

**MEMORANDUM**

June 20, 2016

**To:** House Committee on Oversight and Government Reform  
Attention: [REDACTED]

**From:** [REDACTED]  
Legislative Attorney  
American Law Division

**Subject:** Effect of House Censure Resolution on a Federal Official's Pension

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This memorandum is submitted in response to the Committee's request, as discussed with [REDACTED], for a legal analysis of the effect of a House Resolution, such as H. Res. 737, 114<sup>th</sup> Congress, on the right of an individual officer or employee of the federal government to receive his pension annuity under the Federal Employee Retirement System (FERS).

The resolution in question, H. Res. 737, 114<sup>th</sup> Congress, expresses the "sense of the House of Representatives" that a named officer in the executive branch of government "should" resign immediately, or be removed from office by the President, and "should – be required to forfeit all rights to any annuity for which he is eligible under chapter 83 or chapter 84 of title 5, United States Code."

The legislative vehicle in which the House would "censure and condemn" the official, and would express its opinion that such official forfeit his pension annuities, is a one-house, or "simple resolution." As noted by parliamentary authorities, simple resolutions of one house of Congress (or concurrent resolutions by both houses) are commonly employed for certain "nonlegislative" matters, such as to express the opinion or the "sense of" the Congress or of one house of Congress on a public matter.<sup>1</sup> Simple resolutions require no action by the other house of Congress, and since they contain no legislative matters are not presented to the President and "have no legal effect."<sup>2</sup>

The provisions and language in the simple resolution regarding the pension annuities of the executive branch official are therefore simply hortatory, are not legally binding, and would have no mandatory impact upon the right of the officer to his government pension.<sup>3</sup> An attempt to "legislate" with respect to

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<sup>1</sup> "Simple resolutions are used in dealing with nonlegislative matters such as expressing opinions or facts ...." 7 DESCHLER'S PRECEDENTS OF THE U.S. HOUSE OF REPRESENTATIVES [hereinafter DESCHLER'S PRECEDENTS], ch. 24, § 6.1, at. p. 363.

"[Concurrent resolutions] are not used in the adoption of general legislation. ... [They] are used in ... expressing the sense of Congress on propositions .... A concurrent resolution does not involve an exercise of the legislative power under article I of the Constitution in which the President must participate." *Id.* at § 5. Brown, Johnson, and Sullivan, HOUSE PRACTICE, 112<sup>th</sup> Congress, 1<sup>st</sup> Sess., at 164: "Simple or concurrent resolutions are used ... to express facts or opinions, or to dispose of some other nonlegislative matter." See also Riddick & Frumin, Riddick's Senate Procedure, 1202 (1992).

<sup>2</sup> DESCHLER'S PRECEDENTS, *supra* at ch. 24, § 6.1, p.363.

<sup>3</sup> Pension annuities of federal executive officers and employees may be forfeited under the provisions of the so-called "Hiss Act" upon conviction of the officer or employee of treason, espionage, or other similar national security related offenses. See P.L. 83-769, 68 Stat. 1142 (Sept. 1, 1954), as amended; now 5 U.S.C. §§ 8311 *et seq.* The list of covered offenses is at 5 U.S.C. § 8312.

the rights and benefits of those outside the purview of the House of Representatives in a simple, one-house resolution may run afoul of the constitutional requirements of bicameralism and presentment.<sup>4</sup>

If, on the other hand, there were an attempt to place the pension forfeiture provision regarding a named individual in a House bill, to be approved by the Senate, and presented to the President to be enacted into law, such legislation would then appear to run afoul of the provision of the United States Constitution which prohibits the Congress from enacting a “Bill of Attainder.”<sup>5</sup> The provision of the Constitution forbidding Congress from adopting a “Bill of Attainder” is directed at what are generally described as legislative punishments.<sup>6</sup> Taking away an employee’s or former employee’s pension in such circumstances (*i.e.*, in response to perceived employee misconduct) has been characterized in the past as “punitive”<sup>7</sup>; and Congress targeting specific employees for reductions of pay or benefits as a punitive measure either in permanent legislation or in appropriations laws has been found by the Supreme Court to constitute an impermissible “Bill of Attainder.”<sup>8</sup>

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<sup>4</sup> U.S. CONST., art. I, §7, cl. 2 and 3. *INS v. Chadha*, 462 U.S. 919, 948-956 (1983).

<sup>5</sup> U.S. CONST., art. I, §9, cl. 3.

<sup>6</sup> A bill of attainder is “a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.” *Nixon v. Administrator of General Services*, 433 U.S. 425, 468 (1977); *Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. 841, 847 (1984).

<sup>7</sup> *Hiss v. Hampton*, 338 F. Supp. 1141, 1148 - 1152 (D.D.C. 1972).

<sup>8</sup> *United States v. Lovett*, 328 U.S. 303 (1946).

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