

§ 288h. Defense of certain constitutional powers

In performing any function under this chapter, the Counsel shall defend vigorously when placed in issue—

- (1) the constitutional privilege from arrest or from being questioned in any other place for any speech or debate under section 6 of article I of the Constitution of the United States;
- (2) the constitutional power of the Senate to be judge of the elections, returns, and qualifications of its own Members and to punish or expel a Member under section 5 of article I of the Constitution of the United States;
- (3) the constitutional power of the Senate to except from publication such parts of its journal as in its judgment may require secrecy;
- (4) the constitutional power of the Senate to determine the rules of its proceedings;
- (5) the constitutional power of Congress to make all laws as shall be necessary and proper for carrying into execution the constitutional powers of Congress and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof;
- (6) all other constitutional powers and responsibilities of the Senate or of Congress; and
- (7) the constitutionality of Acts and joint resolutions of the Congress.

(Pub. L. 95-521, title VII, § 709, Oct. 26, 1978, 92 Stat. 1881.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title VII of Pub. L. 95-521, which enacted this chapter, section 5504 of this title, and section 1364 of Title 28, Judiciary and Judicial Procedure, and amended sections 3210, 3216, and 3219 of Title 39, Postal Service. For complete classification of title VII to the Code, see Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Jan. 3, 1979, see section 717 of Pub. L. 95-521, set out as a note under section 288 of this title.

§ 288i. Representation conflict or inconsistency**(a) Notification**

In the carrying out of the provisions of this chapter, the Counsel shall notify the Joint Leadership Group, and any party represented or person affected, of the existence and nature of any conflict or inconsistency between the representation of such party or person and the carrying out of any other provision of this chapter or compliance with professional standards and responsibilities.

(b) Solution; publication in Congressional Record; review

Upon receipt of such notification, the members of the Joint Leadership Group shall recommend the action to be taken to avoid or resolve the conflict or inconsistency. If such recommendation is made by a two-thirds vote, the Counsel shall take such steps as may be nec-

essary to resolve the conflict or inconsistency as recommended. If not, the members of the Joint Leadership Group shall cause the notification of conflict or inconsistency and recommendation with respect to resolution thereof to be published in the Congressional Record of the Senate. If the Senate does not direct the Counsel within fifteen days from the date of publication in the Record to resolve the conflict in another manner, the Counsel shall take such action as may be necessary to resolve the conflict or inconsistency as recommended. Any instruction or determination made pursuant to this subsection shall not be reviewable in any court of law.

(c) Computation of period following publication

For purposes of the computation of the fifteen day period in subsection (b)—

- (1) continuity of session is broken only by an adjournment of Congress sine die; and
- (2) the days on which the Senate is not in session because of an adjournment of more than three days to a date certain are excluded.

(d) Reimbursement

The Senate may by resolution authorize the reimbursement of any Member, officer, or employee of the Senate who is not represented by the Counsel for fees and costs, including attorneys’ fees, reasonably incurred in obtaining representation. Such reimbursement shall be from funds appropriated to the contingent fund of the Senate.

(Pub. L. 95-521, title VII, § 710, Oct. 26, 1978, 92 Stat. 1882.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this title”, meaning title VII of Pub. L. 95-521, which enacted this chapter, section 5504 of this title, and section 1364 of Title 28, Judiciary and Judicial Procedure, and amended sections 3210, 3216, and 3219 of Title 39, Postal Service. For complete classification of title VII to the Code, see Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Jan. 3, 1979, see section 717 of Pub. L. 95-521, set out as a note under section 288 of this title.

§ 288j. Consideration of resolutions to direct counsel**(a) Procedure; rules**

(1) A resolution introduced pursuant to section 288b of this title shall not be referred to a committee, except as otherwise required under section 288d(c) of this title. Upon introduction, or upon being reported if required under section 288d(c) of this title, whichever is later, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. A motion to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to.

(2) With respect to a resolution pursuant to section 288b(a) of this title, the following rules apply:

(A) If the motion to proceed to the consideration of the resolution is agreed to, debate thereon shall be limited to not more than ten hours, which shall be divided equally between, and controlled by, those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to the resolution shall be in order. No motion to recommit the resolution shall be in order, and it shall not be in order to reconsider the vote by which the resolution is agreed to.

(B) Motions to postpone, made with respect to the consideration of the resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(C) All appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to the resolution shall be decided without debate.

(b) “Committee” defined

For purposes of this chapter, other than section 288b of this title, the term “committee” includes standing, select, and special committees of the Senate established by law or resolution.

(c) Rules of the Senate

The provisions of this section are enacted—

(1) as an exercise of the rulemaking power of the Senate, and, as such, they shall be considered as part of the rules of the Senate, and such rules shall supersede any other rule of the Senate only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

(Pub. L. 95-521, title VII, §711, Oct. 26, 1978, 92 Stat. 1882.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this title”, meaning title VII of Pub. L. 95-521, which enacted this chapter, section 5504 of this title, and section 1364 of Title 28, Judiciary and Judicial Procedure, and amended sections 3210, 3216, and 3219 of Title 39, Postal Service. For complete classification of title VII to the Code, see Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Jan. 3, 1979, see section 717 of Pub. L. 95-521, set out as a note under section 288 of this title.

§ 288k. Attorney General relieved of responsibility

(a) Upon receipt of written notice that the Counsel has undertaken, pursuant to section 288c(a) of this title, to perform any representational service with respect to any designated party in any action or proceeding pending or to be instituted, the Attorney General shall—

(1) be relieved of any responsibility with respect to such representational service;

(2) have no authority to perform such service in such action or proceeding except at the request or with the approval of the Senate; and

(3) transfer all materials relevant to the representation authorized under section 288c(a) of this title to the Counsel, except that nothing in this subsection shall limit any right of the Attorney General under existing law to intervene or appear as amicus curiae in such action or proceeding.

(b) The Attorney General shall notify Counsel as required by section 530D of title 28.

(Pub. L. 95-521, title VII, §712, Oct. 26, 1978, 92 Stat. 1883; Pub. L. 107-273, div. A, title II, §202(b)(2), Nov. 2, 2002, 116 Stat. 1774; Pub. L. 108-7, div. H, title I, §110(b), Feb. 20, 2003, 117 Stat. 355.)

Editorial Notes

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-7 made technical amendment to reference in original act which appears in text as reference to section 530D of title 28.

2002—Subsec. (b). Pub. L. 107-273 added subsec. (b) and struck out former subsec. (b) which read as follows: “The Attorney General shall notify the Counsel with respect to any proceeding in which the United States is a party of any determination by the Attorney General or Solicitor General not to appeal any court decision affecting the constitutionality of an Act or joint resolution of Congress within such time as will enable the Senate to direct the Counsel to intervene as a party in such proceeding pursuant to section 288e of this title.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-7 effective as if included in the enactment of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273, see section 110(c) of Pub. L. 108-7, set out as a note under section 5571 of this title.

EFFECTIVE DATE

Section effective Jan. 3, 1979, see section 717 of Pub. L. 95-521, set out as a note under section 288 of this title.

§ 288l. Procedural provisions

(a) Intervention or appearance

Permission to intervene as a party or to appear as amicus curiae under section 288e of this title shall be of right and may be denied by a court only upon an express finding that such intervention or appearance is untimely and would significantly delay the pending action or that standing to intervene has not been established under section 2 of article III of the Constitution of the United States.

(b) Compliance with admission requirements

The Counsel, the Deputy Counsel, or any designated Assistant Counsel or counsel specially retained by the Office shall be entitled, for the purpose of performing his functions under this chapter, to enter an appearance in any proceeding before any court of the United States or of a State or political subdivision thereof without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this subsection shall