80th Congress
2d Session

COMMITTEE PRINT

STATUS QUO RESOLUTIONS

REPORTS OF TREASURY DEPARTMENT

AND

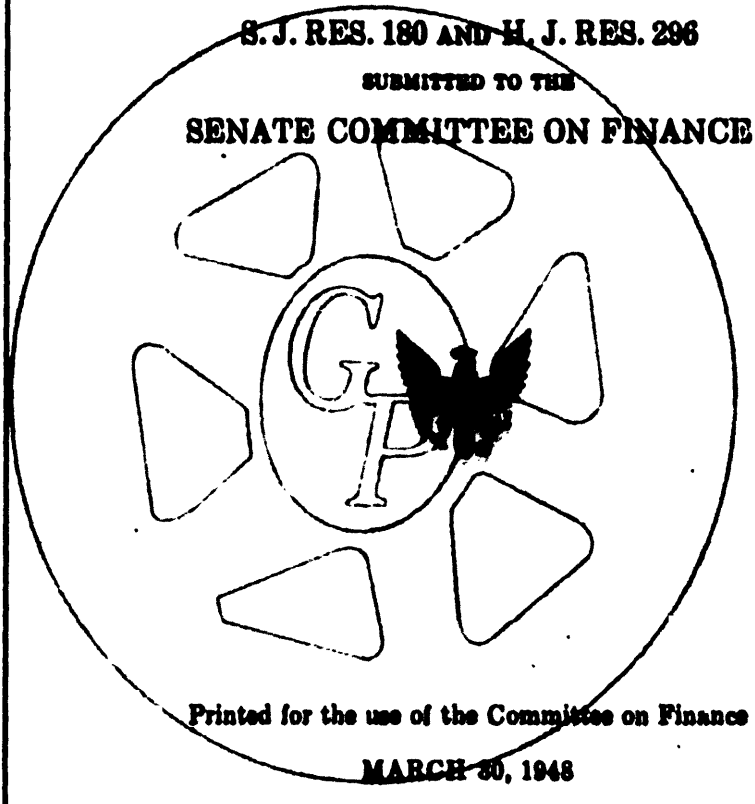
FEDERAL SECURITY AGENCY

ON

S. J. RES. 180 AND H. J. RES. 296

SUBMITTED TO THE

SENATE COMMITTEE ON FINANCE



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STATUS QUO RESOLUTIONS

TREASURY DEPARTMENT,
Washington, February 18, 1948.

Hon. EUGENE D. MILLIKIN,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter dated January 21, 1948, requesting the views of this Department regarding Senate Joint Resolution 180, Eightieth Congress, second session.

The purpose of the proposed resolution is stated to be—

to maintain the status quo in respect of certain employment taxes and social-security benefits pending action by Congress on extended social-security coverage.

The resolution would amend section 1426 (d) and section 1607 (i) of the Internal Revenue Code and section 1101 (a) (6) of the Social Security Act, as of the date of their enactment, to provide in effect that, for purposes of the social-security program and excepting cases in which "eligibility for benefits" was "determined" prior to January 1, 1948, the term "employee" shall not include any individual who is not an employee "under the common law rules applicable in determining the employer-employee relationship."

In the first place, the proposed resolution would not maintain the "status quo" but would change the law as pronounced by the Supreme Court in June 1947 (*U. S.* v. *Silk*, 67 S. Ct. 1463; *Harrison* v. *Greyvan Lines, Inc.*, 67 S. Ct. 1463; and *Bartels* v. *Birmingham*, 67 S. Ct. 1547), and, in so doing, would deprive an estimated one-half to three-quarters of a million employees and their dependents of the social security coverage to which they are now entitled. Thus, the proposed resolution implies a disregard for the protection afforded by the social-security program and would reverse the trend toward expanded coverage which the President and this Department have repeatedly espoused.

In addition, the proposed resolution would require the courts and the administrative agencies to ignore the general purposes of the social-security legislation in identifying the persons to whom it should be applied. It would substitute the "common law rules" for the principles of economic reality recently set forth by the Supreme Court, as governing the determination of employer-employee relationships for purposes of the social-security program.

Under common law, the legal right to control the performance of services appears to be the primary test in determining the existence of the employer-employee relationship. In the absence of any other guide, this test was adopted by the Treasury Department in 1936, in the Department's original regulations under the Social Security Act. As experience developed under these regulations, however, it became

increasingly clear that such a test permitted employers to avoid employment tax liability and deprive their workers of social-security coverage by dressing up their relationship through so-called independent contracts but without, in any material sense, altering their relative economic positions. Indicative of the artificiality which arose is the case *Nevins, Inc.* v. *Rothenaies* (58 F. Supp. 460, aff'd per curiam, 158 F. (2d) 189), in which a chain drug company converted former branch managers into licensees, advancing all necessary equipment and inventories to each store. The licensees were held to be independent contractors, despite the fact that their economic relationship with the drug company remained virtually the same as when they were branch managers. The extent to which such artifices were employed might also be illustrated by the following advice published in a nationally known tax service:

> Many employers have taken steps to eliminate pay-roll tax liability on certain individuals by changing their status from that of employees to that of independent contractors. The types of employees where such change is feasible include, among others, salesmen, selling agents, factors, brokers, bulk-oil operators, store managers, motion-picture-theater managers, and taxicab drivers.
>
> Before attempting to establish an independent contractor relationship with any individuals * * * be sure that the contract definitely provides for freedom from control as to the manner or method of performance of the work, and be extremely careful not to direct or influence the workers as to their choice of means or methods. Relinquish not only control of the way they do their work and the employees they hire, but also sever all contact with their customers.

In June 1947 the Supreme Court of the United States in the Silk, Greyvan, and Bartels cases finally established that, within the meaning and intent of the social-security legislation, the employment relationship should be determined on the basis of the worker's relationship in fact with the person for whom he performs services, rather than on his technical relationship under the common law. By thus elevating substance above form, the Supreme Court has effectively limited the possibilities of avoiding employment-tax liability and defeating the purposes of the social-security program through mere technical arrangements. The proposed resolution would nullify the results of these Supreme Court decisions and would reinstate the "control" test in spite of its obvious deficiencies.

It is significant that a majority of the States, even prior to the Silk, Greyvan, and Bartels decisions, recognized the inadequacy of the common law "control" test and abandoned it for purposes of the unemployment insurance program. Many of the workers whose status would be changed to independent contractor by the proposed resolution have been and would continue to be, held employees under the unemployment compensation acts of such States. (See P-H Social Security Tax Service, vol. 1, sec. 27,226, and cases cited therein.) The rest of the States retained the common law "control" test only because they considered the unemployment insurance program to be essentially a federally sponsored program and have been reluctant to depart from the Federal rule. (See *Commercial Motor Freight, Inc.* v. *Ebright* (Ohio), 54 N. W. (2d) 297; *A. J. Meyer & Co.* v. *U. S. C.* (Mo.) 152 S. W. (2d) 184; *Gentile Bros. Co.* v. *Florida Ind. Com.* (Fla.), 10 S. (2d) 568; and *Meredith Publishing Co.* v. *Iowa Employment Security Commission* (Iowa), 6 N. W. (2d) 6. See also sec. 2 (K) of California Unemployment Insurance Act; sec. 2 (1) (7) of Delaware Unemployment Compensation Act; sec. 108.02 (h) of the Wisconsin

Unemployment Reserves and Compensation Act; and similar provisions in other State unemployment insurance laws.) Now that the Federal concept of "employee" has been brought substantially in line with the majority of the States, it is reasonable to presume that the rest of the States will quickly follow and that the employer-employee relationship will hereafter receive substantially uniform determinations for purposes of the unemployment insurance program under both the Federal and the State laws. Enactment of the proposed resolution would prevent such a result. It would restore the unrealistic distinctions between legal right to control and economic position to control and between workers on the premises and those off the premises, which pervaded the social-security system under the common law "control" test. Once more, thousands of workers would be deemed independent contractors under the Federal unemployment legislation but employees under most of the implemental State acts. Employers would again be able to avoid their proper share of contributions to the social-security program; and the protection of the program would again be denied to the more than 500,000 individuals whose coverage is assured under existing law.

The objections to the proposed resolution would by no means be removed even if such individuals were eventually to be brought within the old-age and survivors insurance program by a future extension of coverage to include self-employed individuals. There is considerable doubt as to the feasibility of covering self-employed individuals under the unemployment insurance program. Accordingly, to legislate these workers into a self-employed status might forever deprive them of unemployment insurance benefits. Furthermore, all plans proposed to date for the coverage of self-employed individuals contemplate a higher rate of contribution than that required from employees. Since all of the workers in this area occupy the same economic status as "common law" employees, it would be inequitable to make them pay more than their "common law" counterparts for social security protection, particularly when it is considered that such excess represents a tax burden which should properly be borne by their employers. Likewise, by exempting employers of such individuals from employment taxes, the proposed resolution would revive the discrimination, which persisted under the "control" test, against other employers, including competitors, who either preferred not, or were unable, to rearrange the status of their employees to fit the technical "common law" classification of independent contractor.

In addition to the foregoing, there is considerable doubt regarding the legal effect of section 2 (b) of the proposed resolution. It provides that the amendments proposed therein—

> shall not have the effect of voiding any determination respecting eligibility for, or amount of, benefits of any individual under title II of the Social Security Act made prior to January 1, 1948, or of preventing any such determination so made from continuing to apply on or after January 1, 1948.

In one respect this provision could mean that any individual who was deemed by the Social Security Administration or the courts to be an employee entitled to wage credits prior to January 1, 1948, would continue to be an employee thereafter for purposes of wage credits and insurance benefits. In this event a number of the individuals under consideration would be allowed to accumulate addi-

tional wage credits after January 1, 1948, without paying any taxes, since the Social Security Administration has been making determinations on the basis of the Silk, Greyvan, and Bartels cases since June 1947. Moreover, to hold such individuals to be entitled to accumulate wage credits is meaningless without a simultaneous imposition of tax on their employers, since it is through the employment-tax return that the necessary wage data is obtained. It can hardly be contemplated that the employees themselves would furnish adequate wage data periodically to the Social Security Administration.

In another light the provisions of section 2 (b) of the proposed resolution might be interpreted to apply only to those individuals who were deemed by the Social Security Administration or the courts, prior to January 1, 1948, to be fully qualified, by age and otherwise, to receive insurance benefits. This interpretation would obviously produce an inequitable result. Moreover, under such an interpretation, the Social Security Administrator, in many cases, would be prevented by reason of section 2 (a) of the proposed resolution from applying the "work clause" (sec. 203 (d)) of the Social Security Act and reducing such individuals' benefits, even though such individuals thereafter continue to receive substantial remuneration in the same type of employment which qualified them for their benefits.

The proposed resolution was evidently drafted on the assumption that the "control" test has governed all determinations and assessments of employment-tax liability to date. Such, however, is not the case. In 1945 the Court of Appeals of the District of Columbia sustained an assessment against an employer of intinerant coal hustlers, primarily on the ground that the social-security—

(statutes are remedial and require construction which will give effect to the intention of Congress in the light of the mischief to be corrected and the end to be attained * * * (*Grace* v. *Magruder*, 148 F. (2d) 679, cert. den. 326 U. S. 720).

Similar departures from common-law principles with respect to assessments of employment taxes for periods prior to January 1, 1948, have been pronounced in *La Lone* v. *U. S.* (57 F. Supp. 947 (1944)); *Schwing, et al.* v. *U. S.* (C. C. A. 3, No. 9190 (January 1948)); *Tapager* v. *Birmingham* (U. S. D. C., N. D., Iowa, cent. div., January 16, 1948); and *Atlantic Coast Life Ins. Co.* v. *U. S.* (U. S. D. C., E. D., S. Carolina, Charleston Div., January 16, 1948); not to mention the Supreme Court's decision in the Silk case in June 1947. In all of these cases the taxes have been paid and wage credits have been posted to the employees' accounts with the Social Security Administration. Enactment of the proposed resolution might reopen all of such cases. The Commissioner of Internal Revenue would then have to determine whether to make refunds or relitigate such cases under the control test. In either event, the administrative task would be difficult. Relitigation of the status of the truck owner-drivers and orchestra leaders involved in the Silk, Greyvan, and Bartels cases would also have to be considered, since such individuals were held by the Supreme Court to be independent contractors on the basis of their economic, and in spite of their common-law, relationship with the persons to whom they were rendering services.

The proposed resolution is substantially identical with House Joint Resolution 296, which was reported to the House of Representatives by the Ways and Means Committee on February 3, 1948. In the majority report of that committee it is stated that the pending amend-

ments to the Treasury Department's employment-tax regulations, which seek to implement the Supreme Court decisions in the Silk, Greyvan, and Bartels cases, will affect many "normally independent operations," such as "logging," "marketing of petroleum products," "distribution or sale of newspapers," "distribution or sale of household and other items and appliances to the ultimate consumer," and "sales of fire casualty, and some other type of insurance," and will result in confusion and extensive litigation. It is also stated in the Ways and Means Committee report that, in the absence of the type of control required under the common-law rules, many employers will be unable to compute or withhold the employment taxes for which they will be liable.

With respect to the scope of the new regulations, it should be pointed out that "normally independent operations" which are independent in fact will not be affected thereby. The regulations will not convert independent retailers into employees but will apply only where a service relationship exists in fact between the individual performing the services and the person for whom they are being performed. Many individuals engaged in logging, selling newspapers, distributing household appliances, and selling insurance have already been held to be employees under the so-called common-law rules. Many of those considered independent contractors at common law, as in the field of petroleum marketing, casualty insurance, and credit correspondents will, doubtless, continue more clearly in that status under the new regulations than under the "control" test. The only individuals whose status will be affected by the new regulations will be those who, but for certain formal recitations in their employment contracts or certain methods of remuneration, would clearly be employees even under the common-law rules.

It is believed that an intelligent and practical application of the new regulations will not increase uncertainty or litigation but will substantially reduce the present uncertainty and controversies with respect to the status of a great number of the workers involved in the new area of coverage. The "control" test produced an endless stream of employment-tax litigation, as well as a constant series of adjustments between employers and employees to circumvent the findings on which adverse decisions have been based. To date approximately 250 employment-tax cases involving the "control" test have had to be litigated in the courts, and more than 50 of such cases are pending in court at the present time. Under the criteria laid down by the Supreme Court and reiterated in the pending regulations, on the other hand, the tendency will be to produce greater stability and less litigation, since the status of individuals thereunder cannot be altered by mere technical adjustments in the form of their reemployment contracts. So that the status of individuals in the new area of coverage might be more easily ascertained, it is contemplated that, on final promulgation of the new regulations, a number of rulings in various fields of business and industrial activity will be published by the Commissioner of Internal Revenue illustrating the scope and application thereof.

As to the administrative problems involved, you may be sure that the Treasury Department and the Bureau of Internal Revenue are not insensitive to, or unaware of, the wage reporting and withholding burdens which will have to be sustained by employers in the new

area of coverage. It must be recognized, however, that in every case where an individual status is held to be that of an employee under the new regulations, he will be rendering services to, and substantially dependent on, his employer and, as a practical matter, will be no less willing to cooperate with his employer than in the case of any "common law" employee. Accordingly, the employer will invariably be in a position to secure from such employees whatever reports or remittances are necessary to enable him to comply with the reporting and withholding provisions of the law.

It is noted that the reporting and withholding requirements were considered a serious problem to employers at the time of the enactment of the original Social Security Act in 1935. Despite these difficulties, however, the program was enacted and the administrative burdens proved much less serious than was anticipated. Furthermore, the withholding and reporting problems referred to by the Ways and Means Committee are not new. Many of the individuals covered by existing regulations operate under commission, purchase and sale, and lease arrangements, and procedures have been worked out through which their employers have been able satisfactorily to comply with the withholding and reporting requirements of the social security program. The difficulties confronting employers in the new area of coverage are no greater than those which have already been resolved by other employers. Certainly, it has not been shown that the difficulties confronting them are so formidable as to warrant destruction of the benefit rights to which their employees are now entitled.

On the basis of the foregoing considerations, the Treasury Department is opposed to the enactment of Senate Joint Resolution 180.

As stated above, it is estimated that between 500,000 and 750,000 workers would be excluded from social-security coverage under the provisions of Senate Joint Resolution 180. Assuming average earnings of $2,000 by 625,000 workers, the total wages would approximate $1,250,000,000. The employers' and employees' taxes on such wages would run close to $25,000,000 annually.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Very truly yours,

A. L. M. WIGGINS.
Acting Secretary of the Treasury.

FEDERAL SECURITY AGENCY,
Washington 25, February 20, 1948.

Hon. EUGENE D. MILLIKIN,
Chairman, Committee on Finance,
United States Senate, Washington 25, D. C.

DEAR MR. CHAIRMAN: This is in response to the committee's letter of January 31, 1948, requesting an expression of our views on Senate Joint Resolution 180, to maintain the status quo in respect of certain employment taxes and social-security benefits pending action by Congress on extended social-security coverage.

The resolution, if adopted, would exclude from coverage provisions of the Internal Revenue Code and the Social Security Act those who are not under "common law rules" in an employer-employee relation-

ship. The proposed amendments, moreover, are designed to have the same effect for internal-revenue purposes as if included in the Internal Revenue Code on February 10, 1939, the date of the code's enactment; and for social-security purposes, as if included in the original Social Security Act of 1935. It would preserve rights to title II benefits for those whose determinations with respect thereto were made prior to January 1, 1948, but would not preserve wage credits in cases in which no determination has been made by that date.

As above indicated, the title of the resolution states its purpose to be the maintenance of the status quo pending congressional action on extended social-security coverage. It is difficult, however, to reconcile that statement with the substantive provisions of the resolution. Far from preserving the status quo, the resolution would, it is estimated, exclude from coverage approximately one-half to three-quarters of a million workers now covered under the acts as interpreted by the Supreme Court. The dependents of these workers would likewise be deprived of the protection they now have. The resolution would thus reverse the direction in which concededly the program should move. It has long been recognized by the President, the Congress, this Agency, and other competent authorities in this field that the coverage of the act should be broadened rather than narrowed.

The tests of coverage used by the Supreme Court in interpreting the act and followed in the Proposed Amendment of Employment Tax Regulations, published in the Federal Register on November 27, 1947 (12 F. R., p. 7966), seem to us to furnish rules of determination which are at the same time more workable than those proposed in the resolution and more closely in harmony with the purpose of the program. That purpose, basically, is to provide to those who look for their livelihood to their earnings from services for others and the dependents of such workers a minimum of protection against the risk of loss of those earnings by reason of temporary unemployment, retirement on account of age, or death. The rules stated by the Supreme Court reject as exclusively determinative the technical "control concept" pertinent to an employer's legal responsibility to third persons for the acts of his servants. Instead, they require, in addition, the weighing of other relevant factors, sometimes also considered by the common law, such as the permanency of the relation, the skill required in the performance of the work, the investment in the facilities for work, and the opportunity for profit or loss from the activities, giving to each such weight as it properly deserves in the light of the statutory aims. This approach, moreover, while realistic in relation to social security, lessens the possibility of artful avoidance of coverage through meaningless arrangements changing the form rather than the substance of the relationship.

Moreover, the definition proposed in the resolution, insofar as it would introduce into the program as a test for exclusion from its benefits the technical concept of master and servant as known to the common law, would not substitute certainty for uncertainty in determining coverage in this field. In examining the vast body o decisions in this area, one is struck with the innumerable and frequently irreconcilable distinctions and refinements drawn in tort cases by the courts in determining whether a person is a servant or independent contractor for that purpose. In its application, there is not single common-law master-servant concept but, rather, a large measur

of variation as between the different States, and even within any one State it is frequently impossible to find any consistent line of decisions.

The so-called control test, often stressed as the determinative factor under the common law as it has developed, is often all but impossible to apply. Even those courts which tend to treat the control test as determinative differ widely in their application of it. Some insist upon a right to control the details of physical performance of the work while others are satisfied with general control over the person engaged. Still others have held, even in tort cases, that control in the physical sense is not a prerequisite at all, at least where it would seem an inconvenient or inefficient arrangement, or where the skill of the employee makes it unnecessary. The so-called common-law criteria, then, would not provide taxpayers, beneficiaries, administrators, or the courts with a definite rule of predetermined content.

It seems appropriate to add some comments on the report of the majority of the House Ways and Means Committee on the companion resolution, House Joint Resolution 296, since that report gives what we think is a seriously misleading impression concerning the background of the present controversy and concerning the consequences of a failure to enact the resolution.

That report, and particularly the appendix to it, undertakes to show that an intention clearly expressed by Congress in 1939 has been flouted by "other branches of the Government," that is, by the administration and the courts. I believe that this charge is quite unwarranted.

We have, of course, long been familiar with the legislative history referred to in the House Ways and Means Committee report. We have felt that it was quite inconclusive, a view which was concurred in by the successive Solicitors General and which last year was sustained by the Supreme Court. Contrary to what is stated in the House Ways and Means Committee report, the 1939 legislative history was discussed in the Government's brief and was considerably relied upon in the opposition briefs in cases before the Supreme Court. The Court's statement, in *United States* v. *Silk* (1947) 67 Sup. Ct. 1467), that—

> Nothing that is helpful in determining the scope of the coverage of the tax sections of the Social Security Act has come to our attention in the legislative history of the passage of the act or amendments thereto—

must therefore be taken to mean, not that it was unaware of the history of the 1939 amendments but that it found nothing significant in that history.

The question now at issue is, Who are "employees"? As your committee is, of course, aware, this question does not admit of a simple, definite, clear-cut answer, either at common law or in any other context. In 1939 the House proposed an amendment to the old-age and survivors insurance tax and benefit provisions which in respect to salesmen would have gone beyond "employees" under any known definition. The amendment would apparently have had bizarre and unintended results covering "as employees" some persons who are in a full and real sense independent merchants. In explaining the amendment, the House report stated:

> A restricted view of the employer-employee relationship should not be taken in the administration of the Federal old-age and survivors insurance system * * *. The tests for determining the relationship laid down in cases relating to

tort liability and to the common-law concept of master and servant should not be narrowly applied. In certain cases even the most liberal views as to the existence of the employer-employee relationship will fall short of covering individuals who should be covered.

The committee's purely negative reference to the common-law rule is at best ambiguous and cannot be accepted as an unequivocal statement of the view that the common-law governed, let alone that the regulations then in effect were a precise reflection of congressional intent.

In recommending that this amendment be deleted from the bill, the Senate Finance Committee, the chairman of the committee in presenting the matter on the floor, and the conference committee all confined themselves to saying that they did not wish to go beyond "employees." None of them gave any indication what they meant by "employees." It is true that some witnesses testifying before the committees had discussed the meaning of the term "employees," some urging a broad interpretation, some a narrow one. But the Senate Finance Committee, whose views on the amendment prevailed, gave no indication that it considered the master-servant rule controlling.

In short, instead of a guide to the original intent of Congress, the history of the 1939 amendments discloses merely ambiguous expressions in committee reports and on the floor of the Senate as to an amendment which eventually failed. We have always believed that the question, Who are "employees"? was thus left just where the original Social Security Act of 1935 had left it; that is, that the term had been left wholly undefined and therefore subject to reasonable administrative and judicial interpretation in the light of the purposes of the social-security legislation.

Addressing itself to the problem of conflicting State court decisions involving the application of common-law rules of master and servant the present House report states that the existing Treasury regulations defining the term "employee" are intended to be taken as the true embodiment of the "usual" common-law rules, irrespective of the law of the particular State in which the services are performed. The report implicitly assumes that, with the Supreme Court's decision in *United States* v. *Silk* and *United States* v. *Greyman Lines* ((1947) 67 Sup. Ct. 1463), and other cases "repealed" by act of Congress, the course is clearly set.

The matter, however, is not so simple. Applying the existing regulations liberally, as the Bureau of Internal Revenue and the Social Security Administration did from the beginning of the program and as they were encouraged to do by the language in the 1939 House report, the results on the whole were not less broad, indeed, were further in some respects, than those reached by the Supreme Court in 1947. Substantial deviations from the Bureau's course of interpretation until the Supreme Court had spoken were caused only by a line of Federal court decisions, beginning in 1941, which applied the regulations narrowly. If the resolution should now be enacted, one may well ask which status quo ante is to be restored, the status quo as it existed from the beginning of the program up to 1941; as it was thought to exist by the courts in such narrow decisions as—

Texas Co. v. *Higgins* ((C. C. A. 2) (1941), 118 F. (2d) 636);
Deecy Products Co. v. *Welch* ((C. C. A. 1) (1941), 124 F. (2d) 592)
Jones v. *Goodson* ((C. C. A. 10) (1941), 121 F. (2d) 176);

American Oil Co. v. *Fly* ((C. C. A. 5) (1943), 135 F. (2d) 491); *Glenn* v. *Beard* ((C. C. A. 6) (1944), 141 F. (2d) 376, cert. denied 323 U. S. 724); and *United States* v. *Silk* ((C. C. A. 10) (1946), 155 F. (2d) 356), or as it was liberally viewed in *United States* v. *Vogue* ((C. C. A. 4) (1944), 145 F. (2d) 609) and *Grace* v. *Magruder* ((D. C. App.) (1945), 148 F. (2d) 679, cert. denied, 326 U. S. 720). Is it intended that the situation should be restored as it existed immediately before the Supreme Court's 1947 decisions, including the conflict of judicial authority in applying the very regulations which the resolution would reestablish? The problem of interpretation has been resolved in the only way in which ultimately, under our system, it can be satisfactorily resolved. To do what the resolution aims to do would, apart from its undesirable social consequences, recreate the difficulties of which the Supreme Court had disposed.

In view of these considerations, we believe that the resolution should not be favorably considered by the Congress.

Pursuant to established procedure, this letter has been submitted to the Bureau of the Budget, and I am advised by that Bureau that the enactment of Senate Joint Resolution 180 would not be in accord with the program of the President.

Sincerely yours,

OSCAR R. EWING, *Administrator.*

[S. J. Res. 180, 80th Cong., 2d sess.]

JOINT RESOLUTION To maintain the status quo in respect of certain employment taxes and social-security benefits pending action by Congress on extended social-security coverage

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1426 (d) and section 1607 (i) of the Internal Revenue Code are amended by inserting before the period at the end of each the following: ", but such term does not include (1) any individual who, under the common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor or (2) any individual (except an officer of a corporation) who is not an employee under such common-law rules".

(b) The amendments made by subsection (a) shall have the same effect as if included in the Internal Revenue Code on February 10, 1939, the date of its enactment.

SEC. 2. (a) Section 1101 (a) (6) of the Social Security Act is amended by inserting before the period at the end of each the following: ", but such term does not include (1) any individual who, under the usual common-law ruies applicable in determining the employer-employee relationship, has the status of an independent contractor or (2) any individual (except an officer of a corporation) who is not an employee under such common-law rules".

(b) The amendment made by subsection (a) shall have the same effect as if included in the Social Security Act on August 14, 1935, the date of its enactment, but shall not have the effect of voiding any determination respecting eligibility for, or amount of, benefits of any individual under title II of the Social Security Act made prior to January 1, 1948, or of preventing any such determination so made from continuing to apply on or after January 1, 1948.

[H. J. Res. 296, 80th Cong., 2d sess.]

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Passed the House of Representatives February 27, 1948.

Attest: JOHN ANDREWS, *Clerk*.