

Congressional Consideration of Resolutions to "Censure" Executive Branch Officials

September 14, 2017 (IN10774)

Related Author

- [Christopher M. Davis](#)

Christopher M. Davis, Analyst on Congress and the Legislative Process (cmdavis@crs.loc.gov, 7-0656)

Over the history of the federal Congress, Members have [proposed resolutions](#) to formally express the House or Senate's censure, disapproval, loss of confidence, or condemnation of the President or other executive branch official or their actions. This *Insight* summarizes the parliamentary procedures the House and Senate might use to consider a resolution to censure or condemn an executive branch official and provides links to additional reading material on the subject.

Two Types of "Censure" Resolutions

An important distinction should be made between two types of "censure" resolutions: (1) resolutions expressing the sense of the House or Senate that the behavior or actions of an *executive branch official* should be condemned or censured and (2) resolutions that censure a *Member of Congress* for "disorderly behavior," including ethical violations.

Resolutions that censure officials of the executive branch for abuse of power or inappropriate behavior, including ethical violations, are usually simple resolutions of the House or Senate. Such resolutions, however, are distinct in an important way from the simple resolutions by which either chamber may censure one of its own Members, even though the reasons for censure may be similar. Article I, Section 5, of the Constitution grants each chamber the power to discipline its own members, and resolutions censuring a Senator or Representative are based on this power. Resolutions censuring an official of another branch, on the other hand, are merely expressions of the sense of the House or the Senate about the conduct of an individual over whom Congress has no disciplinary authority (except through impeachment). Consequently, both Houses treat these two types of "censure" resolutions very differently in a parliamentary sense. Resolutions of either type, however, have been rare.

Resolutions That Censure a Representative or a Senator

Simple resolutions that censure a Member of Congress for "disorderly behavior"—that is, resolutions carrying out the constitutional function of disciplining a Member under the Constitution—are privileged for consideration in both the House and Senate. In the House of Representatives, such resolutions generally qualify as [questions of the privileges of the House](#) under Rule IX. In this context, the censure of a Representative would occur through a formal vote of the House on a resolution disapproving of the Member's conduct. Such resolutions include the requirement that the

offending Member stand in the well of the House as the resolution of censure is [read aloud by the Speaker](#). (If the resolution reprimands a Member of the House without using the term *censure*, this step is not taken.) The most recent instance where a Representative was formally censured in this way by the House occurred [in 2010](#). Similarly, in the Senate, the Select Committee on Ethics may recommend [disciplinary action](#) against a Senator, including "censure, expulsion, or recommendation to the appropriate party conference regarding such Member's seniority or positions of responsibility." The last time a Senator was formally censured by such a [privileged resolution](#) was [in 1990](#).

Resolutions That Censure an Executive Branch Official

While resolutions censuring a Member of Congress are privileged in his or her chamber, resolutions that censure, condemn, disapprove of, or express a loss of confidence in an executive branch official are not privileged and do not enjoy a special parliamentary status. Inasmuch as they simply express the formal opinion of the House or Senate, such resolutions are considered under the regular parliamentary mechanisms used to process other ["sense of"](#) legislation.

Which procedure might be used in the House to consider a resolution censuring an executive branch official would depend on the level of support such a measure enjoyed in the chamber. Should widespread support exist, a resolution to censure an executive branch official could be considered by unanimous consent or under the [Suspension of the Rules](#) procedure. (Under long-standing policies announced by the Speaker, such a unanimous consent request would have to be cleared in advance by the bipartisan committee and floor leadership in order to be entertained. The Suspension of the Rules procedure lays aside any parliamentary barriers to considering the measure but requires a two-thirds vote for passage.) Such a resolution could also be brought to the floor under the terms of a special rule reported by the Committee on Rules and adopted by the House. All three of these mechanisms require, at a minimum, the support of the majority party leadership in order to be entertained.

If the censure resolution were not supported by the House majority party leadership, obtaining floor consideration would likely be difficult. Members could try to employ the House [discharge rule](#) (Rule XV, clause 2) to bring a censure resolution (or a special rule providing for its consideration) to the floor for consideration.

In the Senate, resolutions censuring an executive branch official could be called up on the floor by unanimous consent. Should there be an objection to the immediate consideration of such a resolution when it was submitted, the measure would [go "over under the rule"](#) and be placed on a special section of the Senate's [Calendar of Business](#) dedicated to such resolutions. In current practice, simple resolutions that go "over under the rule" in this way are effectively moot and cannot be considered except by unanimous consent. Should, on the other hand, a Senate committee report a resolution censuring an executive branch official, the measure could be called up on the floor by debatable motion. In any case, the resolution and any preamble therein would each be separately debatable and amendable, including by non-germane amendment. Should a Senator succeed in getting an amendment that included censure language pending on the floor, that amendment too, would be subject to debate. As a result, one or more [cloture](#) processes might be necessary in order to reach a final vote on the language under any of these parliamentary scenarios if unanimous consent could not be obtained. A Senator might try to trigger a vote *in relation* to censure language by making a motion to [Suspend the Rules](#). When voting on such a motion, the question before the Senate would be whether or not to lay aside any rules blocking floor consideration of censure legislation.

For additional reading on censure resolutions aimed at executive branch officials, see CRS Report RL34037, [Congressional Censure and "No Confidence" Votes Regarding Public Officials](#), coordinated by Cynthia Brown; and CRS Insight IN10775, [Resolutions Censuring the President: History and Context, 1st-114th Congresses](#), by Jane A. Hudiburg.