

Sec. 7—Bills and Resolutions

Cls. 1–3—Legislative Process

that the absence of the evils deemed to bottom the Court's premises in *The Pocket Veto Case*—long delay and public uncertainty—made possible the result.

The two-thirds vote of each House required to pass a bill over a veto means two-thirds of a quorum.⁵¹¹ After a bill becomes law, of course, the President has no authority to repeal it. Asserting this truism, the Court in *The Confiscation Cases*⁵¹² held that the immunity proclamation issued by the President in 1868 did not require reversal of a decree condemning property seized under the Confiscation Act of 1862.⁵¹³

Presentation of Resolutions

The purpose of clause 3, the Orders, Resolutions, and Votes Clause (ORV Clause), is not readily apparent. For years it was assumed that the Framers inserted the clause to prevent Congress from evading the veto clause by designating as something other than a bill measures intended to take effect as laws.⁵¹⁴ Why a separate clause was needed for this purpose has not been explained. Recent scholarship presents a different possible explanation for the ORV Clause—that it was designed to authorize delegation of lawmaking power to a single House, subject to presentment, veto, and possible two-House veto override.⁵¹⁵

If construed literally, the clause could have bogged down the intermediate stages of the legislative process, so Congress made practical adjustments. At the request of the Senate, the Judiciary Committee in 1897 published a comprehensive report detailing how the clause had been interpreted over the years. Briefly, it was shown that the word “necessary” in the clause had come to refer to the necessity for law-making; that is, any “order, resolution, or vote” must be submitted if it is to have the force of law. But “votes” taken in either House preliminary to the final passage of legislation need not be submitted to the other House or to the President, nor must concurrent resolutions merely expressing the views or “sense” of Congress.⁵¹⁶

⁵¹¹ *Missouri Pacific Ry. v. Kansas*, 248 U.S. 276 (1919).

⁵¹² 87 U.S. (20 Wall.) 92 (1874).

⁵¹³ 12 Stat. 589 (1862).

⁵¹⁴ See 2 M. FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* (rev. ed. 1937), 301–302, 304–305; 2 JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* § 889, at 335 (1833).

⁵¹⁵ Seth Barrett Tillman, *A Textualist Defense of Art. I, Section 7, Clause 3: Why Hollingsworth v. Virginia was Rightly Decided, and Why INS v. Chadha was Wrongly Reasoned*, 83 TEX. L. REV. 1265 (2005).

⁵¹⁶ S. REP. NO. 1335, 54th Congress, 2d Sess.; 4 HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES § 3483 (1907).