

Nos. 12-2335 & 12-2435

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

EDITH SCHLAIN WINDSOR,

Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,

Defendant,

BIPARTISAN LEGAL ADVISORY GROUP
OF THE U.S. HOUSE OF REPRESENTATIVES,

Intervenor-Defendant-Appellant.

EDITH SCHLAIN WINDSOR,

Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,

Defendant-Appellant,

BIPARTISAN LEGAL ADVISORY GROUP
OF THE U.S. HOUSE OF REPRESENTATIVES,

Intervenor-Defendant.

**REPLY IN SUPPORT OF MOTION OF
THE BIPARTISAN LEGAL ADVISORY GROUP OF
THE U.S. HOUSE OF REPRESENTATIVES
TO DISMISS APPEAL NO. 12-2435**

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The Executive Branch takes the remarkable position that it is free not only to abandon its duty to defend a duly-enacted federal statute, as it has done here, but that it also is free, if it so chooses, to prevent any other entity, including the Legislative Branch, from taking up that defense in any appellate court. In other words, the Executive Branch would bestow upon itself an extra-constitutional, post-enactment veto authority such that it not only could refuse to defend (and presumably to enforce more broadly) any statute that *it* deemed unconstitutional but, by serving as the sole gatekeeper for filing appeals of any lower court determination of unconstitutionality, also could prevent this Court (or the Supreme Court) from reviewing such determinations. This Court should not countenance such arrogant arguments and, rather, should dismiss the Executive Branch appeal, No. 12-2435, and retain the House's appeal, No. 12-2335.

I. The Executive Branch's Appeal Is Improper Because the Executive Branch Is Not an Aggrieved Party.

The Executive Branch insists that its appeal is proper, notwithstanding that it obtained *everything* it sought below. It does not, because it cannot, contest that “[a] party who receives all that he has sought generally is not aggrieved by the judgment affording the relief and cannot appeal from it.” *Deposit Guar. Nat’l Bank v. Roper*, 445 U.S. 326, 333 (1980); *see also* Mot. of [House] to Dismiss Appeal No. 12-2435 at 9-11 (July 19, 2012) (ECF No. 53) (“House Mot.”) (citing other authorities). Rather, the Executive Branch argues that this Court nonetheless

should find it adequately aggrieved here because the Supreme Court found it adequately aggrieved in *INS v. Chadha*, 462 U.S. 919 (1983), a case that arose (i) in the context of a different, and extraordinary, appellate jurisdiction statute, and (ii) in materially different factual circumstances.¹ The Executive Branch is wrong.

As here, *Chadha* involved the Executive Branch abandoning its duty to defend a federal statute. (There, unlike here, the Executive Branch at least maintained a colorable argument that the statute at issue infringed on Executive prerogatives). The House and Senate separately sought certiorari from an adverse ruling below and the Supreme Court granted each of those petitions – over the Executive Branch’s suggestion that it not do so – *before* ruling on whether the Executive Branch also could appeal from the judgment below. *See INS v. Chadha*, 454 U.S. 812 (1981); Dep’t Resp. to Pets. for Cert., *U.S. House of Reps. v. INS*, at *4 (Aug. 28, 1981) (Nos. 80-2170 & 80-2171), 1981 U.S. S. Ct. Briefs LEXIS 1423. The Court ultimately allowed the Executive Branch’s appeal under 28 U.S.C. § 1252 (repealed), *see Chadha*, 462 U.S. at 929-31, and it is that part of the *Chadha* decision on which the Executive Branch now relies.

In allowing the Executive Branch’s appeal in *Chadha*, however, the Court carefully limited its holding to the precise appellate jurisdiction statute and

¹ That reliance is ironic in that, as discussed in Section II, below, *Chadha* squarely rejects the Executive Branch’s gratuitous suggestion that the House lacks standing independently to pursue an appeal in this matter.

circumstances at issue there – a statute and circumstances not implicated here.

First, the Court limited its holding to “deciding whether the INS is ‘any party’ within the grant of appellate jurisdiction in § 1252.” 462 U.S. at 930; *see also id.* at 931 (painstakingly limiting each sentence of Court’s analysis to § 1252, e.g.: “aggrieved party for purposes of taking an appeal *under* § 1252”; “aggrieved party *under* § 1252” (emphasis added)); *cf.* Opp’n of [Executive Branch] to Mot. to Dismiss Appeal No. 12-2435 at 8-12 (Aug. 3, 2012) (ECF No. 67) (“Exec. Br. Opp’n”) (painstakingly omitting from each of its quotes from *Chadha* this express, limiting language). In so holding, the Supreme Court emphasized that § 1252 was an extraordinary statute that provided for more liberal grant of appellate jurisdiction than that available under ordinary means of achieving appellate review:

It is apparent that Congress intended that this Court take notice of cases that meet the technical prerequisites of § 1252 [rather than imposing the usual, additional adverseness requirement²]; in other

² A certain level of adversity is required to meet the Article III “case or controversy” requirement. *See, e.g., Chadha*, 462 U.S. at 931 n.6 (“In addition to meeting the statutory requisites of § 1252, of course, an appeal must present a justiciable case or controversy under Art. III. Such a controversy clearly exists [for the given Executive Branch appeal], as in the [petitions for certiorari filed by the House and Senate], because of the presence of the two Houses of Congress as adverse parties.”); *id.* at 939 (“[Even] prior to Congress’ intervention, there was adequate Art. III adverseness even though the only parties were the INS and *Chadha*.”). In order to achieve appellate jurisdiction, however, courts generally require a heightened level of adversity. *See, e.g., Deposit Guar.*, 445 U.S. at 333-34 (“The [aggrieved party] rule is one of federal appellate practice, however, derived from the statutes granting appellate jurisdiction and the historic practices of the appellate courts; it does not have its source in the jurisdictional limitations of Art. III.”). It was this heightened level of adversity that the Supreme Court

cases where an Act of Congress is held unconstitutional by a federal court, review in this Court is available only by writ of certiorari.

Chadha, 462 U.S. at 930-31. In this case, the Executive Branch purports to appeal, not under § 1252 or some other extraordinary grant of appellate jurisdiction, but only under 28 U.S.C. § 1291, which provides general appellate jurisdiction over “all final decisions of the district courts.”

The Court in *Chadha* not only was careful to limit its holding to an appellate jurisdiction statute with a limited adversity requirement, but also expressly limited that holding to the circumstance there presented, i.e., where the Executive Branch agency at issue was charged with administering the statute at issue: “When an *agency of the United States* is a party to a case in which the Act of Congress *it administers* is held unconstitutional, it is an aggrieved party for purpose of taking an appeal under § 1252.” 462 U.S. at 931 (emphasis added). Here, *no* federal agency is a party to this litigation and, in any event, the agency implicated by Ms. Windsor’s lawsuit, the Internal Revenue Service, does not administer the statute at issue, DOMA. Accordingly, the Executive Branch here would not satisfy even the lower “aggrieved party” standard of § 1252, much less that of § 1291.

The Executive Branch has no effective answer to these arguments, even though the House articulated them in its Motion, based on the Executive Branch’s

indicated that § 1252 did not require (but which otherwise is required in the appellate context, including here).

citation to *Chadha* in a similar context in another case. *See* House Mot. at 12 n.6. Rather, the Executive Branch skips to citations to two cases in which the Supreme Court neither addressed – nor apparently did any party raise – whether the Executive Branch had suffered an adverse ruling sufficient for appellate jurisdiction. *See U.S. v. Lovett*, 328 U.S. 303 (1946); *Bob Jones Univ. v. U.S.*, 461 U.S. 574 (1983) (involving, in any event, challenge not to statute but to regulatory ruling, thereby leaving Executive better situated to satisfy adversity requirement).

It follows that the Executive Branch cannot rely on *Chadha*. Instead, it must satisfy the ordinary standard of adversity, i.e., that it failed to obtain something that it sought below – a standard that it cannot satisfy here. Accordingly, this Court should dismiss appeal No. 12-2435.

II. This Court Should Reject the Executive Branch’s Invitation to Overlook Its Defective Appeal on the Basis of Imagined Faults in the House’s Appeal.

The Executive Branch’s fallback position is that this Court should ignore the impropriety of its appeal because “uncertainty” exists as to the propriety of the House appeal. Exec. Br. Opp’n at 18. No such “uncertainty” exists, and the Court should not countenance the Executive Branch’s efforts to salvage its own appeal by manufacturing phantom defects in the House’s appeal.

First, the Executive Branch’s arguments regarding the propriety of the House’s appeal have no relevance whatsoever to the propriety of its own appeal.

See, e.g., MasterCard Int'l Inc. v. Visa Int'l Serv. Ass'n, Inc., 471 F.3d 377, 382-84 (2d Cir. 2006) (dismissing defective appeal, then independently examining propriety of parallel appeal). And, because *no party* has filed a motion to dismiss the House's appeal, the Executive Branch's arguments in this regard in fact have no relevance to any issue in this case, period. Rather, the Executive Branch's arguments constitute no more than an unabashed effort to secure for itself the authority not only to select which duly enacted statutes *it* will label unconstitutional and thereby decline to defend, but also to reserve to itself the power to bar any *judicial* determination of the constitutionality of those statutes. *See* Exec. Br. Opp'n at 18 n.5 (responding only that certain legal rights – here, presumably those of the Legislative and Judicial Branches – cannot be vindicated).³

Second, the Executive Branch's arguments regarding the propriety of the House's appeal (even if those arguments were relevant, which they are not) already have been flatly rejected by the Supreme Court – which perhaps explains the

³ In its opposition, the Executive Branch argues that the House is “incorrect[.]” to note that the Executive Branch, in joining various plaintiffs in affirmatively attacking DOMA Section 3, has moved beyond the position it acknowledged in its February 23, 2011 Holder Letter. Exec. Br. Opp'n at 6. Not true. In the Holder Letter, the Executive Branch announced that “the President has instructed the Department not to defend [DOMA Section 3]”; in that letter, the Executive Branch also stated that it would “inform” and “advise” courts of its new position. Holder Letter at 5-6, attached as Ex. 1 to House Mot. “Inform[ing]” and “advise[ing]” a court of a party's position is a far cry from what the Department in fact has done in this and other DOMA Section 3 litigations, i.e., repeatedly file extensive briefs affirmatively attacking a duly-enacted statute, all while endeavoring to undermine the House's defense of that statute. *See, e.g.,* House Mot. at 7.

Executive Branch's unwillingness actually to file a motion to dismiss the House's appeal. As noted above, the Executive Branch suggested in *Chadha* that the Court not grant the House's petition for certiorari on the ground that the Executive Branch appeal was sufficient. Dep't Resp. to Pets. for Cert., at *4, 1981 U.S. S. Ct. Briefs LEXIS 1423. Over that suggestion, the Supreme Court nonetheless granted the House's petition. *See Chadha*, 454 U.S. 812. In its merits decision, the Court explained: "Congress is both a proper party to defend the constitutionality of [the statute at issue] and a proper petitioner under [28 U.S.C.] § 1254(1) [i.e., a proper petitioner under the statute providing, then and now, for Supreme Court jurisdiction on petitions for certiorari]." 462 U.S. at 939. The Court further stated flatly:

We have long held that Congress is the proper party to defend the validity of a statute when an agency of government, as a defendant charged with enforcing the statute, agrees with plaintiffs that the statute is inapplicable or unconstitutional.

Id. at 940 (emphasis added).

The Executive Branch cannot escape this binding precedent:

1. To the extent it half-heartedly suggests that this case might be different because the Senate joined the House's intervention in *Chadha*, whereas only the House has intervened here, the Executive Branch offers no explanation, much less any authority, for why that difference would matter. In fact, *Chadha* itself forecloses that argument: In that case, the Supreme Court rejected the

Executive Branch’s suggestion that the Court not act on the *independent* petitions of the House and the Senate. *See Chadha*, 454 U.S. 812. The Court granted each of those independent petitions, and never suggested that it would not have granted the one in the absence of the other. *See id.* The House’s interest in defending a statute that it passed, with overwhelming bipartisan support only sixteen years ago, is independent of the interests of the Senate, just as it is independent of the interests of the Executive Branch.

2. To the extent it suggests that the House cannot litigate through the Bipartisan Legal Advisory Group, as the House has done for decades,⁴ the Executive Branch in the same breath must concede that, in fact, “[t]he House may organize its internal affairs through a committee – or advisory group” as it wishes. Exec. Br. Opp’n at 17-18. Indeed, it is for the House alone to determine how it will organize those affairs, including how it will appear in litigation.⁵

⁴ The House of Representatives 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). *See, e.g., In re Koerner*, 800 F.2d 1358, 1360 (5th Cir. 1986); *Ameron, Inc. v. U.S. Army Corps of Eng’rs*, 787 F.2d 875, 880 (3d Cir. 1986). Since 1993, the House rules have formally acknowledged and referred to the Bipartisan Legal Advisory Group, as such, in connection with its function of providing direction to the Office of General Counsel. *See, e.g.,* Rule I.11, Rules of the House of Reps., 103d Cong. (1993), attached as Ex. A; Rule II.8, Rules of the House of Reps., 112th Cong. (2011), attached as Ex. B. While the Advisory Group seeks consensus whenever possible, it functions on a majoritarian basis, like the institution it represents, when consensus cannot be achieved.

⁵ As noted, the Advisory Group is a creature of the House of Representatives

3. Finally, none of the additional cases cited by the Executive Branch are contrary to the plain holding of *Chadha*. In *Buckley v. Valeo*, 424 U.S. 1, 138 (1976), the Court made only the point that the House has repeated throughout this litigation: That it generally is the responsibility of the Executive Branch to enforce (including by defending) duly-enacted statutes. The House, pursuant to the Court's

and its Rules; it exists for the purpose of assisting the Speaker in providing direction to the House Office of General Counsel, which Office litigates on behalf of the House. See Ex. B (H.R. Rule II.8) ("The Office of the General Counsel shall function pursuant to the direction of the Speaker, who shall consult with a Bipartisan Legal Advisory Group, which shall include the majority and minority leaderships."); cf. 2 U.S.C. § 130f(a) (empowering House Office of General Counsel to appear in courts without regard to admission requirements).

The House Rule outlining the functioning of the Advisory Group (Rule II.8), like the other rules of the House, was adopted pursuant to the Rulemaking Clause of the Constitution, see U.S. Const. art. I, § 5, cl. 2, which is a "broad grant of authority," *Consumer's Union of U.S. v. Periodical Correspondent's Ass'n*, 515 F.2d 1341, 1343 (D.C. Cir. 1975), that sits "[a]t the very core of our constitutional separation of powers," *Walker v. Jones*, 733 F.2d 923, 938 (D.C. Cir. 1984) (MacKinnon, J., concurring in part and dissenting in part). The Supreme Court has made clear that while House Rules may not ignore constitutional restraints or violate fundamental rights, they otherwise are "absolute and beyond the challenge of any other body or tribunal." *United States v. Ballin*, 144 U.S. 1, 5 (1892).

It follows, therefore, that it is for the House, and the House alone, to determine the means by which it will appear in litigation to vindicate its institutional interests. Neither the Executive Branch nor this Court nor any other Court has the authority to second-guess the House's determination of the means by which it will advocate those interests. See also, e.g., *Zivotofsky v. Clinton*, 132 S. Ct. 1421, 1433 (2012) (Sotomayor, J., concurring in part and in judgment) ("Because of the respect due to a coequal and independent department . . . , courts properly resist calls to question the good faith with which another branch attests to the authenticity of its internal acts."); *U.S. v. Munoz-Flores*, 495 U.S. 385, 409-10 (1990) (Scalia, J., concurring in judgment) ("Mutual regard between the coordinate branches, and the interest of certainty, both demand that official representations regarding . . . matters of internal process be accepted at face value.").

blessing in *Chadha*, appears here only, and precisely, because the Executive Branch has forsaken that responsibility, leaving the House to undertake it.

As for *Diamond v. Charles*, 476 U.S. 54 (1986), and *Newdow v. U.S. Congress*, 313 F.3d 495 (9th Cir. 2002), the House already has explained that they have no application here. See House Mot. at 16-17. Neither *Diamond* nor *Newdow* can be read to require an Executive Branch appeal as a prerequisite to House involvement because neither involved an instance of the Executive Branch refusing to defend a duly-enacted statute; in *Chadha*, which, as here, did involve such a circumstance, the Court granted the House's petition for certiorari more than a year *before* allowing the Executive Branch appeal and stated in unequivocal terms:

“[F]rom the time of Congress' formal intervention, . . . the concrete adverseness is beyond doubt. Congress is both a proper party to defend the constitutionality of [the statute at issue] and a proper petitioner

462 U.S. at 939-40 (emphasis added).⁶

* * *

For all the foregoing reasons and all the reasons stated in the House's Motion to Dismiss Appeal No. 12-2435, that appeal should be dismissed.

⁶ The Executive Branch's "*cf.*" citation to *Raines v. Byrd*, 521 U.S. 811, 829-30 (1997), is particularly far afield. That case involved the standing of individual legislators rather than of the whole House (and, indeed, distinguished the one context from the other). See 521 U.S. at 829-30.

Respectfully submitted,

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August 14, 2012

⁷ The Bipartisan Legal Advisory Group, which speaks for the House in litigation matters, currently is comprised of the Honorable John A. Boehner, Speaker of the House, the Honorable Eric Cantor, Majority Leader, the Honorable Kevin McCarthy, Majority Whip, the Honorable Nancy Pelosi, Democratic Leader, and the Honorable Steny H. Hoyer, Democratic Whip. The Democratic Leader and the Democratic Whip have declined to support the position taken by the Group on the merits of DOMA Section 3's constitutionality in this case.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on August 14, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Paul D. Clement

Paul D. Clement

EXHIBIT A

RULES
of the
HOUSE OF REPRESENTATIVES

EFFECTIVE FOR
ONE HUNDRED THIRD CONGRESS



PREPARED BY
DONNALD K. ANDERSON
Clerk of the House of Representatives
JANUARY 5, 1993

(Rev 1-3-93)

H940-3.

RULES OF THE HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

RULE I

DUTIES OF THE SPEAKER

1. The Speaker shall take the Chair on every legislative day precisely at the hour to which the House shall have adjourned at the last sitting and immediately call the Members to order. The Speaker, having examined the Journal of the proceedings of the last day's sitting and approved the same, shall announce to the House his approval of the Journal, and the Speaker's approval of the Journal shall be deemed to be agreed to subject to a vote on agreeing to the Speaker's approval on the demand of any Member, which vote, if decided in the affirmative, shall not be subject to a motion to reconsider. It shall be in order to offer one motion that the Journal be read only if the Speaker's approval of the Journal is not agreed to, and such motion shall be determined without debate and shall not be subject to a motion to reconsider.

2. He shall preserve order and decorum, and, in case of disturbance or disorderly conduct in the galleries, or in the lobby, may cause the same to be cleared.

3. He shall have general control, except as provided by rule or law, of the Hall of the House, and of the corridors and passages and the disposal of the unappropriated rooms in that part of the Capitol assigned to the use of the House, until further order.

4. He shall sign all acts, addresses, joint resolutions, writs, warrants, and subpoenas of, or issued by order of, the House and decide all questions of order, subject to an appeal by any Member, on which appeal no Member shall speak more than once, unless by permission of the House. The Speaker is authorized to sign enrolled bills whether or not the House is in session.

5. (a) He shall rise to put a question, but may state it sitting; and shall put questions in this form, to wit: "As many as are in favor (as the question may be), say 'Aye'."; and after the affirmative voice is expressed, "As many as are opposed, say 'No'."; if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative. If any Member requests a recorded vote and that request is supported by at least one-fifth of a

quorum, such vote shall be taken by electronic device, unless the Speaker in his discretion orders clerks to tell the names of those voting on each side of the question, and such names shall be recorded by electronic device or by clerks, as the case may be, and shall be entered in the Journal together with the names of those not voting. Members shall have not less than fifteen minutes to be counted from the ordering of the recorded vote or the ordering of clerks to tell the vote.

(b)(1) On any legislative day whenever a recorded vote is ordered or the yeas and nays are ordered, or a vote is objected to under clause 4 of rule XV on any of the following questions, the Speaker may, in his discretion, postpone further proceedings on each such question to a designated time or place in the legislative schedule on that legislative day in the case of the question of agreeing to the Speaker's approval of the Journal, or within two legislative days, in the case of the other questions listed herein:

(A) the question of passing bills;

(B) the question of adopting resolutions;

(C) the question of ordering the previous question on privileged resolutions reported from the Committee on Rules;

(D) the question of agreeing to conference reports;

(E) the question of agreeing to motions to suspend the rules; and

(F) the question of agreeing to motions to instruct conferees as provided in clause 1(c) of rule XXVIII: *Provided, however,* That said question shall not be put if the conference report on that measure has been filed in the House.

(2) At the time designated by the Speaker for further consideration of proceedings postponed under subparagraph (1), the Speaker shall put each question on which further proceedings were postponed, in the order in which that question was considered.

(3) At any time after the vote has been taken on the first question on which the Speaker has postponed further proceedings under this paragraph, the Speaker may, in his discretion, reduce to not less than five minutes the period of time within which a roll call vote by electronic device on the question may be taken without any intervening business on any or all

of the additional questions on which the Speaker has postponed further proceedings under this paragraph.

(4) If the House adjourns before all of the questions on which further proceedings were postponed under this paragraph have been put and determined, then, on the next following legislative day the unfinished business shall be the disposition of all such questions, previously undisposed of, in the order in which the questions were considered.

6. He shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive, or where the House is engaged in voting by ballot; and in cases of a tie vote the question shall be lost.

7. He shall have the right to name any Member to perform the duties of the Chair, but such substitution shall not extend beyond three legislative days, except that with the permission of the House he may name a Member to act as Speaker pro tempore only to sign enrolled bills and joint resolutions for a period of time specified in the designation, notwithstanding any other provision of this clause: *Provided, however,* That in case of his illness, he may make such appointment for a period not exceeding ten days, with the approval of the House at the time the same is made; and in his absence and omission to make such appointment, the House shall proceed to elect a Speaker pro tempore to act during his absence.

8. He shall have the authority to designate any Member, officer or employee of the House of Representatives to travel on the business of the House of Representatives, as determined by him, within or without the United States, whether the House is meeting, has recessed or has adjourned, and all expenses for such travel may be paid for from the contingent fund of the House on vouchers solely approved and signed by the Speaker. However, expenses may not be paid from the contingent fund for travel of a Member after the date of the general election of Members in which the Member has not been elected to the succeeding Congress, or in the case of a Member who is not a candidate in such general election, the earlier of the date of such general election or the adjournment sine die

RULES OF THE

of the last regular session of the Congress.

9. (a) He shall devise and implement a system subject to his direction and control for closed circuit viewing of floor proceedings of the House of Representatives in the offices of all Members and committees and in such other places in the Capitol and the House Office Buildings as he deems appropriate. Such system may include other telecommunications functions as he deems appropriate. Any such telecommunications function shall be subject to rules and regulations issued by the Speaker.

(b)(1) He shall devise and implement a system subject to his direction and control for complete and unedited audio and visual broadcasting and recording of the proceedings of the House of Representatives. He shall provide for the distribution of such broadcasts and recordings thereof to news media, the storage of audio and video recordings of the proceedings, and the closed captioning of the proceedings for hearing-impaired individuals.

(2) All television and radio broadcasting stations, networks, services, and systems (including cable systems) which are accredited to the House radio and television correspondents' galleries, and all radio and television correspondents who are accredited to the radio and television correspondents' galleries shall be provided access to the live coverage of the House of Representatives.

(3) No coverage made available under this clause nor any recording thereof shall be used for any political purpose.

(4) Coverage made available under this clause shall not be broadcast with commercial sponsorship except as part of bona fide news programs and public affairs documentary programs. No part of such coverage or any recording thereof shall be used in any commercial advertisement.

(c) He may delegate any of his responsibilities under this clause to such legislative entity as he deems appropriate.

10. There is established in the House of Representatives an office to be known as the Office of the Historian of the House of Representatives.

11. There is established in the House of Representatives an office to be known as the Office of General Counsel for the purpose of providing legal assistance and representation to the House. Legal assistance and representation shall be provided without regard to political affiliation. The Office of General Counsel shall function pursuant to the direction of the Speaker, who shall consult with a Bipartisan Legal Advisory Group, which shall include the majority and minority leaderships. The Speaker shall appoint and set the annual rate of pay for employees of the Office of General Counsel.

12. To suspend the business of the House for a short time when no question is pending before the House, the Speaker may declare a recess subject to the call of the Chair.

RULE II

ELECTION OF OFFICERS

There shall be elected by a viva voce vote, at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, Sergeant-at-Arms, Doorkeeper, and Chaplain, each of whom shall take an oath to support the Constitution of the United States, and for the true and faithful discharge of the duties of his office to the best of his knowledge and ability, and to keep the secrets of the House; and each shall appoint all of the employees of his department provided for by law. The Clerk, Sergeant-at-Arms, and Doorkeeper may be removed by the House or by the Speaker.

RULE III

DUTIES OF THE CLERK

1. The Clerk shall, at the commencement of the first session of each Congress, call the Members to order, proceed to call the roll of Members by States in alphabetical order, and, pending the election of a Speaker or Speaker pro tempore, preserve order and decorum, and decide all questions of order subject to appeal by any Member.

2. He shall make and cause to be printed and delivered to each Member, or mailed to his address, at the commencement of every regular session of Congress, a list of the reports which it is the duty of any officer or Department to make to Congress, referring to the act or resolution and page of the volume of the laws or Journal in which it may be contained, and placing under the name of each officer the list of reports required of him to be made.

3. He shall note all questions of order, with the decisions thereon, the record of which shall be printed as an appendix to the Journal of each session; and complete, as soon after the close of the session as possible, the printing and distribution to Members, Delegates, and the Resident Commissioner from Puerto Rico of the Journal of the House, together with an accurate and complete index; retain in the library at his office, for the use of the Members, Delegates, the Resident Commissioner from Puerto Rico and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; send, at the end of each session, a printed copy of the Journal thereof to the executive and to each branch of the legislature of every State; deliver or mail to any Member, Delegate, or the Resident Commissioner from Puerto Rico an extra copy, in binding of good quality, of each document requested by that Member, Dele-

gate, or the Resident Commissioner which has been printed, by order of either House of the Congress, in any Congress in which he served; attest and affix the seal of the House to all writs, warrants, and subpoenas issued by order of the House, certify to the passage of all bills and joint resolutions.

4. He shall, in case of temporary absence or disability, designate an official in his office to sign all papers that may require the official signature of the Clerk of the House, and to do all other acts except such as are provided for by statute, they may be required under the rules and practices of the House to be done by the Clerk. Such official acts, when so done by the designated official, shall be under the name of the Clerk of the House. The said designation shall be in writing, and shall be laid before the House and entered on the Journal.

5. The Clerk is authorized to receive messages from the President and from the Senate at any time that the House is not in session.

6. He shall supervise the staff and manage any office of a Member who is deceased, has resigned, or been expelled until a successor is elected and shall perform similar duties in the event that a vacancy is declared by the House in any congressional district because of the incapacity of the Member representing such district or other reason. Whenever the Clerk is acting as a supervisory authority over such staff, he shall have authority to terminate employees; and he may appoint, with the approval of the Committee on House Administration, such staff as is required to operate the office until a successor is elected. He shall maintain on the House payroll and supervise in the same manner staff appointed pursuant to section 800 of Public Law 91-655 (2 U.S.C. 31b-5) for sixty days following the death of a former Speaker.

RULE IV

DUTIES OF THE SERGEANT-AT-ARMS

1. It shall be the duty of the Sergeant-at-Arms to attend the House during its sittings, to maintain order under the direction of the Speaker or Chairman, and, pending the election of a Speaker or Speaker pro tempore, under the direction of the Clerk, execute the commands of the House, and all processes issued by authority thereof, directed to him by the Speaker.

2. The symbol of his office shall be the mace, which shall be borne by him while enforcing order on the floor.

RULE V

DUTIES OF THE DOORKEEPER

1. The Doorkeeper shall enforce strictly the rules relating to the privileges of the Hall and be responsible to the House for the official conduct of his employees.

EXHIBIT B

RULES
of the
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS



PREPARED BY
Karen L. Haas
Clerk of the House of Representatives
JANUARY 5, 2011

(Rev. 1-05-11)

RULES OF THE

may, in consultation with the Minority Leader—

(1) postpone the time for reconvening within the limits of clause 4, section 5, article I of the Constitution and notify Members accordingly; or

(2) reconvene the House before the time previously appointed solely to declare the House in recess within the limits of clause 4, section 5, article I of the Constitution and notify Members accordingly.

(d) The Speaker may convene the House in a place at the seat of government other than the Hall of the House whenever, in the opinion of the Speaker, the public interest shall warrant it.

RULE II

OTHER OFFICERS AND OFFICIALS

Elections

1. There shall be elected at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, a Sergeant-at-Arms, a Chief Administrative Officer, and a Chaplain. Each of these officers shall take an oath to support the Constitution of the United States, and for the true and faithful exercise of the duties of the office to the best of the knowledge and ability of the officer, and to keep the secrets of the House. Each of these officers shall appoint all of the employees of the department concerned provided for by law. The Clerk, Sergeant-at-Arms, and Chief Administrative Officer may be removed by the House or by the Speaker.

Clerk

2. (a) At the commencement of the first session of each Congress, the Clerk shall call the Members, Delegates, and Resident Commissioner to order and proceed to record their presence by States in alphabetical order, either by call of the roll or by use of the electronic voting system. Pending the election of a Speaker or Speaker pro tempore, the Clerk shall preserve order and decorum and decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner.

(b) At the commencement of every regular session of Congress, the Clerk shall make and cause to be delivered to each Member, Delegate, and the Resident Commissioner a list of the reports that any officer or Department is required to make to Congress, citing the law or resolution in which the requirement may be contained and placing under the name of each officer the list of reports required to be made by such officer.

(c) The Clerk shall—

(1) note all questions of order, with the decisions thereon, the record of which shall be appended to the Journal of each session;

(2) enter on the Journal the hour at which the House adjourns;

(3) complete the distribution of the Journal to Members, Delegates, and

the Resident Commissioner, together with an accurate and complete index, as soon as possible after the close of a session; and

(4) send a copy of the Journal to the executive of and to each branch of the legislature of every State as may be requested by such State officials.

(d)(1) The Clerk shall attest and affix the seal of the House to all writs, warrants, and subpoenas issued by order of the House and certify the passage of all bills and joint resolutions.

(2) The Clerk shall examine all bills, amendments, and joint resolutions after passage by the House and, in cooperation with the Senate, examine all bills and joint resolutions that have passed both Houses to see that they are correctly enrolled and forthwith present those bills and joint resolutions that originated in the House to the President in person after their signature by the Speaker and the President of the Senate, and report to the House the fact and date of their presentation.

(e) The Clerk shall cause the calendars of the House to be distributed each legislative day.

(f) The Clerk shall—

(1) retain in the library at the Office of the Clerk for the use of the Members, Delegates, Resident Commissioner, and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; and

(2) deliver to any Member, Delegate, or the Resident Commissioner an extra copy of each document requested by that Member, Delegate, or Resident Commissioner that has been printed by order of either House of Congress in any Congress in which the Member, Delegate, or Resident Commissioner served.

(g) The Clerk shall provide for the temporary absence or disability of the Clerk by designating an official in the Office of the Clerk to sign all papers that may require the official signature of the Clerk and to perform all other official acts that the Clerk may be required to perform under the rules and practices of the House, except such official acts as are provided for by statute. Official acts performed by the designated official shall be under the name of the Clerk. The designation shall be in writing and shall be laid before the House and entered on the Journal.

(h) The Clerk may receive messages from the President and from the Senate at any time when the House is in recess or adjournment.

(i)(1) The Clerk shall supervise the staff and manage the office of a Member, Delegate, or Resident Commissioner who has died, resigned, or been expelled until a successor is elected. The Clerk shall perform similar duties in the event that a vacancy is declared by the House in any congressional district because of the incapacity of the person representing such district or

other reason. When acting as a supervisory authority over such staff, the Clerk shall have authority to terminate employees and, with the approval of the Committee on House Administration, may appoint such staff as is required to operate the office until a successor is elected.

(2) For 60 days following the death of a former Speaker, the Clerk shall maintain on the House payroll, and shall supervise in the same manner, staff appointed under House Resolution 1238, Ninety-first Congress (as enacted into permanent law by chapter VIII of the Supplemental Appropriations Act, 1971) (2 U.S.C. 31b-5).

(j) In addition to any other reports required by the Speaker or the Committee on House Administration, the Clerk shall report to the Committee on House Administration not later than 45 days following the close of each semi-annual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Clerk. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(k) The Clerk shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Sergeant-at-Arms

3. (a) The Sergeant-at-Arms shall attend the House during its sittings and maintain order under the direction of the Speaker or other presiding officer. The Sergeant-at-Arms shall execute the commands of the House, and all processes issued by authority thereof, directed to the Sergeant-at-Arms by the Speaker.

(b) The symbol of the Office of the Sergeant-at-Arms shall be the mace, which shall be borne by the Sergeant-at-Arms while enforcing order on the floor.

(c) The Sergeant-at-Arms shall enforce strictly the rules relating to the privileges of the Hall of the House and be responsible to the House for the official conduct of employees of the Office of the Sergeant-at-Arms.

(d) The Sergeant-at-Arms may not allow a person to enter the room over the Hall of the House during its sittings and, from 15 minutes before the hour of the meeting of the House each day until 10 minutes after adjournment, shall see that the floor is cleared of all persons except those privileged to remain.

(e) In addition to any other reports required by the Speaker or the Committee on House Administration, the Sergeant-at-Arms shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the

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Sergeant-at-Arms. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(f) The Sergeant-at-Arms shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Chief Administrative Officer

4. (a) The Chief Administrative Officer shall have operational and financial responsibility for functions as assigned by the Committee on House Administration and shall be subject to the oversight of the Committee on House Administration.

(b) In addition to any other reports required by the Committee on House Administration, the Chief Administrative Officer shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or December 31 on the financial and operational status of each function under the jurisdiction of the Chief Administrative Officer. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(c) The Chief Administrative Officer shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Chaplain

5. The Chaplain shall offer a prayer at the commencement of each day's sitting of the House.

Office of Inspector General

6. (a) There is established an Office of Inspector General.

(b) The Inspector General shall be appointed for a Congress by the Speaker, the Majority Leader, and the Minority Leader, acting jointly.

(c) Subject to the policy direction and oversight of the Committee on House Administration, the Inspector General shall only—

(1) provide audit, investigative, and advisory services to the House and joint entities in a manner consistent with government-wide standards;

(2) inform the officers or other officials who are the subject of an audit of the results of that audit and suggesting appropriate curative actions;

(3) simultaneously notify the Speaker, the Majority Leader, the Minority Leader, and the chair and ranking minority member of the Committee on House Administration in the case of any financial irregularity discovered in the course of carrying out responsibilities under this clause;

(4) simultaneously submit to the Speaker, the Majority Leader, the Minority Leader, and the chair and

ranking minority member of the Committee on House Administration a report of each audit conducted under this clause; and

(5) report to the Committee on Ethics information involving possible violations by a Member, Delegate, Resident Commissioner, officer, or employee of the House of any rule of the House or of any law applicable to the performance of official duties or the discharge of official responsibilities that may require referral to the appropriate Federal or State authorities under clause 3(a)(3) of rule XI.

Office of the Historian

7. There is established an Office of the Historian of the House of Representatives. The Speaker shall appoint and set the annual rate of pay for employees of the Office of the Historian.

Office of General Counsel

8. There is established an Office of General Counsel for the purpose of providing legal assistance and representation to the House. Legal assistance and representation shall be provided without regard to political affiliation. The Office of General Counsel shall function pursuant to the direction of the Speaker, who shall consult with a Bipartisan Legal Advisory Group, which shall include the majority and minority leaderships. The Speaker shall appoint and set the annual rate of pay for employees of the Office of General Counsel.

RULE III

THE MEMBERS, DELEGATES, AND RESIDENT COMMISSIONER OF PUERTO RICO

Voting

1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented, and shall vote on each question put, unless having a direct personal or pecuniary interest in the event of such question.

2. (a) A Member may not authorize any other person to cast the vote of such Member or record the presence of such Member in the House or the Committee of the Whole House on the state of the Union.

(b) No other person may cast a Member's vote or record a Member's presence in the House or the Committee of the Whole House on the state of the Union.

Delegates and the Resident Commissioner

3. (a) Each Delegate and the Resident Commissioner shall be elected to serve on standing committees in the same manner as Members and shall possess in such committees the same powers and privileges as the other members of the committee.

(b) The Delegates and the Resident Commissioner may be appointed to any select committee and to any conference committee.

RULE IV

THE HALL OF THE HOUSE

Use and admittance

1. The Hall of the House shall be used only for the legislative business of the House and for caucus and conference meetings of its Members, except when the House agrees to take part in any ceremonies to be observed therein.

2. (a) Only the following persons shall be admitted to the Hall of the House or rooms leading thereto:

(1) Members of Congress, Members-elect, and contestants in election cases during the pendency of their cases on the floor.

(2) The Delegates and the Resident Commissioner.

(3) The President and Vice President of the United States and their private secretaries.

(4) Justices of the Supreme Court.

(5) Elected officers and minority employees nominated as elected officers of the House.

(6) The Parliamentarian.

(7) Staff of committees when business from their committee is under consideration, and staff of the respective party leaderships when so assigned with the approval of the Speaker.

(8) Not more than one person from the staff of a Member, Delegate, or Resident Commissioner when that Member, Delegate, or Resident Commissioner has an amendment under consideration (subject to clause 5).

(9) The Architect of the Capitol.

(10) The Librarian of Congress and the assistant in charge of the Law Library.

(11) The Secretary and Sergeant-at-Arms of the Senate.

(12) Heads of departments.

(13) Foreign ministers.

(14) Governors of States.

(15) Former Members, Delegates, and Resident Commissioners; former Parliamentarians of the House; and former elected officers and minority employees nominated as elected officers of the House (subject to clause 4).

(16) One attorney to accompany a Member, Delegate, or Resident Commissioner who is the respondent in an investigation undertaken by the Committee on Ethics when a recommendation of that committee is under consideration in the House.

(17) Such persons as have, by name, received the thanks of Congress.

(b) The Speaker may not entertain a unanimous consent request or a motion to suspend this clause or clauses 1, 3, 4, or 5.

3. (a) Except as provided in paragraph (b), all persons not entitled to the privilege of the floor during the session shall be excluded at all times from the Hall of the House and the cloakrooms.

(b) Until 15 minutes of the hour of the meeting of the House, persons employed in its service, accredited members of the press entitled to admission to the press gallery, and other persons