with its rules."

Copies of the executed oath shall be retained by the Clerk as part of the records of the House. This paragraph establishes a standard of conduct within the meaning of paragraph (a)(2). Breaches of confidentiality shall be investigated by the Committee on Standards of Official Conduct.

(e)(1) If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee on Standards of Official Conduct, the committee may take such action as it may deem appropriate by an affirmative vote of a majority of its members, considers appropriate in the circumstances.

(2) Complaints filed before the One Hundred Fifth Congress may not be deemed frivolous by the Committee on Standards of Official Conduct.

## *Audio and visual coverage of committee proceedings*

4. (a) The purpose of this clause is to provide a means, in conformity with acceptable standards of dignity, propriety, and decorum, by which committee hearings or committee meetings that are open to the public may be covered by audio and visual means—

(1) for the education, enlightenment, and information of the general public, on the basis of accurate and impartial news coverage, regarding the operations, procedures, and practices of the House as a legislative and representative body, and regarding the measures, public issues, and other matters before the House and its committees, the consideration thereof, and the action taken thereon; and

(2) for the development of the perspective and understanding of the general public with respect to the role and function of the House and the Constitution as an institution of the Federal Government.

(b) In addition, it is the intent of this clause that radio and television tap and television film of any coverage under this clause may not be used, made available for use, as partisan or political campaign material to promote or oppose the candidacy of any person for elective public office.

(c) It is, further, the intent of this clause that the general conduct of each meeting (whether of a hearing or otherwise) covered under authority of this clause by audio or visual means, and the personal behavior of the committee members and staff, other Government officials and personnel, witnesses, television, radio, and press media personnel, and the general public at the hearing or other meeting, shall be in strict conformity with and observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House in its operations, and may not be such as to

(1) distort the objects and purposes of the hearing or other meeting, the activities of committee members in connection with that hearing, meeting or in connection with the general work of the committee or the House; or

(2) cast discredit or dishonor on the House, the committee, or a Member, Delegate, or Resident Commissioner.



## RULES OF THE

(d) The coverage of committee hearings and meetings by audio and visual means shall be permitted and conducted only in strict conformity with the purposes, provisions, and requirements of this clause.

(e) Whenever a hearing or meeting conducted by a committee or subcommittee is open to the public, those proceedings shall be open to coverage by audio and visual means. A committee or subcommittee chairman may not limit the number of television or still cameras to fewer than two representatives from each medium (except for legitimate space or safety considerations, in which case pool coverage shall be authorized).

(f) Each committee shall adopt written rules to govern its implementation of this clause. Such rules shall contain provisions to the following effect:

(1) If audio or visual coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(2) The allocation among the television media of the positions or the number of television cameras permitted by a committee or subcommittee chairman in a hearing or meeting room shall be in accordance with fair and equitable procedures devised by the Executive Committee of the Radio and Television Correspondents' Galleries.

(3) Television cameras shall be placed so as not to obstruct in any way the space between a witness giving evidence or testimony and any member of the committee or the visibility of that witness and that member to each other.

(4) Television cameras shall operate from fixed positions but may not be placed in positions that obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(5) Equipment necessary for coverage by the television and radio media may not be installed in, or removed from, the hearing or meeting room while the committee is in session.

(6)(A) Except as provided in subdivision (B), floodlights, spotlights, strobelights, and flashguns may not be used in providing any method of coverage of the hearing or meeting.

(B) The television media may install additional lighting in a hearing or meeting room, without cost to the Government, in order to raise the ambient lighting level in a hearing or meeting room to the lowest level necessary to provide adequate television coverage of a hearing or meeting at the current state of the art of television coverage.

(7) In the allocation of the number of still photographers permitted by a committee or subcommittee chairman in a hearing or meeting room, preference shall be given to photographers from Associated Press

Photos and United Press International Newspictures. If requests are made by more of the media than will be permitted by a committee or subcommittee chairman for coverage of a hearing or meeting by still photography, that coverage shall be permitted on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

(8) Photographers may not position themselves between the witness table and the members of the committee at any time during the course of a hearing or meeting.

(9) Photographers may not place themselves in positions that obstruct unnecessarily the coverage of the hearing by the other media.

(10) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(11) Personnel providing coverage by still photography shall be currently accredited to the Press Photographers' Gallery.

(12) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and their coverage activities in an orderly and unobtrusive manner.

#### Pay of witnesses

5. Witnesses appearing before the House or any of its committees shall be paid the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members, Delegates, the Resident Commissioner, and employees of the House, plus actual expenses of travel to or from the place of examination. Such per diem may not be paid when a witness has been summoned at the place of examination.

#### Unfinished business of the session

6. All business of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

#### RULE XII

##### RECEIPT AND REFERRAL OF MEASURES AND MATTERS

#### Messages

1. Messages received from the Senate, or from the President, shall be entered on the Journal and published in the Congressional Record of the proceedings of that day.

#### Referral

2. (a) The Speaker shall refer each bill, resolution, or other matter that relates to a subject listed under a standing committee named in clause 1 of rule X in accordance with the provisions of this clause.

(b) The Speaker shall refer matters under paragraph (a) in such manner as to ensure to the maximum extent feasible that each matter shall be within the jurisdiction under clause 1 of rule X over the subject matter of a provision thereof may consider such provision and report to the House thereon. Precedents, rulings, or procedures in effect before the Ninety-Fourth Congress shall be applied to referrals under this clause only to the extent that they will contribute to the achievement of the objectives of this clause.

(c) In carrying out paragraphs (a) and (b) with respect to the referral of a matter, the Speaker—

(1) shall designate a committee of primary jurisdiction;

(2) may refer the matter to one or more additional committees for consideration in sequence, either initially or after the matter has been reported by the committee of primary jurisdiction;

(3) may refer portions of the matter reflecting different subjects and jurisdictions to one or more additional committees;

(4) may refer the matter to a special, ad hoc committee appointed by the Speaker with the approval of the House, and including members of the committees of jurisdiction, for the specific purpose of considering that matter and reporting to the House thereon;

(5) may subject a referral to appropriate time limitations; and

(6) may make such other provision as may be considered appropriate.

(d) A bill for the payment or adjudication of a private claim against the Government may not be referred to a committee other than the Committee on International Relations or the Committee on the Judiciary, except by unanimous consent.

#### Petitions, memorials, and private bills

3. If a Member, Delegate, or Resident Commissioner has a petition, memorial, or private bill to present, he shall endorse his name, deliver it to the Clerk, and may specify the reference or disposition to be made thereof. Such petition, memorial, or private bill (except when judged by the Speaker to be obscene or insulting) shall be entered on the Journal with the name of the Member, Delegate, or Resident Commissioner presenting it and shall be printed in the Congressional Record.

4. A private bill or private resolution (including an omnibus claim or pension bill), or amendment thereto, may not be received or considered in the House if it authorizes or directs—

(a) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Tort Claims Procedure provided in title 28, United States Code, or for a pension (other than to carry out a provision of law or treaty stipulation);

(b) the construction of a bridge across a navigable stream;

(c) the correction



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