



Sessions, Adjournments, and Recesses of Congress

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Summary

The House and Senate use the terms *session*, *adjournment*, and *recess* in both informal and more formal ways, but the concepts apply in parallel ways to both the daily and the annual activities of Congress. A *session* begins when the chamber convenes and ends when it *adjourns*. A *recess*, by contrast, does not terminate a session, but only suspends it temporarily.

In context of the daily activities of Congress, any calendar day on which a chamber is in session may be called a (calendar) “day of session.” A *legislative day*, by contrast, continues until the chamber *adjourns*. A session that continues into a second calendar day without adjourning still constitutes only one legislative day, but if a chamber adjourns, then reconvenes later on the same day, the single day of session includes two legislative days. Conversely, if a chamber *recesses* and then reconvenes on the same day, the same day of session and the same legislative day both continue. Finally, when a chamber recesses overnight, instead of adjourning, although a new calendar day of session begins when it reconvenes, the same legislative day continues.

A regular annual *session* of Congress begins when the two chambers convene in January, pursuant to the Constitution (or to law). An annual session ends with an *adjournment sine die*. Until the next annual session convenes, Congress is then in a period of sine die adjournment (or “intersession recess”). If the President were to call an additional, “extraordinary” session, it would be procedurally similar to a regular annual session.

The Constitution provides that neither chamber may adjourn for three days or more without the consent of the other. The two houses consent to each other’s sine die adjournment by adopting a concurrent resolution, called an “adjournment resolution.” They use a similar vehicle to allow each other to suspend their daily sessions for three days or more without terminating their annual session. Such a suspension is called a “recess of the session,” an intrasession recess, or, more formally, an “adjournment for more than three days” within a session. To avoid the need for a concurrent resolution, a chamber may hold *pro forma sessions* on such a schedule that no break of three days or more occurs.

Legislation retains its status, and may continue to receive action, until the last session of a Congress adjourns sine die. Nowadays, measures are “pocket vetoed” only when unsigned by the President after a final adjournment sine die. Nominations, by contrast, will be returned to the President if they remain pending whenever the Senate adjourns sine die or recesses its session for more than 30 days, unless the body otherwise orders.

“Lame duck sessions” are periods when Congress is in session after election day, but before the newly elected Congress takes office. Nowadays, they are not separate annual sessions, but portions of the last regular annual session of a Congress, usually separated from the pre-election portion by a recess of the session or by a period of pro forma sessions.

Recent Presidents have made recess appointments during intersession recesses (periods of sine die adjournment), even very short ones, but have usually done so during intrasession recesses only of 10 days or more. Pro forma sessions have sometimes been used to preclude recess appointments by preventing a recess of the session. The Office of Legal Counsel has recently argued that recess appointments are possible during a period that would be a recess of the session if not for pro forma sessions. A 2013 U.S. Court of Appeals decision instead asserts that recess

appointments are allowable only during intrasession recesses, and only for vacancies that arose during that recess.

Certain statutes provide that Congress may disapprove, or must approve, specified actions of the executive branch by using expedited (“fast track”) procedures during specified periods. These periods may be defined in calendar days, days of session, legislative days, or “days of continuous session.” Days of continuous session include all calendar days except those on which either chamber is in a “recess of the session.”

Contents

| | |
|--|----|
| Introduction..... | 1 |
| Daily Sessions and Their Adjournments and Recesses..... | 2 |
| Adjournment from Day to Day..... | 3 |
| Recess of the Daily Session..... | 4 |
| Bringing About a Recess of the Daily Session..... | 5 |
| Relation of “Days of Session” and Legislative Days | 6 |
| Constitutional Restriction on Daily Adjournments and Recesses | 7 |
| Annual Sessions and Their Adjournments and Recesses..... | 8 |
| Annual Sessions of Congress | 8 |
| Regular Sessions | 8 |
| Extraordinary Sessions..... | 9 |
| Adjournment Sine Die..... | 10 |
| “Recess of the Session” | 10 |
| Relation of Daily and Annual Sessions and Recesses | 12 |
| Pro Forma Sessions | 13 |
| Practical Applications | 14 |
| Continuity of Business | 14 |
| Presidential Action on Legislation..... | 15 |
| “Lame Duck Sessions” | 16 |
| Recess Appointments..... | 17 |
| Statutory Expedited Procedures..... | 20 |
| Measuring Periods for Action and the Effect of Recesses of the Session | 21 |
| Recesses and the Alignment of Periods for Action | 22 |
| Effect of Sine Die Adjournment..... | 23 |

Contacts

| | |
|---------------------------------|----|
| Author Contact Information..... | 24 |
| Acknowledgments | 24 |
| Key Policy Staff..... | 24 |

Introduction

Congress regulates the timing of its activities, both from day to day and over the two-year term for which it is elected, by rules governing how its sessions begin, continue, and end. These rules have a variety of procedural consequences, both for the flow of business in each chamber (such as for the order of business and the consideration of measures) and for actions that involve relations between the chambers and with the executive branch (such as pocket vetoes and recess appointments).¹ The purpose of this report is to describe the main features of the rules governing sessions of Congress, the means by which each chamber implements them, and their chief implications for the conduct of business.

Some of the pertinent regulations governing the timing of actions are prescribed by the Constitution, while others are established by the adopted rules of each chamber. Both kinds of regulation have come to be implemented in ways that depend not only on their explicit terms, but also on interpretations that have become accepted and practices that have become customary.²

The basic terms this report uses to describe the timing of congressional activity are the session, adjournment, and recess. All three terms are used in relation both to the daily and the annual activities of Congress. While they are used in ways that are generally parallel in the daily and annual contexts, their precise meanings often differ in detail. This report will generally distinguish the two contexts, as appropriate, by speaking of “daily” sessions, adjournments, and recesses, and “annual” ones.

In either a daily or an annual context, generally speaking, a *session* is a period when a chamber is formally assembled as a body and can, in principle, engage in business. A *session* begins when a chamber *convenes*, or assembles, and ends when it *adjourns*. In the period between convening and adjournment, the chamber is said to be “in session.” Once a chamber adjourns, it may be said to “stand adjourned,” and until it reconvenes, it may be said to be “out of session,” or “in adjournment.” The period from a chamber’s adjournment until its next convening is also often called “an adjournment.”

The term *recess*, by contrast, is generally used to refer to a temporary suspension of a session, or a break within a session.³ For a break within the daily session, this term is a formal designation; for a break within an annual session, the term is only colloquial, but is in general use. In either context, a recess begins when the chamber recesses, or “goes into recess.” For most purposes, it

¹ The President “pocket vetoes” a measure by leaving it unsigned when Congress has adjourned and so cannot override his disapproval. See “Presidential Action on Legislation” in this report for a discussion of this issue. A recess appointment is a temporary appointment by the President to fill a vacancy when the Senate is out of session. See “Recess Appointments” in this report for a discussion of this issue.

² See William Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice: A Guide to the Rules, Precedents, and Practices of the House* (Washington: GPO, 2011), [Hereafter, *House Practice*] chap. 1 (“Adjournment”), sec. 1, p. 2; U.S. Congress, Senate, *Riddick’s Senate Procedure: Precedents and Practices*, by Floyd M. Riddick, Parliamentarian Emeritus, and Alan S. Frumin, Parliamentarian, rev. and ed. by Alan S. Frumin, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992) [Hereafter, *Riddick’s Senate Procedure*] (“Adjournment”), pp. 1-3.

³ In some contexts, the period between the adjournment of one annual session and the convening of the next also may be referred to as a “recess,” as discussed under “Adjournment Sine Die,” “Recess of the Session,” and “Recess Appointments.”

can be said that a recess, like an adjournment, ends when the chamber reconvenes. During the period between recessing and reconvening, the chamber is said to be “in recess” or to “stand in recess.” When a chamber reconvenes from a recess, the suspended session resumes. For some purposes, nevertheless, it can be convenient to speak of a period between convening and recessing, or between reconvening and adjourning, or between recesses, also as “a session.”

Although these basic explanations of the terms reflect common usage in the congressional context, they do not always take full account of the technical meanings that each term may bear in connection with specific chamber rules and precedents or with various interpretations of provisions of the Constitution. These technical meanings, moreover, may also vary from one formal context to another, or between the House and Senate. It is the intent of this report, throughout, to identify and distinguish the various senses, both formal and informal, in which the respective terms are being used.

This report first describes how pertinent rules and practices regulate the daily sessions of Congress and their adjournments and recesses, including discussion of the “legislative

day.” It then develops a corresponding discussion for the annual sessions of Congress, which addresses, among other things, the use of “pro forma sessions.” The report clarifies certain situations in which terms may simultaneously apply in different ways in relation to the daily session and to the annual session. Finally, the report notes some of the most important implications of the occurrence of sessions, adjournments, and recesses in relation to such matters as presidential action on legislation, recess appointments by the President, the operation of statutory expedited procedures (“fast track” procedures), and “lame duck” (post-election) sessions.

Session. A period when a chamber is formally assembled as a body and can, in principle, engage in business.

Adjournment. The means through which a session is ended.

Recess. A temporary suspension of a session; a break within a session.

Daily Sessions and Their Adjournments and Recesses

In context of the daily activities of Congress, each chamber convenes, or assembles, by being called to order by the chair; it is then commonly said to be “in session.” Once a daily session is convened, a chamber remains in session, in this sense, until it adjourns for the day (or perhaps until it recesses for the day, although, as elaborated later, the formal effect of recessing is in some respects different).

Generally speaking, it is only when the chamber is in session in this sense that it can engage in official business. When a chamber is in session, in this sense, a presiding officer will be in the chair, Members may be present in their official capacities and participate in acts of the body, and the presence of a quorum may be required. In particular circumstances, however, either chamber may provide that, during a specific daily session, no business, or none of specified kinds, may occur.⁴

⁴ This account draws in part on observations offered by Elizabeth Rybicki, specialist on Congress and the Legislative Process in the Government and Finance Division of the Congressional Research Service.

In these terms, the period between the convening of a daily session and its adjournment or recess is necessarily a continuous period of time. Normally, on any day on which a chamber convenes, it adjourns (or recesses for the day) later on the same day. A calendar day on which a chamber convenes and then adjourns or recesses until a later calendar day may be called a “calendar day of session” or, more informally, simply a “day of session” for that chamber. In some Senate contexts, the term “session day” is used in a technical sense, especially, as described later, in connection with expedited or “fast track” procedures. The House, on the other hand, makes no use of this term in formal contexts.

It sometimes happens that a chamber convenes on one day and remains continuously in session, without adjourning or recessing, until the next calendar day (or even until some later day). Whether it might be appropriate to describe such a period as a single “day of session” or two (or more) could depend on the specific procedural context. If, on the other hand, a chamber were to be out of session at all points throughout an entire calendar day, it could not, in general, be appropriate to speak of that day as a “day of session” for that chamber.

Adjournment from Day to Day

An adjournment of the daily session of either chamber, more formally called an *adjournment from day to day*, terminates that daily session. More technically, an adjournment from day to day terminates a “legislative day,” a concept that is more fully addressed below in the section on “Relation of “Days of Session” and Legislative Days.”

A chamber normally adjourns its daily session by adopting a motion to adjourn.⁵ The Senate sometimes adjourns, instead, by agreement to a unanimous consent request. In the practice of the House, however, adjournment by unanimous consent occurs only by declaration of the Speaker, and only “when no Member is available” to offer the motion.⁶ The Senate also may adjourn pursuant to a previous order setting the time at which adjournment will occur;⁷ the House generally does not use such a practice. Finally, Senate rules authorize the chair to declare a daily adjournment of the Senate if notified of an “imminent threat.”⁸

Once a chamber adjourns, it is “in adjournment.” At that point, no daily session is in progress, which means, in general, that the chamber cannot conduct any official business as a body.⁹ A chamber may, however, adopt orders (while it is in session) providing that certain kinds of administrative business, such as the receipt of messages from the President or reports of committees, may occur during an adjournment.

⁵ In both the House and Senate, this motion is not subject to debate, amendment, or a motion to lay on the table. With only narrow exceptions, the motion is in order at any point in the proceedings. *House Practice*, pp. 2-3; *Riddick’s Senate Procedure*, p. 3. It is normally offered by a member or designee of the leadership of the majority party, which is accorded the responsibility for arranging the schedule of the chamber, and is usually adopted by voice vote.

⁶ *House Practice*, chap. 1 (“Adjournment”), sec. 5, p. 5.

⁷ *Riddick’s Senate Procedure* (“Adjournment”), p. 5.

⁸ S.Res. 296 (108th Cong.) established a standing order allowing the presiding officer in the Senate to declare a recess or adjournment of less than three days when he or she has been notified of an “imminent threat.” This standing order also authorizes the majority and minority leaders (or their designees), when the Senate is out of session, to modify any order as to the time or place for reconvening after a recess or adjournment of less than three days when warranted by “intervening circumstances.” The House addresses such situations through recesses, as explained in the next section.

⁹ This statement requires modification for the House of Representatives, as discussed in the following section on “Recess of the Daily Session.”

When a chamber reconvenes after a daily adjournment, a new daily session begins. At that point, the daily order of business prescribed by chamber rules begins anew. In each chamber, for example, a new calendar day of session begins with a prayer by the Chaplain and the recitation of the Pledge of Allegiance. Any legislation that was under consideration and pending at the adjournment of the previous day's session is converted into the unfinished business of the new daily session.¹⁰

During a daily session, either chamber may (by motion, resolution, or unanimous consent) adopt an order setting the time when it will reconvene after it adjourns. If a chamber adjourns its daily session in the absence of such an order, it reconvenes in accordance with a resolution specifying the normal schedule of the chamber that it typically adopts at the beginning of each new Congress.¹¹

Recess of the Daily Session

In addition to a daily adjournment, which terminates a daily session, a chamber may take a recess within its daily session. For example, a chamber may recess while awaiting the arrival of a specific item of business, or in order to convene in a joint meeting with the other chamber to hear an address by a foreign dignitary. Unlike a daily adjournment, a recess of the daily session does not terminate the daily session. Instead, when a chamber reconvenes after a recess, the same daily session resumes, and business continues from the point it had reached when the recess began.

A recess often occupies only a brief period during a day's session. A chamber, however, also may recess its daily session overnight or for a longer period. In some respects, the effects of an overnight recess may resemble those of a daily adjournment. When the Senate reconvenes after an overnight recess, for example, it observes the same ceremonies that are customary when reconvening after an adjournment, such as the prayer and pledge of allegiance,¹² which is not done after a recess that takes place within a single calendar day. In the Senate, as well, it may in general appropriately be said that an overnight recess, like a daily adjournment, brings a calendar day of session to an end. When the House has reconvened after a recess overnight or longer, on the other hand, it has often omitted the ceremonies customary at the beginning of the next day's session, but has instead taken up the activity of the previous day from the point at which it had been suspended.

Formally, however, a recess, even one that lasts overnight, is unlike an adjournment, in that it does not procedurally terminate a legislative day. Whenever a chamber reconvenes after a daily recess, even if the recess began on a preceding calendar day, the previously existing legislative day is considered as resuming, and business continues from the point at which it stood when the recess began. In the terms being used here, as a result, a single legislative day may include more than one calendar day of session.

¹⁰ *House Practice*, chap. 55 ("Unfinished Business"), pp. 901-905. *Riddick's Senate Procedure* ("Unfinished Business"), pp. 1370-1380.

¹¹ See, for example, "Daily Hour of Meeting," proceedings in the House, *Congressional Record* [daily ed.], vol. 157, January 5, 2011, p. H28 (H.Res. 10), and "Fixing the Hour of Daily Meeting of the Senate," proceedings in the Senate, *Congressional Record* [daily ed.], vol. 157, January 5, 2011, p. S6 (S.Res. 3).

¹² *House Practice*, chap. 36 ("Order of Business; Privileged Business"), sec. 2, pp. 660-662; *Riddick's Senate Procedure* ("Prayer in the Senate"), p. 1004, ("Opening of a Daily Session of the Senate"), p. 1525.

In context of the daily sessions of Congress, accordingly, being in recess is in strict contrast with being in adjournment: the House or Senate may either be recessed or adjourned, but it cannot be in both states at the same time. In the same way, once a chamber has recessed, it can be said to be “in recess,” but it cannot formally be described as “in adjournment.”

The House and Senate differ, however, in their interpretation of the relation between a daily session and a recess thereof. The House considers its daily session to continue during a recess: the mace¹³ remains in its place at the rostrum and certain forms of routine business may occur, such as the introduction of bills and the filing of reports by committees.¹⁴ The Senate, by contrast, permits actions of this kind during a recess only pursuant to an “order, adopted by unanimous consent.”¹⁵ In this sense, although the House can be described as “in recess” between the time it recesses and the time it reconvenes, it cannot technically be described as “out of session” during that time. In the Senate, on the other hand, it might be considered proper to say that when the chamber is “in recess,” it is “out of session.”

Bringing About a Recess of the Daily Session

In both chambers, an order for a recess of the daily session will, in general, specify the time for reconvening; otherwise, it will most likely provide for reconvening “at the call of the chair.” The means used to bring about a daily recess, however, differ between the two chambers. The Senate can bring about a daily recess by essentially the same means it may use for a daily adjournment. Senate rules give high precedence to a motion to recess, second only to the motion to adjourn.¹⁶ The Senate also can recess by unanimous consent, or pursuant to an order previously adopted by unanimous consent.

In the House, by contrast, a motion simply to recess is not privileged.¹⁷ Instead, House Rules allow a motion to authorize the Speaker to declare a recess, if the Speaker recognizes a Member for that motion.¹⁸ Although the House could recess by unanimous consent or pursuant to a previous order, it more usually proceeds under this Rule by giving the Speaker authorization in advance to declare the recess. House Rules accord the Speaker also the general authority to declare a recess “for a short time” subject to the call of the Chair if no business is pending.¹⁹ Finally, House Rules authorize the Speaker to declare an “emergency recess” subject to the call of the Chair when notified of an “imminent threat to [the] safety” of the House.²⁰

¹³ The mace is a symbol of parliamentary authority and is displayed while the House is meeting in daily session. For further information, see CRS Report 98-396, *Guide to Individuals Seated on the House Dais*, by Valerie Heitshusen.

¹⁴ *House Practice*, chap. 45 (“Recess”), sec. 1, p. 779.

¹⁵ *Riddick’s Senate Procedure* (“Recess”), p. 1082.

¹⁶ The motion for a recess in the Senate is not debatable, and may not be laid on the table, but it is amendable. *Riddick’s Senate Procedure* (“Recess”), pp. 1080-1081, 1084.

¹⁷ Privileged measures and actions are those that may interrupt the regular order of business. For further information, see CRS Report 95-563, *The Legislative Process on the House Floor: An Introduction*, by Christopher M. Davis.

¹⁸ House Rule XVI clause 4. This motion is neither debatable nor amendable. *Constitution, Jefferson’s Manual, and Rules of the House of Representatives, One Hundred Twelfth Congress*, H.Doc. 111-157, 111th Cong., 2nd sess., [compiled by] John V. Sullivan, Parliamentarian (Washington: GPO, 2011), [hereafter *House Manual*], sec. 913.

¹⁹ House Rule I clause 12(a), *House Manual*, sec. 638.

²⁰ House Rule I clause 12(b), *House Manual*, sec. 639. In addition, if emergency conditions arise during a recess or adjournment, the Speaker may alter the time for the House to reconvene from that previously ordered. House Rule I clause 12(c). See *House Practice*, chap. 1 (“Adjournment”), p. 2. For corresponding Senate practices, see note 8 and (continued...)

Except under the rule providing for an emergency recess, or in accordance with a previous order of the House itself, the House cannot recess while sitting as the Committee of the Whole.²¹ Instead, the Committee of the Whole would first have to rise, and the House would then recess using the procedures just described.²²

Relation of “Days of Session” and Legislative Days

The distinction between recesses and adjournments (of the daily session) underlies the concept of the “legislative day.” Although the term “legislative day” is sometimes informally used to mean a calendar day on which a chamber is in session, this usage is, in most technical contexts, incorrect. In cases when the significant distinction is whether or not any daily session of a chamber occurred on a specific calendar day, it will be less ambiguous or misleading simply to speak of a calendar day of session of the chamber (or, more informally, as suggested earlier, of a “day of session”).

A calendar day of session, in this sense, and a legislative day will not necessarily begin and terminate at the same point in time. A legislative day ends only when the chamber adjourns, and a new legislative day begins whenever the chamber reconvenes after an adjournment. When a chamber reconvenes after recessing, by contrast, no new legislative day begins, because no adjournment has intervened. If the chamber has recessed overnight, clearly a new calendar day of session begins, but still there is no new legislative day. As a result, a legislative day is not always the same as a “day of session,” in either the House or Senate. By recessing overnight rather than adjourning, a chamber may continue a single legislative day into a second calendar day. By repeating this proceeding, a chamber may continue the same legislative day for many days, even for several weeks or months.

A chamber may make use of this proceeding in order to bring about desired procedural consequences. In the Senate, for example, rules prescribe that a “morning hour,” during which several orders of routine “morning business” are supposed to take place, is to occur at the beginning of each new legislative day. For several decades late in the 20th century, the Senate often remained in the same legislative day for extended periods by continuing to recess overnight (and even over weekends) rather than adjourning. By this means it avoided the possibility that the requirement for a “morning hour” could be used for dilatory purposes. The House, for various purposes, has also occasionally made use of such a proceeding. Nowadays, however, both chambers normally adjourn at the end of each daily session, which means that in practice, the calendar day and the legislative day usually coincide.²³

Conversely, instead of taking a short recess within a calendar day, a chamber may adjourn briefly and reconvene later on the same day. (For this purpose, before the chamber adjourns, it will agree

(...continued)

text at that point.

²¹ The Committee of the Whole is a parliamentary device that affords the House broad opportunities for considering amendments. For further information, see CRS Report RL32200, *Debate, Motions, and Other Actions in the Committee of the Whole*, by Bill Heniff Jr. and Elizabeth Rybicki.

²² *House Practice*, chap. 45 (“Recess”), sec. 1, p. 779.

²³ *House Practice*, chap 1 (“Adjournment”), p. 3; *Riddick’s Senate Procedure* (“Adjournment”), p. 14. In current practice, the Senate usually adjourns its daily session after first giving unanimous consent that, on the following day, “morning hour” proceedings be dispensed with.

to an order specifying the time for it to reconvene.) In this case, when the chamber reconvenes, a new legislative day begins, even though the calendar day remains the same, because an adjournment has intervened between the two periods of session. By this means, a chamber may convene for more than one legislative day on a single calendar day.

Legislative Day. A period beginning with the convening of a chamber after an adjournment and ending with an adjournment.

(Daily) Session. A period (on a calendar day) during which a chamber is in session.

“Day of Session.” Informal term to describe a calendar day during some part of which a chamber is in session.

Daily Adjournment (Adjournment from Day to Day). The means through which a legislative day is terminated. If the chamber does not reconvene until the following calendar day, the adjournment also terminates a “day of session.”

Daily Recess. The means through which a legislative day is suspended. When the chamber reconvenes, the same legislative day continues, even if the recess extended overnight, and thereby terminated the previous “day of session.”

For instance, Senate Rules provide that when a measure is reported from committee, it must normally lie over for a period stated in legislative days before it can be taken up for consideration. Similarly, House Rules provide that a “special rule” (a resolution reported by the Committee on Rules, establishing a special order of business) may not be considered on the same day reported, except by a two-thirds’ vote, and this requirement is interpreted in terms of the legislative day.²⁴ Either chamber may more quickly satisfy a layover requirement defined in terms of legislative days by adjourning for a few minutes and immediately reconvening in a second

legislative day on the same calendar day. In recent times, each chamber has used such a proceeding only occasionally.²⁵

Constitutional Restriction on Daily Adjournments and Recesses

In setting times for reconvening after a daily adjournment, both chambers are restricted by the Adjournments Clause of the Constitution, which requires that “Neither House, during the session of Congress, shall, without the Consent of the other, adjourn for more than three days”²⁶ Under this provision, neither chamber, acting on its own sole authority, can authorize a daily adjournment to a day more than three full calendar days thereafter.²⁷ In practice, Congress interprets this constitutional restriction on adjournments of the daily session as applicable also to daily recesses: a chamber may not arrange to stand in recess continuously for more than three full calendar days without having received the consent of the other.²⁸

²⁴ House Rule XIII clause 6(a), *House Manual*, sec. 857. See especially the second paragraph of the Parliamentarian’s commentary.

²⁵ Both chambers sometimes interpret references in the Rules simply to “days,” without qualification, as meaning legislative days rather than calendar days (or “days of session”). Hinds, Asher C., *Hinds’ Precedents of the House of Representatives of the United States* (Washington: GPO, 1907), vol. IV, sec. 3192. *Riddick’s Senate Procedure* (“Day”), pp. 712-715.

²⁶ Article I, Section 5, clause 4.

²⁷ According to the practice of the House, and apparently of the Senate as well, the three days must include either the day on which the recess begins or the day on which it ends, but Sunday is excluded from the count. *House Practice*, chap. 1 (“Adjournment”), sec. 10, p. 8; *Riddick’s Senate Procedure* (“Day”), p. 714.

²⁸ *House Practice*, chap. 1 (“Adjournment”), sec. 13, pp. 11-12; *Riddick’s Senate Procedure* (“Adjournment”), pp. 17-21.

When either chamber plans to adjourn or recess its daily session for three days or more, Congress has developed two means of satisfying this constitutional requirement. One is for the two chambers to adopt an “adjournment resolution,” which is a concurrent resolution in which each gives the other permission to suspend its daily sessions for the desired period. Concurrent resolutions are appropriate for this purpose, because the concurrent resolution is a form of measure that requires the approval of both chambers, but is not presented to the President for approval.

The other means by which a chamber can effectively suspend its daily sessions for three days or more is for it to establish a schedule under which it meets at least every third day. The “three days” of such a break must include either the last day the chamber meets before the break, or the first day after the break. These meetings, held for the purpose of avoiding the necessity of obtaining the consent of the other to an adjournment or recess of three days or more, are known as “pro forma sessions.” Both adjournment resolutions and pro forma sessions are discussed more fully in the following section on annual sessions.

Annual Sessions and Their Adjournments and Recesses

Essential points from the previous section may be summarized by saying that, in respect to its daily sessions, the House or Senate is *in session* whenever it is formally convened, but whenever it has *adjourned*, it is *in adjournment*, and is *out of session*, until it reconvenes. When a chamber has taken a *recess*, it is not *in adjournment*, but it is *in recess* (and the House, at least, cannot then for all purposes be described as *out of session*). These concepts apply to annual sessions in ways that are largely analogous, but the different context leads to some differences in application.

Annual Sessions of Congress

Like a daily session, an annual session of either chamber begins when the session is formally convened and continues until it adjourns. The adjournment of an annual session is an *adjournment sine die*. In contemporary practice, the period between the convening of an annual session and an adjournment sine die typically encompasses a substantial portion of the year.²⁹

Regular Sessions

The Constitution regulates annual sessions by providing that “The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.”³⁰ Even though this provision does not use the word “session,” a “meeting” of Congress pursuant to its provisions is understood to constitute an annual session, and this session is understood to “begin” with its “assembly,” or convening. A session of Congress, in this sense, involves annual sessions of both the House and the Senate that are concurrent (or, in general, at least roughly concurrent).

²⁹ For example, in the 111th Congress, the first session began on January 6 and ended on December 26, 2009; the second session began on January 5 and ended on December 29, 2010.

³⁰ Amendment XX, Section 2.

Each Congress is elected for a two-year term of office, so that the term of office of each Congress comprises two regular annual sessions. Each Congress is identified by its numerical sequence; for example, the Congress that first convened in January 2011 was the 112th Congress. Each annual session is identified by its sequence within its own Congress; for example, the session that convened in January 2012 was the second session of the 112th Congress.

For the first annual session of a new Congress, the Senate is normally convened by the Vice President or by its President pro tempore;³¹ the House of Representatives is normally convened by the Clerk of the previous House.³² Each chamber then engages in organizing activities, including the swearing-in of newly elected Members, the establishment of a quorum, and notification to the other branches. The House adopts its Rules and elects its officers; the Senate accomplishes any desired changes to its previous Rules and officers. These organizing actions are valid for the entire Congress, so that, in any later annual session of the same Congress, each chamber is normally convened by its existing presiding officers, and may then proceed at once to business.

Extraordinary Sessions

The President may call additional sessions of Congress, pursuant to his constitutional power “on extraordinary Occasions, [to] convene both Houses, or either of them.”³³ A session called by the President pursuant to this authority is known as an “extraordinary” session. An extraordinary session stands on the same basis as the regular sessions in respect of its beginning, recess, and adjournment. Accordingly, the basic observations offered in this report section may be extended to extraordinary sessions without material modification, and this report uses the term “annual session” (as contrasted with the “daily session”) to include extraordinary as well as regular sessions.

Under contemporary conditions, the exercise of this Presidential power has seldom proved necessary, for each regular annual session normally continues to meet throughout most of the year. If, however, the President were to call an extraordinary session after the sine die adjournment of one regular annual session and before the convening of the next, the Presidentially called session would be a separate session of Congress, additional to the regular annual sessions that convene pursuant to the Constitution, and would receive a separate number within the regular sequence. For example, the second session of the 76th Congress in 1939 was an extraordinary session, convened by the President after the sine die adjournment of the first session; as a result, the final regular session of the 76th Congress, which convened in 1940, became the third session of that Congress. If, on the other hand, the President were to convene Congress at a time between the convening and sine die adjournment of a regular annual session, that same annual session would reconvene and continue to meet. For example, when President Truman called the 80th Congress back in 1948, the second session of that Congress had not

³¹ The Vice President is the President of the Senate. The President pro tempore presides in the Vice President’s absence.

³² *House Practice*, chap. 5 (“Assembly of Congress”), sec. 4, p. 156. Senate Rule I paragraph 1, in U.S. Congress, Senate, *Senate Manual, Containing the Standing Rules, Laws, and Resolutions Affecting the Business of the United States Senate*, prepared by Matthew McGowan under the direction of Jean Parvin Bordewich, staff director, Committee on Rules and Administration, 112th Cong., 1st sess., S.Doc. 112-1 (Washington: GPO, 2011), sec. 1.

³³ Article II, Section 3.

adjourned sine die; as a result, the assembly of Congress pursuant to the President's call represented a continuation of that second session.

Adjournment Sine Die

Just as a daily session continues until an adjournment from day to day, so an annual session (of either chamber) continues until an *adjournment sine die* (or "sine die adjournment"). In essence, an adjournment sine die simply means "an adjournment that ends an annual session." The literal meaning of "sine die" is "without day;" the implication is that the session is adjourning *without* having set any *day* for a subsequent meeting.³⁴ When a chamber has established no date on which to return for any further meeting of the same annual session, the consequence is that it will not meet again until it assembles for its next annual session.³⁵ Accordingly, an adjournment sine die necessarily brings an annual session to an end, and when Congress reconvenes after an adjournment sine die, a new annual session begins; for instance, the sine die adjournment of Congress in December 2009 terminated the first session of the 111th Congress, and when Congress next assembled in January 2010, it thereby began the second session of the 111th Congress.

In the sense applicable to the annual sessions of Congress, once either chamber convenes its session, it remains "in session" until it adjourns sine die. In the same sense, in the period between the sine die adjournment of one annual session and the convening of the next, the chamber can properly be said to be "in adjournment" and "out of session." Although this period is sometimes spoken of as a period of sine die adjournment, it is also referred to as a recess between sessions or an "intersession recess." The pertinence of this usage is clarified in the following section on "Recess of the Session and in the later section on "Lame Duck Sessions."

"Recess of the Session"

As with the daily session, each chamber can also suspend its annual session for a period without adjourning it. A chamber may do so by adjourning (or recessing) its daily session to a time several days, or more, distant. When it does so, the annual session is not adjourned sine die, but only temporarily interrupted. When the chamber convenes for its next daily session following a temporary break of this kind, the annual session of the chamber that was already in progress continues in being. That is, the same numbered session of Congress (for example, the first session of the 112th Congress) resumes.

Such a suspension of daily sessions in the course of the annual session is often referred to as a "recess," meaning, implicitly, a recess of the annual session. This usage generally parallels the use of "recess" in relation to the daily session, meaning, in both cases, a temporary break that does not terminate the session. When referring to a break within the annual session, however, the term "recess" does not serve as a parliamentary term of art, but instead simply as a convenient,

³⁴ In congressional usage, the phrase is usually pronounced "sign a dye."

³⁵ Under contemporary conditions, Congress normally adjourns its annual sessions subject to contingent authority granted to some group of leaders of the two chambers to reconvene them "whenever the public interest shall warrant it" (or equivalent language). *House Practice*, chap. 1 ("Adjournment"), sec. 10, p. 9. Some considerations generated by this mode of proceeding are discussed in the sections on "Presidential Action on Legislation" and on "Lame Duck Sessions," below.

and widely understood, form of reference. In this respect, usage in relation to the annual session contrasts with that in relation to the daily session.

The significance of a recess within an annual session of Congress depends on its length. As noted earlier, the Adjournments Clause of the Constitution prohibits either chamber from adjourning for more than three days without the consent of the other. This requirement is understood to apply not only to sine die adjournments, but also to periods within the annual session when the daily sessions of a chamber are suspended. In this way, the Adjournments Clause gives a distinct status to “recesses” of three days or more within an annual session. In conformity with the language of the clause, such periods are formally referred to as “adjournments for more than three days” within the annual session.³⁶ More informally, they are commonly called “recesses of the session” or “intrasession recesses.” This latter usage is convenient when highlighting the contrast with periods of sine die adjournment between sessions, which, as discussed in the preceding section on “Adjournment Sine Die,” are sometimes referred to as “intersession recesses.”

As with sine die adjournments of a session, each chamber normally provides permission for the other to adjourn for three days or more by means of a concurrent resolution, adopted by both. Like the concurrent resolutions used for sine die adjournments, those used for adjournments for three days or more within the annual session may be referred to as “adjournment resolutions.” In several respects, nevertheless, these concurrent resolutions function in ways that parallel the actions that provide for recesses of the daily session. Like a motion authorizing a daily recess, a concurrent resolution for a “recess of the session” normally establishes the date for each chamber to reconvene. When a chamber reconvenes after a daily recess, moreover, the business of the daily session resumes from the point at which it left off; similarly, when a chamber reconvenes after a “recess of the session,” the business of the annual session resumes from the point it had reached when the daily sessions were suspended.

If the term “recess of the session” is restricted to adjournments of three days or more within a session, a “recess of the session” will then routinely be identifiable by the presence of a concurrent resolution authorizing each house to take the recess. This restriction, however, leaves no distinctive term for periods when the daily sessions are adjourned for fewer than three days. These briefer suspensions of daily sessions, too, may sometimes be spoken of as “recesses” in relation to the annual session.

These breaks of fewer than three days between daily sessions occur routinely. For example, it is common practice in each chamber to adjourn a daily session on Friday and not to reconvene until the following Tuesday, or to adjourn on Thursday and not reconvene until Monday. The practical effects of such a break are no different from those of a daily adjournment from one day to the next, or an overnight recess of the daily session. They have no significance in relation to the Adjournments Clause: not only do they not terminate the annual session, they do not even suspend it. A chamber may pursue such a schedule on its own authority, without the consent of the other, by any of the means specified in the section on daily adjournments.³⁷

³⁶ *House Practice*, chap. 1 (“Adjournment”), part B, p. 8.

³⁷ These conclusions follow from the counting conventions described in note 27, including the exclusion of Sundays from the count.

Relation of Daily and Annual Sessions and Recesses

The preceding discussion shows that in many respects, the terms “recess” and “adjournment” are used, in relation to the annual session, in ways that parallel their use in relation to the daily session. An adjournment *sine die* terminates an annual session, just as an adjournment from day to day terminates a legislative day. A “recess of the session” (for more than three days, pursuant to a concurrent resolution) does not terminate an annual session, but only puts it in a state of suspension, just as a recess of the daily session does not terminate the legislative day, but only puts it into a state of suspension. A “recess of the session” stands in strict contrast with a *sine die* adjournment, just as a chamber cannot simultaneously be in adjournment and in recess with respect to its daily session. Finally, the annual session of a chamber remains continuous through both daily recesses and adjournments in a sense that corresponds to the continuity of the chamber’s daily session when no daily recesses occur between convening and adjournment.

Certain differences between the two contexts also exist, however. When the daily session of a chamber is interrupted by no daily recesses, the chamber is actually present and capable of business during every moment from convening to adjournment. On the other hand, even if a chamber’s annual session is interrupted by no recesses of the session, the chamber is not actually present and capable of doing business during every consecutive moment from its first convening until the *sine die* adjournment. Although the annual session remains continuous through daily recesses and adjournments, its actual capacity for business at any given moment, obviously, will be interrupted by these recesses and adjournments.

Finally, a chamber may initiate a “recess” of its *annual* session either with a recess or an adjournment of its *daily* session. The House normally recesses its annual session through an adjournment of its daily session. The Senate, on the other hand, has sometimes begun a recess of its annual session by taking a recess of daily session that continued throughout the “recess of the annual session.” Under this practice, for example, the Senate may return in September in the same legislative day as when its recess of the annual session began in August. Conversely, a chamber can adjourn its annual session *sine die* only by also adjourning its last daily session of that annual session. A chamber cannot adjourn its annual session *sine die* while recessing its daily session.

Pro Forma Sessions

In the primary sense of the term, a *pro forma session* is considered to include any daily session which is held chiefly to prevent the occurrence of a “recess of the session” (that is, an adjournment for more than three days within an annual session) or forestalls a sine die adjournment.³⁸ Either chamber may arrange for such sessions in order to avoid the need for a concurrent resolution to authorize a recess of the session or a sine die adjournment. In this sense, a pro forma session is a kind of *daily* session that has a specific effect in relation to the status of the *annual* session. The term “pro forma session” has no application as a description of any form of annual session itself.³⁹

Beyond this point, however, “pro forma session” (like “recess” in relation to the annual session) does not have a precise formal sense; it is not a parliamentary term of art, but one that has been used informally to describe sessions having various characteristics and performing various functions. The term is commonly used, in particular, to connote a short daily session of either chamber in which little or no business is transacted, and often also for any session for which no session of that chamber occurs on either the preceding or following day.⁴⁰ There is no formal property or status that makes a daily session “pro forma;” a session may function for the same purposes whether or not it is described as “pro forma.”

Each chamber often uses pro forma sessions as a means of extending a weekend break without having to provide for a “recess of the session.” If a chamber adjourns from Thursday to Monday with the understanding that no business, or only routine business, will be transacted on the Monday, Members may feel enabled

Annual Session. A period that begins when the chamber first formally convenes after a sine die adjournment and lasts until it next adjourns sine die.

Adjournment Sine Die. The means through which an annual session is terminated.

Recess of the Annual Session. The means through which an annual session is suspended for three calendar days or more in one or both chambers through a concurrent resolution. Such annual recesses may be initiated by an adjournment or recess of the daily session. When the chamber reconvenes, the same annual session continues.

Pro Forma Session. A daily session whose existence prevents the occurrence of a recess of the annual session or forestalls a sine die adjournment.

³⁸ In earlier times, Congress has used pro forma sessions in ways that may indicate that the avoidance of “recesses of the session,” is not an essential requisite of such sessions. In the fall of both 1940 and 1942, for example, both houses met in pro forma sessions during a period spanning the election, thereby avoiding the need to provide for a “recess of the session.” Circumstances attendant in cases of this type suggest that the purpose of instituting these periods of pro forma session may not have been to avoid “recesses of the session” but, rather, to sustain the existing session of Congress in order to avoid having to adjourn sine die. By this means, Congress may have intended to ensure its availability to act if circumstances should so require, whether or not the President might choose to exercise his constitutional power to convene Congress in extraordinary session. In modern times this approach might be found unnecessary, for the contingent reconvening authority usual in contemporary adjournment resolutions tends to render periodic pro forma sessions unnecessary for this purpose.

³⁹ The question is sometimes raised whether pro forma sessions during which no business occurs count as meeting the requirements of the Adjournments Clause. This clause, however, sets no conditions about the occurrence of business, but only about the occurrence of the session itself. Instead, the reason for holding pro forma sessions at all is precisely that they are intended to satisfy the formal requirement for meetings of a chamber in the absence of an adjournment resolution. For further information, see the section on “Lame Duck Sessions.”

⁴⁰ “Pro forma” means “for the sake of form;” on this understanding, the formality being satisfied would be the requirement of the Adjournments Clause that each house convene a daily session at least once every three days unless the consent of the other is obtained. If a session is being held principally to fulfill this requirement, however, there may usually be little reason for transacting business during its course, which suggests that these connotations of the term might be derivative from its primary meaning.

to remain in their constituencies until a later date.⁴¹ Nevertheless, no adjournment for three days or more within the session occurs, and no adjournment resolution is required. Under these circumstances, the significant feature that distinguishes the Monday, rather than the preceding Thursday, as the pro forma session is that it is the Monday on which no, or little, business is scheduled.

Both houses have also used pro forma sessions as a means of establishing a constituency work period without requiring a “recess of the session.” A chamber may effectively establish a one-week constituency work period, for example, by arranging to meet only on Monday and Thursday of the week in question, and only for short sessions at which no business is to occur. In this way, none of the intervals between daily sessions need constitute an adjournment for three days or more, and no concurrent resolution would be necessary. In this case the Monday and Thursday sessions would clearly be identifiable as the pro forma sessions in all senses of the term.

By this understanding of “pro forma session,” during the week of the constituency work period, the body would be “in pro forma session” only between the convening and adjournment of its daily session on the Monday, and then on the Thursday. It could not be properly described as “in pro forma session” during the week as a whole. This period might appropriately be described as “a period of pro forma sessions,” or as including “a series of pro forma sessions.” Such phrases could properly be understood as indicating that the pro forma sessions separated breaks of fewer than three days, and that without them, the chamber would have been in a “recess of the session” in the sense specified earlier.

Practical Applications

The considerations relative to recesses and adjournments of daily and annual sessions of Congress raised in the previous discussion have significant implications for several aspects of congressional practice, including

- The continuity of business generally;
- Presidential vetoes;
- “Lame duck sessions” of Congress.
- Recess appointments; and
- Statutory expedited procedures (“fast track” procedures).

The following sections address considerations pertinent to each of these.

Continuity of Business

The earlier discussion of the daily session noted that legislative business actively pending on the floor at the time of a daily recess remains the pending business (in other words, remains

⁴¹ The adjournment from Thursday to Monday counts as three days because Sunday is not counted. See footnote 27.

continuous through the recess) and the business pending at a daily adjournment is thereby converted into unfinished business. Corresponding continuities apply in respect of the annual session.

The status of legislative business before Congress is not affected by a recess of the annual session (an adjournment for more than three days). Nor is it affected even by a sine die adjournment, as long as the following annual session is a further session of the same Congress (for example, the second session of the 111th Congress). For example, bills introduced before a recess or adjournment of the session remain available for congressional action, and bills previously reported from committee remain on the Calendar of measures eligible for floor consideration. In the modern practice, legislative business dies only with the final sine die adjournment of the last annual session of a Congress, prior to the convening of the next annual session. When that next session convenes, it will be the first session of a newly elected Congress (for example, the first session of the 112th Congress).

The practice of the Senate with respect to executive business (nominations and treaties) differs from the congressional treatment of legislative business. At the sine die adjournment of each annual session, any nominations still pending before the Senate are returned to the President, unless the next session is a further annual session of the same Congress and the Senate otherwise orders. During a recess of (the annual session of) the Senate, nominations retain their pendency, except that, if the recess is longer than thirty days, they are returned to the President unless the Senate otherwise orders.⁴² Treaties, by further contrast, remain before the Senate indefinitely until the Senate acts on them, unless the President withdraws them.⁴³

Presidential Action on Legislation

The Constitution⁴⁴ provides that within 10 days after a bill passed by Congress is presented to the President (Sundays excepted), the President is either to sign it into law or return it to Congress with his objections (known as a “return veto”). If the President does neither, the bill becomes law at the expiration of the 10 days, “unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law” (known as a “pocket veto”).⁴⁵ Contemporary practice leaves partially settled some questions about what form of adjournment prevents the return of a bill. Clearly, however, these questions relate to the annual session; an adjournment from day to day, much less a recess of the daily session, would hardly prevent the return of a bill.⁴⁶

In contemporary practice it is accepted that even if the allotted 10 days expire during a intrasession recess (that is, a recess for three days or more, pursuant to a concurrent resolution), the return of a bill is not prevented, for Congress has provided means by which it can receive bills returned during such a recess, and it is able to act to override the veto when it returns from the

⁴² Senate Rule XXXI, paragraph 6, *Senate Manual*, sec. 31.6.

⁴³ Senate Rule XXX, *Senate Manual*, sec. 30.

⁴⁴ Article I, Section 7.

⁴⁵ For further information on possible presidential action, see CRS Report RS22188, *Regular Vetoes and Pocket Vetoes: An Overview*, by Kevin R. Kosar.

⁴⁶ For a general overview of these issues, see U.S. Congress, Senate, *The Constitution of the United States of America: Analysis and Interpretation*, S.Doc. 108-17, 108th Cong., 2nd sess., Article 1, Section 7, clauses 1-3, prepared by the Congressional Research Service, Library of Congress, Johnny H. Killian, George A. Costello, Kenneth R. Thomas, co-editors (Washington: GPO, 2004).

recess. It has become generally accepted, as well, that the same argument applies if the 10 days expire during a sine die adjournment between sessions of the same Congress.⁴⁷

The uncertainty that remains seems to be associated with the final sine die adjournment of a Congress. Even in this situation, it seems clear that if the 10 days expire after the expiration of the term of office of the Congress (on January 3 of an odd-numbered year), the President can pocket veto the bill. In this case, Congress has definitively “by their Adjournment prevent[ed]” the return of the bill, because the only Congress that could be in session on the date when the 10 days expire cannot be the one that passed the bill, but rather its successor. It is also accepted, however, that the President may sign a bill into law at any time within the allotted 10-day period, even if the date of signing falls after the expiration of the term of the Congress.⁴⁸

The remaining possibility is that the 10 days expire after the final sine die adjournment of the Congress, but before the expiration of its term of office. On the face of the matter, it would appear that a bill that remains without Presidential action at that point would be pocket vetoed, inasmuch as, even if the President returned the measure to Congress, the Congress that enacted it would never thereafter be present to act on the veto. In contemporary practice, however, as noted earlier, resolutions providing for a sine die adjournment usually also authorize the leadership to reconvene the Congress if circumstances require.⁴⁹ (Also, of course, the President might exercise his constitutional power to convene an extraordinary session, although it seems unlikely that the President would exercise this power for the purpose of enabling Congress to override a veto). If Congress were to reconvene under either authority, it could be argued that its previous adjournment had in no sense had the effect of preventing the President from returning a bill with his objections, and therefore that any bill remaining unsigned at the end of the applicable 10 days had not been pocket vetoed, but had become law. To address such uncertainties, Presidents sometimes return bills to Congress with their objections even after a sine die adjournment, accompanied by a memorandum asserting that the bill should be regarded as not having become law even if it had not been returned. This procedure has come to be known as a “protective return veto.”

“Lame Duck Sessions”

A “lame duck session” of Congress is any portion of an annual session that occurs after the election for the next Congress has already taken place (in November of an even-numbered year), but before the following January 3, when the term of office of that newly elected Congress begins. During a lame duck session, accordingly, the Congress that meets is not the Congress that has just been elected, for its term of office has not yet begun, but instead the Congress that is coming to a close, because its term of office has not yet concluded, even though it still includes Members who are going to retire at the end of the Congress or have already been defeated for re-election.

Under contemporary conditions, a “lame duck session” is normally not a separate annual session of Congress, but simply the portion of the regular session already in being that occurs after the

⁴⁷ See *Wright v. United States*, 302 U.S. 583 (1938), *Kennedy v. Sampson*, 511 F.2nd 430 (D.C. Cir. 1979).

⁴⁸ For a further discussion of these areas of uncertainty, see archived CRS Report RL 30909, *The Pocket Veto: Its Current Status*, by Louis Fisher (available from Jessica Tollestrup).

⁴⁹ See footnote 35.

election day. It is not separately numbered as a session, but retains the number of the session that was previously meeting. The annual session then normally adjourns sine die some time in December, although it has occasionally extended right up until the term of office of the Congress expires at noon on January 3.

In recent times, when Congress has met in lame duck session, the post-election portion of the annual session has most often been separated from the pre-election portion by a recess of the session. The terms of the concurrent resolution of adjournment have typically provided for this recess to begin about a month before the election and extend until a few days or weeks thereafter. In some cases, however, one or both chambers have taken no recess of the session over the period of the election, but instead have held pro forma sessions during that period. In a few cases, as well, a chamber has taken a recess of the session during the election period, but has extended it at one or both ends by a series of pro forma sessions.

The authority to reconvene Congress if circumstances warrant, which concurrent resolutions for a sine die adjournment now routinely accord to congressional leadership, provides another means by which lame duck sessions may occur.⁵⁰ Occasionally in recent decades, leadership has used this authority to reconvene Congress after the election for the following Congress has taken place. When this authority has been used, its use has usually been foreseen at the time the adjournment resolution was adopted. In these circumstances it remains true that the previously existing annual session of Congress is regarded as resuming; the previous adjournment is treated as not having been a sine die adjournment after all.

As explained earlier under “Annual Sessions of Congress,” if Congress were to recess its session during the election period, and the President exercised the constitutional authority to reconvene them in extraordinary session at a point after the election, but before the date set by the adjournment resolution, the previously existing session would still be regarded as resuming. On the other hand, if the President exercised the authority in the same way after Congress had adjourned its session sine die, the sine die adjournment would still be regarded as having occurred, and the reconvening would be treated as beginning a new, separately numbered, extraordinary session of Congress. Another way in which a lame duck session could constitute a new, separately numbered, annual session of Congress would be realized if Congress adjourned sine die before the election after having exercised its constitutional authority to enact a law providing for an additional session to convene on a date after the election.⁵¹ None of these three courses of action, however, has occurred since the current schedule of annual sessions went into effect in 1934, pursuant to the ratification of the 20th Amendment.⁵²

Recess Appointments

The Recess Appointments Clause of the Constitution provides that “the President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the end of their next Session.”⁵³ “Recess” and “Session” are

⁵⁰ See footnote 35.

⁵¹ Amendment XX, Section 2.

⁵² For further information on the form of election breaks and lame duck sessions, see CRS Report RL33677, *Lame Duck Sessions of Congress, 1935-2010 (74th-111th Congresses)*, by Richard S. Beth and Jessica Tollestrup.

⁵³ Article II, Section 2, clause 3.

clearly used here in a sense pertinent to the annual session, not the daily; the President could hardly avoid asking the Senate to confirm his nominations just by making appointments during a recess in the course of a daily session, or even during an overnight or weekend recess within the same legislative day. On the other hand, it has long been the general practice that for purposes of this clause, a “recess” can be either an intersession recess or an intrasession recess; that is, either a period of sine die adjournment or a recess of the session, as described earlier in the sections on “Adjournment Sine Die” and “Recess of the Session. In earlier times, in fact, recess appointments normally occurred primarily during intersession recesses, partly because intrasession recesses were infrequent until more recently.

At issue, however, has been the extent to which the President can exercise this power during (1) the sine die adjournment of the Senate (that is, an intersession recess); (2) a “recess of the session” (that is, an “adjournment for more than three days” or “intrasession recess”) or (3) a period of pro forma sessions. In practice, it is clear that Presidents have frequently made recess appointments during intersession recesses of the Senate, and such action has seldom been challenged.⁵⁴ At least since the 1920s, as well, Presidents have sometimes also made recess appointments during intrasession recesses of the Senate. Beyond these circumstances, areas of uncertainty remain.

It has sometimes been argued that “the Recess of the Senate,” in the Recess Appointments Clause, should be understood to mean the same as the “adjourn[ment] for more than three days” mentioned in the Adjournments Clause. Under this argument, the recess appointment power would be available to the President during an annual session of the Senate at exactly those times when the Senate is in adjournment for three days or more pursuant to an adjournment resolution in accordance with the Adjournments Clause.⁵⁵

At least until very recently, however, Presidents appear to have made recess appointments during intrasession recesses of the Senate only when the recess would be at least 10 days long.⁵⁶ During intersession recesses of the Senate, on the other hand, Presidents have occasionally made recess appointments even when fewer than three days intervened between the sine die adjournment of one session and the convening of the next, including one case when no appreciable interval occurred between the sine die adjournment and the convening of the next annual session.⁵⁷

⁵⁴ Comprehensive consideration of the intent of the Recess Appointments Clause and practice thereunder is beyond the scope of this report. For discussion of these issues, see CRS Report RL33009, *Recess Appointments: A Legal Overview*, by Vivian S. Chu, and CRS Report R42323, *President Obama’s January 4, 2012, Recess Appointments: Legal Issues*, by David H. Carpenter et al.

⁵⁵ Executive Power—Recess Appointments, 33 Op. Att’y Gen. 20, 25 (1921); Memorandum of Points and Authorities in Support of Defendants’ Opposition to Plaintiffs’ Motion for Partial Summary Judgment, at 24-6, *Mackie v. Clinton*, 827 F. Supp. 56 (D.D.C. 1993), *vacated as moot*, 10 F.3d 13 (D.C. Cir. 1993). See also footnote 13 in *Lawfulness of Recess Appointments During a Recess of the Senate Notwithstanding Periodic Pro Forma Sessions*, 36 Op. Off. Legal Counsel (January 6, 2012), available at <http://www.justice.gov/olc/2012/pro-forma-sessions-opinion.pdf> (last visited January 18, 2012) (hereafter “OLC 2012 opinion”).

⁵⁶ CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue. Such intersession appointments have occurred regardless of whether the concurrent resolution to adjourn to a date certain provided contingent authority to reconvene prior to that date (OLC 2012 opinion, p. 21).

⁵⁷ At the moment when the first session of the 58th Congress ended at noon on December 7, 1903, and the second session immediately began thereafter, President Theodore Roosevelt announced the recess appointment of over 160 officials. See Henry B. Hogue and Richard S. Beth, “Recess Appointments During Short Intervals Between Sessions and Historical Efforts to Prevent Recess Appointments through Congressional Scheduling,” CRS Congressional Distribution Memorandum, June 8, 1012, available from its authors.

These patterns suggest that the meaning of “recess” in the Recess Appointments Clause cannot simply be identified with that of “adjourn[ment] for more than three days” in the Adjournments Clause. Some observers have argued, nevertheless, that only the Adjournments Clause that the Constitution appears to offer any potential guidance on what may constitute a “recess” for purposes of the Recess Appointments Clause. On this basis, these observers have suggested that the three-day standard of the Adjournments Clause constitutes at least a minimum length requisite for exercise of the recess appointment power, at least during an intrasession recess.⁵⁸ In recent years, the Senate has sometimes arranged to avoid the occurrence of any recess of the session for three days or more by holding a series of pro forma sessions, with the apparent intent, at least in part, of preventing the President from making recess appointments.⁵⁹

Pro forma sessions could achieve this effect, however, only on the presumption that the recess appointment power is not available in an adjournment or “recess” of the Senate for fewer than three days. In other words, unless “recess” is held to mean the same thing in context of the Recess Appointments Clause as “adjourn” in the Adjournments Clause, the use of periods of pro forma session would seem irrelevant to the purpose of preventing recess appointments. The most recent memorandum of the Office of Legal Counsel (OLC) on recess appointments, from January 2012, does not reject this three-day standard, but proposes that the President might determine the parameters of a “recess for recess appointment clause purposes, based on when the Senate is ‘not in session’ for the appointment of officers.”⁶⁰ Such determinations might be made based upon the President’s perception of the availability of the Senate to “receive and act on nominations.”⁶¹

This view of the matter raises the question of whether, during a period of pro forma sessions, the Senate might properly be described as being “in recess” for purposes of the Recess Appointments Clause, even though no interval between pro forma sessions is a “recess of the session” for the purposes of the Adjournments Clause. The January 2012 OLC opinion makes a number of arguments in favor of this proposition, for example, that Senators and Senate sources sometimes refer to a period of pro forma sessions as a “recess,”⁶² even though it is not a “recess of the session” in the sense specified earlier in this report. This opinion argues that a “recess” sufficient for the purposes of the Recess Appointments Clause may in fact occur during such periods when the Senate predetermines that no business will occur during the pro forma sessions. By this argument, although pro forma sessions with no business transpiring may be sufficient to satisfy the Adjournments Clause, they are not sufficient to prevent a recess appointment.⁶³ On some occasions, on the other hand, the Senate has agreed by unanimous consent to conduct business during a pro forma session, even though it had previously agreed, by unanimous consent, that no business would occur.⁶⁴ The OLC opinion, nevertheless, asserts that “the President may properly

⁵⁸ See, for example, Memorandum of Points and Authorities in Support of Defendants’ Opposition to Plaintiffs’ Motion for Partial Summary Judgment, at 24-6, *Mackie v. Clinton*, 827 F. Supp. 56 (D.D.C. 1993), *vacated as moot*, 10 F.3d 13 (D.C. Cir. 1993), cited in CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue.

⁵⁹ Sometimes this has occurred due to the wishes of the House. See CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue.

⁶⁰ OLC 2012 opinion, p. 13; see pp. 13-24.

⁶¹ *Ibid.*, p. 1.

⁶² *Ibid.*, p. 3.

⁶³ See *ibid.*, pp. 9-18, for an explanation of this rationale.

⁶⁴ See also footnote 42.

rely on the public pronouncements that it will not conduct business...regardless of whether the Senate has disregarded its own orders on prior occasions.”⁶⁵

A 2013 U.S. Court of Appeals decision on the subject of recess appointments, however, takes a contrary approach.⁶⁶ According to this decision, the term “recess” in the Recess Appointments Clause does not cover recesses within a session at all, whether of more or fewer than three days, but refers only to a recess between sessions; that is, a period of sine die adjournment.⁶⁷ Consequently, recess appointments may occur only between a sine die adjournment of the annual session and the convening of the next session. In addition, the Court of Appeals held that the only vacancies eligible for recess appointments are those that arose during the same intersession recess.⁶⁸ Under the principles enunciated in this decision, in instances where the Senate does not adjourn sine die, and instead continues the annual session until the time when the next annual session must constitutionally convene, no opportunity for recess appointments would arise at all.⁶⁹

Statutory Expedited Procedures

Expedited procedures, also known as “fast track” procedures, or, more formally, “privileged procedures,” are procedural rules established in statute to govern the action of either or both chambers on measures of a kind also specified by the statute.⁷⁰ Many of the measures subject to statutory privileged procedures are resolutions either to approve or disapprove specific kinds of action proposed by the executive, but the measures covered also include congressional budget resolutions and reconciliation bills under the Congressional Budget Act, as well as bills to implement certain kinds of trade agreement.⁷¹

Although these procedures are enacted into law, rather than being adopted as part of the standing rules of either chamber, they have the same force and effect as standing rules, but only with respect to the specified measures.⁷² They are designed to promote timely congressional action on the measures and, to this end, they tend to override the normal control of the leadership over the floor agenda and, in the Senate, the opportunity to block measures by filibuster.⁷³ For example,

⁶⁵ Ibid., p. 21. The opinion further asserts that “even absent a Senate pronouncement that it will not conduct business, there may be circumstances in which the President could properly conclude that the body is not available to provide advice and consent for a sufficient period to support the use of his recess appointment power.” What such circumstances might be is not enumerated.

⁶⁶ *Canning v. NLRB*, No. 12-1225, 2013 U.S. App. LEXIS 1659 (D.C. Cir. January 25, 2013).

⁶⁷ Ibid., pp. 17-18.

⁶⁸ Ibid., p. 31.

⁶⁹ Ibid., p. 40. For a further discussion of the implications of this decision, see CRS Report WSLG379, *DC Circuit Rules President Obama’s Recess Appointments Unconstitutional*, by David H. Carpenter.

⁷⁰ For general information on expedited procedures, see CRS Report RS20234, *Expedited or “Fast-Track” Legislative Procedures*, by Christopher M. Davis.

⁷¹ See, for example, reconciliation in the Congressional Budget Act (P.L. 93-344, Section 310). For further information on reconciliation, see CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr. On trade agreement implementing bills, see the Trade Act of 1974 (19 U.S.C. 2191).

⁷² For this reason, pursuant to Article 1 Section 5 of the Constitution, which gives each chamber the power to determine the rules of its proceedings, the House and Senate may unilaterally modify, suspend, or waive these procedures without the concurrence of the other chamber or the President.

⁷³ For a further discussion of the potential advantages of expedited procedures, see CRS Report 98-888, *“Fast-Track” or Expedited Procedures: Their Purposes, Elements, and Implications*, by Christopher M. (continued...)

they often provide for mandatory introduction of the measure, protect the opportunity for floor consideration, place time limits on consideration, and prohibit amendments.⁷⁴

Measuring Periods for Action and the Effect of Recesses of the Session

Many expedited procedure statutes make the procedures they establish available only during specified periods, often beginning with the initial proposal by the executive, or similarly limit specific stages in the process. The prescribed periods may be measured through any of several different ways of counting days, each of which is affected in a different way by the annual, and even the daily, recesses and adjournments of Congress. The ways of measuring time most often used in expedited procedures are *calendar days*, *days of session*, and *days of continuous session*.

A count of *calendar days* is the most straightforward, for in this case every day (including weekends and holidays) counts toward completion of the period, whether or not either chamber holds a daily session on that day, or even whether or not an annual session is ongoing.

Statutes generally define periods by *days of session* only for the Senate. The House, in general, does not make use of days of session as a technical term, and accordingly, the corresponding period for that chamber is usually defined by *legislative days*.⁷⁵ Inasmuch as the House normally adjourns at the end of each daily session, this approach has the effect of treating both chambers in parallel ways. Periods defined in this way are, in any case, normally measured separately for each chamber, and in each case, only those days count on which a daily session of the chamber occurs. Days falling on a weekend, as a result, are usually not days of session for the Senate or legislative days for the House, and days falling while either chamber is in a recess of the session or a sine die adjournment are excluded from the count for that chamber as well. Provisions of the Congressional Review Act,⁷⁶ for example, extend the opportunity for Congress to disapprove a proposed regulation through privileged procedures into a new session of Congress if Congress adjourns its previous session sine die before the 60th session day in the Senate, or the 60th legislative day in the House, after the regulation is submitted to Congress.

Periods measured in *days of continuous session* are usually defined by taking account simultaneously of the schedules of both chambers, counting each day unless *either* chamber is in a “recess of the session” or a sine die adjournment. By this standard, although days when either chamber is in a “recess of the session” will not count as days of continuous session, weekend days will count, even when neither chamber meets on those days (unless they are part of a “recess of the session”).

Calendar days are not affected by whether either chamber holds pro forma sessions instead of taking a recess (or instead of adjourning sine die). The occurrence of pro forma sessions, on the other hand, does affect the count of days of session or legislative days, and also that of days of

(...continued)

Davis <http://www.crs.gov/pages/Reports.aspx?PRODCODE=98-888>.

⁷⁴ For a further discussion of such features, see CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted Into Law*, by Christopher M. Davis.

⁷⁵ For example, the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101) makes it in order for the Speaker to recognize a House Member to call up a resolution of approval once it has been on the calendar for five legislative days.

⁷⁶ 5 U.S.C. 801(d)(1) through 801(d)(3).

continuous session. For example, suppose that one chamber takes a “recess of the session” from Friday until the second following Monday, while the other chamber continues to hold its daily sessions. The nine days of the recess do not count as days of session (or legislative days) for the chamber that recessed its session, and they do not count as days of continuous session for either chamber. If, however, instead of taking this nine-day recess of the session, that same chamber meets for pro forma sessions on the intervening Tuesday and Friday, those *two* days will count as days of session (or legislative days) for that chamber. If, however, this period is to be measured in *days of continuous session*, the existence of these two pro forma sessions of the one chamber while the other continues to hold its daily sessions means that no “recess of the session” now occurs in either chamber. As a result, all *nine* days count, for both chambers, toward the completion of a period measured in days of continuous session. In this way, pro forma sessions tend to make days of continuous session elapse as fast as calendar days.

For either chamber, the use of a period counted in legislative days could enable it to extend the calendar length of the period by recessing its daily sessions rather than adjourning them, or to shorten it by adjourning (and reconvening) more than once on each calendar day of session. Occasionally, a statute has attempted to avoid this possibility by defining “legislative day,” for its purposes, not in the technical sense explained earlier, but instead to mean what this report calls a “day of session.”

Recesses and the Alignment of Periods for Action

For some purposes, an expedited procedure may operate more smoothly if its periods for action run concurrently, or at least approximately so, in both chambers. Whether they do so can depend not only on the standard by which the days of the periods are counted, but also by whether the periods begin at the same point for both chambers. For this purpose, for example, if a period is to begin when Congress receives a proposal from the executive, an expedited procedure may direct that the receipt must occur on a day when both chambers hold a daily session, or that it be deemed to occur on the next following day on which both chambers do so.

If a period measured in calendar days begins on the same day for both chambers, it will necessarily also end on the same day for both.

The same is true for periods measured in days of continuous session, as usually defined, because the same days (those on which *either* chamber is in recess) are excluded from the count for *both* chambers. Using either of these methods of counting, however, a period may end on a day when both chambers are out of session. Moreover, much of the period could go by while one chamber is (or, under certain conditions, both are) in a recess of the session (or, in some cases, even in a sine die adjournment). These circumstances could limit the effective opportunity for a chamber to act under the expedited procedure.

Calendar Days. Every calendar day (including weekends and holidays) counts toward completion of the period, whether or not either chamber holds a daily session on that day, or even whether or not an annual session is ongoing.

Days of Continuous Session. Every calendar day of an annual session counts unless either chamber is in a “recess of the session” (of three days or more) or a sine die adjournment. By this standard, weekend days and holidays will count, even when neither chamber meets on those days, unless they are part of a “recess of the session.”

Days of Session. Each chamber keeps a separate count of days, which includes only those days on which a daily session of the respective chamber occurs. Days falling on a weekend or holiday, as a result, are usually not days of session, and days falling while the chamber is in a recess of the session or a sine die adjournment are excluded as well.

A period measured in days of session, by contrast, cannot elapse except on days when the respective chamber is in session, and so cannot end except on such a day. The two chambers, however, seldom follow exactly the same schedule of daily sessions. As a result, if periods for action pursuant to an expedited procedure are measured in session days, then even if they begin on the same calendar day in both chambers, they are likely to end on different calendar days in each. In the second session of the 110th Congress, for example, if an action period of 60 days of session began on the day the annual session convened, it would have started in both chambers on January 3, 2008, but the 60th day of session would have occurred in the House on April 21, and in the Senate not until May 16.

Effect of Sine Die Adjournment

As just noted, if a period during which an expedited procedure is available is measured in calendar days, it may expire during a sine die adjournment, in which case the effective opportunity for Congress to make use of the procedure becomes truncated. In addition, some expedited procedure statutes explicitly provide that if the final adjournment sine die of a Congress occurs before the end of the period during which the expedited procedure is available, the period terminates with the sine die adjournment.⁷⁷ Such provisions also truncate the effective opportunity for Congress to make use of the expedited procedure.

Also as already noted, on the other hand, a period measured in days of session cannot expire during a sine die adjournment. In this case, any portion of the period remaining at the sine die adjournment could remain available for action under the expedited procedure in the following annual session. If the following session is the first of a new Congress, however, the remaining portion of the period may be too short to afford the incoming Congress a realistic opportunity to complete action, especially because the full lawmaking process under the expedited procedure would have to be accomplished *de novo*, beginning with the introduction of a new measure. Some statutes are framed in such a way that if a measure specified in the statute is reintroduced in the Congress following the one in which the President submitted the corresponding proposal to be disapproved or approved, it is not eligible for expedited consideration.⁷⁸

Some other expedited procedures deal with these possibilities by providing that if the final sine die adjournment of one Congress occurs before a prescribed period for action expires, a full new period for action becomes available from the start of the succeeding Congress. Some provide also that at that point, the proposal by the executive is deemed resubmitted. Some of these statutes extend these arrangements also to the beginning of a second or subsequent session of the same Congress, even though, in such cases, any measure subject to the expedited procedure that was previously introduced and remains without final action would still be available for action in the new session.⁷⁹

Similarly, when action periods measured in days of continuous session are broken by a sine die adjournment, a new Congress might commence with only a brief remainder of that action period remaining. To forestall this situation, many statutes that count action periods in this way stipulate that the expedited procedure is available during the “first period of [the stipulated number of]

⁷⁷ See, for example, the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2604).

⁷⁸ For example, the Trade Act of 1974, Section 151 (P.L. 93-618).

⁷⁹ For example, the Congressional Review Act (5 U.S.C. 801(d)).

days of continuous session of Congress beginning after”⁸⁰ the designated initiating event, and also provide that “continuity of session of Congress is broken . . . by an adjournment sine die” (or, sometimes, only by a final adjournment sine die of the Congress).⁸¹ Under these arrangements, if Congress adjourns sine die before a period of the required length has been completed, a new period of continuous session begins when the next session convenes, during which action under the expedited procedure may proceed *de novo*. It appears, nevertheless, that Congress has sometimes interpreted such provisions as applying only when the executive branch resubmits the underlying proposal.

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⁸⁰ The specific provision quoted appears in the Alaska Natural Gas Transportation Act of 1976, Section 8(g)(2) (15 U.S.C. 719f(g)(2)).

⁸¹ Different statutes carry different versions of this definition. The quotation given appears in the Alaska Natural Gas Transportation Act of 1976, Section 8(c)(1) (15 U.S.C. 719f(c)(1)).