

Chapter 3

Appeals

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Research References

5 Hinds §§ 6877, 6938–6952
8 Cannon §§ 3435, 3452–3458
Deschler-Brown Ch 31 § 13
Manual §§ 379, 627–629, 641, 844, 902, 903

§ 1. In General; Forms

The right to appeal from a decision of the Chair on a question of order is derived from the English Parliament and is recognized under rule I clause 5, which dates from 1789. *Manual* §§ 379, 627, 629. This right of appeal, which may be invoked by any Member, protects the House against arbitrary control by the Speaker. 5 Hinds § 6002.

MEMBER: I respectfully appeal from the decision of the Chair.

CHAIR: The question is, shall the decision of the Chair stand as the judgment of the House [or the Committee]?

An appeal is debatable but is subject to the motions for the previous question or to table in the House. §§ 4, 5, *infra*. In the Committee of the Whole, an appeal is subject to the motion to limit debate or to rise and report. *Manual* § 629.

The vote on the appeal may be taken by record vote. 98–2, June 26, 1984, p 18861. A majority vote sustains the ruling appealed from. *Manual* § 971. The weight of precedent indicates that a tie vote (especially where the Chair has not voted to make the tie) sustains the ruling as well. 4 Hinds § 4569; 5 Hinds § 6957. The Chair may vote to make or break a tie and

may cast a vote in favor of his own decision. 4 Hinds § 4569; 5 Hinds §§ 5686, 6956. An appeal from a ruling of the Chair goes only to the propriety of the ruling; the vote thereon should not be interpreted as a vote on the merits of the issue at hand. Deschler-Brown Ch 31 § 13.2.

§ 2. When in Order

Rule I clause 5 provides the right of appeal from decisions of the Speaker on questions of order. Examples of appeals from decisions of the Chair include the following:

- The priority of business. 5 Hinds § 6952.
- Whether a certain motion or resolution gives rise to a question of privilege. *Manual* § 713.
- The propriety of an exhibit. *Manual* § 622.
- Whether a Member has engaged in personalities in debate. *Manual* § 622.

An appeal may also be taken from the ruling of the Chairman of the Committee of the Whole on a question of order. *Manual* § 971. For example, an appeal may be taken from a ruling of the Chair on the germaneness of an amendment or that an amendment proposes to change a portion of the bill already passed in the reading. Deschler-Brown Ch 31 § 13.7; 105–1, Sept. 25, 1997, p ____.

An appeal is in order during a call of the House. 6 Cannon § 681.

§ 3. When Not in Order

The Speaker's decision on a question of order is not subject to an appeal if the decision is one that falls within the discretionary authority of the Chair. For example, an appeal may not be entertained from the following decisions:

- Chair's decision on recognition. 2 Hinds §§ 1425–1428; 8 Cannon §§ 2429, 2646, 2762.
- Chair's decision on dilatoriness of motions. 5 Hinds § 5731.
- Chair's count of the number rising to demand tellers, a recorded vote, or the yeas and nays. *Manual* § 629; 8 Cannon § 3105.
- Chair's call of a voice vote. *Manual* § 629.
- Chair's refusal to recapitulate a vote. 8 Cannon § 3128.
- Chair's count of a quorum. *Manual* § 629.
- Chair's determination that a Member's time in debate has expired. *Manual* § 629.
- Chair's response to a parliamentary inquiry. 5 Hinds § 6955; 8 Cannon § 3457.

An appeal from a ruling of the Chair declining to consider the question of the constitutionality of a provision is not in order. The question of the constitutionality of a provision in a pending measure is a matter for the House to determine by its vote on the merits, rather than by voting on a possible appeal from the Chair's decision declining to rule on that constitutional issue. Deschler-Brown Ch 31 § 13.1.

An appeal from a ruling of the Chair is not in order if the effect of the appeal, if sustained, would be to change a rule of the House, such as where the underlying rule does not involve discretion on the part of the Chair. Thus, the Speaker's refusal under rule XX clause 7(a) to entertain a point of order of no quorum when a pending question has not been put to a vote is not subject to an appeal, because that rule contains an absolute and unambiguous prohibition against such a point of order. To allow an appeal in such a case would permit a direct change in the rule itself. Deschler-Brown Ch 31 § 13.5.

Untimely or Dilatory Appeals

An appeal is not in order if it is dilatory. 5 Hinds §§ 5715–5722; 8 Cannon § 2822. An appeal also is not in order if it is untimely. An appeal is not in order:

- While another appeal is pending. 5 Hinds §§ 6939–6941.
- On a question on which an appeal has just been decided. 4 Hinds § 3036; 5 Hinds § 6877.
- During a call of the yeas and nays. 5 Hinds § 6051.
- Between the motion to adjourn and vote thereon. 5 Hinds § 5361.
- From a question on which an appeal has just been decided. 4 Hinds § 3036; 5 Hinds § 6877.

§ 4. Debate on Appeal

Appeals are customarily subject to debate, both in the House and the Committee of the Whole (8 Cannon §§ 3453–3455), with recognition being at the discretion of the Chair (8 Cannon § 2347). However, debate is not in order on an appeal from a ruling of the Chair on the priority of business (5 Hinds § 6952) or on a ruling as to the relevancy of debate (5 Hinds §§ 5056–5063).

Debate in the House on an appeal is under the hour rule but may be closed at any time by the adoption of a motion for the previous question or to lay on the table. *Manual* § 629. Debate on an appeal in the Committee of the Whole is under the five-minute rule and may be closed by motion to close debate or to rise and report. 5 Hinds §§ 6947, 6950; 8 Cannon §§ 2347, 3453–3455.

Members may speak but once on appeal, unless by permission of the House, the Chair alternating between those favoring and those opposing. *Manual* § 627; 8 Cannon § 3455.

It is not in order in debating an appeal to discuss the merits of the proposition under consideration at the time the decision was made. 5 Hinds § 5055.

§ 5. Motions

Although an appeal is debatable, it is normally disposed of in the House without debate by a motion to lay the appeal on the table. If the motion to table is adopted, the appeal is disposed of adversely and the ruling of the Speaker is sustained. Thus, an appeal from the Speaker's decision—that a resolution did not present a question of the privileges of the House—has been laid on the table. See, *e.g.*, *Manual* § 706. The House has tabled a motion to reconsider the vote whereby an appeal from a decision of the Chair was laid on the table. Deschler-Brown Ch 31 § 13.16. An appeal in Committee of the Whole may not be laid on the table, because that motion does not lie in the Committee. 4 Hinds § 4719.

Other motions that may be offered pending an appeal include:

- A motion to postpone the appeal to a day certain (in the House). 8 Cannon § 2613.
- A motion for the previous question (in the House). 5 Hinds § 6947.
- A motion to close or limit debate (in the Committee of the Whole). 5 Hinds §§ 6947, 6950.
- A motion that the Committee rise and report to the House. 8 Cannon § 3453.

§ 6. Withdrawal

An appeal may be withdrawn at any time before action thereon by the House. 5 Hinds § 5354. An appeal can be withdrawn before the question is put on a motion to lay the appeal on the table. Deschler-Brown Ch 31 § 13.10. Ordering the yeas and nays on a motion to lay an appeal on the table has been held sufficient House action as to preclude withdrawal. 5 Hinds § 5354.

§ 7. Effect of Adjournment

An appeal pending at adjournment at the end of the day ordinarily comes up for consideration on the next legislative day. 5 Hinds § 6945. However, an appeal pending at adjournment on a day set apart for Private Calendar business and related to private business goes over to the next day

provided for consideration of business on the Private Calendar. Where the House has adjourned and reconvened to meet again on the same calendar day and the call of the Private Calendar is still in order, the appeal comes up as unfinished business. 97–1, Nov. 17, 1981, pp 27772, 27773.