

assurances by that Member that he had verified his vote by re-inserting his card.

MR. [ROBERT O.] TIERNAN [of Rhode Island]: Mr. Speaker, yesterday here, on rollcall No. 100, the vote on the Roybal amendment to strike out the funds for the extension of the west front of the Capitol, I voted “no”

Mr. Speaker, I placed my card in the box. It registered “no.” I actually took the card back out and put it back in, and it showed a red “no” again.

Last night, to my chagrin, I was told that I was not recorded as voting. I

was here. Other Members of the House were present with me and saw me vote and record my vote as “no.”

I hope that the House committee which is in charge of this electronic voting system will check that out, because there is no question of it.

THE SPEAKER:<sup>(20)</sup> The Chair hopes the same thing.

MR. TIERNAN: Apparently there is no way of correcting the Record at this time.

THE SPEAKER: Not under the procedure which has been adopted. The Chair is powerless to act.

## B. NON-RECORDED VOTES

### § 7. Voice Votes

The voice vote is the first voting procedure referred to by the House rules.<sup>(1)</sup> Specifying how the Speaker is to fulfill his duty to present matters for a decision, Rule I prescribes<sup>(2)</sup> that he:

. . . shall put questions in this form, to wit: “As many as are in favor (as the question may be), say ‘Aye.’”; and after the affirmative voice is expressed, “As many as are opposed, say ‘No’.” . . .

The voice vote, as the term is used in the House, means a vocal response, in unison, as indicated above. The Chair listens to the response and announces the vote as

he discerns it. His “call” on a voice vote is not subject to direct challenge.<sup>(3)</sup> Putting the question in this prescribed form is the duty of the Chair and must precede any demand for a yea or nay or recorded vote.<sup>(4)</sup> The remedy available to any Member not agreeing with the Chair’s announcement on the voice vote is to demand a division or recorded vote. The Speaker, if he is in doubt as to whether he correctly heard the will of the House on the voice vote, or any Member, can ask for a division.

The voice vote, like the unanimous-consent request, serves as

20. Carl Albert (Okla.).

1. Rule I clause 5, *House Rules and Manual* §§ 629, 630 (1995).

2. *Id.* at § 629.

3. See § 7.2, *infra*.

4. See § 7.1, *infra*.

an efficient mechanism to expedite the determination of issues on which House sentiment is clear.<sup>(5)</sup> Often, it is merely the prelude to a determination ultimately reached by a division, recorded vote, or by the yeas and nays.

The vote “viva voce,” which is also specified in the rules, must be distinguished from the “voice vote.” The former procedure is used in elections, when Members respond on a roll call, not by answering “yea” or “nay” but by the name of the candidate of their choice. Under Rule II, Elections of Officers,<sup>(6)</sup> the elections of the Clerk, the Sergeant-at-Arms, the Chief Administrative Officer and the Chaplain are to be conducted by a viva voce vote. Since the election of these officers normally precedes the adoption of the rules of the House, in that period of transition where the House is operating under general parliamentary law, this prescription for the method of voting is ignored,<sup>(7)</sup> and

the officers are chosen by the adoption of a resolution. The Speaker’s election, the manner of which is not dictated in the standing rules, is, however, conducted by a viva voce vote.<sup>(8)</sup>

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**§ 7.1 Pursuant to clause 5(a) of Rule I, the Speaker must put the pending question to a voice vote prior to entertaining a demand for a recorded vote or the yeas and nays; and where the Speaker ordered a record vote on a question and did not first put the question to a voice vote, the Speaker explained why the Record described the yeas and nays as having been ordered by unanimous consent.**

On Mar. 5, 1992,<sup>(9)</sup> the House had under consideration House

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the officers normally precedes the adoption of the rules for the new Congress. See, e.g., adoption of H. Res. 1 (electing officers for the 103d Congress) and H. Res. 5 (establishing the rules for that Congress) on Jan. 5, 1993.

5. See § 8.2, *infra*, for an example of where a voice vote was used in lieu of a roll call where the sentiment of the House was clear.
6. See Rule II, *House Rules and Manual* § 635 (1995).
7. Since the rules of one House do not bind its successor, Rule II is not in effect at the time of the organization of a new Congress. The election of

8. The Speaker, who was selected by ballot in the early Congresses, has been chosen by viva voce vote, by surname responses from those nominated, since 1839. See 1 Hinds’ Precedents § 187; *House Rules and Manual* § 27 (1995).
9. 138 CONG. REC. 4579, 102d Cong. 2d Sess.

Concurrent Resolution 287, the concurrent resolution on the budget for fiscal year 1993–1994. When the resolution was before the House for final adoption, the question was divided. The Speaker<sup>(10)</sup> directed the votes on the divided portions to be taken by the yeas and nays, without first putting them to a voice vote and then entertaining a demand for the yeas and nays and determining if there was a sufficient second to the demand. On the next legislative day, the Speaker made the announcement, which follows:<sup>(11)</sup>

The Chair wishes to make a statement.

On rollcall 41 and rollcall 42, as shown in the Record of March 5, 1992, it appears that the yeas and nays were ordered by unanimous consent on adoption of the divided portions of House Concurrent Resolution 287. In fact, the Chair put the question on the adoption of those portions of House Concurrent Resolution 287 to a vote by electronic device without first putting the question by a voice vote and without first asking whether one-fifth of those present supported a demand for the yeas and nays.

The Chair was in error in so ordering the vote to be taken by the yeas and nays without first going through the required procedure, but at the time members of the committee on both sides of the aisle were on their feet,

and the Chair assumed that a demand for a record vote would be made immediately by one or the other of the members of the committee. When the Chair ordered the vote to be taken as he did, no objection was raised by either side of the House, and the House was implicitly granting unanimous consent for the vote to be taken by the yeas and nays, and the Parliamentarian suggested the Record should so reflect that.

**§ 7.2 A count by the Chair (on a vote by voice) is not subject to challenge.<sup>(12)</sup>**

On July 13, 1994,<sup>(13)</sup> during consideration in the Committee of the Whole of the bill, H.R. 518, the California Desert Protection Act, Mr. Randy Cunningham, of California, had offered an amendment to strike out section 609. While the motion to strike was pending, Mr. George Miller, of California, offered a perfecting amendment which was agreed to by voice vote. The motion to strike out the section, being broader in scope than the Miller amendment, was then put to a vote. Mr. Cunningham sought to challenge the Chair's call of the voice vote on his amendment. The proceedings were as follows:

THE CHAIRMAN:<sup>(14)</sup> The question is on the amendment to strike offered by

10. Thomas S. Foley (Wash.).

11. 138 CONG. REC. 4698, 102d Cong. 2d Sess., Mar. 9, 1992.

12. See the introduction to this section.

13. 140 CONG. REC. p. \_\_\_\_, 103d Cong. 2d Sess.

14. Pete Peterson (Fla.).

the gentleman from California [Mr. Cunningham].

The question was taken, and the Chairman announced that the noes appeared to have it.

So the . . . amendment to strike was rejected.

THE CHAIRMAN: Are there further amendments?

MR. CUNNINGHAM: Mr. Chairman, I have a parliamentary inquiry. No Member said, "no." There was not a single "no." How could the "noes" have it?

THE CHAIRMAN: The Chair announced that the "noes" had it.

MR. [BRUCE F.] VENTO [of Minnesota]: Mr. Chairman, I could not hear.

THE CHAIRMAN: The Chair put the question to a vote on the amendment to strike as submitted by the gentleman from California [Mr. Cunningham]. In the vote, as voice voted, the Chair recognized that the "noes" had it.

MR. CUNNINGHAM: Mr. Chairman, I have a further parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CUNNINGHAM: If there were "ayes" and there were absolutely no recorded "noes," how does the Chair say that the "noes" have it?

THE CHAIRMAN: The Chair recognized the "noes," and the Chair himself votes "no."

## § 8. Voting by Division

While the House has "modernized" its voting practices by the

installation of the electronic voting system,<sup>(15)</sup> which is used for taking yea and nay and recorded votes, the process of voting by division has remained largely unchanged since the First Congress convened.<sup>(16)</sup> Should the Speaker be uncertain as to the outcome of a voice vote or should any Member so request,

. . . the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative. . . .<sup>(17)</sup>

Since the Chair's count usually can be verified by a demand for a record vote, there are few instances where the integrity of the Chair's count have arisen.<sup>(18)</sup>

15. See 118 CONG. REC. 36005-12, 92d Cong. 2d Sess., Oct. 13, 1972.

16. For the sake of historical accuracy, however, the reader should note that for several months in the First Congress, divisions were accomplished in a teller-like fashion. Those Members voting in the affirmative passed to the right of the Chair while those voting in the negative passed to the Chair's left. See 2 Hinds' Precedents §1311.

17. Rule I clause 5, *House Rules and Manual* §629 (1995).

18. See 5 Hinds' Precedents §6002, and, for comparison, 8 Cannon's Precedents §3115. For an instance where complaints were made about the accuracy of the Chair's count of the House and on demands for recorded votes, see the remarks made under a