

H. RES. 5
ADOPTING RULES FOR THE 113TH CONGRESS

SECTION-BY-SECTION ANALYSIS

Section 1. Resolved Clause.

This section provides that the Rules of the 112th Congress are the Rules of the 113th Congress, except with the amendments contained in section 2 of the resolution and orders contained in sections 3, 4, and 5.

Section 2. Changes to the Standing Rules.

Committee Activity Reports. Subsection (a) reduces the frequency of committee activity reports from four times per Congress to two times per Congress (once per Session). The process for filing end of session committee reports is also modified to allow filings through January 2nd of each year.

Voting. Subsection (b) streamlines the voting process for several specific instances in the House and the Committee of the Whole. Paragraph (1) authorizes the Chair to reduce the time from 5 minutes to not less than 2 minutes for a vote after a quorum call in the Committee of the Whole, which is similar to the Speaker's current authority in the House to shorten votes following a quorum call. It also authorizes the Chair to reduce the time for voting on the first question arising without intervening debate or motion after the Committee of the Whole resumes its sitting. Paragraph (2) authorizes the Speaker to reduce the time for voting on the first question arising without intervening debate or motion after the Committee of the Whole rises and to reduce the time for voting on motions to recommit to not less than 5 minutes. The Rules Committee intends that these parallel authorities will be used following a vote stack in the Committee of the Whole or the House, respectively, where the Chamber is still full, and hence it would be likely that the Presiding Officer would determine that an adequate opportunity for Members to vote exists.

Clarifications in Rule X. Subsection (c) makes two clarifications with respect to clause 1 of rule X. Paragraph (1) clarifies that the Committee on Homeland Security's jurisdiction includes the general management of the Department of Homeland Security. This change is intended to clarify the Committee's existing jurisdiction over the organization and administration of the department, and is not intended to alter the pattern of bill referrals to the Committee on Homeland Security, nor is it intended to alter the existing oversight jurisdiction of the Committee on Homeland Security. Paragraph (2) conforms terminology used in the Committee on Natural Resources jurisdiction to terminology recognized by the Departments of State and Interior.

Modifications of the Ramseyer Rule. Subsection (d) is intended to improve the readability of the comparative print required by clause 3(e) of rule

XIII—commonly known as a “Ramseyer”—by including other contiguous portions of law if they will be useful in understanding the change made by the amendment. The chair of each committee will determine the portions of the amended law that will be useful to improve readability.

Changes to the Code of Conduct and the Committee on Ethics. Subsection (e) makes several improvements and clarifications to the Code of Conduct. Paragraph (1) clarifies the circumstances under which the Committee on Ethics or its chair must make a public statement following action whereby time for consideration of a certain recommendation from the Office of Congressional Ethics is extended. Currently, the rule could be read to require a public statement when the time is extended by joint action of the chair and ranking minority member, but not when the time is extended by committee vote. Paragraph (2) amends clause 8(c) of rule XXIII to expand the current nepotism rule to conform to current law and adds grandchildren to the rule, who are not currently covered under House Rules or current law. The provision permits grandchildren who were employed by a relative prior to the 113th Congress to retain their employment subject to the same restrictions applied to spouses employed prior to the 107th Congress. Paragraph (3) transfers the responsibility to maintain copies of the executed classified oath, in the case of an officer or employee of the House, to the Sergeant-at-Arms. The Clerk of the House will continue to maintain the executed oaths for Members, Delegates, and Resident Commissioners. Paragraph (4) amends the restrictions on the use of private aircraft contained in the Code of Conduct so as to conform the House rule to the existing rule in the Senate. The changes allow Members to pay their pro rata share for a charter flight based upon the fair market value of the flight, divided by the number of Members, officers, or employees of the House on the flight. It also increases the flexibility of Members with regard to which aircraft may be used. Members may pay for a charter flight authorized under this provision with either personal or official funds. The amended rule would allow House Members to use their campaign funds, in addition to official or personal funds. However, a statute still prohibits House candidates (but not Senate candidates) from using campaign funds for that purpose. Therefore, the rule change only affects personal and official funds unless 2 USC 439a(c)(2) is amended by future legislation. This paragraph also provides that the chair and ranking minority member of the Committee on Ethics may jointly waive this rule, subject to such conditions as they may prescribe. This provision is intended to facilitate the use of private aircraft in extraordinary circumstances, such as in an emergency or in the aftermath of a natural disaster.

Technical and Clarifying Changes. Subsection (f) corrects several typographic and other simple errors in the standing rules. Paragraph (1) corrects a typographic error. Paragraph (2) amends rule II (relating to House Officers) to add the Committee on Appropriations to the list of recipients of audit reports prepared by the Inspector General of the House. Paragraph (3) amends rule V (relating to Broadcasting of House proceedings) to address new technology and clarify acceptable uses of coverage of the floor proceedings. Paragraph (4)

conforms the process for regular meeting notices to committee practice, which will eliminate the need to cancel the regular meeting if it was never noticed. Paragraph (5) clarifies the process for noticing a special meeting called pursuant to clause 2(c)(2) of rule XI. Paragraphs (6) and (7) are technical changes. Paragraph (8) amends rule XI to clarify that if any Member notifies a committee of the intention to file views, all Members are entitled to file views. Paragraph (9) makes a typographic change and related conforming changes. Paragraph (10) conforms clause 6(g) of rule XIII to the Rules Committee practice of specifying waivers in committee reports rather than resolutions. Paragraph (11) amends rule XV to clarify that motions to discharge a committee apply to all committees, including select committees. Paragraph (12) clarifies that precedents related to Calendar Wednesday business in effect before the 111th Congress will be applied only to the extent consistent with clause 6 of rule XV. Paragraph (13) clarifies that with respect to a call of the House in the event of a catastrophic circumstance, the Speaker may consult with the Majority Leader and Minority Leader or their designees. Paragraph (14) conforms rules related to conference reports to existing electronic availability for bills and other measures. Paragraph (15) is a technical change to conform to current House practices. Paragraph (16) eliminates the requirement for physical printing of Member Financial Disclosures in light of online disclosure under the STOCK Act.

Section 3. Separate Orders.

Independent Payment Advisory Board. Subsection (a) eliminates provisions contained in the Affordable Care Act that limit the ability of the House to determine the method of consideration for a recommendation from the Independent Payment Advisory Board or to repeal the provision in its entirety.

Budget Matters. Subsection (b)(1) clarifies that section 306 of the Budget Act (prohibiting consideration of legislation within the Budget Committee's jurisdiction, unless referred to or reported by the Budget Committee) only applies to bills and joint resolutions and not to simple or concurrent resolutions. Paragraph (2) makes a section 303 point of order (requiring adoption of budget resolution before consideration of budget-related legislation) applicable to text made in order as an original bill by a special rule. Paragraph (3) provides that specified or minimum levels of compensation for a Federal office will not be considered as providing new entitlement authority. Paragraph (4) prevents the Committee of the Whole from rising to report a bill to the House that exceeds an applicable allocation of new budget authority under section 302(b) (Appropriations subcommittee allocations) as estimated by the Budget Committee and creates a point of order. Paragraph (5) provides that the provisions of House Concurrent Resolution 112 (112th Congress), as adopted by the House, and the allocations of spending authority printed in tables 11 and 12 of House Report 112-421 (112th Congress) will be in effect until a budget resolution for fiscal year 2014 is adopted.

Determinations for PAYGO Acts. Subsection (c) allows the chair of the Budget Committee to take into account the exemptions provided under 503(b)(1) of H. Con. Res. 112 (112th Congress) for the purpose of complying with Statutory PAYGO.

Spending Reduction Amendments in Appropriations Bills. Subsection (d) carries forward the requirement from the 112th Congress that in each general appropriations bill there be a “spending reduction” account, the content of which is a recitation of the amount by which, through the amendment process, the House has reduced spending in other portions of the bill and indicated that such savings should be counted towards spending reduction. It provides that other amendments that propose to increase spending in accounts in a general appropriations bill must include an offset of equal or greater value.

Estimates of Direct Spending. Subsection (e) prohibits the consideration of a concurrent resolution on the budget, or any proposed amendment to or conference report on, unless it includes specified information and estimates related to direct spending, including means-tested direct spending and nonmeans-tested direct spending. The subsection also requires the chair of the Committee on the Budget to publish a description in the Congressional Record of covered programs.

Certain Subcommittees. Subsection (f) waives clause 5(d) of rule X to allow the Committees on Armed Services and Foreign Affairs up to seven subcommittees each, and the Committee on Transportation and Infrastructure up to six subcommittees. This is a standard provision carried in the rules package during the last several congresses.

Exercise Facilities for Former Members. Subsection (g) continues the prohibition on access to any exercise facility that is made available exclusively to Members, former Members, officers and former officers of the House and their spouses to any former Member, former officer, or spouse who is a lobbyist registered under the Lobbying Disclosure Act of 1995.

Numbering of Bills. Subsection (h) reserves the first 10 numbers for bills (H.R. 1 through H.R. 10) for assignment by the Speaker and the second 10 numbers (H.R. 11 through H.R. 20) for assignment by the Minority Leader.

Inclusion of United States Code Citations. Subsection (i) requires the sponsor of a bill or joint resolution to include, if available and to the maximum extent practicable, the applicable United States Code citation when the legislation proposes to repeal or amend in full or in part any uncodified law.

Duplication of Federal Programs. Subsection (j) authorizes the chair of a committee to request that the Government Accountability Office perform a duplication analysis of any bill or joint resolution referred to that committee. The subsection also requires committee reports to include a statement indicating

whether any provision of the measure establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal Program.

Disclosure of Directed Rule Makings. Subsection (k) requires committee reports on bills or joint resolutions to include a statement estimating the number of directed rule makings required by the measure. The subsection defines “directed rule making” to include those rule makings specifically directed to be completed by a provision in the legislation, but does not include a grant of discretionary rule making authority.

Section 4. Committees, Commissions, and House Offices.

Litigation Matters. Subsection (a) carries forward the authority of the House, and certain constituent entities on its behalf, to litigate ongoing matters. Paragraph (1) particularly relates to the House’s litigation through the Bipartisan Legal Advisory Group, the entity that speaks for, and articulates the litigation position of, the House in all litigation matters in which it appears.

The Bipartisan Legal Advisory Group currently is litigating a number of matters on behalf of the House involving the constitutionality of Section 3 of the Defense of Marriage Act (“DOMA”). DOMA was enacted in 1996 by overwhelming bipartisan majorities of both houses of Congress and then signed into law by President Clinton. Congress and the President relied, in part, on the Department of Justice’s advice that DOMA was constitutional. *See, e.g.,* Letter from Andrew Fois, Asst. Att’y Gen., to Rep. Canady (May 29, 1996), *reprinted in* H.R. Rep. No. 104-664, at 34 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2905 (“House Report”); Letter from Andrew Fois, Asst. Att’y Gen., to Rep. Hyde (May 14, 1996), *reprinted in* House Rep. at 33-34; Letter from Andrew Fois, Asst. Att’y Gen., to Sen. Hatch (July 9, 1996), *reprinted in Defense of Marriage Act: Hearing on S. 1740 Before the S. Comm. on the Judiciary, 104th Cong. 2* (1996).

It is the constitutional responsibility of the Executive Branch to defend the constitutionality of duly-enacted statutes such as DOMA. U.S. Const. art. II, § 3 (“[The President] shall take Care that the Laws be faithfully executed . . .”). However, on February 23, 2011, the Attorney General notified the Speaker of the House that the Executive Branch no longer would defend the constitutionality of DOMA Section 3. Letter from Att’y Gen. Eric H. Holder, Jr., to the Hon. John A. Boehner, Speaker of the House (Feb. 23, 2011). Remarkably, the Executive Branch abdicated its constitutional responsibility, notwithstanding the Attorney General’s candid acknowledgement that:

- in light of “the respect appropriately due to a coequal branch of government,” the Department “has a longstanding practice of defending the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense,” *id.* at 5;
- binding precedents of eleven of thirteen U.S. Courts of Appeals (the other two being silent on the issue) held that sexual orientation classifications are

subject only to rational basis review under the Equal Protection Component of the Due Process Clause of the Fifth Amendment, *id.* at 3-4 nn.4-6; and

- “a reasonable argument for Section 3’s constitutionality may be proffered under [the rational basis] standard,” *id.* at 6.

As a result of the Executive Branch’s abdication of its constitutional responsibility, on March 9, 2011, the Speaker of the House, on the recommendation of the Bipartisan Legal Advisory Group of which he is a part, and in accordance with the Rules and precedents of the House, directed the Office of the General Counsel to represent the Bipartisan Legal Advisory Group, on behalf of the House, in defending the constitutionality of DOMA Section 3 in civil actions in which that statute’s constitutionality has been challenged in order to protect the interests of the House. The House has articulated its institutional position in litigation matters through a five-member bipartisan leadership group since at least the early 1980s, although the formulation of the group’s name has changed somewhat over time. Since 1993, the House rules formally have acknowledged and referred to the Bipartisan Legal Advisory Group as such.

Prior to its involvement in the DOMA litigation, the Bipartisan Legal Advisory Group, or its predecessors, had intervened in at least eleven cases. *See, e.g., Adolph Coors Co. v. Brady*, 944 F.2d 1543, 1545 (10th Cir. 1991); *In re Koerner*, 800 F.2d 1358, 1360 (5th Cir. 1986); *North v. Walsh*, 656 F. Supp. 414, 415 n.1 (D.D.C. 1987); *Am. Fed’n of Gov’t Emps. v. United States*, 634 F. Supp. 336, 337 (D.D.C. 1986); *Synar v. United States*, 626 F. Supp. 1374, 1378-79 (D.D.C.), *aff’d sub nom. Bowsher v. Synar*, 478 U.S. 714 (1986); *Ameron, Inc. v. U.S. Army Corps of Eng’rs*, 607 F. Supp. 962, 963 (D.N.J. 1985), *aff’d*, 809 F.2d 979 (3d Cir. 1986); *Barnes v. Carmen*, 582 F. Supp. 163, 164 (D.D.C. 1984), *rev’d sub nom. Barnes v. Kline*, 759 F.2d 21, 22 (D.C. Cir. 1985), *rev’d on mootness grounds sub nom. Burke v. Barnes*, 479 U.S. 361, 362 (1987); *In re Prod. Steel, Inc.*, 48 B.R. 841, 842 (M.D. Tenn. 1985); *In re Moody*, 46 B.R. 231, 233 (M.D.N.C. 1985); *In re Tom Carter Enters., Inc.*, 44 B.R. 605, 606 (C.D. Cal. 1984); *In re Benny*, 44 B.R. 581, 583 (N.D. Cal. 1984), *aff’d in part and dismissed in part*, 791 F.2d 712, 714 (9th Cir. 1986).

In addition, the Bipartisan Legal Advisory Group, or its predecessors, has appeared on behalf of the House as amicus curiae in more than a dozen other cases – generally cases in which the Executive Branch had not abandoned its duty to defend a duly-enacted statute. *See, e.g., Br. of Amicus Curiae the Bipartisan Legal Advisory Group of the U.S. House of Representatives in Supp. of Pet’r, Renzi v. United States*, No. 11-557, 2011 WL 6019914 (S. Ct. Dec. 2, 2011); *Dickerson v. United States*, 530 U.S. 428, 430 n.* (2000); *Raines v. Byrd*, 521 U.S. 811, 818 n.2 (1997); *Am. Foreign Serv. Ass’n v. Garfinkel*, 490 U.S. 153, 154 (1989); *Morrison v. Olson*, 487 U.S. 654, 659 (1988); *Japan Whaling Ass’n v. Am. Cetacean Soc’y*, 478 U.S. 221, 223 (1986); *Helstoski v. Meanor*, 442 U.S. 500, 501 (1979); *United States v. Helstoski*, 442 U.S. 477, 478 (1979); *United States v. Renzi*, 651 F.3d 1012, 1015 (9th Cir. 2011); *In re Grand Jury Subpoenas*, 571 F.3d 1200 (D.C. Cir. 2009); *Fields v. Office of Eddie Bernice Johnson*, 459

F.3d 1, 3 (D.C. Cir. 2006) (en banc); *Beverly Enters., Inc. v. Trump*, 182 F.3d 183, 186 (3d Cir. 1999); *United States v. McDade*, 28 F.3d 283, 286 (3d Cir. 1994); *In re Search of The Rayburn House Office Bldg.*, 432 F. Supp. 2d 100, 104-05 (D.D.C. 2006), *rev'd sub nom. United States v. Rayburn House Office Bldg.*, 497 F.3d 654 (D.C. Cir. 2007). Accordingly, the intervention by the Bipartisan Legal Advisory Group in the DOMA Section 3 cases to articulate the House's institutional position, and to protect the House's institutional interests, has been neither unusual nor extraordinary.

Recently, the Supreme Court granted certiorari in one of the cases in which the Bipartisan Legal Advisory Group has intervened to defend the constitutionality of DOMA Section 3, i.e., *Windsor v. United States*, 833 F. Supp. 2d 394 (S.D.N.Y. 2012), *aff'd*, 699 F.3d 169 (2d Cir. 2012), *cert. granted*, No. 12-307 (Dec. 7, 2012), *cert. pending* No. 12-63 (July 16, 2012), and No. 12-785 (Dec. 28, 2012). In granting certiorari in *Windsor*, the Supreme Court asked the parties to brief, in addition to the merits of the DOMA Section 3 issue, this question: “[W]hether the Bipartisan Legal Advisory Group of the United States House of Representatives has Article III standing in this case.” Op. Granting Cert., *Windsor v. United States*, No. 12-307, 2012 WL 4009654 (Dec. 7, 2012).

Paragraph (1) is intended to clarify the role of the Bipartisan Legal Advisory Group generally, and in the *Windsor* litigation particularly.

Paragraph (2) authorizes the Committee on Oversight and Government Reform, through the House Office of the General Counsel, to continue litigation to enforce a subpoena against the Attorney General related to the "Fast and Furious" investigation. This lawsuit was authorized by H. Res. 706 (112th Congress). It also authorizes the chair of the Committee on Oversight and Government Reform (when elected) to take certain actions necessary to continue the litigation. Parallel authority was contained in H. Res. 5 (111th Congress) on a similar contempt matter.

House Democracy Partnership. Subsection (b) reauthorizes the House Democracy Partnership.

Tom Lantos Human Rights Commission. Subsection (c) reauthorizes the Tom Lantos Human Rights Commission.

Office of Congressional Ethics. Subsection (d) reauthorizes the Office of Congressional Ethics (OCE) for the 113th Congress and clarifies that term limits do not apply to members of the OCE.

Empanelling Investigative Subcommittee of the Committee on Standards and Official Conduct. Subsection (e) continues House Resolution 451 (110th Congress) directing the Committee on Standards of Official Conduct (now Ethics) to empanel investigative subcommittees within 30 days after the date a Member is indicted or criminal charges are filed.

Section 5. Additional Orders of Business

Reading of the Constitution. Subsection (a) allows the Speaker to recognize Members for the reading of the Constitution on any legislative day through January 15, 2013.

Motions to Suspend the Rules. Subsection (b) authorizes the Speaker to entertain motions that the House suspend the rules relating to a measure addressing flood insurance at any time on the legislative day of January 4, 2013.