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Voting

A. GENERALLY

§ 1. Introduction

The legislative power vested in the Congress by Article I of the Constitution[1] is implemented by the Members of the House and Senate by the act of voting. There are various ways in which votes are cast: the Constitution specifies that the "yeas and nays" shall be taken on any issue if desired by one-fifth of the Members of either House who are present when a question is put.[2] When the yeas and nays are ordered, the names of all Members responding to the vote are recorded in the Journal of the House or Senate, as the case may be.

The yeas and nays are in the modern House taken by electronic means, each Member inserting his own coded card into one of the voting stations installed in the Chamber. They were formerly taken by a call of the roll, Members names being called by the Clerk, alphabetically. This system is still utilized on occasion when the electronic system is inoperable and can be specified as the method to be used on a particular vote by the Speaker, who is given the discretion to choose the voting method by a House rule.[3]

The roll is in special circumstances called "by states": on opening day of a new Congress, for example, a House rule requires the Clerk to call the roll in this fashion to determine the presence of a quorum.[4] Under the 12th amendment, if the House were called upon to choose a President, votes would be cast by states. Proposals to govern the conduct of this vote have been introduced.[5]

Obviously, while critical questions usually do become the subject of votes of record, not every vote is taken by the constitutional method: many issues are decided

1. U.S. Const. art. I § 1.
2. *Id.* at § 5, clause 3.
3. Rule XV clause 5(a), *House Rules and Manual* § 774b (1995).
4. Rule III clause 1 directs the Clerk to "call the roll of Members by States in alphabetical order." Since the advent of electronic voting, this quorum call is normally, by unanimous consent, conducted by the electronic device. See, e.g., 139 CONG. REC. 45, 103d Cong. 1st Sess., Jan. 5, 1993.
5. See § 1.1, infra.

by unanimous consent or by other methods of voting prescribed by the rules adopted in each body. In the House of Representatives, a vast amount of the business, from procedural motions to amendments to the third reading and passage of bills, is disposed of by unanimous-consent requests. The Speaker or the Chairman of the Committee of the Whole routinely entertain requests for legislative action phrased as unanimous-consent requests which are finalized "without objection." For example, unanimous consent may be asked to "consider" a measure, in which case a vote may be demanded later when the appropriate motion for disposition of the matter is made. More frequently, the request may be to "pass" a bill, "agree" to a resolution, or "concur" in a Senate amendment. These requests may accomplish the legislative result without a vote, since the failure of any Member to object results in the adoption of the matter which is the subject of the request.[6]

One of the foundations of parliamentary procedure in the House is that the Presiding Officer, the Speaker or the Chairman of the Committee of the Whole, or Members appointed to preside "pro tempore," will be impartial in conducting votes. Whether taken by voice, by division, or by one of the various forms of taking a roll call, the Chair's call of the result and his utilization of the voting mechanism must be even-handed and carried out without partisanship. When there is a perception that the Chair has deviated from these standards, Members may take great offense.[7]

This chapter explains how the Members cast their many votes, including those constitutionally mandated,[8] as well as those prescribed[9] or permitted by House

6. An example of this principle: a unanimous-consent request to concur in a Senate amendment to a House bill on the Speaker's table with an amendment is not subject to a vote, the failure of any Member to object resulting in the automatic adoption of the proposed Senate amendment with the stated modification. See § 1.2, infra.

7. See § 31.18, infra.

8. The only type of vote which is constitutionally mandated is the yea and nay vote. U.S. Const. art. I § 5. The vote on sustaining or overriding a Presidential veto must be taken by the yeas and nays. *Id.* at § 7.

9. The House rules mandate a yea and nay vote where a quorum is not present, an objection to a vote is made for that reason, and the House does not choose to adjourn. See Rule XV clauses 4 and 6, *House Rules and Manual* § 773 (1995). See also § 1.3, infra, for an example of a statutory requirement for a yea and nay vote. A provision of law enacted as an ex-

rules.[10] It describes the procedures used in taking a vote by voice, division, tellers with clerks, and the yeas and nays as well as the proper parliamentary foundation which must be laid to demand a particular type of vote.[11] The chapter also addresses the priorities or precedence of certain votes,[12] the finality of a vote once cast,[13] and methods used to bring a vote to final conclusion.[14]

Also included in the chapter are precedents explaining a Member's responsibility to vote,[15] ethical

ercise of rulemaking authority can mandate the taking of a vote in a prescribed manner.

10. Voice votes, division votes, and recorded votes are permitted under the rules: see Rule I clause 5, *House Rules and Manual* § 630 (1995). Teller votes, where Members filed up the center aisle of the Chamber between Members appointed to "tell" the vote, were dropped from Rule I in the 103d Congress. Tellers with clerks, a method of taking a recorded vote by depositing red, green, or orange preference cards with employees of the Clerk, remains as a method of voting but is normally not utilized since the installation of the electronic voting system.

11. For example, demands for recorded votes and the yeas and nays require "support" before the votes will be ordered. See §§ 23.1, 34.1, infra.

12. A demand for the yeas and nays took precedence over a demand for tellers, for example. See § 24.1, infra. And yet, the former demand cannot interrupt a vote by division which is in progress; see § 10.3, infra.

13. A vote once given cannot be changed. However, a vote incorrectly recorded, as on a roll call where the Clerk hears the response incorrectly, may be corrected if the error in recording the vote is demonstrably clear. See § 6; §§ 31.16 and 38.1, infra.

14. When votes were taken by a call of the roll, the possibilities for error in recording a Member's vote were manifest. Close votes were sometimes "recapitulated" to insure accuracy. See § 27, infra. The procedure is rarely used today, since the purpose of this procedure is to guard against error on a close roll call determination by allowing and encouraging Members to check whether they are properly recorded. *Id.* On electronic votes Members can see how they are recorded without repeating the process.

15. Rule VIII, Duties of the Members, specifies that "[e]very Member shall be present within the Hall of the House during its sittings . . . and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question." *House Rules and Manual* § 656 (1995). It should be noted that since the advent of electronic voting and the practice of permitting recorded votes in a Committee of the Whole (a practice begun in 1974), the frequency of yea and nay votes, recorded votes, and quorum calls has increased. Few Members can claim

questions concerning the sanctity of the vote and new rules addressing the problem of "ghost" voting in the House[16] and the Speaker's authority to schedule the timing of taking a vote. Since the advent of electronic voting,[17] various new procedures have been put in place to allow the Speaker to postpone votes to a scheduled time and to certain voting times when votes occur "back to back" without intervening business.[18] The chapter also addresses the topic of dividing the question for separate votes where more than one topic or proposition is inherent in the question.[19]

Most issues that come before the House are decided by a majority vote, a concept which normally implies one-half plus one of the number voting.[20] In a strict sense, of course, the majority for legislative action is a majority of those voting, a quorum being present.[1] Occasionally, a law having the status of a House rule will specify that the majority necessary to a legislative action is measured against the authorized membership of the House.[2] There are exceptions where a super ma-

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to have responded to every such vote. On May 3, 1978, both the Speaker and the Minority Leader commented on the unbroken record of Rep. Bill Natcher (Ky.) who on that date cast his 10,000th vote without missing a quorum call or roll call in his 24 years in the House. 124 CONG. REC. 12473, 95th Cong. 2d Sess. Because of illness, Rep. Natcher failed to respond to a roll call on Mar. 3, 1994. His final unbroken string of consecutive votes totaled 18,401. 140 CONG. REC. p. _____, 103d Cong. 2d Sess., Mar. 3, 1994.

16. Rule VIII clause 3, *House Rules and Manual* § 660(b) (1995).

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

18. Rule I clause 5(b), *House Rules and Manual* § 631 (1995).

19. Rule XVI clause 6, provides that a "question shall be divided if it includes propositions so distinct in substance that one being taken away a substantive proposition shall remain . . .". *House Rules and Manual* § 791 (1995).

20. Jefferson's Manual states: ". . . The voice of the majority decides; for the lex majoris partis is the law of councils, elections, etc., where not otherwise expressly provided." *House Rules and Manual* § 508 (1995).

1. Rule XV clause 3 specifies the necessity of a quorum for a challenged vote: "On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business." *House Rules and Manual* § 772 (1995).

2. See § 8.2, infra.

jority is required. Most obvious is the vote on reconsideration of a bill following a Presidential veto, where the Constitution specifies that a two-thirds vote is required for passage over the veto.[3] Amendments to the Constitution also require the support of two-thirds for passage[4] as does the vote on expulsion of a Member.[5] In the 14th amendment, there is the little-noticed and largely obsolete requirement of a two-thirds vote to remove a political disability;[6] and in the 25th amendment, a similar vote is required to determine that the President is disabled and unable to carry out the responsibilities of his office.[7]

In the parliamentary history of the House, certain rules have required a two-thirds vote for a variety of decisions. The rule providing for motions to suspend the rules, a special procedure now permitted on certain days of each week to expedite consideration of measures, has its origins in a rule first adopted in 1822.[8] Other motions to disturb the established order of business also require two-thirds for adoption: to dispense with Calendar Wednesday[9] or the call of the Private Calendar,[10] to call up a special order on the same day reported from the Committee on Rules.[11] More recently, in the 104th Congress, the House adopted a new rule requiring a three-fifths vote for passage of a measure containing an income tax rate increase[12] and put in place a Corrections Calendar (to replace the Consent Calendar) which specifies that a bill considered under this new procedure requires the approval of three-fifths of the Members voting, a quorum being present, for passage.[13]

The rules of the House do not specifically prescribe rules for vot-

3. U.S. Const. art. I § 7. For an interesting precedent involving a House determination as to the vote-majority or two-thirds-required to extend the time for state ratification of a constitutional amendment, see § 1.5, infra.

4. *Id.* at art. IV.

5. *Id.* at art. I, § 5.

6. *Id.* at § 3.

7. *Id.* at § 4.

8. The development of the motion to suspend the rules is discussed in the annotation following Rule XXVII clause 1, *House Rules and Manual* § 902 (1995).

9. Rule XXIV clause 7, *House Rules and Manual* § 897 (1995).

10. Rule XXIV clause 6, *House Rules and Manual* § 893 (1995).

11. Rule XI clause 4(b), *House Rules and Manual* § 729a (1995).

12. Rule XXI clause 5(c), *House Rules and Manual* § 846c (1995).

13. Rule XIII clause 4(c), *House Rules and Manual* § 746 (1995).

ing in its committees. However, since House rules are made applicable to its committees by the current Rule XI clause 1,[14] so far as applicable, it has been accepted practice to consider that the constitutional requirement[15] is applicable therein and to permit the yeas and nays to be ordered by one-fifth of those present. Indeed, the right to demand the yeas and nays in committee was well-established in the 19th century.[16]

In the modern House, since the Legislative Reorganization Act of 1970, committees have been required to adopt written rules and to publish them in the *Congressional Record*.[17] An examination of those rules[18] show that committees differ as to how a roll call vote is ordered: in some, one Member can demand a roll call; in others, one-fifth of those present; in still others, one-fifth of a quorum. Some committee rules are silent, implicitly following the general rule described above. As in the House, many issues are decided by unanimous consent, by division, or voice votes. A bill can be ordered reported to the House by a non-record vote, a quorum being present;[19] but since the adoption of the Legislative Reorganization Act of 1970, the House rules now require a record of all roll call votes to be available for public inspection[20] and also mandate that "with respect to each roll call vote on a motion to report any measure or matter of a public character, and on any amendment offered to the measure or matter, the total number of votes cast for and against, and the names of those Members voting for and against, shall be included in the committee report on the measure or matter."[1]

Voting by States; Election of President by House

§ 1.1 A Member announced his introduction of a resolution amending the rules of the House to provide for open recorded votes within each

14. *House Rules and Manual* § 703 (1995).
15. Article I Section 5, *House Rules and Manual* § 75 (1995).
16. 4 Hinds' Precedents § 1472.
17. Rule XI clause 2(a), *House Rules and Manual* § 704 (1995).
18. See "Rules Adopted by the Committees of the House of Representatives," compiled by the Committee on Rules and republished each Congress.
19. Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713c (1995).
20. Rule XI clause 2(e), *House Rules and Manual* § 706a (1995).
1. Rule XI clause 2(l)(2)(B), *House Rules and Manual* § 713d (1995).

state delegation when choosing a President under the 12th amendment to the Constitution.

On May 28, 1992,[2] Mr. F. James Sensenbrenner, Jr., of Wisconsin, took a special order to address his concerns regarding the process of "voting by states" under the 12th amendment.[3]

MR. SENSENBRENNER: Madam Speaker, the time has come for the House of Representatives to seriously consider adopting procedures should the selection of the next President of the United States fall to the House of Representatives under the 12th amendment to the U.S. Constitution.

Today, I have introduced a resolution amending the permanent rules of the House of Representatives to open up the process for the election of a President should the House be called upon to do this duty. The resolution that I have introduced is rather straightforward. It adopts a new rule 54 of the Rules of the House, entitled "Procedures for Choosing a President," and it says:

> Whenever the right of choice shall devolve upon the House, any vote of a Member from a state in determining the vote of that state to choose a President shall be recorded by the Clerk in open session.

The last time the House of Representatives had to select a President was in 1825 following the failure of all four candidates to obtain a majority in the Electoral College in the Presidential election of 1824. In looking at the precedents that were established in the 1825 election of the President, it is clear that two things happened.

First, the House met in closed session with everybody except House Members, stenographers, officers of the House, and Senators being excluded; and second, the votes cast in each State delegation were done in secret, so not only did the public not know how every Representative voted in the selection of the President, but they did not know how each State's vote was cast.

At the end of the process, the Speaker of the House just announced which candidates had how many States' votes and declared John Quincy Adams elected President of the United States.

Obviously, this secrecy will not do should the new House of Representatives be called upon to select a President beginning January 6, 1993, due to the failure of the three Presidential candidates to achieve a majority in the Electoral College.

It is incumbent upon this House of Representatives to set up the ground rules now before anybody can accuse the House of trying to engineer those rules to favor one candidate or the other, so that the most important vote that is cast by those Representatives who are elected on November 3, that is

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2. 138 CONG. REC. 12855, 102d Cong. 2d Sess.

3. See 3 Hinds' Precedents, Chapter LXII, "Election and Inauguration of President," § 1981 for the constitutional provision, Article XII; §§ 1982, 1983 for rules adopted by the House in 1801, when Jefferson was chosen; § 1984, 1985 when President John Quincy Adams was chosen by the House in 1825.

the election of the President of the United States, will be open to the public and on the record.

My resolution proposes to do that. It opens up the process so that Members of the House can be accountable on how they cast this very important vote should the House be called upon under the 12th amendment to perform this very important function.

Mr. Sensenbrenner's resolution (H. Res. 472) was referred to the Committee on House Administration but was not reported to the House.

§ 1.2 A unanimous-consent request to concur in Senate amendments to a House bill on the Speaker's table with amendments is not subject to a vote, the failure of any Member to object resulting in the automatic adoption of the proposed amendments.

On July 2, 1980,[4] the Chairman of the Committee on Science and Technology, Mr. Don Fuqua, of Florida, asked to take a House bill (H.R. 7474) with Senate amendments thereto, from the Speaker's table:

Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 7474), providing for a research, development, and demonstration program to achieve early technology applications for ocean thermal energy conversion systems, with Senate amendments thereto, concur in the Senate amendment to the title, and concur in the Senate amendment to the text with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Ocean Thermal Energy Conversion Research, Development, and Demonstration Act". . . .

The Clerk read the House amendment to the text of the Senate amendment, as follows:

Strike out section 10 on page 13, line 19 through page 14, line 12 of the engrossed Senate amendment and insert in lieu thereof the following: . . .

THE SPEAKER PRO TEMPORE:[5] Is there objection to the initial request of the gentleman from Florida?

There was no objection.

A motion to reconsider was laid on the table.

PARLIAMENTARY INQUIRY

MR. [TOM] LOEFFLER of Texas]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. LOEFFLER: Mr. Speaker, is it in order to ask for a vote at this time? It is hard to hear.

THE SPEAKER PRO TEMPORE: This was just a unanimous-consent request

4. 126 CONG. REC. 18273, 18275, 96th Cong. 2d Sess.

5. Melvin Price (Ill.).

to amend the Senate amendment and there is no vote on that request.

§ 1.3 The Legislative Reorganization Act of 1970 (2 USC 198) requires that the concurrent resolution providing for the August recess in odd-numbered years be adopted by roll call vote in each House.

Section 132(a) of the Legislative Reorganization Act of 1970 provides as follows:

> Unless otherwise provided by the Congress, the two Houses shall—
>
> (1) adjourn sine die not later than July 31 of each year; or
>
> (2) in the case of an odd-numbered year, provide, not later than July 31 of such year, by concurrent resolution adopted in each House by rollcall vote, for the adjournment of the two Houses from that Friday in August which occurs at least thirty days before the first Monday in September (Labor Day) of such year to the second day after Labor Day.
>
> (b) This section shall not be applicable in any year if on July 31 of such year a state of war exists pursuant to a declaration of war by the Congress.

§ 1.4 The Senate, having passed by voice vote a concurrent resolution providing for an August adjournment, by unanimous consent reconsidered that action and the concurrent resolution was subsequently adopted by roll call vote in both Houses in compliance with the statute.

In the first session of the 94th Congress, the Senate passed Senate Concurrent Resolution 54 by voice vote, ignoring the statutory rule[6] requiring a roll call.

> On July 22, 1975,[7] the Senate remedied the omission by reconsidering its action.
>
> MR. [MIKE] MANSFIELD [of Montana]: Mr. President, yesterday the Senate passed an adjournment resolution, Senate Concurrent Resolution 54. It was my intention at that time to ask for a rollcall vote. I forgot it. So I ask unanimous consent at this time that the matter be reconsidered.
>
> THE ACTING PRESIDENT PRO TEMPORE:[8] Without objection, it is so ordered.
>
> MR. MANSFIELD: I ask for the yeas and nays.
>
> THE ACTING PRESIDENT PRO TEMPORE: Is there a sufficient second? There is a sufficient second.
>
> The yeas and nays were ordered.
>
> MR. MANSFIELD: And that the vote occur at the hour of 12 o'clock noon.
>
> THE ACTING PRESIDENT PRO TEMPORE: Without objection, it is so ordered. . . .
>
> Under the previous order, the Senate will now vote on Senate Concurrent Resolution 54. On this question the yeas and nays have been ordered, and the clerk will call the roll.

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6. See § .1.3, supra.

7. 121 CONG. REC. 24028, 24109, 94th Cong. 1st Sess.

8. Dale Bumpers (Ark.).

The legislative clerk called the roll.

MR. ROBERT C. BYRD [of West Virginia]: I announce that the Senator from Mississippi (Mr. Eastland), the Senator from Hawaii (Mr. Inouye), and the Senator from Rhode Island (Mr. Pell), are necessarily absent.

I also announce that the Senator from Michigan (Mr. Hart), is absent because of illness.

MR. [ROBERT P.] GRIFFIN [of Michigan]: I announce that the Senator from Oklahoma (Mr. Bartlett), is absent due to a death in the family.

On July 28, 1975,[9] the House took action on the Senate concurrent resolution and followed the statutory mandate that the decision be reached by a yea and nay vote.

MR. [THOMAS P.] O'NEILL [Jr., of Massachusetts]: Mr. Speaker, I take this time to advise the House that the Speaker will lay before the House Senate Concurrent Resolution 54, providing for an adjournment of the two Houses from Friday, August 1, 1975, until Wednesday, September 3, 1975.

The Senate adopted this concurrent resolution on July 22 and under section 132 of the Legislative Reorganization Act of 1946, as amended, both Houses must vote by rollcall to adjourn for this period. Since under the precedents an adjournment resolution of this sort is not debatable, I have taken this time for the convenience of the Members to notify them of the forthcoming vote.

MR. [JOHN J.] RHODES [of Arizona]: Mr. Speaker, will the majority leader yield?

MR. O'NEILL: I yield to the minority leader.

MR. RHODES: Mr. Speaker, I support the Senate concurrent resolution. . . .

The Speaker laid before the House the Senate concurrent resolution (S. Con. Res. 54) providing for a conditional adjournment of the Congress from August 1, 1975, until September 3, 1975.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 54

Resolved by the Senate (the House of Representatives concurring), That when the two Houses adjourn on Friday, August 1, 1975, they stand adjourned until 12 o'clock noon on Wednesday, September 3, 1975, or until 12 o'clock noon on the second day after their respective Members are notified to reassemble in accordance with section 2 of this resolution, whichever event first occurs.

SEC. 2. The Speaker of the House of Representatives and the President pro tempore of the Senate shall notify the Members of the House and the Senate, respectively, to reassemble whenever in their opinion the public interest shall warrant it or whenever the majority leader of the House and the majority leader of the Senate, acting jointly, or the minority leader of the House and the minority leader of the Senate, acting jointly, file a written request with the Clerk of the House and the Secretary of the Senate that the Congress reassemble for the consideration of legislation.

SEC. 3. During the adjournment of both Houses of Congress as provided in section 1, the Secretary of the Senate and the Clerk of the House, respectively, be, and they hereby are, authorized to receive messages, including veto messages, from the President of the United States.

9. 121 CONG. REC. 25220, 94th Cong. 1st Sess.

THE SPEAKER:[10] Under the law, the vote on this Senate concurrent resolution must be taken by the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 293, nays 109, not voting 32, as follows: . . .

§ 1.5 The House laid on the table a resolution called up under a question of the privileges of the House declaring that a two-thirds vote was necessary to pass a joint resolution extending the ratification period for a constitutional amendment previously submitted to the states; and in response to a parliamentary inquiry on the vote required to pass a joint resolution extending the period for state ratification of a constitutional amendment, the Speaker stated that the House had determined that a majority vote was required, by laying on the table a (privileged) resolution asserting that a two-thirds vote was required.

Section 508, Jefferson's Manual, states "The voice of the majority decides; for the *lex majoris partis* is the law of all councils, elections, &c., where not otherwise expressly provided." A super-majority is required in article V: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution. . . ." Since 1917 Congress has, when proposing a constitutional amendment, provided in the joint resolution a time limit within which the requisite number of states must ratify; in four cases since that date the time limit has appeared in the text of the constitutional amendment, but since the 23d amendment has appeared independently in the proposing clause (with the apparent intent of not "cluttering" the Constitution with irrelevant past time limits). Early in the 95th Congress the Parliamentarian's office began receiving inquiries, principally from the Subcommittee on Civil and Constitutional Rights, as to the required vote on a joint resolution to extend the time limit for ratification of the Equal Rights Amendment (submitted to the states in March 1972), where the joint resolution referred to the joint resolution proposing the amendment but neither amended it nor the text of the constitutional amendment.

The report of the Committee on the Judiciary[11] stated that the joint resolution extending the ratification period could be adopted

10. Carl Albert (Okla.).

11. H. Rept. No. 95–1405.

by a majority vote, but the issue was one on which the House was clearly divided. On Aug. 15, 1978, Mr. James H. Quillen, of Tennessee, offered House Resolution 1315, as a question of privilege. The proceedings were as indicated.

MR. QUILLEN: Mr. Speaker, at the conclusion of my remarks I shall offer a resolution involving a question of the privileges of the House and ask for its immediate consideration.

Mr. Speaker, the "Resolved" clause of my resolution demands a two-thirds vote on final passage of the constitutional resolution extending the ERA. At the appropriate time I will offer my privileged resolution.

THE SPEAKER:[12] The Chair will state to the gentleman from Tennessee (Mr. Quillen) that now is the time for the gentleman to offer his resolution.

MR. QUILLEN: Mr. Speaker, I rise to a question of the privileges of the House and offer a privileged resolution (H. Res. 1315) involving a question of the privileges of the House, and I ask for its immediate consideration.

THE SPEAKER: The Clerk will report the resolution.

First, the Chair will state that he has had an opportunity to examine the resolution as offered by the gentleman from Tennessee (Mr. Quillen), and in the opinion of the Chair the resolution presents a question of the privileges of the House and may be considered under rule IX of the rules of the House.

The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 1315

Whereas H.J. Res. 638 of this Congress amends H.J. Res. 208 of the 92nd Congress, proposing an amendment to the Constitution;

Whereas H.J. Res. 208 of the 92nd Congress was passed by an affirmative vote of two-thirds of the Members present and voting, as required by Article V of the Constitution, and submitted for ratification on March 22, 1972;

Whereas the integrity of the process by which the House considers changes to H.J. Res. 208 of the 92nd Congress would be violated if H.J. Res. 638 were passed by a simple majority of the Members present and voting; and

Whereas the constitutional prerogatives of the House to propose amendments to the Constitution and to impose necessary conditions thereto in accordance with Article V of the Constitution would be abrogated if H.J. Res. 638 were passed by a simple majority of the Members present and voting;

Resolved, That an affirmative vote of two-thirds of the Members present and voting, a quorum being present, shall be required on final passage of H.J. Res. 638.

MR. [DON] EDWARDS of California: Mr. Speaker, I move to table the resolution.

THE SPEAKER: The question is on the motion offered by the gentleman from California (Mr. Edwards).

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. QUILLEN: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 230, nays 183, not voting 19, as follows: . . .

12. Thomas P. O'Neill, Jr. (Mass.).

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER: The Chair recognizes the gentleman from California (Mr. Edwards) to offer a motion.

MR. [CHARLES E.] WIGGINS [of California]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WIGGINS: Mr. Speaker, upon the conclusion of our consideration of House Joint Resolution 638, including the adoption of any amendments to it, when the question is put on the final passage of that resolution, must the vote of the House to adopt the joint resolution be by a simple majority of those present and voting or by two-thirds of those present and voting?

THE SPEAKER: In response to the parliamentary inquiry raised by the gentleman from California, the Chair feels that the action of the House in laying on the table House Resolution 1315 was an indication by the House that a majority of the Members feel a majority vote is required for the final passage of House Joint Resolution 638. The Chair would cite the precedent contained in Cannon's VIII, section 2660, that affirmative action on a motion to lay on the table, while not a technical rejection, is in effect an adverse disposition equivalent to rejection.

The Chair, by ruling that House Resolution 1315 properly raised a question of the privileges of the House under rule IX, believed it essential that the question of the vote required to pass House Joint Resolution 638 be decided by the House itself. The House now having laid that resolution on the table, the Chair feels that the result of such a vote, combined with the guidance on this question furnished by the Committee on the Judiciary on page 6 of its report, justifies the Chair in responding that, following the expression of the House, House Joint Resolution 638 will be messaged to the Senate if a majority of those present and voting, a quorum being present, vote for passage.

MR. WIGGINS: I have a further parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

MR. WIGGINS: Do I understand the ruling of the Chair correctly to be that a vote not to consider a privileged resolution is equivalent to a rejection of the text of the resolution itself?

THE SPEAKER: The vote was not on the question of consideration. The Chair will state that he believes he has answered the question raised in the gentleman's original inquiry. The Chair has stated that a motion to table is an adverse disposition.

MR. WIGGINS: Mr. Speaker, I understood the answer, then, to be "Yes"?

THE SPEAKER: The answer is "Yes."

§ 2. Stating and Putting the Question

Reaching a decision on a motion before the House or the Committee of the Whole involves several distinct steps. After debate has terminated, the Chair first *states the question:* "The question

is on the motion offered by the Gentleman from ____." The Chair's statement defines the issue to be voted upon.[13] The Chair then *puts the question:* "Those in favor of the motion will say aye, those opposed will say no." The type of vote is then within the control of the Members, who can ask for a division, recorded vote, or—in the House—the yeas and nays.[14]

The order in which motions or questions are put to the House is dictated by rules, either standing or special. A standing rule may establish the "regular order" of considering issues. A special order reported from the Committee on Rules or otherwise brought to the House for consideration and adoption may specify a "unique order" for consideration of amendments.

Rule XIX, e.g., structures the order of voting when several amendments are pending—an amendment tree—and also specifies that the title of a bill or resolution is amended only after the text is agreed to.[15]

Jefferson's Manual states that the "natural order in considering and amending any paper is, to begin at the beginning, and proceed through it by paragraphs;" with a "single exception found in parliamentary usage."[16] The preamble is considered and amended after the text has been perfected and agreed to.[17]

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13. See § 2.1, infra.

14. The precise rule which governs the action of the Chair—Rule 1 clause 5(a)—is as follows:

"He shall rise to put a question, but may state it sitting; and 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'."; if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative. If any Member requests a recorded vote and that request is supported by at least one-fifth of a quorum, such vote shall be taken by electronic device, unless the Speaker in his discretion orders clerks to tell the names of those voting on each side of the question, and such names shall be recorded by electronic device or by clerks, as the case may be, and shall be entered in the Journal, together with the names of those not voting. Members shall have not less than fifteen minutes to be counted from the ordering of the recorded vote or the ordering of clerks to tell the vote." See *House Rules and Manual* § 629 (1995).

15. *House Rules and Manual* § 822 (1995). See also Ch. 27, §§ 19.4–19.6, supra.

16. *House Rules and Manual* §§ 413, 414 (1995). See also Ch. 24, §§ 9.9–9.13, supra.

17. See §§ 2.6–2.8, supra.

Chair's Statement as Controlling

§ 2.1 A motion as stated by the Chair in putting the question and not as stated by the Member in offering the motion, is the proposition voted upon.

On Dec. 4, 1963,[18] the House having resolved itself into the Committee of the Whole in order to consider a bill (H.R. 6196) to revitalize the cotton industry, Mr. Charles B. Hoeven, of Iowa, offered an amendment in the nature of a substitute requiring the Secretary of Agriculture to make yearly adjustments in cotton price supports and to conduct a research program to reduce the cost of upland cotton production.

Following some discussion of the proposed amendment, Mr. William R. Poage, of Texas, moved[19] that "all debate on this amendment close at 4 o'clock."

In presenting the question, however, the Chairman[20] stated:

> The gentleman from Texas [Mr. Poage] moves that all debate on this amendment and all amendments thereto close at 4 o'clock. The question is on the motion of the gentleman from Texas [Mr. Poage].

While the motion passed, the Chair's phrasing prompted the following exchange:

> MR. [M.G.] SNYDER [of Kentucky]: Mr. Chairman, a parliamentary inquiry. I understood the gentleman to propose that all debate on this amendment close at 4 o'clock, and I understood the Chair to say "this amendment and all amendments thereto."
>
> THE CHAIRMAN: That is correct.
>
> MR. SNYDER: Which is it?
>
> THE CHAIRMAN: "And all amendments thereto" is the way the Chair put it: "This amendment and all amendments thereto" is the way the Chair put the question.

Thus, the Chair's statement of the question is preeminent.

§ 2.2 Where a Member asks for a recorded vote in the House, but the Chair interprets the request as a demand for the yeas and nays and puts the question in that fashion ("Those in favor of taking this vote by the yeas and nays will rise"), it is the Chair's statement of the issue, not the Member's request, which governs whether one-fifth of a quorum or one-fifth of those present will constitute a sufficient second. Since the constitutional demand for the yeas and nays always takes precedence, and since the Chair himself has the right to make

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18. 109 CONG. REC. 23300, 88th Cong. 1st Sess.

19. *Id.* at p. 23305.

20. John J. Rooney (N.Y.).

that demand, the Chair can force the yeas and nays when he chooses to do so.

On Oct. 1, 1981, a resolution disapproving an action of the District of Columbia Council was before the House. When a motion was made to proceed to its consideration, a Member asked for a recorded vote on that motion. The Speaker Pro Tempore, James J. Howard, of New Jersey, interpreted the demand as one for the yeas and nays. The proceedings were as follows:[1]

MOTION OFFERED BY MR. PHILIP M. CRANE

MR. CRANE [of Illinois]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Philip M. Crane moves that the House proceed to the immediate consideration of House Resolution 208 pursuant to section 604(g) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1–127(g)).

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Illinois (Mr. Philip M. Crane).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [RONALD V.] DELLUMS [of California]: Mr. Speaker, on that I request a recorded vote.

THE SPEAKER PRO TEMPORE: The gentleman asks for the yeas and nays. All Members wishing the yeas and nays will rise and remain standing until counted.

The Chair will count the House.

One hundred and fifty-seven Members are present; thirty-four having stood, a sufficient number, the yeas and nays are ordered.

POINT OF ORDER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Mr. Speaker, the gentleman asked for a recorded vote, I believe, which requires 44 Members.

THE SPEAKER PRO TEMPORE: The Chair put the question for the yeas and nays. The Chair counted for the yeas and nays, the Chair would inform the gentleman.

The yeas and nays are ordered. Members will cast their vote by electronic device.

Only Chair Puts Question

§ 2.3 Votes on questions may be put only by the Chair; and it is not in order for a Member having the floor in debate to ask for a show of support for a certain proposition.

It is not within the rules for a Member, during debate, to ask his colleagues to show whether they support, or would support, an amendment or a bill drafted in a certain form. Putting the question

1. 127 CONG. REC. 22760, 97th Cong. 1st Sess.

is the prerogative of the Chair and it is not in order to seek informal expressions of support. On May 5, 1955,[2] Chairman Robert L. F. Sikes, of Florida, had occasion to make such a ruling:[3]

MR. [ABRAHAM J.] MULTER [of New York]: Mr. Chairman, I move to strike out the necessary number of words.

Mr. Chairman, I supported the rigid price-support program and I intend to do it again today. I supported the peanut amendment last year, and I did yesterday, but I am beginning to wonder whether or not the victory that was accomplished on the peanut amendment yesterday was not brought about at least by some people who want to scuttle the entire program and see this bill defeated.

I have noticed that most of our Republican colleagues walked through the tellers yesterday in support of the peanut amendment. I ask now how many of them who voted for the peanut amendment yesterday will vote for this bill if the peanut amendment remains in the bill? Those of you who will, please do me the favor of rising in your seats.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Chairman, a point of order. I object to that as being contrary to the rules. The gentleman has no right to call for a rising vote.

THE CHAIRMAN: The gentleman will proceed in order.

MR. [MELVIN R.] LAIRD [of Wisconsin]: Mr. Chairman, will the gentleman yield so that I may answer his question?

MR. MULTER: No, I will yield at this point only for a show of hands or a rising by those Members on the left-hand side of the aisle who will vote for this bill with the peanut amendment in it.

MR. HOFFMAN of Michigan: Mr. Chairman, a point of order. The gentleman is out of order, and under the rules his request should be stricken from the record.

THE CHAIRMAN: The gentleman's point of order is well taken. Questions can be put only by the Chair. The Chair trusts the gentleman will proceed in order.

§ 2.4 An amendment which is "accepted" by the bill manager must still be voted upon.

The fact that the majority and minority managers of the bill or issue before the House "accept" the motion or amendment does not relieve the Chair of the necessity of stating and putting the question. The proceedings of Feb. 27, 1980,[4] are illustrative:

2. 101 CONG. REC. 5778, 84th Cong. 1st Sess.

3. A similar ruling was given by Chairman William H. Natcher, of Kentucky, on Apr. 27, 1977, 123 CONG. REC. 12548, 95th Cong. 1st Sess. In the 104th Congress, a similar admonition was made that Members in debate should "not conduct straw polls in the House." Speaker Pro Tempore Robert Goodlatte, of Virginia; 141 CONG. REC. p. __, 104th Cong. 1st Sess., Nov. 18, 1995.

4. 126 CONG. REC. 4095, 4096, 96th Cong. 2d Sess.

Amendment offered by Mr. Bauman: Page 5, immediately after line 8 insert the following new subsection:

"(k) Up to one per centum of the funds made available to Nicaragua from amounts authorized in subsection (b) shall be used to make publicly known to the people of Nicaragua the extent of U.S. aid programs to them. The President shall periodically report to the Congress on the effectiveness of his efforts to carry out this subsection."

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, will the gentleman yield?

MR. [ROBERT E.] BAUMAN [of Maryland]: I yield to the gentleman from Wisconsin.

MR. ZABLOCKI: I thank the gentleman from Maryland for yielding.

Mr. Chairman, I sort of feel a bit embarrassed that I am accepting all of these amendments, but since we are being very cooperative, we have had an opportunity to read and study the amendment offered by the gentleman from Maryland (Mr. Bauman). Certainly we want to identify U.S. aid to Nicaragua. On behalf of this side and on behalf of many of the majority, we accept the amendment.

MR. BAUMAN: I thank the gentleman.

MR. [TOM] HARKIN [of Iowa]: Mr. Chairman, I move to strike the requisite number of words.

PARLIAMENTARY INQUIRY

MR. ZABLOCKI: Mr. Chairman, I have a parliamentary inquiry.

We have not voted on the amendment.

THE CHAIRMAN:[5] The gentleman from Iowa (Mr. Harkin) is entitled to move to strike the requisite number of words, to debate the amendment, even though it has been accepted by both sides.

The Chair recognizes the gentleman from Iowa (Mr. Harkin).

MR. [EDWARD J.] DERWINSKI [of Illinois]: I yield to the gentleman from Florida.

MR. [DANTE B.] FASCELL [of Florida]: Mr. Chairman, we are about to vote here in a second on this amendment, which has been accepted, and I would just like to say to my colleagues that we have had many days now of very fine cooperation, thorough debate on many issues before us on this bill. We are down to about the last amendment. I believe there is one more amendment on that side of the aisle. I am not sure, but I believe that is right. And with a little cooperation we can finish this bill. I would urge the continued cooperation of my colleagues.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Maryland (Mr. Bauman).

The amendment was agreed to.

An Amendment Identical to One Previously Adopted Must Still Be Voted Upon

§ 2.5 Where the Committee of the Whole, pursuant to a unanimous-consent agreement, permitted identical amendments to two propositions to be considered and debated at the same time, the Chair still put the question on the two propositions separately, causing the Com-

5. Thomas S. Foley (Wash.).

mittee to vote first on the perfecting amendment to the original text and then on the identical amendment offered to the amendment in the nature of a substitute.

On July 12, 1988,[6] the House had resolved into the Committee of the Whole for consideration of the Defense Savings Act, 1988 (H.R. 4481). The proceedings were as follows:

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ARMEY

MR. [RICHARD K.] ARMEY [of Texas]: Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Armey: Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This act may be cited as the "Defense Savings Act of 1988."

SEC. 2. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS.

This Secretary of Defense shall— . . .

AMENDMENT OFFERED BY MR. PORTER TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ARMEY

MR. [JOHN E.] PORTER [of Illinois]: Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. Porter to the amendment in the nature of a substitute offered by Mr. Armey: In section 4(b), strike out "The" in the first sentence and insert in lieu thereof "Subject to paragraph (2), the".

At the end of section 4(b), add the following new paragraph:

(2) Not more than one-half of the professional staff of the Commission shall be individuals who have been employed by the Department of Defense during calendar year 1988.

MR. PORTER: Mr. Chairman, I ask unanimous consent that the amendment be made in order both to the amendment in the nature of a substitute offered by the gentleman from Texas [Mr. Armey] and to the committee bill.

THE CHAIRMAN:[7] Is there objection to the request of the gentleman from Illinois to making the amendment in order to both the committee print and to the amendment in the nature of a substitute?

There was no objection.

PARLIAMENTARY INQUIRY

MR. [LES] ASPIN [of Wisconsin]: Mr. Chairman, let me make a parliamentary inquiry. Can the gentleman from Illinois offer his amendment to both pieces of legislation simultaneously?

THE CHAIRMAN: Unanimous consent was given to offer the amendment simultaneously to both of the pending texts, since both texts are pending and open to separate amendment at any point. So the amendments are now pending to both. Under parliamentary procedure, the amendment will be first

6. 134 CONG. REC. 17757, 17762, 17763, 100th Cong. 2d Sess.

7. Harold L. Volkmer (Mo.).

voted upon to the original bill and then it will be voted upon as offered to the substitute offered by the gentleman from Texas. . . .

MR. ASPIN: Mr. Chairman, what are we going to vote on? What is the parliamentary procedure?

THE CHAIRMAN: If there is no further discussion on the amendment offered by the gentleman from Illinois, the Chair will put the question. The question will be first put as to the amendment to the print, being considered as original text, and the Chair will now do that.

The question is on the amendment offered by the gentleman from Illinois [Mr. Porter] to the committee amendment in the nature of a substitute.

The amendment to the committee amendment in the nature of a substitute was agreed to.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Illinois [Mr. Porter] to the amendment in the nature of a substitute offered by the gentleman from Texas [Mr. Armey].

The amendment to the amendment in the nature of a substitute was agreed to.

Preamble Amendments

§ 2.6 When the Committee of the Whole has perfected the body and then the preamble of a concurrent resolution and the Committee rises, the Speaker puts the question on separate votes on amendments and then on agreeing to the resolution (including the preamble).

On Oct. 5, 1962,[8] the House resolved itself into the Committee of the Whole for the consideration of a concurrent resolution (H. Con. Res. 570) expressing the sense of the Congress with respect to the then-volatile situation in Berlin.

In the course of considering the resolution, the Committee perfected both the body and the preamble,[9] whereupon it rose, and the Chairman[10] reported the resolution back to the House with the amendments adopted by the Committee. Under the rule, the Speaker[11] then ordered the previous question and asked if any of the Members sought a separate vote on any amendment. No such request having been made, the amendments were considered en gross and agreed to. The Chair then put the question on the concurrent resolution in accordance with appropriate procedure.

§ 2.7 Where a joint resolution is reported to the House from the Committee of the Whole with amendments to the body and preamble, the Speaker puts the question: (1) on the amendment to the

8. 108 CONG. REC. 22620, 87th Cong. 2d Sess.
9. *Id.* at pp. 22636, 22637.
10. Samuel S. Stratton (N.Y.).
11. John W. McCormack (Mass.).

body; (2) on engrossment of the joint resolution; (3) on the amendment to the preamble; (4) on the third reading of the joint resolution; and (5) on passage of the joint resolution.

On Aug. 18, 1972,[12] the House resolved itself into the Committee of the Whole for the consideration of a joint resolution (H.J. Res. 1227) to provide congressional approval of an interim agreement on limitation of strategic offensive arms. During the course of the discussion, the Committee amended both the body and the preamble of the resolution after which it rose[13] under the rule and reported the resolution back to the House with the adopted amendments.

Thereafter,[14] the Speaker[15] put the appropriate questions in the proper procedural order as the following excerpt indicates:

> THE SPEAKER: Under the rule, the previous question is ordered.
>
> The question is on the amendment to the text of the joint resolution.
>
> The amendment to the text of the joint resolution was agreed to.
>
> THE SPEAKER: The question is on the engrossment of the joint resolution.
>
> The joint resolution was ordered to be engrossed.
>
> THE SPEAKER: The question is on the amendment to the preamble.
>
> The amendment to the preamble was agreed to.
>
> THE SPEAKER: The question is on the third reading of the joint resolution.
>
> The joint resolution was ordered to be read a third time, and was read the third time.
>
> THE SPEAKER: The question is on the passage of the joint resolution.

Parliamentarian's Note: Where a Senate joint resolution is considered in the House, the question is put separately on the preamble only if there are amendments to be considered thereto.

§ 2.8 A motion to strike all after the resolving clause of a concurrent resolution does not affect the preamble thereof; and a motion to strike out the preamble is properly offered after the resolution has been agreed to.

On Feb. 21, 1966,[16] the House considered a Senate concurrent resolution, the text of which was identical to a House-passed resolution, differing only in that the Senate resolution carried a preamble. The proceedings for eliminating the preamble are carried below:

> The Clerk called the concurrent resolution (H. Con. Res. 552) recognizing

12. 118 CONG. REC. 29095, 92d Cong. 2d Sess.

13. *Id.* at p. 29126.

14. *Id.* at p. 29127.

15. Carl Albert (Okla.).

16. 112 CONG. REC. 3473, 89th Cong. 2d Sess.

the 50th anniversary of the chartering by act of Congress of the Boy Scouts of America. . . .

THE SPEAKER PRO TEMPORE:[17] Is there objection to the present consideration of the concurrent resolution?

There being no objection, the Clerk read the House concurrent resolution, as follows:

H. CON. RES. 552

Whereas June 15, 1966, will mark the fiftieth anniversary of the granting by Act of Congress of the charter of the Boy Scouts of America;

Whereas the Boy Scouts of America was the first youth organization to be granted a charter by Act of Congress;

Whereas the Congress has been kept informed of the programs and activities of the Boy Scouts of America through the annual reports made to it each year by this organization in accordance with such charter.

Whereas these programs and activities have been designed to instill in boys the moral and ethical principles, and the habits, practices, and attitudes, which are conducive to good character, citizenship, and health; and

Whereas, by fostering in the youth of the Nation those qualities upon which our strength as a Nation is dependent, the Boy Scouts of America has made a contribution of inestimable value to the welfare of the entire Nation: Therefore be it

Resolved by the House of Representatives (the Senate concurring), That the Congress hereby pay tribute to the Boy Scouts of America on the occasion of the fiftieth anniversary of the granting by Act of Congress of the charter of the Boy Scouts of America, and expresses its recognition of and appreciation for the public service performed by this organization through its contributions to the lives of the Nation's youth.

The concurrent resolution was agreed to and a motion to reconsider was laid on the table.

The following committee amendment was agreed to:

On pages 1 and 2, strike all "Whereas" clauses.

MR. [ARCH A.] MOORE [Jr., of West Virginia]: Mr. Speaker, I ask unanimous consent for the present consideration of Senate Concurrent Resolution 68, which is similar to House Concurrent Resolution 552.

The Clerk called the Senate concurrent resolution (S. Con. Res. 68).

THE SPEAKER: Is there objection to the present consideration of the Senate concurrent resolution?

There was no objection.

There being no objection, the Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 68

Whereas June 15, 1966, will mark the fiftieth anniversary of the granting by Act of Congress of the charter of the Boy Scouts of America;

Whereas the Boy Scouts of America was the first youth organization to be granted a charter by Act of Congress;

Whereas the Congress has been kept informed of the programs and activities of the Boy Scouts of America through the annual reports made to it each year by this organization in accordance with such charter;

Whereas these programs and activities have been designed to instill in boys the moral and ethical principles, and the habits, practices, and

17. Carl Albert (Okla.).

attitudes, which are conducive to good character, citizenship, and health; and

Whereas, by fostering in the youth of the Nation those qualities upon which our strength as a Nation is dependent, the Boy Scouts of America has made a contribution of inestimable value to the welfare of the entire Nation: Therefore be it

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby pays tribute to the Boy Scouts of America on the occasion of the fiftieth anniversary of the granting by Act of Congress of the charter of the Boy Scouts of America, and expresses its recognition of and appreciation for the public service performed by this organization through its contributions to the lives of the Nation's youth.

MR. MOORE: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Moore: Strike out all after the enacting clause and insert the provisions of House Concurrent Resolution 552 as passed.

THE SPEAKER PRO TEMPORE: Is the purpose of the gentleman from West Virginia to strike out the preamble?

MR. MOORE: My amendment would strike out the language of the Senate concurrent resolution and substitute in lieu thereof the language of the concurrent resolution just passed by the House.

THE SPEAKER PRO TEMPORE: Would the amendment of the gentleman from West Virginia strike out the preamble or all after the enacting clause and substitute the language of the House concurrent resolution just passed?

MR. MOORE: It would strike out all after the enacting clause.

THE SPEAKER PRO TEMPORE: That would not eliminate the preamble.

MR. MOORE: Then, Mr. Speaker, I move to strike the preamble.

The Senate concurrent resolution was agreed to and a motion to reconsider was laid on the table.

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment of the gentleman from West Virginia.

The Clerk read as follows:

Mr. Moore moves to strike out the preamble.

The amendment was agreed to.

A similar House concurrent resolution was laid on the table.

§ 3. Duty To Vote

In the First Congress, a rule was adopted which specified that "no Member shall vote on any question in the event of which he is immediately and particularly interested; or in any case where he was not present when the question was put."[18] Another rule, adopted on the same day, Apr. 7, 1789, provided that "every Member who shall be in the House when a question is put shall vote on the one side or the other, unless the House for special reasons shall excuse him;".[19] Finally, on Apr. 13, 1789, the House

18. See House Journal, First Cong. 1st Sess., p. 9, for adoption of "old rule 29," on Apr. 7, 1789.

19. First Cong. 1st Sess., Rule 31.

mandated "that no Member absent himself from the service of the House, unless he have leave or be sick and unable to attend;".[20]

In the 104th Congress, the corresponding clauses of Rule VIII address the same concepts. Clause 3, although implicitly a part of the accepted norms of House behavior, was not adopted until "ghost voting" problems surfaced in the House following the utilization of the electronic voting system.[1] The rule reads as follows:

> Rule VIII. Duties of the Members.
>
> Clause 1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question. . . .
>
> Clause 3. (a) A Member may not authorize any other individual to cast his vote or record his presence in the House or Committee of the Whole.
>
> (b) No individual other than a Member may cast a vote or record a Member's presence in the House or Committee of the Whole.
>
> (c) A Member may not cast a vote for any other Member or record another Member's presence in the House or Committee of the Whole.

In the 94th Congress, the House adopted a new provision to the Code of Official Conduct. Rule XLIII clause 10,[2] states that a Member of the House who pleads guilty to, or is convicted of, a crime for which the sentence could be two or more years imprisonment should refrain from voting in the House or its committees, including the Committee of the Whole, until judicial or executive proceedings reinstate the Member's presumption of innocence or until he is reelected to the House after his conviction.[3] The power of the House to deprive a Member of the right to vote on any question is certainly doubtful.[4] Clause 10 is not mandatory, but "directory."[5]

Personal or Pecuniary Interest, Member's Determination

§ 3.1 Observance of the requirement of Rule VIII, clause 1 that each Member shall vote unless he has a direct personal or pecuniary interest in the question, is the responsibility of the individual Member. And the

20. First Cong. 1st Sess., Journal p. 13.

1 127 Cong. Rec. 98–113, 97th Cong. 1st Sess., H. Res. 5, Jan. 5, 1981.

2. *House Rules and Manual* § 839 (1995).

3. 121 Cong. Rec. 10340, 94th Cong. 1st Sess., Apr. 16, 1975.

4. 5 Hinds' Precedents § 5952; 8 Cannon's Precedents § 3072.

5. See § 3.2, infra.

Speaker has indicated that he would not rule on a point of order challenging the personal or pecuniary interest of Members in a pending question, but would defer to the judgment of each Member as to the directness of their interest.

On June 27, 1972,[6] the House entertained consideration of a resolution (H. Res. 1021) providing for the consideration of a bill (H.R. 15390) to extend the then-temporary level of the public debt limitation.

In the course of the resolution's consideration, Mr. Durward G. Hall, of Missouri, sought to elicit an indication from the Speaker[7] as to whether the Chair intended to direct the Members with respect to assessing their own pecuniary interest in voting on the measure, as the following exchange[8] reveals:

> MR. HALL: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. HALL: Mr. Speaker, I am referring to rule VIII,[9] pertinent to the duties of Members, clause 657, which involves personal interest, stating in part: "Unless he has a direct personal or pecuniary interest in the event of such question."
>
> Furthermore, Mr. Speaker, leading up to the parliamentary inquiry, section 659 says:
>
> > It is a principle of "immemorial observance" that a Member should withdraw when a question concerning himself arises . . .
>
> Now, Mr. Speaker, my parliamentary inquiry is, in view of the Reorganization Act of 1970, and even prior to that, the establishment of the Standing Committee on the Conduct and Standards of Ethics of Members, inasmuch as it has become common knowledge as the result of reportorial objective enterprise that there are over 190 Members, including the gentleman from Missouri, that have pecuniary interest in banks and monetary exchange, would it be the intention of the Speaker to see that rule VIII applies in the vote on the previous question?
>
> THE SPEAKER: The Chair will state to the gentleman that the precedents under the rule to which the gentleman makes reference are clear that the Speaker has usually held that the Member himself should determine the question. It is a question for the conscience of the Member.
>
> MR. HALL: A further parliamentary inquiry, Mr. Speaker.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. HALL: Unless a point of order were made based on this rule it would not be the intention of the Chair to direct the Members that they should as a matter of conscience assess their own

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6. 118 CONG. REC. 22548, 92d Cong. 2d Sess.

7. Carl Albert (Okla.).

8. 118 CONG. REC. 22554, 92d Cong. 2d Sess.

9. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

pecuniary interest in voting on such a matter?

THE SPEAKER: The Chair would leave the matter of conscience to each Member's own judgment.

Point of Order Raised Against Vote

§ 3.2 Where a Member had voted on a motion to permit the reading in debate of a court transcript on which a pending resolution for his expulsion was in part based, the Chair overruled a point of order that such Member was prohibited because of his personal interest in the question from voting thereon, since the more recent precedents within the last 100 years indicate that it is the responsibility of each Member, and not of the Speaker, to determine whether he has a direct personal or pecuniary interest so as to prevent him from voting under Rule VIII.

On Mar. 1, 1979,[10] Mr. Newt Gingrich, of Georgia, rose to a question of privilege. The pertinent proceedings relating to Rule VIII are shown below:

MR. GINGRICH: Mr. Speaker, I rise to a question of the privileges of the House, and I offer a privileged resolution (H. Res. 142) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 142

Resolved, That Charles C. Diggs, Jr., a Representative from the Thirteenth District of Michigan, is hereby expelled from the House of Representatives.

MOTION OFFERED BY MR. WRIGHT

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Wright moves to refer House Resolution 142 to the Committee on Standards of Official Conduct.

THE SPEAKER:[11] The gentleman from Texas (Mr. Wright) is recognized for 1 hour.

MR. GINGRICH: Mr. Speaker, will the gentleman yield?

MR. WRIGHT: Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. Gingrich). . . .

MR. WRIGHT: Mr. Speaker, I yield 8 minutes to the gentleman from Virginia (Mr. Butler). . . .

MR. [M. CALDWELL] BUTLER [of Virginia]: . . . I will tell you, however, that I have read the testimony of Charles Diggs under oath before the court and in my opinion he affirmatively stated and admitted sufficient acts to constitute grounds for his expulsion today. Here again, I would prefer it to be determined with the recommendation of the appropriate committee and under more regular procedures await that process; but when the gentleman from Michigan insists on continued participation, then I have no choice but to share the facts I have now.

10. 125 CONG. REC. 3746, 3747, 96th Cong. 1st Sess.

11. Thomas P. O'Neill, Jr. (Mass.).

Bear in mind, I have not read the entire record. I make no representation about that. I only deal with what the gentleman from Michigan (Mr. Diggs) had to say on the charges against him. There are 29. My time is limited. I will only deal with samples, but I represent that these are fair samples.

PARLIAMENTARY INQUIRY

MR. [PARREN J.] MITCHELL of Maryland: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman from Maryland will state the parliamentary inquiry.

MR. MITCHELL of Maryland: Mr. Speaker, the Member in the well is going to attempt to read from a transcript in a trial. Ordinarily, I would have no objection to that if this body had constituted itself as a body to try Mr. Diggs. It has not done so. I have strenuous objections to reading any portion of that transcript when this body is not so constituted to receive that information.

Number two. Mr. Speaker, in doing so, if he is permitted to do so, is not the Member usurping authority of the Committee on Standards of Official Conduct?

I strenuously object to the reading of any portion of this transcript.

THE SPEAKER: The gentleman objects to the reading?

MR. MITCHELL of Maryland: Yes, I do, Mr. Speaker; any portion of the transcript, whether it is printed in the Record or not, I do not care. I object to its being read before this body as presently constituted.

THE SPEAKER: The gentleman from Virginia can continue to debate, but he cannot continue to read without the permission of the House.

MR. BUTLER: Mr. Speaker, may I have the permission of the House to read from the transcript?

MR. MITCHELL of Maryland: Mr. Speaker, I object to granting permission for the reading of the transcript.

THE SPEAKER: The question is: Shall the gentleman from Virginia be permitted to read the document? The question is on that matter.

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER: The gentleman from Maryland demands the yeas and nays.

Those in favor of taking this by the yeas and nays will arise.

In the opinion of the Chair, a sufficient number have arisen. The yeas and nays will be ordered. . . .

The Members will proceed to vote. Those in favor will vote "aye," those opposed will vote "no."

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 353, nays 53, not voting 26, as follows: . . .

MR. [JOHN J.] RHODES [of Arizona]: Mr. Speaker, I have a point of order.

THE SPEAKER: The gentleman from Arizona will state it.

MR. RHODES: Mr. Speaker, the electronic device by which the House votes indicates that the gentleman from Michigan (Mr. Diggs) has voted on the question which the House just considered. I would like to make a point of order against the vote by the gentleman from Michigan (Mr. Diggs)

based on rule VIII, clause 1, which of course states:

> Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.
>
> In making the point of order, I submit that the gentleman from Michigan clearly has a personal interest in the question just decided.

THE SPEAKER: The Chair is ready to rule on the gentleman's point of order. For the information particularly of the new Members as to how the pending vote came about, it is stated in the Rules of the House that a Member cannot read from a document upon which the House will not vote without the permission of the House. In this instance the gentleman was going to read from the records of the court. The gentleman from Maryland (Mr. Mitchell) objected. This has happened in the past.

It was on December 19, 1974, that there was an objection to the reading from a paper by the gentlewoman from New York, Mrs. Abzug, and the House voted that she could read from the paper.

The gentleman from Arizona (Mr. Rhodes) has addressed himself in an inquiry to the Chair on the application of rule VIII, clause 1, providing that each Member shall vote on each question unless he has a direct personal or pecuniary interest therein.

Speaker Clark held that the question of whether a Member's interest was such as to disqualify him from voting was an issue for the Member himself to decide and that the Speaker did not have the prerogative to rule against the constitutional right of a Member to represent his constituency.

Speaker Blaine stated that the power of the House to deprive one of its Members of the right to vote on any question was doubtful.

The Chair has been able to discover only two recorded instances in the history of the House where the Speaker has declared a Member disqualified from voting. The last decision occurred over 100 years ago.

Because the Chair severely doubts his authority to deprive the constitutional right of a Member to vote, and because of the overwhelming weight of precedent, the Chair holds that each Member should make his or her own determination whether or not a personal or pecuniary interest in a pending matter should cause him to withhold his vote. The point of order is overruled.

So the gentleman from Virginia (Mr. Butler) was allowed to read.

For Medical Reasons

§ 3.3 A Member may be excused from voting for medical reasons only by the House; the Committee of the Whole has no such authority, even by unanimous consent.

On Mar. 26, 1965,[12] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 2362) to strengthen and improve edu-

12. 111 CONG. REC. 6095, 6096, 89th Cong. 1st Sess.

cational quality and educational opportunities in the nation's elementary and secondary schools.

During the course of the bill's consideration, Mr. Adam C. Powell, of New York, asked unanimous consent that Mr. Charles E. Bennett, of Florida, and Mr. Elmer J. Holland, of Pennsylvania, be excused from any teller votes. Although both of these Members were present, Mr. Bennett had a broken leg and was confined to a wheelchair; and Mr. Holland was recovering from a severe stroke and found walking difficult.

The Chairman[13] was unable to permit the Powell request, however, stating that "That is not in order in the Committee of the Whole. . . ."

Abstentions and Announcements Thereof

§ 3.4 Two Members abstained from voting on a bill [to increase compensation for service-connected disabilities for veterans] in which they had a pecuniary interest.

On Apr. 2, 1962,[14] Mr. Olin E. Teague, of Texas, moved to suspend the rules and pass a bill (H.R. 10743) to amend title 38 of the United States Code. The purposes of the bill were to provide increases in the rates of service-connected disability compensation to reflect the change which had occurred in the cost of living since the previous compensation increase in 1957 and to more adequately compensate the nation's seriously disabled veterans.

Following discussion of the motion, the Speaker[15] put the question.[16] It was taken; and, the yeas and nays having been ordered, there were—yeas 347, answered "present" 2, not voting 87.

The two Members voting "present" were Mr. Robert H. Michel, of Illinois, and Mr. John Bell Williams, of Mississippi. Both of the aforementioned Members possessed service-connected disabilities.[17]

§ 3.5 A Member announced a disqualifying personal inter-

13. Richard Bolling (Mo.).
14. 108 Cong. Rec. 5561, 87th Cong. 2d Sess.
15. John W. McCormack (Mass.).
16. 108 Cong. Rec. 5568, 87th Cong. 2d Sess.
17. In an earlier instance, the same Mr. Williams along with Mr. Charles E. Potter (Mich.), notified the Speaker that they would be personally affected by a bill (S. 1864) to authorize the Administrator of Veterans' Affairs to purchase automobiles for certain disabled veterans. Accordingly, each indicated that he felt compelled to vote "present." See 97 Cong. Rec. 13746, 82d Cong. 1st Sess., Oct. 20, 1951.

est in a pending bill [pertaining to marketing orders on pears] and stated his intention to vote "present" on the issue.

On Sept. 9, 1968,[18] the House resolved itself into the Committee of the Whole for the purpose of considering a bill (H.R. 10564) to amend section 2(3), section 8c(2), and section 8c(6)(I) of the Agricultural Marketing Agreement Act of 1937, as amended. The purpose of the bill was to add pears for canning or freezing to the list of commodities for which federal marketing orders may be made applicable and to permit the inclusion of a checkoff for marketing promotion projects, including paid advertising for the commodity.

In the course of the bill's consideration, Mr. Charles S. Gubser, of California, felt compelled to make the following statement:[19]

> Mr. Chairman, I am the owner and operator of a small pear orchard. So, obviously, I have a personal interest in this matter which I construe as a conflict of interest. I therefore take this time to announce to the membership of the House that if a rollcall is held on this bill, I shall vote "present."

§ 3.6 A Member announced that he had not voted on a roll call because of a pecuniary interest in the legislation, which dealt with urban renewal.

On July 27, 1965,[20] the House agreed to the conference report on a bill (H.R. 7984) to assist in the provision of housing for low and moderate-income families to promote orderly urban development, to improve living environment in urban areas, and to extend and amend laws relating to housing, urban renewal, and community facilities.

Following this vote, Mr. James H. Scheuer, of New York, requested unanimous consent to address the House for one minute. There being no objection, Mr. Scheuer made the following statement:

> Mr. Speaker, I would like to clarify for the record that on rollcall No. 204 concerning H.R. 7984, I was present but did not vote because I felt I had a direct personal interest in the legislation, and under rule 8 of the House was precluded from voting thereon.[1]

§ 3.7 Where a bill was pending relating to the reserves required to be maintained by certain banks, a Member disqualified himself on the vote

18. 114 CONG. REC. 26035, 90th Cong. 2d Sess.
19. *Id.* at p. 26038.
20. 111 CONG. REC. 18424, 18425, 89th Cong. 1st Sess.
1. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

because of a pecuniary interest in the question voted upon.

On July 1, 1959,[2] the House resolved itself into the Committee of the Whole for the further consideration of a bill (S. 1120) to amend the National Bank Act and the Federal Reserve Act with respect to the reserves required to be maintained by member banks of the Federal Reserve System against deposits and to eliminate the classification "central reserve city."

In the course of the Committee's deliberations, the Chairman[3] recognized Mr. Thomas M. Pelly, of Washington, who then made the following statement:[4]

> Mr. Chairman, I desire the Record to show that in conformity with rule 8 of the Rules of the House when this measure comes to a vote, I shall feel constrained to vote "present."[5]

Withdrawal of Vote Owing to Pecuniary Interest

§ 3.8 A Member has withdrawn his vote on a roll call because of a pecuniary interest in the question voted upon.

On July 21, 1954,[6] the House voted to suspend the rules and pass a bill (H.R. 9020) to provide increases in the monthly rates of compensation and pension payable to certain veterans and their dependents. Prior to the Speaker's[7] announcement of the result, Mr. John Bell Williams, of Mississippi, addressed the Speaker and asked how he was recorded. The Speaker responded by informing Mr. Williams that he was recorded as voting "yea."

Immediately thereafter, Mr. Williams made the following statement:

> Mr. Speaker, under rule 8, clause 1, of the Rules of the House of Representatives I do not feel qualified to vote on this particular measure. I therefore withdraw my vote of "yea" and vote "present."

The result of the vote was then announced, after which Mr. Williams sought and received unanimous consent to extend his remarks in the Record. In so doing, he said the following:

> Mr. Speaker, on the rollcall just completed, I am recorded as voting "present." In view of the fact that I am not recorded as favoring or opposing the measure, I feel that I should take this means to clarify my personal position on the bill just passed.

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2. 105 Cong. Rec. 12481, 86th Cong. 1st Sess.

3. Howard W. Smith (Va.).

4. 105 Cong. Rec. 12504, 86th Cong. 1st Sess.

5. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

6. 100 Cong. Rec. 11262, 83d Cong. 2d Sess.

7. Joseph W. Martin, Jr. (Mass.).

Clause 1, rule VIII of the Rules of the House of Representatives provides that every Member "shall vote on each question put unless he has a direct or pecuniary interest in the event of such question."[8]

Further, Jefferson's Manual of Parliamentary Practice, paragraph 376, states:

> Where the private interests of a Member are concerned in a bill or question, he is to withdraw.

Mr. Speaker, due to the fact that I would be one of the veterans personally affected by the bill just passed, I felt compelled under the Rules of the House to withdraw from voting and to be recorded as voting "present"[9]

Where Subject Matter in Question Affects Class of Members

§ 3.9 The Chair has held that where the subject matter before the House affects a class of citizens, which includes some Members, rather than individual Members, the personal interest of Members who belong to that class is not such as to disqualify them from voting; and the Chair noted, in so ruling, that the power of the House to deprive one of its Members of the right to vote on any question is doubtful.

On May 31, 1939,[10] Mr. Edward E. Cox, of Georgia, by direction of the Committee on Rules, called up a resolution (H. Res. 205) and asked for its immediate consideration. The resolution provided, in part, that upon its adoption, the House would resolve itself into the Committee of the Whole:

> . . . for the consideration of H.R. 6466, a bill to provide for and promote the general welfare of the United States by supplying to the people a more liberal distribution and increase of purchasing power, retiring certain citizens from gainful employment, improving and stabilizing gainful employment for other citizens, stimulating agricultural and industrial production and general business, and alleviating the hazards and insecurity of old age and unemployment. . . .

Shortly thereafter,[11] Mr. Martin J. Kennedy, of New York, propounded a parliamentary inquiry—the answer to which comprised a rather lengthy statement by the Chair.

> MR. MARTIN J. KENNEDY: . . . I feel that in such an important issue as the

8. This language did not change in the intervening period of time. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

9. In the 84th Congress, Mr. Williams also withdrew a "yea" vote on a roll call to pass a bill of pecuniary interest to certain veterans for virtually the same reasons. See 102 CONG. REC. 12566, 84th Cong. 2d Sess., July 12, 1956.

10. 84 CONG. REC. 6359, 76th Cong. 1st Sess.

11. *Id.* at p. 6360.

pending one the House and the country are entitled to know whether or not these Members over the age of 60 are disqualified to vote under rule VIII of the House.[12] If this bill passes they will automatically become immediate beneficiaries under the provisions of the bill. Therefore, Mr. Speaker, my parliamentary inquiry is, Are such Members disqualified from voting on this bill?

THE SPEAKER:[13] The gentleman from New York has propounded a parliamentary inquiry which, of course, the Chair assumes is propounded in good faith, and the Chair imagines that the gentleman has in mind rule VIII of the House of Representatives, which is in the following language:

Every Member shall be present within the Hall of the House during its sittings unless excused or necessarily prevented, and shall vote on each question put unless he has a direct personal or pecuniary interest in the event of such question.

The Chair does not feel, in view of the pressing circumstances with respect to time, it is necessary to undertake to elaborate upon this question, as it is certainly not a novel one, and in the brief time since the gentleman gave notice he would propound his parliamentary inquiry the Chair has found that this question has been specifically presented to the House on a number of occasions and finds that very thoughtful and elaborate opinions have been rendered upon this point, particularly by Mr. Speaker Blaine (Hinds' Precedents, vol. V, sec. 5952), by Mr. Speaker Longworth (Cannon's Precedents, vol. VIII, sec. 3072), and by Mr. Speaker Clark (Cannon's Precedents, vol. VIII, sec. 3071), all of whom join in the conclusion stated in the syllabus of the Blaine opinion in the following language:

> Where the subject matter before the House affects a class rather than individuals, the personal interest of Members who belong to that class is not such as to disqualify them for voting.
>
> The power of the House to deprive one of its Members of the right to vote on any question is doubtful.

If the Chair were disposed to elaborate upon the opinion announced in the Blaine decision, it might be proper for him to read extracts from that decision. However, it seems to be well determined—and the Chair thinks it is based on sound reasoning and philosophy—that where a bill comes up affecting a general class of people and no direct or personal pecuniary interest of a Member as such is involved, Members are not proscribed in absolute good faith and in all morality from voting upon a bill of that character.

If the rule were otherwise, all of us would probably be subject to some prohibition in the way of voting upon Federal Taxation. It might be taken to excuse ourselves from voting upon such questions because our pecuniary interests are involved. A number of other suggestions might be made along the same line.

So the Chair answers the parliamentary inquiry of the gentleman from New York to the effect that under the

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12. The language of the first clause of Rule VIII did not change between 1939 and 1973. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

13. William B. Bankhead (Ala.).

rulings of former Speakers in well-considered opinions and as a matter of constitutional right the Members can, and should, in all good faith vote upon the bill now involved.

Votes and Ethics Inquiries

§ 3.10 A Member's stock ownership has been the subject of an investigation by the Committee on Standards of Official Conduct where it was alleged that the Member's votes on legislation before the House tended to benefit his investment.

In the 94th Congress, the Committee on Standards of Official Conduct investigated several charges of misconduct brought against Mr. Robert L. F. Sikes, of Florida. The committee eventually submitted a report urging a reprimand of the Representative which was adopted by the House.[14]

One of the charges against Mr. Sikes was that he had violated Rule VIII clause 1,[15] which provides that a Member not vote on questions in which he has a direct personal or pecuniary interest, in that he had voted on a general defense appropriation bill in 1974 which carried an appropriation of funds to purchase aircraft to be manufactured by a corporation in which he owned stock. The committee declined to recommend that the Member be punished for this vote and cited in support of its decision Speaker Albert's response to a parliamentary inquiry on Dec. 2, 1975.[16] In that instance, Speaker Albert had stated that a Member's ownership of stock did not disqualify him from voting on a bill general in scope where he would be within a class of numerous individuals with similar pecuniary interests. It is up to each Member to make a determination whether to withhold his vote under Rule VIII.

Committee Meeting as Excusing Duty To Vote

§ 3.11 Permission from the House to a committee to sit during House sessions, does not relieve committee members from their obligation to respond on House roll calls.

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14. H. Res. 1421, 122 CONG. REC. 14381–83, 94th Cong. 2d Sess., July 29, 1976.

15. Rule VIII clause 1, provides: "Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question." *House Rules and Manual* § 656 (1995).

16. 121 CONG. REC. 38135, 94th Cong. 1st Sess.

On Aug. 5, 1937,[17] the House, by unanimous consent, granted its permission to the Committee on Ways and Means to sit during the sessions of the House for the remainder of the session. Immediately thereafter, Mr. Hamilton Fish, Jr., of New York, addressed the Speaker[18] and the following exchange took place:

> MR. FISH: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: Does the gentleman from Indiana yield to permit the gentleman from New York to submit a parliamentary inquiry?
>
> MR. [ARTHUR H.] GREENWOOD: I yield.
>
> MR. FISH: Mr. Speaker, when permission is given to a committee to sit during the sessions of the House, does that give any rights to any of the members of that committee on roll calls?
>
> THE SPEAKER: Absolutely none.
>
> MR. FISH: Not even on quorum roll calls?
>
> THE SPEAKER: It does not. On all quorum roll calls all Members who desire to be recorded must appear and vote on the roll call.

Right of Chairman of Committee of the Whole To Participate

§ 3.12 Appointment of a Member to Chair the Committee of the Whole does not effect a forfeiture of his right to vote or to object to a unanimous-consent request.

On Dec. 9, 1947,[19] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 4604) providing aid to certain foreign countries. In the course of the lengthy discussion which followed, a question arose as to the possible invasion of the Chair's rights. Mr. August H. Andresen, of Minnesota, had sought unanimous consent to discuss his proposed amendment[20] in the Committee of the Whole on the following day. Objection being heard,[1] Mr. Andresen withdrew his request. However, Mr. John W. McCormack, of Massachusetts, sought to strike the last word in order to voice his reservations against such a request per se. Mr. McCormack felt constrained to say that he "would never agree to a unanimous-consent request which takes away from the Chairman of the Committee . . . the right to recognize Members in [the] Committee of the Whole."

In responding to Mr. McCormack's assertion, the Chair[2] in-

17. 81 CONG. REC. 8300, 75th Cong. 1st Sess.
18. William B. Bankhead (Ala.).
19. 93 CONG. REC. 11188, 80th Cong. 1st Sess.
20. *Id.* at p. 11230.
1. *Id.* at p. 11231.
2. Earl C. Michener (Mich.).

dicated that it did not believe any of its prerogatives would be forfeited if such a request were honored. Said Chairman Michener:

> As the Chair understands the rule, the presiding officer in the Committee is in a dual capacity. First, he is selected to be the presiding officer during the consideration of the bill. But by accepting such appointment he does not lose his right to vote and object as any other Member. That is, his district is not deprived of its rights by virtue of the Chairman selection. That being true, the Chair not making any objection, I cannot see how the rights of the Chair are infringed upon if the committee, by unanimous consent, wants to provide that a certain individual may speak at a certain hour during the Committee consideration. If the Chair is agreeable and all Members are agreeable.[3]

In the Senate

§ 3.13 The Senate by viva voce vote excused a Senator from voting on a yea and nay roll call because of his pecuniary interest in an amendment before that body.

The Senate having resumed consideration of a bill (H.R. 3687) to provide revenue, and for other purposes, Senator J. W. Elmer Thomas, of Oklahoma, called up an amendment pertaining to mineral depletion allowances.[4] Discussion ensued after which the Presiding Officer[5] put the question[6] on the amendment. Senator Thomas then requested the yeas and nays which were ordered shortly thereafter.

As the legislative clerk proceeded to call his name, Senator Warren R. Austin, of Vermont, initiated the following exchange:

> Mr. President, I ask to be excused from voting on this amendment. I am personally interested in one of the items affected, namely, talc.
>
> THE PRESIDING OFFICER: Shall the Senator from Vermont, for the reasons assigned by him, be excused from voting? [Putting the question.] The "ayes" have it, and the Senator is excused.

Parliamentarian's Note: While Members of the House are expected to vote on each question unless they have a "direct personal or pecuniary interest"[7]—a question which each Representative must decide on his own—members of the Senate are expected to vote unless "excused by

3. For specific precedents pertaining to votes by the Chair in the generic sense (i.e., by the Chairman of the Committee of the Whole, by the Speaker, and by the Speaker Pro Tempore) see §§ 15, 21, 29, infra.

4. 90 CONG. REC. 300, 78th Cong. 2d Sess., Jan. 18, 1944.

5. John L. McClellan (Ark.).

6. 90 CONG. REC. 304, 78th Cong. 2d Sess.

7. Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

the Senate."[8] The procedure is described in part as follows:[9]

> When a Senator declines to vote on call of his name, he shall be required to assign his reasons therefor, and having assigned them, the Presiding Officer shall submit the question to the Senate: "Shall the Senator, for the reasons assigned by him, be excused from voting?" which shall be decided without debate.

Proxy Voting

§ 3.14 While the exercise of proxy voting is forbidden in the House, recognition of voting proxies by a standing committee has at some periods been left as a matter to be determined by the committee itself.

On Jan. 26, 1950,[10] the House briefly discussed a recent decision of the Committee on Rules to delay the reporting out of certain legislation because of the absence of two of the committee's minority members. As Mr. Clarence J. Brown, of Ohio, explained to the House, one of the missing members had been unavoidably absent because of his hospitalization, and had specifically requested that the Committee on Rules decision be delayed temporarily.

Shortly thereafter, a colloquy evolved as follows:

> MR. [HERMAN P.] EBERHARTER [of Pennsylvania]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER:[11] The gentleman will state it.
>
> MR. EBERHARTER: Mr. Speaker, would it not be within the rules of the House for the Committee on Rules to permit a member to give his proxy to another member so a vote could be had on an important matter in which the whole country is interested?
>
> THE SPEAKER: That is a matter for the committee to determine.
>
> The Chair may make this statement: He served on one committee for 24 years, and never was a proxy voted on that committee, because the present occupant of the Chair always voted against it.
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. RANKIN: The rules of the House are the rules of every committee of the House. I, as chairman of the Committee on Veterans' Affairs, have taken the position that since the rules of the House forbid voting by proxy, under the same rule a member cannot vote by proxy in the committee. Am I right or not?
>
> THE SPEAKER: Committees have always been permitted to decide that question.

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8. Rule XII clause 2, *Senate Manual* (1995).

9. *Id.* at clause 2.

10. 96 CONG. REC. 980, 81st Cong. 2d Sess.

11. Sam Rayburn (Tex.).

MR. RANKIN: The rule states that the committees shall be governed by the rules of the House: that the rules of the House shall be the rules of every committee, and I do not believe a committee can change its own rules to permit absentee voting.

THE SPEAKER: The Chair is going to hold as did Speaker Longworth, that it is a matter for the committee itself to determine.[12]

Parliamentarian's Note: Effective Jan. 22, 1971, the provisions of section 106(b) of the Legislative Reorganization Act of 1970 became part of the rules. Those provisions permitted committees to adopt written rules permitting proxies in writing, designating the person to execute the proxy, and limited to a specific measure or matter and amendments or motions relating thereto. Effective Jan. 3, 1975, proxies in committee were prohibited, but on Jan. 14, 1975, the rule was amended to permit proxies in committees with the additional restrictions requiring an assertion that the Member is absent on official business or otherwise unable to attend, requiring the Member to sign and date the proxy, and permitting general proxies for procedural matters. In the 103d Congress, Rule XI clause 2(f), was added which prohibited all proxy voting in all committees and subcommittees.[13]

"Absentee" or "Ghost" Voting

§ 3.15 An explicit prohibition against using a voting card for a colleague is now a part of the standing rules.

While the requirement that a Member has to be physically in the Chamber to cast his vote had been an "accepted" part of House procedures since the First Congress, either explicitly stated or universally understood as the norm of behavior, the necessity of adopting clause 3, Rule VIII arose after the implementation of the electronic voting system. The Committee on Standards of Official Conduct, in its report on "voting anomalies" issued in the 96th Congress recommended the adoption of an explicit rule.[14] The current clause 3 was actually made a part of Rule I on Jan. 5, 1981.[15]

§ 3.16 The House has reprimanded a Member who permitted votes on his behalf to be cast during his absences.

12. Speaker Longworth's statement on the use of proxies in committees is found in 8 Cannon's Precedents § 2219. See also Ch. 17, supra.

13. See H. Res. 6, Jan. 4, 1995.

14. H. Rept. No. 96–991.

15. 127 CONG. REC. 98–113, 97th Cong. 1st Sess., Jan. 5, 1981.

On Dec. 18, 1987,[16] the House considered a privileged resolution, reported from the Committee on Standards of Official Conduct, to reprimand Mr. Austin J. Murphy, of Pennsylvania, for allowing his voting card to be used to cast two votes during his absence.

MR. [JULIAN C.] DIXON [of California]: Mr. Speaker, I call up a privileged resolution (H. Res. 335) in the matter of Representative Austin J. Murphy, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 335

Resolved, That the House of Representatives adopt the report by the Committee on Standards of Official Conduct dated December 16, 1987, in the matter of Representative Austin J. Murphy of Pennsylvania.[17]

THE SPEAKER PRO TEMPORE:[18] The gentleman from California [Mr. Dixon] is recognized for 1 hour. . . .

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

THE SPEAKER PRO TEMPORE: The Chair would like to state that unanimous consent has been obtained for Members to extend their remarks on this matter. It is essential that the Congressional Record contain as true and accurate a record of the proceedings as possible. All insertions and extensions not delivered in debate will appear at the end of the proceedings printed in smaller type. The Chair trusts that Members will, in revising remarks they actually delivered in debate on this subject, confine their revisions to those which are necessary to correct grammatical errors and consistent with the permission obtained by the gentleman from California [Mr. Dixon] to refrain from making any changes in the substance of debate.

The Chair recognizes the gentleman from California [Mr. Dixon]: . . .

MR. DIXON: . . . Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, there were four counts that the committee sustained. Two counts dealt with what is commonly known as ghost voting. A third count dealt with the improper diversion of Government resources, and the fourth count dealt with what is known as a ghost employee; that is, Michael Corbett—from September 1981 to July 1982—failed to carry out the duties for which he was compensated.

I want to first take the time to deal with counts 1 and 2. The committee found that on July 14 and August 9, 1978, Representative Murphy was recorded as voting when he wasn't present in the Hall of the House.

He was recorded "present" on rollcall No. 543 at 10:23 a.m. on July 14, 1978. There was clear and convincing evidence and, as a matter of fact, it was

16. 133 CONG. REC. 36266–76, 100th Cong. 1st Sess.

17. The report of the Committee on Standards of Official Conduct (H. Rept. No. 100–485) set forth the findings of the committee and recommended a reprimand. By adopting the report, the House ratified the committee's findings as well as its recommendations.

18. Dave McCurdy (Okla.).

stipulated to that he was in Washington, PA, serving as master of ceremonies at Judge Samuel Rogers' swearing in at 10:30 a.m.

On August 9, 1978, on rollcall No. 663 at 10:26 a.m., he was recorded as being present. He was in Carmichaels, PA, at a ground-breaking ceremony at 11 a.m.

As a matter of fact, Representative Murphy has stipulated that he was present at these particular places. The defense for these actions are that his card was placed in his desk drawer while he was out of town and he had no personal knowledge how these votes occurred. He also asserts that, as a defense, it was not a violation of House rules at that time to proxy vote.

In 1978, rule VIII said, in part: Every Member shall be present *** and shall vote on each question put ***.

The committee came to the conclusion that Representative Murphy permitted, either in the sense that he knew or that he didn't guard against being voted on the floor of the House by safeguarding his voting card. Furthermore, he didn't, a short time thereafter, notify the House to disavow the ghost votes. . . .

It is the totality of this picture: That on at least two occasions ghost voting occurred; that there was an improper diversion of official resources; and that a ghost employee under Representative Murphy's direct supervision, did not carry out his job duties as subcommittee staff director, that this committee has recommended to you, on a vote of 11 ayes to 0 nays, that Representative Murphy be reprimanded. . . .

Mr. Speaker, I want to say to the Members of this body that I appreciate the attention that they have given to both sides of this issue. . . .

There is some confusion here as it relates to counts one and two, and let me tell you what the facts are. An analysis was made. The votes were not made here or anyplace else. They were made at station 33 with a card; so the issue of whether they were made here and all the confusion, in all respect to the respondent, he is trying to cloud the issue.

Prior to 1973, that was the year that the voting devices were installed, was there any doubt in any Member's mind that they have to be here physically on the floor and vote? I do not think so.

After that time in an honorable House with honorable men and women, no one thought to change the rule, and so there is an issue that arose in the Morgan Murphy case as to the crime or breach of confidence or House rule as it relates to someone who took the card, not the person that was responsible for their own vote; and yes, there was a rule change made in 1980 that said not only do you have to be present, but because of technology, the person who does the voting has breached the House rules. That is what occurred in the Morgan Murphy case.

Mr. Murphy in that case took the well on the Monday after and said he did not allow anyone to vote him.

Now, the gentleman from Pennsylvania, Mr. Austin Murphy, says that some of this came to the committee's attention, and he is correct in part, by a May 7 Times article. Did Mr. Murphy at that time look at the article, ex-

amine the dates, the specific two dates that were alleged, come to this well, notify the Speaker, "Yes, I was not here, and there was a recorded vote"? No, he waited until after a statement of alleged violation, after we knew where he was, and then he says, "Oh, yes, I leave my card—when I get this, now, when I in fact leave"——

MR. MURPHY: Will the gentleman yield just for a question?

MR. DIXON: I will not yield. The gentleman has placed his interpretation on the evidence. These are arguments I have a right to place my interpretation on the evidence.

I take my card and I put it in my desk drawer, and so when I leave here I do not have my identification card. With that, does he ever check his records to see if he has been recorded? No. He just does not know how it happened.

When you look at the fact that it did occur at station 33, there is no doubt that he either directed someone to do it, or he did not safeguard this card. . . .

THE SPEAKER PRO TEMPORE: All time has expired.

MR. DIXON: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the resolution.

MR. DIXON: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 324, nays 68, answered "present" 20, not voting 21, as follows: . . .

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Voting After Conviction for Felony

§ 3.17 In the 93d Congress, the House adopted a resolution expressing the sense of the House that Members should refrain from voting, in the House, its committees, including the Committee of the Whole, when convicted of a crime for which a sentence of two years or more may be imposed. This resolution was later added to the Code of Official Conduct, as clause 10 in Rule XLIII.

The resolution was considered and adopted on Nov. 14, 1973.[19]

H. RES. 128

Resolved, That it is the sense of the House of Representatives that any Member of, Delegate to, or Resident Commissioner in, the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is then a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of

19. 119 CONG. REC. 26944–46, 93d Cong. 1st Sess.

the presumption of his innocence or until he is reelected to the House after the date of such conviction. This resolution shall not affect any other authority of the House with respect to the behavior and conduct of its Members.

MR. [MEL] PRICE of Illinois: . . . [T]he committee is unanimous . . . in urging adoption of the pending resolution which would make it the sense of the House that a Member convicted of a crime carrying a possible sentence of 2 or more years' imprisonment should refrain from participation in the business of each committee of which he is a member and refrain from voting on any questions in the House.

After debate on the resolution, where certain Members addressed issues of constitutionality and of depriving constituents of representation, the House adopted the resolution by a vote of 388 to 18, 27 Members not voting.

Later in the 93d Congress, on Sept. 24, 1974, a Member resigned as a conferee, citing the provisions of H. Res. 128 as the reason for his action.

In the 94th Congress, in a report (94–76) issued by the Committee on Standards of Official Conduct, the committee stated that "conviction" in clause 10 includes a plea of guilty or a finding of guilty even though sentencing may be deferred.

§ 4. Pairs

The practice of "pairing votes" dates back to the early part of the 19th century.[20] The fundamental purposes of pairing were to indicate a Member's position on a roll call vote when he was unable to be present and to prevent his absence from improperly affecting the outcome. "Pairing" enabled him to effect a "cancellation" of the vote he would have cast on the particular issue through a gentleman's agreement with a Member of the opposite view. The latter Member either expected to be similarly unavailable for the vote in question or would willingly abstain from voting in deference to the "pair" and vote "present."

Initially criticized by Members of prominence,[21] the practice was not referred to in the rules until 1880.[1] Even then, the applicable rule[2] merely pertained to the announcing of pairs; and its promulgation appears to have constituted the legitimizing of a longstanding practice. Historically regarded as merely private agreements between Members, the pairing procedure grew more by custom than by direction; and the original purpose was occasionally lost in the

20. 8 Cannon's Precedents § 3076.

21. Indeed, John Quincy Adams once moved a resolution citing the practice as violative of the Constitution. *Id.* At § 3076.

1. Rule VIII clause 2, *House Rules and Manual* § 660 (1995).

2. *Id.*

procedures which evolved. Hence, as early as 1917, "general pairs" were customarily listed by pair clerks of all absent Members not leaving instructions to the contrary.[3] And such lists did not necessarily reflect any Member's position or even his opposition to the position of the individual with whom he was paired. The rules still make only minimal reference to the pair.[4]

Today, students of congressional procedure frequently encounter references to "simple" pairs, "live" pairs, "general" pairs, and "broken" pairs, among other terms. The "simple" pair usually refers to the basic agreement through which two Members cancel out each other's vote by pairing themselves in the Record when each would take opposite positions if present, but both anticipate being absent when the particular question is put. The "live" pair refers to an agreement in which a Member who would vote "yea" pairs with a Member who would vote "nay," and only one of the two expects to be absent; when the question is put, the attending Member changes his vote to "present" or merely answers "present" and announces that he has a "live" pair with his absent colleague.[5] A "general" pair does not represent the product of any agreement between Members and neither indicates the positions of those paired nor whether they hold opposite views; Members anticipating their absence who desire to be generally paired, notify the Clerk as such, and their names are arbitrarily paired in the Record as "Member X with Member Y until further notice." A "broken" pair, of course, refers to a pair agreement which is vitiated for one reason or another.[6]

In General

§ 4.1 Parties to pairs sometimes, by mutual consent, indicate their positions on the question by inserting after their names "for" and "against" respectively.

On Oct. 10, 1963,[7] the Committee of the Whole reported a bill back to the House where, following a motion to recommit, the

3. 8 Cannon's Precedents § 3078.
4. See Rule VIII clause 2 (§ 660) and Rule XV clause 1 (§ 765), *House Rules and Manual* (1995).
5. Alternatively, the attending Member may vote "yea" or "nay" and then withdraw his vote pursuant to the "live" pair before the result is announced by the Chair. See § 8, infra.
6. See § 4.2, infra.
7. 109 CONG. REC. 19270, 88th Cong. 1st Sess.

yeas and nays were taken, after which the Clerk announced the following pairs, among others:

On this vote:

Mr. Halleck for, with Mr. Albert against.

Mr. Conte for, with Mr. Keogh against.

Mr. Collier for, with Mr. Shepard against. . . .

Until further notice:

Mr. Buckley with Mr. Reifel.

Mr. O'Brien of Illinois with Mr. Curtin.

Mr. Feighan with Mr. Thomson of Wisconsin.

§ 4.2 A pair will be regarded as broken when a paired Member, expecting to be absent, arrives in time to cast his vote.

On Apr. 26, 1961,[8] the House voted on the conference report on a bill (S. 1) to alleviate conditions of substantial and persistent unemployment and underemployment in certain economically distressed areas.

Mr. James E. Bromwell, of Iowa, having anticipated that he would be absent, had been paired on this vote. Immediately after the tally, however, he initiated the following exchange with the Speaker:[9]

Mr. Speaker, I was paired on this vote, but I arrived on the floor in time to vote. Of course, I should not be shown twice since I did vote in person.

THE SPEAKER: The pair will be broken then, if the gentleman desires to do that.

MR. BROMWELL: Yes, Mr. Speaker.

Announcements Pertaining to Pairs

§ 4.3 Until the 94th Congress, while pairs could not be announced on a vote by tellers with clerks (now a recorded vote) in the Committee of the Whole, a Member could be recorded as "present" and then insert at that point in the Record the statement of an absent Member that he and his colleague would have voted on opposite sides of the question.

On May 18, 1972,[10] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 14989) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending June 30, 1973, and for other purposes.

In the course of the bill's consideration, Mr. Edward J. Derwinski,

8. 107 CONG. REC. 6731, 87th Cong. 1st Sess.

9. Sam Rayburn (Tex.).

10. 118 CONG. REC. 18018, 18027, 18028, 92d Cong. 2d Sess.

of Illinois, proposed an amendment to increase the amount of funds appropriated for the United Nations and seven of its agencies. Following discussion of this proposal, the question was taken by tellers with clerks, and the amendment was rejected.

Immediately after this vote, the following personal announcement appears in the Record:

> (Mr. Purcell, at the request of Mr. Bergland, was granted permission to extend his remarks at this point in the record.)
>
> MR. [GRAHAM B.] PURCELL [of Texas]: Mr. Chairman, I am unable to be present. Were I present, I would vote "no" on this amendment. The gentleman from Minnesota (Mr. Bergland) having intended to vote "aye," the result of the vote would be the same. The gentleman from Minnesota voted "present."

Parliamentarian's Note: Clause 2 of Rule VIII was amended in the 94th Congress to permit pairs to be announced in Committee of the Whole.[11]

§ 4.4 A Member who entered the Chamber after a vote had been announced on the question of overriding a veto, stated the reasons for his absence and entered his name on the pair list.

Following a decision by the House to override a Presidential veto of the Revenue Act of 1944 (H.R. 3687), Mr. Chet Holifield, of California, obtained unanimous consent to extend the following remarks at that point in the Record:[12]

> Mr. Speaker, I arrived on the floor after my name had been called for a vote to sustain or reject the President's veto on the tax bill. Due to an unavoidable appearance before the State Department on an immigration matter for a constituent, I arrived some 3 minutes late. In such a case the rules of the House prohibit the Member qualifying for the roll-call vote. I immediately entered my name on the pair list in favor of sustaining the President's vote. If I had been present in time for qualification, I would have cast my vote in favor of sustaining the President's veto.

§ 4.5 Immediately after announcing that a live pair with an absent colleague compelled him to withdraw his negative roll call vote on an amendment, a Member additionally announced that he had voted "present" in the Committee of the Whole on a recorded teller vote pertaining to the same amendment based upon a similar agreement with the identical colleague.

11. See H. Res. 5, 121 CONG. REC. 20, 94th Cong. 1st Sess., Jan. 14, 1975.

12. 90 CONG. REC. 2016, 78th Cong. 2d Sess., Feb. 24, 1944.

The House entertaining consideration of an amendment to a bill (H.R. 8190) making supplemental appropriations for the fiscal year ending June 30, 1971, the question on the amendment was put, and, following a vote by the yeas and nays, but before the Speaker's announcement of the result, Mr. Glenn R. Davis, of Wisconsin, was recognized by the Chair.[13] He stated:

> Mr. Speaker, I have a live pair with the gentleman from Mississippi, Mr. Griffin. If he had been present he would have voted "yea." I voted "nay." I withdraw my vote and vote "present."
>
> Mr. Speaker, I would like to further state that my vote of "present" on the teller vote is also explained by my live pair with the gentleman from Mississippi, Mr. Griffin.

Parliamentary Inquiries as to Pairs

§ 4.6 While the Chair does not interpret or take other cognizance of pairs, he may respond to a parliamentary inquiry concerning whether or not a particular Member's name was read by the Clerk as being paired.

The House having passed a bill (H.R. 15149), Mr. Frank T. Bow, of Ohio, withdrew his "nay" vote immediately thereafter, and voted "present" instead, explaining that he had a "live pair" with Mr. Donald W. Riegle, Jr., of Michigan, who would have voted "yea," had he been present.[14]

This action prompted the following inquiry and the Chair's response:

> MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER:[15] The gentleman will state his parliamentary inquiry.
>
> MR. GROSS: When the pairs were originally announced, was not the gentleman from Michigan (Mr. Riegle) announced as being paired?
>
> THE SPEAKER: The Chair will state, in response to the parliamentary inquiry, that the gentleman from Michigan (Mr. Riegle) was announced as paired for. The Chair does not take cognizance of pairs.

Member's Proscription Against Pairing

§ 4.7 A Member may leave instructions with pair clerks that he is never to be paired, on any occasion.

On Oct. 8, 1962,[16] shortly after the House convened, Mr. Clarence Cannon, of Missouri, made the following personal statement:

> Mr. Speaker, a summary of votes on legislation for the session shows me as having been paired on one occasion.

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13. 117 CONG. REC. 14590, 14591, 92d Cong. 1st Sess., May 12, 1971.

14. 115 CONG. REC. 37996, 91st Cong. 1st Sess., Dec. 9, 1969.

15. John W. McCormack (Mass.).

16. 108 CONG. REC. 22801, 87th Cong. 2d Sess.

Mr. Speaker, the clerks have direction never to pair me. I am never paired on a vote on any occasion, and I wish to make this statement at this time.

Subsequent Deletion of Pair

§ 4.8 Following a statement as to how he would have voted on the final passage of a bill if he had been present, a Member obtained unanimous consent to delete his "until further notice" pair with another Member from the Record.

On Apr. 25, 1972,[17] shortly after the House convened, Mr. John G. Schmitz, of California, was recognized by the Speaker[18] and made the following statement:

Mr. Speaker, I regret that I was unable to be on the House floor on April 20 to be recorded on rollcall No. 119, the vote on H.R. 14070, to authorize appropriations for the National Aeronautics and Space Administration, including the funding for the space shuttle program. Had I been present I would have voted "yea."

Mr. Speaker, I ask unanimous consent that the listing of my name under the pairs under the "until further notice" section be stricken, to reflect this fact.

There being no objection to the unanimous-consent request, it was honored; and the name of Mr. Thomas S. Foley, of Washington, with whom Mr. Schmitz had been paired, was also deleted[19] from the permanent Record.

"Live" Pairs; Withdrawing Vote; In General

§ 4.9 A Member who qualified as being opposed to a bill and offered the motion to recommit (which was defeated) withdrew his "no" vote on passage and, after announcing a live pair, answered "present."

On Dec. 9, 1969,[20] the Committee of the Whole directed its Chairman[1] to report a bill (H.R. 15149) to the House making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes with sundry amendments and with the recommendation that the amendments be agreed to and that the bill as amended do pass.

The bill having been engrossed and read a third time, Mr. Frank T. Bow, of Ohio, rose to offer a motion to recommit. The Speak-

17. 118 Cong. Rec. 14214, 92d Cong. 2d Sess.
18. Carl Albert (Okla.).
19. 118 Cong. Rec. 13654, 92d Cong. 2d Sess., Apr. 20, 1972.
20. 115 Cong. Rec. 37995, 37996, 91st Cong. 1st Sess.
1. Charles M. Price (Ill.).

er[2] ascertained Mr. Bow's opposition to the measure and the Clerk was directed to report the motion to recommit. The motion was rejected, however, and the bill was passed by the yeas and nays with Mr. Bow voting in the negative.

Immediately thereafter, Mr. Bow addressed the Chair and made the following statement:

> Mr. Speaker, I have a live pair with the gentleman from Michigan (Mr. Riegle). If he had been present he would have voted "yea." I voted "nay." I withdraw my vote and vote "present."

§ 4.10 A Member withdrew his roll call vote of "no" and answered "present" pursuant to a "live pair" with an absent Member, and then announced that he had answered "present" on a recorded teller vote on that amendment in the Committee of the Whole based upon a similar agreement with the absent Member.

On May 12, 1971,[3] following consideration in the Committee of the Whole of a bill making supplemental appropriations for the fiscal year ending June 30, 1971, the bill (H.R. 8190) was reported back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass. The previous question was then ordered in the House, and a request emerged for a separate vote on a particular amendment. The yeas and nays having been demanded, the question was taken; and there were—yeas 201, nays 197, answered "present" 6, not voting 28.

Among those who answered "present" was Mr. Glenn R. Davis, of Wisconsin, who, in the course of withdrawing his vote, explained:

> Mr. Speaker, I have a live pair with the gentleman from Mississippi, Mr. Griffin. If he had been present he would have voted "yea." I voted "nay." I withdraw my vote and vote [answer] "present."
>
> Mr. Speaker, I would like to further state that my vote [answer][4] of "present" on the teller vote [the teller vote with clerks on the same amendment in the Committee of the Whole] is also explained by my live pair with the gentleman from Mississippi, Mr. Griffin.

Timing of Withdrawal

§ 4.11 Members desiring to withdraw their roll call votes

2. John W. McCormack (Mass.).
3. 117 Cong. Rec. 14590, 14591, 92d Cong. 1st Sess.
4. It should be noted that a "vote" of "present" is a misnomer. A Member answering "present" does not cast a vote in so doing.

of "yea" or "nay" in order to answer "present" pursuant to a live pair must do so before the announcement of the result.

On May 27, 1947,[5] the House voted by the yeas and nays on a resolution (H. Res. 218) waiving points of order against a bill (H.R. 3601) making appropriations for the Department of Agriculture for the fiscal year 1948. The Speaker[6] announced the result of the vote, and a motion to reconsider was laid on the table. The resolution having been agreed to, a motion was then offered to resolve into the Committee of the Whole for the consideration of the bill.

Immediately thereafter, the following exchange transpired:

> MR. [WILLIAM S.] HILL [of Colorado]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. HILL: Mr. Speaker, may I inquire how I was recorded? I had a pair with the gentleman from Michigan, Mr. Jonkman. I voted "no." I wish to withdraw my vote and vote "present."
>
> THE SPEAKER: The vote has been announced and the time when the gentleman could have announced how he would have voted has passed. . . . He should have addressed the Chair and requested that he be recorded as "present."[7]

Withdrawal of Vote Relating to Vetoed Bill; Pairing on Votes Requiring Two-thirds for Adoption

§ 4.12 Where a Member with a "live pair" withdraws his vote on overriding a vetoed bill and answers "present," the pair clerks include the name of a third Member who would have voted, if present, to override the veto [by the required two-thirds vote] in order to pair two Members in favor with one against the question.

On June 25, 1970,[8] the House reconsidered a bill (H.R. 11102) to amend the Public Health Service Act in order to extend existing hospital construction programs and to provide additional funds for the construction of hospitals and for the guarantee and subsidy of hospital loans, among other purposes.

The bill having been previously vetoed, a two-thirds vote taken by

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5. 93 CONG. REC. 5878, 5879, 80th Cong. 1st Sess.

6. Joseph W. Martin, Jr. (Mass.).

7. For a comparable instance, see 118 CONG. REC. 34166, 92d Cong. 2d Sess., Oct. 5, 1972, where Mr. Philip M. Crane (Ill.), who had formed a live pair with Mr. Roman C. Pucinski (Ill.), appeared to be cognizant of the fact he had waited too long to withdraw his "nay" vote and chose not to ask the Chair for permission to do so. Instead, he merely stated that he was "unable to exercise" the live pair and announced how Mr. Pucinski would have voted.

8. 116 CONG. REC. 21552, 21553, 91st Cong. 2d Sess.

the yeas and nays was required by the Constitution.[9] The Speaker[10] put the question, it was taken; and enough votes were cast in the affirmative to override the veto.

Immediately after the vote and before the Chair announced the result, the following statements were made:

> MR. [JOHN H.] KYL [of Iowa]: Mr. Speaker, I have a live pair with the gentleman from Texas (Mr. Bush). If he were present, he would vote "nay."
>
> I voted "yea." I, therefore, withdraw my vote and vote [answer] "present."
>
> MR. [DAN H.] KUYKENDALL [of Tennessee]: Mr. Speaker, I have a live pair with the gentleman from Ohio (Mr. Bow). If he were present, he would vote "nay." I voted "yea." I, therefore, withdraw my vote and vote [answer] "present."

Mr. Kyl and Mr. Kuykendall having voiced the statement quoted above, the pair clerks, pursuant to their usual practice, paired them in the Record, as follows:

> The Clerk announced the following pairs:
>
> On this vote:
>
> Mr. Kyl and Mr. Pollock for, with Mr. Bush against.
>
> Mr. Kuykendall and Mr. Smith of Iowa for, with Mr. Bow against. . . .

A similar situation occurred in the 99th Congress when a Member changed his vote from "nay" to "present" pursuant to a "live pair" with another Member who was absent and would have voted "yea" on the question of overriding a Presidential veto. The pair clerks found another absent Member to "round up" the pair in the proper 2 to 1 ratio, and the *Congressional Record* carried the following result of the vote:[11]

> The Clerk announced the following pairs:
>
> On this vote:
>
> Mr. Pepper and Mrs. Long for, with Mr. Foley against.
>
> MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I have a live pair with the gentleman from Florida [Mr. Pepper]. If he were present, he would have voted "yea." I voted "nay." I withdraw my vote and vote "present."
>
> Mr. [Berkley] Bedell [of Iowa] changed his vote from "nay" to "present."
>
> So, two-thirds not having voted in favor thereof, the veto of the President was sustained and the bill was rejected.
>
> The result of the vote was announced as above recorded.

§ 4.13 Where a Member voted against the overriding of a veto and then came into the well to announce his "live pair" with two absent Members who would have voted

9. U.S. Const. art. I § 7.

10. John W. McCormack (Mass.).

11. 132 CONG. REC. 19387, 99th Cong. 2d Sess., Aug. 6, 1986.

in the affirmative, the tally clerk at the rostrum adjusted the electronic voting system to reflect the Member's withdrawal of his vote and to indicate his answer of "present."

On Sept. 12, 1973,[12] the House reconsidered a previously vetoed bill (S. 504) to amend the Public Health Service Act to authorize assistance for planning, development and initial operation, research, and training projects for systems for the effective provision of health care services under emergency conditions.

Following considerable discussion of the bill, the Speaker[13] put the question[14] which, as required by the Constitution,[15] had to be determined by the yeas and nays; and the vote was taken by electronic device. During the course of that procedure, Mr. George H. Mahon, of Texas, first voted "nay," and then came forward into the well, stating:

> Mr. Speaker, I have a live pair with the gentleman from Arkansas (Mr. Mills) and the gentleman from New York (Mr. Stratton). If they had been present they would have voted "yea." I voted "nay." I withdraw my vote and vote [answer] "present."

The tally clerk then adjusted the electronic voting system to indicate the withdrawal of Mr. Mahon's vote and his decision to answer "present" without obliging the Member to reinsert his card or fill out a ballot at the rostrum.

Parliamentarian's Note: Normally, the correct procedure for "live pairs" on a vote being taken electronically is for the Member to record himself as "present" with his voting card and then announcing his reasons for so doing in the well before the announcement of the result.

Erroneously Listed Pairs; Correcting the Record by Unanimous Consent; Deleting Pairs

§ 4.14 While the House does not take cognizance of pairs, a Member may, by unanimous consent, correct the Record where a pair is erroneously listed. Thus, a Member, paired in favor of a proposition without his consent, asked unanimous consent that the pair be deleted from the permanent Record and Journal.

On May 16, 1966,[16] Mr. John V. Tunney, of California, ad-

12. 119 Cong. Rec. 29329, 93d Cong. 1st Sess.

13. Carl Albert (Okla.).

14. 119 Cong. Rec. 29352, 93d Cong. 1st Sess.

15. U.S. Const. art. I § 7.

16. Cong. Rec. (daily ed.), 89th Cong. 2d Sess.

dressed the Chair[17] to make the following request:

> Mr. Speaker, in the Congressional Record of May 10, 1966, I am listed as paired in favor of an amendment to provide $20 million in rent supplement contractual authority, and $2 million for payments under contracts in fiscal year 1967. An error was made, and I ask unanimous consent to have the permanent Record and Journal corrected to eliminate this pair.
>
> Mr. Speaker, I was granted an official leave of absence by the House to take part in the United States-British Interparliamentary Conference on Africa on May 10. Had I been present on this, I would have opposed this amendment.

The Speaker Pro Tempore then asked the Members if there were any objection, and, none being voiced, the Member's request was granted.

§ 4.15 By unanimous consent, a Member who had been incorrectly paired in opposition to the adoption of a conference report was permitted to delete the "pair" from the permanent Record.

On Sept. 20, 1972,[18] Mr. LaMar Baker, of Tennessee, rose to address the Chair[19] and make the following statement:

> Mr. Speaker, on Tuesday, the 5th of September, on rollcall No. 351, record vote on adopting the conference report on H.R. 12350, the OEO authorization, I was recorded as absent. I was paired as opposed to adopting the conference report. If present and voting, I would have voted "yea" to adopt the conference report. I ask unanimous consent that my pair be deleted from the permanent Record.

There being no objection to the Member's request, the Record was so corrected.

Adding Pairs

§ 4.16 The *Congressional Record* was corrected, by unanimous consent, to add the names of two Members to the list of those shown as "paired" on a roll call.

The House having agreed to the conference report[20] on a bill (H.R. 7885) to further amend the Foreign Assistance Act of 1961, as amended, the names of two Members who were paired on the roll call were inadvertently omitted.

Accordingly, on Dec. 10, 1963,[1] Mr. Charles A. Mosher, of Ohio, rose to address the Speaker[2] with the following request:

> Mr. Speaker, I ask unanimous consent that the permanent Record be corrected as follows:

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17. Carl Albert (Okla.), Speaker Pro Tempore.

18. CONG. REC. (daily ed.), 92d Cong. 2d Sess.

19. Carl Albert (Okla.).

20. 109 CONG. REC. 23850, 88th Cong. 1st Sess., Dec. 9, 1963.

1. CONG. REC. (daily ed.), 88th Cong. 1st Sess.

2. John W. McCormack (Mass.).

On rollcall No. 224, immediately following the last live pair of Mr. Martin of Massachusetts for, with Mrs. St. George against, add the following pair: Mr. Rhodes of Arizona for, with Mr. Michel against.

There being no objection to Mr. Mosher's request, the permanent Record was corrected.

Converting Pairs

§ 4.17 The Majority Leader corrected the *Congressional Record*, by unanimous consent, to show that Members paired as "for" and "against" a motion to suspend the rules actually had been only "general" pairs.

On Aug. 3, 1965,[3] Majority Leader Carl Albert, of Oklahoma, addressed the Chair[4] with respect to a roll call vote taken the previous day[5] on a motion to suspend the rules and pass a bill (H.R. 8027) providing assistance to state and local law enforcement personnel.

As the following excerpt reveals, the Majority Leader's request resulted in a correction of the permanent record:

MR. ALBERT: Mr. Speaker, I ask unanimous consent to correct the Record.

On rollcall No. 215, page 18262 of the [temporary edition of the] Congressional Record for August 2, 1965, all pairs are shown to have been for or against, whereas all pairs should have been general pairs.

I ask unanimous consent that the permanent Record be corrected accordingly.

THE SPEAKER: Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

§ 4.18 The *Congressional Record* was corrected, by unanimous consent, to show that Members listed as having "live" pairs on a particular vote actually had only "general" pairs.

On May 23, 1963,[6] the House agreed to a resolution (H. Res. 362) making in order a bill (H.R. 6060) to prohibit sex discrimination in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

The temporary Record for that day having erroneously listed many Members as comprising halves of numerous "live pairs," Mr. Carl Albert, of Oklahoma, subsequently initiated the following[7] exchange on the next legislative day:

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3. CONG. REC. (daily ed.), 89th Cong. 1st Sess.

4. John W. McCormack (Mass.).

5. 111 CONG. REC. 18976, 18977, 89th Cong. 1st Sess., Aug. 2, 1965.

6. 109 CONG. REC. 9194, 88th Cong. 1st Sess.

7. CONG. REC. (daily ed.), 88th Cong. 1st Sess., May 27, 1963.

MR. ALBERT: Mr. Speaker, on rollcall No. 54 there were listed as live pairs the names of sundry Members. These should have been listed as general pairs.

Mr. Speaker, I ask unanimous consent that the permanent Record be corrected accordingly.

THE SPEAKER:[8] Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

§ 5. Tie Votes; Supermajority Votes

Under a rule in effect since the First Congress, a question which results in a tie vote is lost.[9] The Speaker, who ordinarily does not vote on all legislative propositions before the House, has the prerogative of voting; and in Rule I clause 6, he is "required to vote . . . where his vote would be decisive." In the days preceding the advent of electronic voting, when the yeas and nays were taken by a call of the roll, the Speaker's name was not on the roll and was not called unless the Speaker directed that it be called. However, the Speaker can count himself on a division vote, can submit his card where a vote is taken by tellers with clerks, and can exercise his responsibility to be the decisive vote on a vote taken by electronic device.[10]

The majority required to pass an amendment to the Constitution, to override a veto, or to adopt a motion to suspend the rules is two-thirds of the Members voting, a quorum being present.[11]

§ 5.1 Before announcing the result of a vote taken by electronic device, the Speaker may cast a decisive vote by advising the tally clerk of his vote to break a tie and verifying that vote for the record by submitting an appropriate ballot card.

On Oct. 17, 1990,[12] Speaker Thomas S. Foley, of Washington, cast the decisive vote on an amendment reported from the Committee of the Whole. The proceedings were as follows:

THE SPEAKER PRO TEMPORE: Under the rule, the previous question is ordered.

8. John W. McCormack (Mass.).

9. Rule I clause 6: He shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive, or where the House is engaged in voting by ballot; and in cases of a tie vote the question shall be lost. *House Rules and Manual* § 632 (1995).

10. See § 5.1, infra.

11. See § 5.2, infra.

12. 136 CONG. REC. 30229, 30230, 101st Cong. 2d Sess.

Is a separate vote demanded on any amendment?

MR. [HENRY J.] HYDE [of Illinois]: Mr. Speaker, I demand a separate vote on the so-called Solarz amendment, as amended.

THE SPEAKER PRO TEMPORE: Is a separate vote demanded on any other amendment?

If not, the Chair will put them en gros.

The amendments were agreed to.

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Page 25, after line 18, add the following:

TITLE VI—INCENTIVES FOR PEACE IN ANGOLA . . .

THE SPEAKER PRO TEMPORE: The question is on the amendment.

The question was taken; and the Speaker Pro Tempore announced that the noes appeared to have it.

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 207, nays 206, not voting 21, as follows: . . .

THE SPEAKER: On this vote the yeas are 206, and the nays are 206.

The Chair votes "aye."

The yeas are 207.

So the amendment was agreed to.

THE SPEAKER: The question is on the engrossment and third reading of the bill.

Two-thirds Votes

§ 5.2 The majority required in the House to pass an amendment to the United States Constitution is, like the majority required to pass a bill over the President's veto[13] and to adopt a motion to suspend the rules,[14] two-thirds of those Members voting either in the affirmative or negative, a quorum being present, and Members who only indicate that they are "present" are not counted in the computation.

On Nov. 15, 1983,[15] Mr. Robert H. Michel, of Illinois, propounded a parliamentary inquiry pertaining to the vote required on an amendment to the Constitution, to which Speaker Pro Tempore James C. Wright, Jr., of Texas, responded. The proceedings were as follows:

MR. MICHEL: In the short time available to us, Mr. Speaker, I have reviewed the precedents on the subject of the consideration by this House of a proposed amendment to the Constitution under a motion to suspend the rules.

Mr. Speaker, precedents are rare on this question, although I believe it to be of profound significance to the deliberations we are about to embark upon.

13. See 7 Cannon's Precedents § 1111.

14. See Speaker Thomas P. O'Neill's Dec. 16, 1981, ruling at 127 CONG. REC. 31856, 97th Cong. 1st Sess.

15. 129 CONG. REC. 32667, 32668, 98th Cong. 1st Sess.

The question which I would like the Chair to address is the question as to whether those Members voting present on any proposed constitutional amendment are included in determining whether two-thirds have voted in the affirmative. With the indulgence of the Chair, I would like to review the applicable provision under which this question is raised.

Mr. Speaker, there are no precedents, at least none available to this Member, under the provisions of rule XXVII of the rules of the House—the so-called suspension of the rules provisions—which address the question of counting those Members voting present on the passage of a constitutional amendment.

There are no precedents under the provisions of article V of the Constitution, the article which delineates the manner and mode of proposing and ratifying amendments to the Constitution.

There is only one precedent which is available on this question, Mr. Speaker, and that precedent occurred on August 13, 1912. I refer specifically to section 1111 of volume 7, Cannon's Precedents of the House of Representatives, which states:

> The two-thirds vote required to pass a bill notwithstanding the objections of the President is two-thirds of the Members voting and not two-thirds of those present.

That precedent addressed the question of whether those answering "present" should be taken into consideration or excluded in determining whether two-thirds have voted for passing a bill over the President's veto. That question should be considered separate and distinct from the one we have before us today.

If the Chair were to examine that one precedent to which I refer, he will find that it is based wholly on the language of article I, section 7 of the Constitution, which states in part:

> If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively.

Matters of law are measured and judged on every word, comma, and period of our great Constitution.

The provisions providing for the passage of a vetoed bill and only those voting for and against being entered upon the Journal of the House are substantially different from the provisions of article V dealing with those instances "whenever two thirds of both Houses shall deem it necessary" to propose amendments to our Constitution.

I think this question requires the closest examination, as do all matters involving our Constitution.

I will state my inquiry one more time, if I might, Mr. Speaker.

On the question of the House of Representatives proposing an amendment to the Constitution, should those answering "present" be taken into consideration in determining whether two-thirds shall have deemed it necessary to propose such an amendment?

And the most important language upon which our only precedent is based is that which states:

> But in all such Cases the Votes of the Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal . . .

That is a profound distinction from the procedure required under the provision of article V dealing with constitutional amendments. The one precedent is founded on the requirement of a yea and nay vote, and that only those votes be entered on the Journal. Article I, section 7, does not contemplate "present" votes, but article V is silent on this question, and because we have no precedent, at least that this Member could find, we need a ruling that would apply to the situation we are facing today.

That is why, Mr. Speaker, I have propounded this parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The distinguished gentleman from Illinois, the minority leader, has requested the Chair to interpret the requirement of article V of the U.S. Constitution that a two-thirds vote of the House is necessary to propose an amendment to the Constitution.

It is a well-settled rule, as indicated by the precedents cited in section 192 of the Constitution and *House Rules and Manual*, that the vote required on a joint resolution proposing a constitutional amendment is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership.

The Supreme Court of the United States has addressed the same issue and concluded in 1920, in the National Prohibition cases, volume 253 of the U.S. Reports, page 386, that—

> The two-thirds vote in each House which is required in proposing an amendment is a vote of two-thirds of the members present—assuming the presence of a quorum—and not a vote of two-thirds of the entire membership, present and absent.

Now, as to the status of Members who vote present on a rollcall vote on a proposition which requires a two-thirds majority for passage, the Chair has no doubt that under the rules and under the practices and precedents of the House, and under parliamentary law in general, Members who indicate their presence only and do not vote either yea or nay on a question of this type are not to be counted, as they are not counted on any other question, in determining whether the proposition has been approved by the appropriate or required majority.

Speaker Champ Clark delivered an extensive ruling in 1912, in the 62d Congress, on that precise issue. It involved the passage of a bill over Presidential veto. Although the passage of a bill over Presidential veto requires a vote by the yeas and nays, the two-thirds majority which is required for that action, under article II, section 7, clause 2 of the Constitution is the same, identical two-thirds majority required to propose a constitutional amendment. In 1912 the issue before the Chair was stated as follows:

> On a roll call on passing a bill over the President's veto, in determining whether two-thirds have voted for it, should those answering "present" be taken into consideration or excluded therefrom?

Speaker Clark ruled as follows, and I quote from his ruling:

> The Constitution does not provide for a Member voting "present," but

> the rules of the House in order to eke out a quorum, have provided that they can vote "present." They have to answer "aye" or "nay" on the roll call in order to be counted on passing a bill over the President's veto. That is a requirement of the Constitution, and if the contention were on a proposition which required only a majority it would be the same way. In fact, that is one unvarying rule of procedure whenever the roll is called on any proposition. The Chair announces: "so many ayes, so many nays, so many present; the ayes-or nays, as the case may be—have it." Those voting "present" are disregarded except for the sole purpose of making a quorum.

Speaker Clark went on to say:

> These gentlemen were here simply for the purpose of making a quorum. It is clear that to count them on this vote would be to count them in the negative, and the Chair does not believe that any such contention as that is tenable.

Now, the distinguished gentleman from Illinois has emphasized the requirement of article I, section 7, that the names of the persons voting for and against a bill over Presidential veto be entered on the Journal, in order to distinguish the status of Members only recording their presence on a veto override as opposed to Members only recording their presence on passage of a constitutional amendment.

It appears to the Chair that the requirement of the Journal entry on veto override merely emphasizes that the vote in that circumstance must be taken by the yeas and nays, with the names of the Members recorded. If the yeas and nays are ordered by one-fifth of the Members present on any other question, article I, section 5, clause 3 requires that the yeas and nays of the Members be entered on the Journal, and makes no mention of Members who are present for the vote but do not cast their votes on one side or the other. The fact that the House has determined to authorize Members to be present and record that fact without taking a position affords no constitutional status to such a decision except to be counted for a quorum.

The Chair would also point out that the present Speaker, Mr. O'Neill, has ruled on the status of Members who vote "present" on a motion to suspend the rules. On December 16, 1981, Speaker O'Neill ruled, in response to a parliamentary inquiry, following a roll-call vote on a motion to suspend the rules and pass H.R. 5274, that a motion to suspend the rules may be agreed to by two-thirds of the Members voting yea or nay, a quorum being present, and Members voting "present" are only counted to establish a quorum and not to determine a two-thirds majority.

Thus, as stated in chapter 21, section 9.21 of Deschler's Precedents of the House of Representatives, a motion to suspend the rules is an appropriate parliamentary method for consideration of a constitutional amendment and has previously been utilized for that purpose.

MR. MICHEL: Mr. Speaker, I thank the Chair for responding to my parliamentary inquiry and I am sure that will clarify much more clearly and demonstrate a precedent for the future.

I thank the Chair.

§ 5.3 Debate on issues surrounding constitutionality of supermajority votes.

In the 104th Congress, the House adopted a new provision in Rule XXI which required a three-fifths vote of the Members voting to pass any bill, joint resolution, amendment, or conference report carrying a tax rate increase.[16] Under the provisions of House Resolution 5, 104th Congress, providing for the consideration of House Resolution 6, establishing the rules for that Congress, section 106 of the rules package, which contained the new requirement for the supermajority vote of three-fifths, was subject to separate debate and a separate vote.[17] When this provision was reached during the consideration of House Resolution 6, questions regarding the constitutionality of the provision were raised in the debate. The proceedings related to this constitutional issue were as follows:[18]

THE SPEAKER PRO TEMPORE:[19] Section 106 of the resolution is now debatable for 20 minutes. The gentleman from Pennsylvania [Mr. Fox] will be recognized for 10 minutes, and the gentleman from Georgia [Mr. Lewis] will be recognized for 10 minutes.

MS. [MAXINE] WATERS [of California]: Mr. Speaker, I have an amendment at the desk.

THE SPEAKER PRO TEMPORE: The Chair does not recognize the gentlewoman at this time for an amendment. The gentleman from Pennsylvania [Mr. Fox] is recognized for 10 minutes.

PARLIAMENTARY INQUIRY

MS. WATERS: Parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentlewoman will state her inquiry.

MS. WATERS: Mr. Speaker, I have an amendment at the desk in this section. This is a section that increases the vote requirement for raising taxes from a simple majority to a three-fifths majority. I wish to protect Social Security from being cut by a simple majority. Why can I not add this amendment at this time?

THE SPEAKER PRO TEMPORE: The gentlewoman should be advised that under the rule that amendment is not in order at this time. . . .

MR. [JON D.] FOX [of Pennsylvania]: . . . Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. Saxton].

MR. [JIM] SAXTON [of New Jersey]: Mr. Speaker, I commend the gentleman for bringing this amendment to our attention.

As you know, this amendment to the House Rules provides for a three-fifths or 60 percent vote as a necessity to pass any income tax increase. I first introduced this concept in the form of a rule change on Tax Freedom Day, May 8, 1991. I recognized then, as I do now, that our choices in methods used to balance the budget involve two very difficult types of decisions. First, do we raise taxes, or second, do we hold down spending to bring the budget into balance.

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16. Rule XXI clause 5(c), *House Rules and Manual* § 846c (1995).

17. 141 CONG. REC. p. ____, 104th Cong. 1st Sess., Jan. 4, 1995.

18. *Id.* at p. ____.

19. Jim Kolbe (Ariz.).

History shows quite clearly that when faced with those two difficult options, this House has historically opted to increase taxes. Why? Simply because it has always been the easier of the two. . . .

Some have indicated a concern regarding the constitutionality of this measure. Let me put those concerns to rest. I would like to quote from an article that appeared in the Washington Times on December 20, 1994 by Bruce Fein.

> Supermajority voting rules are constitutional and legislative commonplaces.
>
> The U.S. Supreme Court blessed the constitutionality of supermajority restraints on the tax and spending propensities of government in Gordon vs. Lance (1971). At issue were provisions of West Virginia laws that prevented political subdivisions from incurring bonded indebtedness or increasing tax rates beyond limits fixed in the West Virginia Constitution without the approval of 60 percent of the voters in a referendum election. Writing for the majority, Chief Justice Warren Burger stressed the political incentive for prodigality when the cost can be saddled on future generations without any political voice: "It must be remembered that in voting to issue bonds voters are committing, in part, the credit of infants and of generations yet unborn, and some restriction on such commitment is not an unreasonable demand." . . .

MR. [JOHN] LEWIS of Georgia: Mr. Speaker, for the purposes of debate only, I yield 21/2 minutes to the gentleman from Colorado [Mr. Skaggs].

MR. [DAVID E.] SKAGGS [of Colorado]: Mr. Speaker, civilization depends upon civility, and civility rests upon an implicit trust that we each abide by a shared sense of bounds, of what is within the rules. Each of us must be able to expect of the others that we will play by the rules, and not play with the rules.

The proposed rule does violence to this essential aspect of a civil society. It is a proposal to go beyond the bounds, to play with the rules, instead of by them. And in a most uncivil way, it would abuse the discretion given this House by the Constitution to determine the rules of its proceedings, by using the rules of the House to subvert part of the Constitution: the principle of majority rule that is central to the operation of the legislative branch. . . .

The Constitution is the most fundamental statement of American values, the very charter of our democracy. The oath of office we took this afternoon was to support and defend the Constitution and to bear true faith and allegiance to it. The first responsibility of our job in Congress is to honor that charter and remain true to its basic principles.

The gentleman from New York, the new chairman of the Rules Committee, has written that the Constitution says the House may write its own rules. Yes. And the gentleman has quoted an 1892 Supreme Court decision, United States versus Ballin, which says this rulemaking power "is absolute and beyond the challenge of any other body or tribunal" so long as it does "not ignore constitutional constraints or violate fundamental rights."

But there's the rub. The rulemaking power of the House does not give us a license to steal other substantive provisions of the Constitution, especially not

one so central as the principle of majority rule.

The gentleman from New York conveniently failed to point out that a unanimous Supreme Court in that very same case determined that one constitutional constraint that limits the rulemaking power is the requirement that a simple majority is sufficient to pass regular legislation in Congress. To quote the Court:

> The general rule of all parliamentary bodies is that, when a quorum is present, the act of a majority of the quorum is the act of the body. This has been the rule for all time, except so far as in any given case the terms of the organic act under which the body is assembled have prescribed specific limitations. *** No such limitation is found in the Federal Constitution, and therefore the general law of such bodies obtains.
>
> The Court expressed the same understanding as recently as 1983, when, in *Immigration and Naturalization Service* v. *Chadha*, it stated:
>
> *** Art. II, sect. 2, requires that two-thirds of the Senators present concur in the Senate's consent to a treaty, rather than the simple majority required for passage of legislation.
>
> This principle, while not written into the text of the Constitution, was explicitly adopted by the Constitutional Convention. It was explicitly defended in The Federalist, the major contemporary explanation of the Framer's intent. It was followed by the first Congress on its first day, and by every Congress for every day since then. And, as I've already indicated, this principle has been explicitly found by the Supreme Court to be part of our constitutional framework.

The Framers were very much aware of the difference between a supermajority and a simple majority. They met in Philadelphia against the historical backdrop of the Articles of Confederation, which required a supermajority in Congress for many actions, including the raising and spending of money. It was the paralysis of national government caused by the supermajority requirement, more than any other single cause, that led to the convening of the Constitutional Convention.

In that Philadelphia Convention, the delegates repeatedly considered, and rejected, proposals to require a supermajority for action by Congress, either on all subjects or on certain subjects. In only five instances did they specify something more than a majority vote. These are for overriding a veto, ratifying a treaty, removing officials from office, expelling a Representative or Senator, and proposing amendments to the Constitution. Amendments to the Constitution later added two others: restoring certain rights of former rebels, and determining the existence of a Presidential disability. . . .

Some argue that a three-fifths requirement to raise taxes would be like a two-thirds vote requirement to suspend the rules and pass a bill, or the 60-vote requirement to end debate in the Senate. Wrong. Those rules address procedural steps. A bill not approved under suspension of the rules in the House can be reconsidered and passed by a simple majority. After debate is over in the Senate, only a simple majority is required to pass any bill.

So this proposed rule is not like any rule adopted in the 206 years in which we have operated under our Constitution. As 13 distinguished professors of

constitutional law recently said in urging the House to reject this rule:

> This proposal violates the explicit intentions of the Framers. It is inconsistent with the Constitution's language and structure. It departs sharply from traditional congressional practice. It may generate constitutional litigation that will encourage Supreme Court intervention in an area best left to responsible congressional decision. . . .
>
> What is at stake here is the Constitution. Have respect for this foundation document of our democracy. Don't return us to the failed approach of the Articles of Confederation. Don't subvert the Constitution's basic principles. And don't ask us to break the oath of office we just took.

Mr. Speaker, I call on my colleagues to support and defend the Constitution of the United States.

The provision was adopted on a separate vote by a majority of 279–152.[20]

Representative Skaggs and other Members filed a suit in the U.S. District Court challenging the constitutionality of the supermajority requirement contained in section 106 of the rules. (See *Skaggs* v *Carle*, 898 F Supp. 1, DDC, 1995). The court concluded that the appellants lacked standing to challenge Rule XXI clause 5(c), stating, in part:

> They [the appellants] argued that the three-fifths majority required by Rule XXI(5)(c) is repugnant to the principle of majority rule they see embodied in the presentment clause of Article I, §7 of the Constitution ("Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States"). . . .

Robin H. Carle, the Clerk of the House, moved to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The district court granted the motion, concluding that prudence counsels against deciding the merits of a partisan political dispute:

> Whether expressed in terms of a failure of standing, or "equitable" or "remedial" discretion, the fundamental consideration underlying those decisions is one of prudent self-restraint: federal courts should generally refrain, as a matter of policy, from intruding in the name of the Constitution upon the internal affairs of Congress at the behest of lawmakers who have failed to prevail in the political process. . . .

The appellants call upon the court to consider the constitutionality of two rules governing the internal workings of a coordinate branch of the Government. . . . The Clerk responds, among other things, that the appellants lack standing because they have suffered no concrete injury.

A. Rule XXI(5)(c)

According to the appellants, the presentment clause establishes that a simple majority of the Members voting in each House of the Congress is all that is needed to pass a bill. Therefore, we are told, by providing that legislation carrying an income tax increase will not be considered to have passed in the House even if it receives the support of a majority (but not of a three-fifths majority), Rule XXI(5)(c) runs afoul of the presentment clause.

20. 141 CONG. REC. p. _____, 104th Cong. 1st Sess., Jan. 4, 1995.

The Clerk contends that the appellants lack standing to raise this challenge because they have suffered no injury by reason of Rule XXI(5)(c) and are unlikely ever to do so. The House has never failed to deem passed a bill that has received the support of a simple majority and it is unclear whether the House will ever do so. . . .

In sum, the appellants claim that they face imminent injury because a simple majority of the House of Representatives cannot commit the House to raising income tax rates. We are unpersuaded, however, that Rule XXI(5)(c) prevents a simple majority from doing just that. At most the appellants have shown that Rule XXI(5)(c) could, under conceivable circumstances, help to keep a majority from having its way—perhaps, for example, because a simple majority in favor of an income tax increase might not be prepared, for its own political reasons, to override the preference of the House leadership against suspending or waiving the Rule in a particular instance. But that prospect appears to be, if not purely hypothetical, neither actual nor imminent. We conclude therefore that the appellants lack standing to challenge Rule XXI(5)(c).

Corrections Calendar; Three-fifths Vote Requirement

§ 5.4 The House amended its rules to create a Corrections Calendar. Measures called up from the Corrections Calendar are considered in the House under special procedures including a three-fifths affirmative vote requirement for passage.

On June 20, 1995,[1] the House adopted House Resolution 168 to create an expedited procedure which, according to the chairman of the Rules Committee,[2] "would repeal or correct laws, rules, and regulations that are obsolete, ludicrous, duplicative, burdensome, or costly."

The amended Rule XIII clause 4,[3] governing the Corrections Calendar, provides the Speaker the authority, in consultation with the Minority Leader, to place bills already on the House or Union Calendars on the Corrections Calendar and to call the Corrections Calendar at his discretion on the second or fourth Tuesday of each month. The rule provides for consideration in the House for one hour equally divided between the chair and ranking member of the primary committee of jurisdiction. It restricts amendments to those recommended by the committee or offered by its chairman; provides for one motion to recommit with or without instructions; and re-

1. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
2. Gerald B. H. Solomon (New York) at *Id.*
3. *House Rules and Manual* § 745a (1995).

quires a three-fifths affirmative vote for passage.

Corrections Calendar Procedure First Used

§ 5.5 The Speaker ordered the call of the Corrections Calendar and the House adopted a bill under the three-fifths affirmative vote passage requirement.

On July 25, 1995,[4] the Speaker Pro Tempore[5] directed the Clerk to call the Corrections Calendar and H.R. 1943, the San Diego Coastal Corrections Act of 1995, was considered as the first item on the calendar. The conclusion of the proceedings on that bill follow:

> THE SPEAKER PRO TEMPORE: The question is on the passage of the bill.
>
> The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.
>
> RECORDED VOTE
>
> MR. [NORMAN Y.] MINETA [of California]: Mr. Speaker, I demand a recorded vote.
>
> A recorded vote was ordered.
>
> The vote was taken by electronic device, and there were—ayes 269, noes 156, not voting 9, as follows: . . .
>
> So—three-fifths having voted in favor thereof—the bill was passed.
>
> The result of the vote was announced as above recorded.
>
> A motion to reconsider was laid on the table.

Federal Income Tax Rate Increase Requires Three-fifths Vote

§ 5.6 As part of its first-day proceedings, the House adopted a requirement that any bill or joint resolution, amendment, or conference report carrying a federal income tax rate increase shall not be considered as passed or agreed to unless three-fifths of the Members vote in the affirmative. During the debate over adoption of this provision, the constitutionality of such a requirement was contested.

On Jan. 4, 1995,[6] the House considered and adopted House Resolution 6, section 106 of which provided for the tax rate increase voting requirement.

The question of the requirement's constitutionality[7] was taken to the District Court for the District of Columbia. Mr. David E. Skaggs, of Colorado, several other Members, six of their constituents and the League of Women Voters filed suit against Robin E. Carle,

4. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
5. Scott McInnis (Colo.).
6. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
7. See § 5.3, supra.

Clerk of the House, to invalidate the rule on Feb. 8, 1995.[8] The court granted a motion filed on Ms. Carle's behalf to dismiss the suit concluding that prudence counseled against deciding the merits of a partisan political dispute.

Mr. Skaggs and his fellow complainants, appealed the decision of the district court to the Court of Appeals for the District of Columbia Circuit. The appellate court affirmed the lower courts decision on a 2–1 vote finding that the appellants lacked standing.[9]

The requirement for a three-fifths vote is contained in Rule XXI clause 5(c).[10]

§ 5.7 The three-fifths affirmative vote requirement for federal income tax rate increases was first applied to an amendment in the nature of a substitute containing a provision to raise the top corporate income tax rate.

On Mar. 24, 1995,[11] the Committee of the Whole had under consideration H.R. 4, the Personal Responsibility Act. During consideration of the bill, the following transpired:

> AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MRS. MINK OF HAWAII
>
> MRS. [PATSY] MINK of Hawaii: Mr. Chairman, pursuant to the rule, I offer an amendment in the nature of a susbstitute.
>
> THE CHAIRMAN:[12] The Clerk will designate the amendment in the nature of a substitute.
>
> The text of the amendment in the nature of a substitute is as follows:
>
> > Amendment in the nature of a substitute offered by Mrs. Mink of Hawaii:
> > Strike all after the enacting clause and insert:
> >
> > SECTION 1. SHORT TITLE.
> >
> > This Act may be cited as the "Family Stability and Work Act of 1995". . . .
> >
> > SEC. 501. INCREASE IN TOP MARGINAL RATE UNDER SECTION 11.
> >
> > (a) IN GENERAL.—The following provisions of the Internal Revenue Code of 1986 are amended by striking "35" and inserting "36.25": . . . .

During the debate, Mrs. Mink inserted a statement into the record, a section of which follows:

> Corporate America benefits from billions of dollar [sic] worth of corporate welfare—subsidies, tax breaks, credits, direct federal spending—every major corporation and business receives some kind of benefit from the Federal gov-

8. *Skaggs* v *Carle*, Action No. 95–00251 (D.D.C.).
9. *Skaggs* v *Carle*, Action No. 95–5323 (D.C. Cir.).
10. *House Rules and Manual* § 846c (1995).
11. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
12. John Linder (Ga.).

ernment. Corporations must do their share in investing in our nation's most vulnerable in our society.

The Mink bill is financed through raising the top corporate income rate by 1.25% to 36.25 percent. This is estimated to raise $20.25 billion over 5 years.

After further debate, the Chair put the question, as follows:

THE CHAIRMAN: All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentlewoman from Hawaii [Mrs. Mink].

The question was taken; and the Chairman announced that three-fifths of those present not having voted in the affirmative, the noes appeared to have it.

RECORDED VOTE

MRS. MINK of Hawaii: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 96, noes 336, not voting 2, ...

So, three-fifths of those present not having voted in the affirmative, the amendment in the nature of a substitute was rejected.

The result was announced as above recorded.

§ 5.8 A special order reported by the Committee on Rules, adopted by a majority vote, may waive the three-fifths requirement for passage of a measure containing a federal income tax rate increase.

On Oct. 26, 1995,[13] the Speaker Pro Tempore,[14] responded to a parliamentary inquiry regarding the application of Rule XXI clause 5(c)[15] to H.R. 2491, Seven-Year Balanced Budget Reconciliation Act of 1995, being considered under the provisions of House Resolution 245, a special order reported by the Committee on Rules. The inquiry and the Speaker Pro Tempore's response follow:

MR. [MICHAEL D.] WARD [of Kentucky]: My inquiry is, I have studied the rules and rule XXI applies to bills. This is a bill, and it is a tax increase. Why does rule XXI not apply to this bill?

THE SPEAKER PRO TEMPORE: The Chair will state that the House, by adopting House Resolution 245, has waived that requirement of the rule. Therefore, the Chair's response at this point would be purely hypothetical, and the Chair cannot respond further at this point.

§ 6. Finality of Votes Once Cast

When a vote is cast by a system where there is human intervention in recording the result, such as a vote cast by a roll call or by

13. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
14. Dan Burton (Ind.).
15. *House Rules and Manual* § 846c (1995).

tellers with clerks, and there is an error in the recordation of the vote,[16] the Chair has the discretion to entertain a request to correct the vote if it does not change the result of the vote as previously announced from the Chair. Obviously, where a vote is taken by voice, and the Chair has heard the responses from the "ayes" and the "noes," a Member cannot change his response. Similarly, when a vote is by division, and the Chair has counted those standing in the affirmative and the negative and has announced the result, a Member cannot change his mind. The same is true of all votes cast: a vote once given cannot be retracted or changed. A Member who casts a vote by mistake can admit his error and state for the Record how he intended to vote, and by unanimous consent such an explanation may be inserted in the Record following the vote in question.

§ 6.1 A Member may not change a vote once cast, even by unanimous consent, after the result has been announced.

On June 17, 1986,[17] Mr. Fernand J. St Germain, of Rhode Island, asked the Chair if he could change his vote from yea to nay "because his attention was diverted at the time he voted and he did not understand the issue."

MR. ST GERMAIN: Mr. Speaker, on this vote, rollcall No. 168, my attention was diverted at the time I voted. By mistake or through distraction, I cast a "nay" vote, whereas I should have cast a "yea" vote. Subsequently I was called to the phones.

Mr. Speaker, I ask unanimous consent that my vote be changed in the permanent Record to reflect a "yea" vote on rollcall No. 168.

THE SPEAKER PRO TEMPORE:[18] The Chair would advise the gentleman that he cannot change his vote. The gentleman's statement will appear in the Record, immediately following the vote.

§ 6.2 The Speaker cannot permit voting corrections after the announcement of the result of a vote by electronic device, based upon the presumed infallibility of that device and upon the responsibility of each Member to correctly cast and verify his vote.

On Apr. 18, 1973,[19] the Speaker declined to entertain a unanimous-consent request that the Record be corrected to indicate that a Member had voted by electronic device on a recorded vote in Committee of the Whole despite

16. See § 38.1, infra.
17. 132 CONG. REC. 14038, 99th Cong. 2d Sess.
18. G. V. (Sonny) Montgomery (Miss.).
19. 119 CONG. REC. 13081, 93d Cong. 1st Sess.

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:[20] 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.[1] Specifying how the Speaker is to fulfill his duty to present matters for a decision, Rule I prescribes[2] 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.[3] 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.[4] 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.[5] 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,[6] 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,[7] 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.[8]

§ 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,[9] the House had under consideration House

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 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.

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[10] 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:[11]

> 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.[12]

On July 13, 1994,[13] 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:[14] 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,[15] 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.[16] 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. . . .[17]

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.[18]

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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

The intervention of a parliamentary inquiry does not preclude a demand for a division vote on an amendment after a voice vote has been taken.[19]

§ 8.1 Where a demand for a division vote on an amendment is immediately followed by a motion that the Committee of the Whole do now rise, the division vote is not commenced until and unless the preferential motion to rise has been rejected.

On June 13, 1947,[20] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 3342) pertaining to the cultural relations program of the State Department.

In the course of the bill's consideration, Mr. Frank B. Keefe, of Wisconsin, offered an amendment to strike out three sections of the bill. Following brief debate on this proposal, Mr. Keefe modified his amendment and the Chair commenced to put the question on the amendment as so modified.

> THE CHAIRMAN:[1] . . . The question is on the amendment offered by the gentleman from Wisconsin [Mr. Keefe].
>
> The question was taken; and Mr. Angell demanded a division.
>
> MR. [DANIEL A.] REED of New York: Mr. Chairman, I offer a preferential motion.
>
> The Clerk read as follows:
>
> Mr. Reed of New York moves that the Committee do now rise.
>
> THE CHAIRMAN: The question is on the motion offered by the gentleman from New York.
>
> The question was taken; and on a division (demanded by Mr. Rayburn) there were—ayes 93, noes 95.

Immediately thereafter, Mr. Reed demanded tellers. Tellers were ordered; the Committee again divided; and the tellers reported that there were—ayes 101, noes 110. Thus, the motion to rise was rejected.

The Chair then felt obliged to review the parliamentary situation, prompting a resultant inquiry as follows:

> THE CHAIRMAN: The Chair will state that before the motion was made that the Committee do now rise the ques-

special order on June 27, 1985. 131 CONG. REC. 17893–901, 99th Cong. 1st Sess. See also the dispute surrounding the Chair's count of the number standing to second a demand for a recorded vote on a motion to recommit on that date. 131 CONG. REC. 18550, 99th Cong. 1st Sess., July 11, 1985.

19. See 121 CONG. REC. 7953, 94th Cong. 1st Sess., Mar. 21, 1975. See § 9.7, infra.

20. 93 CONG. REC. 6963, 6996–98, 80th Cong. 1st Sess.

1. Thomas A. Jenkins (Ohio).

tion was being taken on the amendment offered by the gentleman from Wisconsin [Mr. Keefe]. There was a voice vote and then a division was requested.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. MCCORMACK: The Chair had stated that a standing vote had been requested, but I think the Chair failed to state that the Chair announced the "ayes" had it on the voice vote.

THE CHAIRMAN: No. No announcement was made on the division. The preferential motion intervened.[2]

On Presidential Reorganization Plan

§ 8.2 Providing that a majority of the authorized membership votes in the affirmative, the House may adopt a resolution disapproving a reorganization plan of the President by a voice, division, or "yea and nay" vote.

On Aug. 11, 1949,[3] the House resolved itself into the Committee of the Whole for the purpose of considering a resolution (H. Res. 301) disapproving of Reorganization Plan No. 2 of 1949.

After some debate, the Committee rose,[4] and the following exchange took place between Mr. Charles H. Halleck, of Indiana, and the Speaker:

MR. HALLECK: . . . Mr. Speaker, do I understand correctly that under the terms of the Reorganization Act under which we are operating the proponents of the resolution who by that resolution would seek to disapprove Reorganization Plan No. 2 would have to have 218 votes actually present and voting in order to carry the resolution?

THE SPEAKER:[5] That is correct; that is the law, and the Chair will take this opportunity to read the law:

> Sec. 6. (a) Except as may be otherwise provided pursuant to subsection (c) of this section, the provisions of the reorganization plan shall take effect upon the expiration of continuous session of the Congress, following the date on which the plan is transmitted to it; but only if, between the date of transmittal and the expiration of such 60-day period there has not been passed by either of the two Houses, by the affirmative vote of a majority of the authorized membership of that House, a resolution stating in substance that that House does not favor the reorganization plan.

Immediately thereafter, Mr. Clarence J. Brown, of Ohio, posed a parliamentary inquiry, as follows:

2. While there would appear to be some confusion as to whether the Chair did, indeed, announce the voice vote, this would have no effect on the priority accorded the motion to rise over the commencement of the division count.

3. 95 CONG. REC. 11296, 81st Cong. 1st Sess.

4. *Id.* at p. 11314.

5. Sam Rayburn (Tex.).

MR. BROWN of Ohio: How will the Chair determine whether there are 218 votes cast in favor of the resolution?

THE SPEAKER: By the usual method: Either by a viva voce vote [*sic*], division vote, or a vote by the yeas and nays.

The question is on the resolution.

The question was taken.

THE SPEAKER: In the opinion of the Chair the resolution not having received the affirmative vote of a majority of the authorized membership of the House, the resolution is not agreed to.

So the resolution was rejected.

§ 9. Demand for Division Vote

By Speaker

§ 9.1 The Speaker may himself order a division vote, without waiting for such a demand to be made from the floor.

On July 9, 1940,[6] Mr. Sol Bloom, of New York, requested unanimous consent for the immediate consideration of House Resolution 547.

The Clerk read as follows:

Whereas there have long existed historical ties of friendship between the United States of America and Argentina; and

Whereas these ties, based on the respect and admiration of two free and independent nations, happily grow firmer day by day; and

Whereas on July 4, 1940, the Chamber of Deputies of the Argentine Congress graciously paid tribute to the anniversary of the independence of the United States of America and to this House of Representatives of the Congress of the United States of America; and

Whereas today, July 9, 1940, marks the anniversary of the Declaration of Independence of the Argentine Republic, a memorable day in the progress of democratic institutions; therefore be it

Resolved, That this House pay tribute to the Chamber of Deputies of Argentina and to the great Argentine Nation on this their anniversary of the signature by a group of 28 patriots in the city of Tucuman on July 8, 1816, of the Declaration of Independence of the United Provinces of the Rio de la Plata; and be it further

Resolved, That a copy of this resolution be forwarded through the Secretary of State to His Excellency the Ambassador of Argentina at Washington for transmission to the Chamber of Deputies of the Argentine Republic.

After some brief remarks by Mr. Bloom and Mr. Hamilton Fish, Jr., of New York, the Speaker[7] put the question on agreeing to the resolution and simultaneously demanded a division.

The House divided, and the resolution passed by a vote of 350 yeas and no nays.[8]

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6. 86 CONG. REC. 9359, 9360, 76th Cong. 3d Sess.

7. William B. Bankhead (Ala.).

8. It should be noted, parenthetically, that in the Senate the Chair does not announce the number of Members voting "aye" or "nay." See 90 CONG. REC. 398, 78th Cong. 2d Sess., Jan. 19, 1944.

Chair May Order Division Vote

§ 9.2 The Chair may on his own initiative under Rule I clause 5, order and conduct a division vote before entertaining a demand for a recorded vote.

Where the Chairman of the Committee of the Whole was unsure that a voice vote on an unexpected motion that the Committee rise expressed the will of the Committee, he directed that a division vote be taken on the motion, even though another Member had asked for a recorded vote. Following the division, the demand for a recorded vote was then entertained. The proceedings of Oct. 20, 1977,[9] which demonstrate the role of the Chair, were as follows:

THE CHAIRMAN:[10] The Clerk will read.

PREFERENTIAL MOTION OFFERED BY MR. EDWARDS OF ALABAMA

MR. [JACK] EDWARDS of Alabama: Mr. Chairman, I move that the Committee do now rise.

THE CHAIRMAN: The gentleman from Alabama (Mr. Edwards) has offered a preferential motion that the Committee do now rise.

The question is on the preferential motion that the Committee do now rise offered by the gentleman from Alabama (Mr. Edwards).

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

MR. EDWARDS of Alabama: Mr. Chairman, I demand a recorded vote.

THE CHAIRMAN: The Chair will first take this vote by division.

The Committee divided; and there were—ayes 186; noes 93.

THE CHAIRMAN: The Committee will rise.

RECORDED VOTE

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Chairman, I demand a recorded vote.

THE CHAIRMAN: A recorded vote has been demanded by the gentleman from Missouri (Mr. Volkmer).

So many as are in favor of taking this vote by recorded vote will stand and remain standing until counted.

PARLIAMENTARY INQUIRY

MR. [GEORGE H.] MAHON [of Texas]: I have a parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman from Texas (Mr. Mahon) has a parliamentary inquiry, and the gentleman will state it.

MR. MAHON: Mr. Chairman, I understand that the motion is that the Committee do now rise, but we only lack about a page and a half of completing the reading of the bill.

MR. [JOHN M.] ASHBROOK [of Ohio]: Regular order, Mr. Chairman.

MR. [JOHN H.] ROUSSELOT [of California]: Regular order.

THE CHAIRMAN: The regular order is being followed. The gentleman from

9. 123 CONG. REC. 34717, 95th Cong. 1st Sess.

10. Sam M. Gibbons (Fla.).

Texas (Mr. Mahon) has a parliamentary inquiry, and the gentleman is being recognized for his parliamentary inquiry.

MR. MAHON: Mr. Chairman, the parliamentary inquiry is this: Would it not be possible to read through the title? There is only about half a page remaining. Then we would have this matter behind us, and perhaps then we could rise.

THE CHAIRMAN: The Chair will make this statement: The Chair first announced that the ayes had it on the preferential motion to rise. Then there was a vote by division. The gentleman from Missouri (Mr. Volkmer) has now demanded a recorded vote on the preferential motion that the Committee do now rise. The Chair will count all those Members standing on the demand for a recorded vote.

Evidently a sufficient number have arisen.

A recorded vote is ordered.

§ 9.3 A recorded vote may be demanded in the Committee of the Whole after the Chair announces the result of a voice vote or states that the Chair is in doubt.

Where the Chair is in doubt of a voice vote, he may on his own initiative ask for a division. However, he can entertain a demand for a recorded vote without first conducting a division. The proceedings of May 6, 1992,[11] are illustrative.

MR. [GEORGE W.] GEKAS [of Pennsylvania]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

THE CHAIRMAN PRO TEMPORE:[12] Pursuant to the provisions of clause 2(c) of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the Gekas amendment, as amended by the Frank substitute.

The vote was taken by electronic device, and there were—ayes 222, noes 196, answered "present" 1, not voting 15, as follows: . . .

So the amendment offered as a substitute for the amendment was agreed to.

The result of the vote was announced as above recorded.

THE CHAIRMAN PRO TEMPORE: The question is on the amendment offered by the gentleman from Pennsylvania [Mr. Gekas], as amended.

The question was taken.

RECORDED VOTE

MR. [BARNEY] FRANK of Massachusetts: Mr. Chairman, I demand a recorded vote.

PARLIAMENTARY INQUIRY

MR. [GERALD B.H.] SOLOMON [of New York]: Mr. Chairman, that is premature. The Chair did not announce the vote.

THE CHAIRMAN PRO TEMPORE: The gentleman will repeat himself.

MR. SOLOMON: Mr. Chairman, I have a parliamentary inquiry.

11. 138 CONG. REC. 10515, 10516, 102d Cong. 2d Sess.

12. Kweisi Mfume (Md.).

THE CHAIRMAN PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. SOLOMON: Mr. Chairman, I did not hear the Chair announce the yeas and nays, the result.

THE CHAIRMAN PRO TEMPORE: The Chair is in doubt on the voice vote.

MR. FRANK of Massachusetts: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

THE CHAIRMAN PRO TEMPORE: This is a 5-minute vote.

The vote was taken by electronic device, and there were—yes 221, noes 196, answered "present" 1, not voting 16, as follows: . . .

Timeliness; Effect of Announcement of Voice Vote

§ 9.4 A demand for a division vote does not come too late following the refusal to order tellers where the result of the voice vote has not been announced by the Chair.

On Nov. 9, 1971,[13] the House resolved itself into the Committee of the Whole for the purpose of the consideration of the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

In the course of the bill's consideration, Mr. Frank E. Evans, of Colorado, offered an amendment to a substitute amendment offered by Mr. John H. Kyl, of Iowa, for the amendment in the nature of a substitute offered by Mr. John G. Dow, of New York.

The question was taken; and the Chairman announced that the Chair was in doubt. Mr. Evans then demanded tellers which were refused whereupon he immediately sought a division.

This, in turn, prompted the following exchange between Mr. Gerald R. Ford, of Michigan, and the Chair:

MR. GERALD R. FORD: Mr. Chairman, I object. The gentleman did not ask for the division timely.

THE CHAIRMAN:[14] The Chair has not announced the result of the vote, and the gentleman from Colorado (Mr. Evans) can demand a division.

Where Recognition Sought Prior to Announcement of Voice Vote

§ 9.5 The announcement of a voice vote does not preclude a subsequent demand for a division providing the proponent of the request for division was on his feet seeking recognition at the time of the announcement and no in-

13. 117 CONG. REC. 40020, 40027, 40038, 40046, 40054, 92d Cong. 1st Sess.

14. William L. Hungate (Mo.).

tervening business has transpired.

On Sept. 20, 1967,[15] the House resolved itself into the Committee of the Whole for the purpose of considering a bill (H.R. 6418) to amend the Public Health Service Act.

In the course of debate, Mr. Harley O. Staggers, of West Virginia, rose and moved that all debate on section 12 of H.R. 6418 conclude within 45 minutes. The Chairman put forth the Staggers motion; the question was taken, and the Chair announced that the ayes appeared to have it.

Mr. H. R. Gross, of Iowa, then rose to demand a division whereupon Mr. John D. Dingell, of Michigan, rose to a point of order culminating in the following exchange:

> MR. DINGELL: Mr. Chairman, the gentleman's request comes too late. There was intervening business, Mr. Chairman.
>
> THE CHAIRMAN:[16] Was the gentleman from Iowa on his feet at the time?
>
> MR. GROSS: Yes, Mr. Chairman, I was, at the time, and I turned around to get to the microphone.
>
> THE CHAIRMAN: Under those circumstances, the Chair overrules the point of order.[17]

§ 9.6 The Chair has stated that where there was doubt among the membership as to whether a particular Member was on his feet seeking recognition to demand a division vote as the voice vote was being announced, the Chair would resolve the doubt in favor of the Member.

On Feb. 2, 1948,[18] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 4790) to reduce individual income tax payments. The Chairman[19] put the question on an amendment before the Committee, and subsequently announced that the ayes had it.[20]

Immediately thereafter, Mr. John D. Dingell, of Michigan, requested a division.

> MR. DINGELL: Mr. Chairman, I ask for a division.
>
> MR. [HAROLD] KNUTSON [of Minnesota]: Mr. Chairman, the request comes too late.
>
> MR. DINGELL: No; it does not come too late. Let the Chair rule on that.
>
> THE CHAIRMAN: Was the gentleman on his feet when he made the request?

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15. 113 CONG. REC. 26119, 26122, 90th Cong. 1st Sess.

16. Jack Brooks (Tex.).

17. For similar rulings, see also 108 CONG. REC. 772, 87th Cong. 2d Sess., Jan. 23, 1962; and 94 CONG. REC. 922, 80th Cong. 2d Sess., Feb. 2, 1948.

18. 94 CONG. REC. 888, 80th Cong. 2d Sess.

19. Charles B. Hoeven (Iowa).

20. 94 CONG. REC. 922, 80th Cong. 2d Sess.

MR. [SAM] RAYBURN [of Texas]: Mr. Chairman, we have always been very liberal in the House about the matter of votes or whether Members were on their feet. We have always been very liberal in the matter of allowing division votes. As far as I am concerned I do not care anything about it.

THE CHAIRMAN: If there is any doubt in the minds of the membership the Chair will resolve the doubt in favor of the gentleman from Michigan.

The question was taken; and there were—ayes 202, noes 37.

So the committee amendment was agreed to.

Parliamentarian's Note: The Chair's resolution of this matter, as well as the attitude expressed by Mr. Rayburn, reveal the disposition toward a Member who states that he was on his feet seeking recognition when the voice vote was announced. Such a declaration is normally all that is required to protect the right to press for a division, teller, or record vote.

Demand for Division Not Precluded by Parliamentary Inquiry

§ 9.7 Where the Chair's announcement of the result of a voice vote had been followed by a parliamentary inquiry concerning the nature of the amendment being voted on—whether it was a substitute or a perfecting amendment to the text—the Chair held that it was not too late to demand a division vote after the inquiry had been answered.

Where there was pending an amendment offered as a motion to strike out a paragraph of pending text and insert new language, another amendment was then offered as a perfecting amendment to the text proposed to be stricken. While the second amendment could have been considered as a substitute for the first, the Chair treated it as a perfecting amendment. When the perfecting amendment had been disposed of, the Chair put the question on the original amendment to strike and insert and announced that question had been decided in the affirmative. A parliamentary inquiry then followed as to the nature of the amendment being voted on. The proceedings on Mar. 21, 1975,[1] were as follows:

MRS. [MILLICENT] FENWICK [of New Jersey]: Mr. Chairman, I am not sure but that I have let the time go by, but I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. Fenwick: Page 11, strike out lines 1 through 12 and insert in lieu thereof: . . .

MR. [LES] AUCOIN [of Oregon]: Mr. Chairman, I offer a perfecting amendment.

1. 121 CONG. REC. 7950, 7952, 7953, 94th Cong. 1st Sess.

The Clerk read as follows:

Perfecting amendment offered by Mr. AuCoin: On page 11, line 1, strike out "25" and insert in lieu thereof "30".

On page 11, line 3, insert "with respect to existing units and" immediately after "use".

THE CHAIRMAN:[2] The Chair will treat this amendment as a perfecting amendment to the paragraph of the bill and it will be voted on first. . . .

THE CHAIRMAN: The question is on the perfecting amendment offered by the gentleman from Oregon (Mr. AuCoin).

The perfecting amendment was agreed to.

THE CHAIRMAN: The question is on the amendment offered by the gentlewoman from New Jersey.

The question was taken; and the Chairman announced that the ayes appeared to have it.

PARLIAMENTARY INQUIRY

MR. [THOMAS L.] ASHLEY [of Ohio]: Mr. Chairman, a parliamentary inquiry.

Does the Chairman mean the amendment, as amended?

THE CHAIRMAN: The Chair will advise the gentleman that the amendment offered by the gentleman from Oregon (Mr. AuCoin) was a perfecting amendment to section 9(d) on page 11, line 1 through line 8. The amendment offered by the gentlewoman from New Jersey (Mrs. Fenwick) is an amendment which would strike all of the language in the paragraph of the bill and substitute her language.

The Chair will now preserve the rights of Members who were standing at the time of the vote when the Chair put the question and stated that the amendment offered by the gentlewoman from New Jersey (Mrs. Fenwick) had carried.

Does the gentleman from Ohio (Mr. Ashley) seek recognition?

MR. ASHLEY: Yes, I do, Mr. Chairman.

Mr. Chairman, a further parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. ASHLEY: It is on this basis, Mr. Chairman, that I misunderstood the parliamentary situation. I had thought that the gentleman's amendment was in the nature of a substitute. Inasmuch as the gentleman's amendment was adopted, is it also the fact that the amendment of the gentlewoman from New Jersey (Mrs. Fenwick) was adopted?

THE CHAIRMAN: Yes, thereby deleting the language which contained the perfecting amendment of the gentleman from Oregon.

MR. ASHLEY: In that case, Mr. Chairman, I would ask for a division on the vote.

POINT OF ORDER

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I make a point of order.

THE CHAIRMAN: The gentleman from Maryland will state his point of order.

MR. BAUMAN: It is too late. Other business had intervened.

THE CHAIRMAN: The Chair will rule that no further business had intervened, that at the instant when the

2. Robert N. Giaimo (Conn.).

Chair was ready to declare the vote on the amendment of the gentlewoman from New Jersey, the gentleman from Ohio (Mr. Ashley) was on his feet seeking recognition with respect to whether to ask for a division vote on that amendment. The Chair has stated that he would protect the rights of the gentleman from Ohio.

The question is on the amendment of the gentlewoman from New Jersey (Mrs. Fenwick).

The question was taken; and on a division (demanded by Mr. Ashley) there were—ayes 34, noes 60.

Parliamentary Inquiry Preceding Demand

§ 9.8 Recognition having been sought to demand a division prior to the Chair's announcement of the voice vote, a parliamentary inquiry which intervenes between the announcement and the Chair's recognition of the division-seeking Member does not operate to preclude the demand.

On Apr. 29, 1947,[3] the House resolved itself into the Committee of the Whole for the purpose of further considering House Joint Resolution 153, providing for relief assistance to the people of countries devastated by war.

In the course of debate, Mr. Lawrence H. Smith, of Wisconsin, offered an amendment to the resolution after which, Mr. William M. Colmer, of Mississippi, offered a substitute amendment therefor. This, in turn, led Mr. Karl E. Mundt, of South Dakota, to offer an amendment to the substitute amendment. And, upon the conclusion of debate, the Colmer substitute as amended by the Mundt amendment was agreed to.

Following this sequence of events, the question then occurred on the Smith amendment as amended by the substitute. The question was taken; and the amendment was rejected. Mr. Mundt then rose to request a division vote whereupon Mr. Vito Marcantonio, of New York, raised a point of order.

Prior to addressing himself to the point of order, the Chairman[4] entertained a parliamentary inquiry from Mr. William C. Cole, of Missouri, and the following exchange transpired:

THE CHAIRMAN: The gentleman will state the parliamentary inquiry.

MR. COLE of Missouri: I understand the amendment that was just voted on, as amended by the Mundt amendment, was a substitute for the Smith amendment. Then, why do we vote on the Smith amendment?

THE CHAIRMAN: That was the original amendment.

MR. COLE OF Missouri: A further parliamentary inquiry, Mr. Chairman.

3. 93 CONG. REC. 4214, 4217, 4218, 4222, 4233, 80th Cong. 1st Sess.

4. George B. Schwabe (Okla.).

MR. MARCANTONIO: Mr. Chairman, I make a point of order.

THE CHAIRMAN: The gentleman will state the point of order.

MR. MARCANTONIO: I make a point of order against the request for a division. It came too late. The vote was announced. The result was announced and the decision of the Committee was announced. Therefore, the request for a division comes too late. That is my point of order.

MR. MUNDT: Mr. Chairman, on that point of order I would like to be heard. There was confusion all over the Chamber. I was seeking recognition to ask for a division. The fact that it was announced prior to that has no bearing upon the point at all.

MR. BLOOM: Mr. Chairman, the gentleman was not recognized for the purpose. The whole thing was decided and the vote was given and there was a pause. The Chair did not recognize the gentleman for that purpose.

MR. MARCANTONIO: May I say further, Mr. Chairman, that the Chair paused for an appreciable period of time after the decision of the Committee was announced by the Chairman, and no demand for a division was made.

THE CHAIRMAN: The purpose of any vote is to ascertain fairly the judgment of the parliamentary body and we have not passed on to the consideration of any other business. Therefore, the Chair overrules the point of order.

Demands as Untimely

§ 9.9 A demand for a division vote comes too late when a Member was not on his feet seeking recognition at the time the Chair announced the result of the voice vote.

On July 30, 1971,[5] the House resolved itself into the Committee of the Whole for the purpose of considering a bill (H.R. 8432) to authorize emergency loan guarantees to major business enterprises.

In the course of considering the bill, Mr. John D. Dingell, of Michigan, offered an amendment, shortly after which the Chairman[6] put the question, and the following exchange transpired:

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Michigan (Mr. Dingell), as amended.

The amendment, as amended, was rejected.

THE CHAIRMAN: Are there any further amendments?

MR. [BROCK] ADAMS [of Washington]: Mr. Chairman, on that I ask for a division.

THE CHAIRMAN: The Chair will state that the request of the gentleman from Washington (Mr. Adams) comes too late inasmuch as the result of the vote had been announced to the committee.

Parliamentarian's Note: As other precedents have indicated,[7] if Mr. Adams had been standing and seeking recognition in order

5. 117 CONG. REC. 28340, 28399, 92d Cong. 1st Sess.
6. Charles H. Wilson (Calif.).
7. See §§ 9.10, 9.11, infra.

to demand a division at the time of the Chair's announcement, his request would have been timely.

§ 9.10 Where tellers were refused on an amendment and the Chair announced that the amendment had been rejected, it was too late to demand a division vote on the amendment if the Member had not sought recognition prior to announcement of the result.

On Sept. 24, 1970,[8] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 18583) to amend the Public Health Service Act and other laws so as to comprehensively deal with drug abuse prevention and control.

In the course of the bill's consideration, Mr. Claude D. Pepper, of Florida, offered an amendment pertaining to central nervous system stimulants. The proposed amendment was debated after which the Chair[9] put the question.

The question was taken; and the Chairman announced that the noes appeared to have it. Mr. Pepper then demanded tellers. However, an insufficient number of Members supported this demand; so tellers were refused, and the Chair announced that the amendment was rejected.

At this point, Mr. Pepper rose to a point of order, and the following colloquy ensued:

> MR. PEPPER: Mr. Chairman, I make the point of order that a quorum is not present.
>
> THE CHAIRMAN: The Chair will count.
>
> MR. [WILLIAM L.] SPRINGER [of Illinois]: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. SPRINGER: Is my understanding correct that the amendment was defeated?
>
> THE CHAIRMAN: The gentleman's understanding is correct.
>
> MR. [CRAIG] HOSMER [of California]: A parliamentary inquiry, Mr. Chairman.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. HOSMER: Mr. Chairman, I was on my feet to demand a division before the gentleman made a point of order that a quorum was not present.
>
> THE CHAIRMAN: The Chair will state to the gentleman that the Chair had announced the noes appeared to have it on the amendment. Tellers were requested, and an insufficient number supported the demand for tellers, so tellers were refused.
>
> The Chair is presently in the process of counting to determine whether a quorum is present.
>
> MR. HOSMER: My inquiry is, Mr. Chairman: In either event, will I still be recognized to demand a division?

8. 116 CONG. REC. 33603, 33608, 33618, 91st Cong. 2d Sess.

9. William S. Moorhead (Pa.).

THE CHAIRMAN: The Chair will state to the gentleman that the amendment has been rejected. Therefore, a request for a division comes too late.

MR. HOSMER: I thank the Chair.

Immediately following the Chair's reply to the Hosmer inquiry, Mr. Pepper withdrew his point of order, and the Committee proceeded to the next section of the bill.

§ 9.11 When the Chair has announced that an amendment has been rejected, and a Member makes the point of order that a quorum is not present, it is too late, even prior to the point of no quorum, to demand a division vote on the amendment.

On Sept. 24, 1970,[10] the House resolved itself into the Committee of the Whole for the purpose of considering certain drug legislation.

Following the rejection of an amendment which he had offered, Mr. Claude D. Pepper, of Florida, raised the point of order that a quorum was not present. As the Chair[11] started to count, a parliamentary inquiry was posed by Mr. Craig Hosmer, of California.

Mr. Hosmer stated that he was on his feet to demand a division before Mr. Pepper had raised his point of order pertaining to the lack of a quorum. Accordingly, he inquired as to whether he would be recognized to demand a division.

The Chair responded initially by reminding Mr. Hosmer that the Chair had already announced that the noes appeared to have it on the amendment; that tellers had been requested; that an insufficient number supported the demand for tellers, hence they were refused,[12] and that the amendment had been rejected.

The Chair further elaborated by stating that it was in the midst of counting to determine whether a quorum was present, and, finally, that the amendment having been rejected, the request for a division came too late.

§ 10. Interruption of Division Vote

For Parliamentary Inquiry

§ 10.1 A Member may not interrupt the actual count on a division vote by a parliamentary inquiry.

On Feb. 13, 1946,[13] Mr. Howard W. Smith, of Virginia, offered

10. 116 CONG. REC. 33603, 33618, 91st Cong. 2d Sess.

11. William S. Moorhead (Pa.).

12. For the entire exchange, see § 9.10, supra.

13. 92 CONG. REC. 1274, 1275, 79th Cong. 2d Sess.

a privileged resolution (H. Res. 523) which called for the striking from the Record of all the matter spoken and inserted by the Member from Washington (Mr. Charles R. Savage) on page 1267 of the [daily] Record of Tuesday, Feb. 12, 1946. Mr. Smith's resolution stated that the insertion of extraneous matter in the Record, without previous specific authorization from the House constituted a violation of the rules, thereby mandating the removal of such matter.

With the exception of a brief parliamentary inquiry posed by Mr. John E. Rankin, of Mississippi, Mr. Smith held the floor until such time as he moved the adoption of the resolution. The Speaker[14] then put the question, immediately, and the question having been taken, he announced that the ayes seemed to have it.

At this point, Mr. Smith demanded a division, and the House proceeded to divide. In the midst of that procedure, Mr. Hugh De Lacy, of Washington, addressed the Chair, and the following exchange transpired:

> MR. DE LACY (interrupting the division): Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The House is dividing now. Nothing else is in order now.
>
> MR. DE LACY: Are there not two sides to a debate, Mr. Speaker?
>
> THE SPEAKER: The Chair is putting the question. The Chair is going to be fair to everybody in this House; the Chair wants the gentleman from Washington and everybody else to understand that. The Chair has always thought that each man, being elected by his own State has a right to speak.
>
> The division was concluded.
>
> THE SPEAKER: On this vote by division the ayes are 74 and the noes are 2.
>
> So the resolution was agreed to.

§ 10.2 A parliamentary inquiry may not interrupt a division; but such inquiries are entertained until the Chair asks those in favor of the proposition to rise.

On Sept. 29, 1966,[15] the Committee of the Whole having met to further consider the Economic Opportunity Amendments of 1966 (H.R. 15111), Mr. John N. Erlenborn, of Illinois, offered an amendment to an amendment offered by Mrs. Edith S. Green, of Oregon. Following some discussion of the Erlenborn proposal, the Chair[16] put the question, it was taken; and the Chairman announced that the Chair was in doubt.

Immediately thereafter, the following discussion took place:

14. Sam Rayburn (Tex.).

15. 112 CONG. REC. 24455–57, 89th Cong. 2d Sess.

16. Daniel J. Flood (Pa.).

MR. ERLENBORN: Mr. Chairman, I ask for a division.

MR. WILLIAM D. FORD [of Michigan]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. WILLIAM D. FORD: In the event that the amendment offered by the gentleman from Illinois [Mr. Erlenborn] which is offered to the amendment offered by the gentlewoman from Oregon [Mrs. Green] is defeated at this time and the amendment offered by the gentlewoman from Oregon [Mrs. Green] is also defeated, would the Erlenborn amendment then be in order if offered separately?

MR. [HAROLD R.] COLLIER [of Illinois]: Mr. Chairman, a point of order. Is a parliamentary inquiry in order at this time during the vote?

THE CHAIRMAN: The parliamentary inquiry was made before the Chair put the question pursuant to the demand of the gentleman from Illinois [Mr. Erlenborn] for a division.

In response to the parliamentary inquiry by the gentleman from Michigan, the Chair will state that the amendment may be offered later as a separate amendment.

Having permitted the parliamentary inquiry, the Chair then put the question on the Erlenborn proposal, it was taken; and on a division demanded by Mr. Erlenborn, there were—ayes 69, noes 27.

To Demand Yeas and Nays

§ 10.3 A demand for the yeas and nays is not in order while the Chair is counting on a division vote.

On June 10, 1937,[17] the House resolved itself into the Committee of the Whole for the purpose of considering a bill (H.R. 6391) to authorize the prompt deportation of [alien] criminals and certain other aliens, and for other purposes. Following considerable discussion of the bill, the Committee rose and its Chairman[18] reported the bill back to the House with an amendment agreed to in committee.

Shortly thereafter, the Speaker[19] put the question on the passage of the bill, whereupon Mr. Thomas A. Jenkins, of Ohio, offered a motion to recommit. The following colloquy then ensued:

THE SPEAKER: The question is on the motion to recommit offered by the gentleman from Ohio [Mr. Jenkins].

MR. JENKINS of Ohio: Mr. Speaker, I demand a division.

THE SPEAKER: The gentleman from Ohio demands a division. All those in favor of the motion will rise and stand until counted.

MR. JENKINS of Ohio (interrupting the count): Mr. Speaker, I ask for the yeas and nays.

THE SPEAKER: The gentleman's request is not in order while the House is dividing.

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17. 81 CONG. REC. 5547, 5573, 5574, 75th Cong. 1st Sess.

18. William B. Umstead (N.C.).

19. William B. Bankhead (Ala.).

MR. [CARL E.] MAPES [of Michigan]: Mr. Speaker, a point of order.

THE SPEAKER: The Chair thinks it has discretion to conclude the count on a division before entertaining another request.

MR. MAPES: I never knew the Chair to make such a ruling before.

THE SPEAKER: The Chair now makes it.

The Chair continued his count and announced the totals in both the affirmative and negative columns[20] before entertaining another demand for the yeas and nays from Mr. Jenkins.

By Demand for Record Vote

§ 10.4 Where a vote by division is in progress, it cannot be interrupted by a demand for a recorded vote.

On June 10, 1975,[1] the Chairman of the Committee of the Whole, William H. Natcher, of Kentucky, had put the question on a pending amendment and being in doubt as to the result of a voice vote, he directed a division vote. While the Members in the affirmative were standing to be counted, Mr. Sam Gibbons, of Florida, asked for a recorded vote. The Chair declined to interrupt his count and the proceedings were as follows:

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Florida (Mr. Gibbons).

The question was taken; and the Chairman being in doubt, the Committee divided.

MR. GIBBONS: Mr. Chairman, I ask for a recorded vote.

THE CHAIRMAN: The Chair is counting, and a division vote in progress cannot be interrupted by a demand for a recorded vote.

The Chairman having announced that he was in doubt, and the Committee having divided, there were—ayes 77, noes 66.

RECORDED VOTE

MR. [AL] ULLMAN [of Oregon]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

§ 11. Objections to Division Vote: Lack of Quorum

Generally

§ 11.1 Objection to a voice vote for lack of a quorum having been withdrawn and demand then being made for a division, an objection to the division vote for lack of a quorum is in order.

20. It should be noted, parenthetically, that in the Senate the Chair does not announce the number of Members voting "aye" and "no" on a division vote. See § .14.4, infra.

1. 121 CONG. REC. 18048, 94th Cong. 1st Sess.

On Feb. 5, 1957,[2] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 4249) making appropriations for the fiscal year ending June 30, 1957. Discussion ensued, and the Committee eventually agreed to rise and to report the bill back to the House with various amendments and with the recommendation that the bill as amended, be passed.

Thereafter, the Speaker[3] inquired as to whether any Member demanded a separate vote on any amendment. In response thereto, Mr. James Roosevelt, of California, stated that he desired a separate vote on the amendment to Chapter III which had been adopted in the Committee. No other separate votes having been requested, the Chair put the remaining amendments en gros, and they were agreed to.

Immediately thereafter, the Chair directed the Clerk to report the amendment on which a separate vote had been demanded. The Clerk read the amendment, after which Mrs. Edith S. Green, of Oregon, demanded the yeas and nays. This request having been refused, the question was put, taken, and agreed to by voice vote.

At this point, Mrs. Green objected to the vote on the ground that a quorum was not present. After the Chair announced it would count, Mrs. Green immediately withdrew the point of order and asked for a division. The question was then taken on a division, and there were—ayes 118, noes 46.

Immediately thereafter, the following exchange took place:

MRS. GREEN of Oregon: Mr. Speaker, I object to the vote on the ground that a quorum is not present, and I make the point of order that a quorum is not present.

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. H. CARL ANDERSEN: The point of order is that that request has already been made in reference to this vote, and the gentlewoman withdrew it.

THE SPEAKER: The objection to the voice vote on the grounds that a quorum was not present was withdrawn. The objection to the vote by division, on the grounds that a quorum is not present, is in order.

Evidently a quorum is not present.

The Speaker then directed the Clerk to call the roll.

Repeated Points of No Quorum

§ 11.2 While a division vote following a quorum call is "intervening business" permitting an objection to the vote for lack of a quorum under Rule XV clause 4, the Chair is not bound by the result of

2. 103 CONG. REC. 1528, 1553, 85th Cong. 1st Sess.
3. Sam Rayburn (Tex.).

the division but may count the House to determine whether a quorum is in fact present.

On Nov. 17, 1975,[4] the House was considering motions to suspend the rules. Pending the Chair's putting the question on one of these motions, a point of order was made that a quorum was not present:

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE:[5] Evidently a quorum is not present.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond: . . .

THE SPEAKER PRO TEMPORE: On this rollcall 372 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with. . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from New Jersey (Mr. Dominick V. Daniels) that the House suspend the rules and pass the bill H.R. 8618.

The question was taken.

MR. [WILLIAM D.] FORD of Michigan: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will point out to the gentleman that the quorum has been established, and there has been no intervening business.

MR. FORD of Michigan: Mr. Speaker, I therefore demand the yeas and nays.

The yeas and nays were refused.

MR. FORD of Michigan: Mr. Speaker, I demand a division.

The question was taken; and on a division (demanded by Mr. Ford of Michigan) there were—ayes 115, noes 15.

MR. FORD of Michigan: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present, as evidenced by the vote just cast.

[After counting the House:]

THE SPEAKER PRO TEMPORE: The Chair will point out to the gentleman that a quorum had been established just prior to the vote. The Chair determines that a quorum is still present.

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

As Related to Adjournment

§ 11.3 A quorum not being required for purposes of adjournment, objection to an affirmative division vote on a motion to adjourn—when based on the absence of a

4. 121 CONG. REC. 36914, 94th Cong. 1st Sess.

5. John J. McFall (Calif.).

quorum—is not a proper point of order.

On July 25, 1949,[6] the House met at 12 o'clock noon, a prayer was offered, and the Speaker[7] directed the Clerk to read the Journal of the last day's proceedings.

Immediately following the Chair's instruction and before the Clerk proceeded, however, Mr. Ed Gossett, of Texas, moved that the House adjourn. This question was taken; and on a division there were—ayes 46, noes 30.

Mr. Wayne L. Hays, of Ohio, then rose and the following exchange took place:

> MR. HAYS of Ohio: Mr. Speaker, I object to the vote on the ground there is no quorum present.
>
> THE SPEAKER: That is not a proper point of order. The gentleman may ask for the yeas and nays.
>
> MR. HAYS of Ohio: I ask for the yeas and nays, Mr. Speaker.
>
> The yeas and nays were ordered.
>
> The question was taken; and there were—yeas 102, nays 243, not voting 87. . . .
>
> So the motion was rejected.

Parliamentarian's Note: In the absence of a quorum, only two motions are in order—a call of the House or a motion to adjourn.[8] In this particular instance, the motion to adjourn would have taken precedence over any simultaneously proposed motion for a call of the House;[9] hence no such motion was forthcoming despite the desire of the majority to avoid adjournment. Had the initial division vote been opposed to adjourning, however, an objection based on the lack of a quorum would have been in order, and—assuming the point of order were sustained—an "automatic" roll call would have followed.[10]

§ 11.4 While a quorum is not required to adjourn the House, a point of no quorum following a negative division vote on adjournment, when sustained, precipitates a call of the House under the rule (Rule XV clause 4).

On Dec. 11, 1963,[11] Mr. John L. McMillan, of South Carolina, sought unanimous consent to take from the Speaker's desk a bill (H.R. 4276) to provide for the creation of horizontal property regimes in the District of Columbia,

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6. 95 CONG. REC.. 10092, 81st Cong. 1st Sess.

7. Sam Rayburn (Tex.).

8. See *House Rules and Manual* § 769 (note); and Rule XV clause 2(a), *House Rules and Manual* § 768 (1995).

9. *Id.*

10. Rule XV clause 4, *House Rules and Manual* § 773 (1995); see also § 11.4, infra.

11. 109 CONG. REC. 24212, 24217, 24218, 88th Cong. 1st Sess.

with a Senate amendment thereto, and concur in the Senate amendment.

Following the reading of the Senate amendment, Mr. Steven B. Derounian, of New York, rose to make the point of order that a quorum was not present. The Speaker[12] then asked the gentleman if he would withhold his point until the Chair could obtain the unanimous-consent request desired by Mr. McMillan. Mr. Derounian insisted on his point of order, however, whereupon Mr. Carl Albert, of Oklahoma, offered a preferential motion that the House adjourn.

The question of adjournment was taken; a division was demanded by Mr. Derounian and Mr. Silvio O. Conte, of Massachusetts; and, there were—ayes 60, noes 63. Immediately following the announcement of the vote, Mr. Joe D. Waggonner, Jr., of Louisiana, objected to the vote on the ground that a quorum was not present. The Speaker sustained the point of order and ordered the Clerk to call the roll. The motion was agreed to, and the House adjourned.[13]

12. John W. McCormack (Mass.).

13. For similar instances, see 97 Cong. Rec. 6621, 82d Cong. 1st Sess., June 15, 1951; and 97 Cong. Rec. 6097, 82d Cong. 1st Sess., June 4, 1951.

§ 11.5 While a quorum is not required on an affirmative motion to adjourn, a negative vote on that motion by division may precipitate an "automatic" roll call pursuant to Rule XV clause 4.

In the 100th Congress, on Nov. 2, 1987,[14] a similar instance occurred, where an automatic call pursuant to clause 4, Rule XV occurred when, following a vote by division, the House refused to adjourn but a quorum failed to respond on the vote. A quorum also failed to respond on the automatic vote, and the House found itself in that unenviable position where it could conduct no business and had only two alternatives, to persuade a majority to vote to adjourn in the absence of the required quorum or to obtain the presence of absentees so business could continue. A motion to direct the Sergeant at Arms to compel attendance of absent Members was also defeated, with a quorum still not responding on the vote. A sec-

For a comparable instance involving a point of no quorum with respect to an affirmative division vote [on a motion to adjourn] see § 11.3, supra. And, for other instances of objections to division votes precipitating automatic roll calls, see §§ 11.5, 11.10, infra.

14. 133 Cong. Rec. 30386–90, 100th Cong. 1st Sess.

ond motion to adjourn was then made, the yeas and nays were taken, and the House continued to refuse to adjourn. Another yea and nay vote, on a motion to direct Speaker James C. Wright, Jr., of Texas, who was presiding, to compel the attendance of absentees, was then adopted by less than a quorum; but under the operation of this order, additional Members finally entered the Chamber and recorded their presence. After some three hours, enough Members finally responded to make a quorum and a motion to adjourn taken by the yeas and nays was finally adopted.[15]

15. The various steps taken to adjourn the House on Nov. 2, 1987, are summarized above but annotations describing the various actions in more detail are included here for clarity:

The Speaker may in his discretion entertain parliamentary inquiries relating to the pending parliamentary situation during the pendency of a record vote although prior to the announcement of the result where a quorum has not appeared.

Where less than a quorum rejects a motion to adjourn, the House may not consider business but may dispose of motions to secure the attendance of absent Members.

A privileged motion to compel the attendance of absent Members is in order after the Chair has announced that a quorum has not responded on a negative record vote to adjourn.

Less than a quorum of the House rejected a motion directing the Sergeant at Arms to arrest absent Members.

Less than a quorum of the House rejected a second motion to adjourn and then adopted a motion authorizing the Speaker to compel the attendance of absent Members.

The motion to compel the attendance of absent Members being neither debatable nor amendable is not subject to a motion to lay on the table.

The House having authorized the Speaker to compel the attendance of absent Members, the Speaker announced that the Sergeant at Arms would proceed with necessary and efficacious steps, and that pending the establishment of a quorum no further business, including unanimous-consent requests for recess authority, could be entertained.

The House having authorized the Speaker to compel the attendance of absent Members and having then obtained a quorum by recording the names of additional Members who appeared subsequent to the previous roll call on a negative motion to adjourn, the motion to adjourn was then renewed and adopted by roll call vote.

Precedence Over Tellers

§ 11.6 An objection to a division vote on the ground that a quorum is not present takes precedence over a demand for tellers on the question.

On June 18, 1953,[16] Mr. Robert B. Chiperfield, of Illinois,

16. 99 CONG. REC. 6840, 83d Cong. 1st Sess.

moved that the House resolve itself into the Committee of the Whole for the consideration of a bill (H.R. 5710) to amend further the Mutual Security Act of 1951, as amended. The question was taken; and Mr. H. R. Gross, of Iowa, having demanded a division, there were—ayes 122, noes 10. Immediately following the announcement of this result, Mr. Gross objected to the vote on the ground that a quorum was not present. Mr. Charles A. Halleck, of Indiana, then rose and demanded tellers.

Faced with these two requests, the Speaker[17] stated that the point of order of Mr. Gross took precedence over Mr. Halleck's demand for tellers. The Chair then counted, and a quorum having been determined, the motion was agreed to.[18]

A Point of No Quorum Is in Order Where a Pending Question Is Put to a Vote

§ 11.7 In the House, where the question of resolving into the Committee of the Whole for consideration of a bill is taken by a division vote, and the announcement of the result of the division is followed by a point of order that a quorum is not present (but not coupled with an objection to the vote for lack of a quorum under Rule XV clause 4), the question is put de novo following the quorum call.

Rule XV clause 6(e) was adopted by the House in January 1977. It severely limited the right to make a point of order that a quorum is not present and specified that such a point of order can be made or entertained only when a pending question has been put to a vote. Since the adoption of this new rule, it has been the practice of the Speaker to put de novo a decisive question initially decided by fewer than a quorum, where the lack of a quorum was announced by the Chair in response to a point of order that a quorum was not present and a call of the House was thereafter ordered and taken, producing a quorum. This practice is disclosed by the proceedings of Sept. 22, 1977,[19] which were as follows:

> MR. [E] DE LA GARZA [of Texas]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7073) to extend the Federal Insecticide,

17. Joseph W. Martin, Jr. (Mass.).

18. See also § 15, infra.

19. 123 CONG. REC. 30289, 30290, 95th Cong. 1st Sess.

Fungicide, and Rodenticide Act, as amended.

THE SPEAKER PRO TEMPORE:[20] The question is on the motion offered by the gentleman from Texas (Mr. de la Garza).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, so that we may have some record of the attendance of the House, as the Constitution requires, in order to do business, I demand a division.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Bauman) demands a division.

Those in favor of the motion will rise and remain standing until counted. The Chair will count all Members standing.

The ayes will be seated and the noes will rise.

On this vote, there are 18 ayes and no noes.

MR. BAUMAN: Mr. Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Does the gentleman object to the vote on the ground that a quorum is not present?

MR. BAUMAN: No, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Will the gentleman allow the Chair, then, to announce the vote?

MR. BAUMAN: Mr. Speaker, the gentleman insists on his point of order, and hopes that the point will be entertained by the Chair.

THE SPEAKER PRO TEMPORE: Does the gentleman from Maryland (Mr. Bauman) desire an automatic rollcall?

MR. BAUMAN: No, Mr. Speaker, the gentleman from Maryland simply makes the point of order that a quorum is not present and the Constitution does require a quorum to do business in the House.

PARLIAMENTARY INQUIRY

MR. DE LA GARZA: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. DE LA GARZA: Mr. Speaker, is the gentleman from Maryland (Mr. Bauman) objecting to a quorum not being present or to the vote as announced by the Chair?

THE SPEAKER PRO TEMPORE: The Chair will state that the Chair was in the process of announcing the vote and that the Chair did not count for a quorum. The Chair was simply taking count of the Members who were standing. It was the Chair's understanding that the gentleman from Maryland (Mr. Bauman) in making his point of order that a quorum was not present, was doing so in order that a quorum be called in order to establish the presence of a quorum.

Will the gentleman from Texas, Mr. de la Garza, withdraw his motion and move a call of the House?

MR. DE LA GARZA: Mr. Speaker, if it is permissible to withdraw my motion without asking unanimous consent then I will do so, and if it is not, then I will ask unanimous consent to withdraw my motion.

PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, a parliamentary inquiry.

20. James C. Wright, Jr. (Tex.).

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, has the Chair entertained my point of order of no quorum?

THE SPEAKER PRO TEMPORE: The Chair is in the process of entertaining the gentleman's point of order.

MR. BAUMAN: I object to the withdrawal of the motion.

THE SPEAKER PRO TEMPORE: While the motion may be withdrawn if the gentleman from Texas asks, the House having taken no final action on the motion, the gentleman from Maryland (Mr. Bauman) must in the meantime decide within his own mind—and the Chair will protect the gentleman's rights, and is so doing—whether the gentleman from Maryland wants to object to the vote on the ground that a quorum is not present or the Chair would recognize someone for a motion for a call of the House. If the Chair sustains the point of order, the gentleman from Maryland may have one but he may not have both.

MR. BAUMAN: The only point of order that the gentleman from Maryland has made is that a quorum is not present, and there is pending a motion at this time regarding resolving into the Committee of the Whole House on the State of the Union.

THE SPEAKER PRO TEMPORE: Under the rules of the House, if a quorum is not present, the motion on a call of the House would still take precedence over the pending motion to resolve into Committee.

The gentleman from Maryland makes the point of order that a quorum is not present and evidently a quorum is not present.

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond: . . .

THE SPEAKER PRO TEMPORE: On this rollcall 286 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT AUTHORIZATION

THE SPEAKER PRO TEMPORE: The pending business is the motion offered by the gentleman from Texas (Mr. de la Garza) that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 7073, on which the Chair will again put the question.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 7073, with Mr. Danielson in the chair.

Parliamentarian's Note: The practice was otherwise before the adoption of clause 6(e), Rule XV. A division vote having been taken on an amendment pending in the House, even though immediately followed by a point of no quorum and a call of the House, a second

demand for a division would not have been entertained. While the yeas and nays or a recorded vote could yet be demanded after the call of the House, the issue could be decided by the division vote unless so challenged.

Practice Before 1977; Precipitation of Automatic Roll Calls

§ 11.8 A point of no quorum, following announcement of the result of a division vote on an amendment as to which less than a quorum voted, does not precipitate an automatic roll call under the rules; and unless objection to the vote on the ground that a quorum is not present is made and such objection sustained, a call of the House solely on the point of order that a quorum is not present precludes a vote de novo on agreeing to the amendment.

On Feb. 21, 1967,[1] Mr. Richard Bolling, of Missouri, by direction of the Committee on Rules, called up House Resolution 83 and asked for its immediate consideration. The resolution authorized the Committee on Agriculture to investigate and make studies into a variety of matters.

Following debate, the Chair[2] put the question on agreeing to the committee amendments. The question was taken; and, Mr. Paul C. Jones, of Missouri, having demanded a division, there were—ayes 34, noes 13.

Immediately following the announcement of the vote, Mr. Jones rose to make a point of order, and the following colloquy ensued:

> THE SPEAKER: Does the gentleman make the straight point of order that a quorum is not present?
>
> MR. JONES of Missouri: Mr. Speaker, the gentleman makes the point of order. I want to get a quorum here and then I will have a division.
>
> THE SPEAKER: The gentleman from Missouri makes the point of order that a quorum is not present.
>
> The Chair will state that the vote is automatic at this point.
>
> MR. JONES of Missouri: The vote on the resolution is not automatic. At this point we are only voting on the amendments.
>
> THE SPEAKER: Does the gentleman from Missouri make the point of order that a quorum is not present and objects to the vote on the ground that a quorum is not present?
>
> Evidently, a quorum is not present.
>
> MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state the parliamentary inquiry.

1. 113 CONG. REC. 4137, 4139, 4140, 90th Cong. 1st Sess.

2. John W. McCormack (Mass.).

MR. HALL: Mr. Speaker, the parliamentary inquiry is whether or not the gentleman from Missouri did object to the vote on the basis that a quorum was not present as was stated by the Speaker.

THE SPEAKER: The Chair would like to understand clearly what the gentleman from Missouri is demanding.

Is the gentleman from Missouri demanding a straight quorum call?

MR. JONES of Missouri: I was demanding a straight quorum call, and then I am going to ask for a division when we come to adopting the resolution.

THE SPEAKER: Evidently a quorum is not present.

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I move a call of the House.

A call of the House was ordered.

Over 300 Members having answered to their names, a quorum was established,[3] and pursuant to unanimous consent, further proceedings under the call were dispensed with.

Shortly thereafter, the Speaker put the question on agreeing to the resolution as amended. The question was taken; and on a division demanded by Mr. Jones, there were—ayes 128, noes 25.

At this point, Mr. Jones rose again, prompting the following exchange and resultant roll call:

MR. JONES of Missouri: Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

THE SPEAKER: The gentleman from Missouri objects to the vote on the ground that a quorum is not present, and makes the point of order that a quorum is not present.

Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 306, nays 18, not voting 108.

§ 11.9 In Committee of the Whole, only one demand for a vote by division on a pending question is in order.

In the 98th Congress, during consideration of the Education Amendments of 1984 (H.R. 11) in the Committee of the Whole, Chairman Abraham Kazen, Jr., of

3. It should be noted that Mr. Jones intended to demand a second division vote on the amendments following the quorum call. During the call, however, he was advised that a vote de novo would not be in order. Accordingly, when the call established the presence of a quorum, Mr. Jones did not choose to press the point. The gentleman could have obtained a second vote on agreeing to the amendments through the automatic roll call provision of Rule XV clause 4 [Rule XV clause 4, *House Rules and Manual* § 773 (1995)], if he had not decided to pursue a "straight quorum call" under Rule XV clause 2(b) [Rule XV clause 2(b), *House Rules and Manual* § 771b (1995)].

Texas, put the question on a pending amendment offered by Mr. Pat Williams, of Montana. On a division vote, the Chair announced the result to be 19 in the affirmative, 21 in the negative. After intervening business—a quorum call and an unsuccessful attempt to get a recorded vote on the amendment—a second request for a division vote was denied. The proceedings of July 26, 1984,[4] were as follows:

THE CHAIRMAN PRO TEMPORE: The question is on the amendment offered by the gentleman from Montana [Mr. Williams].

The question was taken; and on a division (demanded by Mr. Williams of Montana) there were—ayes 19, noes 21.

MR. WILLIAMS of Montana: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN PRO TEMPORE: The Chair will count. Forty-four Members are present, not a quorum.

Pursuant to the provisions of clause 2, rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

THE CHAIRMAN PRO TEMPORE: Three hundred and ninety-six Members have answered to their names, a quorum is present, and the Committee will resume its business.

The pending business is the demand of the gentleman from Montana [Mr. Williams] for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

PARLIAMENTARY INQUIRY

MR. WILLIAMS of Montana: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE: The gentleman will state it.

MR. WILLIAMS of Montana: Mr. Chairman, may I request the yeas and nays on that last vote?

THE CHAIRMAN PRO TEMPORE: A recorded vote had been requested and refused.

MR. WILLIAMS of Montana: May I ask for the yeas and nays?

THE CHAIRMAN PRO TEMPORE: Not at this time.

The Chair will tell the gentleman from Montana that that would not be permitted in the Committee of the Whole.

MR. WILLIAMS of Montana: Mr. Chairman, a further parliamentary inquiry; may I ask for a division?

THE CHAIRMAN PRO TEMPORE: There has already been one.

MR. WILLIAMS of Montana: I understand that. My question is, May I ask for another?

THE CHAIRMAN PRO TEMPORE: No.

MR. WILLIAMS of Montana: I thank the Chairman.

A similar sequence of events occurred in the Committee of the Whole in the 103d Congress. On June 29, 1994,[5] the House had

4. 130 CONG. REC. 21259, 98th Cong. 2d Sess.

5. 140 CONG. REC. p. _____, 103d Cong. 2d Sess.

under consideration the Department of Defense Appropriation Act of 1995. Mrs. Carolyn B. Maloney, of New York, offered an amendment which was debated. When the question on adoption of the amendment was put by the Chair it appeared that the amendment was rejected on a voice vote. Mrs. Maloney then asked for a recorded vote and made a point of order that a quorum was not present. The Chair counted the Committee and announced that a quorum was present in the Chamber. Mrs. Maloney did not renew her demand for a recorded vote at this point, but instead asked for a division. After counting those standing in support of and in opposition to the amendment, the Chair announced that the ayes were 20, the noes 69. Mrs. Maloney again made a point of no quorum and the Chair announced that after again counting the Members present a quorum was still present.[6] When Mrs. Maloney again asked for a vote by division, the Chair ruled that a second request was not in order. Mrs. Maloney then renewed her demand for a recorded vote but an insufficient number of Members rose to second her demand. The amendment was thus rejected.

AMENDMENT OFFERED BY MRS. MALONEY

MRS. MALONEY: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mrs. Maloney: Page 14, strike lines 4 through 22.

MRS. MALONEY: Mr. Chairman, I offer an amendment to cut the single most ridiculous item in the budget.

Let me make this simple and quick. Three simple facts: The Civilian Marksmanship Program is obsolete. Created in 1903 during the Spanish-American War, it is no longer needed to train men and women to shoot straight. It is time to declare victory and cut this boondoggle out of the budget. It is a boondoggle.

It hands out millions of rounds of ammunition to private gun clubs. The Army does not want it. The Department of Defense does not want it. The Office of Management and Budget does not want the money.

If we cannot cut here, where? Where are we going to cut?

MR. [JOHN P.] MURTHA [of Pennsylvania]: Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I yield back the balance of my time, and I ask for a vote on the amendment.

6. In response to Mrs. Maloney's argument that the Chair should have called for a quorum call when the vote by division showed less than a quorum voting, she was advised that a vote by division takes no cognizance of Members present but not voting, and consequently the number of votes counted by division has no tendency to establish a lack of quorum. See *House Rules and Manual* § 630a (1995), June 29, 1988.

THE CHAIRMAN:[7] Do other Members seek to be recognized for debate on the amendment?

The question is on the amendment offered by the gentlewoman from New York [Mrs. Maloney].

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

RECORDED VOTE

MRS. MALONEY: Mr. Chairman, I demand a recorded vote, and I make the point of order that a quorum is not present.

THE CHAIRMAN: The gentlewoman from New York has requested a recorded vote.

Those in favor of a recorded vote will rise and remain standing until counted. The Chair will count for a recorded vote.

MRS. MALONEY: Mr. Speaker, I note the absence of a quorum.

THE CHAIRMAN: The gentlewoman makes a point of order that a quorum is not present. The Chair will count for a quorum.

A quorum is present.

MRS. MALONEY: Mr. Chairman, I demand a division.

THE CHAIRMAN: The gentlewoman from New York has demanded a division.

Those in favor of the amendment will rise and remain standing until counted.

Those opposed will rise and remain standing until counted.

On this vote, in the affirmative: 20; opposed: 69.

MRS. MALONEY: In the absence of a quorum, I asked for a quorum.

MR. MURTHA: Regular order.

MRS. MALONEY: Notice of a quorum.

THE CHAIRMAN: The gentlewoman has made a point of order of no quorum. The Chair must again count for a quorum since there has been a division vote.

The Chair has counted more than 100 Members for a quorum. A quorum is present.

MRS. MALONEY: Division; I ask for a division.

MR. [GERALD B. H.] SOLOMON [of New York]: Regular order.

THE CHAIRMAN: The gentlewoman is not able to ask for a division again. A division vote has been conducted.

MR. MURTHA: Regular order.

§ 11.10 Objection to a voice vote taken in the House for lack of a quorum having been withdrawn and demand then being made for a division, an objection to the division vote for lack of a quorum is in order and, if a quorum is not present the roll call is automatic.

On Feb. 5, 1957,[8] the House entertained consideration[9] of an amendment to a bill (H.R. 4249) making appropriations for the fiscal year ending June 30, 1957. The amendment having been agreed to by voice vote, Mrs. Edith S. Green, of Oregon, ob-

7. Robert G. Torricelli (N.J.).

8. 103 CONG. REC. 1553, 85th Cong. 1st Sess.

9. For greater detail see § 11.1, supra.

jected to the vote on the ground that a quorum was not present. The Speaker[10] then announced he would count, after which Mrs. Green immediately withdrew her point of order and asked for a division. The division then being taken, there were—ayes 118, noes 46.

At this point, the following discussion ensued:

MRS. GREEN of Oregon: Mr. Speaker, I object to the vote on the ground that a quorum is not present, and I make the point of order that a quorum is not present.

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. H. CARL ANDERSEN: The point of order is that that request has already been made in reference to this vote, and the gentlewoman withdrew it.

THE SPEAKER: The objection to the voice vote on the grounds that a quorum was not present was withdrawn. The objection to the vote by division, on the grounds that a quorum is not present, is in order.

Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

§ 11.11 An objection to a division vote taken in the Committee of the Whole and based on the absence of a quorum may not precipitate an "automatic" roll call under the rules; "automatic" roll calls are not in order in the Committee of the Whole.

On June 7, 1973,[11] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 7446) to establish the American Revolution Bicentennial Administration.

In the course of the bill's consideration, Mr. Lawrence G. Williams, of Pennsylvania, offered several amendments en bloc and, following debate on these amendments, the Chair[12] put the question before the Committee. The question was taken; and the Chair announced that the noes appeared to have it. Mr. Williams then demanded a recorded vote.

Thereafter, the following discussion ensued:

THE CHAIRMAN: A recorded vote has been demanded.

MR. WILLIAMS: Mr. Chairman, I withdraw that. I make the point of order that a quorum is not present, and I object to the vote on that basis.

THE CHAIRMAN: The Chair advises the gentleman from Pennsylvania that that procedure is not in order in the Committee of the Whole.

MR. WILLIAMS: Mr. Chairman, I make a point of order. I object to the

10. Sam Rayburn (Tex.).

11. 119 CONG. REC. 18509, 18518, 18521, 93d Cong. 1st Sess.

12. Henry B. Gonzalez (Tex.).

vote on the ground that a quorum is not present, and I request a rollcall vote.

I can object to the vote on the ground that a quorum is not present, and insist on my point of order.

THE CHAIRMAN: Not in the Committee of the Whole, the Chair wishes to advise.

The gentleman may be advised that he may wish to raise a point of order that a quorum is not present.

MR. WILLIAMS: That is exactly what I have done.

THE CHAIRMAN: But the gentleman must be advised that during proceedings of the Committee of the Whole, an automatic vote is not a proper request.

MR. WILLIAMS: Mr. Chairman, I make a point of order against the vote previously taken on the basis that a quorum is not present.

THE CHAIRMAN: The gentleman from Pennsylvania raises the point of order that a quorum is not present. Is that what the gentleman wishes?(13)

MR. WILLIAMS: No. I demand a recorded vote.

THE CHAIRMAN: The Chair will remind the gentleman from Pennsylvania that that demand has been withdrawn.

MR. WILLIAMS: I did withdraw it before. I am now requesting a recorded vote.

THE CHAIRMAN: The gentleman from Pennsylvania now demands a recorded vote on his amendments.

Mr. Williams' request for a recorded vote was refused, and the amendments were rejected.

Where Parliamentary Inquiry Precedes Objection

§ 11.12 Although preceded by a parliamentary inquiry, an objection to a division vote in the House on the ground that a quorum was not present, does not come too late and is in order.

On Mar. 7, 1956,(14) the House entertained consideration of a bill (H.R. 9739) making appropriations for various executive bureaus and bodies, for the fiscal year ending June 30, 1957.

In the course of debate, it was agreed that one of the proposed amendments to the bill would be voted on separately. The Chair being in doubt upon the taking of the question, a division was had, and there were ayes 17, noes 31.

Immediately following the Chair's announcement to that effect, Mr. Gordon Canfield, of New Jersey, propounded a parliamen-

13. Since an objection to a division vote in the Committee of the Whole on the ground of no quorum will not lie, the only proper way to obtain a record vote under the circumstances would have been to raise a point of no quorum pending a demand for a recorded vote.

For additional information as to points of no quorum, see Ch. 20, supra.

14. 102 CONG. REC. 4215, 84th Cong. 2d Sess.

tary inquiry asking if it were too late to request that that amendment be read to the House. The Speaker Pro Tempore[15] informed Mr. Canfield that the amendment having been read, the Chair assumed that every Member was aware of its content. Hence, the amendment was not reread by the Clerk.

Following the Chair's ruling on the Canfield inquiry, Mr. H. R. Gross, of Iowa, rose to object to the vote on the ground that a quorum was not present. Mr. Gross' objection prompted the following exchange:

> MR. [JOHN] TABER [of New York]: Mr. Speaker, I make the point of order that the gentleman's point comes too late. There was a parliamentary inquiry submitted since the division.
>
> THE SPEAKER PRO TEMPORE: The gentleman from New Jersey [Mr. Canfield] addressed the Chair on a point of order. The gentleman from Iowa [Mr. Gross] was justified in waiting until that point of order had been determined by the Chair. Immediately upon that determination the gentleman from Iowa made the point of order that a quorum was not present and objected to the vote on the ground that a quorum was not present. The Chair feels that the gentleman from Iowa exercised his rights under the rules in such manner that a point of order against his point of order would not lie.

Where Yeas and Nays Refused

§ 11.13 Less than a quorum having voted on a division and a yea and nay vote having been refused, it is not too late to object to the division vote on the ground that a quorum is not present.

On June 1, 1942,[16] Mr. Joseph J. Mansfield, of Texas, moved to suspend the rules and pass a bill (H.R. 6999) to authorize the construction and operation of a pipeline and a navigable barge canal across Florida, among other things.

After debate, the Speaker[17] put the question.[18] The question was taken; and Mr. John D. Dingell, of Michigan, having demanded a division, there were 85 ayes and 121 noes.

Mr. Mansfield thereupon requested the yeas and nays-prompting the Speaker to count those Members in favor. An insufficient number having arisen, the yeas and nays were refused.

Mr. Herman P. Kopplemann, of Connecticut, then commenced the following discussion:

> MR. KOPPLEMANN: Mr. Speaker, I raise the point of order that there is no quorum present, and I object to the vote on that ground.
>
> THE SPEAKER: The Chair will count.

15. John W. McCormack (Mass.).

16. 88 CONG. REC. 4767, 77th Cong. 2d Sess.

17. Sam Rayburn (Tex.).

18. 88 CONG. REC. 4774, 77th Cong. 2d Sess.

MR. [ALBERT E.] CARTER [of California]: Mr. Speaker, I make the point of order that the gentleman's point of order comes too late.

THE SPEAKER: The Chair will hold that it does not come too late. The Chair will count. [After counting.] More than 218 Members are present, a quorum.

Two-thirds of those present not having voted in favor thereof, the motion to suspend the rules and pass the bill was rejected.

Objection Resulting in Postponement of Roll Call Vote

§ 11.14 Objection having been raised to a division vote on the ground that a quorum was not present, the point of order that a quorum was not present was made and further proceedings were postponed pursuant to a previous unanimous-consent agreement that any roll call votes would be put over until a later day.

On Oct. 5, 1965,[19] Mr. Clement J. Zablocki, of Wisconsin, moved to suspend the rules and pass the Senate joint resolution (S.J. Res. 106) to allow the showing in the United States of the U.S. Information Agency film "John F. Kennedy-Years of Lightning, Day of Drums."

After some discussion pertaining to the precedential nature of such an authorization as well as certain other concerns of various Members, the Speaker Pro Tempore[20] put the question. It was taken; and, on a division demanded by Mr. H. R. Gross, of Iowa, there were—ayes 55, noes 12.

Mr. Gross then rose immediately to object to the vote on the ground that a quorum was not present.[1]

In response thereto, the Chair stated that pursuant to the order of the House of Oct. 1, 1965, further proceedings on the Senate joint resolution would be put over until Oct. 7, 1965.[2]

When Untimely

§ 11.15 Objection to a division vote on the ground that a

19. 111 CONG. REC. 25941, 89th Cong. 1st Sess.

20. John W. McCormack (Mass.).

1. 111 CONG. REC. 25944, 89th Cong. 1st Sess.

2. The postponement of such proceedings was a result of a unanimous-consent agreement reached on Oct. 1, 1965. In light of impending religious holidays, the House agreed that any roll call votes, other than on questions of procedure, would be put over until October 7. See 111 CONG. REC. 25797, 89th Cong. 1st Sess., Oct. 1, 1965.

quorum was not present comes too late after the vote has been announced, the bill passed, and a motion to reconsider has been laid on the table.

On Sept. 17, 1962,[3] Mrs. Gracie B. Pfost, of Idaho, moved to suspend the rules and pass the bill (H.R. 12761) to provide relief for residential occupants of unpatented mining claims. The Speaker Pro Tempore[4] following debate, put the question. Mr. John D. Dingell, of Michigan, having demanded a division, the question was taken, and there were 49 ayes and 13 noes.

The Speaker Pro Tempore then announced that two-thirds having voted in the affirmative, the rules were suspended and the bill passed. He further stated that if there were no objection, a motion to reconsider would be laid on the table. The Record indicates there was no immediate objection.

Shortly thereafter, however, Mr. Dingell objected to the vote on the ground that a quorum was not present. In response thereto, Mr. Charles A. Halleck, of Indiana, rose to a point of order that the Dingell objection came too late. The Speaker Pro Tempore concurring in that conclusion, Mr. Dingell withdrew the point of order.

In the Committee of the Whole

§ 11.16 In the Committee of the Whole, objection will not lie to a division vote on the ground that a quorum is not present.

On Aug. 1, 1966,[5] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 14765) to assure nondiscrimination in federal and state jury selection, to facilitate desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of intimidation, and for other purposes.

In the course of the bill's consideration, Mr. Byron G. Rogers, of Colorado, moved that all debate on title II and all amendments thereto terminate at 4 o'clock that day.[6] The Chair[7] put the question; it was taken, and on a division demanded by Mr. Joe D. Waggonner, Jr., of Louisiana, there were-ayes 51, noes 42.

Mr. John V. Dowdy, of Texas, thereupon rose to object, as follows:

---

3. 108 CONG. REC. 19650, 87th Cong. 2d Sess.

4. Carl Albert (Okla.).

5. 112 CONG. REC. 17831, 89th Cong. 2d Sess.

6. *Id.* at p. 17844.

7. Richard Bolling (Mo.).

MR. DOWDY: Mr. Chairman, I object to the vote on the ground that a quorum is not present.

THE CHAIRMAN: The Chair will advise the gentleman that such an objection is not valid in the Committee of the Whole.

Parliamentarian's Note: A point of order that a quorum is not present will lie in the Committee of the Whole; however, objection will not lie to any vote in the Committee on the ground that a quorum is not present. See, for example, the proceedings of Dec. 17, 1970,[8] where the Chairman ordered a quorum call following a point of order that a quorum was not present, but ruled an objection to a voice vote on the same ground to be out of order.

§ 12. Determining Presence of Quorum as Related to Division Vote

Counting Those Present

§ 12.1 In determining the presence of a quorum on a division vote, the Chair counts those Members who are present but not voting.

On Aug. 13, 1940,[9] Mr. William M. Colmer, of Mississippi, called up House Resolution 406 which provided that upon the adoption of the resolution, the House would resolve itself into the Committee of the Whole in order to consider H.R. 8157, a bill to establish a national land policy and to provide homesteads free of debt for farm families.

Following debate on the resolution, the previous question was ordered[10] and the question taken on the resolution;[11] and there were on a division (demanded by Mr. Colmer)—ayes 47, noes 123. This result prompted Mr. Knute Hill, of Washington, to object to the vote on the ground that a quorum was not present. The Speaker[12] counted and announced that the count disclosed 235 Members present—a quorum. The yeas and nays were requested and refused; so the resolution was rejected.

§ 12.2 The Speaker having counted a quorum after putting the question on a pending amendment, and less than a quorum having voted by division on the same question immediately thereafter, the Speaker, in reply to a point of order, ruled that a

8. 116 CONG. REC. 42232, 91st Cong. 2d Sess.

9. 86 CONG. REC. 10251, 76th Cong. 3d Sess.

10. *Id.* at p. 10257.

11. *Id.* at p. 10258.

12. William B. Bankhead (Ala.).

quorum was present, and said that the Chair was not responsible if all Members did not vote.

On Apr. 2, 1943,[13] the House entertained further consideration of the war security bill (H.R. 2087) which was intended to provide for the punishment of certain hostile acts against the United States, among other things.

In the course of the bill's consideration, Mr. Harry Sauthoff, of Wisconsin, offered an amendment to strike out certain portions of the bill which he believed to present a threat to civil liberties.[14]

Following debate on the Sauthoff amendment, the question was put by the Speaker,[15] whereupon Mr. Clare E. Hoffman, of Michigan, raised the point of order that a quorum was not present.[16] The Chair counted and having found 219 Members present, proceeded to put the question. A division was had, and the vote resulted in 62 ayes, and 112 noes.

Immediately thereafter, Mr. Sauthoff rose to object to the vote, as follows:

MR. SAUTHOFF: Mr. Speaker, I object to the vote on the ground that a quorum is not present.

THE SPEAKER: The Chair has just counted, and a quorum was present. The Chair is not responsible if all Members in the House do not vote. The Chair must hold that a quorum is present.

So, the amendment was rejected.[17]

§ 13. Division Vote as Related to Demand for Tellers

Where Tellers Refused Prior to Division

§ 13.1 The House has agreed to adjourn by division vote after refusing both the yeas and nays and a teller vote on the motion.

On May 15, 1946,[18] Mr. Graham A. Barden, of North Carolina, was recognized and moved that the House adjourn.

Immediately thereafter, Mr. Vito Marcantonio, of New York, and Mr. Andrew J. Biemiller, of

13. 89 CONG. REC. 2877, 78th Cong. 1st Sess.

14. *Id.* at p. 2879.

15. Sam Rayburn (Tex.).

16. 89 CONG. REC. 2886, 78th Cong. 1st Sess.

17. For a comparable instance in which a quorum was ascertained immediately following a division vote of less than a quorum, see 86 CONG. REC. 10258, 76th Cong. 3d Sess., Aug. 13, 1940.

18. 92 CONG. REC. 5067, 79th Cong. 2d Sess.

Wisconsin, demanded the yeas and nays.

The yeas and nays having been refused, Mr. Marcantonio then demanded tellers which were also refused. The latter refusal prompted him to seek a division. This request was subsequently honored following a brief, intervening inquiry from Mr. Joseph W. Martin, Jr., of Massachusetts. The Speaker[19] put the question; it was taken;[20] and there were—ayes 99, noes 81. Accordingly, the House adjourned until the following day, May 16, 1946, at 12 o'clock noon.

§ 13.2 A demand for a teller vote in the Committee of the Whole having been refused, a second demand for such a vote following a division vote on the pending question was not in order.

On June 13, 1957,[1] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 6127) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

In the course of the bill's consideration, Mr. William M. Tuck, of Virginia, offered an amendment. Following debate, the Chair[2] put the question, and the Chairman announced that the ayes appeared to have it. Mr. John D. Dingell, Jr., of Michigan, was recognized immediately thereafter, and demanded tellers. This request having been refused, Mr. Kenneth B. Keating, of New York, then rose to ask for a division.

Following a brief discussion between the Chair and two Members as to whether a division was permissible, the Chair held Mr. Keating was within his rights. Accordingly, the Committee divided; and there were—ayes 106, noes 114.

This turn of events prompted the following colloquy:

> MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. COLMER: Would it be in order to have tellers?
>
> THE CHAIRMAN: Tellers have been refused.
>
> MR. [ROSS] BASS of Tennessee: Mr. Chairman, a point of order.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. BASS of Tennessee: Mr. Chairman, the tellers were refused after the Chair had ruled and said that the amendment was agreed to. Then tell-

19. Sam Rayburn (Tex.).

20. 92 CONG. REC. 5068, 79th Cong. 2d Sess.

1. 103 CONG. REC. 9018, 9030, 9034, 9035, 85th Cong. 1st Sess.

2. Aime J. Forand (R.I.).

ers were demanded, and those people who now want tellers felt that the amendment was agreed to, so they did not rise to ask for tellers; and I can get the House to agree with me. I make that point of order and ask the Chair to rule on it.

THE CHAIRMAN: The Chair will rule that on the demand for tellers an insufficient number of Members rose to their feet.

MR. BASS of Tennessee: I disagree with the ruling of the Chair and ask for a vote on the ruling of the Chair. I say that he had already ruled on the vote.

THE CHAIRMAN: Does the gentleman appeal from the ruling of the Chair?

MR. BASS of Tennessee: I appeal from the ruling of the Chair.

MR. [WILLIAM J.] GREEN [Jr.] of Pennsylvania: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. GREEN of Pennsylvania: Mr. Chairman, it is too late for the gentleman to appeal from the ruling of the Chair.

THE CHAIRMAN: The gentleman has appealed from the ruling of the Chair.

The question is, Shall the decision of the Chair stand as the judgment of the Committee?

The question was taken, and the Chairman announced that the ayes apparently had it.

MR. BASS of Tennessee: Mr. Chairman, I demand a division.

The Committee divided; and there were—ayes 222, noes 4.

So the decision of the Chair stands as the judgment of the Committee.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state the parliamentary inquiry.

MR. HOFFMAN: Mr. Chairman, is it now in order to ask for tellers after the rising vote?

THE CHAIRMAN: It is not in order. The question was taken on the amendment and the question was decided.

Accordingly, the amendment was rejected.

Where Tellers Sought Following Division and Parliamentary Inquiry

§ 13.3 A demand for tellers did not come too late where the Member was on his feet when the division was announced but first propounded a parliamentary inquiry before making the demand.

On Sept. 20, 1967,[3] the House resolved itself into the Committee of the Whole for the purpose of further considering a bill (H.R. 6418) to amend the Public Health Service Act.

In the course of the bill's consideration, Mr. John Jarman, of Oklahoma, offered a perfecting amendment to section 12 of the bill. Mr. Jarman's amendment was discussed, and upon the expiration of the time allotted for its consideration, the Chairman put

3. 113 CONG. REC. 26119, 26120, 26130, 90th Cong. 1st Sess.

the question, the question was taken, and, on a division demanded by Mr. Richard L. Ottinger, of New York, there were—ayes 43, noes 102. Thereafter, the following discussion transpired:

MR. OTTINGER: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. OTTINGER: Mr. Chairman, was that vote on the Jarman perfecting amendment?

THE CHAIRMAN: The Chair will state that is correct.

MR. OTTINGER: Mr. Chairman, I demand tellers.

MR. [JAMES J.] PICKLE [of Texas]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. PICKLE: Mr. Chairman, I make the point of order that the demand comes too late; the Chairman had already announced the vote.

THE CHAIRMAN: The Chair will state that the point of order is overruled.

Accordingly, tellers were ordered, and the Chairman appointed Mr. Jarman and Mr. William L. Springer, of Illinois, as tellers.

Where Tellers Sought Following Division and Point of No Quorum

§ 13.4 The right to demand tellers was not prejudiced by the fact that a point of no quorum and a call of the House intervened following a division vote on the question on which tellers were requested.

On Sept. 25, 1969,[4] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 12884) to amend title 13, United States Code, to assure confidentiality of information furnished in response to inquiries of the Bureau of the Census.

In the course of the bill's consideration, Mr. Jackson E. Betts, of Ohio, offered an amendment, and the question was subsequently put by the Chair.[5] The question was taken; and, Mr. Betts demanding a division, there were—ayes 32, noes 22. Mr. Thaddeus J. Dulski, of New York, then raised a point of no quorum. The Chair's count revealing only 75 Members present, the Clerk was directed to call the roll; the Committee rose, and the Speaker[6] resumed the chair.

When a quorum responded to the call, the Committee resumed its sitting, and the following discussion then ensued:

MR. CHARLES H. WILSON [of California]: Mr. Chairman——

THE CHAIRMAN: The Committee will be in order.

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4. 115 CONG. REC. 27018, 27036, 27041, 27042, 91st Cong. 1st Sess.

5. George W. Andrews (Ala.).

6. John W. McCormack (Mass.).

MR. CHARLES H. WILSON: Mr. Chairman——

THE CHAIRMAN: For what purpose does the gentleman from California rise?

MR. CHARLES H. WILSON: Mr. Chairman, on the Betts amendment I demand tellers.

MR. [G. V.] MONTGOMERY [of Alabama]: Mr. Chairman, I make a point of order that the demand for tellers is out of order. The time is past for that. The Chair asked for a division vote and the vote was 32 to 22, and the amendment was agreed to. The Chairman announced that the amendment was agreed to. Then the chairman of the full Committee on Post Office and Civil Service made the point of order that a quorum was not present and there was a call of the House.

My point of order is that when the chairman of the Committee on Post Office and Civil Service made the point of order that a quorum was not present, that that cut off the teller vote.

Therefore, Mr. Chairman, I insist upon my point of order.

THE CHAIRMAN: Does the gentleman from California desire to be heard on the point of order?

MR. CHARLES H. WILSON: Mr. Chairman, I just ask for tellers and I assume I am following the correct procedure in asking for tellers. There has been no intervening business, and it is my understanding that——

MR. MONTGOMERY: There was intervening business. There was a 20-minute delay.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, may I be heard on this point of order?

MR. GERALD R. FORD [of Michigan]: Mr. Chairman——

THE CHAIRMAN: Does the gentleman from Michigan desire to be heard on the point of order?

MR. GERALD R. FORD: May I be heard on the point of order?

THE CHAIRMAN: The gentleman from Michigan is recognized on the point of order.

MR. GERALD R. FORD: There was no intervening business between the division vote and the point of order being made that a quorum was not present. We went through the quorum call immediately, and subsequently the gentleman from California asked for tellers.

THE CHAIRMAN: The Chair will state that is the way the Chair recalls the procedure.

MR. HALL: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair will recognize the gentleman from Missouri to be heard on the point of order.

MR. HALL: Mr. Chairman, I submit that the point of order should not be sustained inasmuch as the record will indicate that the Chair had announced the division vote, but it had not said that the amendment was agreed to. The Chair had not made the final decision. The right of any Member of the House to ask for a teller vote, to ask for a reconsideration, or to ask for any other privileged motion had not inured; therefore the request, because the quorum call could not be interrupted, to ask for tellers is quite in order.

MR. GERALD R. FORD: Mr. Chairman, would the Chair again recognize me for one other observation?

THE CHAIRMAN: The Chair recognizes the gentleman from Michigan on the point of order.

MR. GERALD R. FORD: Mr. Chairman, I was on my feet awaiting the opportunity to ask for tellers at the time the gentleman from New York made the point of order that a quorum was not present.

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

The Chair will state that the gentleman from Missouri is correct in his recollection. The Chair had not said that the amendment was agreed to, therefore no intervening business had taken place when the point of order of no quorum was made.

The Chair will read from Cannon's Precedents of the House of Representatives, volume 8, page 646, section 3104:

> The right to demand tellers is not prejudiced by the fact that a point of no quorum has been made against a division of the question on which tellers are requested.

That precedent was established on December 13, 1917.

The Chair therefore overrules the point of order.[7]

§ 13.5 Where a point of no quorum was made and withdrawn immediately after a division vote, it was not then too late to demand a teller vote on the pending proposition.

On Mar. 8, 1946,[8] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 5605) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1947.

In the course of the bill's consideration, Mr. John W. Heselton, of Massachusetts, offered an amendment pertaining to the distribution of funds for soil conservation in accordance with the conservation needs of the particular states.

Mr. Heselton's amendment was debated, and subsequently put before the Committee for a vote. The question was taken; and on a division demanded by Mr. Heselton, there were—ayes 42, noes 28.

Mr. Reid F. Murray, of Wisconsin, then rose to make the point of order that a quorum was not present. As the Chairman[9] announced his intent to count, Mr. Murray rose again to withdraw his point of no quorum.

Mr. George H. Mahon, of Texas, was then prompted to advance the following parliamentary inquiry:

> MR. MAHON: Mr. Chairman, a parliamentary inquiry.

7. It should also be noted that where a division vote has been followed by a point of no quorum which, in turn, is followed by agreement to a privileged motion that the Committee rise, neither of the foregoing constitutes "intervening business" which would preclude a demand for tellers on the pending question immediately following the resumption of business in the Committee. Generally, see Ch. 19, supra.

8. 92 CONG. REC. 2061, 2081, 2084, 79th Cong. 2d Sess.

9. William M. Whittington (Miss.).

THE CHAIRMAN: The gentleman will state it.

MR. MAHON: Mr. Chairman, is it too late to ask for tellers on this vote?

THE CHAIRMAN: No; it is not too late to ask for tellers.

MR. MAHON: Mr. Chairman, I ask for tellers.

Tellers having been ordered and appointed, the Committee again divided; and the tellers reported that there were—ayes 30, noes 43. Accordingly, the amendment was rejected.

Where Tellers Demanded Following Division and Point of No Quorum in the Committee of the Whole

§ 13.6 Where a point of no quorum was made in the Committee of the Whole and the roll was called as a demand for tellers on an amendment remained pending, the question of ordering tellers was put immediately after the Committee resumed its sitting, and a division vote taken prior to the demand for tellers was not final.

On May 10, 1946,[10] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 6335) making appropriations for the Department of the Interior for the fiscal year ending June 30, 1947.

In the course of the bill's consideration, Mr. Henry C. Dworshak, of Idaho, offered an amendment to an amendment offered by Mr. J. W. Robinson, of Utah. Mr. Dworshak's proposal sought to decrease certain expenditures contained within the Robinson amendment, and was ultimately embraced by Mr. Robinson prior to the vote.

The Chairman[11] subsequently put the question; it was taken; and, on a division demanded by Mr. John J. Rooney, of New York, there were—ayes 41, noes 29.

Immediately thereafter, Mr. Jed Johnson, of Oklahoma, demanded tellers whereupon Mr. Frank B. Keefe, of Wisconsin, made the point of order that a quorum was not present. The Chair then counting only 87 Members present, the Clerk was directed to call the roll.

A quorum having responded to the roll call, the Committee rose; the Chairman submitted the absentees' names to be spread upon the Journal; and the Speaker[12] directed the Committee to resume its sitting.

At this point, the following exchange transpired:

10. 92 CONG. REC. 4827, 4833, 4834, 4837, 4840, 79th Cong. 2d Sess.

11. Jere Cooper (Tenn.).

12. Sam Rayburn (Tex.).

THE CHAIRMAN: The gentleman from Oklahoma [Mr. Johnson] demands tellers on the amendment offered by the gentleman from Idaho [Mr. Dworshak] to the amendment offered by the gentleman from Utah [Mr. Robinson].

MR. [WALTER K.] GRANGER [of Utah]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. GRANGER: As I understood the situation when the quorum was called, the Chair had already announced that the amendment offered by the gentleman from Idaho to the amendment had been agreed to; and the request comes too late.

THE CHAIRMAN: The Chair had announced that on a division the amendment to the amendment had been agreed to. Thereupon, the gentleman from Oklahoma [Mr. Johnson] demanded tellers. At that point a point of order was made that a quorum was not present.

The gentleman's demand for tellers is now pending.

Having clarified the situation, the Chairman proceeded to order tellers, and the amendment to the amendment was subsequently rejected.

§ 13.7 The demand for tellers on an amendment did not come too late where the absence of a quorum had prevented the Chair from announcing the adoption of the amendment by division vote.

On Sept. 24, 1970,[13] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 18583) to amend the Public Health Service Act and other laws in order to deal more comprehensively with the problems attendant upon drug abuse prevention and control.

In the course of the bill's consideration, Mr. Richard H. Poff, of Virginia offered an amendment. Following debate, the question was taken on the amendment, and, on a division demanded by Mr. Robert C. Eckhardt, of Texas, there were—ayes 35, noes 22. This result prompted Mr. James C. Corman, of California, to raise the point of order that a quorum was not present. The Chair[14] then counting only 71 Members, a quorum call was ordered.

A quorum having responded, the Committee rose; the Chairman reported the results to the Speaker,[15] and the Committee resumed its sitting. Thereafter, a subsequent demand for tellers was honored as the following excerpt reveals:

THE CHAIRMAN: When the point of order was made on the absence of a quorum, the Chair had just announced the vote by division on the amendment offered by the gentleman from Virginia (Mr. Poff)—35 ayes, 22 noes.

MR. ECKHARDT: Mr. Chairman, I demand tellers.

13. 116 CONG. REC. 33603, 33628, 33634, 91st Cong. 2d Sess.

14. William S. Moorhead (Pa.).

15. John W. McCormack (Mass.).

Tellers were ordered, and the Chairman appointed as tellers Mr. Poff and Mr. Eckhardt.

The Committee again divided, and the tellers reported that there were—ayes 147, noes 61.

So the amendment was agreed to.

§ 13.8 Where the Chair had announced the result of a division vote on an amendment but was precluded from announcing the adoption of the amendment by a point of order of no quorum, it was in order to demand tellers on the amendment upon the resumption of proceedings in the Committee of the Whole.

On Sept. 24, 1970,[16] the House having resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 18583) to amend the Public Health Service Act and other laws, an amendment was offered and, subsequently, put to a vote by the Chairman.[17]

A division having been demanded, there were—ayes 35, noes 22. Before the Chair could announce the adoption of the amendment, however, a point of order of no quorum was raised whereupon the Chair was obliged to count.

The count revealing the absence of a quorum, the Clerk was directed to call the roll, and 335 Members responded to their names. The Committee rose; the Chairman informed the Speaker[18] of the preceding events—entering the names of absentees on the Journal—and, in accordance with the rules,[19] the Committee resumed its sitting.

Immediately thereafter, Mr. Robert C. Eckhardt, of Texas, demanded tellers which were ordered as requested.

§ 14. Division Vote as Related to Demand for Yeas and Nays

In General

§ 14.1 A demand for the yeas and nays in the House takes precedence of a request for a division.

Where the vote on the approval of the Journal was postponed to follow debate on certain motions to suspend the rules, the yeas and nays were demanded when the Chair eventually put the question. The proceedings of Mar. 29, 1993,[20] were as follows:

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16. 116 Cong. Rec. 33634, 91st Cong. 2d Sess.

17. William S. Moorhead (Pa.).

18. John W. McCormack (Mass.).

19. See Rule XXIII clause 2, *House Rules and Manual* § 863 (1973).

20. 139 Cong. Rec. 6666, 103d Cong. 1st Sess.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

THE SPEAKER PRO TEMPORE:[1] Debate has concluded on all motions to suspend the rules.

Pursuant to clause 5, rule I, the Chair will now put the question on agreeing to the approval of the Journal and on each of the first two motions to suspend the rules on which further proceedings were postponed earlier today in the order in which each arose.

Votes, therefore, will be taken in the following order:

On agreeing to the Journal, de novo:

H.R. 175, by the yeas and nays; and H.R. 829, as amended, by the yeas and nays.

THE JOURNAL

THE SPEAKER PRO TEMPORE: Pursuant to clause 5 of rule I, the pending business is the question of the Chair's approval of the Journal.

The question was taken.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I demand a division.

MR. [JOHN] LEWIS of Georgia: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER PRO TEMPORE: The Chair will announce that this will be a 15-minute vote, and subsequent votes on the two motions to suspend the rules upon which proceedings were postponed will be 5-minute votes.

The vote was taken by electronic device, and there were—yeas 231, nays 137, not voting 62, as follows: . . .

1. Romano L. Mazzoli (Ky.).

§ 14.2 The House, first by division vote resulting in a tie, and then by the yeas and nays, rejected a preferential motion to recede and concur in a Senate amendment.

On Dec. 10, 1963,[2] the House agreed to the conference report on a bill (H.R. 8747) making appropriations for various executive bureaus and offices for the fiscal year ending June 30, 1964.

Thereafter, the House entertained discussion as to those Senate amendments remaining in disagreement. One of these was Senate amendment No. 92. Mr. Harold C. Ostertag, of New York, offered a preferential motion that the House recede from its disagreement to the Senate amendment and concur therein.

Following debate, the Speaker[3] put the question on the preferential motion; it was taken; and on a division demanded by Mr. Ostertag, there were—ayes 102, noes 102.

Mr. Albert Thomas, of Texas, then sought the yeas and nays, and a sufficient number having seconded his demand, they were ordered. The question was taken; and there were—yeas 171, nays 204, not voting 59. Accordingly,

2. 109 CONG. REC. 23949–53, 88th Cong. 1st Sess.

3. John W. McCormack (Mass.).

the motion to recede and concur was rejected.

Where Demand Is Refused

§ 14.3 The Chair having abstained from a division vote to adjourn, a demand for the yeas and nays was seconded by 20 percent of those participating in the vote—but refused when the Chair noted that, counting himself, less than the minimum number of Members present had seconded the demand.

On June 30, 1937,[4] Mr. Sam Rayburn, of Texas, moved that the House adjourn. The Speaker[5] put the question; it was taken and on a division vote demanded by Mr. John E. Rankin, of Mississippi, there were—ayes 41, noes 24.

Immediately thereafter, Mr. Rankin demanded the yeas and nays. The Speaker then proceeded to count those in favor of that demand, and soon announced that:

> . . . Thirteen gentlemen have arisen, not a sufficient number. The rule provides that the yeas and nays may be ordered by one-fifth of the Members present.

Since the Speaker had counted himself in reaching the total number of Members present, the 13 seconding Members—while clearly comprising one-fifth of those who had risen on the division vote—did not comprise one-fifth of those present. Accordingly, the demand was refused.

In the Senate

§ 14.4 In the Senate the Chair does not announce the number of Members voting "aye" and "no" on a division vote, and after a request that such announcement be made, the Chair has held that it was too late to ask for a yea and nay vote.

On Jan. 19, 1944,[6] the Senate entertained consideration of a bill (S. 469) relating to the use of the emblem and name of the Red Cross in the United States and its territorial possessions.

In the course of the bill's consideration, Senator Joseph C. O'Mahoney, of Wyoming, offered an amendment on behalf of Senator Millard E. Tydings, of Maryland, the Presiding Officer[7] put the question, and the following exchange transpired:

> THE PRESIDING OFFICER: The question now recurs on the amendment of-

4. 81 CONG. REC. 6642, 75th Cong. 1st Sess.
5. William B. Bankhead (Ala.).
6. 90 CONG. REC. 387, 390, 398, 78th Cong. 2d Sess.
7. Hattie W. Caraway (Ark.).

fered by the Senator from Wyoming [Mr. O'Mahoney] in behalf of the Senator from Maryland [Mr. Tydings]. [Putting the question.] The "noes" seem to have it.

MR. TYDINGS: Mr. President, I ask for a division.

MR. [CLAUDE] PEPPER [of Florida]: Mr. President, will the Chair restate the question.

THE PRESIDING OFFICER: The question is on agreeing to the amendment offered by the Senator from Wyoming in behalf of the Senator from Maryland. A division has been requested.

MR. PEPPER: Would a vote "aye" be in favor of the amendment.

THE PRESIDING OFFICER: Yes.

On a division, the amendment was rejected.

MR. TYDINGS: Mr. President, for the Record will the Chair please announce the vote?

THE PRESIDING OFFICER: Under the rules the Chair does not announce the result on a division.

MR. TYDINGS: I know that the Chair is not obliged to announce the result. However, I do not wish to ask for a roll call, and if the Chair will accommodate the Senator from Maryland he will try to cooperate with the Chair and get on with the discharge of business. There can be no reason why the result of the vote should be secret.

THE PRESIDING OFFICER: Is there objection to the request of the Senator from Maryland that the Chair announce the result of the vote?

MR. [ROBERT M.] LAFOLLETTE [Jr., of Wisconsin]: I object.

THE PRESIDING OFFICER: Objection is heard.

MR. TYDINGS: Mr. President, I ask for the "yeas" and "nays."

MR. LAFOLLETTE: I make the point of order that the request comes too late.

THE PRESIDING OFFICER: The Chair rules that the request comes too late.

The point of order is sustained.

§ 15. Voting by the Chair on Division Votes

Affirmative Tie-breaking Votes

§ 15.1 The Speaker has voted in the affirmative on a division vote to break a tie.

On July 15, 1937,[8] the House agreed to the conference report on the bill (H.R. 6958) making appropriations for the Department of the Interior for the fiscal year ending June 30, 1938, and for other purposes.

In the course of the bill's consideration, Senate amendments remaining in disagreement were discussed in chronological order. Among them was Senate amendment No. 89, which provided funds for a project in Arizona to divert certain waters.

With respect to this amendment, Mr. James G. Scrugham, of Nevada, moved that the House recede and concur in the amendment. Mr. Abe Murdock, of Utah, then demanded a division of the

8. 81 CONG. REC. 7184, 7197, 7198, 75th Cong. 1st Sess.

question. The Speaker[9] having honored this request, the question before the House was whether or not to recede.

The question was taken; and on a division demanded by Mr. Robert F. Rich, of Pennsylvania, there were-ayes 58, noes 58. The Chair then immediately voted "aye," breaking the tie.

The Speaker's vote notwithstanding, the House subsequently decided not to recede by a vote by the yeas and nays.

§ 15.2 The Chairman has voted in the affirmative, on a division vote, to break a tie.

On Mar. 8, 1961,[10] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 4510) to provide a special program for feed grains for 1961.

In the course of the bill's consideration, Mr. Ralph Harvey, of Indiana, offered an amendment authorizing the Secretary of Agriculture to fix price supports for corn up to 75 percent of parity.

Following some discussion of this amendment, Mr. Harold D. Cooley, of North Carolina, moved that all debate on the Harvey amendment close in five minutes. The Chairman[11] put the question; it was taken; and on a division demanded by Mr. Leslie C. Arends, of Illinois, there were-ayes 121, noes 121.

At this point, the Chair immediately voted "aye."[12] And, while a teller vote remained to be held,[13] the outcome did not change.

§ 15.3 Where the Chair had voted in the affirmative on a division vote-thereby breaking a tie on a motion to terminate debate, tellers were demanded, and the motion was agreed to.

The House having resolved into the Committee of the Whole for the further consideration of a bill (H.R. 4510)[14] pertaining to feed grain programs,[15] discussion ensued, and a motion was ultimately proposed to close debate within five minutes.

The question was taken; a division was demanded by Mr. Leslie C. Arends, of Illinois; and there were—ayes 121, noes 121. The

9. William B. Bankhead (Ala.).

10. 107 Cong. Rec. 3491, 3508, 3511, 87th Cong. 1st Sess.

11. Frank N. Ikard (Tex.).

12. For a similar instance, see 101 Cong. Rec. 6244, 84th Cong. 1st Sess., May 12, 1955.

13. See § 15.3, infra.

14. See § 15.2, supra.

15. 107 Cong. Rec. 3491, 3511, 87th Cong. 1st Sess., Mar. 8, 1961.

Chairman voted "aye," immediately thereafter, whereupon Mr. Arends demanded tellers.

Tellers having been ordered, the Committee again divided, and the tellers reported that there were-ayes 149, noes 123. Accordingly, the motion to close debate was agreed to.

Negative Tie-breaking Votes

§ 15.4 The Chairman has voted in the negative, on a division vote, to break a tie.

On Feb. 26, 1964,[16] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 9022) to amend the International Development Association Act to authorize the United States to participate in an increase in the resources of the International Development Association.

Following considerable discussion of the bill, Mr. Frank T. Bow, of Ohio, offered a preferential motion that the Committee rise and report the bill back to the House with the recommendation that the enacting clause be stricken out.

When the question was taken, on a division demanded by Mr. Bow, there were—ayes 94, noes 94. The Chair[17] then immediately voted "no," thereby breaking the tie, although the Chair's vote was not decisive.[18]

§ 15.5 Where the Chair had voted in the negative on a division vote-thereby breaking a tie on a preferential motion-tellers were demanded and the motion was defeated.

The House having resolved itself into the Committee of the Whole in order to consider a bill (H.R. 9022)[19] pertaining to the International Development Association,[20] Mr. Frank T. Bow, of Ohio, ultimately offered a preferential motion that the Committee rise and report the bill back to the House with the recommendation that the enacting clause be stricken out.

The question was put and, a division having been demanded by Mr. Bow, there were—ayes 93, noes 94. Chairman John J. Flynt, Jr., of Georgia, then announced that he was voting in the negative, although his vote was not decisive, whereupon Mr. Bow demanded tellers.

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16. 110 CONG. REC. 3628, 3648, 3649, 88th Cong. 2d Sess.

17. John J. Flynt, Jr. (Ga.).

18. While a teller vote followed, the motion was still rejected; see § 15.5, infra. For a comparable instance in which the teller vote altered the outcome, however, see § 15.8, infra.

19. See also § 15.4, supra.

20. 110 CONG. REC. 3628, 3648, 3649, 88th Cong. 2d Sess., Feb. 26, 1964.

Tellers having been ordered, the Committee again divided; and the tellers reported that there were—ayes 120, noes 128. Accordingly, the motion was rejected.[1]

Tie-creating Vote

§ 15.6 The Chairman of the Committee of the Whole has voted by division to make a tie and thus defeat an amendment.

On June 16, 1966,[2] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 14025) to extend the Defense Production Act of 1950, and for other purposes.

In the course of the bill's consideration, Mr. H. R. Gross, of Iowa, offered an amendment and, following brief debate, the Chairman[3] put the question before the Committee.

The question was taken and, on a division demanded by Mr. Gross, there were—ayes 30, noes 29. The Chair voted "no," thereby forcing a tie, and preventing adoption. A subsequent teller vote obtained similar results, and the amendment was rejected.

§ 15.7 A division vote on a motion to recede and concur having resulted in a tie, the Speaker Pro Tempore abstained from voting, and the motion was rejected.

On Sept. 18, 1962,[4] the House had under consideration the conference report on a bill (H.R. 12648) making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1964, and for other purposes.

During these proceedings, the Senate amendments in disagreement were taken up, one of which was Senate amendment No. 2 which mandated an increase in the funding of research on agricultural production and product utilization. Mr. Jamie L. Whitten, of Mississippi, who opposed the amendment, offered a motion to insist upon disagreement. Mr. James F. Battin, of Montana, then offered a preferential motion that the House recede and concur in the amendment and that motion was put to a vote.

1. For a comparable instance in which the Chairman also cast a negative division vote to break a tie, see 106 CONG. REC. 11301, 86th Cong. 2d Sess., May 26, 1960, where a subsequent teller vote reversed the outcome, thereby resulting in the adoption of the amendment.
2. 112 CONG. REC. 13351, 13366, 13367, 89th Cong. 2d Sess.
3. Richard Bolling (Mo.).
4. 108 CONG. REC. 19708, 19714, 19715, 87th Cong. 2d Sess.

On a division demanded by Mr. Battin, there were—ayes 37, noes 37. The Speaker Pro Tempore[5] chose not to vote and the motion to recede and concur was therefore rejected.

Parliamentarian's Note: It is apparent from the rule[6] that the Speaker, as Presiding Officer of the House, would be required to vote to break a tie if his vote were intended to result in the question being agreed to, and to make a tie if his vote were intended to result in the question being lost. In other words, the Speaker's vote is "decisive" only if the result would be different were he to refrain from voting. The language of the rule is intended to reach all situations where the Speaker's vote would change the result. Similarly, a Chairman of the Committee of the Whole House on the State of the Union, appointed by the Speaker to preside over the consideration of a bill, must vote to make or break a tie where his vote would be decisive. But, although both the Speaker and the Chairman of the Committee of the Whole may exercise their prerogatives as constitutional Members of the House to vote on any question, the traditional approach was to refrain. Since the advent of electronic voting in the House and recorded votes in Committee of the Whole, Members serving in the chair routinely exercise the right to vote.

Nondecisive Votes

§ 15.8 The Chairman of the Committee of the Whole has voted by division even though his vote was not decisive.

On Nov. 16, 1967,[7] the House resolved itself into the Committee of the Whole for the further consideration of a bill (S. 2388) to amend the Economic Opportunity Act, to authorize funds for the continued operation of economic opportunity programs, and to authorize emergency employment legislation.

In the course of the bill's consideration, Mr. John M. Ashbrook, of Ohio, offered an amendment to limit the number of "supergrades," i.e., GS–16, 17, and 18 positions to be approved for the Office of Economic Opportunity. Following debate, on a division vote demanded by Mr. Ashbrook, there were-ayes 74, noes 74. The Chairman[8] then voted "no,"[9] and Mr. Ashbrook

5. Carl Albert (Okla.).

6. Rule I clause 6, *House Rules and Manual* § 632 (1995).

7. 113 CONG. REC. 32636, 32687–89, 90th Cong. 1st Sess.

8. John J. Rooney (N.Y.).

9. While the Chair's action broke a tie on the issue, since his vote was cast

immediately demanded a teller vote.

Tellers having been ordered, the Committee again divided, and the tellers reported that there were-ayes 118, noes 110. Accordingly, the amendment was agreed to, and the Chairman's division vote did not prove to be dispositive of the issue.

§ 16. Voting by Tellers; In General

Counting votes by the use of tellers was a more precise system than voice or division votes for determining the sentiment of the House. Teller votes served as an essential voting procedure in the House until the 103d Congress.[10] Teller votes could be taken by direction of the Chair if he remained uncertain as to the outcome of a division or at the behest of the Members if one-fifth of a quorum[11] so desired. The procedure entailed the appointment by the Chair of "one or more Members from each side of the question" who proceeded to station themselves along the center aisle of the Chamber. Members voting in the affirmative then passed through the center aisle where their votes were tallied, though not recorded, by the Member-teller or tellers. Immediately thereafter, Members voting in the negative proceeded up the center aisle, their votes being similarly tallied by the designated Member-teller or tellers. Where the Chair chose to vote, he did not need to pass through the tellers, but merely announced his position. When the tellers completed their respective counts, the tallies were reported to the Chair who then announced the result.

Historically, teller votes never revealed the position particular Members took on a given issue. In 1971,[12] however, the "recorded teller vote" came into being as the result of a rules change[13] promulgated by the Legislative Reorganization Act of 1970.[14] The re-

in the negative, its practical effect on the amendment's adoption, of course, was no different from a decision to abstain.

10. See Rule I clause 5, *House Rules and Manual* § 630 (1991). The rule permitting teller votes was deleted from the rules at the beginning of the 103d Congress. See H. Res. 5, 139 CONG. REC. 49, 99, 100, 103d Cong. 1st Sess., Jan. 5, 1993.

11. Assuming there were no vacancies in the full House, this would require 44 Members; in the Committee of the Whole the requisite number would be 20.

12. 117 CONG. REC. 144, 92d Cong. 1st Sess., Jan. 22, 1971.

13. Rule I clause 5, *House Rules and Manual* § 631 (1971).

14. 84 Stat. 1140.

corded teller vote was itself supplanted by the "recorded vote" in 1973.[15] Both procedures are considered in later sections of this chapter.[16]

The following precedents remain illustrative of general principles governing voting in the House and remain useful when researching older precedents where a result may have been determined by a vote conducted with tellers.

Teller Votes Used To Decide Both Procedural and Substantive Motions

§ 16.1 The House has adjourned by teller vote.

On Jan. 23, 1950,[17] following an unsuccessful request for the yeas and nays on a motion to adjourn, the Speaker[18] put the question on the motion. Immediately thereafter, Mr. Vito Marcantonio, of New York, demanded tellers and tellers were ordered. The House divided; and the tellers reported that there were—ayes 167, noes 109. So the motion was agreed to.

§ 16.2 Following a voice vote and division vote to the same effect, the Committee of the Whole rejected a motion that it rise, by teller vote—although the Member moving that the Committee rise was in charge of the bill.

On June 16, 1948,[19] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 6401) which was eventually to become the Selective Service Act of 1948.

Following debate, the Member in charge of the bill, Mr. Walter G. Andrews, of New York, moved that the Committee rise inasmuch as several Members who had been afforded time to speak were not then present. The Chairman[20] put the question, and, on a division demanded by Mr. Andrews, there were—ayes 79, noes 94. Thereafter, the following occurred:

> MR. ANDREWS of New York: Mr. Chairman, I ask for tellers.
>
> Tellers were ordered, and the Chairman appointed as tellers Mr. Andrews of New York and Mr. Smathers.
>
> The Committee again divided; and the tellers reported there were—ayes 76, noes 139.
>
> So the motion was rejected.

Effect of Tie

§ 16.3 Where a teller vote in the Committee of the Whole

15. 119 CONG. REC. 27, 93d Cong. 1st Sess., Jan. 3, 1973.
16. See §§ 30, 33–35, 40, infra.
17. 96 CONG. REC. 785, 81st Cong. 2d Sess.
18. Sam Rayburn (Tex.).
19. 94 CONG. REC. 8502, 8521, 80th Cong. 2d Sess.
20. Francis H. Case (S.D.).

resulted in a tie, the question was lost, as on other tie votes.

On Aug. 16, 1967,[1] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 2516) to prescribe penalties for certain acts of violence or intimidation which interfered with citizens' civil rights.

In the course of the bill's consideration, Mr. Albert W. Watson, of South Carolina, offered an amendment. Following debate on the amendment, the Chairman[2] put the question and, on a division demanded by Mr. Watson, there were—ayes 55, noes 69.

The following proceedings then occurred:

> MR. WATSON: Mr. Chairman, I demand tellers.
>
> Tellers were ordered, and the Chairman appointed as tellers Mr. Watson and Mr. Rogers of Colorado.
>
> The Committee again divided, and the tellers reported that there were—ayes 90, noes 90.
>
> So the amendment was rejected.[3]

Effect of Limitation of Debate

§ 16.4 Where time for debate was limited to a certain hour rather than a certain number of minutes, that portion of time taken by teller votes came out of the time remaining for debate.

On Feb. 22, 1950,[4] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 4453) to prohibit discrimination in employment because of race, color, religion, or national origin. During consideration of the bill, Mr. John W. McCormack, of Massachusetts, offered a motion that all debate on the pending amendment and all amendments thereto close at 2:30 a.m. The motion was agreed to by teller vote.

Following debate and the ordering of tellers on an amendment to the pending amendment, the Chairman[5] recognized Mr. Francis H. Case, of South Dakota, for a parliamentary inquiry:

> MR. CASE of South Dakota: The limitation on time fixed the time at a precise hour rather than so many minutes. The effect of teller votes, then, is simply to take time out of the time allowed for debate?
>
> THE CHAIRMAN: Of course, it comes out of the time.

Disclosure of Members' Names and Positions

§ 16.5 A Member could announce, in debate, the party

1. 113 CONG. REC. 22743, 22768, 22769, 90th Cong. 1st Sess.
2. Richard Bolling (Mo.).
3. For similar instances, see 110 CONG. REC. 16859, 88th Cong. 2d Sess., July 23, 1964; and 109 CONG. REC. 24752, 88th Cong. 1st Sess., Dec. 16, 1963.
4. 96 CONG. REC. 2240, 2246, 81st Cong. 2d Sess.
5. Francis E. Walter (Pa.).

division on a simple teller vote, but a disclosure of the names of Members voting in the affirmative or negative was not in order.

On Aug. 6, 1963,[6] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 4995) to strengthen and improve the quality of vocational education and to expand the vocational education opportunities in the nation.

In the course of the bill's consideration, Mr. Alphonzo Bell, of California, offered an amendment and following debate thereon, the Chair put the question. Mr. Bell demanded tellers and, tellers having been ordered, the Committee divided; and there were—ayes 146, noes 194. Accordingly, the amendment was rejected.

Shortly thereafter, the following proceedings occurred:

> MR. [CHARLES S.] GUBSER [of California]: Mr. Chairman, for obvious reasons the Nation's press is not able to report the partisan lineups which occur on teller votes. I observed the number of Democrats going through the "yea" line for the Bell amendment and the number of Republicans going through the "nay" line and would like to report the results of that observation for the record.
>
> My count shows that 143 Republicans——
>
> MR. [ADAM C.] POWELL [of New York]: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[7] The gentleman will state the point of order.
>
> MR. POWELL: Mr. Chairman, I do not believe that that can be done under the rules of the House.
>
> THE CHAIRMAN: The gentleman may not mention the names of the Members who voted. . . .
>
> The Chair recognizes the gentleman from California [Mr. Gubser].
>
> MR. GUBSER: Mr. Chairman, my count shows that 142 Republicans voted against discrimination and 185 Democrats voted for discrimination.

§ 16.6 There was no rule of the House prohibiting members of the press from publishing the names of Members passing through the aisle on a teller vote, and if such a publication recorded a Member improperly, his only recourse was to reply to it.

On Mar. 6, 1946,[8] shortly after the House convened, Mr. Walter K. Granger, of Utah, was recognized by the Speaker[9] and granted unanimous consent to address the House for one minute:

> MR. GRANGER: Mr. Speaker, I take this time for the purpose of propounding a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.

---

6. 109 CONG. REC. 14258, 14285, 14294, 14295, 88th Cong. 1st Sess.

7. Richard Bolling (Mo.).

8. 92 CONG. REC. 1971, 79th Cong. 2d Sess.

9. Sam Rayburn (Tex.).

MR. GRANGER: On yesterday or the day before there appeared in the Washington Post what was purported to be a poll of certain Members who passed through the aisle on a teller vote. Included was the name of the gentleman from Arizona [Mr. Murdock], who only a few moments before had vigorously supported the premium payments in the housing bill, the very matter which was stricken out as a result of the teller vote. The printing of his name in this account in the newspaper made him appear to speak one way and vote another.

The query is: What is the rule of the House in respect to that matter, and what protection has a Member other than having it denied in the press, which would mean that the gentleman from Arizona might have to explain that inconsistency for the next 10 years?

THE SPEAKER: There is no rule of the House with reference to it.

The only remedy a Member has when something is published in the newspaper that affects him improperly, is to reply to it.

§ 17. Demand for Tellers

Generally

§ 17.1 A demand for tellers was in order following the announcement of a division vote.

On Sept. 20, 1967,[10] the House having resolved itself into the Committee of the Whole in order to further consider a bill (H.R. 6418) to amend the Public Health Service Act, a perfecting amendment was proposed by Mr. John Jarman, of Oklahoma, and, following debate, the question was taken on a division vote. Mr. Richard L. Ottinger, of New York, who was seeking recognition at the time the division was announced, demanded tellers following the announcement of the vote and the Chair's[11] response to his parliamentary inquiry. The point of order having been raised that the demand for tellers was untimely, the Chairman overruled the point of order.

§ 17.2 Tellers could be demanded and ordered following a refusal to order the yeas and nays, a division vote, an objection to the vote on the ground of no quorum, and the Chair's announcement that the bill had passed—providing the Member demanding tellers was on his feet seeking recognition prior to the announcement.

On June 5, 1940,[12] Mr. Samuel Dickstein, of New York, called up a bill (H.R. 6381) for the admis-

10. 113 CONG. REC. 26119, 26120, 26130, 90th Cong. 1st Sess.

11. Jack Brooks (Tex.).

12. 86 CONG. REC. 7623, 7626, 76th Cong. 3d Sess.

sion to citizenship of aliens who came into the United States prior to Feb. 5, 1917, and asked unanimous consent that the bill be considered in the House as in Committee of the Whole.

Following debate, Mr. Dickstein moved the previous question and it was ordered. A request for the yeas and nays on final passage having been refused, a division was demanded by Mr. John J. Cochran, of Missouri, and there were—ayes 94, noes 87.

Immediately following this vote, Mr. Cochran objected on the ground that a quorum was not present. In response thereto, the Chair [13] commenced to count, and the following exchange took place:

> THE SPEAKER PRO TEMPORE: . . . [After counting.] Two hundred and twenty-five Members are present, a quorum. The bill is passed.
>
> MR. COCHRAN: Mr. Speaker, I ask for tellers.
>
> MR. DICKSTEIN: Mr. Speaker, I think the gentleman's request comes too late.
>
> THE SPEAKER PRO TEMPORE: The Chair does not think so.
>
> MR. DICKSTEIN: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE: The gentleman will state it.
>
> MR. DICKSTEIN: Do I understand that after the Speaker announces the passage of the bill they can go back and ask for tellers?
>
> THE SPEAKER PRO TEMPORE: . . . yes.
>
> MR. DICKSTEIN: That is news to me, and I think it is going a little too far.
>
> THE SPEAKER PRO TEMPORE: The gentleman from New York [Mr. Dickstein] is out of order and he will take his seat. The Chair thinks the gentleman from Missouri [Mr. Cochran] was endeavoring to ask for a division [Tellers].

Tellers were then ordered, and the Chair appointed Mr. Dickstein and Mr. Cochran to act as tellers.

Parliamentarian's Note: It would appear that Mr. Dickstein momentarily misinterpreted the ruling of the Speaker Pro Tempore when he assumed the Chair had permitted a demand for tellers following announcement of the bill's passage. The Chair's subsequent statement, i.e., the point that Mr. Cochran was on his feet seeking recognition prior to the announcement, clarified the ruling, however.

§ 17.3 A demand for a teller vote in the Committee of the Whole having been refused, a second demand for such a vote following a division vote on the pending question was not in order (an appeal of the ruling sustained the Chair's decision).

On June 13, 1957,[14] the House resolved itself into the Committee

13. Sam Rayburn (Tex.), Speaker Pro Tempore.

14. 103 CONG. REC. 9018, 9030, 9034, 9035, 85th Cong. 1st Sess.

of the Whole for the further consideration of a bill (H.R. 6127) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

In the course of the bill's consideration, Mr. William M. Tuck, of Virginia, offered an amendment and, following debate, the Chair [15] put the question.

The question was taken; and the Chairman announced that the ayes appeared to have it. Mr. John D. Dingell, Jr., of Michigan, was recognized immediately thereafter, and demanded tellers. This request having been refused, Mr. Kenneth B. Keating, of New York, then rose to ask for a division.

Following a brief discussion between the Chair and two Members as to whether a division was permissible, the Chair held that Mr. Keating was within his rights. Accordingly, the Committee divided; and there were—ayes 106, noes 114. This prompted the following inquiry and resultant discussion:

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Chairman, a parliamentary inquiry. . . .

Would it be in order to have tellers?

THE CHAIRMAN: Tellers have been refused.

MR. [ROSS] BASS of Tennessee: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. BASS of Tennessee: Mr. Chairman, the tellers were refused after the Chair had ruled and said that the amendment was agreed to. Then tellers were demanded, and those people who now want tellers felt that the amendment was agreed to, so they did not rise to ask for tellers; and I can get the House to agree with me. I make that point of order and ask the Chair to rule on it.

THE CHAIRMAN: The Chair will rule that on the demand for tellers an insufficient number of Members rose to their feet.

MR. BASS of Tennessee: I disagree with the ruling of the Chair and ask for a vote on the ruling of the Chair. I say that he had already ruled on the vote.

THE CHAIRMAN: Does the gentleman appeal from the ruling of the Chair?

MR. BASS of Tennessee: I appeal from the ruling of the Chair.

MR. [WILLIAM J.] GREEN [Jr.] of Pennsylvania: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. GREEN of Pennsylvania: Mr. Chairman, it is too late for the gentleman to appeal from the ruling of the Chair.

THE CHAIRMAN: The gentleman has appealed from the ruling of the Chair.

The question is, Shall the decision of the Chair stand as the judgment of the Committee?

The question was taken, and the Chairman announced that the ayes apparently had it.

MR. BASS of Tennessee: Mr. Chairman, I demand a division.

15. Aime J. Forand (R.I.).

The Committee divided; and there were—ayes 222, noes 4.

So the decision of the Chair stands as the judgment of the Committee.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Chairman, a parliamentary inquiry. . . .

Mr. Chairman, is it now in order to ask for tellers after the rising vote?

THE CHAIRMAN: It is not in order. The question was taken on the amendment and the question was decided.

Accordingly, the amendment was rejected.

Effect of Competing Demands, Motions, and Objections

§ 17.4 When a request was made for tellers and almost simultaneously a demand for the yeas and nays was made, the demand for the yeas and nays, being a constitutional right, superseded the request for tellers.

On Dec. 10, 1963,[16] the House having agreed to the conference report on a bill (H.R. 8747) making appropriations for various independent executive offices, those amendments remaining in disagreement between the two bodies were then considered.

Among these was Senate amendment No. 92, which provided that $1,722,000 be used for the sites and planning expenses involved in the construction of a Veterans' Administration hospital at Bay Pines, Florida. A motion having been offered that the House insist on its disagreement to this amendment, Mr. Harold C. Ostertag, of New York, then offered a preferential motion that the House recede from its disagreement to the Senate amendment and concur therein.

Following brief discussion of the preferential motion, the previous question was ordered, and the following events transpired:

THE SPEAKER:[17] The question is on the preferential motion offered by the gentleman from New York [Mr. Ostertag].

The question was taken; and on a division (demanded by Mr. Ostertag) there were—ayes 102, noes 102.

MR. [WILLIAM C.] CRAMER [of Florida]: Mr. Speaker, I ask for tellers.

MR. [ALBERT] THOMAS [of Texas]: Mr. Speaker, I ask for the yeas and nays.

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state the parliamentary inquiry.

MR. HALLECK: Mr. Speaker, we were standing for a teller vote. Can we not insist on the teller vote?

THE SPEAKER: The demand for the yeas and nays is a constitutional right and, therefore, would supersede the request for tellers.

16. 109 CONG. REC. 23949, 23950, 23952, 88th Cong. 1st Sess.

17. John W. McCormack (Mass.).

The gentleman from Texas has demanded the yeas and nays.

The yeas and nays were ordered.

§ 17.5 A demand for tellers gave way to a timely objection to a division vote on the ground that a quorum was not present.

On June 18, 1953,[18] Mr. Robert B. Chiperfield, of Illinois, moved that the House resolve itself into the Committee of the Whole for the consideration of a bill (H.R. 5710) to amend further the Mutual Security Act of 1951, as amended. The question was taken; and Mr. H. R. Gross, of Iowa, having demanded a division, there were—ayes 122, noes 10. Immediately following the announcement of this result, Mr. Gross objected to the vote on the ground that a quorum was not present. Mr. Charles A. Halleck, of Indiana, then rose and demanded tellers.

The Speaker[19] stated that the point of order of Mr. Gross took precedence over Mr. Halleck's demand for tellers. The Chair then counted, and, a quorum having been determined, the motion was agreed to,[20] and the House immediately resolved itself into the Committee of the Whole.

18. 99 Cong. Rec. 6840, 83d Cong. 1st Sess.

19. Joseph W. Martin, Jr. (Mass.).

20. For a comparable instance, see 112 Cong. Rec. 9839, 89th Cong. 2d Sess., May 4, 1966.

§ 17.6 An amendment having been defeated on a division vote, it was not too late to demand tellers even though a motion that the Committee rise had been made without recognition from the Chair.

On Apr. 16, 1943,[1] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 2481) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944.

In the course of the bill's consideration, Mr. John Taber, of New York, offered an amendment designed to reduce certain portions of the appropriations. Following discussion of the proposal, the Chairman[2] announced the expiration of the time allotted for debate, and the following exchange took place:

The Chairman: The question recurs on the amendment offered by the gentleman from New York [Mr. Taber]. The question was taken; and on a division (demanded by Mr. Taber) there were ayes 83 and noes 111.

The Chairman: The amendment is rejected.

Mr. [Malcolm C.] Tarver [of Georgia]: Mr. Chairman, I move that the Committee do now rise.

1. 89 Cong. Rec. 3473, 3495, 3502, 78th Cong. 1st Sess.

2. William M. Whittington (Miss.).

MR. TABER: Mr. Chairman, I ask for tellers.

MR. TARVER: Mr. Chairman, I raise the point of order that it is too late to demand tellers.

MR. TABER: I was on my feet, Mr. Chairman.

MR. TARVER: The Chair had announced the result of the vote, and a motion had been made that the Committee rise.

MR. TABER: The gentleman from Georgia had not been recognized by the Chair.

MR. TARVER: The Chair had announced the vote.

THE CHAIRMAN: The gentleman from New York demands tellers.

The gentleman from Georgia makes the point of order that the request comes too late. The Chair would say in deference to the gentleman from New York and the gentleman from Georgia that there had not been formal recognition of the gentleman from Georgia.

Accordingly, tellers were ordered, and the Chair appointed Mr. Tarver and Mr. Taber to act as tellers.

§ 17.7 Where a Member demanded tellers on an amendment in Committee of the Whole and then made a point of order that a quorum was not present, the demand for tellers was held in abeyance pending the establishment of a quorum; and when the Committee of the Whole resumed its sitting upon the establishment of a quorum, the pending question was the ordering of tellers which were demanded immediately prior to the point of no quorum.

On May 20, 1970,[3] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 17604) to authorize certain construction at military installations, and for other purposes.

In the course of the bill's consideration, Mr. Otis G. Pike, of New York, offered an amendment to strike out the $322 million allocated for the Safeguard ABM system. Mr. Pike's proposal was discussed briefly after which the Chair[4] put the question, it was taken; and on a division demanded by Mr. Pike, there were—ayes 11, noes 42.

Immediately thereafter, Mr. Lucien N. Nedzi, of Michigan, demanded tellers, and pending that, made the point of order that a quorum was not present. The Chair proceeded to count and finding only 56 Members present, he directed the Clerk to call the roll. Three hundred fifty-nine Members having responded to their names, the Committee rose; the Speaker Pro Tempore[5] re-

3. 116 CONG. REC. 16244, 16256, 16258, 91st Cong. 2d Sess.
4. Thomas J. Steed (Okla.).
5. Carl Albert (Okla.).

sumed the Chair, and the Chairman of the Committee reported the preceding events in addition to spreading the names of the absentees on the Journal.

The Committee having resumed its sitting, the Chairman stated:

> When the point of order of no quorum was made there was pending a demand for tellers on the amendment offered by the gentleman from New York (Mr. Pike).

A sufficient number of Members supported the demand, and tellers were ordered.[6]

§ 17.8 A demand for a teller vote in the Committee of the Whole being displaced by a motion to rise before the demand for tellers was seconded, the question of ordering tellers was regarded as pending and was first disposed of when the Committee resumed its sitting if the motion to rise was agreed to.

On Mar. 9, 1935,[7] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 6021) to provide additional home mortgage relief, to amend the Federal Home Loan Bank Act, the Home Owners' Loan Act of 1933, and the National Housing Act. In the course of the bill's consideration, Mr. Jesse P. Wolcott, of Michigan, offered an amendment to increase the amount of insurance provided by the government on improved property. A brief discussion ensued.

Shortly thereafter, the Chairman[8] put the question and the following proceedings occurred:

> THE CHAIRMAN: The question is on the amendment offered by the gentleman from Michigan [Mr. Wolcott], which the Clerk will again report.
>
> The Clerk read the Wolcott amendment.
>
> The question was taken; and the Chair being in doubt, the Committee divided, and there were—ayes 118, noes 89.
>
> MR. [FRANKLIN W.] HANCOCK [Jr.] of North Carolina: Mr. Chairman, I demand tellers.
>
> MR. [JOHN J.] O'CONNOR [of New York]: Mr. Chairman, I move that the Committee do now rise.
>
> MR. [THOMAS L.] BLANTON [of Texas]: Mr. Chairman, if the Committee determines to rise, the request for tellers will be considered as pending?
>
> THE CHAIRMAN: The gentleman is correct.
>
> The question is on the motion of the gentleman from New York that the Committee do now rise.

6. For a similar instance, see 116 CONG. REC. 8563, 91st Cong. 2d Sess., Mar. 23, 1970.

7. 79 CONG. REC. 3289, 3312, 3315, 3316, 74th Cong. 1st Sess.

8. Emanuel Celler (N.Y.).

Point of No Quorum as Affecting Demand

§ 17.9 The right to demand tellers was not prejudiced by the fact that a point of no quorum and a quorum call intervened following a division vote on the question on which tellers were requested.

On Sept. 25, 1969,[9] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 12884) to amend title 13, United States Code, to assure confidentiality of information furnished in response to inquiries of the Bureau of the Census.

In the course of the bill's consideration, Mr. Jackson E. Betts, of Ohio, offered an amendment limiting the categories of information to be required under penalty of law. When the Chair[10] put the question, Mr. Betts demanded a division, and there were—ayes 32, noes 22. Mr. Thaddeus J. Dulski, of New York, then raised a point of no quorum. The Chair's count revealing only 75 Members present, the Clerk was directed to call the roll; the Committee rose, and the Speaker[11] resumed the chair. A quorum having responded to the call, the Chairman so informed the Speaker and spread the names of absentees on the Journal.

The Committee then resumed its sitting, and the following discussion ensued:

> MR. CHARLES H. WILSON [of California]: Mr. Chairman——
>
> THE CHAIRMAN: The Committee will be in order.
>
> MR. CHARLES H. WILSON: Mr. Chairman——
>
> THE CHAIRMAN: For what purpose does the gentleman from California rise?
>
> MR. CHARLES H. WILSON: Mr. Chairman, on the Betts amendment I demand tellers.
>
> MR. [G. V.] MONTGOMERY [of Mississippi]: Mr. Chairman, I make a point of order that the demand for tellers is out of order. The time is past for that. The Chair asked for a division vote and the vote was 32 to 22, and the amendment was agreed to. The Chairman announced that the amendment was agreed to. Then the chairman of the full Committee on Post Office and Civil Service made the point of order that a quorum was not present and there was a call of the House.
>
> My point of order is that when the chairman of the Committee on Post Office and Civil Service made the point of order that a quorum was not present, that that cut off the teller vote.
>
> Therefore, Mr. Chairman, I insist upon my point of order.
>
> THE CHAIRMAN: Does the gentleman from California desire to be heard on the point of order?

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9. 115 CONG. REC. 27018, 27042, 91st Cong. 1st Sess.

10. George W. Andrews (Ala.).

11. John W. McCormack (Mass.).

MR. CHARLES H. WILSON: Mr. Chairman, I just ask for tellers and I assume I am following the correct procedure in asking for tellers. There has been no intervening business, and it is my understanding that——

MR. MONTGOMERY: There was intervening business. There was a 20-minute delay.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, may I be heard on this point of order?

MR. GERALD R. FORD [of Michigan]: Mr. Chairman——

THE CHAIRMAN: Does the gentleman from Michigan desire to be heard on the point of order?

MR. GERALD R. FORD: May I be heard on the point of order?

THE CHAIRMAN: The gentleman from Michigan is recognized on the point of order.

MR. GERALD R. FORD: There was no intervening business between the division vote and the point of order being made that a quorum was not present. We went through the quorum call immediately, and subsequently the gentleman from California asked for tellers.

THE CHAIRMAN: The Chair will state that is the way the Chair recalls the procedure.

MR. HALL: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair will recognize the gentleman from Missouri to be heard on the point of order.

MR. HALL: Mr. Chairman, I submit that the point of order should not be sustained inasmuch as the record will indicate that the Chair had announced the division vote, but it had not said that the amendment was agreed to. The Chair had not made the final decision. The right of any Member of the House to ask for a teller vote, to ask for a reconsideration, or to ask for any other privileged motion had not inured; therefore the request, because the quorum call could not be interrupted, to ask for tellers is quite in order.

MR. GERALD R. FORD: Mr. Chairman, would the Chair again recognize me for one other observation?

THE CHAIRMAN: The Chair recognizes the gentleman from Michigan on the point of order.

MR. GERALD R. FORD: Mr. Chairman, I was on my feet awaiting the opportunity to ask for tellers at the time the gentleman from New York made the point of order that a quorum was not present.

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

The Chair will state that the gentleman from Missouri is correct in his recollection. The Chair had not said that the amendment was agreed to, therefore no intervening business had taken place when the point of order of no quorum was made.

The Chair will read from Cannon's Precedents of the House of Representatives, volume 8, page 646, section 3104:

> The right to demand tellers is not prejudiced by the fact that a point of no quorum has been made against a division of the question on which tellers are requested.

That precedent was established on December 13, 1817.

The Chair therefore overrules the point of order.

Parliamentarian's Note: It should also be noted that where a

division vote has been followed by a point of no quorum which, in turn, is followed by agreement to a privileged motion that the Committee rise, neither of the foregoing constitutes "intervening business" which would preclude a demand for tellers on the pending question immediately following the resumption of business in the Committee.

§ 17.10 Where a point of no quorum was made and withdrawn immediately after a division vote, it was not then too late to demand a teller vote on the pending proposition.

On Mar. 8, 1946,[12] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 5605) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1947.

In the course of the bill's consideration, Mr. John W. Heselton, of Massachusetts, offered an amendment which was debated, and subsequently put before the Committee for a vote. The question was taken; and on a division demanded by Mr. Heselton, there were—ayes 42, noes 28.

Mr. Reid F. Murray, of Wisconsin, then rose to make the point of order that a quorum was not present. As the Chairman[13] announced his intent to count, Mr. Murray rose again to withdraw his point of no quorum.

Mr. George H. Mahon, of Texas, then made the following parliamentary inquiry:

> MR. MAHON: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. MAHON: Mr. Chairman, is it too late to ask for tellers on this vote?
>
> THE CHAIRMAN: No; it is not too late to ask for tellers.
>
> MR. MAHON: Mr. Chairman, I ask for tellers.

§ 17.11 The demand for tellers on an amendment did not come too late where the absence of a quorum had prevented the Chair from announcing the adoption of the amendment by division vote.

On Sept. 24, 1970,[14] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 18583) to amend the Public Health Service Act and other laws in order to deal more comprehensively with the problems attendant upon drug abuse prevention and control.

In the course of the bill's consideration, Mr. Richard H. Poff, of

12. 92 CONG. REC. 2061, 2081, 2084, 79th Cong. 2d Sess.

13. William M. Whittington (Miss.).

14. 116 CONG. REC. 33603, 33628, 33634, 91st Cong. 2d Sess.

Virginia, offered an amendment. An amendment to the Poff amendment having been rejected, the Chairman[15] put the question on the Poff amendment.

The question was taken; and on a division demanded by Mr. Robert C. Eckhardt, of Texas, there were—ayes 35, noes 22. Mr. James C. Corman, of California, raised the point of order that a quorum was not present. The Chair then counting only 71 Members, a quorum call was ordered.

A quorum having responded, the Committee rose; the Chairman reported the results to the Speaker,[16] and the Committee resumed its sitting. Thereafter, a subsequent demand for tellers was honored as follows:

> THE CHAIRMAN: When the point of order was made on the absence of a quorum, the Chair had just announced the vote by division on the amendment offered by the gentleman from Virginia (Mr. Poff)—35 ayes, 22 noes.
>
> MR. ECKHARDT: Mr. Chairman, I demand tellers.
>
> Tellers were ordered, and the Chairman appointed as tellers Mr. Poff and Mr. Eckhardt.
>
> The Committee again divided, and the tellers reported that there were—ayes 147, noes 61.
>
> So the amendment was agreed to.

15. William S. Moorhead (Pa.).
16. John W. McCormack (Mass.).

Refusal To Entertain During Count for Quorum

§ 17.12 The Chair did not entertain a demand for a teller vote in the Committee of the Whole pending his count of a quorum.

On Aug. 21, 1950,[17] the Committee of the Whole having under consideration a bill (H.R. 9313) to amend the Agricultural Act of 1949, Mr. James C. Davis, of Georgia, offered an amendment. A division vote was taken and, with 49 Members voting, Mr. Davis made the point of order that a quorum was not present, whereupon the Chair[18] indicated it would count.

The following proceedings then occurred:

> MR. DAVIS of Georgia: Mr. Chairman, I demand tellers.
>
> THE CHAIRMAN: The gentleman withdraws his point of order that a quorum is not present?
>
> MR. DAVIS of Georgia: I do not withdraw it. A parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. DAVIS of Georgia: Was my point of order that a quorum is not present in order?
>
> THE CHAIRMAN: The gentleman can make the point of order that a quorum is not present. . . .

17. 96 CONG. REC. 12960, 12961, 81st Cong. 2d Sess.
18. Carl T. Durham (N.C.).

MR. DAVIS of Georgia: Mr. Chairman, a further parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. DAVIS of Georgia: Can the motion for tellers be made after a quorum is present?

THE CHAIRMAN: Yes.

Chair's Count for Quorum; Not Verifiable by Tellers

§ 17.13 The Chair did not recognize a demand for tellers to verify its count of a quorum.

On May 20, 1949,[19] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 4591) to provide pay, allowances, and physical disability retirement for members of the armed forces.

During debate, Mr. Frank B. Keefe, of Wisconsin, rose to address the Chair[20] and initiated the following exchange:

MR. KEEFE: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count. [After counting.] One hundred and five Members are present, a quorum.

MR. [CARL] VINSON [of Georgia]: Mr. Chairman, I demand tellers.

THE CHAIRMAN: The gentleman from Georgia has demanded tellers. The gentleman from Wisconsin made the point of order that a quorum was not present. The Chair counted 105 Members present. At this time there is no question before the House on which tellers can be ordered.

The Chairman having so ruled, Mr. Vinson then made the point of order that a quorum was not present. The Chair counted and found 114 Members in attendance. Accordingly, the Committee proceeded to its business.

§ 18. Ordering Tellers

Generally

§ 18.1 Tellers were ordered by one-fifth of a quorum—20 Members in the Committee of the Whole (44 Members in the House).

On Jan. 23, 1968,[1] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 8696) to amend section 408 of the National Housing Act, as amended, to provide for the regulation of savings and loan holding companies and subsidiary companies.

In the course of the bill's consideration, Mr. Del M. Clawson, of California, offered an amendment and, following debate on the

19. 95 CONG. REC. 6546, 6556, 81st Cong. 1st Sess.

20. Oren Harris (Ark.).

1. 114 CONG. REC. 694, 705, 706, 90th Cong. 2d Sess.

measure, the Chairman[2] put the question; and on a division demanded by Mr. Wright Patman, of Texas, there were—ayes 18, noes 29.

Immediately thereafter, Mr. Del Clawson demanded tellers which were refused, thereby prompting the following exchange:

MR. GERALD R. FORD [of Michigan]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. GERALD R. FORD: The Chair stated that there were 18 Members who rose in favor of tellers, and that that was not a sufficient number. I would ask the Chairman, is that not a sufficient number of the Members on the floor?

THE CHAIRMAN: The Chair will state that 20 Members are required in order that tellers be ordered.

MR. GERALD R. FORD: Mr. Chairman, a further parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. GERALD R. FORD: Mr. Chairman, is that 20 Members, regardless of the number of Members on the floor?

THE CHAIRMAN: The Chair will state that the number required is one-fifth of a quorum in the Committee of the Whole. This would then represent 20 Members, since 100 Members constitute a quorum. Therefore, tellers are refused.

§ 18.2 Tellers have been ordered on the question of the passage of a bill where a demand for the yeas and nays had been refused.

On May 8, 1963,[3] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 5555) to amend title 37, United States Code, to increase the rates of basic pay for members of the uniformed services, and for other purposes.

Following extensive consideration of the bill, the Committee rose, the Speaker[4] resumed his chair; and the Chairman[5] of the Committee reported the bill back to the House with sundry amendments adopted by the Committee. A motion to recommit having been rejected, the Speaker put the question on the passage of the bill.

Immediately thereafter, the following proceedings occurred:

MR. [LESLIE C.] ARENDS [of Illinois]: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER: (after counting). The yeas and nays are refused.

MR. [CRAIG] HOSMER [of California]: Mr. Speaker, I demand tellers.

Tellers were ordered, and the Speaker appointed as tellers Mr. Rivers of South Carolina and Mr. Curtis.

The House divided, and the tellers reported that there were—ayes 293, noes 10.

2. Peter W. Rodino, Jr. (N.J.).

3. 109 CONG. REC. 8044, 8082, 88th Cong. 1st Sess.

4. John W. McCormack (Mass.).

5. Hale Boggs (La.).

So the bill was passed.

A motion to reconsider was laid on the table.

§ 18.3 Where a point of no quorum was made in the Committee of the Whole and the roll was called as a demand for tellers on an amendment remained pending, the question of ordering tellers was put immediately after the Committee resumed its sitting, and a division vote taken prior to the demand for tellers was not final.

On May 10, 1946,[6] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 6335) making appropriations for the Department of the Interior for the fiscal year ending June 30, 1947.

In the course of the bill's consideration, Mr. Henry C. Dworshak, of Idaho, offered an amendment to an amendment offered by Mr. J. W. Robinson, of Utah. The Chairman[7] subsequently put the question; it was taken; and, on a division demanded by Mr. John J. Rooney, of New York, there were—ayes 41, noes 29.

Immediately thereafter, Mr. Jed Johnson, of Oklahoma, demanded tellers whereupon Mr. Frank B. Keefe, of Wisconsin, made the point of order that a quorum was not present. The Chair then counting only 87 Members present, the Clerk was directed to call the roll.

A quorum having responded to the roll call, the Committee rose; the Chairman submitted the absentees' names to be spread upon the Journal; and, the Speaker[8] directed the Committee to resume its sitting.

At this point, the following exchange took place:

THE CHAIRMAN: The gentleman from Oklahoma [Mr. Johnson] demands tellers on the amendment offered by the gentleman from Idaho [Mr. Dworshak] to the amendment offered by the gentleman from Utah [Mr. Robinson].

MR. [WALTER K.] GRANGER [of Utah]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. GRANGER: As I understood the situation when the quorum was called, the Chair had already announced that the amendment offered by the gentleman from Idaho to the amendment had been agreed to; and the request comes too late.

THE CHAIRMAN: The Chair had announced that on a division the amendment to the amendment had been agreed to. Thereupon, the gentleman from Oklahoma [Mr. Johnson] demanded tellers. At that point a point of

6. 92 CONG. REC. 4827, 4833, 4834, 4837, 4840, 79th Cong. 2d Sess.

7. Jere Cooper (Tenn.).

8. Sam Rayburn (Tex.).

order was made that a quorum was not present.

The gentleman's demand for tellers is now pending.

The Chairman then proceeded to order tellers, and the amendment to the amendment was subsequently rejected.

In Committee of the Whole; Effect of Motion To Rise

§ 18.4 The Committee of the Whole having ordered tellers on a proposition, a motion to rise remained in order following their appointment providing the tellers had not taken their places and the count had not begun.

On Mar. 12, 1942,[9] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 6709) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1943.

In the course of the bill's consideration, Mr. Everett M. Dirksen, of Illinois, offered an amendment to lower one portion of the appropriation by $10 million. Immediately thereafter, Mr. Francis H. Case, of South Dakota, offered a substitute amendment to lower the same portion of the appropriation by $20 million. The following proceedings then occurred:

THE CHAIRMAN:[10] The question is on the substitute offered by the gentleman from South Dakota.

The question was taken; and the Chair being in doubt the Committee divided, and there were—ayes 84, noes 88.

MR. CASE of South Dakota: Mr. Chairman, I ask for tellers.

Tellers were ordered, and the Chair appointed as tellers Mr. Case of South Dakota and Mr. Tarver.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I move that the Committee do now rise.

MR. [JOSEPH W.] MARTIN [JR.] of Massachusetts: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. MARTIN of Massachusetts: The gentleman cannot interrupt a vote.

THE CHAIRMAN: The vote has not started.

MR. MARTIN of Massachusetts: We had already started to vote on the substitute and the Chair had announced the vote as 84 to 88.

THE CHAIRMAN: The tellers had not taken their places.

The point of order is overruled.

MR. MARTIN of Massachusetts: Mr. Chairman, we had started the vote when the first voice vote was taken.

THE CHAIRMAN: The point of order is overruled.

The gentleman from Georgia moves that the Committee do now rise.

The question is on the motion.[11]

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9. 88 CONG. REC. 2345, 2374, 77th Cong. 2d Sess.

10. Robert Ramspeck (Ga.).

11. For a similar ruling, see 88 CONG. REC. 5169, 77th Cong. 2d Sess., June 11, 1942.

§ 18.5 Where the Committee of the Whole had ordered tellers on an amendment and then risen, the order for tellers could be vacated and the vote taken de novo only by unanimous consent when the Committee again resumed consideration of the matter.

On July 2, 1947,[12] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 4002) making appropriations for civil functions administered by the War Department for the fiscal year ending June 30, 1948. Immediately after the Committee sat, Mr. George A. Dondero, of Michigan, asked the Chair[13] whether a particular item dealing with flood control had been discussed as yet.

The Chair replied in the negative, and then summarized the situation, as follows:

> When the Committee rose yesterday, the so-called Rankin amendment was pending. A voice vote had been taken. Tellers were demanded and ordered.
>
> Without objection, the Clerk will again read the so-called Rankin amendment.
>
> There was no objection.
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. RANKIN: Mr. Chairman, is it not in order to vacate or disregard the standing vote and take the standing or voice vote again?
>
> THE CHAIRMAN: Tellers have already been ordered.
>
> MR. RANKIN: I understand that, Mr. Chairman, but I believe that where a vote is not completed on one day it is taken again when the question again comes up for consideration.
>
> THE CHAIRMAN: The gentleman's inquiry is: Can the order for tellers be vacated, and the Committee proceed de novo on the amendment? That can be done by unanimous consent.

§ 18.6 Where the Committee of the Whole refused to rise on a teller vote and the question recurred on the adoption of an amendment which was then agreed to by division vote, the Chair held that after the seconding of a demand for tellers on the amendment (and the ordering of tellers with respect thereto), a motion that the Committee rise was still in order; and, a teller vote on that motion would take precedence over a teller vote on the amendment.

On Mar. 23, 1944,[14] the House resolved itself into the Committee

12. 93 CONG. REC. 8136, 8137, 80th Cong. 1st Sess.

13. Earl C. Michener (Mich.).

14. 90 CONG. REC. 2969, 2999, 3005, 78th Cong. 2d Sess.

of the Whole for the further consideration of a bill (H.R. 4443) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1945.

In the course of the bill's consideration, Mr. Forest A. Harness, of Indiana, offered an amendment prohibiting the use of the appropriated funds for the salaries or expenses of certain persons. Discussion ensued with respect to this proposal until the Chair[15] announced that the time allotted for debate had expired.

At this point, Mr. Malcolm C. Tarver, of Georgia, moved that the Committee rise. The question was taken; and on a division demanded by Mr. Tarver, there were-ayes 58, noes 96.

Mr. Tarver thereupon demanded tellers. Tellers having been ordered and appointed, the Committee again divided; and the tellers reported that there were-ayes 65, noes 88. So, the motion was rejected.

The question then recurred on Mr. Harness' proposed amendment. The question was taken; and on a division demanded by Mr. Tarver, there were-ayes 89, noes 69.

At this point, Mr. Tarver was recognized again, and the following exchange transpired:

MR. TARVER: MR. CHAIRMAN, I DEMAND TELLERS.

Tellers were ordered.

MR. TARVER: Mr. Chairman, I move that the Committee do now rise.

MR. TABER: Mr. Chairman, I make the point of order that the motion is not in order after the direction for the vote.

THE CHAIRMAN: Under the previous ruling of the Chair, the point of order is overruled.

The question is on the motion of the gentleman from Georgia that the Committee do now rise.

The question was taken; and on a division (demanded by Mr. Tarver) there were-ayes 70, noes 88.

MR. TARVER: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Tarver and Mr. Dirksen.

The Committee again divided; and the tellers reported there were-ayes 65, noes 90.

So the motion was rejected.

THE CHAIRMAN: The question is on the amendment proposed by the gentleman from Indiana [Mr. Harness]. Tellers have been ordered.

The Committee again divided; and the tellers reported there were-ayes 93, noes 65.

So the amendment was agreed to.

Parliamentarian's Note: A motion to rise may be repeated after intervening business. Here, the division vote on the amendment was intervening business.

15. William M. Whittington (Miss.).

§ 19. Appointment of Tellers

Chair's Discretion

§ 19.1 The appointment of tellers was within the discretion of the Chair, and he sometimes appointed the Member demanding tellers.

On Sept. 21, 1965,[16] the House resolved itself into the Committee of the Whole for the consideration of a bill (S. 2300) authorizing the construction, repair, and preservation of certain public works.

Following debate, Mr. John A. Blatnik, of Minnesota, rose to address the Chair:

> MR. BLATNIK: Mr. Chairman, I move that the Committee do now rise.
>
> THE CHAIRMAN:[17] The question is on the motion of the gentleman from Minnesota.
>
> MR. [WILLIAM C.] CRAMER [of Florida]: Mr. Chairman, I demand tellers.
>
> The requisite number of Members having supported the demand for tellers, they were ordered, and the Chair appointed Mr. Cramer and Mr. Blatnik as tellers.

Designation of Members of Opposing Views

§ 19.2 In appointing tellers on a vote the Chair usually named a Member on each side of the question.

On Sept. 21, 1965,[18] following lengthy consideration of a bill (S. 2300) authorizing certain construction and repair on rivers and harbors, a discussion ensued among certain Members of the Committee of the Whole as to whether they should rise:

> MR. [LESLIE C.] ARENDS [of Illinois]: I should like to ask the Chairman if we are going to continue tonight or not. I should think, in view of what has transpired in the last couple of weeks, we should go ahead and finish our business. We have been inconvenienced many times. Let us keep on doing it.
>
> MR. [JOHN A.] BLATNIK [of Minnesota]: We are prepared—I certainly am; and, in fact, all of the Committee Members are—to go ahead, but I believe in all fairness to Members who, by coincidence, have a serious conflict with obligations, we should not. Let me make the statement that I am prepared to move that the Committee rise now. I shall not at this moment. I believe we are over the hump. There are probably four amendments of any substance left.
>
> MR. [WILLIAM C.] CRAMER [of Florida]: I say to the gentleman, so far as I am concerned we are here. We are prepared to go ahead and finish the bill. There seems to be a great demand for these bills at this time. We have an opportunity to finish this bill today. So far as I am concerned, I have had a

16. 111 CONG. REC. 24593, 24635, 89th Cong. 1st Sess.

17. Dan Rostenkowski (Ill.).

18. 111 CONG. REC. 24635, 89th Cong. 1st Sess.

number of requests on this side that we finish the bill today. If the gentleman wishes, so far as we are concerned, we are ready to go ahead and finish it.

MR. BLATNIK: Mr. Chairman, I move that the Committee do now rise.

THE CHAIRMAN:[19] The question is on the motion of the gentleman from Minnesota.

MR. CRAMER: Mr. Chairman, I demand tellers.

A sufficient number of Members having supported the demand, tellers were ordered, and the Chair appointed Mr. Blatnik and Mr. Cramer as tellers in light of their differing views on the motion.

§ 19.3 A point of order having been raised that each of the appointed tellers was in favor of a particular proposition, the Chair designated a Member in opposition to the measure to serve as a teller.

On Aug. 9, 1950,[20] the Committee of the Whole having under its consideration the Defense Production Act of 1950 (H.R. 9176), the question arose on an amendment to an amendment—whereupon the following exchange took place:

THE CHAIRMAN:[1] The question is on the amendment to the amendment.

The question was taken; and on a division (demanded by Mr. Flood) there were—ayes 80, noes 121.

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Flood and Mr. Spence.

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. HALLECK: The gentleman from Kentucky [Mr. Spence] voted for the amendment.

THE CHAIRMAN: Is there any member of the committee who is opposed to the amendment? If so, will he kindly take his place as a teller?

In response to the Chair's request, Mr. Jesse P. Wolcott, of Michigan, who was opposed to the amendment "took his place as a teller" on the vote in question.[2]

§ 19.4 The Chair has declined to change his designation of tellers after the appointed tellers had taken their places and Members had passed between them to be counted.

On June 28, 1967,[3] the Committee of the Whole having under consideration a bill (H.R. 10340) authorizing

19. Dan Rostenkowski (Ill.).
20. 96 CONG. REC. 12124, 81st Cong. 2d Sess.
1. Howard W. Smith (Va.).
2. For an instance in which the Chair changed the appointment of a teller for reasons not pertaining to the Member's position on the issue, see § 22.5, infra.
3. 113 CONG. REC. 17739, 17748, 90th Cong. 1st Sess.

appropriations for the National Aeronautics and Space Administration, Mr. Richard L. Roudebush, of Indiana, offered an amendment to an amendment offered by Mr. James G. Fulton, of Pennsylvania. The Roudebush amendment, which called for a reduction in the amount of funds appropriated, was discussed at some length after which the Chair[4] put the question; it was taken; and the noes appeared to have it.

Immediately thereafter, Mr. George P. Miller, of California, demanded tellers. A sufficient number of Members having supported the demand, tellers were ordered and the Chair appointed Mr. Roudebush and Mr. Miller as tellers. The Members were then directed to pass through the tellers and commenced to do so.

There being some doubt as to whether Mr. Miller was opposed to the Roudebush amendment, an inquiry was directed to the Chair:

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The Committee is in the process of voting, and no parliamentary inquiry can be made at this time.

MR. [DONALD] RUMSFELD [of Illinois]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. RUMSFELD: Is it not correct that there should be a teller in favor of the amendment and a teller in opposition?

THE CHAIRMAN: The gentleman from Illinois has asked a question rather than making a point of order.

MR. FULTON of Pennsylvania: I am here. I am against the amendment.

MR. WAGGONNER: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. WAGGONNER: Is it not necessary, under the rules of the House, in the instance of a teller vote, that the Chair name one Member as a teller who supports the amendment?

THE CHAIRMAN: The Chair will state that the gentleman from Louisiana has not made a point of order, but rather has asked a question. The Chair designated as tellers the gentleman from Indiana [Mr. Roudebush], the author of the amendment, and the gentleman from California [Mr. Miller]. No point was raised until the vote had begun to be taken.

The vote will proceed.

Parliamentarian's Note: Although the Chair has sole discretion in the appointment of tellers, he generally attempts to appoint tellers who represent each side of the question, that is, those that favor the proposition and those that oppose it.

§ 20. Interruptions of Teller Votes

For Parliamentary Inquiry or Point of Order

§ 20.1 The Chair refused to entertain a parliamentary inquiry during a teller vote but

4. John J. Flynt, Jr. (Ga.).

has responded to a point of order concerning the conduct of the vote.

On June 28, 1967,[5] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 10340) to authorize appropriations to the National Aeronautics and Space Administration. When the Committee had arisen the day before, there remained pending an amendment offered by Mr. James G. Fulton, of Pennsylvania.

Mr. Richard L. Roudebush, of Indiana, offered an amendment to the Fulton amendment and, when the question was put, the Chair[6] announced that the noes appeared to have it. At this point, Mr. George P. Miller, of California, demanded tellers whereupon the following took place:

> Tellers were ordered, and the Chairman appointed as tellers Mr. Roudebush and Mr. Miller of California.
>
> THE CHAIRMAN: Those in favor of the amendment offered by the gentleman from Indiana [Mr. Roudebush] to the amendment offered by the gentleman from Pennsylvania [Mr. Fulton] will pass through the tellers.
>
> MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The Committee is in the process of voting, and no parliamentary inquiry can be made at this time.
>
> MR. [DONALD] RUMSFELD [of Illinois]: Mr. Chairman, a point of order.
>
> THE CHAIRMAN: The gentleman will state his point of order.
>
> MR. RUMSFELD: Is it not correct that there should be a teller in favor of the amendment and a teller in opposition?
>
> THE CHAIRMAN: The gentleman from Illinois has asked a question rather than making a point of order.
>
> MR. [JAMES G.] FULTON of Pennsylvania: I am here. I am against the amendment.
>
> MR. WAGGONNER: Mr. Chairman, a point of order.
>
> THE CHAIRMAN: The gentleman will state his point of order.
>
> MR. WAGGONNER: Is it not necessary, under the rules of the House, in the instance of a teller vote, that the Chair name one Member as a teller who supports the amendment?
>
> THE CHAIRMAN: The Chair will state that the gentleman from Louisiana has not made a point of order, but rather has asked a question. The Chair designated as tellers the gentleman from Indiana [Mr. Roudebush] the author of the amendment, and the gentleman from California [Mr. Miller]. No point was raised until the vote had begun to be taken.
>
> The vote will proceed.

§ 21. Voting by the Chair on Teller Votes

Passing Through Tellers

§ 21.1 The Chair could count himself on a teller vote with-

5. 113 CONG. REC. 17739, 17748, 90th Cong. 1st Sess.
6. John J. Flynt, Jr. (Ga.).

out passing through the tellers.

On Sept. 21, 1965,[7] the Committee of the Whole had under consideration an amendment to a bill (S. 2300) authorizing certain construction and repair work to be performed on various rivers and harbors. Discussion having concluded, the Chairman[8] put the question, it was taken; and the Chair announced that the noes appeared to have it. Immediately thereafter, Mr. William C. Cramer, of Florida, demanded tellers, and, tellers having been ordered, the following proceedings occurred:

> Tellers were ordered, and the Chairman appointed as tellers Mr. Clark and Mr. Blatnik.
>
> The Committee divided.
>
> THE CHAIRMAN: On this vote by tellers, the ayes are 100, noes 99.
>
> The Chair votes in the negative.
>
> So the amendment was rejected.[9]

Timing of Vote

§ 21.2 The Speaker has indicated that the Chair may vote "aye" or "no" at any time prior to the announcement of the vote.

On Apr. 6, 1971,[10] Mr. Thomas P. O'Neill, Jr., of Massachusetts, sought unanimous consent that the House adjourn to meet at 11 o'clock the next morning. The Speaker[11] then asked if there was any objection, and the following discussion ensued:

> MR. [JAMES G.] FULTON of Pennsylvania: Mr. Speaker, reserving the right to object, I would like to make a parliamentary inquiry.
>
> On the record vote, on a teller vote when is it in order to vote "present"?
>
> THE SPEAKER: Just immediately after the announcement of the vote and before any further business is conducted.
>
> MR. FULTON of Pennsylvania: After the tellers have made their announcement?
>
> THE SPEAKER: After the Chair announces the vote.
>
> MR. FULTON of Pennsylvania: And when is it proper for the Chairman to vote?
>
> THE SPEAKER: The Chairman can vote at any time prior to his announcement of the vote.
>
> MR. FULTON of Pennsylvania: Prior to his announcement of a teller vote?
>
> THE SPEAKER: Prior to the announcement of the teller vote.

§ 21.3 The Chair could cast his vote, to make or break a tie

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7. 111 CONG. REC. 24635, 89th Cong. 1st Sess.

8. Dan Rostenkowski (Ill.).

9. For similar instances, see 109 CONG. REC. 15589, 88th Cong. 1st Sess., Aug. 22, 1963, and 90 CONG. REC. 1499, 78th Cong. 2d Sess., Feb. 9, 1944.

10. 117 CONG. REC. 9784, 9785, 92d Cong. 1st Sess.

11. Carl Albert (Okla.).

on a vote by tellers, if the result of the vote had not been finally and conclusively announced and the Committee had not proceeded to other business.

On Aug. 24, 1967,[12] the Chairman[13] of the Committee of the Whole put the question on an amendment to a bill (H.R. 12048) to further amend the Foreign Assistance Act of 1961, and for other purposes. Tellers having been ordered, the Committee divided, and the tellers reported that there were—ayes 139, noes 138.

The Chair then voted as follows, prompting several inquiries from the Minority Leader:

> THE CHAIRMAN: On this vote by tellers, the ayes are 139, the noes 138. The amendment is agreed to.
>
> The Chair votes "no."
>
> So the amendment was rejected.
>
> MR. GERALD R. FORD [of Michigan]: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state his parliamentary inquiry.
>
> MR. GERALD R. FORD: Mr. Chairman, the Chair had announced the vote, and that the amendment had been agreed to.
>
> THE CHAIRMAN: The Chair will state that the Chair had not completed the announcement.
>
> MR. GERALD R. FORD: Mr. Chairman, the Chair had announced the vote, and the Chair had brought down the gavel.
>
> THE CHAIRMAN: The Chair will state that the Chair has the right to make the vote a tie, and the Chair exercised that right.
>
> MR. GERALD R. FORD: But the Chairman does not have that right after the vote has been announced, and after the gavel has fallen.
>
> THE CHAIRMAN: The Chair will state that the Committee had not proceeded to any other business, and the Chair exercised its right before the Committee proceeded to any other business. The Chair exercised its right to vote.

Parliamentarian's Note: The Chair customarily announced his own vote (if he voted) before announcing the result of a teller vote. See § 21.2, supra, for the preferred form of the Chair's vote and announcement.

Tie-creating Votes

§ 21.4 The Chairman of the Committee of the Whole could vote on a teller vote to make a tie and thus defeat an amendment.

On Sept. 21, 1965,[14] a teller vote having been ordered in the Committee of the Whole on an amendment to a bill (S. 2300) au-

12. 113 CONG. REC. 23926, 90th Cong. 1st Sess.

13. Melvin Price (Ill.).

14. 111 CONG. REC. 24635, 89th Cong. 1st Sess.

thorizing certain construction and repair work on rivers and harbors, the tellers reported that there were—ayes 100, noes 99. The Chairman[15] then voted "no," and the amendment was rejected.

Mr. William C. Cramer, of Florida, immediately rose to make the following inquiry:

> Mr. Chairman, I wish to make a parliamentary inquiry. . . .
>
> Is it proper for the Chair to make a tie or to break a tie, from a parliamentary standpoint, on a teller vote?
>
> THE CHAIRMAN: Under the rules, the Chair can vote to make or break a tie, the Chair informs the gentleman.[16]

§ 21.5 The Chairman of the Committee of the Whole could cast a negative teller vote to make a tie, thereby defeating a motion to rise and report a bill back to the House with the recommendation that the enacting clause be stricken out.

On Aug. 1, 1957,[17] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 6763) to amend the Act of Aug. 30, 1954, entitled "An Act to authorize and direct the construction of bridges over the Potomac River, and for other purposes."

Mr. John Taber, of New York, offered a preferential motion that the Committee rise and report the bill back to the House with the recommendation that the enacting clause be stricken out. After debate, the Chair[18] put the question on the motion and the following proceedings occurred:

> The question was taken; and the Chair being in doubt, the Committee divided, and there were—ayes 54, noes 49.
>
> MR. [JAMES C.] DAVIS of Georgia: Mr. Chairman, I ask for tellers.
>
> Tellers were ordered, and the Chairman appointed as tellers Mr. Taber and Mr. Davis of Georgia.
>
> The Committee again divided.
>
> THE CHAIRMAN: On this vote by tellers, the ayes are 63; noes, 62. The Chair votes "no."
>
> So the motion was rejected.

Nondecisive Votes

§ 21.6 The Chair could cast a teller vote even though his vote was not decisive.

On Nov. 15, 1967,[19] the House resolved itself into the Committee

15. Dan Rostenkowski (Ill.).
16. Teller votes by the Chair resulting in a tie are not uncommon. For similar instances in which an amendment was rejected because of the resultant tie, see 109 CONG. REC. 15590, 88th Cong. 1st Sess., Aug. 22, 1963; 103 CONG. REC. 13176, 85th Cong. 1st Sess., July 31, 1957; and 95 CONG. REC. 9238, 81st Cong. 1st Sess., July 11, 1949.
17. 103 CONG. REC. 13371, 13377, 13378, 85th Cong. 1st Sess.
18. Richard Bolling (Mo.).
19. 113 CONG. REC. 32636, 32689, 32690, 90th Cong. 1st Sess.

of the Whole for the further consideration of a bill (S. 2388) to provide an improved Economic Opportunity Act.

In the course of the bill's consideration, Mr. John M. Ashbrook, of Ohio, offered an amendment to define "administrative expenses," and to limit such expenditures. Mr. Ashbrook's amendment was discussed briefly whereupon the Chair[20] put the question on the amendment, it was taken; and on a division demanded by Mr. Ashbrook, there were—ayes 82, noes 87.

Immediately thereafter, Mr. Ashbrook demanded tellers and the following events transpired:

> Tellers were ordered, and the Chairman appointed as tellers Mr. Ashbrook and Mr. Perkins.
>
> The Committee again divided, and the tellers reported that there were—ayes 131, noes 131.
>
> THE CHAIRMAN: The Chair votes "no."
>
> So the amendment was rejected.

§ 22. Recapitulations and Recounts of Teller Votes

The Chair could order his count of Members seconding the demand for a teller vote to be retaken if there was confusion over the number seconding the request. A teller vote could be retaken at the Chair's discretion if there was a dispute over the number passing through the tellers.[1] His discretion[2] was absolute but was exercised only in those situations where the result was in doubt. The Speaker has declined to order a recapitulation of a vote taken by electronic device.[3]

Request for Recount of Seconding Members

§ 22.1 Following a count and announcement by the Chair of the number of Members seconding a demand for tellers, a unanimous-consent request that the count be taken again was denied by the Chair.

On Apr. 4, 1940,[4] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 9209) making appropriations for the military establishment for the fiscal year ending June 30, 1941. In the course of the bill's consider-

20. John J. Rooney (N.Y.).

1. See §§ 22.3, 22.4, infra.
2. See § 22.1, infra.
3. 121 CONG. REC. 25841, 94th Cong. 1st Sess., July 30, 1975; § 31.6, infra.
4. 86 CONG. REC. 4017, 4049, 4050, 76th Cong. 3d Sess.

ation, Mr. John M. Robison, of Kentucky, offered an amendment and, after some debate, the Chairman[5] put the question, as follows:

> THE CHAIRMAN: The question is on the adoption of the amendment offered by the gentleman from Kentucky [Mr. Robison].
>
> The question was taken; and on a division (demanded by Mr. May) there were—ayes 43, noes 29.
>
> MR. [ANDREW J.] MAY [of Kentucky]: Mr. Chairman, I demand tellers.
>
> THE CHAIRMAN: Those in favor of taking this vote by tellers will rise and stand until counted. [After counting.] Seven Members have risen, not a sufficient number, and tellers are refused.
>
> MR. [EMMET] O'NEAL [of Kentucky]: Mr. Chairman, may I respectfully request by unanimous consent that the count be taken again? There were more than seven standing.
>
> THE CHAIRMAN: The Chair counted those who rose after the Chair had announced that those in favor of tellers should stand, and the Chair distinctly observed only seven, and therefore, the Chair refuses again to submit the request.

Recapitulation of Teller Votes

§ 22.2 A vote by tellers was not subject to recapitulation.

On Aug. 24, 1967,[6] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 12048) to further amend the Foreign Assistance Act of 1961, as amended, and for other purposes.

In the course of the bill's consideration, Mr. E. Ross Adair, of Indiana, offered an amendment, and, when the question was put, tellers having been ordered, there were—ayes 139, noes 138. The Chair then voted "no," and announced that the amendment was rejected. This prompted a parliamentary inquiry from the Minority Leader, as follows:

> MR. GERALD R. FORD [of Michigan]: Mr. Chairman, a . . . parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state his parliamentary inquiry.
>
> MR. GERALD R. FORD: Mr. Chairman, it is within the Rules of the House that there should be a recapitulation of the vote?
>
> THE CHAIRMAN: The Chair will state not on a teller vote.

Chair's Authority To Direct Recount

§ 22.3 Where representations were made prior to the announcement of the result that the tellers' count was incorrect, the Chair stated that it could direct the vote be retaken without unanimous consent providing there was doubt on the part of the tellers.

5. Lindsay C. Warren (N.C.).
6. 113 CONG. REC. 23908, 90th Cong. 1st Sess.

On May 25, 1953,[7] the House resolved itself into the Committee of the Whole for the purpose of considering a bill (H.R. 5246) making appropriations for the Department of Labor, the Department of Health, Education, and Welfare, and related independent agencies for the fiscal year ending June 30, 1954. In the course of the bill's consideration, Mr. John E. Fogarty, of Rhode Island, offered an amendment, and, following debate, the Chairman[8] put the question on that amendment. Tellers were subsequently ordered, following a division vote, and the Chairman appointed Mr. Fred E. Busbey, of Illinois, and Mr. Fogarty as tellers. The Committee then proceeded to divide.

At this point the following exchange took place:

MR. BUSBEY: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. BUSBEY: Mr. Chairman, the gentlewoman from Illinois [Mrs. Church], when she was passing through, claimed that I had dropped 10, that instead of saying 49 I said 39.

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HALLECK: Mr. Chairman, is there any method by which the vote can be had again when it has once been taken by tellers?

MR. [SAM] RAYBURN [of Texas]: Mr. Chairman, I would object to that. It cannot be done except by unanimous consent.

THE CHAIRMAN: If there is a doubt on the part of the tellers about the count, it can be taken again, the Chair will rule.

MR. RAYBURN: This is the first time I ever heard of that.

MR. BUSBEY: Mr. Chairman, we will pick it up on the rollcall, so let it go.

Parliamentarian's Note: A teller vote was not subject to recapitulation.[9] Therefore, a "recount" of a teller vote was equivalent to a vote de novo since the recount was not limited to Members who voted the first time[10] and did not prohibit Members from changing their votes.

§ 22.4 Where tellers have failed to agree on their count, and a recount was requested, the Chair could exercise its discretion and order that the vote be taken de novo.

On Mar. 23, 1938,[11] the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 9415) to amend the

7. 99 CONG. REC. 5474, 5476, 5484, 83d Cong. 1st Sess.
8. Donald W. Nicholson (Mass.).
9. See § 22.2, supra.
10. See § 22.6, infra.
11. 83 CONG. REC. 3953, 3964, 3965, 3966, 75th Cong. 3d Sess.

Act entitled "An act to establish a Civilian Conservation Corps, and for other purposes." In the course of the bill's consideration, Mr. Gerald J. Boileau, of Wisconsin, offered an amendment. The Chairman[12] put the question on the amendment, it was taken; and on a division demanded by Mr. Boileau there were—ayes 40, noes 53. At that point, the following discussion ensued:

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chair appointed as tellers Mrs. Norton and Mr. Boileau.

The Committee again divided.

MR. BOILEAU (pending the report of the tellers): Mr. Chairman, I desire to count the gentleman from Ohio [Mr. Jenkins] and, Mr. Chairman, the gentleman from Kansas [Mr. Houston], whom the lady from New Jersey counted as going through on her side, was voting with me.

MRS. [MARY T.] NORTON [of New Jersey]: I withdrew the count of that vote.

THE CHAIRMAN: The tellers will first announce their count. How many were in the affirmative?

MR. BOILEAU: There were 53 originally and 2 others, including the gentleman from Kansas [Mr. Houston], whom the gentlewoman from New Jersey counted as going through on her side, the 2 others making a total of 55.

MRS. NORTON: May I say to the Chairman that the gentlewoman from New Jersey withdrew the count and the gentlewoman from New Jersey counted 57 correctly.

MR. BOILEAU: I do not desire to get into a controversy with the gentlewoman from New Jersey about the matter, and I ask for a recount of the vote.

THE CHAIRMAN: May the Chair inquire how many votes the gentleman from Wisconsin claims are at issue?

MR. BOILEAU: Two votes.

Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. BOILEAU: Is it possible when tellers are counting the vote and when there is an honest difference between the two persons acting as tellers to have a recount of the vote? If so, I would ask that without any further argument.

MR. FISH: Mr. Chairman, I want to submit a parliamentary inquiry.

THE CHAIRMAN: The gentleman's request is not in order. The gentleman from Wisconsin has submitted a parliamentary inquiry and the Chair will undertake to answer it.

The Chair is informed that the Chair has the discretion, where there is a discrepancy in the vote and a recount is requested, to rule that there should be one. In this instance there is some question as to whether or not two of the Members who passed through the tellers voted in the affirmative or in the negative. If the Chair understands the situation correctly, the 57 votes reported by the gentlewoman from New Jersey includes the two votes that are claimed in the affirmative.

MRS. NORTON: No, Mr. Chairman.

THE CHAIRMAN: Does the gentleman from Wisconsin admit there were 57

12. William B. Umstead (N.C.).

votes in the negative, exclusive of the 2 referred to?

MR. BOILEAU: Mr. Chairman, I claim that there was only one vote that the gentlewoman from New Jersey counted that I should properly count on this side. However, there were several persons counted here who did not go through the tellers, and I maintain while I was attempting to talk to the Chair the gentlewoman from New Jersey kept on counting Members who indicated they wanted to go through the tellers.

THE CHAIRMAN: Does the gentleman claim, then, that if one vote that was counted by the gentlewoman from New Jersey was transferred to the yeas, as the gentleman contends should be done, that that would meet his objection?

MR. BOILEAU: No; I do not, Mr. Chairman.

THE CHAIRMAN: In that event the Chair rules there should be a recount of the vote.

MR. [JOHN J.] O'CONNOR of New York: Mr. Chairman, would the Chair desire to hear me on the point?

THE CHAIRMAN: The Chair would be pleased to hear the gentleman from New York.

MR. O'CONNOR of New York: The gentlewoman from New Jersey claims 57 votes without counting the vote of the gentleman from Kansas [Mr. Houston], which is in dispute. The gentleman from Wisconsin claims 55 votes, but if there was a mistake of that 1 vote, it would only mean a tie, and the amendment of the gentleman from Wisconsin would not pass.

THE CHAIRMAN: May I ask the gentleman from Wisconsin if the gentleman from New York [Mr. O'Connor] has correctly stated his position?

MR. BOILEAU: Mr. Chairman, he has correctly stated it except in this respect: While I was attempting to address the Chair, and while there was confusion, Members were counted in the negative who did not actually go through the tellers. I have no doubt that the gentlewoman from New Jersey attempted correctly to get the views of the Committee and of Members. I believe, however, in view of the situation that developed, and in all fairness, a recount would be in order, and without making any charges of any kind I respectfully ask a recount of the teller vote.

THE CHAIRMAN: The Chair is of opinion that under the circumstances there should be a recount of the vote, and the Chair so directs.[13]

Where Tellers Changed

§ 22.5 Where tellers in the Committee of the Whole were unable to agree on a count, the Chair directed the vote to be taken over and made a change in the appointment of tellers.

On July 19, 1946,[14] the Committee of the Whole having met to consider a bill (S. 1717) for the development and control of atomic energy, a teller vote was ordered

13. See Parliamentarian's Note to § 22.3, supra.

14. 92 CONG. REC. 9466, 79th Cong. 2d Sess.

on a committee amendment, and the Chair[15] appointed Mr. Andrew J. May, of Kentucky, and Mr. Dewey Short, of Missouri, as tellers.

Thereafter, the following proceedings occurred:

> The Committee divided; and the tellers were unable to agree on the count.
>
> THE CHAIRMAN: . . . [T]he Chair will direct that the vote by tellers be taken over. . . .
>
> The Chair appointed as tellers Mr. Thomason and Mr. Short.
>
> The Committee again divided, and the tellers reported that there were-ayes 102, noes 72.
>
> So the amendment was agreed to.

Members Eligible To Vote on Recount

§ 22.6 Where a teller vote was taken a second time because of a discrepancy in the first count, all Members were entitled to pass through the tellers and be counted, and did not need to qualify as having voted the first time.

On Mar. 23, 1938,[16] the Committee of the Whole having under consideration a bill (H.R. 9415) to amend the Civilian Conservation Corps Act,[17] a difference of opinion arose between tellers with respect to the count of a teller vote on a proposed amendment to the bill.

The Chairman[18] ordered a recount of the vote, prompting the following question from Mr. Harry L. Englebright, of California:

> Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. ENGLEBRIGHT: Inasmuch as this is a recapitulation[19] is any one entitled to vote on the recapitulation who did not vote on the previous vote?
>
> THE CHAIRMAN: In the opinion of the Chair any Member on the floor when the vote is retaken has a right to pass through the tellers and be counted.

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14. 92 CONG. REC. 9466, 79th Cong. 2d Sess.

15. John J. Delaney (N.Y.).

16. 83 CONG. REC. 3965, 3966, 75th Cong. 3d Sess.

17. See § 22.4, supra, for greater detail.

18. William B. Umstead (N.C.).

19. It should be noted that a teller vote may be taken de novo when war-

C. YEAS AND NAYS AND OTHER VOTES OF RECORD

§ 23. The Yeas and Nays; In General

The only method of voting expressly incorporated in the Constitution is voting by the yeas and nays.[1] The yeas and nays are taken on the "Desire of one fifth of those [Members] Present," a computation which may result in more or fewer Members than the number required to constitute one-fifth of a quorum. One-fifth of a quorum is the necessary number to second a demand for a recorded vote in the House under Rule I clause 5(a).

If a Member desires a vote to be recorded by name, showing whether a Member responds yes or no to a vote, he can pursue several options: when a voice vote is taken, any Member not liking the result announced by the Speaker, can ask for a division. If those who stand and are counted for and against the proposition do not constitute a quorum of the House, the Member can make a point of order that a quorum is not present and object to the vote under Rule XV clause 4. If a quorum does appear on the vote, or if the Speaker counts and declares a quorum present, it has been possible, since 1971, to ask for a recorded vote.[2] If that request is not supported by one-fifth of a quorum of the House (or 44 Members), then it is still possible to ask for the yeas and nays which can be ordered by one-fifth of those present.[3]

1. U.S. Const. art. I, §§ 5, 7.

2. See § 30, infra.

3. See the proceedings of Oct. 14, 1978, for an occasion where voice and division votes were taken in sequence, then objected to under Rule XV clause 4; and when a quorum was found to be present, and a recorded vote refused by an insufficient second, the yeas and nays were finally ordered by one-fifth of those present. 124 CONG. REC. 38553, 95th Cong. 2d Sess.

An interesting example of the use of the yeas and nays occurred on Nov. 4, 1983, when, during special-order speeches at the end of the day, a Member made an unexpected motion to adjourn. On a division vote, demanded by the proponent of the motion to adjourn, there were only four Members present and the vote was 3–1 in the affirmative. The majority, in an effort to protect those Members whose special order had not yet been called and to retain the option of filing a privileged report from the Committee on Rules before adjournment, then objected to the vote on the ground that a quorum was not present. Since a quorum is not required on an affirmative motion to adjourn, that objection was not in order. A recorded vote was

The Constitution requires a vote on reconsideration of a Presidential veto to be taken by the yeas and nays.[4] Certain rules of the House also require that the yeas and nays be taken: in Rule XV clause 7 specifies that the yeas and nays shall be considered as ordered on passage of a bill making general appropriations, increasing federal income tax rates and on the final adoption of the budget or any conference report thereon.[5] Rule XXVIII clause 6, requires a roll call vote on any motion to close a conference meeting.[6] There are also some instances in law which attempt to mandate a yea and nay vote on an issue before the House (see, e.g., the provisions of the Legislative Reorganization Act of 1970, which requires a vote *not* to adjourn for the August recess to be taken by the yeas and nays).

The emergence of electronic voting[7] has substantially modified the actual voting process. While the Speaker may, in his discretion,[8] order that the vote be taken by the traditional approach[9] in which the Clerk calls the roll, and each Member votes on the question as he answers to his name,[10] the Chair usually employs the electronic voting system. In the latter situation, Members have "not less than fifteen minutes from the ordering of the roll call. . . ."[11] in which to have their vote or presence recorded which is accomplished by inserting a plastic card in one of many voting "stations" and depressing the appropriate (i.e., "Yea," "Nay," or "Present") pushbutton.

Regardless of which method is utilized, the Clerk is required[12] to:

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then requested, but obviously, 44 Members (one-fifth of a quorum) were not present. The only alternative to adjourning was then to demand the yeas and nays, which were ordered by one-fifth of those present. On that vote, taken by electronic device, a quorum responded and the motion to adjourn was defeated by a vote of 99 to 120, with one Member answering present. 129 CONG. REC. 30946, 30947, 98th Cong. 1st Sess.

4. U.S. Const. art. I, § 7, clause 2.

5. See H. Res. 6, adopting the rules of the House for the 104th Congress. 141 CONG. REC. p. ____, 104th Cong. 1st Sess., Jan. 4, 1995.

6. This rule was first adopted on Jan. 4, 1977 (H. Res. 5, 123 CONG. REC. 53–70, 95th Cong. 1st Sess.).

7. See § 31, infra.

8. Rule XV clause 5, *House Rules and Manual* § 774b (1995).

9. *Id.*

10. The roll is called twice, and Members appearing after their names are called may still vote providing the result of the vote has not been announced.

11. Rule XV clause 5, *House Rules and Manual* § 774b (1995).

12. *Id.*

. . . enter in the Journal and publish in the Congressional Record in alphabetical order in each category, a list of names of those Members recorded as voting in the affirmative, of those Members recorded as voting in the negative, and of those Members answering present, as the case may be, as if their names had been called. . . .

Constitutional Origins

§ 23.1 The Constitution specifies that one-fifth of the Members present may order a yea and nay vote.

On Jan. 4, 1965,[13] a resolution (H. Res. 1) directing the Speaker to administer the oath of office to the gentleman from Mississippi was under discussion. Following a few preliminary inquiries, Mrs. Edith S. Green, of Oregon, initiated the discussion below with the Chair:

MRS. GREEN of Oregon: Mr. Speaker, will the gentleman yield for a parliamentary inquiry?

MR. [CARL] ALBERT [of Oklahoma]: I yield for a parliamentary inquiry.

MRS. GREEN of Oregon: Since the rules of the House have not been adopted, am I correct in understanding that it would require 20 percent of the Members here to stand for a yea-and-nay vote?

THE SPEAKER:[14] The Chair will state that under the Constitution, it would require one-fifth of the Members present to rise to order a yea-and-nay vote.[15]

Parliamentarian's Note: The yeas and nays may be demanded (1) while the Speaker is putting the question to a voice vote or (2) is announcing the result of a division, (3) as a vote by tellers is being demanded, and (4) even after the announcement of the vote if the demand is diligently made and the House has not passed to other business.

§ 23.2 The Constitution requires in all cases that a vote to pass a bill over the President's veto must be had by the yeas and nays.

On Oct. 20, 1951,[16] the Speaker[17] laid before the House the

13. 111 CONG. REC. 19, 89th Cong. 1st Sess.

14. John W. McCormack (Mass.).

15. This prerogative emanates from art. I, § 5, clause 3 of the Constitution which states, in its entirety: "Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal."

See also § 26.4, infra, and especially § 26.10, infra, where the yeas and nays were refused after 20 percent of those voting had seconded the demand, but the Chair noted that, counting himself, 20 percent of those present had not supported the demand.

16. 97 CONG. REC. 13736, 13737, 13745, 13746, 82d Cong. 1st Sess.

17. Sam Rayburn (Tex.).

following message from the Senate:

> The Senate having proceeded to reconsider the bill (S. 1864) entitled "An act to authorize payments by the Administrator of Veterans' Affairs on the purchase of automobiles or other conveyances by certain disabled veterans, and for other purposes." returned by the President of the United States with his objections, to the Senate, in which it originated, it was
>
> > *Resolved,* That the said bill do pass, two-thirds of the Senators present having voted in the affirmative.

The Clerk then read the President's veto message after which debate ensued until Mr. John E. Rankin, of Mississippi, moved the previous question. The previous question then being ordered, the Chair proceeded, stating:

> The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?
>
> Under the Constitution, this vote must be determined by the yeas and nays.[18]

§ 24. Demands

Precedence of Yeas and Nays Over Demand for Tellers

§ 24.1 A demand for the yeas and nays in the House under article I, section 5 of the Constitution takes precedence over a demand for tellers.

On Dec. 10, 1963,[19] during consideration in the House of the conference report (and amendments remaining in disagreement) on the bill H.R. 8747, making appropriations for various independent ex-

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18. U.S. Const. art. I, § 7, clause 2:

> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approves he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return in which Case it shall not be a Law."

19. 109 CONG. REC. 23949, 23950, 23952, 88th Cong. 1st Sess.

ecutive offices, a motion was offered that the House insist on its disagreement to a Senate amendment. Mr. Harold C. Ostertag, of New York, then offered a preferential motion that the House recede from its disagreement to the Senate amendment and concur therein. The following proceedings then occurred:

> THE SPEAKER:[20] The question is on the preferential motion offered by the gentleman from New York [Mr. Ostertag].
>
> The question was taken; and on a division (demanded by Mr. Ostertag) there were—ayes 102, noes 102.
>
> MR. [WILLIAM C.] CRAMER [of Florida]: Mr. Speaker, I ask for tellers.
>
> MR. [ALBERT] THOMAS [of Texas]: Mr. Speaker, I ask for the yeas and nays.
>
> MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state the parliamentary inquiry.
>
> MR. HALLECK: Mr. Speaker, we were standing for a teller vote. Can we not insist on the teller vote?
>
> THE SPEAKER: The demand for the yeas and nays is a constitutional right and, therefore, would supersede the request for tellers.
>
> The gentleman from Texas has demanded the yeas and nays.
>
> The yeas and nays were ordered.

Parliamentarian's Note: Where both a division and the yeas and nays are requested on a pending question, the Chair first entertains the demand for the yeas and nays, which has constitutional precedence over other forms of voting. See § 14.1, supra.

When in Order; Intervening Events

§ 24.2 A demand for the yeas and nays is in order despite the Chair's recognition of a Member offering a unanimous-consent request on a different question, providing that that Member seeking the yeas and nays has exercised due diligence in his efforts.

On July 20, 1939,[1] the House agreed to a resolution (H. Res. 258) calling for a congressional investigation of the National Labor Relations Board. Immediately thereafter, the following occurred:

> MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I move to reconsider the vote by which the resolution was agreed to and lay that motion on the table.
>
> THE SPEAKER PRO TEMPORE:[2] Without objection, a motion to reconsider will be laid on the table.
>
> MR. SMITH of Virginia: Mr. Speaker, I ask unanimous consent—

20. John W. McCormack (Mass.).

1. 84 CONG. REC. 9593, 76th Cong. 1st Sess.

2. James P. Richards (S.C.).

MR. [CLAUDE V.] PARSONS [of Illinois]: Mr. Speaker, I object, and ask for the yeas and nays on the motion to reconsider.

MR. SMITH of Virginia: Mr. Speaker, I make the point of order that the motion comes too late, as I had already proceeded with a unanimous-consent request.

MR. PARSONS: I was on my feet objecting, Mr. Speaker.

MR. SMITH of Virginia: I had already proceeded with a unanimous-consent request, and may I state that request, Mr. Speaker?

MR. PARSONS: Mr. Speaker, I was on my feet trying to get the attention of the Chair.

THE SPEAKER PRO TEMPORE: Does the gentleman from Illinois insist on his request for the yeas and nays?

MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Mr. Speaker, the motion has already been carried and the gentleman from Virginia had been recognized to make another request. I demand the regular order, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair will state to the distinguished minority leader that the gentleman from Illinois was on his feet at the time.

The gentleman from Illinois [Mr. Parsons] demands the yeas and nays.

MR. MARTIN of Massachusetts: Mr. Speaker, I demand we find out what the record shows.

MR. PARSONS: The gentleman saw me running down the aisle; and I was trying to get the attention of the Chair to object, and I did object.

THE SPEAKER PRO TEMPORE: The gentleman from Illinois was on his feet at the time.

The gentleman from Illinois demands the yeas and nays on the motion to lay on the table a motion to reconsider.

§ 24.3 A Member's demand for the yeas and nays is in order notwithstanding the intervention of an objection to a voice vote on the grounds that a quorum was not present and the Chair's count of the House to ascertain the presence of a quorum where the Member exercises due diligence with respect thereto.

On Nov. 2, 1967,[3] the Speaker Pro Tempore[4] put the question on the passage of a bill (S. 780) to amend the Clean Air Act. The question was taken; and the Chair announced that the ayes appeared to have it. Mr. John M. Ashbrook, of Ohio, then objected to the vote on the ground that a quorum was not present. The Chair counted in response to the Ashbrook objection and subsequently announced that a quorum was present.

Immediately thereafter, the following occurred:

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

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3. 113 CONG. REC. 30999, 90th Cong. 1st Sess.

4. Charles M. Price (Ill.).

MR. [WAYNE L.] HAYS [of Ohio]: A point of order, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HAYS: Mr. Speaker, I would like to point out that the Chair had announced the vote, and then the gentleman from Ohio objected to the vote on the ground that a quorum was not present and made the point of order that a quorum was not present. The Chair counted a quorum. I would have thought the demand of the gentleman from Michigan came too late.

MR. GERALD R. FORD: Mr. Speaker, I was on my feet when the gentleman objected.

THE SPEAKER PRO TEMPORE: The gentleman from Michigan was on his feet as the Chair was counting, and the demand for the yeas and nays was in order, and the yeas and nays were ordered.

Effect of Ordering of Alternative Voting Procedures

§ 24.4 The constitutional right of a Member to demand the yeas and nays in the House is not foreclosed by the ordering of tellers on the question, where the tellers have not taken their places and begun the count.

On Dec. 9, 1970,[5] the Speaker having announced that the ayes appeared to have it on an amendment to a joint resolution (H.J. Res. 1413) intended to forestall a national railroad strike, Mr. William L. Springer, of Illinois, demanded tellers on the question. The Member's demand having been supported, tellers were ordered; and the Speaker appointed as tellers Mr. Harley O. Staggers, of West Virginia, and Mr. Springer.

The following proceedings then occurred:

MR. STAGGERS: Mr. Speaker, am I permitted to ask for a rollcall vote on this amendment? Can I demand a rollcall vote?

THE SPEAKER:[6] A rollcall vote demand is in order at the present time.

MR. STAGGERS: Mr. Speaker, I demand the yeas and nays.

THE SPEAKER: The gentleman from West Virginia demands a vote by a call of the yeas and nays which would be in order.

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GERALD R. FORD: Is it in order after a vote by tellers has been ordered to demand a rollcall vote after the Speaker has announced that a teller vote had been ordered?

THE SPEAKER: The Chair will state that the demand for a rollcall vote before the tellers have taken their place and the beginning of the vote by tellers would be in order.

The gentleman from West Virginia demands the yeas and nays.

5. 116 CONG. REC. 40704, 91st Cong. 2d Sess.

6. John W. McCormack (Mass.).

The yeas and nays were ordered.

With Respect to Particular Motions

§ 24.5 Following a negative division vote on a motion that the House adjourn to a day certain, the simple motion to adjourn was held to take precedence over a demand for the yeas and nays on the former motion.

On Feb. 15, 1950,[7] the House met at 12 o'clock noon, and shortly after a prayer offered by the Chaplain, the Journal of the previous day's proceedings was read.

Prior to the completion of that reading, however, Mr. John E. Rankin, of Mississippi, rose to a point of order—contending that the Journal had incorrectly recorded the events of the previous day. Mr. Rankin further contended that the Chair had ruled improperly in granting preference to a simple motion to adjourn over his request for the yeas and nays on a motion to adjourn to a day certain. The following discussion then occurred:

> MR. RANKIN: . . . Now, Mr. Speaker, I call the Speaker's attention to the fact that on yesterday I asked for a vote on my motion that the House adjourn until Thursday. While we were taking that vote the gentleman from Massachusetts [Mr. McCormack] moved that the House adjourn. The vote on my motion was interrupted; the motion to adjourn made by the gentleman from Massachusetts was given precedence and was voted on and agreed to.
>
> I protest that that ruling was in flagrant violation of section 5360 of Hinds' Precedents, which states:
>
> > While a motion to adjourn takes precedence over other motions, yet it may not be put while the House is voting on another motion or while a Member has the floor in debate.
>
> We had offered a motion to adjourn until a day certain. We were voting on it at that time. However, in violation of the rules of the House, the gentleman from Massachusetts was permitted to offer a motion that the House adjourn.
>
> In order to keep the record straight I call that to the attention of the House, and I wish also to call attention to the fact that Jefferson's Manual has the following provision in section XXXIII relative to adjournment:
>
> > A motion to adjourn simply takes place of all others; for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion cannot be received after another question is actually put and while the House is engaged in voting.
>
> I call that to the attention of the House in order to keep the record straight. My distinguished colleague from Mississippi [Mr. Williams], who was going along with me, also endeavored to secure a roll call on the motion to adjourn until Thursday. We were absolutely within the rules of the

7. 96 CONG. REC. 1805, 1806, 81st Cong. 2d Sess.

House and the motion to adjourn by the gentleman from Massachusetts [Mr. McCormack] was not in order.

THE SPEAKER:[8] The Chair does not agree with the gentleman. On the motion made by the gentleman, upon which there was a vote, there was a vote by division, and the motion was lost.

MR. RANKIN: Mr. Speaker, I asked for a roll-call vote on that motion.

THE SPEAKER: Then the gentleman asked for the yeas and nays, but before that question was put the gentleman from Massachusetts [Mr. McCormack] moved that the House adjourn, which was a preferential motion. The Chair put the question and the House did adjourn.

MR. RANKIN: And the gentleman from Mississippi [Mr. Williams] and I were asking for the yeas and nays and the Chair refused to put the question.

THE SPEAKER: The Chair has just tried to say to the gentleman that anyone can ask for the yeas and nays. The yeas and nays were not ordered. The gentleman from Massachusetts was within his rights and made a preferential motion to adjourn, and the House did adjourn.

When Untimely

§ 24.6 A demand for the yeas and nays comes too late after the Speaker has put the question on a motion, announced the result, and the House has proceeded to other business.

On Aug. 25, 1960,[9] the House had under consideration certain amendments remaining in disagreement between the two bodies with respect to a bill (H.R. 11390) making appropriations for the Department of Health, Education, and Welfare and the Department of Labor for the fiscal year 1961.

In the course of considering the amendments remaining in disagreement, Mr. John E. Fogarty, of Rhode Island, moved that the House recede from its disagreement to the amendment of the Senate numbered 16 and concur therein. The proceedings were as follows:

MR. FOGARTY: . . . And I am sure the taxpayers are willing to pay for this kind of a program, because in the end it is going to save them money.

Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER:[10] The question is on the motion offered by the gentleman from Rhode Island.

The motion was agreed to.

THE SPEAKER: The Clerk will report the next amendment in disagreement.

MR. [JOHN] TABER [of New York]: Mr. Speaker, on that motion I call for the yeas and nays.

THE SPEAKER: Well, it appears to the Chair that the gentleman's request comes rather late. The Chair has al-

8. Sam Rayburn (Tex.).

9. 106 CONG. REC. 17666–73, 86th Cong. 2d Sess.

10. Sam Rayburn (Tex.).

ready declared the motion agreed to and ordered the Clerk to report the next amendment in disagreement.

§ 24.7 A demand for the yeas and nays on a motion to recommit comes too late after the Speaker has put the question on the motion, announced the result, and put the question on passage of the bill.

On Apr. 28, 1966,[11] the House had under consideration a bill (H.R. 13881) to authorize the Secretary of Agriculture to regulate the transportation, sale, and handling of dogs, cats, and other animals intended to be used for purposes of research or experimentation, and for other purposes.

After the engrossment and third reading of the bill,[12] the following proceedings occurred:

MRS. [FRANCES P.] BOLTON [of Ohio]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:[13] Is the gentlewoman opposed to the bill?

MRS. BOLTON: I am, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mrs. Bolton moves to recommit the bill 13881 to the Committee on Agriculture.

The previous question was ordered.

THE SPEAKER: The question is on the motion to recommit.

The question was taken; and the Speaker announced that the noes had it, and that the motion was not agreed to.

THE SPEAKER: The question is on passage of the bill.

For what purpose does the gentleman from New Jersey rise?

MR. [HENRY] HELSTOSKI [of New Jersey]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. HELSTOSKI: I would like to have the yeas and nays on the motion to recommit.

THE SPEAKER: The Chair will state that that stage has already been passed.

The question is now on the passage of the bill.

Withdrawal of Demand

§ 24.8 When the demand for the yeas and nays has been supported by one-fifth of the Members present, it is too late for the Member making the demand to withdraw it.

On May 26, 1960,[14] the House having under consideration a bill

11. 112 CONG. REC. 9230, 89th Cong. 2d Sess.

12. When the House votes affirmatively on the "engrossment and third reading" of a bill, it is voting on the measure's final language. An "engrossed bill," itself, is the final copy of the measure as passed by the House; it includes all amendments which emanated from the floor, and is certified to by the Clerk of the House.

13. John W. McCormack (Mass.).

14. 106 CONG. REC. 11304, 86th Cong. 2d Sess.

(H.R. 10128) to authorize federal financial assistance to the states for school construction, the Speaker put the question on a committee amendment as amended by the Committee of the Whole. Mr. Stewart L. Udall, of Arizona, then demanded the yeas and nays. A sufficient number of Members supporting this demand, the yeas and nays were ordered.

Immediately thereafter, a series of parliamentary inquiries were addressed to the Chair, there being some confusion as to the pending amendment. Mr. John W. McCormack, of Massachusetts, sought to clarify the matter through the following exchange:

> MR. MCCORMACK: If the committee amendment as amended is adopted and a motion to recommit should be defeated then the bill is identically the same as the committee amendment as amended.
>
> THE SPEAKER:[15] That is correct.

Mr. Udall then rose and initiated the following discussion with the Chair:

> MR. UDALL: Since the vote on final passage will be the same as this vote I ask consent to withdraw my request.
>
> THE SPEAKER: The Chair has already announced that a sufficient number of Members had arisen to order a rollcall.

Another parliamentary inquiry followed, and the question was ultimately taken by the yeas and nays.

§ 25.—When Not in Order

Following Initial Refusal

§ 25.1 A demand for the yeas and nays having been refused, a second demand following the denial of tellers is out of order.

On Mar. 1, 1939,[16] the House voted to adopt the conference report on a bill (H.R. 2868) making deficiency appropriations for the fiscal year ending June 30, 1939. Immediately thereafter, the Speaker directed the Clerk to report those amendments remaining in disagreement between the two bodies. Among these was amendment No. 13, as to which Mr. Clifton A. Woodrum, of Virginia, offered a motion to recede and concur with an amendment.

Debate on the Woodrum proposal ensued after which the following occurred:

> THE SPEAKER:[17] The question is on the motion of the gentleman from Virginia to recede and concur with an amendment.
>
> The question was taken; and on a division (demanded by Mr. Woodrum of Virginia) there were—ayes 118, noes 96.

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15. Sam Rayburn (Tex.).

16. 84 CONG. REC. 2095, 2100, 2103, 76th Cong. 1st Sess.

17. William B. Bankhead (Ala.).

Mr. H. Carl Andersen [of Minnesota]: Mr. Speaker, I ask for the yeas and nays.

THE SPEAKER: The gentleman from Minnesota asks for the yeas and nays. Those who favor taking this question by the yeas and nays will rise and stand until counted. [After counting.] Thirty-four Members have arisen, not a sufficient number.

MR. AUGUST H. ANDERSEN [of Minnesota]: Mr. Speaker, I demand tellers.

MR. [CASSIUS C.] DOWELL [of Iowa]: Mr. Speaker, I object to the vote on the ground that a quorum is not present.

THE SPEAKER: The gentleman from Iowa makes the point of order that a quorum is not present, which is always a constitutional question. The Chair will count. [After counting.] Two hundred and forty-one Members are present, a quorum.

MR. AUGUST H. ANDERSEN: Mr. Speaker, I demand tellers.

Tellers were refused.

MR. [JAMES F.] O'CONNOR [of Montana]: Mr. Speaker, I demand the yeas and nays.

THE SPEAKER: The yeas and nays have been previously demanded and refused. The demand is out of order.

The Clerk will report the next amendment in disagreement.[18]

§ 25.2 A demand for the yeas and nays having been refused, and tellers then having been ordered, a second demand for the yeas and nays is not in order after completion of the teller vote.

On June 26, 1968,[19] the House considered a bill (H.R. 18037) making appropriations for the Department of Health, Education, and Welfare, and the Department of Labor for the fiscal year ending June 30, 1969. In the course of the bill's consideration, separate votes were demanded on three amendments, and following agreement to the remaining amendments en gross, the House proceeded to entertain the three aforementioned provisions in the order in which they appeared in the bill.

Immediately after the Clerk read the first amendment on which a separate vote had been demanded, the following proceedings occurred:

THE SPEAKER:[20] The question is on the amendment.

MR. [NEAL] SMITH of Iowa: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

The question was taken; and on a division (demanded by Mr. Ashbrook) there were—ayes 110, noes 109.

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Speaker, I demand tellers.

MR. [JAMES J.] HOWARD [of New Jersey]: Mr. Speaker, a parliamentary inquiry?

THE SPEAKER: The gentleman will state it.

18. See also § 25.3, infra.

19. 114 CONG. REC. 18938, 18939, 90th Cong. 2d Sess.

20. John W. McCormack (Mass.).

MR. HOWARD: Mr. Speaker, is this teller vote going to be on the so-called Mink impact aid amendment?

THE SPEAKER: The Chair will state it is on the amendment offered in the Committee of the Whole by the gentlewoman from Hawaii [Mrs. Mink].

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, a parliamentary inquiry?

THE SPEAKER: The gentleman will state it.

MR. HALLECK: Mr. Speaker, if the amendment should be defeated on this teller vote, are we past the point of a record vote?

THE SPEAKER: The Chair will answer that affirmatively, yes.

Tellers were ordered, and the Speaker appointed as tellers Mr. Flood and Mr. Michel.

Parliamentarian's Note: Until 1972, a recorded vote was not permitted under Rule I, and the yeas and nays or an automatic roll call under Rule XV, were the only "record" votes permitted in the House.

§ 25.3 A demand for the yeas and nays having been refused, a second demand on the same question remains out of order notwithstanding the intervention of a division, a teller vote, and a quorum count.

On June 5, 1940,[1] the House considered a bill (H.R. 6381) for the admission to citizenship of aliens who came into the United States prior to Feb. 5, 1917, the effective date of the first immigration act.

Following some discussion of the bill, the question was put, and a demand for the yeas and nays was heard. An insufficient number of Members having responded, the yeas and nays were refused; a division was requested and had—and a point of no quorum was raised. The Speaker Pro Tempore[2] then counted a quorum and announced the passage of the bill.

At this point a demand for tellers was made and immediately objected to as being untimely. The Chair overruled the objection, however, pointing out that the requesting Member had been on his feet seeking recognition before the Chair's announcement. The House divided; and the tellers reported there were—ayes 111, noes 98.

Immediately thereafter, Mr. Martin J. Kennedy, of New York, was recognized, and the following exchange occurred:

MR. MARTIN J. KENNEDY: Mr. Speaker, I demand the yeas and nays.

THE SPEAKER PRO TEMPORE: The yeas and nays have already been refused.

The Speaker Pro Tempore having so ruled, the bill was passed,

1. 86 CONG. REC. 7623, 7626, 76th Cong. 3d Sess.

2. Sam Rayburn (Tex.).

and a subsequently offered motion to reconsider was laid on the table.[3]

During Count on Division

§ 25.4 A demand for the yeas and nays is not in order while the Chair is counting on a division vote.

On June 10, 1937,[4] the House having under consideration a bill (H.R. 6391) to authorize the prompt deportation of alien criminals and certain other aliens, Mr. Thomas A. Jenkins, of Ohio, offered a motion to recommit. The Chair proceeded to put the question on the Jenkins proposal, and the following discussion ensued:

THE SPEAKER:[5] The question is on the motion to recommit offered by the gentleman from Ohio [Mr. Jenkins].

MR. JENKINS of Ohio: Mr. Speaker, I demand a division.

THE SPEAKER: The gentleman from Ohio demands a division. All those in favor of the motion will rise and stand until counted.

MR. JENKINS of Ohio (interrupting the count): Mr. Speaker, I ask for the yeas and nays.

THE SPEAKER: The gentleman's request is not in order while the House is dividing.

MR. [CARL E.] MAPES [of Michigan]: Mr. Speaker, a point of order.

THE SPEAKER: The Chair thinks it has discretion to conclude the count on a division before entertaining another request.

MR. MAPES: I never knew the Chair to make such a ruling before.

THE SPEAKER: The Chair now makes it.

Parliamentarian's Note: To permit the interruption of a division vote by a demand for a recorded vote or the yeas and nays merely serves to confuse the count, as Members then standing would not necessarily stand to support the ordering of a "record" vote.

During Count of Those Supporting Demand for Tellers

§ 25.5 While the yeas and nays may be demanded pending a simultaneous demand for tellers (or after tellers have been ordered but before the count has begun), the demand for the yeas and nays may not be made while the Chair is counting to ascertain whether one-fifth of a quorum supports the demand for tellers.

On Aug. 17, 1972,[6] the Speaker having put the question on an

3. See also 84 CONG. REC. 9594, 76th Cong. 1st Sess., July 20, 1939, where a second demand for the yeas and nays was also ruled out of order following the refusal of an earlier demand, a division, and a quorum count.

4. 81 CONG. REC. 5574, 75th Cong. 1st Sess.

5. William B. Bankhead (Ala.).

6. 118 CONG. REC. 28915, 92d Cong. 2d Sess.

amendment to a bill (H.R. 13915) intended to further equal educational opportunities, Mr. Roman C. Pucinski, of Illinois, demanded a teller vote; and the following discussion occurred:

THE SPEAKER:[7] All those in favor of taking a vote by tellers will rise.

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Speaker, on that I demand the yeas and nays.

MR. PUCINSKI: Mr. Speaker, I have demanded that the vote be taken by tellers and I will ask that it be taken by tellers with clerks.

THE SPEAKER: The gentleman from Illinois has demanded a vote by tellers and a request has been made that the Members rise. The Chair is counting.

At this point, Mr. Gerald R. Ford, of Michigan, advanced a parliamentary inquiry on a constitutional issue[8] after which the following occurred:

MR. PUCINSKI: Mr. Speaker, I withdraw my demand for tellers.

MR. QUIE: Mr. Speaker, I demand that the vote be taken by the yeas and nays.

Mr. Quie having renewed his request (as indicated above) and the Chair no longer being in the process of counting those in favor of tellers, the demand for the yeas and nays was entertained.

7. Carl Albert (Okla.).

8. See § 30.3, infra.

§ 26. Ordering of Vote

Generally

§ 26.1 The House has voted by the yeas and nays on ordering the previous question on approval of the Journal.

On July 25, 1949,[9] immediately after the Clerk concluded the reading of the Journal, the following exchange took place:

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I move that the Journal as read stand approved; and on that motion I move the previous question.

THE SPEAKER:[10] The question is on ordering the previous question.

MR. [JAMES C.] DAVIS of Georgia: Mr. Speaker, on that I demand the yeas and nays.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I demand the yeas and nays on ordering the previous question.

The yeas and nays were ordered.

The question was then taken; and there were—yeas 259, nays 88, not voting 85. So, the previous question was ordered.

§ 26.2 The yeas and nays have been ordered on a motion to dispense with further proceedings under the call for a quorum.

9. 95 CONG. REC. 10092, 10093, 81st Cong. 1st Sess.

10. Sam Rayburn (Tex.).

On June 5, 1946,[11] shortly after the Chair's announcement that it was Calendar Wednesday, Mr. Dan R. McGehee, of Mississippi, made the point of order that a quorum was not present. The Chair's count revealing the absence of a quorum, Mr. Howard W. Smith, of Virginia, moved a call of the House which was so ordered. Two hundred seventy-two Members then responded to their names, and the Chair announced that a quorum was present.

Immediately thereafter, the following occurred:

THE SPEAKER:[12] On this roll call 272 Members have answered to their names, a quorum.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I move that further proceedings under the call be dispensed with.

MR. SMITH of Virginia: Mr. Speaker, on that I ask for the yeas and nays.

THE SPEAKER: Those Members desiring the yeas and nays will rise and remain standing until counted. [After counting.] Forty-five Members have risen. The Chair, in looking over the membership since the announcement that 272 had answered, notes that 45 is more than one-fifth of the Members present now.

MR. SMITH of Virginia: Mr. Speaker, I ask for a division.

THE SPEAKER: The yeas and nays are ordered.

The Clerk will call the roll.

§ 26.3 Whether a proposition will be subject to a roll call vote at a future time is a matter for the House, not the Chair, to decide.

On June 29, 1961,[13] Mr. Samuel N. Friedel, of Maryland, called up a resolution (H. Res. 354) which called for the creation and dissemination to each Member of a flag symbolizing membership in the House. The Speaker[14] put the question on the resolution, it was taken; and he announced that the "ayes" appeared to have it. Mr. H. R. Gross, of Iowa, then objected to the vote on the ground that a quorum was not present and made the point of order at the Speaker's request. Mr. Friedel sought to withdraw the resolution.

Thereafter, the following proceedings occurred:

MR. GROSS: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. GROSS: Is it necessary to ask unanimous consent to withdraw the resolution?

THE SPEAKER: It is, but the Chair did not think anyone would object to that unanimous consent request.

MR. GROSS: Mr. Speaker, a further parliamentary inquiry.

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11. 92 CONG. REC. 6352, 79th Cong. 2d Sess.

12. Sam Rayburn (Tex.).

13. 107 CONG. REC. 11798, 11799, 87th Cong. 1st Sess.

14. Sam Rayburn (Tex.).

THE SPEAKER: The gentleman will state it.

MR. GROSS: Will this resolution be subject to a roll call vote when it is called up again?

THE SPEAKER: That would be up to the House to decide.

Speaker's Determination as to Seconding Support

§ 26.4 In deciding whether to order the yeas and the nays, the Speaker counts the total number of Members present in the Chamber in order to determine if those seconding the demand constitute one-fifth of those present.

On July 20, 1939,[15] the Committee of the Whole reported back to the House a bill (S. 1871) to prevent pernicious political activities with sundry amendments adopted by the Committee. Under the rule, the previous question was ordered and the Speaker inquired as to whether a separate vote was requested on any amendment. Mr. Claude V. Parsons, of Illinois, having demanded a separate vote on each amendment, the House proceeded to consider the amendments in chronological order.

The House agreed to the first nine amendments by separate votes after which the Speaker put the question on the 10th amendment. Mr. Parsons then demanding the yeas and nays, the following exchange occurred:

THE SPEAKER:[16] The gentleman from Illinois demands the yeas and nays on the amendment just read. As many as favor ordering the yeas and nays will rise and stand until counted. [After counting.] The Chair will now count the number of Members present to determine whether or not a sufficient number have arisen to order the yeas and nays. [After counting.] Sixty-five Members rose in favor of ordering the yeas and nays. The Chair counted 365 Members present, which would require 73 Members rising to order the yeas and nays. Not a sufficient number rose and the yeas and nays are refused.

MR. [EDWARD W.] CREAL [of Kentucky]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CREAL: When the Chair takes the vote of those present and then counts again after they come in from the cloakrooms, is that number counted that comes in after the first number had risen?

THE SPEAKER: One-fifth of the Members present in the Chamber are required to order the yeas and nays in the House. When the demand is made, the Chair counts those who rise in favor of taking the vote by the yeas and nays, and it is then the duty of the Chair to determine the total number of

15. 84 CONG. REC. 9637, 76th Cong. 1st Sess.

16. William B. Bankhead (Ala.).

Members present in the Chamber and divide that count in order to determine whether or not one-fifth have seconded the demand for the yeas and nays.

The question is on agreeing to the amendment.[17]

§ 26.5 In determining whether a demand for the yeas and nays is supported by one-fifth of those present, the Speaker may use as a basis for such determination, the number of Members who responded on an immediately preceding roll call.

On Mar. 26, 1935,[18] the House had under consideration a resolution (H. Res. 174) which provided that upon its adoption, a joint resolution (H.J. Res. 117) pertaining to relief appropriations would be taken from the Speaker's table, with Senate amendments thereto, and a conference would be agreed to by the House.

Following considerable discussion, the question was put on ordering the previous question. Mr. John E. Rankin, of Mississippi, then demanded the yeas and nays which were ordered. The question was taken; and there were—yeas 265, nays 108, answered "present" 1, not voting 57. Accordingly, the previous question was ordered.

Immediately thereafter, the following proceedings occurred:

THE SPEAKER PRO TEMPORE:[19] The question is on the adoption of the resolution.

MR. RANKIN: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER PRO TEMPORE: The Chair will count. [After counting.] Sixty-four Members have risen; not a sufficient number.

MR. RANKIN: Mr. Speaker, I challenge the count.

THE SPEAKER:[20] The Chair may state that according to the roll call there were 371 Members present. It is very evident that the number who arose was not one-fifth of the number present as shown by the roll call.

MR. RANKIN: Mr. Speaker, I counted 70 myself.

THE SPEAKER: It would take more than 70 to order the yeas and nays.

So the yeas and nays were refused.

Immediately thereafter, Mr. Rankin demanded a teller vote on

17. Mr. Creal's fundamental question, that is, does the Chair count as present those who enter the Chamber after supporters of the demand have already arisen in computing the ratio, was considered by Speaker Rayburn 11 years later; see § 26.9, infra.

For routine instances where insufficient support resulted in denial of the yeas and nays, see 93 CONG. REC. 6392, 80th Cong. 1st Sess., June 4, 1947; and 84 CONG. REC. 5613, 76th Cong. 1st Sess., May 16, 1939.

18. 79 CONG. REC. 4474, 4475, 4476, 74th Cong. 1st Sess.

19. Henry Ellenbogen (Pa.).

20. Joseph W. Burns (Tenn.).

the passage of the resolution. This demand having been supported, tellers were ordered; the House divided; and there were—ayes 186, noes 78. The result of this vote prompted further inquiries on the Chair's prior refusal to order the yeas and nays:

MR. RANKIN: Mr. Speaker, I make the point of order we were entitled to a roll-call vote, because this vote shows there are not five times as many Members in the House as stood up a while ago and asked for a roll-call vote.

THE SPEAKER: By the gentleman's own count of 70, he was not entitled to a roll-call vote, because it requires 75, according to the roll call which has just been completed.

MR. RANKIN: I beg the Chair's pardon; what was the report?

THE SPEAKER: This vote was on an entirely different question, and the Chair has no doubt but what many Members have gone to their offices since the roll call was completed.

MR. RANKIN: No; Mr. Speaker, many Members have come in since then.

The regular order was demanded.

MR. [WILLIAM D.] MCFARLANE [of Texas]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MCFARLANE: Is there any way by which we can get a roll-call vote at this time?

THE SPEAKER: The House has refused a roll-call vote on the passage of the resolution.

So the resolution was agreed to.

MR. [GERALD J.] BOILEAU [of Wisconsin]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BOILEAU: Mr. Speaker, is it possible to have a roll-call vote on the basis of the number of Members present, as indicated by the teller vote, if one-fifth of the number shown by the teller vote would now ask for a roll-call vote?

THE SPEAKER: The Chair will state to the gentleman that quite a number of minutes—15 or 20, or perhaps one-half an hour—has elapsed since the House refused the roll call, and that roll call was requested immediately after a roll call of the House which disclosed 371 Members present. It therefore took 75 Members to order a roll call, and according to the count there were not 75 Members standing.

The Chair having explained the situation, there were no further requests for a roll call vote on the passage of the resolution.

Parliamentarian's Note: Using the number of Members responding on an immediately preceding roll call as a basis to determine whether the yeas and nays should be ordered is a practice which is not normally followed. See, for example, 92 CONG. REC. 6352, 79th Cong. 2d Sess., June 5, 1946, where Speaker Rayburn stated, "The Chair, in looking over the membership since the announcement [of an immediately preceding roll call] that 272 answered, notes that 45 is more than one-fifth of the Members present now." In the current prac-

tice, this is the way the Chair would count, that is, he would not rely upon an immediately preceding vote.

Chair's Count for Second

§ 26.6 The Chair has reversed his determination that an insufficient number have seconded a request for the yeas and nays where a subsequent count of the House indicated that one-fifth of those present had indeed stood to second the demand.

On Aug. 10, 1976, Speaker Carl Albert, of Oklahoma, had put the question of consideration with respect to a resolution called up in the House immediately after it had been reported by the Committee on Rules. The yeas and nays being demanded on the question, the Speaker counted 60 Members standing to support the demand, and then based on his estimate of those present, declared that "an insufficient number" had risen. A point of no quorum was then made and the Chair counted the House, finding on his count 240 Members in the Hall. He then reversed his decision and affirmed that a sufficient number had in fact stood to second the demand.[1] The proceedings were as follows:

Mr. Sisk, from the Committee on Rules, reported the following privileged resolution (H. Res. 1473, Rept. No. 94–1421), which was referred to the House Calendar and ordered to be printed:

H. RES. 1473

Resolved, That immediately upon the adoption of this resolution it shall be in order to take from the Speaker's table the bill (S. 3735) to amend the Public Health Service Act to authorize the establishment and implementation of an emergency national swine flu immunization program and to provide an exclusive remedy for personal injury or death arising out of the manufacture, distribution, or administration of the swine flu vaccine under such program, and to consider said bill in the House.

MR. [B. F.] SISK [of California]: Mr. Speaker, I call up House Resolution 1473 and ask for its immediate consideration.

THE SPEAKER: The Clerk will report the resolution.

The Clerk read the resolution.

THE SPEAKER: The question is, Will the House now consider House Resolution 1473?

The question was taken.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, on that I demand the yeas and nays.

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1. 122 CONG. REC. 26793, 26794, 94th Cong. 2d Sess. While the count of the Chair in determining whether a requisite number of those Members present has sustained a demand for the yeas and nays is not subject to verification or appeal (8 Cannon's Precedents §§ 3112–3118), the Chair may on his own initiative reverse his determination when satisfied that his prior count was erroneous.

THE SPEAKER: Those Members in favor of taking this vote by the yeas and nays will rise and remain standing until counted.

Sixty Members are standing, an insufficient number.

MR. [WALTER] FLOWERS [of Alabama]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: The Chair will count the House.

MR. FLOWERS: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. FLOWERS: Mr. Speaker, did the Chair count the House?

THE SPEAKER: The Chair counted just those standing.

MR. FLOWERS: How many were standing, Mr. Speaker?

THE SPEAKER: There were 60 Members standing.

MR. FLOWERS: How many are required, Mr. Speaker?

THE SPEAKER: One-fifth of all the Members present.

MR. FLOWERS: Mr. Speaker, if 60 Members were standing, I make the point of order that a quorum is not present.

THE SPEAKER: The Chair will count.

The Chair counts 240 Members present. A quorum is present, but the Chair is going to reverse his decision and declare the yeas and nays to be ordered. . . .

The Chair is going to reverse his decision because he did not initially count the House, and 60 is a sufficient number to order the yeas and nays under the count just made.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I have a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, is a two-thirds vote necessary in order to pass this and consider the legislation?

THE SPEAKER: The Chair will state that in order to consider the resolution, a two-thirds vote is necessary, not to adopt it, but to consider it.

MR. BAUMAN: I thank the Speaker.

THE SPEAKER: The question is, Will the House now consider House Resolution 1473, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 293, nays 70, not voting 68. . . .

So, two-thirds having voted in favor thereof, the House agreed to consider House Resolution 1473.

The result of the vote was announced as above recorded.

THE SPEAKER: The gentleman from California (Mr. Sisk) is recognized for 1 hour.

§ 26.7 While the Chair's count of one-fifth of those Members present in the House to order the yeas and nays under section 5 of article I of the U.S. Constitution is not subject to challenge, the Chair may respond to a Member's inquiry as to the exact count.

On May 3, 1994,[2] the following proceedings took place on the floor of the House:

2. 140 CONG. REC. p. ———, 103d Cong. 2d Sess.

MR. [JOSEPH P.] KENNEDY [II, of Massachusetts]: Mr. Speaker, I yield back the balance of my time.

THE SPEAKER PRO TEMPORE:[3] The question is on the motion offered by the gentleman from Massachusetts [Mr. Kennedy] that the House suspend the rules and pass the bill, H.R. 3191, as amended.

The question was taken.

MR. [PORTER J.] GOSS [of Florida]: Mr. Speaker, I demand the yeas and nays.

THE SPEAKER PRO TEMPORE: All those in favor of the yeas and nays will stand and remain standing.

A sufficient number having arisen, pursuant to clause 5 of rule I, and the Chair's prior announcement——

MR. KENNEDY: Mr. Speaker, I would inquire of the Chair what the rule is about a sufficient number of Members rising.

THE SPEAKER PRO TEMPORE: The Chair advises that one-fifth of those present constitutes a sufficient number.

MR. KENNEDY: I would ask if the Chair would just count them up, please, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair already counted two Members standing. There are less than 10 Members on the floor.

MR. KENNEDY: Mr. Speaker, I withdraw my request.

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

3. George Darden (Ga.).

Chair's Count for Second Not Subject to Appeal

§ 26.8 The Speaker's count of the House to determine whether one-fifth of those Members present have risen to support a request for the yeas and nays is not subject to verification by appeal.

Where the yeas and nays were demanded in the House on the question of passing a bill under suspension, the Speaker, after counting those standing to second the demand and then counting the House, declared that less than one-fifth of those present had risen to support the demand. The Speaker declared that no appeal on the Chair's count was in order. The proceedings were as follows:[4]

THE SPEAKER PRO TEMPORE:[5] The question is on the motion offered by the gentleman from Oregon (Mr. Ullman) that the House suspend the rules and pass the bill H.R. 12578, as amended.

The question was taken.

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, two-thirds have voted in the affirmative.

MR. [HAROLD A.] VOLKMER [of Missouri]: Mr. Speaker, on that I demand the yeas and nays.

4. 124 CONG. REC. 28949, 28950, 95th Cong. 2d Sess., Sept. 12, 1978.

5. B. F. Sisk (Calif.).

THE SPEAKER PRO TEMPORE: The gentleman from Missouri (Mr. Volkmer) demands the yeas and nays. All those in favor of taking this vote by the yeas and nays will rise and remain standing until counted.

Not a sufficient number have risen.

MR. VOLKMER: Mr. Speaker, I have a parliamentary inquiry.

Is the requirement one-fifth of the Members present?

THE SPEAKER PRO TEMPORE: Yes. The Chair will state that the requirement is that one-fifth of the Members present be standing for the yeas and nays, and there is not one-fifth of the Members standing.

MR. VOLKMER: Mr. Speaker, I count four Members standing.

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, an insufficient number have arisen.

The Chair will be glad to count, if the gentleman desires.

MR. VOLKMER: Would the Chair count, please? I believe there are only 25 Members here.

THE SPEAKER PRO TEMPORE: The Chair will count. Thirty Members are present.

Two-thirds having voted in the affirmative, the rules are suspended and the bill, as amended, is passed, and without objection, a motion to reconsider is laid on the table.

There was no objection. . . .

MR. [JOHN F.] SEIBERLING [of Ohio]: Mr. Speaker, is it in order to appeal the ruling of the Chair on the last vote?

THE SPEAKER PRO TEMPORE: The Chair will state to the gentleman that no appeal lies on the count of the Chair.

§ 26.9 Where the Speaker counted the Members rising to second a demand for the yeas and nays on a motion to adjourn and then counted the total number of Members present to determine whether one-fifth seconded such demand, he declined a Member's request that a new count be taken on the ground that some Members entered the Chamber and were counted after the count of those seconding the demand.

On Jan. 23, 1950,[6] toward the end of the day, Mr. John W. McCormack, of Massachusetts, moved that the House adjourn. Immediately thereafter, Mr. Vito Marcantonio, of New York, demanded the yeas and nays. The Chair then counted and announced that "fifty-four Members . . . [had] arisen, not a sufficient number."

The following then occurred:

MR. [EARL] WILSON of Indiana: Mr. Speaker, a point of order. There were many Members who came in and were counted after the standing count was taken. I ask that the vote be taken again.

THE SPEAKER:[7] The Chair is not going to make the count again because

6. 96 CONG. REC. 785, 81st Cong. 2d Sess.

7. Sam Rayburn (Tex.).

he has just counted both the total number of Members and the number standing to demand the yeas and nays.

The question is on the motion to adjourn.[8]

§ 26.10 Although a demand for the yeas and nays had been seconded by 20 percent of those voting, the Speaker noted that, counting himself, less than the minimum number of Members present had seconded the demand—so the yeas and nays were refused.

On June 30, 1937,[9] Mr. Sam Rayburn, of Texas, moved that the House adjourn. The Speaker[10] put the question; it was taken, and on a division vote demanded by Mr. John E. Rankin, of Mississippi, there were—ayes 41, noes 24.

Immediately thereafter, Mr. Rankin demanded the yeas and nays. The Speaker then proceeded to count those in favor of that demand, and announced that:

> . . . Thirteen gentlemen have arisen, not a sufficient number. The rule provides that the yeas and nays may be ordered by one-fifth of the Members present.

Since the Speaker had counted himself in reaching his conclusion, the 13 seconding Members—while comprising one-fifth of those who had voted—did not comprise one-fifth of those present. Accordingly, the demand was refused.

§ 27. Interruption of Vote

For Parliamentary Inquiry

§ 27.1 The Speaker has permitted the interruption of a yea and nay vote for a parliamentary inquiry where no Member had as yet responded to his name when called.

On June 27, 1935,[11] the House voted on the passage of a bill (H.R. 8555) to develop a strong merchant marine, among other purposes. A division having been demanded, there were—ayes 145, noes 131. Mr. William D. McFarlane, of Texas, then demanded the yeas and nays.

Immediately thereafter, the following proceedings occurred:

> MR. MCFARLANE: Mr. Speaker, I demand the yeas and nays.
>
> The yeas and nays were ordered.
>
> The Clerk proceeded to call the roll.
>
> MR. [RALPH O.] BREWSTER [of Maine]: Mr. Speaker—
>
> THE SPEAKER:[12] For what purpose does the gentleman from Maine rise?

8. See also §§ 26.4, supra and 31.1, infra.

9. 81 CONG. REC. 6642, 75th Cong. 1st Sess.

10. William B. Bankhead (Ala.).

11. 79 CONG. REC. 10288, 10289, 74th Cong. 1st Sess.

12. Joseph W. Byrns (Tenn.).

MR. BREWSTER: To propound a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BREWSTER: Mr. Speaker, it was my intention to offer a motion to recommit.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I rise to a point of order. The Clerk has already begun the calling of the roll and has called the first name, "Allen." I make the point of order the gentleman from Maine cannot interrupt the roll call.

THE SPEAKER: The Chair overrules the point of order. The gentleman from Maine is entitled to propound a legitimate parliamentary inquiry, and the Chair presumes that the inquiry propounded is a proper one. The gentleman from Maine will state his parliamentary inquiry.

MR. BREWSTER: Mr. Speaker, do I understand that a motion to recommit cannot be submitted at this stage?

THE SPEAKER: Such a motion is not in order at this time.

The inquiry having been answered, the question was then taken by the yeas and nays.[13]

For Unanimous—consent Request

§ 27.2 A yea and nay vote having been ordered, the Chair declined to entertain a unanimous-consent request before the Clerk called the roll.

On May 3, 1940,[14] the House considered an amendment adopted in the Committee of the Whole to a bill (H.R. 5435) to amend the Fair Labor Standards Act of 1938. The Chair having put the question on agreeing to the amendment, the following proceedings occurred:

MRS. [MARY T.] NORTON [of New Jersey]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

MR. [FRANK H.] BUCK [of California]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[15] The gentleman will state it.

MR. BUCK: On what is the vote by yeas and nays ordered?

THE SPEAKER PRO TEMPORE: On the amendment as amended in Committee of the Whole.

MR. [JOSEPH W.] MARTIN [Jr. of Massachusetts]: I wanted the House to have the benefit of that knowledge.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Speaker——

THE SPEAKER PRO TEMPORE: For what purpose does the gentleman rise?

MR. CASE of South Dakota: To [make] a unanimous-consent request.

THE SPEAKER PRO TEMPORE: The yeas and nays have been ordered. The Chair will not entertain a unanimous-consent request at this time.

A parliamentary inquiry then followed, after which the Clerk was directed to call the roll.

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13. The Chair has also permitted a parliamentary inquiry where the yeas and nays had been ordered but the Clerk had not yet been directed to call the roll. See § 27.2, infra.

14. 86 CONG. REC. 5499, 76th Cong. 3d Sess.

15. Sam Rayburn (Tex.).

§ 28. Recapitulation of Roll Call Vote

The term, "recapitulation," refers to a procedure[16] whereby the count on a roll call vote is verified by the Chair. Undertaken at the Chair's discretion,[17] a recapitulation is had either before or after the announcement of the result. The sole purpose is to ascertain how Members are recorded. Occasionally requested on close votes,[18] the procedure enables incorrectly recorded Members to obtain corrections. Members may not change their votes during a recapitulation[19] [a correction, of course, does not constitute a "change" of vote]. However, if the Chair directs the recapitulation before announcing the result of the vote, Members may change their votes following the recapitulation and preceding the announcement of the result.[20]

Beginning in the 92d Congress, the House began using the electronic voting system (§ 31, infra). Most yea and nay votes have been taken with the electronic system since Jan. 23, 1973. Recapitulation has not been permitted since that time but would still be available on a vote taken by roll call.

16. See § 28.8, infra.
17. See §§ 28.1–28.5, infra.
18. See §§ 8.4, 28.5, infra.
19. See § 28.6, infra.
20. See § 28.6, infra.

Speaker's Discretion

§ 28.1 Either before or after the announcement of the result of a roll call vote, the Speaker may, in his discretion, order a recapitulation of the vote.

On Sept. 2, 1959,[1] the House voted on overriding a Presidential veto of a bill (H.R. 7509) making appropriations for civil functions administered by the Department of the Army, certain agencies of the Department of the Interior, and the Tennessee Valley Authority for the fiscal year ending June 30, 1960.

After the votes were tallied, but before the Speaker announced the result, Mr. Clarence Cannon, of Missouri, prompted the following discussion:

> MR. CANNON: Mr. Speaker, I ask for a recapitulation of the vote.
>
> MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, may we not have the vote announced first?
>
> THE SPEAKER:[2] The Chair holds that there can be a recapitulation be-

1. 105 CONG. REC. 17752, 17753, 86th Cong. 1st Sess.
2. Sam Rayburn (Tex.).

fore or after the vote. Therefore, we will have a recapitulation.

MR. HALLECK: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HALLECK: Upon request, will not the Speaker announce the vote?

THE SPEAKER: The Chair has discretion in this matter.

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, regular order.

THE SPEAKER: The regular order is the Clerk will call the names of those voting in the affirmative. . . .

MR. HALLECK: Mr. Speaker. I renew my request for an announcement of the vote.

THE SPEAKER: The Chair has already ordered a recapitulation. The Clerk will call the names of those voting in the affirmative.[3]

§ 28.2 In the course of exercising his discretionary authority, the Chair once stated that it was not possible to request a recapitulation where a roll call vote was still in progress.

On Oct. 12, 1962,[4] the House agreed to a conference report on a bill (H.R. 12900) making certain public works appropriations for the fiscal year ending June 30, 1973. The Members then proceeded to consider the first amendment remaining in disagreement between the two bodies, and Mr. Clarence Cannon, of Missouri, moved that the House recede from its disagreement and concur in the Senate amendment with an amendment.

After the Speaker put the question on the motion, it was taken; and he announced that the noes appeared to have it. Mr. Cannon then objected to the vote on the ground that a quorum was not present whereupon the Chair counted and subsequently directed the Clerk to call the roll. The roll having been called, the Speaker directed the Clerk to call the names of those Members who failed to answer the first call.

In the course of this resumption of the call, the following proceedings occurred:

MR. [H. R.] GROSS [of Iowa] (interrupting the rollcall): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[5] The gentleman will state his parliamentary inquiry.

MR. GROSS: Mr. Speaker, how many times must a Member check how he has voted?

THE SPEAKER: That is not a parliamentary inquiry.

MR. [EDMOND] EDMONDSON [of Oklahoma] (interrupting the rollcall): Mr. Speaker, a parliamentary inquiry.

3. For similar instances, in which the Chair makes evident its authority to order a recapitulation before the announcement of the vote, see § 28.3, infra; and 81 CONG. REC. 7772, 75th Cong. 1st Sess., July 28, 1937. But see § 28.2, infra.

4. 108 CONG. REC. 23432, 23433, 23434, 87th Cong. 2d Sess.

5. John W. McCormack (Mass.).

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. EDMONDSON: Mr. Speaker, is it possible to have a recapitulation of the votes that have been cast in advance of the announced vote?

THE SPEAKER: The Chair will state that there has been no vote announced as yet. Therefore, at this point it is not possible to request a recapitulation.

(The Clerk resumed calling the roll.)

Parliamentarian's Note: It should be noted that any determination as to whether to conduct a recapitulation is within the discretionary power of the Chair. Thus, it is altogether possible to interpret the Speaker's language in this instance as meaning that such a request was not permissible because in the exercise of the Speaker's discretionary authority, he did not choose to entertain such a request before the announcement of the vote.

Moreover, the majority of recapitulation instances indicate that the Chair has felt few constraints on the timing of his decision to order a recapitulation. Speaker Sam Rayburn, of Texas, for example, declined a Member's request for announcement of the vote prior to undertaking a recapitulation in 1941.[6] Speaker William B. Bankhead, of Alabama, responding to a Member's point of order in 1937, stated:[7]

In answer to the point of order the Chair refers to section 3123, volume 8, Cannon's Precedents. The syllabus recites that "under the more recent practice recapitulation of a vote may be had either before or after the announcement of the result of the vote."

—*Members' Responsibility*

§ 28.3 When a recapitulation of a roll call vote on overriding a Presidential veto is ordered by unanimous consent, Members who come on the floor for the first time while the recapitulation is being taken are not permitted to vote. Members leaving the Chamber after voting on the original roll call who may have been incorrectly recorded do so on their own responsibility, and any Member who desires to change his vote before the vote is announced following the recapitulation may do so.

On Aug. 7, 1941,[8] the House proceeded by roll call vote to consider the question of overriding the President's veto on S. 1580 (a road bill). When the roll call was completed the Speaker[9] announced:

The Chair thinks this vote is close enough so that, if there is no objection, there will be a recapitulation. . . .

6. 87 CONG. REC. 6869, 77th Cong. 1st Sess., Aug. 7, 1941.

7. 81 CONG. REC. 7772, 75th Cong. 1st Sess., July 28, 1937.

8. 87 CONG. REC. 6895–97, 77th Cong. 1st Sess.

9. Sam Rayburn (Tex.).

MR. [JOSEPH E.] CASEY of Massachusetts: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CASEY of Massachusetts: May we hear the present vote?

THE SPEAKER: We are starting a recapitulation to determine whether or not the vote is correct. The Clerk will call the names of those recorded as voting "yea."

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. NICHOLS: Mr. Speaker, will Members who come on the floor while this recapitulation is being taken be permitted to vote?

THE SPEAKER: Members cannot qualify unless they were here before the roll call was completed.

MR. [LEO E.] ALLEN of Illinois: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ALLEN of Illinois: How could you have a correct analysis of the vote if a Member were out of the Chamber now who had voted "nay" and he is recorded as voting "yea" and he is not here to correct it?

THE SPEAKER: That is not the business of anybody in the House except the particular Member involved. . . .

MR. [EARL C.] MICHENER [of Michigan]: A point of order, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

MR. MICHENER: As I understand the rules, at the conclusion of the calling of the roll, the rules require the Speaker to announce the result.

No business can intervene between the calling of the roll and the announcing of the result of the roll call. After the result has been announced and it is known whether or not the vote is close, the Speaker may, of his own volition, order a recapitulation of the roll call. . . . It has been held that a recapitulation will only be ordered where the vote is close. Consequently, it seems imperative that the House should be advised as to what the vote is before a recapitulation is ordered. . . .

It is fundamental that a Member cannot change his vote after the result of the roll call has been announced. A recapitulation is for the purpose of correcting any errors in the vote as recorded, and not for the purpose of giving an additional opportunity to members to change their votes. . . . A recapitulation is for the purpose of correcting clerical errors.

To hold otherwise would be to lend encouragement to effective filibuster in order that one side in a closely contested vote might bring influence to bear and cause Members to change their original votes. To hold otherwise would do violence to the democratic processes of the House. . . .

THE SPEAKER: The Chair certainly is not in a filibuster. It has been held time and time again that any Member may change his vote before the vote is announced, and I read from page 419 of Cannon's Procedure in the House of Representatives, and this is exactly what the Speaker operated under:

> The motion that a vote be recapitulated is not privileged, but either before or after the announcement of the vote, the Speaker may, in his discretion, order recapitulation. (If

more than four votes different, in the absence of other considerations, recapitulation will not be ordered.)

The Speaker did not order a recapitulation until he asked if there was objection by any Member of the House.

MR. MICHENER: There was no announcement to see whether there was a difference of but a few votes. The effect of this procedure is to interrupt an incompleted roll call and proceed with a recount. No votes should be changed in a recount and no new votes should be added during a recount or a recapitulation.

THE SPEAKER: The Chair is following this book. The Chair is going to hold that up until the time the result of this vote is announced by the Chair any Member may change his vote, because that is merely following the precedents of the House. Any Member who desires to change his vote before the vote is announced, may do so.

After the names of Members who had voted aye were called, and the last of those voting no, several Members then changed their votes before the result was announced.

The vote was—yeas 251, nays 128, not voting 54. So the President's veto was not overridden.

Closeness of Vote as Determining Factor

§ 28.4 The Speaker has declined to order a recapitulation where the difference in the vote was as great as 10.

On June 21, 1962,[10] Mr. Paul Findley, of Illinois, offered a motion to recommit a bill (H.R. 11222) to the Committee on Agriculture pertaining to farm products, prices, income, and other agricultural matters. When the Speaker put the question, the yeas and nays were demanded and subsequently ordered. The question was taken; and there were—yeas 215, nays 205, not voting 17. The Chair then announced the result of the vote on the motion.

Immediately thereafter, the following exchange occurred:

MR. [HAROLD D.] COOLEY [of North Carolina]: Mr. Speaker, I ask for a recapitulation of the vote.

THE SPEAKER:[11] Does the gentleman insist on his request for a recapitulation?

MR. COOLEY: Yes, Mr. Speaker, I insist upon it.

THE SPEAKER: The Chair feels that the vote is not sufficiently close to order a recapitulation.

MR. COOLEY: All right, Mr. Speaker, I withdraw the request.[12]

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10. 108 CONG. REC. 11383, 11384, 87th Cong. 2d Sess.

11. John W. McCormack (Mass.).

12. The Chair has also declined to order a recapitulation after being so urged in earlier Congress; see, for example, 101 CONG. REC. 11930, 84th Cong. 1st Sess., July 28, 1955, where a seven-vote difference was involved, and 83 CONG. REC. 5124, 75th Cong.

§ 28.5 The Speaker has declined to order a recapitulation of a vote where there was a four-vote difference.

On Oct. 9, 1969,[13] Mr. Silvio O. Conte, of Massachusetts, offered a motion instructing House conferees to insist on a particular provision with respect to a bill (H.R. 11612) making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1970.

Shortly thereafter, a preferential motion was offered to lay the Conte motion on the table. On a vote by division, there were—ayes 64, noes 44. Mr. Conte objected to the vote on the ground that a quorum was not present whereupon the Speaker, concurring, directed the Clerk to call the roll. The question was taken and there were—yeas 181, nays 177. Accordingly, the preferential motion was agreed to.

Immediately thereafter, the following proceedings occurred:

> MR. [PAUL] FINDLEY [of Illinois]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER:[14] The gentleman will state his parliamentary inquiry.
>
> MR. FINDLEY: Mr. Speaker, was the vote 181 affirmative and 177 negative?
>
> THE SPEAKER: The Chair will state that that is correct.
>
> MR. FINDLEY: Mr. Speaker, on that I request a recapitulation.
>
> THE SPEAKER: The Chair will state that the Chair feels that if there was a difference of one or two votes, the Chair would order a recapitulation, but where there are four votes the Chair does not feel a recapitulation should be ordered.

Parliamentarian's Note: Referring to the difference between the yea and nay columns in a similar situation, Speaker Sam Rayburn, of Texas, stated,[15] "If the number were less than 4, the Chair would consider a recapitulation but not on a vote where there is this much [seven votes] difference." A number of years earlier, Speaker William B. Bankhead, of Alabama, noted,[16] "The Chair has the discretion upon a very close vote to request a recapitulation; that is, where there is a difference of only one or two or three or possibly four votes."

Vote Changes; Effect of Announcement of Result

§ 28.6 Members desiring to change their votes on a re-

3d Sess., Apr. 8, 1938, where there was an eight-vote spread. See also § .28.5, infra.

13. 115 CONG. REC. 29314, 29315, 91st Cong. 1st Sess.

14. John W. McCormack (Mass.).

15. 101 CONG. REC. 11930, 84th Cong. 1st Sess., July 28, 1955.

16. 83 CONG. REC. 5124, 75th Cong. 3d Sess., Apr. 8, 1938.

capitulation of a vote may do so after the recapitulation providing the result has not been announced by the Chair.

On July 28, 1954,[17] the House took a roll call vote on a resolution (H. Res. 626) providing that upon its adoption the Committee of the Whole would sit to consider a bill (H.R. 236) authorizing a flood control project in Colorado. Immediately after the vote and prior to making any announcement as to the result, the Chair asked for a recapitulation, and the following proceedings then occurred:

MR. [HAROLD A.] PATTEN [of Arizona]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[18] The gentleman will state it.

MR. PATTEN: What are we doing now?

THE SPEAKER: We are recapitulating the vote to find out if the Members are correctly recorded.

MR. PATTEN: Is it true that a Member who voted "yea" can now vote "nay"?

THE SPEAKER: Yes.

MR. PATTEN: Then you are not recapitulating, you are asking for a new vote.

THE SPEAKER: The House is in the process of recapitulating the vote.

MR. PATTEN: A person who voted "yea" before may now vote "nay." You cannot do that, Mr. Speaker. I raise a point of parliamentary procedure. You cannot do that.

THE SPEAKER: Will the gentleman take his seat, and we will do it in due order?

MR. PATTEN: No; I shall not take my seat.

THE SPEAKER: Will the gentleman cease for a moment?

MR. PATTEN: The Parliamentarian will tell you that is wrong.

THE SPEAKER: The Parliamentarian informs the Chair that Members can change their votes at any time before the Chair announces the result of the vote.

MR. PATTEN: Then I may change my vote at this point?

THE SPEAKER: Not until after the recapitulation.

The Clerk will call the names of those voting "yea."

The Clerk proceeded to call the names of those voting "yea."

MR. [CLIFF] CLEVENGER [of Ohio] (interrupting the recapitulation): Mr. Speaker, the Clerk passed my name. I voted in the affirmative about four times as loud as I could yell.

THE SPEAKER: The gentleman may make that correction at the end of the call of those who voted in the affirmative.

Immediately after the recapitulation, but prior to the Chair's announcement of the result, the Record reveals that 10 Members changed their votes.[19]

17. 100 CONG. REC. 12453, 12454, 83d Cong. 2d Sess.

18. Joseph W. Martin, Jr. (Mass.).

19. Members desiring to change incorrectly recorded votes may do so, of

§ 28.7 The result of a roll call vote having been announced, a Member may not change his vote on a subsequent recapitulation although he is entitled to correct his vote if it was incorrectly recorded.

On Feb. 17, 1955,[20] the House had under consideration a resolution (H. Res. 142) which provided that upon its adoption the House would resolve itself into the Committee of the Whole in order to consider a bill (H.R. 1) to extend the authority of the President to enter into trade agreements under section 350 of the Tariff Act of 1930. The resolution additionally provided that no amendment other than those offered by the Committee on Ways and Means would be in order, and that such amendments would not be subject to amendment.

After the previous question on the resolution was voted down, Mr. Clarence J. Brown, of Ohio, offered an amendment to provide for an open rule which would have allowed "any amendment . . . germane to H.R. 1 when . . . considered under the 5 minute rule." Following debate on the Brown amendment, the Speaker put the question, it was taken; and, the yeas and nays having been ordered, there were—yeas 191, nays 193, not voting 50. The Chair announced the result of the vote, and the following proceedings then occurred:

> MR. BROWN of Ohio: Mr. Speaker, may I call for a recapitulation.
>
> THE SPEAKER:[1] The Chair thinks the vote is close enough so that there should be a recapitulation.
>
> The Clerk will call the names of those voting in the affirmative.
>
> MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. MCCORMACK: I would like to inquire of the Speaker if my understanding is correct that on recapitulation no Member can change his vote. The question is only how they are recorded.
>
> THE SPEAKER: That is true because the vote has been announced.
>
> MR. BROWN of Ohio: Mr. Speaker, a further parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. BROWN of Ohio: Upon recapitulation, if a Member finds that his vote has been recorded incorrectly, he certainly has a right to correct it.
>
> THE SPEAKER: That is the purpose of a recapitulation.[2]

Procedure

§ 28.8 When a recapitulation is ordered, the Clerk calls first

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course, at the proper time during the recapitulation; see §§.28.7, 28.8, infra.

20. 101 CONG. REC. 1661, 1678, 1682, 1683, 84th Cong. 1st Sess.

1. Sam Rayburn (Tex.).

2. See also §.28.6, supra.

those voting in the affirmative, second, those voting in the negative, and, third, those answering "present"; any necessary corrections are made after all the names in each respective category are called.

On July 28, 1954,[3] the House took a roll call vote on a resolution (H. Res. 626) providing that upon its adoption the Committee of the Whole would sit to consider a bill (H.R. 236) authorizing a flood control project in Colorado. Immediately after the vote and prior to making any announcement as to the result, the Speaker asked for a recapitulation, and directed the Clerk to call the names of those voting in the affirmative. The proceedings were as follows:

THE SPEAKER:[4] The Clerk will call the names of those voting "yea."

The Clerk proceeded to call the names of those voting "yea."

MR. [CLIFF] CLEVENGER [of Ohio] (interrupting the recapitulation): Mr. Speaker, the Clerk passed my name. I voted in the affirmative about four times as loud as I could yell.

THE SPEAKER: The gentleman may make that correction at the end of the call of those who voted in the affirmative.

MR. CLEVENGER: I voted in the affirmative.

THE SPEAKER: Will the gentleman be seated and wait until the end of the call?

The Clerk concluded the call of the names of those voting "yea."

THE SPEAKER: Are there any corrections to be made where any Member was listening and heard his name called as voting "yea" who did not vote "yea"? [After a pause.] The Chair hears none.

Did any Member vote "yea" whose name was not called?

MR. CLEVENGER: Mr. Speaker, I said I voted four times in the affirmative.

THE SPEAKER: The gentleman will be recorded as voting "yea."

The Clerk will call the names of those recorded as voting "nay."

The Clerk called the names of those voting "nay."

THE SPEAKER: Is there any Member voting "nay" who is incorrectly recorded?[5] [After a pause.] The Chair hears none.

Where Different Result Obtained

§ 28.9 The Chair having directed a recapitulation on a close vote, a different result than that previously announced was obtained.

3. 100 CONG. REC. 12453, 12454, 83d Cong. 2d Sess.

4. Joseph W. Martin, Jr. (Mass.).

5. For comparable instances, see 105 CONG. REC. 17752, 86th Cong. 1st Sess., Sept. 2, 1959; 101 CONG. REC. 5807, 84th Cong. 1st Sess., May 5, 1955; 97 CONG. REC. 8876, 82d Cong. 1st Sess., July 25, 1951; and 87 CONG. REC. 6897, 77th Cong. 1st Sess., Aug. 7, 1941.

On Mar. 24, 1949,[6] Mr. Olin E. Teague, of Texas, moved that the bill (H.R. 2681) to provide pensions for veterans of World Wars I and II based on nonservice-connected disability and attained age, be recommitted to the Committee on Veterans' Affairs for further study. Shortly thereafter, the Speaker Pro Tempore put the question on Mr. Teague's motion, it was taken; and the Chair announced that the "ayes" had it. Mr. John E. Rankin, of Mississippi, then demanded the yeas and nays which were ordered.

The roll was called, and prior to the announcement of the result, two Members changed their votes from "no" to "aye." Thereafter, the following exchange took place:

> THE SPEAKER PRO TEMPORE:[7] On this vote the ayes are 208; the noes are 209.
>
> The Chair thinks the vote is so close that there should be a recapitulation.
>
> MR. RANKIN: Oh, no; it is clear.
>
> THE SPEAKER PRO TEMPORE: The Chair will take its own initiative; either way the Chair would have taken the initiative on this vote.
>
> MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Speaker, I make such a request.
>
> MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE: The gentleman will state it.
>
> MR. MARCANTONIO: Mr. Speaker, a Member cannot change his vote during the recapitulation; is that correct?
>
> THE SPEAKER PRO TEMPORE: The gentleman is correct.
>
> The Clerk will call the names of those voting in the affirmative.

At this point the recapitulation process took place after which the Chair stated:

> Upon the tallying of the vote on the recapitulation it appears the vote is as follows: Those in favor of recommittal, 208; those opposed, 207.

Accordingly, the motion to recommit was agreed to—a different result having been obtained after recapitulation of the vote.

Parliamentarian's Note: The cause of this different result lay in the change of votes by the aforementioned two Members from "no" to "aye." It seems the tally clerk properly added two more affirmative votes to the "yea" column but inadvertently neglected to subtract those votes from the "nay" column. Hence, the original error.

In the Senate

§ 28.10 The Chair has held that a Senator may vote after a yea and nay vote has been recapitulated providing the result of the vote has not been announced.

6. 95 CONG. REC. 3114, 3115, 81st Cong. 1st Sess.
7. John W. McCormack (Mass.).

On Feb. 28, 1947,[8] the Senate resumed consideration of a concurrent resolution (S. Con. Res. 7) establishing a ceiling for expenditures for the fiscal year 1948 and for appropriations for the fiscal year 1948 to be expended in that fiscal year. In the course of the resolution's consideration, the President Pro Tempore put the question on an amendment to an amendment. The yeas and nays having been ordered on this particular proposal, the vote was taken and a recapitulation was had.

Immediately thereafter, the following proceedings occurred:

> THE PRESIDENT PRO TEMPORE:[9] On this vote the yeas are 38, the nays——
>
> MR. [MILLARD E.] TYDINGS [of Maryland]: Mr. President, I ask for a recapitulation.
>
> THE PRESIDENT PRO TEMPORE: The Clerk will recapitulate the vote.
>
> The vote was again recapitulated.
>
> THE PRESIDENT PRO TEMPORE: On this vote the yeas are 38——
>
> MR. [GLEN H.] TAYLOR [of Idaho]: Mr. President——
>
> MR. [ROBERT A.] TAFT [of Ohio]: It is too late, Mr. President.
>
> MR. TYDINGS: Oh, no; it is not. The result has not been announced.
>
> THE PRESIDENT PRO TEMPORE: The Senator from Idaho is recognized.
>
> MR. TAYLOR: I vote "yea."

Senator Taylor's vote having been permitted, the final tally was—yeas 39, nays 38, not voting 18. Thus, the result of the vote was altered by the Chair's recognition of the Senator from Idaho prior to the announcement.

§ 29. Voting by the Speaker

Rule I clause 6 provides:

> He [the Speaker] shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive, or where the House is engaged in voting by ballot; and in cases of a tie vote the question shall be lost.

The Speaker's name is not on the roll from which the yeas and nays are called[10] and is not called unless on his request.[11] It is then called at the end of the roll,[12] the Clerk calling him by name. On an electronic vote, the Chair directs the Clerk to record him and verifies that instruction by submitting a vote card.[13] The Chair may vote to make a tie and so decide a question in the negative, as he may vote to break a tie and so decide a question in the af-

8. 93 CONG. REC. 1547, 1552, 80th Cong. 1st Sess.

9. Arthur H. Vandenberg (Mich.).

10. 5 Hinds' Precedents § 5970.

11. 5 Hinds' Precedents § 5965.

12. 5 Hinds' Precedents § 5965; 8 Cannon's Precedents § 3075.

13. See § 29.2, infra.

firmative.[14] The duty of giving a decisive vote may be exercised after the intervention of other business, or after the announcement of the result or on another day, if a correction of the roll shows a condition wherein his vote would be decisive;[15] and he also exercises the right to withdraw his vote in case a correction shows it to have been unnecessary.[16] The Speakers have the same right as other Members to vote[17] but rarely exercise it,[18] and the Chair may not vote twice.[19] The Chair may be counted on a vote by tellers.[20]

Method of Taking Vote

§ 29.1 The Clerk does not call the Speaker's name when the roll is called on a yea and nay vote; if the Speaker wishes to be recorded, he asks the Clerk to call his name at the conclusion of the call.

14. 8 Cannon's Precedents § 3100; see also § 29.3, infra.

15. 5 Hinds' Precedents §§ 5969, 6061–6063; 8 Cannon's Precedents § 3075.

16. 5 Hinds' Precedents § 5971.

17. 5 Hinds' Precedents §§ 5966, 5967.

18. 5 Hinds' Precedents § 5964 (footnote).

19. 5 Hinds' Precedents § 5964.

20. 5 Hinds' Precedents §§ 5996, 5997; 8 Cannon's Precedents §§ 3100, 3101.

On Nov. 6, 1967,[1] the House having discussed a motion to suspend the rules and pass a joint resolution (S.J. Res. 33) to establish a National Commission on Product Safety, the Speaker[2] put the question; it was taken, and an objection was heard on the ground that a quorum was not present. The Chair sustaining that point of order, the Clerk was instructed to call the roll.

At the conclusion of the call, but prior to announcing the numerical totals, the Speaker stated, "The Clerk will call my name." Immediately thereafter, the Record reveals, "The Clerk called the name of Mr. McCormack and he answered 'yea.' "

§ 29.2 Before announcing the result of a vote by electronic device, the Speaker may cast a decisive vote pursuant to clause 6, Rule I by advising the Clerk directly of his vote to break a tie (and then verifying that vote by handing the Clerk a ballot card).

During the amendment process involving consideration of H.R. 5422, the Intelligence Authorization Act of 1991, in the House on Oct. 17, 1990,[3] Speaker Thomas

1. 113 Cong. Rec. 31287, 90th Cong. 1st Sess.

2. John W. McCormack (Mass.).

3. 136 Cong. Rec. 30229–31, 101st Cong. 2d Sess.

S. Foley, of Washington, announced that the vote on the so-called Solarz amendment was 206 to 206. The Speaker then cast his vote in the affirmative. The proceedings were as follows:

Accordingly, the Committee rose, and the Speaker pro tempore [Mr. Gephardt] having assumed the chair, Mr. Nelson of Florida, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee having had under consideration the bill (H.R. 5422) to authorize appropriations for fiscal year 1991 for intelligence and intelligence-related activities of the U.S. Government, the intelligence community staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, pursuant to House Resolution 487, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

THE SPEAKER PRO TEMPORE: Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment?

MR. [HENRY J.] HYDE [of Illinois]: Mr. Speaker, I demand a separate vote on the so-called Solarz amendment, as amended. . . .

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Page 25, after line 18, add the following:

TITLE VI—INCENTIVES FOR PEACE IN ANGOLA . . .

THE SPEAKER PRO TEMPORE: The question is on the amendment.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 207, nays 206, not voting 21, as follows: . . .

THE SPEAKER: On this vote the yeas are 206, and the nays are 206.

The Chair votes "aye."

The yeas are 207.

So the amendment was agreed to.

THE SPEAKER: The question is on the engrossment and third reading of the bill.

MR. HYDE: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HYDE: Mr. Speaker, as I understood it, the vote was by electronic device. I did not see you vote by electronic device. You had announced the vote, Mr. Speaker. You passed the vote.

THE SPEAKER: The gentleman will suspend while the Chair explains the result of the vote.

The Chair's vote is entered into the electronic system upon the announcement of the Chair of his vote and prior to the announcement of the final result.

The Chair's vote is entered into the system at the time of the Chair's announced vote, the Chair will advise the gentleman.

Speaker's Vote as Decisive

§ 29.3 The Speaker voted in the negative on a yea and

nay vote—thereby creating a tie and causing the rejection of two amendments considered en bloc.

On May 3, 1946,[4] the House had under consideration a bill (H.R. 6056) making appropriations for the Departments of State, Justice, Commerce, and the Judiciary, for the fiscal year ending June 30, 1947. In the course of the bill's consideration, Mr. Louis C. Rabaut, of Michigan, sought unanimous consent that two amendments pertaining to the Bureau of Foreign and Domestic Commerce be considered en bloc. There was no objection.

Shortly thereafter, the Speaker[5] put the question on the en bloc amendments, and Mr. Rabaut demanded the yeas and nays. A sufficient number of Members having supported the demand, the yeas and nays were ordered.

After the Members voted but before announcing the result, the Chair noted:

> On this roll call the yeas are 127, the nays 126, and 2 answered present. The Chair votes "nay."

While a recapitulation followed, the vote totals remained the same. Accordingly, the amendments were rejected—the Speaker's vote having proven decisive.

§ 29.4 The Speaker voted in the affirmative at the conclusion of an automatic roll call, thereby breaking a tie and effecting the passage of a bill.

On Aug. 14, 1957,[6] an automatic roll call was had on the passage of a bill (S. 1383) amending section 410 of the Interstate Commerce Act, to change the requirements for obtaining a freight forwarder permit. The question was taken; and the Members commenced to vote.

After the Members cast their votes but before announcing the result, the Speaker made the following statement:

> THE SPEAKER:[7] There is a tie vote. If any Member asks for a recapitulation of the vote, the Chair will order a recapitulation. If there is no request for a recapitulation, the Clerk will call my name.
>
> The Clerk called the name of Mr. Rayburn and he answered "yea."

After the Speaker voted, the final tally on the passage of the bill was—yeas 177, nays 176. Accordingly, the bill was passed.

Parliamentarian's Note: While the Clerk calls the Speaker by

4. 92 CONG. REC. 4433, 4434, 4435, 79th Cong. 2d Sess.
5. Sam Rayburn (Tex.).
6. 103 CONG. REC. 14783, 85th Cong. 1st Sess.
7. Sam Rayburn (Tex.).

name after he so requests, when the roll call vote is printed in the *Congressional Record* and in the Journal, the Chair is designated as "The Speaker."

Speaker's Vote as Nondecisive

§ 29.5 The Speaker has voted on a yea and nay roll call where his vote did not prove decisive.

On June 30, 1939,[8] the Committee of the Whole had under consideration a joint resolution (H.J. Res. 306) popularly known as the Neutrality Act of 1939. Following debate, the Committee rose and reported the resolution with sundry amendments back to the House. Shortly thereafter, the Speaker[9] put the question on the joint resolution.

At this point, a motion to recommit was offered. When the question was taken on the motion to recommit, a division was demanded and there were—ayes 179, noes 185. Mr. Hamilton Fish, Jr., of New York, then requested the yeas and nays which were subsequently ordered.

The question was taken, and the Record reveals the following:

> THE SPEAKER: The Clerk will call my name.
>
> The Clerk called the name of Mr. Bankhead, and he answered "nay."

When the tally had been completed, there were—yeas 194, nays 196, answered "present" 1, and not voting 40. Thus, the motion was rejected, and the Speaker's vote was not decisive.

Speaker's Vote in Establishing Quorum

§ 29.6 The Speaker has voted on an automatic roll call where his vote was necessary to establish a quorum.

On Nov. 24, 1942,[10] the House resolved itself into the Committee of the Whole for the purpose of considering a bill (H.R. 7096) to provide for the settlement of claims of the government of the United States on behalf of American nationals against the government of Mexico. After the Committee rose and reported the bill back to the House with an amendment, a motion to recommit was offered.

Shortly thereafter, the Speaker[11] put the question on the motion to recommit. The question was taken; and, a division having been demanded, there were—ayes 15, noes 70. Mr. Robert F. Rich, of

8. 84 CONG. REC. 8502, 8511, 8512, 8513, 76th Cong. 1st Sess.

9. William B. Bankhead (Ala.).

10. 88 CONG. REC. 9104, 9116, 9117, 77th Cong. 2d Sess.

11. Sam Rayburn (Tex.).

Pennsylvania, then objected to the vote on the ground that a quorum was not present. The Speaker concurring, an automatic roll call was commenced.

Two hundred fourteen Members voted on the call. The Record then reveals the following:

> THE SPEAKER: The Clerk will call my name.
>
> The Clerk called the name of Mr. Rayburn and he answered "no."
>
> So the motion to recommit was rejected.

Parliamentarian's Note: Normally, of course, it takes 218 Members to comprise a quorum in the House. However, on this particular day [Nov. 14, 1942], there were six vacancies in the membership—thus, the quorum figure had been lowered to 215 Members.

§ 30. Recorded Votes; In General

Until Jan. 22, 1971,[12] clause 5 of House Rule I stated the method by which the Speaker was to put questions before the House, specified the procedure by which a division vote was to be cast, and provided for the taking of teller votes if the Chair was in doubt or if a count was "required by at least one fifth of a quorum. . . ."[13]

On that date, however, by virtue of the Legislative Reorganization Act of 1970,[14] a provision was added to the clause which specified that before tellers were named, Members could request "tellers with clerks." And, if such requests were supported by at least one-fifth of a quorum, the names of those voting on each side of the question and the names of those not voting . . . [would] be recorded by clerks or by electronic device, and . . . [would] be entered in the Journal.[15]

Thus the 92d Congress marked the first instance in which the House rules made provisions for the recording of votes in the Committee of the Whole.[16]

In the 93d Congress, the House further altered this clause by eliminating the phrase, "tellers with clerks," and substituting therefor the more simple language of "a recorded vote."[17] In addi-

12. See Rule I clause 5, *House Rules and Manual* § 630 (1971).

13. Rule I clause 5, *House Rules and Manual* § 630 (1969.).

14. 84 Stat. 1140.

15. Rule I clause 5, *House Rules and Manual* § 630 (1971).

16. See adoption of H. Res. 5, 92d Cong. 1st Sess., Jan. 22, 1971.

17. When not taken by electronic device, recorded votes are taken by a process similar to that previously utilized

tion, the two-step procedure previously necessary to obtain a recorded vote was abandoned in favor of a one-step method which did not oblige a Member to wait until tellers had been ordered before seeking a recorded teller vote. Instead, the Member merely requested a recorded vote which, if supported by the requisite number, would

> be taken by electronic device, unless the Speaker in his discretion . . . [ordered] clerks to tell the names of those voting on each side of the question and such names . . . [would then] be recorded by electronic device or by clerks, as the case may be, and . . . entered in the Journal.[18]

The requirement of one-fifth of a quorum to second the demand for a recorded vote[19] continues to be applicable in the House; but in the Committee of the Whole the requisite number for a second was changed in the 96th Congress to the fixed number of twenty-five.[20]

§ 30.1 In the 92d Congress, the Speaker described the method by which nonelectronic votes would be taken when tellers with clerks were ordered.

On Feb. 25, 1971,[1] the Speaker[2] proceeded to explain how recorded teller votes would be taken under the then-prevailing rule[3] when the electronic voting system could not be used:[4]

for tellers-with-clerks procedure. As Members pass through the appropriate "aye" or "no" aisle, they simply cast their votes by depositing a signed green (yea) or red (no) card in a ballot box. See § 30.1, infra.

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

19. There is a semantic distinction between a "recorded vote" and the frequently used phrase, "record vote." The latter term is usually employed in a broad, generic sense, i.e., any vote by which a Member's position or absence is made evident permanently for all to know. Thus, it would include roll calls prompted by a demand for the yeas and nays, automatic roll calls, tellers with clerks, and, of course, recorded votes. The "recorded vote," however, refers solely to those votes taken under the provisions of the last two sentences of Rule I clause 5. As used herein, the reader should note that the term thus encompasses all votes taken by "tellers with clerks" under the now-abandoned two-step procedure employed during the 92d Congress.

20. Rule XXIII clause 2(b), *House Rules and Manual* § 864 (1995), adopted Jan. 15, 1979, H. Res. 5, 125 Cong. Rec. 16, 96th Cong. 1st Sess.

1. 117 Cong. Rec. 3833, 3834, 92d Cong. 1st Sess.

2. Carl Albert (Okla.).

3. Rule I clause 5, *House Rules and Manual* § 631 (1971).

4. Although the teller vote with clerks has been supplanted by the recorded

If tellers with clerks are ordered, the Chair will name four Member tellers, two from each side of the question. The Chair will designate the aisle adjacent to the center aisle and to the Chair's left as the aisle for "yea" votes, and the corresponding aisle adjacent to the center aisle to the Chair's right as the aisle for the "no" votes.

Two Member tellers, one from each side of the question, will take their places in the "aye" aisle toward the rear of the Chamber, and the other two Member tellers will take their places in the "no" aisle toward the rear of the Chamber.

Two ballot boxes will be used. One marked "yea," with green trimming. The other marked "no," with red trimming. These boxes will be placed on seats along the "aye" and "no" aisles, respectively, immediately adjacent to the two Member tellers who have positioned themselves along those aisles. One tally clerk will stand behind each of the boxes.

Green "aye" and red "no" cards will be available in the cloakrooms and in the well of the House. These cards will have spaces for the Members to fill in his name, State, and district.

The Chair will state: "Members will pass between the tellers, be counted, and recorded." Members desiring to vote in the affirmative will proceed from the well up the "aye" aisle and, as counted by the Member tellers, will give their green "aye" card, properly filled in, to the "aye" tally clerk, who will, after examination, place it in the green ballot box.

Members who wish to be counted against the proposition will at the same time proceed from the well up the "no" aisle between the Member tellers and, as they are counted, will hand the filled-in red "no" card to the second tally clerk who will, after examination, place it in the red "no" box. The Member tellers will report to the Chair when all Members have been counted and have handed in their ballots.

To avoid confusion in the well, the Chair asks that Members obtain and fill in the appropriate green or red card in advance of the recorded teller vote, if possible.

After the "no" vote is reported, Members who arrive within the allotted time—which under the rule must be at least 12 [now 15] minutes from the naming of tellers with clerks—will be permitted to fill in the card, be counted, and recorded. No Member will be counted unless, at the time he passes between the Member tellers, he hands a filled-in card to one of the two tally clerks.

The Chair will then announce the vote, but not before the expiration of at least 12 [now 15] minutes from the naming of tellers with clerks, nor until the Chair ascertains that no further Members are present who desire to be recorded.

Immediately after the Chair has announced the vote and before any further business is conducted, Members wishing to be recorded as "present" will announce their presence to the Chair.

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vote, when the electronic system is not utilized, the present procedure is identical to that described above, except Members no longer act as tellers in the recording of teller votes. See § 33.1, infra.

The names of Members voting in the affirmative, in the negative, those recorded as present, and those not voting will be printed in the Journal and in the Congressional Record.

One bell and light will signal that tellers have been ordered.

Two bells and lights will indicate that a recorded teller vote has been ordered and is in progress. This second signal should be distinguishable from a two-bell and light rollcall vote because it will come very shortly after the one bell and light teller vote call.

The first signal—for tellers—one bell and light—will be repeated at the end of 5 minutes. And, after a brief pause, the second signal—for recorded tellers—two bells and lights—will also be repeated. At this point Members will be on notice that the recorded teller vote could be closed in 7 [now 10] minutes.

May the Chair add that we believe this is the most practicable way in which to implement the rule. If time and experience prove otherwise, we can of course change the procedure.

These ground rules have been modified as the House has utilized the system. Current practices are discussed in other portions of this chapter.

In the Committee of the Whole

§ 30.2 Yea and nay votes on questions are not permitted in the Committee of the Whole.

On June 2, 1977,[5] the Committee of the Whole had under consideration the Department of Energy Organization Act (H.R. 6804). Mr. John N. Erlenborn, of Illinois, offered an amendment which was rejected on a voice vote. Mr. Erlenborn then asked for a recorded vote.

THE CHAIRMAN:[6] The question is on the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. Erlenborn).

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

MR. ERLENBORN: Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

MR. ERLENBORN: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count. Eighty-one Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to clause 2, rule XXIII, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

At the time the point of order of no quorum was made, the amendment in

5. 123 CONG. REC. 17292, 95th Cong. 1st Sess.

6. Lucien N. Nedzi (Mich.).

the nature of a substitute offered by the gentleman from Illinois (Mr. Erlenborn) was before the Committee, a recorded vote had been refused, and in the opinion of the Chair the amendment in the nature of a substitute had not carried.

For what purpose does the gentleman from Illinois (Mr. Erlenborn) rise?

MR. ERLENBORN: Mr. Chairman, on the question of my amendment in the nature of a substitute, I demand a division.

On a division (demanded by Mr. Erlenborn) there were—ayes 29, noes 51.

MR. [STEVEN D.] SYMMS [of Idaho]: Mr. Chairman, on that I ask unanimous consent for a recorded vote.

THE CHAIRMAN: Is there objection to the request of the gentleman from Idaho?

MR. [LLOYD] MEEDS [of Washington]: Mr. Chairman, I object.

THE CHAIRMAN: Objection is heard.

So the amendment in the nature of a substitute was rejected.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. BROWN of Ohio: Mr. Chairman, is it appropriate to ask for the yeas and nays at this point?

THE CHAIRMAN: The Chair will state in response to the gentleman's parliamentary inquiry that it is not in order to ask for the yeas and nays in Committee of the Whole.

Are there amendments to title I?

A similar situation occurred in the 98th Congress[7] where a Member asked for the yeas and nays in Committee of the Whole following refusal of his request for a recorded vote on an amendment. Proceedings were as follows:

THE CHAIRMAN PRO TEMPORE:[8] The question is on the amendment offered by the gentleman from Montana [Mr. Williams].

The question was taken; and on a division (demanded by Mr. Williams of Montana) there were—ayes 19, noes 21.

MR. [PAT] WILLIAMS of Montana: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN PRO TEMPORE: The Chair will count; 44 Members are present, not a quorum.

Pursuant to the provisions of clause 2, rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device. . . .

THE CHAIRMAN PRO TEMPORE: Three hundred ninety-six Members have answered to their names, a quorum is present, and the Committee will resume its business.

The pending business is the demand of the gentleman from Montana [Mr. Williams] for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

MR. WILLIAMS of Montana: Mr. Chairman, a parliamentary inquiry.

7. 130 CONG. REC. 21259, 98th Cong. 2d Sess., July 26, 1984.

8. Abraham Kazen, Jr. (Tex.).

THE CHAIRMAN PRO TEMPORE: The gentleman will state it.

MR. WILLIAMS of Montana: Mr. Chairman, may I request the yeas and nays on that last vote?

THE CHAIRMAN PRO TEMPORE: A recorded vote had been requested and refused.

MR. WILLIAMS of Montana: May I ask for the yeas and nays.

THE CHAIRMAN PRO TEMPORE: Not at this time.

The Chair will tell the gentleman from Montana that that would not be permitted in the Committee of the Whole.

MR. WILLIAMS of Montana: Mr. Chairman, a further parliamentary inquiry; may I ask for a division?

THE CHAIRMAN PRO TEMPORE: There has already been one.

MR. WILLIAMS of Montana: I understand that. My question is, May I ask for another?

THE CHAIRMAN PRO TEMPORE: No.

MR. WILLIAMS of Montana: I thank the Chairman.

Effect of Taking a Recorded Vote on Demand for Yeas and Nays on Same Question

§ 30.3 In the 92d Congress, the Speaker stated that a vote taken by tellers with clerks pursuant to the rules would not preclude the constitutional right of a Member to demand the yeas and nays on that question.

On Aug. 17, 1972,[9] the Speaker having put the question on the passage of a bill (H.R. 13915) to further equal educational opportunities, Mr. Roman C. Pucinski, of Illinois, demanded tellers on the question. The Chair then sought to determine the number of Members in favor of the Pucinski demand at which time Mr. Albert H. Quie, of Minnesota, demanded the yeas and nays. Mr. Pucinski then revised his request and demanded tellers with clerks.[10]

THE SPEAKER:[11] The gentleman from Illinois has demanded a vote by tellers and a request has been made that the Members rise. The Chair is counting.

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. GERALD R. FORD: Mr. Speaker, if we have a vote by tellers with clerks, is it possible to have a record vote subsequently?[12]

THE SPEAKER: A record vote is a constitutional prerogative of the Members of the House.[13]

Parliamentarian's Note: In the 105th Congress, a change was

9. 118 CONG. REC. 28915, 92d Cong. 2d Sess.

10. See Rule I clause 5, *House Rules and Manual* § 630 (1995). See also § 30.1, supra.

11. Carl Albert (Okla.).

12. It should be noted that the use of the words, "record vote," by both the Speaker and Mr. Ford in this exchange is meant to denote a vote taken by the yeas and nays.

13. See U.S. Const. art. I, § 7, clause 2.

made to Rule I clause 5(a)[14] which renders this precedent obsolete. Clause 5(a) was amended to read as follows:

> In clause 5(a) of rule I, insert before the last sentence the following: "A recorded vote taken pursuant to this paragraph shall be considered a vote by the yeas and nays.".

Following the adoption of this amendment, a recorded vote, whether taken electronically or by clerks, would preclude a demand for the yeas and nays.

§ 31. The Electronic Voting System

The electronic voting system was first used in the House on Jan. 23, 1973.[15] The pertinent rule [Rule XV clause 5(a)] was adopted in 1972.[16] Since its installation, it has been used almost exclusively for votes taken by the yeas and nays in the House and for recorded votes in the House and in Committee of the Whole. Back-up procedures have been used on rare occasions where the electronic system was inoperable.[17] The use of the electronic system, with the shortened voting times the system permits, coupled with the rules change in the 92d Congress which for the first time permitted recorded votes in Committee of the Whole,[18] has changed the culture of the House. In the 90th Congress when the Members responded verbally when their names were called by the reading clerk, there were 875 roll calls (397 quorum calls and 478 votes by the yeas and nays), while in the 103d, utilizing the electronic system, there were 1,122 (only 28 quorum calls, 468 yeas and nays, and 626 recorded votes), and in the 104th, there were 1,340 (19 quorum calls, 522 yeas and nays, and 799 recorded votes).

The procedures used in conducting electronic votes have been altered as the House lived with the system and learned its capabilities. Various changes in the pertinent rules and in the manner of using the system have been adopted by the House or announced by the Speaker. These

14. See § 24(a) of H. Res. 5, adopted Jan. 7, 1997, 143 CONG. REC. p. ———, 105th Cong. 1st Sess.

15. 119 CONG. REC. 1793, 93d Cong. 1st Sess.

16. H. Res. 1123, 118 CONG. REC. 36005–12, 92d Cong. 2d Sess., Oct. 13, 1972.

17. 119 CONG. REC. 6699, 93d Cong. 1st Sess., Mar. 7, 1973; 129 CONG. REC. 18858, 98th Cong. 1st Sess., July 13, 1983.

18. H. Res. 5, 117 CONG. REC. 132–44, 92d Cong. 1st Sess., Jan. 22, 1971.

are noted in this section. Some are carried for their historical significance even though no longer current in the practice of the House.

Use of; Procedure

§ 31.1 In the 92d Congress, the House amended its rules to provide procedures for the recording of votes in the House and in Committee of the Whole by electronic device at the discretion of the Chair; provision was also made for a "back-up" non-electronic procedure for recorded votes by which clerk tellers may be appointed under a single-step demand for a "recorded vote."

On Oct. 13, 1972,[19] Mr. B. F. Sisk, of California, by direction of the Committee on Rules, called up House Resolution 1123.[20]

The Clerk read as follows [emphasis supplied]:

H. RES. 1123

Resolved, That (a) clause 5 of Rule I of the Rules of the House of Representatives is amended to read as follows:

"5. He [the Speaker] shall rise to put a question, but may state it sitting; and 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".'; if he doubts or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one or more from each side of the question to tell the Members in the affirmative and negative; which being reported, he shall rise and state the decision. *However, if any Member requests a recorded vote and that request is supported by at least one-fifth of a quorum, such vote shall be taken by electronic device, unless the Speaker in his discretion orders clerks to tell the names of those voting on each side of the question, and such names shall be recorded by electronic device*

19. 118 CONG. REC. 36005, 36006, 92d Cong. 2d Sess.

20. H. Res. 1123 was intended to incorporate the electronic voting system into prevailing House procedures with only slight rule changes where necessary. The context of those changes, however, is relevant to an understanding of the system's availability. Accordingly, that language which would amend the then-prevailing rules is italicized. A concise yet comprehensive explanation of these language changes is provided in the excerpted remarks of Mr. H. Allen Smith (Calif.), infra. Rule I clause 5 has been subsequently amended to remove the option for teller votes. See H. Res. 5, 139 CONG. REC. 49, 103d Cong. 1st Sess., Jan. 5, 1993.

A current edition of the *House Rules and Manual* should be consulted for further modifications in Rules I, VIII, and XV.

or by clerks, as the case may be, and shall be entered in the Journal, together with the names of those not voting. Members shall have not less than fifteen minutes to be counted from the ordering of the recorded vote or the ordering of clerks to tell the vote.".

(b) Clause 2 of Rule VIII of the Rules of the House of Representatives is amended to read as follows:

"2. Pairs shall be announced by the Clerk *immediately before the announcement by the Chair of the result of the vote* from a written list furnished him, and signed by the Member making the statement to the Clerk, which list shall be published in the Record as a part of the proceedings, immediately following the names of those not voting. However, pairs shall be announced but once during the same legislative day.".

(c) Rule XV of the Rules of the House of Representatives is amended to read as follows:

"RULE XV.

"ON CALLS OF THE ROLL AND HOUSE

"1. *Subject to clause 5 of this Rule* upon every roll call the names of the Members shall be called alphabetically by surname, except when two or more have the same surname, in which case the name of the State shall be added; and if there be two such Members from the same State, the whole name shall be called, and after the roll has been once called, the Clerk shall call in their alphabetical order the names of those not voting. Members appearing after the second call, but before the result is announced, may vote or announce a pair.

"2. (a) In the absence of a quorum, fifteen Members, including the Speaker, if there is one, shall be authorized to compel the attendance of absent Members; and those for whom no sufficient excuse is made may, by order of a majority of those present, be sent for and arrested, wherever they may be found, by officers to be appointed by the Sergeant-at-Arms for that purpose, and their attendance secured and retained; and the House shall determine upon what condition they shall be discharged. Members who voluntarily appear shall, unless the House otherwise direct, be immediately admitted to the Hall of the House, and they shall report their names to the Clerk to be entered upon the Journal as present.

"(b) *Subject to clause 5 of this Rule*, when a call of the House in the absence of a quorum is ordered, the Speaker shall name one or more clerks to tell the Members who are present. The names of those present shall be recorded by such clerks, and shall be entered in the Journal and the absentees noted, *but the doors shall not be closed except when so ordered by the Speaker. Members shall have not less than fifteen minutes from the ordering of a call of the House to have their presence recorded.*[1]

"3. On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.

"4. *Subject to clause 5 of this Rule*, whenever a quorum fails to vote on any question, and a quorum is not

1. Another proposed change in H. Res. 1123 affecting Rule 15 clause 2(b) was the deletion of language granting the Chair discretionary authority to require the use of tally sheets in counting a quorum. See the remarks of Mr. H. Allen Smith (Calif.), infra.

present and objection is made for that cause, unless the House shall adjourn there shall be a call of the House, and the Sergeant-at-Arms shall forthwith proceed to bring in absent Members; and the yeas and nays on the pending question shall at the same time be considered as ordered. The Clerk shall call the roll, and each Member as he answers to his name may vote on the pending question, and, after the roll call is completed, each Member arrested shall be brought by the Sergeant-at-Arms before the House, whereupon he shall be noted as present, discharged from arrest, and given an opportunity to vote and his vote shall be recorded. If those voting on the question and those who are present and decline to vote shall together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the majority of those voting shall appear. And thereupon further proceedings under the call shall be considered as dispensed with. At any time after the roll call has been completed, the Speaker may entertain a motion to adjourn, if seconded by a majority of those present, to be ascertained by actual count by the Speaker; and if the House adjourns, all proceedings under this clause shall be vacated.

"5. *Unless, in his discretion, the Speaker orders the calling of the names of Members in the manner provided for under the preceding provisions of this rule, upon any roll call or quorum call the names of such Members voting or present shall be recorded by electronic device.* In any such case, the Clerk shall enter in the Journal and publish in the Congressional Record, in alphabetical order in each category, a list of the names of those Members recorded as voting in the affirmative, of those Members recorded as voting in the negative, and of those Members answering present, as the case may be, as if their names had been called in the manner provided for under such preceding provisions. *Members shall have not less than fifteen minutes from the ordering of the roll call or quorum call to have their vote or presence recorded.*".

(d) Clause 2 of Rule XXIII of the Rules of the House of Representatives is amended to read as follows:

"2. Whenever a Committee of the Whole finds itself without a quorum which shall consist of one hundred Members, *the Chairman shall invoke the procedure for the call of the roll under clause 5 of Rule XV,* unless in his discretion, he orders a call of the committee to be taken by the procedure set forth in clause 2(b) of Rule XV; and thereupon the Committee shall rise, and the Chairman shall report the names of the absentees to the House, which shall be entered on the Journal; but if on such call a quorum shall appear, the Committee shall thereupon resume its sitting without further order of the House.".

Thereafter, Mr. Sisk yielded part of his time to Mr. Wayne L. Hays (Ohio) (Chairman of the Committee on House Administration, the committee responsible for installation of the electronic voting system), who proceeded to explain some of the aspects of the system. Mr. Hays pointed out the two consoles—one on each side of the House—at which the Majority and Minority Leaders would be able to "call up any group of names" and determine how those Members voted. He further discussed several other components, as the following excerpt indicates:

If the Members will notice the tallies on either side of the Chamber, it can

be noticed the time is ticking away. When the votes start, where it says "time," it will be 15 minutes, and it keeps ticking down to zero. When it reaches zero, the Chair will announce that all the voting is over, and unless there is a Member in the Chamber who has not voted, then he will be permitted to vote, and the Chair will be able to lock the vote in, and that will be it, and it will tell instantaneously what the vote is, the "yeas" and "nays."

In addition to that, there will be a printout available for the members of the press out in the lobby almost immediately after the vote is over, telling exactly how each and every Member voted.

Mr. Speaker, the voting will be done by a little plastic card which is punched on either end identically, so you can put it in upside down or backwards. No matter how you put it in, it is supposed to work, and it will key only your name.

If the Members will note during this demonstration, under my name we just have one card made up as a sample at the moment. Every Member will get one. There is a red light at the left of my name. That means I have inserted the card and voted "no." If I decide to change my vote, I will put the card back in one of the slots and press the "yea."

Mr. Speaker, I will now press the "yea" button, and hopefully the red light will change to a green light. . . .

Shortly thereafter, Mr. Hays offered to answer any of the Members' questions whereupon Mr. Hale Boggs, of Louisiana, prompted the following exchange:

MR. BOGGS:. . . Mr. Speaker, I would just like to ask the gentleman this question: On the time clock over here, does the board automatically go off when the time limit has expired?

MR. HAYS: No, it does not. It does not go off until it is locked out up at the Speaker's desk.

MR. BOGGS: So that means we now have 1 or, rather, 1½ minutes to vote. May I ask, when it becomes zero, then how long is it open there at the desk?

MR. HAYS: When it comes to zero, the Speaker will bang down his gavel and will say, "All time has expired," or "Are there any Members in the Chamber who desire to vote?" It is just like we do it now on a teller vote. If there are any who desire to vote, he will give them a minute or two more to do so, and then he will lock the machine out, and that is the end of it.

If a Member has misplaced a card, then he can go to the desk, and there will be an arrangement where he can fill out a card, an arrangement where he can sign a red or green or amber ballot, just like we do now for a teller vote. Then the Clerk up there will put a master card in and vote for the Member, and it will show up as on the teller votes. . . .

Mr. Hays proceeded to discuss the economics of the system after which Mr. Sisk sought to explain some of the procedural changes being proposed as well as the nature of the "backup" procedures:

I would briefly like to comment in connection with the fallback or fail-safe position with regard to the voting and other matters contained in the resolution.

In brief we propose that machinery be used in all appropriate voting situations, that is, whenever names of Members are to be recorded. We also propose to put in the rules substitution of present procedures as a backup in case the machinery becomes unavailable for whatever the reason may be. We also propose that we use the backup procedures at the discretion of the Chairman of the Committee of the Whole.

We also are suggesting two additional changes in the backup procedure. The first occurs in the procedure for tellers with clerks or what is called the recorded teller vote.

I want to emphasize that the amendments we offer do not in any way alter the basic substance of that procedure. What we are trying to do is to simplify the process.

I might add what we propose is substantially the way the Democratic caucus asked for during the past year. As the rules now stand a Member must make two separate requests to get a recorded teller vote, and we know the procedures.

We further propose doing away with the time-consuming process of making Members act as tellers in the recording of the teller votes. There is no reason why Members must be found to stand at the head of the aisle to record the vote. Clerks will simply be required to do that in the future in the event that there are teller votes.

Mr. Speaker, we are also proposing a new method for recording Members during quorum calls. At the present time, as you know, the Clerk calls the roll twice and recognizes Members in the House in a time-consuming process. Again we have a recommendation from the caucus in connection with this matter. In effect this method would have the clerks tell the Members just as they do in a recorded teller vote, for instance, in recording the presence of the Members.

Instead of calling the roll, the clerks would merely record the names of the Members as they came up the aisle in the Chamber, or in any other fashion that the Speaker made known.

MR. HAYS: Mr. Speaker, will the gentleman yield?

MR. SISK: I will be glad to yield to the gentleman from Ohio.

MR. HAYS: You could use the electronic system for a quorum call.

MR. SISK: Certainly. In almost all cases I think the electronic system will be used. What I am explaining is the so-called backup procedure in the event that we did not desire to use the electronic system.

In the course of further discussion, Walter E. Fauntroy, the Delegate from the District of Columbia, posed the following question [(2)] to which Mr. Sisk offered a reply.

MR. FAUNTROY: Mr. Speaker, as the Members know, I cannot vote in this Chamber, and I would like to, and I am very anxious to do so some day. But I would ask, under this proposed system, what would prevent someone who is as anxious as I am to vote, of someone handing me their card, and punching the card for them?

MR. SISK: Let me make a brief comment here. Actually, the Members of

2. 118 CONG. REC. 36007, 36008, 92d Cong. 2d Sess.

the Congress work on their own honor, as we are today. As you will recall, there was an incident in the last Congress in which accusations were made. I do not think anything deliberate had been done, but there were mistakes, apparently, by the clerks. But again it gets down to a matter of the integrity of each Member.

Shortly thereafter, Mr. Sisk yielded his remaining time to Mr. H. Allen Smith, of California, who concisely singled out those changes in the rules which would be brought about by passage of House Resolution 1123:

Mr. Speaker, the purpose of House Resolution 1123 is to make the changes in the House rules which will be required in order to use the electronic voting equipment installed in the House Chamber. Changes are made at four different points in the rules.

The first change [is] in rule I, clause 5, which deals with how votes may be taken in the House. House Resolution 1123 adds language, which provides that a recorded vote may be taken by electronic device. The procedure would be as follows: A Member may request a recorded vote at any time after the question has been put by the Speaker. The intent is that a request for a recorded vote shall be in order before or after a voice vote, a division vote or a teller vote. If a Member requests a recorded vote and is supported by one-fifth of a quorum, the vote will be taken by electronic device. A Member may no longer demand a vote by tellers with clerks. However, once a recorded vote is ordered, the Speaker in his discretion may order a recorded vote with clerks. This would be similar to the present vote by tellers with clerks, except that the Speaker will appoint clerks to count, rather than Members. A Member shall have not less than 15 minutes to be counted. The time begins to run from the ordering of the recorded vote or the ordering of clerks to tell the vote.

The second change in the rules affects rule VIII, clause 2, which deals with the announcing of pairs. The present rule provides in relevant part, that—

> Pairs shall be announced by the Clerk, after the completion of the second rollcall.

The new language provides that—

> Pairs shall be announced by the Clerk immediately before the announcement by the Chair of the result of the vote.

This is a technical change to reflect the fact that there will no longer necessarily be a rollcall preceding the announcement of pairs, because of the use of the electronic device.

The third change in the rules affects rule XV which deals with calls of the roll and House. House Resolution 1123 adds language which provides that any rollcall or quorum call may be taken by electronic device. This new language is in clause 5 of rule XV. However, the Speaker in his discretion, may order that the names be called in the traditional manner. The first four clauses of rule XV, which describe the traditional system for taking rollcalls and quorum calls, are left intact for the most part, but are made subject to clause 5, which provides for the use of the electronic device.

As in the case of a vote, Members have not less than 15 minutes from the ordering of a call of the House to have their presence recorded by the electronic device.

In addition to changes in wording necessary to provide for rollcalls or quorum calls by electronic device, there is one part of the present rule XV which is dropped under this resolution. The present clause 2(b) of rule XV allows the Speaker discretion to order the use of tally sheets to record a quorum; once a quorum is recorded, it is in order to dispense with the rest of the call, allowing Members 30 minutes to record their presence on the tally sheet. This procedure was put into the rules as an amendment to the Legislative Reorganization Act of 1970. However, the procedure has never been used, and is removed from the rules by House Resolution 1123.

The fourth change in the rules affects rule XXIII, clause 2, which deals with the Committee of the Whole House. The language changes permit the use of the electronic device to record the presence of a quorum in the Committee of the Whole.

In summary, the major effect of House Resolution 1123 will be to provide for the use of the electronic device, while giving the Speaker the discretion to return to the traditional system as a backup. . . .

Following additional discussion, Mr. Sisk offered an amendment[3] providing that the resolution would become effective immediately before noon on Jan. 3, 1973. The amendment was agreed to, and the resolution, as amended, was also agreed to.

§ 31.2 The Speaker inserted in the Record a detailed statement describing procedures to be followed during votes and quorum calls by electronic device and by the "back-up" procedures therefor.

On Jan. 15, 1973,[4] Speaker Carl Albert, of Oklahoma, announced to the Members that effective Jan. 23, 1973, the electronic voting system would become operative. The Chair urged the Members to obtain their electronic voting cards and reminded them that a detailed statement concerning the operation of the system had been mailed to their offices by the Clerk. The Speaker further pointed out that each Member had been given a committee[5] print entitled "The Electronic Voting System for the U.S. House of Representatives"; and that he would insert both the statement and the print[6] in the Record.

The statement, in its entirety,[7] reads as follows:

3. *Id.* at p. 36012.

4. 119 CONG. REC. 1055, 93d Cong. 1st Sess.

5. Committee on House Administration.

6. See 119 CONG. REC. 1056, 1057, 93d Cong. 1st Sess., Jan. 15, 1973, for a copy of the print.

7. *Id.* at pp. 1055, 1056.

STATEMENT ON ELECTRONIC VOTING

Members are familiar with the fact that an electronic voting system was designed, developed, and installed during the 92d Congress. The rules of the House, adopted on January 3, 1973, now provide for the use of this new voting system. The Chair will announce in a few days when this system will be utilized, but in advance of its implementation, it seems advisable to pro-mulgate the procedures regarding its use.

The Chair has given careful consideration to the implementation of this new voting mechanism. Discussions have been held with the Committee on House Administration, which is responsible for the technical development of the system, with the Committee on Rules, and with the Leadership on both sides of the aisle to determine the most efficient and practical means of utilizing the electronic system.

This new voting system has been designed primarily with the aim of reducing the time required to conduct recorded votes and quorum calls while at the same time assuring the accuracy of the vote or call. Consequently, the Chair anticipates that the use of this new procedure will not supplant votes by voice, division, or tellers as provided in the Rules of the House.

The use of this system by the Members can best be described in terms of the essential physical components. A number of *vote stations* are attached to selected chairs in the Chamber. Each station is equipped with a vote card slot and four indicators, marked "yea," "nay," "present," and "open." The first three indicators are also push-buttons used to cast votes, while the fourth is illuminated only when a vote period is in progress and the station is in operational readiness to accept votes. Each Member has been provided with a personalized Vote-ID Card. The vote cards are encoded with a pattern of holes so as to be uniquely identifiable by the system when inserted into any of the vote stations. The *main display,* located over the press gallery, lists the Members' names alphabetically and will indicate their vote preferences by the illumination of colored lights adjacent to each Member's name. The color code is: green for yea, red for nay, and amber for present. The duplicate *summary displays,* located on the east and west gallery ledges, will identify the issue under consideration, provide running tallies of the yea, nay, and present responses recorded by the system, and show the time remaining during a vote period.

As the Members are undoubtedly aware, a computer system coordinates the interaction of these components and maintains a permanent record of the Members' votes.

Where a vote is to be taken, electronically, the Chair will instruct Members to record their presence or votes by means of the electronic device. This will initiate a fifteen minute voting period during which a Member may cast his vote. The initiation of a vote period will be accompanied by the illumination of the blue "open" light at each of the vote stations and by activation of the main and summary displays. The time indicated on the summary displays will reduce from 15:00 minutes to 00:00 minutes during the vote period.

A Member casts his vote by inserting his Vote-ID card into any one of the

vote stations and depressing the appropriate push-button indicator. The voting system indicates the recording of the Member's vote by illuminating the selected push-button indicator at the vote station and the vote preference light adjacent to the Member's name on the main display panel. At the same time, the appropriate running tally on the summary display will be incremented.

If a Member mis-casts his vote or desires to change his vote during the voting period, he may do so by simply repeating the method used for casting his original vote. The system will illuminate the push-button he last selected when he inserts his Vote-ID card into the station. At this point, he may change his vote by depressing another push-button. The running tallies on the summary displays will reflect the changed vote, and the vote preference light adjacent to the Member's name on the main display will change accordingly.

A Member may also verify his previously cast vote by simply inserting his Vote-ID card into a vote station and observing which push-button is illuminated.

In the event that a Member is in the Chamber without his Vote-ID card, he may still cast his vote in the following manner. Green "yea" ballot cards, red "nay" ballot cards, and amber "present" ballot cards will be available in the cloakrooms and in the Well. These cards have spaces for the Member to fill in his name, State, and district. Upon properly filling out an appropriate ballot card, the Member casts his vote by handing the ballot card to the Tally Clerk in the Well. The Tally Clerk will then record the vote electronically and the main and summary displays will reflect the Member's vote preference. At the same time, the system deactivates the use of the Member's Vote-ID card for the duration of the vote then in progress. A Member without a Vote-ID card who has been recorded in this fashion and who then wishes to change his vote must seek recognition by the Chair and announce his change. That Member does not submit a second ballot card.

If a Member present in the Chamber at the time of a recorded vote in the House desires to be paired with a Member not present he should record himself as "present" in the manner prescribed above and, at the conclusion of the voting period seek recognition by the Speaker to announce his desire to create a pair with his absent colleague. As has been the practice under the precedents "pairs" will not be permitted in Committee of the Whole.

At the conclusion of the 15 minutes voting period, the time indicated on the summary displays will show "0:00"; however, the vote stations will remain open, indicated by the blue illumination of the "open" indicator light, until the Chair declares the vote to be closed and announces the final result. At this point, the summary panel time display will indicate "FINAL" and the vote stations will be closed to the acceptance of further votes.

When the vote is finally declared, printed reports of the results, alphabetically listing Members who responded "aye," "nay" or "present" or who did not respond at all will be available to the Leadership.

A similar method governs the use of the electronic vote system for the re-

cording of quorum calls, both for the House and for the Committee of the Whole. The Chair will instruct that a quorum call be taken by electronic device. This will initiate a 15 minute period during which the Member may indicate his presence by inserting his Vote-ID card into a vote station and depressing the "present" push-button. The main and summary displays will reflect the Member's responses as in the case described above for a recorded vote. The vote stations, however, will not accept a vote other than "present" during a quorum period. At the conclusion of the 15 minute period, the time indicated on the summary display will be "0:00". The vote stations will remain open until the Chair announces that the count is final, at which point the vote stations will be closed and the time indicator will show "FINAL". A printed report of those responding on the quorum call will then be distributed as previously described.

If a Member is in the Chamber without his Vote-ID card, he may indicate his presence by using the amber ballot card, as previously described.

One further aspect of the electronic voting system deserves mention at this time. Video consoles equipped with key boards are located at both the majority and minority tables. These devices may be used by the Leadership to review the progress of the vote. The same information is available on both devices, though, of course, they are operated independently of one another. The actual operation and use of the devices is the responsibility of the majority and minority leaders.

Under the provisions of Rules XV and XXIII, the Chair may in his discretion determine that recorded votes be taken by alternative procedures in lieu of the electronic device. In the House, the Constitutional yeas and nays or an "automatic roll call" (where a quorum is not present and objection to a vote is made for that reason) may be taken by a call of the roll under Clause 1 of Rule XV. In such event, the names of Members shall be called alphabetically and there shall be a second roll call of those Members who failed to respond to the first roll call. Members may respond "aye", "no", or "present" when their names are called.

In the House and in the Committee of the Whole a "recorded vote"—that is a vote demanded under the provisions of Clause 5, Rule I by one-fifth of a quorum—may, at the Chairman's discretion, be told by tellers in lieu of using the electronic system. In that event, Members will fill in a green "aye" ballot card to be deposited in the "aye" ballot box at the rear of the aisle to the Chair's left or a red "no" ballot card to be deposited in the "no" ballot box at the rear of the aisle to the Chair's right. Members wishing to be recorded as "present" in such case will announce this fact to the Chair prior to the announcement of the result.

Quorum calls in the House and in the Committee of the Whole may, at the discretion of the Chair, be recorded by clerks in lieu of electronic devices under clause 2(b) of Rule XV. In that event, Members will find quorum call cards here at the Clerk's desk which must be filled in by name, State and district. Tally clerks will be stationed at a box to be located at the rear of the center aisle. The Clerks will take the cards, deposit them in the box and count the number of Members who respond to the call. When the Clerk de-

clares that procedures under this clause have been completed the Tally Clerk will give the Chair a final count which the Chair will announce to the House.

The Speaker has placed in the *Congressional Record* a guide to the bell and light system, and has occasionally announced upgrades to reflect current usage. For instance, on Jan. 23, 1979, the Speaker announced the usage as follows:

ANNOUNCEMENT BY THE SPEAKER

THE SPEAKER: Several changes in the rules of the House with respect to voting will necessitate a change in the legislative bell and light system. The Clerk has sent to each Member a detailed statement indicating changes in the bell system, and the Chair will insert the statement in the Record at this point:

One bell and light indicates a teller vote taken in accordance with clause 5, Rule I (Members indicate their preference by walking up the center aisle to be counted by Members who are named as tellers by the Chair. This is not a recorded vote).

Two bells and lights indicate an electronically recorded vote, either demanded under the Constitution by one-fifth of those present (in the House), by one-fifth of a quorum under cl. 5, Rule I (in the House), by 25 Members (in Committee of the Whole) under cl. 2(b), Rule XXIII, or pursuant to an "automatic vote by yeas and nays" where any Member in the House objects to a vote on the ground that a quorum is not present under cl. 4, Rule XV.

Two bells may also indicate a recorded vote under clause 5, Rule I under a back-up procedure whenever Members are to record their votes by depositing ballot cards in the "aye" or "no" boxes. The two bells will be repeated five minutes after the first ring to give Members a second notice of the vote in progress.

Two bells, a brief pause, followed by two bells and lights indicates a yea and nay or recorded vote taken under the provisions of clause 1, Rule XV by a call of the roll. The bells will be sounded again when the Clerk reaches the "R's" in the first call of the roll.

Two bells and lights, a brief pause, followed by five bells and lights, indicate the beginning of the first (15 minute) vote in a series of two or more votes where subsequent electronic votes immediately thereafter may be reduced to five minutes; under one of four different procedures as follows:

1. At beginning of first electronically recorded vote ordered on series of "clustered" votes on final passage or adoption of bills, resolutions, or conference reports (cl. 5(b), Rule I);

2. At beginning of electronically recorded vote ordered on recommittal to be immediately followed by possible five-minute record vote on final passage or adoption of bills, resolutions, or conference reports (cl. 5, Rule XV);

3. At beginning of first electronically recorded vote ordered on series of "clustered" votes on resolutions from Rules Committee (cl. 4(e), Rule XI); or

4. At beginning of first electronically recorded vote ordered on series of "clustered" votes on motions to suspend the rules (cl. 3, Rule XXVII).

After the first five minutes on the first electronically recorded vote conducted under any of these procedures, two bells and lights will be repeated to give Members a second notice of the vote in progress. (As indicated below, five bells will be rung

on all subsequent five-minute votes in each series on which the Speaker has reduced voting time.)

Three bells and lights indicate a regular quorum call either in the House or Committee of the Whole by electronic system or by clerks (cl. 2, 5, Rule XV, cl. 2(a), Rule XXIII). Three bells will be repeated five minutes after the first ring to give Members a second notice of the quorum call in progress.

Three bells and lights, a brief pause, followed by three bells and lights indicate a quorum call in House or in Committee of the Whole under cl. 1, Rule XV by a call of the roll, repeated when the Clerk reached the "R's" in the first call of the roll.

One long bell, a brief pause, followed by three regular bells, indicate that the Chair has exercised his discretion under cl. 2, Rule XXIII and will vacate proceedings when quorum of the Committee of the Whole appears ("Notice" or "short" quorum call). One bell followed by three bells and lights will be repeated every five minutes unless (a) the call is vacated by ringing of one long bell and extinguishing of three lights, or (b) the Chair converts to a regular quorum call and three regular bells are rung as explained above.

Three bells, a brief pause, followed by five bells, indicate beginning of a regular quorum call in Committee of the Whole, which will possibly be immediately followed by five-minute recorded vote at discretion of Chair if recorded vote is ordered on pending question (cl. 2, Rule XXIII). Three bells will be repeated five minutes after the first ring to give Members a second notice of the quorum call in progress.

Four bells and lights indicate an adjournment of the House, followed by extinguishing of amber light on right.

Five bells and lights indicate the beginning of any five-minute electronically recorded vote. The bells are not rung again during a five minute vote.

Six bells and lights indicate a recess of the House.

Twelve bells, sounded at two-second intervals, with six lights illuminated, indicate Civil Defense Warning.

At the beginning of each Congress, the Speaker usually enunciates guidelines for the use of the electronic voting system. While Rule XV establishes a *minimum* time of 15 minutes for responding on such a vote, in practice, the length of an electronic vote often stretched to 30 minutes or more. In recent Congresses, Speakers have alerted Members that time limits set by the rule would be followed. An example of such a policy statement follows:[8]

THE SPEAKER:[9] The Chair wishes to enunciate a clear policy with respect to the conduct of electronic votes.

As Members are aware, clause 5 of Rule XV provides that Members shall have not less than 15 minutes in which to answer an ordinary rollcall vote or quorum call. The rule obviously establishes 15 minutes as a minimum. Still, with the cooperation of the Members, a vote can easily be completed in that time. The events of October 30, 1991, stand out as proof of this point. On that occasion, the House was consid-

8. 141 CONG. REC. p. _____, 104th Cong. 1st Sess., Jan. 4, 1995.

9. Newt Gingrich (Ga.).

ering a bill in the Committee of the Whole under a special rule that placed an overall time limit on the amendment process, including the time consumed by rollcalls. The Chair announced, and then strictly enforced, a policy of closing electronic votes as soon as possible after the guaranteed period of 15 minutes. Members appreciated and cooperated with the Chair's enforcement of the policy on that occasion.

The Chair desires that the example of October 30, 1991, be made the regular practice of the House. To that end, the Chair enlists the assistance of all Members in avoiding the unnecessary loss of time in conducting the business of the House. The Chair encourages all Members to depart for the Chamber promptly upon the appropriate bell and light signal. As in recent Congresses, the cloakrooms should not forward to the Chair requests to hold a vote by electronic device, but should simply apprise inquiring Members of the time remaining on the voting clock.

Although no occupant of the chair would prevent a Member who is in the well of the Chamber before the announcement of the result from casting his or her vote, each occupant of the Chair will have the full support of the Speaker in striving to close each electronic vote at the earliest opportunity. Members should not rely on signals relayed from outside the Chamber to assume that votes will be held open until they arrive in the Chamber.

Verifying Votes Cast by Electronic Device

§ 31.3 The Speaker announced that Members should utilize the safeguards of the electronic voting system to verify that their votes are properly recorded.

On Feb. 6, 1973,[10] shortly after the House convened, the Speaker[11] made a statement regarding the verification problems attendant upon electronic voting:

> The Chair would like to make a brief statement about the use of the electronic voting system.
>
> Members now have been using this new voting system for several days. A sufficient number of Members have spoken to the Chair about its use to demonstrate that there is some general misunderstanding, or lack of understanding, about the safeguards which have been built into this system. The Chair would like to stress two points:
>
> First, when a Member inserts his card in a voting station, he should carefully note whether the blue light—that is the light on the far right of the voting station—goes off momentarily and then illuminates. When this light comes on, and only then, is the mechanism ready to receive the Member's vote. The Member then depresses the appropriate button—yea, nay, or present—before removing his card. When he depresses the button of his choice, that button will also light. It may take a second or two for this voting light to come on. The Member should continue to depress the button until it does illuminate.

10. 119 CONG. REC. 3558, 93d Cong. 1st Sess.

11. Carl Albert (Okla.).

Second, having voted in this fashion, a Member can very quickly and simply verify whether or not he is correctly recorded, or is recorded at all, on the rollcall or quorum call then in progress, simply by reinserting his card in the same or any other voting station and observing which button lights. If he has previously voted in the affirmative, for example, the yea button will light to indicate that the computer already has registered his vote.

A Member also can verify his vote by watching the master panel on the wall of the Chamber above the Press Gallery. However, a Member can more accurately check his vote by the procedure just explained.

If a Member has any difficulty with the system, he should of course check with the employees of the House who are positioned at the majority and minority tables next to the monitoring screens.

Changing Electronic Votes

§ 31.4 At various times, the Speaker has announced changes in the procedure for changing votes taken by the electronic system. In the 94th Congress, a policy was implemented which prohibited vote changes from the voting stations and required Members to come to the well, fill out a vote card, and announce his change. This policy was reversed in the second session of the 94th Congress.

On Sept. 17, 1975,[12] Speaker Carl Albert, of Oklahoma, made the following statement:

ANNOUNCEMENT BY THE SPEAKER

THE SPEAKER: The Chair desires to make an announcement.

It has been suggested to the Chair by the leadership on both sides of the aisle, by representatives of the Committee on House Administration, and by other Members that certain procedures associated with the use of the electronic voting system be changed—specifically, those procedures required to change a vote once it has been cast.

Under the present procedure, a Member may change a vote simply by repeating the method used for casting his original vote and may do so any number of times during the progress of a vote.

After due consideration of all the factors involved in directing an adjustment in voting procedures, the Chair has come to the conclusion that it would be better if the House were to return to the system for changing votes which was in effect prior to the advent of the electronic system; that is, that Members should come to the well at the conclusion of the vote to announce and make changes in their votes. Accordingly, the Chair has directed that the voting computer be reprogramed, effective September 22, 1975, so that once votes have been cast during a voting period they may be changed only if Members come into the well at the conclusion of the 15-minute minimum vot-

12. 121 CONG. REC. 28903, 94th Cong. 1st Sess.

ing time, seek recognition and announce their vote changes after their names are called by the reading clerk. When called by name, Members should state "off aye, on no" or "off no, on aye" or "off aye, on present," and at the same time hand in a red, green or amber tally card to indicate a final vote of "no," "aye," or "present." The computer will accept no vote changes from the voting stations in the Chamber, other than from "present" to "aye" or "no."

The specific procedure is as follows: At the end of the 15 minute voting period permitted under clause 5, rule XV, the Chair will follow his present practice of asking if there are additional Members who wish to be recorded.

When the Chair ascertains that there are no other Members attempting to be initially recorded, the Chair will then inquire if there are Members who wish to change their votes. As indicated, a Member who wishes to change his vote must come to the well, and when his name is called, announce his change and submit a red, green or amber voting card to the tally clerk to indicate his corrected vote. The tally clerk will then enter the corrected vote into the computer and the changed vote will then be reflected on the large voting panel over the Speaker's rostrum, on the south wall of the Chamber.

While this process is continuing, Members who have not initially voted may, of course, still be recorded but they must do so by submitting a card at the well, for the voting stations throughout the Chamber will be turned off during these proceedings.

As stated, these new procedures will be in effect on next Monday. The Chair trusts that Members will view these changes as the Chair intends them—as an attempt to further improve upon and preserve the usefulness and integrity of the voting procedures of this House.

PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

Mr. Bauman: Mr. Speaker, within the last few months the gentleman from Maryland raised a request from the floor for a recapitulation following a rather close electronic rollcall, and was informed by the Chair that under the electronic system, recapitulations were not permitted.

It seems fairly obvious, at least to the gentleman from Maryland, that under this new procedure a recapitulation would not only be in order, but in many instances would probably be very beneficial, especially if the result were very close.

I put this question to the Chair: Under this changed electronic procedure just announced, will recapitulations be granted when requested by Members?

THE SPEAKER: As the gentleman has submitted his parliamentary inquiry, there is no change in that ruling. That is not the reason why the prior ruling was made. The names of the Members will still appear on the panel and Members can verify their changed votes without a recapitulation. That was the basis for the original ruling, that all names, whether they are by Members inserting their voting cards

or voting from the well, will appear on the voting panel for verification. The ruling will remain as it was when the gentleman made his inquiry at an earlier date.

MR. BAUMAN: Mr. Speaker, I have a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: What the gentleman from Maryland is not completely sure about is by what complete authority changes of the rules of this nature are made by the ruling of the Chair alone. If a Member wished to seek to have the full House act on the announcement just made by the Chair, would this be done only by resolution referred to the Committee on Rules?

THE SPEAKER: The gentleman is correct.

MR. BAUMAN: I thank the Chair.

On Mar. 22, 1976,[13] Speaker Albert announced a further modification of the voting system to permit Members to change their votes electronically during the first 10 minutes of the 15-minute voting period but requiring changes made in the last five minutes to be announced from the well by submission of a voting card.

ANNOUNCEMENT BY THE SPEAKER—CHANGE IN ELECTRONIC VOTING SYSTEM

THE SPEAKER: The Chair wishes to make an announcement concerning the electronic voting system.

After consultation with the leadership on both sides of the aisle and with the chairman of the Committee on House Administration, it has been decided that it would be a convenience to Members to permit changes in votes cast with the electronic system by reinserting a voting card during the first 10 minutes of the voting period. After 10 minutes, if a Member wishes to change his vote, he must follow the present procedure of doing so by voting card, in the well, following the completion of the 15-minute voting period. As with the present system, a Member wishing to change a vote cast during a 5-minute vote, such as occur on suspension days, must do so by filling out a card in the well and announcing his change when recognized to do so.

The necessary programing of the computer has been accomplished to accommodate this change and so this new procedure is effective today.

In 1977,[14] Speaker Thomas P. O'Neill, Jr., of Massachusetts, clarified the policy to be followed for making changes during a vote which has been reduced to five minutes of duration. During such votes, changes can be made electronically and an announcement from the well is not required.

THE SPEAKER: The Chair desires to make an announcement concerning the electronic voting system. . . .

. . . [O]n 5-minute votes, the revised procedure will permit Members to reinsert voting cards in any voting sta-

13. 122 CONG. REC. 7394, 94th Cong. 2d Sess.

14. 123 CONG. REC. 73, 74, 95th Cong. 1st Sess., Jan. 4, 1977.

tion at any time until the Chair directs voting stations to be closed by inquiring whether Members in the Chamber wish to change their votes or be recorded. From that point until the Chair's announcement of the result, Members must follow the present procedure of submitting voting cards, in the well, at the completion of the 5-minute voting period, and announcing his change when recognized to do so.

The necessary programing of the computer has been accomplished to accommodate this change and so this new procedure on 5-minute votes is effective today.

§ 31.5 Although Members have a minimum of 15 minutes in which to record their votes on a vote taken by electronic device, the Chair has exercised his discretion to close the vote and to announce the result at any time after the 15 minutes have elapsed; and those precedents guaranteeing Members in the Chamber the right to have their votes recorded even if the Chair has announced the result, which predate the use of an electronic voting system, do not require the Chair to hold open indefinitely a vote taken by electronic device.

The Chair has on occasion been required to make ad hoc decisions concerning the use of the electronic system when circumstances in the Chamber required. On Mar. 14, 1978,[15] certain Members were expressing their dissatisfaction with a decision made by a standing committee by asking for numerous roll calls on procedural matters: a call of the House, a vote on a motion that the Journal be read, and another vote on the approval of the Journal were part of the tactics employed. Members were also delaying the termination of votes by changing their responses from yea to nay in the well at the conclusion of votes.

The following proceedings, during which the Speaker Pro Tempore entertained a parliamentary inquiry during the progress of the vote—a practice normally not followed but one within the Chair's discretion—illustrate the authority of the Chair to meet parliamentary exigencies.

[Following a quorum call, the Speaker pro tempore moved to the next order of business.]

THE SPEAKER PRO TEMPORE:[16] The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I object to the approval of the Journal.

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15. 124 CONG. REC. 6838–41, 95th Cong. 2d Sess.

16. Lloyd Meeds (Wash.).

THE SPEAKER PRO TEMPORE: Objection is heard.

Does the gentleman from Maryland offer a motion?

MR. BAUMAN: I do, Mr. Speaker.

PREFERENTIAL MOTION OFFERED BY MR. BAUMAN

MR. BAUMAN: Mr. Speaker, I offer a preferential motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the preferential motion.

The Clerk read as follows:

> Mr. Bauman moves that the Journal be read in full.

THE SPEAKER PRO TEMPORE: The question is on the preferential motion offered by the gentleman from Maryland (Mr. Bauman).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. BAUMAN: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 99, nays 301, not voting 34, as follows: . . .

Messrs. McClory, Schulze, Walker, Dickinson, Vander Jagt, Stangeland, Steers, and Livingston changed their vote from "nay" to "yea."

Messrs. Moore, Edwards of Oklahoma, Stratton, Marlenee, Don H. Clausen, and Burgener changed their vote from "yea" to "nay."

THE SPEAKER PRO TEMPORE: All time has expired.

The Chair will take votes of those Members who have not had an opportunity to vote, and those who have had such an opportunity can clear the well. If there are people here who have not voted, the Chair will take those votes. Otherwise, the vote is closed.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: All time has expired.

MR. ASHBROOK: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. ASHBROOK: Mr. Speaker, under Cannon's Precedents it says clearly:

> The vote of a Member failing to be recorded, he may insist that it be recorded even after the Chair has declared the result and the Chair then makes a new declaration (V, 6064, 6065; VIII, 3143).

Under the precedents, I would like to suggest that the Chair is not making a proper ruling.

THE SPEAKER PRO TEMPORE: Those precedents apply only to rollcalls preceding the installation of the electronic device and are not a precedent for holding the vote by electronic device open indefinitely.

All time has expired.

So the motion was rejected.

The result of the vote was announced as above recorded.

MR. [RICHARD T.] SCHULZE [of Pennsylvania]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state his point of order.

MR. SCHULZE: Mr. Speaker, I attempted to change my vote under the electronic device process before the conclusion of the vote and was unable to do so. So, if we are not going to be able to change our vote by electronic device then we must be able to change

our vote in the well or change the electronic device so that we can watch our vote.

THE SPEAKER PRO TEMPORE: The gentleman's objection will be noted. The Chair will rule that a point of order will not lie when the Chair exercises his discretion to close the voting.

In the absence of an objection the Chair will approve the Journal.

MR. BAUMAN: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I move that the Journal be approved.

MR. BAUMAN: Mr. Speaker, I demand that the gentleman submit a written motion.

MR. FOLEY: I have a written motion at the desk.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

> Mr. Foley moves that the Journal be approved.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Washington (Mr. Foley).

The question was taken and the Speaker pro tempore announced that the ayes appeared to have it.

MR. ASHBROOK: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 371, nays 29, not voting 34, as follows: . . .

THE SPEAKER PRO TEMPORE: Are there Members in the Chamber who have failed to cast their votes?

The Chair will advise Members that the electronic voting stations are still open, and they will remain open for 5 minutes.

MR. [ROBERT E.] BADHAM [of California]: My card did not work, Mr. Speaker.

THE SPEAKER PRO TEMPORE: If there are Members who do not have cards, the Chair will certainly take the word of those Members and they may vote in the well.

MR. [GARRY] BROWN of Michigan: Mr. Speaker, I do not recall that the rules provide for qualification.

THE SPEAKER PRO TEMPORE: Members who desire to vote may do so. The voting stations will remain open for 5 minutes.

MR. BAUMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The Chair will take the parliamentary inquiry, although he is not required to do so during the vote.

MR. BAUMAN: The gentleman from Maryland thanks the Chair for his indulgence.

The gentleman from Maryland was aware that the Speaker of the House of Representatives had previously announced rules governing the operation of the electronic voting device. Is the Chair now announcing that those rules have been permanently changed, and that there will be no 5-minute closed period at the end of all 15-minute rollcalls?

THE SPEAKER PRO TEMPORE: The Chair will state that he is not making a change. He is just adapting the procedure to fit the situation.

MR. BAUMAN: I thank the Chair.

MR. [JAMES G.] MARTIN [of North Carolina]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. MARTIN: Mr. Speaker, the Speaker has announced that the electronic recording devices are open. They are, but they have neglected to throw the switch which will allow us to change our vote, which is what I have been trying unsuccessfully to do.

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman that the voting stations remain open for those Members who have not yet recorded their votes. Pursuant to the announcement of the Speaker on March 22, 1976, changes in votes already recorded may not be made from the voting stations during the last 5 minutes of a vote taken by electronic device, but must be made by card from the well.

MR. MARTIN: That is right, Mr. Speaker, because I have not been able to change my vote.

THE SPEAKER PRO TEMPORE: Will the gentleman from North Carolina (Mr. Martin) bring his card to the well?

The gentleman will not be able to change his vote at this time; he will be able to vote for the first time. If the gentleman desires to change his vote, he should come to the well when we take changes at the end of the 5 minutes.

Five minutes has expired. The Chair will accept changes for an additional 5 minutes.

Messrs. Johnson of Colorado, Schulze, Hagedorn, Ketchum, Wampler, Coughlin, O'Brien, Walker, Collins of Texas, Crane, Del Clawson and Treen changed their vote from "nay" to "yea."

Messrs. Kindness, Dickinson, Livingston, Martin, and Steers changed their vote from "yea" to "nay."

So the motion was agreed to.

The result of the vote was announced as above recorded.

MR. [MICKEY] EDWARDS of Oklahoma: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

> Mr. Edwards of Oklahoma moves to reconsider the vote whereby the Journal was approved.

MR. FOLEY: Mr. Speaker, I move to lay the motion to reconsider on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion to table the motion to reconsider.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. EDWARDS of Oklahoma: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 308, nays 91, not voting 35, as follows:

Mr. McEwen changed his vote from "present" to "yea."

Mr. Beard of Tennessee changed his vote from "yea" to "nay."

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

No Recapitulation on Electronic Vote

§ 31.6 A Member may not demand a recapitulation of a vote taken by electronic device.

Where the House was voting on the adoption of a special rule which provided that the House concur in Senate amendments to a House bill, the vote on adoption was very close—with the voting display showing a tie at 213 voting aye and 213 voting in the negative. A Member who had been recorded as "present" then changed his vote, filling out a card at the Clerk's table and voting in the affirmative. The resolution was thus agreed to by a one vote margin. Mr. Robert E. Bauman, of Maryland, then asked for a "recapitulation." Speaker Carl Albert, of Oklahoma, declined to recognize for that demand. Pertinent proceedings from July 30, 1975,[17] were as follows:

MR. [JOHN] YOUNG of Texas: Mr. Speaker, I move the previous question on the resolution.

THE SPEAKER: Without objection, the previous question is ordered.

MR. BAUMAN: Mr. Speaker, I object.

THE SPEAKER: Does the gentleman from Maryland object to ordering the previous question?

MR. BAUMAN: I do, Mr. Speaker.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. BAUMAN: Mr. Speaker, on that I demand a division.

The question was taken; and there were—ayes 396, noes 20.

So the previous question was ordered.

THE SPEAKER: The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. BAUMAN: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 214, nays 213, answered "present" 1, not voting 6, as follows: . . .

MR. BAUMAN (prior to the announcement of the vote): Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, the gentleman from Florida (Mr. Burke) was listed in the recorded vote on the board as having voted aye.

MR. [J. HERBERT] BURKE of Florida: Mr. Speaker, I changed my vote from "present" to "aye."

THE SPEAKER: The vote is final.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

POINT OF ORDER

MR. BAUMAN: Mr. Speaker, I have a point of order.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, I demand a recapitulation, under the rules.

THE SPEAKER: Under the rules, a recapitulation of an electronic vote is not in order.

17. 121 CONG. REC. 25840, 25841, 94th Cong. 1st Sess.

Mr. Bauman: Mr. Speaker, that is unfortunate.

§ 31.7 The Speaker Pro Tempore indicated in response to a parliamentary inquiry that a demand would not be in order for a recapitulation of a vote taken by electronic device even where the display panels were inoperative, since individual votes and vote totals still could be verified through individual voting stations and through the monitoring stations.

On June 21, 1978,[18] the Chair, in response to a parliamentary inquiry, Speaker Pro Tempore James C. Wright, Jr., of Texas, declined to entertain a request for a recapitulation.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, in view of the fact that the display board is not working today, will it be in order for Members to demand a recapitulation of the vote in view of the fact that we quite often have close votes on amendments or on other legislation here?

THE SPEAKER PRO TEMPORE: The Chair will state that Members can still verify by the machine. A Member can ascertain the manner in which his vote has been recorded after having voted by inserting his card into the same or a different receptacle or by going to a monitor. There will be attendants at the monitors on both sides of the Chamber.

MR. BAUMAN: I thank the Speaker.

Speaker's Discretion as to Use of Standby Procedures

§ 31.8 The Speaker announced that, pending preparation and testing of Members' voter-identification cards to be used with the newly installed electronic voting system, roll call votes would be conducted under the standby provisions of the rules.

On Jan. 3, 1973,[19] the Speaker[20] was obliged to delay the implementation of the electronic voting system. Accordingly, he advised the Members as follows:

The Chair desires to make a statement, and it is a statement that is important to all of the Members of the House.

The Rules of the House provide for the use of an electronic voting system which has recently been installed in the House Chamber. The chairman of the Committee on House Administration addressed a letter to each Member advising the places, dates, and times

18. 124 CONG. REC. 18260, 95th Cong. 2d Sess.

19. 119 CONG. REC. 27, 93d Cong. 1st Sess.

20. Carl Albert (Okla.).

when staff personnel from the office of the Clerk and the Committee on House Administration would be available for preparation of House of Representatives voter identification cards. The Chair urges Members to have the cards prepared and tested as soon as possible. Of course, it will take a few days to complete this project. Therefore, pursuant to the authority contained in clause 5 of rule XV,[1] the Chair directs that until further notice all rollcall votes and quorum calls shall be taken by the Clerk calling the roll in the same manner as was the practice in the last Congress.

Members will be given sufficient notice as to when the electronic voting system will be activated.

§ 31.9 The Speaker may direct the Clerk to call the roll alphabetically where the electronic voting device is not in operation.

On May 16, 1973,[2] the Committee of the Whole having arisen after considering a bill (H.R. 5777) to protect hobbyists against the manufacture of certain imitation hobby items, among other things, the Speaker[3] put the question on the passage of the bill. The question was taken; and the Speaker announced that the ayes appeared to have it.

At this point, Mr. John W. Wydler, of New York, objected to the vote on the ground that a quorum was not present and made the point of order that a quorum was not present. The Speaker sustained the point of order, but noted that "The electronic voting device apparently is not operating properly." Accordingly, the Clerk was directed to call the roll.

Where the electronic voting system is inoperative, one back-up procedure available in the House or in Committee of the Whole is the procedure in Rule XV, clause 2(b)-"tellers with clerks." This alternative voting procedure has been utilized to conduct a "short quorum" call in Committee of the Whole.[4]

§ 31.10 The Speaker has announced that the electronic voting system was temporarily inoperable and that until further notice roll call votes would be conducted under the "back-up" provisions of the rules.

1. *House Rules and Manual* § 774b (1995).
2. 119 CONG. REC. 15860, 93d Cong. 1st Sess.
3. Carl Albert (Okla.).
4. The use of tellers with clerks consumes less time than a roll call by the Clerk, but is seldom used since the clerks are often not prepared with cards and ballot boxes without advance notice. See the proceedings of July 13, 1983, 129 CONG. REC. 18858, 98th Cong. 1st Sess. for an instance where tellers with clerks were used as a backup in Committee of the Whole.

On Mar. 7, 1973,[5] the Speaker[6] made the following statement to the Members:

> The Chair would like to make an announcement.
>
> The Chair has been advised that the electronic voting system is at the present time not operable.
>
> Until further notice, therefore, all votes and quorum calls will be taken by the standby procedures which are provided in the rules.

Parliamentarian's Note: Rule XV clause 1 authorizes the Chair to direct the alphabetical call of the roll on "every roll call" unless the Chair in his discretion, utilizes the electronic device.[7] Rule XV clause 5 refers to "any roll call or quorum call;"[8] and clause 2(b) permits "calls of the House" to be told by clerks where the electronic device is not utilized.[9]

§ 31.11 The use of the electronic voting system, inoperative for several days, resumes at the Chair's discretion.

On July 19, 1973,[10] following messages from both the President and the Senate, the Speaker[11] made the following announcement:

> The Chair desires to make a statement.
>
> The Chair has been advised that the electronic voting system, which has not been functioning for the past 3 days, is now in order.
>
> Technicians thoroughly tested the system this morning and have assured the Chair that it is fully operable.
>
> The Chair will therefore direct that its use be resumed as of today.

Electronic Voting System; Display Panels Inoperative

§ 31.12 The Speaker has directed the electronic voting system to be utilized even where the display boards showing how Members are recorded and the running totals on the pending vote are inoperative, where he is assured that the votes can still be correctly recorded by the insertion of the Members' voting cards and that Members can verify their votes by reinserting their cards.

On June 6, 1977,[12] Speaker Thomas P. O'Neill, of Massachusetts, made the following an-

5. 119 Cong. Rec. 6699, 93d Cong. 1st Sess.
6. Carl Albert (Okla.).
7. *House Rules and Manual* § 765 (1995).
8. *House Rules and Manual* § 774(b) (1995).
9. *House Rules and Manual* § 771(b) (1995).
10. 119 Cong. Rec. 24919, 93d Cong. 1st Sess.
11. Carl Albert (Okla.).
12. 123 Cong. Rec. 17484, 95th Cong. 1st Sess.

nouncement concerning the use of the electronic voting system:[13]

> THE SPEAKER: The Chair would like to make an announcement about the electronic voting system. The Chair has been informed that the board displaying each Member's name behind the Chair and the boards displaying the bill number and vote totals to the left and right of the Chair are not working today. However, all voting stations are operating, and the Chair has directed all vote monitoring stations to be staffed with personnel so any Member may go to any monitor and verify his or her vote. Members may also verify their votes—as they should on any vote, by reinserting their card at the same or another voting station.
>
> The Chair therefore directs that the vote be taken by electronic device. Members interested in the progress of the vote may inquire at the vote monitoring stations.

Where Breakdown Occurs—De Novo Votes

§ 31.13 Where the electronic voting system became inoperative during a recorded vote in Committee of the Whole, the Chair, pursuant to his authority under the rules, directed that the vote be taken de novo by clerks.

On July 16, 1973,[14] the Committee of the Whole was considering a bill (H.R. 8860) to amend and extend the Agricultural Act of 1970. The Chairman[15] put the question on an amendment offered by Mr. Bob Bergland, of Minnesota, to strike the cotton section of the bill. The question was taken; and the Chairman being in doubt, the Committee divided, and there were—ayes 49, noes 42.

At this point, Mr. Olin E. Teague, of Texas, rose to demand a recorded vote. Mr. Teague's demand having been supported by the requisite number of Members, a recorded vote was ordered and commenced.

The Chair then interrupted the vote-taking to make the following announcement:

> The Chair desires to announce to the Members that the electronic device is not working. This vote will be repeated by a recorded vote with clerks.

—Vacating Vote

§ 31.14 Where the electronic voting system has malfunc-

13. Similar announcements were made where the display panels were again inoperative on June 21, 1978, 124 CONG. REC. 18256, 95th Cong. 2d Sess.; July 18, 1979, 125 CONG. REC. 19279, 96th Cong. 1st Sess.; Sept. 18, 1985, 131 CONG. REC. 24160, 99th Cong. 1st Sess.; Dec. 4, 1985, 131 CONG. REC. 34233, 99th Cong. 1st Sess. On Sept. 19, 1985, the electronic system failed again, and the Speaker ordered the vote taken by a roll call. 131 CONG. REC. 24245, 99th Cong. 1st Sess.

14. 119 CONG. REC. 23970, 23971, 93d Cong. 1st Sess.

15. William H. Natcher (Ky.).

tioned, the Chair may abort and vacate one electronic vote and initiate a second such vote on the same question pursuant to clause 5, Rule XV.

On Oct. 4, 1989,[16] where a breakdown occurred while a vote by electronic device was in progress, the Speaker ordered the pending vote vacated and immediately ordered a new vote on the same question. The Speaker's announcement explained the situation:

> THE SPEAKER PRO TEMPORE:[17] If the Members will bear with the Chair, we have had some problems with the electronic voting machine and the Chair is attempting to decide at this point whether to vacate the previous vote and to begin again, so if the Members will hold for just a moment, the Chair is trying to find out if the machine has been restored.
>
> The Chair would like to advise the House that that machine was not working properly. The Clerk is not certain that all the votes were recorded.
>
> So it is the intent of the Chair to vacate the vote at this point and to direct a new record vote by electronic device on the previous question on the motion to instruct conferees.
>
> The voting machine is now working. So we will begin the voting process again. The Chair is informed that some Members have left the Chamber, so this will be a full 15 minute vote in all fairness to give all Members an opportunity to vote.
>
> This vote is on ordering the previous question.
>
> The vote was taken by electronic device, and there were yeas 198, nays 222, not voting 12, . . .
>
> So the previous question was not ordered.

—*Votes Electronically Recorded Before Breakdown*

§ 31.15 Where the electronic voting system became inoperative during a yea and nay vote on a motion to suspend the rules, the Speaker directed the Clerk to call the roll alphabetically pursuant to the rules and then announced that Members who had been recorded prior to the malfunction of the electronic voting device would be included in the tally of those voting on the motion.

On Dec. 21, 1973,[18] Mr. Harley O. Staggers, of West Virginia, moved that the House suspend the rules and agree to a House resolution (H. Res. 761) to take from the Speaker's table a Senate bill (S. 921) to amend the Wild and Scenic Rivers Act, with a Senate amendment to the House

16. 135 CONG. REC. 23204, 101st Cong. 1st Sess.

17. William J. Hughes (N.J.).

18. 119 CONG. REC. 43285, 93d Cong. 1st Sess.

amendment thereto, and agree to the Senate amendment to the House amendment with an amendment.

Following discussion of this proposal, the Speaker[19] put the question,[20] whereupon Mr. John D. Dingell, of Michigan, demanded the yeas and nays. The yeas and nays having been ordered, the Members commenced to vote electronically.

In the course of the voting, however, the Speaker interrupted to make the following announcement:

> Will the Members of the House give the Chair their attention? The electronic equipment is out of order. It is evident that it is not going to be repaired in time to finish this bill tonight. The Chair knows of no way in which to handle this matter except by a rollcall vote,[1] and to combine with the rollcall vote any Member whose name is recorded who has left.
>
> The question is on the motion offered by the gentleman from West Virginia (Mr. Staggers) that the House suspend the rules and agree to the resolution, House Resolution 761.

The question was taken; and (two-thirds not having voted in favor thereof) the motion was rejected. In an effort to clarify the method by which this vote would be indicated in the Record, the Speaker later made an additional statement:[2]

> The Chair wishes to announce that the names of all Members who voted by means of electronic device will be included in the list of those voting on this motion so that the Record will clearly reflect the names of all Members who have voted on this matter.[3]

19. Carl Albert (Okla.).

20. 119 CONG. REC. 43288, 93d Cong. 1st Sess.

1. The Chair's authority was derived from the provisions of Rule XV. See Rule XV clause 5, *House Rules and Manual* § 774(b) (1995); Rule XV clause 1, *House Rules and Manual* § 765 (1995).

2. 119 CONG. REC. 43292, 93d Cong. 1st Sess.

3. Accordingly, the text of the Record only shows the complete vote on the motion, and does not distinguish between those Members who voted electronically before the malfunction and those Members who voted thereafter.

A similar breakdown of the electronic system occurred in 1981 during the consideration of amendments to the Interior Department appropriation bill (H.R. 4035) in the Committee of the Whole. Chairman George E. Danielson, of California, handled the situation in a similar fashion, directing a roll call vote de novo but stating that Members who had responded electronically would be "captured" in the final tally. 127 CONG. REC. 16819–20, 97th Cong. 1st Sess., July 22, 1981. In the 98th Congress, where a breakdown occurred in the middle of an electronic vote on the approval of the Journal, the Chair again used a roll call as

Correcting Electronic Vote

§ 31.16 While the Speaker will not entertain unanimous-consent requests to correct the Record and Journal on a vote taken by electronic device or where a vote was changed by submission of a ballot card to the tally clerk, the incorrect transcription by the Official Reporters of Debates of an announced vote change in the well may be corrected in the Record by unanimous consent.

On Sept. 24, 1975,[4] a Member incorrectly recorded by the Official Reporters of Debate as having changed his vote, received unanimous consent for the correction of the permanent Record:

> MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, in the Record of yesterday, September 23, 1975, on page H8993, I am correctly recorded as having voted "yea" on rollcall No. 536, the vote on the Collins of Texas anti-busing amendment.
>
> However, on the same page, after the rollcall, the following paragraph appears:
>
> Messrs. Dent and Ullman, Mrs. Boggs, Messrs. Addabbo, Smith of Iowa, Carney, Hastings, Bauman, and Florio changed their vote from "yea" to "nay."
>
> Mr. Speaker, this is incorrect. I did not change my vote at all, having voted "yea" during the rollcall. I did, however, come to the well and inquire of the Chair (Mr. Bolling) how I was recorded. I did so out of an abundance of caution, in view of the new procedure announced by the Speaker which now governs electronic rollcalls.
>
> Mr. Speaker, I ask unanimous consent that the permanent Record be corrected to reflect the fact that I did not change my vote, and I thank the Chair.
>
> THE SPEAKER:[5] Is there objection to the request of the gentleman from Maryland?
>
> There was no objection.

ANNOUNCEMENT BY THE SPEAKER

THE SPEAKER: It has been called to the Chair's attention that the Record of yesterday incorrectly indicates changes of votes made by two Members, one of whom being the gentleman from Maryland (Mr. Bauman).

The Chair will point out, however, that the errors in the Record were errors in transcription of the notes taken by the reporters, and that the proper votes by each Member were accurately recorded in the electronic system and can be verified by the voting cards themselves.

The Chair has taken precautions to assure that in the future any changes of votes recorded by the Official Re-

---

the means of finalizing the result. The final tally was delayed until the Clerk could retrieve the names of Members who had voted electronically but failed to answer the roll when their names were called. 129 CONG. REC. 18844, 98th Cong. 1st Sess., July 13, 1983.

4. 121 CONG. REC. 30059, 94th Cong. 1st Sess.

5. Carl Albert (Okla.).

porters of Debates will be checked against the voting cards submitted to the tally clerk before they are noted in the *Congressional Record*.

§ 31.17 The Speaker entertained a unanimous-consent request to permit a Member to correct the Record and Journal where he had inadvertently not been recorded on a quorum call taken by a call of the roll where the electronic voting system had been inoperative.

Parliamentarian's Note: Where a unanimous-consent request to correct the permanent Record is procedurally permissible and no objection is heard, the actual honoring of the request obviates the need to include it, as originally stated, in the permanent edition of the Record. The reader of the permanent edition, of course, will be unaware that any mistake warranting such a correction was made. Accordingly, all correction requests of this category (i.e., those which require unanimous consent, which are procedurally permissible, and which are not objected to) may only be found in the temporary edition of the *Congressional Record*.

On July 17, 1973,[6] Mr. Ronald A. Sarasin, of Connecticut, rose to address the Chair[7] as follows:

Mr. Speaker, on yesterday, July 16, 1973, on rollcall No. 339, a quorum call, I am recorded as absent. I was present and answered to my name. I ask unanimous consent that the permanent Record and Journal be corrected accordingly.

The Speaker then put the request to the House;[8] and, there being no objection, the Record was corrected.[9]

Vacating Disputed Vote

§ 31.18 A disputed vote has on rare occasions been vacated and the question put de novo to ameliorate a dispute regarding the conduct of the vote.

Illustrative are the proceedings of June 21 and 22, 1995, where a vote taken in Committee of the Whole was held open for longer than the 17 minutes normally allowed to conclude a vote but was closed while several Members were in the well—or proceeding to the well—attempting to be recorded. The amendment was nar-

6. CONG. REC. (daily ed.), 93d Cong. 1st Sess.

7. Carl Albert (Okla.).

8. If the quorum call in question had been taken by electronic means, Mr. Sarasin would have been precluded from obtaining such a correction in light of the general proscription against unanimous-consent requests where electronic voting is involved. See § 32.2, infra.

9. 119 CONG. REC. 23986, 93d Cong. 1st Sess., July 16, 1973.

rowly defeated, 213–214 and certain Members felt seriously aggrieved and were protesting the vote. A preferential motion that the Committee of the Whole rise was then offered by the manager of the bill and was adopted. Back in the House, a motion to adjourn was immediately offered and carried. On the following day, June 22, 1995, the Majority Leader asked, in the House, that when the Committee of the Whole resumed its sitting on the measure, the question be put de novo on the disputed amendment. After some discussion, this request was agreed to.

When the Committee resumed its deliberations, the question on the amendment was again put and after limited debate, the amendment was agreed to by a vote of 220–204. Pertinent excerpts from the proceedings surrounding this dispute commencing on June 21, 1995,[10] were as follows:

THE CHAIRMAN:[11] It is now in order to consider amendment No. 5 printed in House Report 104–146.

AMENDMENT OFFERED BY MR. FAZIO OF CALIFORNIA

MR. [VIC] FAZIO of California: Mr. Chairman, I offer an amendment.

THE CHAIRMAN: The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. Fazio of California: Page 19, after line 13, insert the following:

OFFICE OF TECHNOLOGY ASSESSMENT

SALARIES AND EXPENSES

For salaries and expenses necessary to carry out the provisions of the Technology Assessment Act of 1972 (Public Law 92–484) including official reception and representation expenses, expenses incurred in administering an employee incentive awards program, and rental of space in the District of Columbia, $18,620,000.

THE CHAIRMAN: Pursuant to the rule, the gentleman from California [Mr. Fazio] and a Member opposed will each be recognized for 5 minutes.

MR. [RON] PACKARD [of California]: Mr. Chairman, I rise in this instance in strong opposition to the amendment.

THE CHAIRMAN: The gentleman from California [Mr. Packard] will be recognized for 5 minutes. . . .

AMENDMENT OFFERED BY MR. HOUGHTON AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. FAZIO OF CALIFORNIA

MR. [AMO] HOUGHTON [of New York]: Mr. Chairman, I offer an amendment as a substitute for the amendment.

THE CHAIRMAN: The Clerk will designate the amendment offered as a substitute for the amendment.

The text of the amendment offered as a substitute for the amendment is as follows:

10. 141 CONG. REC. p. ____, 104th Cong. 1st Sess.

11. John Linder (Ga.).

Amendment No. 6 offered by Mr. Houghton as a substitute for the amendment offered by Mr. Fazio of California: Page 23, line 18, strike "$60,083,000" and insert "$75,083,000".

Page 26, line 19, strike "$211,664,000" and insert "$195,076,000".

THE CHAIRMAN: Pursuant to the rule, the gentleman from New York [Mr. Houghton], and a Member in opposition, the gentleman from California [Mr. Packard], will be recognized for 5 minutes. . . .

So the amendment offered as a substitute for the amendment was agreed to. . . .

THE CHAIRMAN: The question is on the amendment offered by the gentleman from California [Mr. Fazio], as amended.

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

RECORDED VOTE

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 213, noes 214, not voting 7, as follows: . . .

THE CHAIRMAN: For what reason does the gentleman from California [Mr. Packard] rise?

MR. PACKARD: Mr. Chairman, I move the Committee do now rise.

THE CHAIRMAN: The gentleman from California moves that the Committee do now rise. There is a motion on the floor. The gentleman from California has been recognized. . . .

MR. [DAVID E.] BONIOR [of Michigan]: A parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman from Michigan [Mr. Bonior] will state his parliamentary inquiry.

MR. BONIOR: Mr. Chairman, we had 2 Members in the well with their voting cards out, and the vote was 214 to 213, and the gentleman in the Chair, respectfully I say to him, called the vote while two of our Members were voting. That, Mr. Chairman, is not fair. It is not right. This side of the aisle is not going to stand for it.

THE CHAIRMAN: That is not correct.

MR. BONIOR: I would further add, Mr. Chairman——

THE CHAIRMAN: That was not a parliamentary inquiry.

The gentleman from California [Mr. Packard] has a privileged motion before the Committee. The gentleman will state his motion.

MR. PACKARD: The motion is to rise.

THE CHAIRMAN: The question is on the motion to rise offered by the gentleman from California [Mr. Packard].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

MR. VOLKMER: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 233, noes 190, not voting 11, as follows: . . .

So the motion to rise was agreed to.

The result of the vote was announced as above recorded.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LaHood) having assumed the chair, Mr. Linder, Chairman of the Committee of the Whole House on the

State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1854) making appropriations for the legislative branch for the fiscal year ending September 30, 1996, and for other purposes, had come to no resolution thereon.

MR. [RICHARD K.] ARMEY [of Texas]: Mr. Speaker, I move that the House do now adjourn.

THE SPEAKER PRO TEMPORE:[12] The question is on the motion offered by the gentleman from Texas [Mr. Armey].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

MR. VOLKMER: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 224, noes 190, not voting 20, as follows: . . .

So the motion to adjourn was agreed to.

The result of the vote was announced as above recorded.

Accordingly (at 3 o'clock and 47 minutes p.m.), the House adjourned until tomorrow, Thursday, June 22, 1995, at 10 a.m.

The proceedings in the House and the Committee of the Whole on June 22, 1995,[13] were as follows:

FAIRNESS IN HOUSE VOTING PROCEDURES

(Mr. Armey asked and was given permission to address the House for 1 minute.)

MR. ARMEY: Mr. Speaker, prior to making a unanimous-consent request, I have two comments to make about yesterday's vote on the amendment offered by the gentleman from California [Mr. Fazio] as amended during consideration of the legislative branch appropriations bill.

First, after viewing and reviewing the videotape of yesterday's proceedings, it is quite clear that the Chair, the gentleman from Georgia [Mr. Linder], was on solid parliamentary ground when he called the vote on the Fazio amendment. The Clerk informs us that he called the vote after 17 minutes and 10 seconds. The videotape shows Mr. Linder started to call the vote and refrained from completing the call to allow a Member on the minority side of the aisle to vote at the desk, the gentleman from New York [Mr. Ackerman]. The video then shows the gentleman from Georgia [Mr. Linder] called the vote with the well of the House empty of Members. The video then shows that after some time two Members from the minority party appeared at the desk and attempted to vote. The regular procedure of the House is that after the Chair has called the vote, it is too late for Members to cast a vote. The fact that Mr. Linder paused to allow the gentleman from New York [Mr. Ackerman] to vote demonstrates that his intent was not to arbitrarily shut off Members from their right to vote, nor did the Chair cut off anyone in the well from their right to vote because there were no Members in the well at the time he announced the vote. . . .

However, I know all too well that once the perception of unfairness and arbitrariness has set in, it is difficult

12. Ray LaHood (Ill.).

13. 141 CONG. REC. p. __, 104th Cong. 1st Sess.

to undo regardless of the facts of the matter. It is important to this Member that fairness govern this Chamber because this Member spent over a decade attempting to do the people's business under very unfair conditions. It is important to this Member that the victories we win are honest and that the defeats we endure are equally so.

For that reason I am about to make a unanimous-consent request to revisit the vote on the Fazio amendment. . . .

MR. [RICHARD A.] GEPHARDT [of Missouri]: Reserving the right to object, Mr. Speaker, and I am reserving the right to object, but I will not object. I want to respond briefly to what the majority leader said.

Mr. Speaker, I think what the majority leader is attempting to do is right. Our version of the facts is different than his, and I would like to give that version just for the purpose of all of us understanding what was involved here and so that we can try to not have these kinds of things happen again.

As all of my colleagues know, the Speaker made a ruling early in the year that we would try to hold votes to 17 minutes. The ruling stated unless someone was in the well. Our version of the facts was that these two Members, who will speak for 5 minutes and will give their version of it in a moment, were in the Chamber, were trying very much to get into the well, but were not able to physically get there, but were, clearly understood by everybody in the Chamber, trying to vote, and in fact at some point, and there is a dispute about when they handed the card in or even handing cards in to vote, when the vote was called to an end, they were not allowed to vote. There is added suspicion because the vote was close and the majority was winning by one vote, and we had two Members coming into the Chamber, so there is added suspicion from that end of it.

Mr. Speaker, there is very strong feeling on this side. I have been here now 19 years, and I have not in my experience seen the depth of feeling that occurred on this particular issue because, as the gentleman said, the thing that we all hold most dear is our ability to represent over 500,000 people in this Chamber on every issue that is voted on. These Members were doing their best to be here on time and to vote. I think there is added feeling on this side because we seem to be into a differing standard from vote to vote. As was said on the vote just before this vote, there was a long time that the clock was held open. On the vote after, on the motion to adjourn, it again was held open for a much longer time than 17 minutes. . . .

Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER: Is there objection to the request of the gentleman from Texas?

There was no objection.

THE SPEAKER: Therefore, proceedings on rollcall No. 405 will be vacated, and, when the Committee of the Whole resumes consideration of H.R. 1854 pursuant to House Resolution 169, the Chairman of the Committee of the Whole will be directed to put the question de novo on the amendment offered by the gentleman from California [Mr. Fazio] as amended by the amendment offered by the gentleman from New York [Mr. Houghton]. . . .

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1996

THE SPEAKER PRO TEMPORE:[14] Pursuant to House Resolution 169 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1854. . . .

THE CHAIRMAN: When the Committee of the Whole rose on Wednesday, June 21, 1995, amendment No. 5 printed in House Report 104–146 offered by the gentleman from California [Mr. Fazio] had been disposed of.

DE NOVO VOTE ON AMENDMENT OFFERED BY MR. FAZIO OF CALIFORNIA, AS AMENDED

THE CHAIRMAN: Pursuant to the order of the House today, the Chair will now put the question de novo.

The question is on the amendment offered by the gentleman from California [Mr. Fazio], as amended.

MR. FAZIO of California: Mr. Chairman, I ask unanimous consent that the gentleman from New York [Mr. Houghton] be allowed to speak out of order for 2 minutes in order to underscore and explain the amendment that is about to be voted on.

THE CHAIRMAN: Is there objection to the request of the gentleman from California? . . .

THE CHAIRMAN: All time has expired.

The Chair will now put the question de novo.

The question is on the amendment offered by the gentleman from California [Mr. Fazio], as amended.

The question was taken; and the Chairman announced that he was in doubt.

RECORDED VOTE

MR. FAZIO of California: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 220, noes 204, not voting 10. . . .

§ 32. Requests To Alter Electronically Recorded Votes

Since the inception of the electronic system, the Speaker has resisted attempts to permit corrections to the electronic tally after the announcement of a vote. This policy is based upon the presumptive reliability of the electronic device and upon the responsibility of each Member to correctly cast and verify his vote. The Speaker has continued to entertain Members' unanimous-consent requests to correct the Record the day after the announcement of the result where the electronic voting system has been inoperative and a backup procedure—where the possibility of human error still exits—was utilized.

Votes or Presence Cannot Be Entered After Vote Has Been Closed and Result Announced

§ 32.1 Following the announcement of the result of a call of

14. Paul E. Gillmor (Ohio).

the House conducted by electronic device pursuant to the rules, the Speaker declined to entertain requests by Members to record their presence.

On Nov. 13, 1973,[15] Mr. Spark M. Matsunaga, of Hawaii, by direction of the Committee on Rules, called up a resolution (H. Res. 695) which provided that upon its adoption, the House would resolve itself into the Committee of the Whole to consider a bill (H.R. 11333) providing for certain increases in social security benefits among other things.

During debate on the resolution, Mr. Steven D. Symms, of Idaho, made the point of order that a quorum was not present. The Speaker[16] sustained the point of order and a call of the House was ordered and taken electronically.[17]

When 373 Members responded to the call, the Speaker announced the presence of a quorum. Unanimous consent was then granted to dispense with further proceedings under the call. Prior to the further consideration of the matter at hand, however, a colloquy took place between the Speaker and a Member as to the failure of the latter to be recorded on the quorum call.

This discussion, which appears in its entirety below, illustrates the Speaker's obligation to decline a Member's request to be recorded after the Chair has already announced the result of a quorum call conducted by electronic means. The exchange[18] took place as follows:

> MR. [JOHN W.] DAVIS of Georgia: Mr. Speaker, I had my hand up and I was in the Chamber on this past rollcall, but I was not recorded.
>
> THE SPEAKER: The gentleman's statement will appear in the Record.
>
> The Chair under the present practices of the House is without authority to change the vote or announcement of a quorum after the result is announced.
>
> MR. DAVIS of Georgia: I had my hand up, Mr. Speaker.
>
> THE SPEAKER: The Chair apologizes if he did not see the gentleman, but the Members make their presence known by addressing the Chair. This is the only manner in which the Chair has a right to recognize a Member.
>
> MR. DAVIS of Georgia: Mr. Speaker, that is the manner this Member followed.
>
> THE SPEAKER: Did the gentleman take the microphone and address the Chair?
>
> MR. DAVIS of Georgia: No. I did not take the microphone. I was in the

15. 119 CONG. REC. 36862, 93d Cong. 1st Sess.

16. Carl Albert (Okla.).

17. See Rule XV clause 5, *House Rules and Manual* § 774(b) (1995).

18. 119 CONG. REC. 36862, 36863, 93d Cong. 1st Sess.

Chamber. I do not know of any rule that requires the Member to take a microphone.

THE SPEAKER: The gentleman must address the Chair.

MR. DAVIS of Georgia: I did.

THE SPEAKER: The Chair went 3 minutes beyond the 15-minute minimum time. The Chair does not have the authority to recognize the gentleman to make this request.

MR. DAVIS of Georgia: There is no rule.

THE SPEAKER: The precedent has been established with respect to numerous Members of the House under both the old rollcall system and the new electronic system. The gentleman can state that he was present and the House knows the gentleman was present and his statement will appear immediately following the announcement of the Members recorded as present.

MR. DAVIS of Georgia: Mr. Speaker, is there anything in the rules about a microphone?

THE SPEAKER: It is only for the purposes of facilitating the action of the House, that is all, so that the Chair will see Members, but the Chair looked around the Chamber before announcing the result.

MR. DAVIS of Georgia: I will state this Member had his hand up.

THE SPEAKER: The gentleman's remarks will appear in the Record.

MR. DAVIS of Georgia: That is not important, I was in the Chamber. I tried to answer the roll.

Mr. Speaker, I will not be intimidated by regular order requests. I was in the Chamber.

THE SPEAKER: The gentleman's remarks that he was in the Chamber, that he was holding up his hand in the Chamber, that he was seeking recognition of the Chair, will appear in the Record; but the gentleman cannot be recorded, nor can any other Member, under the practices of this House, if he is not recorded before the vote or rollcall is announced. The Chair has announced this policy on numerous occasions—including April 18, May 10, and June 6 of this year.

The Chair is bound by those rulings and the Chair is going to stand by this ruling, unless overruled by the House. The gentleman's statement will appear in the Record.

§ 32.2 The Speaker has declined to entertain unanimous-consent requests to correct the Record and the Journal on votes taken by electronic device.

On May 10, 1973,[19] following the Speaker's[20] appointment of five Members to confer with Senate conferees as to the Airport Development Acceleration Act of 1973 (S. 38), Mr. Ray J. Madden, of Indiana, rose to make a personal announcement.

Mr. Madden's announcement and the Speaker's reply indicate the Speaker's lack of discretion to correct what a Member deems to be an improperly recorded vote when the vote was tallied by elec-

19. 119 CONG. REC. 15282, 93d Cong. 1st Sess.

20. Carl Albert (Okla.).

tronic means. The exchange was as follows:

> MR. MADDEN: Mr. Speaker, on roll-call No. 132, yesterday, I was present and voted "no." I ask unanimous consent that the permanent Record be corrected accordingly.
>
> THE SPEAKER: The Chair is without authority in that regard. The gentleman's statement will appear in the Record.

Absent Member Somehow Recorded; Record Corrected

§ 32.3 Instance where the permanent Record and Journal were corrected to show that a Member recorded on a series of votes taken by electronic device was in fact not present and not voting.

In the 95th Congress, a Member who was in fact absent and not voting on the preceding day, but was somehow shown as voting, asked to have the permanent record corrected to show that he was in fact not present. His absence was conclusively shown by travel documents and other evidence placing him in his district. His voting card had been misplaced and somehow had been used in error. The Member was issued a new voting card and the old card voided so the system would not accept it if another use of the card was attempted.

The permanent Record and Journal were corrected to indicate that the Member, Mr. James A. Burke, of Massachusetts, was indeed absent as indicated by an excerpt from the Sept. 19, 1978,[1] Record:

> [ROLL NO. 796]
>
> YEAS—396
>
> Abdnor
> Addabbo
> Akaka . . .
>
> NAYS—3
>
> Collins, Tex.
> McDonald
> Symms
>
> NOT VOTING—33
>
> Ammerman
> Armstrong
> Burke, Calif.
> Burke, Mass. . . .

§ 32.4 Based upon the presumed infallibility of the electronic voting system, the Chair will not entertain a unanimous-consent request to correct a roll call vote by electronic device absent a conclusive explanation of the voting discrepancy.

On July 31, 1979,[2] a Member asked to proceed for one minute

1. 124 CONG. REC. 30195, 95th Cong. 2d Sess.
2. 125 CONG. REC. 21659, 21660, 96th Cong. 1st Sess.

and during that presentation asked "unanimous consent that the permanent Record reflect the fact that" he was absent on the preceding day and did not in fact vote as indicated in the Record. This request was interpreted by the Speaker, not as an attempt to change the vote, but as a request to put the current statement in the Record. The Member making the request, Mr. Morgan F. Murphy, of Illinois, who was a member of the Committee on Standards of Official Conduct, asked that committee to investigate the occurrence and stated that during such an inquiry, he would recuse himself from committee activity while the matter was under investigation.[3]

§ 32.5 On one occasion, the Speaker announced a change in the result of an electronic roll call where the error was attributed to an incorrect reading of a signature on a voting card submitted in the well.

At the conclusion of a roll call vote taken by electronic device, Members who do not have their voting card or who arrive in the Chamber after the electronic device has been closed, may use red or green or orange "tally cards," which they procure and sign at the rostrum and submit to the tally clerk. Signatures on these cards are sometimes difficult to decipher.

On June 9, 1981, a vote was taken on passage of H.R. 3462, making appropriations for the Department of Justice, fiscal year 1982.

On June 11, 1981, Speaker Thomas P. O'Neill, Jr., of Massachusetts, made the following statement which appeared in the daily edition of the Record:

> THE SPEAKER: The Chair will announce that on rollcall No. 70 the following corrections will be made: The gentleman from Arkansas (Mr. Alexander) to be recorded as not voting and the gentleman from Ohio (Mr. Ashbrook) to be recorded as voting "nay."
>
> This correction is required because of an error in correctly identifying a signature on a voting card submitted in the well.

The permanent Record was accordingly corrected.

Unanimous consent was not required for this change, since the error was clerical and not attributable to the electronic system, which has continued to retain its reputation for infallibility. The

3. The Committee on House Administration also undertook an inquiry into the voting errors here noted. 125 CONG. REC. 21986, 21987, 96th Cong. 1st Sess., Aug. 1, 1979.

Journal and voting records were also corrected to conform to this announcement.

§ 33. Demand for Vote

While the mechanics of taking a recorded vote by electronic device are the same as those required for taking a vote by the yeas and nays, the process for ordering the two votes is different. The demand for the yeas and nays is constitutional in origin[4] while the recorded vote is a creature of the House rules.[5] While the yeas and nays are in order only in the House, a recorded vote can be demanded both in the House and in the Committee of the Whole.[6] The yeas and nays are ordered by one-fifth of those present (so if only ten Members are in attendance, two can order the yeas and nays) whereas one-fifth of a quorum (44 in the House) is required to get a recorded vote. In Committee of the Whole, the number for a recorded vote is fixed by rule.[7] Originally set at one-fifth of a quorum (20 in Committee), the requirement for a second was changed in the 96th Congress to the fixed number of 25.[8]

In the House, a demand for a recorded vote can be made following a demand for the yeas and nays which does not receive a sufficient second. But where a vote is taken in the House by one method and concluded, either positively or negatively, the other method can no longer be demanded.[9] Where, on the other hand, an amendment is adopted by a recorded vote in Committee of the Whole, and is reported back to the House where it is subject to a demand for a "separate vote," that separate vote can be concluded by either a recorded vote or the yeas and nays.

Single-Step Demands; Nonelectronic "Backup" Procedure

§ 33.1 In the 92d Congress, the rules were amended to pro-

4. U.S. Const. art. I, § .5.
5. Rule I clause 5(a); Rule XXIII clause 2(b), *House Rules and Manual* §§ 629 and 864 (1995).
6. *Id.*
7. *Id.*
8. Rule XXIII clause 2(b), *House Rules and Manual* § 864 (1995).
9. See Rule I clause 5(a), *House Rules and Manual* § 629 (1995), as amended by H. Res. 5, 105th Cong. 1st Sess., Jan. 7, 1997. The following sentence was added to Rule I clause 5(a): "A recorded vote taken pursuant to this paragraph shall be considered a vote by the yeas and nays." This amendment was inserted to prevent an issue decided by a recorded vote from being revisited by a demand for the yeas and nays on the same question.

vide for a "back-up" nonelectronic procedure for recorded votes by which clerk tellers may be appointed under a single-step demand for a "recorded vote."

On Oct. 13, 1972,[10] Mr. B. F. Sisk, of California, by direction of the Committee on Rules, called up House Resolution 1123 and asked for its immediate consideration. The resolution read, in part, as follows:

> *Resolved,* That (a) clause 5 of Rule I of the Rules of the House of Representatives is amended to read as follows:
>
> "5. He shall rise to put a question, but may state it sitting; and 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".'; if he doubts or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one or more from each side of the question to tell the Members in the affirmative and negative; which being reported, he shall rise and state the decision. However, if any Member requests a recorded vote and that request is supported by at least one-fifth of a quorum, such vote shall be taken by electronic device, unless the Speaker in his discretion orders clerks to tell the names of those voting on each side of the question, and such names shall be recorded by electronic device or by clerks, as the case may be, and shall be entered in the Journal, together with the names of those not voting. Members shall have not less than fifteen minutes to be counted from the ordering of the recorded vote or the ordering of clerks to tell the vote. . . ."[11]

In the course of the ensuing discussion, Mr. Sisk explained some of the procedural changes being proposed as well as the nature of the "backup" procedures, as follows:[12]

> I would briefly like to comment in connection with the fallback or fail-safe position with regard to the voting and other matters contained in the resolution.
>
> In brief we propose that machinery be used in all appropriate voting situations, that is, whenever names of Members are to be recorded. We also propose to put in the rules substitution of present procedures as a backup in case the machinery becomes unavailable for whatever the reason may be. We also propose that we use the backup procedures at the discretion of the Chairman of the Committee of the Whole.
>
> We also are suggesting two additional changes in the backup proce-

10. 118 CONG. REC. 36005, 92d Cong. 2d Sess.

11. Other segments of the resolution pertaining to electronic voting may be found in § .31.1, supra.

12. 118 CONG. REC. 36006, 36007, 92d Cong. 2d Sess.

dure. The first occurs in the procedure for tellers with clerks or what is called the recorded teller vote.

I want to emphasize that the amendments we offer do not in any way alter the basic substance of that procedure. What we are trying to do is to simplify the process.

I might add what we propose is substantially the way the Democratic caucus asked for during the past year. As the rules now stand a Member must make two separate requests to get a recorded teller vote, and we know the procedures.

We propose that that two-step procedure be dropped and that a single-step procedure be substituted therefor. A Member will simply request a recorded teller vote, and that will take care of any situation.

We further propose doing away with the time-consuming process of making Members act as tellers in the recording of the teller votes. There is no reason why Members must be found to stand at the head of the aisle to record the vote. Clerks will simply be required to do that in the future in the event that there are teller votes.

Mr. Speaker, we are also proposing a new method for recording Members during quorum calls. At the present time, as you know, the Clerk calls the roll twice and recognizes Members in the House in a time-consuming process. Again we have a recommendation from the caucus in connection with this matter. In effect this method would have the Clerks tell the Members just as they do in a recorded teller vote, for instance, in recording the presence of the Members.

Instead of calling the roll, the Clerks would merely record the names of the Members as they came up the aisle in the Chamber, or in any other fashion that the Speaker made known.

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker, will the gentleman yield?

MR. SISK: I will be glad to yield to the gentleman from Ohio.

MR. HAYS: You could use the electronic system for a quorum call.

MR. SISK: Certainly. In almost all cases I think the electronic system will be used. What I am explaining is the so-called backup procedure in the event that we did not desire to use the electronic system.

Discussion proceeded after which Mr. Sisk yielded his remaining time to Mr. H. Allen Smith, of California, who summarized those changes in the rules which would be brought about by passage of House Resolution 1123. In the course of doing so, he stated, in part:[13]

Mr. Speaker, the purpose of House Resolution 1123 is to make the changes in the House rules which will be required in order to use the electronic voting equipment installed in the House Chamber. Changes are made at four different points in the rules.

The first change [is] in rule I, clause 5, which deals with how votes may be taken in the House. House Resolution 1123 adds language, which provides that a recorded vote may be taken by electronic device. The procedure would be as follows: A Member may request a recorded vote at any time after the

13. *Id.* at p. 36008.

question has been put by the Speaker. The intent is that a request for a recorded vote shall be in order before or after a voice vote, a division vote or a teller vote. If a Member requests a recorded vote and is supported by one-fifth of a quorum, the vote will be taken by electronic device. A Member may no longer demand a vote by tellers with clerks. However, once a recorded vote is ordered, the Speaker in his discretion may order a recorded vote with clerks. This would be similar to the present vote by tellers with clerks, except that the Speaker will appoint clerks to count, rather than Members. A Member shall have not less than 15 minutes to be counted. The time begins to run from the ordering of the recorded vote or the ordering of clerks to tell the vote. . . .

Mr. Sisk later offered an amendment[14] providing that the resolution would become effective immediately before noon on Jan. 3, 1973. The amendment was agreed to, and the resolution, as amend-ed, was also agreed to.

As Related to Demand for Yeas and Nays

§ 33.2 A demand for a recorded vote may be made following a demand for the yeas and nays, providing the latter demand is first withdrawn.

On June 28, 1972,[15] following discussion of a motion to concur in a Senate amendment with a House amendment to a bill (H.R. 13955) pertaining to legislative branch appropriations, the Speaker[16] put the question on the motion, it was taken; and the Chair announced that the ayes appeared to have it.

Immediately thereafter, the following discussion ensued:

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, on that I demand the yeas and nays.

Mr. Speaker, is it in order for me to ask that we have tellers with clerks to record this vote?[17]

THE SPEAKER: It is in order.

MR. YATES: Mr. Speaker, I ask that we have the vote by tellers with clerks.

THE SPEAKER: It would be necessary first to withdraw the demand for yeas and nays.

MR. YATES: Mr. Speaker, I withdraw my demand that the vote be taken by the call of the yeas and nays, and demand that this vote be taken by tellers.[18]

Tellers were ordered.

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14. *Id.* at p. 36012.

15. 118 CONG. REC. 22981, 92d Cong. 2d Sess.

16. Carl Albert (Okla.).

17. Tellers with clerks—the original formulation for what has become "the recorded vote"—were first adopted in the 92d Congress. (See H. Res. 5, Jan. 22, 1971.)

18. If Mr. Yates' initial demand for the yeas and nays had been seconded by one-fifth of those present, it would have been procedurally impermissible for him to withdraw the demand in the absence of unanimous consent. See § 24.8, supra.

MR. YATES: Mr. Speaker, I demand tellers with clerks.

Tellers with clerks were ordered; and the Speaker appointed as tellers Messrs. Casey of Texas, Stratton, Cederberg, and Yates.

Where Yeas and Nays Refused

§ 33.3 Where one-fifth of the Members present have refused to order the yeas and nays on a motion, a recorded vote remains a viable option.

Where the question is put on a motion, and the yeas and nays are refused, one-fifth of those present not supporting the demand, a request that the vote be taken by a record vote may still be made and such a vote can be ordered if seconded by one-fifth of a quorum of the House, or 44 Members. This situation frequently arises when the yeas and nays are refused, the vote is then objected to under Rule XV clause 4, on the ground that a quorum is not present and the vote is then postponed by the Chair. When the bill is thereafter taken up at the appointed time, a recorded vote is often the best option for getting Members on record. The proceedings of Sept. 21, 1976,[19] are illustrative:

THE SPEAKER:[20] The question is on the motion offered by the gentleman from Alabama (Mr. Flowers) that the House suspend the rules and pass the bill H.R. 12048, as amended.

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER: Twelve Members have arisen, an insufficient number.

The yeas and nays were refused.

MR. STEIGER of Wisconsin: I am sorry, Mr. Speaker. I could not hear what the Speaker said.

THE SPEAKER: I said that 12 Members have arisen, an insufficient number.

MR. STEIGER of Wisconsin: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Pursuant to the provisions of clause 3(b) of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

Does the gentleman from Wisconsin withdraw his point of order that there is no quorum?

MR. STEIGER of Wisconsin: Mr. Speaker, I withdraw my point of order.

. . .

THE SPEAKER PRO TEMPORE:[1] The unfinished business is the question of suspending the rules and passing the bill, H.R. 12048, as amended.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Alabama (Mr. Flowers) that the House suspend the rules and pass the bill, H.R. 12048, as amended.

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19. 122 CONG. REC. 31640, 31641, 31668, 94th Cong. 2d Sess.

20. Carl Albert (Okla.).

1. John J. McFall (Calif.).

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

MR. [BOB] ECKHARDT [of Texas]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

POINT OF ORDER

MR. [WALTER] FLOWERS [of Alabama]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state the point of order.

MR. FLOWERS: Mr. Speaker, on the last recorded vote there were 400 Members present. Twenty percent of that would be 80.

THE SPEAKER PRO TEMPORE: The Chair will advise the gentleman that on recorded vote the rules require one-fifth of a quorum, which is 44.

A recorded vote is ordered.

§ 33.4 After withdrawing a demand for the yeas and nays on an amendment in the House, a Member may request that the vote be taken by a recorded vote.

On Nov. 4, 1971,[2] Mrs. Edith S. Green, of Oregon, demanded a separate vote on an amendment to a committee amendment in the nature of a substitute to a bill (H.R. 7248) to amend and extend the Higher Education Act of 1965 and other acts relating to higher education.

As soon as the Speaker[3] put the question on the amendment, Mrs. Green demanded the yeas and nays, and the following exchange took place:

MRS. GREEN of Oregon: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentlewoman will state the parliamentary inquiry.

MRS. GREEN of Oregon: Mr. Speaker, when we are in the House, is it possible to ask for tellers with clerks?

THE SPEAKER: It is.

MRS. GREEN of Oregon: Then, Mr. Speaker, I withdraw the other request.[4]

Mr. Speaker, I demand tellers.

Tellers having been ordered, Mrs. Green then demanded tellers with clerks[5] which were also ordered; and the Speaker appointed Mrs. Green and three other Members to serve as tellers for the recorded vote.[6]

Counting Those Standing To Demand Recorded Vote

§ 33.5 The Chair's count of Members standing to support

2. 117 CONG. REC. 39352, 92d Cong. 1st Sess.
3. Carl Albert (Okla.).
4. As one-fifth of those present had not yet seconded Mrs. Green's demand for the yeas and nays when she withdrew it, she was not obliged to seek unanimous consent in order to do so. See § 24.8, supra, for an instance in which a Member was not permitted to withdraw his demand for the yeas and nays.
5. 117 CONG. REC. 39353, 92d Cong. 1st Sess.
6. See Rule I clause 5, *House Rules and Manual* § 630 (1995); see also § 30.1, supra.

the demand for a recorded vote is not subject to appeal.

During consideration of an appropriation bill in Committee of the Whole on June 24, 1976,[7] a vote was taken on an amendment. The Chair announced that on a voice vote, the amendment was rejected. A Member then demanded a record vote and pending that, made a point of order that a quorum was not present.

A quorum not being present, a call of the Committee was taken by electronic device; and pursuant to the rule, the Chair announced that he would vacate proceedings under the call when a quorum appeared. When 100 Members had responded, the Chair terminated the call and asked those desiring a recorded vote to stand.

THE CHAIRMAN PRO TEMPORE:[8] The question is on the amendment offered by the gentleman from New York (Mr. Scheuer).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

MR. [JAMES H.] SCHEUER [of New York]: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN PRO TEMPORE: The Chair will count. Thirty-four Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN PRO TEMPORE: One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

The pending business is the demand of the gentleman from New York (Mr. Scheuer) for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

THE CHAIRMAN PRO TEMPORE: The Clerk will read.

The Clerk read as follows:

NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

To carry out, except as otherwise provided, titles IV and X of the Public Health Service Act with respect to child health and human development, $140,343,000.

MR. SCHEUER: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. SCHEUER: Mr. Chairman, under the set of facts which took place a few minutes ago, would it be possible to appeal the ruling of the Chair on the count of the Members standing? It was the impression of many Members on this side that we had substantially more Members than 19 standing.

7. 122 CONG. REC. 20390, 20391, 94th Cong. 2d Sess.

8. Clement J. Zablocki (Wis.).

THE CHAIRMAN PRO TEMPORE: An appeal from the Chair's count is not in order.

Repeated Requests for Recorded Vote

§ 33.6 A request for a recorded vote, having been made and refused, may not be made again on the same question.

In Nov. 18, 1975,[9] during consideration of H.R. 30 (to establish the Hells Canyon National Recreation Area) in the Committee of the Whole, the following occurred:

THE CHAIRMAN:[10] The question is on the amendments offered by the gentleman from Oregon (Mr. Duncan).

MR. [ROBERT] DUNCAN of Oregon: Mr. Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count. One hundred and five Members are present, a quorum.

MR. DUNCAN of Oregon: Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

The question was taken; and on a division (demanded by Mr. Symms) there were—ayes 27, noes 43.

So the amendments were rejected.

MR. DUNCAN of Oregon: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. DUNCAN of Oregon: Mr. Chairman, can I still get a recorded vote on that?

THE CHAIRMAN: A recorded vote has been refused.

§ 33.7 A request for a recorded vote on a pending question having been refused, a second request is not in order following a division vote on that question.

On Jan. 21, 1976,[11] the Chair had put the question on an amendment under consideration in Committee of the Whole and had announced that on a voice vote the "ayes had it" and that the amendment was agreed to. A recorded vote was then ordered.

MRS. [PATSY T.] MINK [of Hawaii]: Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

MRS. MINK: Mr. Chairman, on that I demand a division.

MR. [PHILIP E.] RUPPE [of Michigan]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[12] The gentleman will state his parliamentary inquiry.

MR. RUPPE: Mr. Chairman, my parliamentary inquiry is this, did not the Chairman announce that he thought there was an insufficient number of Members who had risen for a recorded vote, and that, therefore, the amendment had been agreed to?

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9. 121 CONG. REC. 37061, 94th Cong. 1st Sess.

10. Morgan F. Murphy (Ill.).

11. 122 CONG. REC. 508, 94th Cong. 2d Sess.

12. Charles H. Wilson (Calif.).

THE CHAIRMAN: The Chair will state that in the meantime, before the Chair had announced the vote, a division was demanded and the Chair has instructed those Members in favor of the amendment to stand and remain standing until counted.

Those Members against the amendment will stand and remain standing until counted.

On this vote by division the ayes are 14 and the noes are 17.

MR. [JOE] SKUBITZ [of Kansas]: Mr. Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

THE CHAIRMAN: A recorded vote has been refused.

MR. RUPPE: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. RUPPE: Is it not possible to call for a recorded vote inasmuch as we did call for one previous to that and an insufficient number of Members stood? In his decision, the Chair stated it was agreed to, and then changed it. Would we not have a change as well as far as having the opportunity to have a recorded vote?

THE CHAIRMAN: A recorded vote had already been refused, and it is not possible on the same amendment to have a second request for a recorded vote.

The amendment is, therefore, rejected.

§ 33.8 A request for a recorded vote, if not supported by 25 Members in Committee of the Whole, cannot be repeated following a quorum call; but a division and/or teller vote may be demanded if the Chair has not finally announced the result of the voice vote on the question.

On July 22, 1980,[13] the State, Justice, Commerce, and Judiciary appropriation bill was under consideration in Committee of the Whole. The following sequence of votes and quorum calls illustrate the options available where a demand for a recorded vote fails to achieve a sufficient second.

MR. [BARBER B.] CONABLE [Jr., of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Conable: Page 38, line 22, strike out "$321,300,000" and insert in lieu thereof "$312,700,000.". . .

Amendment offered by Mr. Huckaby as a substitute for the amendment offered by Mr. Conable: On page 38, line 22, strike out "$321,300,000." and insert in lieu thereof "$300,000,000:". . . .

THE CHAIRMAN:[14] The question is on the amendment offered by the gentleman from Louisiana (Mr. Huckaby) as a substitute for the amendment offered by the gentleman from New York (Mr. Conable).

The question was taken; and on a division (demanded by Mr. Huckaby) there were—yes 24, noes 10.

13. 126 CONG. REC. 19067, 19068, 19070, 19071, 96th Cong. 2d Sess.

14. George E. Brown, Jr. (Calif.).

So the amendment offered as a substitute for the amendment was agreed to.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from New York (Mr. Conable), as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

MR. SMITH of Iowa: Mr. Chairman, I make the point of order that a quorum is not present.

MR. [THOMAS J.] HUCKABY [of Louisiana]: Regular order, Mr. Chairman.

THE CHAIRMAN: The Chair has already announced that an insufficient number of Members arose to order a recorded vote.

Does the gentleman from Iowa (Mr. Smith) still insist on his point of order?

MR. SMITH of Iowa: Yes, Mr. Chairman, I still insist on my point of order.

THE CHAIRMAN: The gentleman insists on his point of order.

Evidently a quorum is not present.

MR. SMITH of Iowa: Mr. Chairman, I ask for a division, too, and pending that I make the point of order that a quorum is not present.

THE CHAIRMAN: A quorum call is ordered.

MR. HUCKABY: Regular order, Mr. Chairman.

THE CHAIRMAN: The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence. Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to record their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members responded to their names: . . .

THE CHAIRMAN: Three hundred and fifty-six Members have answered to their names, a quorum is present, and the Committee will resume its business.

When the point of no quorum was made the Chair had announced the result of the voice vote on the amendment offered by the gentleman from New York (Mr. Conable), as amended by the substitute offered by the gentleman from Louisiana (Mr. Huckaby), and had stated that the ayes prevailed.

For what purpose does the gentleman from Iowa rise?

MR. SMITH of Iowa: Mr. Chairman, on that I demand a division.

MR. HUCKABY: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HUCKABY: Mr. Chairman, pending the outcome of the division, will it be possible at that time to request a recorded vote?

THE CHAIRMAN: The request for a recorded vote has already been made and rejected for lack of a sufficient number standing. It cannot be repeated.

MR. HUCKABY: Does not the request for a recorded vote in the hierarchy precede a division and, hence, the Chairman is reverting back to a division, since the Chairman has already denied a request for a recorded vote and the Chair has ruled upon that?

THE CHAIRMAN: Regardless of the type of vote requested, a request for a recorded vote cannot be repeated. It has already been rejected. However, a division may now be requested.

MR. HUCKABY: Would a request for a teller vote be in order?

THE CHAIRMAN: A request for a teller vote would be in order.

On a division (demanded by Mr. Smith of Iowa) there were—ayes 107, noes 110.

MR. HUCKABY: Mr. Chairman, would the Chair please repeat the numbers?

THE CHAIRMAN: The ayes were 107 and the noes were 110.

MR. HUCKABY: Mr. Chairman, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE CHAIRMAN: The gentleman makes a point that a quorum is not present and objects to the vote. That is not in order in the Committee of the Whole.

MR. HUCKABY: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Smith of Iowa and Mr. Conable.

The Committee again divided, and the tellers reported that there were—ayes 134, noes 116.

So the amendment, as amended, was agreed to.

Renewed Requests for Recorded Vote

§ 33.9 Where the Committee of the Whole has refused a request for a recorded vote on an issue, the request cannot be renewed, even following a quorum call and a vote by division on the issue, except by unanimous consent.

The proceedings of June 2, 1977,[15] when the House had under consideration in Committee of the Whole the Department of Energy Reorganization Act, were as follows:

THE CHAIRMAN:[16] The question is on the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. Erlenborn).

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

MR. [JOHN N.] ERLENBORN [of Illinois]: Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

MR. ERLENBORN: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count. Eighty-one Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

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15. 123 CONG. REC. 17292, 95th Cong. 1st Sess.

16. Lucien N. Nedzi (Mich.).

Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to clause 2, rule XXIII, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

At the time the point of order of no quorum was made, the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. Erlenborn) was before the Committee, a recorded vote had been refused, and in the opinion of the Chair the amendment in the nature of a substitute had not carried.

For what purpose does the gentleman from Illinois (Mr. Erlenborn) rise?

MR. ERLENBORN: Mr. Chairman, on the question of my amendment in the nature of a substitute, I demand a division.

On a division (demanded by Mr. Erlenborn) there were—ayes 29, noes 51.

MR. [STEVEN D.] SYMMS [of Idaho]: Mr. Chairman, on that I ask unanimous consent for a recorded vote.

THE CHAIRMAN: Is there objection to the request of the gentleman from Idaho?

MR. [LLOYD] MEEDS [of Washington]: Mr. Chairman, I object.

THE CHAIRMAN: Objection is heard.

So the amendment in the nature of a substitute was rejected.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. BROWN of Ohio: Mr. Chairman, is it appropriate to ask for the yeas and nays at this point?

THE CHAIRMAN: The Chair will state in response to the gentleman's parliamentary inquiry that it is not in order to ask for the yeas and nays in Committee of the Whole.

Are there amendments to title I?

§ 33.10 A recorded vote having been refused in Committee of the Whole, a point of no quorum may lie under Rule XXIII clause 2 if the pending question has not been disposed of by a division (or teller) vote, but a demand for a recorded vote cannot be renewed.

On May 27, 1982,[17] during consideration of the First Concurrent Resolution on the Budget for fiscal 1983, a closely contested amendment was pending in the Committee of the Whole. After the Chair announced that the amendment was agreed to on a voice vote, a recorded vote was demanded and refused for lack of a sufficient second. When a Member then made a point of no quorum, and pending that, again asked for a recorded vote, the Chair explained the parliamentary situation:

THE CHAIRMAN PRO TEMPORE:[18] The question is on the amendment offered by the gentleman from Mis-

17. 128 CONG. REC. 12470, 97th Cong. 2d Sess.

18. Leo C. Zeferetti (N.Y.).

sissippi (Mr. Whitten) to the amendment in the nature of a substitute offered by the gentleman from Wisconsin (Mr. Aspin).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

MR. [RALPH] REGULA [of Ohio]: Mr. Chairman, I demand a recorded vote.

THE CHAIRMAN PRO TEMPORE: A recorded vote is demanded.

All those in favor of taking this vote by a recorded vote will rise and be counted.

Twenty-four Members, an insufficient number.

So a recorded vote was refused.

MR. REGULA: Mr. Chairman, I make the point of order that a quorum is not present, and pending that, I demand a recorded vote.

THE CHAIRMAN PRO TEMPORE: The Chair has already announced an insufficient number.

The gentleman can make a point of order but he cannot ask for a recorded vote.

MR. REGULA: Mr. Chairman, I demand a division.

On a division (demanded by Mr. Regula) there were—ayes 42, noes 43.

MR. [JAMES J.] HOWARD [of New Jersey]: Mr. Chairman, I demand tellers.

Tellers were ordered and the Chairman pro tempore appointed as tellers Mr. Whitten and Mr. Jones of Oklahoma.

The Committee again divided, and the tellers reported that there were—ayes 72, noes 72.

THE CHAIRMAN PRO TEMPORE: The Chair votes "aye."

§ 33.11 A request for a recorded vote on an amendment once denied may not be renewed in Committee of the Whole, even where the absence of a quorum is disclosed immediately following the refusal to order the recorded vote.

On June 6, 1979,[19] the Committee of the Whole had under consideration the Housing and Community Development Act of 1979, and Chairman George E. Brown, Jr., of California, had put the question on a pending amendment. On a voice vote, the Chair announced that the ayes appeared to have it. A recorded vote was then requested, and when an insufficient number stood to second the demand, a recorded vote was refused. A point of order was then made that a quorum was not present, and on a count the Chair found only 77 Members in attendance, not a quorum. When Mr. J. William Stanton, of Ohio, understood that he could not renew his request for a recorded vote, even if a call of the Committee produced a quorum, he moved that the Committee rise.

The question is on the amendment offered by the gentleman from South Carolina (Mr. Campbell).

The question was taken; and the Chairman announced that the ayes appeared to have it.

19. 125 CONG. REC. 13648, 96th Cong. 1st Sess.

MR. [THOMAS L.] ASHLEY [of Ohio]: Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

MR. ASHLEY: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count.

The Chair has already ruled that an insufficient number stood for a recorded vote. A separate point of order has been made that no quorum is present, and the Chair is counting; 77 Members are present, not a quorum.

MR. STANTON: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. STANTON: Under the rules of the House, is it applicable to make this point of order after the vote has been over with?

THE CHAIRMAN: The Chair will state to the gentleman it is always in order to make a point of order of no quorum. The Chair has already ruled, however, that there was an insufficient number standing to order a recorded vote. If the chairman of the committee desires to call for a separate vote in the House after the bill is disposed of, he may do so.

MR. STANTON: Mr. Chairman, then no vote can be taken at this particular time?

THE CHAIRMAN: A recorded vote on the amendment is not in order.

MR. ASHLEY: Mr. Chairman, I ask unanimous consent to withdraw the point of order.

THE CHAIRMAN: The Chair has already announced that a quorum is not present.

MR. STANTON: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. STANTON: Mr. Chairman, could I move that the Committee do now rise?

THE CHAIRMAN: It would be in order to do so.

MR. ASHLEY: Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

When the Committee resumed its consideration on the following day,[20] the Chair stated the pending business, and the Committee then took first a division vote on the amendment, then a teller vote.[1] The proceedings were as follows:

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill, H.R. 3875, with Mr. Brown of California in the chair.

The Clerk read the title of the bill.

THE CHAIRMAN: When the Committee of the Whole rose on Wednesday, June 6, 1979, title IV had been considered as having been read and open to amendment at any point. Pending was an amendment offered by the gentleman from South Carolina (Mr. Campbell). The Chair had announced that on a voice vote the ayes

20. 125 CONG. REC. 13925, 96th Cong. 1st Sess., June 7, 1979.

1. Teller votes were eliminated from the menu of choices for voting in the 103d Congress, with the adoption of H. Res. 5 on Jan. 5, 1993.

appeared to have it and a recorded vote had been refused.

The Chair recognizes the chairman of the subcommittee, the gentleman from Ohio (Mr. Ashley).

MR. ASHLEY: Mr. Chairman, I demand a division.

MR. STANTON: Mr. Chairman, I wonder if before we take this vote we could have complete order in the House, because some will want to stand for an aye vote and some will want to sit, so if we could start off with the House in order, I would appreciate it.

THE CHAIRMAN: The Chair will call attention to the fact that on this very important vote which occurred last evening, there was considerable debate as to which side actually prevailed. It is very important that all Members understand the situation and be prepared to vote in accordance with their own wishes. The Committee will be in order. The gentleman from Ohio has demanded a division.

MR. STANTON: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. STANTON: Is it the understanding of the Chair that we are taking a vote on the Campbell amendment?

THE CHAIRMAN: The gentleman is correct.

MR. STANTON: Those in favor, then, of the procedural vote, who are in favor of the Campbell amendment, will then rise first as those who are in favor of it?

THE CHAIRMAN: That is correct.

The question is on the amendment offered by the gentleman from South Carolina (Mr. Campbell).

The question was taken; and on a division (demanded by Mr. Ashley), there were—ayes 106, noes 61.

MR. ASHLEY: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Ashley and Mr. Campbell.

The Committee again divided, and the tellers reported that there were—ayes 129, noes 73.

So the amendment was agreed to.

§ 33.12 A request for a recorded vote, if not supported by the required second, cannot be repeated following a quorum call on the pending question, but a division vote may yet be had if the Chair has not finally announced the voice vote on the question.

In one instance in the 96th Congress, when teller votes were still permitted under Rule I, both a division and a teller vote were taken following the initial refusal to order a recorded vote. The proceedings of July 22, 1980,[2] were as follows:

MR. [BARBER B.] CONABLE [Jr., of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Conable: Page 38, line 22, strike out "$321,300,000" and insert in lieu thereof "$312,700,000." . . .

2. 126 CONG. REC. 19067, 19068, 19070, 19071, 96th Cong. 2d Sess.

Amendment offered by Mr. Huckaby as a substitute for the amendment offered by Mr. Conable: On page 38, line 22, strike out "$321,300,000." and insert in lieu thereof "$300,000,000:". . . .

THE CHAIRMAN:[3] The question is on the amendment offered by the gentleman from Louisiana (Mr. Huckaby) as a substitute for the amendment offered by the gentleman from New York (Mr. Conable).

The question was taken; and on a division (demanded by Mr. Huckaby) there were—ayes 24, noes 10.

So the amendment offered as a substitute for the amendment was agreed to.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from New York (Mr. Conable), as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

MR. SMITH of Iowa: Mr. Chairman, I make the point of order that a quorum is not present.

MR. [THOMAS J.] HUCKABY [of Louisiana]: Regular order, Mr. Chairman.

THE CHAIRMAN: The Chair has already announced that an insufficient number of Members arose to order a recorded vote.

Does the gentleman from Iowa (Mr. Smith) still insist on his point of order?

MR. SMITH of Iowa. Yes, Mr. Chairman, I still insist on my point of order.

THE CHAIRMAN: The gentleman insists on his point of order.

Evidently a quorum is not present.

MR. SMITH of Iowa: Mr. Chairman, I ask for a division, too, and pending that I make the point of order that a quorum is not present.

THE CHAIRMAN: A quorum call is ordered.

MR. HUCKABY: Regular order, Mr. Chairman.

THE CHAIRMAN: The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence. Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to record their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members responded to their names: . . .

THE CHAIRMAN: Three hundred and fifty-six Members have answered to their names, a quorum is present, and the Committee will resume its business.

When the point of no quorum was made the Chair had announced the result of the voice vote on the amendment offered by the gentleman from New York (Mr. Conable), as amended by the substitute offered by the gentleman from Louisiana (Mr. Huckaby), and had stated that the ayes prevailed.

3. George J. Brown, Jr. (Calif.).

For what purpose does the gentleman from Iowa rise?

MR. SMITH of Iowa: Mr. Chairman, on that I demand a division.

MR. HUCKABY: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HUCKABY: Mr. Chairman, pending the outcome of the division, will it be possible at that time to request a recorded vote?

THE CHAIRMAN: The request for a recorded vote has already been made and rejected for lack of a sufficient number standing. It cannot be repeated.

MR. HUCKABY: Does not the request for a recorded vote in the hierarchy precede a division and, hence, the Chairman is reverting back to a division, since the Chairman has already denied a request for a recorded vote and the Chair has ruled upon that?

THE CHAIRMAN: Regardless of the type of vote requested, a request for a recorded vote cannot be repeated. It has already been rejected. However, a division may now be requested.

MR. HUCKABY: Would a request for a teller vote be in order?

THE CHAIRMAN: A request for a teller vote would be in order.

On a division (demanded by Mr. Smith of Iowa) there were—ayes 107, noes 110.

MR. HUCKABY: Mr. Chairman, would the Chair please repeat the numbers?

THE CHAIRMAN: The ayes were 107 and the noes were 110.

MR. HUCKABY: Mr. Chairman, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE CHAIRMAN: The gentleman makes a point that a quorum is not present and objects to the vote. That is not in order in the Committee of the Whole.

MR. HUCKABY: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Smith of Iowa and Mr. Conable.

The Committee again divided, and the tellers reported that there were—ayes 134, noes 116.

So the amendment, as amended, was agreed to.

Point of No Quorum Takes Precedence of Demand for Recorded Vote

§ 33.13 In Committee of the Whole, where there is a demand for a recorded vote and a point of order that there is no quorum present, the point of order must be disposed of first.

During consideration in Committee of the Whole of H.R. 25, the Surface Mining and Reclamation Act, 1975, a Member desired to have a record vote on a pending amendment. The proceedings on Mar. 14, 1975,[4] were as follows:

THE CHAIRMAN:[5] The question is on the amendment offered by the gentleman from Ohio (Mr. Seiberling).

4. 121 CONG. REC. 6707, 6708, 94th Cong. 1st Sess.
5. Neal Smith (Ia.).

The question was taken; and the Chairman announced that the ayes appeared to have it.

MR. [SAM] STEIGER of Arizona: Mr. Chairman, on that I demand a recorded vote and make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count.

MR. STEIGER of Arizona: I am told Mr. Chairman, that you are not honoring my point of order that a quorum is not present.

THE CHAIRMAN: The Chair has counted 21 Members to this point.

MR. STEIGER of Arizona: Mr. Chairman——

THE CHAIRMAN: The Members will be seated. The Chair is counting for a quorum.

MR. STEIGER of Arizona: Mr. Chairman, another point of order. I do not want to confuse anyone here. I would ask the Chair this: Is it true that if 21 Members are standing, that is a sufficient number on which to base a rollcall vote and we would then avoid the necessity of demanding a quorum? It obviously is not here anyway.

THE CHAIRMAN: Is the gentleman from Arizona withdrawing his point of no quorum?

MR. STEIGER of Arizona: No. I am just asking if there are 21 Members who responded to my demand for a rollcall, which I coupled very cleverly with a point of order that a quorum was not present, that is sufficient if 20 were standing, but the Chair announced that 21 were standing.

THE CHAIRMAN: The point of no quorum must be disposed of first.

MR. STEIGER of Arizona: Even though the demand preceded the point of order?

THE CHAIRMAN: Yes.

MR. STEIGER of Arizona: This is very interesting. I want all the Members to remember that.

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Chairman, if the gentleman will yield, I ask him to withdraw it and I will support his request for a vote and we will thereby save time.

MR. STEIGER of Arizona: All right. I think it is going to work out.

THE CHAIRMAN: Sixty-eight Members are present, evidently not a quorum.

The Chair announces that he will vacate proceedings under the call when a quorum of the committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: One hundred and two Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

The pending business is a demand for a recorded vote.

A recorded vote was ordered.

Motion To Rise Preferential

§ 33.14 In Committee of the Whole, a motion that the Committee rise takes preference over a demand for a recorded vote on a pending amendment.

On Mar. 5, 1980,[6] during consideration in Committee of the

6. 126 CONG. REC. 4801, 4802, 96th Cong. 2d Sess.

Whole of H.R. 3829, a bill dealing with International Financial Institutions, an amendment to a pending amendment was agreed to by a voice vote. An opponent of the amendment then asked for a recorded vote, and pending that, made a point of order that a quorum was not present. The manager of the bill, Mr. Henry B. Gonzalez, of Texas, then moved that the Committee rise. A demand for a recorded vote and a point of no quorum were made after the Chair announced that the affirmative position prevailed on the motion to rise. The Chair declined to entertain the point of no quorum, since the motion that the Committee rise does not require a quorum for adoption. The proceedings were as indicated below:

THE CHAIRMAN:[7] The question is on the amendment offered by the gentleman from Nebraska (Mr. Cavanaugh) to the amendment offered by the gentleman from Ohio (Mr. Ashbrook).

The question was taken; and the Chairman announced that the ayes appeared to have it.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

MR. GONZALEZ: Mr. Chairman, I move that the Committee do now rise. . . .

THE CHAIRMAN: The question is on the motion offered by the gentleman from Texas (Mr. Gonzalez).

The question was taken; and the Chairman announced that the ayes appeared to have it.

MR. ASHBROOK: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Does the gentleman from Ohio demand a recorded vote and make the point of order that a quorum is not present under the motion for the Committee to rise?

MR. ASHBROOK: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair will advise the gentleman that a quorum is not required on a preferential motion that the Committee rise.

Does any Member join in the demand for a recorded vote? The Chair will count. Twelve Members have arisen, an insufficient number.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Chairman, I demand a division.

THE CHAIRMAN: On the motion that the Committee do now rise?

MR. ROUSSELOT: Yes, Mr. Chairman.

MR. GONZALEZ: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. GONZALEZ: Mr. Chairman, may I ask of the distinguished Chairman what the motion is?

THE CHAIRMAN: The Chair will advise the gentleman that the motion is a preferential motion offered by the gentleman from Texas (Mr. Gonzalez) that the Committee do now rise. A division has been demanded.

The Chair will now count for a division.

7. Robert Duncan (Oreg.).

On a division (demanded by Mr. Ashbrook) there were—ayes 15, noes 14.

So the motion was agreed to.

§ 33.15 Where the preferential motion to rise takes precedence over a pending request for a recorded vote, and the Committee rises, the request for a recorded vote remains pending business when the Committee of the Whole resumes consideration of the bill.

On July 15, 1981,[8] before putting the question on a preferential motion that the Committee rise, Chairman Paul Simon, of Illinois, stated the parliamentary situation as follows:

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Indiana (Mr. Hillis).

The question was taken; and the Chairman announced that the ayes appeared to have it.

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Chairman, I demand a recorded vote.

MR. [MELVIN] PRICE [of Illinois]: Mr. Chairman, I move that the Committee do now rise.

MR. STRATTON: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. STRATTON: Mr. Chairman, is the vote on the motion to rise or is it a vote on the Hillis amendment?

THE CHAIRMAN: This is the vote on the motion to rise.

The request of the gentleman from New York to have a recorded vote will be pending when we go into the Committee of the Whole tomorrow.

MR. STRATTON: The request for a recorded vote on the Hillis amendment will be the first order of business tomorrow?

THE CHAIRMAN: That is correct.

The question is on the motion offered by the gentleman from Illinois (Mr. Price) that the Committee do now rise.

The motion was agreed to.

When Timely

§ 33.16 Generally, a demand for a recorded vote is timely if made before other business intervenes.

On Oct. 5, 1994,[9] the House was considering the American Heritage Areas Partnership Program Act in Committee of the Whole. Pending was an amendment offered by Mr. W. J. Tauzin, of Louisiana, and a perfecting amendment thereto offered by Mr. Nick J. Rahall, of West Virginia. When the question was put on the perfecting amendment, Chairman Robert Menendez, of New Jersey, announced that the ayes had it on a voice vote. Mr. Tauzin, momentarily distracted in a conversation with a colleague, failed to stand

8. 27 CONG. REC. 15921, 97th Cong. 1st Sess.

9. 140 CONG. REC. p. ____, 103d Cong. 2d Sess.

immediately to ask for a recorded vote but when he insisted, the Chair permitted his demand to be entertained since there had been no intervening business. The proceedings were as follows:

THE CHAIRMAN: The question is on the amendment offered by the gentleman from West Virginia (Mr. Rahall) to the amendment offered by the gentleman from Louisiana (Mr. Tauzin).

The question was taken; and the Chairman announced that the ayes appeared to have it.

MR. TAUZIN: Mr. Chairman, I demand a recorded vote.

MR. RAHALL: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. RAHALL: Mr. Chairman, how long a time does one have after a vote has been declared one way or another?

THE CHAIRMAN: There had been no intervening business when the gentleman from Louisiana, who was standing, asked for a recorded vote.

A recorded vote was ordered.

When Untimely

§ 33.17 It is too late to demand a recorded vote on an amendment agreed to by the House by voice vote after the Speaker has put the question on engrossment and third reading of the bill.

On July 19, 1973,[10] certain Members having requested separate votes on three amendments proposed by the Committee of the Whole to a bill (H.R. 8860) to amend and extend the Agricultural Act of 1970, the House rejected the first, while agreeing to the second and third. The other of the Committee's recommended amendments having been agreed to en gross, the Speaker[11] put the question on the engrossment and third reading of the bill.[12]

After the taking of the question and the Chair's announcement that the ayes appeared to have it, Mr. Wilmer Mizell, of North Carolina, made the following parliamentary inquiries:

MR. MIZELL: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. MIZELL: Mr. Speaker, my parliamentary inquiry is would the Chair restate the vote on the previous Bergland amendment?

THE SPEAKER: The Chair will state that the Chair announced that the ayes had it.

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10. 119 CONG. REC. 24965, 24966, 93d Cong. 1st Sess.

11. Carl Albert (Okla.).

12. When the House votes affirmatively on the "engrossment and third reading of the bill," it is voting on the final language of the bill. An "engrossed bill," itself, is the final copy of the measure as passed by the House; it includes all amendments which emanated from the floor, and is certified to by the Clerk of the House.

MR. MIZELL: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MIZELL: This means that the Bergland amendment carried; is that correct?

THE SPEAKER: That is correct.

MR. MIZELL: On that, Mr. Speaker, I demand a recorded vote.

THE SPEAKER: The gentleman waited much too long.

MR. MIZELL: Mr. Speaker, I was on my feet. Mr. Speaker, I demand a recorded vote. I was on my feet.

THE SPEAKER: The Chair has put the question on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

§ 33.18 The demand for a recorded vote on the passage of a bill is not timely if the Member making the demand is not on his feet seeking recognition for that purpose when the Chair announces the result of a voice vote on passage and states that the bill is passed, and a motion to reconsider has been laid on the table. However, it is certainly within the province of the Chair to recognize for a unanimous-consent request to vacate the proceedings on passage and thereby set the stage for putting the question on passage a second time so a recorded vote can be demanded.

Where a controversial measure had been passed by unanimous consent, no Member having sought a roll call vote in a timely manner, the bill manager withdrew his objection to a unanimous-consent request to vacate the proceedings on passage so that a Member's right to demand a vote could be protected. The proceedings on Oct. 19, 1977,[13] were as follows:

THE CHAIRMAN: Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Udall, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1037) to require that a percentage of U.S. oil imports be carried on U.S.-flag vessels, pursuant to House Resolution 774, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

THE SPEAKER:[14] Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

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13. 123 CONG. REC. 34223, 34224, 95th Cong. 1st Sess.

14. Thomas P. O'Neill (Mass.).

THE SPEAKER: The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

THE SPEAKER: The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it. The bill was passed.

THE SPEAKER: A motion to reconsider is laid on the table.

MR. [PAUL N.] MCCLOSKEY [Jr., of California]: Mr. Speaker, I ask for a recorded vote.

THE SPEAKER: The Chair waited and the gentleman did not ask at the proper time. The Chair waited and no Member rose within the proper time.

MR. MCCLOSKEY: I merely thought the Chair was speaking about the third reading of the bill.

THE SPEAKER: We went through the third reading of the bill. The only way the gentleman can get a vote is by a unanimous-consent request.

MR. MCCLOSKEY: Mr. Speaker, I ask unanimous consent to have a recorded vote.

THE SPEAKER: Is there objection to the request of the gentleman from California?

MR. [JOHN M.] MURPHY of New York: Mr. Speaker, I object.

THE SPEAKER: Does the gentleman ask unanimous consent to vacate the proceedings whereby the bill was passed and the motion to reconsider laid on the table? Does the gentleman make that request?

MR. MCCLOSKEY: I do, Mr. Speaker. I ask unanimous consent to vacate the action of the House, set aside the proceedings and have a record vote.

THE SPEAKER: Is there objection to the request of the gentleman from California?

MR. MURPHY of New York: Mr. Speaker, I object.

THE SPEAKER: Objection is heard.

MR. MCCLOSKEY: Mr. Speaker, I move to reconsider the vote by which the House apparently passed the bill.

THE SPEAKER: A motion to reconsider was laid on the table, without objection.

MR. MCCLOSKEY: Mr. Speaker, I was on my feet, seeking recognition.

THE SPEAKER: The gentleman was not seeking recognition when the question was put on final passage. The Chair looked in that direction, expecting that someone would rise, and no Member rose. The Chair has been expeditiously fair on this matter, anticipating that somebody would rise, and nobody rose.

The Chair recognizes the gentleman from Maryland (Mr. Bauman).

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I ask unanimous consent to proceed for 1 minute.

THE SPEAKER: Is there objection to the request of the gentleman from Maryland?

There was no objection.

MR. BAUMAN: Mr. Speaker, I want to support the Chair in the Chair's statement. The gentleman from Maryland was watching the proceedings, and at no time did any Member rise to request a vote. The Chair waited for a period of time, and no request was made.

But I would also make this observation: In view of the controversy and the charges that have surrounded this legislation, it seems to me that the gen-

tleman from New York (Mr. Murphy) might want to reconsider his objection to the request to rescind the proceedings and to allow a vote. I think the subsequent public criticism that the House will receive should we pass this controversial bill without a rollcall vote will be far greater than any benefit that might be derived. The honor of the House as an institution is at stake here. That is only one Member's viewpoint, but the Chair was certainly within his rights in his ruling but we should have a vote.

THE SPEAKER: The Chair respects the statement of the gentleman from Maryland.

MR. MURPHY of New York: Mr. Speaker, I withdraw my objection to the request of the gentleman from California (Mr. McCloskey).

THE SPEAKER: The question is on the passage of the bill.

MR. MCCLOSKEY: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 165, nays 257, not voting 12, as follows: . . .

As Related to Vote by Division

§ 33.19 Where the Chairman of the Committee of the Whole is counting those standing on a vote by division, he will not entertain a request for a recorded vote.

Where Members in favor of a pending amendment have been asked to stand and remain standing while the Chair counts on a division vote, the vote cannot be interrupted by a demand for a recorded vote as the two issues may become confused. A ruling by Chairman William H. Natcher, of Kentucky, on June 10, 1975,[15] illustrates this point:

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Florida (Mr. Gibbons).

The question was taken; and the Chairman being in doubt, the Committee divided.

MR. [SAM] GIBBONS [of Florida]: Mr. Chairman, I ask for a recorded vote.

THE CHAIRMAN: The Chair is counting, and a division vote in progress cannot be interrupted by a demand for a recorded vote.

The Chairman having announced that he was in doubt, and the Committee having divided, there were—ayes 77, noes 66.

MR. [AL] ULLMAN [of Oregon]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

Withdrawal of Demand

§ 33.20 A demand for a recorded vote may be withdrawn before the Chair begins to count Members supporting the demand, and unanimous consent is not required.

On Aug. 1, 1975, a bill entitled the Energy Conservation and Oil

15. 121 CONG. REC. 18048, 94th Cong. 1st Sess.

Policy Act of 1975 was under consideration in the Committee of the Whole. After all debate had been limited and had expired on an amendment, the Chair put the question and when a recorded vote was demanded thereon, the Committee rose. When the Committee resumed consideration of the measure on Sept. 17, 1975,[16] a request was made that an additional four minutes of debate be permitted on the amendment, equally divided between the two parties. The Chair reminded Members that a recorded vote had been demanded but that if the demand were withdrawn, he would then entertain a request for additional debate time. The proceedings were as follows:

THE CHAIRMAN:[17] When the Committee rose on Friday, August 1, 1975, all time for debate on title III of the committee amendment in the nature of a substitute and all amendments thereto had expired and there was pending the amendment offered by the gentleman from Ohio (Mr. Brown) to title III on which a recorded vote had been requested by the gentleman from Ohio.

Without objection, the Clerk will again read the amendment offered by the gentleman from Ohio (Mr. Brown).

There was no objection.

The Clerk read as follows:

Amendment offered by Mr. Brown of Ohio: Strike out sections 301, 302, 303.

Renumber the succeeding sections of title III accordingly.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I rise to make a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. DINGELL: Mr. Chairman, it is my recollection that at the time the Committee rose, as the Chair has just indicated to us, we had under consideration, as the Chair has pointed out, the Brown amendment which provided for the striking, as I recall it, of three sections: Section 301, section 302, and section 303, as amended. Am I correct on that, Mr. Chairman?

THE CHAIRMAN: The gentleman goes well beyond the parliamentary inquiry. The Chair can state that that is correct.

MR. [CLARENCE] BROWN of Ohio: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. BROWN of Ohio: The parliamentary inquiry, Mr. Chairman is, Would it be in order at this point while the vote is pending to ask unanimous consent of the House that 2 minutes may be granted on either side of the aisle for a discussion at this point of the pending vote?

THE CHAIRMAN: Such a request would be in order only if the gentleman first withdrew his request for a recorded vote.

MR. BROWN of Ohio: A further parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman will state it.

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16. 121 CONG. REC. 28904, 94th Cong. 1st Sess.

17. Richard Bolling (Mo.).

MR. BROWN of Ohio: Would that request for a recorded vote then be in order following the discussion of the pending vote?

THE CHAIRMAN: The gentleman could again request a recorded vote.

MR. BROWN of Ohio: Mr. Chairman, then I ask unanimous consent to withdraw my request for a recorded vote at this point.

THE CHAIRMAN: That does not require unanimous consent. The gentleman withdraws his request for a recorded vote.

Does the gentleman now ask unanimous consent for debate time?

MR. BROWN of Ohio: I do, Mr. Chairman. I ask unanimous consent that 2 minutes be granted on either side of the aisle, 2 minutes to the gentleman from Michigan (Mr. Dingell) and 2 minutes to the gentleman from Ohio (Mr. Brown) to discuss the pending vote.

THE CHAIRMAN: Is there objection to the request of the gentleman from Ohio?

MR. DINGELL: Mr. Chairman, reserving the right to object, I think we can do this in 1 minute, if the gentleman would ask unanimous consent for 1 minute.

MR. BROWN of Ohio: Mr. Chairman, I ask unanimous consent that 1 minute be granted to the Democratic side in the hands of the gentleman from Michigan (Mr. Dingell) and 1 minute to the Republican side to be in the hands of the gentleman from Ohio (Mr. Brown).

THE CHAIRMAN: Is there objection to the request of the gentleman from Ohio?

There was no objection.

§ 33.21 Withdrawal of a demand for a recorded vote has also been permitted where the Chair had counted for a second but had not announced the numbers supporting the demand.

On Sept. 27, 1978,[18] Chairman Barbara Jordan, of Texas, permitted a "by right" withdrawal of a demand for a recorded vote.

THE CHAIRMAN: . . . Pending before the House is an amendment offered by the gentleman from Ohio (Mr. Harsha) to an amendment offered by the gentleman from Pennsylvania (Mr. Ertel), and the pending business is the demand of the gentleman from Ohio (Mr. Harsha) for a recorded vote.

All those Members in favor of taking the vote on this amendment by a recorded vote will please rise and remain standing until they are counted.

MR. [WILLIAM H.] HARSHA [of Ohio]: Madam Chairman, I ask unanimous consent to withdraw my request for a recorded vote.

MR. JOHN T. MYERS [of Indiana]: Madam Chairman, I object.

THE CHAIRMAN: The Chair will state that since she has not announced the count of those requesting a recorded vote, the Member requesting the recorded vote may withdraw the request without unanimous consent. Does the gentleman from Ohio (Mr. Harsha) withdraw his request?

MR. HARSHA: Madam Chairman, I withdraw my request for a recorded vote.

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18. 124 CONG. REC. 32053, 95th Cong. 2d Sess.

THE CHAIRMAN: The gentleman from Ohio (Mr. Harsha) withdraws his request for a recorded vote.

MR. HARSHA: Madam Chairman, I just want to make certain I am not withdrawing my amendment. I am withdrawing my request for a recorded vote.

MR. [JAMES J.] HOWARD [of New Jersey]: Madam Chairman, on that I demand a division.

On a division (demanded by Mr. Howard) there were—ayes 60, noes 2.

So the amendment to the amendment was agreed to.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Pennsylvania (Mr. Ertel), as amended.

The amendment, as amended, was agreed to.

§ 33.22 A recorded vote which was underway when the electronic system failed was discontinued when the Member who had made the request for a recorded vote asked unanimous consent to withdraw his demand so the House would not have to undertake a more protracted vote on the issue by roll call.

On May 31, 1984,[19] the Chairman of the Committee of the Whole, having directed the Clerk to call the roll for a recorded vote where the electronic voting system had failed during the vote, entertained a unanimous-consent request, by the Member who had requested the recorded vote in the first instance, to vacate the proceedings whereby the requisite number of Members had seconded the demand for the vote and to withdraw the demand. The Chair's prior statement that the amendment had been agreed to on a division vote was then controlling. The proceedings described were as follows:

THE CHAIRMAN:[20] The question is on the amendment offered by the gentleman from Massachusetts (Mr. Conte).

The question was taken; and on a division (demanded by Mr. Frenzel) there were—ayes 18, noes 24.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device.

ANNOUNCEMENT BY THE CHAIRMAN

THE CHAIRMAN: The Chair desires to make an announcement. Because of a technical malfunction, obvious to all of us, it will be necessary to repeat this vote by a rollcall of the Members. The Chair therefore requests all Members to take their seats, and the Clerk will call the roll.

For what purpose does the gentleman from Massachusetts (Mr. Conte) seek recognition?

MR. CONTE: Mr. Chairman, in view of all that has happened here, I ask

19. 130 CONG. REC. 14616, 98th Cong. 2d Sess.

20. George E. Brown, Jr. (Calif.).

unanimous consent to vacate the proceedings and to withdraw my request for a rollcall vote.

THE CHAIRMAN: Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

THE CHAIRMAN: The Chair will announce that the amendment offered by the gentleman from Massachusetts (Mr. Conte) was rejected on a division vote.

Conditional Withdrawal of Demand

§ 33.23 Where a demand for a recorded vote is pending, it may be withdrawn by the maker, but it is not in order to condition its withdrawal on a modification in the motion on which the vote is being taken.

Where there was pending a motion to close debate on a pending amendment and all amendments thereto, a Member demanded a recorded vote on that motion. The Member making the demand then suggested that he would withdraw it if the original motion to limit debate were modified. Chairman Neal Smith, of Iowa, then stated that the demand for the recorded vote must be disposed of by a vote or by its withdrawal, but that it had to be disposed of before there could be a modification to the underlying motion to limit debate. Following a quorum call, the proceedings of July 8, 1975,[1] were as follows:

THE CHAIRMAN: . . . At the time the quorum call was requested, there was pending a motion offered by the gentleman from Arizona (Mr. Steiger) to limit all debate on the Hébert amendment and all amendments thereto to 10 minutes to 5. The request of the gentleman from Michigan was also pending for a recorded vote.

Does the gentleman still insist upon his request?

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. DINGELL: Mr. Chairman, would it be possible for me to withdraw my demand if a unanimous-consent request were made by the chairman of the subcommittee handling the legislation to limit time solely on the amendment offered by the gentleman from New York (Mr. Stratton)?

THE CHAIRMAN: The Chair advises the gentleman that first we must dispose of the motion.

MR. [F. EDWARD] Hébert [of Louisiana]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HÉBERT: May I inquire as to what the gentleman's motion was?

THE CHAIRMAN: The motion of the gentleman from Arizona was to limit debate on the amendment of the gen-

1. 121 CONG. REC. 21627, 94th Cong. 1st Sess.

tleman from Louisiana and all amendments thereto to 10 minutes to 5.

Does the gentleman insist on his demand for a recorded vote at this point?

MR. DINGELL: Mr. Chairman, I have no choice but to insist on it unless someone will make another request.

MR. [SAM] STEIGER of Arizona: Mr. Chairman, I ask unanimous consent to withdraw my motion.

THE CHAIRMAN: Is there objection to the request of the gentleman from Arizona?

There was no objection.

MR. [JOHN] MELCHER [of Montana]: Mr. Chairman, I ask unanimous consent that all debate on the pending amendment cease within 5 minutes.

THE CHAIRMAN: Is there objection to the request of the gentleman from Montana to limit debate on the Stratton amendment?

There was no objection.

Yeas and Nays

§ 33.24 While a demand for the yeas and nays, once seconded by one-fifth of those present, cannot be withdrawn, the House may, by unanimous consent, vacate the proceedings and take the vote de novo.

On Mar. 6, 1978,[2] during the consideration of House Joint Resolution 578, the following proceedings occurred:

THE SPEAKER PRO TEMPORE:[3] The question is on the motion offered by the gentleman from Florida (Mr. Lehman) that the House suspend the rules and pass the joint resolution (H.J. Res. 578).

The question was taken.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

Debate has been concluded on all motions to suspend the rules.

Pursuant to clause 3, rule XXVII, the Chair will now put the question on each motion, on which further proceedings were postponed, in the order in which that motion was entertained.

Votes will be taken in the following order:

House Joint Resolution 715, by the yeas and nays; and House Joint Resolution 578, by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

The unfinished business is the question of suspending the rules and passing the joint resolution (H.J. Res. 715).

The Clerk read the title of the joint resolution.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Florida (Mr. Lehman) that the House suspend the rules and pass the joint resolution (H.J. Res. 715), on which the yeas and nays are ordered.

The Chair observes that the electronic voting system is temporarily inoperative.

2. 124 CONG. REC. 5715, 5716, 95th Cong. 2d Sess.

3. James C. Wright, Jr. (Tex.).

In view of that fact, the Clerk will call the roll.

The question was taken; and there were—yeas 349, nays 7, not voting 78. . . .

MR. CHARLES H. WILSON of California: Mr. Speaker, I ask unanimous consent that the House vacate the proceedings whereby the yeas and nays were ordered on House Joint Resolution 578, authorizing the President to proclaim the third week of May of 1978 and 1979 as National Architectural Barrier Awareness Week.

The Clerk read the title of the joint resolution.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from California?

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Florida (Mr. Lehman) that the House suspend the rules and pass the joint resolution (H.J. Res. 578).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

A motion to reconsider was laid on the table.

§ 34. Taking the Vote

Ordering a Recorded Vote—The Old "Two-step" Rule

§ 34.1 One-fifth of a quorum in the House orders that a vote be taken by recorded vote.

On Nov. 4, 1971,[4] a separate vote having been demanded in the House on an amendment to a bill (H.R. 7248) to amend and extend the Higher Education Act of 1965 and other acts dealing with higher education, the Speaker[5] put the question on the amendment and a demand for the yeas and nays was heard. Mrs. Edith S. Green, of Oregon, who had made the demand then inquired of the Chair as to whether it was possible to ask for tellers with clerks. When the Chair replied in the affirmative Mrs. Green withdrew her other request[6] and demanded tellers; they were ordered and the following proceedings then occurred:

MRS. GREEN of Oregon: Mr. Speaker, I demand tellers with clerks [more than one-fifth of a quorum then seconded Mrs. Green's demand.]

Tellers with clerks were ordered; and the Speaker appointed as tellers Mr. Erlenborn, Mrs. Green of Oregon, Mr. Perkins, and Mr. Quie.

The Committee divided, and the tellers reported that there were—ayes 186, noes 181, not voting 64. . . .

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4. 117 CONG. REC. 39352, 39353, 92d Cong. 1st Sess.

5. Carl Albert (Okla.).

6. Unanimous consent is not required in the House to withdraw a demand for the yeas and nays before the demand has been supported by one-fifth of those present. The situation is different, however, where the demand has been supported; see § 24.8, supra.

The Members' names having been recorded in accordance with their positions on the issue, this marked the first instance of a recorded teller vote.

New Single-step Rule

§ 34.2 Pursuant to the rules adopted in the 93d Congress, one-fifth of a quorum in the House may support a single demand for a "recorded vote" (in lieu of the two-step demand for tellers and then for tellers with clerks), and the Chair may, in his discretion, direct that the vote be taken by electronic device.

On Feb. 7, 1973,[7] during consideration in the Committee of the Whole of a bill (H.R. 2107) to require the Secretary of Agriculture to carry out the rural environmental assistance program, the Chairman[8] put the question on an amendment in the nature of a substitute, as amended. The question was taken; and the Chair announced that the noes appeared to have it.

Thereafter the following exchange and request took place:

> MR. [WILMER] MIZELL [of North Carolina]: Mr. Chairman, I demand tellers.
>
> THE CHAIRMAN: Does the gentleman demand a recorded vote?
>
> MR. MIZELL: Yes, Mr. Chairman, I do demand a recorded vote.
>
> THE CHAIRMAN: As the Chair understands, the new procedure in the House is that the demand is for a recorded vote.

One-fifth of a quorum having supported the demand, the recorded vote was ordered.

> THE CHAIRMAN: . . . The vote will be taken by electronic device.[9]

§ 34.3 Pursuant to the rules, recorded votes may be conducted by clerks in the discretion of the Chair (when the electronic voting system is inoperative).

On July 11, 1973,[10] the Committee of the Whole had under consideration an amendment to a bill (H.R. 8860) to amend and extend the Agricultural Act of 1970. The question on the amendment was taken; and the Chairman announced that the noes appeared to have it.

Immediately thereafter, Mr. Neal Smith, of Iowa, the proponent of the amendment, demanded a recorded vote, and the following exchange took place:

> THE CHAIRMAN:[11] A recorded vote has been demanded.

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7. 119 CONG. REC. 3707, 93d Cong. 1st Sess.

8. Robert N. Giaimo (Conn.).

9. See Rule I clause 5, *House Rules and Manual* § 630a (1995).

10. 119 CONG. REC. 23156, 23157, 23161, 93d Cong. 1st Sess.

11. William H. Natcher (Ky.).

The Chair would like first to advise the Members that the electronic device is not working at this time. A recorded vote will require tellers on either side of the aisle, as the gentleman from Iowa (Mr. Smith) knows.[12]

Does the gentleman from Iowa insist upon his request?

Mr. SMITH of Iowa: Mr. Chairman, I demand tellers.

Tellers were refused (less than 20 Members rising to second the request) so the amendment was rejected.

Later during consideration of the same measure, Mr. Silvio O. Conte, of Massachusetts, offered an amendment on which he subsequently demanded a recorded vote. A sufficient number of Members supporting this demand, the vote was taken by clerks pursuant to the Chairman's discretionary authority in light of the inoperative state of the electronic voting system.

§ 35. Time To Respond on a Vote

When the electronic device is utilized to record a vote, Members are allowed a minimum of 15 minutes to respond; unless the Chair has utilized his authority to cluster and reduce votes to five minutes under clause 5(b) of Rule I. It is within the discretion of the Chair, following the expiration of the minimum time, how much longer to leave the voting stations open.[13]

Fifteen-minute Minimum

§ 35.1 The Chair indicated that under the then-existing rules, Members were entitled to a minimum of 12 [now 15]

12. See Rule I clause 5, *House Rules and Manual* § 630a (1995).

13. Voting times have been extended by the Chair for a variety of reasons, for instance, where Members are at a meeting at the White House or engaged in some ceremony that has delayed their attendance. In one instance, a recorded vote was left open for over an hour while the leadership on both sides of the aisle were determining the next item to be on the legislative agenda. See Roll Call Number 412, 140 CONG. REC. p. ____, 103d Cong. 2d Sess., Aug. 19, 1994, which remained pending for a total of 73 minutes.

In the 104th Congress, the "customary time" for permitting Members to respond was announced to be "as soon as possible" after the 15 minutes permitted by the rule. Seventeen became accepted as an appropriate maximum time and has since been generally accepted as the norm. The Chair often announces that "this will be a 17-minute vote" when the bells are rung. See 141 CONG. REC. p. ____, 104th Cong. 1st Sess., Feb. 10, 1995.

minutes to vote on a recorded vote; at the conclusion of that time the Chair ascertains whether Members are in the Chamber who desire to vote before announcing the result.

On Sept. 16, 1971,[14] a recorded teller vote having been ordered on an amendment to a bill (H.R. 1746) concerning equal employment opportunity, clerks took their positions and Members deposited tally cards in the appropriate boxes; and, at the conclusion of the vote, the Chairman[15] stated:

> Twelve minutes[16] have expired. Are there any Members in the Chamber who have not voted and wish to vote?

Immediately thereafter, Mr. James G. Fulton, of Pennsylvania, engaged in a brief discussion with the Chair as to the fundamental nature of the time limit, as follows:

> MR. FULTON of Pennsylvania: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state his parliamentary inquiry.
>
> MR. FULTON of Pennsylvania: Mr. Chairman, does not the rule explicitly state that the 12 [now 15] minutes is the minimum? So, there is no 12-minute expiration. Any Member may vote so long as he is in the Chamber before the final report is made; is that not correct?
>
> THE CHAIRMAN: The Chair has so ruled.
>
> Is there any Member in the Chamber who has not voted but who wishes to vote?
>
> MR. FULTON of Pennsylvania: Mr. Chairman, a further parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state his parliamentary inquiry.
>
> MR. FULTON of Pennsylvania: It is definite, then, that there is no maximum time limitation on a record teller vote?
>
> THE CHAIRMAN: Not until the vote is so announced.

Parliamentarian's Note: A recorded teller vote by nonelectronic means having been ordered, the proper procedure for recording or changing votes after the completion of the count, is as follows:

(1) Members who voted may change their votes by depositing corrected tally cards prior to the Chair's announcement of the result without unanimous consent.

(2) Members indicating a desire to vote who are in the Chamber and have not been recorded may vote prior to the Chair's announcement of the result, and unanimous consent is not required.

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14. 117 CONG. REC. 32111, 92d Cong. 1st Sess.

15. Brock Adams (Wash.).

16. Effective Jan. 3, 1973, the minimum time limit became 15 minutes; see Rule I clause 5, *House Rules and Manual* § 630 (1995).

(3) Members who voted but were incorrectly recorded may change their votes after the Chair's announcement of the result by unanimous consent (and only by unanimous consent) providing no further business has intervened. (The Chair will not entertain a unanimous-consent request to change a vote taken by electronic device.

(4) Members who have not voted prior to the Chair's announcement of the result may only be recorded as "present" thereafter (before further business intervenes), and may not vote "aye" or "no" even by unanimous consent.[17]

Effect of Announcement of the Result

§ 35.2 Pursuant to the rules, Members have a minimum of 15 minutes from the time of the ordering of a recorded vote to be in the Chamber, and Members who are in the Chamber at the expiration of that time will be permitted to vote prior to the announcement of the result by the Chair.

On Oct. 13, 1972,[18] the House adopted a resolution (H. Res. 1123)[19] as amended, which mandated certain prospective changes in House rules for the purpose of introducing an electronic voting system. Among those provisions affected were Rules I, VIII, XV, and XXIII. Pursuant to the resolution's final form upon adoption, the changes were to take effect "immediately before noon on Jan. 3, 1973."[20]

Whereas Rule I clause 5 previously limited Members to 12 minutes[1] within which to be counted after the naming of tellers with clerks,[2] House Resolu-

17. For more detail, see § 40, infra.

18. 118 Cong. Rec. 36012, 92d Cong. 2d Sess.

19. Significant excerpts from H. Res. 1123 may be found at § 31.1, supra.

20. Thus such changes technically became part of the rules of the 92d Congress, without actually being operable during that Congress, and could be incorporated *by reference* as rules of the 93d Congress merely by adopting 92d Congress rules.

1. Rule I clause 5, *House Rules and Manual* § 630 (1971).

2. The phrase, "tellers with clerks," as a parliamentary term of art has been supplanted by the use of the words, "recorded vote." While a recorded vote may certainly be taken, if necessary, by nonelectronic means, the change in the wording tends to underscore the newly streamlined one-step procedure of Rule I clause 5, as amended by H. Res. 1123. For addi-

tion 1123 extended this period to "not less than fifteen minutes to be counted from the ordering of the recorded vote or the ordering of clerks to tell the vote." Moreover, in accordance with the traditional interpretation of the words, "to be counted," Members in the Chamber upon the expiration of the minimum time limit are permitted to vote prior to the Chair's announcement of the result—as the following exchange[3] indicates:

> MR. [HALE] BOGGS [of Louisiana]: . . . I would just like to ask the gentleman [Mr. Wayne L. Hays, of Ohio] this question: On the time clock over here, does the board automatically go off when the time limit has expired?
>
> MR. HAYS: No, it does not. It does not go off until it is locked out up at the Speaker's desk.
>
> MR. BOGGS: So that means we now have 1 or, rather, 1½ minutes to vote. May I ask, when it becomes zero, then how long is it open there at the desk?
>
> MR. HAYS: When it comes to zero, the Speaker will bang down his gavel and will say, "All time has expired," or "Are there any Members in the Chamber who desire to vote?" It is just like we do it now on a teller vote. If there are any who desire to vote, he will give them a minute or two more to do so, and then he will lock the machine out, and that is the end of it.[4]

§ 35.3 It is the responsibility of the Chair at the expiration of 12 [now 15] minutes to ascertain whether Members are in the Chamber who desire to vote on a recorded vote before announcing the result; but Members may not be recorded thereafter even by unanimous consent.

On Sept. 30, 1971,[5] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 10351) to provide for the continuation of programs authorized under the Economic Opportunities Act of 1964, and for other purposes. In the course of the bill's consideration, Mr. Carl D. Perkins, of Kentucky, offered an amendment to an amendment previously offered by Mr. John Brademas, of Indiana.

Following debate, the Chair[6] put the question, and, tellers with

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tional details as to this change, see § 31.1 and § 17, supra.

3. 118 CONG. REC. 36006, 92d Cong. 2d Sess.

4. It should be noted that the "locking out" of the system—the termination of the electronic vote—does not actually preclude a Member from casting or changing a vote prior to the Chair's announcement of the result. While the electronic system itself will no longer record a vote after the system is closed down, Members may still change or cast their votes by entering the well and depositing with the Clerk a card intended for such use. Thus, the critical cutoff point remains the Chair's announcement of the result.

5. 117 CONG. REC. 34270, 34284, 34290, 34291, 92d Cong. 1st Sess.

6. John J. Rooney (N.Y.).

clerks having been ordered, there were—ayes 226, noes 158, not voting 48. The Chairman then announced that the amendment to the amendment was agreed to. Immediately thereafter, the following exchange took place:

> MR. [DELBERT L.] LATTA [of Ohio]: Mr. Chairman, I was in the Chamber before the Chair announced the vote. Is it too late to cast my vote?
>
> THE CHAIRMAN: It is now too late since the vote has been announced.
>
> MR. LATTA: Well, Mr. Chairman, had I been here I would have voted "no."
>
> MRS. [MARGARET M.] HECKLER of Massachusetts: Mr. Chairman, I wish to state that had I been present I would have voted "aye."

Mr. Latta and Mrs. Heckler were officially recorded as "not voting."

§ 35.4 It is too late for a Member to cast a recorded vote after the Chair has announced the result of the vote.

On May 12, 1971,[7] a recorded teller vote (with Member tellers) having been taken on an amendment to a bill (H.R. 8190) providing for supplemental appropriations for the fiscal year ending June 30, 1971, the Chairman[8] himself having voted by sending a signed tally card to the appropriate tellers, then announced that the amendment was agreed to by a vote of 201–195. Immediately thereafter, the following exchange transpired:

> MR. [WILLIAM J.] GREEN of Pennsylvania: Mr. Chairman, I vote "no."
>
> THE CHAIRMAN: The Chair will state to the gentleman from Pennsylvania that his vote comes too late. The Chair has announced the vote by tellers with clerks.
>
> MR. GREEN of Pennsylvania: Mr. Chairman, I was here before, and I had my hand up before the Chair announced the vote. I was trying to be recognized.
>
> THE CHAIRMAN: The Chair will state to the gentleman from Pennsylvania that the gentleman cannot be recorded as voting "no."

§ 35.5 It is too late for a Member to vote on a recorded vote after the Chair has announced the result, although that Member states that he was in the Chamber prior to the announcement.

On Sept. 30, 1971,[9] during consideration of a bill (H.R. 10351) to provide for a continuation of programs authorized under the Economic Opportunity Act of 1964 in the Committee of the Whole, a recorded teller vote was ordered on an amendment, the vote was

7. 117 CONG. REC. 14584, 14585, 92d Cong. 1st Sess.

8. Wayne N. Aspinall (Colo.).

9. 117 CONG. REC. 34291, 92d Cong. 1st Sess.

taken and the Chair announced the result.

Immediately thereafter, the following exchange transpired:

MR. [DELBERT L.] LATTA [of Ohio]: Mr. Chairman, I was in the Chamber before the Chair announced the vote. Is it too late to cast my vote?

THE CHAIRMAN:[10] It is now too late since the vote has been announced.

§ 36. Casting Votes After the Roll Call; Effect of Announcement of Result

In General

§ 36.1 A Member may not be recorded on a yea and nay vote after the result of the vote has been announced.

On Mar. 29, 1962,[11] after a roll call vote on a bill (H.R. 10650) to amend the Internal Revenue Code of 1954, Mr. Carroll D. Kearns, of Pennsylvania, rose to address the Chair with the following statement:

MR. KEARNS: Mr. Speaker, I was standing behind the rail eulogizing our great Speaker after Drew Pearson's article about him. I was here and qualify and vote "no" on the last vote.

THE SPEAKER:[12] The Chair regrets that the gentleman cannot be recorded after the vote has been announced. The gentleman can state for the Record that he would have voted "no."[13]

Effect of Presence in Chamber

§ 36.2 A Member who is present in the Chamber but fails to cast his vote cannot be recorded after the announcement of the result.

On July 18, 1967,[14] after a roll call vote on a bill (H.R. 11456) making appropriations for the Department of Transportation, Mr. William L. Scott, of Virginia, rose and addressed the Chair as follows:

MR. SCOTT: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[15] The gentleman will state it.

MR. SCOTT: Mr. Speaker, I was here when the vote was taken on the final passage of the bill appropriating funds for the Department of Transportation, and I intended to vote "yea" on that bill.

Frankly, Mr. Speaker, I am not sure I voted. My vote is not recorded.

Can I at this time, having been present on the floor, cast my vote in the affirmative?

THE SPEAKER PRO TEMPORE: The Chair will advise the gentleman he cannot do that, since the result on the vote has already been announced.

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10. John J. Rooney (N.Y.).

11. 108 CONG. REC. 5432, 5438, 87th Cong. 2d Sess.

12. John W. McCormack (Mass.).

13. See also 87 CONG. REC. 7075, 77th Cong. 1st Sess., Aug. 12, 1941.

14. 113 CONG. REC. 19274, 19300, 90th Cong. 1st Sess.

15. Carl Albert (Okla.).

§ 36.3 A Member who was in the Chamber but who did not respond during a roll call vote may not be recorded after the Chair has announced the result.

On June 1, 1972,[16] after a roll call[17] vote on a bill (H.R. 13918) to provide improved financing for the Corporation for Public Broadcasting, Mr. Walter Flowers, of Alabama, made the following statement:

> MR. FLOWERS: Mr. Speaker, on the last vote I was in the Chamber, and desire to be recorded.
>
> THE SPEAKER: Did the gentleman answer when his name was called?
>
> MR. FLOWERS: No, Mr. Speaker, I did not. I did not realize the rollcall had been completed.
>
> THE SPEAKER: The gentleman cannot qualify after the result of the vote has been announced unless he can state he answered.
>
> MR. FLOWERS: Mr. Speaker, had I qualified I would have voted "yea."

Unanimous-consent Requests

§ 36.4 After the announcement of the result of a vote, a Member may not be recorded, even by unanimous consent.

On Mar. 12, 1959,[18] the House resolved itself into the Committee of the Whole for the consideration of a bill (S. 50) to provide for the admission of the state of Hawaii into the Union. Following debate thereon, the Speaker put the question on its passage, the question was taken; and (the yeas and nays having been ordered), there were—yeas 323, nays 89, not voting 22. The result of the vote was announced, and a motion to reconsider was laid on the table.

Immediately thereafter, Mr. Clarence Cannon, of Missouri, initiated the following proceedings:

> MR. CANNON: Mr. Speaker, I was in the well and I ask that my name be recorded as voting in the affirmative.
>
> THE SPEAKER:[19] The gentleman cannot be recorded after the announcement of the vote unless he voted during the rollcall.
>
> MR. CANNON: Mr. Speaker, I ask unanimous consent that the Record be revised. I was standing here in the well.
>
> THE SPEAKER: The gentleman cannot be recorded by unanimous consent, if he did not vote. If the gentleman voted and wants to correct the Record and say that he is not recorded, he may do that but he cannot be recorded as voting if he did not vote.[20]

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16. 118 CONG. REC. 19485, 92d Cong. 2d Sess.

17. The vote was conducted pursuant to Rule XV. See Rule XV, *House Rules and Manual* §§ 765–774(b) (1973).

18. 105 CONG. REC. 4006, 4038, 4039, 86th Cong. 1st Sess.

19. Sam Rayburn (Tex.).

20. A similar request was also denied where a Member had remained in

§ 36.5 The Speaker has refused to recognize a Member for the purpose of offering a unanimous-consent request that certain other Members who were absent for a record vote on the preceding day be permitted to have their votes recorded, belatedly.

On Mar. 16, 1971,[1] the House voted to agree to the conference report on a bill (H.R. 4690) raising the public debt limit. A joint resolution (H.J. Res. 465) making a supplemental appropriation for the Department of Labor was also passed on the same day. A number of Members, desirous of voting on both measures, were absent because they were under the impression that neither question would be put that day.

Accordingly, on Mar. 17, 1971,[2] Mr. Leslie C. Arends, of Illinois, addressed the Speaker with the following request:

MR. ARENDS: At this particular time I have no intention of pointing my finger at any one or of being personally critical. However, let me state that last Thursday I was privileged to ask the majority leader what the legislative program would be for this week. He carefully informed me, after which I sent such notice to the Members on our side of the aisle, just as they did on the majority side.

Particularly noticeable was this statement:

"Tuesday: Private Calendar. No bills."

At the bottom of the list there was no such statement that conference reports could be called up at any time. All Members relied on such information and accordingly 70 Members were not in attendance for one reason or another when two rollcalls were taken. Many of our Members have now called me, rather critical of the fact that we had sent this information to them and they were not here.

Accordingly, Mr. Speaker, I want to at this time do something unprecedented, very much unprecedented. I am now going to ask unanimous consent of the House of Representatives to permit any absentee yesterday, in view of the fact that they were misinformed, to cast their vote on the two bills that passed this House yesterday.

THE SPEAKER:[3] The Chair will not recognize the gentleman for that purpose.[4]

Where Signal Bells Failed To Ring

§ 36.6 The Speaker has declined to recognize a Member

his seat during the roll call, but was conferring with another Member and neglected to vote. See 106 CONG. REC. 10206, 86th Cong. 2d Sess., May 12, 1960.

1. 117 CONG. REC. 6742, 6746, 92d Cong. 1st Sess.
2. *Id.* at p. 6809.
3. Carl Albert (Okla.).
4. For a comparable instance, see 94 CONG. REC. 1008, 80th Cong. 2d Sess., Feb. 3, 1948, where a Member similarly sought unanimous consent to be recorded after announcement of the vote but encountered objection thereto.

seeking unanimous consent to be recorded after the result of a roll call vote was announced—despite such Member's assertion that the signal bells failed to ring in his office.

On June 9, 1938,[5] the House entertained consideration of a resolution (H. Res. 482) pertaining to a contested New Hampshire election in the 75th Congress. The resolution having been divided into its substantive clauses, the House agreed to the first resolve which denied the seat to one of the contestants and proceeded to vote on the second resolve which granted the seat to the other.

As with the first resolve, the yeas and nays were demanded on the second portion of the resolution, and the demand was supported by a sufficient number of Members. This resolve was also agreed to, and the result of the vote was announced.

Shortly thereafter, Mr. Hamilton Fish, Jr., of New York, addressed the Speaker with the following statement:

> MR. FISH: Mr. Speaker, the bells did not ring on the first roll call.[6] In view of that fact, I ask unanimous consent that the gentleman from Minnesota, Mr. Knutson, and I may be permitted to vote "nay" on the first roll call.
>
> THE SPEAKER:[7] The Chair cannot entertain a unanimous-consent request for that purpose.
>
> MR. FISH: I want the Record to show we would have voted "nay."
>
> THE SPEAKER: The Chair will, of course, recognize the gentleman to state how he would have voted had he been present.[8]

Parliamentarian's Note: Electronic bell system error has never historically been held to constitute a permissible reason for failure to cast a particular vote in time. Prior to its amendment in 1969, Rule XV, as enforced, required that ". . . a Member who had failed to respond on either the first or second call of the roll could not be recorded before the announcement of the result [citations omitted] unless he 'qualified' by declaring that he had been within the Hall, listening, when his name should have been called and failed to hear it [citations omitted], and then only on the theory that his name may have been inadvertently omitted by the Clerk [citation omitted]."[9] As a result, there were several instances of Members seeking to

5. 83 CONG. REC. 8660–62, 75th Cong. 3d Sess.
6. Mr. Fish was referring, here, to the roll call vote on the first resolve.
7. William B. Bankhead (Ala.).
8. See also § 41, infra.
9. Rule XV clause 2, *House Rules and Manual* § 765 (1995).

qualify after missing the call of their names on the ground that the signal bells in their offices failed to ring. The requests were denied, however, unless the circumstances fell within the confines of the narrowly-prescribed exception.[10]

§ 37. Changing Incorrectly Recorded Votes Prior to Announcement of Result

Deleting Vote Attributed to Absent Colleague; Use of Unanimous Consent

§ 37.1 A Member, ascertaining that an absent colleague had been inadvertently recorded on a roll call vote, had the vote deleted by unanimous consent.

On June 13, 1963,[11] the House voted on a bill (H.R. 6755) to provide a one-year extension of certain corporate tax rates and excise tax rates. Immediately thereafter and before the result of the vote was announced, Mr. John D. Dingell, of Michigan, initiated the following exchange with the Speaker:[12]

> MR. DINGELL: Mr. Speaker, how is the gentleman from Michigan [Mr. Ryan] recorded?
>
> THE TALLY CLERK: He voted "aye."
>
> MR. DINGELL: Mr. Speaker, the gentleman from Michigan [Mr. Ryan] is unavoidably detained elsewhere on official business. I ask unanimous consent that the Record be corrected accordingly.
>
> THE SPEAKER: Without objection, it is so ordered.

No objection being voiced, the Record was corrected accordingly.

§ 37.2 The Minority Leader, by unanimous consent, corrected a roll call vote to delete an erroneously recorded absent colleague's vote.

On Aug. 12, 1963,[13] the House voted on a motion to recommit a bill (H.R. 7525) relating to crime and criminal procedure in the District of Columbia. Shortly thereafter, but prior to the Chair's announcement of the result, Charles A. Halleck, of Indiana, the Minority Leader, initiated the following exchange:

> MR. HALLECK: Mr. Speaker, I would like to inquire whether the gentleman from North Dakota is recorded as having voted.

10. See, for example, 103 CONG. REC. 13365, 85th Cong. 1st Sess., Aug. 1, 1957; and 94 CONG. REC. 7161, 80th Cong. 2d Sess., June 4, 1948.

11. 109 CONG. REC. 10870, 10871, 88th Cong. 1st Sess.

12. John W. McCormack (Mass.).

13. 109 CONG. REC. 14758, 14759, 88th Cong. 1st Sess.

THE SPEAKER PRO TEMPORE:[14] The gentleman is recorded as having voted "yea."

MR. HALLECK: Mr. Speaker, I have checked with his office. We looked to see whether the gentleman from North Dakota was here. I am told by his office, he is not present. So I think the Record should be corrected. If subsequently, it is determined that the gentleman was here, the Record can be corrected by him. But, I think in view of the present situation, it would be better that the gentleman not be recorded.

THE SPEAKER PRO TEMPORE: Without objection, the rollcall will be corrected accordingly.

There being no objection, the correction was made.

§ 37.3 Where a colleague stated that a Member recorded as voting "nay" was neither present nor in the city, the Speaker obtained unanimous consent to correct the roll call prior to announcing the result of the vote.

On Mar. 22, 1944,[15] the House voted by the yeas and nays on an amendment to a bill (H.R. 3961) authorizing the construction, repair, and preservation of certain public works on rivers and harbors.

Shortly after the vote and prior to the Chair's announcement of the result, the following exchange occurred:

MR. [ALBERT E.] CARTER [of California]: Mr. Speaker, how is the gentleman from New Jersey [Mr. McLean] recorded?

THE SPEAKER:[16] He is recorded as voting "nay."

MR. CARTER: Mr. Speaker, I am certain there is an error, inasmuch as Mr. McLean, as I understand, is not present and is not in the city.

THE SPEAKER: Without objection, the roll call will be corrected accordingly.

There being no objection, the Record was so corrected.[17]

Deleting Vote Attributed to Absent Colleague Without Unanimous Consent

§ 37.4 Where a Member informed the Chair that a colleague recorded as voting "yea" was not then in the city and had left instructions

14. Carl Albert (Okla.).

15. 90 CONG. REC. 2927, 2928, 78th Cong. 2d Sess.

16. Sam Rayburn (Tex.).

17. For comparable instances, see § 37.4, infra, where the Chair corrected the vote without obtaining unanimous consent, and 96 CONG. REC. 9002, 81st Cong. 2d Sess., June 21, 1950, where the Member pointing out a similar error simultaneously sought unanimous consent (which was granted) for the appropriate correction. Such corrections are only permitted on roll call votes based upon presumed clerical errors; and are not permitted on votes by electronic device.

to be paired, the Speaker ordered the correction of the roll call prior to announcing the result of the vote.

On Oct. 18, 1945,[18] the House voted by the yeas and nays on an amendment to a bill (H.R. 3615) providing federal aid for the development of public airports and amending existing law relating to air-navigation facilities.

Shortly after the vote and prior to announcing the result, the Chair recognized Mr. Alfred L. Bulwinkle, of North Carolina, who initiated the following exchange:

> A parliamentary inquiry, Mr. Speaker.
>
> THE SPEAKER:[19] The gentleman will state it.
>
> MR. BULWINKLE: Is the gentleman from Indiana, Mr. Halleck, recorded?
>
> THE SPEAKER: The gentleman from Indiana, Mr. Halleck, is recorded as voting "aye."
>
> MR. BULWINKLE: I thought there was a mistake at the time. Someone inadvertently answered to his name.
>
> MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Mr. Speaker, I may say that the gentleman from Indiana is out of town and has a pair "aye."
>
> THE SPEAKER: The name of the gentleman from Indiana, Mr. Halleck, will be taken off the roll call.[20]

18. 91 CONG. REC. 9806, 9807, 79th Cong. 1st Sess.
19. Sam Rayburn (Tex.).
20. For comparable instances, see § 37.3, supra, where the Chair first sought unanimous consent prior to ordering a correction in the vote, and 96 CONG. REC. 9002, 81st Cong. 2d Sess., June 21, 1950, where the Member pointing out a similar error simultaneously sought unanimous consent (which was granted) for the appropriate correction.

Notation of Change in Record

§ 37.5 Where a Member is incorrectly recorded on a roll call and corrects his vote before the announcement of the result, the change is noted in the Record and unanimous consent is not required.

On Sept. 6, 1961,[1] the question was put on a motion to suspend the rules and pass a bill (H.R. 9000) to extend for two additional years the expired provisions of Public Laws 815[2] and 874, 81st Congress,[3] and the National Defense Education Act of 1958. Immediately after the vote, and before the announcement of the result, Mr. Peter F. Mack, Jr., of Il-

1. 107 CONG. REC. 18256, 18257, 87th Cong. 1st Sess.
2. A law providing for the construction of minimum school facilities in impacted areas which was enacted in September 1950.
3. A law authorizing cost of maintenance and operation, including teachers' salaries, of minimum school facilities in impacted areas; also enacted in September 1950.

linois, addressed the Chair and stated that he was incorrectly recorded and "would like to be recorded as having voted 'aye.'" The result of the vote was announced a few moments later.

Shortly thereafter, the following exchange took place:

> MR. MACK: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE:[4] The gentleman will state it.
>
> MR. MACK: Mr. Speaker, I was incorrectly recorded on the last rollcall. I am wondering if the Record will show that I was incorrectly recorded or whether it will show that I changed my vote.
>
> THE SPEAKER PRO TEMPORE: All the Chair can state is that the Record will show what actually transpired.
>
> MR. MACK: Mr. Speaker, I ask unanimous consent that I be recorded as having voted "aye" on the last rollcall.
>
> THE SPEAKER PRO TEMPORE: The Chair will state that according to the information given the Chair the gentleman is recorded as voting "aye."

The Chair's information was correct, and Mr. Mack's change of vote was noted and corrected in the permanent Record.

4. John W. McCormack (Mass.).

§ 38. Correction of Incorrectly Recorded Votes After Announcement of Result

Permissibility

§ 38.1 The Chair does not pass upon the explanation a Member sets forth as to how he was improperly recorded or how, though present and having voted, he was not recorded. The Chair impugns the motive of no Member. The Chair observed that while it is not permissible to change a vote [after the announcement of the result] it is permissible for a Member to correct the Record.

On May 28, 1959,[5] the House granted a unanimous-consent request that the permanent edition of the Record be corrected to show that Mr. James G. Fulton, of Pennsylvania, was present on a roll call vote taken the previous day and had voted "aye."[6]

Mr. James G. Fulton, of Pennsylvania, rose to address the Chair as follows:

> Mr. Speaker, on rollcall No. 59 I am recorded as not voting. I was present

5. CONG. REC. (daily ed.), 86th Cong. 1st Sess.

6. See 105 CONG. REC. 9184, 86th Cong. 1st Sess., May 27, 1959.

and voted "aye." I ask unanimous consent that the Record and Journal be corrected accordingly.[7]

Roll Call No. 59 was a yea and nay vote on the passage of a bill (H.R. 7086) to extend the Renegotiation Act of 1951.[8] Following Mr. Fulton's request, the Speaker Pro Tempore[9] asked if there was any objection, and none being heard, the request was granted.[10] Accordingly, the permanent Record was so corrected.[11]

Shortly thereafter, the following exchange took place between Mr. Clare E. Hoffman, of Michigan, and the Speaker Pro Tempore:[12]

MR. HOFFMAN of Michigan: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[13] The gentleman will state it.

MR. HOFFMAN of Michigan: I did not hear how the gentleman stated he had voted. It is permissible to change a vote, on a rollcall, a yea-and-nay vote? May a Member change from one to the other the next day?

THE SPEAKER PRO TEMPORE: Of course it is not permissible to change a vote, but it is permissible for a Member to correct the Record.

MR. HOFFMAN of Michigan: On the theory that the Clerk has recorded it unaccurately?

THE SPEAKER PRO TEMPORE: The Chair does not pass upon what theory the gentleman says he was not recorded when he was present and voted. The Chair impugns the motive of no Member.

Parliamentarian's Note: On electronically recorded votes, the Chair will not entertain a unanimous-consent request to have the permanent Record corrected. See § 32.2, supra.

Responsibility of Member To Be Present

§ 38.2 Where a Member who has been incorrectly recorded nevertheless leaves the Chamber after voting, and is not present to correct his vote at the time of a recapitulation, he undertakes sole responsibility for such action.

On Aug. 7, 1941,[14] the Clerk was directed to read a message from the President in which he explained his veto of a bill (S. 1580) to supplement the Federal Aid Road Act, approved July 11,

7. Mr. Fulton's statement will not be found in the permanent edition since his unanimous-consent request was granted.

8. 105 CONG. REC. 9184, 86th Cong. 1st Sess., May 27, 1959.

9. John W. McCormack (Mass.).

10. CONG. REC. (daily ed.), 86th Cong. 1st Sess.

11. 105 CONG. REC. 9184, 86th Cong. 1st Sess., May 27, 1959.

12. 105 CONG. REC. 9335, 86th Cong. 1st Sess., May 28, 1959.

13. John W. McCormack (Mass.).

14. 87 CONG. REC. 6886, 6895, 6896, 77th Cong. 1st Sess.

1916, as amended and supplemented, to authorize appropriations during the national emergency declared by the President on May 27, 1941, for the immediate construction of roads urgently needed for the national defense.

Following debate on whether or not to override the President's veto, the Speaker[15] put the question; and, pursuant to constitutional mandate,[16] it was taken by the yeas and nays. The vote being close in the Chair's estimation, a recapitulation was undertaken.

> MR. [LEO E.] ALLEN of Illinois: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. ALLEN of Illinois: How could you have a correct analysis of the vote if a Member were out of the Chamber now who had voted "nay" and he is recorded as voting "yea" and he is not here to correct it?
>
> THE SPEAKER: That is not the business of anybody in the House except the particular Member involved.

§ 38.3 A Member, temporarily unable to use his voice because of an operation on his throat, submitted a roll call correction in writing, without making the request in the well, pursuant to arrangements with the Speaker; the Record carried the correction as a unanimous-consent request.

On May 21, 1968,[17] Mr. Glenn Cunningham, of Nebraska, sought a correction in the permanent Record of a roll call vote as to which he was improperly recorded as absent. Mr. Cunningham, however, was temporarily unable to use his voice because of an operation on his throat. By prior arrangement with the Speaker and because of the unusual circumstances, Mr. Cunningham was permitted to submit the desired correction in writing in lieu of making a unanimous-consent request from the well.

The Record[18] carried the correction as a unanimous-consent request as the following excerpt indicates:

> MR. CUNNINGHAM: Mr. Speaker, on rollcall No. 140, on May 15, a quorum call, I am recorded as absent. I was present and answered to my name.
>
> I ask unanimous consent that the permanent Record and Journal be corrected accordingly.
>
> THE SPEAKER:[19] Is there objection to the request of the gentleman from Nebraska?
>
> There was no objection.

15. Sam Rayburn (Tex.).
16. U.S. Const. art. I, § 7, clause 2.
17. CONG. REC. (daily ed.), 90th Cong. 2d Sess.
18. *Id.*
19. John W. McCormack (Mass.).

The permanent Record[20] was then revised accordingly.

§ 38.4 The Government Printing Office having erroneously printed on a roll call the name of a deceased Member of the House, the permanent Record was corrected, by unanimous consent, to delete the name.

On June 26, 1969,[1] Mr. H. R. Gross, of Iowa, initiated the following exchange with the Speaker:

> MR. GROSS: Mr. Speaker, on rollcall 91 there is a printing error. The Government Printing Office has unfortunately listed the name of our late colleague, the gentleman from Massachusetts, Mr. Bates, among those Members responding on the rollcall.
>
> I therefore ask unanimous consent that the permanent Record be corrected to delete his name.
>
> Agreement to this request would in no way change the result of the vote as announced.
>
> THE SPEAKER:[2] Is there objection to the request of the gentleman from Iowa?
>
> There was no objection.

The roll call vote to which Mr. Gross referred (roll call No. 91), was on the passage of a resolution (H. Res. 357) to increase the number of clerks and the clerk-hire allowance for each Member. The vote had been taken the day before [June 25, 1969][3] and the error was eventually traced to the Government Printing Office.[4] The permanent Record was corrected accordingly.[5]

Correcting Administrative Errors

§ 38.5 Where tally clerks have found an error in a previously announced roll call count on the passage of a bill, the Speaker has announced the corrected yea and nay vote later in the day.

On Oct. 22, 1941,[6] the House voted on the passage of a bill (H.R. 146) to provide for trials of and judgments upon the issue of good behavior in the case of certain federal judges. A division having been demanded on the question, there were—ayes 62, noes 40. Mr. Clarence E. Hancock,

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20. See 114 CONG. REC. 13454, 90th Cong. 2d Sess., May 15, 1968.

1. CONG. REC. (daily ed.), 91st Cong. 1st Sess.

2. John W. McCormack (Mass.).

3. CONG. REC. 17290, 91st Cong. 1st Sess.

4. See 115 CONG. REC. 17643, 17644, 91st Cong. 1st Sess., June 27, 1969, for an explanation as to how the error originated.

5. See 115 CONG. REC. 17290, 91st Cong. 1st Sess., June 25, 1969.

6. 87 CONG. REC. 8168, 77th Cong. 1st Sess.

of New York, then objected to the vote on the ground that a quorum was not present. The Speaker[7] sustained the point of order and directed the Clerk to call the roll. Following the roll call, the Chair announced that there were-yeas 124, nays 123;[8] so the bill was passed.

Shortly thereafter, the Speaker made the following statement:[9]

> The Chair announces the corrected vote on the bill (H.R. 146) to provide for trials of and judgments upon the issue of good behavior in the case of certain Federal judges. After the tally clerks have rechecked the responses, the vote stands: Yeas, 124; nays, 121.
>
> The bill is passed.

§ 38.6 The Speaker has requested and received unanimous consent to correct the Journal and the Record where a copy of a roll call vote sent to the Printing Office was found to be incorrect.

On Feb. 12, 1942,[10] the Speaker[11] made the following statement in reference to a roll call vote on a bill (H.R. 6483) authorizing a $50 million appropriation to relieve an acute shortage of housing, public works, and equipment therefor in the District of Columbia area:

> It seems that in connection with roll call 22 yesterday, the copy of the roll call that went to the Printing Office did not contain the names of Mr. Allen of Illinois, Mr. Allen of Louisiana, Mr. H. Carl Andersen, Mr. Anderson of California, Mr. Anderson of New Mexico, Mr. Cooley, or Mr. Collins.
>
> Without objection, the Journal and permanent Record will be corrected to record these gentlemen as having been present and voting "yea."
>
> There was no objection.

§ 39. Changing Correctly Recorded Votes; Inquiries

The precedents carried in this section all predate the use of the electronic voting system. In the modern House, Members have no need to ask "how they are recorded" since their votes are on the electronic displays and in the visible computer monitors on the floor. The current procedure for changing votes is discussed in §§ 32, supra and 40, infra.

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7. Sam Rayburn (Tex.).

8. CONG. REC. (daily ed.), 77th Cong. 1st Sess.

9. 87 CONG. REC. 8169, 77th Cong. 1st Sess.

10. CONG. REC. (daily ed.), 77th Cong. 2d Sess.

11. Sam Rayburn (Tex.).

Inquiry as to How Member Recorded

§ 39.1 Members may inquire how they are recorded before the announcement of a yea and nay vote.

On Apr. 8, 1938,[12] the House entertained a motion to recommit a bill (S. 3331) to provide for reorganizing agencies of the government, extending the classified civil service, establishing a General Auditing Office and a Department of Welfare. The yeas and nays having been ordered, the Speaker[13] put the question.

At the end of the roll call but prior to announcement of the result, the following exchange took place:[14]

> MR. [STEPHEN] PACE [of Georgia]: Mr. Speaker, may I inquire how I am recorded?
>
> THE SPEAKER: The gentleman voted "nay."
>
> MR. [JOHN J.] O'CONNOR [of New York]: Mr. Speaker, I demand the announcement of the result.
>
> THE SPEAKER: The Chair will announce the result as soon as it is handed to the Chair by the Clerk.
>
> MR. [JAMES M.] MEAD [of New York]: Mr. Speaker, how was my vote recorded?
>
> MR. O'CONNOR: That is just an attempt to delay the decision, Mr. Speaker.
>
> MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, I demand the announcement of the vote.
>
> THE SPEAKER: The Chair does not desire one side or the other to have any advantage. We are merely following the usual routine.
>
> MR. MEAD: Mr. Speaker, how am I recorded?
>
> THE SPEAKER: The gentleman voted "nay".
>
> MR. MEAD: That is correct.

Thereafter, a brief discussion about the possibility of a recapitulation occurred, after which the result of the vote was announced.

Effect of Announcement of the Result

§ 39.2 A Member may change his vote on a roll call at any time before the result of the roll call vote is announced.

On July 28, 1937,[15] following a roll call vote on a bill (S. 2416) relating to the citizenship of certain classes of persons born in the Canal Zone or the Republic of Panama, the Speaker[16] decided to order a recapitulation. The result of the initial vote not having been announced, Mr. Andrew Edmiston, of West Virginia,

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12. 83 CONG. REC. 5123, 75th Cong. 3d Sess.

13. William B. Bankhead (Ala.).

14. 83 CONG. REC. 5124, 75th Cong. 3d Sess.

15. 81 CONG. REC. 7772, 75th Cong. 1st Sess.

16. William B. Bankhead (Ala.).

changed his vote in the course of the recapitulation from "no" to "aye." This prompted a point of order raised by Mr. Cassius C. Dowell, of Iowa, who contended that such a change was not permissible.

The Chair ruled on the point of order, as follows:

> There has been no announcement on the part of the Chair of the result of the vote.
>
> A Member may change his vote at any time before it is announced.
>
> That was held by Mr. Speaker Gillette. The Chair, therefore, overrules the point of order. The vote of the gentleman from West Virginia will be changed from "no" to "aye."

§ 39.3 Prior to announcing the result of a yea and nay vote, the Speaker clarified a statement he had made in reply to a parliamentary inquiry preceding such vote, so that Members would understand the exact parliamentary situation and change their votes if so desired, before his announcement of the result.

On Mar. 4, 1952,[17] the Chairman[18] of the Committee of the Whole reported back to the House a bill (H.R. 5904) providing for the administration and discipline of the National Security Training Corps with an amendment in the nature of a substitute adopted in the Committee of the Whole.[19] As the rule dictated that the previous question be ordered, the Speaker[20] put the question on the amendment, and it was rejected. Accordingly, the original bill remained before the House.

Shortly thereafter, Mr. Dewey Short, of Missouri, offered a motion to recommit the bill to the Committee on Armed Services. The question was put, and the yeas and nays were ordered.

Before the vote was taken, the following proceedings occurred:

> MR. [JAMES C.] DAVIS of Georgia: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. DAVIS of Georgia: If this motion to recommit is voted down will the bill then be sent back to the Committee of the Whole for further consideration?
>
> THE SPEAKER: No; the question then will be on the passage of the bill.
>
> MR. [THOMAS G.] ABERNETHY [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

17. 98 CONG. REC. 1863, 1864, 1865, 82d Cong. 2d Sess.

18. Jere Cooper (Tenn.).

19. It should be noted that when the Committee of the Whole perfects a bill by amendment and then adopts an amendment in the nature of a substitute for the entire bill, only the substitute is reported to the House. Moreover, should the House reject the substitute, the original bill without amendment is then before the House.

20. Sam Rayburn (Tex.).

THE SPEAKER: The gentleman will state it.

MR. ABERNETHY: Do I understand that this vote occurs on the bill as it was introduced without committee amendments?

THE SPEAKER: Not as introduced, but as reported to the House from the Committee of the Whole.

MR. ABERNETHY: Do I understand, then, that the vote to follow will occur on the bill as reported to the House, including the committee amendment?

THE SPEAKER: It does not have any committee amendments.

The question is on the motion to recommit.

The question was then taken; and the votes were tallied. Prior to announcing the result, however, the Speaker made the following statement:

The Chair desires to make a statement.

In answering a parliamentary inquiry of the gentleman from Mississippi [Mr. Abernethy], the Chair was mistaken as to the import of the inquiry. The Chair thought the gentleman was asking whether, if the motion to recommit was voted down, we would then vote on the bill as amended by the Committee of the Whole. Of course, the Chair's answer was correct on that understanding, because the Burleson amendment took out all the amendments that were adopted by the Committee of the Whole.

However, the Chair should have gone one step further, if he had understood the gentleman entirely, and said that the bill that would be voted on at that time was the bill as originally introduced and referred to the Committee on Armed Services without the amendments adopted by the Committee on Armed Services or the Committee of the Whole, because those amendments of the committee to the bill as originally introduced were not reported to the House.

The Chair wanted to make that statement before the final vote was announced so that all Members could understand the exact situation and be allowed to change their votes if they so desired. The bill is now before the House as originally introduced.

The Record indicates that two Members changed their votes thereafter.

§ 39.4 Members desiring to change their votes from "yea" or "nay" in order to answer "present" because of a pair must do so before the announcement of the result.

On May 27, 1947,[1] the House voted on a resolution (H. Res. 218) waiving points of order against a bill (H.R. 3601) making appropriations for the Department of Agriculture for the fiscal year 1948. The Speaker[2] announced the result of the vote, and a motion to reconsider was laid on the table. The resolution having been agreed to, a motion was then offered to resolve into the Committee of the

1. 93 CONG. REC. 5878, 5879, 80th Cong. 1st Sess.
2. Joseph W. Martin, Jr. (Mass.).

Whole for the consideration of the bill, itself.

Immediately thereafter, the following exchange took place:

> MR. [WILLIAM S.] HILL [of Colorado]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. HILL: Mr. Speaker, may I inquire how I was recorded? I had a pair with the gentleman from Michigan, Mr. Jonkman. I voted "no." I wish to withdraw my vote and vote "present."
>
> THE SPEAKER: The vote has been announced and the time when the gentleman could have announced how he would have voted has passed. . . .
>
> . . . He should have addressed the Chair and requested that he be recorded as "present."[3]

§ 39.5 While a Member may announce that his recorded vote was cast under misapprehension and misinformation, he may not change his vote following the announcement of the result.

On Apr. 26, 1949,[4] the House voted on a resolution (H. Res. 191) which provided, in part, that upon its adoption, the Committee of the Whole would consider a bill (H.R. 2032)—against which all points of order were to be waived—to provide for the repeal of the Labor-Management Relations Act of 1947, and the reenactment of the National Labor Relations Act of 1935. The yeas and nays having been ordered, there were—yeas 369, nays 6, not voting 56.

Following debate on the bill and the rising of the Committee, the Speaker[5] recognized Mr. Roy W. Wier, of Minnesota, and the following exchange took place:

> MR. WIER: Mr. Speaker, on the roll-call vote today on the rule, under misapprehension and misinformation, I voted "nay." I ask unanimous consent that the Record show I intended to vote "aye."
>
> THE SPEAKER: The gentleman's statement will stand. The vote itself cannot be changed at this time.

Effect of Timely Change

§ 39.6 Where a Member changes his vote following a roll call, before its announcement by the Chair, the change appears in the Record.

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3. For a comparable instance, see 118 CONG. REC. 34166, 92d Cong. 2d Sess., Oct. 5, 1972, where Mr. Philip M. Crane (Ill.), who had formed a live pair with Mr. Roman C. Pucinski (Ill.), appeared to be cognizant of the fact that he had waited too long to withdraw his "nay" vote and chose not to ask the Chair for permission to do so. Instead, he merely stated that he was "unable to exercise" the live pair and announced how Mr. Pucinski would have voted.

4. 95 CONG. REC. 5062, 5063, 5086, 81st Cong. 1st Sess.

5. Sam Rayburn (Tex.).

On Dec. 20, 1969,[6] the House, by roll call vote, agreed to the conference report on a bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970. Immediately following that vote and before the announcement of the result, Mr. James H. Scheuer, of New York, changed his vote from "yea" to "nay." Moments later—and still within the interim between the actual vote-casting and the Speaker's[7] announcement of the result—the Congressman changed his vote again, from "nay" to "yea." As the permanent Record indicates, he was so recorded.

Confusion as to Question Under Consideration as Basis for Vote Change

§ 39.7 Confusion existing as to the precise question under consideration, 40 Members changed their roll call votes from "yea" to "nay," and 93 Members changed their votes from "nay" to "yea."

On Aug. 21, 1957,[8] Mr. Clarence Cannon, of Missouri, called up the conference report on the supplemental appropriation bill of 1958 (H.R. 9131). The report having been agreed to, discussion followed with respect to the amendments remaining in disagreement.

Thereafter, Mr. Cannon moved that the House recede and concur in a Senate amendment numbered 54 with an amendment. Mr. Karl M. LeCompte, of Iowa, offered a preferential motion that the House recede and concur with Senate amendment No. 54, and Mr. John Taber, of New York, then requested a division of that question.

The vote was taken on the question, as divided (i.e., on the motion to recede from disagreement to the Senate amendment), and a division having been demanded by Mr. Cannon, there were—ayes 76, noes 22. Mr. Taber then objected to the vote on the ground that a quorum was not present whereupon the Speaker[9] directed the Clerk to call the roll.

Before the result of the vote was announced, the Record reveals that 40 Members changed their votes from "yea" to "nay," and 93 Members changed their votes from "nay" to "yea." This unusual occurrence was explained in a statement by Mr. Cannon, as follows:

> Mr. Speaker, may I say that this misapprehension was due to the fail-

6. 115 Cong. Rec. 40456, 40457, 91st Cong. 1st Sess.
7. John W. McCormack (Mass.).
8. 103 Cong. Rec. 15508, 15510, 15518, 15519, 85th Cong. 1st Sess.
9. Sam Rayburn (Tex.).

ure here at the desk to understand that the question had been divided. We took for granted we were voting on receding and concurring when, as a matter of fact, the vote was on the question to recede.

May I add, Mr. Speaker, that we expect to go back to conference tomorrow and will have an opportunity to again take up the matter in conference.

§ 40. Instances Where Vote Changes and Corrections Have Been Made

Incorrectly Cast Votes

§ 40.1 A Member may change his vote on a recorded teller vote by stating his correction prior to the announcement of the result by the Chair, and unanimous consent is not required.

On July 27, 1971,[10] a recorded teller vote having been taken on an amendment to a bill (H.R. 10061) making appropriations for the Department of Labor and the Department of Health, Education, and Welfare, Mr. Phillip M. Landrum, of Georgia, rose to ask the Chair[11] the following question:

Mr. Chairman, I voted the green card in error thinking I was voting in the negative. I intended to vote in the negative. Is it permissible for me to change my vote?

The Chair responded that the gentleman would be allowed to correct his vote, and following a parliamentary inquiry thereafter, the Chairman announced that the amendment had been rejected.

§ 40.2 Unable to effect a correction because of untimeliness, a Member announced that he had miscast his vote on a recorded teller vote taken the preceding day.

On June 18, 1971,[12] after a roll call vote on a resolution (H. Res. 434) authorizing investigative authority to the Committee on Education and Labor, Mr. James W. Symington, of Missouri, made the following statement:

Mr. Speaker, I wish to state for the Record that on recorded teller vote 143 yesterday I voted "aye" but had intended to vote "no."

§ 40.3 On a recorded vote, not conducted electronically, vote corrections are sometimes permitted after the Chair has announced the result.

While a Member may, by unanimous consent, correct his vote on

10. 117 Cong. Rec. 27373, 27374, 92d Cong. 1st Sess.
11. Chet Holifield (Calif.).
12. 117 Cong. Rec. 20723, 92d Cong. 1st Sess.

a recorded teller vote immediately after the Chair has announced the result, the Chair will not entertain such requests after further business has been transacted—unless the correction requested pertains to an error which could not have been made by the Member. Unanimous consent has been granted, for example, to correct the permanent Record to reflect a Member's vote which the temporary edition had recorded as not being cast.[13] Such requests would not be allowed, however, with regard to votes cast by electronic device in light of the assumption that the mechanism does not err and based upon the Member's ability and responsibility to verify his vote when cast.[14]

On Mar. 18, 1971,[15] tellers with clerks having been ordered on an amendment to a joint resolution (H.J. Res. 468) making further continuing appropriations for the fiscal year 1971, the vote was taken; and the Chair announced that the amendment was agreed to.

Immediately thereafter, the following requests were made:

> MR. [FRANK] ANNUNZIO [of Illinois]: Mr. Chairman, I voted "aye" by mistake in all the confusion. I want to be recorded as voting "no" and ask unanimous consent that my vote be corrected accordingly.
>
> THE CHAIRMAN:[16] Without objection, the correction will be made. . . .
>
> MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, I ask unanimous consent to be recorded as voting for the amendment instead of against it. I voted against it, and I ask unanimous consent to correct my vote.
>
> THE CHAIRMAN: Without objection, the correction will be made. . . .

No objections having been voiced to either of the Members' requests, the corrections were made.

Incorrectly Recorded Votes

§ 40.4 Four days after a Member was erroneously recorded as not voting on a nonelectronic recorded vote, unanimous consent was granted to permit the permanent Record and Journal to be corrected accordingly.

On June 28, 1971,[17] Mrs. Charlotte T. Reid, of Illinois, made the following statement:

> MRS. REID of Illinois: Mr. Speaker, on page H5871 of the Congressional Record of June 24, 1971, I am listed as not voting on recorded teller vote No. 163 when, in fact, I was present and

13. See § 40.4, infra.

14. See § 32.2, supra.

15. 117 CONG. REC. 7023, 7024, 92d Cong. 1st Sess.

16. Charles M. Price (Ill.).

17. CONG. REC. (daily ed.), 92d Cong. 1st Sess.

voted "no." I ask unanimous consent that the permanent Record and Journal be corrected accordingly.

THE SPEAKER:[18] Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

The final tally of recorded teller vote No. 163 was subsequently corrected in the permanent edition of the Record[19] and the Journal[20] to reflect the requested change.

§ 40.5 Where the possibility of confusion existed in the reporting by tellers of the result of a recorded teller vote, the Chair indicated: (1) that the Chair could only announce the vote as reported to him by the clerks and that discrepancies between that announcement and the official tally would appear in the Record; and (2) there is no available procedure for a recapitulation of a vote taken by clerks.

On Mar. 29, 1971,[1] a recorded teller vote having been ordered on an amendment to a joint resolution (S.J. Res. 55) to provide a temporary extension of a law relating to interest rates and cost-of-living stabilization, the Committee of the Whole divided; and the tellers reported that there were—ayes 143, noes 183, not voting 106. Accordingly, the Chairman[2] announced that the amendment has been rejected.

In the course of the voting procedure, the Member-tellers were apparently changed, and, there being some concern as to possible confusion which may have resulted, the following discussion ensued:

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Chairman, I rise to direct a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. DERWINSKI: Mr. Chairman, in the procedure that we just followed there is a possibility that a number of Members voting in the negative were not in effect counted since the tellers were switched at the onset of the vote. My question is not directed at this vote, but against any future complications of that type.

What is the official vote? Is it the vote announced by the tellers, or will it be the vote from the box and when the ballots are, in fact, counted, and the record of the voting is indicated?

THE CHAIRMAN: The Chair can only report the vote as reported by the tellers.

MR. DERWINSKI: If the Record the following day would indicate a contrary

18. Carl Albert (Okla.).

19. 117 CONG. REC. 21891, 92d Cong. 1st Sess., June 24, 1971.

20. H. Jour. 783 (1971).

1. 117 CONG. REC. 8265, 8266, 92d Cong. 1st Sess.

2. George W. Andrews (Ala.).

vote, what recourse, if any, would we have?

THE CHAIRMAN: The recorded teller vote will appear in the Record. However, the Chair can only announce the vote as reported by the tellers.

MR. DERWINSKI: Another parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman will state it.

MR. DERWINSKI: Mr. Chairman, to protect both parties at any time or any majority or minority Member at any time, it is obvious that there must be enough precautions taken to avoid what just occurred where tellers were, in fact, switched, and the vote was not properly presented to the tellers.

THE CHAIRMAN: The Chair will say that the tellers took their places at the proper boxes as designated by the Chair. The Chairman would caution all Members to be very careful about how they proceed through the lines. Do not be too hasty, and certainly be on time.

MR. GERALD R. FORD [of Michigan]: Mr. Chairman, a further parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. GERALD R. FORD: Mr. Chairman, we have a procedure for a recapitulation in a rollcall vote in the House of Representatives. Is there any comparable parliamentary procedure in this new device we are using for teller votes with clerks?

THE CHAIRMAN: Not for a recapitulation of a recorded teller vote. According to the vote announced by the Chair, as reported by the tellers, the yeas were 143, and the noes were 183, and the amendment was not agreed to.

Properly Cast, Recorded Votes

§ 40.6 Members who wish to change their votes on a recorded vote conducted by clerks may announce their vote change in the well prior to the announcement of the result.

On July 11, 1973,[3] a recorded vote having been ordered on an amendment to a bill (H.R. 8860) to amend and extend the Agricultural Act of 1970, the vote was taken by clerks as the electronic system was temporarily inoperative. Following the clerk's tally, Mr. Carlos J. Moorhead, of California, and Mr. C. W. Young, of Florida, stood in the well and announced that they desired to change their votes from "no" to "aye" and filled out new ballot cards. The result of the vote not yet having been announced by the Chair,[4] the gentlemen's requests were honored, and their votes duly recorded.

§ 40.7 Following the announcement of the result of a recorded vote taken by tellers, a Member may change his vote only by unanimous consent and only if no further business has been transacted.

On Nov. 9, 1971,[5] a recorded teller vote having been ordered on

3. 119 CONG. REC. 23161, 23162, 93d Cong. 1st Sess.
4. William H. Natcher (Ky.).
5. 117 CONG. REC. 40062, 40063, 92d Cong. 1st Sess.

an amendment to a substitute amendment to a bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, the Committee divided; the tellers tallied the vote, and the Chairman[6] announced that the amendment to the substitute amendment was rejected.

Immediately thereafter, Mr. Robert N. C. Nix, of Pennsylvania, requested that he be permitted to change his vote from "no" to "aye." The Chairman stated that it would be ordered if there were no objections. There being no objection, Mr. Nix' vote was recorded as requested.

A similar result was obtained on the very next recorded teller vote when Mr. John L. McMillan, of South Carolina, sought unanimous consent to change his vote from "yea" to "nay," following the Chair's announcement that the particular amendment had been rejected. Again, the Chair inquired as to whether any Member objected, and none being heard, the change was recorded.

6. William L. Hungate (Mo.).

§ 41. Announcement of Member Pertaining to His Own Vote; Announcing How Absent Colleague Would Have Voted

The practice in the House regarding a Member's announcement of how he would have voted had he been present on a record vote, where he was in fact absent, has changed during the last half-century. Such announcements are now routinely accepted by unanimous consent. Announcements on behalf of absent colleagues, on the other hand, are not entertained under current procedures used in the House. The precedents in this section illustrate this evolution.

§ 41.1 Under current practice, a Member may announce how he would have voted when the roll was called had he been present to vote.

On May 20, 1959,[7] having missed a roll call vote on a motion to suspend the rules and pass a bill (H.R. 7007) making appropriations for the National Aeronautics and Space Administration, Mr.

7. 105 Cong. Rec. 8634, 8690, 86th Cong. 1st Sess.

Robert R. Barry, of New York, made the following statement:

MR. BARRY: Mr. Speaker, on rollcall No. 46 I was unavoidably detained. Had I been present, I would have voted "yea." I ask unanimous consent that the Record so indicate.

THE SPEAKER:[8] Without objection, it is so ordered.

There was no objection.

§ 41.2 A Member may announce how he would have voted on a roll call had he been present, but may not do so before the announcement of the vote.

On May 11, 1964,[9] the House agreed to a resolution (H. Res. 650) which provided that upon its adoption, the House would resolve itself into the Committee of the Whole for the consideration of a bill (H.R. 8986) to adjust the rates of basic compensation of certain officers and employees in the federal government, and for other purposes.

Prior to the Speaker's announcement of the result, Mr. William M. Colmer, of Mississippi, made the following statement:

Mr. Speaker, I was temporarily absent from the Chamber. I did not hear the second bell ring, and I did not hear my name called. I am very anxious to vote. Do I qualify?

THE SPEAKER:[10] Having in mind the statement just made by the distinguished gentleman from Mississippi, the Chair is reluctantly constrained to rule that he cannot vote; he does not qualify.

MR. COLMER: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. COLMER: Mr. Speaker, under the rules am I permitted to state how I would have voted had I qualified?

THE SPEAKER: Not at this particular time.

After the Chair announced the result of the vote, Mr. Colmer then made a request as follows:

MR. COLMER: Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

THE SPEAKER: Is there objection to the request of the gentleman from Mississippi?

There was no objection.

MR. COLMER: Mr. Speaker, had I been able to qualify on the vote just taken, I would have voted "no" on the resolution.

§ 41.3 The rules do not preclude a Member from announcing, after a record vote on which he failed to answer, how he would have voted if present.

On June 27, 1957,[11] after a roll call vote on a motion to recommit

8. Sam Rayburn (Tex.).
9. 110 CONG. REC. 4905, 88th Cong. 2d Sess.
10. John W. McCormack (Mass.).
11. 103 CONG. REC. 10521, 85th Cong. 1st Sess.

a bill (S. 1429) authorizing structural and other improvements on the Senate Office Building, Mr. Paul C. Jones, of Missouri, was recognized by the Speaker[12] and stated:

> Mr. Speaker, I was not in the Chamber when my name was reached on the rollcall which has just been completed, although I was here during a part of the debate and also before the rollcall was completed. However, I cannot qualify to be recorded. If I had the opportunity to vote I would have voted "no." . . . The only reason I make this explanation is to indicate that I was not absent and have been engaged in official work in the interest of my constituents during the entire day.

Mr. Clarence Cannon, of Missouri, then rose and initiated the following proceedings:

> MR. CANNON: Mr. Speaker, if the Speaker will permit a parliamentary inquiry, there have been an increasing number of announcements in the last few weeks by Members on how they would have voted if present when the roll was called. May I ask the Speaker as to the practice?
>
> THE SPEAKER: The gentleman from Missouri raised that question with the Chair the other day and stated that it was unparliamentary for a Member who could not qualify to announce later on that had he been here he would have voted yea or nay. Now, the Chair does not know of any way that we could keep a Member from asking unanimous consent to proceed for a minute or an hour and announce before a bill was brought up how he was going to vote if he was present or how he would have voted when the matter came up. So the Chair cannot see any reason for not allowing Members to express themselves how they would have voted or how they are going to vote. If there is any rule of the House that that violates, the Chair does not know anything about it.

Parliamentarian's Note: The Chair's ruling remains viable as the current practice,[13] although Mr. Cannon, in his extensions of remarks, noted that such announcements were not permitted under the earlier practice:

> MR. CANNON: In response to the Speaker's inquiry, may I quote from section 3151 of the Precedents of the House.
>
> 3151. It is not in order after a record vote on which he failed to vote for a Member to announce how he would have voted if present.

On February 6, 1915, Mr. John E. Raker, of California, rising in his place, said:

> Mr. Speaker, I want to ask unanimous consent to make a statement for a minute. I was here yesterday afternoon, but on account of sickness in my family I was called out and could not get back in time to vote on the motion to recommit the naval appropriation bill. I returned, but too late to have my vote recorded. If I had been here, I would have voted against the motion to recommit.

Mr. James R. Mann, of Illinois, made the point of order that the statement was wholly improper.

12. Sam Rayburn (Tex.).

13. See §§ 41.1, 41.2, supra.

The Speaker sustained the point of order and said:

The statement is out of order.

Mr. Cannon continued his statement, pointing out an earlier ruling by Speaker Henry T. Rainey, of Illinois, in the 73d Congress, where the Chair quoted from Rule XV:[14]

After the roll has been once called, the Clerk shall call in their alphabetical order the names of those not voting; and thereafter the Speaker shall not entertain a request to record a vote.

Mr. Cannon continued:

The rule is founded on sound policy. Such announcements may be cited in contrast with others who failed to vote, as an inference of less interest in the proceedings and less attention to the question at issue.

If one Member makes the announcement, critics may make it the occasion of inquiry as to why other absent Members did not announce a position on the vote.

The pair clerks pair all Members who do not vote. Subsequent announcement of how a Member would have voted if present automatically places the Member, with whom he is paired, on the other side of the question.

Such practice renders Members less responsive to inconvenient rollcalls, when their position can later be announced at a more convenient time.

No Speaker has ever held such announcements in order.

§ 41.4 Where a Member entered the Chamber too late to be recorded on the question of overriding a veto, he stated the reasons for his absence, entered his name on the pair list, and indicated how he would have voted if he had been able to do so.

On Feb. 24, 1944,[15] the House voted to override the President's veto of a tax revenue bill (H.R. 3687). Shortly thereafter, several Members received unanimous consent to address the House on the issue for a brief period of time. Among them was Mr. Chet Holifield, of California, who made the following request:

MR. HOLIFIELD: Mr. Speaker, I ask unanimous consent to extend my own remarks at this point in the Record.

THE SPEAKER:[16] Without objection, it is so ordered.

There was no objection.

MR. HOLIFIELD: Mr. Speaker, I arrived on the floor after my name had been called for a vote to sustain or reject the President's veto on the tax bill. Due to an unavoidable appearance before the State Department on an immigration matter for a constituent, I arrived some 3 minutes late. In such a case the rules of the House prohibit

14. Mr. Cannon incorrectly attributed the ruling to Speaker Rayburn. See 77 CONG. REC. 2587, 2588, 73d Cong. 1st Sess., Apr. 28, 1933.

15. 90 CONG. REC. 2013, 2016, 78th Cong. 2d Sess.

16. Sam Rayburn (Tex.).

the Member qualifying for the roll-call vote. I immediately entered my name on the pair list in favor of sustaining the President's veto. If I had been present in time for qualification, I would have cast my vote in favor of sustaining the President's veto.

Parliamentarian's Note: Although the result of the vote had not been announced when Mr. Holifield entered the Chamber, under the prevailing rules of the day his failure to answer to his name when it was called, precluded him from casting a vote. In order to do so, he would have had to "qualify" by stating that he had been in the Chamber, listening, when his name had been called and had failed to hear it. These criteria were eliminated in 1969.

Announcements Pertaining to Absent Members

§ 41.5 The Chair stated that the practice of announcing how an absent Member would have voted after a roll call vote is not a proper practice under the established precedents.

On Apr. 14, 1937,[17] the House having just passed a bill (H.R. 1668) by roll call vote, to amend the Interstate Commerce Act, the following exchange took place:

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I was unavoidably detained and was not in the Chamber at the time my name was called. I desire to submit a parliamentary inquiry.

THE SPEAKER:[18] The gentleman will state it.

MR. CANNON of Missouri: Would I be entitled to recognition by the Chair for the purpose of announcing how I would have voted had I been present?

THE SPEAKER: Under a strict construction of the precedents the Chair does not think the gentleman would be permitted to do so.

MR. CANNON of Missouri: Under the same circumstance, Mr. Speaker, would I be entitled to recognition by the Chair to announce how a colleague would have voted had he been present?

THE SPEAKER: The Chair would make the same ruling in that respect.

In view of the fact the question has been raised by the parliamentary inquiry of the gentleman from Missouri, the Chair will state that a practice has grown up in the House, because no objection has been raised by any Member, whereby when certain Members fail to be present and answer to their names, some of their colleagues undertake to explain how they would have voted if present. This question has been raised several times in the past, and it has been held uniformly that it is an improper practice. The Chair, therefore, is inclined to adhere to the decisions heretofore established.

§ 41.6 In response to a Member's inquiry, the Chair stated that it possessed no authority other than that impliedly granted by unanimous consent to recognize a

17. 81 CONG. REC. 3489, 3490, 75th Cong. 1st Sess.

18. William B. Bankhead (Ala.).

Member for the purpose of stating how an absent colleague would have voted.

On Mar. 21, 1938,[19] Mr. Clifton A. Woodrum, of Virginia, addressed the Chair with the following parliamentary inquiry:

MR. WOODRUM: Mr. Speaker, a practice seems to have grown up of late in the House of Members announcing how their colleagues would have voted had they been present. Entirely without regard to these particular cases, as to which I, of course, have no objection, this was actually carried to the point a few days ago of permitting a Member to have the Record corrected to show that had he been present he would have voted in a certain way, and this particular Member, although absent at the time under some sort of misapprehension, actually voted on the matter.

I wish to inquire, Mr. Speaker, whether under the rules of the House there is any parliamentary authority for such announcements being made in the House?

THE SPEAKER:[20] In reply to the parliamentary inquiry of the gentleman from Virginia the Chair will state that when a record vote is taken in the House only the names of those who are present and voting or paired are shown in the Record.

There has grown up a practice of Members arising in their places after votes are taken and asking unanimous consent to make a statement with reference to how some absent colleague would have voted had he been present. There is no authority for the Chair to recognize a Member for that purpose except by unanimous consent. The Chair, of course, when a Member rises for the purpose of submitting such a unanimous-consent request, feels that in fairness he should submit the matter to the House as a question of unanimous consent. If any objection is made there is no parliamentary authority for a Member to make such a statement.

§ 41.7 A point of order having been made earlier in the day against the practice of Members announcing how absent colleagues would have voted, if present, on a roll call vote, the Speaker declined later the same day to recognize Members for that purpose.

On Aug. 15, 1940,[1] the House voted on a joint resolution (S.J. Res. 286) to strengthen the common defense and to authorize the President to order members and units of reserve components and retired personnel of the Regular Army into active military service. The vote having been taken by the yeas and the nays, 342 Members voted "yea," 34 Members voted "nay," and 54 Members did not vote.

Shortly after the announcement of the result of the vote, the Chair recognized Mr. Joseph A.

19. 83 CONG. REC. 3768, 75th Cong. 3d Sess.

20. William B. Bankhead (Ala.).

1. 86 CONG. REC. 10448, 10449, 10460, 10461, 76th Cong. 3d Sess.

Gavagan, of New York, who commenced the following exchange:

MR. GAVAGAN: Mr. Speaker, I announce that my colleagues the gentlemen from New York, Mr. Celler——

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I very much regret to have to call attention to the rule against announcement of how another Member would have voted if present.

THE SPEAKER:[2] The gentleman from Missouri objects to the announcement of how the colleagues of the gentleman from New York would have voted. Under the rule, such an announcement is not in order.

A few moments later, the Speaker announced that "the Chair will now recognize Members only for unanimous-consent requests," thereby prompting another brief exchange initiated by Mr. Gavagan, as follows:

MR. GAVAGAN: Mr. Speaker, under the right to submit unanimous-consent requests, I wish to announce to the House that my colleagues——

MR. CANNON of Missouri: I regret that I have to object, Mr. Speaker. The proper method would be for the Member himself to later speak or extend remarks giving his views.

THE SPEAKER: The gentleman from Missouri objects to the announcement. . . .

MR. ENGLEBRIGHT: Mr. Speaker, I ask unanimous consent to proceed for one-half minute to make a short statement.

THE SPEAKER: Without objection, it is so ordered.

There was no objection.

MR. ENGLEBRIGHT: Mr. Speaker, I am authorized to state that had Mr. Andresen of Minnesota, and Mr. Hope, of Kansas, been present they would have voted "aye"——

THE SPEAKER: The Chair cannot entertain that statement in view of the objection made by the gentleman from Missouri (Mr. Cannon) earlier in the day, to other statements of that sort.

MR. CANNON of Missouri: Mr. Speaker, it is not a matter of any Member objecting but, under the rules, the Chair is not permitted to recognize Members for that purpose.

MR. [JESSE P.] WOLCOTT [of Michigan]: Mr. Speaker, will the gentleman yield?

MR. CANNON of Missouri: I yield.

MR. WOLCOTT: May not the whip or the leader, or whoever is charged with that responsibility obtain a minute to address the House for that purpose by unanimous consent?

MR. CANNON of Missouri: Unfortunately, the whips, like other Members, are subject to the rules of the House. It is a rule which has been observed for a hundred years, and, like every other rule of the House, there is an excellent reason for its observance.

In the first place, it places a Member on record by proxy. A Member may not be recorded unless present and answering when his name is called and a Member may not vote by proxy. Such announcements in effect nullify both these provisions of the rules and place Members on record on the announcements of a colleague.

In the second place, such announcements flagrantly misrepresent the position of other Members of the House.

2. William B. Bankhead (Ala.).

All Members who fail to answer on roll call are arbitrarily paired without consulting their wishes or inquiring as to their attitude on the question on which the vote is taken, and always without their knowledge or consent as to with whom paired. Then for some Member to rise on the floor at the conclusion of the vote and announce that the Member with whom they are unwittingly paired would have voted in the affirmative or the negative if present, automatically places them on the opposite of the question although they may have been emphatically pledged to their constituency to the contrary. Again, such announcements are a reflection on all Members who, through some unavoidable exigency, failed to vote on the roll call, as they infer less interest in the proceedings and less attention to the question at issue than that exhibited by the Members whose position is announced by an assiduous, if not officious, colleague. If such a practice should become general it would impose on spokesmen for each delegation in the House the nerve-wracking duty of seeing that every Member of his delegation was accounted for in these announcements at the close of every vote thereby contributing immeasurably to the confusion on the floor and the delay in the proceedings of the House every time the roll was called.

Not the least objectionable feature of this violation of the rules is its encouragement of delinquency. When a Member may enter his appearance in and be placed of record in this manner he has less hesitancy in absenting himself from the Chamber and the city. Something like 40 Members were included in a recent announcement of this character, and if it is extended to permit the whips on either side of the aisle to thus round up their charges, it is easy to foresee a situation in which a majority of the membership of the House might leave their vote and their conscience in the keeping of a colleague while they attend to more inviting matters. In fact, so objectionable is the practice that the Chair has held that Members could not be recognized even for the purpose of asking unanimous consent to make such announcements.

MR. WOLCOTT: Will the gentleman yield further?

MR. CANNON of Missouri: I yield.

MR. WOLCOTT: I am merely asking this question to clarify the matter. I can see the gentleman's points, but is this a rule or a tradition?

MR. CANNON of Missouri: It is a practice of immemorial standing. There are decisions by practically every Speaker of the House since Mulhenberg to the effect that the Chair cannot recognize for that purpose.

MR. WOLCOTT: It would not be violating any of the rules if the whip on either side, for the purpose of announcing the votes, asked unanimous consent to proceed for 1 minute for that purpose, would it?

MR. CANNON of Missouri: The Speaker is not authorized to put a unanimous-consent request for that purpose. You cannot vitiate the rule by indirection. It is a long-established rule that you cannot do by indirection anything directly prohibited by the rules.

MR. WOLCOTT: That is why I asked if it was a rule or simply a practice.

MR. CANNON of Missouri: Both. The rules do not provide for it and the

practice of the House does not permit it.

MR. WOLCOTT: There is nothing in the written rules of the House to prevent it, as I understand?

MR. CANNON of Missouri: There is nothing in the written rules of the House to permit it.

MR. WOLCOTT: But the gentleman is familiar with the rules. Will he advise the House whether there is anything in the written rules which prevents such announcement?

MR. CANNON of Missouri: The gentleman remembers the statement by the distinguished Member from Ohio, Mr. Longworth, at one time Speaker of the House, in which he said that about half of the law of the House was written and half unwritten, and that frequently the unwritten was the more important of the two. And Speaker Cannon, in passing on a point of order in a proceeding under suspension of the rules, pointed out that the motion not only suspended all rules but included in its scope the unwritten law and practice of the House.

MR. GAVAGAN: The gentleman concedes that the written rules of the House make no provision for the gentleman's objection to the unanimous-consent request.

MR. CANNON of Missouri: The written rules of the House make no provision for it. It is not permissible under the rules.

MR. GAVAGAN: I would like also to call the gentleman's attention to a specific rule of this House which prevents Members from voting standing here in the Well of the House; yet I have seen the gentleman time in and time out violate that rule. From today onward the gentleman will stand at his seat and vote.

MR. CANNON of Missouri: I would like to have the gentleman cite an occasion when I did so.

MR. GAVAGAN: I submit that repeatedly the gentleman has stood in the Well of this House and voted.

MR. CANNON of Missouri: The gentleman is mistaken about that.

MR. GAVAGAN: Unquestionably the gentleman is not mistaken, and from today onward the gentleman from Missouri will vote from his seat and not the Well.

MR. CANNON of Missouri: The gentleman's memory is in error. I positively have never violated that rule.

MR. [VITO] MARCANTONIO [of New York]: As I understand the situation now, the gentleman from California asked and did receive unanimous consent to proceed for one-half minute.

MR. CANNON of Missouri: A Member speaking under unanimous consent cannot violate a rule of the House.

THE SPEAKER: The gentleman from California asked unanimous consent to proceed for one-half minute. When he got to the point of stating how certain Members would have voted, the Chair, under the protest made by the gentleman from Missouri [Mr. Cannon], said the Chair could not recognize him for that purpose. There are a number of precedents to sustain the Chair in this ruling.

§ 41.8 In the later practice, the Chair has repeatedly held that it is not in order to announce or place in the Record a statement as to

how an absent colleague would have voted on a roll call, if present—regardless of whether unanimous consent was sought or whether another Member raised a point of order against the practice.

Parliamentarian's Note: In a series of rulings over a 13-month period between January 1941, and February 1942, the Chair[3] gradually delineated the parliamentary status of Members' announcements as to how certain absent colleagues would have voted on particular roll call votes. While the permissibility of such announcements had always been a matter of some doubt,[4] the trend of the Chair's rulings ultimately culminated in the determination that these announcements were improper, per se.

Thus, on Jan. 22, 1941,[5] Mr. Richard J. Welch, of California, made the following announcement:

> Mr. Speaker, the gentleman from California, Mr. Johnson, is ill and confined to his room. Were he here, he would have voted "yea" on the bill (H.R. 1437) authorizing additional shipbuilding and ordnance manufacturing facilities for the United States Navy, and for other purposes.

Before any other Member could make a similar announcement, however, the Speaker stated:

> The Chair desires to make an announcement. The Chair a moment ago recognized a gentleman to make an announcement of how an absent Member would vote if he were here. The Chair did that because the present occupant of the chair has not yet made a ruling upon the matter. A statement like that is prohibited by the rules of the House and the Speaker will hereafter recognize no Member to announce how an absent Member would vote.

Later in the year, after a roll call vote on a bill (H.R. 6159) making supplemental appropriations for the national defense, the Chair recognized Mr. John Taber, of New York, who sought unanimous consent to address the House for one minute.[6] There being no objection to his request, Mr. Taber proceeded to announce how certain absent Members would have voted on the preceding roll call. Mr. Clarence Cannon, of Missouri, then raised the point of order that Mr. Taber's announcements were out of order. A brief discussion ensued.

In the course of that discussion, Mr. Earl C. Michener, of Michi-

3. Speaker Sam Rayburn (Tex.), occupied the Chair in each of the instances which follow.

4. See §§ 41.5, 41.6, 41.7, supra.

5. 87 CONG. REC. 243, 77th Cong. 1st Sess.

6. 87 CONG. REC. 9496, 9497, 77th Cong. 1st Sess., Dec. 5, 1941.

gan, noted that Mr. Taber "was given the unanimous consent of the House to proceed for one minute; therefore he is permitted to say anything so long as he uses parliamentary language." Mr. Cannon, however, subscribed to a different point of view, noting that he wished:

> . . . there were some parliamentary way for this information to be made available to the House at this time. But it is a rule of long standing . . . and we cannot relax it for one and enforce it for others. As a matter of fact, a point of order is not required. It is the duty of the Speaker, and the practice of the Speaker to enforce it just as he would enforce the rule against an explanation of a vote during roll call or any other automatic rule of procedure. . . .

The Chair ruled that:

> . . . Even though the gentleman from New York [Mr. Taber] had unanimous consent to proceed for 1 minute, when he began making the explanation he did, the Chair must sustain the point of order under all precedents.

Three days later, on Dec. 8, 1941,[7] the House having just voted on a motion to suspend the rules and pass a joint resolution (H.J. Res. 254) declaring war on Japan, the Speaker made the following statement:

> The Chair desires to announce that he has held in the past and will hold henceforth that it is contrary to the rules of the House for any Member to announce how an absent Member would vote if present.

In the second session of the same Congress, the Chair was again pressed to rule on this issue. After a roll call vote on a Navy Department appropriations bill (H.R. 6460), Mr. Fred C. Gilchrist, of Iowa, was recognized by the Chair, and posed the following question:[8]

> Mr. Speaker, would it be in order as a parliamentary regulation for me at this time to ask if I might place in the Record a statement which the gentleman from Iowa [Mr. Jensen], who is absent on account of illness, would have voted for the measure just passed had he been present?

The Chair neither relied on a point of order[9] nor felt compelled to address any unanimous-consent implications[10] in stating that:

> The Chair thinks it is positively against the rules and practices for one Member to announce how another would have voted had he been present.

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7. CONG. REC. (daily ed.), 77th Cong. 1st Sess.

8. 88 CONG. REC. 757, 77th Cong. 2d Sess., Jan. 27, 1942.

9. See § 41.7, supra.

10. See § 41.6, supra.

D. DIVISION OF THE QUESTION FOR VOTING

§ 42. In General

The fundamental prerequisites as well as the basic limits of divisibility are found in the sixth clause[1] of Rule XVI. It is there provided, in part, that any Member may demand the division of the question and that such a demand shall be honored if made before the question is put and if the propositions are so distinct in substance that one being taken away a substantive and grammatically separate proposition shall remain. To these fundamental requirements is added the proviso that two particular types of propositions are expressly indivisible-specifically, a motion or resolution to elect members or any portion of the members of a standing committee and a resolution or order reported by the Committee on Rules providing a special order of business.

Clause 7[2] of Rule XVI also provides that the motion to strike out and insert is always indivisible. The clause proceeds to state, however, that neither amendments nor motions to strike out and insert are precluded merely because of the failure of a motion to strike out.

Substantive Proposition Requirement

§ 42.1 A question containing more than one substantive proposition may be divided on demand of a Member.

On June 1, 1942,[3] Mr. Compton I. White, of Idaho, sought to amend a committee amendment to a bill authorizing certain American Indians to sue in the Court of

1. "On the demand of any Member, before the question is put, a question shall be divided if it includes propositions so distinct in substance that one being taken away a substantive proposition shall remain: *Provided*, That any motion or resolution to elect the members or any portion of the members of the standing committees of the House and the joint standing committees shall not be divisible, nor shall any resolution or order reported by the Committee on Rules, providing a special order of business be divisible." [Rule XVI clause 6, *House Rules and Manual* § 791 (1995).]

2. "A motion to strike out and insert is indivisible but a motion to strike out being lost shall neither preclude amendment nor motion to strike out and insert. . . ." [Rule XVI clause 7, *House Rules and Manual* § 793 (1995).]

3. 88 CONG. REC. 4754, 4756, 4758, 77th Cong. 2d Sess.

Claims. Mr. White's amendment consisted of five parts, as follows:

Amendment offered by Mr. White:

On page 5, line 17, after the words "Snake or Paiute Indians" and wherever these words occur in this bill, strike out the comma or period and insert: "of the former Malheur Indian Reservation of Oregon."

On page 5, line 21, strike out "departmental".

Strike out section 2 and insert therefor: "Any alleged band of Snake or Paiute Indians of the former Malheur Indian Reservation of Oregon may prove themselves as such in the Court of Claims."

On page 10, line 8, after the word "as" insert "engaged by the Snake or Paiute Indians of the former Malheur Indian Reservation of Oregon."

Insert:

"Sec. 8. That for the purpose of the distribution of the proceeds of such judgment, the Secretary of the Interior is hereby authorized and directed to make a proper roll of said Indians within 2 years from the date of the approval of this act. Each community of the Snake or Paiute Indians of the former Malheur Indian Reservation of Oregon shall prepare a roll of its membership, which roll be submitted to a council of the majority of their Indian chiefs, who lived on the above said Indian reservation, for its approval or disapproval. The said central council of these chiefs shall prepare a combined roll of all members and descendants of members of the respective communities of said Indians of former Malheur Indian Reservation of Oregon, and shall submit the same to the Secretary of the Interior for a final approval which shall operate as final proof of such Indians to share in the benefits of this act."

Mr. Francis H. Case, of South Dakota, sought to separate one part of Mr. White's amendment from the other parts. The following discussion ensued:

MR. CASE of South Dakota: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[4] The gentleman will state it.

MR. CASE of South Dakota: The gentleman from Idaho [Mr. White] submitted what was referred to as an amendment to the committee amendment, but, as a matter of fact, did the gentleman not submit several amendments, and may they be voted upon separately?

THE SPEAKER PRO TEMPORE: The gentleman from Idaho [Mr. White] offered an amendment to the committee amendment which is now under consideration.

MR. CASE of South Dakota: It seemed to me as I heard the amendment that it referred to different parts of the committee amendment. I was wondering if it could be separated.

THE SPEAKER PRO TEMPORE: The committee amendment strikes out all after the enacting clause and includes a new draft.

MR. CASE of South Dakota: To get directly at the question involved, is it possible to have a separate vote on that portion of the amendment offered by the gentleman from Idaho which provides for the establishment of a roll?

THE SPEAKER PRO TEMPORE: It would be in order to have separate votes if separate votes should be de-

4. Jere Cooper (Tenn.).

manded on each part of the amendment offered by the gentleman from Idaho.

MR. CASE of South Dakota: I would like to have a separate vote upon that portion of the amendment offered by the gentleman from Idaho which calls for the establishment of a roll.

As requested, the Speaker Pro Tempore subsequently separated that section of the White amendment mandating the establishment of a roll of eligible Indians from the other portions thereof, and separate votes were cast on that part and then on the remainder of the five part amendment.[5]

Substantially Equivalent Questions

§ 42.2 A resolution censuring a Member and adopting a report of a committee, which itself recommends censure on the basis of the committee's findings, is not divisible since the questions are substantially equivalent.

Instance where the Chair took under advisement a question regarding the divisibility of a pending resolution, responding later in the day after an examination of the precedents.

On Oct. 13, 1978,[6] the House had under consideration a disciplinary resolution concerning Mr. Edward R. Roybal, of California. During its consideration, a Member asked if the resolution was divisible. The Speaker deferred his decision until precedents could be reviewed. The proceedings were as follows:

MR. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Speaker, I offer a privileged resolution (H. Res. 1416) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1416

Resolved, That Representative Edward R. Roybal be censured and that the House of Representatives adopt the Report of the Committee on Standards of Official Conduct dated October 6, 1978, In the matter of Representative Edward R. Roybal.

At the onset of debate under the hour rule, Mr. John M. Ashbrook, of Ohio, addressed a parliamentary inquiry to the Speaker:

MR. ASHBROOK: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER:[7] The gentleman will state his parliamentary inquiry.

5. For similar instances, in later Congresses, see the following: 118 CONG. REC. 28906, 92d Cong. 2d Sess., Aug. 17, 1972; 111 CONG. REC. 20945, 20956, 89th Cong. 1st Sess., Aug. 18, 1965; 95 CONG. REC. 14462, 81st Cong. 1st Sess., Oct. 13, 1949; 94 CONG. REC. 8690, 80th Cong. 2d Sess., June 17, 1948; and 88 CONG. REC. 5892, 77th Cong. 2d Sess., July 1, 1942.

6. 124 CONG. REC. 37009, 37010, 37012, 37013, 37016, 37017, 95th Cong. 2d Sess.

7. Thomas P. O'Neill, Jr. (Mass.).

MR. ASHBROOK: Mr. Speaker, my parliamentary inquiry is directed toward the rules and the precedents of the House. I would propound a question to the Chair in my parliamentary inquiry as to whether the resolution is divisible when it comes to a vote.

THE SPEAKER: The Chair will state that the gentleman will have to indicate how he wanted to divide the vote.

MR. ASHBROOK: Mr. Speaker, the resolution says, "That Representative Edward R. Roybal be censured," which would seem to be divisible under the precedents of the House. The resolution calls upon the House of Representatives to adopt the report and to censure Mr. Roybal. I wonder whether or not the resolution can, therefore, be divided into two questions, one being censure and the second being the adoption of the report, which could be by separate votes.

THE SPEAKER: The gentleman's rights will be protected. The Chair will examine the precedents with regard to the gentleman's point.

MR. ASHBROOK: Mr. Speaker, I thank the Chair for that consideration.

THE SPEAKER: The gentleman from Georgia (Mr. Flynt) is recognized for 60 minutes.

Following debate on the resolution and the underlying committee investigation and report, Mr. Ashbrook renewed his inquiry.

MR. ASHBROOK: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. ASHBROOK: Mr. Speaker, earlier I propounded a parliamentary inquiry to the Speaker as to whether or not, under the rules and precedents of the House, House Resolution 1416, as it stands, would be divisible.

THE SPEAKER: The Chair is ready to respond to the gentleman.

MR. ASHBROOK: I appreciate that, Mr. Speaker.

THE SPEAKER: The gentleman from Ohio (Mr. Ashbrook) has requested an opinion as to whether the question on House Resolution 1416 may be divided.

To be the subject of a division of the question under the precedents of the House, a proposition must constitute two or more separate substantive propositions so that if one of the propositions is removed, the remaining proposition constitutes a separate and distinct question, and that test must work both ways.

In the opinion of the Chair, the questions are substantially equivalent questions. For that reason, the Chair holds that House Resolution 1416 is not subject to a demand for a division of the questions.

MR. ASHBROOK: I thank the Chair.

MR. FLYNT: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

MR. BOB WILSON [of California]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the resolution?

MR. BOB WILSON: I am.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Bob Wilson moves to recommit the resolution, House Resolution 1416, to the Committee on Standards of Official Conduct with instructions to report the same back forthwith with the following amendment. Strike all after the resolving clause and insert:

That Edward R. Roybal be and he is hereby reprimanded.

THE SPEAKER: Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

MR. [BRUCE F.] CAPUTO [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CAPUTO: Is time allowed for debate?

THE SPEAKER: The motion is not debatable.

The question is on the motion to recommit with instructions.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. FLYNT: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

MRS. [MILLICENT] FENWICK [of New Jersey]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 219, nays 170, answered "present" 1, not voting 40, as follows: . . .

So the motion to recommit was agreed to.

The result of the vote was announced as above recorded.

MR. FLYNT: Mr. Speaker, pursuant to the instructions of the House, I report the resolution back to the House with an amendment.

The Clerk read as follows:

Amendment offered by Mr. Flynt: Strike all after the resolving clause and insert: That Edward R. Roybal be and he is hereby reprimanded.

The amendment was agreed to.

The resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

Amendment of Two Parts, One Striking and Inserting, the Other Inserting

§ 42.3 Under clause 6 of Rule XVI, the question may be divided on an amendment if it includes more than one distinct substantive proposition susceptible of grammatical separation.

During consideration of an Interior appropriation bill on July 15, 1993,[8] an amendment that was offered which proposed to change a figure in one paragraph and also to insert a new paragraph at another point was held to be divisible as between the two parts. It

8. 139 CONG. REC. 15843. 103d Cong. 1st Sess.

was implied and understood that the inserted paragraph was drafted in a manner which would render it ungrammatical if an attempt were made to divide its text. The proceedings were as indicated below:

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Walker: Page 61, line 23, strike "$19,366,000" and insert "$18,091,000".

Page 66, after line 22, insert the following:

REVISION OF AMOUNTS FOR DEPARTMENT OF ENERGY

The amounts otherwise provided by this title for the Department of Energy are revised by reducing the amount made available under the heading "Fossil Energy Research and Development" by, and also transferring from the remaining amount made available under such heading to the appropriation for "Energy Conservation" an additional $24,873,000.

MR. WALKER (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The Chairman:[9] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

MR. [RALPH] REGULA [of Ohio]: Mr. Chairman, I ask that the question be divided on this amendment.

MR. WALKER: Mr. Chairman, I do not believe the amendment in its present form is subject to a question of division.

THE CHAIRMAN: As between the two parts of the amendment, the one on page 61, line 23, and the one on page 66, after line 22, it would be subject to a division of the question. Those two parts would be subject to a division, if that is how the gentleman is offering this amendment. . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. YATES: Will the Chair describe again just what the parliamentary situation is? What amendment are we considering at the present time?

THE CHAIRMAN: A demand for a division of the question has been made. The first vote will occur on the portion of the amendment which is on page 61, line 23, the striking and inserting of dollars. The second vote will occur on page 66, after line 22, inserting the following.

MR. YATES: I thank the Chair.

THE CHAIRMAN: The gentleman from Pennsylvania [Mr. Walker] is recognized for 5 minutes in support of his amendment.

Demand for Division, When in Order

§ 42.4 Any Member may demand a division of the question on an amendment which has two or more substantive propositions at any time before the question is put thereon, and unanimous con-

9. Dan Glickman (Kans.).

sent is not required for that purpose.

On Oct. 19, 1977,[10] when the Committee of the Whole had under consideration a bill making supplemental appropriations for various government departments. An amendment was offered which contained three parts. Two of the clauses struck out figures in the bill and inserted new amounts. The third deleted a phrase of the text. The Chair declared the amendment divisible and addressed the right of a Member to demand a separate vote on the parts thereof. The proceedings were as follows:

The Clerk read as follows:

OPERATING EXPENSES

For an additional amount for "Operating expenses", to remain available until expended, $167,000,000; of which $150,000,000 shall be for the Clinch River Breeder Reactor Project and which shall become available only upon the enactment into law of authorizing legislation; and of which not to exceed $17,000,000 is made available to reimburse the General Services Administration for the expenses of renovation, furnishing and repair of facilities necessary to provide temporary and permanent space for personnel relocated as a result of the establishment and activation of the Department of Energy.

MR. [TOM] BEVILL [of Alabama]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bevill: On page 10, line 17 strike out "$167,000,000" and insert "$97,000,000";

On line 18 strike out "$150,000,000" and insert "$80,000,000"; and

Beginning on line 19 strike out "and which shall become available only upon the enactment into law of authorizing legislation". . . .

MR. [GEORGE E.] BROWN [Jr.] of California: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[11] The gentleman will state it.

MR. BROWN of California: Mr. Chairman, would I be in order to ask for a division of the question and, following that, to debate the merits on each section separately?

THE CHAIRMAN: The Chair will protect the rights of the gentleman from California (Mr. Brown) to request a division when we come to a vote on this matter. The gentleman can do it right now, if he wants to.

MR. BROWN of California: Mr. Chairman, I wish to call for a division of the question at this time.

MR. JOHN T. MYERS [of Indiana]: I reserve the right to object, Mr. Chairman.

THE CHAIRMAN: Let the Chair first inquire as to which part.

MR. BROWN of California: Mr. Chairman, I ask for a separate vote on the last clause.

THE CHAIRMAN: The clause beginning, "and beginning on line 19 strike out * * *"?

MR. BROWN of California: That is correct.

10. 123 CONG. REC. 34252, 95th Cong. 1st Sess.

11. Sam Gibbons (Fla.).

MR. [WALTER] Flowers [of Alabama]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman from Alabama (Mr. Flowers) will state his parliamentary inquiry.

MR. FLOWERS: Mr. Chairman, is the gentleman entitled to have that request granted just on the decision of the Chair, or does it require action by the committee?

THE CHAIRMAN: Any Member can request a division if the question that will be offered is divisible.

MR. FLOWERS: Mr. Chairman, I object to the request, and I would like to be heard on whether or not it is a divisible question.

THE CHAIRMAN: It is not one of the matters that requires unanimous consent. It is not within the prerogative of the Chair. It is within the right of the Member to request a division on a matter that is divisible, and this matter is clearly divisible.

Concurrent Resolution on Budget

§ 42.5 A concurrent resolution on the budget has been considered divisible as between that portion constituting a budget resolution pursuant to the Budget Act and a separate hortatory section expressing the sense of Congress regarding fiscal policy.

On Mar. 5, 1992,[12] when the Committee of the Whole had concluded its consideration of the concurrent resolution on the budget for fiscal years 1993 through 1997, the ranking minority member of the Budget Committee, Mr. Willis D. Gradison, Jr., of Ohio, asked that the resolution be divided for a vote so that the House could vote separately on section 3, a provision expressing the sense of the House on appropriate levels of budget authority in the event of certain contingencies. He asked to be heard on the question of the divisibility of the concurrent resolution, but Speaker Thomas S. Foley, of Washington, declaring the resolution to be subject to a demand for a division, declined to entertain debate on that issue. The Speaker put the question first on the remaining parts of the concurrent resolution, sections 1, 2, and 4 and then put the question on the part on which a separate vote had been demanded. The proceedings were as follows:

THE CHAIRMAN PRO TEMPORE:[13] Under the rule, the Committee rises.

Accordingly the Committee rose, and the Speaker having resumed the chair, Mr. Mfume, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the concurrent resolution (H. Con. Res. 287) setting forth the congressional budget for the U.S. Gov-

12. 138 CONG. REC. 4657, 4658, 102d Cong. 2d Sess.

13. Kweisi Mfume (Md.).

ernment for the fiscal years 1993, 1994, 1995, 1996, and 1997, pursuant to House Resolution 386, he reported the concurrent resolution back to the House.

THE SPEAKER: Under the rule, the previous question is ordered.

MR. GRADISON: Mr. Speaker, I demand a division of the question on the resolution and specifically ask for a separate vote on section 3. Pending the determination of the Chair as to the resolution's divisibility, I would like to be heard on that question.

THE SPEAKER: The gentleman may not debate a demand which has not been subject to a point of order.

Section 3 is subject to a division of the question, and a separate vote will be held on that portion of the concurrent resolution.

MR. [RICHARD A.] GEPHARDT [of Missouri]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. GEPHARDT: Mr. Speaker, I would simply ask the Chair to clarify this decision and the fact that there will be a separate vote on both parts of this budget.

THE SPEAKER: The demand has been made that there be a division of the question and a separate vote on section 3. The Chair has ruled and is prepared to put the question in a divided form, the two parts of the vote to occur immediately without further intervening debate, so that what would normally have been accomplished in a single vote on the adoption of the resolution will now require two votes.

MR. GEPHARDT: I thank the Chair.

THE SPEAKER: This vote will be on sections 1, 2, and 4. The second vote will be on section 3. . . .

So sections 1, 2, and 4 of House Concurrent Resolution 287 were agreed to.

THE SPEAKER: The question is on section 3 of House Concurrent Resolution 287.

Without objection, the yeas and nays are ordered.

There was no objection.

The vote was taken by electronic device, and there were—yeas 224, nays 191, not voting 20, as follows: . . .

So section 3 of House Concurrent Resolution 287 was agreed to.

The result of the vote was announced as above recorded.

Prefatory Words May Not Destroy Divisibility

§ 42.6 An amendment containing separate paragraphs appropriating funds for different government programs may be divisible although preceded by prefatory language (such as "There is hereby appropriated . . .") applicable to all paragraphs.

On Nov. 8, 1983,[14] during consideration of a continuing appropriation joint resolution for 1984, a comprehensive amendment, made in order by the adoption of a special order reported by the Committee on Rules, was reached in the amendment process. The amendment consisted of 17 items of appropriation for different de-

14. 129 CONG. REC. 31477, 31494, 31495, 98th Cong. 1st Sess.

partments and programs, all preceded by standard language of appropriation: "The following amounts are hereby made available, in addition to funds otherwise available, for the following purposes:". While the amendment was pending, a Member asked when a motion to divide the amendment into its 17 component parts could be made. The Chair responded that a motion was not required, that any Member could demand the division of the amendment at any time during its pendency up until the point where the Chair has put the question on the amendment. At the conclusion of debate, a division was in fact asked, and the question was first put on the part of the amendment which had not been the object of the demand for division, then on the individual parts on which separate parts were requested.

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wright: At the appropriate place in the joint resolution insert the following new section:

Sec. . Such joint resolution is further amended by adding the following new section:

Sec. . (a) Notwithstanding any other provision of this joint resolution, the following amounts are hereby made available, in addition to funds otherwise available, for the following purposes:

COMPENSATORY EDUCATION FOR THE DISADVANTAGED

For an additional amount for carrying out chapter 1 of the Education Consolidation and Improvement Act of 1981, $165,000,000 to become available on July 1, 1984, and remain available until September 30, 1985.

VOCATIONAL EDUCATION

For an additional amount for carrying out the Vocational Education Act of 1963, $81,400,000 to become available on July 1, 1984, and remain available until September 30, 1985. . . .

There followed 12 more paragraphs, each related to a different education program, and two other headings for "Job Training" and "Emergency Shelters for the Homeless."

MR. WRIGHT (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN:[15] Is there objection to the request of the gentleman from Texas?

MR. [ROBERT S.] WALKER [of Pennsylvania]: Reserving the right to object, Mr. Chairman, I do so simply to propound a parliamentary inquiry of the Chair.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. WALKER: Mr. Chairman, I am wanting to know whether or not it would be possible at a time appropriate to divide the question on this amendment into its 17 component parts.

15. Wyche Fowler, Jr. (Ga.).

THE CHAIRMAN: The Chair will respond to the gentleman from Pennsylvania that the Chair does not know precisely how many parts there are to the gentleman's amendment, but the gentleman is entitled to ask for a division, and the gentleman from Pennsylvania has that right upon demand. . . .

Much later in the proceedings, the following occurred:

MR. WALKER: Mr. Chairman, I rise to ask for a division of the question.

THE CHAIRMAN: The gentleman from Pennsylvania (Mr. Walker) will please state to the Chair the portions that he wishes to divide.

MR. WALKER: Mr. Chairman, I wish to divide the question into-I think it is 17 ways.

MR. WRIGHT: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. WRIGHT: Mr. Chairman, I have not yielded back the balance of my time. I wonder if the gentleman's request is timely at this moment. I have simply suggested that the minority might use its remaining time.

If the gentleman's request at this moment does not preclude our concluding debate, then I have no objection to his making it at this time.

THE CHAIRMAN: The gentleman is correct. The gentleman from Massachusetts had no more requests for time. The gentleman from Pennsylvania was appropriately recognized to demand a division of the question on the amendment. But the time of the gentleman from Texas for debate on his amendment is protected.

MR. WALKER: Mr. Chairman, I wish to divide the question into the following categories: Compensatory education for the disadvantaged, vocational education, adult education, community services block grant, low-income energy assistance, education for the handicapped, rehabilitation services and handicapped research, education for immigrant children, higher education, the higher education science centers, the college work-study appropriation, supplemental education opportunity grants, the community health centers, the National Technical Institute for the Deaf, Galludet College, job training, emergency shelter for the homeless, the section of the bill which is related to child nutrition, and the section of the bill which is the mandatory monthly reporting language on food stamps.

THE CHAIRMAN: The request of the gentleman from Pennsylvania (Mr. Walker) is appropriate and the Wright amendment will be divisible in the order contained in the amendment.

MR. WALKER: I thank the Chair.

MR. WRIGHT: Mr. Chairman, I yield myself such time as remains.

THE CHAIRMAN: The gentleman from Texas (Mr. Wright) has 6 minutes remaining.

MR. WRIGHT: Mr. Chairman, I should like to say I am sorry that we will be required to take 17 separate votes. I should have thought that it might have been considered as one package. That was the intention, I believe, of the Committee on Rules in drafting the rule. However, the gentleman from Pennsylvania is fully within his rights.

This merely means that we will have to have a vote on each separate compo-

nent of this package. I ask you to vote for each of them. . . .

THE CHAIRMAN: All time has expired.

The first question will be put on the remainder of the amendment, as amended, on which a division of the question has not been demanded, namely, on the Perkins amendment . . . [which had added several paragraphs to the end of the Wright amendment, dealing with school lunch and child nutrition].

At the conclusion of that vote, then we will vote separately on the divisible portions in the order in which they appear in the amendment. . . .

The question is on the Perkins amendment language now part of the Wright amendment.

That portion of the Wright amendment was agreed to.

THE CHAIRMAN: The Clerk will report the first portion of the amendment on which a division of the question has been demanded.

The Clerk read as follows:

> Sec. . (a) Notwithstanding any other provision of this joint resolution, the following amounts are hereby made available, in addition to funds otherwise available, for the following purposes:
>
> COMPENSATORY EDUCATION FOR THE DISADVANTAGED
>
> For an additional amount for carrying out chapter 1 of the Education Consolidation and Improvement Act of 1981, $165,000,000 to become available on July 1, 1984, and remain available until September 30, 1985.

THE CHAIRMAN: The question is on the portion of the amendment relating to compensatory education for the disadvantaged.

The portion of the amendment relating to compensatory education for the disadvantaged was agreed to.

THE CHAIRMAN: The Clerk will report the next portion of the amendment on which a division of the question has been demanded.

The Clerk read as follows:

> Sec. . (a) Notwithstanding any other provision of this joint resolution, the following amounts are hereby made available, in addition to the funds otherwise available, for the following purposes:
>
> VOCATIONAL EDUCATION
>
> For an additional amount for carrying out the Vocational Education Act of 1963, $81,400,000 to become available on July 1, 1984, and remain available until September 30, 1985. . . .

THE CHAIRMAN: The question is on the portion of the amendment relating to vocational education.

The question was taken, and on a division (demanded by Mr. Walker) there were—ayes 37, noes 20.

So the portion of the amendment relating to vocational education was agreed to.

Separate votes were then taken on the remaining portions of the Wright amendment. The Clerk, in reporting each separate part, repeated the prefatory language. Most of the divisible portions were decided by voice votes. Seven resulted in record votes.

Divisibility of Perfecting Amendments Striking Text

§ 42.7 An amendment striking out various unrelated parts

of text is subject to a division of the question.

During consideration of the annual authorization bill for the National Aeronautics and Space Administration, 1985, several committee amendments were voted on en bloc at the request of The Chairman of the committee who was managing the bill. The Chairman did ask for a division of the question on one of the committee amendments which struck out text on a section of the bill. The question was divided without challenge. The proceedings of Mar. 28, 1984,[16] were as follows:

THE CHAIRMAN:[17] The question is on the committee amendments, with the exception of the committee amendment appearing on page 17.

The committee amendments, with the exception of the committee amendment appearing on page 17, were agreed to.

MR. [DON] FUQUA [of Florida]: Mr. Chairman, I ask for a division of the question on the 2 parts of the amendment on page 17.

THE CHAIRMAN: The Clerk will report the committee amendment.

The Clerk read as follows:

Committee amendment: Page 17, strike lines 16 and 17, and redesignate succeeding subparagraphs, and on page 17, line 19, strike subsection (c).

MR. FUQUA: Mr. Chairman, I ask that the amendment be divided.

THE CHAIRMAN: The Clerk will report the first portion of the amendment.

The Clerk read as follows:

Page 17, strike lines 16 and 17, and redesignate succeeding subparagraphs. * * *

THE CHAIRMAN: Does the gentleman wish to debate this?

MR. FUQUA: Mr. Chairman, I do not. This is conforming with the action taken by the committee, and I urge an "aye" vote.

THE CHAIRMAN: The question is on the first portion of the committee amendment.

The first portion of the committee amendment was agreed to.

THE CHAIRMAN: The Clerk will report the second portion of the amendment.

The Clerk read as follows:

Page 17, line 19, strike subsection (C).

MR. FUQUA: Mr. Chairman, after reconsideration, the committee does not wish to proceed with the adoption of this amendment and ask for a "no" vote.

THE CHAIRMAN: The question is on the second portion of the committee amendment.

The second portion of the committee amendment was rejected.

Engrossment and Third Reading

§ 42.8 The question on engrossment and third reading of a

16. 30 CONG. REC. 6898, 98th Cong. 2d Sess.

17. Al Swift (Wash.).

bill is not subject to a demand for a division of the question since two independently coherent questions are not present.

Where the House had before it a bill on which the previous question had been ordered on a previous day, the Speaker announced the unfinished business to be the question on the engrossment and third reading. When a Member inquired whether the question could be divided, the Speaker replied in the negative. The proceedings of Aug. 3, 1989,[18] were as indicated herein:

THE SPEAKER:[19] The unfinished business is the engrossment and third reading of the bill (H.R. 3026) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1990, and for other purposes.

The Clerk read the title of the bill.

MR. [STAN] PARRIS [of Virginia]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. PARRIS: Mr. Speaker, is a vote on the engrossment and third reading of this bill in order under the rules of the House if requested by a Member of the House?

THE SPEAKER: Does the gentleman mean a recorded vote?

MR. PARRIS: A recorded vote, yes.

THE SPEAKER: A recorded vote is in order if the House sustains such a request.

MR. PARRIS: Is the question of engrossment and third reading a divisible question so that there perhaps could be two recorded votes if requested?

THE SPEAKER: In the opinion of the Chair, the question on engrossment and third reading of the bill is not divisible.

Divisibility of Resolution Established by Special Order

§ 42.9 A resolution adopting the rules of the House was divided into nine questions pursuant to a special resolution adopted prior to the rules package acknowledging such divisibility.

In the 104th Congress, a privileged procedural resolution, offered at the direction of the majority conference, established the procedure under which the resolution adopting the rules for the new Congress would be considered.[20] That privileged resolution specified that the resolution adopting the rules would be divisible into nine separate questions, and specified debate time on each. The resolution establishing the

18. 135 CONG. REC. 18544, 101st Cong. 1st Sess.

19. Thomas S. Foley (Wash.).

20. 141 CONG. REC. p. ____, 104th Cong. 1st Sess., Jan. 4, 1995.

new rules was drafted in a form to permit such divisibility, with a separate resolving clause before each portion which was to be subject to a separate vote. The effect of this draft was to protect the viability of the rules package even if one portion were defeated.

House Resolution 5, which was offered by the chairman of the Rules Committee on Jan. 4, 1995, specified that the question of adoption of the rules package would be divided into nine parts, each to be separately debated for 20 minutes.

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, by direction of the House Republican Conference, since there is no Committee on Rules yet, and the Committee on Rules has not met yet to organize and will not until tomorrow, by direction of the Republican Conference, I call up a privileged resolution and ask for its immediate consideration.

THE SPEAKER:[1] The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 5

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the resolution (H. Res. 6) adopting the Rules of the House of Representatives for the One Hundred Fourth Congress. The resolution shall be considered as read. The resolution shall be debatable initially for 30 minutes to be equally divided and controlled by the Majority Leader and the Minority Leader or their designees. The previous question shall be considered as ordered on the resolution to final adoption without intervening motion or demand for division of the question except as specified in sections 2 and 3 of this resolution.

Sec. 2. The question of adopting the resolution shall be divided among nine parts, to wit: each of the eight sections of title I; and title II. Each portion of the divided question shall be debatable separately for 20 minutes, to be equally divided and controlled by the Majority Leader and the Minority Leader or their designees, and shall be disposed of in the order stated.

Sec. 3. Pending the question of adopting the ninth portion of the divided question, it shall be in order to move that the House commit the resolution to a select committee, with or without instructions. The previous question shall be considered as ordered on the motion to commit to final adoption without intervening motion.

THE SPEAKER: The resolution is a matter of privilege. The gentleman from New York [Mr. Solomon] is recognized for 1 hour.

Following adoption of this procedural order, the House proceeded to consideration of House Resolution 6. Each of the nine divisible portions was preceded by a standard clause: "The Rules of the House of Representatives on the One Hundred Third Congress, including applicable provisions of law or concurrent resolution that constituted rules of the House at the end of the One Hundred Third Congress, together with such

1. Newt Gingrich (Ga.).

amendments thereto in this resolution as may otherwise have been adopted, are adopted as the Rules of the House of the One Hundred Fourth Congress with the following amendments:".

Who May Demand; When in Order

§ 42.10 Any Member may demand a division of the question at any time before the vote providing the question is divisible.

On June 17, 1948,[2] Mr. Edward H. Rees, of Kansas, offered an amendment to the Selective Service Act of 1948. Mr. Rees' proposal consisted of an additional section containing three subparagraphs designed to insure that training under the act be "carried out on the highest possible moral, religious, and spiritual plane."

Mr. James W. Wadsworth, Jr., of New York, sought to divide the question, prompting the following discussion:

MR. WADSWORTH: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[3] The gentleman will state it.

MR. WADSWORTH: I inquire as to whether or not this amendment may be divided and an opportunity given to the members of the committee to vote separately with respect to the first paragraph and separately with respect to the second paragraph.

MR. [JOHN] PHILLIPS of California: Mr. Chairman, the amendment has been considered as a whole, and the request to separate it should have been made earlier.

THE CHAIRMAN: The Chair will state that under the rules of the House a division of a question may be asked for at any time, if the question is divisible, before the vote.

The Chair has examined the amendment and notices that it is in three paragraphs labeled subparagraph (a), subparagraph (b), and subparagraph (c), each one of them being substantive in form, and each one of them could be voted on separately, if it is so demanded.

Mr. Wadsworth subsequently requested that a separate vote be taken on the second and third paragraphs. This request was agreed to.

Withdrawal of Demand

§ 42.11 A demand for a division of the question may be withdrawn by the Member making such demand, before the question is put, and unanimous consent is not required.

On July 20, 1942,[4] Mr. Lyle H. Boren, of Oklahoma, sought to di-

2. 94 CONG. REC. 8686, 80th Cong. 2d Sess.

3. Francis H. Case (S. Dak.).

4. 88 CONG. REC. 6388, 77th Cong. 2d Sess.

vide certain portions of a proposed amendment to the Revenue Act of 1942. After some discussion, Mr. Boren changed his mind, and the following occurred:

MR. BOREN: Mr. Chairman, under the confused situation I ask unanimous consent to withdraw the request temporarily.

MR. [RAYMOND S.] MCKEOUGH [of Illinois]: I object, Mr. Chairman.

MR. BOREN: Mr. Chairman, I ask for a vote on the division as I have outlined it then.

THE CHAIRMAN:[5] The Chair will state that the gentleman does not have to ask unanimous consent to withdraw his request for a division.

Timing of Demand for Division

§ 42.12 In Committee of the Whole, a request for a division of the question on an amendment may be made at any time before the Chair puts the question on the amendment.

On Oct. 21, 1981,[6] during consideration of the Food and Agriculture Act of 1981 (H.R. 3603) in the Committee of the Whole, the following proceedings occurred:

Amendment offered by Mr. Coleman: Page 89, after line 23, insert the following new section (and redesignate succeeding sections accordingly): . . .

MR. [E. THOMAS] COLEMAN [of Missouri]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[7] The gentleman will state his parliamentary inquiry.

MR. COLEMAN: Mr. Chairman, at what point would a motion to divide be in order?

THE CHAIRMAN: The Chair will advise that a demand for division of the question is a proper request and can be made at the time that the question is put on the amendment. . . .

MR. [E] DE LA GARZA [of Texas]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. DE LA GARZA: Mr. Chairman, we have an amendment composed of four sections of which three sections are unobjectionable, and then there is a question about the fourth one. Is it possible to vote on the unobjectionable sections without curtailing or limiting further debate on the fourth section?

THE CHAIRMAN: The Chair will advise the gentleman that if before the Chair first puts the question on the Coleman amendment there is a request for a division of the question, the remainder of the amendment will be voted on first and the portion on which the division is demanded will be voted on last, and following the adoption or rejection of the portion first voted on, which the gentleman refers to as the objectionable portion, the portion on which a division is demanded will remain open to further debate and amendment. . . .

MR. COLEMAN: Mr. Chairman, there seems to be a fiction perpetrated here

5. Fritz G. Lanham (Tex.).

6. 127 CONG. REC. 24778, 24785, 24788, 24789, 97th Cong. 1st Sess.

7. Matthew F. McHugh (N.Y.).

that there is only one part of this amendment which is controversial, 1340. My question is at what point and in what order do we vote if we were to separate, as has been the indication, separate one out? I would like to know, and I think others would like to point out that there are some extreme difficulties with some of the other sections of this amendment. If we are going to start couching in a one or the other situation, then we are going to have a division on every one of these things if we have a division on one.

THE CHAIRMAN: The Chair will advise the gentleman that if a division is requested with respect to section 1343, the enforcement provisions, that a vote would first be taken on the balance of the Coleman amendment, the section upon which a division was demanded would be open for debate and amendment. But the part, of course, that had been voted upon, the balance of the Coleman amendment would be foreclosed from further debate and amendment.

MR. COLEMAN: If I might inquire of the Chair, what if an objection was made or a division were to be requested or a division were to be made on 1306, would that be voted on first?

THE CHAIRMAN: With respect to a demand for a division, assuming the question is divisible, there would be a vote on the part not subject to the demand for a division first.

MR. COLEMAN: But if there was a demand for a division on 1306, would that precede the vote on 1343?

THE CHAIRMAN: If a division were demanded on both, that is correct.

MR. COLEMAN: I thank the chairman.

§ 42.13 A demand for division of the question can be made while an amendment is pending, even before debate has expired, at any time until the Chair has put the question.

On Nov. 8, 1983,[8] Mr. Robert S. Walker, of Pennsylvania, posed a parliamentary inquiry relative to the divisibility of an amendment, as indicated below:

THE CHAIRMAN:[9] The gentleman will state his parliamentary inquiry.

MR. WALKER: Mr. Chairman, I am wanting to know whether or not it would be possible at a time appropriate to divide the question on this amendment into its 17 component parts.

THE CHAIRMAN: The Chair will respond to the gentleman from Pennsylvania that the Chair does not know precisely now many parts there are to the gentleman's amendment, but the gentleman is entitled to ask for a division, and the gentleman from Pennsylvania has that right upon demand.

MR. WALKER: And the gentleman from Pennsylvania would be protected to offer such a motion just before the vote on the Wright amendment?

THE CHAIRMAN: The Chair is unable to protect in the traditional sense of the word the gentleman from Pennsylvania because what the gentleman is requesting is a request and it is not a motion.

MR. WALKER. I thank the Chair. But it would be proper to make that re-

8. 129 CONG. REC. 31477, 98th Cong. 1st Sess.

9. Wyche Fowler, Jr. (Ga.).

quest at the time just before the vote on the Wright amendment; is that correct?

THE CHAIRMAN: The Chair will respond that before the Chair puts the question on the amendment offered by the gentleman from Texas, if there is a timely request by the gentleman from Pennsylvania, it will be entertained.

MR. WALKER. I thank the Chair I withdraw my reservation of objection.

Order of Voting on Divisible Parts

§ 42.14 When there is a division of the question on various separable parts of an amendment, the Chair puts the question first on the remainder of the amendment, the portion not to be divided; and then the remaining portions (which remain open to debate and even further amendment) are voted on in the order in which the divisible portions appear in the bill.

On Oct. 21, 1981,[10] the Committee of the Whole had under consideration a bill (H.R. 3603) described as the Food and Agriculture Act of 1981. An amendment offered by Mr. E. Thomas Coleman, of Missouri, proposed the insertion of two new sections to the pending text and made several conforming changes in the pertinent text (further insertions and provisions striking out and inserting new text). Mr. Matthew F. McHugh, of New York, who was acting as Chairman of the Committee of the Whole, answered several parliamentary inquiries regarding the time to demand a division of the amendment and the order of voting. No decision was rendered on whether the amendment was in fact, divisible in the Committee. The proceedings were as follows:

> Amendment offered by Mr. Coleman: page 89, after line 23, insert the following new section (and redesignate succeeding sections accordingly):
>
> ADJUSTMENT OF THE THRIFTY FOOD PLAN
>
> Sec. 1306. Section 3(o) of the Food Stamp Act of 1977 is amended by striking out clause (6) and all that follows through the end of clause (9), and inserting in lieu thereof the following: "(6) on October 1, 1982, adjust the cost of such diet to the nearest dollar increment to reflect changes in the cost of the thrifty food plan for the twenty-one months ending the preceding June 30, 1982, and (7) on October 1, 1983, and each October 1 thereafter, adjust the cost of such diet to the nearest dollar increment to reflect changes in the cost of the thirty food plan for the twelve months ending the preceding June 30".
>
> (Food stamp funding and program extension.)
>
> Page 114, line 7, insert "and" at the end thereof.
>
> Page 114, strike out line 8 and all that follows through line 17, and insert in lieu thereof the following:

10. 127 CONG. REC. 24778, 24785, 24788, 24789, 97th Cong. 1st Sess.

(2) inserting before the period at the end thereof the following: "; not in excess of $11,300,000,000 for the fiscal year ending September 30, 1982; not in excess of $11,170,000,000 for the fiscal year ending September 30, 1983; not in excess of $11,115,000,000 for the fiscal year ending September 30, 1984; and not in excess of $11,305,000,000 for the fiscal year ending September 30, 1985".

Page 120, after line 22, insert the following new section.

AUTHORITY OF OFFICE OF INSPECTOR GENERAL

Sec. 1343. Any person who is employed in the Office of the Inspector General, Department of Agriculture, who conducts investigations of alleged or suspected criminal violations of statutes, including but not limited to the food stamp program, administered by the Secretary of Agriculture or any agency of the agency of the Department of Agriculture, and who is designated by the Inspector General of the Department of Agriculture may—

(1) make an arrest without a warrant for any such criminal violation if such violation is committed, or if such employee has probable cause to believe that such violation is being committed, in the presence of such employees.

(2) incident to making an arrest under paragraph (1), search the premises and seize evidence, without a warrant.

(3) execute a warrant for an arrest, for the search of premises, or the seizure of evidence if such warrant is issued upon probable cause to believe that such violation has been committed, and

(4) carry a firearm,

in accordance with rules issued by the Secretary of Agriculture, while such employee is engaged in the performance of official duties under the authority provided in section 6, or described in section 9, of the Inspector General At of 1978. (5 U.S.C. app.a 6, 9).

Page 104, line 23, insert after "of coupons" the following: "including any losses involving failure of a coupon issuer to comply with the requirements specified in section 11(d)(21).".

Page 108, line 21, strike out "paragraph:" and insert in lieu thereof "paragraphs:"

Page 109, after line 9 insert the following:

"21. That, project areas or parts thereof where authorization cards are used, and eligible households are required to present photographic identification cards in order to receive their coupons, the state agency shall include, in any agreement or contract with a coupon issuer, a provision that (1). . . .

MR. [E. THOMAS] COLEMAN [of Missouri]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[11] The gentleman will state his parliamentary inquiry.

COLEMAN: Mr. Chairman, at what point would a motion to divide be in order?

THE CHAIRMAN: The Chair will advise that a demand for division of the question is a proper request and can be made at the time that the question is put on the amendment. . . .

MR. [E] DE LA GARZA [of Texas]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. DE LA GARZA: Mr. Chairman, we have an amendment composed of four sections of which three sections are

11. Matthew F. McHugh (N.Y.).

unobjectionable, and then there is a question about the fourth one. It Is possible to vote on the unobjectionable sections without curtailing or limiting further debate on the fourth section?

THE CHAIRMAN: The Chair will advise the gentleman that if before the Chair first puts the question on the Coleman amendment there is a request for a division of the question, the remainder of the amendment will be voted on first and the portion on which the division is demanded will be voted on last, and following the adoption or rejection of the portion first voted on, which the gentleman refers to as the objectionable portion, the portion on which a division is demanded will remain open to further debate and amendment. . . .

MR. COLEMAN: Mr. Chairman, there seems to be a fiction perpetrated here that there is only one part of this amendment which is controversial, 1340. My question is at what point and in what order do we vote if we were to separate, as has been the indication, separate one out? I would like to know, and I think others would like to point out that there are some extreme difficulties with some of the other sections of this amendment. If we are going to start couching in a one or the other situation, then we are going to have a division on every one of these things if we have a division on one.

THE CHAIRMAN: The Chair will advise the gentleman that if a division is requested with respect to section 1343, the enforcement provisions, that a vote would first be taken on the balance of the Coleman amendment, the section upon which a division was demanded would be open for debate and amendment. But the part, of course, that had been voted upon, the balance of the Coleman amendment would be foreclosed from further debate and amendment.

MR. COLEMAN: If I might inquire of the Chair, what if an objection was made or a division were to be requested or a division were to be made on 1306, would that be voted on first?

THE CHAIRMAN: With respect to a demand for a division, assuming the question is divisible, there would be a vote on the part not subject to the demand for a division first.

MR. COLEMAN: But if there was a demand for a division on 1306, would that precede the vote on 1343?

THE CHAIRMAN: If a division were demanded on both, that is correct.

MR. COLEMAN: I thank the chairman.

Chair Has Some Discretion in Order of Voting

§ 42.15 Where no further debate or amendment is in order on the portion of an amendment on which a division of the question has been demanded, the Chair has discretion to put the question first on the divided portions and then on the remainder of the amendment.

While the order of voting on the various portions of a divided question has been differently executed by various presiding officers, the more modern practice is to allow the Chair some discretion to

shape the voting to meet the will of the Members participating. Thus, on June 8, 1995,[12] the Chair put the question first on those portions of the amendment on which a division of the question had been demanded, then on the remainder. The proceedings were as indicated:

MR. [BENJAMIN A.] GILMAN [of New York]: Mr. Chairman, pursuant to the rule, I offer an amendment that has not been printed in the Record. I have consulted through staff and the ranking minority member with regard to this amendment.

The Clerk read as follows: . . .

At the end of the bill, add the following:

DIVISION D—ADDITIONAL PROVISIONS

TITLE XLI—UNITED STATES EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

SEC. 4001. AUTHORIZATION OF APPROPRIATIONS.

(a) FULBRIGHT ACADEMIC EXCHANGE PROGRAMS.—Notwithstanding section 2106(3)(A), there are authorized to be appropriated for "Fulbright Academic Exchange Programs", $112,484,200 for the fiscal year 1996 and $88,680,800 for the fiscal year 1997.

(b) OTHER PROGRAMS.—Notwithstanding section 2106(3)(F), there are authorized to be appropriated for "Other Programs", $77,265,800 for the fiscal year 1996 and $57,341,400 for the fiscal year 1997.

In section 3231 of the bill (in section 667(a)(1) of the Foreign Assistance Act of 1961, as proposed to be amended by such section 3231; relating to operating expenses of the United States Agency for International Development), strike "$465,774,000" and insert "$396,770,250" and strike "$419,196,000" and insert "$396,770,250".

AMENDMENT OFFERED BY MR. HOYER TO THE AMENDMENT OFFERED BY MR. GILMAN

MR. [STENY H.] HOYER [of Maryland]: Mr. Chairman, I offer an amendment to the amendment offered by the gentleman from New York [Mr. Gilman].

The Clerk read as follows:

Amendment offered by Mr. Hoyer to the amendment to the amendment offered by Mr. Gilman:

At the end of the amendment, add the following: In title XXVI (relating to foreign policy provisions) insert the following at the end of chapter 1:

SEC. 2604. BOSNIA AND HERZEGOVINA SELF-DEFENSE ACT.

(a) SHORT TITLE.—This section may be cited as the "Bosnia and Herzegovina Self-Defense Act".

(b) FINDINGS.—The Congress makes the following findings:

(1) The Serbian aggression against Bosnia and Herzegovina continues into its third year, the violence has escalated and become widespread, and ethnic cleansing by Serbs has been renewed. . . .

(d) TERMINATION OF ARMS EMBARGO.—

(1) TERMINATION.—The President shall terminate the United States arms embargo of the Government of Bosnia and Herzegovina upon receipt from that Government of a request for assistance in exercising its right of self-defense under Article 51 of the United States Charter. . . .

12. 141 CONG. REC. p. ____, 104th Cong. 1st Sess.

MR. [DAN] BURTON of Indiana: First of all, Mr. Chairman, let me just say that I have a first degree amendment, and I ask for a division of the question on the last part of Mr. Gilman's amendment regarding AID and O&E cuts.

THE CHAIRMAN:[13] The Chair will divide the question at the appropriate time. . . .

THE CHAIRMAN: All time for consideration of amendments under this rule has expired.

MR. HOYER: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his inquiry.

MR. HOYER: To understand the parliamentary situation at this point in time, am I correct that the Gilman en bloc amendment will be voted on after the Hoyer amendment as a secondary amendment which will be voted upon first; then is it my understanding that the Burton amendment will be then split out of the en bloc amendment for the purposes of a vote, and then the Gilman amendment as amended?

THE CHAIRMAN: The gentleman is correct. For the information of the Members, the Chair will announce that the order of voting will proceed as follows: first on the amendment offered by the gentleman from Maryland [Mr. Hoyer] to the amendment offered by the gentleman from New York [Mr. Gilman]; next on separate votes on any divisible portion of this Gilman amendment; and finally on the remainder of the Gilman amendment, as amended or not. . . .

MR. [ALCEE L.] HASTINGS of Florida: I have a further parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman will state his inquiry.

MR. HASTINGS of Florida: Mr. Chairman, does that mean that Members could ask for a division on any of the manager's amendments that are in there?

THE CHAIRMAN: Any divisible portion of the amendment can be subjected to a separate vote. . . .

So the [Hoyer] amendment to the amendment was agreed to.

The result of the vote was announced as above recorded.

THE CHAIRMAN: The question is on the last divisible portion of the amendment as originally offered by the gentleman from New York [Mr. Gilman], as amended, demanded by the gentleman from Indiana [Mr. Burton]. The Clerk will report the divided portion of the amendment.

The Clerk read as follows:

> In section 3231 of the bill (in section 667(a)(1) of the Foreign Assistance Act of 1961, as proposed to be amended by such section 3231; relating to operating expenses of the United States Agency for International Development), strike "$465,774,000" and insert "$396,770,250" and strike "$419,196,000" and insert "$396,770,250". . . .

THE CHAIRMAN: The question is on the last divisible portion of the amendment offered by the gentleman from New York [Mr. Gilman], as amended.

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

MR. BURTON of Indiana: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 182, noes 236, not voting 16, as follows: . . .

13. Robert W. Goodlatte (Va.).

THE CHAIRMAN: The question is on the remaining portion of the amendment offered by the gentleman from New York [Mr. Gilman], as amended.

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

MR. GILMAN: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

THE CHAIRMAN: This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 239, noes 117, not voting 18, as follows: . . .

§ 43. Amendments and Substitutes Therefor

Effect of Negative Vote on Divisibility of Remainder

§ 43.1 A negative vote on a motion to strike out a portion of a pending amendment does not preclude the demand for a division of that portion of the amendment if it constitutes a properly severable and, hence, separate proposition.

On Aug. 18, 1965,[14] Mr. William R. Poage, of Texas, offered an amendment to the Food and Agriculture Act of 1965. The amendment proposed some six substantive changes in a section of the bill relating to the release and reapportionment of cotton acreage allotments.

Mr. Paul C. Jones, of Missouri, offered an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Jones of Missouri to the amendment offered by Mr. Poage: Strike out the first paragraph, which reads: "On Page 14, beginning on line 24, strike out all of paragraph (2) and renumber paragraphs (3) and (4) as paragraphs (2) and (3), respectively."

After discussion of Mr. Jones' motion to strike out, the Chairman[15] presented the question for a vote. Mr. Jones' amendment was rejected.

Shortly thereafter, Mr. Poage's amendment was about to be voted upon when Mr. John J. Rhodes, of Arizona, rose to divide the question. The following colloquy ensued:

MR. RHODES of Arizona: Mr. Chairman, I ask for a separate vote on the first three lines of the amendment.

THE CHAIRMAN: The Clerk will report the first part of the amendment referred to by the gentleman from Arizona.

The Clerk read as follows:

On Page 14, beginning at line 24, strike all of paragraph 2 and renumber paragraphs 3 and 4 as paragraphs 2 and 3 respectively.

THE CHAIRMAN: The question occurs on that part of the amendment just read by the Clerk.

14. 111 CONG. REC. 20943, 20956, 89th Cong. 1st Sess.

15. Oren Harris (Ark.).

MR. [HAROLD D.] COOLEY [of North Carolina]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. COOLEY: Have we not just voted on a separate amendment, the Jones of Missouri amendment, which had the same purpose? Mr. Jones, the author of the amendment, stated it had the same purpose, I think.

THE CHAIRMAN: There was an amendment offered by the gentleman from Missouri [Mr. Jones] but it was not this same proposition which was just read by the Clerk.

MR. COOLEY: The only difference is the name of the author.

THE CHAIRMAN: The parliamentary situation, I would say to the gentleman from North Carolina, is different, too.

The question occurs on that part of the amendment just read by the Clerk.

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

Parliamentarian's Note: The motion to strike a given section from an amendment and the motion to divide the section from others for voting might accomplish the same end. However, the two procedures are distinguishable from a parliamentary perspective; and, the failure of the motion to strike out does not preclude the request to divide in this instance, providing the section in question constitutes a separate proposition.

§ 43.2 A Member having demanded a division of the question on two portions of an amendment which was divisible into five substantive parts, the question recurred on the remainder of the amendment following agreement to the two portions by separate votes.

On Aug. 17, 1972,[16] Mrs. Edith S. Green, of Oregon, proposed an amendment to title IV of the Equal Educational Opportunities Act of 1972 (H.R. 13915).[17] Mrs. Green's amendment consisted of five substantive parts, three of which pertained to section 403, and the remaining two of which called for the creation of sections 406 and 407.

Pursuant to the request of Mr. William A. Steiger, of Wisconsin, those portions of the amendment pertaining to sections 403 and 406 were considered in two separate votes. Both portions having been agreed to, the Chairman[18] then put the remainder of the Green amendment to a vote.

Parliamentarian's Note: Where an amendment is crafted to insert new, severable provisions, there may be a different result depend-

16. 118 CONG. REC. 28888, 28906, 28907, 92d Cong. 2d Sess.

17. For the entire text of title IV and Mrs. Green's amendment, see § 43.3, infra.

18. Morris K. Udall (Ariz.).

ing on whether one section is made the object of a separate vote by a demand for a division of the question or whether an amendment is offered to strike the provision. In the latter event, the question would recur on the original amendment, as amended, but when a portion of an amendment is rejected on a separate vote, the question merely recurs on the remainder of the amendment.

Substitutes Not Divisible

§ 43.3 Where a pending amendment to the text of a bill would insert language containing several substantive propositions (and such amendment does not wholly consist of a motion to strike out and insert), a demand for the division of the amendment is in order, but a demand for the division of a substitute therefor is not.

On Aug. 17, 1972,[19] the House resolved itself into the Committee of the Whole in order to consider H.R. 13915, the Equal Educational Opportunities Act of 1972. During such consideration the Chairman[20] directed the Clerk to read title IV of the bill.

The Clerk read as follows:

TITLE IV—REMEDIES

FORMULATING REMEDIES; APPLICABILITY

Sec. 401. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

Sec. 402. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or on the first combination thereof which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures

19. 118 CONG. REC. 28834, 28887, 28888, 28890, 92d Cong. 2d Sess.

20. Morris K. Udall (Ariz.).

without requiring transportation beyond that described in section 403;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 403 and 404 of this Act.

TRANSPORTATION OF STUDENTS

Sec. 403. (a) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan that would require the transportation of any student in the sixth grade or below to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

(b) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan which would require the transportation of any student in the seventh grade or above to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student, unless it is demonstrated by clear and convincing evidence that no other method set out in section 402 will provide an adequate remedy for the denial of equal educational opportunity or equal protection of the laws that has been found by such court, department, or agency. Such plan shall only be ordered in conjunction with the development of a long-term plan involving one or more of the remedies set out in clauses (a) through (g) of section 402. If a United States district court orders implementation of a plan requiring transportation beyond that described in this subsection, the appropriate court of appeals shall, upon timely application by a defendant educational agency, grant a stay of such order until it has reviewed such order.

(c) No court, department or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

DISTRICT LINES

Sec. 404. In the formulation of remedies under section 401 or 402 of this Act, the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.

VOLUNTARY ADOPTION OF REMEDIES

Sec. 405. Nothing in this Act prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the appropriate educational agency.

Immediately thereafter, Mrs. Edith S. Green, of Oregon, rose to offer the following amendment:

The Clerk read as follows:

Amendment offered by Mrs. Green of Oregon: Title IV is amended as

follows: (a) Section 403, page 37, line 5 is amended by striking out "in the sixth grade or below";

(b) Section 403., beginning on page 37, line 9 and continuing on page 38 through line 3 is amended by striking all of paragraph (b);

(c) Section 403., page 38, line 4 is amended by striking out the letter "c" and inserting in lieu thereof the letter "b";

(d) Adding at the end thereof the following new sections:

REOPENING PROCEEDINGS

Sec. 406. On the application of an educational agency, court orders, or desegregation plans under title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this Act and intended to end segregation of students on the basis of race, color, or national origin, shall be reopened and modified to comply with the provisions of this Act. The Attorney General shall assist such educational agency in such reopening proceedings and modification.

LIMITATION ON ORDERS

Sec. 407. Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws shall, to the extent of such transportation, be terminated if the court finds the defendant educational agency is not effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were in the past segregated de jure or de facto. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found to be effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were in the past segregated de jure or de facto.

Sec. 408. Any court order requiring the desegregation of a school system shall be terminated, if the court finds the schools of the defendant educational agency are a unitary school system, one within which no person is to be effectively excluded from any school because of race, color, or national origin, and this shall be so, whether or not such school system was in the past segregated de jure or de facto. No additional order shall be entered against such agency for such purpose unless the schools of such agency are no longer a unitary school system.

Shortly thereafter, Mr. William A. Steiger, of Wisconsin, initiated the following exchange with the Chair:

MR. STEIGER of Wisconsin: Mr. Chairman, the amendment offered by the gentlewoman from Oregon amends several sections in title IV.

My parliamentary inquiry is whether or not it is possible to have a separate vote on each of the substantive sections included in the gentlewoman's en bloc amendment?

THE CHAIRMAN: In response to the parliamentary inquiry, the Chair will state at this point it would be appropriate and proper to ask for separate votes on the different sections.

However, in the event a substitute is offered and agreed to, that procedure cannot be followed.

MR. STEIGER of Wisconsin: But there could be separate votes?

THE CHAIRMAN: The gentleman can demand a separate vote and the Chair will preserve his right to do so, subject to the condition that a substitute, if offered, is not agreed to.

After some discussion of the Green amendment, Mr. Albert H. Quie, of Minnesota, offered a substitute for that amendment.

Mr. Robert C. Eckhardt, of Texas, then sought clarification of the parliamentary situation. In responding, the Chairman reiterated what he had said to Mr. Steiger—leaving no doubt as to the rule:

> THE CHAIRMAN: . . . Let the Chair state that the original amendment offered by the gentlewoman from Oregon (Mrs. Green) contains four separate elements. Inquiry was made by the gentleman from Wisconsin (Mr. Steiger) as to whether it would be proper to divide those questions and ask for a separate vote. The Chair advised that in the event the substitute is not agreed to, the gentleman's rights would be protected, and he could ask for a separate vote on each of the four propositions in the amendment offered by the gentlewoman from Oregon (Mrs. Green).

The Chairman further elaborated in response to another query from Mr. Eckhardt that:

> . . . [T]he substitute offered by the gentleman from Minnesota (Mr. Quie) cannot be divided for a separate vote whereas the original proposition by the gentlewoman from Oregon can be divided in the event that a substitute is not agreed to.

Parliamentarian's Note: The precedents consistently indicate that a division of the question may not be demanded on a substitute for an amendment, based upon the prohibition in Rule XVI clause 7, against a division of a motion to strike out and insert. (See 5 Hinds' Precedents § 6127, and 8 Cannon's Precedents § 3168).

With respect to a division of the question on an amendment, as amended by a substitute, the headnote in 5 Hinds' Precedents § 6127 as well as Cannon's statement on page 172 of *Cannon's Procedure* indicate that the "original," as amended, may be divided. The significance of this should not be misconstrued, however, for the "substitute" in § 6127 was not offered to a pending amendment, but rather to the original text. That precedent, therefore, does not stand for the proposition that a motion to strike out and insert is subject to a division of the question, either as to the two branches of the motion or as to the language proposed to be inserted.

Divisibility of En Bloc Amendments

§ 43.4 By unanimous consent a Member received permission to offer several amendments en bloc and to divide the question for a separate vote on each one.

On June 9, 1966,[1] the Committee of the Whole having under consideration a bill (H.R. 14929) to promote international trade in agricultural commodities, to combat hunger and malnutrition, and to further economic development, Mr. Richard L. Ottinger, of New York, addressed the Chairman, as follows:

> MR. OTTINGER: Mr. Chairman, I offer two amendments and ask unanimous consent that they be considered en bloc and voted upon separately.
>
> THE CHAIRMAN:[2] Is there objection to the request of the gentleman from New York?
>
> There was no objection.
>
> The Clerk read as follows:
>
> > Amendments offered by Mr. Ottinger: On page 24, line 15, strike "persons serving" and all of lines 16 and 17, and insert "Peace Corps volunteers or Peace Corps volunteer leaders pursuant to the Peace Corps Act (75 Stat. 612); and".
> >
> > On page 23, line 3, strike "Secretary of Agriculture" and insert "President".
> >
> > On page 23, line 5, immediately after "to establish and administer through existing" insert "departments or".
> >
> > On page 23, line 6, strike "of the Department of Agriculture".
> >
> > On page 24, line 23, strike "$33,000,000" and substitute "$7,000,000".

Following debate, the Chair put the question on the first amendment. The question was taken; and the Chairman announced that the noes appeared to have it.

Immediately thereafter, Mr. Gerald R. Ford, of Michigan, posed the following question:

> Mr. Chairman, as I understood the request that was made, on the amendments offered by the gentleman from New York, he asked unanimous consent that they be considered en bloc. If he did that, does not the Committee have to vote on those amendments en bloc?
>
> THE CHAIRMAN: The Chair will advise the gentleman from Michigan that the unanimous-consent request was that the amendments be considered en bloc but voted upon separately. There was no objection.
>
> MR. GERALD R. FORD: Did the gentleman from New York make that specific request?
>
> THE CHAIRMAN: That is correct.

The Committee voted separately upon the remaining amendments.

Division of En Bloc Amendment

§ 43.5 In Committee of the Whole, a division may be demanded on discrete parts of a series of amendments considered en bloc.[3]

During consideration of a general appropriation bill on June 19,

1. 112 CONG. REC. 12881, 12882, 89th Cong. 2d Sess.
2. William S. Moorhead (Pa.).
3. See *House Rules and Manual* § 792 (1995). A division can be precluded if the request for en bloc consideration so specifies.

1978,[4] a Member offered two related amendments on research and development programs funded in the bill and asked that they be considered en bloc. After debate, and before the question was put on the amendments, another Member requested a division. The proceedings were as indicated below:

THE CHAIRMAN:[5] Are there further amendments to title I? If not, the Clerk will read.

The Clerk read as follows:

RESEARCH AND DEVELOPMENT

For research and development activities, $328,028,000, to remain available until September 30, 1980.

MR. [GEORGE E.] BROWN [Jr.] of California: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Brown of California: On page 12, line 14, strike "$328,028,000" and insert in place thereof "$348,028,000".

MR. BROWN of California: Mr. Chairman, I ask unanimous consent that a second amendment on page 13 be reported by the Clerk, and that the two amendments be considered en bloc.

THE CHAIRMAN: The Clerk will report the second amendment.

The Clerk read as follows:

Amendment offered by Mr. Brown of California: On page 13, line 4, strike "$4,200,000,000" and insert in place thereof "$4,180,000,000".

THE CHAIRMAN: Is there objection to the request of the gentleman from California?

There was no objection. . . .

THE CHAIRMAN: The Chair will inquire of the gentleman from New York (Mr. Ambro) whether he is requesting that the question be divided.

MR. [JEROME A.] AMBRO [of New York]: I am, indeed, Mr. Chairman.

THE CHAIRMAN: The gentleman has that right, and the question will be divided. . . .

THE CHAIRMAN: The question is on the first amendment offered by the gentleman from California (Mr. Brown) appearing on page 12 of the bill entitled Research and Development.

The question was taken; and on a division (demanded by Mr. Brown of California) there were—ayes 12, noes 17. . . .

A recorded vote was refused.

So the first amendment offered by the gentleman from California (Mr. Brown) was rejected.

THE CHAIRMAN: The question is on the second amendment offered by the gentleman from California (Mr. Brown).

The second amendment offered by the gentleman from California (Mr. Brown) was rejected.

§ 43.6 Consideration of amendments en bloc by unanimous consent does not prevent a demand for division of the question so separate votes can be taken on each of the amendments.

Where two amendments, each adding a new section to a bill,

4. 124 CONG. REC. 18180, 18184, 18186, 95th Cong. 2d Sess.

5. Elliott Levitas (Ga.).

were considered en bloc by unanimous consent, the proponent announced his intention to ask that the Committee of the Whole vote on the two sections separately after debate on both. The Chair stated that en bloc consideration would not prejudice a demand for a division of the question. The proceedings of July 18, 1991,[6] were as indicated:

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[7] The gentleman will state his inquiry.

MR. SOLOMON: Mr. Chairman, I have two amendments pending at the desk, amendments 67 and 68, and my question is, Is it possible to have these two amendments debated at the same time in order to reduce the vote on the second amendment, should it be necessary to have one? . . .

I think it would save the membership time if we could debate the two amendments and then have a 15-minute vote on the first one, followed by a 5-minute vote.

Is that an acceptable procedure, if I were to make a unanimous consent request?

THE CHAIRMAN: The Chair has some discretion in this area, if the amendments are considered en bloc and if there is no intervening business between the votes on the amendments. Does the gentleman ask unanimous consent that the amendments be considered en bloc?

MR. SOLOMON: Mr. Chairman, that puts me at a disadvantage, but to go along with the membership, I would agree to do that, to have no intervening debate but two separate votes.

THE CHAIRMAN: The gentleman makes a unanimous-consent request that the amendments be considered en bloc.

Is there objection to the request of the gentleman from New York? . . .

There was no objection.

MR. SOLOMON: Mr. Chairman, I offer two amendments.

The Clerk read as follows:

Amendments offered by Mr. Solomon: Page 25, after line 5, add the following:

SEC. 37. DRUG TESTING REQUIRED AS A CONDITION OF NEW EMPLOYMENT WITH THE COAST GUARD.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "preemployment drug testing" means preemployment testing for the illegal use of a controlled substance; and

(2) the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

(b) PREEMPLOYMENT DRUG TESTING.—No person may be appointed to a civilian position in the Coast Guard unless that person undergoes preemployment drug testing in accordance with this section.

(c) REGULATIONS.—The Secretary of the department in which the Coast Guard is operating shall issue regulations to carry out subsection (b). Such regulations shall be issued no later than 90 days after the date of the enactment of this Act.

6. 137 CONG. REC. 18851, 18852, 18854, 18856, 18857, 102d Cong. 1st Sess.

7. George Darden (Ga.).

(d) EFFECTIVE DATE.—This section applies with respect to any appointment taking effect after the date on which regulations are first issued under subsection (c).

Page 26, after line 5, add the following:

SEC. 27. CONTROLLED SUBSTANCES TESTING PROGRAM FOR CIVILIAN EMPLOYEES OF THE COAST GUARD. . . .

(b) CONTROLLED SUBSTANCES TESTING PROGRAM.—The Secretary of the department in which the Coast Guard is operating shall establish and implement a program under which civilian employees of the Coast Guard shall be subject to random testing for the illegal use of controlled substances. . . .

MR. SOLOMON: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. SOLOMON: Mr. Chairman, I was passed a note from the majority over there that there is a question about how this vote will take place on those two amendments.

At the end of the debate, I would hope the chairman would recognize me for the purpose of asking for the two separate votes, one a 15-minute and one a 5-minute. . . .

I might then, Mr. Chairman, ask for a division as we continue the debate for vote purposes.

THE CHAIRMAN: The gentleman may demand a division of the question at this time.

MR. SOLOMON: I do so.

THE CHAIRMAN: The question will be put separately on each of the two amendments being considered en bloc. . . .

THE CHAIRMAN: The question is on the amendments offered by the gentleman from New York (Mr. Solomon).

The question will be divided.

The Clerk will read the title of the amendment upon which the vote will be taken.

MR. SOLOMON: Mr. Chairman, it would be amendment 8.

The Clerk read the title of the amendment.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from New York (Mr. Solomon).

MR. SOLOMON: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

THE CHAIRMAN: Pursuant to clause 2(c) of rule XXIII, the Chair will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the second amendment, if that question is put without intervening debate or amendment.

The vote was taken by electronic device, and there were—ayes 177, noes 240, not voting 16, as follows: . . .

THE CHAIRMAN: The pending business is the vote on the second amendment offered by the gentleman from New York (Mr. Solomon).

The Clerk will restate the title of the amendment.

The Clerk read the title of the amendment.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from New York (Mr. Solomon).

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

§ 44. Motions To Amend an Amendment

Amendments From the Floor

§ 44.1 An amendment containing two distinct propositions may be divided, and each is subject to amendment as it is taken up for consideration.

On Aug. 17, 1951,[8] the House having resolved itself into the Committee of the Whole, Mr. James G. Fulton, of Pennsylvania, offered an amendment to the Mutual Security Act of 1951. Mr. Fulton's amendment called for reductions in both the military and economic aid to be provided pursuant to the act.

> [T]he Clerk read as follows:
>
> On page 2, line 22, section 101(a) subsection (1): Strike out "$5,028,000,000" and insert "$4,828,000,000."
>
> On page 3, line 16, strike out "$1,335,000,000" and insert "$1,035,000,000."

Pursuant to Mr. Fulton's request, the Chairman divided the proposed amendment in order to provide for a "separate vote on the military cut and a separate vote on the economic cut." Following debate, an amendment to the amendment was proposed, as indicated below:

> MR. [LAWRENCE H.] SMITH of Wisconsin: . . . Mr. Chairman, I offer an amendment.
>
> THE CHAIRMAN:[9] Is it a substitute for the first portion of the Fulton amendment?
>
> MR. SMITH of Wisconsin: My amendment applies to both parts, Mr. Chairman, but I can ask unanimous consent to offer the first part to the Fulton amendment.
>
> THE CHAIRMAN: The gentleman offers an amendment to the first section?
>
> MR. SMITH of Wisconsin: Yes. . . .
>
> THE CHAIRMAN: The Clerk will report the amendment.
>
> The Clerk read as follows:
>
> Substitute amendment offered by Mr. Smith of Wisconsin to the first portion of the amendment of Mr. Fulton: Page 2, line 22, section 101(a), subsection (1) strike out "$5,028,000,000" and insert "$4,799,999,999."
>
> MR. [WALTER H.] JUDD [of Minnesota]: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. JUDD: Is it possible to divide an amendment and offer an amendment to a portion of an amendment or is a division applicable only in the case of voting on an amendment?

The Chair responded to the effect that an amendment may be divided, and the divisible portion thereof is similarly subject to amendment. Unstated though implicit in the Chairman's ruling was the fundamental requirement

8. 97 CONG. REC. 10226, 82d Cong. 1st Sess.

9. Francis E. Walter (Pa.).

that every divisible question consist of two or more substantive propositions.

Senate Amendments

§ 44.2 Senate amendments are considered in their entirety, and it is not in order to consider separate items contained therein.

On May 20, 1936,[10] the House entertained the conference report on the Department of the Interior appropriation bill of 1937 (H.R. 10630). The report having been agreed to, amendments remaining in disagreement between the Houses were then discussed.

Among these was a Senate amendment which read as follows:

> Page 24, after line 21, insert the following:
>
> "The following-named reclamation projects are hereby authorized to be constructed, the cost thereof to be reimbursable under the reclamation law:
>
> "Central Valley project, California: For flood control, improving and in aid of navigation, and to provide for the general welfare in cooperation with the State of California, and for incidental purposes, including irrigation, drainage, and power production.
>
> "Grand Lake-Big Thompson transmountain diversion project, Colorado: To irrigate public lands of the United States and to provide for the general welfare in cooperation with the State of Colorado, and for incidental purposes, including the irrigation of patented land, power production, and flood control: *Provided*, That said project shall include the construction and the permanent maintenance of adequate compensatory or replacement reservoirs, necessary feeder canals, and other incidental works at the most suitable sites within said State; the water impounded by said reservoirs to be used within the Colorado River Basin, and the cost of constructing and maintaining such reservoirs, feeder canals, and incidental works shall be included in the cost of said project and be repaid by the beneficiaries of the water so diverted from said basin: *Provided further*, That said project shall be constructed and operated in such manner as to continuously maintain the normal levels of the waters of said Grand Lake.
>
> "Carlsbad project, New Mexico: To provide for the general welfare in cooperation with the State of New Mexico and for incidental purposes, including irrigation and flood control.
>
> "Deschutes project, Oregon: To provide for the general welfare in cooperation with the State of Oregon and for incidental purposes, including irrigation and flood control.
>
> "Provo River project, Utah: To provide for the general welfare in cooperation with the State of Utah and for incidental purposes, including irrigation and flood control.
>
> "Yakima project, Washington, Roza division: To provide for the general welfare in cooperation with the State of Washington and for incidental purposes, including irrigation and flood control.
>
> "Casper-Alcova project, Wyoming: To irrigate public lands of the United States and to provide for the general welfare in cooperation with the State of Wyoming and for incidental purposes, including the irriga-

10. 80 CONG. REC. 7611, 7616, 7623, 7624, 74th Cong. 2d Sess.

tion of patented lands, power production, and flood control."

Mr. Edward T. Taylor, of Colorado, rose to offer a motion following the reading of the amendment.

The Clerk read as follows:

Mr. Taylor of Colorado moves to recede and concur in the Senate amendment with an amendment as follows: "Strike out the third paragraph in said amendment, in lines 9 to 26, inclusive, relating to the Grand Lake-Big Thompson transmountain diversion project, Colorado.

The Taylor motion prompted the following exchange between Mr. Fred N. Cummings, of Colorado, and the Speaker:

MR. CUMMINGS: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[11] The gentleman will state it.

MR. CUMMINGS: Will a motion be in order to consider these items separately?

THE SPEAKER: No; there is only one Senate amendment.

MR. [JAMES P.] BUCHANAN [of Texas]: Mr. Speaker, I think the House ought to vote down the motion to concur. I am going to demand a division of the question (to recede and concur).

11. Joseph W. Byrns (Tenn.).

§ 45. Motions To Instruct Conferees; Motions To Recommit

To Concur With Amendment to Senate Amendment

§ 45.1 A motion to instruct conferees to agree to a Senate amendment with an amendment is not divisible.

On May 9, 1946,[12] the Speaker[13] requested the Clerk to read a motion to instruct conferees offered by Mr. Brent Spence, of Kentucky.

The Clerk read as follows:

Mr. Spence moves to instruct the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 4761 to agree to section 11(a) of the Senate amendment, with an amendment, as follows: Strike out "$600,000,000, as it appears therein, and insert in lieu thereof "$400,000,000".

Shortly thereafter, Mr. Vito Marcantonio, of New York, posed a parliamentary inquiry, as follows:

MR. MARCANTONIO: As I understand the motion filed by the gentleman from Kentucky, it provides for agreeing to the Senate amendment with an amendment. Is it possible to have the motion divided so that a vote may be taken on the Senate amendment itself?

12. 92 CONG. REC. 4750, 4751, 79th Cong. 2d Sess.

13. Sam Rayburn (Tex.).

THE SPEAKER: It is one proposition, it is not divisible.

Recommittal of Conference Reports

§ 45.2 On a motion to recommit a conference report with instructions, it is not in order to demand a separate vote on the instructions or various branches thereof.

On Apr. 11, 1956,[14] following a motion to recommit a conference report with instructions to insist on the alteration and striking of several sections and titles, Mr. Arthur Miller, of Nebraska, inquired as to whether a separate vote may be had on the various amendments. The Speaker[15] ruled that a motion to recommit is not subject to division.[16]

Recommital of Bill

§ 45.3 While the motion to recommit with instructions is not divisible, a substantially and grammatically distinct amendment contained in a successful motion to recommit with instructions may be divided when reported back to the House forthwith.

On June 29, 1993,[17] a motion to recommit a general appropriation bill with instructions to report the bill back immediately with an amendment of two parts was pending when a parliamentary inquiry was directed to the Speaker Pro Tempore. The inquiry assumed that the motion to recommit with instructions was not divisible[18] but was directed to the divisibility of the amendment in the event the motion to recommit were to be adopted.

MR. [JOHN T.] MYERS of Indiana: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE:[19] Is the gentleman opposed to the bill?

MR. MYERS of Indiana: In its present form, I am, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Myers of Indiana moves to recommit the bill H.R. 2491, to the Committee on Appropriations with instructions to report back the same to the House forthwith with the following amendments:
>
> On page 69, after line 2, insert the following new section:
>
> "SEC. . Notwithstanding any other provision of this Act, except for Title I, Department of Veterans Affairs, each amount appropriated or otherwise made available that is not re-

14. 102 CONG. REC. 6157, 84th Cong. 2d Sess.
15. Sam Rayburn (Tex.).
16. See also 93 CONG. REC. 7845, 80th Cong. 1st Sess., June 27, 1947.
17. 139 CONG. REC. 14617, 14618, 103d Cong. 1st Sess.
18. See 5 Hinds' Precedents § 6134; 8 Cannon's Precedents §§ 2737, 3170.
19. G. V. (Sonny) Montgomery (Miss.).

quired to be appropriated or otherwise made available by a provision of law is hereby reduced by 6 percent.";

And on page 58, line 16, strike "$5,000,000" and insert in lieu thereof "$25,000,000".

THE SPEAKER PRO TEMPORE: The gentleman from Indiana [Mr. Myers] is recognized for 5 minutes in support of his motion to recommit.

PARLIAMENTARY INQUIRY

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. SOLOMON: Mr. Speaker, I would just propound the question, if the motion to recommit is adopted, is it not then in order for a demand for a division of the question under the rules of the House?

THE SPEAKER PRO TEMPORE: If the motion to recommit is adopted, the amendment in the form presented could be divided when reported back to the House forthwith.

MR. SOLOMON: I thank the Chair.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit.

§ 46. Motions for the Previous Question

§ 46.1 A motion for the previous question cannot be divided.

On Apr. 25, 1940,[20] Mr. Edward E. Cox, of Georgia, moved the previous question on an amendment and the adoption of a resolution pertaining to the wage-hour law. Mr. Hamilton Fish, Jr., of New York, inquired as to whether such a motion was divisible thereby prompting the following discussion:

MR. FISH: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[1] The gentleman will state it.

MR. FISH: Mr. Speaker, would it be in order to have separate votes on the two propositions?

THE SPEAKER PRO TEMPORE: A motion of the previous question cannot be divided.

MR. [PHIL] FERGUSON [of Oklahoma]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. FERGUSON: Can a separate vote be had on the two propositions if the previous question is ordered?

THE SPEAKER PRO TEMPORE: If the previous question is ordered, the question will first recur on the amendment offered by the gentleman from Georgia and then on the rule.

MR. [REUBEN T.] WOOD [of Missouri]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WOOD: The vote will be on the amendment?

---

20. 86 CONG. REC. 5051, 76th Cong. 3d Sess.

1. Sam Rayburn (Tex.).

THE SPEAKER PRO TEMPORE: The vote now is on the previous question. If the previous question is ordered, the vote will then be on the amendment offered by the gentleman from Georgia and then on the resolution, as amended or not.

The previous question was ordered, and separate votes were taken on the amendment and the resolution thereafter.

§ 47. Motions To Rise

§ 47.1 A motion that the Committee of the Whole rise and report a bill back to the House with the recommendation that the enacting clause be stricken out is not divisible.

On Dec. 15, 1937,[2] Mr. Lyle Boren, of Oklahoma, moved that the Committee of the Whole rise and report a Senate bill back to the House with the recommendation that the enacting clause be stricken out. Mr. Clarence E. Hancock, of New York, inquired as to whether the motion was divisible. The Chairman[3] ruled that such a motion was not divisible.

2. 82 CONG. REC. 2125, 75th Cong. 2d Sess.
3. John W. McCormack (Mass.).

§ 48. Motions To Strike Out and Insert

Rule XVI clause 7, explicitly provides that a motion to strike out and insert is indivisible.[4] Where it is proposed to strike out text and insert new language embracing several connected matters, it is not in order to demand a separate vote on each of those different propositions[5] except through an amendment process addressing all or a portion of the text proposed to be inserted.

The doctrine applies to a pending House amendment to a bill under consideration as well as to a Senate amendment. So where there is pending a House bill and a Senate amendment striking the House text and substituting new language, the motion to concur in the Senate amendment is not divisible as between concurring and amending. However, a special order, reported from the Committee on Rules or brought up by unanimous consent or under suspension, can be adopted which would subject the Senate text to separate votes on its various provisions.

§ 48.1 Where a motion to concur in a Senate amendment

4. *House Rules and Manual* § 793 (1995).
5. 5 Hinds' Precedents § 6124.

is divided pursuant to a special rule permitting that procedure, the Chair puts the question on the first portion of the Senate amendment, and then on the remaining portion which was the portion targeted for a separate vote by the special rule.

In the 103d Congress, the House had before it a resolution reported as a special order of business from the Committee on Rules. The resolution made it in order to move to take from the Speaker's table a House bill dealing with the extension of emergency unemployment compensation and to concur in the Senate amendment. The Senate amendment was in the nature of a substitute for the House text. The proceedings of Mar. 4, 1993,[6] were as follows:

EMERGENCY UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1993

Mr. Moakley, from the Committee on Rules, submitted a privileged report (Rept. No. 103–26) on the resolution (H. Res. 115) providing for the consideration of the Senate amendment to the bill (H.R. 920) to extend the emergency unemployment compensation program, and for other purposes, which was referred to the House Calendar and ordered to be printed:

H. RES. 115

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House, any rule of the House to the contrary notwithstanding, a motion to take from the Speaker's table the bill (H.R. 920) to extend the emergency unemployment compensation program, and for other purposes, with the Senate amendment thereto, and to concur in the Senate amendment. The Senate amendment shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means or their respective designees. The previous question shall be considered as ordered on the motion to final adoption without intervening motion. The motion shall be divided for a separate vote on concurring in section 7 of the Senate amendment, any rule of the House to the contrary notwithstanding.

MR. [JOHN JOSEPH] MOAKLEY [of Massachusetts]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 115 and ask for its immediate consideration.

The Clerk read the resolution.

THE SPEAKER PRO TEMPORE:[7] The question is, will the House now consider House Resolution 115?

The question was taken; and, two-thirds having voted in favor thereof, the House agreed to consider House Resolution 115.

THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts [Mr. Moakley] is recognized for 1 hour.

MR. MOAKLEY: Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. Quillen], pending

6. 4139 CONG. REC. 4163, 4164, 103d Cong. 1st Sess.

7. Romano L. Mazzoli (Ky.).

which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 115 makes it in order to consider in the House—any rule to the contrary notwithstanding—a motion to take from the Speaker's table H.R. 920 with the Senate amendment, and to agree to the Senate amendment. The Senate substitute is the same as the House bill with the addition of a freeze on Members' pay for calendar year 1994 at this year's level.

The rule provides 1 hour of general debate. The rule also automatically divides the question, allowing a separate vote on the last section of the bill, elimination of cost of living adjustment for Members of Congress in 1994. Mr. Speaker, the division is in order any rule of the House to the contrary notwithstanding. . . .

Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table . . .

MR. MOAKLEY: Mr. Speaker, pursuant to House Resolution 115, I move to take from the Speaker's table the bill (H.R. 920) "an Act to extend the emergency unemployment compensation program, and for other purposes", with the Senate amendment thereto, and to concur in the Senate amendment.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: Under the rule, the Senate amendment is considered as read.

The text of the Senate amendment is as follows:

Senate amendment: Strike out all after the enacting clause and insert:

section 1. short title.

This Act may be cited as the "Emergency Unemployment Compensation Amendments of 1993".

SEC. 2. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) GENERAL RULE.—Sections 102(f)(1) and 106(a)(2) of the Emergency Unemployment Compensation Act of 1991 (Public Law 102–164, as amended) are each amended by striking "March 6, 1993" and inserting "October 2, 1993".

SEC. 7. ELIMINATION OF COST OF LIVING ADJUSTMENT FOR MEMBERS OF CONGRESS IN 1994.

(a) COST OF LIVING ADJUSTMENT.—Notwithstanding section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)), the cost of living adjustment (relating to pay for Members of Congress) which would become effective under such provision of law during calendar year 1994 shall not take effect.

(b) SEVERABILITY.—If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this Act, or an amendment made by this Act, or the application of such provision to other persons or circumstances, shall not be affected.

THE SPEAKER PRO TEMPORE: Under the rule, the gentleman from California [Mr. Matsui] will be recognized for 30 minutes, and the gentleman from Pennsylvania [Mr. Santorum] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. Matsui].

MR. MATSUI: Mr. Speaker, I yield myself such time as I may consume.

After adoption of the resolution, and at the conclusion of the debate provided therein, the provision of the rule which permitted the separate vote was implemented as follows:

> MR. [ROBERT T.] MATSUI [of California]: Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

THE SPEAKER PRO TEMPORE: All time has expired.

Pursuant to House Resolution 115, the previous question is ordered on the motion, and pursuant to House Resolution 115, the question on concurring in the Senate amendment will be divided.

The first question before the House is on concurring in sections 1 through 6 of the Senate amendment.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

MR. MATSUI: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—ayes 247, nays 156, not voting 27, as follows: . . .

THE SPEAKER PRO TEMPORE: The Chair will advise the Members that the question, having been divided, now before the House is on concurring in section 7 of the Senate amendment which, the Chair advises, deals with the cost-of-living adjustment.

The question, therefore, is on concurring in section 7 of the Senate amendment to H.R. 920.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [RICK] SANTORUM [of Pennsylvania]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 403, noes 0, answered "present" 3, not voting 24, as follows: . . .

So section 7 of the Senate amendment to H.R. 920 was concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

§ 49. Propositions Affecting Several Persons

The rules of the House confirm that a resolution electing Members to standing committees of the House is not subject to division (Rule XVI clause 6). This prohibition is precise but other resolutions naming more than one person may be subject to a division if drafted in a manner which makes the proposition susceptible to the request.

Generally

§ 49.1 A resolution directing the Speaker to certify a report containing the names of three persons refusing to testify has been held to be indivisible.

On May 28, 1936,[8] Mr. Charles J. Bell, of Missouri, sought the certification of the Speaker with respect to the report of the committee[9] he chaired regarding the refusal of three witnesses to testify before that committee. The resolution embodying this request read as follows:

HOUSE RESOLUTION 532

Resolved, That the Speaker of the House of Representatives certify the report of the Select Committee to Investigate Old Age Pension Plans as to the willful and deliberate refusal of Francis E. Townsend, Clinton Wunder, and John B. Kiefer to testify before said committee, together with all the facts in connection therewith, under seal of the House of Representatives, to the United States attorney for the District of Columbia, to the end that the said Francis E. Townsend, Clinton Wunder, and John B. Kiefer may be proceeded against in the manner and form provided by law.

Shortly thereafter, Mr. Everett M. Dirksen, of Illinois, inquired as to the resolution's divisibility.

MR. DIRKSEN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[10] The gentleman will state it.

MR. DIRKSEN: Is the resolution divisible as to the three gentlemen named?

THE SPEAKER: It is not.

§ 49.2 A demand for a division of the question on a resolution confirming several nominations is in order at any time during the consideration of the resolution or after the previous question has been ordered thereon but before the question has been put by the Chair.

On Mar. 19, 1975,[11] a resolution confirming certain nominees to the Federal Election Commission was made in order by unanimous consent. The proceedings were as follows:

MR. [WAYNE L.] HAYS of Ohio: Mr. Speaker, by direction of the Committee on House Administration, I call up House Resolution 314 and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 314

Resolved, That pursuant to the Federal Election Campaign Act Amendments of 1974, Public Law 93–443, the following named individuals be confirmed for appointment to the Federal Election Commission:

(a) Joan D. Aikens of Pennsylvania for a term ending on the April 30 first occurring more than six months after the date on which she is appointed;

(b) Robert O. Tiernan of Rhode Island for a term ending one year after

8. 80 CONG. REC. 8222, 74th Cong. 2d Sess.

9. The Select Committee to Investigate Old Age Pension Plans.

10. Joseph W. Byrns (Tenn.).

11. 121 CONG. REC. 7344, 7345, 7353, 7354, 94th Cong. 1st Sess.

the April 30 on which the term of the member referred to in clause (a) immediate above ends;

(c) Neil O. Staebler of Michigan for a term ending two years thereafter;

(d) Thomas E. Harris of Virginia for a term ending three years thereafter;

(e) Vernon W. Thomson of Wisconsin for a term ending four years thereafter; and

(f) Thomas B. Curtis of Missouri for a term ending five years thereafter.

MR. HAYS of Ohio (during the reading): Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the Record.

THE SPEAKER:[12] Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE SPEAKER: Is there objection to the present consideration of the resolution?

MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Speaker, reserving the right to object, and I do not think I will object at this time, but I would like to ask the distinguished chairman of the committee a question.

It is my understanding that there will be approximately 1 hour of debate, which the gentleman from Ohio has agreed to share with the minority?

MR. HAYS of Ohio: That is correct.

MR. DICKINSON: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. DICKINSON: Mr. Speaker, is this resolution, as it is presented at this time or later, divisible so that we can demand a separate vote on one or all of the six nominees?

THE SPEAKER: If consent for the consideration of the resolution is given, the resolution is subject to a division of the question with respect to the various nominations.

MR. DICKINSON: And at that time it will be proper for me, or any other Member, to ask for a separate vote on any one or more of the nominees?

THE SPEAKER: If consent is granted for the consideration of the resolution, any Member can ask for a division of the question at the proper time.

MR. DICKINSON: I thank the Speaker.

MR. HAYS of Ohio: Mr. Speaker, I yield myself such time as I may consume.

MR. DICKINSON: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: Does the gentleman from Ohio yield to the gentleman from Alabama?

MR. HAYS of Ohio: I yield to the gentleman from Alabama.

THE SPEAKER: The gentleman will state it.

MR. DICKINSON: Mr. Speaker, I wanted to make sure I understood, and I would ask the Chair, when is the proper time to ask for a division of the question?

THE SPEAKER: Now, or when the previous question is ordered.

MR. DICKINSON: Mr. Speaker, I will at this time ask for a division of the nominees individually.

THE SPEAKER: The gentleman asks for a division on all the nominations, and the question will be divided when put. . . .

The previous question was ordered.

THE SPEAKER: Pursuant to the request of the gentleman from Alabama

12. Carl Albert (Okla.).

(Mr. Dickinson), the question on the adoption of the resolution will be divided.

The Clerk will report the first portion of the resolution.

The Clerk read as follows:

> *Resolved*, That pursuant to the Federal Election Campaign Act Amendments of 1974, Public Law 93–443, the following named individuals be confirmed for appointment to the Federal Election Commission:
>
> (a) Joan D. Aikens of Pennsylvania for a term ending on the April 30 first occurring more than six months after the date on which she is appointed;

THE SPEAKER: The question is on the part of the resolution including the nomination of Joan D. Aikens.

The first part of the resolution was agreed to and the nomination was confirmed.

THE SPEAKER: The Clerk will report the next portion of the resolution.

The Clerk read as follows:

> (b) Robert O. Tiernan of Rhode Island for a term ending one year after the April 30 on which the term of the member referred to in clause (a) immediate above ends;

THE SPEAKER: The question is on the portion of the resolution which includes the nomination of Robert O. Tiernan.

Clause (b) of the resolution was agreed to and the nomination was confirmed.

THE SPEAKER: The Clerk will report the next portion of the resolution.

The Clerk read as follows:

> (c) Neil O. Staebler of Michigan for a term ending two years thereafter:

THE SPEAKER: The question is on the portion of the resolution which includes the nomination of Neil O. Staebler.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. DICKINSON: Mr. Speaker, on that I demand the yeas and nays. . . .

Clause (c) of the resolution was agreed to and the nomination was confirmed.

The result of the vote was announced as above recorded.

THE SPEAKER: The Clerk will report the next portion of the resolution.

The Clerk read as follows:

> (d) Thomas E. Harris of Virginia for a term ending three years thereafter;

THE SPEAKER: The question is on clause (d) of the resolution including the nomination of Thomas E. Harris.

Clause (d) of the resolution was agreed to and the nomination was confirmed.

THE SPEAKER: The Clerk will report the next portion of the resolution.

The Clerk read as follows:

> (e) Vernon W. Thomson of Wisconsin for a term ending four years thereafter; and

THE SPEAKER: The question is on clause (e) of the resolution which includes the nomination of Vernon W. Thomson.

Clause (e) was agreed to and the nomination was confirmed.

THE SPEAKER: The Clerk will report the final portion of the resolution.

The Clerk read as follows:

> (f) Thomas B. Curtis of Missouri for a term ending five years thereafter.

THE SPEAKER: The question is on the final clause of the resolution including the nomination of Thomas B. Curtis.

Clause (f) was agreed to and the nomination was confirmed.

A motion to reconsider the votes whereby the various parts of the resolution were agreed to was laid on the table.

THE SPEAKER: The Clerk will notify the Senate of the action of the House.

§ 49.3 A resolution with two resolve clauses separately directing the Speaker to certify to the United States attorney the contemptuous conduct of two individuals is subject to a demand for a division of the question as to each individual.

In the 74th Congress, Speaker Joseph W. Byrns, of Tennessee, had held that one contempt resolution certifying three persons in one resolved clause was not divisible since the resolution was drafted in a manner that was grammatically indivisible. In the present case, the Foreign Affairs Committee was advised to draft separate resolved clauses for each witness, as logically each certification should be subject to a separate vote. On Feb. 27, 1986,[13] the chairman of the Committee on Foreign Affairs sought recognition:

MR. [DANTE B.] FASCELL [of Florida]: Mr. Speaker, by direction of the Committee on Foreign Affairs, I offer a privileged resolution (H. Res. 384) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 384

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Ralph Bernstein to answer questions of the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law; and be it further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Joseph Bernstein to answer questions of the Subcommittee of Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law.

THE SPEAKER PRO TEMPORE: The gentleman from Florida [Mr. Fascell] is recognized for 1 hour. . . .

MR. FASCELL: Mr. Speaker, for the purposes of debate only, I yield 30 minutes to the gentleman from Iowa [Mr. Leach]. I yield the remainder of my time for the purposes of debate to the gentleman from New York [Mr. Solarz], and pending that, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the approval of House Report 99–462, which concerns proceedings against Ralph Bernstein and Joseph Bernstein. This action is made necessary by the

13. 132 CONG. REC. 3040, 3048, 3049, 3050, 3061, 3062, 99th Cong. 2d Sess.

refusal of these two individuals to cooperate with the investigation of the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs. . . .

MR. [JIM] LEACH of Iowa: Mr. Speaker, I rise in support of the report of the Committee on Foreign Affairs regarding the refusals of Joseph and Ralph Bernstein to answer certain questions. . . .

The subcommittee's inquiry was well founded in legislative purpose. Joseph and Ralph Bernstein demonstrated a contempt of Congress by refusing to cooperate with that inquiry. However, I would like to emphasize again, and I'm sure the distinguished chairman of the Subcommittee share this preventive, that the subcommittee prefers to seek information and not punitive actions against these witnesses. They hold the keys to their potential incarceration in their pockets. We continue to hope that Joseph and Ralph Bernstein will cooperate with the subcommittee in its search for the truth in this investigation. In the meantime, I urge my colleagues to support the contempt citation before us to protect the legislative powers and responsibilities of this institution. In this regard, however, as they are individuals of differing circumstances, I demand division of the question.

THE SPEAKER PRO TEMPORE: The gentleman's rights will be protected. The question will be divided. . . .

MR. [STEPHEN J.] SOLARZ [of New York]: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

MR. LEACH of Iowa: Mr. Speaker, I renew my demand for a division.

THE SPEAKER PRO TEMPORE: The Clerk will report the first part of the resolution.

The Clerk read as follows:

> *Resolved,* That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Ralph Bernstein to answer questions of the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law;

THE SPEAKER PRO TEMPORE: The question is on the first part of the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

THE SPEAKER PRO TEMPORE: The Clerk will report the second part of the resolution.

The Clerk read as follows:

> *Resolved,* That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Joseph Bernstein to answer questions of the Subcommittee of Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law.

THE SPEAKER PRO TEMPORE: The question is on the second part of the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. LEACH of Iowa: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 343, noes 50, not voting 41, as follows: . . .

§ 49.4 Where an amendment in the form of a limitation is offered to an appropriation bill providing that no part of the appropriation shall be paid to several individuals named, such amendment is divisible and a separate vote may be had on each name.

On Feb. 5, 1943,[14] Mr. Joseph E. Hendricks, of Florida, offered an amendment to an appropriation bill then before the Committee of the Whole.

The Clerk read as follows:

Amendment offered by Mr. Hendricks: Page 12, line 22, after the word "Treasury", strike out the period and insert a colon and the following: "*Provided further,* That no part of any appropriation contained in this act shall be used to pay the compensation of William Pickens, Frederick L. Schuman, Goodwin B. Watson, William E. Dodd, Jr., Paul R. Porter, John Herling, Paul F. Brissenden, David J. Saposs, Maurice Parmelee, Harold Loeb, Sam Schmerler, Emil Jack Lever, David Lasser, Tom Tippett, Henry C. Alsberg, David Karr, Guiseppi Facci, David Wahl, Hugh Miller, Walter Gellhorn, Karl Borders, Jack Fahy, Nathaniel Weyl, Robert Morss Lovett, Merle Vincent, Alice Barrows, Arthur F. Goldschmidt, Marcus I. Goldman, Leonard Emil Mins, Henry T. Hunt, Mary McLeod Bethune, Harry C. Lamberton, T. A. Bisson, Katherine Kellock, Jay Deiss, Milton V. Freeman, George Slaff, A. C. Shire, and Edward Scheunemann."

Mr. John H. Folger, of North Carolina, rose subsequently to make a point of order and stated:

. . . Thirty-eight or forty names are included within the amendment, and I make the point of order that it is out of order for that reason. Each one must be taken separately. It is a divisible amendment.

The Chairman[15] subsequently overruled Mr. Folger's point of order, noting that:

. . . [W]hen it comes to voting on the amendment, should the House so desire, the amendment is divisible and a separate vote could be had with respect to each individual name.

§ 49.5 A resolution reported from an elections committee providing that one individual is not entitled to a seat in the House and that another individual is entitled to a seat has been held to be divisible.

On June 9, 1938,[16] Mr. John H. Kerr, of North Carolina, called up House Resolution 482, which stated:

Resolved, That Arthur B. Jenks is not entitled to a seat in the House of

14. 89 Cong. Rec. 645, 646, 78th Cong. 1st Sess.

15. William W. Courtney (Tenn.).

16. 83 Cong. Rec. 8642, 8660, 75th Cong. 3d Sess.

Representatives in the Seventy-fifth Congress from the First Congressional District of the State of New Hampshire; and be it further

Resolved, That Alphonse Roy is entitled to a seat in the House of Representatives in the Seventy-fifth Congress from the First Congressional District of the State of New Hampshire.

After debate, Mr. Bertrand H. Snell, of New York, demanded a division of the question.

The Speaker[17] ruled that Mr. Snell was "entitled to ask for a division of the question."

As to Election of House Officers

§ 49.6 Prior to adoption of the rules, a resolution providing for the election of the officers of the House is divisible.

On Jan. 21, 1971,[18] Mr. Olin E. Teague, of Texas, sought immediate consideration of the following resolution:

H. RES. 1

Resolved, That W. Pat Jennings, of the Commonwealth of Virginia, be, and he is hereby, chosen Clerk of the House of Representatives;

That Zeake W. Johnson, Jr., of the State of Tennessee, be, and he is hereby, chosen Sergeant at Arms of the House of Representatives;

That William M. Miller, of the State of Mississippi, be, and he is hereby, chosen Doorkeeper of the House of Representatives;

That H. H. Morris, of the Commonwealth of Kentucky, be, and he is hereby, chosen Postmaster of the House of Representatives;

That Reverend Edward G. Latch, D.D., of the District of Columbia, be, and he is hereby, chosen Chaplain of the House of Representatives.

Mr. John B. Anderson, of Illinois, then requested a division of the question so that a separate vote could be obtained with respect to the Office of the Chaplain. The Speaker[19] honored Mr. Anderson's request, and that portion of the resolution was voted on and agreed to.[20]

§ 50. Propositions Considered Under a Motion To Suspend the Rules

§ 50.1 It is not in order to demand a division of the question on a proposition considered under a motion to suspend the rules.

On Sept. 20, 1943,[1] Mr. John W. McCormack, of Massachusetts,

17. William B. Bankhead (Ala.).
18. 117 CONG. REC. 13, 92d Cong. 1st Sess.
19. Carl Albert (Okla.).
20. For a similar instance, see 113 CONG. REC. 27, 90th Cong. 1st Sess., Jan. 10, 1967. This procedure is usually followed on opening day of each Congress in order to show unanimity of support for the Chaplain of the House.
1. 89 CONG. REC. 7646, 7655, 78th Cong. 1st Sess.

moved to suspend the rules and agree to the following resolution:

> *Resolved*, That the time for debate on a motion to suspend the rules and pass House Concurrent Resolution 25 shall be extended to 4 hours, such time to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs: and said motion to suspend the rules shall be the continuing order of business of the House until finally disposed of.

A discussion of the resolution ensued after which the following exchange took place:

> MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Speaker, a further parliamentary inquiry.
>
> THE SPEAKER:[2] The gentleman will state it.
>
> MR. DIRKSEN: The resolution contains two substantive proposals. Is it by reason of this fact divisible?
>
> THE SPEAKER: Not under a suspension of the rules, because the first proposal suspends all the rules.

§ 51. Reports From the Committee of the Whole on Amendments Considered Therein

When Senate amendments to a House bill are referred to the Committee of the Whole, the text for consideration in that Committee is the language of the Senate amendment. When the text of a bill is before the Committee of the Whole, the Committee has only the authority to recommend changes to that text. The Chairman's report, when the Committee rises, is that "the Committee of the Whole has had under consideration the bill H.R. 1234 and reports the same back with the recommendation that the bill pass with the following amendments." When Senate amendments are reported back, the report is that the "Senate amendment be disagreed to, agreed to, or agreed to with an amendment." In either case, each amendment recommended by the Committee of the Whole is subject to being voted on separately, absent a special rule or unanimous consent.

§ 51.1 A recommendation from the Committee of the Whole that a Senate amendment be concurred in with an amendment striking out the text of the Senate amendment and inserting new text is not divisible as between concurring and the amendment.

On July 12, 1945,[3] the House resolved itself into the Committee of the Whole for the purpose of considering a bill (H.R. 3368)

2. Sam Rayburn (Tex.).

3. 91 CONG. REC. 7474, 7489, 7493, 7494, 79th Cong. 1st Sess.

making appropriations for war agencies and for other purposes, with Senate amendments. The Chairman[4] directed the Clerk to report the first Senate amendment.

The Clerk read the Senate amendment as follows:

Senate Amendment No. 1: Page 1, line 9, insert:

COMMITTEE ON FAIR EMPLOYMENT PRACTICE

Salaries and expenses: For all expenses necessary to enable the Committee on Fair Employment Practice to carry out any functions lawfully vested in it by Executive Orders No. 8802 and 9346, including salary of a Chairman at not to exceed $8,000 per annum and 6 other members at not to exceed $25 per diem when actually engaged; travel expenses (not to exceed $63,800); expenses of witnesses in attendance at Committee hearings, when necessary; printing and binding (not to exceed $4,800); purchase of newspapers and periodicals (not to exceed $500); not to exceed $694 for deposit in the general fund of the Treasury for cost of penalty mail as required by section 2 of the act of June 28, 1944 (Public Law 364); and the temporary employment of persons, by contract or otherwise, without regard to section 3709 of the Revised Statutes and the civil-service and classification laws (not to exceed $8,900); $250,000: *Provided*, That no part of the funds herein appropriated shall be used to pay the compensation of any person to initiate, investigate, or prosecute any complaint against any defendant where such defendant does not have the same right to appeal an adverse decision of the Committee on Fair Employment Practice to the President of the United States, or to refer said complaint to the President of the United States for final disposition, as is asserted by or allowed the said Committee on Fair Employment Practice in cases where persons complained against refuse to abide by its orders: *Provided further*, That no part of this appropriation shall be used to pay the compensation of any person to initiate, investigate, or prosecute any proceedings against any person, firm, or corporation which seeks to effect the seizure or operation of any plant or other property of such person, firm, or corporation by Federal authority for failure to abide by any rule or regulation of the Committee on Fair Employment Practice, or for failure to abide by any order passed by the Committee on Fair Employment Practice: *Provided further*, That no part of the funds herein appropriated shall be used to pay the compensation of any person employed by said Committee on Fair Employment Practice who issues or attempts to enforce any rule, regulation, or order which repeals, amends, or modifies any law enacted by the Congress.

Mr. Clarence Cannon, of Missouri, offered an amendment which, as additionally amended by Mr. Francis H. Case, of South Dakota, was subsequently agreed to after debate.

A motion that the Committee rise and report the bill back to the House was agreed to and the following then occurred:

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Sparkman, Chairman of the Committee of the Whole House on the State of the Union, reported that that

4. John J. Sparkman (Ala.).

Committee, having had under consideration the Senate amendments to the bill (H.R. 3368) making appropriations for war agencies for the fiscal year ending June 30, 1946, and for other purposes, directed him to report the same back to the House with the recommendation that the House concur in Senate amendment numbered 1, with an amendment, and that the House disagree to Senate amendments numbered 2 to 33, inclusive, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon.

MR. CANNON of Missouri: Mr. Speaker, I move the previous question.

THE SPEAKER:[5] The Clerk will report the first recommendation of the Committee [Mr. Cannon's amendment, as amended].

The Clerk read as follows:

> The Committee of the Whole House on the State of the Union recommends that the House concur in Senate amendment No. 1, with the following amendment:
>
> "Strike out the matter proposed to be inserted by Senate amendment No. 1 and insert in lieu thereof the following:
>
> "'COMMITTEE ON FAIR EMPLOYMENT PRACTICE
>
> "'Salaries and expenses: For completely terminating the functions and duties of the Committee on Fair Employment Practice, including such of the objects and limitations specified in the appropriation for such agency for the fiscal year 1945 as may be incidental to its liquidation, $250,000: *Provided*, That if and until the Committee on Fair Employment Practice is continued by an act of Congress, the amount named herein may be used for its continued operation until an additional appropriation shall have been provided: *Provided further*, That in no case shall this fund be available for expenditure beyond June 30, 1946."'

THE SPEAKER: The question is on agreeing to the recommendation.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RANKIN: As I understand it, this entire amendment, beginning on line 9, page 1, and ending on line 14, page 3, as amended, is a Senate amendment. It is brought in here as a Senate amendment. Now the question is on adopting that Senate amendment, the entire amendment; not adopting the amendment offered by the gentleman from Missouri to the amendment, but on adopting the entire FEPC amendment?

THE SPEAKER: The question is on the motion agreed to in Committee of the Whole. That is, to agree to the Senate amendment with an amendment. There is no division of the question, if that is what the gentleman is asking.

MR. RANKIN: Then we have a right to vote on whether or not we will adopt the Senate amendment as amended.

THE SPEAKER: There is just one question before the House. That is, to concur in the recommendation of the Committee of the Whole.

MR. RANKIN: Mr. Speaker, I demand a separate vote on this entire Senate amendment. The rules of the House provide that when an amendment is brought in, even though it is amended in Committee of the Whole, when we

5. Sam Rayburn (Tex.).

get back to the House we do not vote on amendments to the amendment but we vote on the amendment as amended.

THE SPEAKER: We vote on the recommendation which the Committee of the Whole made to the House. That is all there is before the House at this time.

MR. RANKIN: That is that the amendment as amended be adopted?

THE SPEAKER: That is the question.

MR. RANKIN: I would like to have a separate vote on that amendment.

THE SPEAKER: That is what we are attempting to do right now.[6]

§ 51.2 A proposition reported from the Committee of the Whole as an entire and distinct amendment may not be divided, but must be voted on as a whole in the House.

On July 20, 1951,[7] the House resolved itself into the Committee of the Whole for the purpose of considering a bill (H.R. 3871) to amend the Defense Production Act of 1950. When the Committee rose, the Speaker resumed the chair, and the Chairman[8] reported the bill back to the House with the amendments adopted by the Committee.

The Speaker stated that under the rule, the previous question was ordered, whereupon demands were made for separate votes on several amendments, and then an inquiry was directed to the Speaker, as follows:

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[9] The gentleman will state it.

MR. YATES: Mr. Speaker, is it in order to ask for a separate vote on the Sabath amendment at page 83, section 206?

THE SPEAKER: The Sabath amendment was not adopted in Committee of the Whole.

MR. YATES: It was a motion, however, Mr. Speaker, to strike out a portion of the committee amendment. Is it not therefore in order?

THE SPEAKER: Separate votes may be had only on amendments that have been reported by the Committee of the Whole.

MR. YATES: Has not the amendment been adopted by the Committee, Mr. Speaker?

THE SPEAKER: The Sabath amendment is an amendment to the com-

6. See 8 Cannon's Precedents § 2420 (and § 3192), where a Senate amendment considered in Committee of the Whole was amended by the insertion of several words. The recommendation of the Committee, that the Senate amendment be concurred in with the amendment, being rejected, the House then concurred in the Senate amendment. See also 8 Cannon's Precedents § 3176, which affirms the proposition that a motion to concur in a Senate amendment with an amendment is not divisible.

7. 97 CONG. REC. 8538, 8608, 82d Cong. 1st Sess.

8. Wilbur D. Mills (Ark.).

9. Sam Rayburn (Tex.).

mittee amendment and was not agreed to in Committee. . . .

MR. YATES: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. YATES: Mr. Speaker, may a separate vote be taken on a portion of a committee amendment, namely section 206(a) and (b) on page 83?

THE SPEAKER: A separate vote cannot be had on a portion of the amendment reported by the Committee of the Whole. The amendment must be voted on in its entirety as reported by the Committee of the Whole.[10]

§ 52. Motions To Recede and Concur

The divisibility of the motion to recede and concur may alter the preferential nature of certain motions following such division. The motion to recede and concur in a Senate amendment, for example, takes precedence over a motion to recede and concur with an amendment,[11] since, after the stage of disagreement has been reached, the motion which most quickly brings the two Houses together is preferential. But if the House recedes from its disagreement, then a motion to amend takes precedence over concurring.

In a Senate Amendment

§ 52.1 A motion that the House recede and concur in a Senate amendment is divisible upon request of any Member, and the House does not vote on whether to divide the motion.[12]

10. Similar, though less explicit, rulings may be found in later Congresses. See, for example, the following: 114 CONG. REC. 24242, 90th Cong. 2d Sess., July 30, 1968; 114 CONG. REC. 21546, 90th Cong. 2d Sess., July 16, 1968; 114 CONG. REC. 1421, 90th Cong. 2d Sess., Jan. 30, 1968; 113 CONG. REC. 29317, 90th Cong. 1st Sess., Oct. 18, 1967; and 104 CONG. REC. 16264, 85th Cong. 2d Sess., Aug. 5, 1958.

11. It is to be noted that the phrase "a motion to recede and concur with an amendment" is a term of art in parliamentary parlance and refers to a motion that the House recede from its disagreement to a Senate amendment and concur therein *with a further House amendment.* It must be distinguished from the "motion to recede and concur"—which refers to a simple motion that the House recede from its disagreement to a Senate amendment and decide to concur *in that Senate amendment.*

12. This precedent is well established. For similar instances, see 109 CONG. REC. 8506, 88th Cong. 1st Sess., May 14, 1963; 107 CONG. REC. 16325, 87th Cong. 1st Sess., Aug. 10, 1961; 106 CONG. REC. 14074, 86th Cong. 2d Sess., June 23, 1960; 91 CONG. REC. 4492, 79th Cong. 1st Sess., May

On June 28, 1972,[13] Mr. Robert R. Casey, of Texas, called up the conference report on a bill (H.R. 13955) making appropriations for the legislative branch for the fis-cal year ending June 30, 1973, and for other purposes. The vote was taken on the conference report, and it was agreed to.

Thereafter, the Speaker directed the Clerk to report the amendments remaining in disagreement between the Houses. Among those was Senate amendment No. 36, as to which the following discussion took place:

THE SPEAKER:[14] The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment numbered 36: Page 24, line 20, insert:

EXTENSION OF THE CAPITOL

Funds available under this appropriation may be used for the preparation of preliminary plans for the extension of the west central front: *Provided, however,* That no funds may be used for the preparation of the final plans or initiation of construction of said project until specifically approved and appropriated therefor by the Congress.

MR. CASEY of Texas: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Casey of Texas moves that the House further insist on its disagreement to the amendment of the Senate numbered 36.

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Stratton moves that the House recede from its disagreement to Senate amendment numbered 36 and concur therein.

MR. CASEY of Texas: Mr. Speaker, I request a division of the question.

MR. STRATTON: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. STRATTON: Is the request for a division of the question presumably to recede on one part and concur on the other part? Is this subject to a vote or something?

THE SPEAKER: All of the motion is subject to a vote. The question is on the matter of receding from disagreement.

MR. STRATTON: A further parliamentary inquiry, Mr. Speaker. If a Member is in favor of accepting the Senate amendment, then he would oppose the motion to divide on the vote. Is that correct?

THE SPEAKER: This is not a question of voting on the division but a question of voting on the motion to recede.

MR. STRATTON: A further parliamentary inquiry. My understanding is that if the motion to divide succeeds and passes, then it is possible parliamentarily to offer an amendment to the Senate amendment rather than

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11, 1945; and 89 CONG. REC. 5899, 78th Cong. 1st Sess., June 15, 1943.

13. 118 CONG. REC. 22959, 22974, 92d Cong. 2d Sess.

14. Carl Albert (Okla.).

to accept the Senate amendment. Is that not correct?

THE SPEAKER: If the motion to recede from disagreement is adopted, then a motion to concur in the Senate amendment with an amendment is in order. . . .

MR. STRATTON: Mr. Speaker, I am confused. My original question was whether the proposal to divide the question into two parts was subject to a vote.

THE SPEAKER: Division of a question is a right which any Member of the House enjoys.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, a parliamentary inquiry. At what point is it in order for the gentleman from New York to offer his motion to recede and concur with the Senate.

THE SPEAKER: The motion is pending. The gentleman from Texas asked for a division.

MR. YATES: Is it in order at this point for the gentleman from New York to offer his motion to recede and concur?

THE SPEAKER: That motion is pending. The question is shall the House recede from its disagreement to the Senate amendment.

The motion was agreed to.

§ 52.2 A preferential motion to recede and concur having been divided, the House agreed first to recede and subsequently to concur.

On Aug. 10, 1961,[15] Mr. George H. Mahon, of Texas, called up the conference report on a bill (H.R. 7851) making appropriations for the Department of Defense for the fiscal year ending June 30, 1962, and for other purposes. The report was agreed to, and the House then proceeded to consider the Senate amendments remaining in disagreement.

One of these amendments (No. 26) provided for $207,600,000 to be utilized for civil defense activities, including the hiring of motor vehicles and the providing of fallout shelters in government-owned or leased buildings. Mr. Mahon moved that the House recede from its disagreement to this amendment and concur therein.

Mr. John Taber, of New York, requested the question be divided and upon so doing, the Speaker Pro Tempore[16] put the question to the House.

The House having decided to recede from its disagreement to Senate amendment No. 26, Mr. Taber subsequently moved to concur in the amendment with an amendment.

After some discussion of the proposed Taber amendment which called for a reduction in the funding by $93 million, Mr. Mahon moved the previous question and the House rejected Mr. Taber's motion.

15. 107 CONG. REC. 15320, 15325, 15326, 15331, 15336, 87th Cong. 1st Sess.

16. Carl Albert (Okla.).

The motion to concur with an amendment having failed, the previously offered Mahon motion to concur in the Senate amendment was then put before the House. The motion was agreed to.[17]

§ 52.3 A motion to recede and concur in a Senate amendment having been divided, the House receded from disagreement, rejected both a motion to concur with an amendment and a motion to concur, and decided thereafter to insist on disagreement.

On May 14, 1963,[18] the conference report on the supplemental appropriation bill of 1963 (H.R. 5517) having been agreed to, Mr. Albert Thomas, of Texas, moved that the House recede from its disagreement to a Senate amendment No. 76, and concur therein with an amendment. Mr. Robert R. Barry, of New York, then offered a preferential motion to recede and concur in the Senate amendment. Mr. Thomas having demanded a division of the proposition, the motion to recede was entertained and subsequently agreed to.

Immediately thereafter, Mr. Thomas moved that the House concur in the Senate amendment with the same amendment which had been incorporated in Mr. Thomas' original motion. Since the House had already receded, this motion was now preferential to the remaining portion of the Barry motion. The Thomas proposal was rejected, however.

The question then recurred on the second part of the Barry motion (i.e., to concur in the Senate amendment) which was also rejected. Mr. George Meader, of Michigan, then moved that the House insist on its disagreement to the Senate amendment. This motion was agreed to, without discussion.

§ 52.4 A motion that the House recede from its disagreement and concur in a Senate amendment with an amendment is divisible only as between receding and then concurring with an amendment.

On Mar. 21, 1946,[19] the House had under consideration a conference report pertaining to the independent offices appropriation bill of 1947. Among those Senate amendments to the bill (H.R. 5201) which remained in disagreement were Nos. 10 and 18. After

17. See also 106 Cong. Rec. 14081, 86th Cong. 2d Sess., June 23, 1960.

18. 109 Cong. Rec. 8504, 8505, 8506, 8509–11, 88th Cong. 1st Sess.

19. 92 Cong. Rec. 2521, 2523, 2525, 79th Cong. 2d Sess.

the conference report was agreed to, the aforementioned amendments were discussed.

The first amendment remaining in disagreement was read to the House at the Speaker's[20] request.

> The Clerk read as follows:
>
> Senate amendment No. 10: Page 4, line 21, insert the following:
>
> EMERGENCY FUND FOR THE PRESIDENT
>
> Emergency fund for the President: Not to exceed $5,000,000 of the appropriation "Emergency fund for the President," contained in the First Supplemental National Defense Appropriation Act, 1943, as supplemented and amended, is hereby continued available until June 30, 1947: *Provided*, That no part of such fund shall be available for allocation to finance a function or project for which function or project a Budget estimate of appropriation was transmitted pursuant to law during the Seventy-ninth and Eightieth Congresses and such appropriation denied after consideration thereof by the Senate and House of Representatives or by the Committees on Appropriations of both bodies.

Mr. Joseph E. Hendricks, of Florida, then moved to recede and concur in the Senate amendment with the following amendment:

> After the word "Senate" in line 12 of said amendment strike out the remainder of the line and all of lines 13 and 14 and insert in lieu thereof the following: "or House of Representatives or by the Committee on Appropriations of either body."

20. Sam Rayburn (Tex.).

Mr. Richard B. Wigglesworth, of Massachusetts, asked for a division of the question. Mr. Hendricks having risen to a point of order that the question could not be divided, the Speaker ruled to the contrary. Thereafter, the motion, as divided, (i.e., to recede) was put to the House and agreed to.[1]

Effect of Division on Determining the Question

§ 52.5 The motion to recede and concur having been divided, the first vote applies only to the motion to recede.

On May 14, 1963,[2] Mr. Albert Thomas, of Texas, called up the conference report on a bill (H.R. 5517) making supplemental appropriations for the fiscal year ending June 30, 1963, and for other purposes. Following adoption of the report, the House considered Senate amendment No. 76.

This was a proposal to authorize the payment of some $73 million to the Government of the Republic of the Philippines in accordance with previously passed legislation dealing with war dam-

1. See also 80 CONG. REC. 7616, 74th Cong. 2d Sess., May 20, 1936.

2. 109 CONG. REC. 8502, 8505, 8506, 88th Cong. 1st Sess.

age claims and in conjunction with certain newly proposed conditions. Mr. Thomas moved that the House recede from its disagreement with the amendment and concur with an amendment.

Mr. Robert Barry, of New York, then offered a preferential motion that the House recede from its disagreement and concur in the Senate amendment. This motion, in turn, was followed by a demand from Mr. Thomas that the question be divided. The Speaker[3] then indicated that the first concept in the motion, that is, whether the House would recede from its disagreement to the Senate amendment, was the question under consideration.

§ 52.6 Where both the motion to adhere and the motion to recede and concur are pending, and a division of the latter motion is demanded, the vote comes first on the motion to recede.

On June 23, 1960,[4] Mr. J. Vaughan Gary, of Virginia, called up a bill (H.R. 10569) making appropriations for the Treasury and Post Office Departments, and the Tax Court of the United States for the fiscal year ending June 30, 1961, and for other purposes, with a Senate amendment thereto. Immediately after so doing, the stage of disagreement having been reached, Mr. Gary moved that the House adhere to its disagreement to the Senate amendment.

Mr. Clare E. Hoffman, of Michigan, then offered a preferential motion that the House recede from its disagreement and concur therein. Mr. Gary sought a division of the question on the preferential motion, and the Speaker Pro Tempore[5] recognized him for an hour to control the debate.

After some discussion of the matter, which pertained to how the franking privilege was to be used, Mr. John Taber, of New York, initiated the following exchange:

> MR. TABER: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE:[6] The gentleman will state it.
>
> MR. TABER: Is not the parliamentary situation this: The gentleman from Michigan [Mr. Hoffman] has offered a motion to recede and concur. The gentleman from Virginia asked for a division of the question. The parliamentary situation is this: We first vote on the question of receding, and if that carries we can vote on the other part of the motion?
>
> THE SPEAKER PRO TEMPORE: On the question of concurrence?

3. John W. McCormack (Mass.).
4. 106 CONG. REC. 14074, 14081, 86th Cong. 2d Sess.
5. Wilbur Mills (Ark.).
6. Francis E. Walter (Pa.).

MR. TABER: Yes.

THE SPEAKER PRO TEMPORE: That is correct.

MR. TABER: If the motion to recede is not agreed to, then that is the end of it?

THE SPEAKER PRO TEMPORE: No. The vote then would be on the motion to adhere.

The motion to adhere was not voted upon, however, as the motion to recede carried by a substantial margin.

§ 52.7 The motion to recede and concur having been divided, and the House having receded from its disagreement to a Senate amendment, the motion to concur with an amendment takes precedence over the motion to concur.[7]

On May 14, 1963,[8] the conference report on the supplemental appropriation bill of 1963 was before the House. Among those Senate amendments remaining in disagreement was a provision calling for some $73 million to be paid to the Philippine government for the purposes of war-damage compensation. Mr. Albert Thomas, of Texas, moved that the House recede from its disagreement to this amendment (No. 76) and concur with an amendment. After some discussion, Mr. Robert R. Barry, of New York, offered the preferential motion that the House recede and concur in Senate amendment No. 76. A division being demanded by Mr. Thomas, the motion to recede was agreed to, and Mr. Thomas then moved to concur with an amendment, which was part of his original motion. This motion now occupying a preferential status, it was entertained before the remaining portion of the Barry motion. Mr. Thomas' proposal was rejected, however, and the Speaker[9] then indicated that the question before the House was Mr. Barry's motion to concur.

§ 52.8 A motion to recede from disagreement to a Senate amendment and concur therein being divided, and the House having receded, if a preferential motion to concur with an amendment is offered and rejected, the question recurs on the motion to concur in the Senate amendment.

A motion to recede from disagreement to a Senate amendment and concur therein having

7. For more information about the disposition of amendments between the Houses, see Ch. 32, infra.

8. 109 CONG. REC. 8502, 8505, 8506, 8509, 8510, 88th Cong. 1st Sess.

9. John W. McCormack (Mass.).

been divided,[10] the motion to recede was agreed to.

Thereafter, a preferential motion to concur in the Senate amendment with an amendment was offered by Mr. Albert Thomas, of Texas. After some debate thereon, the Speaker put the question on that motion:

> THE SPEAKER:[11] The question is on the motion offered by the gentleman from Texas that the House concur in the Senate amendment, with an amendment.
>
> The motion was rejected.
>
> THE SPEAKER: The question now is on the second part of the motion offered by the gentleman from New York that the House concur in the Senate amendment.

Thus, the rejection of the preferential motion revives the second portion of the previously divided motion to recede and concur[12] unless another preferential motion is offered.

Effect of Division When Followed by Rejection of Motion To Recede

§ 52.9 The motion to recede and concur in a Senate amendment having been divided, the Chair informed a Member that the effect of voting down the motion to recede from disagreement to the Senate amendment would permit the offering of a motion to insist on disagreement.

On May 14, 1963,[13] the conference report on the supplemental appropriation bill of 1963 (H.R. 5517) having been agreed to, Mr. Albert Thomas, of Texas, moved that the House recede from its disagreement to a Senate amendment No. 76, and concur therein with an amendment. A preferential motion to recede and concur having been offered, Mr. Thomas demanded the division of the latter motion, and subsequently moved the previous question on the motion to recede.

Mr. George Meader, of Michigan, then rose and the following exchange took place:

> MR. MEADER: Mr. Speaker, a further parliamentary inquiry.
>
> THE SPEAKER:[14] The gentleman will state it.
>
> MR. MEADER: Would it be in order, either before the previous question is agreed to or thereafter, to offer a motion to further disagree with the Senate amendment?

10. 109 CONG. REC. 8506, 8509, 8510, 88th Cong. 1st Sess., May 14, 1963.
11. John W. McCormack (Mass.).
12. See also 93 CONG. REC. 9319, 80th Cong. 1st Sess., July 18, 1947.
13. 109 CONG. REC. 8504–06, 8508, 88th Cong. 1st Sess.
14. John W. McCormack (Mass.).

THE SPEAKER: The Chair will state that that can be accomplished, if desired, by voting down the motion to recede.

Parliamentarian's Note: It is in order, following the refusal of the House to recede, to entertain a motion to insist on disagreement.[15] They are not equivalent questions, since the House, upon refusing to recede, could also adhere.

§ 52.10 There being two motions currently pending—one to recede and concur in a Senate amendment with an amendment and the other a preferential motion to recede and concur—if the House refuses to recede when the motion to recede and concur is divided, both motions are then inoperable. The House has in effect reiterated its disagreement to the Senate amendment and a motion to further insist on (or a motion to adhere to) that position is in order.

On Dec. 16, 1943,[16] Mr. Clarence Cannon, of Missouri, called up the conference report on a supplemental defense appropriation bill for 1944 (H.R. 3598). The House subsequently agreed to the report, and discussion ensued with respect to those amendments remaining in disagreement between the Houses.

Among them was a Senate amendment No. 49, as to which Mr. Cannon offered a motion to recede and concur with an amendment. The Senate amendment dealt with a supplemental appropriation for the Bureau of Reclamation. Mr. Cannon's proposal read as follows:

In lieu of the sum of "$2,800,000" named in such amendment, insert "$700,000"; and in lieu of the sum of "$800,000" named in such amendment, insert "$200,000".

Shortly thereafter, Mr. Compton I. White, of Idaho, offered a preferential motion.

The Clerk read as follows:

Mr. White moves that the House recede from its disagreement to Senate amendment No. 49 and concur in the same.

Mr. Cannon then requested a division of the question, and the House refused to recede.

Thereafter, Mr. Cannon moved that the House further insist on its disagreement to the Senate amendment. This motion prompted a series of parliamentary in-

15. See also 103 CONG. REC. 15519, 85th Cong. 1st Sess., Aug. 21, 1957; 115 CONG. REC. 40902, 40912, 40915, 40921, 40922, 91st Cong. 1st Sess., Dec. 22, 1969.

16. 89 CONG. REC. 10753, 10756, 10777–80, 78th Cong. 1st Sess.

quiries from a number of Members:

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[17] The gentleman will state it.

MR. CASE: The first question for division was a division on the amendment offered by the gentleman from Idaho [Mr. White]. The House has refused to recede on the division of that motion. Then it seems to me that the question recurs on the motion offered by the gentleman from Missouri [Mr. Cannon] to recede and concur with an amendment. On that motion I ask for a division.

THE SPEAKER: The gentleman asks for a division of the question. The House has already refused to recede. Therefore, it would be rather anomalous if we had a division of the motion of the gentleman from Missouri, and voted again on the question of receding.

MR. CANNON of Missouri: Mr. Speaker, I insist on my motion that the House insist on its disagreement to the Senate amendment.

MR. CASE: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CASE: Since the motion which was offered by the gentleman from Idaho [Mr. White] was a preferential motion as against the motion offered by the gentleman from Missouri [Mr. Cannon], I question whether or not the gentleman can then move to insist. The vote, it seems to me, must recur on the motion previously pending, which was the motion of the gentleman from Missouri to recede and concur with an amendment. A division of the question is entirely different when two different propositions are before the House. The House has refused to recede on the dividing of the question offered by the gentleman from Idaho, but has not refused to recede on dividing the question offered by the gentleman from Missouri in his original motion.

THE SPEAKER: The gentleman from Missouri [Mr. Cannon] has moved to insist on disagreement to the Senate amendment. The Chair believes there is nothing to do at this time but to put the gentleman's motion.

The question is on the motion offered by the gentleman from Missouri, that the House insist on its disagreement.

Shortly thereafter, the Speaker put the question to a vote. The motion to insist carried, but was objected to on the ground that a quorum was not present. More parliamentary inquiries preceded the vote:

MR. [JOHN R.] MURDOCK [of Arizona]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MURDOCK: I am confused as to what the question is. Will the Chair restate it?

THE SPEAKER: The motion to recede was voted down. The only motion the gentleman from Missouri had left, therefore, was to further insist on the disagreement to the Senate amendment. That is what we are voting on now.

17. Sam Rayburn (Tex.).

MR. [CLINTON P.] ANDERSON of New Mexico: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ANDERSON of New Mexico: Did the gentleman from Missouri withdraw his motion to recede and concur with an amendment?

THE SPEAKER: He did not; it was not necessary. Because of the fact that a motion to recede had been voted down, a second motion to recede was not in order.

MR. [JOHN] TABER [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. TABER: The motion to recede and concur with an amendment having been displaced by a motion to recede and concur, and this motion having been divided so that we voted on the motion to recede alone, the only motion that could possibly be made would be the one the gentleman from Missouri did make, that the House further insist; is that correct?

THE SPEAKER: The Chair has so stated.

The roll was then called, and the motion to insist was agreed to.[18]

Effect of Division on Time Allotted for Debate

§ 52.11 A motion to recede and concur in a Senate amendment having been divided, the proponent of the initial motion retains control of the floor.

On Dec. 22, 1969,[19] the House having called up a conference report on a bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes, certain Senate amendments remained in disagreement between the Houses.

Mr. George H. Mahon, of Texas, moved that the House recede from its disagreement to the amendment of the Senate No. 33 and concur therein. A division of the question having been demanded, the Speaker put the first portion of the question before the House, and the following discussion ensued:

THE SPEAKER:[20] The question is, Will the House recede from its disagreement to the amendment of the Senate numbered 33?

MR. [CLARK] MACGREGOR [of Minnesota]: Mr. Speaker, a parliamentary inquiry.

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18. See also 89 CONG. REC. 7384, 78th Cong. 1st Sess., July 7, 1943, where the Speaker indicated that "the House cannot concur until it has receded;" and 86 CONG. REC. 5892, 76th Cong. 3d Sess., May 9, 1940, where the Speaker Pro Tempore answered a parliamentary inquiry by stating that the rejection of a motion to recede (which question had been divided from an original motion to recede and concur) would preclude the subsequent offering of a motion to concur with an amendment.

19. 115 CONG. REC. 40902, 40915, 91st Cong. 1st Sess.

20. John W. McCormack (Mass.).

THE SPEAKER: The gentleman will state it.

MR. MACGREGOR: I should like to ask the Speaker if the time for debate on the motion of the gentleman from Texas (Mr. Mahon) is under the control of the gentleman from Texas and if it is in order for me at this time to ask the gentleman from Texas to yield to me for 5 minutes?

MR. MAHON: I have agreed to yield to the gentleman from Minnesota for 5 minutes for the purpose of debate.

MR. MACGREGOR: Am I recognized, Mr. Speaker?

THE SPEAKER: The gentleman from Texas will be recognized for 1 hour, but the question before the House now is on the motion of the gentleman from Texas that the House recede from its disagreement to the Senate amendment.

The Speaker having confirmed Mr. Mahon's control of the time for debate, Mr. Mahon then yielded the floor to Mr. MacGregor for 5 minutes.

§ 52.12 Debate on a motion that the House recede from its disagreement to a Senate amendment and concur in the same is under the hour rule, and if the question is divided, the hour rule applies to each motion separately, unless the previous question has been ordered on the motion prior to the division of the question.

On May 9, 1940,[1] Mr. Clarence Cannon, of Missouri, moved that the House recede from its disagreement to a Senate amendment to the agricultural appropriation bill of 1941 and concur therein with an amendment which he sent to the Clerk's desk. Mr. Malcolm C. Tarver, of Georgia, then offered a preferential motion that the House recede from its disagreement and concur in the Senate amendment, itself. The question having been divided by request, the House entertained the motion to recede.

During the course of that debate, the following occurred:

MR. [WILLIAM M.] WHITTINGTON [of Mississippi]: Mr. Speaker, as I understand, there is 1 hour debate allowed on the motion to recede and concur. Request has been made for a division. My inquiry is this: Will there be 1 hour of debate on each motion?

THE SPEAKER:[2] The gentleman from Missouri [Mr. Cannon] controls the time. If one is demanded on the motion to recede, that hour is granted. Then an hour will be granted on the motion to concur.

MR. WHITTINGTON: That satisfies my inquiry.

Parliamentarian's Note: Under Rule XXVIII clause 2(b)(1), debate on a motion to dispose of an

1. 86 CONG. REC. 5887, 5889, 76th Cong. 3d Sess.
2. William B. Bankhead (Ala.).

amendment in disagreement is divided between the majority and minority parties—or divided three ways if both floor managers are in support of the motion and if another Member demands 20 minutes in opposition. See H. Res. 7, 131 CONG. REC. 393, 99th Cong. 1st Sess., Jan. 3, 1985.

E. POSTPONING VOTES; CLUSTERING VOTES; REDUCED VOTING TIME; SEPARATE VOTES

§ 53. Evolution of House Rules on Postponement and Reduced Voting Time

Introduction

The concepts of postponing votes, clustering a series of votes, and of reducing voting times were introduced into the rules by the adoption of House Resolution 5 on the first day of the 96th Congress.[1] Amendments were made to Rules I, XV, XXIII, and XXVII.[2] The first instance where the Speaker utilized his new authority to postpone a series of votes to another day occurred on Feb. 21, 1979,[3] when the debate on a series of 10 committee funding resolutions was conducted but where the votes were postponed until Feb. 26, 1979.[4]

Although the Speaker may not on his own volition and discretion reduce the times in which votes are taken with the electronic system, the House may authorize such action by unanimous consent or special order.

The Development of the Speaker's Postponement Authority and Its Place in the Rules

§ 53.1 In the 96th Congress, the Speaker was given discretionary authority to postpone record votes on the final passage of bills, the adoption of resolutions and conference reports to a time certain within two legislative days. In separate amendments to Rules XI and XXVII, the authority to postpone and "cluster" votes on resolutions reported from the Committee on Rules and on motions to suspend the rules

1. 125 CONG. REC. 7–10, 12, 13, 96th Cong. 1st Sess., Jan. 15, 1979.
2. *Id.* at pp. 8, 9.
3. 125 CONG. REC. 2906, 96th Cong. 1st Sess.
4. *Id.* at pp. 3255, 3256.

until the same or the next legislative day was clarified.

New rules adopted on Jan. 15, 1979,[5] included the following authorities [those parts of the resolution relating to postponing and clustering votes are shown in italic]:

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I offer a privileged resolution (H. Res. 5) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 5

Resolved, That the Rules of the House of Representatives of the Ninety-fifth Congress, including all applicable provisions of law which constituted the rules of the House at the end of the Ninety-fifth Congress, be, and they are hereby, adopted as the Rules of the House of Representatives of the Ninety-sixth Congress, with the following amendments included therein as part thereof, to wit: . . .

(2) In Rule I, clause 5 is amended by inserting "(a)" immediately after "5" and by adding at the end of such clause the following new paragraph:

"(b)(1) On any legislative day whenever a recorded vote or the yeas and nays are ordered on the question of passing bills or resolutions or agreeing to conference reports, or when a vote is objected to under clause 4 of Rule XV on the question of passing bills or resolutions or agreeing to conference reports, the Speaker may, in his discretion, postpone further proceedings on each such question to a designated time or place in the legislative schedule on that legislative day or within two legislative days.

"(2) At the time designated by the Speaker for further consideration of proceedings postponed under subparagraph (1), the Speaker shall put each question on which further proceedings were postponed, in the order in which that question was considered.

"(3) At any time after the vote has been taken on the first question on which the Speaker has postponed further proceedings under this paragraph, the Speaker may, in his discretion, reduce to not less than five minutes the period of time within which a rollcall vote by electronic device on the question may be taken without any intervening business on any or all of the additional questions on which the Speaker has postponed further proceedings under this paragraph.

"(4) If the House adjourns before all of the questions on which further proceedings were postponed under this paragraph have been put and determined, then, on the next following legislative day the unfinished business shall be the disposition of all such questions, previously undisposed of, in the order in which the questions were considered."; . . .

(11)(a) In Rule XI, clause 4(e) is amended to read as follows:

"(e)(1) On any legislative day when reports from the Committee on Rules are being considered, the Speaker may announce to the House, in his discretion, before consideration of the first resolution, that he will postpone further proceedings on such of the resolutions reported from that committee as he may designate if a recorded vote or the yeas and nays are ordered or if the vote is objected to under clause 4 of Rule XV when the Chair puts the question on the previous question or on the adoption of the resolution, until—

5. 125 CONG. REC. 7–9, 12, 96th Cong. 1st Sess.

"(A) all such resolutions on that legislative day have been considered and any debate thereon concluded, with the question having been put and determined on each such resolution on which the taking of the vote will not be postponed; or

"(B) the next legislative day, with the question having been put and determined on each such resolution on which the taking of the vote will not be postponed.

"(2) Where the Speaker has postponed votes pursuant to paragraph 4(e)(1)(A) of this clause, when the last of such resolutions so designated has been considered and any debate thereon concluded, with the question put and determined on each such resolution on which further proceedings were not postponed, the Speaker shall put the appropriate question on each such resolution on which further proceedings were postponed in the order in which each such resolution was considered.

"(3) Where the Speaker has postponed votes pursuant to paragraph (e)(1)(B) of this clause, on the next legislative day the Speaker shall put as unfinished business the appropriate question on each such resolution on which further proceedings were postponed in the order in which each such resolution was considered.";

(b) Redesignate subparagraphs (3) and (4) as (4) and (5) respectively. ; . . .

(18)(a) In Rule XXVII, amend clause 3 to read as follows:

"3. (a) When a motion to suspend the rules has been submitted to the House or has been seconded pursuant to clause 2 of this rule, it shall be in order, before the final vote is taken thereon, to debate the proposition to be voted upon for forty minutes, one-half of such time to be given to debate in favor of, and one-half to debate in opposition to, such proposition; and the same right of debate shall be allowed whenever the previous question has been ordered on any proposition on which there has been no debate.

"(b)(1) On any legislative day on which the Speaker is authorized to entertain motions to suspend the rules and pass bills or resolutions, including the last six days of a session, he may announce to the House, in his discretion, before entertaining the first such motion, that he will postpone further proceedings on each of such motions on which a recorded vote or the yeas and nays is ordered or on which the vote is objected to under clause 4 of Rule XV, until—

"(A) all of such motions on that legislative day have been entertained and any debate thereon concluded, with the question having been put and determined on each such motion on which the taking of the vote will not be postponed; or

"(B) the next legislative day, with the question having been put and determined on each such motion on which the taking of the vote will not be postponed.

"(2) Where the Speaker has postponed votes pursuant to paragraph (b)(1)(A) of this clause, when the last of all motions on that legislative day to suspend the rules and pass bills or resolutions has been entertained and any debate therein concluded, the Speaker shall put the question on each motion which further proceedings were postponed, in the order in which that motion was entertained.

"(3) Where the Speaker has postponed votes pursuant to paragraph (b)(1)(B) of this clause, on the next legislative day the Speaker shall put as unfinished business the question of each motion on which further proceedings were postponed, in the order in which that motion was entertained."; . . .

MR. WRIGHT: Mr. Speaker, I yield, for purposes of debate only, 30 minutes of that hour to the distinguished mi-

nority leader, the gentleman from Arizona (Mr. Rhodes), and pending that, I yield myself such time as I may require. . . .

The rules changes we propose are modest. Their thrust is to assist the House in facilitating the business of the House. I think basically these changes embodied in this resolution will do four things:

First, some of the changes would grant authority to the Speaker to group record votes in clusters in order to expedite the consideration of relatively noncontroversial legislation. The purpose of this, quite obviously, is to save time. . . .

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Speaker, consideration of our rules is an important area of discussion, for they are going to determine how we proceed in this House for the next 2 years.

The rules changes proposed are complex and technical. I am going to place in the Record an analysis and an expression of my concern over what I consider to be the more significant changes proposed by the majority, but I want to mention the two areas which could lead to the greatest mischief: the postponing of votes and the budget amendments.

Mr. Speaker, the clustering of votes at the end of the day or on the following day may expedite the business of this House, but that practice certainly will not lead to better legislation. It will actually encourage absenteeism, as was alluded to by the gentleman from Iowa (Mr. Grassley), and will tend to inhibit open debate and discussion.

Mr. Speaker, votes on rules reported and suspensions can actually be deferred until the next day, but it is my understanding that the Speaker would give prior notice of these votes if the votes would be deferred.

§ 53.2 In the 97th Congress, the House adopted changes to Rule I to consolidate under one clause the separate authorities to postpone record votes on a variety of issues.

In the process of adopting new rules for the 97th Congress, the House, on Jan. 5, 1981,[7] consolidated the various authorities for the Speaker to postpone record votes in Rule I clause 5. As part of the same amendment, the period of time for which a vote on a suspension motion can be postponed was increased from one to two legislative days. The new rule provided:

H. RES. 5

Resolved, That the Rules of the House of Representatives of the Ninety-sixth Congress, including all applicable provisions of law which constituted the Rules of the House at the end of the Ninety-sixth Congress, be, and they are hereby, adopted as the Rules of the House of Representatives of the Ninety-seventh Congress, with the following amendments included therein as part thereof, to wit:

(1) In Rule I, clause 4 is amended by adding at the end thereof the following new sentence: "The Speaker is author-

7. 127 CONG. REC. 98, 97th Cong. 1st Sess.

ized to sign enrolled bills whether or not the House is in session.".

(2) In Rule I, clause 5(b)(1) is amended to read as follows:

"(b)(1) On any legislative day whenever a recorded vote is ordered or the yeas and nays are ordered, or a vote is objected to under clause 4 of Rule XV on any of the following questions, the Speaker may, in his discretion, postpone further proceedings on each such question to a designated time or place in the legislative schedule on that legislative day or within two legislative days:

"(A) the question of passing bills;

"(B) the question of adopting resolutions;

"(C) the question of ordering the previous question on privileged resolutions reported from the Committee on Rules;

"(D) the question of agreeing to conference reports; and

"(E) the question of agreeing to motions to suspend the rules.".

Special Orders Used To Regulate Deferral and Clustering of Votes; Postponement Authority in Committee of the Whole

§ 53.3 The House for the first time, by the adoption of a special order, granted the Chairman of the Committee of the Whole special authority to defer requests for recorded votes, to cluster votes on amendments which are deferred, and to vary the order of consideration of amendments established in the special order.

In an effort to introduce more logical consideration of major issues in annual defense authorization bills, and to expedite their consideration, the Committee on Armed Services (redesignated as the Committee on National Security in the 104th Congress) has requested the Committee on Rules to report increasingly detailed and structured special orders governing consideration of such measures. The rule adopted by the House in the 102d Congress, second session, is illustrative of the detailed special orders which have been utilized in more recent Congresses. The text of House Resolution 474 was as follows:[8]

MR. [MARTIN] FROST [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 474 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 474

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House

8. Portions of the rule dealing with the amendment process and voting are shown in italics. 138 CONG. REC. 13239–41, 102d Cong. 2d Sess., June 3, 1992.

resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 5006) to authorize appropriations for fiscal year 1993 for military functions of the Department of Defense, to prescribe military personnel levels for fiscal year 1993, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill for failure to comply with section 302(f) of the Congressional Budget Act of 1974 are waived. After general debate, which shall be confined to the bill and the amendments made in order by this resolution and which shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, *the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Armed Services now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read.* All points of order against the committee amendment in the nature of a substitute for failure to comply with clause 7 of rule XVI, clause 5(a) of rule XXI, and section 302(f) of the Congressional Budget Act of 1974 are waived. No *amendment to the committee amendment in the nature of a substitute shall be in order except the amendments printed in the report of the Committee on Rules accompanying this resolution and amendments en bloc described in this resolution.* Pro forma amendments for the purpose of debate may be offered only by the chairman or ranking minority member of the Committee on Armed Services. Unless otherwise specified in this resolution, the amendments printed in the report of the Committee on Rules shall be considered in the order and manner specified in the report. Unless otherwise specified in the report, each amendment may be offered only by the named proponent or a designee, shall be considered as read when offered, shall be debatable for ten minutes equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against amendments printed in the report are waived. If more than one of the following amendments relating to funding levels for the Strategic Defense Initiative is adopted, only the last to be adopted shall be considered as finally adopted and reported to the House: (1) by Representative Dellums of California; (2) by Representative Kyl of Arizona; (3) by Representative Durbin of Illinois; and (4) Representative Aspin of Wisconsin or Representative Dickinson of Alabama. If more than one of the following amendments relating to B-2 procurement is adopted, only the last to be adopted shall be considered as finally adopted and reported to the House: (1) by Representative Andrews of Maine; and (2) Representative Aspin of Wisconsin or Representative Dickinson of Alabama. At any time after the adoption of this resolution the Committee on Rules may file a supplemental report for the purpose of printing additional amendments relating to economic conversion and adjustments in funding levels. Amendments printed in the supplemental report shall be considered as though included in the original report to accompany this resolution except that the consideration of any amendments relating to economic conversion: (1) shall be in order not sooner than one hour after the chairman of the Committee on Armed Services announces from the floor a

request to proceed thereto; and (2) shall begin with general debate on that subject for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services. It shall be in order at any time for the chairman of the Committee on Armed Services or his designee to offer amendments en bloc consisting of amendments printed in part II of the report of the Committee on Rules or germane modifications thereof. Amendments en bloc shall be considered as read except that modifications shall be reported. Amendments en bloc shall be debatable for twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services or their respective designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against amendments en bloc are waived. The original proponent of an amendment included in amendments en bloc may insert a statement in the Congressional Record immediately before the disposition of the amendments en bloc. *The chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment made in order by this resolution. The chairman of the Committee of the Whole may reduce to not less than five minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in any series of questions shall be not less than fifteen minutes.* The chairman of the Committee of the Whole may recognize for the consideration of an amendment printed in the report of the Committee on Rules at a time other than its prescribed place in the order, but not sooner than one hour after the chairman of the Committee on Armed Services announces from the floor a request to that effect. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been finally adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

THE SPEAKER PRO TEMPORE:[9] The gentleman from Texas [Mr. Frost] is recognized for 1 hour.

MR. FROST: Mr. Speaker, House Resolution 474 provides for the consideration of H.R. 5006, the National Defense Authorization Act for Fiscal Year 1993. . .

Mr. Speaker, in devising the rule providing for the consideration of the fiscal year 1993 Defense Department authorization, the Committee on Rules considered over 180 amendments which were submitted to the committee for possible inclusion in the rule. The proposed rule not only allows the House to debate all of the major policy issues associated with our national defense, it also allows the House to work its will on a number of amendments which deal with a variety of issues relating to the Department of Defense. However, the rule providing for the consideration of all these issues

9. Romano L. Mazzoli (Ky.).

is necessarily complicated and I would like to take a few minutes to explain to the House the procedure recommended by the Rules Committee.

Only those amendments printed in the report accompanying House Resolution 474, as well as certain amendments en bloc and pro forma amendments for the purpose of debate, if offered by the chairman or ranking minority member of the Committee on Armed Services, will be eligible for consideration. The amendments made in order in the report are to be considered in the order and manner specified, and, unless otherwise specified in the rule, the amendments are debatable for 10 minutes each, to be equally divided and controlled by a proponent and opponent of the amendment. The rule also provides that unless otherwise specified, amendments may be offered only by the named proponent or a designee, and provides that the amendments shall be considered as read when offered, shall not be subject to a demand for a division in the House or in the Committee of the Whole, and waives all points of order against the amendments printed in the report. . . .

Mr. Speaker, because a number of amendments made in order in the rule do deal with major policy issues, the Committee on Rules has structured the consideration of two of those issues in a king-of-the-hill procedure. The rule provides that during the consideration of amendments relating to the strategic defense initiative, that each of the four amendments eligible for consideration shall be debated for 30 minutes, with the time to be equally divided and controlled by the named proponent and an opponent. Each amendment will be debated and voted on and the last amendment agreed to shall be considered as finally adopted and reported to the House. . . .

The rule also grants the Committee on Rules the authority to file a supplemental report which will include amendments relating to economic conversion and add backs of DOD funds to reflect the spending levels envisioned in the fiscal year 1993 budget resolution. The rule provides that the amendments printed in the supplemental report shall be considered as though they had been printed in the original report accompanying House Resolution 474. However, the rule does provide that any amendment relating to defense conversion shall not be considered until 1 hour after the chairman of the Committee on Armed Services announces a request to proceed to the consideration of those amendments and until after the completion of general debate, not to exceed 1 hour on that subject. The rule provides that general debate on the issue of defense conversion shall be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services.

The rule provides for the consideration of two amendments relating to defense conversion, but which shall be debatable for 10 minutes, equally divided and controlled. The first amendment will be offered by Chairman Aspin, and the second, a substitute amendment, will be offered by Representative Dickinson. . . .

In order to expedite the consideration of this lengthy and complicated process in the House, House Resolution 474 provides that the Chairman of the Committee of the Whole may postpone

a request for a recorded vote, votes may be reduced to 5 minutes the time for voting on amendments after the first 15-minute vote in a series of votes, and may recognize for consideration of amendments out of the order in which they are printed in the report accompanying this rule, but only after 1 hour's notification by the chairman of the Committee on Armed Services.

§ 53.4 While the authority of the Chairman of the Committee of the Whole to postpone and cluster votes is provided by special orders, drafted to fit the specific amendment process established for a particular bill, the concept of reducing voting times to five minutes was incorporated into the standing rules in the 102d Congress. Rule XXIII clause 2(a), permits a five-minute vote on an amendment immediately following a 15-minute quorum call; and clause 2(c) permits the reduction of voting time on an amendment or amendments where the vote comes immediately after a 15-minute vote on another amendment.

The first instance where the Chairman announced his intention to use the new authority in clause 2(c), Rule XXIII, occurred on May 15, 1991.[10] During consideration of H.R. 1415, the Foreign Relations Authorization Act of fiscal years 1992 and 1993, a partial amendment tree was pending: an amendment, a perfecting amendment thereto, and a substitute for the original amendment. The Chairman's statement of his intention to have two five-minute votes, if recorded votes were in fact ordered, following a 15-minute vote on the perfecting amendment, was in fact thwarted by further debate which intervened after the first of the three votes. Proceedings were as indicated below.[11]

Ms. [OLYMPIA J.] SNOWE [of Maine]: Mr. Chairman, I offer amendments en bloc explicitly made in order under the rule.

The Clerk read as follows:

Amendments en bloc offered by Ms. Snowe:

Strike paragraph (7) of section 101(a).

Strike section 132 and insert in lieu thereof the following:

SEC. 132. MOSCOW EMBASSY SECURITY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 401(a) of the Diplomatic Security Act (22 U.S.C. 4851) is amended—

(1) in paragraph (4) by striking "Amounts" and inserting "Except as provided in paragraph (5), amounts"; and

(2) by adding after paragraph (4) the following new paragraph (5):

10. 137 CONG. REC. 11115, 102d Cong. 1st Sess.

11. *Id.* at pp. 11090, 11093, 11109.

(5) MOSCOW EMBASSY SECURITY.—Of the amounts authorized in paragraph (4), $130,000,000 shall be available for fiscal year 1993 only for the costs of deconstruction of the partially constructed new chancery of the United States Embassy in Moscow to the basement level and reconstruction of a new chancery on the same site.".

(b) EXTRAORDINARY SECURITY SAFEGUARDS.— . . .

MR. [HAROLD L.] BERMAN [of California]: Mr. Chairman, I offer an amendment to the amendments en bloc.

The Clerk read as follows:

Amendment offered by Mr. Berman to the amendments en bloc offered by Ms. Snowe:

Page 1, after "Strike paragraph (7) of section 101(a)" insert "and insert the following:

(7) MOSCOW EMBASSY.—Subject to the provisions of section 132, for construction of a new United States Embassy office building in Moscow, Soviet Union, $130,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal year 1993.

Page 1, strike subsection (a) (lines 2 through 16) and insert the following (and redesignate subsections as may be appropriate);

(a) LIMITATION.—Amounts authorized to be appropriated under section 101(a)(7) shall be available for obligation and expenditure subject to the provisions of this section.

(b) COMPREHENSIVE PLAN.— . . .

MR. [FREDERICK S.] UPTON [of Michigan]: Mr. Chairman, I offer an amendment as a substitute for the amendments en bloc.

The Clerk read as follows:

Amendments offered by Mr. Upton as a substitute for the amendments en bloc offered by Ms. Snowe:

Strike paragraph (7) of section 101(a).

Strike section 132 and insert in lieu thereof the following:

SEC. 132. MOSCOW EMBASSY SECURITY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 401(a) of the Diplomatic Security Act (22 U.S.C. 4851) is amended—

(1) In paragraph (4) by striking "Amounts" and inserting "Except as provided in paragraph (5), amounts"; and . . .

MR. BERMAN: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[12] The gentleman will state it.

MR. BERMAN: Mr. Chairman, were the Berman amendment to pass, would then the Upton substitute be a substitute for the Berman amendment?

THE CHAIRMAN: If the Berman amendment were to be adopted, the Upton substitute would be for the Snowe amendment, as amended. But it would, if adopted, eliminate the Berman perfecting amendment.

MR. BERMAN: And restore the Snowe amendment with the additional provisions regarding Soviet funding.

THE CHAIRMAN: The gentleman is correct.

MR. BERMAN: At this particular point, you will ask for a vote on the Berman amendment. If there is a rollcall requested following that vote, is there a way to deal with the Upton amendment, or do we have to wait until after that 15-minute rollcall vote?

THE CHAIRMAN: The Chair would announce pursuant to clause 2(c), rule XXIII its intent that if a subsequent

12. David R. Nagle (Iowa).

recorded vote should be ordered without intervening business or amendment or debate, that the Chair would then intend to reduce to not less than 5 minutes the votes on any subsequent recorded votes. The Snowe amendment and amendments thereto.

MR. [HAROLD L.] VOLKMER [of Mississippi]: Mr. Chairman, will the gentleman yield?

MR. BERMAN: On the point of parliamentary inquiry.

MR. VOLKMER: Just a point of clarification.

There is no time limit on debate; is that correct?

THE CHAIRMAN: The gentleman from Missouri [Mr. Volkmer] is correct.

MR. VOLKMER: In addition, Mr. Chairman, if the amendment of the gentleman from California [Mr. Berman] is successful or not, either way, to the amendment of the gentlewoman from Maine [Ms. Snowe], I could still rise at the end of that, and, if recognized by the Chair, be able to offer a motion at that time?

THE CHAIRMAN: The gentleman is correct, and should that debate or intervening business take place, the subsequent vote will not be reduced to 5 minutes.

§ 53.5 In the 104th Congress, the House further amended Rule I, clause 5(b), to reorder and expand the list of questions susceptible to postponement. In certain situations, the vote on the previous question can be postponed, if the question to which it applies is also subject to the Speaker's postponement authority. In the 105th Congress, the House expanded the list of questions susceptible to postponement in Rule I to include votes on amending Corrections bills and suspension motions.

As amended in the 104th and the 105th Congresses, Rule I clause 5(b), which contains the authority for the Speaker to postpone votes in the House, provides as follows:

(b)(1) On any legislative day whenever a recorded vote is ordered or the yeas and nays are ordered, or a vote is objected to under clause 4 of rule XV on any of the following questions, the Speaker may, in his discretion, postpone further proceedings on each such question to a designated time or place in the legislative schedule on that legislative day in the case of the question of agreeing to the Speaker's approval of the Journal, or within two legislative days, in the case of the other questions listed herein:

(A) the question of adopting a resolution;

(B) the question of passing a bill;

(C) the question of agreeing to a motion to instruct conferees as provided in clause 1(c) of rule XXVIII:[13] *Pro-*

13. Clause 1(c) of Rule XXVIII provides for motions to discharge or instruct conferees in certain situations. See *House Rules and Manual* § 910 (1995).

vided, however, That proceedings shall not resume on said question if the conferees have filed a report in the House;

(D) the question of agreeing to a conference report;

(E) the question of agreeing to a motion to recommit a bill considered pursuant to clause 4 of rule XIII;[14]

(F) the question of ordering the previous question on a question described in subdivision (A), (B), (C), (D), or (E);

(G) the question of agreeing to an amendment to a bill considered pursuant to clause 4 of rule XIII; and

(H) the question of agreeing to a motion to suspend the rules.

§ 54. Postponing Votes

Postponement of Votes to Next Legislative Day

§ 54.1 An announcement by the Chair, after midnight on one legislative day, that votes will be taken "tomorrow" results in their postponement until the next legislative day. Under Rule I clause 5(b), the period for postponement of votes is measured in legislative, not calendar, days.

On Oct. 15, 1990,[15] the House remained in session until after midnight and considered several motions to suspend the rules. When the Speaker Pro Tempore, Romano L. Mazzoli, of Kentucky, announced that he would postpone recorded votes ordered on the series of motions until "tomorrow," a parliamentary inquiry was directed to the Chair as follows:

> MR. [BARNEY] FRANK [of Massachusetts]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE: The gentleman will state it.
>
> MR. FRANK: Mr. Speaker, what day is tomorrow?
>
> THE SPEAKER PRO TEMPORE: The Chair would answer the gentleman's question by stating that it is on the next legislative day.

By Speaker's Authority—Postponement of Suspension Votes; Chair's Discretion

§ 54.2 Clause 5(b) does not require the Speaker to announce at the beginning of consideration of a motion to suspend the rules his intention to postpone proceedings if roll call votes are demanded.

Under Rule I clause 5(b), the Speaker may postpone further proceedings after a record vote is ordered or a point of no quorum raised under Rule XV clause 4.

While the Chair, as a courtesy to all Members, normally an-

14. Clause 4 of Rule XIII provides for the "Corrections Calendar." See *House Rules and Manual* § 745a (1995).

15. 136 CONG. REC. 29286, 101st Cong. 2d Sess.

nounces his intention with respect to the postponing of votes before exercising his authority under Rule I clause 5(b), the rule does not require such prior notification. The proceedings of Feb. 23, 1993,[16] are illustrative:

THE SPEAKER PRO TEMPORE:[17] The question is on the motion offered by the gentleman from Missouri [Mr. Clay] that the House suspend the rules and pass the bill, H.R. 20, as amended.

The question was taken; and on a division (demanded by Mr. Wolf) there were—ayes 10, noes 16.

MR. [WILLIAM (BILL)] CLAY [of Missouri]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair announces that pursuant to clause 5 of rule I, further proceedings on this motion will be postponed until tomorrow.

The point of no quorum is withdrawn.

MR. [FRANK R.] WOLF [of Virginia]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. WOLF: I would ask the Chair if he could tell me why the vote was postponed.

THE SPEAKER PRO TEMPORE: The Chair reserves the right to postpone the vote and has made a determination to do so.

MR. WOLF: I thank the Chair.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I offer a privileged motion. . . .

So the motion to adjourn was rejected.

The result of the vote was announced as above recorded. . . .

MR. [ALBERT R.] WYNN [of Maryland]: Mr. Speaker, I ask unanimous consent that the following Members be permitted to extend their remarks and to include extraneous material in that section of the Record entitled "Extensions of Remarks": . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Maryland?

MR. WALKER: Mr. Speaker, reserving the right to object, I do so in order to make an inquiry of the Chair.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. WALKER: Mr. Speaker, my understanding of the rule that was used to postpone the vote on the bill previous was that that particular announcement is to be made prior to the consideration of the bill and is not to come later rather than earlier.

In this particular case, the minority was not informed of that particular decision until just before the Chair ruled.

Is it not true that the normal process in the House is to announce when votes are going to be rolled at the beginning of the suspension day rather than just prior to the vote?

THE SPEAKER PRO TEMPORE: The gentleman will be advised that advance announcement is only a courtesy by the Chair, but that the Chair reserves the right under the rule to

16. 139 CONG. REC. 3281, 3282, 103d Cong. 1st Sess.

17. Kweisi Mfume (Md.).

make that ruling on the motion at any time once the question is put.

MR. WALKER: The question here is one of courtesy, not of rules?

THE SPEAKER PRO TEMPORE: The gentleman is correct in part. It has been, and will continue to be at times, a courtesy of the Chair to do that, but the courtesy is not mandatory. The Chair reserves the right under the rule to make that ruling.

—*Flexibility in Use of Speaker's Postponement Authority*

§ 54.3 The Speaker's authority to postpone recorded votes (see Rule I clause 5) has been interpreted to provide flexibility in the manner of its execution. The Speaker, for example, has announced that suspension votes on which the yeas and nays have been ordered would be postponed until later that same day. When, by unanimous consent, the ordering of the yeas and nays were later vacated, the Speaker announced that postponed votes would be taken, de novo, on the following day.

The proceedings of July 30, 1990,[18] were as follows:

THE SPEAKER PRO TEMPORE:[19] Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken after consideration of H.R. 5313, the military construction appropriations bill. . . .

MR. [G. V. (SONNY)] MONTGOMERY [of Mississippi]: Mr. Speaker, I ask unanimous consent to vacate the ordering of yeas and nays on all of the 11 motions to suspend the rules, and that the Chair be authorized to put the question de novo on each motion.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Mississippi?

MR. [ROBERT S.] WALKER [of Pennsylvania]: Reserving the right to object, I would take this time to allow the gentleman from Mississippi to explain his request.

MR. MONTGOMERY: Mr. Speaker, if the gentleman will yield, basically what that means is that it would put all the suspensions off until tomorrow. We would start all over again. The Chair would put the question on each bill, and if a Member wanted to vote on that suspension, that Member could ask for a vote. . . .

MR. WALKER: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Mississippi?

There was no objection.

THE SPEAKER PRO TEMPORE: The Chair will state that the questions will be put on each suspension on tomorrow de novo to a voice vote. . . .

18. 136 CONG. REC. 20370, 20433, 20434, 20458, 20459, 101st Cong. 2d Sess.

19. Romano L. Mazzoli (Ky.).

THE SPEAKER PRO TEMPORE: Earlier today, following unanimous consent to vacate the ordering of the yeas and nays on the Suspension Calendar, the Chair announced that he would on tomorrow put the question de novo on the 11 postponed motions to suspend the rules. The Chair wishes to clarify that announcement. Without objection, the Chair will put the question de novo at this point.

There was no objection.

THE SPEAKER PRO TEMPORE: Pursuant to clause 5, rule I, further proceedings on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered or on which the vote is objected to under clause 4, rule XV, will be postponed until tomorrow, July 31, 1990.

Pursuant to the unanimous-consent agreement of earlier today, the pending business is the question of suspending the rules and passing the bill, H.R. 3493, as amended.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Minnesota [Mr. Vento] that the House suspend the rules and pass the bill, H.R. 3493, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

§ 54.4 Another interpretation of the rule which has allowed flexibility in scheduling is to postpone votes until a time to be announced later.

The proceedings of Nov. 15, 1983,[20] are illustrative:

THE SPEAKER PRO TEMPORE:[1] Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken tomorrow after debate has been concluded on all motions to suspend the rules, or at such other time as subsequently announced by the Chair pursuant to clause 5 of rule I.

MR. [WALTER B.] JONES [of North Carolina]: Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3969) to amend the Panama Canal Act of 1979 to allow the use of proxies by the Board of the Panama Canal Commission.

The Clerk read as follows: . . .

Under his postponement authority, now consolidated in Rule I, the Speaker may postpone further proceedings on one motion to suspend the rules until designated time later in the current day while postponing further proceedings on other such motions until the following day. An example of the exercise of such authority is found in the proceedings of Sept. 17, 1990,[2] when the House

20. 129 CONG. REC. 32705, 98th Cong. 1st Sess.

1. Ronald Coleman (Tex.).

2. 136 CONG. REC. 24695, 24739–41, 24747, 24748, 101st Cong. 2d Sess.

considered suspensions before and after the consideration of unfinished business from a previous day.

THE SPEAKER PRO TEMPORE:[3] Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

The vote on S. 3033, if postponed, will occur at the end of debate on all suspensions, but no earlier than 4 p.m. The vote on the remaining suspension bills will be postponed until tomorrow. . . .

MR. [CHARLES A.] HAYES of Illinois: Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 3033) to amend title 39, United States Code, to allow free mailing privileges to be extended to members of the Armed Forces while engaged in temporary military operations under arduous circumstances.

The Clerk read as follows:

S. 3033

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3401(a)(1)(A) of title 39, United States Code, is amended in inserting "engaged in temporary military operations under arduous circumstances," before "or serving."

THE SPEAKER PRO TEMPORE: Is a second demanded?

MR. [JOHN T.] MYERS of Indiana: Mr. Speaker, I demand a second.

THE SPEAKER PRO TEMPORE: Without objection, a second will be considered as ordered.

There was no objection.

THE SPEAKER PRO TEMPORE: The gentleman from Illinois [Mr. Hayes] will be recognized for 20 minutes, and the gentleman from Indiana [Mr. Myers] will be recognized for 20 minutes. . . .

MR. [BENJAMIN A.] GILMAN [of New York]: . . . S. 3033 is similar to the measure we debated last Thursday, H.R. 5611 and to which a vote on a motion to recommit is pending in the House. This motion contains instructions for our committee to bring H.R. 5611 back to the floor with an amendment authorizing the payment of the postage due portion of the cost of providing this service to be extracted from our franking budget, as contained in the legislative appropriations bill. Existing statutes provide that the Department of Defense shall reimburse the U.S. Postal Service for all expenses, postage due and transportation, that are incurred by the Postal Service in providing this service. . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Illinois [Mr. Hayes] that the House suspend the rules and pass the Senate bill, S. 3033.

The question was taken.

MR. HAYES of Illinois: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed. . . .

3. Romano L. Mazzoli (Ky.).

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. Hoyer] at 5 p.m.

THE SPEAKER PRO TEMPORE:[4] Pursuant to the provisions of clause 5, rule I, the pending business is the question of suspending the rules and passing the Senate bill, S. 3033, on which further proceedings were postponed earlier today.

The Clerk read the title of the Senate bill.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Illinois [Mr. Hayes] that the House suspend the rules and pass the Senate bill, S. 3033, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 368, nays 0, not voting 64. . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table. . . .

THE SPEAKER PRO TEMPORE: Pursuant to the order of the House of Thursday, September 13, 1990, the unfinished business is the question de novo on the motion to recommit the bill H.R. 5611 with instructions, on which further proceedings were postponed on Thursday, September 13, 1990.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit offered by the gentleman from Pennsylvania [Mr. Ridge].

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. [THOMAS J.] RIDGE [of Pennsylvania]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 227, noes 142, not voting 63. . . .

So the motion to recommit was agreed to.

The result of the vote was announced as above recorded.

MR. HAYES of Illinois: Mr. Speaker, in accordance with the instructions of the House, and on behalf of the Committee on Post Office and Civil Service, I report the bill, H.R. 5611, back to the House with an amendment.

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment.

Authority of Speaker To Postpone as it Pertains to Approval of Journal—Where Journal Vote Is Postponed; Use of Privileged Motion To Adjourn To Get Roll Call at Beginning of Day

§ 54.5 Where, pursuant to clause 5(b) of Rule I, the Chair postpones further proceedings on the question of agreeing to the Speaker's approval of the Journal until later on a legislative day, a Member may immediately offer a privileged motion to adjourn and provoke an "automatic" roll call vote fol-

4. Steny H. Hoyer (Md.).

lowing the Chair's announcement of a negative result thereon.

On July 30, 1992,[5] Speaker Thomas S. Foley, of Washington, postponed the vote on the approval of the Journal until the end of the legislative day. The sequence of events was as follows:

THE SPEAKER: The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MR. [CURT] WELDON [of Pennsylvania]: Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

THE SPEAKER: The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. WELDON: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: The gentleman from Pennsylvania [Mr. Weldon] demands a vote on the Speaker's approval of the Journal.

Accordingly, the Chair will postpone the vote on the approval of the Journal in accordance with rule I. The vote on the Journal will occur at the end of the legislative day.

MR. WELDON: Mr. Speaker, I offer a privileged motion.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Weldon moves that the House do now adjourn.

THE SPEAKER: The question is on the motion offered by the gentleman from Pennsylvania [Mr. Weldon].

MR. WELDON: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 11, nays 368, not voting 57.

—Postponing Vote on Speaker's Announced Approval of Journal

§ 54.6 The authority of the Speaker to postpone the vote on agreeing to his announced approval of the Journal was added to the rules at the beginning of the 98th Congress. It was first utilized in November of 1983 to postpone the vote on approval so that a newly elected Member could be sworn before the question was put.

5. 138 CONG. REC. 20320, 102d Cong. 2d Sess.

House Resolution 5, adopted on Jan. 3, 1983,[6] introduced into the rules the authority of the Speaker to postpone a record vote on the question of his approval of the Journal until a later time on the same legislative day. Rule I clause (b)(1), which had earlier listed those votes which could be postponed at the discretion of the Speaker, was at that time amended to read as follows:[7]

H. RES. 5

Resolved, That the Rules of the House of Representatives of the Ninety-seventh Congress, including all applicable provisions of law and concurrent resolutions adopted pursuant thereto which constituted the Rules of the House at the end of the Ninety-seventh Congress, be, and they are hereby, adopted as the Rules of the House of Representatives of the Ninety-eighth Congress, with the following amendments included therein as part thereof, to wit:

(1) In rule I, clause 5(b)(1) is amended to read as follows:

"(b)(1) On any legislative day whenever a recorded vote is ordered or the yeas and nays are ordered, or a vote is objected to under clause 4 of rule XV on any of the following questions, the Speaker may, in his discretion, postpone further proceedings on each such question to a designated time or place in the legislative schedule on that legislative day, in the case of the question of agreeing to the Speaker's approval of the Journal, or within two legislative days, in the case of the other questions listed herein:

"(A) the question of passing bills;

"(B) the question of adopting resolutions;

"(C) the question of ordering the previous question on privileged resolutions reported from the Committee on Rules;

"(D) the question of agreeing to conference reports; and

"(E) the question of agreeing to motions to suspend the Rules.".

The first use of the Speaker's authority to postpone a vote on his announced approval of the Journal occurred some nine months following its inclusion in Rule I clause 5. The proceedings were as indicated:[8]

THE SPEAKER:[9] The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MR. [HOWARD C.] NIELSON of Utah: Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

THE SPEAKER: The question is on the Chair's approval of the Journal.

MR. NIELSON of Utah: Mr. Speaker, I object to the vote on the ground that

6. 129 CONG. REC. 51, 98th Cong. 1st Sess.

7. *Id.* at p. 34. Rule I clause 5(b)(1), *House Rules and Manual* § 631 (1995).

8. 129 CONG. REC. 32097, 98th Cong. 1st Sess., Nov. 10, 1983.

9. Thomas P. O'Neill, Jr. (Mass.).

a quorum is not present, and make the point of order that a quorum is not present.

THE SPEAKER: The Chair will postpone the vote until after we have sworn in the new Member from Georgia.

The Speaker laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, D.C.
November 10, 1983.

HON. THOMAS P. O'NEILL, JR.
The Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: I have the honor to transmit herewith a copy of the Certificate of Election received from the Honorable Joe Frank Harris, Governor of the State of Georgia, indicating that the Honorable George (Buddy) Darden was elected to the Office of Representative in Congress from the Seventh District of Georgia in a Special Election held on November 8, 1983.

With kind regards I am,

Sincerely,
BENJAMIN J. GUTHRIE,
Clerk, House of Representatives.

THE SPEAKER: Will the Member-elect kindly step forward with the dean of the Georgia delegation and the members of the Georgia delegation?

Mr. Darden appeared at the bar of the House and took the oath of office.

THE SPEAKER: The gentleman is now a Member of the Congress of the United States and we welcome you.

THE JOURNAL

THE SPEAKER: The question now is on the approval of the Journal.

Those in favor will vote "aye"; those opposed will vote "no." Voting will be by electronic device, and the gentleman from Georgia (Mr. Darden) is entitled to vote.

ANNOUNCEMENT BY THE SPEAKER

THE SPEAKER: The Chair will announce that following the vote we will go directly to consideration of the continuing resolution. Following the completion of the continuing resolution, we will then take the 1-minute addresses for the day.

By Unanimous Consent

§ 54.7 The House has postponed all roll call votes on legislation or amendments for five days by unanimous consent.

On Apr. 11, 1957,[10] Mr. John W. McCormack, of Massachusetts, made the following request:

MR. MCCORMACK: Mr. Speaker, I ask unanimous consent that in connection with the consideration of any legislation on Monday [April 15, 1957] and Tuesday [April 16, 1957] of next week, if there should be occasion for any roll-calls on such legislation, or any amendments thereto, further consideration of such legislation be postponed until the following Wednesday [April 17, 1957].

THE SPEAKER:[11] Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

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10. 103 CONG. REC. 5541, 85th Cong. 1st Sess.

11. Sam Rayburn (Tex.).

§ 54.8 The House has agreed, by unanimous consent, that a prospective vote on the final passage of a bill would be taken by the yeas and nays on the following day.

On Mar. 31, 1941,[12] after debate on a bill (H.R. 968) pertaining to net weights in interstate and foreign commerce transactions in cotton, the Speaker[13] made the following statement:

> Permit the Chair to make a statement. The Chair has told 20 or 30 Members, both on the Republican side and on the Democratic side, that if he could prevent it there would not be a roll call today on any bill, so may the Chair suggest that the request be made that when the House meets tomorrow and this vote is taken it be taken by the yeas and nays.

A brief discussion ensued, after which Mr. John W. McCormack, of Massachusetts, offered a unanimous-consent request that the vote be postponed until the next day and that when the vote came on the final passage of the bill, such vote be taken by the yeas and nays. No objection was heard.

Accordingly, the next day, Apr. 1, 1941,[14] the Speaker stated:

> The unfinished business of the day is the vote on the bill H.R. 968. Before the House adjourned yesterday unanimous consent was granted for a yea-and-nay vote on the bill.
>
> The question is on the passage of the bill.

The question was then taken; and there were—yeas 145, nays 168, not voting 116. So, the bill was not passed.

§ 54.9 A unanimous-consent agreement providing that yea and nay votes on scheduled bills should be postponed until a day certain was interpreted not to apply to procedural matters such as resolutions reported from the Committee on Rules providing for the consideration of a bill.

On Mar. 3, 1960,[15] Mr. John W. McCormack, of Massachusetts, rose to address the Speaker Pro Tempore[16] as follows:

> Mr. Speaker, I ask unanimous consent that in the event of any rollcall being ordered on Monday [Mar. 7, 1960] or Tuesday [Mar. 8, 1960] that further proceedings on the bill on which such call is ordered be postponed to Wednesday [Mar. 9, 1960] of next week.

Following a brief statement by Mr. H. R. Gross, of Iowa, with respect to another matter, the

12. 87 Cong. Rec. 2754, 77th Cong. 1st Sess.
13. Sam Rayburn (Tex.).
14. 87 Cong. Rec. 2799, 77th Cong. 1st Sess.
15. 106 Cong. Rec. 4389, 86th Cong. 2d Sess.
16. Carl Albert (Okla.).

Speaker Pro Tempore asked if there was any objection to the McCormack request, and none was heard.

Four days later,[17] the question was put on a resolution (H. Res. 467) providing that upon adoption of the resolution, the House would resolve itself into the Committee of the Whole for the purpose of considering a bill (H.R. 10777) to authorize certain construction at military installations, and for other purposes. The question was taken; and the Speaker Pro Tempore announced that the yeas appeared to have it.

Immediately thereafter, the following proceedings occurred:

> MR. [JOHN BELL] WILLIAMS [of Mississippi]: Mr. Speaker, I object to the vote on the ground a quorum is not present and make the point of order that a quorum is not present.
>
> The Speaker Pro Tempore: The Chair will count. [After counting.] One hundred sixty-eight Members are present, not a quorum.
>
> A rollcall is automatic.
>
> MR. WILLIAMS: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE: The gentleman will state it.
>
> MR. WILLIAMS: Mr. Speaker, is it not a fact that under an order of this House by unanimous consent all yea and nay votes have been ordered to be put over?
>
> THE SPEAKER PRO TEMPORE: Only votes on the passage of bills. This is a procedural matter on a resolution and does not come within the order of the House of Thursday last.
>
> The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

By Special Order

§ 54.10 A special order providing for the consideration of a bill in Committee of the Whole may specify the order in which amendments are to be considered, determine the debate time on any or all amendments, and provide the Chairman of the Committee of the Whole with authority to postpone any request for a recorded vote and cluster such requests so that votes will occur back-to-back at a later time during the consideration of the bill in Committee.

An example of such a grant of authority is shown below:[18]

> MR. [TONY P.] HALL of Ohio: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 197 and ask for its immediate consideration. [The portion of the special order delineating the amendment process is italicized.]

17. 106 CONG. REC. 4787, 86th Cong. 2d Sess., Mar. 7, 1960.

18. 139 CONG. REC. p. _____, 103d Cong. 1st Sess., June 16, 1993.

The Clerk read the resolution, as follows:

H. RES. 197

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for further consideration of the bill (H.R. 2333) to authorize appropriations for the Department of State, the United States Information Agency, and related agencies, to authorize appropriations for foreign assistance programs, and for other purposes. No further general debate shall be in order. The bill shall be considered for amendment under the five-minute rule. *It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Foreign Affairs now printed in the bill, modified by the amendments printed in part 1 of the report of the Committee on Rules accompanying this resolution. The committee amendment in the nature of a substitute, as modified, shall be considered as read. All points of order against the committee amendment in the nature of a substitute, as modified, are waived. No amendment to the committee amendment in the nature of a substitute, as modified, shall be in order except those printed in part 2 of the report of the Committee on Rules accompanying this resolution and amendments en bloc described in this resolution. Amendments printed in part 2 of the report may be offered only in the order printed, may be offered only by the named proponent or a designee, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment except as specified in the report, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. . . .*

SEC. 3. The chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment made in order by this resolution. The chairman of the Committee of the Whole may reduce to not less than five minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device without intervening business: *Provided*, That the time for voting by electronic device on the first in any series of questions shall be not less than fifteen minutes.

—Postponement and Clustering Authority in Committee of the Whole

§ 54.11 Where a special order permitted the Chairman of the Committee of the Whole to postpone recorded votes, if ordered, on certain first degree amendments offered in an "issue cluster" until the consideration of the last such amendment, the Chair announced his intention to use the postponement authority and to reduce voting time to five minutes on the second and subsequent ordered recorded votes.

The first example in the House where postponement of votes on a series of amendments was per-

mitted in Committee of the Whole occurred on May 20, 1987.[19] Before exercising the authority, the Chair stated the provisions of the special order previously adopted by the House which bestowed this authority:

> . . . It is in order for the Chairman of the Committee of the Whole to postpone recorded votes, if ordered, on any said first degree amendment, and the Chair may reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all additional amendments following the first vote in the series. The Chair announces that he will postpone said recorded votes, if ordered, until completion of consideration of the amendment offered by Representative Davis of Illinois. . . .
>
> THE CHAIRMAN PRO TEMPORE:[20] The question is on the amendment offered by the gentleman from Illinois [Mr. Davis].
>
> MR. [DAN] BURTON of Indiana: Mr. Chairman, I demand a recorded vote.
>
> A recorded vote was ordered.
>
> THE CHAIRMAN PRO TEMPORE: Pursuant to House Resolution 160, and the Chair's prior announcement, further proceedings on this vote will be postponed.
>
> MR. [LES] ASPIN [of Wisconsin]: Mr. Chairman, I think it would be useful to all of us if the Chair would delineate the order of voting and how much time and what the sequence is on these cluster votes coming up.
>
> THE CHAIRMAN PRO TEMPORE: The Chair was in the process of doing that.
>
> Debate has been concluded on the amendments printed in section 1 of House Report 100–84, relating to Central America.
>
> Pursuant to House Resolution 160, and the Chair's prior announcement, the Chair will now put the question on the adoption of each amendment on which further proceedings were postponed, in the order designated in paragraph (5) of section 2 of House Resolution 160.
>
> Votes will be taken in the following order:
>
> The amendment offered by the gentleman from New York [Mr. Mrazek], a 15-minute vote; the amendment offered by the gentlewoman from California [Mrs. Boxer], a 5-minute vote; the amendment offered by the gentleman from Pennsylvania [Mr. Foglietta], a 5-minute vote; and
>
> The amendment offered by the gentleman from Illinois [Mr. Davis], a 5-minute vote.
>
> The first order of business is the recorded vote on the amendment offered by the gentleman from New York [Mr. Mrazek].
>
> The vote was taken by electronic device, and there were—ayes 197, noes 225, not voting 10. . . .

—Distinction Between Postponing a Request for a Recorded Vote and Postponing the Vote Itself

§ 54.12 Where a special order permits the postponement of the request (or demand) for a

19. 133 CONG. REC. 13042, 13071, 100th Cong. 1st Sess.

20. Marty Russo (Ill.).

recorded vote, the ordering of a second to the request (support of 25 Members in Committee of the Whole) is deferred until the postponed proceedings are again before the Committee as unfinished business.

The Chairman of the Committee of the Whole explained that under the special order governing the consideration of the bill H.R. 4, the Personal Responsibility Act of 1996, in Committee of the Whole, he would be postponing requests for recorded votes but not entertaining seconds to such demands until the Chair puts the question after the postponement. The pertinent part of the very complex rule governing the consideration of the bill was as follows:[1]

SEC. 4. The Chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment made in order by this resolution. The Chairman of the Committee of the Whole may reduce to not less than five minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in any series of questions shall be not less than fifteen minutes. The Chairman of the Committee of the Whole may recognize for consideration of any amendment printed in the report of the Committee on Rules accompanying this resolution out of the order printed, but not sooner than one hour after the chairman of the Committee on Ways and Means or a designee announces from the floor a request to that effect.

The Chair's explanation of the procedure was as indicated:[2]

THE CHAIRMAN:[3] All time has expired on the amendment.

The question is on the amendment offered by the gentleman from Missouri [Mr. Talent].

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

MR. [JAMES M.] TALENT [of Missouri]: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Pursuant to the rule, further proceedings on the amendment offered by the gentleman from Missouri [Mr. Talent] will be postponed.

The point of order no quorum is considered withdrawn.

The Chair would like to take this opportunity to remind Members that under the rule, the authority granted under the rule for this bill, the Chair is merely postponing requests for recorded votes until after consideration of amendment No. 8.

1. 141 CONG. REC. p. _____, 104th Cong. 1st Sess., Mar. 22, 1995.

2. *Id.*

3. John Linder (Ga.).

At that time the request for a recorded vote on amendment No. 1 will be the unfinished business of the House. Twenty-five Members will need to stand at that time in order to obtain a recorded vote on that amendment as well as the other postponed questions in turn. There is no need for a Member making a request for a recorded vote to renew the request.

The Chair would also like to remind the Members that the first vote taken on the first amendment will be a 15-minute vote, and subsequent votes may be reduced to 5 minutes, if no business interferes between the votes.

It is now in order to consider amendment No. 5 printed in House Report 104–85. . . .

THE CHAIRMAN: All time has expired on this amendment.

The question is on the amendment offered by the gentleman from New Jersey [Mr. Smith].

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

MR. [CHRISTOPHER H.] SMITH of New Jersey: Mr. Chairman, I demand a recorded vote.

THE CHAIRMAN: Pursuant to the rule, further proceedings on the amendment offered by the gentleman from New Jersey [Mr. Smith] will be postponed.

Pursuant to the rule, proceedings will now resume on those amendments on which further proceedings were postponed, in the following order: Amendment No. 1 offered by the gentleman from Texas [Mr. Archer]; amendments en bloc offered by the gentleman from Texas [Mr. Archer]; amendment No. 3 offered by the gentleman from Missouri [Mr. Talent]; amendment No. 7 offered by the gentleman from Oregon [Mr. Bunn]; and amendment No. 8 offered by the gentleman from New Jersey [Mr. Smith]. . . .

THE CHAIRMAN: The pending business is the demand for a recorded vote on amendment No. 1 printed in House Report No. 104–85 offered by the gentleman from Texas [Mr. Archer] on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

THE CHAIRMAN: A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 228, noes 203, not voting 3. . . .

§ 55. Procedures During Postponed Proceedings

Precedence of Questions—Interruption of Series of Suspensions by Question of Privilege

§ 55.1 A resolution raising a question of the privileges of the House takes precedence over a motion to suspend the rules and may be offered and voted on between consideration of motions to suspend the rules on which the

Speaker has postponed record votes.

On May 17, 1983,[4] before embarking on consideration of a revenue measure reported from the Committee on Ways and Means which was being brought up under the suspension procedure, the House considered and adopted a resolution, offered as a question of the privileges of the House under Rule IX,[5] to return to the Senate a similar revenue bill originated by that body. The question of privilege interrupted consideration of a series of suspension motions. The proceedings were as indicated below:

THE SPEAKER PRO TEMPORE:[6] Pursuant to the provisions of clause 5, rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken today after debate has been concluded on all motions to suspend the rules.

MR. [GEORGE E.] BROWN [Jr., of California]: Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2785), to amend the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act relating to the scientific advisory panel and to extend the authorization for appropriations for such Act, as amended. . . .

THE SPEAKER PRO TEMPORE:[7] The question is on the motion offered by the gentleman from Florida (Mr. Gibbons) that the House suspend the rules and pass the bill, H.R. 2602, as amended.

The question was taken.

MR. [FRANK] ANNUNZIO [of Illinois]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I rise to a question of the privileges of the House, and I send to the desk a privileged resolution (H. Res. 195) and ask for its immediate consideration. The Clerk read the resolution, as follows:

H. RES. 195

Resolved, That the bill of the Senate (S. 144) to ensure the continued expansion of international market opportunities in trade, trade in services, and investment for the United States and for other purposes, in the opinion of the House, contravenes the first clause of the seventh section of Article I of the Constitution of the United States and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER PRO TEMPORE: The gentleman from Illinois (Mr. Rostenkowski) is recognized for 1 hour.

4. 129 CONG. R. 12467, 12486, 98th Cong. 1st Sess.

5. *House Rules and Manual* § 661a (1995).

6. John P. Murtha (Pa.).

7. Charles Roemer (La.).

MR. ROSTENKOWSKI: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution is simple and straightforward. On April 21, 1983, the Senate completed its consideration of S. 144, a bill to insure the continued expansion of reciprocal market opportunities in trade, trade in services, and investment for the United States, and for other purposes, approved the bill and messaged it to the House of Representatives. As passed by the Senate, the bill contains several provisions relating to revenues. As such, the bill on its face clearly violates the prerogatives of the House of Representatives to originate revenue bills.

At times in the past, there has been some disagreement about the proper extent of the other body's authority to amend House-originated revenue bills. It is a matter of intense debate, and I have been known to express my views on that matter from time to time. In this instance, however, we need not discuss the specifics of the Senate amendment, since the Senate has taken it upon itself to directly originate an entire revenue bill. There can be no clearer case where the prerogatives of the House of Representatives have been disregarded by the other body.

Last Thursday, this matter was discussed by the Committee on Ways and Means; and it was unanimously agreed to follow the process of returning S. 144 to the Senate inasmuch as it contravenes the first clause of section 7 of article I of the Constitution.

MR. [BARBER E.] CONABLE [Jr., of New York]: Mr. Speaker, will the gentleman yield?

MR. ROSTENKOWSKI: I yield to the gentleman from New York.

MR. CONABLE: Mr. Speaker, I support the position taken by our distinguished chairman on this matter. I feel it should be returned to the other body, as he has indicated, and for the reasons he has stated.

MR. ROSTENKOWSKI: Mr. Speaker, I yield back the balance of my time.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the resolution.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on the resolution. A resolution was agreed to.

A motion to reconsider was laid on the table.

MR. ROSTENKOWSKI: Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 2973, to repeal the withholding of tax from interest and dividends.

The Clerk read as follows:

H.R. 2973

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) subtitle A of title III of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to withholding of tax from interest and dividends) is hereby repealed, and. . . .

—Order of Taking Votes on Postponed Questions

§ 55.2 Consideration of new motions to suspend the rules can take precedence over the votes on suspensions postponed from a preceding day.

In the 96th Congress, the practice of conducting a series of postponed votes was to have a 15-minute vote on the first vote in the series. Where new motions to suspend the rules were considered before taking up votes postponed from the preceding day, a 15-minute vote was utilized for the first vote in each series.

On Mar. 18, 1980,[8] the acting Majority Leader[9] announced that the consideration of motions to suspend the rules takes precedence over unfinished business (postponed roll call votes on motions to suspend the rules coming over from the previous day):

> MR. [JOHN] ROUSSELOT [of California]: I thank the gentleman for yielding.
>
> I have no substantive questions about this legislation, but I take this time to direct a question to the Speaker. Mr. Speaker, my question is, Why has the procedure of the House been changed? As I understand it, Mr. Speaker, the procedure has been altered so that the recorded vote on H.R. 5625 (the A. Phillip Randolph Institute Gold Medal) was put over from yesterday's suspension calendar. Normally that recorded vote would occur today, first thing.
>
> I wonder if the Speaker could explain to the House why that was changed?
>
> MR. ROSTENKOWSKI: Mr. Speaker, will the gentleman yield?
>
> MR. ROUSSELOT: I would be glad to yield to my colleague from Illinois (Mr. Rostenkowski).
>
> MR. ROSTENKOWSKI: It has been our custom on all suspensions to conclude the business of suspensions and then have the votes at the conclusion of all of the suspensions. There has never been any precedent set where we would vote on the suspensions we have concluded consideration on the day before.
>
> It has always been our practice to have concluded all of the suspensions and vote at the end of the day.

Later that same day,[10] the Speaker Pro Tempore[11] applied this practice, as follows:

> Pursuant to the provisions of clause 3 of rule XXVII, the unfinished business is the vote on the motion of the gentleman from Illinois (Mr. Annunzio) to suspend the rules and pass the bill, H.R. 5625, as amended, on which further proceedings were postponed on Monday, March 17, 1980, on which the yeas and nays are ordered.
>
> The Clerk read the title of the bill.
>
> THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Illinois (Mr. Annunzio) that the House suspend the rules and pass the bill, H.R. 5625, as amended, on which the yeas and nays are ordered.
>
> This will be a 15-minute vote, since it is a different series of suspension motions.

8. 126 CONG. REC. 5733, 96th Cong. 2d Sess.

9. Dan Rostenkowski (Ill.).

10. 126 CONG. REC. 5741, 96th Cong. 2d Sess., Mar. 18, 1980.

11. John P. Murtha (Pa.).

Method of Voting—Where Requests for Recorded Votes Are Postponed

§ 55.3 Where postponed proceedings resume in Committee of the Whole on a request for a recorded vote on an amendment which is deferred pursuant to an order of the House, the recorded vote is not automatically ordered but must be supported at the later time, when the question is put, by 25 Members seconding the demand.

Where the request for a recorded vote is postponed, the Member making the request (the demand) need not renew his request when the question is again before the Committee or the House; but the Chair does not ascertain whether a sufficient number support the request until the time appointed to take the postponed votes. Chairman George E. Brown, Jr., of California, explained the effect of postponing requests for recorded votes under the rule as follows:[12]

> THE CHAIRMAN: All time for debate of the amendment offered by the gentleman from Florida [Mr. Stearns] has expired.
>
> The question is on the amendment offered by the gentleman from Florida [Mr. Stearns].
>
> The question was taken; and the Chairman announced that the noes appeared to have it.
>
> MR. [CLIFF] STEARNS [of Florida]: Mr. Chairman, I demand a recorded vote.
>
> THE CHAIRMAN: In accordance with the unanimous-consent request that was granted by the House earlier, the Chair will postpone further proceedings on the amendment offered by the gentleman from Florida [Mr. Stearns] until a later time. That means that at a later time the gentleman's request will be pending.
>
> MR. STEARNS: Mr. Chairman, as I understand it, a recorded vote is not automatic. I will have to go through this again.
>
> THE CHAIRMAN: The Chair will announce to the gentleman when it is an appropriate time for him to protect his request. The Chair will not overlook the gentleman.
>
> MR. STEARNS: Well, Mr. Chairman, I am just worried that I will not be here.
>
> Can I make a point of order that a quorum is not present and go through the whole procedure so it becomes an automatic vote so I will not have to depend upon my presence, my being here?
>
> Mr. Chairman, I am just saying that I want to make sure that this is an automatic vote and that it is not a vote dependent upon my being here.
>
> THE CHAIRMAN: Some Member will have to make a point of no quorum pending the request for a recorded vote, and at that point the Chair will put the request in the usual fashion.
>
> In other words, if enough Members stand, the gentleman will get a recorded vote. This will just expedite the proceedings.

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12. 140 CONG. REC. p. _____, 103d Cong. 2d Sess., June 27, 1994.

—*Withdrawal of Request for Record Vote After Vote Is Postponed*

§ 55.4 A request for a recorded vote on an amendment in Committee of the Whole on which proceedings have been postponed may be withdrawn, by unanimous consent, to allow the amendment to be disposed of as per the voice or division vote initially announced when the question was put.

Like a reservation of a point of order or a reservation of the right to object to a unanimous-consent request, a request for a recorded vote inures to the benefit of every Member. The Member making the demand for the recorded vote may withdraw his demand, as a matter of right, when the question is yet before the Committee or when it is again put as unfinished business. Any other Member could then renew the demand. On July 26, 1995,[13] when the Commerce, Justice, State, and the Judiciary appropriation bill was under consideration in Committee of the Whole, the Member demanding a recorded vote on an amendment offered by Mrs. Jan Meyers, of Kansas, asked unanimous consent to withdraw his demand, since there had been intervening business and the Meyers amendment was no longer the pending business. The proceedings were as indicated:

> The Chairman:[14] The gentleman objects to the 20-minute time allocation.
>
> Is there objection to the request of the gentlewoman from Kansas [Mrs. Meyers] to offer an amendment to title V?
>
> There was no objection.
>
> MRS. MEYERS of Kansas: Mr. Chairman, I offer an amendment.
>
> THE CHAIRMAN: The Clerk will designate the amendment.
>
> The text of the amendment is as follows:
>
> > Amendment offered by Mrs. Meyers of Kansas: Page 97, line 8, strike "$217,947,000" and insert "$222,–325,000".
> >
> > Page 98, line 6, strike "$97,000,000" and insert "$92,622,000".
>
> MR. [HAROLD] ROGERS [of Kentucky]: Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto close in 10 minutes, and that the time be equally divided between the gentlewoman from Kansas [Mrs. Meyers] and the gentleman from New York [Mr. Forbes].
>
> THE CHAIRMAN: Is there objection to the request of the gentleman from Kentucky?
>
> There was no objection. . . .
>
> THE CHAIRMAN: All time has expired.

13. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

14. Steve Gunderson (Wisc.).

The question is on the amendment offered by the gentlewoman from Kansas [Mrs. Meyers].

The question was taken; and the Chairman announced that the ayes appeared to have it.

MR. [MICHAEL P.] FORBES [of New York]: Mr. Chairman, I demand a recorded vote.

THE CHAIRMAN: Pursuant to the order of the House of today, further proceedings on the amendment offered by the gentlewoman from Kansas [Mrs. Meyers] will be postponed.

MR. [JOSÉ E.] SERRANO [of New York]: Mr. Chairman, I offer an amendment.

THE CHAIRMAN: The Clerk will designate the amendment.

The text of the amendment is as follows:

> Amendment offered by Mr. Serrano: Page 102, after line 20, insert the following:
>
> SEC. 609. None of the funds made available in this Act may be used for the Advisory Board for Cuba Broadcasting under section 5 of the Radio Broadcasting to Cuba Act. . . .

MR. FORBES: Mr. Chairman, I ask unanimous consent to withdraw my demand for a recorded vote on the Meyers amendment.

THE CHAIRMAN: Is there objection to the request of the gentleman from New York?

MR. [ROGER F.] WICKER [of Mississippi]: Mr. Chairman, reserving the right to object, how did the Chair announce that vote on the voice vote?

THE CHAIRMAN: The ayes had it.

MR. WICKER: That the ayes had it?

THE CHAIRMAN: On the Meyers amendment, yes.

MR. WICKER: Mr. Chairman, I withdraw my reservation of objection reluctantly.

THE CHAIRMAN: Is there objection to the request of the gentleman from New York?

MR. [JOHN J.] LAFALCE [of New York]: Mr. Chairman, reserving the right to object, what was the request that was made again?

MR. FORBES: I requested unanimous consent to withdraw my request for a recorded vote.

MR. LAFALCE: Further reserving the right to object, if this is an issue that will be settled, but if there is going to be an attempt made in conference or something or some other time in the future, I think that at some point in time there will not be.

Mr. Chairman, I withdraw my reservation of objection.

THE CHAIRMAN: Is there objection to the request of the gentleman from New York?

There was no objection.

So, the amendment was agreed to.

—Repetition of Demand for Yeas and Nays or Recorded Vote

§ 55.5 Where one-fifth of the Members present have refused to order the yeas and nays on a motion to suspend the rules and that motion later becomes the pending or unfinished business of the House under the rule governing the Speaker's postponement authority,[15] a

15. Rule I clause 5(b)(1), *House Rules and Manual* § 631 (1995).

Member may still demand a recorded vote on the motion but may not renew his demand for the yeas and nays.

During consideration in the House of the bill H.R. 12048, the Administrative Rule Making Reform Act of 1976, in the 94th Congress,[16] Speaker Carl Albert, of Oklahoma, put the question on a suspension motion and the following proceedings then devolved:

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER: Twelve Members have arisen, an insufficient number.

The yeas and nays were refused.

MR. STEIGER of Wisconsin: I am sorry, Mr. Speaker. I could not hear what the Speaker said.

THE SPEAKER: I said that 12 Members have arisen, an insufficient number.

MR. STEIGER of Wisconsin: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Pursuant to the provisions of clause 3(b) of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

Does the gentleman from Wisconsin withdraw his point of order that there is no quorum?

MR. STEIGER of Wisconsin: Mr. Speaker, I withdraw my point of order. . . .

THE SPEAKER PRO TEMPORE:[17] The unfinished business is the question of suspending the rules and passing the bill, H.R. 12048, as amended.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Alabama (Mr. Flowers) that the House suspend the rules and pass the bill, H.R. 12048, as amended.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [BOB] ECKHARDT [of Texas]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

MR. [WALTER] FLOWERS [of Alabama]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state the point of order.

MR. FLOWERS: Mr. Speaker, on the last recorded vote there were 400 Members present. Twenty percent of that would be 80.

THE SPEAKER PRO TEMPORE: The Chair will advise the gentleman that on recorded vote the rules require one-fifth of a quorum, which is 44.

A recorded vote is ordered.

§ 55.6 Where further proceedings on a pending question have been postponed where there is objection to the vote for lack of a quorum, following a division vote and the refusal of the House to order the yeas and nays, the Speaker puts the question de novo when it is

16. 122 CONG. REC. 31640, 31641, 31668, 94th Cong. 2d Sess., Sept. 21, 1976.

17. John J. McFall (Calif.).

again the pending business but a request for a division vote and a demand for the yeas and nays cannot be repeated.

On July 12, 1977,[18] Speaker Pro Tempore Thomas S. Foley, of Washington, put the question on a motion to suspend the rules and concur in a Senate amendment to a House bill. The proceedings were as indicated:

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from California (Mr. Danielson) that the House suspend the rules and concur in the Senate amendment to the bill H.R. 6893.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

The question was taken; and on a division (demanded by Mr. Bauman) there were—ayes 44, noes 5.

MR. BAUMAN: Mr. Speaker, having explored all other possibilities, I now object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of order is considered as having been withdrawn. . . .

THE SPEAKER PRO TEMPORE: The unfinished business is the question of suspending the rules and concurring in the Senate amendment to the bill H.R. 6893.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from California (Mr. Danielson) that the House suspend the rules and concur in the Senate amendment to the bill H.R. 6893.

The Clerk read the title of the bill.

The question was taken and the Speaker pro tempore announced that, in his opinion, two-thirds of the Members had voted in favor thereof.

MR. BAUMAN: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER PRO TEMPORE: The Chair will state that the yeas and nays have already been demanded and have been refused so that request is not in order.

MR. BAUMAN: Mr. Speaker, is it in order to ask for a division on this vote?

THE SPEAKER PRO TEMPORE: The Chair will state that a division has already been taken on the question.

MR. BAUMAN: Then an additional division is not permitted at this time?

THE SPEAKER PRO TEMPORE: That is correct. The yeas and nays have already been demanded and have been refused and prior to that a division vote had already been taken.

MR. BAUMAN: And it is out of order to renew the request for the yeas and nays?

THE SPEAKER PRO TEMPORE: The Chair will state that it is not in order to renew the request that the vote be taken by the yeas and nays.

MR. BAUMAN: I thank the gentleman.

18. 123 CONG. REC. 22487, 22488, 95th Cong. 1st Sess.

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

Mr. Bauman could have demanded a recorded vote—as distinct from the yeas and nays—since that form of voting had not been attempted when the question was first put. An example of using a recorded vote following rejection of a demand for the yeas and nays is found in the proceedings of Sept. 21, 1976.[19]

Postponed Amendment Proceedings

§ 55.7 When consideration is resumed on amendments where requests for recorded votes have been demanded, but not ordered, the Chair: (1) directs the Clerk to re-report the amendment; (2) states the pending business to be the request for a recorded vote and states the result of the initial vote taken by voice or division; and (3) requests those Members seeking a recorded vote to stand and remain standing until counted.

While a Member may announce his intention to ask for a recorded vote on an underlying first degree amendment, he cannot actually make that request until the question is put on the amendment; and that question necessarily is deferred until a pending second degree amendment is disposed of. On July 29, 1992, the House had under consideration the bill H.R. 5679, making appropriations for Veterans' Affairs, Housing and Urban Development.[20]

Before resolving into the Committee of the Whole, the following unanimous-consent agreement was entered into:[1]

MR. [LOUIS] STOKES [of Ohio]: Mr. Speaker, I ask unanimous consent that during further consideration of H.R. 5679, the Chairman of the Committee of the Whole House on the State of the Union may postpone until a time not earlier than 8:30 p.m. this evening any recorded votes that may be requested on amendments after the vote on the pending amendment.

THE SPEAKER PRO TEMPORE:[2] Is there objection to the request of the gentleman from Ohio?

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, reserving the right to object, and I do not intend to object, I just want to make certain of one thing. There are going to be amendments to amendments, so I would inquire what happens in that kind of a situation.

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19. See § 55.5, supra.

20. 138 CONG. REC. 20202, 102d Cong. 2d Sess.

1. *Id.* at p. 20261.

2. Leon E. Panetta (Calif.).

THE SPEAKER PRO TEMPORE: Is the gentleman from Pennsylvania [Mr. Walker] addressing the question to the Chair, or to the gentleman from Ohio [Mr. Stokes]?

MR. WALKER: To the gentleman from Ohio, who has made the request.

MR. STOKES: Mr. Speaker, will the gentleman yield?

MR. WALKER: I yield to the gentleman from Ohio.

MR. STOKES: Mr. Speaker, I would assume that those would also be accomplished within the timeframe that we have referenced.

MR. WALKER: In other words, the amendment to the amendment would have to be waited upon and then we would have to go back and complete the amendment later on, is that correct?

MR. STOKES: If the gentleman will continue to yield, yes, that is correct.

MR. WALKER: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Ohio?

There was no objection.

Chairman Anthony C. Beilenson, of California, responded to several inquiries about this procedure and demonstrated the procedure followed *when it is the request for a recorded vote that is deferred*, and not a recorded vote which is already demanded and ordered by the requisite number of seconding Members. The proceedings were as follows:[3]

THE CHAIRMAN: All time has expired.

The question is on the amendment offered by the gentleman from Utah [Mr. Hansen] to the amendment offered by the gentleman from Utah [Mr. Owens].

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

MR. [JAMES V.] HANSEN [of Utah]: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Pursuant to the order of the House of earlier today, further proceedings on this request for a recorded vote are postponed until not earlier than 8:30 p.m.

The point of no quorum is considered as having been withdrawn.

MR. [WAYNE] OWENS of Utah: Mr. Chairman, I move to strike the last word.

Mr. Chairman, it will be my intention to seek a vote on my amendment only if the amendment to the amendment fails.

MR. [DON] SUNDQUIST [of Tennessee]: I have a parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. SUNDQUIST: Mr. Chairman, under the rules the gentleman cannot strike the last word before a vote. He is getting an extension of his time for debate.

THE CHAIRMAN: The Chair would advise the gentleman that the votes on both amendments, if two are requested, have been postponed. No amendment is pending. The statement of the gentleman from Tennessee is not in order.

3. 138 CONG. REC. 20286, 20288–91, 102d Cong. 2d Sess., July 29, 1992.

MR. SUNDQUIST: Mr. Chairman, we did not have a second vote. We had one vote on the amendment of the gentleman from Utah [Mr. Hansen].

THE CHAIRMAN: The Chair will state that the question cannot be put on the original amendment of Mr. Owens at this time. The Chair would advise the gentleman that that request will be in order at the proper time after the vote is later taken by the Committee on the Hansen amendment, after that amendment is voted on.

Does the gentleman from Utah [Mr. Owens] wish to complete his statement?

MR. OWENS of Utah: Mr. Chairman, I just wanted to explain to the House that I will seek a vote on my amendment if the vote on the amendment to the amendment is not successful. . . .

THE CHAIRMAN: The pending business is the demand of the gentleman from Massachusetts, Mr. Atkins, for a recorded vote on his amendment on which the Chair had announced that the noes prevailed on a voice vote.

The Clerk will rereport the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Atkins: Page 84, strike line 3 and all that follows through line 6 on page 85.

THE CHAIRMAN: Those in favor of taking the vote by recorded vote will rise and remain standing. . . .

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Chairman, I have a further parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his inquiry.

MR. SOLOMON: Mr. Chairman, could the Chair inform the body whether this particular vote coming up passed or failed? We are entitled to know that.

THE CHAIRMAN: The Chair already announced, he would say to his friend, the gentleman from New York, that the noes prevailed on a voice vote.

MR. SOLOMON: I thank the Chair. . . .

THE CHAIRMAN: The pending business is the demand of the gentleman from Utah [Mr. Hansen] for a recorded vote on his amendment to the amendment offered by the gentleman from Utah [Mr. Owens], on which the Chair had announced that the noes prevailed on a voice vote.

The Clerk will rereport the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Hansen to the amendment offered by Mr. Owens of Utah: Strike "$4,961,500,000, to remain available until September 30, 1994" and insert in lieu thereof "$5,136,500,000, to remain available until September 30, 1994".

THE CHAIRMAN: Those in favor of taking this vote by recorded vote will stand and remain standing.

Evidently a sufficient number has arisen, and a recorded vote is ordered.

The Chair would remind Members that this, too, is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 181, noes 226, not voting 27. . . .

So the amendment to the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. OWENS OF UTAH

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Utah [Mr. Owens].

The Clerk will rereport the amendment.

The Clerk read as follows:

Amendment offered by Mr. Owens of Utah: Page 76, line 21, strike "$5,226,500,000" and insert "$4,961,500,000".

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

MR. OWENS of Utah: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

THE CHAIRMAN: This too will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 249, noes 159, not voting 26, as follows: . . .

—*Vote on Second Degree Amendment*

§ 55.8 Where a recorded vote on a second degree perfecting amendment is postponed, then the question on agreeing to the underlying first degree amendment is also necessarily postponed.

On July 26, 1995,[4] the House had under consideration in Committee of the Whole the appropriation bill (H.R. 2076) for the Departments of Commerce, Justice, State, and the Judiciary. The following parliamentary inquiry and the Chair's response illustrates the point of the headnote.

THE CHAIRMAN:[5] All time has expired.

The question is on the amendment offered by the gentleman from New Jersey [Mr. Smith] to the amendment offered by the gentleman from Colorado [Mr. Skaggs].

MR. [DAVID E.] SKAGGS [of Colorado]: Mr. Chairman, I have a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. SKAGGS: Mr. Chairman, I believe this was characterized as a substitute.

THE CHAIRMAN: It is an amendment.

The question is on the amendment offered by the gentleman from New Jersey [Mr. Smith] to the amendment offered by the gentleman from Colorado [Mr. Skaggs].

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

MR. [CHRISTOPHER H.] SMITH of New Jersey: Mr. Chairman, I demand a recorded vote.

THE CHAIRMAN: Pursuant to the order of the House today, further proceedings on the amendment offered by the gentleman from New Jersey [Mr. Smith], will be postponed.

MR. SKAGGS: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. SKAGGS: Mr. Chairman, I do not know that we have faced this particular parliamentary situation before in which proceedings have been sus-

4. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

5. Steve Gunderson (Wisc.).

pended on an amendment to an amendment, and we have not yet gotten to the underlying amendment. I would reserve at this time, if I may, therefore, the right to a recorded vote on the underlying amendment. I will not otherwise have an opportunity to ask for a vote in the House.

THE CHAIRMAN: The Chair would put the question on the underlying amendment to the committee after action on the amendment to the amendment was completed at a later point.

MR. SKAGGS: I thank the Chair for the clarification.

§ 55.9 Where the Chairman of the Committee of the Whole postpones further proceedings on a request for a recorded vote on a second degree amendment, the question on the underlying first degree amendment may not be put (nor can a recorded vote be requested thereon) until the amendment thereto is disposed of at a subsequent time.

On July 29, 1992,[6] the following proceedings occurred in the Committee of the Whole:

THE CHAIRMAN:[7] All time has expired.

The question is on the amendment offered by the gentleman from Utah [Mr. Hansen] to the amendment offered by the gentleman from Utah [Mr. Owens].

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

MR. [JAMES V.] HANSEN [of Utah]: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Pursuant to the order of the House of earlier today, further proceedings on this request for a recorded vote are postponed until not earlier than 8:30 p.m.

The point of no quorum is considered as having been withdrawn.

MR. [WAYNE] OWENS of Utah: Mr. Chairman, I move to strike the last word.

Mr. Chairman, it will be my intention to seek a vote on my amendment only if the amendment to the amendment fails.

MR. [DON] SUNDQUIST [of Tennessee]: I have a parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. SUNDQUIST: Mr. Chairman, under the rules the gentleman cannot strike the last word before a vote. He is getting an extension of his time for debate.

THE CHAIRMAN: The Chair would advise the gentleman that the votes on both amendments, if two are requested, have been postponed. No amendment is pending. The statement of the gentleman from Tennessee is not in order.

§ 55.10 Where the Chair was given authority by a unani-

6. 138 CONG. REC. 20286, 102d Cong. 2d Sess.

7. Anthony C. Beilenson (Calif.).

mous-consent agreement to postpone requests for recorded votes "until a later time," the Chair interpreted his mandate to include the postponement of such requests on second degree amendments, but not to permit second degree amendments after a voice vote has been taken and announced on the first degree amendment.

On June 24, 1994,[8] Chairman George E. Brown, Jr., of California, while presiding over the Committee of the Whole on an appropriation bill, answered a parliamentary inquiry relating to the offering of second degree amendments when he had been given authority to postpone votes on certain amendments until a later time in the proceedings of the Committee. The inquiries directed to the Chair were as follows:

MR. [HOWARD L.] BERMAN [of California]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. BERMAN: Mr. Chairman, I understand that we are operating now under unanimous-consent request, as it applies to title V, in terms of rolling votes. How will that affect the ability to offer an amendment to any of the amendments that might be offered?

THE CHAIRMAN: Would the gentleman restate his parliamentary inquiry?

MR. BERMAN: The question is, we will now be proceeding to hear amendments to title V and rolling votes on any of the amendments where a vote is requested. If one wants to amend an amendment being offered to title V under this procedure, how would one do that and how would one get recognized?

THE CHAIRMAN: As the Chair understands the situation, on an amendment to the amendment, the vote on that would still be postponed until the end of debate on other amendments to title V.

MR. BERMAN: I have a further parliamentary inquiry. Could the Chair explain the order of votes on amendments? Are all votes on amendments being rolled? What is the first amendment that will be voted on when we go to a vote?

THE CHAIRMAN: The only request that has been postponed following the Chair's announcement that there would be a rolling of the votes has been the amendment offered by the gentleman from Florida [Mr. Stearns].

MR. BERMAN: Mr. Chairman, is there any amendment which has been excluded from the unanimous consent to roll each vote?

THE CHAIRMAN: No, not so far.

MR. BERMAN: So what is the nature of the unanimous-consent request that was granted?

THE CHAIRMAN: The unanimous-consent request was that the request for a recorded vote on amendments be postponed until the end of debate on further amendments to this title. This is

8. 140 CONG. REC. p. _____, 103d Cong. 2d Sess.

to be done at the Chair's discretion, after consultation with the chairman and the ranking member of the appropriations subcommittee.

MR. BERMAN: If I might make a last parliamentary inquiry, would it be in order after an amendment has been voted on, depending on the result of that amendment, to then offer an amendment, after all debate time has expired, to the next amendment, based on what had happened on an earlier amendment?

THE CHAIRMAN: The chairman is informed by the parliamentarian that such a second degree amendment would not be in order, if the question had been put earlier on the first degree amendment and the voice vote announced.

—*Order of Taking Votes Where the Votes on Amendments Are Deferred*

§ 55.11 When the Committee of the Whole resumes proceedings on two consecutive amendments where requests for recorded votes were postponed by the Chair, the questions recur on the amendments in the same order in which the amendments were originally considered.

Where the Chair announces that the votes on two consecutive amendments will be deferred until both have been debated, the order of voting remains the same as the order of their consideration. The proceedings of Apr. 20, 1994, illustrate the order of voting where votes on amendments are postponed: [9]

THE CHAIRMAN: [10] It is now in order to consider amendment No. 37 printed in part 2 of the House Report 103–474.

MR. [BART] GORDON [of Tennessee]: Mr. Chairman, I offer an amendment.

THE CHAIRMAN: The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. Gordon:

At the appropriate place in the bill add the following:

SECTION . AWARDS OF PELL GRANTS TO PRISONERS PROHIBITED.

Section 401(b)(8) the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(8)) is amended to read as follows:

"(8) No basic grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution.".

SEC. . EFFECTIVE DATE.

The amendment made by this Act shall apply with respect to periods of enrollment beginning on or after the date of enactment of this Act.

THE CHAIRMAN: Pursuant to the rule, the gentleman from Tennessee [Mr. Gordon] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

MR. [ALBERT R.] WYNN [of Maryland]: Mr. Chairman, I rise in opposition to the amendment.

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9. 140 CONG. REC. p. _____, 103d Cong. 2d Sess.

10. Robert G. Torricelli (N.J.).

THE CHAIRMAN: The gentleman from Maryland [Mr. Wynn] will be recognized for 5 minutes.

The Chair recognizes the gentleman from Tennessee [Mr. Gordon].

MR. [JACK] BROOKS [of Texas]: Parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The distinguished gentleman will state his parliamentary inquiry.

MR. BROOKS: Mr. Chairman, do I understand that the Chair is going to cluster these two votes and we will have one 15-minute vote and one 5-minute vote after the Gordon-Fields amendment?

THE CHAIRMAN: The Chair has that discretion under the rule, to cluster the votes.

MR. BROOKS: I would request the Chair to do so. It would expedite matters and save us 10 minutes.

MR. GORDON: Mr. Chairman, I have no objection to the request if my friend, the gentleman from Maryland [Mr. Wynn] has no objection.

MR. WYNN: Mr. Chairman, I have no objection.

THE CHAIRMAN: The Chair recognizes the gentleman from Tennessee [Mr. Gordon]. . . .

THE CHAIRMAN: All time on the amendment has expired.

The question is on the amendment offered by the gentleman from Tennessee [Mr. Gordon].

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

MR. [JACK] FIELDS of Texas: Mr. Chairman, I demand a recorded vote.

MR. WYNN: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. WYNN: Mr. Chairman, it is my understanding that because these two amendments were being clustered, the debate on both amendments would occur and then the votes on both amendments would follow subsequent to the debate on both amendments. Am I correct in that understanding? . . .

THE CHAIRMAN: Pursuant to House Resolution 401, as the Chair has stated, further proceedings on the amendment offered by the gentleman from Tennessee [Mr. Gordon] will be postponed until after the debate on the next amendment.

MR. FIELDS of Texas: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. FIELDS: The question is, Mr. Chairman, what is the order of vote when we do have a recorded vote?

THE CHAIRMAN: The vote will occur in the same order as would have occurred had the Chair not postponed the vote.

It is now in order to consider amendment No. 38 printed in part 2 of the House Report 103–474.

MR. WYNN: Mr. Chairman, I offer an amendment made in order by the rule.

THE CHAIRMAN: The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. Wynn: At the appropriate place in the bill add the following: . . .

THE CHAIRMAN: All time has expired.

The question is on the amendment offered by the gentleman from Maryland [Mr. Wynn].

The question was taken, and the Chair announced that the ayes appeared to have it.

MR. FIELDS of Texas: Mr. Chairman, I demand a recorded vote.

THE CHAIRMAN: Pursuant to House Resolution 401, further proceedings on the amendment offered by the gentleman from Maryland will be postponed until after further proceedings on the amendment offered by the gentleman from Tennessee [Mr. Gordon].

Pursuant to Resolution 401, proceedings will now resume on those amendments on which further proceedings were previously postponed and in the following order: Amendment No. 37, offered by the gentleman from Tennessee [Mr. Gordon], and then amendment No. 39, offered by the gentleman from Maryland [Mr. Wynn].

The Chair announces that in the event votes are ordered, the Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

§ 56. Postponed Proceedings and the Quorum Rule

Effect of Announcement of Absence of Quorum on Chair's Authority To Postpone Vote

§ 56.1 Where the absence of a quorum has been announced and an automatic vote ordered under Rule XV clause 4, the House may not, even by unanimous consent, conduct any business in the announced absence of a quorum.

The Speaker's authority to postpone a vote taken in the House may not be exercised after a record vote has begun or once the absence of a quorum has been announced. The proceedings of July 13, 1983,[11] are illustrative. On that date, a vote on the Speaker's announced approval of the Journal was objected to on the ground that a quorum was not present. The Speaker declared that a quorum was indeed not present and directed an "automatic" call of the roll under Rule XV clause 5. When the electronic system then failed, an attempt was made to vacate the demand so that the House would not have to settle the question by using the time-consuming back-up device of having the Clerk call the roll. The proceedings were as follows:

THE SPEAKER:[12] The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MR. [BILL] ARCHER [of Texas]: Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

THE SPEAKER: The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

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11. 129 CONG. REC. 18844, 98th Cong. 1st Sess.

12. Thomas P. O'Neill, Jr. (Mass.).

MR. ARCHER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

THE SPEAKER PRO TEMPORE:[13] The Chair would like to make an announcement.

The Chair has been advised that the electronic voting system is at the present time not operable.

Until further notice, therefore, all votes and quorum calls will be taken by the stand-by procedures which are provided for in the rules.

The Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The Clerk proceeded to call the roll.

MR. [WILLIAM] CARNEY [of New York] (during the rollcall): Madam Speaker, may I make a parliamentary inquiry?

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. CARNEY: Would it be possible to take the vote on the Journal by a voice vote at this time? Could we make a unanimous-consent request to take the Journal vote by a voice vote?

THE SPEAKER PRO TEMPORE: Under the rule, the yeas and nays must be taken. Since the absence of a quorum has been disclosed, no unanimous-consent business can be transacted.

MR. [WILLIAM R.] RATCHFORD [of Connecticut]: Madam Speaker as a parliamentary inquiry, may I ask, is it possible under the rules to delay the vote?

THE SPEAKER PRO TEMPORE: The Chair is advised that it is not now possible to postpone the vote which has been commenced, and since the absence of a quorum has been announced by the Chair.

Point of No Quorum Considered as Withdrawn Where Vote Is Postponed

§ 56.2 Pursuant to Rule XV clause 6(e), which prohibits the Speaker from entertaining a point of no quorum unless he has put the question on the pending proposition, the Speaker announces, after postponing a vote on a motion to suspend the rules where objection has been made to the vote on the ground that a quorum is not present, that the point of order is "considered as withdrawn" since the Chair is no longer putting the question, and a Member may not insist on the point of order that a quorum is not present.

Before the adoption on Jan. 4, 1977,[14] of Rule XV clause 6(e), which prohibits the Speaker from entertaining a point of no quorum unless the Speaker has put the pending question to a vote, it was possible to have a call of the House after the Speaker had exercised his authority to postpone further consideration of a suspension motion. The Speaker customarily

13. Barbara Boxer (Calif.).

14. 123 CONG. REC. 70, 95th Cong. 1st Sess.

asked if the Member making the point of no quorum if he or she would withdraw it. Such quorum calls, even though taken by electronic device, were often time-consuming and interrupted the consideration of motions to suspend the rules. An illustration of the practice followed before adoption of clause 6(e) is found in the proceedings of Oct. 20, 1975:[15]

THE SPEAKER PRO TEMPORE:[16] The question is on the motion offered by the gentlewoman from New York (Ms. Abzug) that the House suspend the rules and pass the bill H.R. 9924, as amended.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I demand a recorded vote.

A recorded vote was refused.

Mr. Bauman: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 3(b) of rule XXVII and the prior announcement of the Chair, further proceedings on this motion will be postponed.

Does the gentleman from Maryland withdraw his point of order that there is no quorum?

MR. BAUMAN: Before I do, Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, the Chair announced that 28 Members asked for a recorded vote. Is it not one-fifth of the membership present?

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman that under clause 5 of rule I, on a recorded vote, one-fifth of a quorum, or 44 Members is required in the House. If the gentleman had asked for the yeas and nays, then it would have been one-fifth of those present. The gentleman asked for a recorded vote.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. ASHBROOK: Mr. Speaker, is it too late to ask for the yeas and nays?

THE SPEAKER PRO TEMPORE: It is at this time. The objection has been made to the vote on the ground that a quorum is not present, and the Chair has stated that under the rule, further proceedings have been postponed.

Will the gentleman from Maryland withdraw his point of order that there is no quorum?

MR. BAUMAN: No, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

Without objection, a call of the House is ordered.

There was no objection.

Since the amendment to Rule XV which became effective in the 95th Congress,[17] the following procedure is customary:[18]

THE SPEAKER PRO TEMPORE:[19] The question is on the motion offered by the gentleman from New York (Mr. Murphy) that the House suspend the

15. 121 CONG. REC. 33004, 33005, 94th Cong. 1st Sess.

16. John J. McFall (Calif.).

17. 123 CONG. REC. 70, 95th Cong. 1st Sess., Jan. 4, 1977.

18. 123 CONG. REC. 14785, 95th Cong. 1st Sess., May 16, 1977.

19. John Brademas (Ind.).

rules and pass the bill H.R. 3849, as amended.

The question was taken.

MR. [RONALD M.] MOTTL [of Ohio]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

MR. MOTTL: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 3(b) of rule XXVII, and the prior announcement of the Chair, further proceedings on this motion will be postponed.

The point of order is considered withdrawn.

The Speaker does have complete discretion to recognize for a motion for a call of the House. If a call is necessary between suspension motions, or indeed between any series of matters where the votes are being postponed, the Speaker can recognize for such a motion. Rule XV clause 6(e)(2),[20] which bestows this discretion, is as follows:

Notwithstanding subparagraph (1), it shall always be in order for a Member to move a call of the House when recognized for that purpose by the Speaker, and when a quorum has been established pursuant to a call of the House, further proceedings under the call shall be considered as dispensed with unless the Speaker, in his discretion, recognizes for a motion under clause 2(a) of this rule or for a motion to dispense with further proceedings under the call.

The proceedings of Sept. 24, 1979,[1] are illustrative of the Speaker's exercise of this discretion when he refused to recognize a Member moving a call of the House after a suspension motion had been postponed.

THE SPEAKER PRO TEMPORE:[2] The question is on the motion offered by the gentleman from Alabama (Mr. Nichols) that the House suspend the rules and pass the bill, H.R. 5168.

The question was taken.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

MR. ASHBROOK: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

MR. ASHBROOK: Mr. Speaker, I insist on my point of order.

THE SPEAKER PRO TEMPORE: The point of order is considered withdrawn. The question is no longer pending.

MR. ASHBROOK: Mr. Speaker, I move a call of the House.

THE SPEAKER PRO TEMPORE: The Chair did not recognize the gentleman for that purpose.

Objection to Vote on Ground of No Quorum Takes Precedence of Point of No Quorum

§ 56.3 Where a Member makes a point of no quorum when a

20. *House Rules and Manual* § 774d (1995).

1. 125 CONG. REC. 25876, 96th Cong. 1st Sess.

2. John J. Cavanaugh (Neb.).

question is put by the Speaker, as permitted by Rule XV clause 6(e), another Member may, pending the Speaker's count of the House, object to the vote on the basis that a quorum is not present under clause 4 of that rule, thereby permitting the Speaker to postpone further proceedings on the question which has the effect of mooting the point of no quorum, there no longer being a pending question to put to a vote.

Clause 6(e) of Rule XV, which prohibits the Speaker from entertaining a point of no quorum unless a pending question is put to a vote, was adopted in the first session of the 95th Congress.[3] Later in that same session, during consideration of a series of motions to suspend the rules, a division of the House was requested when the Speaker put the question on the adoption of one of the motions. The Chair's count of those supporting and opposing the motion was less than a quorum, and Mr. John M. Ashbrook, of Ohio, then objected to the vote on the ground that a quorum was not present. Subsequent proceedings were as follows:[4]

THE SPEAKER PRO TEMPORE:[5] The question is on the motion offered by the gentleman from New York (Mr. Solarz) that the House suspend the rules and agree to the resolution (H. Res. 724) as amended.

The question was taken; and on a division (demanded by Mr. Ashbrook) there were—ayes 38, noes 0.)

MR. ASHBROOK: Mr. Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Does the gentleman from Ohio (Mr. Ashbrook) object to the vote on the ground that a quorum is not present?

MR. ASHBROOK: No. Under article I of the Constitution, which requires a quorum be present for the conduct of business, I make the point of order that a quorum is not present.

MR. [STEPHEN J.] SOLARZ [of New York]: Mr. Speaker, I ask for a vote on the resolution.

THE SPEAKER PRO TEMPORE: Does the gentleman from New York (Mr. Solarz) object to the vote on the ground that a quorum is not present?

MR. SOLARZ: No objection.

MR. [TENO] RONCALIO [of Wyoming]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

MR. ASHBROOK: Mr. Speaker, I insist on my point of order that a quorum is not present, as required under the

3. H. Res. 5, 123 CONG. REC. 54, 95th Cong. 1st Sess., Jan. 4, 1977.

4. 123 CONG. REC. 31048, 95th Cong. 1st Sess., Sept. 27, 1977.

5. John P. Murtha (Pa.).

Constitution, for the conduct of business.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman that further proceedings have been postponed, there is no longer a pending question being put to a vote, and under clause 6(e), rule XV, the point of order is not now in order.

MR. ASHBROOK: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. ASHBROOK: Mr. Speaker, the Chair counted the House not more than 1 minute ago and found that not even 40 Members were present. I do not think any Member was present who did not stand. There was clearly not a quorum present.

I want the record to show that I object to that. I think my rights and responsibilities as a Member of Congress have been diluted by this rule, and I want to object to further proceedings because there is not a quorum present, as required by the Constitution.

Mr. Speaker, I make a point of order to that effect.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman that the Chair merely counted a division vote, and did not count the House.

Withdrawal of Objection To Vote on Ground That Quorum Not Present To Permit Demand for Yeas and Nays

§ 56.4 Where a Member objects to a vote on a motion to suspend the rules on the ground that a quorum is not present, and the vote is then postponed under the rule, it is too late to demand the yeas and nays (until that motion is again before the House as unfinished business) unless, by unanimous consent, the proceedings are vacated so the questions remain pending before the House.

Where the yeas and nays are ordered before the Speaker exercises his authority to postpone a vote, that order remains valid when the question again is before the House as the pending or unfinished business. An illustration of this principle is found in the proceedings of Mar. 15, 1976,[6] as shown below:

THE SPEAKER PRO TEMPORE:[7] The question is on the motion offered by the gentleman from North Carolina (Mr. Taylor) that the House suspend the rules and pass the bill H.R. 7743, as amended.

The question was taken.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 3 of rule XXVII, the Chair's prior announce-

6. 122 CONG. REC. 6417, 6418, 94th Cong. 2d Sess.

7. John J. McFall (Calif.).

ment, further proceedings on this motion will be postponed.

Does the gentleman from Ohio withdraw his point of order of no quorum?

MR. ASHBROOK: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. Ashbrook: Mr. Speaker, is the Chair putting the question on the bill?

THE SPEAKER PRO TEMPORE: The Chair would state that the vote has been put over, on the strength of the gentleman's point of order. We would have to have a quorum call if the gentleman does not withdraw his point of order at this time.

MR. ASHBROOK: Mr. Speaker, it is my understanding it could be called and we might not have a vote on it. Is that not correct?

THE SPEAKER PRO TEMPORE: That is correct. The gentleman could have asked for the yeas and nays to order a rollcall vote.

MR. ASHBROOK: Mr. Speaker, I demand the yeas and nays.

THE SPEAKER PRO TEMPORE: The gentleman should first ask unanimous consent to vacate the previous proceedings under which the vote was postponed by his point of order? Does the gentleman make that request?

MR. ASHBROOK: Yes, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Ohio?

There was no objection.

MR. ASHBROOK: Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER PRO TEMPORE: Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

Where Speaker Authorizes Postponement of Vote, Opportunity To Demand Yeas and Nays Deferred

§ 56.5 Where the vote on a motion is postponed because objection to the voice vote is based upon the absence of a quorum, it is then too late to demand the yeas and nays. When the postponed question is later put de novo, the yeas and nays or a recorded vote can then be demanded.

On May 15, 1984,[8] a motion to suspend the rules was put to a voice vote. The proceedings were then as indicated:

THE SPEAKER PRO TEMPORE:[9] The question is on the motion offered by the gentleman from Kentucky (Mr. Perkins) that the House suspend the rules and pass the bill, H.R. 5345.

The question was taken.

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

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8. 130 CONG. REC. 12240, 98th Cong. 2d Sess.

9. Wyche Fowler, Jr. (Ga.).

The point of order of no quorum is considered withdrawn.

MR. PERKINS: Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the bill just under consideration.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Kentucky? . . .

MR. [WILLIAM F.] GOODLING [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. GOODLING: Mr. Speaker, I was going to demand the yeas and nays and did not hear the question put. I would like to demand the yeas and nays.

THE SPEAKER PRO TEMPORE: The Chair put the question. There was an objection for lack of a quorum. Under the previous announcement, that vote has been postponed until all suspensions are considered.

MR. GOODLING: There will be a record vote?

THE SPEAKER PRO TEMPORE: There will be an opportunity for a record vote at that time.

May the Chair clarify once more to the gentleman from Pennsylvania, that question will be decided when the question is out de novo at that time as to whether or not a quorum is present.

MR. GOODLING: That is why I wanted the yeas and nays.

Putting Deferred Questions De Novo

§ 56.6 Where a vote is objected to on the ground that a quorum is not present, and the Speaker then chooses to postpone the vote by exercising his authority under Rule I clause 5, the point of no quorum is considered as withdrawn (no question then remaining before the House) and the question is later put de novo by voice vote as unfinished business.

Where a suspension motion was under consideration and the Speaker put the question to a voice vote, Mr. Robert S. Walker, of Pennsylvania, first asked for the yeas and nays, but before the Speaker had counted those standing to support the demand, the demand was withdrawn. Mr. Walker then objected to the vote under Rule XV clause 4, and the Speaker postponed the vote. The proceedings were as carried below:[10]

THE SPEAKER PRO TEMPORE:[11] The gentleman from Pennsylvania demands the yeas and nays.

MR. WALKER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Pursuant to clause 5, rule I, and the Chair's prior announcement, further pro-

10. 131 CONG. REC. 35589, 99th Cong. 1st Sess., Dec. 10, 1985.

11. Thomas R. Carper (Del.).

ceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

MR. WALKER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Mr. Speaker, has a vote been ordered on the measure?

THE SPEAKER PRO TEMPORE: The Chair will state that the gentleman from Pennsylvania withdrew his demand for the yeas and nays and the vote has been postponed until the conclusion of the other two suspensions at which time the vote will be de novo and a record vote could be ordered.

Putting the Question De Novo on Postponed Vote

§ 56.7 Where a Member withdraws his objection to a voice vote on an amendment on the ground that a quorum is not present and the House then agrees by unanimous consent to postpone further proceedings to a future day, the question on adoption of the amendment is put de novo on that future day, and a roll call vote is not automatic at that time.

On Mar. 23, 1953,[12] the House entertained consideration of a bill (H.R. 3655) to provide for the control of alcoholic beverages in certain clubs in the District of Columbia and for other purposes. In the course of the bill's consideration, Mr. Wayne L. Hays, of Ohio, demanded a separate vote on a particular amendment. There being no other requests for separate votes, the remaining amendments were put en gross, and agreed to.

THE SPEAKER[13] then directed the Clerk to report the amendment on which a separate vote had been demanded. The Clerk read the proposal, the question was put and taken; and the Speaker announced that the ayes appeared to have it. Mr. Hays then objected to the vote on the ground that a quorum was not present.

At this point, Mr. Carroll D. Kearns, of Pennsylvania, urged Mr. Hays to withhold his objection to the vote on the amendment. Mr. Kearns pointed out that a vote on other legislation was withheld and carried over as the first order of business on the next Wednesday pursuant to the request of the majority party. He suggested, accordingly, that the amendment be voted on as the second order of business on that Wednesday.

The following proceedings then occurred:

THE SPEAKER: The Chair will state that that will not jeopardize the gentleman's rights.

MR. HAYS of Ohio: I have no objection, Mr. Speaker.

THE SPEAKER: Without objection, further proceedings in connection with

12. 99 CONG. REC. 2251, 2252, 83d Cong. 1st Sess.

13. Joseph W. Martin, Jr. (Mass.).

the amendment and the bill will be postponed until Wednesday next.

There was no objection.

MR. KEARNS: Mr. Speaker, the Committee on the District of Columbia has no further business for today.

MR. HAYS of Ohio: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HAYS of Ohio: Mr. Speaker, am I correct in saying that the second order of business on Wednesday next will be a rollcall on this amendment.

THE SPEAKER: Not a rollcall; it will be a vote on the amendment.

MR. HAYS of Ohio: Mr. Speaker, I made the point of order that a quorum was not present, and under those circumstances the rollcall is automatic. I will not agree to any withholding of it unless there is a rollcall, because a rollcall is automatic. I think the Speaker will agree that a quorum is not present now.

THE SPEAKER: The gentleman is mistaken in his impression. Today a rollcall would be automatic, but not on Wednesday, unless the House so orders.

MR. HAYS of Ohio: I do not want to agree to anything like that, Mr. Speaker.

THE SPEAKER: It has already been agreed to. The gentleman has forfeited any rights he might have. I am very sorry if he did not understand the situation.

§ 57. Reduced Voting Time

Speaker's Authority—Rescinding Announced Intention To Reduce Voting Time on Passage

§ 57.1 The utilization of the authority bestowed by Rule XV clause 2(c) to reduce the voting time on passage of a bill to five minutes, following a 15-minute vote on a motion to recommit, is completely within the Chair's discretion; and he may rescind his announced decision to reduce the time at any time before the vote commences.

An illustration of the Chair's exercise of his discretion is found in the proceedings of Sept. 29, 1993.[14]

THE SPEAKER PRO TEMPORE:[15] Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

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14. 139 CONG. REC. p. _____, 103d Cong. 1st Sess. Under consideration was H.R. 2401, the Department of Defense Appropriations Act for Fiscal Year 1994.

15. Michael R. McNulty (N.Y.).

MR. [FLOYD] SPENCE [of South Carolina]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

THE SPEAKER PRO TEMPORE: The Chair wishes to announce that a recorded vote on final passage, if ordered, will be a 5-minute vote.

The vote was taken by electronic device, and there were—yes 192, noes 238, not voting 3. . . .

THE SPEAKER PRO TEMPORE: The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

THE SPEAKER PRO TEMPORE: Notwithstanding the Chair's prior announcement, this will be a 15-minute vote.

The vote was taken by electronic device, and there were—yes 268, noes 162, not voting 3. . . .

—*Reducing Voting Time When Votes Are "Back to Back"*

§ 57.2 The Speaker's authority to reduce electronic voting times to five minutes where the vote occurs immediately after a 15-minute vote has been expanded since the concept was first introduced in the 96th Congress.

As part of the resolution adopting new rules for the 96th Congress, Rule XV clause 5 was amended on Jan. 15, 1979,[16] to permit the Speaker to reduce the voting time to five minutes on the passage of a bill or adoption of a resolution or conference report if the electronic roll call immediately followed a 15-minute vote on a motion to recommit.

e pertinent amendment included in House Resolution 5[17] on that date was as follows:

> (12) In Rule XV, clause 5, add at the end thereof the following new sentence: "The Speaker may, in his discretion, announce after a rollcall vote has been ordered on a motion to recommit a bill, resolution, or conference report thereon, that he may reduce to not less than five minutes the period of time in which a rollcall vote, if ordered, will be taken by electronic device on the question of passage or adoption, as the case may be, on such bill, resolution, or conference report thereon if the question on final passage or adoption follows without intervening business the vote on the question of recommittal."

e authority to reduce voting times was supplemented by amendments in the 101st,[18] 102d,[19] and 103d[20] Congresses,

16. Rule XV clause 5(b), *House Rules and Manual* § .774bb (1995).
17. 125 CONG. REC. 8, 96th Cong. 1st Sess., Jan. 15, 1979.
18. 135 CONG. REC. 72, 101st Cong. 1st Sess., Jan. 3, 1989 (H. Res. 5).
19. 137 CONG. REC. 39, 102d Cong. 1st Sess., Jan. 5, 1991 (H. Res. 5).
20. The authority to reduce to five minutes the time to vote on adoption of

so the rule was expanded to permit a reduction in voting time to five minutes immediately following a 15-minute vote in three circumstances: the vote on passage immediately following a vote on recommittal; the vote on successive amendments reported to the House from the Committee of the Whole following a roll call on the first of a series of such amendments; and on the adoption of a special order of business reported from the Committee on Rules where there is a 15-minute vote on the previous question. In the 104th Congress,[1] the permitted time for *any* underlying question which immediately follows a 15-minute previous question vote was established at a minimum of five minutes.

—*Reducing Time on Postponed Votes*

§ 57.3 Where several "clusters" of recorded votes were postponed pursuant to Rule I clause 5(b)(1), to occur "back to back," only the first vote in the first cluster was of the 15-minute variety and succeeding votes, regardless of cluster, were reduced to 5 minutes.

Where the House considered a series of motions to suspend the rules and then took up *seriatim a* number of unanimous-consent requests for the passage of bills and joint resolutions, the Speaker announced postponement of the suspension votes to follow consideration of the bills and then postponed the series of votes on the bills brought up by unanimous consent until after the votes on suspensions. The proceedings of May 17, 1983,[2] were as follows:

> THE SPEAKER PRO TEMPORE:[3] . . . The question is on the motion offered by the gentleman from Illinois (Mr. Rostenkowski) that the House suspend the rules and pass the bill, H.R. 2973.
>
> The question was taken.
>
> MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, on that, I demand the yeas and nays.
>
> The yeas and nays were ordered.
>
> THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.
>
> The Chair will now entertain two requests for consideration of joint resolu-

a special order reported from the Committee on Rules, following a 15-minute vote on the previous question, was first included in the adoption of the rules of Jan. 5, 1993, 139 CONG. REC. 50, 103d Cong. 1st Sess. (H. Res. 5).

1. Rule XV clause 5(b), *House Rules and Manual* § 774bb (1997).

2. 129 CONG. REC. 12505, 12507, 98th Cong. 1st Sess.

3. E (Kika) de la Garza (Tex.).

tions to be called up by the gentleman from Texas (Mr. Leland). The Chair will postpone the votes on suspensions until after the consideration of these joint resolutions.

MR. [MICKEY] LELAND [of Texas]: Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged for further consideration of the Senate joint resolution (S.J. Res. 51) designating May 21, 1983, as "Andrei Sakharov Day," and ask for its immediate consideration in the House.

The Clerk read the title of the Senate joint resolution.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Texas? . . .

THE SPEAKER PRO TEMPORE: The question is on the passage of the Senate joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [MARTY] RUSSO [of Illinois]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this question will be postponed.

The vote will be taken after the recorded vote on H.R. 2973, the last suspension vote.

The point of no quorum is considered withdrawn.

MR. LELAND: Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 226) to designate the week of May 22, 1983, through May 28, 1983, as "National Digestive Diseases Awareness Week," and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Texas? . . .

THE SPEAKER PRO TEMPORE: The question is on the engrossment and third reading of the joint resolution. . . .

THE SPEAKER PRO TEMPORE: The question is on the passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. RUSSO: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER PRO TEMPORE: Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this question will be postponed. The vote will be taken after the vote on H.R. 2973, the last suspension vote.

Later in the same day,[4] votes were taken as indicated:

THE SPEAKER PRO TEMPORE: Debate has been concluded on all motions to suspend the rules and on the two joint resolutions.

Pursuant to clause 5, rule I, the Chair will now put the question on each motion on which further pro-

4. 129 CONG. REC. 12508, 98th Cong. 1st Sess.

ceedings were postponed in the order in which that motion was entertained.

Votes will be taken in the following order:

H.R. 2733, de novo.

House Joint Resolution, by the yeas and nays.

H.R. 1416, by the yeas and nays.

H.R. 2681, by the yeas and nays.

H.R. 2936, by the yeas and nays.

H.R. 2602, by the yeas and nays.

H.R. 2973, by the yeas and nays.

Senate Joint Resolution 51, de novo.

House Joint Resolution 226, by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series. . . .

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 5, rule I, the Chair announces that he will reduce to the minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all the additional motions to suspend the rules on which the Chair has postponed further proceedings and the two commemorative joint resolutions called up by the gentleman from Texas (Mr. Leland).

Varying Voting Times by Unanimous Consent

§ 57.4 The House permitted, by unanimous consent, a reduction of voting time to five minutes on the first of a series of postponed suspension votes where that vote was to occur immediately following a five-minute vote on the passage of another measure.

The proceedings of Nov. 8, 1983,[5] illustrate the use of a unanimous-consent request to "tailor" the clustering authority to meet specific circumstances:

THE SPEAKER:[6] The question is on the motion to recommit.

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER: Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of the passage of the bill.

The vote was taken by electronic device, and there were—yeas 166, nays 244, not voting 23. . . .

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

THE SPEAKER: The question is on the passage of the joint resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. [GERALD B.] SOLOMON [of New York]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 203, nays 206, not voting 24. . . .

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5. 129 CONG. REC. 31505, 31506, 31510, 98th Cong. 1st Sess.

6. Thomas P. O'Neill, Jr. (Mass.).

THE SPEAKER: Pursuant to clause 5, rule I, the Chair will now put the question on each motion to suspend the rules on which further proceedings were postponed earlier today in the order in which that motion was entertained.

Votes will be taken in the following order:

H.R. 2982, de novo, and H.R. 2211, de novo.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

MR. [ELLIOT H.] LEVITAS [of New York]: Mr. Speaker, I ask unanimous consent that the time for the vote on the first suspension, if a vote be taken, be in a 5-minute period.

THE SPEAKER: Is there objection to the request of the gentleman from Georgia?

There was no objection.

§ 57.5 By unanimous consent, waiving the five-minute minimum time set by clause 5(b)(3) of Rule I, the House authorized the Speaker to put remaining postponed questions to two-minute electronic votes.

On Oct. 4, 1988,[7] as the House was proceeding toward an adjournment, there were 40 roll call votes taken on suspension motions and procedural questions. After a series of 15-minute votes, unanimous consent was granted to reduce to two minutes the time for consideration of the 31 remaining suspension motions.

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Speaker, I ask unanimous consent that after the vote on the next suspension, the Speaker be authorized to reduce the time for the balance of the votes for today to 2 minutes.

THE SPEAKER PRO TEMPORE:[8] Is there objection to the request of the gentleman from Illinois?

There was no objection.

THE SPEAKER PRO TEMPORE: The Chair will state that the next vote will be 5 minutes, and all votes following that will be 2 minutes. There will be two bells, and the vote will take 2 minutes. . . .

THE SPEAKER PRO TEMPORE: The unfinished business is the question of suspending the rules and passing the Senate bill, S. 795, as amended.

The Clerk read the title of the Senate bill.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from California [Mr. Miller] that the House suspend the rules and pass the Senate bill, S. 795, as amended, on which the yeas and nays are ordered.

This is the final vote. Let us give a great round of applause to the Clerks and the Parliamentarian who did an outstanding job during this whole series.

This will be a 2-minute vote.

The vote was taken by electronic device, and there were—yeas 405, nays 12, not voting 14. . . .

7. 134 CONG. REC. 28126, 28148, 100th Cong. 2d Sess.

8. John P. Murtha (Pa.).

In Committee of the Whole

§ 57.6 The Chairman of the Committee of the Whole has discretion regarding which votes should be reduced to five minutes.

Instance where the Chair, contemplating the exercise of his authority under clause 2(c), Rule XXIII, to conduct a recorded vote on the pending amendment to the bill as a five-minute vote if ordered without intervening business after a 15-minute vote on a substitute therefor, announced that another recorded vote, already ordered on an earlier amendment but postponed pursuant to a previous order[9] would also be a five-minute vote if taken without intervening business after the questions on the pending amendments.[10]

MR. [DOUG] BEREUTER [of Nebraska]:

Mr. Chairman, I offer an amendment. It is printed in the Record.

The Clerk read as follows:

Amendment offered by Mr. Bereuter:

Page 705, after line 13, insert the following new chapter 4 and redesignate existing chapter 4 of title X (and sections thereof) accordingly:

CHAPTER 4—HORN OF AFRICA RECOVERY AND FOOD SECURITY

SEC. 1061. FINDINGS.

The Congress makes the following findings: . . .

THE CHAIRMAN PRO TEMPORE: The question is on the amendment offered by the gentleman from Nebraska [Mr. Bereuter]. . . .

MR. BEREUTER: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

THE CHAIRMAN PRO TEMPORE:[11] Pursuant to a previous order of the House, the vote on the amendment offered by the gentleman from Nebraska [Mr. Bereuter] will be postponed until after debate on the next amendment.

MR. [DAN] BURTON of Indiana: Mr. Chairman, I offer an amendment.

THE CHAIRMAN PRO TEMPORE: Is the amendment printed in the Record?

MR. BURTON of Indiana: It is, Mr. Chairman.

The Clerk read as follows:

Amendment offered by Mr. Burton of Indiana: Page 688, after line 3, insert the following: . . .

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I offer an

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9. On June 12, 1991, a unanimous-consent request was agreed to in the House which authorized the Chairman of the Committee of the Whole, during the further consideration of the bill H.R. 2508, the International Cooperation Act of 1991, to "postpone recorded votes, if ordered, on any amendment to the bill until later that legislative day, and that he be authorized to reduce to a minimum of five minutes the period of time for recorded votes after the first vote in any series." 137 CONG. REC. 14403, 102d Cong. 1st Sess.

10. 137 CONG. REC. 15602, 15609, 15613–15, 102d Cong. 1st Sess., June 20, 1991.

11. Jim McDermott (Wash.).

amendment as a substitute for the amendment, as amended.

The Clerk read as follows:

> Amendment offered by Mr. Walker as a substitute for the amendment offered by Mr. Burton of Indiana, as amended: In lieu of the matter proposed to be inserted, insert the following:
>
> "Limitation on Assistance". Assistance for any fiscal year under the Foreign Assistance Act of 1961, including assistance with funds appropriated before the date of enactment of this Act, may not be delivered to the Communist Party of South Africa or any affiliated or associated organization. . . .

MR. WALKER: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

THE CHAIRMAN PRO TEMPORE: Pursuant to clause 2(c), rule XXIII, the Chair announces that he will reduce to 5 minutes the time for a recorded vote, if ordered, on the Burton amendment, as amended, if the vote occurs immediately following the pending vote, and then the postponed vote on the Bereuter amendment, immediately thereafter, will be a 5-minute vote.

The vote was taken by electronic device, and there were-ayes 279, noes 134, not voting 19. . . .

THE CHAIRMAN PRO TEMPORE: The pending business is the vote on the amendment offered by the gentleman from Indiana [Mr. Burton], as amended.

The amendment, as amended, was agreed to.

THE CHAIRMAN PRO TEMPORE: The pending business is the vote on the amendment offered by the gentleman from Nebraska [Mr. Bereuter], on which a recorded vote is ordered.

This vote will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 410, noes 0, not voting 22.

§ 58. Separate Votes on Amendments in the House

Amendments Adopted in Committee of the Whole and Reported Back to the House

§ 58.1 Where demand is made for separate votes in the House on several amendments adopted in the Committee of the Whole, the amendments are voted on in the order in which they appeared in the bill.

The order of voting in the House on amendments reported from the Committee of the Whole normally mirrors that of their sequence in the bill. However, the order may be varied by terms of a special rule providing for the consideration of the bill and structuring the amendment process.

One frequently utilized form of special order occurs where a bill being considered in the Committee of the Whole House on the state of the Union has a complete amendment in the nature of a substitute. The customary rule

would permit the substitute to be read as the original bill and would provide that amendments adopted to it be reported to the House for separate votes. Such a rule was utilized for the consideration of H.R. 3950, the Food and Agricultural Resources Act of 1990. When the Committee of the Whole had completed its consideration of the measure, the Chairman[12] reported the bill back to the House, pursuant to the rule, as follows:[13]

THE CHAIRMAN: Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore [Mr. Hughes] having assumed the chair, Mr. Bonior, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3950) entitled the "Food and Agricultural Resources Act of 1990," pursuant to House Resolution 439, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

THE SPEAKER PRO TEMPORE:[14] Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole?

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Speaker, I demand a separate vote on the amendments offered by the gentleman from Illinois [Mr. Madigan to titles IX and X adopted in the Committee of the Whole en bloc.

THE SPEAKER PRO TEMPORE: Is a separate vote demanded on any other amendment?

MR. [RICHARD (DICK)] ARMEY [of Texas]: Mr. Speaker, I demand a separate vote on every amendment adopted in the Committee of the Whole after titles IX and X.

THE SPEAKER PRO TEMPORE: Is a separate vote demanded on any other amendment? If not, the Clerk will report the first amendments on which a separate vote has been demanded in the order appearing in the bill.

The Clerk read as follows:

Amendments en bloc: Section 107A of the Agricultural Act of 1949, as amended by section 901 of the bill, is amended by:

In subsection (a)(3)(C) (page 193, lines 4 and 5) striking "not to exceed 5 percent" and inserting "not to exceed 10 percent"; and

In subsection (c)(1)(E)(ii) (page 200, at lines 11 and 12 and at lines 16 and 17) striking "7.5 percent (10 percent in the case of the 1994 and 1995 crops)" and inserting at those two points "22.5 percent".

Section 105A of the Agricultural Act of 1949, as amended by section 1001 of the bill, is amended by:

In subsection (a)(3)(C) (page 226, lines 16 and 17) striking "not to exceed 5 percent" and inserting "not to exceed 10 percent"; and

In subsection (c)(1)(E)(ii) (page 233, lines 17 and 18, and line 22)

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12. David E. Bonior (Mich.).

13. 136 CONG. REC. 21593, 101st Cong. 2d Sess., Aug. 1, 1990.

14. William J. Hughes (N.J.).

striking "15 percent and inserting at those two points "17.5 percent". . . .

THE SPEAKER PRO TEMPORE: The question is on the amendment en bloc.

The amendments en bloc were agreed to.

MR. ARMEY: Mr. Speaker, I ask unanimous consent to withdraw my earlier request.[15]

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Texas?

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on the committee amendment in the nature of a substitute, as modified, as amended.

The committee amendment in the nature of a substitute, as modified, as amended, was agreed to.

To Withdraw Demand for Separate Vote

§ 58.2 Where separate votes are demanded on several amendments reported from the Committee of the Whole, the Speaker puts the question on each amendment in the order in which it appears in the bill, and not in the order in which a separate vote is demanded.

On May 28, 1987,[16] the House received the report of the Chairman of the Committee of the Whole on the bill H.R. 1451, the Older Americans Act Amendments of 1987. Separate votes were demanded on 10 amendments, but the requests were later withdrawn. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:[17] Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole?

MR. [DALE E.] KILDEE [of Michigan]: Mr. Speaker, I demand a separate vote on the Armey amendment, as amended.

THE SPEAKER PRO TEMPORE: Is a separate vote demanded on any other amendment?

MR. [F. JAMES] SENSENBRENNER [Jr., of Wisconsin]: Mr. Speaker, I demand separate votes on each of the following amendments; the Kildee technical amendments; the Tauke amendment relating to repealing title VII; the Roybal amendment clarifying minority targeting provisions; the Snowe amendment, including adult day care as possible activities; the Pepper amendment requiring States that receive funds under the act to have an elder abuse and prevention program; the Biaggi amendment, reducing the transfer authority; the Gunderson amendment to require technical data collection on rural/urban participation; the Bonker amendment and the Roybal amendment authorizing $2 million more.

THE SPEAKER PRO TEMPORE: Is the gentleman asking for a separate vote

15. See the proceedings at 133 CONG. REC. 14030, 100th Cong. 1st Sess., May 28, 1987.

16. 133 CONG. REC. 14030, 100th Cong. 1st Sess.

17. John P. Murtha (Pa.).

on each of the amendments he has named?

MR. SENSENBRENNER: Yes, Mr. Speaker.

MR. KILDEE: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. KILDEE: To ask for the yeas and nays, one-fifth of those will have to stand for the yeas and nays; is that not the case? We will put the question on the Armey amendment first, and then if enough Members stand for the yeas and nays, then a recorded vote will be called for?

THE SPEAKER PRO TEMPORE: The amendments will be put in the order in which they appear in the bill.

MR. KILDEE: In each case, then, the Speaker will ask for a sufficient number to stand to see whether or not the yeas and nays will be ordered?

THE SPEAKER PRO TEMPORE: That is correct.

MR. KILDEE: Mr. Speaker, I have another parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. KILDEE: At that point, does the Chair have it within his power to reduce the interim between votes to 5 minutes?

THE SPEAKER PRO TEMPORE: Not without unanimous consent.

MR. KILDEE: I thank the Chair.

THE SPEAKER PRO TEMPORE: The Clerk will report the first amendment appearing in the bill on which a separate vote has been demanded. . . .

MR. KILDEE . . . So for that reason, I withdraw my request for a separate vote on the Armey amendment, as amended, in the House.

MR. [BARNEY] FRANK [of Massachusetts]: Mr. Speaker, objection.

THE SPEAKER PRO TEMPORE: Unanimous consent is not required.

The gentleman from Michigan withdraws his request.

Does the gentleman from Wisconsin withdraw his requests?

MR. SENSENBRENNER: Mr. Speaker, based upon the request of the gentleman from Michigan and with the understanding that we will not be having a separate vote on the Armey amendment—

THE SPEAKER PRO TEMPORE: The gentleman has already made the withdrawal.

MR. SENSENBRENNER: Mr. Speaker, I withdraw my request for a separate vote on the other nine amendments.

THE SPEAKER PRO TEMPORE: The gentleman from Wisconsin withdraws his requests.

The question is on the amendment.

The amendment was agreed to.

Varying Order of Voting by Unanimous Consent

§ 58.3 Separate votes in the House on amendments reported from the Committee of the Whole are taken in the order in which they appear in the bill, but by unanimous consent that order of voting may be changed.

On June 23, 1987,[18] in the first session of the 100th Congress,

18. 133 CONG. REC. 17090, 17091, 100th Cong. 1st Sess.

separate votes were demanded in the House on all amendments reported to the House from the Committee of the Whole. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:[19] Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole?

MR. [JOHN] MILLER of Washington: Mr. Speaker, I demand a separate vote on the so-called Herger amendment.

THE SPEAKER PRO TEMPORE: Is a separate vote demanded on any other amendment?

MR. [WALLY] HERGER [of California]: Mr. Speaker, I demand a separate vote on the following amendments:

The Levine amendment regarding the Pan American Health Organization;

The Richardson amendment regarding Cuban political prisoners;

The Richardson amendment concerning human rights abuses in Ethiopia and Paraguay;

The Oberstar amendment regarding consulates in Germany, Sweden, Italy, France, and Austria; and

The Neal amendment, as amended, regarding Japanese defense expenditures.

THE SPEAKER PRO TEMPORE: Is a separate vote demanded on any other amendment?

The Chair will put the votes in the following order; first, the Levine amendment; second, the Oberstar amendment; third, the Richardson amendment No. 6; fourth, the Richardson amendment No. 8; fifth, the Herger amendment; and sixth, the Neal amendment.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. FRENZEL: Will the Clerk read the amendments prior to the vote on each?

THE SPEAKER PRO TEMPORE: The Clerk will report each amendment in the order in which they appear in the bill.

MR. FRENZEL: I thank the Chair.

THE SPEAKER PRO TEMPORE: The Clerk will report the first amendment on which a separate vote has been demanded.

MR. [DANIEL A.] MICA [of Florida]: Mr. Speaker, I ask unanimous consent that following a record vote on this amendment the time for record votes on the remaining amendments be reduced to 5 minutes.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Florida?

MR. HERGER: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard. . . .

THE SPEAKER PRO TEMPORE: The Clerk will report the next amendment on which a separate vote has been demanded.

MR. MICA: Mr. Speaker, I ask unanimous consent that the Herger amendment, which would have been the last amendment, be voted on out of order

19. Tony Coehlo (Calif.).

as the next amendment, and that after that, without prejudice to the outcome of that vote, each of the remaining votes on amendments be reduced to 5 minutes.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Florida?

There was no objection.

THE SPEAKER PRO TEMPORE: The Clerk will report the Herger amendment.

Order of Voting Altered by Special Rule

§ 58.4 Where a "modified closed" rule prescribes the order for consideration of amendments with the bill considered as read in the Committee of the Whole, then separate votes demanded in the House on adopted amendments are taken in that same order, regardless of the order in which the amendments appear in the bill.

Where a special order determines the order of consideration of amendments in Committee of the Whole, the Speaker, in putting the question on separate votes on the adopted amendments back in the House, follows the dictates of the rule. An example of such a rule and of the pattern of voting occurred on Mar. 25, 1993.[20] On this occasion, the order for voting and the order of appearance of the amendments in the bill coincided, but the numbers given the amendments in the rule (numbers 1, 2, and 3) would govern if there were a conflict. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:[1] Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment adopted by the Committee of the Whole?

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, I demand a separate vote on the following amendments adopted in the Committee of the Whole: No. 1, the DeLay amendment requiring counselors to be professionals who have degrees in medicine or mental health, as amended by the Waxman amendment; No. 2, the so-called Waxman amendment regarding the conscience clause; and No. 3, the so-called Burton of Indiana amendment regarding condom standards, as amended by the Waxman amendment.

Mr. Speaker, I demand separate votes on those three amendments.

THE SPEAKER PRO TEMPORE: The Clerk will report the first amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Page 2, line 18, insert before the period the following: ", and that such information will be provided only through individuals holding professional degrees in medicine or osteopathic medicine, nursing, clinical psychology, the allied health professions, or social work,

20. 139 CONG. REC. 6358, 6359, 103d Cong. 1st Sess.

1. Owen B. Pickett (Va.).

through individuals meeting such other criteria as the Secretary determines to be appropriate for providing such information, or through individuals allowed under State law to provide such information".

THE SPEAKER PRO TEMPORE: The question is on the amendment.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it. . . .

So the amendment was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The Clerk will report the next amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Page 3, strike lines 1 through 5 and insert the following:

"(B) the project refers the individual seeking services to another provider in the project, or to another project in the geographic area involved, as the case may be, that will provide such information.

THE SPEAKER PRO TEMPORE: The question is on the amendment. . . .

THE SPEAKER PRO TEMPORE: The Clerk will report the final amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Page 4, after line 3, insert the following subsection:

(c) Information on Condoms.—Section 1001 of the Public Health Service Act, as amended by subsection (a) of this section, is amended by inserting after subsection (b) the following subsection:

"(c) The Secretary may not make an award of a grant or contract under this section unless the applicant for the award agrees that the family planning project involved will—

Order of Voting Where Special Order Provides "King of the Mountain" Process

§ 58.5 Under the "King of the Mountain" amendment procedure, if more than one amendment in the nature of a substitute is adopted, only the last such amendment adopted will be considered as finally adopted and voted on for final passage.

Where a special rule reported from the Committee on Rules limits the number of amendments and defines their order of consideration, it may also specify that if more than one amendment to the same text is adopted, only the last such amendment shall be considered as finally adopted. The procedure has been utilized both for consideration of bills in Committee of the Whole or in the House. The rule adopted on Nov. 8, 1993,[(2)] providing for the consideration *in the House* of H. Con. Res. 170, directing the President to the War Powers Act to remove U.S. Armed Forces from Somalia by a date certain, provides an example of the "King of the Mountain" procedure. The text of the

2. H. Res. 293, 139 CONG. REC. p. _____, 103d Cong. 1st Sess.

special rule reported from the Committee on Rules and adopted by the House was as follows (emphasis added):

MR. [TONY P.] HALL of Ohio: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 293 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 293

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the concurrent resolution (H. Con. Res. 170) directing the President pursuant to section 5(c) of the War Powers Resolution to remove United States Armed Forces from Somalia by January 31, 1994. The amendment in the nature of a substitute recommended by the Committee on Foreign Affairs now printed in the concurrent resolution shall be considered as adopted. *The previous question shall be considered as ordered on the concurrent resolution, as so amended, to final adoption without intervening motion except: (1) the further amendment in the nature of a substitute printed in part 1 of the report of the Committee on Rules accompanying this resolution; (2) the further amendment in the nature of a substitute printed in part 2 of the report of the Committee on Rules accompanying this resolution; and (3) one motion to recommit. Each of the amendments printed in the report of the Committee on Rules may be offered only in the order printed in the report,* may be offered only by a Member designated in the report, shall be considered as read, and shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent. All points of order against the amendments printed in the report are waived. *If more than one of the amendments printed in the report is adopted, only the last to be adopted shall be considered as finally adopted.*

SEC. 2. The provisions of section 7 of the War Powers Resolution (50 U.S.C. 1546) shall not apply during the remainder of the first session of the One Hundred Third Congress to a concurrent resolution introduced pursuant to section 5 of the War Powers Resolution (50 U.S.C. 1544) with respect to Somalia.

In his explanation of the rule of Nov. 8, 1993, Mr. Hall, managing the rule for the Committee on Rules, explained the provisions of the rule.[3]

MR. HALL of Ohio: Mr. Speaker, the rule provides that the Foreign Affairs Committee amendment in the nature of a substitute shall be considered as adopted. Under the rule, only two substitute amendments printed in the report to accompany the rule shall be in order. These amendments may be offered by Mr. Gilman or his designee, and Mr. Hamilton or his designee, and shall be considered in the order and manner specified. . . .

If more than one of the two amendments made in order is adopted, only the last amendment to be adopted shall be considered as finally adopted. This is in keeping with the agreed upon king-of-the-hill procedure. . . .

On the following day, when the House concurrent resolution was called up for consideration, the Speaker Pro Tempore[4] described

3. *Id.*

4. Jim McDermott (Wash.).

the operation of the amendment procedure as follows:[5]

THE SPEAKER PRO TEMPORE: All time for general debate has expired.

It is in order to consider the amendments in the nature of a substitute printed in House Report 103–328. The amendments may be offered only in the order printed and by a Member designated in the report, and shall be considered as read. Debate on each amendment shall be equally divided and controlled by the proponent and an opponent of the amendment.

If more than one of the amendments printed in the report is adopted, only the last to be adopted shall be considered as finally adopted.

Pursuant to the rule, it is now in order to consider the amendment in the nature of a substitute printed in part 1 of House Report 103–328.

For what purpose does the gentleman from New York rise?

MR. [BENJAMIN A.] GILMAN [of New York]: Mr. Speaker, I offer an amendment in the nature of a substitute.

THE SPEAKER PRO TEMPORE: The Clerk will designate the amendment.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. Gilman: Strike all after the resolving clause and insert in lieu thereof the following:

SECTION 1. FINDING THAT THE UNITED STATES ARMED FORCES IN SOMALIA ARE ENGAGED IN HOSTILITIES.

For purposes of sections 5(c) and 7 of the War Powers Resolution (50 U.S.C. 1544(c) and 1546), the Congress finds that the United States Armed Forces in Somalia are engaged in hostilities without a declaration of war or specific statutory authorization.

SEC. 2. REMOVAL OF ARMED FORCES FROM SOMALIA.

Pursuant to section 5(c) of the War Powers Resolution (50 U.S.C. 1544(c)), the Congress hereby directs the President to remove the United States Armed Forces from Somalia by January 31, 1994.

THE SPEAKER PRO TEMPORE: Pursuant to the rule, the gentleman from New York [Mr. Gilman] will be recognized for 15 minutes and a Member opposed will be recognized for 15 minutes.

The Chair recognizes the gentleman from New York [Mr. Gilman].

MR. GILMAN: Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin [Mr. Roth], a senior member of the Committee on Foreign Affairs.

In this instance, the second amendment considered under the "King of the Hill" procedure had more affirmative votes than the first amendment which was considered and which was also decided in the affirmative, but the result under the rule would have been the same even if the first amendment debated and voted on had received a larger number of "aye" votes than the second. The final proceedings on the concurrent resolution were as follows:[6]

THE SPEAKER PRO TEMPORE: The question is on the amendment in the

5. 139 CONG. REC. p. _____, 103d Cong. 1st Sess., Nov. 9, 1993.

6. *Id.* at p. _____.

nature of a substitute offered by the gentleman from New York [Mr. Gilman].

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. GILMAN: Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently, a quorum is not present. The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 224, nays 203, not voting 7. . . .

So the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: Pursuant to the rule it is now in order to consider the amendment in the nature of a substitute printed in part 2 of House Report 103–328.

PARLIAMENTARY INQUIRY

MR. GILMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. GILMAN: Mr. Speaker, would the Chair explain to the House the procedure we are about to follow?

THE SPEAKER PRO TEMPORE: The Chair will reread his statement. Pursuant to the rule, it is now in order to consider the amendment in the nature of a substitute printed in part 2 of House Report 103–328.

MR. GILMAN: Mr. Speaker, am I correct—and I submit a rhetorical question—that if there is a vote against the Hamilton amendment, it would be perceived to be support for the Gilman amendment, is that correct?

THE SPEAKER PRO TEMPORE: The Chair cannot characterize the meaning of Members' votes.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HAMILTON

MR. [LEE H.] HAMILTON [of Indiana]: Mr. Speaker, pursuant to the rule I offer the amendment in the nature of a substitute printed in part 2 of the report to accompany House Resolution 293.

THE SPEAKER PRO TEMPORE: The Clerk will designate the amendment in the nature of a substitute. The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. Hamilton: Strike all after the resolving clause and insert the following:

SECTION 1. REMOVAL OF UNITED STATES ARMED FORCES FROM SOMALIA.

Pursuant to section 5(c) of the War Powers Resolution (50 U.S.C. 1544(c)), the Congress hereby directs the President to remove United States Armed Forces from Somalia by March 31, 1994 (unless the President requests and the Congress authorizes a later date), except for a limited number of members of the Armed Forces sufficient only to protect United States diplomatic facilities and citizens and noncombatant personnel to advise the United Nations commander in Somalia.

PARLIAMENTARY INQUIRIES

MR. [JOHN] LINDER [of Georgia]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. LINDER: Mr. Speaker, is it correct to say that a vote in favor of the Hamilton amendment will negate the Gilman amendment?

THE SPEAKER PRO TEMPORE: Under the rule, if both amendments are adopted, only the last amendment will be finally adopted. . . .

All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentleman from Indiana [Mr. Hamilton].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

MR. GILMAN: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 226, noes 201, not voting 7. . . .

So the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 293, the previous question is ordered on the concurrent resolution, as amended.

The question is on the concurrent resolution, as amended.

The concurrent resolution, as amended, was agreed to.

The title of the concurrent resolution was amended so as to read: Concurrent resolution directing the President pursuant to section 5(c) of the War Powers Resolution to remove United States Armed Forces from Somalia.".

A motion to reconsider was laid on the table.

Committee of the Whole Cannot Determine or Set Length of Votes in House

§ 58.6 The Committee of the Whole may not, even by unanimous consent, order that votes in the House on recommittal and final passage be conducted as five-minute votes following a 15-minute vote on a final amendment in Committee of the Whole.

On Oct. 3, 1990,[7] the House had under consideration in Committee of the Whole the bill H.R. 4300, the Family Unity and Employment Opportunity Immigration Act of 1990. At the conclusion of the amendment process, an inquiry was addressed to Chairman George (Buddy) Darden, of Georgia:[8]

MR. [PAUL B.] HENRY [of Michigan]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HENRY: Mr. Chairman, there are a number of meetings back and forth with the White House and all. I understand we have a series of three

7. 136 CONG. REC. 27273, 101st Cong. 2d Sess.

8. *Id.*

votes, a vote on this Bryant amendment, then a vote on recommittal, and on final passage. Would it be possible to have the other two votes be 5-minute votes?

THE CHAIRMAN: The Chair does not have the authority in the Committee of the Whole. Under the rules pertaining to the Committee, the Chair respectfully denies the request of the gentleman.

MR. HENRY: I thank the Chair.

THE CHAIRMAN: The question is on the amendment in the nature of a substitute offered by the gentleman from Texas [Mr. Bryant].

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

F. DELEGATE VOTING

§ 59. Delegate Voting in the Committee of the Whole

The office of Delegate has its origins in an ordinance adopted by the Continental Congress, and the office was confirmed by law in August, 1789.[1] Delegates were permitted the right to debate, under the theory that a Congress could hear in debate anyone it chose. In the earliest Congresses, however, Delegates were not permitted to vote; but as the business of the House was increasingly considered in committees, Delegates were often named to committees and could participate in deliberations there. In 1841, a report relating to the qualifications of a Delegate from Florida, a gratuitous statement appears in the report: "With the single exception of voting, the Delegate enjoys every other privilege and exercises every other right of a Representative. He can act as a member of a standing or special committee and vote on the business before such committees, and he may thus exercise an important influence on those initiatory proceedings by which business is prepared for the action of the House."[2]

In some later Congresses, the right to participate in committee deliberations and vote therein was curtailed.[3]

In the modern House, the right to membership and the privilege of voting in those committees to which named was affirmed by the 1970 Reorganization Act.[4]

1. 1 Hinds' Precedents § 400.

2. 2 Hinds' Precedents § 1301.

3. 2 Hinds' Precedents § 1300.

For a general discussion of the role of Delegates and their level of participation, see 2 Hinds' Precedents, §§ 1290–1306; 6 Cannon's Precedents §§ 240–246; Ch. 7 § 3.10, supra.

4. See Ch. 7 § 3.10, supra.

Extending the right of the Delegates and the Resident Commissioner to vote in the Committee of the Whole House on the State of the Union was a new concept, first included in the rules of the 103d Congress. The discussions which surrounded the adoption of this new rule, the challenges to its constitutionality and its demise in the 104th Congress are discussed in this section.

Voting by Delegates and the Resident Commissioner

§ 59.1 When the House adopted its rules for the 103d Congress, the rules of the House were amended to permit Delegates and the Resident Commissioner to vote on questions arising in the Committee of the Whole House on the State of the Union.

Rule XII of the rules of the House had, since the Legislative Reorganization Act of 1970, permitted the Delegate from the District of Columbia and the Resident Commissioner from Puerto Rico the privilege and right of voting in the standing committees of the House. In the 103d Congress, the scope of their participation was significantly broadened by including in the rules two new provisions as follows:

Rule XII clause 2:[5]

2. In a Committee of the Whole House on the state of the Union, the Resident Commissioner to the United States from Puerto Rico and each Delegate to the House shall possess the same powers and privileges as Members of the House.

Rule XXIII clause 2(d):[6]

(d) Whenever a recorded vote on any question has been decided by a margin within which the votes cast by the Delegates and the Resident Commissioner have been decisive, the Committee of the Whole shall automatically rise and the Speaker shall put that question de novo without intervening debate or other business. Upon the announcement of the vote on that question, the Committee of the Whole shall resume its sitting without intervening motion.

Arguments were raised in the House that this enlargement of voting rights for "non-Members" was in fact unconstitutional.[7] Before beginning debate on House Resolution 5, the resolution adopting rules for the 103d Congress, a preferential motion to refer the resolution was offered by the ranking minority member of the Committee on Rules, Gerald B. H. Solomon, of New York. The reso-

5. *House Rules and Manual*, § 740 (1993).
6. *House Rules and Manual*, § 864b (1993).
7. See debate on H. Res. 5, adopting rules for the 103d Congress, 139 CONG. REC. 51 et seq., 103d Cong. 1st Sess., Jan. 5, 1993.

lution was laid on the table.[8] The new Delegate rules also withstood other attacks on their constitutionality, both in the House and in the courts,[9] but they remained in effect through the 103d Congress. The first instance where the Delegates and the Resident Commissioner cast their votes on a recorded vote in Committee of the Whole House on the state of the Union is recorded in the proceedings of Feb. 3, 1993, during the consideration of H.R. 1, the Family and Medical Leave Act of 1993.[10]

Votes of the Delegates and the Resident Commissioner were decisive, and subject to review by the House, on three occasions in the 103d Congress.[11] In determining whether the votes were in fact decisive, the Chair followed a "but for" test: would the result of the vote have been different if the Delegates and the Commissioner had not voted. On May 19, 1993,[12] during consideration in Committee of the Whole of H.R. 820, the National Competitiveness

8. The motion to refer provided as follows:

"Mr. Solomon moves to refer the resolution to a select committee of five members, to be appointed by the Speaker, not more than three of whom shall be from the same political party, with instructions not to report back the same until it has conducted a full and complete study of, and made a determination on, the constitutionality of those provisions which would grant voting rights in the Committee of the Whole to the Resident Commissioner from Puerto Rico and the Delegates from American Samoa, the District of Columbia, Guam and the Virgin Islands."

The motion was laid on the table by a vote of 224–176, not voting 31. 139 CONG. REC. 52, 53, 103d Cong. 1st Sess., Jan. 5, 1993.

9. See proceedings surrounding the attempt to offer, as a question of the privileges of the House, a resolution delaying the implementation of the rules pending a determination as to their constitutionality. 139 CONG. REC. p._____, 103d Cong. 1st Sess., Feb. 3, 1993. The resolution was determined not to be a proper question of privilege under Rule IX since a delay in the implementation of a rule of the House in effect is a change in that rule, and a change in a rule of the House cannot be effected by a question of privilege. See also § 59.2, infra, for court decisions on constitutionality.

10. 139 CONG. REC. p._____, 103d Cong. 1st Sess.

11. 140 CONG. REC. p. _____, 103d Cong. 2d Sess., Mar. 17, 1994; 140 CONG. REC. p. _____, 103d Cong. 2d Sess., June 23, 1994; 140 CONG. REC. p. _____, 103d Cong. 2d Sess., June 24, 1994. Only in the second of these three instances was the result of the vote in the Committee of the Whole, where the Delegates participated, reversed in the House, where they did not.

12. 139 CONG. REC. 10408, 10409, 103d Cong. 1st Sess.

Act of 1993, a vote was taken on an amendment and the ayes were 208, the noes 213. Four votes in the negative were cast by Delegates. Had they not voted, the result would have been 208–209, still a vote rejecting the amendment. A series of inquiries, as follows, were addressed to the Chairman Pro Tempore, Mr. Esteban Edward Torres, of California, about how the "but for" test should be applied.[13]

THE CHAIRMAN PRO TEMPORE: The question is on the amendment offered by the gentleman from Tennessee [Mr. Duncan].

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

MR. [JOHN J.] DUNCAN [Jr., of Tennessee]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 208, noes 213, not voting 16. . . .

So the amendment was rejected.

The result of the vote was announced as above recorded.

PARLIAMENTARY INQUIRIES

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE: The gentleman may state his parliamentary inquiry.

MR. WALKER: Mr. Chairman, the delegates have made a difference in the vote here. Does that result in an automatic revote of the issue?

THE CHAIRMAN PRO TEMPORE: Four delegates[14] voted no. It was not a decisive vote. Those votes would not have changed the result of the vote.

MR. WALKER: Wait a minute.

THE CHAIRMAN PRO TEMPORE: The Chair would advise that if the delegates had not voted, the vote would have been 208 to 209. The result would be the same. The amendment would be rejected. The amendment is rejected.

MR. [CLIFF] STEARNS [of Florida]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE: The gentleman may state his parliamentary inquiry.

MR. STEARNS: Under the rule that was passed, Mr. Chairman, it has to be closer before we revote, is that it? Because some of these people might have voted a little differently if the vote was just one or two, so I do not think we can speculate. That is why I think we should have another vote.

THE CHAIRMAN PRO TEMPORE: The Chair can only base his ruling on the votes cast, and the Delegates' vote was not decisive.

MR. STEARNS: Decisive is what, a difference of how much?

THE CHAIRMAN PRO TEMPORE: But for the votes of the Delegates, the outcome would have been different.

MR. STEARNS: So if we take the difference of the four, it is a separation of the two votes.

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13. *Id.*

14. The four Delegates voting were: Carlos A. Romero-Barceló (PR), Eni F. H. Faleomavaega (AS), Ron de Lugo (VI), and Robert A. Underwood (GU).

THE CHAIRMAN PRO TEMPORE: Vote 208 to 209.

MR. STEARNS: One vote, a separation of one vote is not worth another vote? It seems to me that is significant.

THE CHAIRMAN PRO TEMPORE: The result would not have been different.

MR. STEARNS: Well, it might have been different if everyone saw there was just one vote, and if their vote was the key vote——

THE CHAIRMAN PRO TEMPORE: The Chair cannot speculate on that possibility.

MR. STEARNS: Will the Chair allow me a further indulgence?

THE CHAIRMAN PRO TEMPORE: The Chair will recognize the gentleman.

MR. STEARNS: Mr. Speaker, if there is a difference of one vote on the House floor, we have seen many times it go up and down because Members feel a stronger compunction or a stronger conscience on an issue.

THE CHAIRMAN PRO TEMPORE: The Chair again cannot speculate on that possibility.

MR. STEARNS: Well, would the Chairman consider a revote on this matter, since there was just a difference of one vote?

THE CHAIRMAN PRO TEMPORE: The vote cannot be reconsidered in the Committee of the Whole.

MR. STEARNS: I thank the Chairman for his indulgence. . . .

MR. WALKER: Mr. Chairman, a further parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE: The gentleman may state his parliamentary inquiry.

MR. WALKER: Has the Chair just ruled that we can get a separate vote on this matter in the whole House?

THE CHAIRMAN PRO TEMPORE: The amendment was not adopted. The amendment will not be reported to the House. It was not adopted.

MR. STEARNS: Mr. Chairman, may I propound a further parliamentary inquiry?

THE CHAIRMAN PRO TEMPORE: The gentleman may state his parliamentary inquiry.

MR. STEARNS: Mr. Chairman, can we move to rise to the full House and vote on this? Is it appropriate for me to move that we rise?

THE CHAIRMAN PRO TEMPORE: The motion to rise is in order, but it does not provoke another vote in the House.

MR. STEARNS: Well, I mean, with the consideration that we vote in the full House on this particular issue, because I think as it stands now there is only one vote that separates us.

THE CHAIRMAN PRO TEMPORE: The Chair would state that would not be resolved in the House.

MR. [NEWT] GINGRICH [of Georgia]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE: The gentleman may state his parliamentary inquiry.

MR. GINGRICH: Mr. Chairman, if the gentleman from Tennessee were to offer exactly the same amendment, but with 9 percent instead of 10, that would be in order at this point, would it not, so that Members knowing how close it is would have an opportunity on a slightly smaller number actually to reconsider, is that not true?

THE CHAIRMAN PRO TEMPORE: The Chair would rule that a different amendment could be offered.

MR. GINGRICH: And those Members who now know how close it was would

have an opportunity to look at voting on this much closer and a slightly smaller amendment?

THE CHAIRMAN PRO TEMPORE: The Chair would state to the minority whip that that is not a parliamentary inquiry.

MR. GINGRICH: I would simply ask the Chair to keep that section of the bill open for one additional moment.

THE CHAIRMAN PRO TEMPORE: Are there any other amendments to title V?

Mr. Stearns did offer another amendment, with a slightly smaller monetary deduction (9% instead of 10%). The amendment was rejected by a larger majority than the original Duncan amendment.

A further series of inquiries about this "test" occurred on Apr. 20, 1994,[15] where, had the Delegates not participated, the result of a vote would have been a tie.

THE CHAIRMAN:[16] All time has expired. The question is on the amendment offered by the gentleman from Florida [Mr. McCollum].

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

RECORDED VOTE

MR. [BILL] MCCOLLUM [of Florida]: Mr. Chairman, on that I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 212, noes 217, not voting 9. . . .

15. 140 CONG. REC. p. _____, 103d Cong. 2d Sess.

16. Robert G. Torricelli (N.J.).

PARLIAMENTARY INQUIRIES

MR. [TOM] DELAY [of Texas]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. DELAY: Mr. Chairman, I think I know the answer to this inquiry, but for the record, Mr. Chairman, the delegates No. 5.

Is it true that the delegates voting, if we voted again, would cause a tie, and the amendment would fail because of a tie?

THE CHAIRMAN: The gentleman correctly states that the votes cast by delegates were not decisive.

Had the Delegates not voted, it would have been a tie. On a tie vote, the amendment fails.

MR. DELAY: So actually one could say it is a tie, so each vote to the negative on the amendment is a very crucial vote?

THE CHAIRMAN: That is not a parliamentary inquiry. The Chair answered the inquiry as it was stated.

MR. [NEWT] GINGRICH [of Georgia]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman from Georgia will state his parliamentary inquiry.

GINGRICH: Mr. Chairman, I just want to clarify, because I do not think, given the way the House currently counts votes, that a normal citizen would realize that the real vote among the elected Members was 212 to 212.

THE CHAIRMAN: The gentleman must state a parliamentary inquiry.

MR. GINGRICH: In the record, among Members, not counting Delegates, is it

correct, first, that the vote was 212 to 212?

THE CHAIRMAN: If the gentleman's inquiry is whether or not the delegates were decisive in the outcome, they were not. Had they not voted, it would have been a tie vote, and the amendment would have failed. If that is the gentleman's inquiry, the Chair has answered it.

MR. GINGRICH: And therefore, each of the 212 was the decisive vote?

The Chairman: The gentleman is not stating a parliamentary inquiry.

MR. MCCOLLUM: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. MCCOLLUM: Do not the rules state that when a vote is decided by five or fewer votes and the Delegates have voted, the five Delegates, that a revote is in order regardless of what the outcome might or might not be, hypothetically?

THE CHAIRMAN: That is not correct. The rule operates where they are decisive, which means where there would have been a different outcome, had they not voted.

MR. MCCOLLUM: But since there were, in fact, nine Members, the inquiry is this, Mr. Chairman: Where there were Members not voting, in this case there were nine Members not voting, would not the possibility of a revote be that five or fewer votes could change the outcome in a situation like we have before us today on this previous vote?

THE CHAIRMAN: A motion to reconsider is not in order in the Committee of the Whole.

Delegate Voting Upheld as Constitutional

§ 59.2 The constitutionality of the rule permitting Delegates and the Resident Commissioner to vote in Committee of the Whole, subject to review in the House if their votes were decisive, was affirmed in the U.S. District Court. On appeal, the Court of Appeals concurred.

The amendments to Rule XII and Rule XXIII which permitted the Delegates and the Resident Commissioner to cast votes in Committee of the Whole were adopted on Jan. 5, 1993.[17] The Minority Leader of the House, Robert H. Michel, of Illinois, 12 other sitting Members of the House and three private citizens filed suit in the United States District Court for the District of Columbia against the Clerk of the House, the Delegates and the Commissioner, seeking an injunction to prevent the implementation of the rule. They also sought a ruling to the effect that the provisions allowing the Delegates and Commissioner to vote in Committee of the Whole was unlawful. On Mar. 6, 1993, the court issued an order denying the preliminary

17. H. Res. 5, 139 CONG. REC. 49 et seq., 103d Cong. 1st Sess.

in-junction and in the accompanying opinion found that the amendment to Rule XII, permitting a "re-vote" of amendments where the votes by non-Members was decisive, negated any unconstitutional power which would have been bestowed by the amendment to Rule XII, standing alone. Excerpts from the opinion in *Michel* v *Anderson* [18] follow:

ROBERT H. MICHEL, et al., Plaintiffs,

v

DONNALD K. ANDERSON, et al., Defendants.

UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA.

March 8, 1993.

HAROLD H. GREENE, District Judge.

I. OPINION

Background

In this case, thirteen Republican Members of the House of Representatives,[19] led by Minority Leader Robert Michel (R–Ill.),[20] seek to enjoin enforcement [1] of House Rule XII which was amended on January 5, 1993 to authorize Delegates from the District of Columbia, Guam, American Samoa, and the Virgin Islands, as well as the Resident Commissioner from Puerto Rico to vote in the House's Committee of the Whole. The Committee of the Whole is comprised of all Members of the House, and it is where a substantial portion of the chamber's business is conducted. The House also amended House Rule XXIII to require a de novo vote on the House floor on any question decided by the Committee of the Whole where the vote of the Delegates [2] was decisive. The Delegates

18. Civil Action 93–0039; 817 F Supp. 126.

19. The following Members of the House of Representatives are plaintiffs in this suit in their capacity as Members of Congress and as voters: Robert Michel (R–Ill.), Newt Gingrich (R–Ga.), Gerald Solomon (R–NY), Don Young (R–Alaska), Craig Thomas (R–Wy.), Christopher Cox (R–Cal.), Henry Hyde (R–Ill.), Michael Castle (R–Del.), Jay Kim (R–Cal.), Deborah Pryce (R–Ohio), Henry Bonilla (R–Tex.), Thomas Bliley (R–Va.), and Edward Royce (R–Cal.). Additionally, three individual voters from some of the congressional districts represented by the plaintiff Members are also participating as plaintiffs.

20. Twenty-eight additional Members have joined these plaintiffs by means of an *amicus curiae* brief. See p. 478, note 4, infra.

1. Plaintiffs have also asked for a declaratory ruling that non-Member voting in the Committee of the Whole is unlawful.

2. Throughout this Opinion, the Court's references to "Delegates" includes the Resident Commissioner from Puerto Rico. There is no practical distinction between the rights, privileges and entitlements of the Delegates and the Resident Commissioner. [See Deschler's Precedents Ch. 7, § 3, at 38, supra.] The historic origins of these two different titles

are prohibited from participating in this second vote.

The plaintiffs moved for a preliminary injunction on the ground that these rules unconstitutionally vest the Delegates with legislative power, and that they dilute the legislative power of Members of the House. Alternatively, the plaintiffs claim that, by unilaterally modifying the Delegates' role, the House has violated the constitutional requirements of bicameralism and presentment of legislation to the President.

The defendants, who are the Clerk of the House and the five House Delegates,[3] argue that the Court should refrain from deciding this case under various jurisdictional and prudential doctrines. Further, the defendants contend that, if the merits were to be reached, the Court should hold that the rule change does not vest the Delegates with legislative power and that the rule is not otherwise constitutionally defective.[4]

Both parties have joined in requesting that the Court consolidate the plaintiffs' application for a preliminary injunction with final consideration of this issue on the merits pursuant to Federal Rules of Civil Procedure 65(a)(2). The Court grants this request, and the decision herein constitutes a final judgment.

After discussing the history of the Committee of the Whole, the role it plays in the operations of the House, and the history of the position of territorial Delegate, the Court addresses the threshold issue of whether a judicial remedy with respect to this largely

relate to whether a territory was prepared to apply for statehood, in which case their representative in Congress was called a Delegate. [Id. at 37.] Additionally, where the Court uses the term "territorial Delegate" it includes the Delegate from the District of Columbia.

3. Donnald K. Anderson, the Clerk of the House of Representatives, is responsible for tallying and reporting the votes of the Committee of the Whole. The five other defendants are the Delegates who were given a vote in the Committee of the Whole through this rule change: Eleanor Holmes Norton (District of Columbia), Carlos Romero-Barcelo (Resident Commissioner from Puerto Rico), Robert Underwood (Guam), Ron De Lugo (Virgin Islands), and Eni Faleomavaega (American Samoa).

4. A number of parties have filed *amicus curiae* briefs on this novel constitutional issue. Twenty-eight other Republican Members of the House of Representatives have filed a brief in support of the request for preliminary injunction. Other briefs advocating the unconstitutionality of the rule changes have been filed by Citizens United, the Conservative Caucus, Inc., and the Abraham Lincoln Foundation for Public Policy Research, Inc.

An *amicus curiae* brief supporting the constitutionality of the House rules was filed by a broad spectrum of organizations located in the District of Columbia, including the Federation of Civic Organizations, the League of Women Voters, the AFL–CIO, several bar associations, and fourteen past presidents of the D.C. Bar.

internal congressional dispute is appropriate. The Court then considers whether the changes in the House rules, as currently configured, run afoul of the Constitution.

II. COMMITTEE OF THE WHOLE

In order to appreciate the constitutional issues implicated in this lawsuit and to evaluate the defenses raised, it is necessary to review the origins of the Committee of the Whole, the function it serves in the legislative process, and the traditional role of Delegates in the House of Representatives.

The Committee of the Whole is comprised of all of the Members of the House of Representatives,[5] and it convenes on the floor of the House with Members serving as the chair on a rotating basis. It is in this procedural forum that the House considers, debates, and votes on amendments to most of the legislation reported out of the standing or select committees. Only after consideration of amendments in the Committee of the Whole is legislation reported to the floor of the House for final, usually perfunctory, consideration.

A. HISTORY IN ENGLAND

The Committee of the Whole has its origins in seventeenth century England during the reign of King James I where it was referred to as the grand committee. Demonstrating that neither "gridlock" nor disputes regarding taxes are contemporary phenomena, the concept of convening the legislature in a Committee of the Whole developed in response to antagonism, and sometimes deadlock, between Parliament and the monarchy, particularly on the issue of taxation.

As the King and the legislature clashed over that issue, members of Parliament feared that the King's spies in the House of Commons, including the Speaker, would report "disloyal" votes to the crown. Such acts of betrayal could result in incarceration in jail or other sanctions against the particular member. [See 139 CONG. REC. H27, H28 (daily ed.), 103d Cong. 1st Sess., Jan. 5, 1993 (hereinafter, "Wolfensberger Memorandum").]

In order to avoid the perils of recorded voting, members of Parliament met in informal sessions, on a clandestine basis, to debate legislation. The proceedings of these sessions were not

5. There are, in fact, two types of Committees of the Whole. The Committee of the Whole House on the state of the Union considers all public bills affecting taxes and spending. That is the Committee of the Whole at issue in this litigation. The second Committee of the Whole considers private bills relating to claims against the government, special immigration cases, and other private relief bills. The changes in the House Rules challenged here gave the Delegates the vote in the Committee of the Whole House on the state of the Union. [See House Rule XII and 139 CONG. REC. at H28 (daily ed.) ("Wolfensberger Memorandum") (Jan. 5, 1993).]

The Wolfensberger Memorandum which was incorporated into the January 5, 1993 Congressional Record, is entitled "Committees of the Whole: Their Evolution and Functions." It was prepared by Don Wolfensberger, Minority Chief of Staff of the House Rules Committee.

recorded, and the King could not learn who had proposed amendments which exhibited disloyalty to or defiance of the monarchy. The Committee reported only its ultimate recommendation to the official House of Commons for confirmation or rejection. Through such a process the members of Parliament could avoid the iron hand of the monarchy. [*Id.*]

Other historians have noted that the Committee of the Whole was also used to circumvent the power of the standing committees which were often coopted by special interests or agents of the Crown. [See Kenneth Bradshaw and David Pring, *Parliament and Congress,* at 209 (1981).]

B. EARLY AMERICAN PRACTICE

The members of the colonial legislatures, no more trusting of the monarchy than their British ancestors, continued the practice of convening in informal Committees of the Whole to shield their deliberations and actions from the agents of King George III. [See 4 Hinds' Precedents § 4705.]

The same practice also continued in the Continental Congress, the Congress of the Confederation, and the Federal Convention in Philadelphia where the Framers convened to draft the Constitution. [Wolfensberger Memorandum at H28]. In fact, one of the first decisions made by the Framers was to resolve "into a Committee of the Whole House to consider the state of the American Union." Hinds', supra, at 987. It was in this Committee of the Whole that the Constitution was debated and approved. [1 *Records of the Federal Convention* of 1787, rev. ed. Farrand. 29–322 (1966).]

With little fanfare or debate, the First Congress, comprised of many individuals from the Federal Convention and earlier American legislatures made provisions for the Committee of the Whole. In one of the first meetings of the United States House of Representatives on April 7, 1789, one of the first four fundamental rules initially adopted prescribed procedures for the conduct of Committees of the Whole. [George Galloway, *History of the United States House of Representatives* 10 (1965).] It was in this forum that bills were to be "twice read, twice debated by clauses, and subjected to amendment. . . . Conspicuous reliance was placed by the House, then as now, on the Committee of the Whole." [*Id.*]

Similarly, the first important pieces of legislation passed by the early Congresses were debated and significantly modified in the Committee of the Whole. For example, James Madison's bill calling for the establishment of executive departments passed through the Committee of the Whole which excised the President's removal power. [See *Myers* v *United States,* 272 U.S. 52, 112–114 (1926), (citing, 1 Annals of Cong. 585 (1789)).] The Bill of Rights was likewise debated in the Committee of the Whole before it was referred to the full House for ultimate passage. [See *Lee* v *Weisman,* 505 U.S. 577 (1992) (Souter, J., concurring) (citing, 1 Annals of Cong. 731 (1789)).]

Over the years the House has deployed, at times, more than one Committee of the Whole to perform additional functions in the legislative process. [See 4 Hinds' Precedents § 4705 and see note 5, p. 479, supra.] In any event, by the late 1800s the central role of the Committee of the Whole on

the state of the Union was firmly established in the operations of the House. Beginning in that era and continuing until the present, all significant legislation, particularly revenue and expenditure bills, are referred to the Committee of the Whole for debate and the consideration of amendments prior to being reported to the House floor.(6) [See Wolfensberger Memorandum at H30 and Plaintiffs' Motion for Preliminary Injunction, Exhibit 3 (Affidavit of Representative Robert Michel) (here-inafter "Michel Affidavit").] (7)

C. CURRENT FUNCTIONS

The critical function played by the Committee of the Whole is evident from House Rule XIII which provides that "all bills raising revenue, general appropriation bills, and bills of a public character directly or indirectly appropriating money or property" are to be referred to the calendar of the Committee of the Whole. [See also House Rule XIII clause 3.] (8) Even though the historic secrecy justifications for convening in the Committee of the Whole are, of course, no longer present, the Committee continues to be the focus of legislative activity in the House. The Committee of the Whole is still heavily relied upon because it is less subject to parliamentary delaying tactics than the House itself, such as motions to table bills, proposals to adjourn, motions to reconsider votes cast, and other such procedures. [See 4 Hinds' Precedents §§ 4716–4724.]

Moreover, in the Committee of the Whole a Member is limited to five minutes of debate per amendment as opposed to the one hour of debate time accorded each Representative on the floor of the House. [See Wolfensberger Memorandum H30.] Lastly, the quorum requirement in the Committee is only 100 as compared to the constitutionally required quorum of 218 for the full House.(9) In short, it is simply more convenient and expedient for the House to continue to convene in the Committee of the Whole.

Under the House Rules in effect prior to the January 5, 1993, amendments that were rejected in the Com-

6. The two other House calendars were a calendar for public bills that did not touch on money matters, and a calendar for the "other" Committee of the Whole for private bills.

7. The defendants submitted no affidavits or other evidence.

8. [House Rule XXIII clause 3] provides: All motions or propositions involving a tax or charge upon the people, all proceedings touching appropriations of money, or bills making appropriations of money, or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced.

9. The Constitution states that ". . . a majority of each [House] shall constitute a Quorum to do Business;" U.S. Const. art. I, § 5, cl. 1. Now that the House has 435 full Members, a quorum, under this clause, is comprised of 218 Members.

mittee of the Whole could not be considered again on the House floor. The only exception to this general restriction was the "rarely successful" procedure by which a defeated coalition could make one motion to recommit. [See Michel Affidavit at 7.] This procedure basically involves an initiation of the legislative process all over again by a reference of the pertinent bill back to a standing committee. [See Wolfensberger Memorandum H30.] (10)

After the Committee of the Whole completes its work on a piece of legislation it "rises," and the bill is sent to the floor of the House for final approval.(11) Once the bill is so reported to the floor, no other amendments may be offered on that legislation. In fact, once a bill arrives on the House floor from the Committee of the Whole, the House usually conducts a straight "up or down" vote on the legislation as a whole [see Michel Affidavit at 7], and the bill considered by the full House is the legislation as it was amended during the deliberations of the Committee of the Whole.

Upon a motion from the floor, each amendment to the bill approved by the Committee of the Whole can be subjected to a separate vote on the House floor. [See Michel Affidavit at 7.] However, as noted supra, an amendment that was defeated in the Committee of the Whole could not be resurrected in the House, at least not prior to the January 5, 1993 rules change. This was also true of amendments barred from consideration by rulings of the chair or effectively rejected through substitute or second degree amendments. [Michel Affidavit at 5–6; Affidavit of Representative Gerald Solomon at 4–11.]

As is evident, the most significant portion of the House of Representatives' business is done in the Committee of the Whole. The "work of the Committee of the Whole is seldom reversed or recommitted by the House for the simple reason that the work was done by the same House under a different name and using different procedures." [See Wolfensberger Memorandum H30; see also, Charles Tiefer, *Congressional Practice and Procedure* 340, 386 (1989) (the Committee of the Whole is the "dominant phase in the chamber's consideration of a bill" and is "the heart of the chamber's operations").]

III. Status of Delegates

Before discussing the manner in which the recent changes in the House rules affect the legislative process just described, it is useful to provide a brief history of the office of "Delegate" and a review of the present status of that position. As indicated, there are currently five non-voting participants in the House of Representatives, representing the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

10. Contrary to the defendants' claim, the availability of this cumbersome procedure does not mean that amendments defeated in the Committee of the Whole can effectively be reviewed by the full House. Defeat of an amendment in the Committee of the Whole is realistically the final consideration of that issue by the House of Representatives.

11. A majority of the Committee of the Whole must approve a motion to rise.

Article I of the United States Constitution vests "[a]ll legislative Powers . . . in a Congress of the United States." [art. I, § 1.] Article I goes on to require that "[t]he House of Representatives shall be composed of Members chosen . . . by the People of the several States . . . ." [art. I, § 8, cl. 1.]

Obviously the five Delegates do not represent "States" nor are they chosen by "People of the several States." These Delegates are also not subject to the age, citizenship, and residency qualifications for membership set forth in the Constitution for all Members of the House of Representatives.(12) For example, unlike Members of Congress who, by Article I of the Constitution, are required to be American citizens, the Delegate from American Samoa is only required to "owe allegiance to the United States." [See 48 USC § 1733 (1988).] (13) Moreover, American Samoa, the Virgin Islands, Guam, and Puerto Rico are generally self-funded, retaining their own tax collections. [See 26 USC §§ 876(a), 931, 932(c)(4), 933, 7654 (1988).] (14)

Beyond that, these five individuals represent areas and constituents with vastly different political, cultural, geographic, and economic ties to the rest of the United States. The populations of these areas range from 47,000 in American Samoa to 3.6 million in Puerto Rico. By comparison, the average population of the congressional districts represented by the thirteen Member plaintiffs here is approximately 569,864.(15)

Each of these five non-voting Delegate positions was created through a different statute. The common theme in all these statutes is that the particular Delegate is given a seat in Congress with the "right of debate, but not of voting." [See, *e.g.*, 2 USC § 25a(a) (1988) (statute creating D.C. Delegate).] (16)

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12. The Constitution states that: No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen. [art. I, § 2, cl. 2.]

13. Under various statutes, the other Delegates must be American citizens.

14. Plaintiffs point to the anomaly of such Delegates passing upon taxation and appropriations for the United States as part of the Committee of the Whole.

15. Indeed, under *Wesberry* v *Sanders* [376 U.S. 1, 8–9 (1964)], the number of inhabitants in the various congressional districts of this nation must, "as nearly as practicable," contain an equal number of people.

16. Legislation authorizing the other Delegates to sit in the House similarly states that each is to be a "non-voting delegate." [See 48 USC § 1711 (1988) (Guam and the Virgin Islands), 48 USC § 1731 (1988) (American Samoa), and 48 USC § 891 (1988) (Puerto Rico).]

The office of Resident Commissioner from Puerto Rico was established by Congress in 1900 [31 Stat. 86]; in 1972 Congress authorized the election of a Delegate from Guam and from the Virgin Islands [48 USC § 1711 (1988)]; in 1978 a Delegate was authorized for American Samoa [48 USC § 1731 (1988)]; and the of-

The concept of permitting non-voting Delegates to serve in the House of Representatives is well-rooted in the history of the American Congress. The Constitution vests Congress with plenary power to regulate and manage the political representation of the territories.[17] A similar vesting of power is conferred on Congress to govern the District of Columbia.[18] The Supreme Court has consistently affirmed the broad authority of Congress to take action with respect to the territories and the District of Columbia pursuant to these clauses. [See *Sere & Laralde* v *Pitot*, 10 U.S. 332, 336–37 (1810) ("we find Congress possessing and exercising absolute and undisputed power of governing and legislating for the territories"); *Binns* v *United States*, 194 U.S. 486, 491 (1904) ("Congress, in the government of the territories as well as the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution").] On the specific question of Congress' power to prescribe the political rights of the territories, the Supreme Court has stated that "in ordaining government for the Territories, and the people who inhabit them, all the discretion which belongs to legislative power is vested in Congress." [*Murphy* v *Ramsey*, 114 U.S. 15, 44 (1885).]

Although the territorial and other Delegates have never before been granted authority to vote in the Committee of the Whole, they have, intermittently over the past two centuries and consistently over the past two decades, been given significant authority in standing and select committees of the House.

For example, the Northwest Ordinance of 1787 created the post of territorial Delegate who was given a "seat" in Congress with the right to debate, but not the right to vote. [1 Stat. 50, 52 (1789).] The second Delegate from the Northwest Territories was a future President, William Henry Harrison. During his service as a Delegate in Congress, at a time when numerous Framers of the Constitution served in the national legislature, Harrison was allowed to chair an important public lands committee and play a significant role in the passage of legislation. [See Dorothy Burne Goebel, *William Henry Harrison* 44 (1926); 6 Annals of Cong. 209–10, Dec. 24, 1799; 6 Annals of Cong. 529, Feb. 19, 1800.][19] Other Delegates followed Harrison's example and served on various standing committees of the House. [See 2 Hinds' Precedents §§ 1297–1301.]

The frequency of this practice in the early Congress was noted by an 1840

fice of Delegate for the District of Columbia was established in 1970 [84 Stat. 848].

17. The Constitution states with regard to the territories, "Congress shall have the power to make all needful rules and regulations respecting" these entities. [art. IV, § 3.]

18. The Constitution states that "Congress shall have Power . . . to exercise exclusive Legislation in all Cases whatsoever" over the District of Columbia. [art. I, § 8.]

19. Harrison was also appointed to serve on a House committee established to address the urgent problem of the political division of the territories. [Goebel, *William Henry Harrison* at 49; 6 Annals of Cong. 198, Dec. 10, 1799.]

House Committee report which observed that:

> With the single exception of voting, the Delegate enjoys every other privilege and exercises every other right of a Representative. He can act as a member of a standing or special committee and vote on the business before said committees, and he may thus exercise an important influence on those initiatory proceedings by which business is prepared for the action of the House.

[2 Hinds' Precedents § 1301 (quoting, H. Rept. No. 10, 27th Cong., 1st Sess. 4–5 (1841)). See also, Ch. 7, § 3, infra ("in early Congresses, Delegates and Resident Commissioners were entitled to vote in the committees to which they were assigned") (citations omitted).]

The practice of allowing Delegates to vote in standing committees apparently continued until the middle of the nineteenth century at which time the Delegates relinquished this power in exchange for other concessions. [See Cong. Globe 42d Cong., 2d Sess. 117–118, Feb. 13, 1871.][20]

For the next century, until 1970, Delegates no longer possessed the right to vote in standing committees. That year, as part of the 1970 Legislative Reorganization Act, Congress expanded the powers of the Resident Commissioner from Puerto Rico to include the right to vote in standing committees. And over the next three years, the House periodically amended its rules, so that by 1973 all Delegates had once again the power to vote in standing committees. There were no further modifications of the Delegates' powers until the changes that were made in January, 1993.

IV. Rules Change

The genesis of this lawsuit was a decision by the House of Representatives, on Jan. 5, 1993, to amend House Rule XII to give the five non-voting Delegates in the House of Representatives a vote in the Committee of the Whole, as follows:

> In a Committee of the Whole House on the state of the Union, the Resident Commissioner to the United States from Puerto Rico and each Delegate to the House shall possess the same powers and privileges as Members of the House.

[Rule XII clause 2.]

This rule change, made pursuant to the House's broad constitutional power to adopt its internal rules,[1] was opposed by all the Republican Members of the House and by 23 Democrats. [139 Cong. Rec. H53, H54 (daily ed.), 103d Cong. 1st Sess., Jan. 5, 1993.][2]

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20. According to the defendants, the Delegates were persuaded to give up their seats in exchange for "guaranteed memberships with substantial rights on the key committees of greatest importance to them—the Committee of the District of Columbia, and the Committee of the Territories." [See Defendants' Motion to Dismiss at 22.]

1. The Constitution provides that each chamber of Congress "may determine the Rules of its Proceedings." [art. I, § 5, cl. 2.]

2. Concern was expressed by the opponents that the Democrats in Congress were seeking by this means to increase their House majority by five, all five Delegates being Democrats.

As discussed above, this rule change marks the first time in the history of the House of Representatives that territorial Delegates, or any other non-Members, were given a vote in the Committee of the Whole.[3] The House also amended its rules to allow these Delegates to serve periodically as chair of the Committee of the Whole.[4]

As the House gave the Delegates these unprecedented powers, it also adopted a rule [Rule XXIII clause 2(d)] that is generally described as a "savings clause" which, as elaborated on in Part VII, infra, calls for an automatic *de novo* vote in the House itself whenever the votes of the Delegates are decisive in the Committee of the Whole. As will be seen, the interplay between the House's decision by Rule XII to authorize Delegate voting in the Committee of the Whole and the "savings clause" in Rule XXIII is critical to the outcome of this lawsuit.

3. The mere fact that this change in the House rules is unprecedented is not, in and of itself, sufficient grounds for striking it down. In considering an alteration of the means by which the House determined whether a quorum was present, the Supreme Court stated that "it is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time." [*United States* v *Ballin,* 114 U.S. 1, 5 (1892).]

4. House Rule XXIII clause 1(a) now states that "In all cases, in forming a Committee of the Whole House, the Speaker shall leave his chair after appointing a Member, Resident Commissioner, or Delegate as Chairman to preside. . . ."

V. Jurisdictional and Prudential Considerations

The Court cannot reach the merits unless it is able first to cross several jurisdictional and prudential barriers: the doctrines of standing, textual commitment, and remedial discretion. Because in this case several Members of Congress request the Judiciary to invalidate the action of the House of Representatives, separation of powers concerns require the Court to tread cautiously and to weigh the impact of these doctrines at the outset.

A. Standing

The Court turns first to the question of standing. Article III of the Constitution limits judicial action to "cases or controversies." [art. III, § 2.] The doctrine of standing ensures that courts remain within the boundaries of their constitutional power by requiring that the plaintiffs have a personal stake in the outcome of the controversy, at least by allegation. [*Baker* v *Carr,* 369 U.S. 186, 204 (1962).]

The four-part test to determine whether a party has standing[5] is well-established: (1) there must be an injury in fact; (2) to an interest arguably within the zone of interests protected by the constitutional guarantee at issue, here the [art. I, § 1 and § 2]; (3) resulting from the putatively illegal conduct and; (4) which could be redressed by a favorable decision of the court. [*Simon* v *Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26, 38 (1976).]

In the instant matter, the standing debate revolves primarily around the

5. For purposes of determining standing, the Court accepts plaintiffs' pleaded facts as valid. [See *Warth* v *Seldin,* 422 U.S. 490, 501 (1975).]

issue whether there is a judicially-cognizable injury. [*Vander Jagt* v *O'Neill*, 699 F2d 1166, 1168 (D.C. Cir. 1983).] Where separation of powers concerns are present, the Court will not lightly exercise its authority to decide litigation, and absent a compelling and specific injury, the Court must decline to involve itself in an action against a coordinate branch of government. Mere generalized or speculative injury cannot create standing in such actions.

For example, a claim that the alleged unconstitutional action merely diminishes a legislator's effectiveness, as perceived by that legislator, is too amorphous an injury to confer standing. [See *Harrington* v *Bush*, 553 F2d 190, 205–206 (D.C. Cir. 1977) (Representative did not have standing because claim that illegal activities of CIA diminished his effectiveness as legislator was not concrete injury).] By contrast, the loss of a vote or deprivation of a particular opportunity to vote is a sufficiently particularized injury to warrant judicial involvement in congressional affairs. [*Moore* v *United States House of Representatives*, 733 F2d 946, 952–53 (D.C. Cir. 1984); *Coleman* v *Miller*, 307 U.S. 433, 438 (1939); *Dellums* v *Bush*, 752 F Supp 1141, 1147 (D.D.C. 1990).]

In the instant action, the required showing of particularized injury is clearly met. The Constitution guarantees the right to proportional representation in the House of Representatives.[6] Among the plaintiffs' claimed injuries is an abridgement of that right. Article I, section 2, provides in pertinent part: "Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers. . . ." [art. I, § 2, cl. 3.] The alleged dilution of that representational voting power set forth in the Constitution satisfies the requirement of injury in fact. Although the House majority's action does not entirely strip Members of that body of their right to vote, it is claimed to take from them precisely what the Constitution guarantees—votes carrying weight proportional to their States' population.

In *Vander Jagt* [supra, 699 F2d at 1170], the Court of Appeals found sufficient injury when "the essence of the lawsuit is that the Democratic House leadership has successfully diluted the political power of Republican representation on congressional committees." Similarly, in holding unconstitutional an action by a State executive branch overriding the votes of state senators, the Supreme Court has stated that "these senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes. . . . They have set up and claimed a right and privilege under the Constitution to have their votes given effect." [*Coleman* v *Miller*, supra, 307 U.S. 438.] So, too, here. [See also, *Montana* v *United States Department of Commerce*, 775 F Supp 1358 (D. Mont. 1991) (three-judge court), reversed on other grounds, 503 U.S. 442 (1992).]

The remaining requirements of standing are also satisfied. The alleged harm falls squarely within the zone of interests protected by Article I of the Constitution. The political system created by the Framers vests legislative power in the House of Representatives

6. Each State is of course entitled to two Senators regardless of population.

and the United States Senate. [art. I, § 1.] Members of the House are chosen in proportion to the number of citizens in their respective States, and they are each given a vote as the tool with which to craft legislation. As the pool of possible votes expands, the effectiveness of each individual vote shrinks. The action of the House majority, if there is merit to the allegations—an issue discussed below—impairs the role of House Members in the constitutional scheme of lawmaking and thus directly impairs the effectiveness of each Representative's individual vote. [See *Dellums* v *Bush,* supra.]

Turning to the third requirement, the Court is able to trace the injury to the House majority's challenged action. Plaintiffs need only make a reasonable showing that but for defendants' actions, the alleged injury would not have occurred. The plaintiffs here sufficiently established this connection.

Unlike other cases in which a variety of forces could possibly be responsible for a plaintiff's injury, here the nexus connecting act and injury is direct and clear. [See, *e.g., Community Nutrition Institute* v *Block,* 698 F2d 1239 (D.C. Cir. 1983), reversed on other grounds, 467 U.S. 340 (1984).] Absent the passage of House Rule XII, permitting the five Delegates to vote in the Committee of the Whole, the alleged dilution of the other Members' votes would not have occurred. Accordingly, the Court finds that the plaintiffs have alleged the requisite causal link.

Finally, the alleged injury is capable of redress by the Judiciary. Plaintiffs seek only a ruling that House Rule XII is unconstitutional. Passage of that House rule allegedly caused the injury complained of here, and a judicial decision finding that rule constitutionally infirm and enjoining the House from enforcing it would certainly cure any harm.

Inasmuch as the plaintiffs meet the requirements of all four prongs under *Simon,* supra, the Court concludes that they have standing to proceed.

B. TEXTUAL COMMITMENT

A controversy is non-justiciable where there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department." [*Baker* v *Carr,* supra, 369 U.S. 217; *Nixon* v *United States,* 61 U.S.L.W. 4069, Jan. 13, 1993.] However, while the Constitution confers on the House the power "to determine the Rules of its Proceedings," [art. I, § 5, cl. 2], the Judiciary, too, has a role to play. It rests with the courts to evaluate the validity of House rules in relation to the Constitution. [See *Marbury* v *Madison,* 5 U.S. 137 (1803).] As the Supreme Court has stated, "the Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights." [*United States* v *Ballin,* 144 U.S. 1, 5 (1892).]

Thus, while the prudential concerns continue to have great vitality, "it is nonetheless critical that we do not deny our jurisdiction over the claims in the case. As it is conceivable that the committee system could be manipulated beyond reason, we should not abandon our constitutional obligation—our duty and not simply our province—'to say what the law is.'" [*Vander Jagt,* supra, 699 F2d 1170 (quoting *Marbury* v *Madison,* supra).]

Again, separation of powers concerns require caution in reviewing House rules, but it has never been held that this textual commitment renders disputes regarding such rules *ipso facto* nonjusticiable. [*Vander Jagt,* supra, 699 F2d 1173.] Thus, although a court may not order the House to adopt any particular rule, "Article I does not alter our judicial responsibility to say what rules Congress may not adopt because of constitutional infirmity." [*Id.*] On this basis, while the subject of House rules is textually committed to the House, the courts are not thereby ousted of jurisdiction to consider the consistency of a particular rule with the Constitution.[7]

C. REMEDIAL DISCRETION

Separation of powers concerns are also incorporated into principled decision making which holds that, in certain circumstances, a federal court may, in its discretion, grant or withhold injunctive or declaratory relief with respect to intramural disputes in Congress. Under this "remedial discretion" doctrine,[8] the Court will consider a number of factors in determining whether the dispute calls for judicial intervention or is best left to congressional resolution. Among these are the possibility of an alternate remedy through congressional action or a private suit, the egregiousness of the constitutional violation, and the extent of the intrusion of the Judiciary into legislative action if the court entertains the suit. [See, *e.g., Humphrey,* supra, 848 F2d 214 note 4; *Moore,* supra, 733 F2d 954–56; *Vander Jagt,* supra, 699 F2d 1174–75; *Riegle,* supra, 656 F2d 881; *contra Melcher* v *Federal Open Market Committee,* 836 F2d 561, 564–65 (D.C. Cir. 1987).]

Defendants contend that, because plaintiffs' dispute and potential remedy is with their colleagues, the remedial discretion doctrine ipso facto compels the Court to dismiss the action. Under this interpretation of the doctrine, if there is any hope, however remote, that the House's new rule will be remedied by Congress, the Court must decline to grant relief. That is clearly incorrect.[9]

The court's remedial discretion is not inflexibly applied, and in considering

7. This line of reasoning also disposes of the related political question doctrine of justiciability. [See *United States Department of Commerce* v *Montana,* 503 U.S. 442 (1992); *Powell v McCormack,* 395 U.S. 486 (1969).]

8. The doctrine of remedial discretion is recognized and applied in this Circuit. [*Humphrey* v *Baker,* 848 F2d 211, 213 (D.C. Cir. 1988); *Melcher* v *Federal Open Market Committee,* 836 F2d 561 (D.C. Cir. 1987).] It has not been addressed by the Supreme Court. [*Humphrey,* supra.]

9. If defendants' argument were correct, there would be no discretion and indeed no doctrine of remedial discretion because in view of the nature of intramural congressional disputes, one could always hypothesize that a congressional remedy may exist. Certainly, for example, if a House majority decided to deprive blacks or Republicans of their votes, the courts would remedy the situation notwithstanding the theoretical possibility that the majority could, somehow, be persuaded to change its mind.

whether a remedy is appropriately given, the court weighs a variety of factors. Although the case law is equivocal, a suit in which there are also non-congressional, private plaintiffs may be able to resist dismissal. [*Moore,* supra, 733 F2d 956; *Vander Jagt,* supra, 699 F2d 1175 note 24; *Riegle,* supra, 656 F2d 881; *contra Melcher,* 836 F2d 564–65.] In those instances in which a suit was essentially an intramural dispute and could have been brought by private plaintiffs but was not, the Court dismissed the action. For example, in *Riegle,* supra, the court exercised its discretion in refusing to invalidate the allegedly unconstitutional Federal Reserve Act [12 USC § 221 et seq. (1976)], passed by a majority of Senator Riegle's colleagues, or to enjoin five members of the Federal Reserve Bank from voting pursuant to the Act. Several factors were cited in the opinion, but its principal basis was that, because there were private plaintiffs who had the ability to challenge the statute, judicial review could be obtained without creating separation of powers problems. [656 F2d 882; *contra Melcher,* supra, 836 F2d 564–65.][10] There the court indicated that had private plaintiffs been joined, the court "would be obliged to reach the merits of the claim." [*Moore,* 656 F2d 881.]

In the instant case, the Republican House Members sued not only in their congressional capacity but also in their capacity as voters. Moreover, other, non-congressional private citizens have also joined in the suit as plaintiffs.[11] [See *Gregg* v *Barrett,* 771 F2d 539, 546 (D.C. Cir. 1985).] The House's rules change, by allegedly granting legislative power to territorial Delegates, at least one of whom represents as few as one-tenth of the number of citizens represented by each Member of the House pursuant to constitutionally-required reapportionment [art. I, § 2, cl. 3], dilutes the vote of these citizens. [See *Franklin* v *Massachusetts,* 505 U.S. 788 (1992) (O'Connor, J., plurality opinion); *Montana* v *U.S. Department of Commerce,* supra.] It follows that the private plaintiffs are legitimately in the suit, and their presence presents a more compelling claim for judicial involvement. [*Moore,* supra, 733 F2d 956; *Vander Jagt,* supra, 699 F2d 1175 note 24; *Riegle,* supra, 656 F2d 881; *contra Melcher,* 836 F2d 564–65.]

In *Moore,* too, the court relied on the possibilities of congressional repeal and citizen suit to dismiss a challenge to the constitutionality of a statute (Tax Equity and Fiscal Responsibility Act of 1982). [733 F2d 955–56.] As in *Riegle,* supra, private plaintiff had standing to bring the suit but were not plaintiffs. [*Id.*]

Some of the pertinent cases were decided on other grounds in the general remedial discretion framework. In *Humphrey,* supra, while the court concluded that a legislative remedy was available to correct the plaintiffs' grievance, it nevertheless considered the merits, and found the law to be constitutional. [848 F2d 213.] In *Vander*

10. The court also did note that Senator Riegle could obtain substantial relief from the action of his fellow legislators by convincing them to enact, amend, or repeal the offending statute.

11. Gregory T. Chambers, Becky M. Costantino, and Lois Stetzler.

Jagt, for example, the Republican plaintiffs contended that the majority Democrats had provided them with fewer seats on House committees and subcommittees than they were proportionally owed. In rejecting the invitation to have the dispute decided by the courts, the Court of Appeals explained that the prospect of fashioning a remedy, while not impossible, was "a startling unattractive idea." [699 F2d 1176.][12] A remedy would have required the court to dictate to the Speaker "how many Democrats, and perhaps even which Democrats, he is to appoint to the standing committees." [*Id*.] Rather than to inject itself so deeply into the legislative process, the Court of Appeals declined to approve equitable and declaratory relief.

In the instant case, by contrast, the remedy would be uncomplicated and unintrusive. The Court is not called upon to devise rules for the operation of the House but only to pass on the legality of a rule already enacted. In the view of this Court, it is not precluded by prudential considerations from performing this single, relatively simple act, if it turned out, on the merits, that Rule XII and XXIII, taken together, improperly granted votes to the Delegates in violation of Article I of the Constitution and to the detriment of the Members from the several States. Once that matter is decided, judicial involvement will be at an end.

There is yet another reason for not abstaining in the exercise of the Court's discretion. The precedents (*e.g.*, *Riegle* and *Moore*) involved situations where, even without judicial intervention, the controversies would not have a long-lasting impact because they involved only a single statute. By contrast, the instant case revolves around the legislative process itself. Therefore, if House Rule XII is constitutionally infirm, and the courts do not resolve the matter, Delegates will improperly vote in the Committee of the Whole for the indefinite future, and a shadow of unconstitutionality will be cast on much future House action. The argument for judicial decisionmaking in the face of such potentially broad and long-lasting effects is compelling.

The Court concludes that it does not lack jurisdiction and that there is no prudential reason for judicial abstention. The defendants' request for a dismissal of the action on grounds short of the merits is therefore denied.

VI. Vesting of Legislative Power in Individuals Who Are Not Members of Congress

Now as to the merits. The plaintiffs challenge the constitutionality of the changes in the House rules on two grounds. First, they argue that, by allowing them to vote in the Committee of the Whole, the House has unconstitutionally invested the territorial Delegates with legislative power. Second, they claim that the House of Representatives has violated the principles of bicameralism and presentment by unilaterally increasing the power of the Delegates. These contentions are discussed below in turn.

One principle is basic and beyond dispute. Since the Delegates do not represent States but only various terri-

12. The Republican plaintiffs complained about underrepresentation on the Budget Committee, the Appropriations Committee, the Ways and Means Committee, and the Rules Committee. [699 F2d 1167.]

torial entities, they may not, consistently with the Constitution, exercise legislative power (in tandem with the United States Senate), for such power is constitutionally limited to "Members chosen . . . by the People of the several States." [art. I, § 8, cl. 1.]

It is not necessary here to consider an exhaustive list of the actions that might constitute the exercise of legislative power; what is clear is that the casting of votes on the floor of the House of Representatives does constitute such an exercise. Thus, unless the areas they represent were to be granted statehood, the Delegates could not, consistently with the Constitution, be given the authority to vote in the full House.

On the other hand, not all votes cast as part of the congressional process constitute exercises of legislative power. For example, as discussed in Part III, supra, representatives of the territorial entities have at various times in United States history been given the authority to sit on and vote in standing and select committees of the House of Representatives, and they exercise that authority now.[13]

The question here, of course, is whether, consistently with the constitutional mandate that only representatives of States who meet the required qualifications may exercise legislative power, Delegates may cast votes in the Committee of the Whole. This body has broader responsibilities than the standing and select committees of the House, but it is obviously not the House of Representatives itself.

In the opinion of this Court, defendants' claims to the contrary notwithstanding, voting in the Committee of the Whole constitutes an exercise of legislative power. Today, the Committee of the Whole performs much the same functions that it did in the past. According to the uncontradicted evidence produced by Congressman Michel, one of the plaintiffs herein, the Committee of the Whole is a committee only in name. It is convened on the floor of the House and is chaired from the Speaker's rostrum. The bulk of the chamber's time is occupied by the molding of legislation through debate and amendment in the Committee of the Whole. Indeed, the Committee of the Whole occupies a central role on taxes, appropriations, and all other matters touching upon money. [Michel Affidavit at 3–6.]

Beyond that, consideration of a bill in the Committee of the Whole normally represents the sole mechanism by which Representatives who are not

13. There has been no litigation concerning this authority, and thus no judicial decision one way or the other on the authority of the Delegates to participate in standing and select committee deliberations and votes. However, the plaintiffs in this case have affirmatively stated that they are not here questioning that authority, although they note in passing that the practice "may well be constitutionally infirm." [Plaintiffs' Memorandum of Points and Authorities in Support of Preliminary Injunction at 20 note 4.] One of the *amici* does assert that the Delegates should not be allowed to participate in any House committee deliberations and votes. [See *Amicus Curiae* Brief filed on behalf of Republican Members of Congress at 8–18.]

Members of the proposing standing committee may help to shape legislation in the House. [Solomon Affidavit at 5.]

Amendments that are defeated or precluded from consideration as a result of parliamentary decisions in the Committee of the Whole may not be heard again by the House. [Michel Affidavit at 6.] Again, according to the Michel and Solomon affidavits, a bill, as amended by the Committee of the Whole, is in most circumstances, passed by the full House: no further debate is permitted; no new amendments may be offered, and no previously rejected amendments may be reintroduced. [See Michel Affidavit, at 7; and Solomon Affidavit, at 5–6.]

It is true that in no instance does a vote in the Committee of the Whole end the House's consideration of a bill. A bill is officially passed by the House of Representatives on the floor of the House, and all the work of the Committee of the Whole must ultimately be approved by the full House before it becomes official. However, for the reasons stated, House action is frequently formal and ceremonial rather than substantive. For practical purposes, most decisions are final insofar as the House of Representatives is concerned when they are made by the Committee of the Whole.

Indeed, formal legislative action and legislative power are not interchangeable terms. The Supreme Court has defined legislative power as action which has "the purpose and effect of altering legal rights, duties and relations of persons . . . outside the legislative branch." [*Immigration and Naturalization Service* v *Chadha*, 462 U.S. 919, 952 (1986).] Action taken by the Committee of the Whole does, in many instances, have precisely that effect.(14)

In short, the Committee of the Whole is the House of Representatives for most practical purposes. For these reasons, the Court concludes that, to allow Delegates to cast votes in the Committee of the Whole, without qualification or condition, would be to invest them with legislative power in violation of Article I of the Constitution.(15)

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14. The Delegate for the District of Columbia was not far off the mark when she stated, upon passage of the new rules in January 1993 that on "99 percent of the business of the House, the District will have a vote . . . ." ["Jenkins, D.C. Wins Vote on House Floor," *Washington Post*, Jan. 6, 1993 A1.]

15. However, the Court concludes that allowing the Delegates to serve as the chair of the Committee of the Whole does not violate Article I. The chair of the Committee makes the initial determination of whether an amendment may properly be considered by the Committee of the Whole (e.g., whether it is germane to the underlying bill). However, the chair's ruling is subject to appeal to the Committee of the Whole. Therefore, the mere vesting of the Delegates with the authority to chair the committee is not equivalent to allowing these Delegates to exercise legislative power.

As to the other duties of the chair, such as recognizing speakers, only through gross abuses of this power could this responsibility be used to exert "legislative power." Theoretically, a chair could refuse to recog-

VII. SAVINGS CLAUSE

This conclusion does not end the Court's inquiry into the issue raised by the current litigation. For the House of Representatives did not simply amend its rules to allow the Delegates to vote in the Committee of the Whole. Instead the House also adopted what has been termed a "savings clause," which reads as follows:

> Whenever a recorded vote on any question has been decided by a margin within which the votes cast by the Delegates and the Resident Commissioner have been decisive, the Committee of the Whole shall automatically rise and the Speaker shall put that question de novo without intervening debate or other business. Upon the announcement of the vote on that question, the Committee of the Whole shall resume its sitting without intervening motion.

[House Rule XXIII clause 2(d).]

What this rule means is that when a recorded vote in the Committee of the Whole is decided by a margin within which the Delegates' votes were decisive—*e.g.*, a five-vote margin or less if all the Delegates vote on an issue—that issue is automatically[16] referred out of the Committee of the Whole to the full House for a de novo vote without any intervening debate.[17] And the territorial Delegates are prohibited from participating in this de novo vote. Once that second vote is cast and the results are announced, the Committee of the Whole resumes its deliberations on that piece of legislation.

In other words, when the votes of the Delegates do not affect the result in the Committee of the Whole, they are counted as part of the Committee's, and hence the House's, final decision; but when their votes make a difference

nize any members of the minority and thus influence the debate, but such a scenario is wholly implausible. In sum, in the normal duties of the chair there is no opportunity to exercise legislative power.

16. During the floor debates over these rule changes House Majority Leader Richard Gephardt (D–Mo.) engaged in an exchange with Rep. Robert Walker (R–Pa.) over the procedure for initiating this *de novo* vote. The two Members agreed that the rule is to be given its plain meaning, that a *de novo* vote is automatic, and that no Member needs to move for such a re- vote. [139 CONG. REC. H46 (daily ed.), Jan. 5, 1993. See also, Transcript of Feb. 9, 1993. Preliminary Injunction Hearing 31–32 (hereinafter, "Transcript").]

17. Neither the defendants nor anyone else was able to forecast precisely what would happen under the "savings clause" with respect to the differing quorum requirements in the Committee of the Whole and the full House. [See Transcript at 36–37.] It is unclear, for example, what will occur, procedurally, when the Committee of the Whole is convened with more than the 100 Members required for a quorum, but less than the 218 Members needed for a quorum on the House floor. The Committee of the Whole could not automatically rise for a *de novo* vote under those circumstances; presumably the business of the House would be delayed while additional members were located and summoned to the floor of the House.

in the result in the Committee of the Whole, their votes are not cast or counted in the second, decisive vote in the House itself.[18]

Thus, the central question facing the Court is whether this "savings clause" preserves the constitutionality of the rule change adopted by the House. On that issue, the defendants argue that the "savings clause" is just that: it protects the constitutionality of the provision allowing Delegates to vote in the Committee of the Whole if there otherwise were any doubt about constitutionality. The plaintiffs, on the other hand, contend that the "savings clause" does not save the legality of the basic rule change.

Plaintiffs offer four specific arguments to support their claim that the "savings clause" does not adequately void the effects of the Delegates' votes in the Committee of the Whole, and that the principal rule change is therefore unconstitutional despite the presence of that clause. The Court now considers each of these four arguments in turn.

A. UNRECORDED VOTES

By its very terms, the "savings clause" applies only to "recorded" votes; under [House Rule XXIII clause 2(d)], only such votes are required to be repeated in the House itself. The plaintiffs argue strenuously that this limitation represents a significant loophole because approximately half of the Committee of the Whole votes in the 102d Congress were unrecorded.

In the view of the Court, this factor does not drain the "savings clause" of its force.

Under the House rules, a vote in the Committee of the Whole must be recorded "on request supported by at least twenty-five Members." [Rule XXIII clause 2(b).] Thus, the standard for forcing a recorded vote in the Committee of the Whole is so minimal that restricting the "savings clause" to recorded votes only is not significant. It may even be that the new importance attached to the act of recording a Committee of the Whole vote under current House procedures (i.e., triggering the "savings clause") would sharply increase the number of recorded votes. In any event, because of the very minor effort required to produce a recorded vote, the Court is not persuaded that a substantial number, if any, of Committee of the Whole votes under the new rules will go unrecorded where there is any doubt as to whether the Delegates' votes will be decisive.

B. THE "HORSE TRADING" PROBLEM

The plaintiffs further argue that, under these rules, the Delegates will exercise legislative power in ways which cannot be detected by the "savings clause." Specifically, they contend that the rules will allow territorial Delegates to trade their votes with full Members of the House. The following example is cited to illustrate this point. The Delegate from Guam might make separate trades with twelve Members, securing a dozen votes against an amendment limiting funding for the

18. As Congressman Walker (R–Pa.) phrased it, Congress has told the Delegates: "when your vote counts, it doesn't count, but when it doesn't count, it counts." [139 CONG. REC. H70 (daily ed.), 103d Cong. 1st Sess., Jan. 5, 1993.]

U.S. naval presence on the island. If, as a consequence of these maneuvers, the amendment is defeated in the Committee of the Whole by more than five votes, it will not be reviewable by a new vote in the House. By this means, it is said, the Guam Delegate will have affected the outcome of legislation by securing those twelve extra votes in a manner that is not reviewable under the "savings clause."

The critical flaw in this theory, however, is that it assumes that Members of Congress with full votes both in the Committee and in the House will engage in trades with territorial Delegates when the vote these Members receive in the trade is meaningless. Returning to the example cited above, assume that the next vote is an amendment to close an Army base in the district of one of the Members. Assume further that a Member was assured of the Guam Delegate's vote against this amendment in return for a vote against the reduction in naval spending and activity in Guam.

However, if the Army base amendment is defeated by one vote (the Guam Delegate's), it is subject to de novo review in the House. The Delegate's vote then becomes meaningless because the fate of the Army base will be decided in the House itself only by full Members. On the other hand, if the amendment is defeated in the Committee of the Whole by over five votes, the Guam Delegate's vote will similarly be meaningless. The bottom line is that a Delegate's vote can never make the difference between winning and losing.

The plaintiffs have failed to provide the Court with any credible basis on which it may be assumed that a Member of the House of Representatives would trade with a Delegate for a vote that could never be decisive.[19] The affidavits submitted by the plaintiffs describe the legislative horse trading process, and the Court recognizes that such practices may be a daily fact of life on Capitol Hill. However, the Court will not assume that Members will trade something for nothing.[20]

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19. Despite their very thorough preparation and research of these issues, counsel for the plaintiffs could not provide a persuasive explanation for this flaw in their "horse trading" argument. The record is devoid of an adequate basis upon which the Court could conclude that Members of the House of Representatives would defy common sense and trade their votes for the meaningless votes of the Delegates.

The plaintiffs did argue that a Member might trade for a Delegate's vote to buy precious time during the legislative process since a Delegate's vote could force a de novo vote. This time could be an "opportunity to secure other supporters, to make other trades." [See Transcript at 9–10.]

Since the "savings clause" requires a *de novo* vote without intervening debate or other business, presumably little time will pass before the second vote. Moreover, even if the delay is more substantial, vesting Delegates with the power to prolong the proceedings in the Committee of the Whole is hardly the equivalent of granting them legislative power.

20. By their mere presence in the Congress, Delegates are able to engage in other types of trades which could potentially affect the outcome of leg-

Although the plaintiffs correctly note that votes are the "currency of the House"[1] for trading purposes, the fact is that under the January 1993 rules change the votes in the wallets of the Delegates are only counterfeit bills. They can never have a final effect on legislation in the House.

C. DRAFTING OF AMENDMENTS

The plaintiffs further claim that because the Delegates are now empowered to vote in the Committee of the Whole, they will exert more influence over the drafting of amendments which are to be considered by that Committee. This claim is based on the theory that other legislators will consult with Delegates during the drafting of amendments in order to enlist their support.

This argument suffers from two difficulties. First, as with the horse trading scenario, the plaintiffs necessarily assume that a Member will move to amend legislation to appease a Delegate whose vote could ultimately not make the difference between defeat or passage of that amendment.

Second, if this type of influence qualifies as exercising legislative power, then the Delegates, by their mere presence in the House, and certainly by their votes in standing committees, already have legislative power. In the standing committees the Delegates have a vote, and presumably they contribute to the ultimate shape of the bills reported out of the committee.

Delegates also have at their disposal several other methods of influencing the text of various legislation and amendments. For example, they can speak on behalf of a bill during debates, lobby the Members, or offer an endorsement to a Member in exchange for certain changes in a proposed amendment. But none of these has ever been held to constitute the exercise of legislative power.

D. PRECEDENT-SETTING EFFECT

Even if none of these defects existed, there is the underlying problem—as plaintiffs see it—that to permit Delegates to participate at all in the Committee of the Whole is a violation of the constitutional scheme. According to plaintiffs, if the House majority may permit Delegates—who are not Members—to participate in the deliberations of the Committee of the Whole, there would logically be nothing to preclude that same majority also from allowing such non-Members as the Clerk of the House, Members of the Canadian Parliament, or the general public,

islation. For example, the Resident Commissioner from Puerto Rico could offer to make campaign appearances on behalf of a Member with a large Puerto Rican constituency in exchange for that Member's vote on a particular bill. The non-decisive vote in the Committee of the Whole is more akin to this type of bargaining chip already possessed by the Delegates. In other words, the vote that the House has given the Delegates only adds another arrow to the Delegates' quiver. It does not empower them with a completely new and potent weapon that may be equated with legislative power.

1. See Plaintiffs' Reply Memorandum in Support of Preliminary Injunction at 3.

to participate. Even more, if the composition of the Committee of the Whole does not matter constitutionally, as defendants are said to claim, the House could presumably bar women or black legislators from participating in its deliberations, provided only that they retain their full votes in the House itself.

That argument is not well taken, on several levels. First of all, as it has made clear in this Opinion, the Court does not share defendants' view that the Committee of the Whole is a purely advisory body without the ability to exercise conclusive legislative authority. Although there is always the prospect that the House will reverse actions taken by the Committee of the Whole, the procedures for achieving this result are cumbersome and difficult to utilize. For that reason the House is not at liberty to take whatever action it pleases with respect to the composition or proceedings of the Committee of the Whole.

That leaves the question whether, for example, the House could decide that women or black Members will not be permitted to vote in the Committee of the Whole, as long as an automatic re-vote will be held when their votes might have been decisive (e.g., the number of women Members exceeds the margin of victory in the Committee of the Whole).

Such unequal treatment of women or blacks, which the government would be unable to claim is either "substantially related to an important government interest,"[(2)] or narrowly tailored to serve a compelling governmental interest,[(3)] would clearly run afoul of the Constitution. The Supreme Court has made it clear that in establishing the rules of its proceedings, the House is limited by the restrictions contained in the Constitution. [*United States* v *Ballin*, supra, 114 U.S. 5.] Therefore, any rules adopted by the House regarding the procedures in the Committee of the Whole must comply with the Constitution.

That completely answers in the negative the question whether the House has the authority to exclude any individuals who are Members of the House from voting in the Committee of the Whole. As for the House's ability to include additional individuals in the Committee's proceedings, as it has done with respect to the Delegates, that poses a range of questions that the Court need not decide here.

Suffice it to say that the presence of the territorial Delegates in the House of Representatives is expressly provided for in statutes; and these statutes were enacted pursuant to explicit delegations of power contained in the Constitution authorizing Congress to pass laws respecting the territories and the District of Columbia.

The federal laws creating the office of territorial Delegates are the tickets of admission to the proceedings of the House of Representatives. According to Hinds, a "territory or district must be organized by law before the House will admit a representative Delegate."

2. See *Craig* v *Boren*, 429 U.S. 190, 197 (1976) (establishing the standard to be applied to equal protection claims based on gender discrimination).

3. *City of Cleburne* v *Cleburne Living Center*, 473 U.S. 432, 440 (1985) (standard to be applied to equal protection claims based on race discrimination).

[Deschler's Precedents Ch. 7, § 3, p. 35, note 11, supra (citing 1 Hinds' Precedents §§ 405–412).] In crafting the House rules that are challenged here, the House is merely establishing the functions these Delegates will play in the legislative process short of exercising legislative power. As for others, *e.g.*, Members of the Canadian parliament or Democratic governors, they clearly could not, on such a basis, or any basis, be given a vote in the Committee of the Whole.

In sum, it is the conclusion of the Court that, while the new rules of the House of Representatives may have the symbolic effect of granting the Delegates a higher status and greater prestige in the House and in the Delegates' home districts, it has no effect, or only at most an unproven, remote, and speculative effect, as far as voting or the exercise of legislative power is concerned. Accordingly, the rule is not unconstitutional as the delegation of an improper exercise of legislative power.

VIII. Bicameralism

Plaintiffs challenge the recent changes in the House rules on the further basis that the Constitution explicitly confers on Congress, not on the House acting alone, the authority to regulate the District of Columbia and the territories.[4] They rely for this challenge primarily upon the congressional precedents. However these precedents are at best equivocal rather than to provide firm support for plaintiff's position.

In 1884 and in 1932, efforts to allow Delegates to vote in standing committees through simple changes in the House rules were abandoned because of concern that the House lacked the constitutional authority to take such action.[5] Similarly, when the Resident Commissioner from Puerto Rico was given the right to vote in standing committees, this change was accomplished by a statute—an amendment

4. The Constitution states that "Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever" over the District of Columbia. [art. I, § 8.]

With regard to the territories, "Congress shall have the power to make all needful rules and regulations respecting" these entities. [art. IV, § 3.]

5. In 1884 the Speaker of the House questioned the House's authority to allow Delegates to vote in the committees on which they served. Speaker Carlisle refused to allow consideration of this proposal stating that "[i]t is contrary to the law; and, in the opinion of the Chair, the House could not, by a simple resolution, change the law upon the subject." [Statement of Speaker John G. Carlisle, 15 Cong. Rec. 1334, Feb. 23, 1884.]

In 1932 the Subcommittee on Rules of the House Committee on Indian Affairs examined the question of allowing Delegates to vote in standing committees. The subcommittee concluded that the House lacked the authority to make this change because "nowhere in the Constitution or in the statutes can the intention be found to clothe delegates with legislative power." [75 Cong. Rec. 2163, 2164, 72d Cong. 1st Sess., Jan. 18, 1932.]

to the Legislative Reorganization Act of 1970. [See 84 Stat. 1140, 1162 (1970).]

On the other hand, the House has on numerous occasions given Delegates significant power in standing committees by simple rules changes. Although the law creating the position of Delegate from the Northwest Territory only provided that the Delegate have "a seat in Congress, with a right of debating, but not voting . . ." [1 Stat. 50, 52 (1789),] (6) William Henry Harrison, then the Delegate in question, was given the chairmanship of a House standing committee by a unilateral House resolution passed in 1799. [See Goebel, supra, at 44.] (7) In his compilation of the history of the House, Asher C. Hinds noted that "in earlier practice Delegates appear to have voted in committees." [2 Hinds' Precedents §§ 1300–1301.] (8)

The more recent practice is even more illuminating. Thus, while, to be sure, the measure giving the Resident Commissioner from Puerto Rico the right to vote in standing committees was accomplished in 1970 by statute, that same law also provided that the rules changes made by the statute were effected "with full recognition of the power of the House of Representatives to enact or change any rule. . . ." [See 84 Stat. 1141 (1970).] A year later, the House amended Rule XII to grant to the Delegate from the District of Columbia powers in the standing committees equivalent to those of the Resident Commissioner from Puerto Rico (i.e., it provided the right to vote in such standing committees). [See 117 CONG. REC. 132, Jan. 22, 1971.] And in 1973 the House once again amended Rule XII making the language of the rule generic to all Delegates, thus authorizing all territorial Delegates to vote in standing committees. [See 119 CONG. REC. 18, Jan. 3, 1973.] All of these changes were accomplished through amendment of the House's rules rather than through the enactment of legislation.

The bicameralism argument is further undermined by the text of some of the statutes creating the office of Delegate. The statute establishing the positions of Delegates from Guam and the Virgin Islands expressly provides that "the right to vote in committee shall be as provided by the rules of the House of Representatives." [48 USC § 1715 (1988).] The law which created the office of Delegate from American Samoa granted that individual "whatever

6. In this respect, the 1789 statute is similar to those creating the positions of other Delegates. [See, *e.g.*, 2 USC § 25a(a) (1988).]

7. It is noteworthy that many of the Framers of the Constitution were Members of this early Congress.

8. As noted above, see Part III, supra, in reaching this conclusion, Hinds relied heavily on an 1841 congressional report which noted that: "With the single exception of voting the delegate enjoys every other privilege and exercises every other right of a Representative. He can act as a member of a standing or special committee and vote on the business before said committees, and he may thus exercise an important influence on those initiatory proceedings by which business is prepared for the action of the House." [H. Rept. No. 10, 27th Cong. 1st Sess., 4, 5 (1841).]

privileges and immunities that are, or hereinafter may be, granted to the non-voting Delegate from . . . Guam." [48 USC § 1735 (1988).] Contrary to the plaintiffs' claims, the House was acting in accordance with these precedents when it unilaterally acted to define the parameters of the Delegates' roles in its proceedings.

Other factors support the conclusion that the method chosen by the House for defining the role of the Delegates is not invalid.

First, the Supreme Court held in *United States* v *Ballin*, supra [144 U.S. 5], that "the Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights." As this Court discusses in sections VI and VII, supra, the rule changes adopted by the House on January 5, 1993 do not vest the Delegates with legislative power.

These modifications of the Delegates' role in House proceedings do not have "the purpose and effect of altering legal rights, duties and relations of persons . . . *outside* the legislative branch." [See *Chadha*, supra 462 U.S. at 952], (emphasis added). The Delegates do not have the ability to utilize their new voting rights to affect the outcome of legislation. The "savings clause" saps these votes of any real impact on the outcome of the House's deliberations. It follows that the House's action was not a legislative act subject to *Chadha's* strictures of bicameralism and presentment.

Second, although the precedents are not uniform, the history of the House of Representatives supports the conclusion that the House may act unilaterally to fix the role Delegates are to play in the operation of this chamber. From the Congresses of the 18th century to the present, the House has, without resorting to statute, increased and modified the functions encompassed by the Office of Delegate. There is no basis for concluding that when the House decided on January 5, 1993 to increase marginally the role of the Delegates, the Congress had to enact a statute to accomplish this House objective.

Plaintiffs' argument based on bicameralism and the failure of the House to proceed by statute (rather than by rule) is therefore rejected.

IX. Conclusion

The nub of the case before the Court is this. If the only action of the House of Representatives had been to grant to the Delegates from the District of Columbia, Guam, Virgin Islands, and American Samoa, and the Resident Commissioner from Puerto Rico the authority to vote in the Committee of the Whole, its action would have been plainly unconstitutional. In view of the central place occupied by the Committee of the Whole in the legislative process, such a grant of authority would have improperly given to these territorial officials legislative power—a power which under Article I of the Constitution is reserved to Members of Congress elected by the people of the several States. The Delegates are clearly not in that category. It also would have improperly diluted the voting power of the legislative representatives of the States as well as of the citizens who elected them.

But the House also did something else. In addition to amending Rule XII

which grants to the Delegates the authority to vote in the Committee of the Whole, it modified Rule XXIII which, in effect, took away what had been given by Rule XII.[9] Under Rule XXIII, whenever the votes of the Delegates are decisive to the outcome of any balloting in the Committee of the Whole, there is an automatic and immediate second ballot in the House itself, and in that ballot the Delegates are prohibited from participating.

On the basis of this record, the Court concludes that, while the action the House took on January 5, 1993 undoubtedly gave the Delegates greater stature and prestige both in Congress and in their home districts, it did not enhance their right to vote on legislation. In a democratic system, the right to vote is genuine and effective only when, under the governing rules, there is a chance, large or small, that, sooner or later, the vote will affect the ultimate result. The votes of the Delegates in the Committee of the Whole cannot achieve that; by virtue of Rule XXIII they are meaningless. It follows that the House action had no effect on legislative power, and that it did not violate Article I or any other provision of the Constitution.

The Court holds that the rules adopted by the House of Representatives, considered in the aggregate, are valid, and judgment will accordingly be entered for the defendants.

ORDER

Upon consideration of plaintiffs' motion for a preliminary injunction, defendants' motion to dismiss, the memoranda submitted in support thereof and in opposition thereto, the hearing held by the Court on these motions; the briefs filed by the *amici curiae*; the request by the parties to join the application for a preliminary injunction with final consideration of this action on the merits; and the entire record herein; it is this 8th day of March, 1993, in accordance with an Opinion issued contemporaneously herewith

ORDERED that plaintiffs' motion for a preliminary injunction be and it is hereby denied; and it is further

ORDERED that judgment be and it is hereby entered for defendants.

An appeal from this ruling was taken to the United States Court of Appeals, District of Columbia Circuit. Slightly different arguments were made on appeal, but on Jan. 25, 1994, the three-judge court held that changes in the rules did not violate the constitutional requirement that the House "be composed of members" and affirmed the decision of the court below. Portions of the decision[10] (excluding the arguments and decision on the questions of the jurisdiction of the court and the standing of the parties) follow:

9. Interestingly, Rule XII was initially proposed in December 1992, while Rule XXIII surfaced a month later. Some Member or Members must have had doubts about the validity of Rule XII, and they were sufficiently astute to add Rule XXIII to the proposed rule change.

10. Civil Action No. 93–5109; 14 F3d 623.

ROBERT H. MICHEL, et al., Appellants,

v

DONNALD K. ANDERSON, et al., Appellees.

United States Court of Appeals, District of Columbia Circuit.

Argued Oct. 22, 1993.

Decided Jan. 25, 1994. . . .

Before: SILBERMAN and RANDOLPH, Circuit Judges, FRANK M. COFFIN,[11] Senior Circuit Judge, United States Court of Appeals for the First Circuit.

Opinion for the Court filed by Circuit Judge SILBERMAN.

Silberman, Circuit Judge:

A number of congressmen and individual voters appeal from the judgment of the district court rejecting their challenge to a House rule granting delegates from the territories and the District of Columbia the right to vote in the Committee of the Whole. We hold that the provision does not violate Article I of the Constitution and therefore affirm.

I.

Between 1900 and 1974, Congress created the offices of five delegates to the House of Representatives, representing Puerto Rico, Guam, the Virgin Islands, American Samoa, and the District of Columbia. The rules of the House—at least between 1900 and 1970—permitted the delegates to debate, but did not allow them to vote in any setting. In 1970, those rules were changed, and the delegate from Puerto Rico was given the additional right to vote in standing committees.[12] On January 5, 1993, the House granted all five delegates the right to vote in the Committee of the Whole, a committee composed of all members of the House through which all public bills affecting revenue and spending proceed, and which shapes, to a very great extent, the final form of bills that pass the House. The new [House Rule XII clause 2], provides that: . . .

Robert H. Michel, the House Minority Leader, and 11 other members of the House, filed suit against the Clerk of the House and the territorial delegates, seeking a declaration that the House rules were unconstitutional, and an injunction preventing the delegates from attempting to vote in the Committee of the Whole and the Clerk from tallying such votes.[13] The complaint was subsequently amended to add three private voter plaintiffs: one represented by appellant Congressman Michel from Illinois, one by appellant Congressman Castle from Delaware, and one by appellant Congressman Thomas from Wyoming.

The district court denied the appellants' application for a preliminary injunction and dismissed the case. After disposing of a number of juris-dictional

11. Sitting by designation pursuant to 28 USC § 294(d) (1988).

12. By statute and practice, the privileges of the other Delegates are tied to those enjoyed by the Puerto Rican Resident Commissioner. See infra.

13. For the sake of convenience, we will occasionally refer to the appellees as "the House." This is not, however, intended to imply that a suit naming the House itself as a defendant would be proper.

issues, the court determined that "for most practical purposes" the "Committee of the Whole is the House of Representatives," and that accordingly a rule that would permit delegates to vote in that committee without qualification, would "invest them with legislative power in violation of Article I of the Constitution." [*Michel* v *Anderson*, 817 F Supp 126, 141 (D.D.C. 1993).] The court concluded that the rules are constitutional, however, because the "revote" provision left Rule XII with "no effect, or only at most an unproven, remote, and speculative effect, as far as voting or the exercise of legislative power is concerned." [817 F Supp 145.] This appeal followed.[14] . . .

III.

Turning to the merits, we first consider whether the rule is contrary to the legislation which created the delegates. The parties agree that the office of a delegate representing a territory (or the District of Columbia) could not be created other than through legislation, which, of course, requires the concurrence of the Senate and normally the President. The offices of each of the five delegates were created by statute [see 48 USC § 891 (1988) (Puerto Rico); 48 USC § 1711 (1988) (Guam and the Virgin Islands); 48 USC § 1731 (1988) (American Samoa); 2 USC § 25a (1988) (District of Columbia)], and the delegates are paid, and their offices staffed, out of the public treasury. [See, *e.g.*, 48 USC §§ 1715, 1735 (1988).] If, as appellants claim, these offices were created on the condition that the delegates would not be permitted to vote in the Committee of the Whole, then that condition would trump any authority of the House to change its rules unilaterally to grant that power. A statute, enacted into law by bicameral passage and presidential approval (or upon an override of a presidential veto), cannot be amended by one chamber unilaterally. [*INS* v *Chadha*, 462 U.S. 919, 952 (1983).] For this reason, appellees concede that if the statutes creating the delegate offices specifically provided that the delegates would not vote in the Committee of the Whole, the House's rule providing that vote would be invalid.

Appellants' argument that the legislation precludes the rule is not insubstantial but, at bottom, it is dependent on one remark by then-Congressman Foley during the debate over the extension to the Resident Commissioner from Puerto Rico of the right to vote in standing committees. With the exception of the statute creating the office of the delegate from the District of Columbia, the acts creating the other delegates all tie explicitly those delegates' privileges to those of the Resident Commissioner for Puerto Rico. The legislation creating the delegates from Guam and the Virgin Islands specifies that they "shall be entitled to whatever privileges and immunities are, or hereinafter may be, granted to the Resident Commissioner for Puerto Rico: Provided That the right to vote in committee shall be as provided by the Rules of the House of Representatives." [48 USC § 1715 (1988).] The delegate from American Samoa, in turn, is granted "whatever privileges and im-

14. The parties here include a number of *amici curiae* in support of appellee Eleanor Holmes Norton, the Delegate from the District of Columbia.

munities that are, or hereinafter may be, granted to the nonvoting Delegate from the Territory of Guam." [48 USC § 1735 (1988).]

Although the statute creating the Office of the Delegate from the District of Columbia in 1970 did not specifically refer to the powers of the Puerto Rican delegate and provided that the delegate shall have a seat "with the right of debate, but not of voting" [see 84 Stat. 848 (1970), codified at 2 USC § 25a (1988)], it is not argued that the District's delegate was intended any less or more authority than that granted the other delegates, so it is undisputed that Congress also authorized the District delegate to vote "in committee."

The key question, then, is the scope of the powers to be exercised in the House by the Resident Commissioner from Puerto Rico. The office of Resident Commissioner was established by an Act of Congress in 1900 [see 31 Stat. 86 (Apr. 12, 1900)], but the Act is entirely silent as to the Commissioner's function and privileges. [See 48 USC § 891 (1988).] Those privileges were clarified somewhat when Congress enacted the Legislative Reorganization Act of 1970. That Act, passed by both Chambers and signed into law by the President, adopted, *inter alia*, certain rules for the two Houses. One such provision specified that the Commissioner "shall be elected to serve on standing committees in the same manner as Members of the House and shall possess in such committees the same powers and privileges as the other Members." [84 Stat. 1161.] Thus, the rule enacted by statute provided that the commissioner would vote in the standing committees. Appellants argue that under the principle of *inclusio unius est exclusio alterius* the commissioner was not authorized to vote in the Committee of the Whole. The question is more complicated, however, because of section 101 of the Act, which specifies:

> The following sections of this title are enacted by the Congress—
>
> (2) insofar as applicable to the House of Representatives, as an exercise of the rulemaking power of the House of Representatives, subject to and with full recognition of the power of the House of Representatives to enact or change any rule of the House at any time in its exercise of its constitutional right to determine the rules of its proceedings.

[84 Stat. 1143 (1970).]

While it is fair to conclude that in 1970 Congress did not contemplate that the delegates would vote in the Committee of the Whole, section 101 of the Act, on its face, appears to delegate to the House the power to alter that situation by rule. Appellants claim that could not be so, however, because the Congress, in 1970, did not believe it would be constitutional for the House to provide, by rule, that the delegate should vote in the Committee of the Whole. They rely on legislative history. Apparently in response to a prearranged question from Congressman Sisk, who, troubled by the constitutionality of the provision granting the commissioner (and by statutory implication now, the other delegates) the vote in the standing committees, asked whether section 129 could be construed to grant such a vote in the Committee of the Whole as well, then-Congressman Foley responded:

> Now it is very clear . . . that a constitutional amendment would be

> required to give the Resident Commissioner a vote in the Committee of the Whole or the full House. . . . The point is that the constitutional issue does not touch preliminary advisory votes which is what standing committees votes are, but only the votes which are cast in the Committee of the Whole or the full House. These votes can be cast only by Members of Congress.

If it could be said that the whole House meant section 101 to be limited by that constitutional restriction, appellants would have a compelling argument. But we do not see how we can ascribe Congressman Foley's views to the whole House. Nothing in the legislation reflects that understanding. As we have recently noted, we have an obligation to construe statutes to avoid serious constitutional questions [see *Association of Am. Physicians & Surgeons, Inc.* v *Clinton*, 997 F2d 898, 910 (D.C. Cir. 1993)], but we think appellants' claimed interpretation relies too heavily on the remarks of only one congressman (fated, albeit, to be the Speaker) to defeat the plain language of section 101. Moreover, since appellants' claimed construction of the statute depends on the 1970 Congress entertaining the same view of the Constitution appellants assert in this case, by relying on that proposition we would come very close to endorsing that view of the Constitution—which undermines the purpose of the rule of statutory construction. We have, therefore, no alternative but to pass on to the constitutional issue.

IV.

The question before us is shaped by the parties' arguments and, even more, their concessions. The appellants do not challenge the constitutionality of the practice of permitting delegates to vote on standing committees, although, recognizing the difficulty in drawing a constitutional line between the Committee of the Whole and the standing committees, they do not concede the constitutionality of the prior House rule permitting delegates to vote in the latter. The appellees, for their part, forthrightly concede that the House could not permit persons other than the traditional territorial delegates to perform the role currently played by the delegates. It would, thus, not be open to the House to authorize by rule, say, the mayors of the 100 largest cities to serve and vote on House committees. Nor could the House, appellees agree, deprive any member of the right to vote in the Committee of the Whole (or in a standing committee). Finally, despite the House's reliance on the revote mechanism to reduce the impact of the rule permitting delegates to vote in the Committee of the Whole, appellees concede that it would be unconstitutional to permit anyone but members of the House to vote in the full House under any circumstances. In other words, delegates could not be authorized to vote in proceedings of the full House subject to a revote. So the issue is narrowed to the question: May the House authorize territorial delegates to vote in the House's committees, particularly the Committee of the Whole?

The district court, it will be recalled, thought the House rule would have violated Article I if it had not been qualified by the revote provision, because it would have "invested the delegates with legislative power." Appellants reiterate that proposition, but claim that since the qualification is not

complete—some voting power is passed to the delegates notwithstanding the revote provision—Rule XII violates Article I. As *amici* point out, however, and appellants ultimately concede, Article I, § 1, grants the legislative powers to the Congress, which in turn consists of the Senate and House of Representatives. No one congressman or senator exercises Article I "legislative power." Therefore, it is not meaningful to claim that the delegates are improperly exercising Article I legislative authority. The crucial constitutional language implicated by appellants' claim (which appellants point out) is, instead, Article I, § 2: "The House of Representatives shall be composed of Members. . . ." That language precludes the House from bestowing the characteristics of membership on someone other than those "chosen every second Year by the People of the several States."

But what are the aspects of membership other than the ability to contribute to a quorum of members under Article I, § 5, to vote in the full House, and to be recorded as one of the Yeas or Nays if one-fifth of the members so desire? The Constitution, it must be said, is silent on what other characteristics of membership are reserved to members. Although it seems obvious that the Framers contemplated the creation of legislative committees—the Constitutional Convention itself [see Max Farrand, *The Records of the Federal Convention of 1787*, Supplement, ed. James H. Hutson 370, 371 (1987) (index) (listing the numerous committees used by convention during drafting of the Constitution)], as well as the Continental Congress [see Jennings B. Sanders, *Evolution of Executive Departments of the Continental Congress*: 1774–1789, at 4, 6–8, 41–43 (1935)], utilized committees frequently—the Constitution does not mention such committees.

Accordingly, appellees look to the practice of the early congresses relating to territorial delegates as an interpretative aid. Although the actions of the early congresses are not a perfect indicator of the Framers' intent, those actions provide some indication of the views held by the Framers, given the propinquity of the congresses and the framing and the presence of a number of Framers in those congresses. [*Cf. Marsh* v *Chambers*, 463 U.S. 783, 788–791 (1983).] The first territorial delegate, representing the Northwest Territories, was created by statute during the first Congress. [See 1 Stat. 50, 52 (1789).] William Henry Harrison, who occupied that office, was granted considerable privileges in Congress, including the power of making motions [see 6 Annals of Cong. 197, 198 (1799)], and of serving as chairman of a committee. [See 6 Annals of Cong. 527 (1800).] "Harrison's Committee on Public Lands not only procured the passage of the Land Act of 1800, but also served as a clearing house for all petitions and special measures relating to lands in the Northwest." [Dorothy Burne Goebel, *William Henry Harrison: A Political Biography* 46 (1974).]

The practice of permitting delegates to serve on and to chair standing committees continued into the nineteenth century. [See 2 Hinds' Precedents § 1299 (1907).] Those delegates may even have been granted the right to vote in the standing committees. According to a report on the qualifications of David Levy to serve as Dele-

gate from Florida, prepared by the House Committee on Elections in 1841,

> [w]ith the single exception of voting, the Delegate enjoys every other privilege and exercises every other right of a Representative. He can act as a member of a standing or special committee and vote on the business before said committees, and he may thus exercise an important influence on those initiatory proceedings by which business is prepared for the action of the House.

[H. Rept. No. 10, 27th Cong., 1st Sess., 5 (1841).] This report, although indicative of the House's practice around 1840, admittedly provides no direct documentary proof that delegates were permitted to vote in the standing committees in the first congresses as well. Be that as it may, the territorial delegates were certainly accorded a unique status by the first congresses. At the earliest times, Congress viewed the territorial delegates as occupying a unique middle position between that of a full representative and that of a private citizen who presumably could not serve on or chair House committees.

The territorial delegates, representing those persons in geographical areas not admitted as states, then, always have been perceived as would-be congressmen who could be authorized to take part in the internal affairs of the House without being thought to encroach on the privileges of membership.

Appellants, not disputing the main line of appellees' historical presentation, but without conceding the legitimacy of the practice, assert that the rule in question is a qualitatively different matter. Whatever the legitimacy of permitting delegates' participation—even full participation—in the work of standing committees, the Committee of the Whole is so close to the full House that permitting the delegates to vote there is functionally equivalent to granting them membership in the House.

Appellants claim, for instance, that provisions removed by the committee cannot be resurrected on the floor of the House, and that by longstanding practice, enforced by rules of procedure attached to successive bills, the House cannot amend bills that reach the floor but rather must vote up or down on the bills in toto.[15] As appellees point out, appellants' description of the power of the committee is somewhat exaggerated, but, in any event, appellants' argument, even if true, proves too much. Any number of procedures sharply limit the range of options among which the House can choose when bills reach the floor. The House rules could give any standing committee, as it does conference committees, the authority to put bills to the House floor without the possibility of

15. Appellants concede that Members may introduce in the full House a motion to recommit a bill to the standing committees for amendment, but understandably argue that the existence of this time-consuming and cumbersome procedure does little in practice to cure the influence of the Committee of the Whole's proceedings on final bills. Alternatively, appellant congressmen argue that they should not be compelled to surmount such difficult hurdles in order to enforce their right not to have their vote diluted by the Delegates' participation.

amendment. Indeed, under the "fast track" legislation [see 19 USC § 2903 (1988 and Supplement 1991)], a procedural device passed by each House as an exercise of rulemaking power, the President may submit various treaties to the two Houses for ratification on a take-it-or-leave-it basis. That device surely does not make the President the functional equivalent of the full House. In any event, whatever authority the Committee of the Whole exercises, it does so only at the sufferance of the full House which can alter the Committee of the Whole's function at any time.

Nevertheless, it would blink reality to deny the close operational connection between the Committee of the Whole and the full House. The House itself recognized how perilously close the rule change came to granting delegates a vote in the House. That is why the House sought to ameliorate the impact of the change through the revote provision. That has led the parties to dispute vigorously the degree to which, notwithstanding the revote provision, the granting of a vote to the delegates in the Committee causes a change in the dynamics of the behavior of the House. Appellees are put in the awkward position of claiming that the revote provision causes the grant of voting authority to the delegates to be only symbolic. It is not necessary to explore and analyze all the scenarios about which the parties conjecture.[16]

16. Under one such scenario advanced by appellants, the five delegates would each agree to trade their votes on a certain bill with three members in exchange for the members' support of the delegates' pet bill. That pet bill, then, might pass by a margin of 15 votes—too great a number to trigger the revote mechanism but nevertheless a margin that might not have existed were it not for the ability of the delegates to trade their newly granted votes in the Committee. The implicit underlying assumption is that a member would be willing to trade his vote for a delegate's at par, even though in a close vote (presumably the only vote where such a trade would matter) the delegate's own vote could not have a decisive effect because of the revote mechanism. Of course, the membership of delegates on standing committees already endowed them with considerable vote-trading possibilities.

Appellants raise as a second scenario the possibility that by casting a decisive vote, a delegate could "force" a revote, and that the "power" to force a second vote might itself be sufficient to alter the result. Appellants point to a number of instances (unrelated to delegate voting) in which two successive votes were taken on a bill, with the result of the second differing from that of the first. The power to force a second vote is not, however, all that different from the power to resubmit a bill for consideration by the House, a power that the delegates historically have enjoyed.

Finally, appellants point out that House Rule XXIII only provides for a revote on recorded votes, and that the delegates might cast decisive votes when such votes are unrecorded. While this is theoretically true, it is unclear how often, if ever,

Suffice it to say that we think that insofar as the rule change bestowed additional authority on the delegates, that additional authority is largely symbolic and is not significantly greater than that which they enjoyed serving and voting on the standing committees. Since we do not believe that the ancient practice of delegates serving on standing committees of the House can be successfully challenged as bestowing "membership" on the delegates, we do not think this minor addition to the office of delegates has constitutional significance.

* * * * *

Accordingly, the district court's judgment is affirmed.

So ordered.

Repeal of Delegate Voting Rights

§ 59.3 In the 104th Congress, when control of the House of Representatives passed to a Republican majority for the first time in 40 years, the rules adopted in the 103d Congress, permitting the Delegates to vote in Committee of the Whole, were repealed.

On Jan. 4, 1995, House Resolution 6[17] was adopted after prolonged debate. As part of the package of amendments proposed by the new majority, there were amendments to Rules XII[18] and XXIII[19] which repealed the provisions adopted in the prior Congress permitting the Delegates and the Resident Commissioner to participate on recorded votes taken in the Committee of the Whole House on the state of the Union as well as the right to be appointed as Chairman of a Committee of the Whole. The pertinent amendments were as follows:

Section 212 simply repealed the two provisions adopted in the 103d Congress:

Sec. 212. (a) In rule XII, strike clause 2 and the designation of the remaining clause.

(b) In clause 1 of rule XXIII, strike ", Resident Commissioner, or Delegate".

(c) In clause 2 of rule XXIII, strike paragraph (d).

The changes in the rules adopted in the 103d Congress are also shown in the following analysis. The rules for the 103d Congress follow, the portions struck out by Section 212 are set aside in bold brackets:

RULE XII.

RESIDENT COMMISSIONER AND DELEGATES.

[1.**]** The Resident Commissioner to the United States from Puerto Rico

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an unrecorded vote on a controversial matter would be decisive, given that it takes only 25 members to force a recorded vote. [See Rule XXIII clause 2(b), *House Rules and Manual* (1993).]

17. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

18. *House Rules and Manual* § 740 (1995).

19. *House Rules and Manual* § 861a (1995).

and each Delegate to the House shall be elected to serve on standing committees in the same manner as Members of the House and shall possess in such committees the same powers and privileges as the other Members.

[2. In a Committee of the Whole House on the state of the Union, the Resident Commissioner to the United States from Puerto Rico and each Delegate to the House shall possess the same powers and privileges as Members of the House.] (20)

RULE XXIII.

OF COMMITTEES OF THE WHOLE HOUSE.

1. (a) In all cases, in forming a Committee of the Whole House, the Speaker shall leave his chair after appointing a Member[, Resident Commissioner, or Delegate] as Chairman to preside, who shall, in case of disturbance or disorderly conduct in the galleries or lobby, have power to cause the same to be cleared.

2. (a) . . .

[(d) Whenever a recorded vote on any question has been decided by a margin within which the votes cast by the Delegates and the Resident Commissioner have been decisive, the Committee of the Whole shall automatically rise and the Speaker shall put that question de novo without intervening debate or other business. Upon the announcement of the vote on that question, the Committee of the Whole shall resume its sitting without intervening motion.] (1)

20. *House Rules and Manual* § 740 (1993).

1. *House Rules and Manual* § 864b (1993).

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