

tention to challenge many provisions by raising points of order, but reversed his position when promised that an amendment he wished to offer, also legislative in concept, would not be opposed by the bill managers when offered. He then sought to rectify his actions.

MR. [JOHN P.] MURTHA [of Pennsylvania]: Mr. Chairman, we have an agreement with the gentleman from Ohio that he can offer his amendment at the appropriate place, if he would ask unanimous consent to put back the provisions that he has taken out.

MR. TRAFICANT: Mr. Chairman, I would be glad to do that if I could feel that when we got to conference and got everybody in the back room, that when the law is signed by the President the Traficant amendment would be in there . . .

MR. MURTHA: Mr. Chairman, as the gentleman knows, I will do the best I can with every provision we have put in, including the provisions that the gentleman has put in the bill. We will do the best that we can to hold that provision.

I agree with the gentleman on the provision. I think it is a very important provision, and I agree with the gentleman completely on it.

THE CHAIRMAN:<sup>(6)</sup> Are there any other points of order against title II?

If not, are there any amendments to title II?

VACATING PROCEEDINGS ON PREVIOUS  
POINTS OF ORDER BY MR. TRAFICANT

MR. TRAFICANT: Mr. Chairman, I ask unanimous consent that any provisions

of title II stricken by my objections to such provisions for having constituted legislation on an appropriation bill be vacated and the bill stand as it is.

THE CHAIRMAN: The gentleman from Ohio asks unanimous consent to vacate proceedings under points of order raised by the gentleman from Ohio only, not the gentleman from Indiana, under title II.

Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE CHAIRMAN: Those provisions, accordingly, are restored to title II of the bill.

## § 10. Role of Committee on Rules in Waiving Points of Order

In the “modern House,” at least since the 95th Congress, the Committee on Rules has been called upon to craft special orders governing the consideration of most major pieces of legislation to be brought before the House. Even bills otherwise given “privilege” by standing rules of the House, such as general appropriation bills, are often considered pursuant to or are protected by a special rule.<sup>(7)</sup> Special rules can insulate a bill or amendments from points of order; they often are designed to expedite consideration.<sup>(8)</sup>

7. See § 10.16, *infra*.

8. See §§ 10.15, 10.19–10.22, *infra*.

6. James L. Oberstar (Minn.).

In recent Congresses, these special orders have become more complex. Some waive the application of all rules which would inhibit consideration of a measure;<sup>(9)</sup> some waive specific rules.<sup>(10)</sup> Others protect vulnerable amendments<sup>(11)</sup> or provisions of the bill text, structure an amendment process,<sup>(12)</sup> or modify normal debate rules. Some special orders contain a variety of such provisions and more.<sup>(13)</sup>

A special order can be selective, protecting some provisions or amendments and leaving others vulnerable.<sup>(14)</sup>

A special order may recommend the waiver of any rule, even one created in a statute enacted pursuant to the rulemaking authority of the House.<sup>(15)</sup> Such an order, if adopted by the House, can even modify the normal application of a standing rule or order.<sup>(16)</sup>

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***Waiving Points of Order  
Against Violation of Rule Es-  
tablished by Statute***

**§ 10.1 One House may, pursuant to its constitutional au-**

- 9. See §§ 10.6, 10.14, *infra*.
- 10. See §§ 10.3, 10.13, *infra*.
- 11. See §§ 10.5, 10.18, *infra*.
- 12. See § 10.23, *infra*.
- 13. See § 10.16, *infra*.
- 14. See §§ 10.7, 10.9, 10.11, *infra*.
- 15. See §§ 10.1, 10.2, *infra*.
- 16. See §§ 10.8, 10.10, *infra*.

**thority to make its own rules, change or temporarily waive provisions of law which have been enacted as rules of each House insofar as that law applies to the procedure of that House.**

On Mar. 20, 1975,<sup>(17)</sup> the chairman of the Committee on Rules called up for consideration a resolution reported as privileged by that committee. A point of order was raised against the consideration of the report on the ground that it purported to waive certain statutory provisions of the Budget Act in order to permit consideration of H.R. 4485, the Emergency Middle-Income Housing Act of 1975. The resolution contained a provision waiving the applicability of section 401 of the Budget Act which prohibits consideration of a bill containing "new spending authority" not limited by amounts specified in an appropriation act.

In support of the point of order raised by Mr. John B. Anderson, of Illinois, Mr. Robert E. Bauman, of Maryland, also pointed out that the report on the resolution did not contain a "Ramseyer" showing the waiver of section 401 of the Budget Act, arguing that the resolution "changed existing law" and therefore had to comply with Rule

- 17. 121 CONG. REC. 7676, 7677, 7678, 94th Cong. 1st Sess.

IX clause 4(d), making the so-called “Ramseyer rule” applicable to reports from the Committee on Rules.

Several collateral parliamentary issues were raised in the argument on the point of order and are carried herein.

MR. [CLAUDE] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 337, and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 337

*Resolved*, That upon the adoption of this resolution it shall be in order to move, clause 2(l)(6) of rule XI and section 401 of Public Law 93-344 to the contrary notwithstanding, 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. 4485) to provide for greater homeownership opportunities for middle-income families and to encourage more efficient use of land and energy resources. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Currency, and Housing, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommend.

MR. ANDERSON of Illinois: Mr. Speaker, I make a point of order against House Resolution 337 and I would like to be heard on the point of order.

THE SPEAKER:<sup>(18)</sup> The gentleman will state his point of order.

MR. ANDERSON of Illinois: Mr. Speaker, I raise a point of order against House Resolution 337 on the grounds that the Budget Act by direct inference forbids any waiver of the section 401 ban on new backdoor spending in the House of Representatives.

Mr. Speaker, my point of order is grounded on two basic facts: First, there is no specific provision in section 401 for an emergency waiver of its provisions; and yet, in section 402, which generally prohibits consideration of bills authorizing new budget authority after May 15, there is specific provision for an “Emergency Waiver in the House” if the Rules Committee determines that emergency conditions require such a waiver. It is my contention that if the authors of section 401 had intended to permit a waiver of its provisions, they would have specifically written into law as they did with section 402. Section 402 makes a similar provision for waiving its provisions in the Senate.

Second, section 904 of the Budget Act, in subsections (b) and (c) states that “any provision of title III or IV may be waived or suspended in the Senate by a majority vote of the Members voting,” thus extending a waiver procedure in the Senate to section 401 as well as 402. But section 904 contains no similar waiver provision for the House of Representatives.

<sup>18</sup>. Carl Albert (Okla.).

It should be clear from these two facts that the House was intentionally excluded from waiving the provisions of section 401 of the Budget Act.

Mr. Speaker, the point may be made that the Budget Act's provisions are part of the rules of the House, and, as such, are subject to change at any time under the constitutional right of the House to determine the rules of its proceedings. But I think a fine distinction should be drawn here. This resolution is presented for the purpose of making a bill in order for consideration, and is not before us for the purpose of amending or changing the Budget Act. Since section 401 of the Budget Act deals concurrently with the House and the Senate and their integrated procedures for prohibiting new backdoor spending, any attempt to alter this would have to be dealt with in a concurrent resolution at the very minimum, if not a joint resolution or amendment to the Budget Act. It is one thing for the House to amend its rules; it is quite another for it to attempt, by simple resolution, to waive a provision of law relating to the joint rules of procedures of both Houses.

Mr. Speaker, on March 3, 1975, section 401 of the Budget Act, as well as certain other provisions, was activated by the issuance of House report 94-25 by the House Budget Committee. On page 4 of that report, under the heading, "Controls on New Backdoor Authorities," it is written:

The Budget Committees are implementing *immediately* those portions of section 401 of the Act which (1) make new contract and borrowing authority effective only to the extent and amounts provided in appropriations acts (section 401(a)).

The report goes on to state:

With respect to new contract and borrowing authorities, *it is very much in the interest of the new budget process to prohibit a last-minute rush of new backdoor authorities.*

Mr. Speaker, despite the fact that section 401 was activated on March 3, the Committee on Banking and Currency did not see fit to report a clean bill on March 14 which was in conformity with the section 401 requirement. And on March 18, some 15 days after the activation of 401, the Banking and Currency Committee asked the Rules Committee to waive section 401 against its bill.

Mr. Speaker, the relevance of all this to my point of order should seem quite obvious. It is not relevant whether the committee promises to offer the appropriate amendment at a later point. It may or may not offer such an amendment, and it may or may not be adopted. But it should be quite clear that there never was any intention to permit the Rules Committee to waive the provisions of section 401; for by so doing, we would in effect be repealing the backdoor spending ban of the Budget Act by permitting side-door spending through the Rules Committee. It is my contention that the authors of the Budget Act never intended for side-door spending in the Rules Committee and for that reason specifically excluded any provision for emergency waivers in section 401 in the House. I therefore urge that my point of order be sustained.

THE SPEAKER: Does the gentleman from Missouri desire to be heard on the point of order?

MR. [RICHARD] BOLLING [of Missouri]: I do, Mr. Speaker.

Mr. Speaker, there are a variety of grounds on which it would be possible to address this point of order. It could be dismissed very quickly on the grounds that the rules of the House provide that it shall always be in order to call up for consideration a report from the Committee on Rules on a rule, joint rule or the order of business, and then it proceeds to give the very limited number of exceptions. The one that the gentleman from Illinois makes as his point of order, and all the different ones he makes as his points of order, are not included in those specific exceptions.

So, the rules of the House specifically make it clear that the Rules Committee is in order when it reports a rule dealing with the order of business, and it does not qualify that authority except in a very limited degree.

Furthermore, it is an established fact that the House can always change its rules. It is protected by so doing.

Mr. Speaker, the Chair will note I have not relied on the fact that as a member of the committee that dealt finally with the Budget and Impoundment Control Act, I might have an opinion as to what the authors of that act, and consequently the House, felt. I know, as a matter of fact, that the authors of that bill in its final form were well aware of the points that I have just made. It seems to me very clear that the point of order is not valid on those grounds.

I think, however, it is important to add the fact that the Committee on the Budget is a new committee. Quite specifically, the legislation gave it a year in which it could work its way into the process, and that this rule aids that

committee in working its way into the process.

It has been pointed out by the gentleman from Illinois that when the amendment of the committee is adopted, or the amendments of the committee are adopted to the bill reported by the committee, that the bill then will be in compliance even with the Budget Control Act. But, this exception is fully justified on the grounds of the intent of the Congress in giving the Congress itself an opportunity of 1 year in which to try out the process without requiring that every specific provision of that process as provided in law be followed.

So, on the general grounds, the constitutional grounds and the specific grounds, it seems to me very clear that the point of order is not good.

MR. [CHALMERS P.] WYLIE [of Ohio]: Mr. Speaker, I would like to be heard on the point of order.

Mr. Speaker, I would like to ask a question of the gentleman from Missouri on the point of order. On page 6 of the bill H.R. 4485, at line 14, it says:

[The Secretary of the Treasury is authorized and directed to purchase any obligations of the Association issued under this section, and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act.]

Would the gentleman please explain to me the meaning of the language?

MR. BOLLING: I think it would be more appropriate if the gentleman will allow me to suggest that a member of the Committee on Banking and Currency should explain it.

MR. WYLIE: It relates to the point of order, and that is the point I want to

make. This provides for back-door spending and, indeed, suggests that the Secretary of the Treasury is authorized under the act, which was passed many years ago, to increase the public debt without congressional action or approval of the Committee on Appropriations. It seems to me as if it goes directly to section 401(a), as provided in the new Budget Procedures Act.

MR. BOLLING: I am not prepared to disagree with the gentleman on his interpretation of that particular point, but I do not see where it is pertinent to the point of order. I think the discussion we have had on the point of order makes it clear that, despite the fact, this rule is in order.

MR. WYLIE: Does not the Budget Control Act, section 401(a) prohibit back-door spending?

MR. BOLLING: It also is possible for that provision to be waived. What I tried to do in my discussion in opposition to the validity of the point of order made by the gentleman from Illinois was to point out the very broad basis on which such a matter could be waived, a constitutional basis and a specific provision of clause 4 of rule XI granting the Committee on Rules a very broad authority to report matters that relate to order of business. It is a well-known fact that the Committee on Rules often reports waivers of points of order, and this is, in effect, a waiver of a point of order.

THE SPEAKER: The Chair is ready to rule.

The gentleman from Illinois makes the point of order against the consideration of House Resolution 337 reported from the Committee on Rules, on the

grounds that that Committee has no authority to report as privileged a resolution waiving the provisions of section 401 of the Congressional Budget Act of 1974. Section 401 prohibits the consideration in the House of any bill which provides new spending authority unless that bill also provides that such new spending authority is to be available only to the extent provided in appropriations acts.

The Chair would point out that while section 401 has the force and effect of law, section 904 of the Congressional Budget Act clearly recites that all of the provisions of title IV, including section 401, were enacted as an exercise of the rulemaking power of the House, to be considered as part of the rules of the House, with full recognition of the constitutional right of each House to change such rules at any time to the same extent as in the case of any other rule of the House. House Resolution 5, 94th Congress, adopted all these provisions of the Budget Act as part of the rules of the House for this Congress.

Much of the argument of the gentleman from Illinois goes to the merits or the propriety of the action recommended by Committee on Rules and not to the authority of that committee to report this resolution.

The Chair, therefore, overrules the point of order.

MR. BAUMAN: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: I make a further point of order against the consideration of this rule based on the ruling just made by the Chair.

The Chair has just ruled section 904 of the Budget Control Act permits the House to exercise its power to change the rules of the House.

Under the rules of the House, in rule IX, 4(d), it requires that—

Whenever the Committee on Rules reports a resolution repealing or amending any of the Rules of the House of Representatives or part thereof it shall include in its report or in an accompanying document—

(1) the text of any part of the Rules of the House of Representatives which is proposed to be repealed; and

(2) a comparative print. . . .

The report of the Rules Committee, Report 94–80, contains no such comparative print. It shows nothing as to the effect of this rule as it applies to any waiver or change of the rules of the House; and, therefore, is in direct contradiction, on the basis the Chair just cited. I, therefore, make a point of order this is not in order at this time.

THE SPEAKER: Does the gentleman from Missouri (Mr. Bolling) desire to be heard on the point of order?

MR. BOLLING: I do, Mr. Speaker.

It seems to the gentleman from Missouri that the constraint purported to be placed on the House by that particular language is not equal to the specific, clear, constitutional provision which states that the House will make its rules and change its rules.

Mr. Speaker, it would seem to me that no subsidiary provision would be prevailing when the House would be stopped from modifying its rules repeatedly by technical arguments.

THE SPEAKER: The Chair is ready to rule.

The Chair agrees with the statement made by the gentleman from Missouri

(Mr. Bolling). The Chair would state further that the objection raised by the gentleman from Maryland (Mr. Bauman) refers to permanent changes—amendments or repeals—in the rules of the House and not to temporary waivers.

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

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. RHODES: Mr. Speaker, in accordance with the ruling of the Chair, I inquire as to whether or not the ruling of the Chair has the effect of rescinding the rule which is the subject of the point of order made by the gentleman from Illinois or whether it merely suspends the application of that rule for the purposes of the resolution which is now before the House.

THE SPEAKER: In answer to the parliamentary inquiry, the Chair will state that all the ruling of the Chair does is make in order the consideration of the resolution before the House. It does not change the permanent rules of the House.

MR. RHODES: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RHODES: Mr. Speaker, would it then be necessary for the resolution which is before the House to be agreed to by a two-thirds vote?

THE SPEAKER: It would not.

The gentleman from Florida (Mr. Pepper) is recognized for 1 hour.

MR. PEPPER: Mr. Speaker, I yield 30 minutes to the able gentleman from Illinois (Mr. Anderson), pending which I yield myself such time as I may consume.

***Authority of Committee on Rules To Waive Rules Put in Place by Statute***

**§ 10.2 The Committee on Rules can call up as privileged a resolution which provides for temporary waivers of House rules, even though those rules may be part of a statutory scheme enacted into law as an exercise of congressional rulemaking authority.**

House Resolution 352 which provided for the consideration of the National School Lunch and Child Nutrition Act of 1975, was reported on Mar. 23, 1975, and called up as privileged on the following day.<sup>(19)</sup> Mr. Robert E. Bauman, of Maryland, raised a point of order against consideration of the resolution, claiming that a special procedural resolution could not waive provisions of a statutory law, in this instance a section of the Congressional Budget Act of 1974 which prohibits consideration of measures containing "new spending authority" not subject to limitation by an appropriation act. He also argued that the report of the Committee on Rules was defective insofar as it did not contain a "Ramseyer"

showing the waiver of a provision of the Budget Act which would have prevented consideration of the measure had it been applicable. The arguments raised against the resolution were similar to those raised against another special order reported by the Committee on Rules on the preceding day. The proceedings were as follows:

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 352 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 352

*Resolved*, That upon the adoption of this resolution it shall be in order to move, section 401 of Public Law 93-344 to the contrary notwithstanding, 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. 4222) to amend the National School Lunch and Child Nutrition Acts in order to extend and revise the special food service program for children and the school breakfast program, and for other purposes related to strengthening the school lunch and child nutrition programs. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by

19. 121 CONG. REC. 8418, 94th Cong. 1st Sess., Mar. 24, 1975.



the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and all points of order against sections 13 and 15 of said substitute for failure to comply with the provisions of clause 5, rule XXI are hereby waived. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and 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.

MR. BAUMAN: Mr. Speaker, I have a point of order.

THE SPEAKER: <sup>(20)</sup> The gentleman will state his point of order.

MR. BAUMAN: Mr. Speaker, I make a point of order against the consideration of House Resolution 352 on two grounds. The first ground is that the rule itself attempts to permit a waiver of section 401 of Public Law 93-344, the Budget Control Act.

In support of this point of order, I cite the argument by the gentleman from Illinois (Mr. Anderson), which appeared in the *Congressional Record* on page H2074 of last Thursday, which I adopt by reference, the argument being in essence that a procedural resolution of the House cannot repeal, amend, or waive a section of statutory law.

Mr. Speaker, anticipating the Chair's ruling on my first point, I cite the rul-

ing of the Chair on last Thursday in which the Chair said in part:

“. . . section 401” and the provisions thereof “were enacted as an exercise of the rulemaking power of the House, to be considered as part of the rules of the House, with full recognition of the constitutional right of each House to change such rules at any time to the same extent as in the case of any other rule of the House.”

This leads me to state my second point of order against the report, House Report 94-107, accompanying House Resolution 352, on the grounds that this report violates rule XI of clause 4(d), of the Rules of the House which in essence requires that at any time a rule of the House is amended or changed, there shall be printed in the text of the report a comparative print showing such changes.

Mr. Speaker, in support of this second point, I have researched the records of the House; to the best extent one Member can. I realize that rule XI 4(d) is a new provision, but it has a comparative predecessor in the Ramseyer Rule. I have found, in looking up the Ramseyer Rule, that there is no comparable case in which the Chair has ever ruled that a waiver by a simple resolution making in order a rule has extended to the right to change the statutes of the United States, without at least attempting to comply with the Ramseyer Rule. The only close case that I found was a case on January 9, 1930, in which the Chair [Speaker Longworth of Ohio] ruled that the Ramseyer Rule did not apply to an appropriations statute being enacted by the Congress which permitted a temporary waiver of another statute, but this did not apply to a simple rule.

20. Carl Albert (Okla.).

Therefore, Mr. Speaker, on both of these points, I suggest that the consideration of this resolution and its report is not in order at this time.

THE SPEAKER: Does the gentleman from Missouri (Mr. Bolling) desire to be heard on the point of order?

MR. BOLLING: I do, Mr. Speaker, very briefly.

Mr. Speaker, I would cite the case cited by the gentleman from Maryland (Mr. Bauman), the arguments which I happen to have made on that day, and the various rulings of the Chair in support of the position that the rule is in order.

THE SPEAKER: The Chair is ready to rule if the gentlemen do not desire to be heard further.

For the reasons stated by the Chair last week on the point of order raised by the gentleman from Maryland (Mr. Bauman) and on the point raised by the gentleman from Illinois (Mr. Anderson), the Chair finds no reason to reverse the ruling he made last week and therefore overrules the point of order.

MR. BAUMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Is it the Chair's position that henceforth, rule XI, clause 4(d) does not apply at all in any instance where a waiver of a permanent rule of the House, or a statute which has the status of a permanent rule of the House is involved; that in any of those instances there is no need for the Committee on Rules to inform the House of its impending action?

THE SPEAKER: The Chair will state that, firstly, the rule if adopted is a

temporary waiver, and the Chair has previously stated his position with respect to temporary waivers in the case of that portion of the gentleman's argument which cites the Ramseyer rule. That is only applicable with respect to amendments or repeals of laws or rules. It is not applicable simply to a waiver of a rule.

The Chair overrules the point of order.

The gentleman from Missouri is recognized.

### ***Waiver Policy of Committee on Rules***

#### **§ 10.3 In certain Congresses, the Committee on Rules has followed a policy of not granting "blanket waivers" but only waivers of specified House rules.**

In the 100th Congress, a member of the minority leadership included in the Record a list of special orders which contained blanket waivers, and a copy of his letter to the then chairman of the Committee of Rules requesting adherence to the policy of granting only specific waivers. The insertion of Nov. 20, 1987,<sup>(1)</sup> is carried, in part, below.

MR. [TRENT] LOTT [of Mississippi]: Mr. Speaker, the House Rules Committee is rapidly becoming the ruleless committee. This week alone, of the four

1. 133 CONG. REC. 33209, 33210, 100th Cong. 1st Sess.

rules we granted for the consideration of bills and conference reports, all four waived all points of order against consideration. In other words, for all we know, each of those measures could have violated every rule in the book, including the entire Budget Act, but the Rules Committee was saying, "It's okay."

Mr. Speaker, about 9 years ago, when Congressman Bolling became chairman of the Rules Committee, a conscious policy was instituted to avoid blanket waivers of the rules in favor of specified waivers. This policy has proved extremely useful to Rules Committee members, the rest of the House, and to committees.

When our current chairman, Senator Pepper, took over in 1983, he continued to observe this policy, and, according to my research, during his first term as chairman in the 98th Congress, 1983-84, not once did we have a blanket waiver for a bill, a substitute made in order as original text, or a conference report. In the last Congress, though, such blanket waivers comprised 17 percent of all rules. And thus far in this Congress, they constitute 23 percent of all rules.

Mr. Speaker, I don't think committees have become all that more flagrant in their violations of rules than before to warrant such a heavy reliance on blanket waivers. It's just that such rules are easier to draft and explain away. In short, we are becoming sloppy and lazy, and, in so doing, we will eventually be encouraging committees to become so as well when it comes to complying with House rules.

I have therefore today written to Chairman Pepper, urging that we re-

turn to our policy of specifying waivers in the rules we grant. This is the best way Members will know what's involved with both the rules we report and the bills they make in order. And, it is the best way to keep committees honest and ensure that our rules are honored to the maximum extent possible.

At this point in the Record, Mr. Speaker, I will insert my letter to Chairman Pepper and two tables I have prepared on blanket waivers. The materials follow:

Congress of the United States,  
House of Representatives,  
*Washington, DC, Nov. 20, 1987.*  
Hon. CLAUDE PEPPER,  
*Chairman, House Committee on  
Rules, Washington, DC.*

Dear Mr. Chairman: Several years ago, the Rules Committee made a conscious decision to avoid waiving all points of order against measures, and instead to specify in our rules just which House rules and Budget Act provisions were being waived.

As a result of this policy, our Committee Members were better prepared to explain the potential rules violations that were being protected; House Members were consequently better informed about the necessity for the rule and problems with the bills made in order; and, I think, committees were likely to be more careful about not violating House rules in drafting their bills and reports.

In reviewing rules granted in the last three Congresses, I was pleased to learn that none of the 190 rules granted in the 98th Congress waived all points of order against a bill or its consideration, against a substitute as original text, or against a conference report. However, in the 99th Congress, such waivers comprised 17% of all rules, and, in this

Congress, amount to 23% of the rules reported to date. In fact, in this week alone, all four of the rules reported waived all points of order against the measures involved. (See enclosed tables.)

I would like to strongly urge that our Committee return to our former policy of specifying waivers for the benefit of our Committee members, the rest of the House, and as a deterrent against even more violations by committees. While waiving all the rules may be easy and convenient on the surface, it only glosses over deeper troubles that are bound to disrupt surface appearances and conditions the more the practice is relied on.

With warm personal regards, I am  
Sincerely yours,

TRENT LOTT.

Enclosures.

The following is a list of rules containing waivers of all points of order in the 98th Congress:

100th Congress (as of Nov. 19, 1987)

H. Res.:

38 .....	H.R. 2.
124 .....	H.R. 2 (CR).
116 .....	H.J. Res. 175.
151 .....	H.R. 3.
191 .....	H.R. 4.
227 .....	H.R. 2470.
233 .....	H.R. 3022.
236 .....	H.R. 27.
238 .....	H.J. Res. 132.
247 .....	H.J. Res. 324 (CR).
265 .....	H.R. 3030.
296 .....	H.R. 3545.
298 .....	H.R. 3545.
308 .....	H.R. 1451 (CR).
309 .....	H.R. 1748 (CR).
310 .....	H.R. 1720 (CR).
314 .....	H.R. 1346.
316 .....	H.R. —.

(CR) denotes conference report.

***Chairman of the Budget Committee Announced Policy Regarding Waivers of Budget Act Provisions Preventing Consideration of Bills***

**§ 10.4 In the first year of the implementation of the Congressional Budget Act of 1974, the chairman of the Committee on the Budget stated to the House the policies to be followed by his committee regarding waivers recommended by the Committee on Rules for bills violating restrictions against “back-door spending” contained in the Budget Act.**

After several resolutions providing special orders of business reported from the Committee on Rules had been challenged by points of order when called up for consideration, and the Speaker had held them to be in order as proper exercises of rulemaking authority, the chairman of the Committee on the Budget, Mr. Brock Adams, of Washington, explained the policies to be followed by the Committee on the Budget in enforcement of the restrictions in the Budget Act. He acknowledged the authority of the House to waive provisions of the Budget Act but stated a policy of monitoring such waivers, supporting or

opposing them as necessary to protect the integrity of the budget process. The statement by Mr. Adams on Mar. 24, 1975,<sup>(2)</sup> follows:

MR. ADAMS: Mr. Speaker, I thank the gentleman for yielding me this time. I would like to have at this time the attention of the House so that I might outline the procedure which will be followed by the Budget Committee.

As the gentleman from Missouri has explained, these rules came up without an opportunity for us to debate this motion before the Rules Committee. I blame no one for this, because we are in the process of implementing a new statute, which, as was described in the earlier colloquy, puts together a process to be used for closing back-door spending.

The Speaker has ruled, as the statute (Public Law 93-344) provides in section 401 that it shall not be in order under the rules of the House to engage in new backdoor spending—as provided in the act—unless this provision is waived by rule. This can be recommended by the Committee on Rules, and that is proposed in this case. The Budget Committee intends to implement this procedure in the following fashion:

First, I have written to the chairman of the Committee on Rules, and stated that it will be the position of the Budget Committee that it wishes to be heard on any proposed waiver of the rules of the Budget Committee Act with regard to backdoor spending.

2. 121 CONG. REC. 8419, 94th Cong. 1st Sess.

Thus the Budget Committee will have the opportunity to appear before the Committee on Rules and argue the matter of whether a rule waiving points of order should be granted. It is not the general intention of this Member, as chairman of the Budget Committee, to expect any waiver of such rule.

Mr. Speaker, I ask unanimous consent that a copy of my letter of March 21, 1975, to the chairman of the Committee on Rules setting forth this position be included in the Record at this point.

THE SPEAKER:<sup>(3)</sup> Is there objection to the request of the gentleman from Washington?

There was no objection.

The letter follows:

*March 21, 1975.*

Hon. RAY J. MADDEN,  
*Chairman, Committee on Rules, U.S.  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: As you know, on March 3, 1975, the Committee on the Budget filed a report with the House (H. Rept. No. 94-25) implementing certain new budget procedures contained in P.L. 93-344, the Congressional Budget and Impoundment Control Act of 1974.

Two of the important new procedures implemented (effective March 3) are as follows: (1) section 401(a), which prohibits floor consideration of any new contract or borrowing authority legislation unless it contains a provision that such new authority is to be effective only to the extent or in such amounts as are provided in appropriations acts; and (2) section 401(b)(1), which prohibits floor consideration of entitlement legislation having an effective date before the start of the next fiscal year.

3. Carl Albert (Okla.).

In order to assure effective implementation of these provisions, I would ask that any request to the Rules Committee for a waiver of points of order relating to sections 401(a) or 401(b)(1) of P.L. 93-344 be called immediately to the attention of the Budget Committee. In such cases, the Committee will make known to you its views on the waiver request as promptly as possible.

With warmest regards,  
 BROCK ADAMS,  
*Chairman.*

MR. ADAMS: Mr. Speaker, I have also contacted all of the seated committee chairmen of the House again by a special letter of March 21, 1975, and have indicated to them the procedure which is required to be followed if back-door spending is to be allowed, indicating the alternatives, and indicating that if a committee wishes to have a waiver of the rule, that we are available to discuss this matter with them before the matter is presented to the Rules Committee. This has just been done with the other two bills that were involved before the Rules Committee last week. In those bills the back-door spending has been removed. We now have made clear the procedure to be followed so that when the Budget Committee members appear before the Committee on Rules, any chairman looking for a waiver of this rule will know the procedure to be followed.

Mr. Speaker, I ask unanimous consent that a copy of my letter of March 21, 1975, which was sent to each chairman of a standing committee, be included in the Record at this point.

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

There was no objection.

(The letter follows:)

IDENTICAL LETTER TO ALL CHAIRMEN  
 OF STANDING COMMITTEES

*March 21, 1975.*

Hon. RAY ROBERTS,  
*Chairman, Committee on Veterans'  
 Affairs, U.S. House of  
 Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: On March 3, 1975, the Committee on the Budget filed a report with the House (H. Rept. No. 94-25) implementing certain new budget procedures contained in P.L. 93-344, the Congressional Budget and Impoundment Control Act of 1974.

Two of the important new procedures implemented (effective March 3) are as follows: (1) section 401(a), which prohibits floor consideration of any new contract or borrowing authority legislation unless it contains a provision that such new authority is to be effective only to the extent or in such amounts as are provided in appropriations acts; and (2) section 401(b)(1), which prohibits floor consideration of entitlement legislation having an effective date before the start of the next fiscal year.

In order to assure effective implementation of these provisions, I have asked the Rules Committee to bring to the attention of the Budget Committee any request for a waiver of points of order relating to sections 401(a) or 401(b)(1) of P.L. 93-344. In such cases, the Budget Committee plans to inform the Rules Committee of its views on the waiver request as promptly as possible.

Similarly, I would like to ask you to bring to the attention of the Budget Committee any request you plan to make for such a waiver. I assure you that our Committee will do everything possible to work out with you any problems relating to these new provisions of the Budget Act.

I have asked George Gross, the Budget Committee's General Coun-

sel, to contact your staff concerning any questions you may have on these new procedures.

With warmest regards,  
BROCK ADAMS,  
*Chairman.*

MR. ADAMS: Mr. Speaker, I might state that the reason we have had these problems is that the implementing report of the committee was only filed on March 3, 1975. We were then required to wait for the filing of the Senate committee report which was filed on March 5, 1975. It was this process which put into effect section 401 of Public Law 93-344. If we had not filed this report the back-door spending closure would not have gone into effect until next year. So we were implementing this provision a year in advance, and it is now in effect.

***Where Special Order Waives Point of Order Against Specific Amendment, Germane Amendments Thereto May Be Considered and the Amendment as Modified Remain Protected***

**§ 10.5 Where a special rule waives points of order against the consideration of a designated amendment which might otherwise be ruled out as not germane, and does not specifically preclude the offering of amendments thereto, germane amendments to the amendment may be offered and adopted but it is then too**

**late to challenge the amendment as modified even though its text is no longer that protected by the explicit description in the waiver.**

The special order providing for consideration of the Energy Conservation and Oil Policy Act of 1975 made an amendment offered by Mr. Robert Krueger, of Texas, in order, notwithstanding the fact that it was arguably not germane. The rule did not address amendments to the protected amendment, and it was this aspect of the special rule which presented the procedural questions that arose in the July 22, 1975,<sup>(4)</sup> proceedings.

MRS. [PATRICIA] SCHROEDER [of Colorado]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mrs. Schroeder to the amendment offered by Mr. Krueger: In section 8(d)(2)(E)(ii)(a)(1) of the Emergency Petroleum Allocation Act of 1973 as amended by Mr. Krueger's amendment) strike the words "(including development or production from oil shale," and insert a comma after "gas".

In section 8(d)(2)(E)(ii)(a)(2) of the Emergency Petroleum Allocation Act of 1973 (as amended by Mr. Krueger's amendment) strike the words "oil shale,".

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, I reserve a point of order, and pending that I have a parliamentary inquiry.

4. 121 CONG. REC. 23990, 23991, 94th Cong. 1st Sess.

THE CHAIRMAN:<sup>(5)</sup> The gentleman from Texas reserves a point of order, and the gentleman will state his parliamentary inquiry.

MR. ECKHARDT: The parliamentary inquiry is what determines germaneness of this amendment, if it is germane, to the Krueger amendment? It would then be admissible at this time as germane, as I understand it. In other words, the relation to the Krueger amendment would determine germaneness in this instance, I would assume.

THE CHAIRMAN: If the gentleman is asking whether the amendment offered by the gentlewoman from Colorado has to be germane, the answer, of course, is "yes." Is the gentleman contending that it is not germane?

MR. ECKHARDT: No. The gentleman merely asks whether or not on the question of germaneness with respect to this amendment, the question is determined on whether or not this amendment is germane to the Krueger amendment.

THE CHAIRMAN: That is correct.

MR. ECKHARDT: I thank the Chair.

Mr. Chairman, I withdraw my reservation of a point of order.

THE CHAIRMAN: The question is on the amendment offered by the gentlewoman from Colorado (Mrs. Schroeder) to the amendment offered by the gentleman from Texas (Mr. Krueger).

The question was taken; and on a division (demanded by Mr. Brown of Ohio) there were—ayes 39, noes 31.

So the amendment to the amendment was agreed to.

MR. ECKHARDT: Mr. Chairman, I reserve a point of order against the Krueger amendment.

THE CHAIRMAN: The Chair will have to state he believes the point of order comes too late.

MR. ECKHARDT: Mr. Chairman, I am not making one at this time if I need not make one, but I would certainly make one at such time as the Krueger amendment would be voted on.

THE CHAIRMAN: Will the gentleman restate what he is doing? Is he making a point of order against the Krueger amendment?

MR. ECKHARDT: I am making a point of order against the Krueger amendment.

THE CHAIRMAN: That comes too late.

MR. ECKHARDT: If the Chairman would hear me on the point of order I will be glad to explain.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I make a point of order against the point of order. It comes too late.

THE CHAIRMAN: The Chair will be glad to hear the gentleman from Texas on the timeliness of his point of order.

MR. ECKHARDT: Mr. Chairman, if the Chair would permit me, I should make a point of order now if I must do so or I will at such time as the vote arises on the Krueger amendment on the ground that the Krueger amendment is now outside the rule.

If the Chair will recall, I queried of the Chair whether or not the question of germaneness on the amendment offered by the gentlewoman from Colorado was based upon its germaneness to the Krueger amendment or if that were the standard. The Chair answered me that it was. Therefore, the amendment offered by the gentlewoman from Colorado was not subject to a point of order at that time and I

5. Richard Bolling (Mo.).



point out to the Chair that the question of germaneness rests upon whether or not the amendment is germane to the amendment to which it is applied.

At that time it was not in order for me to urge that the amendment offered by the gentlewoman from Colorado was not germane because it was indeed germane to the Krueger amendment, but the rule protects the Krueger amendment itself from a point of order on the grounds of germaneness and specifically says that it shall be in order to consider without the intervention of any point of order the text of an amendment which is identical to the text of section 301 of H.R. 7014 as introduced and which was placed in the *Congressional Record* on Monday and it is described.

The Krueger amendment upon the adoption of the Schroeder amendment becomes other than the identical amendment which was covered by the rule. At this point the question of germaneness of the Krueger amendment rests on the question of whether or not it is at the present time germane to the main body before the House.

It is not germane to the main body before the House because of the—and I cite in this connection Deschler on 28, section 24 in which there are several precedents given to the effect that an amendment which purports to create a condition contingent upon an event happening, as for instance the passage of a law, is not in order. For instance 24.6 on page 396 says:

To a bill authorizing funds for construction of atomic energy facilities in various parts of the Nation, an amendment making the initiation of any such project contingent upon the enactment of federal or state fair

housing measures was ruled out as not germane.

There are a number of other authorities in that connection, that is, an amendment postponing the effectiveness of legislation pending contingency.

Now, with respect to the question of timeliness, the gentleman from Texas could not have raised the point of order against the Schroeder amendment because of the fact that the Schroeder amendment was, in fact, germane to the Krueger amendment. It is clearly stated that the test of germaneness must rest on the question of the body upon which the amendment acts, and as I queried the Chair at the time, I asked that specific question, would the germaneness of the Schroeder amendment rest upon the question whether it is germane to the Krueger amendment.

The Chair answered, I think correctly, that it was germane. I could not quarrel with that ruling and I could not at that point raise a question whether it was effective to the main body involved here; but at this time is the very first time I have had an opportunity and I raise the point of order that the Krueger amendment as now constituted is not protected by the rule.

THE CHAIRMAN: Does any other Member desire to be heard on the point of order?

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I only state that it seems to me that the rule makes the Krueger amendment in order by its text, but it does not prohibit it being amended by subsequent action of this body and that if the text had been changed by the gentleman from Texas (Mr. Krueger) in its introduction, the

point of order might have been appropriate; but the point of order that is attempted to prohibit this body from amending the text of the Krueger amendment after it has been properly introduced and been made germane by the rule would prohibit those others in the majority of this body from acting on any perfection of the Krueger amendment. I do not think that is the purpose of the rule.

THE CHAIRMAN: The Chair is ready to rule, unless another Member desires to be heard.

MR. DINGELL: Mr. Chairman, I am troubled by this point of order. I think, first of all, it comes too late. I think the amendment, Mr. Chairman, comes, first of all, too late.

Second, it would make a nullity of the actions of the Committee on Rules, which very specifically made in order the Krueger amendment.

As a matter of fact, it was at the request of this particular Member and the gentleman from Texas that that was done and also it was at the request of this particular Member of this body that the Committee on Rules made appropriate amendments to the Krueger amendment. If the point of order of the gentleman from Texas would prevail, the gentleman would be able to ex post facto undo the work of the Committee on Rules and convert a prior amendment, which may or may not have been germane, into such a vehicle that it would strike at the actions of the Committee on Rules.

The time to raise this point of order was at the time of offering the amendment by the gentlewoman from Colorado.

THE CHAIRMAN: The Chair is ready to rule, but the Chair would be glad to hear from additional Members.

MR. ECKHARDT: Mr. Chairman, I wish to be heard only because of the statement of the gentleman from Michigan, who is a very correct man with respect to points of order, but the gentleman is now not quite correct.

The gentleman from Michigan did, in truth, ask that the rule include the specific provision protecting the Krueger amendment, if amended; but the Committee on Rules did not include the gentleman's request, but rather very sharply and definitely prescribed that the matter that would be relevant and nothing else was the body of that amendment as printed in the Record.

THE CHAIRMAN: The Chair is ready to rule.

The rule under which the matter is being considered did in fact make in order the so-called Krueger amendment, and any amendment to that amendment which is germane to that amendment was thus, at the same time, made in order. There was no need for special provision to make amendments germane to the Krueger amendment in order, and the argument made by the gentleman from Ohio (Mr. Brown) is very much to the point.

The Chair, therefore overrules the point of order.

### ***Waiving Points of Order***

**§ 10.6 Rules of the House which are designed to prohibit consideration of a bill can be waived if the House adopts a special order which makes consideration in order**

**notwithstanding violations of Budget Act provisions or inadequacies in the committee report.**

House Resolution 601 of the 95th Congress, 1st Session, providing for the consideration of the Victims of Crime Act (H.R. 7010), illustrates the type of special order which may be used to allow a bill to be considered where, absent the adoption of such a rule, points of order would prevent consideration.

The content of the special order and the explanation of its provisions are included below.<sup>(6)</sup>

The Clerk read the resolution as follows:

H. RES. 601

*Resolved*, That upon the adoption of this resolution it shall be in order to move, section 401(b)(1) of the Congressional Budget Act of 1974 (Public Law 93-344), clause 2(l)(3)(A) of rule XI, and clause 7 of rule XIII to the contrary notwithstanding, 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. 7010) to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consid-

eration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and 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.

THE SPEAKER:<sup>(7)</sup> The Chair recognizes the gentleman from Massachusetts (Mr. Moakley).

MR. [JOHN JOSEPH] MOAKLEY [of Massachusetts]: . . . .

Section 401(b)(1) of the Congressional Budget Act of 1974 prohibits consideration of any bill containing new entitlement authority which could take effect before the first day of the fiscal year which begins during the calendar year in which the bill is reported. H.R. 7010 is clearly an entitlement within the meaning of the act.

The Committee on Judiciary has agreed to offer an amendment on the floor which will insure that the entitlement provision cannot take effect before October 1, 1977. The amendment will bring the bill into full compliance and, on the basis of this agreement, the Committee on Budget has supported a waiver of the point of order and the Committee on Rules has reported a resolution containing the waiver.

Clause 2(l)(3)(A) of rule XI provides that reports of committees shall contain oversight findings and recommendations. Of course, the Victims of Crime Act establishes an entirely new program. Since the program does not yet exist, the Committee on Judiciary could hardly exercise any oversight

6. 123 CONG. REC. 17965, 95th Cong. 1st Sess., June 8, 1977.

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

at this point. The committee intends to exercise vigorous oversight and a simple statement like the one I am making contained in the committee report would have satisfied the requirement of the rule. It is a purely technical waiver and I am aware of no possible controversy.

Clause 7 of rule XIII requires any report to contain a cost estimate. This was added to the rules of the House by the Legislative Reorganization Act of 1970 and has been rendered largely obsolete by enactment of the Congressional Budget Act creating the Congressional Budget Office. The act added to the rules of the House a rule (clause 2(l)(3)(B) of rule XI) which requires all committee reports to contain a cost estimate prepared by the Congressional Budget Office. Since CBO has greater professional expertise in this area, the old rule is usually complied with by a single sentence stating the committee reporting the bill accepts the CBO estimate as accurate. The violation of the rule occurs simply because the report does not contain a statement conceding the CBO estimate. It should be noted that a detailed cost estimated by CBO is included in the report (H. Rept. 95-337) on pages 11 through 14 inclusive. While the Committee on Judiciary neglected to include a statement that it accepts the estimate, it does agree and notes that the departmental estimate is in the same range. This waiver is quite technical and presents no controversy at all. . . .

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, House Resolution 601 is a 1-hour, open rule providing for the consideration of H.R. 7010, the Victims of Crime Act of 1977. Mr. Speaker, this

rule contains three waivers, two of which would have been unnecessary if the committee had taken more care in preparing its report. The first waiver, mentioned at line 2 of the rule, is of section 401(b)(1) of the Budget Act which prohibits consideration of any new spending authority which would take effect prior to the beginning of the fiscal year. This waiver is necessary because subsection 2(c) of the bill, beginning on line 22 of page 2, provides an automatic entitlement of travel, transportation and per diem expenses to the members of the Advisory Committee on Victims of Crime. Since this advisory committee presumably could be in operation before October 1 of this year, the waiver became necessary. I would hasten to add, though, that the waiver does not apply to the grants made available to victims of crime. Under section 9 of the bill, the compensation grants to victims of crime does not begin until fiscal year 1978.

***Resolutions Providing Partial Waivers, Leaving Certain Provisions Unprotected From Points of Order***

**§ 10.7 A resolution may propose the waiver of points of order against legislative provisions in a general appropriation bill except for certain enumerated provisions which then remain vulnerable to points of order.**

When the Committee on Rules has a hearing to consider a rule waiving points of order against

provisions in a general appropriation bill, Members may appear at that hearing to ask that certain language not receive the protection of a waiver.

The special rule granting waiver protection to certain provisions in the Defense appropriation bill for fiscal 1978 was called up in the House on June 24, 1977.<sup>(8)</sup> In the debate on the rule, the necessity for certain explanatory language in the rule, limiting the effect of a point of order against an unprotected provision to the precise words targeted by the point of order, was explained by Mr. Delbert L. Latta, of Ohio, a minority member on the Committee on Rules.<sup>(9)</sup>

MR. [GILLIS W.] LONG of Louisiana:  
Mr. Speaker, by direction of the Com-

8. 123 CONG. REC. 20706, 95th Cong. 1st Sess.
9. Since the special rule identified the parts of the bill which were to be protected by page and line numbers, the Parliamentarian suggested to the Committee on Rules that a proviso be added to the rule making it clear that the remainder of a paragraph would not be ruled out if a portion thereof was unprotected. The fact that the remainder of a paragraph was protected by a waiver of a particular House rule would not of itself alter the general principle that an entire paragraph of an appropriation bill is subject to a point of order if any provision therein is vulnerable to a point of order.

mittee on Rules, I call up House Resolution 655 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 655

*Resolved*, That during the consideration of the bill (H.R. 7933) making appropriations for the Department of Defense for the fiscal year ending September 30, 1978, and for other purposes, all points of order against the following provisions in said bill for failure to comply with the provisions of clause 2, rule XXI are hereby waived: beginning on page 13, line 14 through page 16, line 9; beginning on page 17, line 17 through page 20, line 19; beginning on page 21, line 15 through page 23, line 21; beginning on page 25, line 8 through page 27, line 25; and beginning on page 40, line 25 through page 42, line 16; and all points of order against the following provisions in said bill for failure to comply with the provisions of clause 6, rule XXI are hereby waived: beginning on page 15, line 13 through page 24, line 15, except with respect to the language on page 19 beginning with the word "and" on line 17 and all that follows up to the semicolon on line 21: *Provided however*, That a point of order if sustained against the language falling within the exception in the preceding sentence shall apply only to that language and not to the entire paragraph in which it appears.

THE SPEAKER:<sup>(10)</sup> The gentleman from Louisiana (Mr. Long) is recognized for 1 hour. . . .

MR. LATTA: Mr. Speaker, I agree with the statements that were just made by the gentleman from Louisiana (Mr. Long).

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

I would like to point out that there is a proviso in this rule which would seem to set a new precedent. I have reference to line 5, page 2 of the rule where the following proviso appears:

*Provided however,* That a point of order if sustained against the language falling within the exception in the preceding sentence shall apply only to that language and not to the entire paragraph in which it appears.

Mr. Speaker, this unusual provision was included in the rule as a result of an amendment offered in the Rules Committee. A member objected to the waiver of clause 6, rule XXI as it applied to language transferring funds for the hydrofoil missile ship program to other purposes. He strongly favored the hydrofoil ship program and did not favor transferring the funds from the hydrofoil ship program to other purposes. Therefore, he moved to amend the rule so that the waiver of clause 6, rule XXI would not apply to the language transferring funds from the hydrofoil ship program to other purposes.

The Rules Committee adopted his amendment excepting from the waiver of clause 6, rule XXI, the language in the bill on page 19, beginning with the word "and" in line 17 and all that follows up to the semicolon on line 21.

Once part of the paragraph was exempted from the waiver, it was then necessary to add the proviso clause, insuring that the rest of the paragraph would still stand. This was necessary because the House precedents state that an entire appropriating paragraph is subject to a point of order when a part of that paragraph is subject to a point of order.

### ***Special Order Modifying Application of Germaneness Rule***

**§ 10.8 The Committee on Rules may report a special order altering the ordinary test of germaneness, such as rendering only one portion of an amendment subject to challenge by a point of order as being not germane, while protecting the consideration of the remainder of the amendment.**

The Defense Department authorization bill, 1979 was considered in the House on May 24, 1978. A special order, with the unique feature which permitted a point of order to lie against one provision in an amendment in the nature of a substitute, had been adopted on May 23. The critical part of the special rule and the resulting proceedings in Committee of the Whole under this rather unique rule were as follows.

The pertinent language in H. Res. 1188, adopted by the House on May 23, 1978,<sup>(11)</sup> was as follows:

H. RES. 1188

*Resolved,* That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole

11. 124 CONG. REC. 15094, 15095, 95th Cong. 2d Sess.

House on the State of the Union for the consideration of the bill (H.R. 10929) to authorize appropriations during the fiscal year 1979, for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense, to authorize the military training student loads, and to authorize appropriations for civil defense, and for other purposes. . . . It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Armed Services now printed in the bill as an original bill for the purposes of amendment, said substitute shall be read for amendment by titles instead of by sections and all points of order against said substitute for failure to comply with the provisions of clause 5, rule XXI and clause 7, rule XVI, are hereby waived, except that it shall be in order when consideration of said substitute begins to make a point of order that section 805 of said substitute would be in violation of clause 7, rule XVI if offered as a separate amendment to H.R. 10929 as introduced. If such point of order is sustained, it shall be in order to consider said substitute without section 805 included therein as an original bill for the purpose of amendment, said substitute shall be read for amendment by titles instead of by sections and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI and clause 5, rule XXI are hereby waived. . . .

The proceedings of May 24,<sup>(12)</sup> when the amendment in the nature of a substitute was pending in the House were as follows:

THE CHAIRMAN:<sup>(13)</sup> When the Committee rose on Tuesday, May 23, 1978, all time for general debate on the bill had expired. Pursuant to the rule, the Clerk will now read by titles the committee amendment in the nature of a substitute recommended by the Committee on Armed Services now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Defense Appropriation Authorization Act, 1979".*

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, in accordance with the rule, House Resolution 1188, I make a point of order that section 805 of the committee amendment in the nature of a substitute, if offered as a separate amendment to H.R. 10929 as introduced, would be in violation of clause 7 of House Rule XVI regarding germaneness. This provision which deals with the withdrawal of troops from Korea, and section 805 which deals with the withdrawal of troops from Korea, is not germane to the Department of Defense authorization bill. . . .

Thus, by whatever test of germaneness one examines, section 805 is not germane to H.R. 10929.

12. *Id.* at pp. 15293–95.

13. Dan Rostenkowski (Ill.).

Mr. Chairman, without regard to the merits of the issue, H.R. 10929 is not the proper vehicle for House consideration of the issue of U.S. troop withdrawal from Korea. Accordingly, I must insist on the point of order.

THE CHAIRMAN: Does the gentleman from New York desire to be heard on the point of order?

MR. [SAMUEL S.] STRATION [of New York]: Mr. Chairman, I desire to be heard on the point of order.

Mr. Chairman, the gentleman from Wisconsin (Mr. Zablocki), makes the point of order that section 805 is not germane on the ground that it deals with a matter that is related to something that has been before his committee. As he indicated before the Committee on Rules, if this had been introduced as an original bill, it would have been referred sequentially to the Committee on International Relations as well as to the Committee on Armed Services.

I submit, Mr. Chairman, that, first of all, the question of germaneness does not depend on what committee it might be referred to sequentially. In fact, the whole idea of sequential referral is a relatively new concept. I believe, in fact, that it has only been practiced in this House during this present Congress, and perhaps a few times previously. . . .

So, Mr. Chairman, I urge that the point of order be overruled. Section 805 is clearly within the authority of the committee. It is clearly germane to the broad purposes of the bill and the House should have the right to vote on this important question.

THE CHAIRMAN: The Chair is ready to rule. The gentleman from Wisconsin

makes a point of order against section 805 of the committee amendment in the nature of a substitute recommended by the Committee on Armed Services, on the grounds that section 805 of said amendment would not have been germane if offered to the bill H.R. 10929, as introduced.

As indicated by the gentleman from Wisconsin, the special order providing for consideration of this measure, House Resolution 1188, allows the Chair to entertain a point of order on the basis stated by the gentleman, that section 805 of the committee amendment would not have been germane as a separate amendment to H.R. 10929 in its introduced form.

The bill as introduced and referred to the Committee on Armed Services contains authorizations of appropriations and personnel strengths of the Armed Services for fiscal year 1979. It contains no permanent changes in law or statements of policy except for minor conforming changes to existing law relating to troop and personnel strengths.

Section 805 of the committee amendment in the nature of a substitute prohibits: First the withdrawal of ground combat units from the Republic of Korea until the enactment of legislation allowing the retention in Korea of the equipment of such units, and second, the reduction of combat units below a certain level in the Republic of Korea until a peace settlement is reached between said Republic and the Democratic People's Republic of Korea ending the state of war on the Korean peninsula.

The subject matter of section 805 of the committee amendment is unrelated



to H.R. 10929 as introduced. The strength levels prescribed in the bill are for 1 fiscal year only and deal with the overall strength of the Armed Forces, not with the location of Armed Forces personnel. As indicated in the argument of the gentleman from Wisconsin, the withdrawal of American Forces stationed abroad pursuant to an international agreement, and the relationship of that withdrawal to peace agreements between foreign nations and to the transfer of American military equipment to foreign powers, are issues not only beyond the scope of the bill but also within the jurisdiction of the Committee on International Relations. Although committee jurisdiction over an amendment is not the sole test of germaneness, the Chair feels that it is a convincing argument in a case such as the present one where the test of germaneness is between a limited 1-year authorization bill and a permanent statement of policy contingent upon the administration of laws within the jurisdiction of another committee.

For the reasons stated, the Chair sustains the point of order.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Chairman, the Chair may have just stated a novel concept which has never before been heard in a ruling. That is that the sequential referral rule somehow serves as the basis for jurisdiction, and thus can support a point of order dealing with a section in a bill such as the one before us.

The parliamentary inquiry I have is this: Simply because under the new

procedure adopted for the first time in this Congress the rules allow sequential referral at the discretion of the Speaker, does that mean that a committee that has primary jurisdiction, such as the Committee on Armed Services, may be challenged on the floor and have a point of order sustained removing a provision that might be partially under the jurisdiction of another committee on a sequential referral?

THE CHAIRMAN: The ruling of the Chair does not stand for that proposition.

MR. BAUMAN: Mr. Chairman, the gentleman from Maryland understood the Chair to say that the argument of the gentleman from Wisconsin was persuasive to the Chair regarding jurisdiction. If that is the case, it seems to me every committee of this House is somehow going to be challenged on the floor henceforth if its jurisdiction is shared to the slightest degree by another committee.

THE CHAIRMAN: All the Chair has stated is that section 805 is not germane to the introduced bill, and the rule provides that the point of order would lie on that ground.

MR. BAUMAN: Mr. Chairman, I have this further parliamentary inquiry:

Then the ruling of the Chair is based on germaneness of this amendment to this bill and does not go to any effect the sequential jurisdiction would have on the provision?

THE CHAIRMAN: The gentleman is correct.

***Special Order Waiving Points of Order and Refining Application of Rule XXI Clause 2 to Particular Provision in Bill***

**§ 10.9 Form of a special order providing that during con-**

**sideration of a general appropriation bill, all points of order under Rule XXI clause 2 are waived except with respect to a portion of one paragraph, which is left unprotected.**

The form of the resolution waiving certain points of order against House Resolution 332, the supplemental appropriation bill for fiscal 1984, is carried in full, below:<sup>(14)</sup>

MR. [MARTIN] FROST [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 332 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 332

*Resolved*, That during the consideration of the bill (H.R. 3959) making supplemental appropriations for the fiscal year ending September 30, 1984, and for other purposes, all points of order against the bill for failure to comply with the provisions of clause 2, rule XXI are hereby waived, except against the language beginning with the word "Provided" on page 2, line 21 through the colon on page 2, line 25: *Provided* That a point of order against that provision may be made only against that provision and not against the entire paragraph.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The gentleman from Texas (Mr. Frost) is recognized for 1 hour. . . .

14. 129 CONG. REC. 27329, 98th Cong. 1st Sess., Oct. 5, 1983.
15. Dale E. Kildee (Mich.).

MR. FROST: . . . House Resolution 332 provides for the consideration of these items by waiving all points of order against consideration of the bill for failure to comply with the provisions of clause 2, rule XXI. A number of provisions in the bill are not authorized and there is also language in the bill which is considered legislation, thus necessitating the waiver of clause 2 of rule XXI. There is, however, one exception to this blanket waiver. In chapter I of the bill, the Committee on Appropriations added legislative language to the provision of funds for the Emergency Veterans' Job Training Act of 1983 which would have changed the eligibility requirements for job training as provided in the authorizing act. Consequently, the Committee on Rules did not provide the waiver of clause 2, rule XXI for this language and a point of order against this language, but not against the entire paragraph, will stand if it is raised during consideration of the bill.

***Altering Application of Germaneness Rule by Special Order***

**§ 10.10 Example of a special order which alters the application of the germaneness rule, making part of an amendment in the nature of a substitute vulnerable to a separate challenge as "not germane" to the bill as introduced, while protecting the remainder of the amendment.**

The special rule providing for consideration of the Civil Service

Reform Act of 1979 permitted points of order to be lodged against two titles of the substitute. The text of the rule, as excerpted from the proceedings of Aug. 11, 1978,<sup>(16)</sup> is set forth herein:

MR. [LLOYD] MEEDS [of Washington]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1307 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1307

*Resolved*, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, 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. 11280) to reform the civil service laws. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be read for amendment by titles instead of by sections, and all points of order against said sub-

stitute for failure to comply with the provisions of clause 7, rule XVI are hereby waived, except that it shall be in order when consideration of said substitute begins to make one point of order that titles IX and X would be in violation of clause 7, rule XVI if offered as a separate amendment to H.R. 11280 as introduced. If such point of order is sustained, it shall be in order to consider said substitute without titles IX and X included therein as an original bill for the purpose of amendment, said substitute shall be read for amendment by titles instead of by sections and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and 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 amendments in the nature of a substitute made in order by this resolution. 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: The gentleman from Washington (Mr. Meeds) is recognized for 1 hour.

***Rules Selectively Protecting Provisions Against Point of Order***

**§ 10.11 The Committee on Rules can protect portions of a general appropriation bill from points of order under**

16. 124 CONG. REC. 25705, 95th Cong. 2d Sess.

**Rule XXI clause 2, and leave other portions unprotected and subject to being ruled out on points of order.**

The special order reported from the Committee on Rules<sup>(17)</sup> to govern consideration of the State, Justice, Commerce, and the Judiciary appropriations bill, fiscal 1982, is a valid example of how special rules can be tailored to meet particular circumstances.

MR. [LEO C.] ZEFERETTI [of New York]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 188 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 188

*Resolved*, That during the consideration of the bill (H.R. 4169) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for fiscal year ending September 30, 1982, and for other purposes, all points of order against the following provisions in said bill for failure to comply with the provisions of clause 2 of rule XXI are hereby waived; beginning on page 3, lines 1 through 4; beginning on page 3, line 20 through page 6, line 12; beginning on page 8, line 4 through page 10, line 7; beginning on page 13, lines 6 through 23; beginning on page 17, line 3 through page 23, line 21; beginning on page 25, lines 1 through 14; beginning on page 25, lines 16 through 20; beginning on

page 26, lines 7 through 14; beginning on page 26, line 19 through page 33, line 14; beginning on page 33, line 16 through page 34, line 6; beginning on page 34, line 15 through page 36, line 11; beginning on page 39, lines 4 through 18; beginning with the word "to" on page 7, line 19 through page 7, line 20; beginning with the word "Provided" on page 24, line 13 through page 24, line 16; and all points of order against the following provisions in said bill for failure to comply with the provisions of clause 6, rule XXI are hereby waived: beginning on page 6, lines 6 through 12: *Provided*, That in any case where this resolution waives points of order against only a portion of a paragraph, a point of order against any other provision in such paragraph may be made only against such provision and not against the entire paragraph. . . .

MR. ZEFERETTI: . . . Clause 2 of rule XXI prohibits unauthorized appropriations and legislation in an appropriation bill. H.R. 4169 includes various programs which have not yet completed the authorization process and without this waiver would be subject to a point of order.

Clause 6 of rule XXI prohibits reappropriations in an appropriations bill. This waiver is required due to one item in title I permitting administrative costs for the coastal energy impact fund to be derived from unobligated funds in the expired account for environmental grants.

As in House Resolution 171, HUD appropriations, House Resolution 188 includes a provision that insures in any case where this resolution waives points of order against only a portion of a paragraph, a point of order against any other provision in such paragraph

17. 127 CONG. REC. 18799, 18800, 97th Cong. 1st Sess., July 30, 1981.

may be made only against such provision and not against the entire paragraph.

***Points of Order Against Special Rules***

**§ 10.12 No point of order lies against a special order of business reported from the Committee on Rules waiving points of order or otherwise altering procedures governing consideration of a measure, where no rule of the House or law enacted as rulemaking authority prohibits such consideration.**

Public Law 96-389 amended Public Law 95-435 to reaffirm congressional commitment toward achieving a balanced budget. A fair summary of the law was that beginning with fiscal year 1981, the total budget outlays of the federal government shall not exceed its receipts. This statute did not constitute a rule of the House and did not prevent consideration of any budget resolution or other measure providing budget outlays in excess of revenues.

The resolution and the budget resolution which it made in order are excerpted from the Record of June 10, 1982,<sup>(18)</sup> and carried herein:

**18.** 128 CONG. REC. 13352, 13353, 97th Cong. 2d Sess.

FIRST CONCURRENT RESOLUTION ON  
THE BUDGET—FISCAL YEAR 1983

MR. [CLAUDE] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 496 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 496

Resolution providing for the consideration of the concurrent resolution (H. Con. Res. 352) revising the congressional budget for the United States Government for the fiscal year 1982 and setting forth the congressional budget for the United States Government for the fiscal years 1983, 1984, and 1985

*Resolved*, That upon the adoption of this resolution it shall be in order, section 305(a)(1) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution (H. Con. Res. 352) revising the congressional budget for the United States Government for the fiscal year 1982 and setting forth the congressional budget for the United States Government for the fiscal years 1983, 1984, and 1985, and the first reading of the resolution shall be dispensed with. General debate in the Committee of the Whole on said resolution shall continue not to exceed two hours, with not to exceed one hour equally divided and controlled as provided in section 305(a)(2) of the Congressional Budget Act and not to exceed one hour for debate on economic goals and policies as provided in section 305(a)(3) of the Congressional Budget Act. No amendment to the resolution shall be in order ex-

cept the amendment in the nature of a substitute printed in the Congressional Record of June 8, 1982, by Representative Latta of Ohio, said amendment shall be in order any rule of the House to the contrary notwithstanding and shall be considered as having been read, and said amendment shall be debatable for not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget. Said amendment shall not be subject to amendment except for a substitute consisting of the text of the amendment in the nature of a substitute printed in the Congressional Record of June 8, 1982, by Representative Jones of Oklahoma, said amendment shall be in order any rule of the House to the contrary notwithstanding and shall be considered as having been read and said amendment shall not be subject to amendment but shall be debatable for not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget. The resolution shall not be subject to a demand for a division of the question in the House pending final adoption. It shall also be in order to consider the amendment or amendments provided in section 305(a)(6) of the Congressional Budget Act of 1974 necessary to achieve mathematical consistency. Upon the adoption of H. Con. Res. 352, the concurrent resolution S. Con. Res. 92 shall be considered to have been taken from the Speaker's table, to have been amended with an amendment in the nature of a substitute consisting of the text of H. Con. Res. 352 as adopted by the House, to have been adopted by the House as so amended, and the House shall be considered to have insisted on its amendment to S. Con. Res. 92 and to have requested a conference with the Senate thereon; the Speaker shall

then appoint conferees without intervening motion.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I reserve a point of order against consideration of the rule.

THE SPEAKER:<sup>(19)</sup> The gentleman has to state his point of order. There is no reserving a point of order against consideration of a report from the Committee on Rules.

MR. WALKER: Mr. Speaker, I request a point of order against the legislation for the fact that it puts in order consideration of a bill which, if passed, would violate the law of the land; namely, Public Law 95-435; and that the rule provides no waiver for that particular violation of law, nor does the resolution that we will be taking up provide any waiver of that law.

So, therefore, Mr. Speaker, we will be considering a rule and legislation which would be in direct contravention of a law which was reaffirmed by this House yesterday by a vote of 375 to 7.

Mr. Speaker, I would demand a ruling on my point of order.

THE SPEAKER: Does the gentleman from Florida (Mr. Pepper) wish to speak on the point of order?

MR. PEPPER: Mr. Speaker, I invite the ruling of the Chair.

THE SPEAKER: The Chair is ready to rule.

Section 904 of the Budget Act makes it clear that that act was adopted as an exercise of rulemaking powers. Those rules and laws which do constitute rules of the House may be waived at any time by either House of the Congress of the United States, and

<sup>19</sup>. Thomas P. O'Neill, Jr. (Mass.).

this power lies in the Rules Committee.

However, the statute that the gentleman cites which has been amended is not a rule of the House. It triggers no point of order, it needs no waiver, so the gentleman's point of order is not well taken.

The gentleman from Florida (Mr. Pepper) is recognized for 1 hour.

***Example of the Interaction of Two House Rules Governing Admissibility of Amendments***

**§ 10.13 Where an amendment may be protected by a special order from vulnerability to a point of order under one rule of the House, it may still be susceptible to a point of order under another rule.**

On July 17, 1985,<sup>(20)</sup> the Committee of the Whole had under consideration the Commerce, Justice, State, and the Judiciary appropriation bill for fiscal 1986. Points of order had been waived against unauthorized items in the bill by a special rule. An amendment was offered to a paragraph of the bill which increased the unauthorized figure therein. Two points of order were raised against the amendment: the Chair overruled one and sustained the second. The proceedings showing

20. 131 CONG. REC. 19432, 19435, 99th Cong. 1st Sess.

the interaction of two House rules are carried herein.

MR. [C. W. BILL] YOUNG of Florida: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Young of Florida: On page 15, line 4 strike "\$1,194,132,000" and insert "\$1,203,625,000". . . .

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I reserve a point of order on the amendment.

MR. [DON] EDWARDS of California: Mr. Chairman, I also reserve a point of order on the amendment. . . .

THE CHAIRMAN:<sup>(1)</sup> Does the gentleman from California [Mr. Edwards] insist on his point of order?

MR. EDWARDS of California: Mr. Chairman, did the gentleman from Florida [Mr. Young] withdraw his amendment?

MR. YOUNG of Florida: Mr. Chairman, I did not withdraw the amendment, no.

MR. EDWARDS of California: Mr. Chairman, it was my understanding there was a commitment made to withdraw the amendment. If that is not true, I insist on my point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from California [Mr. Edwards] will state his point of order.

MR. EDWARDS of California: Mr. Chairman, the amendment violates clause 2 of House rule XXI, which provides no appropriation shall be reported in any general appropriation bill for any expenditure not previously authorized by law.

1. George E. Brown, Jr. (Calif.).

THE CHAIRMAN: Does the gentleman from Iowa [Mr. Smith] desire to press his point of order?

MR. SMITH of Iowa: I do, Mr. Chairman. I have a different point of order.

THE CHAIRMAN: The gentleman will state it.

MR. SMITH of Iowa: I am very reluctant to make a point of order, but I feel I have to in this case.

It would add budget authority for fiscal year 1986. The waiver of the points of order against the provisions in the bill did not waive points of order against amendments. Therefore, an amendment to add money to the bill would not be in order.

I am very constrained to do that, but if I do not do that in this case, I know there will be a lot of amendments all over the place.

THE CHAIRMAN: Does the gentleman from Florida [Mr. Young] wish to be heard on the point of order?

MR. YOUNG of Florida: Mr. Chairman, I do.

Regarding the point made by our colleague, the gentleman from California [Mr. Edwards], that it is an unauthorized item, this paragraph in question is not authorized but it is protected by the rule. It is well established under the precedents of the House that where an unauthorized appropriation is permitted to remain in the bill by waiver of points of order, that appropriation may be amended to increase the sum, provided the amendment does not add unauthorized items.

My amendment does exactly that, and I believe that that point of order should be overruled.

On the point of my friend and colleague from Iowa [Mr. Smith], deal-

ing with the Budget Act, again, Mr. Chairman, I suggest that the point of order is not well taken. The purpose of House Resolution 221, the rule covering points of order against the Budget Act, is to allow an appropriations bill to be considered on the House floor before the first concurrent budget resolution has been approved by Congress. And since consideration of an appropriations bill on the House floor generally does not require a rule and does not limit amendments, interpretation of this language should follow usual House procedures and allow amendments to appropriations bills whether the amendment would increase or decrease an uncertain budget ceiling.

Therefore, the point of order I think should be overruled. I make the point again that the first budget resolution is still pending, it has still not been finalized by the Congress.

Second, on the same point, Mr. Chairman, House Resolution 221, the rule covering points of order against the Budget Act, provides that all points of order for failure to comply with the provisions of section 303(a) of the Congressional Budget Act of 1974, Public Law 93-344, are hereby waived. Section 303(a) of the Budget Act states that "it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) \*\*\*." Since House Resolution 221 does not specifically limit amendments and since it is to be read in conjunction with section 303(a), my amendment offered during consideration of a general appropriations bill that was reported by the Appropriations Committee prior to July 12, 1985, should be allowed and the point of order overruled.



THE CHAIRMAN: If no one else wishes to be heard on the point of order, the Chair is prepared to rule.

With regard to the point of order raised by the gentleman from California [Mr. Edwards], as to appropriation without authorization, the Chair is constrained to overrule that point of order on the grounds that a waiver has been provided in the rule against the amount in the bill, and the amendment merely increases that amount without an earmarking for an unauthorized purpose.

With regard to the point of order made by the gentleman from Iowa [Mr. Smith] as to whether it has not been waived by the rule, the Chair is constrained to uphold that point of order on the grounds that, while consideration of the bill itself has in House Resolution 221 received a waiver from section 303(a) of the Budget Act, that does not apply to amendments adding new budget authority to the bill and the Chair, therefore, sustains the point of order.

### ***Rules Committee May Protect Various Types of Amendments***

#### **§ 10.14 On occasion, the Committee on Rules will report a resolution which protects an amendment from all points of order if offered by a specific Member.**

Rules which self-execute the adoption of amendments, or protect a stated amendment from points of order if offered by a particular proponent, are more com-

monplace. The following special order excerpted from the proceedings of Sept. 12, 1986,<sup>(2)</sup> is illustrative:

WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF H.R. 5313, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1987

MR. [ANTHONY C.] BEILENSON [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 532 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 532

*Resolved*, That during the consideration of the bill (H.R. 5313) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes, all points of order against the following provisions in the bill for failure to comply with the provisions of clause 2 of rule XXI are hereby waived: beginning on page 2, line 8 through page 7, line 9; beginning on page 7, line 22 through page 9, line 11; beginning on page 10, line 1 through page 13, line 21; beginning on page 14, lines 13 through 16; beginning on page 15, line 21 through page 16, line 9; beginning on page 16, line 23 through page 18, line 4; beginning on page 18, line 10 through page 19, line 12; beginning on page 20, line 10 through page 25, line 3; beginning on page 26, line 1

2. 132 CONG. REC. 23154, 99th Cong. 2d Sess.

through page 29, line 4; beginning on page 29, line 13 through page 33, line 8; beginning on page 35, line 20 through page 36, line 9; and beginning on page 39, line 7 through page 41, line 22. It shall be in order to consider an amendment to the bill printed in section two of this resolution, if offered by Representative Boland of Massachusetts, and all points of order against said amendment for failure to comply with the provisions of clause 2 of rule XXI are hereby waived.

SEC. 2. On page 26, line 14, insert at the end of the sentence: “: *Provided further*, That of the funds appropriated under this heading, not to exceed \$160,000,000 shall be provided for space station phase C/D development and such funds shall not be available for obligation until the enactment of a subsequent appropriations Act authorizing the obligation of such funds.”. . . .

MR. BEILENSON: . . . Mr. Speaker, House Resolution 532 is the rule waiving certain points of order against consideration of H.R. 5313, the Department of Housing and Urban Development and independent agencies appropriations for fiscal year 1987.

Since general appropriation bills are privileged under the rules of the House, the rule does not provide for any special guidelines for the consideration of the bill. Provisions related to time for general debate are not included in the rule.

Customarily, Mr. Speaker, general debate time is limited by a unanimous-consent request by the chairman of the Appropriations Subcommittee prior to the consideration of the bill.

Mr. Speaker, the rule protects specified provisions of the bill against points of order for failure to comply with the provisions of clause 2 of rule

XXI. Clause 2 of rule XXI prohibits unauthorized appropriations and legislative provisions in an appropriations bill. The specific provisions of the bill for which the waiver is provided are detailed in the rule by page and line.

Also, Mr. Speaker, the rule makes in order an amendment offered by Representative Boland of Massachusetts. The amendment is printed in section 2 of the rule. The rule waives points of order against the amendment under clause 2 of rule XXI which, as I stated earlier, prohibits the inclusion of unauthorized appropriations and legislation in general appropriation bills.

### ***Authority of Committee on Rules To Grant Waivers***

**§ 10.15 Where a special report from the Committee on Rules, filed on a preceding day, specifies that only “amendments printed in the report accompanying this resolution” are eligible for consideration, and the report has not been printed at the time the resolution is called up for consideration, no point of order lies against consideration of the report on that ground.**

On Apr. 28, 1988,<sup>(3)</sup> a second rule was reported to govern the further consideration of the Defense authorization bill, fiscal

3. 134 CONG REC. 9194, 9196, 100th Cong. 2d Sess.

1989. This second rule limited the number of amendments which could be considered during the further consideration of the bill and specified the order of consideration and debate time allotted to amendments printed in a report accompanying the resolution. The report had not been returned from the Government Printing Office and was thus not available to Members when the rule was called up. Several parliamentary inquiries were raised as the debate on the rule commenced.

PROVIDING FOR FURTHER  
CONSIDERATION OF H.R. 4264, NA-  
TIONAL DEFENSE AUTHORIZATION  
ACT, FISCAL YEAR 1989

MR. [CLAUDE] PEPPER [of Florida]:  
Mr. Speaker, by direction of the Com-  
mittee on Rules, I call up House Reso-  
lution 436 and ask for its immediate  
consideration.

The Clerk read the resolution, as fol-  
lows:

H. RES. 436

*Resolved*, That during the further  
consideration of the bill (H.R. 4264)  
to authorize appropriations for the  
fiscal year 1989 amended budget re-  
quest for military functions of the  
Department of Defense and to pre-  
scribe military personnel levels for  
such Department for fiscal year  
1989, to amend the National Defense  
Authorization Act for Fiscal Years  
1988 and 1989, and for other pur-  
poses, no further amendment to the  
bill or to the amendment in the na-  
ture of a substitute, as modified and  
as amended, shall be in order except

the amendments designated in sec-  
tion 2 of this resolution, in the report  
of the Committee on Rules accom-  
panying this resolution, or by para-  
graph (2) of section 2 of H. Res. 435.  
Said amendments shall be consid-  
ered only in the order and in the  
manner specified. The amendments  
designated in this resolution shall be  
printed in the report of the Com-  
mittee on Rules accompanying this  
resolution and shall be considered as  
having been read when offered. Each  
amendment may only be offered by  
the Member designated for such  
amendment in the report of the  
Committee on Rules, or this resolu-  
tion, or their designee. Debate on  
each of said amendments shall not  
exceed the time designated in said  
report, to be equally divided and con-  
trolled between the proponent and  
an opponent. All points of order are  
waived against the amendments con-  
tained in sections 1 and 2, and  
against amendments numbered 5, 6,  
7, 11, 19, 20, 28, 35, 47, and 50 in  
section 3 of the report of the Com-  
mittee on Rules. No amendment, ex-  
cept for amendments printed in sec-  
tion 3 of the report of the Committee  
on Rules, shall be subject to amend-  
ment except as specified in this reso-  
lution or in the report of the Com-  
mittee on Rules accompanying this  
resolution, or to a demand for a divi-  
sion of the question in the House or  
in the Committee of the Whole. De-  
bate on any amendment offered to  
an amendment printed in section 3  
of the report of the Committee on  
Rules shall be limited to ten min-  
utes, equally divided and controlled  
by the proponent of the amendment  
and a member opposed thereto. Any  
particular amendment under consid-  
eration when the Committee of the  
Whole rises on a legislative day shall  
be completed when the Committee of  
the Whole next resumes its sitting  
on H.R. 4264. During the consider-  
ation of the bill, pro forma amend-  
ments for the purpose of debate shall

be in order only if offered by the chairman or ranking minority member of the Committee on Armed Services. Any period of general debate specified in this resolution shall be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services.

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The gentleman from Florida (Mr. Pepper) is recognized for 1 hour.

PARLIAMENTARY INQUIRY

MR. [NEWT] GINGRICH [of Georgia]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. GINGRICH: Mr. Speaker, this refers to a report which I believe will contain the various amendments and explain precisely what the Clerk so lengthily just read.

Mr. Speaker, it is my understanding that that report is not available, that that report has not been printed.

THE SPEAKER PRO TEMPORE: There is a copy at the minority table.

MR. GINGRICH: Mr. Speaker, I would suggest, under the rules of the House in terms of the individual Members' access to information, they should be given a document which has been marked up, edited. This has various handwriting and is not available to Members. This is a loose collection of papers. This is not a published report at this time, and would it not be better, I would ask the Speaker, for the House to delay considering this rule until we have the report of the Committee on Rules so Members could see what they are voting on?

4. Marvin Leath (Tex.).

THE SPEAKER PRO TEMPORE: The gentleman is not stating a point of order. He is perhaps stating a reason to vote against the rule.

MR. GINGRICH: I believe it was a parliamentary inquiry whether or not Members are protected and have any recourse in the rules of the House against having a report printed.

THE SPEAKER PRO TEMPORE: The question of consideration cannot be raised against a rule filed on a prior day. The Chair would suggest that Members could vote against the rule.

MR. GINGRICH: So, Mr. Speaker, Members who want a printed report should vote "no," is the Chair's recommendation.

THE SPEAKER PRO TEMPORE: If the gentleman is dissatisfied with the report he has, that would be a recommendation.

MR. GINGRICH: I thank the Chair.

**§ 10.16 Special order providing for consideration of a general appropriation bill, waiving points of order against legislation in violation of Rule XXI clause 2, re-appropriations in violation of Rule XXI clause 6, where the authorizing committees had consented to the waivers; permitting consideration of specified amendments which were not germane and specifying the order of amendments to be considered under a "king of the mountain" procedure.**

The rule providing for consideration of the dire emergency sup-

plemental appropriation bill for fiscal 1989, H.R. 2072, on Apr. 26, 1989,<sup>(5)</sup> provides an example of the complexities often required to permit the timely consideration of appropriation measures which precede the authorization process and interact with the constraints of the Congressional Budget Act.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF H.R. 2072, DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND TRANSFERS, URGENT SUPPLEMENTALS, AND CORRECTING ENROLLMENT ERRORS ACT OF 1989

MR. [JOE] MOAKLEY [of Massachusetts]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 135 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 135

*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 the consideration of bill (H.R. 2072) making dire emergency supplemental appropriations and transfers, urgent supplementals, and correcting enrollment errors for the fiscal year ending September 30, 1989, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against consideration of the bill for failure to comply with the provisions

of sections 302(f) and 311(a) of the Congressional Budget Act of 1974 (Public Law 93-344, as amended by Public Law 99-177) are hereby waived. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations, the bill shall be considered for amendment under the five-minute rule. During the consideration of the bill, all points of order against the bill for failure to comply with the provisions of clause 2 and 6 of rule XXI are hereby waived, except against the provisions beginning on page 20, line 19 through page 21, line 6; beginning on page 31, lines 5 through 12; and beginning on page 34, lines 19 through 25. It shall be in order to consider the amendments printed in the report of the Committee on Rules accompanying this resolution, said amendments shall be considered in the order specified in the report, may be offered only by the Member specified or his designee, shall be considered as having been read, shall be debatable for not to exceed one hour each, equally divided and controlled by the offeror and a Member opposed thereto, and shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against said amendments are hereby waived, except for points of order under clause 2 of rule XXI against provisions identical to those provisions in the bill against which points of order were not waived by this resolution. Any such point of order may lie only against those specified portions of an amendment, and not against an entire amendment. If both of said amendments are adopted, only the latter amendment which is adopted shall be considered to have been finally adopted and reported back to the House.

5. 135 CONG. REC. 7489, 7490, 101st Cong. 1st Sess.

THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts (Mr. Moakley) is recognized for 1 hour.

MR. MOAKLEY: . . . Mr. Speaker, the rule waives points of order under two specified sections of the Congressional Budget Act against consideration of the bill, section 302(f) and section 311(a).

Section 302(f) of the Congressional Budget Act prohibits consideration of measures that would exceed the subcommittee allocations of new discretionary budget authority made pursuant to section 302(b) of the Budget Act. Since the bill provides new budget authority in excess of the Appropriations Committees 302(b) allocations the bill would violate section 302(f) of the Budget Act.

Mr. Speaker, the second budget act waiver against consideration of the bill is section 311(a). Section 311(a) of the Budget Act prohibits consideration of any measure which would cause the budget authority or outlay ceilings established by the concurrent resolution on the budget for such fiscal year to be breached. Since the budget authority and outlays set forth in House Concurrent Resolution 268, the concurrent resolution on the budget for fiscal year 1989, have already been exceeded, the bill would violate section 311(a) by causing the spending ceilings to be further exceeded. . . .

Mr. Speaker, the rule also waives clause 2 and 6 of rule 21, against the bill, except for certain provisions. Clause 2, of rule 21, prohibits the inclusion of legislation and unauthorized appropriations in any appropriation bill.

There are three provisions that are subject to points of order. The first two

provisions deal with adjusting pay rates for certain health care occupations within the Defense and Veterans Departments, and a provision that directs the Federal Aviation Administration to initiate rulemaking procedures to require airlines to use a particular type of explosive detection equipment.

These sections Mr. Speaker, were left unprotected at the request of the committees that have legislative jurisdiction on these matters.

Clause 6 of rule 21 prohibits reappropriations in a general appropriations bill, because the bill contains transfers of previously appropriated funds the waiver is necessary.

Finally, Mr. Speaker, the rule makes in order two amendments that are printed in the report accompanying this resolution. The amendments are to be offered by the member named or his designee, and only in the order specified in the report.

**§ 10.17 The Chair will not render an advisory opinion as to whether a particular amendment against which points of order are waived by a special rule would in fact be subject to a point of order.**

The Committee on Rules, in reporting a special order waiving points of order against a specified amendment, sometimes does so out of an abundance of caution. The fact that a waiver is included does not necessarily mean that a valid point of order would in fact lie if the amendment were unpro-

tected. The inquiry raised by Mr. Coleman on June 28, 1989,<sup>(6)</sup> is illustrative:

AMENDMENT OFFERED BY MRS. MARTIN  
OF ILLINOIS

MRS. [LYNN] MARTIN of Illinois: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. Martin of Illinois: Page 13, line 24, strike the period and insert the following: “: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, shall use \$600,000 of the funds appropriated under this heading for a flood control project on Loves Park Creek, Loves Park and vicinity, Illinois, as authorized by Public Law 99-662, sec. 401.”.

PARLIAMENTARY INQUIRY

THE CHAIRMAN:<sup>(7)</sup> For what purpose does the gentleman from Texas (Mr. Coleman) rise?

MR. [RONALD D.] COLEMAN of Texas: I have parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman will state his inquiry.

MR. COLEMAN of Texas: I understand, am I correct, that this amendment is in violation of clause 2 of rule XXIII, that it was granted a waiver, is that correct, under the rule?

THE CHAIRMAN: The rule waives that point of order against the amendment.

MR. COLEMAN of Texas: And those Members on the other side of the aisle that object to rules that waive points of

order would not do so in this particular instance, is that correct?

THE CHAIRMAN: The gentleman is not stating a parliamentary inquiry.

MR. COLEMAN of Texas: I thank the Chairman.

### *Waiver of Points of Order by Special Order*

**§ 10.18 Where a special order adopted by the House waived points of order against certain of the amendments carried in the committee report, those amendments not protected by the waiver remain subject to points of order when offered, despite certain debate to the effect that “all specified amendments” (those in the report) could be considered.**

Where the Chairman of the Committee of the Whole is faced with a point of order against an amendment enumerated in the report of the Committee on Rules accompanying the special order setting the terms for the consideration of the bill, he is guided by the language in the special order, not on interpretations of the debate accompanying its adoption. Where the rule is clear, it must be followed literally.

On June 24, 1992,<sup>(8)</sup> disagreement over the protection afforded

6. 135 CONG. REC. 13688, 101st Cong. 1st Sess.

7. Don J. Pease (Ohio).

8. 138 CONG. REC. 16106, 16107, 102d Cong. 2d Sess.

a particular amendment manifested itself during the five-minute rule.

THE CHAIRMAN: <sup>(9)</sup> The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. Gekas: Page 36, after line 5, insert the following new section:

SEC. 312. Section 313 of the Federal Election Campaign Act of 1971 (2 U.S.C. 439a) is amended by striking out "may be" the first place it appears and all that follows through the end of the section and inserting in lieu thereof "shall, when the individual ceases to hold Federal office, as determined by the individual—

"(1) be submitted to the Secretary of the Treasury for deposit in the Treasury as miscellaneous receipts;

"(2) be contributed to any organization described in section 170(c) of the Internal Revenue Code of 1986;

"(3) be returned to the persons who made the contributions;

"(4) be transferred without limitation to any national, State, or local committee of any political party; or

"(5) be contributed to an authorized committee of a candidate for Federal, State, or local office, within the limits provided for by law."

MR. [VIC] FAZIO [of California]: Mr. Chairman, I reserve a point of order on the gentleman's amendment and wish that he would explain it to the Members.

THE CHAIRMAN: The gentleman from California reserves a point of order on the amendment.

The gentleman from Pennsylvania [Mr. Gekas] is recognized for 10 minutes.

9. Brian J. Donnelly (Mass.).

MR. [GEORGE] GEKAS [of Pennsylvania]: Mr. Chairman, I yield myself such time as I may consume. . . .

POINT OF ORDER

THE CHAIRMAN: Does the gentleman from California [Mr. Fazio] wish to be heard on his point of order?

MR. FAZIO: Mr. Chairman, I would simply say that the Committee on Rules has made distinctions between those which they protected and which they did not. This clearly is not in the protected category, and I would indicate to the chairman that while many, many Members of this body are not at all affected by the grandfather clause and while many who are covered by it have made public their decision not to exercise it or have, by their decision to seek reelection, made themselves ineligible to utilize it, it is important that we keep faith with the Ethics Reform Act which was passed overwhelmingly in this body several years ago.

Mr. Chairman, I make a point of order against the amendment because it proposes to change existing law and constitutes legislation in an appropriations bill and, therefore, violates clause 2 of rule XXI.

MR. GEKAS: Mr. Chairman, a point of parliamentary inquiry.

THE CHAIRMAN: Does the gentleman from Pennsylvania [Mr. Gekas] wish to be heard on the point of order?

MR. GEKAS: Yes, Mr. Chairman, I do. Is there time available to debate the point of order undertaken by the gentleman?

THE CHAIRMAN: Within the Chair's discretion, the gentleman is recognized to debate the point of order.

MR. GEKAS: Mr. Chairman, the point of order that has been exercised is the



one to which I made my previous remarks, that it is legislating, if I am correct, that it is legislating in an appropriations bill. If that is the stem of the point of order, then I submit, again, for the record, that standing alone, any one of a dozen provisions in this legislative appropriations bill that is before us, had it exchanged places with me and with this amendment, would be subject to the same point of order. . . .

THE CHAIRMAN: The Chair will respond that the rule waived certain points of order against provisions in the bill, but not against all amendments, and the rule was adopted by the House. The Chair is prepared to rule.

MR. GEKAS: I understand. I made a point of parliamentary inquiry.

THE CHAIRMAN: The Chair will continue that the rule did not exempt this amendment from a point of order.

Does any other Member wish to be heard on the point of order?

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I wish to be heard on the point of order. . . .

Mr. Chairman, if I understand correctly, the rule did in fact allow certain amendments to be brought forward on the floor. . . .

On the other hand, the committee did say, I think the language was "amendments 1 and 9." Some could put an interpretation on that, that that meant the entire scope of the amendments that were listed in the bill, of amendments 1 through 9. I think that of the gentleman from Pennsylvania [Mr. Gekas] is one of those amendments, and therefore does deserve the protection that was accorded by the

rule, and it should be allowed to be made in order. . . .

As I say, there are two interpretations. One interpretation is that it means only amendment 1 and amendment 9. However, when the staff of the Committee on Rules on our side originally read that rule, they believed, based upon what they had heard in the Committee on Rules, that it meant all nine of the amendments. . . .

THE CHAIRMAN: The Chair will respond. The Chair is constrained by the language of the resolution adopted by the House, line 25, "All points of order under clause 2 of rule XXI against amendments in the report numbered 1 and 9 are waived."

The Chair is prepared to rule on the point of order of the gentleman from California [Mr. Fazio]. . . .

The Chair would again respond that the Chair is constrained by the adoption of the rule earlier today by the House on which only certain points of order against amendments 1 and 9 were waived.

MR. GEKAS: As a point of parliamentary inquiry, is the Chair saying to me that the rule as fashioned overrules any further consideration of the content of the rule?

THE CHAIRMAN: The Chair has earlier ruled twice during consideration of amendments in the Committee of the Whole that two other amendments which were offered by a different gentleman from Pennsylvania were in fact legislation on an appropriation bill in violation of the rules of the House, and were not given waivers by the rule that was adopted by the House.

The Chair is restrained by the rule that was adopted by the House.

THE CHAIRMAN: Does the gentleman from California [Mr. Fazio] insist on his point of order?

MR. FAZIO: Yes, Mr. Chairman, I certainly do.

THE CHAIRMAN: The gentleman from California makes the point of order that the amendment offered by the gentleman from Pennsylvania violates clause 2 of rule XXI by proposing legislation on a general appropriation bill.

The gentleman's amendment simply and directly amends the Federal Election Campaign Act of 1971. As such it proposes legislation and does not merely perfect provisions in the bill.

The point of order is sustained.

### ***“Hereby” Resolutions and Points of Order***

#### **§ 10.19 The Committee on Rules may recommend a special order of business providing that a Senate amendment pending at the Speaker's table is “hereby” adopted, and a point of order does not lie against the resolution on the basis that the Senate amendment requires consideration in the Committee of the Whole.**

The proceedings on Feb. 4, 1993,<sup>(10)</sup> when H. Res. 71, reported from the Committee on Rules, was called up for consideration were not unique. So-called

**10.** 139 CONG. REC. 2499, 2500, 103d Cong. 1st Sess.

“hereby” resolutions have been challenged by points of order on other occasions.<sup>(11)</sup>

While assuming that the Senate amendment to the bill H.R. 1, the Family and Medical Leave Act of 1993, would indeed be subject to consideration in Committee of the Whole if called up for consideration, the Chair in this instance ruled that vulnerable amendment was not in fact before the House. Proceedings were as follows:

MR. [BART] GORDON [of Tennessee]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 71 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 71

*Resolved*, That upon the adoption of this resolution the bill (H.R. 1) to grant family and temporary medical leave under certain circumstances be, and the same is hereby, taken from the Speaker's table to the end that the Senate amendment thereto

**11.** A clear precedent for this ruling can be found in 6 Deschler's Precedents, Ch. 21, §16.11. It should be noted that the Committee on Rules could have recommended a resolution providing for the consideration of the Senate amendment but waiving the applicability of Rule XX clause 1. See also *House Rules and Manual* §728 (1997) for related parliamentary situations where specific rules were indirectly waived by the use of “hereby” resolutions.

be, and the same is hereby, agreed to.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> The gentleman from Tennessee [Mr. Gordon] is recognized for 1 hour.

POINT OF ORDER

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

THE SPEAKER PRO TEMPORE: The gentleman will state his point of order.

MR. WALKER: Mr. Speaker, pursuant to House rule XX, I make the point of order that House Resolution 71, the rule that we are taking up, should be considered in the Committee of the Whole, and I ask to be heard on my point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state his point of order.

MR. WALKER: Mr. Speaker, House rule XX provides that, and I quote:

Any amendment of the Senate to any House bill—

And I repeat:

An amendment of the Senate \* \* \* shall be subject to a point of order that it shall first be considered in the Committee of the Whole on the State of the Union, if, originating in the House, it would be subject to that point.

And the rule goes on to provide just one exception to this requirement is possible, and that is if a motion to disagree to the Senate amendment and request a conference is made.

THE SPEAKER PRO TEMPORE: Again, rule XX which the gentleman has cited applies only if the Senate amendment itself is before the House, which is not

the parliamentary status that we are now in.

MR. WALKER: Mr. Speaker, a further parliamentary inquiry.

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

MR. WALKER: Mr. Speaker, where is the Senate amendment if it is not in this language? It has to be before the House as a part of this language because once this language is adopted, and the Chair has ruled that the Senate amendment will not come up separately, and so therefore, it has to be contained in this resolution.

THE SPEAKER PRO TEMPORE: What will be adopted will be the rule.

MR. WALKER: But the rule enacts the bill, so the bill is a part of the rule.

THE SPEAKER PRO TEMPORE: Again, the bill is not before the House. The Senate amendment is not before the House. The resolution of the Rules Committee is before the House. The Chair has ruled on the point of order.

The Chair recognizes the gentleman from Tennessee [Mr. Gordon].

**§ 10.20 A special order reported from the Committee on Rules may provide for the “self-execution” of a Senate amendment, providing that it be agreed to, even though if the amendment were before the House it might be challenged by a variety of points of order (under Rule XVI cl. 7, (germaneness); Rule XXI cl. 5(a) (an appropriation in a legislative bill), or certain Budget Act infractions).**

12. David E. Skaggs (Colo.).

By the use of “hereby” or “self-executing” resolutions the House can sometimes reduce the parliamentary steps required to achieve a legislative goal.

On Feb. 24, 1993,<sup>(13)</sup> a rule was called up which provided for consideration of the Emergency Unemployment Compensation Act, 1993. Because the rule provided that certain amendments be “considered as adopted,” the number of votes necessary to perfect the text of the bill in the desired manner were consolidated in the vote on the rule. The points of order against the rule and the various responses of the Chair are carried herein.

EMERGENCY UNEMPLOYMENT  
COMPENSATION AMENDMENTS OF 1993

MR. [DAVID E.] BONIOR [of Michigan]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 103 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 103

*Resolved*, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 920) to extend the emergency unemployment compensation program, and for other purposes. The amendment recommended by the Committee on Ways and Means printed in the bill and the amend-

ment printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. All points of order against the bill, as amended, and against its consideration are waived. Debate on the bill shall not exceed two hours equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except one motion to recommit.

POINTS OF ORDER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I have a point of order against the resolution.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> The gentleman will state his point of order.

MR. WALKER: Mr. Speaker, I make a point of order against House Resolution 103 on the ground that two amendments self-executed by the resolution are in violation of two different House rules, and I ask to be heard on my point of order.

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania wishes to be heard, and the gentleman may proceed.

MR. WALKER: Mr. Speaker, first, House Resolution 103 is in violation of clause 5(a) of rule XXI because it proposes to adopt the Ways and Means Committee amendment printed as section 4 in H.R. 920 as reported. That section deals with financing provisions and in effect reappropriates advance account funds to make payments to the States to provide these additional benefits. Clause 5(a) of rule XXI prohibits appropriations provisions in a bill not

13. 139 CONG. REC. 3542, 3543, 103d Cong. 1st Sess.

14. Romano L. Mazzoli (Ky.).

reported by the appropriations committee.

Second, Mr. Speaker, House Resolution 103 attempts to adopt an amendment contained in the report to accompany the resolution extending coverage of the bill to railroad employees. That amendment is in violation of clause 7 of rule XVI which prohibits the consideration of germane amendments. The amendment contained in the Rules Committee report is under the jurisdiction of the Energy and Commerce Committee and is therefore not germane to this bill from the Ways and Means Committee.

Mr. Speaker, since both of those amendments will be considered to be adopted when this rule is adopted, they are currently before us and must be subject to points of order. It is clear from the rule that once the rule is adopted, the bill as amended by them is not subject to points of order. But, prior to the adoption of this resolution, those two amendments are obviously a part of this resolution and subject to the two points of order I have raised.

THE SPEAKER PRO TEMPORE: Does any Member wish to be heard on the point of order?

If not, the Chair is prepared to rule.

The fact that amendments which if offered separately would be violative of the rules does not prevent the Rules Committee from self-executing the adoption of those amendments together in the rule itself, by providing for their adoption upon the adoption of the rule. The amendments are thus not separately before the House at this time.

### ***“Hereby” Resolutions and Budget Act Relationships***

#### **§ 10.21 The requirement of section 308(a) of the Budget**

**Act—that any reported bill or resolution or committee amendment thereto providing new budget authority shall contain in the accompanying report a statement of the estimated costs—does not apply to a resolution reported from the Committee on Rules which “self-executes” into a bill an amendment providing new budget authority, since the resolution itself does not finally enact new budget authority.**

Neither the consideration nor the adoption of a resolution reported from the Committee on Rules which self-executes an amendment carrying new budget authority is susceptible to a point of order under section 308(a) of the Budget Act.<sup>(15)</sup> On Feb. 24, 1993,<sup>(16)</sup> the Chair pointed out that the amendment was not before the House during consideration of the resolution and the resolution itself did not enact new budget authority. The point of order and the debate thereon are carried below.

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> . . .

Does the gentleman from Pennsylvania have another point of order?

15. See also § 10.20, supra.

16. 139 CONG. REC. 3542, 3543, 103d Cong. 1st Sess.

17. Romano L. Mazzoli (Ky.).

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I make another point of order against House Resolution 103 on the ground that it is in violation of section 308(a) of the Congressional Budget Act of 1974, and I ask to be heard on my point of order.

THE SPEAKER PRO TEMPORE: The gentleman may proceed.

MR. WALKER: Mr. Speaker, section 308(a) of the Congressional Budget Act provides that, and I quote, "Whenever a committee of either House reports to its House a bill or resolution, or committee amendment thereto, providing new budget authority \* \* \* new spending authority described in section 401(c)(2), or new credit authority \* \* \* the report accompanying that bill or resolution shall contain a statement, the report accompanying that bill or resolution shall contain a statement, or the committee shall make available such a statement \* \* \* prepared after consultation with the Director of the Congressional Budget Office" detailing the costs of that provision.

Mr. Speaker, the amendment contained in the Rules Committee report, which would be adopted upon the adoption of this resolution, extends coverage of this bill to railroad workers. It is my understanding that this may entail a cost of \$20 million, but the Rules Committee has not provided a cost estimate from CBO in its report on this amendment as required by section 308 of the Budget Act. This is an amendment reported by the Rules Committee and therefore is subject to the CBO cost estimate requirements. I therefore urge that my point of order be sustained.

THE SPEAKER PRO TEMPORE: Does any Member wish to be heard on the point of order?

If not, the Chair is prepared to rule.

The gentleman from Pennsylvania raises an objection based on section 308(a) of the Budget Act on the basis that the report accompanying this resolution coming from the Rules Committee would have to have a CBO estimate of the potential cost involved by virtue of adoption of the amendment. However, the Chair, after consulting precedents and the rules of the House, rules that the cost estimate does not have to be made a part of the report accompanying the rule being brought from the Rules Committee, but rather the point of order might lie against the underlying bill. The resolution itself does not enact budget authority and, therefore, the resolution coming from the Rules Committee does not itself have to have the cost estimate in the accompanying report.

Therefore, the Chair now would overrule the gentleman's point of order. . . .

The Chair would state that the Budget Act, section 308(a) of the Budget Act, does not require budget estimates to be included in the report since the amendments are not adopted until such time as the rule is adopted. At that time, then, the amendments which are contained and which would be self-actuated under the rule would then be subject to section 308(a) of the Budget Act.

Prior to the adoption by the House of Representatives of this resolution, that underlying budget estimate is not required to be a part of the report on the resolution itself.

## **§ 10.22 The adoption of a special order for the consider-**

**ation of a bill that “self-executes” the adoption of an amendment providing new budget authority to a bill to be subsequently called up does not, itself, provide new budget authority within the meaning and application of section 308 of the Budget Act.**

House Resolution 103, called up in the House on Feb. 24, 1993,<sup>(18)</sup> attracted several points of order at various times during its consideration. As indicated in §10.20, *supra*, points of order when the resolution was first called up by the Rules Committee were overruled. The point of order carried in this section was raised after the ordering of the previous question on the special order. Mr. Robert S. Walker, of Pennsylvania, was trying to show that the Budget Act requirement that a report contain a Congressional Budget Office estimate of the budget authority was being completely obliterated by the type of special order being utilized here. A point of order was not entertained by the Chair at any stage of the proceeding. The waivers were all-encompassing.

Mr. [Jim] Slattery [of Kansas] changed his vote from “nay” to “yea.”

**18.** 139 CONG. REC. 3554, 3555, 103d Cong. 1st Sess.

So the previous question was ordered.

The result of the vote was announced as above recorded.

POINT OF ORDER

MR. WALKER: Mr. Speaker, I make a point of order against the amendment printed in the Rules Committee report, which I understand is now before us, based upon the Chair's previous ruling.

I make my point of order on the ground that the report in this resolution violates section 308(a) of the Budget Act requiring a cost estimate.

Section 308(a) of the Budget Act, which requires the CBO cost estimate in the report on any committee bill, resolution or amendment, contains no exemption for the report of the Committee on Rules.

I quote from the section 308(a) of the Congressional Budget Act:

Whenever a committee of either house reports to its house a bill or resolution or committee amendment thereto providing new budget authority, new spending authority described in section 402(c)(2) or new credit authority, the report accompanying that bill or resolution shall contain a statement or the committee shall make available such a statement prepared after consultation with the director of the Congressional Budget Office. . . .

Section 308(a) clearly applies to the committee amendment, and the amendment contained in the Rules Committee or report is a Rules Committee amendment. It was not reported by the Ways and Means Committee, it was not reported by the Energy and Commerce Committee and so therefore is exclusively in the jurisdiction of the Rules Committee.

The amendment contained in the Rules Committee report on this resolution will be considered to have been adopted when this resolution is adopted. So there is no question who should provide the CBO cost estimate. It is the Rules Committee. They are not above the rules.

Mr. Speaker, I ask that my point of order be sustained. . . .

Yes, Mr. Speaker, I wish to be heard further on the point of order. . . .

When it comes to a question in the bill itself, the point of order with regard to the Budget Act will not be in order because that point of order has been waived. The only time we can get at this particular item is in the self-enacting amendment which is a part of the rule.

The gentleman has not referred to the self-enacting amendment. That is the question to which this particular point of order pertains and it is up to the Chair, I think, to sustain the point of order based upon the fact that the self-enacting amendment within this rule does in fact add costs. It is new budget authority and is therefore in violation of the Congressional Budget Act. . . .

THE SPEAKER PRO TEMPORE: <sup>(19)</sup> The Chair is prepared to rule.

The amendment printed in the bill and the amendment printed in House Report 103-18 will be considered as adopted by the operation of House Resolution 103, which is the special order now pending before the House. . . .

As the Chair indicated previously, the new budget authority at issue would be provided not by the resolu-

tion reported by the Committee on Rules, but rather by the bill as amended.

At this point, the point of order does not lie. That all points of order against the bill as amended will be waived by House Resolution 103, if adopted, does not cause such points of order to lie at some earlier stage.

The rules of the House authorize the Committee on Rules to report a resolution providing a special order of business, and a point of order under Section 308 of the Budget Act does not lie against such a resolution on the ground that its adoption would have the effect of abrogating clause 2(l)(3) of rule XI, which incorporates the requirement of section 308 in the standing rules.

Accordingly, the point of order is overruled.

***Use of Special Order To Avoid Budget Act Points of Order***

**§ 10.23 Where the Congressional Budget Act provides for points of order against reported measures which do not meet certain Budget Act criteria, the Committee on Rules can recommend, in a special order for consideration of a bill, that the text of an unreported measure be considered in lieu of that reported. The Chair has indicated in response to a parliamentary inquiry, that points of order under sections 302, 303, 311, 401, and**

19. Romano L. Mazzoli (Ky.).



### 402 apply only to reported measures.

Following the adoption of a special order which made in order the text of an unreported bill in lieu of the reported version of a bill providing for welfare reform, the Chair entertained a parliamentary inquiry which explored the relationship of the Congressional Budget Act to the bill which would be considered under the provisions of the special order. While the Chair does not normally give anticipatory rulings, he did in this instance clarify the parliamentary situation. The proceedings of Mar. 21, 1995, follow:

#### PARLIAMENTARY INQUIRY

MR. [JIM] McDERMOTT [of Washington]: I have a parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> The gentleman will state it.

MR. McDERMOTT: Mr. Speaker, does the rule we have just adopted make in order general debate on H.R. 4 or H.R. 1214?

THE SPEAKER PRO TEMPORE: The rule makes in order debate on H.R. 4.

MR. McDERMOTT: As I understand it, Mr. Speaker, the committees of jurisdiction reported out three other bills, none of which is before the House today. Am I correct that H.R. 4 has not been reported out by any committee of jurisdiction?

20. 141 CONG. REC. p. \_\_\_\_\_ \* 31122 5211 312  
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1. John T. Doolittle (Calif.).

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. McDERMOTT: Mr. Speaker, continuing that inquiry, is it true that the Budget Act points of order which are designed to assure that the budget rules we established for ourselves are adhered to apply only to measures that have been reported by the committee of jurisdiction?

THE SPEAKER PRO TEMPORE: The Chair observes that sections 302, 303, 311, 401, and 402 of the Congressional Budget Act of 1974 all establish points of order against the consideration of bills or joint resolutions as reported. That is, in each case the point of order against consideration operates with respect to the bill or joint resolution in its reported state. Thus, in the case of an unreported bill or joint resolution, such a point of order against consideration is inoperative.

## § 11. As Related to Other Business

Certain points of order may interrupt business or debate.<sup>(2)</sup> A timely point of order may be made while another Member has the floor, and his consent is not required.<sup>(3)</sup> A point of order may even interrupt a Member stating a question of privilege.<sup>(4)</sup> A timely

2. The special case of the point of order that a quorum is not present is discussed in detail in Ch. 20, Calls of the House; Quorums.

3. See § 11.1, *infra*.

4. See § 11.2, *infra*.