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CHAPTER 31

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Points of Order; Parliamentary Inquiries

A. Points of order

§ 1. In General; Effect

A point of order is in effect an objection that the pending matter or proceeding is in violation of some rule or practice of the House. It may also constitute a demand for an immediate return to the regular order.[1] A point of order is not a vehicle for obtaining debate time or for injecting comments about a pending amendment or matter under consideration.[2]

Rule I clause 4[3] provides that it is the duty of the Speaker[4] to decide points of order, subject to a right of appeal by any Member. Apart from this rule, the disposition of points of order is largely governed by the discretion of the Chair and by precedent.[5] The Chair, without prompting from a Member, sometimes assumes an affirmative obligation to protect the rights of Members.[6] In the exercise of its discretion, the Chair may, for example, decide whether to entertain more than one point of order at the same time;[7] whether to decide one point or another first;[8] or whether to rule on points of order simultaneously.[9] On rare occasions,

1. For general discussion of the subject of points of order prior to 1936, see 5 Hinds' Precedents §§ 6863–6957; 8 Cannon's Precedents §§ 3427–3458.

   Points of order consume less time today than formerly. Mr. Clarence Cannon (Mo.), who was parliamentary clerk at the Speaker's table before becoming a Member, once estimated that discussion of points of order occupied a third of the time of the House in the early 20th century. See 101 CONG. REC. 10609, 84th Cong. 1st Sess., July 14, 1955.
2. See § 1.42, infra.
3. *House Rules and Manual* § 624 (1997).
4. In the Committee of the Whole, the Chairman decides questions of order and generally acts with the powers of the Speaker, as provided by Rule XXIII clause 1, *House Rules and Manual* § 861 (1997). See 5 Hinds' Precedents § § 6828, 6927.
5. See § 1.1, infra, as to the importance of precedents, generally.
6. See § 1.3, infra.
7. See § 1.8, infra.
8. See § 1.9, infra.
9. See § 1.13, infra.

   The Chair's discretion in this regard is guided by his understanding of the relative effects resulting from the sustaining of the various points of order.

the Chair will anticipate a parliamentary situation and—as with a question of privilege—rule without a point of order from the floor.[10]

At the beginning of a Congress, before rules are adopted, the Chair enforces "order" based on precedents and long-established customs—principles of general parliamentary law—which constitute and define proper decorum in debate.[11]

The Chair may refuse to rule on matters that are related to but not expressly raised in the point of order;[12] and points of order do not lie against the Chair's exercise of discretionary authority granted by the standing rules.[13] Moreover, the Chair does not rule on constitutional questions,[14] hypothetical questions,[15] or the effect of a bill's provisions.[16] Similarly, the Chair does not pass upon the consistency of proposed amendments[17] or resolve ambiguities in amendments.[18]

The effect of sustaining a point of order depends on the matter before the House. For example, a point of order against a portion of an amendment may cause the whole amendment to fall;[19] and a point of order against a conference report, if sustained, may vitiate the report and leave the House with the amendments in disagreement before it for disposition.[20]

The enforcement of committee rules—those which are not explicit rules of the House but are internal to a committee—is the responsibility of the pertinent committees. Normally, the Speaker is not compelled to rule on a point of order relating to the interpretation of such a committee rule.[1]

However, violations of certain committee rules are cognizable in the House under Rule XI clause 2.[2]

There are special procedures prescribed by standing rule[3] relating to words uttered in debate. The proper procedure is to demand that "words be taken down." But such demands must be time-

10. See § 1.51, infra.
11. See § 1.2, infra.
12. See § 1.28, infra.
13. See § 1.29, infra.
14. See § § 1.37–1.39, infra.
15. See § 1.40, infra.
16. See § 1.36, infra.
17. See § 1.36, infra
18. See § 1.41, infra.
19. See § 1.25, infra.
20. See § 1.27, infra.
1. See § 1.47, infra.
2. See, e.g., Rule XI clause 2(g)(5), *House Rules and Manual* § 708, and clause 2(l), § 713 (1997). See also § § 1.47, 1.48, 1.49, infra.
3. See Rule XIV, clauses 1, 4, and 5, *House Rules and Manual* § § 749, 760 (1997).

ly, before other debate intervenes.[4]

Importance of Precedents

§ 1.1 The Speaker follows the precedents of the House in deciding points of order.

On June 24, 1958,[5] Mr. Thomas B. Curtis, of Missouri, challenged a practice of the House with which he disagreed and sought to have Speaker Sam Rayburn, of Texas, overrule certain precedents which prevented discussion on the floor of the House of matters occurring in committees, unless the committees in question took action. The following exchange, emphasizing the importance of precedent in the Speaker's rulings, took place:

SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT

THE SPEAKER: Under previous order of the House, the gentleman from Missouri [Mr. Curtis], is recognized for 60 minutes.

MR. CURTIS of Missouri: . . . Mr. Speaker, I am very disturbed about the manner in which one of our House subcommittees has been conducting itself in the past few days. I refer to the subcommittee of the Interstate and Foreign Commerce Committee on Legislative Oversight. . . .

. . . Not only is this subcommittee, in my judgment, not doing the job that needs to be done, it has brought the institution again, in my judgment, into disrepute by disregarding the rules of the House and permitting a committee of the House to be used as a forum in this fashion.

MR. [OREN] HARRIS [of Arkansas]: Mr. Speaker, I must object again and ask that those words be deleted.

MR. CURTIS of Missouri: I would like to ask the gentleman before he does, just what language is he objecting to?

MR. HARRIS: To the charge that this committee is violating the rules of the House.

MR. CURTIS of Missouri: Well, I certainly do charge that and I think it is proper to charge such a thing if I have presented the evidence. How else are we going to present the case to the House?

THE SPEAKER: There is a long line of decisions holding that attention cannot be called on the floor of the House to proceedings in committees without action by the committee. The Chair has just been reading a decision by Mr. Speaker Gillett and the decision is very positive on that point.

MR. CURTIS of Missouri: Mr. Speaker, in addressing myself to that, may I say I am unaware of such a rule and I would argue, if I may, in all propriety, that that rule, if it does exist, should be changed because how else will the House ever go into the functioning and actions of its committees?

THE SPEAKER: That is not a question for the Chair to determine. That is a question for the House to change the rule.

MR. CURTIS of Missouri: Mr. Speaker, is it a rule or is it a ruling? If it is

4. See § 1.50, infra.

5. 104 CONG. REC. 12121, 12122, 85th Cong. 2d Sess.

a ruling of the Chair, then it is appropriate for the Chair to consider it.

THE SPEAKER: The precedents of the House are what the Chair goes by in most instances. There are many precedents and this Chair finds that the precedents of the House usually make mighty good sense.

MR. CURTIS of Missouri: But the Chair can change a precedent. That is why I am trying to present this matter.

THE SPEAKER: If the Chair did not believe in the precedents of the House, then the Chair might be ready to do that, but this Chair is not disposed to overturn the precedents of the House which the Chair thinks are very clear. . . .

THE SPEAKER: The Chair has made his ruling, and the Chair thinks it is correct.

§ 1.2 At the beginning of a new Congress, before rules are adopted, the Chair will entertain a point of order that proper decorum is not being followed and will enforce those rules relating to the Chair's power of recognition which embody long established custom.

On Jan. 3, 1991,[6] during debate on House Resolution 5, establishing rules for the 102d Congress, Mrs. Nancy L. Johnson, of Connecticut, was yielded time under the hour taken to debate the resolution. At the conclusion of her time, she refused to relinquish the floor and persisted in debate despite repeated admonitions from the Chair and the use of the Speaker's gavel. The rather raucous proceedings were as follows:

THE SPEAKER PRO TEMPORE:[7] The gentleman from New York [Mr. Solomon] has 1 minute remaining.

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, I yield such time as she may consume to the gentlewoman from Connecticut [Mrs. Johnson].

MRS. JOHNSON of Connecticut: Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong opposition to the substance of this proposal, and with deep concern for the subversion of the legislative process contained in this package.

The substance strikes at the heart of the budget agreement. The process strikes at the heart of democracy, and so I am going to use such time as I may consume, and I am not going to recognize the authority of the Speaker's gavel, because I want to make very clear the implications of what is happening here.

First of all, this House is operating under precedent, not under rule. Precedent is something that we honor because we hold ourselves to a standard of ethical conduct that requires honoring our rules.

If we do not hold ourselves to that standard of ethical conduct, then the

6. 137 CONG. REC. 58, 59, 102d Cong. 1st Sess.

7. Steny H. Hoyer (Md.).

line between self-government and chaos disintegrates. If we cannot operate ethically, we cannot govern ourselves as a free nation. So, honor is everything; word is bond.

I choose not to be governed by the gavel, because I want to demonstrate that where word is not bond, democracy cannot survive.

If we were doing that here today, democracy in its gut and at the level of trust that it demands would not be at risk; but the majority party is not proposing a statutory change for which they could be held accountable.

THE SPEAKER PRO TEMPORE: The time of the gentlewoman has expired.

MRS. JOHNSON of Connecticut: The majority party is proposing a rules change.

THE SPEAKER PRO TEMPORE: The Chair would state to the gentlewoman that whatever point she is trying to make that the Chair is going to make a point.

MRS. JOHNSON of Connecticut: It does not change the law.

THE SPEAKER PRO TEMPORE: The House will operate under proper decorum.

MRS. JOHNSON of Connecticut: . . . What is happening here is that individual desire for spending programs is overriding the public interest in deficit reduction.

MR. [GERRY] SIKORSKI [of Minnesota]: Mr. Speaker, regular order.

THE SPEAKER PRO TEMPORE: The gentlewoman is out of order. The gentlewoman is making the point of not following the rules.

MRS. JOHNSON of Connecticut: Mr. Speaker, I am sorry. I know this is unpleasant.

THE SPEAKER PRO TEMPORE: The gentlewoman will remove herself from the well within 30 seconds.

POINT OF ORDER

MR. [HENRY B.] GONZALEZ [of Texas]:

Mr. Speaker, I rise to a point of order. I rise to a point of order, Mr. Speaker.

MRS. JOHNSON of Connecticut: As I said, I am not going to talk at length but only for the very few minutes necessary to make clear my concern with the substance and process violations in this rules proposal.

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

MR. GONZALEZ: The gentlewoman is out of order and is defying the Chair's ruling and, therefore, I am imploring the Chair to exercise its authority to enforce the rules of the House by summoning the Sergeant at Arms and presenting the mace.

THE SPEAKER PRO TEMPORE: The Chair may do that.

Speaker Protects Parliamentary Rights of Members

§ 1.3 The Speaker may on his own initiative take action to protect the right of Members to raise appropriate points of order.

Until the 104th Congress adopted its rules on Jan. 4, 1995, points of order had to be "reserved" on general appropriation bills when they were reported. Failure to take this step deprived the Chairman of the Committee of the Whole of the right to "rule out," in re-

sponse to a point of order, a portion of the bill as being legislative or unauthorized in law as required by Rule XXI clause 2.[8] Rule XXI clause 8[9] was added in 1995 and provides: "At the time any appropriation bill is reported, all points of order shall be considered as reserved.". The following incident, on May 23, 1994,[10] showed the willingness of the Chair to protect the prerogatives of Members.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE A PRIVILEGED REPORT ON FOREIGN OPERATIONS APPROPRIATIONS BILL, 1995

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight, May 23, 1994, to file a privileged report to accompany a bill providing appropriations for Foreign Operations for fiscal year 1995, and for other purposes.

THE SPEAKER PRO TEMPORE:[11] Is there objection to the request of the gentleman from Wisconsin?

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, reserving the right to object, we would like to know if the minority has been informed. We are told that they have not been.

MR. OBEY: If the gentleman will yield, I do not think that is correct.

MR. SOLOMON: Mr. Speaker, I stand corrected. I understand that the minority is aware of it, and we have no objection on this side of the aisle.

Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

THE SPEAKER PRO TEMPORE: All points of order are reserved.

Priority of Committee Members in Recognition for Point of Order

§ 1.4 Members of the committee reporting a bill have priority of recognition to make points of order against proposed amendments to bills.

On Mar. 30, 1949,[12] in the Committee of the Whole, Chairman Jere Cooper, of Tennessee, confronted with points of order offered simultaneously by two Members, recognized the committee member.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I offer my amendment at this time and ask that it be read.

The Clerk read as follows: . . .

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, a point of order.

MR. [CARL T.] CURTIS [of Nebraska]: Mr. Chairman, a point of order.

THE CHAIRMAN: The Chair recognizes the gentleman from Washington,

8. *House Rules and Manual* § 834 (1997).

9. *House Rules and Manual* § 848a (1997).

10. 140 CONG. REC. p. _____, **103d Cong. 2d Sess.**

11. G. V. (Sonny) Montgomery (Miss.).

12. 95 CONG. REC. 3520, 81st Cong. 1st Sess. Under consideration was H.R. 3838, the Interior Department general appropriation bill for 1950.

a member of the committee, to state a point of order.

MR. JACKSON of Washington: Mr. Chairman, I make the point of order that this particular amendment is legislation on an appropriation bill and imposes additional duties on the Bureau of Reclamation.

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

MR. CASE of South Dakota: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair will hear the gentleman on the point of order. . . .

Does the gentleman from Nebraska desire to be heard on the point of order?

MR. CURTIS: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair will hear the gentleman briefly.

MR. CURTIS: I rose to make the same point of order. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from South Dakota [Mr. Case] offers an amendment which has been reported, against which the gentleman from Washington [Mr. Jackson] makes a point of order on the ground it is legislation on an appropriation bill. . . .

The Chair sustains the point of order.

Authority of the Chair To Reverse an Earlier Decision

§ 1.5 The Chairman of the Committee of the Whole has the authority to reverse his ruling made earlier during the consideration of a bill for amendment and on rare occasions does so when additional information on the point of order is presented to him.

The Committee on Appropriations has the burden of proving the authorization for projects carried in a general bill and has sometimes cited an "organic law" as the legal basis for a particular item of appropriation.

While the Organic Act creating an agency can be cited to support an item of appropriation, on one occasion when such a law was cited and the Chair relied upon it to overrule a point of order, he later reversed his ruling when it was determined that the Organic Act had been amended to remove the portion thereof relied upon in the ruling.

On June 8, 1983,[13] Chairman Gerry E. Studds, of Massachusetts, entertained argument against an appropriation for "Salaries and Expenses, Bureau of the Mint." The point of order was brought by a member of the Committee on Banking, Finance and Urban Affairs, Frank Annunzio, of Illinois, who argued that the annual authorization for the Bureau had not been enacted into law.

13. 129 CONG. REC. 14854, 14855, 98th Cong. 1st Sess.

The chairman of the Subcommittee on Treasury, Post Office Appropriations, Edward R. Roybal, of California, cited the provisions of law carried in title 31 of the United States Code, which established the Bureau of the Mint. The Chair relied upon these citations in holding that the appropriation was in fact authorized by law.

THE CHAIRMAN: The Clerk will read.

The Clerk read as follows:

BUREAU OF THE MINT

SALARIES AND EXPENSES

For necessary expenses of the Bureau of the Mint: $49,558,000.

MR. ANNUNZIO: Mr. Chairman, I make a point of order that the appropriations for the Bureau of the Mint, salaries and expenses, contained in title I are not authorized by law.

THE CHAIRMAN: Does the gentleman from California (Mr. Roybal) wish to be heard on the point of order?

MR. ROYBAL: Yes, Mr. Chairman, I wish to be heard on the point of order.

The Bureau of the Mint has been operating under one form or another since this country was first founded. The Mint has been minting and issuing coins pursuant to authority found in title 31 of the United States Code. Section 251 of title 31 establishes the Bureau and I would just like to read to the Chairman the first part of section 251. It reads as follows:

> There shall be established in the Treasury Department a Bureau of the Mint embracing as an organization and under its control all mints for the manufacture of coin and all assay offices for the stamping of bars which has been or which may be authorized by law.

Section 253 states:

> The Director of the Mint shall have the general supervision of all mints and assay offices and shall make an annual report to the Secretary of the Treasury of their operations at the close of each fiscal year, and from time to time such additional reports setting forth the operational conditions of such institutions as the Secretary shall require, and shall lay before him the annual estimates for their support; and the Secretary of the Treasury shall appoint the number of clerks classified according to law necessary to discharge the duties of said Bureau.

Mr. Chairman, I would like to point out that in addition to the sections I have just read, sections 261 through 463 of title 31 set forth in detail the duties of the Bureau of the Mint, and those sections are replete with requirements that the mint must accomplish certain acts.

I would like to cite Deschler's and Brown's Procedure of the House, chapter 25, section 5.7, which states in part, as follows. Section 5.7 reads as follows:

> The failure of Congress to enact into law separate legislation specifically authorizing appropriations for existing programs does not necessarily render appropriations for those programs subject to a point of order, where more general existing law authorizes appropriations for such programs. Thus, a paragraph in a general appropriation bill purportedly containing some funds not yet specifically authorized by separate legislation was held not to violate

Rule XXI clause 2, where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question.

It is my opinion, Mr. Chairman, that the general existing law which I have just cited authorizes the appropriation. The United States Code specifically establishes the Bureau of the Mint, and because the Code requires the Mint to accomplish certain functions, there is implicit in law the authority for the Congress to appropriate funds to accomplish those objectives which Congress set forth in law.

Mr. Chairman, I ask that the point of order be overruled.

MR. ANNUNZIO: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair will recognize the gentleman from Illinois (Mr. Annunzio) but the Chair would ask him to address himself to the necessity, as he claims in his point of order, for an annual authorization for these funds.

MR. ANNUNZIO: Mr. Chairman, I listened closely to the explanation of the distinguished chairman of the subcommittee of the Committee on Appropriations.

If the Chair were to sustain the point of order, there would not be any need for authorizing committees to present their authorizations. The Appropriations Committee would be doing the job.

I would also like to cite that in clause 2, rule XXI of the rules of the House, it states that funds cannot be appropriated with an authorization.

THE CHAIRMAN: Does the gentleman from Massachusetts (Mr. Conte) wish to be heard on the point of order?

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I rise in opposition to the point of order.

The chairman of the subcommittee has cited a number of general authorizations, which taken together constitute authorization within the meaning and the application of rule XXI, clause 2.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Illinois makes the point of order that there is no authorization for the expenses contained in the line in question.

The gentleman from California cites an organic statute creating the office in question, namely, the Bureau of the Mint.

The Chair is aware of the bill, H.R. 2628, passed by the House earlier this year, but not yet law. That bill, if and when it becomes law, will authorize some Bureau of Mint appropriations for fiscal 1984 and provide other permanent authorizations for salaries and expenses. Absent citation to such a statute requiring annual authorization, however, the Chair believes that the gentleman from California may rely on an organic act creating the office and authorizing it as a standing authorization in law for the purposes of the Bureau and, therefore, overrules the point of order.

Later in the consideration of the bill,[14] more recent citations of law were called to the attention of the Chair which showed that the Organic Act had been supple-

14. H.R. 3132 (Treasury, Postal Service appropriation, 1984).

mented by a requirement in law for annual authorizations. The Chair then reversed his earlier decision. The proceedings were as follows: [15]

MR. ROYBAL: Mr. Chairman, I ask that the Chair return to page 5, lines 14 through 17, only for the purpose of hearing further arguments on the point of order raised by the gentleman from Illinois (Mr. Annunzio).

THE CHAIRMAN: The Chair will hear the gentleman.

MR. [BILL] FRENZEL [of Minnesota]: Reserving the right to object, Mr. Chairman—

THE CHAIRMAN: The gentleman did not propound a unanimous consent request.

MR. FRENZEL: A point of information, Mr. Chairman. Can the Chair restate what the gentleman from California propounded?

THE CHAIRMAN: The gentleman from California requested the Chair to entertain a return to a point of order earlier overruled.

The Chair in rare circumstances may agree to such a request and has recognized the gentleman to be heard.

MR. FRENZEL: Can the Chair tell us what position in the bill the point of order occurs?

MR. CHAIRMAN: will hear the gentleman from California and will recognize him for that purpose, and the gentleman will point that out.

MR. ROYBAL: Mr. Chairman, I yield to the gentleman from Illinois (Mr. Annunzio).

MR. ANNUNZIO: Mr. Chairman, for the benefit of my distinguished colleague, the gentleman from Minnesota, I am renewing my point of order that the appropriation violates clause 2 of rule XXI, on page 5, line 14, of the rules of the House, in that they appropriate funds without an authorization.

A misunderstanding concerning the point of order has occurred because of a change in the law that took place in 1981, the Omnibus Reconciliation Act. Prior to the passage of the act, the mint operated under a permanent authorization and needed only to come before the Appropriations Committee to obtain its funds.

In 1981, however, the Congress changed that law so that the mint had to first obtain a yearly authorization before obtaining an appropriation.

The report of the House Banking Committee on this legislation makes that point very clear, that each year a new authorization is needed. The report in part says:

> It is the intent of the Committee to repeal the permanent authorization of the salaries and expenses of the Bureau of the Mint.

Further, the statement of the managers in the conference report of the committee on the legislation makes the point even more clear, that it is to be a yearly authorization. In part the report states:

> The House bill terminated the permanent authorization for appropriations for salaries and expenses for the Bureau of the Mint. The Senate receded to the House.

THE CHAIRMAN: The Chair desires to make a statement. The Chair apologizes in advance to the Members for the length of the statement.

15. 129 CONG. REC. 14876, 14877, 98th Cong. 1st Sess.

Earlier, during consideration of the bill in the Committee of the Whole, the Chair overruled a point of order against the paragraph appropriating funds for the Bureau of the Mint, salaries and expenses, on page 5, lines 14 through 17. In argument on the point of order, the manager of the bill cited provisions of law establishing and delegating functions to the Bureau of the Mint, as sufficient authority to authorize appropriations for annual expenses and salaries. The Chair has since become aware that those provisions of law have been repealed, and that the statutes relating to the mint have been amended, first by the Omnibus Reconciliation Act of 1981, then by the Omnibus Reconciliation Act of 1982, and then by a complete recodification of title 31 of the United States Code. No specific authorization of appropriations for fiscal year 1984 has yet been enacted, but one has passed the House (H.R. 2628).

The Omnibus Reconciliation Act of 1981, Public Law 97–35, provided in section 382 that the sentence in the Code (31 U.S.C. 369) which had been construed to provide a permanent authorization of appropriations for the Bureau of the Mint be repealed, and replaced that language with an authorization of appropriations for fiscal year 1982 only. The report on that measure in the House stated, on page 129, that by repealing the existing statutory provision and by limiting the authorization to fiscal year 1982 only, it is the intent of the committee to repeal the permanent authorization for the salaries and expenses of the Bureau of the Mint. The joint explanatory statement of the conferees on the Reconciliation Act reiterated that the House bill terminated the permanent authorization for appropriations for salaries and expenses of the Bureau of the Mint (page 717). The Omnibus Reconciliation Act of 1982, Public Law 97–253, in section 202, changed the 1982 authorization into a fiscal year 1983 authorization. Public Law 97–258 codified in its entirety title 31 of the United States Code, and carried the 1982 authorization in section 5132 of title 31; all the old provisions of title 31 dealing with the mint, previously cited in argument on the point of order, have been repealed. Public Law 97–452 modified the codification to reflect the 1983 authorization carried in the 1982 Reconciliation Act. There remains no statutory language relating to the mint which may be construed as a permanent authorization.

The Chair recognizes that it is unusual for the Chair to reverse a decision or ruling previously made, and it is the opinion of the Chair that he should undertake such a course of action only where new and substantial facts or circumstances, which were not evident or stated in argument on a point of order, are subsequently brought to his attention.

In rare instances, the Chair has reversed a decision on his own initiative; for example, the Chairman of the Committee of the Whole in 1927, as cited in volume 8 of Cannon's Precedents section 3435, held that a provision in a general appropriation bill constituted legislation after reviewing a statute he was not previously aware of when he had rendered a contrary decision.

For the reasons stated, and in view of the unique and compelling circumstances, the Chair holds that the language in the bill on page 5, lines 14

through 17, appropriating funds for the Bureau of the Mint, is unauthorized and, therefore, rules the paragraph out of order.

Chair's Duty To Rule on Point of Order

§ 1.6 The Chair only rules on a point of order when required to do so, and will permit withdrawal of an amendment (by unanimous consent in Committee of the Whole) prior to ruling on a point of order raised against the amendment.

On June 7, 1983,[16] the energy and water development appropriation for fiscal 1984 (H.R. 3132), was under consideration in Committee of the Whole. An amendment, offered by Mr. Robert W. Edgar, of Pennsylvania, was subject to at least two possible points of order: it was "legislation" in violation of Rule XXI clause 2; and it affected the level of excise tax and was thus a violation of Rule XXI clause 5(b), which prohibits tax or tariff measures from being in order to a measure not reported by the Committee on Ways and Means. Points of order were reserved against the amendment, and, after discussion, the proponent of the amendment asked that it be withdrawn.

MR. EDGAR: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Edgar: On page 8, after line 2, add the following new section:

"SEC. 104. Within funds available in the construction general account, including but not limited to funds deferred, the Corps of Engineers is directed to complete the navigation and related features of the Tennessee-Tombigbee Waterway at a total additional Federal cost of $202,000,000. Section 206 of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following: '(27) Tennessee-Tombigbee Waterway: From the Pickwick Pool on the Tennessee River at RM 215 to Demopolis, Alabama, on the Tombigbee River at RM 215.4.'".

MR. [TOM] BEVILL [of Alabama]: Mr. Chairman, I reserve a point of order on this amendment.

THE CHAIRMAN:[17] The gentleman from Alabama (Mr. Bevill) reserves a point of order against the amendment.

MR. [RONNIE G.] FLIPPO [of Alabama]: Mr. Chairman, I also make a point of order against the gentleman's amendment on the grounds that it violates paragraph (b), clause 5, rule XXI of the rules of the House.

THE CHAIRMAN: Would the gentleman suspend.

MR. FLIPPO: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman reserves a point of order. . . .

MR. EDGAR: Mr. Chairman, with those assurances, I would like to ask

16. 129 CONG. REC. 14656, 14657, 98th Cong. 1st Sess.

17. Donald J. Pease (Ohio).

unanimous consent to withdraw my amendment at this time.

THE CHAIRMAN: Is there objection to the request of the gentleman from Pennsylvania?

MR. FLIPPO: Mr. Chairman, I reserve the right to object to the unanimous-consent request.

I wish to make a point of order against the amendment because the amendment violates paragraph (b), clause 5, rule XXI of the Rules of the House of Representatives.

THE CHAIRMAN: If the gentleman would suspend a moment, proper procedure is for the gentleman to object to the unanimous-consent request of the gentleman from Pennsylvania, to withdraw his amendment and then to make a point of order.

MR. FLIPPO: I do object to the unanimous-consent request.

MR. EDGAR: Will the gentleman reserve the right to object?

MR. FLIPPO: I yield to the gentleman from Pennsylvania.

MR. EDGAR: Before the gentleman makes his objection, the gentleman from Pennsylvania is attempting to remove the impediment that the gentleman wants to call a point of order against, simply because the gentleman has made the assurances.

MR. FLIPPO: Mr. Chairman, I do not object to the gentleman's request and I withdraw my reservation of objection.

THE CHAIRMAN: Is there objection to the request of the gentleman from Pennsylvania to withdraw the amendment?

There was no objection.

Preliminary Argument on Point of Order

§ 1.7 Arguments in support of a point of order may be submitted for the information of the Speaker in advance of raising the point of order.

On July 12, 1935,[18] Mr. Thomas L. Blanton, of Texas, informed the Speaker of arguments that he intended to use to support anticipated points of order, thus enabling Speaker Joseph W. Byrns, of Tennessee, to research the applicable precedents and authorities ahead of time.

MR. BLANTON: Mr. Speaker, with the permission of the Chair, I should like to make a point of order with respect to certain bills that will come up next Tuesday, and then let the point of order be pending, so that the Speaker in the meantime may examine the authorities which may be presented by myself or by the Parliamentarian.

THE SPEAKER: The Chair will be glad to hear the gentleman.

Parliamentarian's Note: The Speaker would have discretion whether to recognize for such anticipatory argument and could request its informal submission in writing, in lieu of using the time of the House.

Discretion of Chair

§ 1.8 It is within the discretion of the Chair whether to en-

18. 79 CONG. REC. 11113, 11114, 74th Cong. 1st Sess. The discussion pertained to the provisions of the Private Calendar rule.

tertain more than one point of order to a paragraph at the same time.

On Mar. 29, 1966,[19] in the Committee of the Whole, the Chair entertained and overruled two points of order made against separate language in the same paragraph of a general appropriation bill simultaneously.

MR. [MELVIN R.] LAIRD [of Wisconsin]: Mr. Chairman, I raise a point of order against lines 6 through 22 on page 4 of the pending legislation, and desire to be heard on the point of order.

THE CHAIRMAN:[20] The gentleman will state his point of order.

MR. LAIRD: Mr. Chairman, the language contained in lines 15 through 22 [is] a clear violation of rule XXI of the Rules of the House of Representatives, wherein clause 2 states: . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. YATES: Mr. Chairman, I have a point of order on line 12, which reads "in any fiscal year." Is it in order to make that point now, or should it be made at the conclusion of the Chair's ruling?

THE CHAIRMAN: It can be made now. The Chair will rule on both points of order.

MR. YATES: Mr. Chairman, I make a point of order against the language appearing on line 12 . . . to the words "any fiscal year," on the grounds that it is legislation on an appropriation bill which binds the appropriations for all future times. . . .

MR. LAIRD: Mr. Chairman, I accept the inclusion of the point of order by the gentleman from Illinois, and under the terms of Hinds' Precedents, my point of order is raised against the entire section and I would include the point made by the gentleman from Illinois against the entire section.

THE CHAIRMAN: The Chair will pass on both points of order at this moment, and the Chair is prepared to rule.

The Chair finds that the decision of the Chair on H.R. 11588, a bill providing for supplemental appropriations, on the 14th of October 1965, did include language identical to that subject to the point of order made by the gentleman from Wisconsin and identical to that subject to the point of order made by the gentleman from Illinois. At that time both points of order were ruled upon by the Chairman of the Committee of the Whole House, Mr. Harris, of Arkansas. He ruled that the proviso constituted a limitation negative in nature that did not impose additional duties upon the administration and overruled the point of order on both points.

The Chair, on the basis of the ruling of the Chairman on the 14th of October 1965, referred to, overrules the point of order of the gentleman from Wisconsin and the point of order of the gentleman from Illinois.

Parliamentarian's Note: Since Mr. Laird incorporated Mr. Yates'

19. 112 CONG. REC. 7103, 7104, 89th Cong. 2d Sess. Under consideration was H.R. 14012, the second supplemental appropriation for fiscal 1966.

20. James G. O'Hara (Mich.).

point of order into his own as against the entire paragraph, it was proper for the Chair to rule simultaneously on both.

§ 1.9 It is within the discretion of the Chair as to which of several points of order he will hear or decide first.

On Dec. 15, 1937, in the Committee of the Whole, the following proceedings took place:[1]

> MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, will the gentleman yield to me to make a parliamentary inquiry?
>
> MR. [JERE] COOPER [of Tennessee]: Mr. Chairman, I yield.
>
> MR. SNELL: Mr. Chairman, it seems to me that one point of order ought to be disposed of before we start on another point of order, that that would be the better procedure and more orderly than to have all of these points of order made at one time, because they are all entirely different. When the gentleman from Tennessee began to state his point of order I thought it was along the same lines as my own.
>
> MR. COOPER: Of course, my point of order was raised at this time at the invitation of the Chair.
>
> MR. SNELL: I think one point of order should be considered at a time, Mr. Chairman.
>
> MR. COOPER: From my viewpoint I think they should all be presented.
>
> THE CHAIRMAN:[2] The Chair feels it is within the discretion of the Chair to hear all points of order at the same time that relate to germaneness, and also in the discretion of the Chair as to which one he will rule upon in the first instance. . . .
>
> The Chair feels it would be in the best interest of orderly conduct if the procedure indicated by the Chair is followed.

Parliamentarian's Note: Although several points of order against a proposition may be pending at the same time, the Chair may choose any one of them as a basis for ruling out the proposition without citing the remaining points of order. The Chair would normally follow the principle that he should avoid making an unnecessary ruling, if possible, by ruling first on points of order which he would sustain, thereby rendering moot the remaining points of order.

Multiple Points of Order Against Paragraph, Chair May Be Selective in Ruling

§ 1.10 Every argument raised against a paragraph in an appropriation bill need not be addressed when the Chair responds to a point of order; and if the language is subject to one point of order, since it is unauthorized by law, he need not refute other assertions not necessary to reach this decision.

1. 82 CONG. REC. 1579, 75th Cong. 2d Sess.
2. John W. McCormack (Mass.).

On Sept. 23, 1993,[3] the Department of Transportation appropriation bill for fiscal 1994 was being read for amendment. By unanimous consent, the Committee permitted a return to a paragraph already passed in the reading. A point of order was raised against the paragraph and the proceedings were as shown.

THE CHAIRMAN:[4] The Chair would advise the gentleman that the Clerk was beginning to read the paragraph beginning on line 16, page 21, but had not commenced the reading of that paragraph.

MR. [NORMAN Y.] MINETA [of California]: Let me ask about page 21, lines 1 through 7.

THE CHAIRMAN: That section has been read.

MR. MINETA: Mr. Chairman, I did not hear that portion being read, and I have a point of order on that provision.

THE CHAIRMAN: The Chair would advise the gentleman that that section of the bill has been passed in the reading and would ask the gentleman if he desires to make a unanimous-consent request that the Committee return to that section.

MR. MINETA: Since I did not, and I believe other Members have not heard that portion read, Mr. Chairman, I would ask unanimous consent that that portion be read for consideration at this point.

THE CHAIRMAN: Is there objection to the request of the gentleman from California? . . .

There was no objection.

THE CHAIRMAN: The Committee will return to line 1 on page 21.

The Clerk will read.

The Clerk read as follows:

KENTUCKY BRIDGE PROJECT

(HIGHWAY TRUST FUND)

For up to 80 percent of the expenses necessary for continuing construction to replace the Glover Cary Bridge in Owensboro, Kentucky, $12,000,000, to be derived from the Highway Trust Fund and to remain available until September 30, 1997. . . .

THE CHAIRMAN: Are there any points of order to be raised to that language?

POINT OF ORDER

MR. MINETA: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. MINETA: Mr. Chairman, I raise a point of order against page 21, lines 1 through 7, on the basis that this provision violates clause 2 of rule XXI. First of all, this project is unauthorized. And while there have been previous appropriations, the project has never been authorized by law.

In addition, the period of funding availability until September 30, 1997, is not authorized.

Also, this provision appropriates money out of the highway trust fund, contrary to section 9503(C)(1) of the Internal Revenue Code. That section provides that the highway trust fund may only be used to fund programs authorized in the Highway Acts of 1956, 1982, 1987, and 1991. Thus, because this provision provides funding from

3. 139 CONG. REC. 22172, 22173, 103d Cong. 1st Sess.

4. Rick Boucher (Va.).

the highway trust fund for a project not authorized by one of these laws, it has the effect of changing existing law, and, therefore, is in violation of rule XXI.

Finally, this provision does not come within the exception to rule XXI, clause 2(A), for continuation of appropriations for public works and objects which are already in progress.

It is clear from the precedents that the exception is narrowly construed and has been applied only to Federal projects. As applied specifically to highways, the precedents have required that the United States actually hold title to the road. The project in this paragraph does not meet this test. Thus, Mr. Chairman, for the reasons enumerated above, lines 1 through 7 on page 21 are in violation of rule XXI and subject to a point of order.

THE CHAIRMAN: Does the gentleman from Michigan [Mr. Carr] desire to be heard?

MR. [BOB] CARR of Michigan: Mr. Chairman, I do. This falls within the exceptions in rule XXI for works in progress, and we would ask the Chair to rule.

THE CHAIRMAN: Do other Members desire to be heard on the point of order?

The Chair is prepared to rule.

The gentleman from California [Mr. Mineta] makes the point of order that the funds appropriated in the paragraph entitled "Kentucky Bridge Project" are unauthorized and thus in violation of clause 2 of rule XXI. The gentleman from Michigan has argued that although the funds are indeed unauthorized they are in order under the exception to clause 2 of rule XXI which allows unauthorized appropriations to continue funding public works and objects which are already in progress, referred to as the "works-in-progress exception." The Chair need not rule on whether this project is exclusively a federally-owned project.

The legal authority for expending highway trust funds is outlined in section 9503(c) of the Internal Revenue Code. That section states in positive terms that highway trust fund moneys shall be available where authorized by specific enumerated acts. The paragraph in question circumvents that requirement. Deschler's Precedents, volume 8, chapter 26, section 8.9, stands for the proposition that the works-in-progress exception may not be invoked to circumvent existing law. Therefore, the Chair sustains the point of order.

Multiple Reasons for Sustaining a Point of Order

§ 1.11 Any number of reasons may be advanced at one time to determine whether a matter is subject to a point of order.

On Apr. 5, 1946,[5] Mr. Adam C. Powell, Jr., of New York, offered an amendment to a general appropriation bill prohibiting the use of the funds therein provided to any office, agency, or department of the District of Columbia which

5. 92 CONG. REC. 3227, 79th Cong. 2d Sess. Under consideration was H.R. 5990, a District of Columbia appropriation bill for fiscal 1947.

segregated the citizens of the District on the basis of race, color, creed, or place of national origin. Several points of order based upon the germaneness rule [Rule XVI clause 7, *House Rules and Manual* § 794 (1997)] and upon the rule precluding legislation on a general appropriation bill [Rule XXI clause 2(b), *House Rules and Manual* § 834b (1997)] were immediately raised against the amendment.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[6] The gentleman will state the point of order.

MR. RANKIN: Mr. Chairman, I make the point of order that the amendment is not germane, and that it is legislation on an appropriation bill, in that it attempts to change the fundamental laws of the District of Columbia. . . .

MR. [JOHN M.] COFFEE [of Washington]: Mr. Chairman, I make the point of order that the amendment proposes to incorporate a legislative provision in an appropriation bill that does not come within the purview of the Holman rule and that it sets up an affirmative agency in the law.

MR. [HOWARD W.] SMITH of Virginia: Mr. Chairman, I desire to add further points of order upon which I should like to be heard at a later time in the discussion.

These points of order led to the following exchange, which is illustrative of the rule:

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. MARCANTONIO: Then there will be two points of order pending at the same time.

THE CHAIRMAN: Any number of reasons can be given for the point of order.

Chair's Obligation in Case of Multiple Points of Order

§ 1.12 If several points of order are made against an amendment and the Chair sustains one of them, it is not necessary that he rule on the remainder as the amendment is no longer pending.

When the State, Justice, Commerce, and Judiciary appropriation bill for fiscal 1979 was under consideration in the Committee of the Whole on June 14, 1978,[7] an amendment, phrased as a restriction of all funds in the bill for certain types of advertising of unsafe products, was offered by Mr. Mark Andrews, of North Dakota. Mr. Bob Eckhardt, of Texas, raised two points of order against the amendment. The proceedings were as indicated:

MR. ANDREWS of North Dakota: Mr. Chairman, I offer an amendment.

6. Aime J. Forand (R.I.).

7. 124 CONG. REC. 17644, 17646, 17647, 95th Cong. 2d Sess.

The Clerk read as follows:

> Amendment offered by Mr. Andrews of North Dakota: on page 51 after line 16, insert the following:
>
> SEC. 605. Except for funds appropriated to the Judiciary in title IV of this act, no part of any appropriation contained in this act may be used to pay the salary or expenses of any person to limit the advertising of: (1) any food product that contains ingredients that have been determined to be safe for human consumption by the Food and Drug Administration or are considered to be "Generally Recognized as Safe" (GRAS) and does not contain ingredients that have been determined to be unsafe for human consumption by the FDA; (2) any toy which has not been declared hazardous or unsafe by the Consumer Product Safety Commission.

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

THE CHAIRMAN:[8] The gentleman from Texas (Mr. Eckhardt) reserves a point of order. . . .

Does the gentleman from Texas (Mr. Eckhardt) desire to press his point of order?

MR. ECKHARDT: I do, Mr. Chairman.

THE CHAIRMAN: The gentleman will state his point of order.

MR. ECKHARDT: The amendment is legislation on an appropriation bill, and as such is subject to a point of order under rule XXI, clause 2.

Mr. Chairman, it is provided in the very first section of Deschler on this particular point that:

> When an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make new investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

That is the main thrust of my point of order but I also believe that in the colloquy it becomes rather apparent that this amendment was directed at the Federal Trade Commission section of the bill which has come out. Therefore, I would also offer alternatively, or additionally, the point of order that this is not germane to the bill as it is now before us.

On that latter objection, which I will speak to only very briefly, the argument and the thrust of the amendment clearly goes toward rulemaking authority. But I should primarily like to speak on the point of order based on the proposition that I just read, that is, that this constitutes legislation on an appropriations bill and gives to officers of the Government very, very large additional duties as the result of the passage of this amendment, should it be passed.

I point primarily to the case which I believe is directly in point. On June 21, 1974, there was a point of order made by the gentleman from California (Mr. Moss) to a provision in the appropriations bill at that time, section 511. The gentleman from California (Mr. Moss), asserted that the language would impose additional duties on every agency subject to the bill and was legislation on an appropriation. The language of the section was as follows:

> Except as provided in existing law, funds provided in this act shall be

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

> available only for the purposes for which they are appropriated.

Mr. Moss correctly pointed out that if that provision was sustained, it would be necessary in the use of any funds by an agency involved to go back and show that the Appropriations Committee had addressed the specific object of the use of those funds. The gentleman from California (Mr. Moss), pressed that point very strongly. The gentleman from Mississippi (Mr. Whitten) then contended that he considered this only as limiting the legislation to existing law, and the present speaker joined in supporting the Moss point of order.

I said at that time that as I understood the gentleman from Mississippi, Mr. Whitten's, position on the provision, it meant that each of the specific appropriations would have to be considered with respect to the process brought forth in that committee's hearings.

The Chair ruled as follows:

> The Chair is prepared to rule on the point of order. If the language means what the gentleman from Mississippi now says it does, then the language is a nullity because it just repeats existing law. The Chair is of the opinion, though, that there is a possibility, as earlier indicated during general debate and as suggested by the gentleman from California, that the amendment imposes an additional burden, and the Chair, therefore, sustains the point of order.

There are a number of cases, of course, in Deschler around this area that I have cited that bear out the point that I have made, but I know that the Chair is familiar with the general proposition and I shall not recite them. But I do want to say and show on that point of order if its facts should be sustained, then our contention that there is an additional burden on administrators is demonstrated in spades in this amendment. This amendment says that none of the funds appropriated "in this act may be used to pay the salary or expenses of any person to limit the advertising of: First, any food product that contains ingredients that have been determined to be safe for human consumption by the Food and Drug Administration or are considered to be 'generally recognized as safe.'."

The Food and Drug Administration does not list food products as safe or unsafe. The Food and Drug Administration only determines whether or not ingredients in food products are safe or unsafe. Therefore, if this restriction were placed in law, it would be necessary for an agency like the Federal Communications Commission, when it is determining whether or not funds might be used in order to take some action respecting unsafe foods, to look to see what ingredients were included in the particular food involved. In other words, the Federal Communications Commission would have to exercise the same type of expertise, the same type of technical research that the other agency has had to go through. In addition to this, the amendment says that none of these funds can be used with regard to any toy which has not been declared hazardous or unsafe by the Consumer Product Safety Commission. The Consumer Product Safety Commission does not list specific toys as unsafe.

The Consumer Product Safety Commission determines what minimum design or what minimum standards, per-

formance standards, are necessary in order for a toy to be permitted to go on the market. For instance, a toy that melts lead to make toy soldiers might be unsafe because of the method in which it melts the lead and exposes persons to heat.

The point, though, is that the Commission does not establish that this particular toy is unsafe. If we pass this restriction, we would place the burden on the FTC to go in and look at every toy and then apply the standards of the Consumer Product Agency to those toys to find out whether they could be advertised.

So, Mr. Chairman, I think this is a classic example of placing on every agency to whom this restriction would apply very extensive duties beyond that which they are now called upon to exercise.

In addition, it would place the same burden on other agencies, like the Consumer Product Safety Commission, to change their rules to make different modes of establishing and identifying unsafe toys.

Mr. Chairman, I urge that the point of order be sustained.

THE CHAIRMAN: Does the gentleman from North Dakota (Mr. Andrews) desire to be heard on the point of order?

MR. ANDREWS of North Dakota: I do, Mr. Chairman.

Mr. Chairman, it is clear that the House of Representatives has accepted as "in order" amendments to appropriations bills which are negative prohibitions, descriptive of employment not mandated by law which may not be undertaken if those individuals are to be compensated by funds in the bill.

This type of amendment is clearly described in Deschler's Procedure. The following are two examples of such an amendment:

On June 21, 1974, the House held in order an amendment by Representative Whitten of Mississippi to limit funds used by the FTC to collect line of business data.

On October 9, 1974, the House held in order an amendment to prohibit EPA from using funds to tax, limit or regulate parking facilities.

Mr. Chairman, addressing the question of germaneness, the House Manual, section 795, states that an amendment in the form of a new paragraph must be germane to the bill as a whole.

It certainly is, because the bill contains funding for the Federal Communications Commission, which is the only agency which has so far put in detail an investigation of this type of action.

Second, addressing the issue of legislation on an appropriation bill, to implement the limitation the agency only need examine information which it now receives under existing laws; so there are no additional substantive duties, judgments or determinations.

Therefore, since this amendment is based on a clearly discernible standard and since chapter 25, section 10.4 says:

> Where the manifest intent of a proposed amendment is to impose a limitation on the use of funds appropriated in the bill, the fact that the administration of the limitation will impose certain incidental but additional burdens on executive officers does not destroy the character of the limitation.

Mr. Chairman, based on this, I feel that the amendment is in order. I would hope the Chair would rule accordingly.

THE CHAIRMAN: Does the gentleman from Washington (Mr. Dicks) desire to be heard on the point of order?

MR. [NORMAN D.] DICKS [of Washington]: I do, Mr. Chairman.

Mr. Chairman, just to reiterate on this point, this amendment was aimed at limiting the Federal Trade Commission. Now that that section has been stricken, the only way it can apply is to the FCC. The FCC does not have to regulate itself for advertising. That jurisdiction falls within the jurisdiction of the Federal Trade Commission.

Therefore, it creates new legal duties for the FCC, which are beyond the scope of an appropriation bill, which makes it legislation within an appropriation bill and, therefore, subject to rule XXI, clause 2.

Also the ruling made by the Consumer Product Safety Commission is accurate. The language does not go to unsafe toys, and they would have additional duties created by this amendment.

Mr. Chairman, I also believe that clause 2, rule XXI, applies in this case.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Texas (Mr. Eckhardt) makes the point of order that the amendment offered by the gentleman from North Dakota (Mr. Andrews) constitutes legislation on an appropriation bill. In addition, he makes the point that because it was drafted originally to be applicable to the Federal Trade Commission and that section of the bill has been stricken, it is no longer germane to the bill.

The Chair does not find it necessary to rule, however, on the point of germaneness.

The amendment would prohibit use of any funds in the bill to limit advertising of food products and toys in relation to which determinations have been made by the Food and Drug Administration and the Consumer Product Safety Commission. As indicated by the arguments made on the point of order, this bill now contains no funds for the Federal Trade Commission but does contain funds for the Federal Communications Commission. The Chair feels it is necessary to lay that basis in order to determine whether the amendment requires new duties or determinations of a particular agency which are not now required by law.

The Federal Communications Commission has the authority under the law to regulate interstate and foreign communications and transmissions in wire and radio, but existing law contains no mandate that the Commission consider whether food and toy products are safe or unsafe in regulating broadcasts within its jurisdiction. The amendment would disallow funds for the Commission to limit advertising of certain products, even if the purpose for such regulatory limitations was totally unrelated to the safety of the product in question. In considering any proposal to limit advertising of food or toy products, the Commission would be required to first determine the scope and extent of determinations of other agencies on the safety of those products, and it is far from clear whether such determinations are readily available or sufficiently certain to determine whether the limitation would apply in a particular case.

Furthermore, in relation to food products, the Commission would have to determine whether the finished food

product contained ingredients which have been declared safe if the Food and Drug Administration had made no determination on the safety of such a finished product.

The Chair would also note that the amendment would prohibit advertising of food products containing ingredients considered to be generally recognized as safe, without specifically indicating whether that determination is to be made by the FDA or by the Federal Communications Commission.

For the reasons stated, the Chair finds that the amendment would impose substantial new duties and requirements on the Federal Communications Commission beyond its authorities under existing law and, therefore, sustains the point of order.

Points of Order Against En Bloc Amendments

§ 1.13 Where amendments to the pending paragraph of an appropriation bill and to the following section were, by unanimous consent, considered en bloc, a point of order was lodged against both amendments based on identical legislative language therein and was sustained by the Chair.

On July 31, 1969,[9] where amendments to a bill were considered en bloc in the Committee of the Whole, Chairman Chet Holifield, of California, ruled simultaneously on points of order against two amendments containing identical language.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer amendments and I ask unanimous consent that the amendments be considered en bloc.

THE CHAIRMAN: Is there objection to the request of the gentleman from Massachusetts?

There was no objection. . . .

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I wish to make a point of order against the amendment.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. SIKES: Mr. Chairman, it appears to me that the rulings of the Chair heretofore on this bill this afternoon show clearly that this is legislation on an appropriation bill. . . .

THE CHAIRMAN: The Chair is prepared to rule. The Chair recognizes that this is a very difficult matter. The proposed amendment for section 408 is different from section 408 of the bill in that it has added the words "in order to overcome racial imbalance.". . .

MR. CONTE: Mr. Chairman, may I be heard for a minute?

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman, regular order.

THE CHAIRMAN: The gentleman will please desist until the Chair has finished his ruling on the second amend-

9. 115 CONG. REC. 21675, 91st Cong. 1st Sess. Under consideration was H.R. 13111, the Departments of Labor and Health, Education, and Welfare appropriations for fiscal 1970.

ment because they are being considered en bloc.

The additional words in the amendment to section 409 are "in order to overcome racial imbalance" and this clearly requires additional duties on the part of the officials. Therefore, it is not negative in nature and is legislation on an appropriation bill.

The Chair, therefore, sustains the point of order.

§ 1.14 If a point of order is sustained against any portion of a package of amendments being considered "en bloc" on a general appropriation bill, all the amendments are ruled out and those not subject to a point of order must be reoffered separately.

On Sept. 16, 1981,[10] the House had under consideration the military construction appropriations for fiscal 1982. Amendments were offered, and by unanimous consent, were considered en bloc. The proceedings are carried below.

MR. [RONALD B. (BO)] GINN [of Georgia]: Mr. Chairman, I ask unanimous consent that the bill be considered as read and open to amendment at any point.

THE CHAIRMAN:[11] Is there objection to the request of the gentleman from Georgia?

There was no objection.

THE CHAIRMAN: Are there any points of order against the bill? The Chair hears none. . . .

MR. [M. CALDWELL] BUTLER [of Virginia]: Mr. Chairman, I offer amendments, and I ask unanimous consent that these amendments be considered en bloc.

THE CHAIRMAN: Is there objection to the request of the gentleman from Virginia?

There was no objection. . . .

Amendments offered by Mr. Butler: Page 2, line 11, strike out "$1,029,519,000" and insert in lieu thereof "$1,009,276,400".

Page 3, line 6, strike out "$1,404,883,000" and insert in lieu thereof "$1,354,096,100" . . .

Page 6, line 16, strike out "$36,000,000" and insert in lieu thereof "$34,345,000".

Page 6, line 22, strike out "$37,400,000" and insert in lieu thereof "$35,855,000".

Page 14, after line 13, insert the following new section:

SEC. 123. The provisions of the Act of March 3, 1931 (40 U.S.C. 276a-276a-5; 46 Stat. 1494), commonly referred to as the Davis-Bacon Act, shall not apply to the wages paid to laborers and mechanics for any work or services performed under any contract entered into on or after the date of enactment of this Act for the construction of any project funds for which are appropriated by this Act.

POINT OF ORDER

MR. GINN: Mr. Chairman, I make a point of order against the amendments.

THE CHAIRMAN: The gentleman will state his point of order.

MR. GINN: Mr. Chairman, I make a point of order against the amendments because they constitute legislation in

10. 127 CONG. REC. 20735–38, 97th Cong. 1st Sess.

11. Philip R. Sharp (Ind.).

an appropriations bill, which is in violation of clause 2, rule XXI.

The amendments proposed constitute a change in existing law, which under House rules is not allowed through an appropriations bill.

The amendments are legislative in nature and are in violation of clause 2, rule XXI. Therefore, Mr. Chairman, I ask for a ruling from the Chair. . . .

MR. [THOMAS F.] HARTNETT [of South Carolina]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. HARTNETT: We do not have a whole lot of on-the-job training for new Members who just arrived in the 97th Congress. In the event I would want to raise a point of order, as did the distinguished chairman from Georgia, that the amendment is what I would call double or triple barreled, that I, as a Member, although I may want to vote for some of the changes that are proposed by the gentleman from Virginia (Mr. Butler) in his amendment to the bill, I may not want to vote for others.

My inquiry is: Is this amendment being offered as one amendment, and if it is, would the point of order be in order that the amendment was not properly drawn and that I was being precluded from voting for—I would have to vote for or against all of them where, in fact, I may want to vote for one or the other?

THE CHAIRMAN: The Chair will respond to the gentleman's inquiry by stating that the gentleman from Virginia has already gotten unanimous consent to offer his amendments en bloc. However, if a point of order is sustained against those amendments or any portion thereof, under the precedent the remaining amendments will have to be reoffered, at which point the gentleman from Virginia will again have to ask permission to have them offered en bloc. If that is denied, then the amendments would have to be offered individually.

MR. HARTNETT: Mr. Chairman, what you are telling me is, in order for the gentleman from Virginia to offer a series of amendments like that, the gentleman has to obtain unanimous consent prior to doing that or, in fact, he would have to offer each one of them individually?

THE CHAIRMAN: The gentleman is correct. The very first action the gentleman from Virginia engaged in was to ask for such unanimous consent.

MR. HARTNETT: I thank the Chair.

Multiple Points of Order Against Paragraph in General Appropriation Bill

§ 1.15 Where two points of order are made against a paragraph in a general appropriation bill which has just been read, one against a proviso in the paragraph and the other against the totality of the paragraph, it is the broader point of order which the Chair must address and upon which he must rule.

During the reading for amendment of the supplemental appropriation bill, fiscal 1978, on Oct. 19, 1977,[12] a paragraph dealing

12. 123 CONG. REC. 34245, 34246, 95th Cong. 1st Sess.

with the Federal Energy Administration was read by the Clerk. Mr. Frank Horton, of New York, made a point of order against a proviso in the paragraph which contained a waiver of existing law. Mr. Robert L. Ottinger, of New York, then raised a point of order against the entire paragraph, addressing not only the change in law highlighted by Mr. Horton, but the unauthorized items funded in the paragraph. Chairman Sam Gibbons, of Florida, ultimately ruled out the entire paragraph.

THE CHAIRMAN: The Clerk will read. The Clerk read as follows:

RELATED AGENCIES

FEDERAL ENERGY ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $293,611,000, of which $266,145,000 shall become available only upon enactment of authorizing legislation as follows: (1) for conservation grants for schools and health care facilities, $200,000,000; for conservation grants for local government buildings, $25,000,000; for grants for financial assistance to utility regulatory commissions, $11,250,000; for solar heating and cooling installations in federal buildings, $25,000,000; to remain available for obligation until September 30, 1979; and (2) for administration of grants for schools and health care facilities, local government buildings, and utility rate reform, $1,480,000; and for a federal vanpooling program, $3,415,000: *Provided* That of the total amount of this appropriation, not to exceed $6,000,000, shall remain available until expended for a reserve to cover any defaults from loan guarantees issued to develop underground coal mines as authorized by Public Law 94–163: *Provided further*, That the indebtedness guaranteed or committed to be guaranteed under said law shall not exceed the aggregate of $62,000,000: *Provided further*, That notwithstanding 31 U.S.C. 638a(c)(2) government-owned vehicles may be used to initiate vanpool demonstration projects.

MR. HORTON: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. HORTON: Mr. Chairman, I make a point of order against the portion of this chapter which appropriates funds for a Federal vanpooling program. The appropriation is contained in lines 15 and 16 of page 8—in the words "; and for a Federal vanpooling program, $3,415,000". Related language, to which my point of order should also apply since these words have no meaning in the bill except as they pertain to the vanpooling appropriation, is contained in lines 23 and 24 of page 8 and lines 1 and 2 of page 9:

> *Provided further*, That notwithstanding 31 U.S.C. 638a(c)(2) government-owned vehicles may be used to initiate vanpool demonstration projects.

Mr. Chairman, these provisions violate rule XXI, clause 2, of the Rules of the House. This rule states, in pertinent part:

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in

continuation of appropriations for such public works and objects as are already in progress.

A Federal vanpooling program has never been authorized and is not now in progress. In fact, the House has rejected such a program twice, the second time by an even larger margin than the first. We considered vanpooling as section 701 of H.R. 8444, the National Energy Act, in August of this year. I moved to strike that section from the bill, and my amendment carried with strong bipartisan support, 232 to 184. When the bill was reported back to the House by the Committee of the Whole, a separate vote was demanded on my amendment. In the separate vote, the amendment was agreed to by a vote of 239 to 180.

Mr. Chairman, I am opposed to the House creating by a few words in an appropriation bill a program which it has twice explicitly rejected in the past. That is why I have raised this point of order against H.R. 9375's appropriation of funds for a Federal vanpooling program.

MR. OTTINGER: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. OTTINGER: Mr. Chairman, I make a point of order against the portion of the bill H.R. 9375 appropriating salaries and expenses for the Federal Energy Administration.

The particular provision appropriates $266,145,000 for several purposes all of which are prefaced by the phrase that such appropriation is subject to "enactment of authorizing legislation."

The purposes are:

Conservation grants for schools and health care facilities, $200 million;

Conservation grants for local government buildings, $25 million;

Grants for financial assistance to utility regulatory commissions, $11,250,000;

Solar heating and cooling installations in Federal buildings, $25 million;

Administration of grants for schools and health care facilities, local government buildings, and utility rate reform, $1,480,000; and

Federal vanpooling programs, $3,415,000.

Mr. Chairman, rule XXI, clause 2, provides that no appropriations shall be reported in any general appropriation bill for any expenditure not previously authorized by law. All of the above provisions are unauthorized. They are now a part of the versions of the National Energy Act legislation pending in the House and the Senate. The vanpooling provision was soundly rejected by the House last August in connection with H.R. 8444. The precedents show that an authorization must be enacted before the appropriation may be included in an appropriation bill. Thus, delaying the availability of an appropriation pending enactment of the authorization, as is done in H.R. 9375, does not protect the item of appropriation against the point of order under rule XXI, clause 2. See, *Congressional Record*, April 26, 1972, page 14455. See also, 114 *Congressional Record*, 15354, 90th Congress, second session, May 28, 1968, where it was ruled that an appropriation for a maritime ship construction operation and research not yet authorized by law for the fiscal year of the appropriation was

conceded to be unauthorized and was ruled in violation of rule XXI, clause 2. . . .

THE CHAIRMAN: Does any other Member desire to be heard?

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I think I should respond to the point of order. The gentleman is correct insofar as the point of order is concerned. The purpose of the subcommittee in placing these appropriations in this bill was in order to expedite the activities of the Federal Energy Administration at a critical time. It is my understanding that the conferees for both the House and the Senate have very nearly reached agreement on the bill.

The action of the gentleman in offering the point of order, in my judgment, will slow down the activities of the Federal Energy Administration. However, let me say that as far as the point of order itself is concerned, we are constrained to concede it. . . .

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

THE CHAIRMAN: The gentleman will state it.

MR. BAUMAN: Exactly what lines were stricken by the point of order?

THE CHAIRMAN: The point of order requests the striking of the language on page 8, line 2, through page 9, line 2; the entire section.

MR. YATES: Up to the line, "strategic petroleum reserve."

THE CHAIRMAN: Does anyone else desire to be heard on the point of order?

MR. HORTON: Mr. Chairman, I did not understand what the Chair said as to the language that is to be stricken.

THE CHAIRMAN: The language the gentleman from New York (Mr. Ottinger) wishes to be stricken on the point of order is the language beginning on page 8, line 2, going through page 9, line 2. All of that language, which includes the part the gentleman from New York (Mr. Horton) has raised his point of order against.

MR. HORTON: Mr. Chairman, I thank the Chair.

THE CHAIRMAN: The Chair is prepared to rule.

The point of order has been conceded, and the point of order is sustained. The language on page 8, line 2, through page 9, line 2, is stricken.

Effect of Sustaining Point of Order Against Part of Paragraph in Appropriation Bill

§ 1.16 When part of a pending paragraph in a general appropriation bill is subject to be stricken on a point of order as being legislation, the entire paragraph is also subject to a point of order.

On Apr. 15, 1957,[13] in the Committee of the Whole, Chairman Howard W. Smith, of Virginia, found it necessary to sustain a point of order against an entire paragraph after sustaining one against language in part of it.

MR. [ROBERT E.] JONES [Jr.] of Alabama: Mr. Chairman, a point of order.

13. 103 CONG. REC. 5684–86, 85th Cong. 1st Sess. Under consideration was H.R. 6870, the Second Urgent Deficiency Appropriations Act of 1957.

THE CHAIRMAN: The gentleman will state it.

MR. JONES of Alabama: Mr. Chairman, I make a point of order against the language commencing on page 2, line 23, after the words, "as amended" and reading: "And to be made available from the loan authorization contained in section 606(a) of the act of August 7, 1956 (Public Law 1020).". . .

I submit that this is legislation on an appropriation bill and is subject to a point of order. . . .

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the entire paragraph on loan authorizations. . . .

MR. JONES of Alabama: I insist on the point of order, Mr. Chairman.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, we concede the point of order.

MR. BOW: I insist on my point of order, Mr. Chairman.

THE CHAIRMAN: The Chair is prepared to rule.

The point of order made by the gentleman from Alabama on line 23, page 2, is against the three lines beginning with the word "and" as being legislation upon an appropriation bill, which it obviously is.

Now, the gentleman from Ohio, however, offers a point of order against the entire paragraph. As the language which is sought to be stricken by the gentleman from Alabama is subject to a point of order and is part of the paragraph, then the whole paragraph is subject to a point of order, and the Chair is constrained to sustain both points of order.

§ 1.17 If any part of a paragraph of an appropriation bill is subject to a point of order, it is sufficient for the rejection of the entire paragraph.

On Mar. 15, 1945,[14] after it was conceded, in the Committee of the Whole, that certain lines in a paragraph were subject to a point of order, the Chair sustained a point of order against the entire paragraph.

THE CHAIRMAN:[15] Does the gentleman from Michigan [Mr. Rabaut] desire to be heard?

MR. [LOUIS C.] RABAUT: Mr. Chairman, I think the point of order might apply to the language appearing in lines 20 and 21. That is because of the excesses.

THE CHAIRMAN: Permit the Chair to understand the gentleman. The gentleman concedes that the language in lines 20 and 21 is bad and subject to a point of order?

MR. RABAUT: Yes.

THE CHAIRMAN: Does the gentleman from Kansas [Mr. Rees] insist on his point of order against the entire paragraph? . . .

MR. [EDWARD H.] REES of Kansas: I insist on the point of order to the entire paragraph, Mr. Chairman.

THE CHAIRMAN: In view of the fact that certain language in the paragraph is conceded to be subject to a point of

14. 91 CONG. REC. 2305, 79th Cong. 1st Sess. Under consideration was H.R. 2603, a State, Justice, Commerce, Judiciary, and Federal Loan Agency appropriation for 1946.

15. Wilbur D. Mills (Ark.).

order, the entire paragraph is subject to a point of order.

The Chair sustains the point of order.

§ 1.18 A point of order may be made against a part of a paragraph in a general appropriation bill and, if sustained, will not affect the remainder of such paragraph if no point of order is made against it.

On Mar. 30, 1954,[16] in the Committee of the Whole, Mr. Jacob K. Javits, of New York, raised a point of order against only part of a paragraph, but declined to make his point of order against the remainder of the paragraph. Chairman Louis E. Graham, of Pennsylvania, then ruled that only the affected language was out of order and the balance of the paragraph would remain.

The Clerk read as follows: . . .

MR. JAVITS: Mr. Chairman, I make a point of order against the proviso appearing on page 28, lines 13 to 18, on the ground it is legislation on an appropriation bill.

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

MR. [JOHN] PHILLIPS [of California]: No, Mr. Chairman. I think we are compelled to concede the point of order and I submit an amendment to replace it. . . .

THE CHAIRMAN: The Chair sustains the point of order.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. WHITTEN: Mr. Chairman, is it possible to make a point of order to one part of a paragraph and have it limited to that particular part?

THE CHAIRMAN: A Member may make a point of order to any objectionable language in the paragraph.

MR. WHITTEN: Separating it from the remainder of the paragraph?

THE CHAIRMAN: Yes.

Effect of Sustaining Point of Order Against Portion of Amendment

§ 1.19 A point of order against a portion of an amendment to a general appropriation bill is sufficient, if sustained, to rule out the entire amendment.

On June 25, 1976,[17] during consideration of the Interior appropriation bill, fiscal 1977, an amendment of two parts was offered to the pending paragraph and one following. The amendments were, by general consent, considered en bloc. A point of

16. 100 CONG. REC. 4108, 4109, 83d Cong. 2d Sess. Under consideration was H.R. 8583, the independent offices appropriations bill of 1955.

17. 122 CONG. REC. 20551, 94th Cong. 2d Sess.

order was directed specifically against one portion of the amendments.

MR. [GILBERT] GUDE [of Maryland]: Mr. Chairman, I offer amendments.

The Clerk read as follows:

> Amendments offered by Mr. Gude: Amendment No. 1: Page 10, line 2, strike out "$272,635,000." and insert in lieu thereof "$284,399,871, except that $856,000 of this appropriation shall be available for obligation only upon the enactment into law of authorizing legislation providing for the establishment of the Valley Forge National Historical Park in the Commonwealth of Pennsylvania."
>
> Amendment No. 2: Page 10, beginning on line 19, strike out "$37,228,000" and insert in lieu thereof "$44,228,000".

MR. GUDE (during the reading): Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record, and that they be considered en bloc.

THE CHAIRMAN:[18] Is there objection to the request of the gentleman from Maryland?

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, reserving the right to object, I want to make a point of order against the amendments, and I do not know whether my rights are protected if I consent to the unanimous-consent request. So I object.

THE CHAIRMAN: Objection is heard. The Chair will protect the gentleman on his point of order.

The Clerk will read.

The Clerk concluded reading the amendments.

MR. YATES: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Maryland (Mr. Gude), as it violates clause 2, rule XXI, which states in part that:

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

Mr. Chairman, the amendment offered by the gentleman from Maryland (Mr. Gude) specifically provides for the allocation of funds for the Valley Forge National Historical Park. There is no authorization for the Valley Forge National Historical Park.

THE CHAIRMAN: Does the gentleman from Maryland wish to be recognized on the point of order?

MR. GUDE: I do, Mr. Chairman.

Mr. Chairman, the amendment reads that the money will be allocated to the Park Service. The fact that a part of it would be available for the Valley Forge Park I do not feel works to the entire amendment being out of order.

MR. [ROY A.] TAYLOR of North Carolina: Mr. Chairman, will the gentleman yield?

MR. GUDE: I yield to the gentleman from North Carolina (Mr. Taylor).

MR. TAYLOR of North Carolina: I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman is correct in stating that the authorization for Valley Forge National Historical Park has not yet become law. It has passed the House. In all probability, it shall become law. The act provides for the transfer to take place as of the beginning of the fiscal year 1977. We wanted the State

18. Walter Flowers (Ala.).

of Pennsylvania to operate it under this law. The fact is that we are going to have to have more personnel in order to have this park. Are we just going to have to take them away from other parks and spread the existing personnel more thin? They are too thin now.

MR. YATES: Mr. Chairman, I insist upon my point of order.

I cite, additionally, the following language:

> Delaying the availability of an appropriation pending enactment of an authorization does not protect the item of appropriation against a point of order under this clause.

THE CHAIRMAN: A point of order has been interposed against the amendment offered by the gentleman from Maryland (Mr. Gude).

The amendment offered by the gentleman from Maryland contemplates in its own language that there has been no authorization which has become law and, inasmuch as the point of order must be sustained to that part of it, under Deschler's chapter 26, section 8.1, it would apply to the entire amendment. The Chair must sustain the point of order raised by the gentleman from Illinois (Mr. Yates).

If Part of Amendment Is Legislative, the Whole Can Be Ruled Out

§ 1.20 If any portion of an amendment on a general appropriation bill constitutes legislation, the entire amendment is out of order.

On Aug. 7, 1978,[19] Chairman Dan Rostenkowski, of Illinois, ruled out an amendment, the first part of which might have qualified as a proper limitation but which was tainted by language in the amendment restricting discretion on the part of federal officials. The amendment, the point of order, and the ruling are set forth herein.

MR. JOHN T. MYERS [of Indiana]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. John T. Myers: On page 8, after line 10, add the following new section:
>
> None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses during the current fiscal year in connection with the demilitarization of any arms as advertised by the Department of Defense, Defense Logistics Agency sale number 31–8118 issued January 24, 1978, and listed as "no longer needed by the Federal Government" and that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308. . . .

MR. [ABNER J.] MIKVA [of Illinois]: Mr. Chairman, I make a point of order on the amendment.

THE CHAIRMAN: The gentleman will state his point of order.

MR. MIKVA: Mr. Chairman, I make a point of order on the amendment on the ground that I believe that it is leg-

19. 124 CONG. REC. 24707, 24708, 95th Cong. 2d Sess.

islation within a general appropriation bill and, therefore, violates the rules of the House.

THE CHAIRMAN: Does the gentleman from Indiana (Mr. John T. Myers) wish to be heard on the point of order?

MR. JOHN T. MYERS: Yes, I do, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes the gentleman from Indiana.

MR. JOHN T. MYERS: Mr. Chairman, this is a simple limitation amendment. It merely limits the Secretary of the Treasury to continue to carry out existing law. It does not provide any new law. It simply says that the Secretary of the Treasury shall carry out the prevailing, existing law.

THE CHAIRMAN: Does the gentleman from Ohio (Mr. Ashbrook) wish to be heard on the point of order?

MR. [JOHN M.] ASHBROOK [of Ohio]: I do, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes the gentleman from Ohio.

MR. ASHBROOK: Mr. Chairman, rule 21, clause 2, of the Rules of the House (House Rules and Manual pages 426–427) specifies that an amendment to an appropriation bill is in order if it meets certain tests, such as:

First. It must be germane;

Second. It must be negative in nature;

Third. It must show retrenchment on its face;

Fourth. It must impose no additional or affirmative duties or amend existing law.

WHY THE AMENDMENT COMPLIES WITH RULE 21

First. It is germane. As the amendment applies to the distribution of arms by the Defense Logistics Agency, it is not exclusively an Army of civilian marksmanship amendment, so should not be placed elsewhere in the bill. The overall Defense Department allocates sale and distribution to various military components (foreign sales, Navy, ROTC, Air Force, Division of Civilian Marksmanship, et cetera). It is therefore proper to place the amendment in the general Defense Department section of the bill: "Operation and maintenance, Defense Agencies."

Second. It is negative in nature. It limits expenditure of funds by the Defense Department by prohibiting the destruction and scrapping of arms which qualify for sale through the civilian marksmanship program, which is a division of the executive created by statute.

Third. It shows retrenchment on its face. Retrenchment is demonstrated in that the Department of Defense if prohibited from expending funds to destroy surplus military arms, and that the arms previously earmarked for destruction will be made available in accordance with existing statute. Actual cost savings is not a necessary element in satisfying the retrenchment test under rule 21. However, the Defense Department has attempted destruction of 290,000 M-1 rifles, leading to the waste by scrapping of a valuable stock of arms. The House, in adding this amendment, will secure additional funds for the Treasury which the General Accounting Office has determined is adequate to pay costs of handling the arms. For example, the M-1 rifles are to be sold at a cost of $110 each. These are the arms most utilized by the civilian marksmanship program. The Defense Department will not be

required to spend additional funds to process the sale of additional arms.

Fourth. Does not impose additional or affirmative duties or amend existing law. Title 10, United States Code, section 4308 provides in part:

> (a) The secretary of the Army, under regulations approved by him upon the recommendation of the National Board for the Promotion of Rifle Practice, shall provide for . . .
>
> (5) the sale to members of the National Rifle Association, at cost, and the issue to clubs organized for practice with rifled arms, ammunition, targets, and other supplies and appliances necessary for target practice . . .

In fact, the Army regulations relating to issuance of these arms contain no caveat that distribution shall be limited to any quantity. (AR 725–1 and AR 920–20.) By passing this amendment, we will see that additional funds are placed in the Treasury—certainly more than by scrapping the arms. Thus, by statute and regulation, such arms must be sold to qualified civilians. This amendment specifies that 290,800 of an available pool of 760,000 arms shall not be destroyed, and shall be available for use by this program. If my amendment prevails, the test as to whether these arms will be distributed will be:

First. Does the applicant qualify under the law?

Second. Are sufficient arms in this pool of 290,800 available for distribution?

Regulations issued (see tab M) AR 725–1 and AR 920–20 provide for the issuance of arms by application and qualification through the Director of Civilian Marksmanship. The DCM shall then submit sale orders for the Armament Readiness Military Command (ARMCOM) to fill the requests of these qualified civilians. Thus, the amendment simply requires the performance of duties already imposed by the Army's own regulation.

Minor administrative ministerial duties required by this amendment will not mandate such affirmative action, so as to exceed the responsibilities already imposed by statute. Assessing needs and communicating the needs by the Board would not cross the threshold so as to raise to the level of a newly created positive duty.

PRECEDENTS SUPPORTING THE OVERRULING OF POINT OF ORDER TO MY MOTION

There is ample precedent for language of this nature. A similar motion was offered by Mr. Myers of Indiana in connection with the curtailment of funds for implementation of an executive order pardoning draft evaders. Mr. Myers' amendment provided that the executive could not expend funds to pardon the evaders. This was an after-the-fact amendment following President Carter's Executive order. My amendment does nothing more than to track the same form of executive limitation as did the Myers amendment of March 16, 1977, when the parliamentarian ruled that amendment in order. This precedent will be found in the *Congressional Record*, pages 7706–7754, on H.R. 4877, a supplemental appropriations bill.

THE CHAIRMAN: Does the gentleman from Illinois (Mr. Mikva) wish to be heard further on the point of order?

MR. MIKVA: I do, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes the gentleman from Illinois.

MR. MIKVA: Mr. Chairman, I particularly call attention of the Chair to the second half of the amendment, which imposes an affirmative duty on the Secretary, saying that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308.

Under the general existing law, there are all kinds of discretions that are allowed to the Secretary to decide whether or not such arms shall be distributed. Under this amendment, the existing law is to be changed and those arms may not be withheld. The practical purpose is to turn lose 400,000 to 500,000 rifles into the body politic.

But the parliamentary effect is clearly to change the existing law under which the Secretary can exercise all kinds of discretion in deciding whether or not those arms will be distributed. Under this amendment it not only limits the fact that the funds may be obligated but it specifically goes on to affirmatively direct the Secretary to distribute such arms under title X, which is an affirmative obligation, which is exactly the kind of obligation the rules prohibit, and I renew my point of order.

MR. JOHN T. MYERS: Mr. Chairman, section 4307 provides for the sale of these surplus weapons. This amendment does nothing more than provide that, in this title of section X.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has read the section to which the gentleman refers, title 10, United States Code, section 4308, and is of the opinion that it does not require that all firearms be distributed to qualified purchasers. The Chair further feels that while the first part of the amendment is a limitation, the last part of the amendment is a curtailment of Executive discretion, and the Chair sustains the point of order.

The Clerk will read.

Effect of Point of Order Sustained Against a Portion of a Paragraph in a General Appropriation Bill

§ 1.21 A point of order, if sustained against a proviso containing legislation in a paragraph in a general appropriation bill, is sufficient to cause the whole paragraph to be stricken, even if the remainder of the paragraph is authorized.

On June 8, 1977,[20] while a general appropriation bill was being read for amendment under the five-minute rule in Committee of the Whole, a paragraph was read pertaining to the care and maintenance of the official residence of the Vice President. A point of order was directed at the proviso carried in the paragraph. Proceedings were as indicated.

The Clerk read as follows:

20. 123 CONG. REC. 17922, 17923, 95th Cong. 1st Sess.

OFFICIAL RESIDENCE OF THE VICE PRESIDENT

OPERATING EXPENSES

For the care, maintenance, repair and alteration, furnishing, improvement, heating and lighting, including electric power and fixtures, of the official residence of the Vice President, $61,000: *Provided* That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities.

MR. [HERBERT E.] HARRIS [II, of Virginia]: Mr. Chairman, I make a point of order against this portion of the bill on the basis previously stated.

THE CHAIRMAN:[1] Does the gentleman from Oklahoma (Mr. Steed) desire to be heard on the point of order?

MR. [TOM] STEED [of Oklahoma]: I do, Mr. Chairman.

Mr. Chairman, in this case there is authorization for the item. In the 93d Congress, Senate Joint Resolution 202, passed July 12, 1974, provides for the inclusion of this item in the bill. It is Public Law 93–346.

THE CHAIRMAN: Let the Chair direct a question to the gentleman from Virginia (Mr. Harris) so that the gentleman may clarify his point.

Against what portion of this paragraph does the gentleman make his point of order?

MR. HARRIS: Mr. Chairman, we are dealing with official entertaining expenses in this item, and that is not authorized under law.

THE CHAIRMAN: To what line is the gentleman referring? Will the gentleman from Virginia (Mr. Harris) explain it so we will know to what specific lines of the paragraph he directs his point of order?

MR. STEED: Mr. Chairman, if I may be heard, I believe the gentleman from Virginia (Mr. Harris) made the point of order against the entire item.

MR. HARRIS: Mr. Chairman, this is the item on the Official Executive Residence of the Vice President, Operating Expenses.

THE CHAIRMAN: Let the Chair state to the gentleman from Virginia (Mr. Harris) that there is authorization for appropriations for the official residence of the Vice President, if that is the point the gentleman is attempting to address in this matter. Therefore, that portion of the paragraph would not be subject to a point of order.

MR. HARRIS: I thank the Chair.

THE CHAIRMAN: The Chair, therefore, overrules the point of order.

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Chairman, I rise to make a point of order.

THE CHAIRMAN: The gentleman from Illinois (Mr. Derwinski) will state his point of order.

MR. DERWINSKI: Mr. Chairman, let me read this to be sure we are speaking of the same item.

I make a point of order against the language of the bill on page 8, lines 20 through 25, and on page 9, lines 1 and 2. That item is entitled "Official Residence of the Vice President—Operating Expenses," and this language violates rule XXI, clause 2, of the Rules of the House. That is the basis for the point of order.

Mr. Chairman, if I may be heard further, we have had previous points of order sustained against this item, and, in fact, in last year's appropriation bill a similar point of order was sustained.

1. B. F. Sisk (Calif.).

THE CHAIRMAN: Let the Chair state that the present occupant of the chair was the occupant of the chair last year and considered the proviso starting on line 25 of page 8 and continuing through line 26 and lines 1 and 2 on page 9. On that basis the point of order was sustained. However, the earlier designation, as the Chair understood the statement of the gentleman from Virginia (Mr. Harris), would not follow, because basically there is authority for the Vice President's residence.

That is the reason the Chair is giving ample opportunity to the Members to clarify the point of order. A point of order was in fact sustained on the proviso mentioned last year. I understand the gentleman from Illinois (Mr. Derwinski) is making a point of order based on that proviso.

MR. STEED: Mr. Chairman, if I may be heard on the point of order, if we read section 3 of this act, it says that the Secretary of the Navy shall, subject to the supervision and control of the Vice President, provide for the staffing, upkeep, alteration, and furnishing of an official residence and grounds for the Vice President.

Mr. Chairman, I do not know what more authority we need.

THE CHAIRMAN: The Chair will state that in line with the like ruling last year, a paragraph in a general appropriation bill containing funds for the official residence of the President and of the Vice President and providing for advances repayments or transfers of those funds to other departments or agencies—not just to General Services Administration—was conceded to change existing law and was ruled out as being in violation of clause 2, rule XXI.

Therefore, on the basis of the proviso, the point of order is sustained against the entire paragraph.

Reinserting Language Stricken by Point of Order

§ 1.22 Where a point of order is sustained against a paragraph in a general appropriation bill because a portion thereof is unauthorized and contains legislation, and the entire paragraph is therefore stricken, the authorized portion may then be reinserted by amendment.

When the legislative branch appropriations bill for fiscal 1978 was read for amendment in Committee of the Whole on June 29, 1977,[2] a point of order was made against the paragraph carrying appropriations for "Capitol Grounds". The paragraph contained a proviso amendment a prior appropriation law,[3] was conceded to be legislative. After

2. 123 CONG. REC. 21402, 95th Cong. 1st Sess.

3. The proviso in existing law amended by the paragraph was a provision in the Supplemental Appropriations Act, 1973, authorizing the Architect to use certain lands as a park area pending development of a contemplated Residential Page School, project which never materialized.

the paragraph was stricken by the Chair, the chairman of the Subcommittee on Legislative Branch Appropriations offered an amendment, deleting not only the legislative provision but with a lump sum appropriation figure which deleted funding for a Capitol parking facility which was not authorized by law.

THE CHAIRMAN:[4] The Clerk will read.

The Clerk read as follows:

CAPITOL GROUNDS

For care and improvement of grounds surrounding the Capitol, the Senate and House Office Buildings, and the Capitol Power Plant; personal and other services; care of trees; planting; fertilizer; repairs to pavements, walks, and roadways; waterproof wearing apparel; maintenance of signal lights; and for snow removal by hire of men and equipment or under contract without regard to section 3709 of the Revised Statutes, as amended, $2,402,500, including $483,000 to develop Square 764 into a temporary parking facility for the House of Representatives: *Provided* That chapter V of the Supplemental Appropriations Act, 1973 (Public Law 92–607, approved October 31, 1972, 86 Stat. 1513), is hereby amended by striking the words "green park area" in the third further proviso of the paragraph entitled "Acquisition of Property as an Addition to the Capitol Grounds", and inserting in lieu thereof, the following: "temporary parking facility".

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Chairman, I make a point of order against the entire paragraph starting on page 19, line 16, through line 7 on page 20, on the ground that in two respects it violates rule XXI, clause 2.

Mr. Chairman, this is a provision for the creation of a parking lot at the old Providence Hospital site about which the Chairman of the Committee on House Administration, the gentleman from New Jersey (Mr. Thompson) and I have had colloquy. There is no authorization in law for the development of this parking lot provided for in lines 23 to 25 on page 19.

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Chairman, will the gentleman yield?

MR. COUGHLIN: I yield to the gentleman from Illinois.

MR. SHIPLEY: I thank the gentleman for yielding.

The committee understands that this is subject to a point of order, as the Chairman of the Committee on House Administration, Mr. Thompson, mentioned earlier. The committee will concede the point of order.

MR. COUGHLIN: I thank the gentleman.

THE CHAIRMAN: The point of order is conceded and sustained against the entire paragraph.

MR. SHIPLEY: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Shipley: On page 19, after line 15, insert the following:

For care and improvement of grounds surrounding the Capitol, the Senate and House Office Buildings, and the Capitol Power Plant; personal and other services; care of trees; planting; fertilizer; repairs to pavements, walks, and roadways;

4. John M. Murphy (N.Y.).

waterproof wearing apparel; maintenance of signal lights; and for snow removal by hire of men and equipment or under contract without regard to section 3709 of the Revised Statutes, as amended, $1,919,500.

MR. SHIPLEY: Mr. Chairman, this amendment simply restores the appropriation language for the Capitol grounds at the lower figure, reflecting the reduction of the $483,000 for the temporary parking facility, which was eliminated by the point of order.

Special Rule Creating Jurisdictional Point of Order Against Portion of Text

§ 1.23 Pursuant to a special rule[5] permitting points of order against any "title, part or section" of a committee substitute within the jurisdiction of another committee, the Chair sustained a point of order against a section which contained a subsection outside that committee's jurisdiction (although the section as a whole was within that jurisdiction) under the principle that if a point of order is sustained against a portion of a pending section the entire section may be ruled out of order.

On Nov. 4, 1971,[6] in the Committee of the Whole, Mr. David N. Henderson, of North Carolina, raised a point of order relating to the jurisdiction of the Committee on Post Office and Civil Service with respect to legislation prepared by the Committee on Education and Labor.

MR. HENDERSON: Mr. Chairman, I was on my feet seeking recognition. I raise a point of order against section 1085 of this title.

THE CHAIRMAN PRO TEMPORE:[7] The Chair will hear the gentleman.

MR. HENDERSON: Mr. Chairman, I raise a point of order against section 1805 of title XVIII.

Section 1805 authorizes the Secretary of Health, Education, and Welfare to establish a Council on Higher Education Relief Assistance, and includes provisions that the Secretary may appoint not more than 10 individuals, without regard to the civil service or classification laws, as members of the staff of the Council.

An exemption to the civil service or classification laws is a matter clearly within the Federal civil service generally. Under clause 15 of rule XI of the Rules of the House of Representatives, a matter relating to the Federal civil service generally is a matter clearly within the jurisdiction of the Committee on Post Office and Civil Service.

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5. H. Res. 661, agreed to Oct. 27, 1971. 117 CONG. REC. 37765–69, 92d Cong. 1st Sess.

6. 117 CONG. REC. 39287, 92d Cong. 1st Sess. Under consideration was H.R. 7248, amending and extending the Higher Education Act of 1965.

7. Edward P. Boland (Mass.).

Mr. Chairman, I urge that the point of order be sustained on the basis that section 1805 includes matters that are within the jurisdiction of the Post Office and Civil Service Committee. . . .

THE CHAIRMAN PRO TEMPORE: The Chair is ready to rule. . . .

Clause 15(f), rule XI, gives the Committee on Post Office and Civil Service jurisdiction over the status of officers and employees of the United States, including their compensation, classification, and retirement. Section 1805 includes a portion which, if considered separately, contains subject matter within the jurisdiction of the Committee on Post Office and Civil Service. Under the precedents of the House, if a point of order is sustained against a portion of a pending section or paragraph, the entire section or paragraph may be ruled out of order.

The Chair, therefore, sustains the point of order against section 1805, and the language of the section is stricken from the committee amendment.

Effect of Sustaining Point of Order Against Part of Amendment in Legislative Bill

§ 1.24 If a point of order is made against an amendment, the entire amendment is ruled out, although only a portion of such amendment is objectionable.

On June 30, 1955,[8] in the Committee of the Whole, the Chairman invoked the general principle that a point of order against a part of an amendment renders the whole amendment subject to a point of order.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Chairman, I make the point of order against the amendment, of course, that it is not germane to the bill.

THE CHAIRMAN:[9] Does the gentleman from South Carolina desire to be heard?

MR. [JAMES P.] RICHARDS [of South Carolina]: Mr. Chairman, may I ask if the gentleman raises the point of order in both instances?

MR. MILLS: I base the point of order on the language of the amendment on page 19, lines 1 through 6. I am not advised as to the remainder of the amendment, but I do know that the language referred to is not germane to this bill. . . .

MR. RICHARDS: I concede the point of order, Mr. Chairman.

THE CHAIRMAN: The point of order is conceded and the point of order is sustained. A point of order to a part of an amendment makes the whole amendment subject to a point of order, so the whole amendment goes out on the point of order.

§ 1.25 A point of order against any part of an amendment, if sustained, has the effect of invalidating the entire amendment.

8. 101 CONG. REC. 9662, 84th Cong. 1st Sess. Under consideration was S. 2090, amending the Mutual Security Act of 1954.

9. Jere Cooper (Tenn.).

On June 15, 1970,[10] Speaker Pro Tempore Carl Albert, of Oklahoma, answered a parliamentary inquiry, as follows:

> MR. [H. ALLEN] SMITH of California: Mr. Speaker . . . I make a parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE: The gentleman will state it.
>
> MR. SMITH of California: Mr. Speaker, on H.R. 17966, the so-called Udall substitute, that is in my understanding one amendment in the nature of a substitute. If any part of that bill is not germane or subject to a point of order, would not the entire H.R. 17966 be subject to a point of order if points of order are not waived against it? That was my understanding of the situation.
>
> THE SPEAKER PRO TEMPORE: The gentleman has correctly stated the rule. Should points of order not be waived, then if any part of the amendment is not in order, the entire amendment is not in order.

Reinserting Remainder of Section Where Part Is Subject to Point of Order

§ 1.26 Where a portion of a section of a legislative bill is out of order, the entire section is rejected, but it is in order to offer an amendment reinserting that part of the section which would otherwise have been in order.

On July 13, 1939,[11] Mr. John Taber, of New York, made a point of order against part of a bill as being an appropriation of funds by a committee not having such jurisdiction, which point of order Chairman John W. Boehne, Jr., of Indiana, sustained.

> Sec. 205. (a) A Board to be known as the Trustees of the Franklin D. Roosevelt Library is hereby established. . . .
>
> MR. TABER: Mr. Chairman, I make a point of order against the section on the ground that it contains an appropriation of public funds and that it is reported by a committee not having jurisdiction to bring into the House an appropriation bill.

Mr. Taber called attention to specific language that he deemed improper.

> THE CHAIRMAN: Does the gentleman from New York limit his point of order to the sentence which he read?
>
> MR. TABER: Mr. Chairman, I made the point of order against the section. . . .
>
> THE CHAIRMAN: The Chair is ready to rule.
>
> The Chair is of the opinion that the point of order made by the gentleman from New York against the section is

10. 116 CONG. REC. 19841, 91st Cong. 2d Sess. Being discussed was H. Res. 1077, providing for consideration of H.R. 17070, the Postal Reform Act of 1970.

11. 84 CONG. REC. 9060, 9061, 76th Cong. 1st Sess. S.J. Res. 118, to provide for the establishment and maintenance of the Franklin D. Roosevelt Library.

well taken, and therefore sustains the point of order.

Subsequently, Mr. Sam Rayburn, of Texas, offered an amendment, whose purpose he explained as follows:

The amendment I offer leaves out the language objected to by the gentleman from New York in lines 7, 8, 9, and 10 on page 6. . . .

The amendment was agreed to.

Where Point of Order Sustained Against Conference Report

§ 1.27 A conference report containing new spending authority not subject to advance appropriations having been ruled out as in violation of the Congressional Budget Act, the manager of the bill moved to recede and concur in the Senate amendment containing the offending language with an amendment rendering the new spending authority subject to amounts specified in advance in appropriation acts.

When the conference report on the Health Professional Education Assistance Act of 1976 was called up by the chairman of the Committee on Interstate and Foreign Commerce, a point of order was lodged against the report by Mr. Brock Adams, of Washington, chairman of the House Committee on the Budget. The proceedings of Sept. 27, 1976,[12] were as follows:

CONFERENCE REPORT ON H.R. 5546, HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE ACT OF 1976

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the bill (H.R. 5546), to amend the Public Health Service Act to revise and extend the programs of assistance under title VII for training in the health and allied health professions, to revise the National Health Service Corps program, and the National Health Service Corps scholarship training program, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

MR. ADAMS: Mr. Speaker, I make a point of order on the conference report.

THE SPEAKER PRO TEMPORE:[13] The gentleman from Washington will state his point of order.

MR. ADAMS: Mr. Speaker, the conference agreement on H.R. 5546, the Health Professions Assistance Act of 1976, contains a provision which appears to provide borrowing authority which is not subject to advance appropriations. Consequently, it would be subject to a point of order under section 401(a) of the Congressional Budget Act.

Section 401(a) provides:

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12. 122 CONG. REC. 32655, 32656, 32679, 32685, 32703, 94th Cong. 2d Sess.

13. John J. McFall (Calif.).

> It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(A) or (B) (or any amendment which provides such new spending authority), unless that bill, resolution, or amendment also provides that such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts.

Section 401(c)(2)(B) of the Budget Act defines spending authority as authority "to incur indebtedness-other than indebtedness incurred under the second Liberty Bond Act-for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation acts." This form of spending authority is commonly known as borrowing authority.

The conference report accompanying H.R. 5546 contains a provision creating a student loan insurance fund under section 734 of the Public Health Service Act.

Clearly, the requirement that the Secretary of the Treasury purchase these obligations constitutes borrowing authority.

And since the provision contains no requirement that the authority be limited to amounts provided in advance in appropriation acts, it appears to give rise to a section 401(A) point of order.

The fact that the provision relates to default payments which might arise pursuant to a loan guarantee program does not bring the provision within the "loan guarantee" exception to section 401 of the Budget Act. Although the loan guarantee itself may not be subject to advance appropriation, the default payment made pursuant to the provision in question does not constitute a loan guarantee and it is fully subject to the requirements of section 401.

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

MR. ADAMS: I yield to the gentleman from West Virginia, the chairman of the committee.

MR. STAGGERS: Mr. Speaker, I concede the point of order.

Mr. Speaker, I have a motion.

THE SPEAKER PRO TEMPORE: The gentleman from West Virginia (Mr. Staggers) concedes the point of order.

Therefore, the point of order is sustained.

The Clerk will report the Senate amendment in disagreement.

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

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

MR. BAUMAN: Mr. Speaker, it was my understanding that the gentleman from West Virginia (Mr. Staggers) called up a conference report, and a point of order was made against that conference report, which was sustained.

Is the conference report still before the House, Mr. Speaker?

THE SPEAKER PRO TEMPORE: The conference report is not, but the Senate amendment in disagreement is; and a motion will be offered, the Chair will state to the gentleman from Maryland, that could cure the point of order. Therefore, if the gentleman will bear with us for the sake of orderly proce-

dure, we will have this matter properly before the House. . . .

[Reading of the amendment in disagreement was dispensed with.]

MR. STAGGERS: Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Staggers moves that the House recede from its disagreement to the amendment of the Senate to the bill H.R. 5546, and agree to the same with an amendment as follows:
>
> In lieu of the matter proposed to be inserted by the Senate amendment insert the following:
>
> SHORT TITLE: REFERENCE TO ACT
>
> SECTION 1. (a) This Act may be cited as the "Health Professions Educational Assistance Act of 1976". . . .
>
> "STUDENT LOAN INSURANCE FUND
>
> "SEC. 734. (a) There is hereby established a student loan insurance fund (hereinafter in this section referred to as the 'fund') which shall be available without fiscal year limitation to the Secretary for making payments in connection with the default of loans insured by him under this subpart. . . .
>
> . . . but only in such amounts as may be specified from time to time in appropriations Acts. . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from West Virginia?

MR. BAUMAN: Mr. Speaker, I reserve the right to object to the unanimous consent request made by the gentleman from West Virginia (Mr. Staggers).

My inquiry of the Chair is the same as I made before, and that is that in view of the fact that a point of order has been made to any consideration of the conference report, is the motion that is being made to agree with the Senate amendment to the amendment of the House deleting the offending phrase?

THE SPEAKER PRO TEMPORE: When a conference report is ruled out of order, as this one was, then the Senate amendment in disagreement is before the House. This motion, if passed, would remedy the point of order that was made.

Rulings on Matters Not Raised in Point of Order

§ 1.28 The Chair does not rule on statutory interpretations not presented in a point of order or comment upon legal questions which might collaterally result from an interpretation of the challenged language.

On June 28, 1949,[14] in the Committee of the Whole, Chairman Hale Boggs, of Louisiana, declined to rule on more than was necessary to resolve a point of order.

> MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, the point of order I make is that subparagraphs (e) and (f) of section 102 in title I constitute the appropriation of funds from the Federal Treasury, and that the Committee on Banking and Currency is without jurisdiction to report a bill car-

14. 95 CONG. REC. 8536–38, 81st Cong. 1st Sess. Under consideration was H.R. 4009, the Housing Act of 1949.

rying appropriations under clause 4, rule 21, which says that no bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations. . . .

. . . I make this point of order because this proposes to expand and develop a device or mechanism for getting funds out of the Federal Treasury in an unprecedented degree.

The Constitution has said that no money shall be drawn from the Treasury but in consequence of appropriations made by law. It must follow that the mechanism which gets the money out of the Treasury is an appropriation.

I invite the attention of the Chairman to the fact that subparagraph (e) states:

> To obtain funds for loans under this title, the Administrator may issue and have outstanding at any one time notes and obligations for purchase by the Secretary of the Treasury in an amount not to exceed $25,000,000, which limit on such outstanding amount shall be increased by $225,000,000 on July 1, 1950, and by further amounts of $250,000,000 on July 1 in each of the years 1951, 1952, and 1953, respectively—

Within the total authorization of $1,000,000,000.

Further that subparagraph (f) provides that—

> The Secretary of the Treasury is authorized and directed—

And I call particular attention to the use of the words "and directed"—

> to purchase any notes and other obligations of the Administrator issued under this title and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended—

And so forth. The way in which this particular language extends this device of giving the Secretary authority to subscribe for notes by some authority is this: It includes the words "and directed."

In other words, the Secretary of the Treasury has no alternative when the Administrator presents to him some of these securities for purchase but to purchase them. The Secretary of the Treasury is not limited to purchasing them by proceeds from the sale of bonds or securities. He is directed to purchase these notes and obligations issued by the Administrator. That means he might use funds obtained from taxes, that he might use funds obtained through the assignment of miscellaneous receipts to the Treasury, that he might use funds obtained through the proceeds of bonds.

This proposal will give to the Committee on Banking and Currency, if it should be permitted, authority which the Committee on Appropriations does not have, for in the reporting of an appropriation bill for a fiscal year, any appropriation beyond the fiscal year would be held out of order. Here this committee is reporting a bill which proposes to make mandatory extractions from the Treasury during a period of 4 years. . . .

Mr. Chairman, this is not, as I said earlier, a casual point of order; we are here dealing with the fundamental power of the Congress to control appropriations. No such device has ever before, so far as I can find out, been pre-

sented to the Congress for getting money in the guise of a legislative bill without its having been considered by the Committee on Appropriations. It is a mandatory extraction of funds from the Public Treasury, and, consequently, constitutes an appropriation and is beyond the authority or the jurisdiction of the Committee on Banking and Currency to report in this bill. . . .

MR. [BRENT] SPENCE [of Kentucky]: Mr. Chairman, the raising of funds by public debt transaction has been frequently authorized by the Congress: The Export-Import Bank raises funds by that method; the Bretton Woods Agreement, in my recollection, is carried out by that method; the British loan was financed by that method, and the Federal Deposit Insurance Corporation was also financed by that method. It does not seem to me that this is a seasonable objection. This has been the policy of the Congress for years.

Mr. Chairman, this is not raising money to be appropriated for the purposes that ordinary appropriation bills carry. All of this money is to be used as loans.

The gentleman says that in other acts the Secretary of the Treasury is "authorized" but not "directed." I contend that the meaning of "authorized" and "directed" in this act is absolutely the same.

Do you think when you authorize the Secretary of the Treasury to raise funds to carry out a great public purpose it is in his discretion whether he shall raise those funds and that that shall depend on the discretion of the Secretary of the Treasury? I say "authorized" in this sense means "directed." It could not mean anything else, otherwise you would be delegating to an officer of the Government entire discretion as to whether or not great national acts should be carried out and the purposes of Congress should be subserved.

MR. CASE of South Dakota. Mr. Chairman, in most of the acts which the gentleman has suggested, points of order were waived, and I refer to Bretton Woods and some of the other bills. But as to the particular point here in issue, the question whether the words "and directed" have any meaning, if they do not have any meaning why are they there? The present housing act merely authorizes the Secretary of the Treasury to purchase. It does not say "and directed." The very inclusion of the words "and directed" is evidence of the fact they have a special meaning. They create a mandatory extraction of funds from the Public Treasury. . . .

MR. [JOHN W.] MCCORMACK [of Massachusetts]: . . . The gentleman from South Dakota has referred to the Constitution. The Constitution says:

> No money shall be drawn from the Treasury but in consequence of appropriations made by law.

The word "appropriations" is used.

The rule referred to, clause 4, rule 21, says:

> No bill or resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations.

You will note the word "appropriations" is used. Now, let us see what "appropriations" means.

I have before me Funk & Wagnalls Standard Dictionary and "appropriations" is defined as follows:

To set apart for a particular use. To take for one's own use.

The provisions of this bill are not taking for one's own use, because this is a loan designed purely for loan purposes. It is not a definite appropriation. It is giving authority to utilize for loan purposes and the money comes back into the Treasury of the United States with interest. . . .

The provision in paragraph (f) that my friend has raised a point of order against relates entirely to loans. As we read section 102 of title I it starts out with loans. Throughout the bill, a number of times, there is reference to loans. . . .

. . . Certainly, the word "appropriations" is used in the Constitution. And, I think it is the rule of the House that must govern, and that is what the Chair has to pass upon, because the Congress could determine by proper legislation what the word "appropriation" means as contained in the Constitution itself. . . . Now, if the House intended that it should apply to provisions of this kind, instead of saying, "No bill or joint resolution carrying appropriations shall be reported" the House might have said, "No bill or joint resolution carrying appropriations or having directly or indirectly the effect." There is a difference between cause and effect. Certainly, it applies to this case. The House, in its wisdom, in adopting this rule, confined it to appropriations made to an agency of Government for use by that agency in carrying out what the Congress considered to be essentially the function of the Government during the coming fiscal year or during the period for which the appropriation has been made.

I respectfully submit that it must call for an appropriation out of the general funds of the Treasury in order to violate the rules of the House. This permits the use of money raised by the sale of bonds under the Second Liberty Bond Act for loans to these public agencies, such loans to be repaid with interest. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The Chair agrees with the gentleman from South Dakota that the point which has been raised is not a casual point of order. As a matter of fact, as far as the Chair has been able to ascertain, this is the first time a point of order has been raised on this issue as violative of clause 4 of rule XXI.

As the Chair sees the point of order, the issue involved turns on the meaning of the word "appropriation." "Appropriation," in its usual and customary interpretation, means taking money out of the Treasury by appropriate legislative language for the support of the general functions of Government. The language before us does not do that. This language authorizes the Secretary of the Treasury to use proceeds of public-debt issues for the purpose of making loans. Under the language, the Treasury of the United States makes advances which will be repaid in full with interest over a period of years without cost to the taxpayers.

Therefore, the Chair rules that this language does not constitute an appropriation, and overrules the point of order.

MR. CASE of South Dakota: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CASE of South Dakota: Would the Chair hold then that that language restricts the Secretary of the Treasury to using the proceeds of the securities issued under the second Liberty Bond Act and prevents him from using the proceeds from miscellaneous receipts or tax revenues?

THE CHAIRMAN: The Chair does not have authority to draw that distinction. The Chair is passing on the particular point which has been raised.

MR. CASE of South Dakota: However, Mr. Chairman, it would seem implicit in the ruling of the Chair and I thought perhaps it could be decided as a part of the parliamentary history. It might help some courts later on.

THE CHAIRMAN: The Chair can make a distinction between the general funds of the Treasury and money raised for a specific purpose by the issuance of securities. That is the point involved here.

Point of Order Against Speaker's Appointment of Conferees

§ 1.29 A point of order does not lie against the Speaker's exercise of his discretionary authority under Rule X clause 6(e) in appointing conferees who "generally supported the House position, as determined by the Speaker."

The portion of Rule X clause 6(f) involved in the following point of order raised by Mr. Erlenborn explicitly gives the Speaker discretion to make the determination in appointing conferees who generally supported the House position. Other provisions of the clause are mandatory on the Speaker: he must name Members who are primarily responsible for the legislation, for example. Speaker O'Neill's response to the Erlenborn point of order as excerpted from the proceedings of Oct. 12, 1977,[15] is carried below.

THE SPEAKER:[16] The Chair appoints the following conferees: Messrs. Perkins, Dent, Phillip Burton, Gaydos, Clay, Biaggi, Zeferetti, Quie, Erlenborn, and Ashbrook; and an additional Member, Mr. Pickle, solely for the consideration of section 12 of the House bill and modifications thereof committed to conference.

MR. [JOHN N.] ERLENBORN [of Illinois]: Mr. Speaker, I make a point of order against the naming of the conferees as not being in compliance with the provisions of section 701(e), rule X of the Rules of the House.

THE SPEAKER: Does the gentleman from Illinois (Mr. Erlenborn) wish to be heard on his point of order?

MR. ERLENBORN: Yes, Mr. Speaker.

Mr. Speaker, rule X, section 701(e) provides in part:

> In appointing members to conference committees the Speaker shall appoint no less than a majority of members who generally supported the House position as determined by the Speaker.

15. 123 CONG. REC. 33434, 33435, 95th Cong. 1st Sess.

16. Thomas P. O'Neill (Mass.).

Mr. Speaker, as I pointed out in debate earlier today, the three items in contention between this body and the other body are the rate structure, the tip credit, and the small business amendment. Every one of the majority Members, with the exception of the gentleman from Pennsylvania (Mr. Gaydos), did not support the House position during the consideration of the bill on the floor.

I will admit, Mr. Speaker, that all of the Members who were present did vote for the passage of the bill. The passage of the bill is not in contention. Those items that are in contention between this body and the other body are the three items that I have mentioned, and the majority of the conferees named by the Speaker are not among those Members who supported the majority position in the House.

THE SPEAKER: Does the gentleman from Kentucky (Mr. Perkins) wish to be heard on the point of order?

MR. [CARL D.] PERKINS [of Kentucky]: I do, Mr. Speaker.

Mr. Speaker, there were numerous amendments offered to the minimum wage bill. Perhaps the major amendment that was adopted was the one increasing the exceptions from $250,000 to $500,000 for small businesses. The Speaker has taken care of that situation by appointing the gentleman from Texas (Mr. Pickle).

If we were to follow the argument of the gentleman from Illinois (Mr. Erlenborn), as it might apply to a situation in which some 30 or 40 Members outside the committee had offered amendments, I would think that it would set a precedent that this House could not live with.

But notwithstanding that, the Members who have been suggested to the Speaker by myself as chairman of the Committee on Education and Labor, the seven ranking members of the Subcommittee on Labor Standards, headed by the gentleman from Pennsylvania (Mr. Dent), voted for the majority of the amendments that were offered to the bill on the floor of the House. By and large, all the conferees suggested to the Speaker generally supported the legislation, and that is the rule.

We must look at this picture as a whole and not pick out one or two select amendments that the gentleman from Illinois (Mr. Erlenborn) is primarily interested in and overlook all the other amendments that the other members supported and that the suggested conferees supported.

Therefore, Mr. Speaker, it is my contention that the point of order raised by the gentleman from Illinois (Mr. Erlenborn) is without merit and should be overruled.

THE SPEAKER: The Chair is ready to rule.

This is the judgment of the Chair concerning the following language: "The Speaker shall appoint no less than a majority of Members who generally supported the House position as determined by the Speaker, and the Speaker shall name Members who are primarily responsible for the legislation and shall, to the fullest extent feasible, include the principal proponents of the major provisions of the bill as it passed the House."

That language is found in clause 6(e) of rule X of the Rules of the House.

In the opinion of the Chair, after looking over the list of conferees, and

in view of the fact that the Chair has only had one additional request to name a conferee—and that is the gentleman from Texas (Mr. Pickle), whom the Chair has named as a limited conferee—the Members that the Chair has named as conferees meet the qualification of being "primarily responsible for the legislation."

The Chair's appointment under the remaining provisions of the rule is ultimately a matter within his discretion, which the Chair feels he has properly exercised, and there is nothing in the rule requiring the Chair to consider the conferees' positions solely on the matter in dispute.

The Chair overruled the point of order.

Chair's Recognition Not Subject to Point of Order

§ 1.30 Recognition for unanimous-consent requests to address the House for one minute before legislative business is within the discretion of the Chair, and the Chair's refusal to entertain such requests is not subject to a point of order.

When the House convened on July 25, 1980,[17] Speaker Pro Tempore James C. Wright, Jr., of Texas, announced that the conduct of legislative business should precede recognition for one-minute speeches. Several Members sought recognition to challenge this exercise of the Speaker's power of recognition. Attempts to state opposition to this policy by raising questions of the privilege of the House were unsuccessful. The Chair's announcement and the events which followed are carried herein.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

THE SPEAKER PRO TEMPORE: The Chair desires to make an announcement.

As the Chair announced yesterday, requests to address the House for 1 minute will be entertained at the conclusion of the legislative business today, rather than at the beginning. This should not deprive any Member of the privilege of being heard on any subject of his choice, so long as the Member is willing to await the conclusion of the business of the House.

The Chair believes there is genuine value in the 1-minute rule in the exercise of free expression on subjects, the variety of which is limited only by the individual imaginations of the Members. The Chair would not desire to deny any Member this privilege. For all its value, however, the Chair does not believe that the 1-minute rule must necessarily precede, nor be permitted to postpone, the business of the House. On several occasions this year, the exercise of the 1-minute rule has delayed a beginning on the business of the day by periods extending from 45 minutes to 1 hour.

Only 38 legislative days remain, including Mondays and Fridays, between now and October 4, the date of our re-

17. 126 CONG. REC. 19762–64, 96th Cong. 2d Sess.

cess or adjournment sine die. Nine major appropriations bills remain to be acted upon by the House. No major appropriations bill at this time has completed the legislative process.

In addition to those very basic and indispensable legislative priorities, there are other bills, including the budget reconciliation legislation, the second budget resolution for fiscal year 1981, and a considerable number of important legislative initiatives, which, in the public interest, must be completed before the Congress can adjourn.

Under those circumstances, the Chair requests the understanding and cooperation of all the Members in expediting the necessary legislative business of the House, which is of course our first duty to the American people. The Chair assures all Members, to the extent that any such reassurance may be desired, that their rights under the rules will be fully respected and assiduously protected.

PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland asks a parliamentary inquiry. The gentleman will state it.

MR. BAUMAN: Mr. Speaker, yesterday the gentleman from Maryland heard the Chair answer a question regarding 1-minute speeches. The gentleman from Maryland asked the Chair whether or not limits on such speeches is to be a policy to be followed for the remainder of the session, and the Chair, as recorded on page H6404, said that the Chair was not announcing a policy for the remainder of the session, but only for Thursday and Friday.

Do I take the Chair's announcement this morning to mean that this will be the policy for the remainder of this session?

THE SPEAKER PRO TEMPORE: No; as the Chair stated yesterday in response to a question from the gentleman from Maryland, the present occupant of the chair is not in a position to announce a policy for the remainder of the session, and so stated.

The policy for the remainder of the session would be more appropriately determined and stated by Speaker O'Neill. At this present time, that is all the Chair has to say, or all that he properly should or could say.

QUESTION OF PRIVILEGE OF THE HOUSE

MR. [E. G. (BUD)] SHUSTER [of Pennsylvania]: Mr. Speaker, I rise to a point of privilege.

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

MR. SHUSTER: Mr. Speaker, I offer a privileged resolution.

THE SPEAKER PRO TEMPORE: The Clerk will report the resolution.

The Clerk read as follows:

> Whereas the custom of allowing one-minute speeches is a longstanding tradition of the House, begun by Speaker Sam Rayburn in the 1940's;
>
> Whereas the ability of the Minority to be heard rests to a large degree on the one-minute speeches; permitted in a timely fashion; and
>
> Whereas the integrity of the proceedings of the House is impugned where all Members are not accorded a full opportunity to speak; Now, therefore, be it

Resolved, That the Speaker exercise his prerogative and reinstitute the custom of allowing one-minute speeches at the beginning of the session.

THE SPEAKER PRO TEMPORE: The Chair must declare that a question of the privileges of the House under rule IX cannot impinge upon the Speaker's right of recognition. The gentleman's proposal is not, under rule IX, a privileged resolution, and the Chair will so rule. The Chair does not entertain the resolution at this time.

MR. SHUSTER: Mr. Speaker, I rise to a point of privilege.

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

MR. SHUSTER: Mr. Speaker, I reluctantly send a second privileged resolution to the desk.

THE SPEAKER PRO TEMPORE: The Clerk will report the second resolution.

The Clerk read as follows:

H. RES. 753

Whereas the structural deficiencies of the West Front of the Capitol include walls that are "cracked, the stones are misaligned, the ties have rusted away, and the walls are held in place by a system of shores and braces;" and

Whereas the portico ceiling at the West Capitol Front is composed of "stone joints that have failed;" and

Whereas "the exterior walls of the west central portion of the Capitol are distorted and cracked, and require corrective action for safety and durability;" now, therefore, be it

Resolved, That an independent investigation be immediately initiated into the safety of the Members of the House.

MOTION TO TABLE OFFERED BY MR. BRADEMAS

MR. [JOHN] BRADEMAS [of Indiana]: Mr. Speaker, I move to table the resolution.

THE SPEAKER PRO TEMPORE: The question is on the motion to table offered by the gentleman from Indiana (Mr. Brademas).

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

MR. SHUSTER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The Chair will state that the vote is on the motion offered by the gentleman from Indiana (Mr. Brademas) to table the resolution offered by the gentleman from Pennsylvania (Mr. Shuster).

The vote was taken by electronic device, and there were—yeas 222, nays 137, not voting 74, as follows: . . .

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

POINT OF ORDER

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

Mr. Speaker, prior to the privileged or nonprivileged motions just offered by the gentleman from Pennsylvania, the Chair unilaterally issued a ruling regarding the 1-minute speeches and stated in essence, if I recall, that these speeches would not be permitted today

or during his tenure as Speaker pro tempore because of the press of legislative business in the remainder of the session. I believe that was the import of his remarks.

THE SPEAKER PRO TEMPORE: The Chair would correct the gentleman, if the gentleman would permit.

The Chair did not exactly say that, but the gentleman will state his point of order.

MR. BAUMAN: I make a point of order against the ruling of the Chair. I make a point of order that the Chair cannot in fact deny the 1-minute speeches on the ground which he stated, and as authority for that, I cite chapter 21, section 7 of Deschler's, wherein there are several instances, including those referring to July 22, 1968; June 17, 1970; and October 19, 1966, where the Chair declined to recognize Members for 1-minute speeches because of the press of business, a heavy legislative schedule, which is Deschler's phrase, and proceeding to unfinished business.

Mr. Speaker, my point of order is that the traditions of the House, as evidenced in these precedents, indicate the Chair has the discretion to deny 1-minute speeches on those grounds, but that the ruling of the gentleman from Texas (Mr. Wright), the Speaker pro tempore, has, in fact, allowed an arbitrary ground to be used at a time when there is no press of heavy legislative business manifested by the fact that the Speaker and others have announced that we will adjourn today at 3 o'clock when we can easily stay here and deal with any pressing legislative business if that exists.

Further my point of order is that the Speaker has departed from past traditions and, therefore, has exceeded his discretion in regard to 1-minutes as supported by the traditions of the House.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule on the point of order, unless other Members insist on being heard. The Chair is prepared to rule.

The gentleman's point of order in the first place comes too late. But the Chair is prepared to state that in any event it is not a sustainable point of order.

The gentleman from Maryland is aware, because he is a scholar of the rules of the House, and he is aware of the great thrust of the very section to which he made reference, paragraph 7 of chapter 21 of Deschler's Procedure.

The Chair would simply recite one or two of the precedents therein reported. Recognition for 1-minute speeches is within the discretion of the Speaker, and his evaluation of the time consumed is a matter for the Chair and is not subject to challenge or question by parliamentary inquiry.

Now that was May 9, 1972.

On December 16, 1971, the Speaker pro tempore announced that he would recognize Members to address the House for longer than 1 minute for reasons that he felt desirable. On a number of occasions, July 22, 1968; June 17, 1970; October 19, 1966, the same rule was applied. Recognition for 1-minute speeches is within the discretion of the Speaker, and when the House has a heavy legislative schedule, he sometimes refuses to recognize Members for that purpose.

So the traditions of the House are clear, and the customs have not been

broken; and the Chair has tried to state to the gentleman his intention and his firm determination assiduously to protect the rights of all Members, minority as well as majority.

The Chair has had a conversation with the gentleman from Pennsylvania, and with the Chairman who will preside in the Committee of the Whole House and has asked that Chairman as a favor to the Chair and as an exercise in abundant fairness to be extremely tolerant of the rules of relevance so as to permit the gentleman from Pennsylvania to speak his mind on an amendment that he will be offering.

Now, the Chair has bent over backward in an effort to be fair with the minority, and the Chair believes the gentleman from Maryland is aware of that fact; and so the point of order is overruled.

MR. BAUMAN: Mr. Speaker, I appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland appeals from the ruling of the Chair.

The Chair recognizes the gentleman from Indiana (Mr. Brademas).

MR. BRADEMAS: Mr. Speaker, I move to lay the appeal on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Indiana (Mr. Brademas).

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

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

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 233, nays 139, answered "present" 1, not voting 60, as follows: . . .

Chair's Recognition Not Subject to Appeal

§ 1.31 The decision of the Chair on a matter of recognition is not subject to a point of order, since recognition is largely within the discretion of the Chair.

On July 7, 1980,[18] there was a contest for recognition in the Committee of the Whole when it had under consideration H.R. 7235, the Rail Act of 1980. The proceedings were as indicated.

MR. [JAMES J.] FLORIO [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Florio: Page 103, line 14, insert "or (c)" immediately after "subsection (b)".
>
> Page 104, line 20, strike out the closing quotation marks and the following period.
>
> Page 104, after line 20, insert the following new subsection: . . .

MR. [EDWARD R.] MADIGAN [of Illinois]: Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Madigan as a substitute for the amendment offered by Mr. Florio:
>
> Page 103, line 14, insert "or (c)" immediately after "subsection (b)".

18. 126 CONG. REC. 18285, 18290–92, 96th Cong. 2d Sess.

Page 104, line 20, strike out the closing quotation marks and the following period.

Page 104, after line 20, insert the following new subsection: . . .

MR. MADIGAN: Mr. Chairman, this amendment includes a number of provisions designed to resolve problems which had been expressed by agricultural groups since the bill was reported from committee. . . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[19] The gentleman will state his inquiry.

MR. ECKHARDT: Mr. Chairman, I was not aware at the time that this amendment was offered that it would purport to deal with a number of very different subjects. I assume that it would not be in order to raise a point of order concerning germaneness at this late time, not having reserved it, but I would like to ask if the question may be divided. There are several subjects that are quite divisible in the amendment offered here, and that deal with different matters.

THE CHAIRMAN: The Chair will advise the gentleman from Texas that he is correct, it is too late to raise a point of order on the question of germaneness.

The Chair will further advise the gentleman from Texas that a substitute is not divisible.

AMENDMENT OFFERED BY MR. ECKHARDT TO THE AMENDMENT OFFERED BY MR. MADIGAN AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. FLORIO

MR. ECKHARDT: Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

THE CHAIRMAN: The Clerk will report the amendment to the substitute amendment.

POINT OF ORDER

MR. MADIGAN: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. MADIGAN: Mr. Chairman, I understand that the procedure is that the members of the subcommittee would be recognized for amendments first, and that the gentleman from Texas sought recognition for the purpose of making a parliamentary inquiry and was recognized for that purpose, and was not recognized for the purpose of offering an amendment.

I further understand that the gentlewoman from Maryland, a member of the subcommittee, was on her feet seeking recognition for the purpose of offering an amendment, as well as the gentleman from North Carolina (Mr. Broyhill).

MS. [BARBARA A.] MIKULSKI [of Maryland]: Mr. Chairman, that is correct.

THE CHAIRMAN: The Chair will respond to the gentleman by saying to him that the normal procedure is to recognize members of the full committee by seniority, alternating from side to side, which the Chair has been doing. The gentleman was recognized under that procedure, and the Chair's recognition is not in any event subject to challenge.

Therefore, the gentleman is recognized, and any point of order that the gentleman from Illinois would make on that point would not be sustained.

19. Les AuCoin (Oreg.).

MR. MADIGAN: Further pursuing my point of order, and with all due respect to the Chair, am I incorrect in assuming that the gentleman from Texas was recognized for the point of raising a parliamentary inquiry?

THE CHAIRMAN: The gentleman is correct. He was recognized for that purpose; then separately for the purpose of the amendment that he is offering, which the Clerk will now report.

The Clerk read as follows:

> Amendment offered by Mr. Eckhardt to the amendment offered by Mr. Madigan as a substitute for the amendment offered by Mr. Florio: page 3, strike out lines 14 through 20.
>
> Page 3, line 5, strike out "(i)".
>
> Page 3, line 13, strike out "; or" and insert in lieu thereof a period.
>
> Pages 4 and 5, strike out "20,000" and insert in lieu thereof "5,000".

MR. FLORIO: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman from New Jersey reserves a point of order.

MR. FLORIO: We have not got a copy of the amendment, and what was just shown does not comply with what was just read.

THE CHAIRMAN: The Chair will advise the gentleman from New Jersey that the amendment that has been read is the amendment that is pending. The fact that the gentleman does not have a copy of the amendment does not give rise to a point of order.

MR. FLORIO: I would like to reserve a point of order until we have an opportunity to see the amendment.

THE CHAIRMAN: The gentleman reserves a point of order.

Order of Amendments, Chair's Discretion

§ 1.32 Recognition to offer amendments in the Committee of the Whole is within the discretion of the Chair, and no point of order lies against the Chair's recognition of one Member over another, absent a special rule which gives one amendment a special priority.

During consideration of the Panama Canal Act of 1979, which had been considered by several committees of the House and was being debated under the provisions of a rather complicated special order, a dispute arose about the order of recognition to offer the next amendment. The pertinent proceedings of June 21, 1979,[20] were as follows:

> MR. [JOHN M.] MURPHY of New York: Mr. Chairman, I move to strike the last word.
>
> Mr. Chairman, I rise at this time with so many Members in the well and on the floor to ask as many Members as possible to try to stay on the floor throughout the next hour and 50 minutes. . . .
>
> MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:

20. 125 CONG. REC. 15999, 16000, 96th Cong. 1st Sess.

Amendment offered by Mr. Bauman: Page 187, strike out line 19 and all that follows through line 20 on page 189 and insert in lieu thereof the following:

Chapter 2—IMMIGRATION

SEC. 1611. SPECIAL IMMIGRANTS.—(a) Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), relating to the definition of special immigrants, is amended— . . .

MS. [ELIZABETH] HOLTZMAN [of New York] (during the reading): Mr. Chairman, I want to raise a point of order. My point of order is that under the rule the Committee on the Judiciary was given the right to offer an amendment to strike section 1611, and I believe that is the import of the amendment offered. The gentleman's amendment goes to that section, and I was on my feet.

THE CHAIRMAN:[1] First the amendment should be read, and then the Chair will recognize the gentlewoman.

The Clerk will read.

The Clerk continued the reading of the amendment.

MS. HOLTZMAN: Mr. Chairman, I renew the point of order that I tried to state at an earlier time.

THE CHAIRMAN: The gentlewoman will state the point of order.

MS. HOLTZMAN: Mr. Chairman, at the time that the last amendment was voted on, I was on my feet seeking to offer an amendment on behalf of the Committee on the Judiciary with respect to striking in its entirety section 1611 of the bill. The right to offer that amendment is granted under the rule, in fact on page 3 of House Resolution 274. I want to ask the Chair whether I am entitled to be recognized or was entitled to be recognized to make first a motion, which was a motion to strike the entire section before amendments were made to the text of the bill.

THE CHAIRMAN: Unless an amendment having priority of consideration under the rule is offered, it is the Chair's practice to alternate recognition of members of the several committees that are listed in the rule, taking amendments from the majority and minority side in general turn, while giving priority of recognition to those committees that are mentioned in the rule.

The gentlewoman from New York (Ms. Holtzman) is a member of such a committee, but following the adoption of the last amendment the gentleman from New York (Mr. Murphy), the chairman of the Committee on Merchant Marine and Fisheries, sought recognition to strike the last word. Accordingly, the Chair then recognized the gentleman from Maryland (Mr. Bauman) to offer a floor amendment, which is a perfecting amendment to section 1611 of the bill.

The rule mentions that it shall be in order to consider an amendment as recommended by the Committee on the Judiciary, to strike out section 1611, if offered, but the rule does not give any special priority to the Committee on the Judiciary to offer such amendments, over perfecting amendments to that section.

MS. HOLTZMAN: Mr. Chairman, may I be heard further? The gentleman said that he was going to recognize members of the committees that had a right to offer amendments under the rule al-

1. Thomas S. Foley (Wash.).

ternately. I would suggest to the Chair that no member of the Committee on the Judiciary has been recognized thus far in the debate with respect to offering such an amendment and, therefore, the Chair's principle, as I understood he stated it, was not being observed in connection with recognition.

THE CHAIRMAN: The Chair would observe that the Chair is attempting to be fair in recognizing Members alternately when they are members of committees with priority and that the rule permits but does not give the Committee on the Judiciary special priority of recognition over other floor amendments, which under the precedents would take priority over a motion to strike.

Second, the Chair would like to advise the gentlewoman from New York that recognition is discretionary with the Chair and is not subject to a point of order. Does the gentlewoman have any further comment to make on the point of order?

The Chair overrules the point of order and recognizes the gentleman in the well.

Addressing Rules of Procedure Through Question of Privilege of House

§ 1.33 While ordinary questions of procedure or interpretations of the House rules cannot be raised by a question of privilege under Rule IX, since it is the duty of the Speaker under Rule I clause 4 to rule on all questions of order, a question of privilege was once based upon the assertion that integrity of House proceedings would be violated if the House could not determine as a question of privilege the vote required to extend the time for ratification of a constitutional amendment already submitted to the states.

The Equal Rights Amendment was proposed to the states for ratification in the 92d Congress. In the text of that joint resolution, there was a provision stating that ratification should be completed within seven years of its submission to the states. In the 95th Congress, the House Committee on the Judiciary reported another joint resolution (H.J. Res. 638) proposing to extend the time for ratification. The difficult question presented was the vote needed to pass this joint resolution.

After the House had adopted a special rule making consideration of H.J. Res. 638 in order, Mr. Quillen, of the Committee on Rules, offered H. Res. 1315 as a question of privilege under Rule IX. This resolution declared that a two-thirds vote was required to pass the joint resolution extending the ratification period. The proceedings of Aug. 15, 1978,[(2)] are carried in full.

2. 124 CONG. REC. 26203, 26204, 95th Cong. 2d Sess.

PROVIDING FOR A TWO-THIRDS VOTE OF MEMBERS PRESENT AND VOTING ON FINAL PASSAGE OF HOUSE JOINT RESOLUTION 638

(Mr. Quillen asked and was given permission to address the House for 1 minute.)

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

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

THE SPEAKER:[3] The Chair will state to the gentleman from Tennessee (Mr. Quillen) that now is the time for the gentleman to offer his resolution.

PRIVILEGES OF THE HOUSE—PROVIDING FOR A TWO-THIRDS VOTE OF MEMBERS PRESENT AND VOTING ON FINAL PASSAGE OF HOUSE JOINT RESOLUTION 638

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

THE SPEAKER: The Clerk will report the resolution.

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

The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 1315

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

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

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

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

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

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

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

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

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

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

The yeas and nays were ordered.

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

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

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

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

THE SPEAKER: The gentleman will state his parliamentary inquiry.

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

THE SPEAKER: In response to the parliamentary inquiry raised by the gentleman from California, the Chair feels that the action of the House in laying on the table House Resolution 315 was an indication by the House that a majority of the Members feel a majority vote is required for the final passage of House Joint Resolution 638. The Chair would cite the precedent contained in Cannon's VIII, section 2660, that affirmative action on a motion to lay on the table, while not a technical rejection, is in effect an adverse disposition equivalent to rejection.

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

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

THE SPEAKER: The gentleman will state it.

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

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

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

THE SPEAKER: The answer is "Yes."

Parliamentarian's Note: The question of the vote required, a majority or two-thirds, was unique. Section 508, Jefferson's Manual, states that "The voice of the majority decides; for the lex majoris partis is the law of all

councils, elections, etc. where not otherwise expressly provided."

A supermajority is required in the Constitution, Article V: "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution. . . ."

Since 1917, Congress has, when proposing a constitutional amendment for ratification, provided in the joint resolution a time limit within which the requisite number of states must ratify; in four cases since that date the time limit has appeared in the text of the constitutional amendment, but since the 23d amendment the time limit has appeared independently in the proposing clause.

Chair Does Not Rule on Consistency of Pending Bill

§ 1.34 The Speaker does not rule on a point of order alleging that a pending bill is not consistent with existing law.

On May 3, 1949,[4] Mr. Adam C. Powell, Jr., of New York, pointed out the apparent incongruity of language in proposed legislation that referred to federal courts under nomenclature that was obsolete because of court reorganization.

> MR. POWELL: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER:[5] The gentleman will state it.
>
> MR. POWELL: If this bill uses language which is no longer in keeping with our laws, I raise the point of order that it is incorrectly drawn. On page 53, line 13, this bill uses the language, "to review by the appropriate circuit court of appeals." I make the point of order that there is no longer any circuit court of appeals.
>
> THE SPEAKER: There might be 203 Members take the same position that the gentleman from New York does, but that does not alter the situation.
>
> The question is on the engrossment and third reading of the bill.

Chair Does Not Rule on Consistency of Amendments

§ 1.35 The Chair does not rule on the consistency of a proposed amendment with another amendment already adopted to a different portion of the bill.

When the Committee of the Whole had under consideration the bill H.R. 3744, the Fair Labor Standards Act of 1977, an amendment was offered and agreed to which established the minimum wage levels for three years. Later during the consideration of the

4. 95 CONG. REC. 5543, 5544, 81st Cong. 1st Sess. Under consideration was H.R. 2032, the National Labor Relations Act of 1949.

5. Sam Rayburn (Tex.).

measure, another amendment relating to minimum wage levels was offered by Mr. Burton. The proceedings of Sept. 15, 1977,[6] were as follows:

MR. [JOHN N.] ERLENBORN [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Erlenborn: Page 4, strike out lines 16 and 17 and insert in lieu thereof "INCREASE IN MINIMUM WAGE".

Page 4, line 18, redesignate "SEC. 2.(a)(1)" as "SEC. 2.(a)", and beginning with line 20 strike out everything through line 21 on page 5 and insert in lieu thereof:

"(1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.85 an hour during the year beginning January 1, 1979, and not less than $3.05 an hour after December 31, 1979, except as otherwise provided in this section;". . . .

THE CHAIRMAN:[7] The question is on the amendment offered by the gentleman from Illinois (Mr. Erlenborn).

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

MR. ERLENBORN: Mr. Chairman, I demand a recorded vote. . . .

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 223, noes 193, not voting 18, as follows: . . .

MR. PHILLIP BURTON [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Phillip Burton: Page 9, insert after line 5 of the following:

(b) Section 6 (29 U.S.C. 206) is amended by adding at the end the following:

"(9)(1) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: during the period ending December 31, 1977, not less [than] $2.30 an hour, during the year beginning January 1, 1978, not less than $2.65 an hour, during the year beginning January 1, 1979, not less than 52 per centum of the average hourly earnings excluding overtime, during the twelve-month period ending in June 1978, of production and related workers on manufacturing payrolls, during the year beginning January 1, 1980, and during each of the next three years, not less than 53 per centum of the average hourly earnings excluding overtime, during the twelve-month period ending in June of the year preceding such year, or production and related workers on manufacturing payrolls, and during the year beginning January 1, 1984, and during each succeeding year, not less than the minimum wage rate in effect under this paragraph for the year beginning January 1, 1983. For purposes of computing the minimum wage prescribed by this paragraph, the Secretary shall, not later than August 1, 1979, and August 1 of each of the next five years, publish in the Federal Register an estimate of the average hourly earnings (excluding overtime), during the twelve-month period ending in June of such year, of production and related workers on manufacturing payrolls, and shall, not later than November 1, 1978, and November 1 of each of the next five years, publish in the Fed-

6. 123 CONG. REC. 29431, 29436, 29440, 95th Cong. 1st Sess.

7. William H. Natcher (Ky.).

eral Register such earnings for such period.".

"(2) the minimum wage rate prescribed by paragraph (1) shall apply in any year, in lieu of the wage rate prescribed by subsection (a)(1), in which the wage rate prescribed by paragraph (1) is higher than that prescribed by subsection (a)(1).".

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

MR. [CLIFFORD R.] ALLEN [of Tennessee]: Mr. Chairman, a point of order. I can find no copy of this amendment. I would like to be able to read the amendment and I believe under the rules a certain number of copies are supposed to be available.

THE CHAIRMAN: The gentleman does not state a point of order.

MR. PHILLIP BURTON: Mr. Chairman, I yield back the balance of my time.

THE CHAIRMAN: Does the gentleman from Illinois (Mr. Erlenborn) insist upon his point of order?

MR. ERLENBORN: Yes, Mr. Chairman.

I must first say I have had only a few minutes to look at the amendment which is thrown together rather hastily in an attempt, as the gentleman said, to get a recount on the issue of indexing, but, Mr. Chairman, I make a point of order against the amendment on the ground that the Committee has voted on the issue of indexing, has expressed its will, and this is an amendment which merely would have the House again vote on the same issue already disposed of.

THE CHAIRMAN: Does the gentleman from California (Mr. Phillip Burton) desire to be heard on the point of order?

MR. PHILLIP BURTON: No, other than to say that we have developed this amendment so that a point of order does not lie.

THE CHAIRMAN: The Chair is ready to rule.

The amendment offered by the gentleman from California (Mr. Phillip Burton) simply adds a new subsection to the end of the section. In the opinion of the Chair the amendment is germane. As to whether or not it is inconsistent with the amendment of the gentleman from Illinois (Mr. Erlenborn) adopted a few moments ago, the Chair cannot rule upon that. The Chair holds the amendment to be germane and not to directly change the amendment already adopted. The point of order is overruled. . . .

So the amendment was agreed to.

The result of the vote was announced as above recorded.

§ 1.36 The Chair does not pass upon the consistency of proposed amendments or on their legal effect, if adopted.

On Aug. 22, 1949,[8] in the Committee of the Whole, Chairman Walter A. Lynch, of New York, refused to rule on the consistency of an amendment to an authorization bill.

MR. [USHER L.] BURDICK [of North Dakota]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

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8. 95 CONG. REC. 11994, 81st Cong. 1st Sess. Under consideration was H.R. 5472, dealing with public works on rivers and harbors for navigation and flood control.

Amendment offered by Mr. Burdick: On page 19, line 10, strike out lines 10, 11, 12, 13, 14, and 15 and insert "$250,000,000."

MR. [WILLIAM M.] WHITTINGTON [of Mississippi]: Mr. Chairman, I make a point of order against the amendment, that the amendment is really without meaning or significance, because it authorizes no appropriation. The Congress cannot make an appropriation unless it is authorized by law. There is no authorization. The gentleman from North Dakota wants to strike out the entire paragraph and merely insert $250,000,000. He wants to strike out on page 19 this language:

In addition to previous authorizations there is hereby authorized to be appropriated the sum of $250,000,000 for the prosecution of the comprehensive plan for the Missouri River Basin to be undertaken by the Corps of Engineers, approved by the act of June 28, 1938, as amended and supplemented by subsequent acts of Congress.

He wants to insert "$250,000,000", without saying it is an authorization or what it is. The amendment is without meaning. It is frivolous—meaningless. . . .

THE CHAIRMAN: The Chair will address himself to the point of order and say that, in the opinion of the Chair, the point of order is not well taken, for the reason that whether or not this is consistent is not within the province of the Chair.

The Chair Does Not Rule on Questions of Constitutionality

§ 1.37 The Speaker does not rule on the question of whether a bill is constitutional or unconstitutional.

On July 21, 1947,[9] it was demonstrated that the Chair does not rule on the constitutionality of proposed amendments.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I make the point of order against the bill that it violates the Constitution of the United States and that the Congress has no right to pass such legislation, and I should like to be heard on the point of order.

THE SPEAKER:[10] The Chair will hear the gentleman from Mississippi briefly on the point of order.

MR. RANKIN: . . . I submit, Mr. Speaker, that this bill is not legally before the House, and that my point of order should be sustained.

THE SPEAKER: The Chair is ready to rule. The bill is properly before the House. It is not within the jurisdiction of the Chair to determine what is constitutional and what is not constitutional. The point of order is overruled.

§ 1.38 It is for the House and not the Chair to determine on the constitutionality of a bill; and the Chair has declined to respond to a parliamentary inquiry about whether a bill contravenes the Constitution.

On Feb. 7, 1995,[11] during debate on H.R. 729, a bill dealing

9. 93 CONG. REC. 9522, 9523, 80th Cong. 1st Sess.
10. Joseph W. Martin, Jr. (Mass.).
11. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

with the imposition of the death penalty under federal sentencing procedures, an inquiry was raised about the vote required on passage of the bill. The question and the Chair's response are carried here.

PARLIAMENTARY INQUIRIES

MR. [CLEO] FIELDS of Louisiana: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[12] The gentleman will state his parliamentary inquiry.

MR. FIELDS of Louisiana: Mr. Chairman, since we are about to vote on this measure, I have a question: Since this bill that is before us modifies the Constitution to some degree, would this not call for a two-thirds vote of the House?

THE CHAIRMAN: The simple answer is no. The amendment before us is not a constitutional amendment.

MR. FIELDS of Louisiana: A further parliamentary inquiry, Mr. Chairman:

My inquiry was on the bill and not the amendment.

THE CHAIRMAN: The Chair will issue the same ruling:

This is a bill and not a constitutional amendment.

MR. FIELDS of Louisiana: A further parliamentary inquiry, Mr. Chairman:

The bill precisely says that evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the grounds that the search or seizure was in violation of the fourth amendment.

How is that not, Mr. Chairman, making the fourth amendment of the Constitution moot or at least revising it?

THE CHAIRMAN: The gentleman is not stating a parliamentary inquiry. He is raising a question of constitutional law.

That is a matter for the House to decide.

§ 1.39 The constitutional requirement that "All Bills for raising Revenue shall originate in the House . . ." may be raised when a measure is before the House for consideration, and the issue is determined by the House, voting on a question of privilege which may provide for returning the offending measure to the Senate. But the challenge is in order only when the House is in possession of the papers and cannot be raised collaterally or after the fact when the bill has passed and is no longer in possession of the House.

On Apr. 6, 1995,[13] a resolution was offered from the floor as a question of privilege under Rule IX. The resolution provided as follows:

MR. [PETER] DEUTSCH [of Florida]: Mr. Speaker, I rise to a question of

12. Frank D. Riggs (Calif.).

13. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

privilege under rule IX of the House rules and I offer a House Resolution No. 131.

THE SPEAKER PRO TEMPORE:[14] The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 131

Whereas rule IX of the Rules of the House of Representatives provides that questions of privilege shall arise whenever the rights of the House collectively are affected;

Whereas, under the precedents, customs, and traditions of the House pursuant to rule IX, a question of privilege has arisen in cases involving the constitutional prerogatives of the House;

Whereas section 7 of Article I of the Constitution requires that revenue measures originate in the House of Representatives; and

Whereas the conference report on the bill H.R. 831 contained a targeted tax benefit which was not contained in the bill as passed the House of Representatives and which was not contained in the amendment of the Senate: Now, therefore, be it

Resolved, That the Comptroller General of the United States shall prepare and transmit, within 7 days after the date of the adoption of this resolution, a report to the House of Representatives containing the opinion of the Comptroller General on whether the addition of a targeted tax benefit by the conferees to the conference report on the bill H.R. 831 (A bill to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, and for other purposes) violates the requirement of the United States Constitution that all revenue measures originate in the House of Representatives.

The Chair ruled that the resolution did not qualify as a proper question of Rule IX privilege. After debate, the Chair's decision was sustained on appeal.

THE SPEAKER PRO TEMPORE: Does the gentleman from Florida [Mr. Deutsch] wish to be heard on whether the question is one of privilege? . . .

MR. DEUTSCH: I thank the Chair.

Mr. Speaker, article I, section 7 of the Constitution specifically states that revenue measures must originate in this Chamber, in the House of Representatives. It is an infringement of the House prerogatives when that is not done, and in fact this House has consistently ruled that as a question of privilege when that occurs. It consistently occurs when the other body does a revenue provision.

What occurred in this case, as most Members at this point are well aware, is that this revenue measure which did originate in the House, then went to the other body, went to a conference committee. . . .

The House has consistently held that that type of instance is a violation of our prerogatives.

Furthermore, the Chair has consistently ruled that on issues of this nature the House has the right, and the appropriate action is for the House to decide itself what is a prerogative and what is a violation in terms of the privileges of the House. . . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

14. Scott McInnis (Colo.).

MR. DEUTSCH: Mr. Speaker——

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The Chair rules that the resolution does not constitute a question of privilege under rule IX.

The resolution offered by the gentleman from Florida collaterally questions actions taken by a committee of conference on a House-originated revenue bill by challenging the inclusion in the conference report of additional revenue matter not contained in either the House bill nor the Senate amendment committed to conference. The resolution calls for a report by the Comptroller General on the propriety under section 7 of article I of the Constitution of those proceedings and conference actions on a bill that has already moved through the legislative process.

In the opinion of the Chair, such a resolution does not raise a question of the privileges of the House. As recorded in Deschler's Precedents, volume 3, chapter 13, section 14.2, a question of privilege under section 7 of article I of the Constitution may be raised only when the House is "in possession of the papers." In other words, any allegation of infringement on the prerogatives of the House to originate a revenue measure must be made contemporaneous with the consideration of the measure by the House and may not be raised after the fact.

The Chair rules that the resolution does not constitute a question of the privileges of the House. . . .

MR. DEUTSCH: Mr. Speaker, I respectfully appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The gentleman from Florida has appealed the ruling of the Chair. The gentleman is recognized.

MR. DEUTSCH: Mr. Speaker, I believe I am recognized for an hour.

THE SPEAKER PRO TEMPORE: The gentleman will suspend.

MOTION TO TABLE OFFERED BY MR. WALKER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

> Mr. Walker moves to lay the appeal on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion to table.

PARLIAMENTARY INQUIRIES

MR. [GENE] TAYLOR of Mississippi: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman from the State of Mississippi [Mr. Taylor] is recognized.

MR. TAYLOR of Mississippi: Mr. Speaker, since the rules of the House clearly state that when the question of the integrity of the proceedings of this House have been violated, that is indeed a privileged resolution. Now, I realize that the Chair responded to the written request of my colleague, but I have also asked the Chair to respond to whether or not it is prima facie evidence that a question relating to the integrity of the proceedings of this body are called into question when one individual who earlier this session offered the Speaker of the House an over $4 million book deal which the Speaker

turned down, but he still offered it and with—that is a parliamentary inquiry. I have just as much right as the Members.

THE SPEAKER PRO TEMPORE: Regular order. This is a parliamentary inquiry. The gentleman will suspend. The Chair has ruled previously on all points on this issue as textually raised by the resolution. We now have the motion before the House.

MR. TAYLOR of Mississippi: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The motion is not debatable.

MR. TAYLOR of Mississippi: Mr. Speaker, I have a parliamentary inquiry.

MR. [KWEISI] MFUME [of Maryland]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman from Mississippi [Mr. Taylor] may state a legitimate parliamentary inquiry. . . .

MR. MFUME: Mr. Speaker, yesterday evening when there was an appeal of the ruling of the Chair; then there was from the other side of the aisle a request to table. Following that, there were questions raised on this side of the aisle about why is it so difficult to get a vote on an appeal of the ruling of the Chair? . . .

The gentleman has legitimately appealed it and ought to, at least at some point in time, have a vote, so I would say to my distinguished colleague, the gentleman from Pennsylvania, that, while we will vote on the motion to table the appeal, that there may in fact be another motion to appeal the Chair, and another one after that, and, if that is what it is going to take to get one vote on the appeal of the Chair, then this side is prepared to do that. I would rather not do it. They will win in either case, but this side is just asking for a clean vote on the appeal of the Chair.

THE SPEAKER PRO TEMPORE: It is the Chair's ruling that the motion that is currently pending is, in fact, a proper motion under the rules of the House.

MR. MFUME: I do not dispute that, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The question before the House is the motion to table.

Are there further parliamentary inquiries?

The question is on the motion offered by the gentleman from Pennsylvania [Mr. Walker] to lay on the table the appeal of the ruling of the Chair.

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

MR. WALKER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 230, nays 192, not voting 12, as follows: . . .

So the motion to lay on the table the appeal of the ruling of the Chair was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Chair Does Not Rule on Hypothetical Questions

§ 1.40 Although the Chair responds to parliamentary inquiries concerning the rules of order and decorum in debate, he does not rule on hypothetical questions; rule retrospectively on questions not timely raised; or rule anticipatorily on questions not yet presented.

On Nov. 20, 1989,[15] the House had under debate House Resolution 295 providing for consideration of a measure relating to appropriations for foreign operations.

During the hour, the debate became somewhat intemperate.

> MR. [BOB] MCEWEN [of Ohio]: Mr. Speaker, it is a difficult time to represent the interest of the left when around the world from Managua to Moscow it is being exposed that communism is a violation of human rights and human dignity. Indeed, those who have supported the Marxist guerrillas in Central America this week, having killed hundreds of innocent civilians throughout El Salvador, have not taken the floor to make any protestation of that death. . . .
>
> MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker——
>
> THE SPEAKER PRO TEMPORE:[16] For what purpose does the gentleman from Wisconsin rise?
>
> MR. OBEY: Mr. Speaker, I am about to ask that the gentleman's words be taken down.
>
> Mr. Speaker, would the gentleman yield for a possible correction? I do not want to make a motion to embarrass the gentleman. Would the gentleman yield?
>
> THE SPEAKER PRO TEMPORE: Would the gentleman from Ohio yield to the gentleman from Wisconsin?
>
> MR. MCEWEN: I yield to the gentleman. . . .
>
> MR. OBEY: Mr. Speaker, I would simply suggest—I would be happy to give him another minute because I will not take more than a minute.
>
> I think I heard the gentleman say that those who support Marxist revolutions around the world have not taken specific action on this floor. I hope that the gentleman is not suggesting that anyone on this floor is in support of Marxist revolutions. We are going to have an acrimonious enough debate today without leaving mistaken impressions like that. . . .
>
> ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE
>
> THE SPEAKER PRO TEMPORE: Before the Chair recognizes the gentleman from Massachusetts, the Chair would like to say to Members on both sides of the aisle that the Chair may intervene to prevent the arraignment of the motives of other Members. The Chair would, therefore, echo the sentiments expressed by the honorable minority leader, the gentleman from Illinois [Mr. Michel], this morning when he asked the Members to debate the issue and the policy and not to become involved in attacking or laying for question the motives of other Members.

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15. 135 CONG. REC. 30225, 30226, 101st Cong. 1st Sess.

16. Pat Williams (Mont.).

PARLIAMENTARY INQUIRIES

MR. [VIN] WEBER [of Minnesota]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WEBER: Mr. Speaker, I just would like to clarify on the ruling of the Chair right now.

Does the Chair believe, if someone did suggest that Members, not by name, but that Members of this body supported Marxist revolution, that would be unparliamentary language?

THE SPEAKER PRO TEMPORE: The Chair is not called upon to rule on possible prior violation of the rules of the House or Jefferson's Manual.

Ambiguities in Legislative Language

§ 1.41 The Chair does not rule on points of order as to whether an amendment is ambiguous.

On July 5, 1956,[17] in the Committee of the Whole, Chairman Francis E. Walter, of Pennsylvania, pointed out that the Chair does not rule on the ambiguity of proposed amendments.

Amendment offered by Mr. [James] Roosevelt [of California] to the Powell amendment: Strike the word "provisions" and insert the word "decisions."

MR. [ROSS] BASS of Tennessee: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. BASS of Tennessee: I make the point of order that the amendment is not germane to the bill.

THE CHAIRMAN: It is certainly germane to the amendment offered by the gentleman from New York to substitute the word "decisions" for the word "provisions." The Chair so rules.

MR. BASS of Tennessee: Mr. Chairman, a further point of order.

THE CHAIRMAN: The gentleman will state it.

MR. BASS of Tennessee: I make the point of order that the word "provisions" is ambiguous and has no meaning whatever and would make the amendment not germane.

THE CHAIRMAN: The Chair does not rule on the question of ambiguity. It is a question of germaneness solely, and the Chair has ruled that the amendment is germane.

Legal Effect of Bill Not Subject of Point of Order

§ 1.42 It is not a proper point of order to inquire as to the legal effect of the adoption of an amendment.

On Aug. 7, 1986,[18] during consideration of the Surface Transportation and Uniform Relocation Assistance Act of 1986 (H.R. 3129) in the Committee of the Whole,

17. 102 CONG. REC. 11875, 84th Cong. 2d Sess. Under consideration was H.R. 7537, dealing with federal assistance to states for school construction.

18. 132 CONG. REC. 19675, 99th Cong. 2d Sess.

Chairman Bob Traxler, of Michigan, declined to respond to a point of order seeking information concerning the effect of an amendment.

MR. [ROD] CHANDLER [of Washington]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

MS. [BOBBI] FIEDLER [of California]: I have a point of order, Mr. Chairman.

THE CHAIRMAN PRO TEMPORE: The gentlewoman will state her point of order.

MS. FIEDLER: Mr. Chairman, I would like to ask whether or not a vote in favor of this particular amendment would require the elimination of such signs along a route for hospitals or other urgent or emergency care.

THE CHAIRMAN PRO TEMPORE: The Chair would like to state to the gentlewoman that that is not a point of order.

A recorded vote has been ordered.

Point of Order Does Not Lie Against Competency of Drafting of Amendment

§ 1.43 The issue of whether an amendment is properly and competently drafted to accomplish its legislative purpose is not questioned by a point of order but is a matter to be disposed of by debate on the merits.

The purpose of raising a point of order is to determine whether a motion or action is in compliance with the rules. It is not properly used to question whether an amendment is properly drafted to achieve its stated purpose. The proceedings of Feb. 4, 1976,[19] illustrate this distinction.

MR. [WILLIAM M.] BRODHEAD [of Michigan]: Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

> Amendment offered by Mr. Brodhead to the amendment in the na-ture of a substitute offered by Mr. Krueger: Strike out section 105 and designate the succeeding sections of title I accordingly.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN:[20] The gentleman from Ohio reserves a point of order on the amendment. . . .

Does the gentleman from Ohio (Mr. Brown) insist on his point of order?

MR. BROWN of Ohio: I do, Mr. Chairman.

THE CHAIRMAN: The gentleman from Ohio will state his point of order.

MR. BROWN of Ohio: Mr. Chairman, my point of order against the amendment mentioned is that while it has a purpose with which I am not totally unsympathetic, it does not make the conforming amendments necessary to accomplish that purpose without leaving a lot of loose ends hanging in the legislation. For example, it strikes section 105, which is entitled, "Prohibition

19. 122 CONG. REC. 2371, 94th Cong. 2d Sess.

20. Richard Bolling (Mo.).

of the Use of Natural Gas as Boiler Fuel."

In section 102, the "purpose" section of the amendment, it says:

> . . . to grant the Federal Energy Administration authority to prohibit the use of natural gas as boiler fuel; . . .

That would be left in the legislation without any language under this section 105 which provides for that.

I think there are other references in the language that I have not had a chance to dig out.

I would suggest that if the gentleman from Michigan would like to withdraw his amendment, I think that we can provide the gentleman with an amendment that would have all the necessary conforming language.

THE CHAIRMAN: The Chair will state that the gentleman from Ohio (Mr. Brown) is no longer speaking on his point of order. The Chair will state that the question the gentleman from Ohio raises is not a valid point of order, it is rather a question of draftsmanship and the Chair overrules the point of order.

If the gentleman from Ohio desires to be heard in opposition to the amendment offered by the gentleman from Michigan (Mr. Brodhead) then the Chair would be glad to recognize the gentleman for 5 minutes.

Points of Order Against Relevancy of Debate

§ 1.44 Where a special rule provides that general debate in the Committee of the Whole shall be confined to the bill, a Member must confine his remarks to the bill, and if he continues to talk of other matters after repeated points of order, the Chairman will request that he take his seat.

On Mar. 29, 1944,[1] Chairman James Domengeaux, of Louisiana, sustained a point of order against Emanuel Celler, of New York, after the Member repeatedly strayed from the subject before the House.

> MR. [ADOLPH J.] SABATH [of Illinois]: Mr. Chairman, I rise to a point of order.
>
> THE CHAIRMAN: The gentleman will state the point of order.
>
> MR. SABATH: The gentleman is not speaking to the bill. He has been admonished several times, he has refused, and I am obliged to make the point of order myself, though I regret it.
>
> THE CHAIRMAN: The point of order is sustained and the gentleman is again requested to confine himself to the bill.

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1. 90 CONG. REC. 3263, 78th Cong. 2d Sess. Under consideration was H.R. 4257, dealing with the expatriation of persons evading military service.

Absent language in the special rule (H. Res. 482, 78th Cong.) confining general debate to the subject of the bill, debate would have been permitted in the Committee of the Whole on any subject. See 5 Hinds' Precedents §§5233–38; 8 Cannon's Precedents §2590; 120 CONG. REC. 21743, 93d Cong. 2d Sess., June 28, 1974.

MR. [NOAH M.] MASON [of Illinois]: Mr. Chairman, a parliamentary inquiry. How many times do we have to call the gentleman to order and try to get him to confine his remarks to the bill before the privilege of the House is withdrawn?

THE CHAIRMAN: This will be the last time. If the gentleman does not proceed in order, he will be requested to take his seat.

Point of Order Based on Violation of Ramseyer Rule Lies Only in House

§ 1.45 A point of order that a committee report fails to comply with the Ramseyer rule will not lie in the Committee of the Whole.

On July 25, 1966,[2] Chairman Richard Bolling, of Missouri, ruled that a point of order raised by Mr. John Bell Williams, of Mississippi, against consideration of the bill on the ground that the report of the Committee on the Judiciary accompanying the bill did not comply with requirements of the Ramseyer rule, would not lie in the Committee of the Whole. Mr. Williams had attempted to raise the point of order prior to the House's resolving itself into the Committee of the Whole, but, as Speaker John W. McCormack, of Massachusetts, later acknowledged, the Chair did not hear Mr. Williams make his point of order. After initial debate in the Committee of the Whole, the Committee voted to rise; and the Speaker resumed the Chair. The Speaker then stated that under the circumstances Mr. Williams could make his point of order at that time.

The dialogue was as follows:

MR. [EMANUEL] CELLER [of New York]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14765) to assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes.

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

THE SPEAKER: The question is on the motion offered by the gentleman from New York [Mr. Celler].

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

THE SPEAKER: All those in favor of the motion will let it be known by saying "aye." All those opposed by saying "no." The motion was agreed to.

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 14765, with Mr. Bolling in the chair.

MR. WILLIAMS: Mr. Chairman, a point of order. Mr. Chairman, I have a point of order. I was on my feet—

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

2. 112 CONG. REC. 16840, 89th Cong. 2d Sess. Under consideration was H.R. 14765, the Civil Rights Act of 1966. For more on the Ramseyer rule, see Ch. 17, supra.

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman.

THE CHAIRMAN: Under the rule, the gentleman from New York [Mr. Celler] will be recognized for 5 hours and the gentleman from Ohio [Mr. McCulloch] will be recognized for 5 hours.

MR. WILLIAMS: Mr. Chairman.

MR. WAGGONNER: Mr. Chairman.

MR. [WILLIAM M.] MCCULLOCH: Mr. Chairman.

THE CHAIRMAN: For what purpose does the gentleman from Ohio rise?

MR. MCCULLOCH: Mr. Chairman, I rise for a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. MCCULLOCH: I would like to know if the resolution unqualifiedly guarantees the minority one-half of the time during general debate and nothing untoward will happen so that it will be diminished or denied contrary to gentlemen's agreements.

THE CHAIRMAN: The Chairman will reply by rereading that portion of his opening statement. Under the rule, the gentleman from New York [Mr. Celler] will be recognized for 5 hours, the gentleman from Ohio [Mr. McCulloch] will be recognized for 5 hours. The Chair will follow the rules.

MR. MCCULLOCH: I thank you, Mr. Chairman.

MR. WILLIAMS: Mr. Chairman.

MR. CELLER: Mr. Chairman, I yield myself such time as I may care to use.

Mr. Chairman, Negroes propose to be free. Many rights have been denied and withheld from them. The right to be equally educated with whites. The right to equal housing with whites. The right to equal recreation with whites.

MR. WILLIAMS: Mr. Chairman, a point of order.

MR. CELLER: Regular order, Mr. Chairman.

THE CHAIRMAN: The gentleman will state his point of order.

MR. WILLIAMS: Mr. Chairman, immediately before the House resolved itself into the Committee of the Whole House I was on my feet on the floor seeking recognition for the purpose of making a point of order against consideration of H.R. 14765 on the ground that the report of the Judiciary Committee accompanying the bill does not comply with all the requirements of clause 3 of rule XIII of the rules of the House known as the Ramseyer rule and intended to request I be heard in support of that point of order. I was not recognized by the Chair. I realize technically under the rules of the House at this point, my point of order may come too late, after the House resolved itself into the Committee of the Whole House on the State of the Union.

MR. CELLER: Mr. Chairman.

MR. WILLIAMS: But I may say, Mr. Chairman, that I sought to raise the point of order before the House went into session. May I ask this question? Is there any way that this point of order can lie at this time?

THE CHAIRMAN: Not at this time. It lies only in the House, the Chair must inform the gentleman from Mississippi.

MR. WILLIAMS: May I say that the Parliamentarian and the Speaker were notified in advance and given copies of the point of order that I desired to raise, and I was refused recognition although I was on my feet seeking recognition at the time.

MR. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Chairman, I appeal the ruling of the Chair.

THE CHAIRMAN: The Chair will have to repeat that the gentleman from Mississippi is well aware that this present occupant of the chair is powerless to do other than he has stated.

MR. WAGGONNER: Mr. Chairman, I appeal the ruling of the Chair.

THE CHAIRMAN: The question is, Shall the decision of the Chair stand as rendered?

The question was taken; and on a division (demanded by Mr. Williams) there were—ayes 139, noes 101.

The decision of the Chair was sustained.

MR. WILLIAMS: Mr. Chairman, I move that the Committee do now rise, and on that I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Celler and Mr. Williams.

The Committee again divided, and the tellers reported that there were—ayes 168, noes 144.

So the motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. Bolling, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 14765) to assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes, had come to no resolution thereon.

THE SPEAKER: The Chair recognizes the gentleman from Mississippi.

MR. WILLIAMS: Mr. Speaker, the House resolved itself into the Committee of the Whole House on the State of the Union a moment ago. When the question was put by the Chair, I was on my feet seeking recognition for the purpose of offering a point of order against consideration of the legislation. Although I shouted rather loudly, apparently the Chair did not hear me. Since the Committee proceeded to go into the Committee of the Whole, I would like to know, Mr. Speaker, if the point of order which I had intended to offer can be offered now in the House against the consideration of the bill; and, Mr. Speaker, I make such a point of order and ask that I be heard on the point of order.

THE SPEAKER: The Chair will state that the Chair did not hear the gentleman make his point of order. There was too much noise. Under the circumstances the Chair will entertain the point of order.

Chairman of Committee of the Whole Does Not Rule on House Procedure

§ 1.46 The Speaker, and not the Chairman of the Committee of the Whole, rules on the propriety of amendments included in a motion to recommit with instructions.

On July 28, 1983,[3] during consideration of H.R. 2760, a bill pro-

3. 129 CONG. REC. 21471, 98th Cong. 1st Sess.

hibiting covert assistance to Nicaragua in 1983, Chairman William H. Natcher, of Kentucky, responding to a parliamentary inquiry, stated:

> The Chair would advise the gentleman that the rule does not protect such a motion to recommit, but that would be up to the Speaker when we go back into the House to answer that question specifically.

Points of Order Against Committee Procedure

§ 1.47 A point of order that a measure was reported from a committee in violation of a committee rule requiring advance notice of the committee meeting will not lie in the House—the interpretation of committee rules being with the cognizance of the committee.

On Oct. 12, 1978,[4] Mr. Bolling filed a privileged report emanating from the Committee on Rules. Mr. Bauman, a member of that committee, complained about the procedure used in the Committee on Rules in ordering the resolution reported.

> Mr. Bolling, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1769) on the resolution (H. Res. 1426) providing for the consideration of reports from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.
>
> MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I do not think the gentleman from Missouri has properly filed his report. The resolution was considered this morning in the Rules Committee with no agenda, no notice. It was the intention of the gentleman from Maryland to move to reconsider this resolution. Now, it is jammed through here when we have been in session in the Rules Committee for only 15 minutes.
>
> I think the members of the Rules Committee deserve something better than that. I question whether a quorum was even present.
>
> THE SPEAKER:[5] The report has been filed.
>
> MR. BAUMAN: I make a point of order that a quorum was not present in the Rules Committee at the time the action was taken.
>
> MR. [RICHARD] BOLLING [of Missouri]: If the gentleman will yield——
>
> MR. BAUMAN: I do not have the floor.
>
> THE SPEAKER: The Chair will recognize the gentleman from Missouri.
>
> MR. BOLLING: Mr. Speaker, there was a quorum present. The vote was perfectly proper. No objection was heard, and I filed the report.
>
> MR. BAUMAN: And there was no notice given, as the rules of the Rules Committee require, of that proposed action.
>
> THE SPEAKER: Is the gentleman addressing the Chair?
>
> MR. BAUMAN: Mr. Speaker, the gentleman is addressing the gentleman

4. 124 CONG. REC. 36382, 95th Cong. 2d Sess.

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

from Missouri, who filed this; through the Chair.

THE SPEAKER: Well, as far as notice is concerned, that is a matter of the interpretation of the rules of the Rules Committee, to be raised within the committee and not in the House.

—*May Be Raised in House Only if Improperly Disposed of in Committee*

§ 1.48 Certain points of order based on procedures in committees retain viability in the House only if first raised and improperly disposed of in committee; and the Speaker Pro Tempore has advised that a point of order that a bill was reported to the House without a majority of the committee actually being present does not lie in the House unless made in committee in a timely manner and improperly disposed of therein.

On Aug. 10, 1994,[6] the Speaker was about to declare the House resolved into the Committee of the Whole for the consideration of a pending measure. A Member pressed a parliamentary inquiry, pointing out that the report accompanying the bill stated that a quorum was present when the bill was ordered reported from the committee. The Member then averred that the facts were to the contrary and that committee records disputed the assertion in the report. The proceedings are carried here in full (after a special order providing for consideration of the bill had been adopted).

PARLIAMENTARY INQUIRY

MR. [DAVID] DREIER [of California]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[7] The gentleman will state it.

MR. DREIER: Mr. Speaker, House rule XI, in clause (l)(2)(A) reads: "No measure or recommendation shall be reported from any committee unless a majority of the committee was actually present, which shall be deemed the case if the records of the committee establish that a majority of the committee responded on a rollcall vote on that question."

Mr. Speaker, I realize that the rule goes on to say a point of order will lie in the House that a quorum was not present unless it was first made in the committee.

But my question is this: If the records of the committee show a quorum was not present on a rollcall vote to report a measure, can a committee still claim in its report that a quorum was present?

THE SPEAKER PRO TEMPORE: The gentleman has correctly stated the rule.

MR. DREIER: I know I have correctly stated the rule. I wonder if the com-

6. 140 CONG. REC. p. _____, 103d Cong. 2d Sess.

7. José E. Serrano (N.Y.).

mittee can still claim in its report that a quorum was present?

THE SPEAKER PRO TEMPORE: The Chair is giving the gentleman credit for stating the rule properly. In response to the gentleman's first inquiry, the Chair would state that, while it may not be accurate or proper for a committee to state in its report that a quorum was present if its records show a quorum was not actually present, that is an issue which must first be raised and preserved in the committee by a committee member for a point of order to survive in the House.

MR. DREIER: Mr. Speaker, continuing my parliamentary inquiry, can a committee report a measure without a quorum being present, even when there is a rollcall vote, or must the committee then utilize a rolling quorum until an actual majority of the members respond to their names?

THE SPEAKER PRO TEMPORE: In response to the gentleman's second inquiry, the Chair would state that if a point of no quorum is raised by a committee member when the measure is ordered reported, then the chairman of the committee must either await the appearance of a quorum if there is not to be a rollcall vote, or a rollcall vote must reveal a majority of the committee having responded at some point in time before the measure is ordered reported.

MR. DREIER: Mr. Speaker, if I could pose one final question on my parliamentary inquiry, if a committee can order a measure reported with less than a majority being present, can the committee report a bill with just the chairman present as long as he does not make a point of order against himself?

THE SPEAKER PRO TEMPORE: In response to the third inquiry, the Chair would state that it would be the responsibility of any and all committee members, at a properly convened meeting of the committee, to remain available to assure that at the time the measure is ordered reported a point of order is made that a quorum is not present in order to preserve that point of order in the House.

MR. DREIER: Mr. Speaker, I thank the Chair for that very cogent explanation.

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 514 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4822.

Timing of Point of Order Against Sufficiency of Committee Report

§ 1.49 Responding to a parliamentary inquiry, the Chair indicated that the proper time to raise a point of order against deficiencies in a committee report would be pending the Speaker's declaration that the House resolve itself into Committee of the Whole for consideration of the measure reported.

The rules of the House prescribe that certain information relating to the committee process leading up to the filing of a committee re-

port be set out in the report. Failure to include such information may subject the report to a point of order.

Inquiries relating to the proper time to make a point of order of deficiencies in a committee report were directed to the Speaker on Jan. 19, 1995,[8] pending the consideration of H.R. 5, the Unfunded Mandate Reform Act of 1995.

PARLIAMENTARY INQUIRIES

MR. [PAUL E.] KANJORSKI [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[9] The gentleman will state it.

MR. KANJORSKI: Mr. Speaker, as I understand the new rule in clause 2(l)(2)(B) of rule XI, adopted on January 4 of this year as the new rules of the House, each committee report must accurately reflect all rollcall votes on amendments in committee; is that correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. KANJORSKI: Mr. Speaker, as a further parliamentary inquiry, the report accompanying H.R. 5, as reported from the Committee on Government Reform and Oversight, House Report 104–1, part 2, lists many rollcall votes on amendments. On amendment 6, the report states that the committee defeated the amendment by a rollcall vote of 14 yes and 22 no. However, the tally sheet shows 35 members voting "aye" and 1 member voting "nay."

Mr. Speaker, would a point of order under clause 2(l)(2)(B) of rule XI apply?

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, the gentleman is correct.

MR. KANJORSKI: Mr. Speaker, if that were the case, it is clear that this bill could not proceed under its present rule; is that correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct, if it is an error on behalf of the committee. If it is a printing error. That would be a technical problem which would not be sustained in the point of order.

MR. KANJORSKI: Mr. Speaker, I am not going to insist or raise a point of order. However, I bring this to the attention of the Chair and to my colleagues on the other side. Some of the hesitancy to proceed as quickly as we are proceeding on this bill and others that are part of the Contract With America is the fear on the minority side that this haste may bring waste, that speed may bring poor legislation. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania has been recognized for the purpose of a parliamentary inquiry. The gentleman may continue regarding the inquiry. . . .

MRS. [CAROLYN B.] MALONEY [of New York]: Mr. Speaker, this was my amendment, and it is a printing record error. The Republicans voted against exempting the most vulnerable citizens in our society, children, that cannot vote, cannot speak for themselves in the unfunded mandates bill. But it is a

8. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

9. Steve Gunderson (Wis.).

printing error. They did not vote for it. . . .

MRS. [CARDISS] COLLINS of Illinois: A parliamentary inquiry, Mr. Speaker.

Mr. Speaker, under clause 2(j)(1) of rule XI it states "Whenever any hearing is conducted by any committee upon any measure or matter, the minority party members on the committee shall be entitled, upon request to the chairman by a majority of them before completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least 1 day of hearing thereon."

Mr. Speaker, the Committee on Government Reform and Oversight is the committee of original jurisdiction on this bill. On January 10, the Committee on Government Reform and Oversight began its markup on H.R. 5.

MR. [DAVID] DREIER [of California]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: There is a parliamentary inquiry before the House at the present time. . . .

MRS. COLLINS of Illinois: After two opening statements, the chairman of the committee invited a member of the majority party who was not a member of the committee to testify before the committee. At the conclusion of his testimony, the witness thanked the chairman of the committee for holding the hearing.

Mr. Speaker, minority members of the committee protested in a timely fashion. No opportunity was given to Members on our side of the aisle to question the witness. Democrats requested that an additional formal hearing be conducted on this measure so that their witnesses could be called. That request was denied and the minority was told that the only procedure allowed would be to continue the full committee markup of the bill. Efforts on the part of the minority members to raise questions over possible violations of House rules were dismissed by the chairman.

Mr. Speaker, in my view, allowing a Member not on the committee to testify changed the meeting from a straight markup to a hearing.

It is true that in many committee markups the majority requests the presence of certain experts, usually administration officials or committee staff, to answer questions about the interpretation or effect of different proposals.

The Member's appearance before the committee, the Member who is not a member of the committee, was not like that. Questions were not put to him. He provided a statement and read his testimony in the way any witness testifies at any hearing.

Mr. Speaker, we do not protest the presence of Members not on the committee at the markup and hearing. Our complaint is that we were denied the opportunity to ask questions and to call our own witnesses, as we were entitled to do under the rules.

The only remedy, Mr. Speaker, is a point of order at this stage of deliberation.

Is it correct that I would be required to raise a point of order, Mr. Speaker, when the committee resolves itself into the Committee of the Whole?

THE SPEAKER PRO TEMPORE: If the gentlewoman insists on her point of order, that point of order would be timely at this point in the process.

MRS. COLLINS of Illinois: Thank you, Mr. Speaker. However, because, Mr. Speaker, I do not want to engage in any kind of dilatory tactics, such as I have heard before in the 103d Congress and previous Congresses, I will not insist upon a point of order at this time.

THE SPEAKER PRO TEMPORE: Does the gentlewoman seek a response from the Chair regarding the inquiry?

MRS. COLLINS of Illinois. Not at this time, Mr. Speaker. I think I have made my point.

Point of Order Against Words Used in Debate

§ 1.50 A point of order may not be made or reserved against remarks delivered in debate after subsequent debate has intervened, the proper remedy being a demand that words be taken down as soon as they are uttered.

On Aug. 20, 1980,[10] a brief exchange relating to the procedure for "taking down words" occurred during the five-minute debate on the Treasury, Postal Service, and general government appropriations, 1981. The exchange between Mr. Robert K. Dornan, of California, and Mr. Henry A. Waxman, of California, followed a contentious amendment offered and then withdrawn by Mr. Dornan. Both the prior statement by Mr. Dornan, the Chair's admonition about referring, even indirectly, to a member of the Senate, and the exchange at issue are carried below.

(By unanimous consent, Mr. Dornan was allowed to proceed for 3 additional minutes.)

MR. DORNAN: I want to repeat that line, listen to it well, every Member of this body. . . .

He tells me there is a criminal investigation of the elected Federal official and that I cannot question this prisoner about this particular elected official. Then lo and behold, 2 days after I confront this elected Federal official in his office, he is on an airplane with Justice Department help, and he gets to see the felon. . . .

. . . The FEC never asked for the proof. It was all on supposition, on the word of this felon, sitting in the former General Counsel's office, the office of William Oldaker, and "the elected Federal official." . . .

(By unanimous consent, Mr. Dornan was allowed to proceed for 1 additional minute.)

THE CHAIRMAN:[11] The gentleman from California (Mr. Dornan) has also asked unanimous consent to withdraw his amendment.

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

MR. [RONNIE G.] FLIPPO [of Alabama]: Reserving the right to object, if I might reserve the right to object and I shall not object, the gentleman is making some statements in regard to

10. 126 CONG. REC. 22151–54, 96th Cong. 2d Sess.

11. Richardson Preyer (N.C.).

his opinion of the Federal court's action on the matter regarding Alabama, and he is speaking with great conviction. I wonder if the gentleman has been following the trials taking place in Alabama in regard to this matter. I wish the gentleman would refrain from referring to the Senator from Alabama, and give the Senator an opportunity to do what he needs to do to explain the situations. He does not need to be tried by the Jack Andersons of this world. We have a proper court procedure and a way to proceed in that regard.

I would hope that the gentleman would refrain from bringing up the name of any official from Alabama, or any other State official's name up, in a manner that would tend to encourage people to believe that they had done something wrong, when no such thing exists or it has not been proven in a court of law. I know the gentleman's high regard for court proceedings.

MR. DORNAN: If the gentleman will yield, I believe I have discovered a major coverup; a terribly inept, if not illegal obstruction of justice by Justice Department people assigned to the fair State of Alabama. I gave the Senator mentioned before a face-to-face opportunity, alone in his office, to explain his involvement but he would not do so.

MR. FLIPPO. Mr. Chairman, I ask that the gentleman's words be taken down.

THE CHAIRMAN: The gentleman may not refer to Members of the other body.

MR. FLIPPO: Mr. Chairman, I would ask that the gentleman's words be taken down.

I will yield to what the gentleman wants, then.

THE CHAIRMAN: The Chair will state to the gentleman from California (Mr. Dornan) that under the rules of the House it is not in order to refer to Members of the other body and in the light of that the Chair would ask the gentleman from California if he wishes to withdraw his remarks concerning the Member of the other body.

MR. DORNAN: Mr. Chairman, as of about a year-and-a-half ago, video tape records of House proceedings have been made. Taking that into consideration I will accede to the Chair's suggestion and remove all statements in the written Record pertaining to Members of the other body.

THE CHAIRMAN: The gentleman will proceed. The gentleman has agreed to remove all the statements in question from the Record. . . .

Does the gentleman from Alabama still reserve his point of order?

MR. FLIPPO: Mr. Chairman, I no longer reserve the right to object. . . .

MR. WAXMAN: Mr. Chairman, and my colleagues, I am not familiar with the allegations being made. This amendment has been offered for the purpose of our colleague using the time of the House of Representatives to engage in a good number of accusations attacking the integrity of men in public office and those who would seek to be in public office and those who have assisted them. The gentleman may be absolutely correct; I just do not know. It does, however, seem to me quite curious to have an amendment offered for the sole purpose of using the time of the House to air all these accusations. If there are accusations of serious moment they ought to be brought to the proper authorities: the law en-

forcement authorities, if a crime is committed; the Federal Election Commission which has jurisdiction over the questions of violations of the law should that be involved.

Mr. Chairman, I just wanted to take this opportunity to say this strikes me as curious and gives me a great deal of hesitancy to see that an amendment would be offered solely for the purpose of discussing other matters than what is proposed in the amendment and that relates to the gentleman's campaign for reelection. . . .

MR. DORNAN: Mr. Chairman, I thank the gentleman for his additions.

THE CHAIRMAN: Is there objection to the request of the gentleman from California (Mr. Dornan) to withdraw his amendment? If not, the amendment is withdrawn.

MR. DORNAN: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. DORNAN: Mr. Chairman, I reserve a point of order in opposition to the Member's words against me.

To suggest that someone's remarks are demagogic is impugning the motives of that Member. I could have had my good colleague's words taken down. I reserve the point of order, but add that I am emotionally concerned about a 1-year coverup by the Federal officials who are charged with investigating these matters here. Please have some sympathy, if not empathy, for my position. That is why I do not mind your initial and quick analysis of my motives here. It is understandable, but wrong.

MR. WAXMAN: Will the gentleman yield?

MR. DORNAN: I will be glad to yield.

THE CHAIRMAN: The gentleman has no standing to raise the point of order at this point. Debate has intervened. There is no other amendment before the Committee, and the Chair will ask the Clerk to read.

The Clerk read as follows: . . .

Speaker's Responsibility To Rule on Questions of Privilege of the House Under Rule IX

§ 1.51 It is the duty of the Speaker to decide whether a resolution offered as privileged qualifies for the special privileged status bestowed by Rule IX on questions of "privilege of the House" and he may rule on this question without awaiting a point of order from the floor.

On Jan. 23, 1984,[12] Mr. William E. Dannemeyer, of California, rose to a question of privilege of the House and offered a resolution. The Speaker[13] asked the gentleman why he thought the resolution qualified for that special status under Rule IX, listened to the presentation, and then ruled that the resolution, since it was in effect a change in House rules, did not qualify. The resolu-

12. 130 CONG. REC. 78, 98th Cong. 2d Sess.

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

tion, the arguments, and the ruling are carried herein.

THE SPEAKER: The Chair had intended to recognize Members for 1-minute speeches at this time, unless the gentleman has a question of privilege.

MR. DANNEMEYER: Mr. Speaker, I raise a question of the privileges of the House, and I offer a privileged resolution (H. Res. 390) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 390

Resolved, That effective 30 days after the adoption of this resolution, each Standing and Select Committee of the House, except for the Committee on Standards of Official Conduct, shall be constituted in a ratio which is proportionate to the membership of the two political parties in the House as a whole; and each subcommittee thereof shall also be so constituted; and insofar as practicable, the staffs of each Committee shall also reflect these same ratios.

THE SPEAKER: The gentleman from California has been kind enough to advise the Chair that he was going to offer this resolution as a question of privilege at the appropriate time, and now is the appropriate time.

Would the gentleman state why he feels the resolution constitutes a question of privilege?

MR. DANNEMEYER: I would be happy to, Mr. Speaker. It has long been recognized that the integrity of the proceedings by which bills are considered is a matter of privilege. (Hinds' Precedents III, 2597–2601, 2614; and IV, 3383, 3388, 3478).

I especially draw the Chair's attention to III, 2602 and III, 2603 which show that error or obstruction of minority views are matters of privilege. In the first instance, in the year 1880, it was held that the matter of correcting the reference of a public bill presented a question of privilege at a time when there was not any other means of correction provided for in the rules. The point was made on the floor that this matter was one involving the integrity of the proceedings of the House and as such was privileged.

In the next reference, a charge investigated in 1863 as a question of privilege was "the charge that the minority views of a committee had been abstracted from the Clerk's office by a Member * * *." Both of these precedents indicate that it is a longstanding matter that the minority is granted its "day in court" on questions such as these which are questions impacting on the integrity of the proceedings of the House. And further, these questions indicate that it is the process by which legislation is developed which affects the integrity of the proceedings of the House. I submit that the disproportional ratio of committee membership and staffing even more profoundly impacts on the process by which legislation is developed and that there is no question that my resolution involves a question of privilege.

Some might argue that my resolution does not fall within the ambit of privilege because they would say it is a motion to amend the rules of the House or would "effect a change in the rules of the House of their interpretation." (Ruling by Speaker O'Neill, Dec. 7, 1977, pp. 38470–73.) However, upon close examination the Chair will find

that my resolution is indeed a question of privilege and that the December 7, 1977, ruling does not apply here.

My resolution does not amend the rules of the House because the practice we are attempting to change is not a rule. It is a custom—a longstanding custom of the majority party that suppresses the legitimate representation of the rights of the minority. I have been unable to find—and I challenge any Member of the House to show me where in the House rules it says the ratio in the Rules Committee, for example, shall be nine majority and four minority. It is certainly not in rules X and XI which set forth the establishment and conduct of committees.

The first and only mention of this ratio appears in official records of the House when the committee assignments are made by the Democratic Caucus or the Republican Conference after the Speaker has notified the Republican leader of the number of party vacancies on each of the several committees.

Mr. Speaker, my resolution is not effecting a change in the rules. I am simply attempting to change the arbitrary political policy of the House—an arbitrary custom which indeed adversely affects the integrity of the proceedings of the House.

THE SPEAKER: The Chair knows it is the duty of the Chair to preside and to determine questions of privilege.

Under the precedents of the House cited on page 329 of the House Rules and Manual, a question of the privileges of the House may not be invoked to effect a change in the rules of the House or their interpretation. The gentleman from California contends that the resolution which he has presented addresses not a specific standing rule of the House, but the customs and traditions of the House, and is thus not to be governed by the precedents in the manual.

In the opinion of the Chair, the resolution does constitute a change in the rules of the House, by imposing a direction that the composition of all standing committees be changed within 30 days. The rules of the House do address the question of the procedure by which full committee membership and staff selections are to be accomplished. As indicated on page 399 of the manual, rule X, clause 6, the respective party caucus and conference perform an essential role in presenting privileged resolutions to the House, both at the commencement of a Congress and subsequently to fill vacancies. Because the issue of committee ratios can be properly presented to the House in a privileged manner by direction of the party conference or caucus, and because rule XI, clause 6, establishes a procedure for selection of permanent committee professional and clerical staff, the Chair rules that the resolution constitutes an attempt to change procedures established under the rules of the House and does not therefore present a question of the privileges of the House.

MR. DANNEMEYER: I thank the Speaker.

§ 1.52 On his own volition, without a question from the floor, the Speaker ruled that a motion offered in the House to correct the Record, no allegation being made

that the integrity of the proceedings of the House were involved, failed to qualify as a question of privilege under Rule IX. An appeal from his decision was tabled.

The proceedings of Apr. 25, 1985,[14] offer another illustration of the Chair's responsibility under Rule IX to qualify motions or resolutions as questions of "privilege of the House."

MR. [VIN] WEBER [of Minnesota]: Mr. Speaker, I offer a privileged motion.

The Clerk read as follows:

Motion offered by Mr. Weber: Mr. Weber moves to correct the Congressional Record by striking out on page 2281 the remarks beginning with the words "We" down to and including the word "confederation" and inserting the word "are" before "a".

THE SPEAKER PRO TEMPORE:[15] The Chair does not believe the motion as offered by the gentleman states a question of privilege.

MR. WEBER: Mr. Speaker, I appeal the ruling of the Chair.

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I move to lay the appeal on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion to lay on the table offered by the gentleman from Washington [Mr. Foley].

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

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

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 200, nays 156, answered "present" 1, not voting 76. . . .

The Chair Rules Whether a Resolution States a Question of Privilege Under Rule IX and No Longer Submits the Question to the House

§ 1.53 Although an earlier practice in the House was for the Speaker to submit the question of whether a resolution raised a question of privilege, the Speaker now rules directly on such matters without waiting for a point of order from the floor.

On Feb. 7, 1995,[16] Mr. Gene Taylor, of Mississippi, offered a resolution alleging unconstitutional actions on the part of the President. House Resolution 57 was directed to the Comptroller General and demanded an accounting of certain public funds. The resolution, the Chair's ruling, and a portion of the colloquy which followed are carried here.

MR. TAYLOR of Mississippi: Mr. Speaker, I would like to use this 1 minute to inform my colleagues that

14. 131 CONG. REC. 9419, 99th Cong. 1st Sess.

15. Tommy Robinson (Ark.).

16. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

within a matter of minutes this House will be given the privilege that the President of the United States did not give us; and that is, to decide for ourselves whether or not we thought the Mexican bailout was a good idea.

The privileged motion that will be before the House in just a few minutes is to require the comptroller general to tell us if the law was obeyed when the President used $20 billion from the stabilization fund to bail out Mexico. . . .

ENSURING EXECUTIVE BRANCH ACCOUNTABILITY TO THE HOUSE IN EXPENDITURE OF PUBLIC MONEY

MR. TAYLOR of Mississippi: Mr. Speaker, I offer a privileged resolution (H. Res. 57) to preserve the constitutional role of the House of Representatives to provide for the expenditure of public money and ensure that the executive branch of the U.S. Government remains accountable to the House of Representatives for each expenditure of public money, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 57

Whereas rule IX of the Rules of the House of Representatives provides that questions of privilege shall arise whenever the rights of the House collectively are affected;

Whereas, under the precedents, customs, and traditions of the House pursuant to rule IX, a question of privilege has arisen in cases involving the constitutional prerogatives of the House;

Whereas section 8 of Article I of the Constitution vests in Congress the power to "coin money, regulate the value thereof, and of foreign coins"; Whereas section 9 of Article I of the Constitution provides that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law"; . . .

Whereas the obligation or expenditure of funds by the President without consideration by the House of Representatives of legislation to make appropriated funds available for obligation or expenditure in the manner proposed by the President raises grave questions concerning the prerogatives of the House and the integrity of the proceedings of the House; . . .

Whereas the commitment of $20,000,000,000 of the resources of the exchange stabilization fund to Mexico by the President without congressional approval may jeopardize the ability of the fund to fulfill its statutory purposes: Now, therefore, be it

Resolved, That the Comptroller General of the United States shall prepare and transmit, within 7 days after the adoption of this resolution, a report to the House of Representatives containing the following:

(1) The opinion of the Comptroller General on whether any of the proposed actions of the President, as announced on January 31, 1995, to strengthen the Mexican peso and support economic stability in Mexico requires congressional authorization or appropriation. . . .

THE SPEAKER:[17] Does the gentleman from Mississippi [Mr. Taylor] wish to be heard briefly on whether the resolution constitutes a question of privilege?

MR. TAYLOR of Mississippi: Yes, Mr. Speaker.

Mr. Speaker, in the past few days a dozen Members of Congress, ranking

17. Newt Gingrich (Ga.).

from people on the ideological right, like the gentleman from Kentucky [Mr. Bunning] and the gentleman from California [Mr. Hunter], all the way to people on the ideological left, like the gentleman from Vermont [Mr. Sanders], have asked the question of whether or not the role of Congress has been shortchanged in the decision by the President to use this fund to guarantee the loans to Mexico. . . .

One provision of our Nation's Constitution that is most clearly mandatory in nature is article I, section 9, clause 7. It states, "No money shall be drawn from the Treasury but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Mr. Speaker, this Congress cannot stand idly by and avoid our constitutional duty, a duty mandatory in nature.

I request that the Chair rule immediately on this resolution, and in making that ruling abide by section 664 of rule IX, General Principles, as to precedents of question and privilege.

Once again, it states that "Certain matters of business arising under the provisions of the Constitution mandatory in nature have been held to have a privilege which has superseded the rules establishing the order of business." . . .

Mr. Speaker, since there were a dozen cosponsors of this resolution, each of us with an equal input, I would like the Chair to oblige those other Members who would like to speak on the matter.

THE SPEAKER: The Chair is willing to hear other Members. The Chair recognizes the gentlewoman from Ohio [Ms. Kaptur].

MS. [MARCY] KAPTUR [of Ohio]: Mr. Speaker, I rise as an original sponsor of this legislation and in full support of our bipartisan efforts to get a vote on this very serious matter. Our resolution is very straightforward in attempting to reassert our rightful authority under the Constitution of the United States. . . .

We believe that this is a question of privilege of the House because of the constitutional role of the House of Representatives to provide for the expenditure of public money and ensure that the executive branch of the U.S. Government remains accountable to the House for each such expenditure of public money. . . .

THE SPEAKER: Having heard now from five Members, the Chair is prepared to rule on this. The Chair would first of all point out that the question before the House right now is not a matter of the wisdom of assistance to Mexico, nor is the question before the House right now a question of whether or not the Congress should act, nor is what is before the House a question of whether or not this would be an appropriate topic for committee hearings, for legislative markup, and bills to be reported.

What is before the House at the moment is a very narrow question of whether or not the resolution offered by the gentleman from Mississippi [Mr. Taylor] is a question of privilege. On that the Chair is prepared to rule.

The privileges of the House have been held to include questions relating to the constitutional prerogatives of the House with respect to revenue leg-

islation, clause 1, section 1, article I of the Constitution, with respect to impeachment and matters incidental, and with respect to matters relating to the return of a bill to the House under a Presidential veto.

Questions of the privileges of the House must meet the standards of rule IX. Those standards address privileges of the House as a House, not those of Congress as a legislative branch.

As to whether a question of the privileges of the House may be raised simply by invoking one of the legislative powers enumerated in section 8 of article I of the Constitution or the general legislative "power of the purse" in the seventh original clause of section 9 of that article, the Chair finds helpful guidance in the landmark precedent of May 6, 1921, which is recorded in Cannon's Precedents at volume 6, section 48. On that occasion, the Speaker was required to decide whether a resolution purportedly submitted in compliance with a mandatory provision of the Constitution, section 2 of the 14th amendment, relating to apportionment, constituted a question of the privileges of the House.

Speaker Gillett held that the resolution did not involve a question of privilege. . . .

The House Rules and Manual notes that under an earlier practice of the House, certain measures responding to mandatory provisions of the Constitution were held privileged and allowed to supersede the rules establishing the order of business. Examples included the census and apportionment measures mentioned by Speaker Gillett. But under later decisions, exemplified by Speaker Gillett's in 1921, matters that have no other basis in the Constitution or in the rules on which to qualify as questions of the privileges of the House have been held not to constitute the same. The effect of those decisions has been to require that all questions of privilege qualify within the meaning of rule IX.

The ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules of the House, without necessarily being accorded precedence as questions of the privileges of the House. . . .

The Chair will continue today to adhere to the same principles enunciated by Speaker Gillett. The Chair holds that neither the enumeration in the fifth clause of section 8 of article I of the Constitution of Congressional Powers "to coin money, regulate the value thereof, and of foreign coins," nor the prohibition in the seventh original clause of section 9 of that article of any withdrawal from the Treasury except by enactment of an appropriation, renders a measure purporting to exercise or limit the exercise of those powers a question of the privileges of the House. . . .

It bears repeating that questions of privileges of the House are governed by rule IX and that rule IX is not concerned with the privileges of the Congress, as a legislative branch, but only with the privileges of the House, as a House.

The Chair holds that the resolution offered by the gentleman from Mississippi does not affect "the rights of the House collectively, its safety, dignity, or the integrity of its proceedings" within the meaning of clause 1 of rule IX. Although it may address the aspect

of legislative power under the Constitution, it does not involve a constitutional privilege of the House. Were the Chair to rule otherwise, then any alleged infringement by the executive branch, even, for example, through the regulatory process, on a legislative power conferred on Congress by the Constitution would give rise to a question of the privileges of the House. In the words of Speaker Gillett, "no one Member ought to have the right to determine when it should come in in preference to the regular rules of the House." . . .

MR. TAYLOR of Mississippi: Mr. Speaker, I would also like to point out that the original custom of this body was to present any question of a privilege of the House to the Members and let the Members decide whether they felt it was a privilege of the House that was being violated. Is the Speaker willing to grant the Members of this House that same privilege?

THE SPEAKER: The Chair would simply note that the Chair is following precedent as has been established over the last 70 years and that that precedent seems to be more than adequate. And in that context, the Chair has ruled this does not meet the test for a question of privilege.

MR. TAYLOR of Mississippi: Mr. Speaker, a further parliamentary inquiry: What is the procedure for——

THE SPEAKER: The only appropriate procedure, if the gentleman feels that the precedents are wrong, would be to appeal the ruling of the Chair and allow the House to decide whether or not to set a new precedent by overruling the Speaker.

MR. TAYLOR of Mississippi: Mr. Speaker, I appeal the ruling of the Chair, and I would like Members of Congress to be granted the 1 hour that the House rules allow for to speak on this matter.

PREFERENTIAL MOTION OFFERED BY MR. ARMEY

MR. [RICHARD K.] ARMEY [of Texas]: Mr. Speaker, I offer a preferential motion.

THE SPEAKER: The Clerk will report the preferential motion.

The Clerk read as follows:

> Mr. Armey moves to lay on the table the appeal of the ruling of the Chair.

PARLIAMENTARY INQUIRY

MS. KAPTUR: I have a parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentlewoman will state the parliamentary inquiry.

MS. KAPTUR: Mr. Speaker, am I correct in understanding that the motion to table this appeal is not debatable?

THE SPEAKER: The gentlewoman is correct.

MS. KAPTUR: And thus, Mr. Speaker, Members of Congress will be deprived by this vote without any type of a debate on the authority vested in our constitutional rights to vote on this issue?

THE SPEAKER: The Chair would say to the gentlewoman that the motion is not debatable.

The question is on the preferential motion offered by the gentleman from Texas [Mr. Armey].

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

MR. TAYLOR of Mississippi: Mr. Speaker, I object to the vote on the

ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

This vote will be 17 minutes total.

The vote was taken by electronic device, and there were—yeas 288, nays 143, not voting 3, as follows: . . .

So the motion to lay on the table the appeal of the ruling of the Chair was agreed to.

Floor Manager of Bill May Press Point of Order Against His Own Bill

§ 1.54 Instance where the manager of a general appropriation bill made (on behalf of another) and then conceded a point of order against a paragraph of his own bill.

On June 18, 1993,[18] during consideration of the Treasury-Postal appropriation bill, fiscal 1994, the bill manager made a point of order against a provision therein, honoring a commitment he had made to an absent colleague.

MR. [STENY H.] HOYER [of Maryland]: Mr. Chairman, I have a point of order.

THE CHAIRMAN:[19] The gentleman will state his point of order.

MR. HOYER: Mr. Chairman, I raise a point of order against the language beginning with the words, "Provided further," on page 17, line 2, through the word "Code," on line 5.

Mr. Chairman, I raise the point of order on behalf of the gentleman from Missouri [Mr. Clay], the chairman of the Committee on Post Office and Civil Service, pursuant to the colloquy that just occurred with the gentleman from Virginia [Mr. Wolf] who is the sponsor of this amendment and which is included in our bill.

The language in fact constitutes legislation on an appropriation bill and we, therefore, concede the point that would be made by the chairman that it violates clause 2 of rule XXI.

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

If not, for the reasons stated, and because the point of order was not waived by the rule, the point of order is sustained and the language is stricken.

Bill Manager's Motivation in Making Points of Order

§ 1.55 Motivation for raising points of order against provisions in a bill are varied; and the manager of a bill has pressed points of order against his own bill to expedite its consideration.

On Sept. 30, 1993,[20] Mr. John P. Murtha, of Pennsylvania,

18. 139 CONG. REC. 13364, 13365, 103d Cong. 1st Sess.

19. Gerry E. Studds (Mass.).

20. 139 CONG. REC. 23110, 23123, 103d Cong. 1st Sess.

Chairman of the Defense Subcommittee of the Committee on Appropriations, raised points of order against vulnerable provisions in his own bill where their inclusion was opposed by the Chairman of the committee having jurisdiction over the "legislative provisions" in the bill.

[The following paragraph was reached in the reading.]

GLOBAL COOPERATIVE INITIATIVES, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For support of Department of Defense responses to national and international natural disasters and the expenses of other global disaster relief activities of the Department of Defense; . . . *Provided further*, That none of the funds appropriated under this heading shall be obligated or expended for costs incurred by United States Armed Forces in carrying out any international humanitarian assistance, peacekeeping, peacemaking or peace-enforcing operation unless, at least fifteen days before approving such operation, the President notifies the Committees on Appropriations and Armed Services of each House of Congress in accordance with established reprogramming procedures: *Provided further*, That any such notification shall specify—

(1) the estimated cost of the operation;

(2) whether the method by which the President proposes to pay for the operation will require supplemental appropriations, or payments from international organizations, foreign countries, or other donors;

(3) the anticipated duration and scope of the operation;

(4) the goals of the operation; and . . .

MR. MURTHA: Mr. Chairman, I ask unanimous consent that the bill, through page 125, line 19, be considered as read, printed in the Record, and open to amendment at any point.

THE CHAIRMAN:[1] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

POINTS OF ORDER

MR. MURTHA: Mr. Chairman, I have four points of order.

THE CHAIRMAN: The gentleman will state the points of order.

MR. MURTHA: Mr. Chairman, I make points of order against the following language in the bill. Beginning on page 27, line 23, through line 25;

Beginning with "Provided" on page 20, line 17, through "operations" on page 21, line 21, of the bill;

Against section 8099, beginning on page 198, line 20, through page 109, line 5; and

Against section 8113, beginning on page 114, line 3, through page 115, line 10.

These provisions give affirmative direction, impose additional duties, set aside existing law, go beyond the funding in this bill and appropriate for an unauthorized project.

This constitutes legislation in an appropriations bill and is in violation of clause 2 of rule XXI.

THE CHAIRMAN: Does the gentleman from Florida wish to be heard on the points of order?

MR. [C. W. BILL] YOUNG of Florida: Mr. Chairman, we reluctantly concede the points of order.

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1. Dan Rostenkowski (Ill.).

THE CHAIRMAN: The Chair recognizes the gentleman from Indiana [Mr. Hamilton].

MR. [LEE H.] HAMILTON [of Indiana]: Mr. Chairman, let me just express my appreciation for the consideration by the chairman in accepting these points of order. As chairman of the Committee on Foreign Affairs, I appreciate that very much.

THE CHAIRMAN: Does any other Member wish to be heard on the points of order?

If not, the points of order are conceded.

Following disposition of the points of order, Mr. Murtha asked unanimous consent to curtail debate on the remainder of the bill and amendments thereto.

Priority of Points of Order Over Debate

§ 1.56 Points of order against a paragraph in a general appropriation bill are entertained and disposed of before recognizing Members to debate the provision under pro forma amendments.

On Sept. 23, 1993,[(2)] during the reading of a general appropriation bill under the five-minute rule, a Member sought recognition to strike out the last word to debate the pending portion of the bill. Another Member wished to make a point of order. The Chair indicated that the point of order should be disposed of first.

MR. [NORMAN Y.] MINETA [of California]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[(3)] The gentleman will state his parliamentary inquiry.

MR. MINETA: Mr. Chairman, the fact that the Clerk has now read page 23, line 14, does this preclude me from raising a point of order if the gentleman from Ohio [Mr. Traficant] is recognized?

THE CHAIRMAN: The point of order will have to be made first.

POINT OF ORDER

MR. MINETA: Mr. Chairman, I raise a point of order on page 23, line 14.

THE CHAIRMAN: The Clerk will read the paragraph beginning on line 14.

The Clerk read as follows:

HIGHWAY PROJECT STUDIES

(HIGHWAY TRUST FUND)

For up to 80 percent of the expenses necessary for feasibility and environmental studies for certain highway and surface transportation projects and parking facilities that improve safety, reduce congestion, or otherwise improve surface transportation, $7,150,000, to be derived from the Highway Trust Fund and to remain available until September 30, 1996.

THE CHAIRMAN: For what purpose does the gentleman from California rise?

POINT OF ORDER

MR. MINETA: Mr. Chairman, I raise a point of order against the provision on page 23, lines 14 through 22.

2. 139 CONG. REC. 22177, 103d Cong. 1st Sess.

3. Rick Boucher (Va.).

This provision violates clause 2 of rule XXI because it would appropriate $7.150 million out of the highway trust fund for general feasibility and environmental studies. These studies are not authorized.

In addition, the period of funding availability until September 30, 1996, is not authorized. Thus this provision constitutes an unauthorized appropriation and is subject to a point of order.

THE CHAIRMAN: Do other Members desire to be heard on the point of order?

MR. [BOB] CARR of Michigan: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: For what purpose does the gentleman from Texas rise?

MR. [TOM] DELAY [of Texas]: Mr. Chairman, I would like to be heard on the point of order. . . .

One could argue that the request for $250,000 for this highway study is authorized. Under section 1105 of the ISTEA legislation titled "High Priority Corridors on National Highway System" U.S. Highway 59, including the portion of the highway I propose to study, has been designated a high priority corridor. Under this designation there are several interesting factual points the ISTEA legislation makes. . . .

Mr. Chairman, in my opinion, this is an authorized project, it is authorized money, and I urge the Chair to rule against the point of order.

THE CHAIRMAN: The Chair is prepared to rule.

For those reasons stated by the gentleman from California [Mr. Mineta] in making the point of order, and sustained in prior points of order, the point of order is sustained.

Where Point of Order Is Determined by Voting on Consideration; Unfunded Mandate Legislation

§ 1.57 Under the Unfunded Mandates Act, where a point of order is raised against a provision in a bill or amendment which contains such a mandate, the decision on the point of order is made by the House, by voting on a motion to consider the provision, rather than by a ruling of the Chair.

On Jan. 31, 1995,[4] the House was continuing its consideration of H.R. 5, the Unfunded Mandate Reform Act of 1995. During the consideration of title III for amendment, Mr. David Dreier, of California, offered an amendment which provided in essence that points of order under Sections 425 and 426 of the Budget Act would be disposed of by a vote, and not be dependent on a ruling by the Chair. The amendment is carried herein, along with the explanation of its proponent, Mr. Dreier.

"SEC. 425. POINT OF ORDER.

"(a) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider—

"(1) any bill or joint resolution that is reported by a committee unless the committee has published the statement of the Director pursuant to section 424(a) prior to such consideration, except that this para-

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

graph shall not apply to any supplemental statement prepared by the Director under section 424(a)(4); or

"(2) any bill, joint resolution, amendment, motion, or conference report that contains a Federal intergovernmental mandate having direct costs that exceed the threshold specified in section 424(a)(1)(A), or that would cause the direct costs of any other Federal intergovernmental mandate to exceed the threshold specified in section 424(a)(1)(A), unless—. . .

"SEC. 426. 5ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.

"It shall not be in order in the House of Representatives to consider a rule or order that waives the application of section 425(a): *Provided however,* That pending a point of order under section 425(a) or under this section a Member may move to waive the point of order. Such a motion shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent but, if offered in the House, shall otherwise be decided without intervening motion except a motion that the House adjourn. The adoption of a motion to waive such a point of order against consideration of a bill or joint resolution shall be considered also to waive a like point of order against an amendment made in order as original text.". . . .

SEC. 303. EXERCISE OF RULEMAKING POWERS.

The provisions of this title (except section 305) are enacted by Congress—

(1) as an exercise of the rulemaking powers of the House of Representatives and the Senate, and as such they shall be considered as part of the rules of the House of Representatives and the Senate, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of the House of Representatives and the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House of Representatives or the Senate, respectively. . . .

MR. DREIER: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dreier: In section 301, in the proposed section 425 of the Congressional Budget Act of 1974, strike subsection (d) and redesignate subsection (e) as subsection (d).

In section 301, in the proposed section 426 of the Congressional Budget Act of 1974, strike: "*Provided however,*" and all that follows through the close quotation marks.

In section 301, after such proposed section 426, add the following:

"SEC. 427. DISPOSITION OF POINTS OF ORDER.

"(a) IN GENERAL.—As disposition of points of order under section 425(a) or 426, the Chair shall put the question of consideration with respect to the proposition that is the subject of the points of order.

"(b) DEBATE AND INTERVENING MOTIONS.—A question of consideration under this section shall be debatable for 10 minutes by each Member initiating a point of order and for 10 minutes by an opponent on each point of order, but shall otherwise be decided without intervening motion except one that the House adjourn or that the Committee of the Whole rise, as the case may be.

"(c) EFFECT ON AMENDMENT IN ORDER AS ORIGINAL TEXT.—The disposition of the question of consideration under this section with respect

to a bill or joint resolution shall be considered also to determine the question of consideration under this section with respect to an amendment made in order as original text.". . . .

MR. DREIER: Mr. Chairman, during consideration of H.R. 5 in the Committee on Rules, an amendment to section 426 was adopted that creates a mechanism to allow any Member to make a motion to waive points of order against a mandate in any bill, joint resolution, amendment or conference report that does not include a CBO cost estimate or a means for paying for the mandate.

The language currently in section 426 is preferable to the language in H.R. 5 as introduced for several reasons.

First, it more directly achieves the goal of the authors of H.R. 5 to guarantee votes in the House specifically on unfunded mandates. Second, it does not place undue constraints on the legislative schedule by requiring our Committee on Rules to report two rules every time a decision is made to waive the application of section 425.

Third, it relieves some of the burden on the presiding officer when making a determination with respect to a point of order.

Since H.R. 5 was reported to the House, I have been working with the Parliamentarian and a lot of other Members have been working with the Parliamentarian on language to address two additional concerns raised by section 426. The language is contained in the amendment that I am now offering, Mr. Chairman.

First, the amendment further reduces the burden on the presiding officer to rule on points of order with respect to not only the existence of a mandate but whether the cost of the mandate exceeds the threshold of $50 million. This will be particularly troublesome in situations where a motion to waive such a point of order is not made.

Second, the amendment addresses a concern raised by a number of my colleagues on the other side of the aisle with respect to the role of the chairman of the Committee on Government Reform and Oversight in advising the Chair about the question of unfunded mandates. Under my amendment, that advice would no longer be necessary.

Essentially, Mr. Chairman, the amendment provides that whenever points of order are raised pursuant to section 425(a) or 426, the points of order shall be disposed of by a vote of the Committee of the Whole.

The question would be debatable for 20 minutes, 10 minutes by the Member initiating the point of order and 10 minutes by an opponent of the point of order. . . .

AMENDMENT OFFERED BY MR. MOAKLEY TO THE AMENDMENT OFFERED BY MR. DREIER

MR. [JOHN JOSEPH] MOAKLEY [of Massachusetts]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Moakley to the amendment offered by Mr. Dreier:

In the proposed new section 427, insert the following new subsection (a) (and redesignate the existing subsections accordingly):

"(a) In order to be cognizable by the Chair, a point of order under sec-

tion 425(a) or 426 must specify the precise language on which it is premised.". . .

MR. MOAKLEY: Mr. Chairman, the Dreier amendment is a major improvement over the text of the bill. I would, however, make one suggestion. . . .

My amendment makes the Member who is raising the point of order show exactly where the unfunded mandate exists and explain how that language constitutes a violation. . . .

MR. DREIER: Mr. Chairman, I thank the gentleman for yielding. . . .

It seems to me that on this issue the burden of proof should in fact lie with the Member raising the point of order. This is a very effective way to address that concern. I strongly support the amendment offered by the gentleman from Massachusetts [Mr. Moakley] to the amendment I have offered. The gentleman from Pennsylvania [Mr. Clinger] will be let off the hook with this amendment. . . .

MR. [WILLIAM F.] CLINGER [Jr., of Pennsylvania]: Mr. Chairman, that is precisely what I wanted to say. In the legislation presently drafted, the task of determining what was or was not an unfunded mandate would have fallen on the shoulders of the chairman of the Committee on Government Reform and Oversight, and/or perhaps the ranking member of that committee, so I certainly appreciate the fact that this is now going to ensure that this matter will be decided by the House itself. That is the appropriate place for this decision to be made. I am pleased to support the amendment.

THE CHAIRMAN:[5] The question is on the amendment offered by the gentleman from Massachusetts [Mr. Moakley] to the amendment offered by the gentleman from California [Mr. Dreier].

The amendment to the amendment was agreed to.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from California [Mr. Dreier] as amended.

The amendment, as amended, was agreed to.

§ 2. Manner of Making Point of Order

The formalities followed in making a point of order are relatively simple. Members making points of order must address the Chair and be recognized before proceeding,[6] the Member should be specific as to the language to which he objects,[7] and the Member should make clear that he is making a point of order.[8] The Chair controls debate on a point of order, and a Member recognized on a point of order may not yield to another Member for debate thereon.

Addressing the Chair

§ 2.1 Members making points of order must address the Speaker and be recognized before proceeding.

5. Bill Emerson (Mo.).

6. See § 2.1, infra.

7. See § 2.2, infra.

8. See § 2.3, infra.

On Oct. 24, 1945,[9] Speaker Sam Rayburn, of Texas, asserted himself when the discussion on the floor grew particularly acrimonious.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, we have just witnessed one of the most ridiculous performances that has taken place in this House since I have been in Congress. These unjustified attacks on the Committee on Un-American Activities, these smear attacks on the Daughters of the American Revolution by the Jewish gentleman from New York [Mr. Celler], have been shocking indeed, to say the least of it.

MR. [EMANUEL] CELLER [of New York]: Mr. Speaker, I make the point of order that the gentleman is out of order when he refers to me as "the Jewish gentleman from New York." I ask that the words be taken down.

THE SPEAKER: If the gentleman will allow the Chair, there is one way to refer to a Member of the House of Representatives and that is, "the gentleman from" the State from which he comes. Any other appellation is a violation of the rules.

MR. RANKIN: Mr. Speaker, if he objects to being called a "Jewish gentleman" I withdraw it.

MR. CELLER: Mr. Speaker, I ask that the words be taken down.

MR. [VITO] MARCANTONIO [of New York]: I ask that those words be taken down.

MR. RANKIN: I am withdrawing the words. I have not the time to argue such matters.

MR. MARCANTONIO: I object to his withdrawing the words. I request that the words be taken down.

THE SPEAKER: The Chair has already stated the rule with reference to the language of the gentleman from Mississippi.

MR. MARCANTONIO: But he repeated it, sir.

MR. RANKIN: But I withdrew it. I have something else to talk about.

MR. MARCANTONIO: But I object to his withdrawing it.

THE SPEAKER: The Chair has already ruled on the matter and that is the end of it.

The gentleman from Mississippi [Mr. Rankin] will proceed in order.

MR. MARCANTONIO: He repeated it despite the Speaker's ruling.

MR. RANKIN: Mr. Speaker, it is exceedingly strange that a man presuming to arrogate to himself the prerogative of speaking for a minority group will rise on this floor and denounce the Daughters of the American Revolution, in the manner the Member from New York [Mr. Celler] did and then raise a protest when he is even referred to as a gentleman of his race.

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

THE SPEAKER: The gentleman will state it.

MR. CELLER: The gentleman by inference and innuendo has simply repeated what he said at the inception of his remarks when he attempted to state that I was a Jewish gentleman. That is the second time he did it by indirection. I think the gentleman should

9. 91 CONG. REC. 10033, 79th Cong. 1st Sess. Under consideration was H.R. 1834, proscribing procedures of investigative committees.

be called to order and cautioned not to repeat that kind of language.

THE SPEAKER: The gentleman refers to the gentleman, if he referred to him at all, as the member of a minority race. The Chair does not think that is a violation of the rule.

MR. RANKIN: Mr. Speaker, a parliamentary inquiry. I wish to proceed in order. Does the Member from New York [Mr. Celler] object to being called a Jew or does he object to being called a gentleman? What is he kicking about?

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

THE SPEAKER: The Chair desires to make a little statement.

The Chair trusts that points of order may be properly points of order hereafter, and that a Member before he makes a point of order secures the recognition of the Chair.

The gentleman from Mississippi will proceed in order, and the Chair trusts that the gentleman from Mississippi understands what the Chair means.

§ 2.2 In making a point of order, a Member should be specific as to the objectionable language.

On Feb. 7, 1940,[10] Chairman Harry P. Beam, of Illinois, instructed that a point of order should be specific.

MR. [MILLARD F.] CALDWELL [of Florida]: Mr. Chairman, I send to the desk a further amendment. This takes the place of the language stricken on the point of order made by the gentleman from New York [Mr. Taber].

The Clerk read as follows:

> Amendment offered by Mr. Caldwell: On page 18, line 2, after the figures and the semicolon insert the following: "Bureau of Interparliamentary Union for Promotion of International Arbitration, $20,000, including not to exceed $10,000 for the expenses of the American group of the Interparliamentary Union, including personal services in the District of Columbia and elsewhere, traveling expenses, purchase of necessary books, documents, newspapers, periodicals, maps, stationery, official cards, printing and binding, entertainment, and other necessary expenses to be disbursed on vouchers approved by the president and executive secretary of the American group."

MR. [JOHN] TABER: Mr. Chairman, I make the point of order that the language is still beyond the authorization of the law.

THE CHAIRMAN: Will the gentleman be specific and point out the language he objects to in the amendment offered by the gentleman from Florida?

MR. TABER: The words "and other necessary expenses to be disbursed on vouchers approved by the president and executive secretary of the American group."

MR. CALDWELL: Mr. Chairman, I believe it proper, in view of the scope of the act which authorizes our participation in the Interparliamentary Union, that it be held that all of the purposes now included in the amendment are authorized. Even the word "entertainment," which was complained of in the point of order previously considered, must of necessity be included here.

10. 86 CONG. REC. 1194, 76th Cong. 3d Sess. Under consideration was H.R. 8319, a State, Justice, Commerce, and Judiciary appropriations bill for fiscal 1941.

THE CHAIRMAN: The Chair is prepared to rule.

The act of June 28, 1935, among other things, in the second paragraph has the following language:

Such appropriation to be disbursed on vouchers to be approved by the president and the executive secretary of the American group.

Considering this language in connection with the amendment offered by the gentleman from Florida, the Chair is constrained to overrule the point of order.

§ 2.3 A point of order should be stated explicitly, so that it is clearly understood to be a point of order and not a parliamentary inquiry.

On June 28, 1967,[11] after a teller vote had commenced, Chairman John J. Flynt, Jr., of Georgia, ignored "points of order" which were stated as questions.

MR. [DONALD] RUMSFELD [of Illinois]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. RUMSFELD: Is it not correct that there should be a teller in favor of the amendment and a teller in opposition?

THE CHAIRMAN: The gentleman from Illinois has asked a question rather than making a point of order.

MR. [JAMES G.] FULTON of Pennsylvania: I am here. I am against the amendment.

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. WAGGONNER: Is it not necessary, under the rules of the House, in the instance of a teller vote, that the Chair name one Member as a teller who supports the amendment?

THE CHAIRMAN: The Chair will state that the gentleman from Louisiana has not made a point of order, but rather has asked a question. The Chair designated as tellers the gentleman from Indiana [Mr. Roudebush], the author of the amendment, and the gentleman from California [Mr. Miller]. No point was raised until the vote had begun to be taken.

The vote will proceed.

Parliamentarian's Note: Pursuant to Rule I clause 5, the Chair is required to name tellers "on each side of the question," and a timely point of order, before the vote had commenced, would have been entertained.

§ 3. Reserving Points of Order

By reserving a point of order against an amendment, instead of making it, a Member may hear

11. 113 CONG. REC. 17748, 90th Cong. 1st Sess. Under consideration was H.R. 10340, authorizing appropriations for the National Aeronautics and Space Administration. See also 118 CONG. REC. 13114, 13115, 92d Cong. 2d Sess., Apr. 18, 1972. Under consideration was H.R. 45, establishing an institute for continuing studies of juvenile justice.

the debate on the merits of a proposition or ask a preliminary question, and later determine whether to press or withdraw his point of order.[12] Such a reservation is in the discretion of the Chair[13] who must entertain and rule on the point of order immediately, if a demand for regular order is made.[14] Where all debate time has expired, the reservation of a point of order is not possible. Where there is no time for debate, a point of order must be immediately stated and ruled upon.[15] The reservation of a point of order by one Member against an amendment at the proper time reserves all points of order against the provision[16] and inures to all Members,[17] but the reservation of a point of order by one Member does not preclude another from insisting upon a point of order immediately.[18]

The practice of "reserving a point of order" applies to amendments and not to a paragraph in the bill text.[19]

In General

§ 3.1 A Member may reserve a point of order against a measure and then, after debate on the measure, either insist upon or withdraw the point of order.

On Oct. 28, 1969,[20] Mr. George H. Mahon, of Texas, and Mr. Frank T. Bow, of Ohio, reserved points of order against an amendment offered by Mr. Jeffery Cohelan, of California, but after some discussion on the amendment, Mr. Mahon decided not to press his point of order, while Mr. Bow determined to proceed and the Chair then requested that he state it:

MR. COHELAN: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Cohelan: Page 4, line 22, after "lower:", insert the following:
>
> "*Provided,* That in the case of activities for which appropriations would be available to the Office of Education under the Act making appropriations for the Departments of Labor, and Health, Education, and Welfare for the fiscal year 1970, as passed by the House, the amount available for each such activity shall

12. See § 3.1, infra. Of course, if the Member pressed his point of order at that time, instead of reserving it, debate on the point of order, if permitted at all by the Chair, would be confined to the point of order only. See § 3.2, infra.

13. See §§ 3.17, 3.18, infra.

14. See § 3.15, infra.

15. See § 3.30, infra.

16. See § 3.11, infra.

17. See § 3.10 et seq., infra.

18. See § 3.9, infra.

19. See § 3.5, infra; but see also § 3.6, infra.

20. 115 CONG. REC. 31886, 31888, 91st Cong. 1st Sess. Under consideration were continuing appropriations for fiscal 1970.

be the amount provided therefor by the House action."

MR. MAHON: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN:[1] The gentleman from Texas reserves a point of order.

MR. BOW: Mr. Chairman, I reserve a point of order also.

THE CHAIRMAN: The gentleman from Ohio reserves a point of order. . . .

The Chair notes that a point of order is pending.

MR. MAHON: Mr. Chairman, I have now had an opportunity to read the gentleman's amendment, and I withdraw my point of order.

MR. BOW: Mr. Chairman, I renew the point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. BOW: The amendment provides for activities for which appropriations would be available for the Office of Education under the act making appropriations for the Departments of Labor, and Health, Education, and Welfare for fiscal 1970, as passed by the House. Now, there is no act making appropriations for the Departments of Labor, and Health, Education, and Welfare. Since there is no act, this becomes an action of this House in making an appropriation to the Department when no act has been passed by the Congress.

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

MR. COHELAN: Mr. Chairman, I submit that the amendment was carefully drafted, and to the very best of my knowledge, it is a proper amendment. I urge that it be so recognized.

THE CHAIRMAN: The Chair is ready to rule. The gentleman from California offered an amendment to page 4, line 22, of the bill, to which the gentleman from Ohio made a point of order. The gentleman from Ohio in making his point of order has not pointed out to the Chair any rule of the House that the amendment violates. The point raised by the gentleman from Ohio is not one for the Chair to pass on, but presumably is one for the committee itself to pass on. The Chair does not sustain the point of order.

Effect of Reservation

§ 3.2 Where points of order are reserved, debate may be had on the merits of the proposition under consideration, but where points of order are made, discussion is confined to the question of order presented.

On Apr. 2, 1937,[2] Chairman Jere Cooper, of Tennessee, explained the effect of reserving a point of order to Mr. Jack Nichols, of Oklahoma.

MR. NICHOLS: Will the Chair explain the effect of reserving a point of order instead of making it? . . .

THE CHAIRMAN: It is within the right of the gentleman from Oklahoma ei-

1. Wilbur D. Mills (Ark.).

2. 81 CONG. REC. 3096–98, 75th Cong. 1st Sess. Under consideration was an appropriation bill for the District of Columbia.

ther to make his point of order or to reserve his point of order. If the gentleman makes the point of order, discussion would be confined to the point of order. If he reserves the point of order it would permit debate on the provision of the bill against which the point of order is reserved.

MR. NICHOLS: Then, Mr. Chairman, I decline to reserve the point of order, but make it.

Yielding for Amendment While Reservation of Point of Order Is Pending

§ 3.3 A Member who has offered an amendment against which a point of order has been reserved may not during his time for debate yield to another Member to offer an amendment to the amendment.

During consideration of a bill under the five-minute rule, in Committee of the Whole, on Mar. 21, 1979,[3] an amendment was offered by Mr. Theodore S. Weiss, of New York, against which a point of order was reserved. The proceedings are carried below.

Amendment offered by Mr. Weiss: Page 3, insert after line 5 the following:

SEC. 5. (a) Section 3(b) of the Council on Wage and Price Stability Act is amended by striking out "Nothing in this Act" and inserting in lieu thereof "Except as provided in section 8, nothing in this Act".

(b) Such Act is amended by adding after section 7 the following new section:

"PRESIDENTIAL AUTHORITY

"SEC. 8. (a) The President is authorized to issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages, and salaries at levels not less than those prevailing on January 1, 1979, and to stabilize interest rates and corporate dividends and similar transfers at levels consistent with orderly economic growth. Such orders and regulations may provide for the making of such adjustments as may be necessary to prevent gross inequities. . . .

MR. [WILLIAM S.] MOORHEAD of Pennsylvania: Mr. Chairman, I reserve a point of order against the amendment offered by the gentleman from New York (Mr. Weiss).

THE CHAIRMAN:[4] The gentleman from Pennsylvania (Mr. Moorhead) will be protected on his reservation of the point of order.

MR. WEISS: Mr. Chairman, I rise to speak on the amendment. . . .

MR. [MARC L.] MARKS [of Pennsylvania]: Mr. Chairman, will the gentleman yield?

MR. WEISS: I am pleased to yield to the gentleman from Pennsylvania.

MR. MARKS: Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I have an amendment to the amendment offered by the gentleman from New York (Mr. Weiss).

THE CHAIRMAN: The Chair will remind the gentleman from Pennsylvania (Mr. Marks) that his amendment is not in order at this point.

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3. 125 CONG. REC. 5779–81, 96th Cong. 1st Sess.

4. Butler Derrick (S.C.).

MR. MARKS: May I ask the Chair a question?

THE CHAIRMAN: The gentleman from Pennsylvania (Mr. Moorhead) has reserved a point of order against the pending amendment.

MR. MOORHEAD of Pennsylvania: Mr. Chairman, I would now like to insist on my point of order against the amendment offered by the gentleman from New York (Mr. Weiss).

THE CHAIRMAN: The Chair will point out that the time is under the control of the gentleman from New York (Mr. Weiss).

MR. WEISS: Mr. Chairman, the gentleman from Pennsylvania (Mr. Marks) had asked if I would yield to him, and I am pleased to yield to him at this point.

MR. MARKS: Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, it was my purpose to offer an amendment to the suggestion or the amendment offered by the gentleman from New York (Mr. Weiss), seeking to give the President the authority to impose mandatory wage and price controls, whereby we would give the Congress the authority to nullify the controls imposed by the President by the passage of a concurrent resolution.

It is my purpose, if it is in order, to ask the gentleman from New York (Mr. Weiss) if he would accept such an amendment.

MR. WEISS: Mr. Chairman, I would be pleased to accept that language and make it part of my amendment, if that is satisfactory to the Chair.

MR. MARKS: I would ask the opportunity in that case, Mr. Chairman, on my own time, if I may, to speak to the amendment.

THE CHAIRMAN: The Chair will state that a point of order has been reserved, and the time of the gentleman from New York (Mr. Weiss) has not expired. It would be improper for the gentleman from Pennsylvania (Mr. Marks) to offer his amendment to the amendment at this time.

MR. WEISS: Mr. Chairman, if the Chair would allow me to proceed, I understood that what we had was a reservation of the point of order, and pending that, it is my understanding that the debate could proceed as if in fact there had been no intervention. I would ask if that is accurate.

THE CHAIRMAN: But the amendment offered by the gentleman from New York (Mr. Weiss) is the amendment that is pending before the Committee, and that is the subject at this moment.

MR. WEISS: That is right, Mr. Chairman.

THE CHAIRMAN: When the Chair disposes of the point of order, then the gentleman from Pennsylvania (Mr. Marks) may offer his amendment to the amendment, if it remains pending. . . .

After further argument, the Chair sustained the point of order.

A Member Reserving a Point of Order Does Not Thereby Get Five Minutes of Debate Time

§ 3.4 A Member who reserves a point of order against an amendment is not entitled to debate time at that point, for the proponent has the right to explain his amendment

under the five-minute rule when the point of order is reserved.

On Oct. 7, 1985,[5] Mr. John D. Dingell, Jr., of Michigan, reserved a point of order and attempted to control the debate on an amendment offered as a substitute to an amendment to H.R. 2100, the Food Security Act of 1985. Of course, if the point of order is made against the amendment, rather than reserved, the Member making the point of order is immediately recognized for argument thereon, prior to debate on the merits of the amendment. The proceedings were as follows:

The Clerk read as follows:

Amendment offered by Mr. Tauke as a substitute for the amendment offered by Mr. Jones of Oklahoma: Page 509, after line 13, insert:

LEAD ADDITIVES IN FARM FUEL

SEC. 1896. (a) Except as provided in subsection (f), any regulation issued under any provision of law before or after the date of enactment of this section regarding the control or prohibition of lead additives in gasoline shall be amended to provide that the average lead content per gallon of gasoline distributed and sold for use on a farm for farming purposes shall not be less than 0.5 grams per gallon. The purpose of such amendment shall be to ensure that adequate supplies of gasoline containing sufficient lead additives to protect and maintain farm machinery will be available in all States for use on farms for farming purposes. Nothing in this section shall affect the control of lead or lead additives in gasoline distributed and sold for other uses. For purposes of this section, the term "gasoline used on a farm for farming purposes" has the same meaning as when used in section 6420 of the Internal Revenue Code of 1954. . . .

MR. [THOMAS J.] TAUKE [of Iowa] (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN:[6] Is there objection to the request of the gentleman from Iowa?

There was no objection.

MR. DINGELL: Mr. Chairman, I reserve a point of order.

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

MR. DINGELL: Mr. Chairman, I do not have any reason to believe it will be necessary for me to insist on the point of order. I make the reservation of objection for purposes of a colloquy with my three distinguished friends, the gentleman from Illinois [Mr. Madigan], the gentleman from Iowa [Mr. Tauke], and of course my dear friend from Texas, the chairman of the Committee on Agriculture, Mr. de la Garza.

I understand when this matter reaches the conference stage that you have agreed to keep the Committee on Energy and Commerce——

THE CHAIRMAN: The gentleman, Mr. Dingell, will suspend for 1 second, please.

The Chair would respectfully advise the gentleman that he cannot proceed

5. 131 CONG. REC. 26444, 99th Cong. 1st Sess.

6. David E. Bonior (Mich.).

with the debate on a reservation of a point of order. If the gentleman from Iowa wishes to yield to the gentleman for that purpose, he has the time.

The gentleman from Iowa [Mr. Tauke] is recognized for 5 minutes.

§ 3.5 It is not the practice to permit the reservation of a point of order against part of a bill and then consider amendments.

On Apr. 13, 1949,[7] following the reading of an amendment by the Clerk, Mr. Frederic R. Coudert, Jr., of New York, threatened to press his reserved point of order if the amounts authorized in the military appropriation bill under consideration were increased by the amendment. Chairman Eugene J. Keogh, of New York, prevented the Member from reserving the point of order, however, by requiring it be disposed of before any amendments be considered.

The Clerk read as follows:

MR. COUDERT: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. COUDERT: Mr. Chairman, I reserve a point of order with respect to the last three lines of that paragraph . . . as legislation on an appropriation bill. If the total amount specified in the bill is not increased, I shall not insist upon the point of order. If it is increased by amendment, I shall be compelled to insist upon the point of order.

THE CHAIRMAN: The Chair is of the opinion that the point of order should be disposed of before any amendment is considered.

MR. COUDERT: In that event, Mr. Chairman, I make the point of order against that language.

Mr. Chairman, may I state a parliamentary inquiry?

THE CHAIRMAN: The gentleman will state it.

MR. COUDERT: Mr. Chairman, is it the final decision of the Chairman that I may not reserve the point of order until the amendment is disposed of?

THE CHAIRMAN: The Chair is informed that it has not been the practice to reserve points of order and then consider amendments. The Chair will entertain the gentleman's point of order if the gentleman presses it. . . .

MR. COUDERT: Therefore, Mr. Chairman, I must insist upon the point of order to the entire paragraph, including the amount.

Parliamentarian's Note: The rationale behind disposing of points of order against paragraphs in a general appropriation bill, before entertaining amendments thereto, is that points of order, if sustained, might result in the striking of the paragraph, in which event amendments to such paragraph would be precluded.

7. 95 CONG. REC. 4521, 81st Cong. 1st Sess. Under consideration was H.R. 1146, the national military establishment appropriation bill of 1950.

Instance Where a Reservation of Point of Order Against Paragraph in Bill Was Permitted

§ 3.6 Although it is contrary to established practice, in one instance the Chairman of the Committee of the Whole permitted a Member to reserve a point of order against a paragraph in a general appropriation bill, allowed limited debate thereon, and then recognized the Member who had made the reservation.

On Sept. 19, 1983,[8] during the reading of H.R. 3222, the Commerce, State, Justice, and the Judiciary and related agencies appropriations, fiscal 1984, one Member sought recognition to debate the pending paragraph by a *pro forma* amendment while another reserved a point of order pending that debate. Chairman George E. Brown, Jr., of California, permitted this to happen to avoid a point of order being immediately pressed against the paragraph.

The Clerk read as follows:

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For necessary expenses for international trade activities of the Department of Commerce, including trade promotional activities abroad without regard to the provisions of law set forth in 44 U.S.C. 3702 and 3703; full medical coverage for dependent members of immediate families of employees stationed overseas; employment of Americans and aliens by contract for services abroad; rental of space abroad for periods not exceeding five years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2673 when such claims arise in foreign countries; not to exceed $165,200 for official representation expenses abroad; awards of compensation to informers under the Export Administration Act of 1979, and authorized by 22 U.S.C. 401(b); purchase of passenger motor vehicles for official use abroad and motor vehicles for law enforcement use; $183,831,000, to remain available until expended: *Provided*, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities. During fiscal year 1984 and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed $15,000,000. During fiscal year 1984, total commitments to guarantee loans shall not exceed $30,000,000 of contingent liability for loan principal.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I move to strike the last word.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, will the gentleman yield?

MR. FRENZEL: I yield to the gentleman from Pennsylvania.

8. 129 CONG. REC. 24638, 98th Cong. 1st Sess.

MR. WALKER: Mr. Chairman, I reserve a point of order against this section of the bill.

THE CHAIRMAN: The gentleman from Pennsylvania (Mr. Walker) reserves a point of order against this section of the bill.

MR. FRENZEL: Mr. Chairman, I take this time simply to indicate that this is an unauthorized section, as was noted in the general debate. But, after discussing this matter with the distinguished chairman and the distinguished ranking member, I think that it will not be necessary to make a point of order.

The House authorization bill, which was only passed last week, contained about $27½ million for this total range of programs. This authorization bill contains $40 million plus $30 million in loan guarantee authority. The chairman and ranking member have indicated that they would like to follow the House authorization as closely as possible when the bill moves into conference.

This is a section of the law which has not been terribly effective, but on the other hand, in light of our present difficulties in this trade area, it is considered important to many Members. I would hope that the Committee of the Whole would stand easy on this one and trust the Appropriations Committee to carry it through in conference.

THE CHAIRMAN: Does the gentleman from Pennsylvania insist upon his point of order?

MR. WALKER: Mr. Chairman, in light of the remarks of the distinguished ranking member of the committee that handles this legislation, I withdraw my reservation of a point of order.

THE CHAIRMAN: The gentleman withdraws his reservation of a point of order.

Reservation of Points of Order

§ 3.7 A point of order may not be reserved against a paragraph in a general appropriation bill but must be made immediately after the portion of the bill is read or considered as read, before amendments are offered.

During the reading of a general appropriation bill in Committee of the Whole, a point of order against an amendment may be "reserved" so that the text of the amendment may be examined before a point of order has to be stated. However, this rationale for permitting a reservation of a point of order does not exist with respect to the bill text, since Rule XXI clause 7, requires the report to be available for three days before the bill is called up and the reported text has been before the Members during the general debate on the bill.

Often the manager of the bill will ask unanimous consent that a portion of the bill encompassing many paragraphs be "considered as read." When this happens, points of order against the bill text must be made immediately after the request is agreed to and

come too late after amendments have been offered to the pending text. The proceedings of Sept. 16, 1980,[9] are illustrative:

THE CHAIRMAN:[10] The Clerk will read.

The Clerk read as follows:

SEC. 736. No part of the funds appropriated under this Act shall be used to pay salaries of any Federal employee who is convicted in any Federal, State, or local court of competent jurisdiction, of inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to property or injury to persons, found to be in violation of Federal, State, or local laws designed to protect persons or property in the community concerned.

MR. [JOSEPH P.] ADDABBO [of New York] (during the reading): Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and open to amendment at any point.

THE CHAIRMAN: Is there objection to the request of the gentleman from New York?

MR. [THEODORE S.] WEISS [of New York]: Mr. Chairman, reserving the right to object, I ask simply to propound a parliamentary inquiry. I will have a point of order to raise against one of the sections in this title. Under the unanimous-consent request that has been asked for, would that point of order be in order at any time during consideration of title VII?

THE CHAIRMAN: Immediately after the unanimous-consent request is agreed to.

MR. WEISS: I thank the Chair, and I withdraw my reservation of objection.

THE CHAIRMAN: Is there objection to the request of the gentleman from New York?

There was no objection.

THE CHAIRMAN: Are there any points of order against title VII?

MR. [ELLIOTT H.] LEVITAS [of Georgia]: Mr. Chairman, I reserve a point of order on section 761.

THE CHAIRMAN: Is the gentleman making the point of order now?

MR. ADDABBO: Mr. Chairman, it will be my intention, after unanimous consent has been agreed to, to move to strike section 761.

MR. LEVITAS: I thank the gentleman.

THE CHAIRMAN: Are there any points of order at this time?

POINT OF ORDER

MR. WEISS: Mr. Chairman, I have a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. WEISS: Mr. Chairman, I object to section 736 and rise to make a point of order against section 736.

This provision violates rule XXI, clause 2, of the rules of the House of Representatives, which forbids legislation in an appropriations bill.

By permitting the Department of Defense to impose funding sanctions against its employees who are convicted of "inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to property or injury to persons," section 736 is legislation as to the qualifications of the recipients of these appropriations. This cannot be done under the House rules—see Deschler's chapter 26, sections 11.36 and 11.26.

9. 126 CONG. REC. 25604, 96th Cong. 2d Sess.

10. Dan Rostenkowski (Ill.).

In addition, the section requires a State-by-State analysis of differing criminal statutes, and a review of personnel activities at all levels of the military. This creation of a new affirmative duty on the part of a Federal official is legislation and thus impermissible in an appropriations bill—see Deschler's chapter 26, sections 10.7, 11.38, and 8.9.

The precedents of the House clearly state that legislative changes may not be made on an appropriations bill. I urge the Chairman to uphold the rules of this body and rule this provision out of order.

THE CHAIRMAN: Does the gentleman from New York (Mr. Addabbo) desire to be heard on the point of order?

MR. ADDABBO: I do, Mr. Chairman. I rise in opposition to the point of order.

Mr. Chairman, this is strictly a limitation on the funds in this bill. They pertain only to the Federal employees as the language is contained in the bill, and, therefore, it is strictly a limitation and not legislation.

THE CHAIRMAN: The Chair is prepared to rule, based on the precedents suggesting that when a Federal official is called upon to subjectively evaluate the propriety of individual conduct; such language constitutes legislation.

For example:

An amendment providing that no part of the funds carried in a general appropriations bill may be used for financial assistance for students who have engaged in conduct of a serious nature contributing to a substantial campus disruption and who have used force or the threat thereof to prevent the pursuit of academic aims was held to be imposing new duties and exercise of judgment on the part of Federal officials and was ruled out as legislation—Deschler's; chapter 26, section 16, 12.

Based on this precedent and because the section would require the determinations of material damage and the purpose of local governments in enacting laws, the Chair sustains the point of order, and section 736 is stricken from the bill.

§ 3.8 The reservation of a point of order against an amendment at the proper time reserves all points of order against the amendment.

On July 19, 1973,[11] Chairman William H. Natcher, of Kentucky, upheld the right of Mr. Thomas S. Foley, of Washington, to make a point of order that he had reserved earlier, although at the time of his reservation, he had indicated another basis for a point of order.

MR. [WILLIAM L.] ARMSTRONG [of Colorado]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

MR. FOLEY: Mr. Chairman, I suggest a point of order would lie against this amendment. I believe we have gone past this section of the bill, and I reserve a point of order. . . .

THE CHAIRMAN: The time of the gentleman from Colorado has expired.

The Chair would ask the gentleman from Washington (Mr. Foley) whether

11. 119 CONG. REC. 24950, 24951, 93d Cong. 1st Sess. Under consideration was H.R. 8860, to amend and extend the Agricultural Act of 1970.

the gentleman insists upon his point of order?

MR. FOLEY: Mr. Chairman, I do.

THE CHAIRMAN: The gentleman will state his point of order.

MR. FOLEY: Mr. Chairman, I must insist upon my point of order, because the amendment offered by the gentleman from Colorado is not germane to the bill.

H.R. 8860 is an agriculture and farm program and deals only with a program specified under the jurisdiction of the Department of Agriculture. This amendment offered by the gentleman from Colorado, which amends the Economic Stabilization Act, was not before the Committee on Agriculture for its consideration and jurisdiction. Accordingly I suggest the amendment is not germane to the bill.

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

MR. ARMSTRONG: Mr. Chairman, I do. I would respectfully point out that this is not the point of order which the gentleman from Washington earlier reserved, and I would, therefore, inquire of the Chair at this point if such a point of order is timely.

THE CHAIRMAN: The Chair would like to advise the gentleman from Colorado that the gentleman from Washington was heard [to reserve] a point of order, and at that time he did not have to state the basis for his reservation. His point of order is now in order.

§ 3.9 The reservation of a point of order by one Member does not preclude another from pressing the same point of order.

On July 19, 1967,[12] Mr. H. R. Gross, of Iowa, insisted on making his point of order immediately, although Mr. Edwin E. Willis, of Louisiana, had expressed his desire to reserve the same point of order.

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

MR. GROSS: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[13] The gentleman will state it.

MR. GROSS: Mr. Chairman, I make the point of order against the amendment on the grounds that the amendment is not germane to the pending legislation.

MR. WILLIS: That is the reservation that I had in mind.

MR. GROSS: I have no reservation. I am making the point of order.

Reservation of Point of Order Inures to All Members

§ 3.10 A timely reservation of a point of order by one Member inures to all, and Members other than the one lodging the reservation may later press a point of order.

A point of order may be reserved against a motion to recom-

12. 113 CONG. REC. 19412, 90th Cong. 1st Sess. Under consideration was H.R. 421, prescribing penalties for travel in interstate commerce to incite riots.

13. Joseph L. Evins (Tenn.).

mit with instructions to report back forthwith, with an amendment, since such a motion may be debated for 10 minutes under Rule XVI clause 4.

On July 18, 1990,[14] during consideration of the Balanced Budget Act of 1990, a point of order was reserved by Mr. John Conyers, Jr., of Michigan, against an amendment offered by Mr. Willis D. Gradison, Jr., of Ohio. The point of order was first pressed by another Member and then, after argument, renewed by Mr. Conyers.

BALANCED BUDGET ACT OF 1990

MR. [BUTLER] DERRICK [of South Carolina]: Mr. Speaker, I call up the bill (H.R. 5258) to require that the President transmit to Congress, that the congressional Budget Committees report, and that the Congress consider a balanced budget for each fiscal year, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of H.R. 5258 is as follows:

H.R. 5258

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AMENDMENT TO TITLE 31, UNITED STATES CODE

SEC. 101. SUBMISSION OF BALANCED BUDGET BY THE PRESIDENT.

Section 1105 of title 31, United States Code, is amended by inserting at the end the following new subsection:

"(g)(1) Except as provided by paragraph (2), any budget submitted to Congress pursuant to subsection (a) for the ensuing fiscal year shall not be in deficit.

"(2) For any fiscal year with respect to which the President determines that it is infeasible to submit a budget in compliance with paragraph (1), the President shall submit on the same day two budgets, one of which shall be in compliance with paragraph (1), together with written reasons in support of that determination.". . . .

MOTION TO RECOMMIT OFFERED BY MR. GRADISON

MR. GRADISON: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE:[15] Is the gentleman opposed to the bill?

MR. GRADISON: I am, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Gradison moves to recommit the bill (H.R. 5258) to the Committee on Rules and the Committee on Government Operations with instructions to report the same to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

SEC. 101. AMENDMENTS CHANGING "CONCURRENT" TO "JOINT" RESOLUTIONS.

(a) The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking "concurrent" in the items relating to

14. 136 CONG. REC. 17920, 17930, 17931, 101st Cong. 2d Sess.

15. David E. Skaggs (Colo.).

sections 301, 303, and 304 and inserting "joint". . . .

MR. CONYERS: Mr. Speaker, I reserve the right to object on a point of order.

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

MR. CONYERS: Mr. Speaker, I have not seen the language that has been presented.

THE SPEAKER PRO TEMPORE: The gentleman from Michigan [Mr. Conyers] reserves a point of order.

The gentleman from Ohio [Mr. Gradison] is recognized for 5 minutes. . . .

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Mr. Speaker, is the gentleman from Michigan [Mr. Conyers] reserving the right to object on the question of the reading of the motion, or is he reserving simply a point of order? I understood he was reserving the right to object.

THE SPEAKER PRO TEMPORE: The Chair understood the gentleman from Michigan [Mr. Conyers] to reserve a point of order against the motion.

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

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

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

MR. DERRICK: Mr. Speaker, the motion of the gentleman from Ohio [Mr. Gradison] is out of order. It goes beyond the scope of the Budget Act. It is entirely out of the scope of what we are dealing with. It requires a complete revision of the Budget Act in that we ask the President to sign it.

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Mr. Speaker, the gentleman from Michigan [Mr. Conyers] reserved the point of order. Is it in order for the gentleman from South Carolina [Mr. Derrick] to make the point of order that was reserved by the gentleman from Michigan?

THE SPEAKER PRO TEMPORE: Under the rules of the House, a timely reservation of a point of order by one Member inures to any other Member that wishes to press it, and so the gentleman from South Carolina [Mr. Derrick] is sentitled to press that point of order. . . .

MR. CONYERS: Mr. Speaker, if I may be heard on my point of order, I believe that the motion of the gentleman from Ohio [Mr. Gradison] is not germane because it amends the table of contents to make it a joint resolution. This is the only way it can be done, and in effect it affects all budget resolutions, not just the Balanced Budget Act, H.R. 5258.

So, therefore, Mr. Speaker, I urge that the point of order be sustained because it is not germane. . . .

THE SPEAKER PRO TEMPORE: The Chair will apply the fundamental purpose test of germaneness to this motion. The underlying legislation is described primarily in the second paragraph of page 2 of the Rules Committee report filed with the bill. . . .

For that reason it fails the test of germaneness, and the point of order is sustained.

§ 3.11 Because the reservation of a point of order by one Member inures to all Members, where one Member reserves a point of order against an amendment and the point of order is thereafter overruled or withdrawn, another Member may immediately make another point of order before further debate is had on the amendment.

On June 22, 1972,[16] upon the overruling of a point of order raised by Mr. Thomas J. Steed, of Oklahoma, to an amendment proposed by Mr. Morris K. Udall, of Arizona, Mr. Howard W. Robison, of New York, immediately raised another point of order before any debate could intervene.

MR. UDALL: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

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

THE CHAIRMAN:[17] The gentleman from Oklahoma reserves a point of order against the amendment.

The gentleman from Arizona (Mr. Udall) is recognized. . . .

MR. STEED: Mr. Chairman, I continue to reserve my point of order against the amendment.

THE CHAIRMAN: The gentleman from Maryland is recognized.

MR. GERALD R. FORD [of Michigan]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. GERALD R. FORD: At what point does the reservation expire, and at what point must the Chair decide the point of order?

MR. STEED: Mr. Chairman, I insist upon my point of order.

THE CHAIRMAN: Will the gentleman state his point of order.

MR. STEED: Mr. Chairman, I make a point of order against the amendment on the grounds that it is legislation on a general appropriation bill. . . .

THE CHAIRMAN: The Chair is ready to rule. . . .

. . . [I]t is the opinion of the Chair that these are legitimate limitations. They do not constitute legislation on an appropriation bill, and the point of order is overruled.

MR. ROBISON of New York: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Arizona.

THE CHAIRMAN: The Chair will hear the gentleman. . . .

MR. UDALL: Mr. Chairman, I wish to be heard on a point of order; in the first place, my esteemed friend from New York (Mr. Robison) did not reserve a point of order. He is either making the same one my friend from Oklahoma made, or he is making a different one, and the gentleman from Oklahoma's point of order has been ruled upon.

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16. 118 CONG. REC. 22098, 22099, 92d Cong. 2d Sess. Under consideration was H.R. 15585, dealing with Treasury, Postal Service, and general government appropriations for fiscal 1973.

17. John S. Monagan (Conn.).

He has no right to make a point of order, since he did not reserve one, and debate had intervened.

On the second ground, I think the Chairman has already covered in his earlier ruling the precise point the gentleman has raised.

MR. STEED: Mr. Chairman, may I be heard further?

THE CHAIRMAN: Yes, the gentleman is recognized.

Mr. Steed here discussed the point of order.

THE CHAIRMAN: The point made by the gentleman from New York is essentially that already made by the gentleman from Oklahoma. This bill does contain appropriations for the Executive Office of the President and the Chair reads the amendment as being a limitation upon those appropriations. And, as pointed out before, the specific provision is that no part of the appropriations made by this act shall be expended for certain purposes—detailed in the first four paragraphs of the amendment. The Chair is constrained, therefore, to overrule the point of order.

§ 3.12 The reservation of a point of order by one Member inures to all, and any Member may raise other points of order if the reservation is withdrawn or the point of order is disposed of.

At the conclusion of the consideration of the Labor, Health and Human Services appropriation bill, fiscal 1994, a motion to rise and report was defeated, thus permitting an amendment in the nature of a limitation to be offered. On this occasion, the so-called Hyde amendment relating to abortion services was offered. No point of order was actually pressed against this "made-known" amendment, but a point of order was reserved and several inquiries addressed to the Chair. The pertinent proceedings of June 30, 1993,[18] are carried herewith:

THE CHAIRMAN:[19] All time for debate has expired.

The Clerk will read the remaining sentence of the bill.

The Clerk read as follows:

This Act may be cited as the "Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1994".

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to, and that the bill, as amended, do pass.

THE CHAIRMAN: The question is on the motion to rise and report offered by the gentleman from Kentucky [Mr. Natcher].

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

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18. 139 CONG. REC. 14891–93, 103d Cong. 1st Sess.

19. Philip R. Sharp (Ind.).

RECORDED VOTE

MR. [HENRY J.] HYDE [of Illinois]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were-ayes 190, noes 244, not voting 6, as follows: . . .

So the motion to rise and report was rejected.

The result of the vote was announced as above recorded.

MR. NATCHER: Mr. Chairman, after the amendment of the gentleman from Illinois [Mr. Hyde] is offered, I ask unanimous consent that the time to be consumed on the amendment be limited to 30 minutes, equally divided, with 15 minutes controlled by the gentleman from Illinois [Mr. Porter] and 15 minutes by myself.

THE CHAIRMAN: Is there objection to the request of the gentleman from Kentucky?

MS. [CORRINE] BROWN of Florida: I object, Mr. Chairman. . . .

THE CHAIRMAN: Objection is heard.

AMENDMENT OFFERED BY MR. HYDE

MR. HYDE: Mr. Chairman, I offer an amendment.

THE CHAIRMAN: Let the Chair remind Members of the status of our procedural situation. The gentleman from Illinois [Mr. Hyde] has offered his amendment. It will be read by the Clerk. At that point we will turn to a vote in the absence of a unanimous-consent request for time to debate. No time is allocated at this point in the proceedings. The Chair has recognized the gentleman from Illinois to offer the amendment and will ask the Clerk to read. In the absence of a point of order or otherwise, the Chair must have the Clerk read at this point.

MR. [HENRY A.] WAXMAN [of California]: Mr. Chairman, I reserve a point of order on the amendment.

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

The Clerk will report the amendment.

The Clerk read as follows: Amendment offered by Mr. Hyde of Illinois: On page 62, after line 10, add the following new section:

> Sec. 507. None of the funds appropriated under this Act shall be expended for any abortion except when it is made known to the federal entity or official to which funds are appropriated under this Act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest. . . .

MR. [JOHN] LINDER [of Georgia]: Mr. Chairman, reserving the right to object, is it correct that this is a nondebatable motion unless it is debated in the unanimous-consent request?

THE CHAIRMAN: The gentleman is correct, there will be no debate on this amendment unless this or another unanimous-consent request is agreed to.

MR. LINDER: Mr. Chairman, I object.

THE CHAIRMAN: The gentleman objects to the unanimous-consent request. Objection is heard.

PARLIAMENTARY INQUIRY

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The Chair will recognize the gentleman from Illinois [Mr.

Yates], a member of the Appropriations Committee for a parliamentary inquiry, but would state first that still pending is the reservation of the gentleman from California [Mr. Waxman], who has reserved a point of order against the amendment.

MR. YATES: Mr. Chairman, that is the basis for my parliamentary inquiry. Is the point of order still pending?

THE CHAIRMAN: The point of order has not been made. The gentleman reserved a point of order, and we will have to proceed to that in the absence of other procedures here.

MR. YATES: I should like to reserve a point of order as well, Mr. Chairman. . . .

THE CHAIRMAN: Regular order. Regular order at this point is the reservation of the point of order. Does the gentleman from California [Mr. Waxman] or the gentleman from Illinois [Mr. Yates] wish to pursue the point of order against the amendment of the gentleman from Illinois [Mr. Hyde]?

MR. WAXMAN: Mr. Chairman, I will not pursue my point of order.

MR. YATES: I will pursue my point of order.

THE CHAIRMAN: The Chair could not hear the gentleman.

MR. YATES: Mr. Chairman, I will pursue my point of order.

THE CHAIRMAN: The gentleman indicates that he will pursue the point of order. The gentleman will state his point of order.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, point of order is not timely.

THE CHAIRMAN: The Chair will indicate that a reservation by one Member of a point of order [protects] that right for all Members until a point of order is disposed of.

Therefore, as long as Mr. Waxman held a point of order in reservation, any other Member could ride on that reservation. That is what the gentleman from Illinois [Mr. Yates] has done.

Does the gentleman wish to pursue his point of order?

MR. YATES: Mr. Chairman, I withdraw my point of order.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Illinois [Mr. Hyde]. . . .

So the amendment was agreed to.

The result of the vote was announced as above recorded.

MR. NATCHER: Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The motion was agreed to.

Reservation of Point of Order Protects All Members Who Wish To Make a Point of Order

§ 3.13 One Member's reservation of a point of order against an amendment protects the rights of all Members to insist on a point of order if the reservation is later withdrawn.

During the consideration of agricultural appropriations for fiscal

1985,[20] Mr. David R. Obey, of Wisconsin, offered a substitute for the pending Walker amendment. Mr. Robert S. Walker, of Pennsylvania, reserved a point of order which he later withdrew. Mr. Jamie L. Whitten, of Mississippi, then pressed a point of order. The proceedings are included herein.

MR. WALKER: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Walker: On page 60, after line 18, insert the following new section:

SEC. 629. Notwithstanding any other provision of this Act, each amount appropriated or otherwise made available in this Act is hereby reduced by one percent. . . .

Amendment offered by Mr. Obey as a substitute for the amendment offered by Mr. Walker:

SEC. 629. All amounts appropriated by this Act not required to be appropriated by previously enacted law shall be reduced by 64 percent.

MR. WALKER: Mr. Chairman, I reserve a point of order against the [Obey] amendment. . . .

MR. WHITTEN: Mr. Chairman, I desire to be heard on the point of order.

THE CHAIRMAN:[1] Does the gentleman from Pennsylvania wish to be heard?

MR. WALKER: Mr. Chairman, I withdraw my point of order.

POINT OF ORDER

MR. WHITTEN: Mr. Chairman, I make a point of order against the amendment on the grounds that it would constitute legislation on an appropriations bill.

THE CHAIRMAN: Against the substitute, Mr. Obey's?

MR. WHITTEN: Against the substitute.

MR. OBEY: I do not recall the chairman reserving a point of order at the time, and I would think his point comes too late.

THE CHAIRMAN: If the gentleman from Wisconsin would repeat himself for the Chair, please.

MR. OBEY: Mr. Chairman, it is my impression that the chairman did not reserve a point of order at the time that I offered my amendment, and, under those circumstances, I would think that his objection comes too late.

THE CHAIRMAN: The reservation by any Member protects all Members. So the gentleman from Mississippi's point of order is timely and in order.

MR. OBEY: But my understanding is that Mr. Walker withdrew his point of order.

THE CHAIRMAN: That is correct, but the reservation still prevails.

MR. WHITTEN: Mr. Chairman, the facts are that I was on my feet when Mr. Walker was recognized. He made the point of order; I did not. I relied on the point of order he made. I asked him if he was going to push his point of order; when he said no, I asked to be recognized on a point of order.

THE CHAIRMAN: Does the gentleman from Wisconsin wish to be heard against the point of order?

MR. OBEY: Mr. Chairman, if the Chair is entertaining comments on the point of order being lodged, I would simply submit that all the amendment

20. 130 CONG. REC. 15120–22, 98th Cong. 2d Sess., June 6, 1984.

1. David E. Bonior (Mich.).

does is to reduce by a specified amount every account in the bill which is not required to be appropriated at a specific level by previous law. I would think, under the circumstances, that it would be in order.

THE CHAIRMAN: Does the gentleman from Mississippi wish to be heard?

MR. WHITTEN: I insist, Mr. Chairman.

May I say I still have not seen a copy of the amendment. I listened as best I could when it was read, but my colleague has not given me a copy of the amendment. I was trying to get a copy.

Mr. Chairman, the amendment I have before me, all amounts appropriated by this act shall not be required to be appropriated by previously enacted law shall be reduced by "blank" percent.

THE CHAIRMAN: Sixty-four percent.

MR. WHITTEN: That is the copy that I have; "blank" percent.

THE CHAIRMAN: The copy at the desk says 64 percent.

MR. WHITTEN: Mr. Chairman, we have a little fun here from time to time, but if this were to be adopted, and goodness knows I hope not, it would require how much work on the part of the executive branch? It certainly would require additional duties by the executive branch, the amount of which would be almost limitless.

THE CHAIRMAN: Does the gentleman from Wisconsin wish to be heard further?

MR. OBEY: I would simply say, Mr. Chairman, that this does not impose any duties on the executive branch; it is a direct reduction in the accounts affected.

THE CHAIRMAN: The Chair is prepared to rule that this is not legislation on an appropriation bill. It provides for a specific percentage reduction in discretionary accounts in the base bill accounts identifiable as a matter of law. The point of order is overruled.

Reservation of Point of Order, Renewal Must Be Timely

§ 3.14 While the reservation of a point of order by one Member inures to all, the point of order, if withdrawn by the Member who made the reservation, must be renewed by another in a timely fashion and comes too late after debate on the amendment.

Chairman Don Fuqua, of Florida, presiding during deliberation on the International Security Assistance Act, fiscal 1979, on Aug. 2, 1978,[(2)] declined to recognize a Member to press a point of order after the proponent of the amendment had been recognized for debate.

MR. [TOM] HARKIN [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harkin: Page 19, immediately after line 14, insert the following new section 21:

Termination of Deliveries of Defense Articles to Chile.

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2. 124 CONG. REC. 23921, 23922, 95th Cong. 2d Sess.

SEC. 21. Section 406(a)(2) of the International Security Assistance and Arms Export Control Act of 1976 is amended by adding at the end thereof the following new sentence:

"After the date of enactment of the International Security Assistance Act of 1978, no deliveries of defense articles or services may be made to Chile pursuant to any sale made before the date of enactment of this section, until the Government of Chile has turned over to U.S. custody those Chileans indicted for the murder of Orlando Letelier and Ronni Moffitt.

Redesignate existing section 21 of the bill as section 22 and correct any cross references thereto.

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I reserve a point of order against the amendment. . . .

THE CHAIRMAN: Does the gentleman from Wisconsin insist on his point of order?

MR. ZABLOCKI: I do not insist on my point of order, to save time.

Mr. Chairman, I rise in opposition to the amendment.

THE CHAIRMAN: The gentleman from Wisconsin is recognized.

MR. ZABLOCKI: Mr. Chairman, I think the substantive part of this amendment is identical to the amendment introduced earlier by the gentleman from California (Mr. Stark). The Committee has voiced its opinion and I urge and expect the same fate for this amendment. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, will the gentleman yield?

MR. ZABLOCKI: I yield to the gentleman from Maryland.

MR. BAUMAN: Mr. Chairman, I thank the gentleman for yielding.

I would like to ask the Chair, since the gentleman from Wisconsin reserved a point of order, and the gentleman from Maryland who was also on his feet did not reserve a point of order because he thought the gentleman from Wisconsin was going to make a point of order, whether or not it would be in order for the gentleman from Maryland to make a point of order?

THE CHAIRMAN: The Chair had recognized the gentleman from Wisconsin (Mr. Zablocki) for 5 minutes, so the point of order could not be made at this time.

MR. BAUMAN: Can the gentleman from Wisconsin still make his point of order at this time?

THE CHAIRMAN: No, he cannot.

MR. BAUMAN: I thank the Chair.

Discretion of Chair

§ 3.15 Reservation of a point of order against an amendment is within the discretion of the Chair; and if the regular order is called for, the Chair hears and rules on the point of order as expeditiously as possible.

On Apr. 10, 1963,[3] following the Clerk's reading in the Committee of the Whole, of an amendment offered by Mr. Edward P. Boland, of Massachusetts, Mr.

3. 109 CONG. REC. 6130–32, 88th Cong. 1st Sess. Under consideration was H.R. 5517, making supplemental appropriations for fiscal 1963.

Melvin R. Laird, of Wisconsin, reserved a point of order.

After debate on the amendment, the following proceedings took place:

THE CHAIRMAN:[4] Does the gentleman from Wisconsin [Mr. Laird] desire to withdraw his point of order?

MR. LAIRD: Mr. Chairman, I would like to reserve the point of order until we study [the amendment].

THE CHAIRMAN: The Chair feels that this matter should be disposed of before we proceed further.

MR. LAIRD: Mr. Chairman, if that is the case, the only option I have is to insist upon the point of order at this point. I would like to study the point, but if the Chair insists that I make the point of order now, I will.

THE CHAIRMAN: The Chair thinks that this is the proper parliamentary procedure.

MR. LAIRD: I make the point of order against the amendment on the basis that you are legislating in an appropriation bill. . . .

THE CHAIRMAN: The Chairman has had an opportunity to examine the amendment and feels that the matter discussed is a limitation on the appropriation. Therefore the Chair overrules the point of order.

Chair's Discretion Regarding Reservation of Point of Order

§ 3.16 The Chair has the discretion whether to permit a point of order to be reserved against an amendment or whether to dispose of the point of order before debate.

On Oct. 14, 1981,[5] the Chairman of the Committee of the Whole allowed a point of order to be reserved against an amendment although the proponent of the amendment argued for immediate disposition of the point of order as the more orderly method of proceeding.

> Amendment offered by Mr. Findley: Page 1, Section 101 of Title I as amended is amended by striking the punctuation marks and the word "and" at the end of paragraph (1) and inserting in lieu thereof the following: "; *Provided That,* notwithstanding any other provision of this Act, if the Secretary estimates as of September 29, 1982, or any date thereafter through September 30, 1985, that net government purchases of dairy products, for any such fiscal year, will equal or exceed four billion pounds of milk equivalent, the support price for such fiscal year shall not be in excess of that which was in effect at the end of the previous fiscal year.".

MR. [TOM] HARKIN [of Iowa]: Mr. Chairman, I reserve a point of order against this amendment.

THE CHAIRMAN:[6] The gentleman from Iowa reserves a point of order.

MR. [PAUL] FINDLEY [of Illinois]: Does the gentleman make a point of order against the amendment?

MR. HARKIN: The gentleman wants to hear some of the explanation. The

4. Richard Bolling (Mo.).

5. 127 CONG. REC. 23882, 23884, 97th Cong. 1st Sess.

6. Matthew F. McHugh (N.Y.).

gentleman is about to raise a point of order.

MR. FINDLEY: Mr. Chairman, I think it would facilitate our proceedings if the gentleman would just make the point of order and get the question settled.

THE CHAIRMAN: The gentleman may reserve his point of order at the Chair's discretion.

MR. HARKIN: Mr. Chairman, I would like to reserve the point of order until I hear the gentleman's explanation. At that point I would like to decide whether or not to raise that point of order.

THE CHAIRMAN: The Chair will exercise discretion. The gentleman reserves a point of order. . . .

THE CHAIRMAN: The Chair will inquire of the gentleman from Iowa whether he continues to insist upon his reservation.

MR. HARKIN: Mr. Chairman, I withdraw my reservation.

Chair's Discretion in Permitting Reservation of Point of Order

§ 3.17 The Chair has the discretion to permit the reservation of a point of order against an amendment to permit debate on the merits or he may choose to dispose of the points of order to conserve debate time.

On Mar. 16, 1995,[7] the Committee of the Whole was continuing the consideration of the emergency supplemental appropriation bill, fiscal 1995. The rule providing for the consideration of the bill required amendments to be pre-printed, so they could not be redrafted to accommodate the changing amendment situation. Mr. Christopher Shays, of Connecticut, offered an amendment which, in part, amended a figure already changed in the amendment process. The proceedings were as follows:

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1158) making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes, with Mr. Bereuter in the chair.

The Clerk read the title of the bill.

THE CHAIRMAN:[8] . . . Two hours and 3 minutes remain for consideration of amendments under the 5-minute rule.

Are there further amendments to the bill? . . .

AMENDMENT OFFERED BY MR. SHAYS

MR. SHAYS: Mr. Chairman, I offer an amendment listed in the March 13 Congressional Record as amendment No. 70.

THE CHAIRMAN: The Clerk will designate the amendment.

7. 141 CONG. REC. p. ____, 104th Cong. 1st Sess.

8. Douglas Bereuter (Nebr.).

The text of the amendment is as follows:

> Amendment offered by Mr. Shays: Page 50, beginning on line 6, strike "$186,000,000 shall be from amounts earmarked for housing opportunities for persons with AIDS;".
>
> Conform the aggregate amount set forth on page 49, line 14, accordingly.
>
> Page 54, line 18, strike "$38,000,000" and insert "$224,000,000".

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN: The gentleman from Wisconsin [Mr. Obey] reserves a point of order.

Is the gentleman opposed to the amendment as well?

MR. OBEY: Mr. Chairman, I reserve a point of order on the amendment, Mr. Chairman, and I claim the time in opposition.

THE CHAIRMAN: The gentleman from Connecticut [Mr. Shays] will be recognized for 15 minutes, and the gentleman from Wisconsin [Mr. Obey] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Connecticut [Mr. Shays].

MR. [TOM] DELAY [of Texas]: Mr. Chairman, I also reserve a point of order on this amendment. . . .

THE CHAIRMAN: Does the gentleman from Wisconsin [Mr. Obey] wish to press or withdraw his reservation of a point of order?

MR. OBEY: Mr. Chairman, I withdraw my reservation. I would also withdraw my request to manage time against the amendment. I thought the gentleman was offering a different amendment, and I do not have an objection to this amendment.

THE CHAIRMAN: Does any other Member insist on a point of order at this time?

MR. [ROBERT] LIVINGSTON [of Louisiana]: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN: The gentleman from Louisiana [Mr. Livingston] is recognized on his point of order.

MR. LIVINGSTON: Mr. Chairman, I will not make a point of order, but I would like to address a colloquy to the gentleman from Connecticut.

THE CHAIRMAN: Is the gentleman from Louisiana requesting time in opposition to the amendment?

MR. LIVINGSTON: I am asking for the time, Mr. Chairman. . . .

THE CHAIRMAN: Does any Member insist on a point of order?

MR. DELAY: Mr. Chairman, I would like to reserve my point of order.

THE CHAIRMAN: The Chair would ask the gentlemen to insist upon or withdraw their points of order at this time in order to conserve debate time.

MR. LIVINGSTON: Mr. Chairman, I withdraw my point of order.

THE CHAIRMAN: The gentleman from Louisiana [Mr. Livingston] withdraws his point of order.

MR. SHAYS: Mr. Chairman, I have a question to ask of the Chair, a parliamentary inquiry.

THE CHAIRMAN: The Chair would recognize the gentleman from Connecticut [Mr. Shays]. Does the gentleman ask unanimous consent to withdraw his amendment?

MR. SHAYS: No, I do not ask that. I have a parliamentary inquiry before I make that decision.

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. SHAYS: Mr. Chairman, I want to be up front with every Member on both sides, even if I do not happen to agree with them.

I want the opportunity to use my 15 minutes to state the case on this issue. If the gentleman withdraws his point of order, is he allowed to bring it up in the future?

THE CHAIRMAN: The Chair will not insist upon the gentleman from Texas [Mr. DeLay] insisting upon or withdrawing his point of order at this time. He may continue his reservation if he wishes.

With that ruling, the Chair recognizes the gentleman from Connecticut [Mr. Shays] on the remainder of his 15 minutes.

MR. SHAYS: I thank the Chair.

My understanding is that I have 9 minutes remaining. Is that correct? . . .

Mr. Chairman, based on the dialog that has taken place in this instance with the chairman, and based on the courtesy of this House for allowing me to proceed on an amendment that could have been declared out of order, I ask unanimous consent to withdraw this amendment.

THE CHAIRMAN: Is there objection to the request of the gentleman from Connecticut?

MR. [GERRY E.] STUDDS [of Massachusetts]: . . . Mr. Chairman, in Boston this means 244 people sick and homeless. That is unacceptable, and I object.

THE CHAIRMAN: Objection is heard.

POINT OF ORDER

MR. DELAY: Mr. Chairman, I have a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. DELAY: Mr. Chairman, the gentleman's amendment seeks to amend a paragraph previously amended, and the procedures in the U.S. House of Representatives, chapter 27, section 27.1, states the following:

It is fundamental that it is not in order to amend an amendment previously agreed to. Thus the text of a bill perfected by amendment cannot thereafter be amended.

Mr. Chairman, this amendment seeks to amend text previously amended, and is, therefore, not in order. I respectfully ask the Chair to sustain my point of order. . . .

MS. [NANCY] PELOSI [of California]: Mr. Chairman, I wish to be heard on the point of order. I wish to state that if the point of order of the gentleman from Texas [Mr. DeLay] is in order, that just points to the ultra-restrictiveness of the rule under which this bill was brought to the floor because we did abide by——

MR. DELAY: Regular order, Mr. Chairman. . . .

MRS. [NITA M.] LOWEY [of New York]: Mr. Chairman, I wish to be heard on the gentleman's point of order.

THE CHAIRMAN: The gentlewoman will state her point. . . .

MR. DELAY: Regular order, Mr. Chairman.

THE CHAIRMAN: The Chair is prepared to rule.

Under the precedents recorded in section 31 in chapter 27 of Deschler's Procedure, the point of order of the gentleman from Texas [Mr. DeLay] is sustained. It is consistent with the

Chair's ruling yesterday on the amendment offered by the gentlewoman from Connecticut [Ms. DeLauro].

§ 3.18 A point of order may not be reserved against an amendment upon a demand for the regular order by any Member; but the Chair may in his discretion permit the continued reservation of the point of order until the regular order is demanded.

On Dec. 14, 1973,[9] in the Committee of the Whole, Chairman Richard Bolling, of Missouri, explained the nature of the reservation of a point of order to Mr. Craig Hosmer, of California.

THE CHAIRMAN: Does the gentleman from Michigan insist on his point of order?

MR. HOSMER: Mr. Chairman, a parliamentary inquiry.

It is my understanding that when a point of order is made that the rules require that the ruling be made thereon, and that when a Member reserves the point of order it is in the nature only of a unanimous-consent request and, therefore, when that request is objected to, that thereafter he can no longer pursue the point of order which he has reserved.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, the Chair has already ruled on this.

THE CHAIRMAN: The Chair needs no assistance in this matter.

The gentleman is in error. It is entirely at the discretion of the Chair as to whether the point of order will be reserved unless another Member demands the regular order. A reservation of a point of order is not in the nature of a unanimous-consent request.

Regular order was not demanded. Therefore it is in order for the gentleman to persist in his point of order.

The Chair recognizes the gentleman from Michigan.

Right of Members

§ 3.19 Reservation of a point of order against an amendment or the continuation of such a reservation may be permitted by leave of the Committee of the Whole, but any Member may demand that the point of order be disposed of.

On Apr. 4, 1973,[10] on demand for regular order by Mr. H. R. Gross, of Iowa, Mr. Gerald R. Ford, of Michigan, was compelled to either make or withdraw his reserved point of order:

MR. [JOHN R.] RARICK [of Louisiana]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rarick: Page 15, after line 11 insert:

"Sec. 10. No funds provided under the Rural Electrification Act of 1936,

9. 119 CONG. REC. 41738, 93d Cong. 1st Sess. Under consideration was H.R. 11450, the Energy Emergency Act.

10. 119 CONG. REC. 10935, 10936, 93d Cong. 1st Sess. Under consideration was H.R. 5683, which was to amend the Rural Electrification Act.

as amended, shall be used outside the United States or any of its possessions. (And renumber the remaining paragraphs.)"

THE CHAIRMAN:[11] For what purpose does the gentleman from Michigan (Mr. Gerald R. Ford) rise?

MR. GERALD R. FORD: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN: The gentleman from Louisiana (Mr. Rarick) is recognized for 5 minutes. . . .

MR. GERALD R. FORD: Mr. Chairman, I would like to ask the gentleman from Texas several questions before I either renew or withdraw my reservation.

MR. GROSS: Mr. Chairman, regular order.

THE CHAIRMAN: The gentleman has permission to reserve his point of order.

MR. GROSS: Mr. Chairman, I make the point of order that he must institute his reservation.

THE CHAIRMAN: Does the gentleman wish to withdraw his point of order and seek recognition?

MR. GERALD R. FORD: No. I want to make the point of order. I do not think the amendment is germane to the general purposes of the bill.

I appreciate the gentleman from Iowa giving me an opportunity to ask the gentleman from Texas a question or two.

THE CHAIRMAN: The Chair is ready to rule on the point of order.

It is the opinion of the Chair that the amendment is a restriction on the use of funds authorized under the REA program and is germane to the bill.

The Chair therefore overrules the point of order.

Effect of Demanding Regular Order Where a Point of Order Has Been Reserved Against an Amendment

§ 3.20 Where the proponent of an amendment against which a point of order has been reserved has been recognized to debate the amendment, he cannot during his five minutes be taken from the floor by a "demand for the regular order."

On Aug. 1, 1975,[12] the Committee of the Whole had under consideration the Energy Conservation and Oil Policy Act of 1975. During the reading of the bill for amendment under the five-minute rule, an amendment was offered by Mr. Clarence J. Brown, of Ohio, against which two Members reserved points of order. The proponent of the amendment was then recognized for his five minutes, during which time, he was asked to yield for a parliamentary inquiry. The proceedings are carried below:

MR. BROWN of Ohio: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

11. Dan Rostenkowski (Ill.).

12. 121 CONG. REC. 26945, 26946, 94th Cong. 1st Sess.

Amendment offered by Mr. Brown of Ohio: Strike out Title III, as amended, and reinsert all except for Section 301, as amended.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I reserve a point of order against the amendment.

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, I also reserve a point of order.

MR. BROWN of Ohio: Mr. Chairman, the thrust of this amendment is to strike from the bill the provisions of the Staggers pricing amendment, section 301, by revising title III to strike the whole title and to reinsert all in the title, except section 301.

Mr. Chairman, may I speak on the amendment?

THE CHAIRMAN:[13] The gentleman has been recognized for 5 minutes, so the gentleman may proceed.

MR. BROWN of Ohio: Mr. Chairman, may I reserve 2 minutes of my time to speak on the points of order?

THE CHAIRMAN: The Chair will recognize the gentleman to speak on the points of order at the appropriate time.

MR. DINGELL: Mr. Chairman, I have not yet made the point of order. I reserved it.

THE CHAIRMAN: The Chair has recognized the gentleman from Ohio to speak on the gentleman's amendment for 5 minutes. Then the gentlemen who reserved the points of order may press them or they may not.

MR. BROWN of Ohio: Mr. Chairman, the purpose of this amendment, as I said, is to strike section 301, the pricing section, from the bill.

The reason for striking the pricing section from the bill is an effort to improve the bill so that we can proceed from the point at which we find ourselves to a bill which could be improved to the extent that perhaps it can be signed into law, which ought to be our objective, I think, as Members of Congress. . . .

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Chairman, will the gentleman yield for a parliamentary inquiry?

MR. BROWN of Ohio: I yield to the gentleman from Wisconsin.

MR. STEIGER of Wisconsin: Mr. Chairman, if the regular order were demanded, would the point of order have to be stated?

THE CHAIRMAN: The Chair will state to the gentleman that it is proper for a Member to reserve a point of order.

MR. STEIGER of Wisconsin: I thank the Chairman.

MR. BROWN of Ohio: I thank the gentleman from Wisconsin. . . .

We were very close to agreement a few days ago, and that agreement fell apart. I think there is a chance for us to get an energy bill. But there is no chance with this provision in it. My objective is only to try to get a bill, get this part out of it that will prevent us from getting a bill and will give us an opportunity to proceed in a rational manner.

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

THE CHAIRMAN: The gentleman will state it. . . .

Does the gentleman from Ohio (Mr. Brown) desire to be heard on the point of order?

MR. BROWN of Ohio: Perhaps, Mr. Chairman, it would be appropriate to

13. Richard Bolling (Mo.).

hear both points of order. Or does the Chair desire me to respond to each point of order as it is raised?

THE CHAIRMAN: The gentleman may proceed as he wishes in response to the points of order.

MR. BROWN of Ohio: Mr. Chairman, let me say, in response to the first ground for the point of order that the gentleman from Texas (Mr. Eckhardt) raised, stating that this amendment comes too late, it is appropriate to offer the amendment because the title is open now at any point for amendment, and this is an amendment to title III.

Effect of Withdrawal of Reservation

§ 3.21 The reservation of a point of order being withdrawn, another Member may immediately renew it.

On July 28, 1959,[14] Chairman Wilbur D. Mills, of Arkansas, had occasion to address the propriety of a point of order raised after another point had been withdrawn.

MR. [CHARLES E.] BENNETT of Florida: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I make a point of order against the amendment, and will reserve the point of order. . . .

Mr. Chairman, I withdraw my point of order.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. . . .

MR. BENNETT of Florida: Mr. Chairman, does not the point of order come too late? The gentleman from New York did not reserve a point of order.

THE CHAIRMAN: It did not.

§ 3.22 Where a point of order is reserved against an amendment and later withdrawn, another Member may press another point of order.

On Mar. 27, 1962,[15] during debate on an amendment offered by Mr. William Fitts Ryan, of New York, to an appropriations bill, Mr. John E. Fogarty, of Rhode Island, first reserved a point of order, then withdrew it before Mr. James C. Davis, of Georgia, was recognized to make his point of order. The Chairman ruled the point of order by Mr. Davis did not come too late.

MR. FOGARTY: Mr. Chairman, I reserve the point of order. . . .

MR. JAMES C. DAVIS: Mr. Chairman, is it in order for me at this time to make a point of order against the amendment?

THE CHAIRMAN:[16] The gentleman from Rhode Island has reserved his

14. 105 CONG. REC. 14524, 14525, 86th Cong. 1st Sess. Under consideration was H.R. 8385, making appropriations for certain programs.

15. 108 CONG. REC. 5164, 87th Cong. 2d Sess. Under consideration was H.R. 10904, involving appropriations for the Department of Health, Education, and Welfare for fiscal 1963.

16. Omar T. Burleson (Tex.).

point of order. Does the gentleman from Rhode Island insist on the point of order?

MR. FOGARTY: Mr. Chairman, I waive the point of order. I have stated my reasons as to why the amendment should be defeated and I ask the committee to vote down the amendment.

MR. JAMES C. DAVIS: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state the parliamentary inquiry.

MR. JAMES C. DAVIS: Mr. Chairman, is it in order for me to make a point of order against the amendment? . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, has not the point of order been waived by the gentleman from Rhode Island speaking to the question?

THE CHAIRMAN: The Chair understood that the gentleman from Rhode Island was speaking to his point of order and insisted then on the defeat of the amendment.

MR. YATES: That is correct, Mr. Chairman, and, therefore, no point of order is proper at this time.

THE CHAIRMAN: The gentleman from Georgia [Mr. James C. Davis] now states he was on his feet attempting to press a point of order against the amendment, but the Chair had understood that the gentleman from Rhode Island did insist on his point of order. However, the Chair was in error as to that and the gentleman from Georgia is now recognized to make his point of order.

MR. YATES: Mr. Chairman, one final parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. YATES: Mr. Chairman, does not the point of order by the gentleman from Georgia come too late?

THE CHAIRMAN: Not under the circumstances. The Chair would assume there is a possibility of more than one point of order being made and for more than one reason.

The Chair recognizes the gentleman from Georgia.

MR. JAMES C. DAVIS: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

Similarly, on Feb. 28, 1939,[17] Mr. Abe Murdock, of Utah, was allowed to make a point of order after Mr. Louis Ludlow, of Indiana, withdrew a point of order that he had earlier reserved:

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

MR. [JOHN] TABER [of New York]: Why not make the point of order?

MR. LUDLOW: My attention was diverted from the reading of the amendment, and I should like to know more about the amendment before making the point of order. . . .

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

MR. MURDOCK of Utah: Mr. Chairman, on the question of the point of order——

THE CHAIRMAN:[18] For what purpose does the gentleman from Utah rise?

MR. MURDOCK of Utah: On the question of the point of order to the amendment of the gentleman from New York, and may I propound this parliamentary inquiry?

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17. 84 CONG. REC. 2021–23, 76th Cong. 1st Sess. Under consideration was H.R. 4492, involving the Treasury and printing office appropriation for fiscal 1940.

18. John W. Boehne, Jr. (Ind.).

THE CHAIRMAN: The gentleman will state it.

MR. MURDOCK of Utah: As I understood the gentleman from Indiana [Mr. Ludlow], he reserved all points of order against the amendment offered by the gentleman from New York.

THE CHAIRMAN: The gentleman is correct.

MR. MURDOCK of Utah: Then, as I understand the rules, the gentleman cannot deprive me, after making that reservation, in the event he does not want to make the point of order, of making a point of order myself against the amendment at this time.

THE CHAIRMAN: The gentleman has the right to make the point of order.

MR. MURDOCK of Utah: Then I make the point of order at this time, Mr. Chairman.

§ 3.23 Where a Member reserves a point of order against an amendment and then, after debate on the amendment, withdraws the point of order, the point of order may yet be renewed and pressed by another Member.

On Oct. 28, 1969,[19] after the withdrawal of a point of order reserved by Mr. George H. Mahon, of Texas, the point of order was renewed by another Member.

MR. [JEFFREY] COHELAN [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

MR. MAHON: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN:[20] The gentleman from Texas reserves a point of order.

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I reserve a point of order also.

THE CHAIRMAN: The gentleman from Ohio reserves a point of order. . . .

The Chair notes that a point of order is pending.

MR. MAHON: Mr. Chairman, I have now had an opportunity to read the gentleman's amendment, and I withdraw my point of order.

MR. BOW: Mr. Chairman, I renew the point of order.

THE CHAIRMAN: The gentleman will state his point of order.

Withdrawal of Reserved Point of Order

§ 3.24 While the reservation of a point of order by one Member inures to all, withdrawal of a reservation by the Member requires other Members to either make or continue to reserve the point of order at that point, and a further reservation comes too late after there has been debate.

On Dec. 15, 1982,[1] a point of order had been reserved against an amendment offered in the

19. 115 CONG. REC. 31886, 31888, 91st Cong. 1st Sess. Under consideration was H.J. Res. 966, dealing with continuing appropriations for fiscal 1970.

20. Wilbur D. Mills (Ark.).

1. 128 CONG. REC. 30938, 30939, 97th Cong. 2d Sess.

Committee of the Whole. When the reservation was withdrawn, the amendment was debated and then another Member attempted to reserve a point of order. The proceedings are carried below.

MR. [CLARENCE J.] BROWN of Ohio (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN:[2] Is there objection to the request of the gentleman from Ohio?

There was no objection.

(Mr. Brown of Ohio asked and was given permission to revise and extend his remarks.)

THE CHAIRMAN: The gentleman from Ohio (Mr. Brown) will be recognized for 5 minutes in support of his amendment.

The Chair will inquire, does the gentleman from New York (Mr. Ottinger) continue to reserve his point of order on the amendment?

MR. [RICHARD L.] OTTINGER [of New York]: No, Mr. Chairman, I will drop my reservation of a point of order.

MR. [THOMAS P.] O'NEILL [of Massachusetts]: Mr. Chairman, will the gentleman yield?

MR. BROWN of Ohio: I yield to the distinguished Speaker.

MR. O'NEILL: Mr. Chairman, I thank the gentleman for yielding, and I would just like to make the following statement: . . .

MR. BROWN of Ohio: Mr. Chairman, I thank the distinguished Speaker.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN: The Chair understands that the gentleman from Michigan (Mr. Dingell) reserves a point of order?

MR. DINGELL: Yes, Mr. Chairman.

MR. BROWN of Ohio: Mr. Chairman, I think the point of order is too late, is it not?

THE CHAIRMAN: It is a reservation of a point of order.

MR. BROWN of Ohio: Mr. Chairman, may I ask, can a reservation of a point of order come at any time? I had yielded to the Speaker, and the debate had begun on the amendment.

THE CHAIRMAN: The gentleman is correct. A point of order was reserved and then withdrawn, and the gentleman from Ohio (Mr. Brown) was recognized for 5 minutes on his amendment and had yielded. The point of order cannot be reserved at this time.

The gentleman from Ohio (Mr. Brown) is recognized for 5 minutes.

Reserving Points of Order Against General Appropriation Bills

§ 3.25 Points of order against general appropriation bills are now "considered as reserved" when the bill is reported.

Before clause 8 was added to Rule XXI in the 104th Congress, points of order against general appropriation bills had to be reserved, on the floor of the House, when the bill was reported and referred to the Union Calendar. If this window of opportunity was

2. Leon E. Panetta (Calif.).

missed, points of order could thereafter be reserved only by unanimous consent.

The rationale for reserving points of order had its basis in the requirement that the consideration of an appropriation bill had to occur in the Committee of the Whole House on the State of the Union. It followed that the enforcement of Rule XXI clause 2 prohibiting legislative provisions in a general appropriation bill, either in the measure as reported or introduced by amendment, had to occur in that Committee. While offending provisions could be stricken by amendment, they could be eliminated from the bill as the result of a ruling on a point of order only if the House gave such permission.

An instance where points of order were not reserved when the report was filed, but were subsequently reserved, occurred on Aug. 23, 1976.[3]

PERMISSION TO RESERVE ALL POINTS OF ORDER ON H.R. 15194, PUBLIC WORKS EMPLOYMENT APPROPRIATION ACT, 1977

MR. [CLARENCE E.] MILLER of Ohio: Mr. Speaker, I ask unanimous consent that I may reserve all points of order on the bill H.R. 15194 making appropriations for public works employment for the period ending September 30, 1977, and for other purposes, on which a report was filed by the Committee on Appropriations on August 12, 1976, pursuant to permission granted on August 10, 1976.

THE SPEAKER:[4] Is there objection to the request of the gentleman from Ohio?

There was no objection.

Reservation of Points of Order, General Appropriation Bills

§ 3.26 Under Rule XXI clause 8, adopted in the 104th Congress, points of order on general appropriation bills are "considered as reserved" when the report is filed.

The proceedings of Feb. 10, 1995,[5] demonstrate that when a general appropriation bill is filed from the floor as privileged, the Speaker indicates that points of order are reserved.

REPORT ON H.R. 889, DEPARTMENT OF DEFENSE EMERGENCY SUPPLEMENTAL APPROPRIATIONS, 1995

MR. [ROBERT] LIVINGSTON [of Louisiana], from the Committee on Appropriations, submitted a privileged report (Rept. No. 104–29) on the bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes, which

3. 122 CONG. REC. 27141, 94th Cong. 2d Sess.

4. Carl Albert (Okla.).

5. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

was referred to the Union Calendar and ordered to be printed.

THE SPEAKER PRO TEMPORE:[6] All points of order are reserved on the bill.

Reserving Points of Order

§ 3.27 A point of order against a paragraph in a general appropriation bill must be raised (and may not be reserved) immediately after the paragraph is read.

In the practice of the House, points of order may be reserved against amendments but not against provisions in a bill being read for amendment. Permitting a point of order to be reserved when an amendment is offered does not unduly interfere with the consideration of the matter before the House or Committee of the Whole, so long as the point of order is disposed of, or the reservation withdrawn, before an amendment in the second degree is offered or before the question is put on the amendment. The reservation of a point of order against an amendment is at the Chair's discretion and he, or any Member, may press for the "regular order" which causes the point of order to be withdrawn or stated and decided.

On Apr. 16, 1975,[7] the bill making annual appropriations for the Department of Education, for fiscal 1976, was under consideration in Committee of the Whole. One of the "general provisions" of the bill was read by the Clerk and Mr. Fortney H. (Pete) Stark, of California, attempted to reserve a point of order so that debate on the provision could proceed. Chairman James C. Wright, Jr., of Texas, stated that the point of order had to be made, not reserved. Proceedings were as indicated.

THE CHAIRMAN: The Clerk will read.

The Clerk read as follows:

Sec. 805. No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan, a grant, the salary of or any remuneration whatever to any individual applying for admission, attending, employed by, teaching at, or doing research at an institution of higher education who has engaged in conduct on or after August 1, 1969, which involves the use of (or the assistance to others in the use of) force or the threat of force or the seizure of property under the control of an institution of higher education, to require or prevent the availability of certain curriculum, or to prevent the faculty, administrative officials, or students in such institution from engaging in their duties or pursuing their studies at such institution.

MR. STARK: Mr. Chairman, I would like to reserve a point of order against section 305.

THE CHAIRMAN: The Chair advises that this is the time to make a point of order against section 305. The Chair recognizes the gentleman from California for a point of order.

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6. J. Dennis Hastert (Ill.).

7. 121 CONG. REC. 10375, 94th Cong. 1st Sess.

MR. STARK: Mr. Chairman, I rise to make a point of order against section 305 on the grounds that it imposes additional burdens and duties on Government executives and is legislation on an appropriations bill, and is in violation of clause 2 of rule XXI. . . .

So I submit this is legislation on an appropriations act and should be ruled out of order.

THE CHAIRMAN: Does the gentleman from Pennsylvania wish to be heard on the point of order?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: I do, Mr. Chairman.

Mr. Chairman, this language has been in this bill for many, many years, since 1969 anyhow. We have always considered this to be a limitation on an appropriation bill.

Mr. Chairman, I refer the Chair to "Deschler's Procedure," chapter 25, page 280, section 15.4, where I find this language:

> An amendment providing that no part of the funds carried in a pending general appropriation bill may be used for financial assistance for students who have engaged in force or have used the threat of force to prevent faculty or students from carrying out their duties or studies, was held in order as a limitation. 115 CONG. REC. 21636, 91st Cong. 1st Sess., July 31, 1969 (H.R. 13111).

That was sustained in the 91st Congress, 1st session. I remember that very well, indeed. . . .

THE CHAIRMAN: The Chair is prepared to rule on the point of order. . . .

In the case cited by the gentleman from Pennsylvania, Chairman Holifield on July 31, 1969, while presiding over the Committee of the Whole House, in considering an appropriation bill for education, was confronted with the same point of order.

The Chair finds that the provision under contest in the precedent, cited by the gentleman from Pennsylvania, was for all purposes identical to the provision contained in the present bill. It was held on that occasion that it was a legitimate limitation on an appropriation bill. Consistent with that precedent, and because the precedents cited by the gentleman from California are clearly distinguishable, the Chair overrules the point of order.

§ 3.28 Where a point of order was reserved against a paragraph in a general appropriation bill, the manager of the bill then "modified the paragraph" and the point of order was subsequently not pressed.

On Mar. 7, 1991,[8] during consideration of the dire emergency supplementary bill, a point of order was reserved against a paragraph containing legislative provisions. The following colloquy then took place, the paragraph was modified to satisfy a jurisdictional concern, and the point of order withdrawn.

> THE CHAIRMAN:[9] . . . The Clerk will report the next paragraph in dispute.

8. 137 CONG. REC. 5497, 5498, 102d Cong. 1st Sess.
9. Dennis E. Eckart (Ohio).

The Clerk read as follows:

Page 28, beginning on line 13,

CHAPTER X

GENERAL SERVICES ADMINISTRATION

None of the funds made available by this or any other Act with respect to any fiscal year may be used by the General Services Administration to obligate or expend any funds for the award of contracts for the construction of the Northern Virginia Naval Systems Command Headquarters project without advance approval in writing of the House Committee on Appropriations.

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

MR. [ROBERT A.] ROE [of New Jersey]: Yes, Mr. Chairman, I reserve a point of order against the provision of title II, chapter X, entitled "General Services Administration" beginning on page 28, lines 14 through 21. That provision violates clause 2 of rule XXI because it again is recommending legislation in an appropriations bill.

THE CHAIRMAN: The Chair recognizes the gentleman from Virginia [Mr. Wolf].

MR. [FRANK R.] WOLF [of Virginia]: Mr. Chairman, I ask unanimous consent that the provision entitled "General Services Administration" be modified by inserting in line 21, after the word "the," the words, "House Committee on Public Works and Transportation and the". . . .

THE CHAIRMAN: The gentleman from Virginia [Mr. Wolf] seeks unanimous consent to modify the language subject to the reservation of the point of order of the gentleman from New Jersey [Mr. Roe].

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

There was no objection.

The text of chapter X, as modified, is as follows:

CHAPTER X

GENERAL SERVICES ADMINISTRATION

None of the funds made available by this or any other Act with respect to any fiscal year may be used by the General Services Administration to obligate or expend any funds for the award of contracts for the construction of the Northern Virginia Naval Systems Command Headquarters project without advance approval in writing of the House Committee on Public Works and Transportation and the House Committee on Appropriations.

THE CHAIRMAN: Does the gentleman from New Jersey [Mr. Roe] insist on his point of order?

MR. ROE: No, I do not, Mr. Chairman. I withdraw my point of order.

Reservation of Point of Order Against Bill Text Not in Order

§ 3.29 A point of order may not be reserved against a portion of text of an appropriation bill (as opposed to an amendment) but must be stated and pressed immediately after the paragraph is read and before debate or amendments are offered.

During the reading of the Treasury-Postal appropriation bill, fiscal 1992, a long paragraph

funding named projects in different states was offered. The paragraph had in it a long and complicated series of provisos. During the reading of the paragraph, Mr. James A. Traficant, Jr., of Ohio, attempted to reserve a point of order. The proceedings of June 18, 1991,[10] were as indicated.

The Clerk read as follows:

Georgia:

Atlanta, Center for Disease Control, $5,000,000

Florida:

Fort Myers, Federal Building and U.S. Courthouse, $977,000

Tallahassee, U.S. Courthouse Annex, $3,764,000. . . .

POINT OF ORDER

MR. TRAFICANT: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN:[11] The gentleman will state his point of order.

MR. TRAFICANT: Mr. Chairman, I raise now a point of order starting on page 31, line 1, with the word "provided," and continue it down to and including line 15, up to "in other such projects."

THE CHAIRMAN: What is the point of order of the gentleman?

MR. TRAFICANT: Mr. Chairman, I further reserve the right to object to other elements within that section, and wait for a ruling on this section.

THE CHAIRMAN: First let the Clerk read that paragraph.

The Clerk read as follows:

Provided That each of the immediately foregoing limits of costs on new construction projects may be exceeded to the extent that savings are effected in other such projects, but by not to exceed 10 per centum: *Provided further,* That all funds for direct construction projects shall expire on September 30, 1993, and remain in the Federal Buildings Fund except funds for projects as to which funds for design or other funds have been obligated in whole or in part prior to such date: *Provided further,* That claims against the Government of less than $100,000 arising from direct construction projects, acquisitions of buildings and purchase contract projects pursuant to Public Law 92–313, be liquidated with prior notification to the Committees on Appropriations of the House and Senate to the extent savings are effected in other such projects: *Provided further, That to the extent that savings can be effected in other Federal Buildings Fund activities, the GSA shall seek reprogramming of up to $16,200,000 to supplement funds previously authorized and appropriated for the NOAA laboratory, Boulder, Colorado, subject to the approval of the House and Senate Committees on Appropriations according to existing reprogramming procedures: Provided further,* That such funds will be obligated only upon the advance approval of the House Committee on Public Works and Transportation; (2) not to exceed $569,251,000 which shall remain available until expended, for repairs and alterations: *Provided further,* That funds in the Federal Buildings Fund for Repairs and Alterations shall, for prospectus projects, be limited to the amount by project as follows: except each project may be increased by an amount not to exceed 10 per centum unless advance approval is obtained from the Commit-

10. 137 CONG. REC. 15208, 15209, 102d Cong. 1st Sess.

11. Gerry E. Studds (Mass.).

tees on Appropriations of the House and Senate of a greater amount:

POINT OF ORDER

THE CHAIRMAN: Does the Chair understand that the point of order of the gentleman from Ohio [Mr. Traficant] is directed solely to page 31, lines 1 through 15?

MR. TRAFICANT: Mr. Chairman, the first part of that is line 1 through line 15, including and up to "in other such projects."

Then I want to reserve a point of order commencing later on on that page. I am prepared to object to those other items now, if it would be the will of the Chair.

THE CHAIRMAN: It would be appropriate for the gentleman to make any and all points of order he may have against that paragraph at this time.

MR. TRAFICANT: Mr. Chairman, in addition to that, commencing on line 22, with the words, "provided further," and continuing on, until page 32, line 8.

THE CHAIRMAN: The Chair understands the point of order of the gentleman from Ohio to go to the entirety of the paragraph beginning on page 31, line 1. Is that correct?

MR. TRAFICANT: Mr. Chairman, all except line 15, "provided further," through line 22, "provided further." That section, with Federal building funds activities, I do not strike.

THE CHAIRMAN: The gentleman will state his point of order, now that he has designated it.

MR. TRAFICANT: Mr. Chairman, under clause 2, rule XXI of House rules, for constituting legislation in an appropriation bill.

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

MR. [EDWARD R.] ROYBAL [of California]: Mr. Chairman, the committee concedes the point of order.

THE CHAIRMAN: The committee concedes the point of order, the point of order is sustained, and the language in question is stricken, but the proviso on lines 15 through 22 of page 31 remains in the bill.

Parliamentarian's Note: All of the paragraph was stricken by the point of order except for the proviso shown in italics in the excerpt above.

Reservation of Point of Order Not Possible Where No Debate Time Remains

§ 3.30 Where an amendment is not subject to debate, a point of order may not be reserved against it but must be stated and pressed immediately following the reading of the amendment.

On June 19, 1991,[12] during prolonged consideration of the International Cooperation Act under the five-minute rule, an amendment was offered by Mr. Lee H. Hamilton, of Indiana. The amendment was not subject to debate because of the terms of the

12. 137 CONG. REC. 15477, 102d Cong. 1st Sess.

special rule which governed the debate on this measure. Proceedings were as follows:

AMENDMENT OFFERED BY MR. HAMILTON TO THE AMENDMENT OFFERED BY MR. VOLKMER AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. BURTON OF INDIANA, AS AMENDED

MR. HAMILTON: Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment, as amended.

The Clerk read as follows:

Amendment offered by Mr. Hamilton to the amendment offered by Mr. Volkmer as a substitute for the amendment offered by Mr. Burton of Indiana, as amended: Strike out the period at the end of the section proposed to be added by the Volkmer substitute and insert in lieu thereof the following: "unless the President certifies to the appropriate congressional committees that such assistance is in the national interest of the United States.".

THE CHAIRMAN PRO TEMPORE:[13] The Chair will state that this amendment will have no debate.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I reserve a point of order on the amendment.

PARLIAMENTARY INQUIRY

MR. [DAN] BURTON of Indiana: Mr. Chairman, I have a parliamentary inquiry.

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

MR. BURTON of Indiana: Mr. Chairman, I may be following the same train of thought as my colleague, the gentleman from Pennsylvania.

No. 1, I would ask, is this amendment in order? And No. 2, would it not in effect emasculate the Volkmer amendment so that aid could go to Jordan?

THE CHAIRMAN PRO TEMPORE: The Chair will state that the Hamilton amendment is drafted as an amendment to the Volkmer substitute. The Chair cannot characterize the amendment.

MR. BURTON of Indiana: I thank the Chair.

THE CHAIRMAN PRO TEMPORE: Does the gentleman from Pennsylvania [Mr. Walker] insist on his point of order?

MR. WALKER: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN PRO TEMPORE: The Chair states that no debate is in order on this amendment, so the point of order should be disposed of now.

POINT OF ORDER

MR. WALKER: Mr. Chairman, I make a point of order on the amendment, that the amendment is being offered in the third degree, and, therefore, it is not eligible for consideration in the House.

THE CHAIRMAN PRO TEMPORE: The Chair will state that the amendment to the substitute is not in the third degree, but is in the second degree.

The question is on the amendment offered by the gentleman from Indiana [Mr. Hamilton] to the amendment offered by the gentleman from Missouri [Mr. Volkmer] as a substitute for the amendment offered by the gentleman from Indiana [Mr. Burton], as amended.

13. Jim McDermott (Wash.).

Reserving a Point of Order

§ 3.31 A Member may reserve a point of order against an offered amendment to ascertain from its author the intention or meaning of the language.

On May 4, 1994,[14] the House had under consideration the National Science Foundation authorization bill (H.R. 3254). During consideration of the bill for amendment under the five-minute rule, Mr. Gerald B. H. Solomon, of New York, offered an amendment and the manager of the bill, Mr. Rick Boucher, of Virginia, reserved a point of order. The resulting colloquy is carried here.

AMENDMENT OFFERED BY MR. SOLOMON

MR. SOLOMON: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Solomon:

At the end of Title II, add the following new section:

SEC. 213. DENIAL OF AWARDS OF GRANTS OR CONTRACTS TO EDUCATIONAL INSTITUTIONS WHICH PREVENT MILITARY RECRUITING.

(a) DENIAL OF FUNDS.—The Director may not make a grant or award a contract to any educational institution that has a policy of denying, or which effectively prevents, any of the military services of the United States from obtaining for military recruiting purposes—

(1) entry to campuses or access to students on campuses; or

(2) access to directory information pertaining to students; consistent with applicable law. . . .

MR. BOUCHER: Mr. Chairman, I reserve a point of order with respect to the amendment offered by the gentleman from New York [Mr. Solomon].

THE CHAIRMAN: The gentleman from Virginia [Mr. Boucher] reserves a point of order against the amendment. The gentleman from New York [Mr. Solomon] is recognized for 5 minutes in support of his amendment.

MR. BOUCHER: Mr. Chairman, will the gentleman yield?

MR. SOLOMON: I yield to the gentleman from Virginia.

MR. BOUCHER: Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I rise to propound a question with respect to how the gentleman interprets the recent addition that was made to the base text amendment. The addition that is written in on this amendment on line 7, following the phrase that is denumerated paragraph number 2, says, "consistent with applicable law.". . .

MR. SOLOMON: Mr. Chairman, I say to the gentleman from Virginia that he knows that we had a problem in drafting the amendment to make it germane. Even though I believe that it is a limitation amendment, which should be allowed, I have every reason to believe the Parliamentarians would rule against me and in favor of the gentleman raising a point of order against it.

Therefore, we had to modify it by adding the terms "consistent with applicable law."

14. 140 CONG. REC. p. _____, 103d Cong. 2d Sess.

It does apply to line 6 as well. In effect, it makes this a sense-of-Congress resolution rather than binding. We would hope to pass it over here in this forum and then have the Senate adopt it in its original form where it will become law.

MR. BOUCHER: Mr. Chairman, if the gentleman will continue to yield, I thank the gentleman for his explanation. . . .

I ask the gentleman this additional question: Does the gentleman believe that he is adding any requirements that do not already exist in present law through the general text of his amendment? Will this amendment, if adopted, change the required conduct of universities in terms of the access and information they provide?

MR. SOLOMON: Mr. Chairman, let me say to the gentleman, it is not my intention, by rendering this new modification, to create new law. It is applicable law. That is my intent. . . .

THE CHAIRMAN: The gentleman from Virginia [Mr. Boucher] has reserved a point of order. Does the gentleman wish to press the point of order?

MR. BOUCHER: Mr. Chairman, I withdraw the reservation of the point of order.

§ 4. Timeliness

It is essential that a point of order be raised at the proper time if it is to be entertained by the Chair. Generally, a point of order comes too late after debate on the matter has commenced; but the precedents are sometimes more explicit in defining when a point of order is timely. For example, a point of order against a privileged resolution is properly raised when it is called up, before debate is had on the resolution.[15] Similarly, a point of order against "consideration" is timely when the measure is called up.[16] A point of order against a report involving the privileges of the House is properly raised after the report is read,[17] whereas points of order against conference reports are made after the reading of the report and before the reading of the statement of the managers in explanation of the report.[18]

Challenging Privileged Status of a Resolution

§ 4.1 A point of order questioning the privilege of a resolution reported by the Committee on Rules has been entertained when the resolution was called up before the reading of the resolution by the Clerk.

On Aug. 19, 1964,[19] before the Clerk read the text of a privileged

15. See § 4.1, infra.

16. See § 4.2, infra.

17. See § 4.5, infra.

18. See § 4.4 and Ch. 33, infra.

19. 110 CONG. REC. 20212, 20213, 88th Cong. 2d Sess. Under consideration

resolution, it was determined to be timely for a Member to raise a point of order against it.

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I call up House Resolution 845 and ask for its immediate consideration.

MR. [JAMES G.] O'HARA of Michigan: Mr. Speaker, I make a point of order.

THE SPEAKER:[20] The gentleman will state it.

MR. O'HARA of Michigan: Mr. Speaker, I make a point of order against the consideration of House Resolution 845 on the grounds that the Committee on Rules is without jurisdiction to bring such resolution to the floor of the House under the provisions of rule 16 of the Rules of the House of Representatives, and I ask permission to be heard on the point of order.

THE SPEAKER: The Chair will hear the gentleman.

Following argument, the Speaker overruled the point of order.

Points of Order Against Consideration of Measure

§ 4.2 Under the Congressional Budget Act of 1974, one of the enforcement measures permitted a point of order against the consideration of a bill providing new spending authority not subject to the appropriations process.

The House of Representatives and the Senate have sometimes reached different interpretations of provisions of the Congressional Budget Act of 1974. Such was the case in 1975 when the House, acting first on the legislation, permitted consideration of the International Development Act of 1975, H.R. 9005, the Speaker overruling a point of order that the bill could not be considered because of a provision defining certain loan receipts under the bill as being "authorized to be made available." The Speaker found evidence in the bill that the receipts were available only through the appropriations process.

The House proceedings of Sept. 10, 1975,[1] were as indicated below:

INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1975

MR. [THOMAS E.] MORGAN [of Pennsylvania]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 9005) to authorize assistance for disaster relief and rehabilitation, to provide for overseas distribution and production of agricultural commodities, to amend the Foreign Assistance Act of 1961, and for other purposes.

POINT OF ORDER

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I make a point of

was H. Res. 845, providing for the consideration of H.R. 11926, which was to limit the jurisdiction of federal courts in reapportionment cases.

20. John W. McCormack (Mass.).

1. 121 CONG. REC. 28270, 28271, 94th Cong. 1st Sess.

order against the present consideration of the bill H.R. 9005 on the grounds that on page 15 of this bill, in section 302(e), lines 6 to 17, there is contained a provision which in essence changes the law governing repayments on previous foreign assistance loans making these sums available for certain purposes without reappropriation by Congress. At the present time the proceeds from repayments of these loans are returned to the Treasury for later reappropriation by the Congress.

Apparently this provision allows at least $200 million in loan reflows, as the report refers to them, to be respent without either authorization or further appropriation by the Congress each year.

It would be my contention that this provision violates Public Law 93–344, section 401(a), the Congressional Budget Act of 1974, which in effect prohibits the consideration by the House of any bill or resolution which provides any new spending authority. In effect this is back-door spending without authorization and appropriation each year by the Congress.

THE SPEAKER:[2] Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. MORGAN: I do, Mr. Speaker.

Mr. Speaker, I rise in opposition to the point of order.

Mr. Speaker, the proposed section 103 of the Foreign Assistance Act of 1961 contained in section 301(a) of House Resolution 905 as reported, which authorizes the repayment on prior year foreign aid loans to be made available for specific purposes, does not in effect appropriate funds and, therefore, is not subject to a point of order under clause 5 of rule XXI. The funds referred to in section 103 will not be available for reuse unless they are appropriated. . . . The clear language of the bill, Mr. Speaker, proposed in section 103 specifically provides that amounts repaid are authorized to be available for use and authorized for appropriation. It does not provide that they be available for use as an appropriation.

THE SPEAKER: The Chair would like to address a question to the gentleman from Maryland.

Is the gentleman raising a point of order under the Budget Act for the purpose of preventing the consideration of the legislation, or is he attempting to make a point of order that this is an appropriation on a legislative bill?

MR. BAUMAN: Mr. Speaker, I am making the point of order for the express purpose of preventing the consideration of the bill, inasmuch as the public law to which I have referred says that it shall not be in order for either House to consider a bill which contains such a provision.

I would, therefore, in response to the statement of the chairman of the committee, refer to the committee report on page 46 which says:

> The third subsection added to section 103 authorizes repayments on prior year aid loans to be made available for specified purposes.

This would remove it from the appropriation process.

THE SPEAKER: The Chair is ready to rule. The gentleman from Maryland is making the point of order that the por-

2. Carl Albert (Okla.).

tion of the bill under section 302(e) constitutes new spending authority and violates section 401(a) of the Budget Act, Public Law 93–344.

The Chair has reviewed the language shown in the bill and in the report which shows that it is subject to the appropriation process because the whole intent and thrust is predicated on the words "are authorized to be made available." In other words, the reflow funds are to be appropriated by the Committee on Appropriations and by subsequent legislative actions and not as a result of the passage of this bill.

The Chair, therefore, overrules the point of order.

In the Senate, a point of order against consideration was sustained, but then the Senate permitted the point of order to be withdrawn and the bill modified to pass muster under the Budget Act. The Senate proceedings of Nov. 3, 1975,[3] which carry a description of how the House resolved the parliamentary situation, are carried below:

MR. [DANIEL K.] INOUYE [of Hawaii]: Mr. President, I raise a point of order with reference to section 492(d), page 5, line 17) and section 302(e), (page 23, line 6), authorizing funds "to be made available" which violates section 401(a) of the Budget Act, Public Law 93–344, which states:

> It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2) (A) or (B) (or any amendment which provides such new spending authority), unless that bill, resolution, or amendment also provides that such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

THE PRESIDING OFFICER:[4] The Chair rules the point of order is well taken under section 401(a) of Public Law 93–344. Therefore, the bill cannot be considered.

What is the pleasure of the Senate?

MR. [HUBERT H.] HUMPHREY [of Minnesota]: Mr. President——

THE PRESIDING OFFICER: The Senator from Minnesota.

MR. HUMPHREY: Mr. President, I understand the concern that the Senator from Hawaii has expressed. Might I say most respectfully that in the other body, and I say this to the Parliamentarian, as the Parliamentarian knows, the ruling of the Parliamentarian was that the language was in order in the bill.

This is the language from the other body, but we have our own rules; I understand that.

I suggest to the Senator from Hawaii that the report indicates what has been our practice, that the use of funds for these purposes, whatever the purposes as outlined were, would of course be contingent upon the appropriations action. So it might be, if the Senator will withhold his point of order, that we might be able to reconcile our differences here, because there is no de-

3. 121 CONG. REC. 34732–34, 94th Cong. 1st Sess.

4. Patrick J. Leahy (Vt.).

sire to escape the appropriations process.

For example: On line 6, the language "after July 1, 1975, are authorized to be appropriated for each of the fiscal years 1976 and 1977" instead of "authorized to be made available."

THE PRESIDING OFFICER: The Chair would advise the Senator from Minnesota that to vitiate the point of order and the rulings would require unanimous consent. . . .

MR. HUMPHREY: Large sums of money, and that is why in this language we are authorizing their use only on the basis of the appropriations process. We authorize them for specific purposes, such as for the International Fund for Agricultural Development the sum of $200 million. But it is not to bypass the Appropriations Committee. And I think it should be noted that when this point was raised in the other body, the chairman of the House International Relations Committee rose in opposition to the point of order.

He noted some of the same points that are being made here. . . .

Senator Humphrey then quoted from the debate and the ruling by Speaker Albert.

THE PRESIDING OFFICER: The Chair advises, in that regard, based on the point of order originally made and the ruling by the Chair, that the bill is not before the Senate to be so amended, unless by unanimous consent, and the point of order would be withdrawn, even though that would allow the point of order to be raised again, but, if by unanimous consent the point of order were withdrawn, the Senate could move to consideration of such an amendment. . . .

MR. INOUYE: Mr. President, I ask unanimous consent to withdraw my point of order.

THE PRESIDING OFFICER: Does the Senator ask unanimous consent that his point of order be withdrawn?

MR. INOUYE: I do.

THE PRESIDING OFFICER: Without objection, it is so ordered.

MR. HUMPHREY: Mr. President, in light of the discussion which we have had, both here and in the colloquy, as well as our private discussions, I now move, on page 23, on line 6, after the words, "to be", to strike the words "made available", and insert in lieu thereof the word "appropriated". The line will then read: "and after July 1, 1975, are authorized to be appropriated" for each of the fiscal years, and so on.

THE PRESIDING OFFICER: The question is on agreeing to the amendment.

The amendment was agreed to.

Budget Act Point of Order Against Consideration

§ 4.3 While the Budget Act prohibits consideration of a bill, amendment or conference report which would cause the total level of budget outlays for the current year to be exceeded, the point of order must be made when the bill, amendment, or conference report is called up and comes too late after debate.

On Dec. 15, 1982,[5] the Chairman of the Committee on Appro-

5. 128 CONG. REC. 30912, 30923, 97th Cong. 2d Sess.

priations called up a conference report on the agricultural appropriation bill, fiscal 1983. The conference report was considered as read and then Mr. Jamie L. Whitten, of Mississippi, was recognized to debate the report. The following proceedings are pertinent.

AGRICULTURE, RURAL DEVELOPMENT AND RELATED AGENCIES APPROPRIATION, 1983

MR. WHITTEN: Mr. Speaker, I call up the conference report on the bill (H.R. 7072) making appropriations for the agriculture, rural development, and related agencies programs for the fiscal year ending September 30, 1983, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:[6] Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of December 10, 1982.)

THE SPEAKER PRO TEMPORE: The gentleman from Mississippi (Mr. Whitten) will be recognized for 30 minutes, and the gentlewoman from Nebraska (Mrs. Smith) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. Whitten). . . .

PARLIAMENTARY INQUIRY

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Speaker, before I consume that 1 minute, may I have a parliamentary inquiry?

THE SPEAKER PRO TEMPORE: The parliamentary inquiry would be made as part of your 1 minute. All time is controlled.

MR. DANNEMEYER: Then this is my request in the nature of a parliamentary inquiry.

If the funding level of this conference report is $31.7 billion-plus, and the budget resolution passed by the House earlier this year listed as a maximum amount for this area of spending something a little below $23 billion, my parliamentary inquiry is: If we have passed the budget resolution providing a level of spending for this category or function of the Federal budget, how do we have the ability now to consider a conference report that proposes to spend an amount substantially in excess of that figure? Where do we get that right?

MR. WHITTEN: Mr. Speaker, will the gentleman yield to me?

THE SPEAKER PRO TEMPORE:[7] No point of order was made against the conference report when it was brought up. If one had been raised, the Chair would have ruled at that time. A timely point of order was not made and, therefore, there is no ruling.

MR. DANNEMEYER: Does the Speaker mean that if a Member had raised this in the way of a point of order when it was first brought up——

THE SPEAKER PRO TEMPORE: If there had been a point of order raised on a timely basis, the Chair would have ruled on the point of order.

MR. DANNEMEYER: Ruled which way?

THE SPEAKER PRO TEMPORE: The Chair cannot engage in speculation.

MR. WHITTEN: Mr. Speaker, will the gentleman yield to me?

6. Thomas S. Foley (Wash.).

7. Donald J. Pease (Ohio).

THE SPEAKER PRO TEMPORE: The time of the gentleman from California (Mr. Dannemeyer) has expired.

MR. WHITTEN: Mr. Speaker, I yield myself 1 minute.

Point of Order Against Privileged Resolution Does Not Reflect Committee Action

§ 4.4 A point of order that the text of a privileged resolution does not reflect the action of the Committee on House Administration in ordering it reported comes too late after there has been debate on the resolution.

On Aug. 5, 1970,[8] a privileged report was filed from the Committee on House Administration and immediately called up for consideration. Following the reading of the resolution and several minutes of discussion as to the merits of raising the salaries of two House employees, a parliamentary inquiry was made as to the timeliness of a point of order.

THE SPEAKER:[9] The gentleman will state the parliamentary inquiry.

MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Speaker, according to the rules of the House would a point of order lie to this bill inasmuch as it is not as was reported out of the committee yesterday, and is not identical? Would a point of order lie at this point?

THE SPEAKER: The resolution is already under consideration and there has been debate.

Any point of order against its consideration would come too late at this time.

Point of Order Against Report Relating to Privilege of House

§ 4.5 A point of order against a report involving the privileges of the House is properly raised after the report is read.

On Oct. 18, 1966,[10] Speaker John W. McCormack, of Massachusetts, responded to an inquiry as to when was the proper time to raise a point of order against a privileged report filed by the Committee on Un-American Activities.

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I rise on a question of the privilege of the House, and by direction of the Committee on Un-American Activities I submit a privileged report—House Report No. 2302.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, a parliamentary inquiry.

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8. 116 CONG. REC. 27450, 91st Cong. 2d Sess. Under consideration was H. Res. 1117, which provided additional compensation for two positions created by H. Res. 543 [89th Cong.].

9. John W. McCormack (Mass.).

10. 112 CONG. REC. 27439, 89th Cong. 2d Sess. Under consideration was H. Rept. No. 89–2302, which related to H. Res. 1060, involving the refusal of a witness to testify before the Committee on Un–American Activities.

THE SPEAKER: The gentleman will state it.

MR. YATES: At what point is it in order for me to present a point of order to the resolution?

THE SPEAKER: After the report is read.

The Clerk read as follows:

PROCEEDINGS AGAINST MILTON MITCHELL COHEN

The Committee on Un-American Activities, as created and authorized by the House of Representatives, through the enactment of Public Law 601 of the 79th Congress, section 121, subsection (q)(2), under House Resolution 8 of the 89th Congress, duly authorized and issued a subpena to Milton Mitchell Cohen. . . .

Pursuant to resolution of the Committee on Un-American Activities duly adopted at a meeting held January 13, 1966, the facts relating to the aforesaid failures of Milton Mitchell Cohen are hereby reported to the House of Representatives, to the end that the said Milton Mitchell Cohen may be proceeded against for contempt of the House of Representatives in the manner and form provided by law.

After the reading of the voluminous report was dispensed with by unanimous consent, the Chair entertained the point of order by Mr. Yates.

The Speaker overruled the point of order after extensive argument on the proper interpretation of Rule XI clause 26(m).[11]

A privileged resolution, certifying the report to the United States Attorney, was then offered, debated, and agreed to.[12]

Point of Order Falls When Motion at Which It Is Directed Is Withdrawn

§ 4.6 A motion that the House resolve into the Committee of the Whole for consideration of a bill may be withdrawn pending a point of order against consideration of the bill (for failure of the report to comply with the "Ramseyer" rule), and if withdrawn, the Chair is not obligated to rule on the point of order.

On Dec. 3, 1979,[13] Mr. Henry A. Waxman, of California, moved that the House resolve into the Committee of the Whole to consider the Child Health Assurance Act of 1979. Before the question was put by the Speaker Pro Tempore, a point of order was raised against consideration. The proceedings are carried herein.

MR. WAXMAN: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the

11. *House Rules and Manual* § 735 (1965). For the current rule, see *House Rules and Manual* § 712 (1997).

12. H. Res. 1060, 112 CONG. REC. 27448–85, 89th Cong. 2d Sess.

13. 125 CONG. REC. 34385, 96th Cong. 1st Sess.

State of the Union for the consideration of the bill (H.R. 4962) to amend title XIX of the Social Security Act to strengthen and improve medicaid services to low-income children and pregnant women, and for other purposes.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE:[14] The gentleman from Maryland will state the point of order.

MR. BAUMAN: Mr. Speaker, I make a point of order against the present consideration of the bill, H.R. 4962, on the grounds that the committee report fails to comply with the provisions of clause 3 of rule XIII, the so-called Ramseyer rule.

The relevant provision of clause 3 of rule XIII requires that—

> Whenever a committee reports a bill or a joint resolution repealing or amending any statute or part thereof it shall include in its report or in an accompanying document—a comparative print of that part of the bill or joint resolution making the amendment and of the statute or part thereof proposed to be amended, showing by stricken-through type and italics, parallel columns, or other appropriate typographical devices the omissions and insertions proposed to be made.

Section 4 of the bill amends subparagraph (B) of section 1905(a)(4) of title XIX of the Social Security Act. This amendment is properly shown in italic type on page 111 of the report (H. Rept. 96–568). Section 4 further amends section 1905(a)(4) by adding a new subparagraph (D). This amendment is also properly shown in italic type. Subparagraph (C) of this section of the Social Security Act is not amended, but the committee report also has this provision shown in italic type indicating that it is a change in existing law, and is, therefore, in violation of the House rule. Subparagraph (C) is not an amendment nor is it amended by the bill and, therefore, the committee report is in violation of the provisions of clause 3 of rule XIII, which has the purpose of clearly showing existing law and proposed amendments to that law.

The purpose of the rule is to make it readily apparent what change in existing law is intended. I cite volume 8, chapter 236, section 2236 of "Cannon's Precedents of the House of Representatives" in support of this. On Monday, February 3, 1930, the House was considering bills on the Consent Calendar, when the bill—H.R. 8156—to change the limit of cost for the construction of the Coast Guard Academy was reached.

MR. FIORELLO H. LA GUARDIA, of New York, made the point of order that the change proposed in the law was not properly indicated in the report.

The Speaker, the great Mr. Longworth of Ohio, sustained the point of order and said:

> It is perfectly apparent to anyone reading the bill that its language is not exactly in the form prescribed by the Ramseyer rule, which provides that—
>
> "Whenever a committee reports a bill or joint resolution repealing or amending any statute or part thereof it shall include in its report or in an accompanying document—
>
> "(1) the text of the statute or part thereof which is proposed to be repealed; and

14. John Joseph Moakley (Mass.).

"(2) a comparative print of that part of the bill or joint resolution making the amendment and of the statute or part thereof proposed to be amended showing by stricken-through type and italics, parallel columns or other appropriate typographical devices, the omissions and insertions proposed to be made."

The Chair does not think that the rule has been complied with. What is required under the second part has not been done. Of course the rule is intended to make it evident just what change in a bill or resolution is intended. It is to make this change apparent to anybody without consulting the statute which it is intended to amend.

Mr. Speaker, the report on H.R. 4962 does not make it evident just what change is intended. The report does not make it apparent what is being amended without consulting the statute. In fact, the report clearly and erroneously indicates a section of existing law is amended when it is not.

Furthermore, Mr. Speaker, I note that the report has not even "substantially" complied with the rule. The precedents demonstrate that substantial compliance is achieved even though the report may contain errors of punctuation, capitalization, or abbreviations which are at variance with the bill. The report error here goes far beyond these minor problems and causes difficulty in clearly discerning what this amends and what is now statutory law. The fact that this appears in italic type signifies it as an amendment, which it is not. The report causes confusion rather than clarification and is, therefore, clearly in violation of the rule.

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

MR. WAXMAN: Yes, Mr. Speaker, I do desire to be heard on the point of order.

Mr. Speaker, there are over 20 pages in the proposed bill. The gentleman is referring to one paragraph, in which I am informed has a typographical error; but the point that I would make in opposition to the point of order that is made is that the Ramsayer is in substantial compliance with the rule and that on that basis the point of order ought to be overruled.

THE SPEAKER PRO TEMPORE: The Chair would ask the gentleman from California (Mr. Waxman) to withhold his motion until the Chair can ascertain whether the Ramsayer rule was violated by the committee or whether a typographical error by the Government Printing Office exists in the report.

Will the gentleman withdraw his motion?

MR. WAXMAN: Mr. Speaker, I will withhold my motion.

MR. BAUMAN: Mr. Speaker, if I may be heard further, for the Chair's deliberations I would only indicate that the gentleman from California (Mr. Waxman) has offered as his only rebuttal that this is substantial compliance and not anything more than an error.

The fact of the matter that the section is involved I discovered only because of the substantive nature of that section in my own desire to possibly offer amendments. Now, if this gentleman was misled, I am sure other Members may have been misled, and I think the purpose of this rule is to prevent that.

THE SPEAKER PRO TEMPORE: The motion to go into committee has been withdrawn, so the Chair will at the present time withhold its ruling.

Against Ramseyer Rule Violations

§ 4.7 A point of order that a report fails to comply with the requirement that proposed changes in law be indicated typographically, as required by the Ramseyer rule, is properly made when the bill is called up in the House and before the House resolves into the Committee of the Whole.

On July 13, 1959,[15] immediately after Mr. Thomas G. Abernethy, of Mississippi, moved that the House resolve itself into the Committee of the Whole for the consideration of the bill, Mr. H. R. Gross, of Iowa, inquired of the Speaker:

> MR. GROSS: Mr. Speaker, I desire to make a point of order against the consideration of the bill and the report. When is the proper time to seek recognition for this purpose?
>
> THE SPEAKER PRO TEMPORE:[16] This is the proper time for the gentleman to make his point of order.

Thereupon, Mr. Gross made a point of order against language found in the bill which, under the Ramseyer rule, was not stated in the accompanying report in italicized or other distinctive print. Mr. Abernethy then obtained unanimous consent that the motion be withdrawn and that the bill be recommitted to the committee.

§ 4.8 The proper time to raise a point of order that a committee report fails to comply with the Ramseyer rule is when the motion is made to go into the Committee of the Whole to consider the bill.

On July 30, 1968,[17] during debate on House Resolution 1218, which provided that it should be in order to move that the House resolve itself into the Committee of the Whole for the consideration of a bill to amend the Food and Agriculture Act of 1965, Mr. Paul Findley, of Illinois, unsuccessfully attempted to raise a point of order against further consideration of the resolution on the ground that the committee report accompanying the bill did not comply with the provisions of the Ramseyer rule. Speaker Pro Tempore John J. Rooney, of New York,

15. 105 CONG. REC. 13226, 13227, 86th Cong. 1st Sess. Under consideration was H.R. 6893, a bill to amend the District of Columbia Stadium Act of 1957 with respect to motor vehicle parking areas.

16. John W. McCormack (Mass.).

17. 114 Cong. Rec. 24245, 24252, 90th Cong. 2d Sess. Under consideration was H.R. 17126, the extension of the 1965 Food and Agriculture Act.

then ruled that a point of order on that ground was not appropriate at that time. Mr. Findley then inquired as to when the point would be in order. The Speaker Pro Tempore then stated that it could be raised when the motion was made to go into the Committee of the Whole.

After the previous question was ordered on the resolution and the resolution was agreed to, Mr. William R. Poage, of Texas, moved that the House resolve itself into the Committee of the Whole for the consideration of the bill. Speaker John W. McCormack, of Massachusetts, then heard Mr. Findley on his point of order.

§ 4.9 Where, pending a motion to consider a bill in Committee of the Whole, a point of order was made against a bill on the ground that the report did not comply with the Ramseyer rule, and the contention was made that the point of order came too late, the House having already adopted a resolution making consideration of the bill in order, the Chair overruled the point of order, but by so doing indicated that the point of order was timely.

On Oct. 1, 1963,[18] Mr. Armistead I. Selden, Jr., of Alabama, moved that the House resolve itself into the Committee of the Whole for the consideration of a bill and Speaker John W. McCormack, of Massachusetts, immediately put the question on the motion. Mr. Frank T. Bow, of Ohio, then stated a point of order against the bill on the basis that the report accompanying the bill did not comply with the Ramseyer rule.

In debate on the point of order, Mr. Selden contended that the point of order was too late because a resolution had been adopted to provide for the consideration and that the provision questioned by Mr. Bow did not make a specific change in the provisions of the law as Mr. Bow had argued. To this Mr. Bow responded that under the rules of the House, even though a resolution had been adopted, the point of order under the Ramseyer rule had to come immediately before the House went into the Committee of the Whole. Consequently, argued Mr. Bow, the point of order did not come too late.

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18. 109 CONG. REC. 18412, 88th Cong. 1st Sess. Under consideration was H.R. 7044, a bill to amend Pub. L. No. 193 [83d Cong.], relating to the Corregidor-Bataan Memorial.

The Chair overruled the point of order, holding that there had been an adequate compliance with the Ramseyer rule, and, thus, by implication, indicating that the point of order was timely.

Time for Making Point of Order Against Conference Report

§ 4.10 A point of order against a conference report must be made after the reading of the report and before the reading of the joint statement.

A Member wishing to make a point of order against a portion of a conference report on a bill carrying a Senate number, on the basis that one of the provisions proposed by the Senate and included in the conference agreement would not have been germane if offered to the House version when the bill was under consideration in the House, has a narrow window of opportunity. The proceedings of Dec. 15, 1975,[19] illustrate one of the first applications of the new rule adopted in the 93d Congress.[20]

CONFERENCE REPORT ON S. 622, ENERGY POLICY AND CONSERVATION ACT

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the Senate bill (S. 622) to increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

MR. [BARRY] GOLDWATER [Jr., of California]: Mr. Speaker, I make a point of order.

THE SPEAKER:[1] The gentleman from California will state his point of order.

MR. GOLDWATER: Mr. Speaker, I make a point of order against title V, part B.

THE SPEAKER: The Chair would request that the gentleman withhold his point of order until we have had the title of the bill read by the Clerk.

The Clerk read the title of the bill.

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

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19. 121 CONG. REC. 40671, 40675–77, 40680, 40681, 94th Cong. 1st Sess.

20. The original concept of permitting points of order to address "non-germane" provisions in conference agreements was included in amendments to the rules adopted in the 92d Congress. See H. Res. 11532, Oct. 13, 1972, p. 36023. The pertinent rule, Rule XXVIII clause 4(a), was further amended in the 93d Congress to bring within the application of the rule provisions in a Senate bill sent to conference if they would not have been considered germane if offered to the House version. See H. Res. 998, Apr. 9, 1974, which added the last sentence to clause 4(a). See *House Rules and Manual* § 913(b) (1997).

1. Carl Albert (Okla.).

MR. [OLIN E.] TEAGUE [of Texas]: Mr. Speaker, I reserve a right to object.

THE SPEAKER: The gentleman from Texas (Mr. Teague) reserves a right to object.

The Chair states that the right of the gentleman from California (Mr. Goldwater) will be protected. . . .

THE SPEAKER: Is there objection to the request of the gentleman from West Virginia (Mr. Staggers)?

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, reserving the right to object, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ANDERSON of Illinois: I address the Chair with the following parliamentary inquiry: At which point would it be in order to offer or make a point of order against section 102 of the conference report?

THE SPEAKER: If objection to the reading of the statement is not made, or at any time prior to reading the statement. The Chair has promised he is going to recognize the gentleman from California first on that issue, either now or at that point.

MR. ANDERSON of Illinois: Mr. Speaker, if I still have the floor, I make a point of order against section 102 of the conference report.

THE SPEAKER: The gentleman will not be recognized because there is a unanimous-consent request pending.

MR. ANDERSON of Illinois: May I reserve a point of order against that section?

THE SPEAKER: The gentleman's rights will be protected, but the Chair has already promised the gentleman from California that he would recognize him first on his point of order. . . .

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

There was no objection.

THE SPEAKER: The Chair recognizes the gentleman from California (Mr. Goldwater).

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

THE SPEAKER: The gentleman will state it.

MR. GOLDWATER: Mr. Speaker, I make a point of order to that part of section 301 which adds to the new motor vehicle improvements and cost saving account a new title V, part B, entitled "Application Advanced Automotive Technology."

My point of order is that it is nongermane, pursuant to clause 4, rule XXVIII.

Part B of title V was not in the House bill, as passed in H.R. 7014, but it was in the Senate version and it is in the conference report.

If the section had been offered as an amendment on the House floor, it would have been subject to a point of order as nongermane. Hence, it is subject to a nongermaneness point of order now under rule XXVIII, clause 4.

May I point out to the Speaker that the automotive R & D part of title V is wholly unrelated to the oil pricing and conservation thrust of the bill. Besides, the Science and Technology Committee has jurisdiction of all nonnuclear energy R. & D. matters, and this is an R. & D. incentive program which clearly falls in that jurisdiction.

The original Senate version of section 546 was contained in title II of the

Senate bill (S. 1883). H.R. 9174 was introduced on July 31, 1975, by the gentleman from Washington (Mr. McCormack) and was referred to the Committee on Science and Technology. H.R. 9174 basically included all of title II of the Senate bill (S. 1883), specifically the loan guarantee provision. The committee jurisdiction was positively established by that referral.

Mr. Speaker, I insist on my point of order.

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

THE SPEAKER: The gentleman will state it.

MR. STAGGERS: Mr. Speaker, my parliamentary inquiry is that I had asked unanimous consent that the statement on the part of the managers be read in lieu of the report.

Mr. Speaker, I would like to go through with that before any other unanimous-consent requests or any other points of order are made against the bill. It does not jeopardize any point of order and then I would be glad to answer any questions.

THE SPEAKER: The Chair had asked whether there was any objection to the request and there was no objection. It was so ordered.

MR. STAGGERS: So, Mr. Speaker, it is now considered as read?

THE SPEAKER: The request that the statement be read in lieu of the report has been granted. It does not jeopardize any point of order.

MR. GOLDWATER: Mr. Speaker, I yield to the gentleman from Texas (Mr. Teague).

THE SPEAKER: Does the gentleman wish to be heard further on the point of order?

MR. TEAGUE: Mr. Speaker, I would like to be heard on the point of order.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I would like to be heard on the point of order at the appropriate time.

MR. GOLDWATER: Mr. Speaker, I yield back my time. I have made my point of order.

MR. DINGELL: Mr. Speaker, I think that this is not a good point of order, but out of grace and in order to give the House a chance to vote on this as an orderly procedure—I protested the disorderly procedure with the ERDA bill which was before us—but in order to have orderly procedure I will not contest the point of order, and I do not think my good friend from West Virginia, the chairman of the committee (Mr. Staggers) will contest it. Under those circumstances, I think it is appropriate for the Chair to rule on the point of order with regard to germaneness in order that we may proceed.

MR. STAGGERS: Mr. Speaker, I would say that we have a separate vote on the point of order and then under those circumstances we would be able to proceed.

THE SPEAKER: The point of order is conceded and sustained.

MR. STAGGERS: I would say to the gentleman from California that it is without prejudice——

MR. TEAGUE: Whether he concedes it or not, I would like to be heard on the point of order.

THE SPEAKER: The Chair is going to sustain the point of order.

MR. TEAGUE: Mr. Speaker, may I reserve the right to make a point of order? I am going to make a point of order against the whole conference report.

THE SPEAKER: That would come later.

MR. TEAGUE: But the Speaker will reserve my right?

THE SPEAKER: Could the Chair make himself clear to the gentleman? That might depend upon the outcome of the motion the gentleman from California will make.

MR. DINGELL: I think the gentleman wants to be heard; he desires to be heard.

I ask unanimous consent that he be heard at this time on the point of order which, by concession, without waiving questions of jurisdiction——

THE SPEAKER: The Chair has no authority to hear arguments on matters not related to the point of order made by the gentleman. If the gentleman from California makes a motion, the business which transpires after the motion made by the gentleman will determine whether certain other points of order will be in order.

MR. GOLDWATER: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. GOLDWATER: Has the Chair ruled on the point of order.

THE SPEAKER: The Chair sustained the point of order.

MR. GOLDWATER: Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Goldwater moves that part B, title V in section 301 of S. 622 be rejected.

THE SPEAKER: The gentleman from California (Mr. Goldwater) is recognized for 20 minutes and the gentleman from West Virginia (Mr. Staggers) is recognized for 20 minutes.

The Chair recognizes the gentleman from California. . . .

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

The question was taken; and the Speaker announced that he was in doubt.

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

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 300, nays 103, not voting 31, as follows. . . .

§ 4.11 Rule XXVIII clause 4(a), was amended in the 96th Congress to provide that if a conference report is considered read, then a point of order should be made immediately when consideration of the report begins.

Rule XXVIII, dealing with conference reports and amendments in disagreement, now provides that if the report or amendments reported in disagreement have been available for three calendar days (excluding any Saturday, Sunday, or legal holiday) after filing and if printed in the Record, can be considered as read when called up for consideration. Clause 4(a) now reflects this reality, and so points of order on the germaneness of amendments included in the conference agreement or reported in disagreement must be made immediately at the inception of consideration.[2]

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2. See the current provisions of Rule XXVIII clause 4(a) *House Rules and*

§ 4.12 A point of order against a conference report can only be raised after the reading of the report has been completed or has been dispensed with by unanimous consent.

Until the addition of clause 2(c) of rule XXVIII, which provides that a conference report which has been available in accordance with clause 2(a) shall be "considered as having been read when called up for consideration," a point of order could be raised against a conference report only after the reading of the report had been completed or waived. The proceedings of Sept. 30, 1976,[3] show the application of this earlier practice.

CONFERENCE REPORT ON H.R. 12572, U.S. GRAIN STANDARDS ACT OF 1976

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I call up the conference report on the bill (H.R. 12572) to amend the U.S. Grain Standards Act to improve the grain inspection and weighing system, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

MR. [W. HENSEN] MOORE [of Louisiana]: Mr. Speaker, I make a point of order against consideration of this conference report.

THE SPEAKER:[4] The gentleman will state his point of order.

MR. MOORE: Mr. Speaker, the conference report, in particular section 8, subparagraph (5), violates clause 3 of rule XXVIII of the rules of the House.

THE SPEAKER: Will the gentleman withhold his point of order, because the gentleman is premature. We have to read the report before the point of order would lie.

MR. MOORE: My rights will be protected to raise the point of order, Mr. Speaker?

THE SPEAKER: The gentleman's rights will be protected. . . .

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

There was no objection.

MR. MOORE: Mr. Speaker, I reserve my point of order on the conference report.

THE SPEAKER: The gentleman from Louisiana (Mr. Moore) reserves a point of order on the conference report.

Does the gentleman from Washington (Mr. Foley) request that this matter be put over and be made the first order of business tomorrow?

MR. FOLEY: Mr. Speaker, I ask unanimous consent that the further consideration of this conference report be

Manual (1997), particularly the annotations thereto in § 913, wherein it is stated "The clause was . . . amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to provide that if the conference report is considered read under clause 2(c) of this rule, a point of order under this clause must be made immediately upon consideration of the conference report."

3. 122 CONG. REC. 34224, 34225, 94th Cong. 2d Sess.

4. Carl Albert (Okla.).

postponed, and that it be made the first order of business tomorrow.

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

There was no objection.

§ 4.13 A point of order against a conference report (which has not been printed in the Record for three days and is therefore not "considered as read" when called up) must be made or reserved before the reading of the joint statement where by unanimous consent the statement is read in lieu of the report.

Rule XXVIII, "Conference Reports," was amended in 1979 by the addition of clause 2(c),[5] which specifies that any conference report or a Senate amendment in disagreement which has been filed and printed in the Record for three days is "considered as having been read when called up for consideration." However, if a conference report is called up before the three-day requirement is met, it must still be read. The following sequence of events on Oct. 1, 1980,[6] illustrate how a point of order against a conference report has to be made in a timely fashion.

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I call up the conference report on the bill (H.R. 5612) to amend section 8(a) of the Small Business Act, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

MR. [GEORGE E.] DANIELSON [of California]: Mr. Speaker, I make a point of order against this conference report.

THE SPEAKER PRO TEMPORE:[7] The gentleman will be protected.

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

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will read the report.

The Clerk proceeded to read the report.

MR. SMITH of Iowa (during the reading): Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Iowa?

MR. DANIELSON: Mr. Speaker, a while ago I raised a point of order against the conference report. I understood the Speaker to say that my point of order will be protected.

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. DANIELSON: If I am not waiving any rights, I will withdraw my reservation of objection.

5. *House Rules and Manual* § 912d (1997).

6. 126 CONG. REC. 28637–40, 96th Cong. 2d Sess.

7. William H. Natcher (Ky.).

THE SPEAKER PRO TEMPORE: Without objection, the statement of the managers will be read in lieu of the report.

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 30, 1980.)

Points of Order Against Conference Reports

§ 4.14 The Chair entertains and rules upon points of order against conference reports which, if sustained, will vitiate the entire conference report (as under the Congressional Budget Act) before entertaining points of order against portions of the report (under Rule XXVIII clause 4, e.g.) which, if sustained, merely permit a motion to reject the nongermane portion of the report.

On Sept. 23, 1976,[8] Mr. Joseph P. Vigorito, of Pennsylvania, called up a conference report on the bill H.R. 10339, the Farmer to Consumer Direct Marketing Act of 1976. Mr. John H. Rousselot, of California, raised two points of order against the report, one under the Congressional Budget Act of 1974, which if sustained, would have prevented consideration of the report. The second point of order was against a nongermane portion of the conference agreement. Speaker Carl Albert, of Oklahoma, ruled on only the first point of order for the reasons which he stated at that time.

CONFERENCE REPORT ON H.R. 10339, FARMER TO CONSUMER DIRECT MARKETING ACT OF 1976

MR. VIGORITO: Mr. Speaker, I call up the conference report on the bill (H.R. 10339) to encourage the direct marketing of agricultural commodities from farmers to consumers, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

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

MR. ROUSSELOT: Mr. Speaker, I make a point of order.

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

MR. ROUSSELOT: Mr. Speaker, I have two points of order to raise against the conference report on H.R. 10339 (H. Rept. 94–1516).

The first is under the Budget Control Act. The second is under House Rule XXVIII.

Section 401(b)(1) of the Congressional Budget and Impoundment Control Act (Public Law 93–344) provides as follows:

(b) Legislation Providing Entitlement Authority.—

8. 122 CONG. REC. 32099, 32100, 94th Cong. 2d Sess.

(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

The text of the conference agreement as set forth in the amendment adding a new section 8 is as follows:

EMERGENCY HAY PROGRAM

SEC. 8. In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed $50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

It is clear from a literal reading of this proposed language that certain livestock owners will be entitled to a hay subsidy immediately upon enactment of this bill.

This bill is effective during the so-called transition period of July 1–September 30, 1976.

In any event it is a new spending authority effective before October 1, 1976, which marks the beginning of fiscal year 1977 but occurs in the calendar year in which the conference report is being called up in the House.

"New spending authority" is defined in section 401(c)(2)(C) to include "payments . . . the budget authority for which is not provided for in advance by appropriation Acts, to any person . . . if . . . the United States is obligated to make such payments to persons . . . who meet the requirements established by such law."

In the instance at hand, hay payments are mandated by the language directing that the President shall direct the Secretary of Agriculture to pay 80 percent of hay transportation costs—up to $50 per ton.

The second point of order is that section 8 of the conference report is not in compliance with rule XXVIII, clause 4, and if such language were offered to H.R. 10339 during its consideration in the House it would not be deemed to be germane under rule XI, clause 7.

THE SPEAKER: Does the gentleman from Pennsylvania (Mr. Vigorito) desire to be heard on the points of order?

MR. VIGORITO: Yes, Mr. Speaker, I would like to be heard on the two points of order.

THE SPEAKER: The gentleman from Pennsylvania is recognized.

MR. VIGORITO: Mr. Speaker, my understanding is that if this program is an entitlement program under section 401 of the Budget Act, the funding could not be given an authorization in this bill until the beginning of the next fiscal year, or, in this case, October 1, 1976. If that is the case, I would think that we could develop legislative intent here in that none of the funding would begin in this bill until fiscal year 1977. As a practical matter, the bill will probably not have cleared the President prior to that time, anyway, and consequently we will not be delaying the impact of the bill for any substan-

tial length of time. We have less than a week before October 1 comes about. . . .

THE SPEAKER: The Chair is having difficulty with the argument made by the distinguished gentleman from Pennsylvania, because, as the Chair understands it, theoretically and legally it would be possible to begin the payments before October 1, 1976, which would be in violation of the Budget Impoundment and Control Act, as the entitlement to those payments might vest prior to October 1. If, as the Chair understands it, the entitlement to payments only vested after October 1, 1976, there would be no violation of the Budget Control Act.

What is the gentleman's answer to that?

MR. VIGORITO: The intent is only to begin after October 1, 1976.

THE SPEAKER: Of course, the Chair sees before him language which it seems to the Chair—and the Chair is sympathetic with what the gentleman is trying to do—indicates that:

> In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed $50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

This language does not say when the entitlement to payments vests and does not imply when the payments begin. It does say when the payments end. But the point is that the payments cannot begin before October 31, 1976, without violating the Congressional Budget Act. . . .

The Chair thinks that under the present circumstances he should insist that the gentleman consider another procedure, because he thinks it can be worked out. Therefore, the Chair must sustain the point of order.

The Chair will not rule on the second point of order, on germaneness grounds, because one point of order against the entire conference report has been sustained.

Will the gentleman undertake to work that out within the next day or two?

MR. VIGORITO: Mr. Speaker, I ask unanimous consent to pull this off so that we can work this out.

THE SPEAKER: The conference report is no longer before the House. The gentleman can dispose of the Senate amendments under another procedure.

§ 4.15 Where a conference report is considered as having been read and then further proceedings are postponed by unanimous consent, points of order against the report may still be raised when the report is again before the House as unfinished business.

On Sept. 23, 1976,[9] the chairman of the Select Committee on the Outer Continental Shelf called

9. 122 CONG. REC. 32102, 32103, 94th Cong. 2d Sess.

up the conference report on the measure S. 521, a bill which had been reported by the ad hoc committee. The proceedings were as follows:

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1976

MR. [JOHN M.] MURPHY of New York: Mr. Speaker, I call up the conference report on the Senate bill (S. 521) to increase the supply of energy in the United States from the Outer Continental Shelf; to amend the Outer Continental Shelf Lands Act; and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

THE SPEAKER:[10] Is there objection to the request of the gentleman from New York?

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, reserving the right to object, I should like to ask the chairman of the ad hoc select committee at this time if he will withdraw this report from consideration or seek to postpone further consideration of the report. If not, those on this side will be constrained to object to the request of the gentleman from New York.

Mr. Speaker, the House should not squander its precious remaining hours on a bill that is clearly destined, if not designed, to be vetoed.

MR. MURPHY of New York: Mr. Speaker, I have no intention to withdraw the conference report.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, then I object.

THE SPEAKER: Objection is heard. The Clerk will read.

The Clerk read as follows:

(For Conference Report and statement see proceedings of the House of September 20, 1976.) . . .

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1976

MR. MURPHY of New York: Mr. Speaker, I ask unanimous consent to dispense with further reading of the report, and that consideration thereof be the unfinished business when the House convenes on Tuesday next.

THE SPEAKER PRO TEMPORE:[11] Is there objection to the request of the gentleman from New York?

MR. FISH: Mr. Speaker, I reserve the right to object.

Mr. Speaker, reserving the right to object—and I shall not object—I wish to be sure that I understand the request of the gentleman from New York. The gentleman is asking that: First, the rest of the report be considered as read; second, that further consideration today be dispensed with; and, third, that it not be considered until next Tuesday at the earliest.

Also, Mr. Speaker, I reserve several points of order against the conference report, and would ask, is this the understanding with my reservation of these points of order?

THE SPEAKER PRO TEMPORE: The points of order will still be in order.

MR. FISH: I thank the Chair.

MR. MURPHY of New York: I would clarify for my colleague that the unanimous-consent request specifically stated that this would be the first order of business on Tuesday next.

10. Carl Albert (Okla.).

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

MR. FISH: On Tuesday next?

MR. MURPHY of New York: Tuesday next.

MR. FISH: Not before that?

THE SPEAKER PRO TEMPORE: The first order of unfinished business on Tuesday next.

MR. MURPHY of New York: That is correct.

MR. FISH: Mr. Speaker, further reserving the right to object, is the Chairman also of the opinion that the several points of order which I have so reserved will be protected when we take this matter up?

MR. MURPHY of New York: If the gentleman will yield, the Chair always protects the points of order of the minority.

MR. FISH: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from New York?

There was no objection.

Consideration of Conference Report, Precedence Over Point of Order

§ 4.16 Where further consideration of a conference report (which had been considered as read by unanimous consent) has been postponed to a date certain, it is in order to raise the question of consideration when the report is again called up as unfinished business, and the question of consideration is disposed of before the Chair entertains points of order against the report.

The question of consideration of a conference report is in order immediately after its reading and before debate begins, and, as the proceedings of Sept. 28, 1976,[12] illustrate, where the reading of a report is, by unanimous consent, dispensed with and then consideration postponed, the question of consideration remains available when the conference report is called up as unfinished business.

CONFERENCE REPORT ON S. 521, OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1976

THE SPEAKER:[13] The unfinished business is the further consideration of the conference report on the Senate bill S. 521, which the Clerk will report by title.

The Clerk read the title of the Senate bill.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I demand the question of consideration.

THE SPEAKER: The question is, Will the House now consider the conference report on the Senate bill S. 521.

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

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

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 236, nays 150, not voting 44, as follows: . . .

12. 122 CONG. REC. 33018, 33019, 94th Cong. 2d Sess.

13. Carl Albert (Okla.).

So consideration of the conference report was ordered.

The result of the vote was announced as above recorded.

MR. FISH: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. FISH: Mr. Speaker, my parliamentary inquiry is as to whether my reserved points of order are in order at this time?

THE SPEAKER: The Chair will state that they are.

Point of Order Against Failure To Have "Open Conference"

§ 4.17 Where the minutes of a conference meeting indicate that an open meeting of the House and Senate managers had been held and that a motion was adopted which finally disposed of all matters in disagreement, as reflected by the signatures of a majority of the conferees from each House, a Member must show that there was a subsequent meeting of the conferees in violation of the rule requiring open conference meetings for a point of order to lie.

Until clause 6 was added to Rule XXVIII on Jan. 14, 1975, conferees often met behind closed doors. But with the adoption of clause 6,[14] all conference meetings had to be open to the public unless, by roll call vote in the conference, a majority of the managers of both Houses voted to close the meeting. This clause was further amended on Jan. 4, 1977,[15] to require a roll call vote in the House to permit the managers to exercise their discretion to close a meeting. Another amendment to the rule occurred in the 96th Congress,[16] to provide that if the conference report is considered as read because it has been printed and is available under clause 2(c), a point of order under this "open conference" rule must be made immediately when the conference report is called up.

The discussion which occurred on the House floor on Sept. 28, 1976,[17] illustrates the application of the current rule and the importance of having a final meeting of the conferees which complies with this rule.

The conference report on S. 521, the Outer Continental Shelf Lands Act, had been called up and read on Sept. 23, 1976.[18]

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14. H. Res. 5, 121 CONG. REC. 20–33, 94th Cong. 1st Sess.

15. H. Res. 5, 123 CONG. REC. 53–70, 95th Cong. 1st Sess.

16. H. Res. 5, 125 CONG. REC. 7–16, 96th Cong. 1st Sess., Jan. 5, 1979.

17. 122 CONG. REC. 33019, 33020, 94th Cong. 2d Sess.

18. See § 4.13, supra.

On Sept. 28, 1976, it was before the House as unfinished business. The question of consideration having been decided in the affirmative, points of order were entertained.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I make a point of order against the conference report on grounds that it has been reported in violation of Rule XXVIII, clause 6, which requires that conference meetings be open to the public except when ordered closed by rollcall vote in open session.

Mr. Speaker, on the first day of this Congress, as one of its first moves toward reform, the House voted to amend its rules and open up conferences to public scrutiny. The Senate soon passed a similar measure, and the rule took effect.

At the first open meeting of the conference committee, one of the managers on the part of the Senate moved that the Senate recede from its disagreement to the House amendment with several amendments which he had caused to be printed as part of a conference document. Additional linear amendments were proposed by other Senate managers in the form of amendments to the motion, and in due course a majority of the Senators voted for the motion as amended.

The chairman of the conference committee, the gentleman from New York (Mr. Murphy) then moved that the House agree to the amendments of the Senate. This motion was presumably amendable, although the chairman refused to allow any amendments to be offered. If he had, they would have been restricted to germane modifications of the various Senate amendments which would have been the only items in disagreement at that time. The motion was rushed to a vote and agreed to by the House managers, and the conference meeting was adjourned.

Mr. Speaker, the conference committee must have met again. It must have met without any notice to the minority and far from public view. It must have met in closed session without first having voted to do so in open session. I must assume that there was a closed session of the conference committee, because instead of reporting linear Senate amendments, as had been agreed to in open session, the committee reported a Senate amendment in the nature of a substitute. . . .

There must have been one more meeting—a closed meeting—in which a majority of the Senate conferees and a majority of the House conferees agreed to switch from linear amendments to an amendment in the nature of a substitute without giving minority House managers a chance to offer amendments and without being open to the public. . . .

THE SPEAKER:[19] Does the gentleman from New York (Mr. Murphy) desire to be heard on the point of order?

MR. [JOHN M.] MURPHY of New York: I do, Mr. Speaker.

Mr. Speaker, on the point of order, I would refer to the recorded minutes of the conference on page 2 of the opening day of the conference. Senator Jackson moved that the conference be open to the public. The motion was sec-

19. Carl Albert (Okla.).

onded by Senator Jackson and adopted by the conference without objection. If my colleague, the gentleman from New York, had been present at all sessions of the conference, I doubt if he would make this point of order. The motion made by Senator Jackson at the conference and on page 8 of the first day's minutes of the conference is as follows:

> Mr. Chairman, I therefore move the Senate recede from its disagreement with the House and accept the House amendment with the amendment set forth in the September 13 conference print, except the technical amendments that occur on page 123 of the print.

Mr. Speaker, if I understand the gentleman's argument, he is asserting that the Chair is to find an implied or "constructive" secret meeting of the majority of the conferees because the conference report is not consistent with the gentleman's interpretation of the procedures of the conference committee.

In the first place, there was no secret meeting and thus the rule relied upon by the gentleman was not violated.

In addition, I would point out that the conference report is consistent with the actions of the conference. Senator Jackson moved that the Senate recede from its disagreement and agree to the amendment of the House with an amendment. During the course of the deliberations, the Senate conferees agreed to modify Senator Jackson's proposed amendments. The Senate conferees then approved the Jackson motion.

The House conferees then agreed to adopt the language agreed to by the Senate conferees, to be inserted in lieu of the House amendment.

The conference report properly reflects these actions.

Moreover, rules of the House make it clear that once a conference report is filed by the required number of conferees there is a conclusive presumption as to the validity of the conference.

The Speaker will not look behind the signatures as to the procedures in conference.

Mr. Speaker, the gentleman's point of order should not be sustained. . . .

THE SPEAKER: The Chair is prepared to rule.

The gentleman from New York has made a point of order directed against conference procedure alleging a violation of clause 6, rule XXVIII.

The gentleman's point of order is that the form of the conference report does not conform to his understanding as to which motion was agreed to by the House conferees. The gentleman contends that there was a further constructive meeting of the conferees which was closed and unannounced.

The chief manager of the conference report has reported that in a meeting of the conferees which was open to the public, pursuant to the provisions of clause 6, rule XXVIII, a proper motion was made to agree to an amendment in the nature of a substitute for the House amendment to the Senate bill, and the signatures of a majority of the conferees of both Houses reflecting this agreement appear on the conference report.

The Chair does not feel that a violation of conference rules has been shown, and the Chair overrules the point of order.

Where Multiple Points of Order Directed Against Conference Report

§ 4.18 The Chair may in his discretion require all points of order against a conference report for alleged violation of a particular House rule to be stated before he rules on any, to allow the Chair to determine the order in which he will decide the questions of order.

When the voluminous conference report on the Outer Continental Shelf Lands Act Amendments of 1976 (S. 521, 94th Cong.) was called up on Sept. 28, 1976,[20] the Speaker was informed that several points of order would be lodged against the report. He first heard argument on and ruled on a point of order brought under the "open conference rule."[1] After overruling this point of order, the Chair then turned to arguments based on the "scope of conference" rule.[2] The proceedings are carried in full below.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I make a point of order against the conference report.

THE SPEAKER:[3] The gentleman will state it.

MR. FISH: Mr. Speaker, I make a point of order against the conference report on the grounds that in section 208 the managers have exceeded their authority in several instances and in section 101 in one instance, and the report, therefore, is in violation of clause 3 of rule XXVIII.

Mr. Speaker, so as not to burden the House with unnecessary discussion, I will ask the Chair to rule on these questions of scope one at a time, because as soon as one is upheld, consideration of the others will not be needed.

THE SPEAKER: The Chair must state that when more than one point of order is going to be made under a particular House rule, it is proper under the precedents for the Chair to require all such points of order to be stated and for the Chair then to make his decision on the separate points of order, and the Chair intends to follow that procedure.

MR. FISH: Very good, Mr. Speaker.

THE SPEAKER: The Chair will hear all the arguments of the gentleman.

MR. FISH: Mr. Speaker, prior to 1971, managers considering a bill and an amendment in the nature of a substitute were free to exercise wide discretion in discarding language appearing in both versions and in making germane amendments, even beyond the scope of the various issues in disagreement. All this was changed by the Legislative Reorganization Act of 1970. Section 125(B) of that act revised clause 3 of rule 28, so that each spe-

20. 122 CONG. REC. 33020, 33021, 33023, 94th Cong. 2d Sess.

1. Rule XXVIII clause 6(a), *House Rules and Manual* § 913d (1997).

2. Rule XXVIII clause 3, *House Rules and Manual* § 913a (1997).

3. Carl Albert (Okla.).

cific topic, question, issue, or proposition must now be looked at individually, as if linear amendments had been made by one House to the bill of the other. Under this rule the conferees cannot report new matter not committed by either House. Also, where the two Houses propose different language on a particular issue, the two versions set the boundaries for conference consideration of that issue. Amendments outside those boundaries may not be reported, even if germane. Where one House is silent on an issue proposed by the other, the silent House is deemed to be incorporating current law, if any, on the subject into its version. If both versions contain matter on a given issue, that issue must be reported by the conference, in disagreement if necessary. Finally, since the substitute is being handled as if it were several linear amendments, it is not in order for the managers to modify or fail to report language which is identical in both versions. . . .

Mr. Fish then proceeded to make several specific points of order, all charging that the conference report violated Rule XXVIII clause 3, by including matters "beyond the scope" of the text submitted to conference. The Speaker heard all the points of order, all the refutations by the manager, Mr. Murphy, as shown, and then ruled.

MR. [JOHN M.] MURPHY of New York: Mr. Speaker, before reviewing as the specific points of order, I must review the rules and procedures of the House. Rule 28, paragraph three, indicates whenever a disagreement to a bill through an amendment in the nature of a substitute has been committed to a conference committee, the conference may report a total substitute so long as no additional topic, question, issue, or proposition is included and so long as any modification suggested by the conference. . . .

THE SPEAKER: The Chair is prepared to rule.

The gentleman from New York (Mr. Fish) argues in his first point of order under clause 3, rule XXVIII, that the conferees have exceeded the scope of the matter committed to conference by removing from the Secretary of the Department in which the Coast Guard is operating concurrent responsibility for considering allegations of violations of safety regulations. It is the Chair's opinion that the portions of the conference report dealing with safety regulations and enforcement must be read as a whole. The House and Senate versions had differing provisions on the various aspects of that subject and gave regulatory and enforcement responsibility to differing officials. The conference report compromise gives the authority to the Interior and Labor Departments and makes the conforming change in the provision dealing with consideration of allegations of violations. For the reasons stated by the gentleman from New York (Mr. Murphy) the Chair overrules the point of order.

The gentleman's second point of order on scope deals with the findings at the beginning of the conference report, wherein the conferees agreed to language finding adverse impacts on the various States. . . . The conference language is no broader than

the House language and the Chair overrules the point of order.

In his third point of order on scope, the gentleman from New York only points to language in the statement of managers and argues that a statement of intent by the conferees exceeds the scope of conference. Such a point of order must lie against language in the conference report itself and not in the joint statement and the Chair overrules the point of order.

The gentleman's fourth point of order on scope deals with the section of the conference report relating to judicial review. . . . The conference language clarifies the fact that the limitation on judicial review of the Secretary's determination does not inhibit seeking judicial review of the underlying activities on the Outer Continental Shelf and does not exceed the scope of the matter committed to conference.

The gentleman makes several additional points of order on scope. . . .

The last argument of the gentleman from New York is that the conferees have added the word "new" in a provision that did not contain that word in either the Senate bill or the House amendment. A careful reading of the Senate bill demonstrates that the two provisions were not identical, as the Senate bill contained the word "re-promulgate," not contained in the House amendment. Therefore, the issue whether the regulations were to be new regulations or could be existing regulations was a matter before the conferees.

For the reasons stated, the Chair overrules all the points of order.

Point of Order Against Conference Reports Entertained Pending Request That Statement Be Read in Lieu of Report

§ 4.19 The House rule which precludes managers on the part of the House at a conference with the Senate from agreeing to Senate amendments providing for appropriations in a conference agreement absent specific authority, applies only to Senate amendments which are sent to conference and not to appropriations contained in Senate legislative bills which are before the conferees.

On June 30, 1976,[4] when the conference report on S. 3295, a bill extending the National Housing Act, was called up for consideration in the House, the Member handling the report asked unanimous consent that the statement of the managers be read in lieu of the report. Pending this request, a point of order was raised against the report on the ground that it contained a provision permitting a new use of previously appropriated funds. Speaker Carl Albert, of Oklahoma, entertained

4. 122 CONG. REC. 21632–34, 94th Cong. 2d Sess.

the point of order. The arguments presented and the Chair's decision are carried herein.

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I call up the conference report on the Senate bill (S. 3295) to extend the authorization for annual contributions under the U.S. Housing Act of 1937, to extend certain housing programs under the National Housing Act, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

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

MR. [GARRY] BROWN of Michigan: Reserving the right to object, Mr. Speaker, I raise a point of order against the conference report.

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

MR. BROWN of Michigan: Mr. Speaker, I make a point of order against the conference report on S. 3295 on the basis that the House managers exceeded their authority by agreeing to two matters not in the original House amendment to the Senate bill and which violates clause 2, rule XX, of the House Rules and Precedents of the House. Clause 2, rule XX, reads in part as follows:

> Nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall first be given by the House by a separate vote on every such amendment.

The Senate-passed bill contains section 9(a)(2) and 9(b) which in effect provide for expenditures to be made from the various FHA insurance funds to honor claims made eligible for payment by the provisions of section 9 generally. These amendments are to section 518(b) of the National Housing Act and relate to sections 203 and 221 housing programs for which the authority of the Secretary of HUD to pay claims related to certain structural defects has expired if the claims were not filed by March 1976.

Both sections 9(a)(2) and 9(b) include identical language which states as follows:

> Expenditures pursuant to this subsection shall be made from the insurance fund chargeable for insurance benefits on the mortgage covering the structure to which the expenditures relate.

The words "Expenditures pursuant to this subsection shall be made from the insurance fund" constitute an appropriation within the meaning of clause 2, rule XX. Based on precedents under clause 5, rule XXI, it is clear that payments out of funds such as the FHA insurance fund are within the meaning of the term "appropriation" and that the action taken by the House managers is violative of clause 2, rule XX.

In support of this point of order, I cite the ruling of the Chair on a point of order raised by H. R. Gross on October 1, 1962, to the conference report on H.R. 7927. A Senate provision agreed to in that report provided that—

> The benefits made payable . . . by reason of enactment of this part shall be paid from the civil service retirement and disability fund.

Inasmuch as when the House agreed to go to conference, it did not give specific authority to agree to such an amendment. I therefore submit that it is not in order for such language to be included in the conference report.

The FHA insurance funds are designed to provide the reserves for payments on defaulted mortgages and for the operation of HUD related to the various insurance programs and any diversion of the use of such funds such as for payment for defects in the structure would violate clause 5 of rule XXI. In further support of this point of order, and specifically on the point that the provisions constitute a diversion of funds for a separate purpose not within the intention of the legislation establishing the fund, I cite the ruling of the Chair on October 5, 1972, which holds that an amendment allowing for the use of highway trust fund moneys to purchase buses, would seem to violate clause 4 of rule XXI in that it would divert or actually reappropriate for a new purpose funds which have been appropriated and allocated and are in the pipeline for purposes specified by the law under the original 1956 act.

I say, Mr. Speaker, I make a point of order against the conference report on this basis.

I would note, Mr. Speaker, that the gentleman from Oklahoma is the one who sustained the point of order raised by Mr. Gross in the case which I have referred to.

Mr. Speaker, I am inclined to anticipate a ruling against my point of order, but if that should be the case, Mr. Speaker, I suggest we are making a mockery of the rules of the House.

Since some of my comrades may not be aware of it, the rules of the House in clause 5, rule XXI, provide:

> No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on an appropriation in any such bill, joint resolution, or amendments thereto may be raised at any time.

Mr. Speaker, that is a rule of the House. Now, since the House in its rules cannot have extraterritorial effect or extra body effect, in order to protect the House from having its rules violated by the Senate, we adopted clause 2 of rule XX which related to action that the Senate might take that would be violative of the House rules. But the very fact that this is not a Senate amendment on a House bill is insignificant if the rules of the House are going to have any real meaning because what we are saying is any time we want to violate the House rules, we can have the rule provide that after consideration of the bill it shall be in order for the such-and-such Senate bill to be taken from the Speaker's desk and everything after the enacting clause stricken and apply the House language, or we can, when the bill is under consideration before the House get consent to strike everything after the enacting clause of the Senate bill and substitute the House language. In either of those cases that for all intents and purposes precludes a Member of this House from saying that the rules of this House are violated with respect to action by the Senate.

I respectfully suggest, Mr. Speaker, at this point in time when we are having some questions raised about the integrity of the House rules and House administration, this is not the time to render a decision on a point of order that gives in effect further credence to the fact that we do not intend to maintain integrity in this House with respect to the rules of the House if the procedure is carried out in a circuitous way.

THE SPEAKER: Does the gentleman from Ohio care to be heard on the point of order?

MR. [THOMAS L.] ASHLEY [of Ohio]: Very briefly, Mr. Speaker.

Mr. Speaker, clause 2 of rule XX of the rules of the House makes out of order any provision in a Senate amendment which provides for an appropriation. However, the rule does not address itself to provisions in Senate bills. The conferees accepted the provision in question, without change, from a Senate bill and not from a Senate amendment. Therefore, no violation of the House rules is involved even if the provision is considered to be an appropriation.

THE SPEAKER: The Chair is ready to rule.

The gentleman from Michigan has made a point of order against the conference report, referring to the language of rule XX, clause 2, which places certain restrictions on the managers on the part of the House in a conference with the Senate.

The Chair has ruled on this matter before.

On January 25, 1972, the Chair ruled in connection with a point of order made by the gentleman from Iowa (Mr. Gross) against the conference report on a foreign military assistance authorization bill (S. 2819) on the ground that the House conferees had exceeded their authority by including in the conference report an appropriation entirely in conflict with clause 2, rule XX. That rule provides, in relevant part, that "no amendment of the Senate"—that is the important language—no amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House.

The Chair would point out that it was a Senate bill which was sent to conference with a House amendment thereto. The rule is restricted in its application to Senate amendments and, thus, is not applicable in the present situation.

The Chair, therefore, overrules the point of order.

MR. BROWN of Michigan: Mr. Speaker, in view of the ruling of the Chair, I just would like to point out that in the conference report the paragraph appears:

> That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment.

In other words, with a Senate amendment.

Now, I respectfully suggest that for all intents and purposes, by using the circuitous route of taking up the Senate bill and including the House language, we nullify totally the basic directive of the House rules that this House shall not concur in any appropriation in a legislation bill not a gen-

eral appropriations act, and for the Chair to rule that we will accept a circuitous violation of the House rules, that we will not accept a direct violation, I think is not in the best interests of the House.

THE SPEAKER: The Chair just thinks there are other rules that govern and that can protect the House in situations of this type. The gentleman has referred to the language of the conference agreement; and the Chair would point out that the managers have proposed that the Senate recede and concur in the House amendment with an amendment. There is no Senate amendment before the House at this time.

Is there objection to the request of the gentleman from Wisconsin that the statement be read in lieu of the report?

There was no objection.

The Clerk read the statement.

Parliamentarian's Note: The procedural safeguards mentioned by the Speaker against the inclusion of appropriations in Senate bills include: (1) possible points of order under section 401 of the Congressional Budget Act, if the Senate provision can be construed as new spending authority not subject to amounts specified in advance in appropriations acts where budget authority has not been provided in advance (in this case, the money had already been appropriated and was in a revolving fund, so section 401 was not applicable); and (2) returning Senate bills which contain appropriations to the Senate by asserting the constitutional prerogative of the House to originate "revenue" measures (construed under the precedents to include at least "general appropriation bills").

Points of Order Against Consideration of Conference Reports

§ 4.20 A point of order against consideration of a conference report based upon the fact that the managers had affixed their signatures prior to their formal appointment must be made prior to consideration of the conference report in the House.

On Mar. 25, 1980,[5] the chairman of the Committee on Banking and Currency asked that a conference report on S. 662, a bill authorizing funds for International Banks, be recommitted to the conference. A series of inquiries followed which revealed that there had not been a formal, open meeting of the conference as required by Rule XXVIII. The conferees had been meeting informally with their Senate counterparts and had affixed their signatures about 30 minutes before their formal appointment. While this informal

5. 126 CONG. REC. 6429–31, 96th Cong. 2d Sess.

meeting had been in an "open" situation, it could not qualify as an "open meeting" since the managers had not been appointed.

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I ask unanimous consent to recommit the Senate bill, S. 662, to conference.

THE SPEAKER PRO TEMPORE:[6] Is there objection to the request of the gentleman from Wisconsin?

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, reserving the right to object, could the gentleman tell me the title of the bill?

MR. REUSS: Yes; this is the bill containing authorization for the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund.

MR. BAUMAN: Could the gentleman from Wisconsin explain to me why the chairman is asking to recommit this bill?

MR. REUSS: Yes, though not without some embarrassment. Technically, it turned out that the conferees had conferred and done their business a few minutes before the House conferees were, in fact, appointed. That was one of those slips betwixt the cup and the lip which occur because of the length of our corridors. So, the report as it comes back to us is technically imperfect, and it is to correct that imperfection that I ask this unanimous-consent request.

MR. BAUMAN: Further reserving the right to object, I assume what the gentleman is saying is that the consideration of the report in conference did not comply with rule XXVIII, which requires an open conference meeting unless the House votes otherwise?

MR. REUSS: I believe that is the relevant section. In any event, whether it is rule XXVIII or not, and I do not have it in front of me, it obviously was unintentionally improper, and we seek to correct that by doing it right.

MR. BAUMAN: Further reserving the right to object, I would like to make a parliamentary inquiry, Mr. Speaker.

If no Member made a point of order against the consideration of the conference report it could be considered; could it not?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. BAUMAN: Further reserving the right to object, does the gentleman from Wisconsin know of anyone who is going to make a point of order?

MR. REUSS: No, I do not, but I realize that a valid point of order would lie, and I did not want to be in the position of having something on the calendar for tomorrow or the next day, knowing how fragile it is. I cannot speak for 434 other Members.

MR. BAUMAN: Further reserving the right to object, Mr. Speaker, I would like to make a further parliamentary inquiry.

If this request is granted, the House is then asking the other body for a conference. At that point it allows the other body to act first under the rules, and that would preclude a motion to recommit with instructions on the part of any Member of the House. Is that correct?

THE SPEAKER PRO TEMPORE: This request would not change the order of consideration of the new report. It

6. John P. Murtha (Pa.).

merely asks for a recommital of the conference report to the same conference.

MR. BAUMAN: If the motion is granted, is a motion to recommit or a motion to instruct in order at this time?

THE SPEAKER PRO TEMPORE: The House would still act first on the conference report.

MR. BAUMAN: Further reserving the right to object, the gentleman from Maryland, knowing the outcome of the consideration of the conference, would very much like to make a motion to instruct but does not have one prepared at this time.

THE SPEAKER PRO TEMPORE: The Chair advises that would not be in order at this time in any event.

MR. BAUMAN: That was the question the gentleman put to the Chair, whether a motion to instruct would be in order at this time. The Chair says "No." If this request is not granted and a point of order is made against the consideration of the conference report, as the gentleman from Wisconsin suggested, it might be that no motion to instruct would be in order under rule XXVIII at that time, would it?

THE SPEAKER PRO TEMPORE: If a point of order were sustained under clause 6 to rule 28 a new conference would be considered as requested and conferees appointed without intervening motion and the Senate would probably agree to a new conference and would probably act first on the new conference report.

MR. BAUMAN: Further reserving the right to object, I would inquire of the Chair, if in either case a motion to recommit with instructions would be precluded by any Member of the House, whether this request is granted, or whether a point of order is made, and the rule automatically recommits the conference report?

THE SPEAKER PRO TEMPORE: Not in this case, if the request is granted for recommittal to the same conference.

MR. BAUMAN: Well, I would say that the gentleman from Maryland is trying to protect the rights of the minority, or actually the majority who voted on this bill and who might seek a way of vindicating their position in a motion to instruct the conferees, or a motion to recommit.

THE SPEAKER PRO TEMPORE: If this request is granted to recommit the conference report, the motion to recommit would be protected for the minority.

MR. BAUMAN: But if the other body acts, Mr. Speaker, that precludes a motion to recommit with instructions; does it not?

THE SPEAKER PRO TEMPORE: If this goes back to the same conference the other body, of course, does not have to agree to a request for a new conference.

MR. BAUMAN: But the other body can act first, thereby precluding any motion to recommit?

THE SPEAKER PRO TEMPORE: If the papers are traded in conference, that is possible, but not the normal sequence. . . .

MR. BAUMAN: Mr. Speaker, further reserving the right to object, is it within the province of the senior conferee to return the papers to this House for action first, in order to protect a motion to recommit?

MR. REUSS: Mr. Speaker, if the gentleman will yield, that is absolutely right. That would be the normal course.

MR. BAUMAN: Mr. Speaker, further reserving the right to object, do I have the guarantee of the gentleman from Wisconsin that that will be his course of action? . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Procedure for Raising Point of Order Against Nongermane Provision in Conference Report; Timing of Motion To Reject

§ 4.21 Where the Chair sustains a point of order that conferees have agreed to and included in a conference report a nongermane provision, a motion to reject that provision is in order under Rule XXVIII clause 4(b), and is debatable for 40 minutes, equally divided between the Member making the motion and a Member opposed; and if the motion to reject is defeated, the debate commences on the conference report itself.

The text of the conference report on H.R. 6027,[7] the Local Government Antitrust Act of 1984, considered in the House on Oct. 11, 1984,[8] the resulting point of order, and subsequent proceedings are carried below.

Mr. Rodino submitted the following conference report and statement on the bill (H.R. 6027) to clarify the application of the Federal antitrust laws to the official conduct of local governments:

CONFERENCE REPORT (H. REPT. NO. 98–1158)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6027) to clarify the application of the Federal antitrust laws to the official conduct of local governments, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

This Act may be cited as the "Local Government Antitrust Act of 1984.".

SEC. 2. For purposes of this Act—

(1) the term "local government" means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(A)), but does not include any local government as defined in paragraph (1) of this section, and

7. 130 CONG. REC. 31441, 98th Cong. 2d Sess., Oct. 10, 1984.

8. 130 CONG. REC. 32219, 32220, 32223, 32224, 98th Cong. 2d Sess.

(3) the term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

SEC. 3. (a) No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

(b) Subsection (a) shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) shall not apply.

SEC. 4. (a) No damages, interest on damages, costs or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

(b) Subsection (a) shall not apply with respect to cases commenced before the effective date of this Act.

SEC. 5. Section 510 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1985 (Public Law 98–411), is repealed.

SEC. 6. This Act shall take effect 30 days before the date of the enactment of this Act.

And the Senate agree to the same.

PETER W. RODINO,
JACK BROOKS,
DON EDWARDS,
JOHN F. SEIBERLING,
BILL HUGHES,
MIKE SYNAR,
GEO. W. CROCKETT, Jr.,
CHARLES SCHUMER,
EDWARD FEIGHAN,
HAMILTON FISH,
CARLOS J. MOORHEAD,
HENRY HYDE,
DANIEL E. LUNGREN,
Managers on the Part of the House.
STROM THURMOND,
ORRIN HATCH,
HOWARD METZENBAUM,
Managers on the Part of the Senate. . . .

MR. [PETER W.] RODINO [Jr., of New Jersey]: Mr. Speaker, pursuant to House Resolution 616, I call up the conference report on the bill (H.R. 6027) to clarify the application of the Clayton Act to the official conduct of local governments, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:[9] The Clerk will read the conference report.

The Clerk proceeded to read the conference report. . . .

MR. RODINO (during the reading): Mr. Speaker, I ask unanimous consent that the conference report be considered as read.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from New Jersey?

There was no objection.

POINT OF ORDER

MR. [CHARLES] WILSON [of Texas]: Mr. Speaker, I have a point of order.

I make the point of order that the last section of the conference report contains nongermane matters within the definition of clause 4 of rule XXVIII.

9. Steny H. Hoyer (Md.).

THE SPEAKER PRO TEMPORE: Does the gentleman from New Jersey desire to be heard on the point of order?

MR. RODINO: The gentleman from New Jersey desires to be heard on the point of order.

MR. WILSON: I would also like to be heard, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Texas.

MR. WILSON: Mr. Speaker, if the objectionable section had been offered to the House bill, it would have been in violation of the provisions of clause 7 of rule XVI of the House rules. The provision is a repeal of appropriations law.

That provision deals with spending levels for the Federal Trade Commission for this fiscal year. The legislation is a permanent piece of legislation that amends our antitrust laws. These amendments reduce monetary damages that local governments may be liable for in antitrust suits.

That has nothing to do with the provision of the last section of this conference report to which my point of order is directed.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from New Jersey [Mr. Rodino].

MR. RODINO: Mr. Speaker, I rise in opposition to the point of order against section 5 of the conference report. The fundamental purpose of this conference report is to provide for continued enforcement of the antitrust laws without severely damaging local governments. This legislation before us continues to ensure that antitrust violations will be prosecuted; but limits the amount of damages which can be assessed in such a case against a local governmental unit. It allows the aggrieved party to ensure that injunctive relief will be available to terminate anticompetitive activity of a local government.

The fundamental purpose of the section against which the gentleman raises a point of order is to permit the Federal Trade Commission to continue to bring antitrust suits against municipalities. The Federal Trade Commission is limited in the remedies that it may pursue: The FTC cannot seek damages, only injunctive relief. That is what this bill is all about, preventing damage suits while leaving injunctive remedies in place.

Mr. Speaker, I believe that the provisions of section 5 are wholly consistent with the fundamental purpose of the rest of the conference report and are therefore germane and the point of order should not be sustained.

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

MR. [HAMILTON] FISH [Jr., of New York]: Yes, I do, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from New York on the point of order.

MR. FISH: Mr. Speaker, H.R. 6027 protects local governments, as well as its officials and employees, against money damages in suits under our antitrust laws.

However, it implicitly continues to allow suits for injunctive relief, when no money damages are involved, to enforce these antitrust laws against possible anticompetitive actions by units of local governments.

These suits for injunctive relief may be brought either by a private party or

by the antitrust enforcement agencies, the Department of Justice, or the FTC.

The so-called taxicab rider which would be repealed by section 5 of this bill currently impedes the ability of the FTC to bring the very type of injunctive relief enforcement which the bill before us envisions and presumes. While removing the threat of money damages, we do not intend that local governments be totally immune from Federal antitrust laws. Suits for injunctive relief will be a safety net against potential anticompetitive activities by localities.

This repeal of section 510 of Public Law 98–411 is fully consistent with the overall purposes of this bill. To remove section 5 from this legislation would, ironically, prevent the FTC enforcement when a locality is involved in anticompetitive conduct.

Again, the FTC would not recover money damages under the structure of H.R. 6027, but it could seek an injunction to bring anticompetitive activities by localities to a halt. The fair balance in this legislation would be distorted if the FTC remains unable to exercise its normal statutory responsibilities to enforce compliance with our antitrust laws.

Section 5 is consistent with the fundamental purposes of this legislation and should remain in this bill. It is germane in a logical, substantive sense. This is an antitrust bill. The FTC is an antitrust enforcement agency. H.R. 6027 is an amendment to the Clayton Act. The FTC, along with the Department of Justice, enforces that very same Clayton Act.

Section 510 of Public Law 98–411 was, in reality, legislation on an appropriation bill, so its repeal is germane, but the fact is that its original enactment was not germane.

THE SPEAKER PRO TEMPORE: Does the gentleman from Texas [Mr. Wilson] wish to be heard further on his point of order?

MR. WILSON: No, Mr. Speaker.

THE SPEAKER PRO TEMPORE: If not, the Chair has had the opportunity of reviewing the point of order raised by the gentleman from Texas that pursuant to clause 4 of rule XXVIII, the conferees on H.R. 6027 have agreed to a nongermane Senate provision. Section 5 of the conference report on H.R. 6027 contains the substance of section 3 of the Senate amendment, which repealed section 510 of Public Law 98–411, the State, Justice, Commerce Appropriation Act for fiscal year 1985. The section proposed to be repealed prohibits the expenditure of funds in that appropriation act for the Federal Trade Commission to conduct antitrust actions against municipalities or other units of local government.

H.R. 6027 as passed by the House only addresses the issue of antitrust remedies for claims against local governments, and merely limits monetary relief for a Federal or private cause of action against a local government under the Clayton Act. While the House bill may limit the remedies which the FTC may obtain in such suits, in the same way it limits any claimant, the House bill does not address the general authority of the FTC to prosecute antitrust actions, or the conditions under which the FTC may use its appropriated funds for the coming fiscal year. The Chair would also point out that the conference report

and Senate amendment directly amend a general appropriation act not addressed in the House bill.

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

Does the gentleman from Texas have a motion pursuant to clause 4 of rule XXVIII?

MOTION OFFERED BY MR. WILSON

MR. WILSON: Mr. Speaker, I move, pursuant to clause 4(b) of rule XXVIII, to strike section 5 of the conference report.

THE SPEAKER PRO TEMPORE: The gentleman from Texas [Mr. Wilson] is entitled to 20 minutes in support of his motion.

Does the gentleman from Texas wish to use his time?

MR. WILSON: Mr. Speaker, I am prepared to yield back my time.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey [Mr. Rodino] is entitled to 20 minutes in opposition to the motion. . . .

The question is on the motion offered by the gentleman from Texas [Mr. Wilson].

The question was taken; and on a division (demanded by Mr. Wilson) there were—yeas 8, nays 23.

MR. PHILIP M. CRANE [of Illinois]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 36, nays 298, not voting 98. . . .

So the motion was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE SPEAKER PRO TEMPORE:[10] The gentleman from New Jersey [Mr. Rodino] will be recognized for 30 minutes, and the gentleman from New York [Mr. Fish] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Rodino].

Order of Responding to Points of Order

§ 4.22 Where a conference report is vulnerable to several points of order that sections included therein are not germane, the Speaker entertains one point of order at a time, rules on whether it is germane, and if he sustains the point of order entertains a motion to reject that provision. After a vote on one motion to reject, he then entertains the next point of order under Rule XXVIII clause 4. If any motion to reject is agreed to, the conference report falls, and a motion to recede and concur in the Senate amendment, with an amendment eliminating the rejected provisions, is entertained.

10. Frank Harrison (Pa.).

The proceedings of Oct. 15, 1986,[11] when the House had before it the conference report on the Commodity Futures Trading Act of 1986, provide a good illustration of the steps required by Rule XXVIII clause 4.

CONFERENCE REPORT ON H.R. 4613, FUTURES TRADING ACT OF 1986

Mr. de la Garza submitted the following conference report and statement on the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act:[12]

CONFERENCE REPORT (H. REPT. 99–995)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

section 1. short title and table of contents.

(a) SHORT TITLE.—This Act may be cited as the "Futures Trading Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—FUTURES TRADING

sec. 101. fraudulent practices.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—. . .

MR. [E (KIKA)] DE LA GARZA [of Texas]: Mr. Speaker, pursuant to the provisions of House Resolution 590, the rule just adopted, I call up the conference report on the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that act.

The Clerk read the title of the bill.

POINT OF ORDER

MR. [CHARLES O.] WHITLEY [of North Carolina]: Mr. Speaker, I make a point of order against the nongermane amendment contained in the conference report relating to the transfer of national forest lands in the State of Nebraska.

THE SPEAKER:[13] The gentleman from North Carolina (Mr. Whitley) will identify that portion of the bill.

MR. WHITLEY: Mr. Speaker, the point of order is specifically made against section 207 of title II of the conference report.

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

MR. DE LA GARZA: Yes, Mr. Speaker, briefly.

Mr. Speaker, the committee and the conference committee agreed on the

11. 132 CONG. REC. 31498, 31499, 31502–06, 99th Cong. 2d Sess.

12. See 132 CONG. REC. 30824–26, 99th Cong. 2d Sess., Oct. 14, 1986.

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

text of the legislation which is the Commodity Futures Trade Commission.

The other body then added various and sundry other bills and we have to concede the point that they were not germane and they were extraneous to the matter. Therefore, I find myself in the situation where I could not but otherwise yield to the point of order, Mr. Speaker.

THE SPEAKER: The point of order is conceded and sustained.

Does the gentleman from North Carolina (Mr. Whitley) move to reject that part of the conference committee report?

MR. WHITLEY: Mr. Speaker, I do.

MOTION OFFERED BY MR. WHITLEY

MR. WHITLEY: Mr. Speaker, I move to delete section 207 from the conference report.

THE SPEAKER: The gentleman from North Carolina (Mr. Whitley) is recognized for 20 minutes.

MR. WHITLEY: Mr. Speaker, section 207 of title II of the conference report authorizes the conveyance of approximately 173 acres of land in the Nebraska National Forest to the Nebraska Game and Parks Commission, to be added to the Chadron State Park in Nebraska. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from North Carolina (Mr. Whitley).

The motion was agreed to.

POINT OF ORDER

MR. [EDWARD R.] MADIGAN [of Illinois]: Mr. Speaker, I make a point of order against the conference report to H.R. 4613 under rule XXVIII, clause 4, of the House rules for the reason that it contains a Senate amendment that is in violation of rule XVI, clause 7, because it contains matter nongermane to H.R. 4613 as passed by the House.

H.R. 4613, as reported by the Committee on Agriculture, and adopted in the House, was a bill "to authorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements in that act." . . .

THE SPEAKER PRO TEMPORE:[14] Does the gentleman from Texas (Mr. de la Garza) desire to be heard on this point of order?

MR. DE LA GARZA: Yes, Mr. Speaker.

Mr. Speaker, the House version of the CFTC, as I have explained previously, did not contain this item of legislation. The other body amended the bill and added other items. . . .

THE SPEAKER PRO TEMPORE: . . . In the opinion of the Chair, section 202 of the conference report as added in the Senate would not have been germane to the House-passed bill; so the point of order is sustained.

MOTION OFFERED BY MR. MADIGAN

MR. MADIGAN: Mr. Speaker, I move to reject the matter in the conference report originally contained in section 504 of the Senate amendment to H.R. 4613 and now contained in section 202 of the conference report entitled "Basis for Computation of Emergency Compensation Under the 1986 Wheat Program" (H. Rept. 99–995).

THE SPEAKER PRO TEMPORE: The gentleman from Illinois (Mr. Madigan) is recognized for 20 minutes. . . .

14. John Joseph Moakley (Mass.).

MR. MADIGAN: Mr. Speaker, is it correct that I am entitled to close the debate?

THE SPEAKER PRO TEMPORE: The gentleman is not correct. The gentleman from Texas (Mr. Stenholm) has the right to close debate.

MR. MADIGAN: Mr. Speaker, I ask unanimous consent to insert in the Record a letter from the Director of the Congressional Budget Office relative to the item of discussion before the House this morning.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Illinois?

There was no objection.

The text of the letter is as follows: . . .

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

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

MR. MADIGAN: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 162, nays 239, not voting 31, as follows: . . .

[So the motion to reject was not agreed to.]

THE SPEAKER PRO TEMPORE: Are there any other points of order against this bill?

VACATING PROCEEDINGS BY WHICH SECTION 207 OF THE CONFERENCE REPORT ON H.R. 4613 WAS DELETED

MRS. [VIRGINIA] SMITH of Nebraska: Mr. Speaker, I ask unanimous consent to set aside and vacate the proceedings on the motion of the gentleman from North Carolina (Mr. Whitley) to reject the Senate amendment to section 406 of H.R. 4613 that is now section 207 of the conference report.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentlewoman from Nebraska?

MR. WHITLEY: Mr. Speaker, reserving the right to object, I want to advise the Members that earlier in the proceedings today I made a point of order against one of the sections of the bill. I do not have the language in front of me at this moment. My point of order was sustained, and I moved that that section of the bill be stricken. Speaker O'Neill was in the chair at the time. He ruled that the motion had carried and announced that the section was stricken.

Subsequent to that time, the gentlewoman from Nebraska approached me and told me that the proceedings were somewhat hasty, that she was taken by surprise and did not have an opportunity to present arguments in opposition to my motion.

Mr. Speaker, I will not object to the gentlewoman's request with the clear understanding that I will have the same time to argue in support of my motion that I was originally assigned if the proceeding is vacated.

THE SPEAKER PRO TEMPORE: If there is no objection and the proceeding is vacated, the Chair will resume as if nothing had happened so that the gentleman from North Carolina (Mr. Whitley) will be protected and will have his time.

MR. WHITLEY: I thank the Chair.

Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentlewoman from Nebraska?

There was no objection.

THE SPEAKER PRO TEMPORE: The gentleman from North Carolina (Mr. Whitley) is recognized for 20 minutes. . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from North Carolina (Mr. Whitley).

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

0MRS. SMITH of Nebraska: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 274, nays 130 . . . .

[The motion to reject was agreed to.]

THE SPEAKER PRO TEMPORE:[15] Pursuant to clause 4, rule XXVIII, the conference report is considered as rejected.

The question is on the motion to recede and concur in the Senate amendment with an amendment consisting of the text of the conference report without section 207. . . .

MOTION OFFERED BY MR. DE LA GARZA

MR. DE LA GARZA: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

> Mr. de la Garza moves that the House recede from its disagreement to the Senate amendment to H.R. 4613 and concur therein with an amendment:

In lieu of the matter inserted by the Senate amendment, insert the text of the conference report on H.R. 4613 without section 207 thereof.

THE SPEAKER PRO TEMPORE: The gentleman from Texas (Mr. de la Garza) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. Madigan) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. de la Garza).

Points of Order at Conference Stage

§ 4.23 A point of order against a conference report on a legislative bill on the basis that it carries in its text an appropriation is not valid if the appropriation was in the bill as it passed the House and allowed to remain because of waiver or inaction.

On May 1, 1975,[16] during consideration of the conference report on the bill H.R. 6096, the Vietnam Humanitarian and Evacuation Assistance Act of 1975, a point of order was raised against the report on the ground that it carried an appropriation in violation both of clause 2 of Rule XX and clause

15. Kenneth J. Gray (Ill.).

16. 121 CONG. REC. 12752, 12753, 94th Cong. 1st Sess.

5 of Rule XXI. After debate, the Speaker overruled the point of order. The discussion on the point of order and the ruling follow:

MR. [THOMAS E.] MORGAN [of Pennsylvania]: Mr. Speaker, I call up the conference report on the bill (H.R. 6096) to authorize funds for humanitarian assistance and evacuation programs in Vietnam and to clarify restrictions on the availability of funds for the use of U.S. Armed Forces in Indochina, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:[17] there objection to the request of the gentleman from Pennsylvania?

MS. [ELIZABETH] HOLTZMAN [of New York]: Mr. Speaker, I would like to make a point of order against the conference report.

THE SPEAKER: The gentlewoman will state it.

MS. HOLTZMAN: Mr. Speaker, section 7 of the conference report in the last sentence refers to evacuation programs authorized by this act. It permits a waiver of a series of laws for the purpose of allowing those evacuation programs to take place.

In the House bill (H.R. 6096), section 3 dealt with evacuation programs referred to in section 2 of the bill and waived the same series of laws with respect thereto. In order for section 3 to be considered, it required a rule from the Rules Committee. And a rule was granted waiving points of order against section 3 of the bill. But section 7 of the conference report, in speaking of evacuation programs authorized by the entire act and not just by one section, exceeds the scope of section 3 of the bill and exceeds the waiver that was permitted under the rule. It therefore violates rule XXI, clause 5, and violates rule XX, clause 2, which prohibits House conferees from accepting a Senate amendment providing for an appropriation on a nonappropriation bill in excess of the rules of the House.

Mr. Speaker, last week the Committee of the Whole deliberated on an amendment that exceeded the limitations of the rule granted by the Rules Committee. That was the Eckhardt amendment, and it was ruled out of order by the Chairman. The language in section 7 of the conference report in essence has the same flaw as the Eckhardt amendment.

The last sentence of section 7 of the conference report would waive various provisions of law with respect to $327 million, whereas the last sentence of section 3 of the House bill waived these laws only with respect to $150 million. Section 7 of the conference report, therefore, is broader than section 3 of the House bill.

Had the language of section 7 been offered as an amendment to the House bill, it would have been subject to a point of order. Since the authority of the House conferees is no broader than the waiver originally granted to the bill by the Rules Committee, section 7 of the conference report should be ruled out of order.

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

MR. MORGAN: Yes, Mr. Speaker.

17. Carl Albert (Okla.).

The point of order has no standing. Section 3 of the House bill and section 7 of the conference report referred to use of funds of the Armed Forces of the United States for the protection and evacuation of certain persons from South Vietnam. The language of the conference report does not increase funds available for that purpose. Both the House bill and the conference report simply removed limitations on the use of funds from the DOD budget. These limitations were not applicable to the funds authorized in H.R. 6096. The scope of the waiver is the same in the conference report and the House bill.

Mr. Speaker, the changes in language are merely conforming changes. Section 2 of the House bill was a section which authorized the evacuation programs in the House bill. The conference version contains the evacuation programs authority in several sections plus reference to the entire act rather than to one specific section.

Mr. Speaker, the point of order has no standing and I hope it is overruled.

THE SPEAKER: Does the gentlewoman from New York desire to be heard further on the point of order?

MS. HOLTZMAN: No, Mr. Speaker.

THE SPEAKER: The Chair is ready to rule.

The gentlewoman from New York makes the point of order that section 7 of the conference report constitutes an appropriation on a legislative bill in violation of clause 5, rule XXI, to which the House conferees were not authorized to agree pursuant to clause 2, rule XX.

The Chair would first point out that the provisions of clause 2, rule XX, preclude House conferees from agreeing to a Senate amendment containing an appropriation on a legislative bill, and do not restrict their authority to consider an appropriation which might have been contained in the House-passed version. In this instance, the conferees have recommended language which is virtually identical to section 3 of the House bill, and they have not agreed to a Senate amendment containing an appropriation. Therefore, clause 2, rule XX, is not applicable to the present conference report.

While clause 5, rule XXI, permits a point of order to be raised against an appropriation in a legislative bill "at any time" consistent with the orderly consideration of the bill to which applied—Cannon's VII, sections 2138–39—the Chair must point out that H.R. 6096 was considered in the House under the terms of House Resolution 409 which waived points of order against section 3 of the House bill as constituting an appropriation of available funds for a new purpose.

The Chair feels that an analogous situation may be found in Deschler's Procedure, chapter 25, section 23.11. There, points of order had been waived against portions of a general appropriation bill which were unauthorized by law, and the bill passed the House containing those provisions and was sent to conference; the conferees were permitted to report their agreement as to those provisions, since the waiver carried over to the consideration of the same provision when the conference report was before the House.

The gentlewoman from New York also has in effect made the point of order that section 7 of the conference report goes beyond the issues in dif-

ference between the two Houses committed to conference in violation of clause 3, rule XXVIII.

In the House-passed bill, section 3 contained waivers of certain provisions of law in order to make available funds already appropriated to the Department of Defense to be used for the Armed Forces in "evacuation programs referred to in section 2 of the act." The conferees have recommended that the same waivers of law shall apply to "evacuation programs authorized by this act."

In the opinion of the Chair, a conforming change in phraseology in a conference report from language contained in the House or Senate version to achieve consistency in the language thereof, absent proof that the effect of that change is to broaden the scope of the language beyond that contained in either version, does not necessarily render the conference report subject to a point of order. In this instance, it appears to the Chair that the only effect of the language in the conference report was to accomplish the same result that would have been reached by section 3 of the House bill, namely to remove certain limitations on the use of funds in the Defense budget for military evacuation programs under this bill.

The Chair therefore holds that the conferees have not exceeded their authority and overrules the point of order.

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

There was no objection.

The Clerk read the statement.

(For conference report and statement see proceedings of the House of April 28, 1975.)

Gaining Floor for Point of Order

§ 4.24 The Chair must recognize a Member to state a point of order relative to the conduct of debate at any time, and it is not necessary that the Member having the floor yield for that purpose.

As the 2d session of the 95th Congress was drawing to a close, the Endangered Species Act Amendments of 1978 was being considered for amendment under the five-minute rule. Time for debate on the bill and remaining amendments was limited to 40 minutes. An amendment was offered by Mr. Duncan and he and Mr. Dingell, the bill manager, were each recognized briefly to debate the amendment. The proceedings of Oct. 14, 1978,[18] were as indicated below:

MR. [ROBERT L.] LEGGETT [of California]: Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is my understanding that we have been considering this bill now for 4 hours. It is everybody's knowledge that we have to complete this bill before the session ends. We do not want to take all day on it.

Mr. Chairman, I ask unanimous consent that debate on all amendments and on the bill close in 30 minutes.

18. 124 CONG. REC. 38153–55, 95th Cong. 2d Sess.

THE CHAIRMAN:[19] Is there objection to the request of the gentleman from California? . . .

MR. LEGGETT: Mr. Chairman, I ask unanimous consent that debate on all amendments and on the bill close in 40 minutes.

THE CHAIRMAN: Is there objection to the request of the gentleman from California?

There was no objection.

MR. [JOHN] BUCHANAN [of Alabama]: Mr. Chairman, reserving the right to object, those of us who have amendments printed in the Record would, of course, be protected by the rules under the scenario?

THE CHAIRMAN: Let the Chair state that that is correct, 5 minutes on each side.

MR. BUCHANAN: I thank the Chair.

THE CHAIRMAN: Is there objection to the request of the gentleman from California?

There was no objection.

THE CHAIRMAN: Members standing at the time the unanimous-consent agreement was entered into will be recognized for 2½ minutes each.

The Chair recognizes the gentleman from New Jersey (Mr. Hughes). . . .

MR. [ROBERT] DUNCAN of Oregon: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Duncan of Oregon: Page 24, strike out line 1 and all that follows down through line 4, and insert in lieu thereof the following:
>
> "(13) The term 'species' means a group of fish, wildlife, or plants, consisting of physically similar organisms capable of interbreeding but generally incapable of producing fertile offspring through breeding with organisms outside this group.";

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I reserve points of order against the amendment.

THE CHAIRMAN: The gentleman from Michigan (Mr. Dingell) reserves points of order against the amendment.

MR. DUNCAN of Oregon: Mr. Chairman, without repeating the significance of these amendments that I have already discussed in connection with the first amendment to redefine "critical habitat," this one goes to the definition of "species." The committee bill, at the top of page 24, defines the term "species" as including any subspecies of fish or wildlife or plants, and any distinct segment of the population of any species of vertebrate fish or wildlife which interbreeds when mature. . . .

THE CHAIRMAN: Does the gentleman from Michigan desire to insist upon his point of order?

MR. DINGELL: No, I do not, I wish to speak in opposition to the amendment.

THE CHAIRMAN: The gentleman from Michigan withdraws his point of order and is recognized for 2½ minutes. . . .

MR. DUNCAN of Oregon: Mr. Chairman, will the gentleman yield?

MR. DINGELL: I do not yield.

MR. DUNCAN: of Oregon: Mr. Chairman, I rise to a point of order.

MR. DINGELL: Mr. Chairman, I ask for regular order.

MR. DUNCAN: of Oregon: Mr. Chairman, a point of order.

MR. DINGELL: Mr. Chairman, I ask for regular order. I do not yield to the gentleman. He understands the rules.

MR. DUNCAN: of Oregon: Mr. Chairman, may I state a point of order.

19. B. F. Sisk (Calif.).

THE CHAIRMAN: The gentleman will state his point of order.

MR. DUNCAN: of Oregon: Mr. Chairman, the point of order is——

MR. DINGELL: Mr. Chairman, I do not yield for a point of order.

THE CHAIRMAN: The Chair has stated that the gentleman will state his point of order.

MR. DUNCAN: of Oregon: Mr. Chairman, I have a point of order. The gentleman is addressing himself and his argument to the amendment——

MR. DINGELL: Mr. Chairman, I do not yield to the gentleman from Oregon.

Mr. Chairman, I demand the protection of the Chair. This is a frivolous point of order. I do not yield for that purpose. I ask that the gentleman be instructed to take his seat and behave himself.

THE CHAIRMAN: Will the gentleman from Michigan (Mr. Dingell) please recognize that the Chair is trying to conform to the rules.

The gentleman has made a point of order; and of course, the Chair must recognize that point of order.

MR. DINGELL: Mr. Chairman, I do not yield for the point of order.

THE CHAIRMAN: The Chair will state that it is not necessary that the gentleman yield for that purpose. The Chair has a right at any time to recognize a Member on a point of order.

The gentleman from Michigan will continue to proceed in order.

MR. DINGELL: I am proceeding in order, Mr. Chairman.

THE CHAIRMAN: The gentleman will proceed. . . .

MR. [WILLIAM J.] HUGHES [of New Jersey]: Mr. Chairman, I yield 1 minute to the gentleman from Oregon (Mr. Duncan).

THE CHAIRMAN: The Chair will advise the gentleman that he already used his time under the allocation.

MR. HUGHES: Mr. Chairman, I had two amendments at the desk.

THE CHAIRMAN: The gentleman has used his time.

The Chair was trying to be fair in recognizing either the chairman or the ranking member, if either desires to comment on the amendment.

Point of Order Against Motion To Recommit

§ 4.25 A point of order against a motion to recommit must be made immediately after the motion is read and comes too late after debate thereon.

On May 13, 1982,[20] Mr. Dan Glickman, of Kansas, attempted to raise a point of order against a pending motion to recommit. The gist of the argument he attempted to make was that the motion amended an amendment already adopted by the House. The motion in this instance was not protected by language in the special order providing for consideration of the bill and specifying that the motion to recommit could be "with or without instructions." In any event, the point of order against the motion came too late, the pro-

20. 128 CONG. REC. 9838, 97th Cong. 2d Sess.

ponent having entered into the five-minute debate permitted by the rules.

THE SPEAKER PRO TEMPORE:[1] Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

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

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. DUNN

MR. [JIM] DUNN [of Michigan]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the bill?

MR. DUNN: I am, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman qualifies.

The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Dunn moves to recommit the bill H.R. 5890 to the Committee on Science and Technology with instructions to report back the same forthwith with the following amendment: On page 2, line 22, strike "$267,100,000" and insert in lieu thereof "$232,700,000".

MR. DUNN: Mr. Speaker, the point of this is to say to this body, and even though I am a member of the committee and a strong supporter of our space program in its entirety, that if we cannot in a $6.6 billion budget deal with between us reducing $35 million, then I would have to ask the Members of this body, where are we going to begin to cut?

The proposal that came from the administration represented an 11-percent increase—an 11-percent increase for NASA at a time when many other areas of our Government are being asked to cut back. If we cannot between us find $35 million, then—

PARLIAMENTARY INQUIRY

MR. GLICKMAN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: Does the gentleman yield for the inquiry?

MR. DUNN: I yield just for an inquiry. The gentleman will state his parliamentary inquiry.

MR. GLICKMAN: Mr. Speaker, I would ask if the numbers in the motion to recommit are in fact the same numbers in the committee bill as amended by the Winn amendment?

MR. DUNN: Yes, Mr. Speaker. They are the same numbers as in the Winn amendment.

THE SPEAKER PRO TEMPORE: The Chair will inquire, is the gentleman from Kansas (Mr. Glickman) raising a point of order?

MR. GLICKMAN: Yes, Mr. Speaker, I am raising a point of order.

MR. DUNN: Regular order, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair will state that, the gentleman's point of order is not timely. It comes too late.

The gentleman from Michigan (Mr. Dunn) will proceed.

1. Gillis W. Long (La.).

§ 5. Timeliness as Against Bills or Provisions Therein

The principles governing the timeliness of points of order against bills or provisions therein and amendments are similar. Points of order against a bill are considered by the Chair prior to recognition of Members to offer amendments;[2] and a point of order against a section of a bill must be made immediately after the section is read and comes too late after an amendment to that section has been considered.[3]

On the other hand, it is not too late to make a point of order against a paragraph merely because there has been argument on a point of order against a proviso within the paragraph.[4] A point of order against a part of a paragraph or section, if sustained, results in the elimination of the whole,[5] unless it is the desire of the offeror of the point of order to limit his point to only part of the paragraph.[6]

The time for making points of order against unauthorized items or legislation in an appropriation bill is after the House has resolved itself into the Committee of the Whole and after the paragraph containing such items has been read for amendment.[7]

But points of order against appropriations in legislative bills, under Rule XXI clause 5, can be raised "at any time," which has been held to mean during consideration of that portion of the bill, or of the amendment, under the five-minute rule.[8]

A point of order against a paragraph in a general appropriation bill comes too late after the sponsor of an amendment to it is recognized to debate his amendment,[9] or after the amendment has been read and agreed to.[10] It is too late to make such points after the Clerk has begun reading the next paragraph.[11] The Chair often displays some leniency, however, to Members who missed their opportunity to raise a point of order, when such Members were on their feet seeking recognition at the appropriate time.[12]

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2. See §§ 5.1–5.8, infra.
3. See § 5.10, infra.
4. See § 5.13, infra.
5. See §§ 1.16–1.18, supra.
6. See § 1.19, supra.
7. See §§ 5.12–5.15, infra.
8. See §§ 5.28, 5.29, infra.
9. See § 5.18, infra.
10. See § 5.20, infra.
11. See § 5.21, infra.
12. See §§ 5.23, 5.24, infra.

Prior to Recognition for Amendments

§ 5.1 Points of order against a paragraph of a bill are considered by the Chairman before Members are recognized to offer amendments to that paragraph.

On June 4, 1970,[13] the Committee of the Whole had under consideration H.R. 17867, the foreign assistance appropriation for fiscal 1971.

The Clerk read as follows:

ECONOMIC ASSISTANCE

Technical assistance: For necessary expenses as authorized by law $310,000,000, distributed as follows:

(1) World-wide, $150,000,000 (section 212);

(2) Alliance for Progress, $75,000,000 (section 252(a)); and

(3) Multilateral organizations, $85,000,000 (section 302(a)), of which not less than $13,000,000 shall be available only for the United Nations Children's Fund: *Provided* That no part of this appropriation shall be used to initiate any project or activity which has not been justified to the Congress, except projects or activities relating to the reduction of population growth: *Provided further*, That the President shall seek to assure that no contribution to the United Nations Development Program authorized by the Foreign Assistance Act of 1961, as amended, shall be used for projects for economic or technical assistance to the Government of Cuba, so long as Cuba is governed by the Castro regime.

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[14] The gentleman will state it.

MR. ZABLOCKI: If a Member desired to raise a point of order to paragraph (3) on page 2, would he have to wait until the Clerk has read the entire title?

THE CHAIRMAN: No, he would have to wait only until the Clerk had read the paragraph carrying the language to which the gentleman wishes to make his point of order.

MR. ZABLOCKI: Mr. Chairman, I have a point of order to language appearing on page 2. The gentleman from Wisconsin was on his feet.

THE CHAIRMAN: The Clerk has read the section to which the gentleman wishes to make his point of order.

MR. [RICHARD H.] ICHORD [of Missouri]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. ICHORD: I wish to offer an amendment affecting lines 9, 10, 11, 12, 13 and 14 on page 2. Is the amendment in order at this time?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. PASSMAN: It is my understanding that the Clerk has already read that section and has even gone into a reading of the third page of the bill.

THE CHAIRMAN: The gentleman from Wisconsin was on his feet seeking rec-

13. 116 CONG. REC. 18395, 18396, 91st Cong. 2d Sess.

14. Hale Boggs (La.).

ognition, and the Chair will protect his rights.

MR. ZABLOCKI: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman from Missouri will defer offering his amendment. The Chair will hear the gentleman from Wisconsin on his point of order.

MR. ZABLOCKI: Mr. Chairman, I make the point of order that the entire proviso beginning on line 20 and ending on line 25 of page 2 is legislation in an appropriation. I am for its objectives, but in effect it simply says that the President should try to enforce existing law. The provisions in existing law, section 620 of the Foreign Assistance Act are stronger and there is no sense in this useless repetition in an appropriation.

Mr. Chairman, I make the point of order that this is legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Louisiana wish to be heard on the point of order?

MR. PASSMAN: Yes, sir, Mr. Chairman. The proviso was added by the Committee on Appropriations for the foreign assistance appropriation bill for fiscal year 1971 in order to insure that no U.S. contribution to the UNDP would be used to give any type of economical or technical assistance to Cuba as long as Cuba is governed by the Castro regime.

I would like to interpret this as a limitation on an appropriation bill and ask for a ruling.

THE CHAIRMAN: The language in question is as follows: Line 20, page 2:

> *Provided further,* That the President shall seek to assure . . .
>
> And so forth.
>
> That is obviously a directive to the President of the United States, it is not limited in application to the funds appropriated in this bill or any section thereof, and the Chair sustains the point of order.

The Chair then recognized Mr. Ichord to offer an amendment.

§ 5.2 Points of order reserved against a proposition must be disposed of before amendments thereto are in order.

On May 14, 1937,[15] it was ruled that one could not reserve a point of order and offer an amendment simultaneously.

> The Clerk read as follows: . . .
>
> MR. [GERALD J.] BOILEAU [of Wisconsin]: Mr. Chairman, I reserve the point of order against the proviso. . . .
>
> THE CHAIRMAN:[16] The time of the gentleman from Wisconsin has expired. Without objection the pro-forma amendment will be withdrawn.
>
> MR. BOILEAU: I do not withdraw my reservation to the point of order, Mr. Chairman, but I have an amendment that I desire to offer.
>
> THE CHAIRMAN: The point of order will have to be disposed of before an amendment is in order.
>
> MR. BOILEAU: I reserve the point of order, if that reservation does not continue.

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15. 81 CONG. REC. 4596, 4597, 75th Cong. 1st Sess. Under consideration was H.R. 6958, the Interior Department appropriation for 1938.

16. Jere Cooper (Tenn.).

THE CHAIRMAN: The reservation does not continue if the gentleman wants to offer an amendment.

MR. BOILEAU: It can continue by unanimous consent, can it not?

THE CHAIRMAN: The Chair thinks it is his duty to protect the bill to that extent.

MR. BOILEAU: Mr. Chairman, I withdraw the point of order.

Before Amendments Are Offered

§ 5.3 Where, by unanimous consent, an authorization bill is considered read and open to amendment at any point, points of order against possible appropriations therein, though in order "at any time," should be stated before amendments are offered.

On Oct. 3, 1962,[17] the principle was expressed that points of order should be raised before taking up amendments to a bill, although in actuality the principle was waived by unanimous consent.

MR. [JOHN A.] BLATNIK [of Minnesota]: Mr. Chairman, I ask unanimous consent that titles I and II be considered as read.

THE CHAIRMAN:[18] And open for amendment at any point?

MR. BLATNIK: Open at any point for amendment.

MR. [WILLIAM C.] CRAMER [of Florida]: Mr. Chairman, reserving the right to object, that does not preclude the right to raise points of order at any time, does it?

THE CHAIRMAN: Of course not.

Is there objection to the request of the gentleman from Minnesota [Mr. Blatnik], that the first two titles will be considered as read?

There was no objection.

MR. [JOHN F.] BALDWIN [of California]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. BALDWIN: Mr. Chairman, do points of order have to be brought up before any amendments are offered?

THE CHAIRMAN: The Chair will state that they should be, but they may be raised.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I ask unanimous consent that points of order be in order at any time.

THE CHAIRMAN: Is there objection to the request of the gentleman from Iowa?

There was no objection.

Parliamentarian's Note: Since, under rules in effect in the 87th Congress, no other points of order would have been in order against a provision in a legislative bill except one directed at an appropriation in violation of Rule XXI clause 5(a), which would have been in order at any time, whether or not debate or amendments

17. 108 CONG. REC. 21883, 87th Cong. 2d Sess. Under consideration was H.R. 13273, concerning omnibus river and harbors authorizations for 1962.

18. Francis E. Walter (Pa.).

had intervened, this unanimous-consent request was unnecessary. Had the bill under consideration been a general appropriation bill, or a highway bill providing for a specific road in violation of present Rule X clause 1(p), then Mr. Gross' unanimous-consent request would have been relevant.

Permitting Points of Order Against Portion of Bill Not Yet Read

§ 5.4 Where the Committee of the Whole had agreed by unanimous consent to consider points of order directed to paragraphs not yet read, the Chair directed the Clerk to report each such provision and entertained points of order as they were presented.

The special order reported from the Committee on Rules which protected legislative provisions in the dire emergency supplemental appropriation bill, funding expenses of the Desert Storm military operation against Iraq, waived all points of order against three provisions, which the Committee on Public Works and Transportation had argued should remain vulnerable to points of order. The special order, adopted Mar. 7, 1991,[19] read, in pertinent part, as follows:

> MR. [MARTIN] FROST [of Texas]: 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 all points of order for failure to comply with the provisions of sections 302(f) and 311(a) of the Congressional Budget Act of 1974 and with clause 2(l)(6) of rule XI and clause 7 of rule XXI are hereby waived against consideration of the bill (H.R. 1281) making dire emergency supplemental appropriations for the consequences of Operation Desert Storm/Desert Shield, food stamps, unemployment compensation administration, veterans compensation and pensions, and other urgent needs for the fiscal year ending September 30, 1991, and for other purposes. During consideration of the bill, all points of order against provisions in the bill for failure to comply with the provisions of clauses 2 and 6 of rule XXI are hereby waived, except against the provisions beginning on page 24, line 17 through page 25, line 10; beginning on page 28, lines 14 through 21; and beginning on page 32, lines 15 through 22. . . .

During the consideration of the bill H.R. 1281 in Committee of the Whole on Mar. 7, 1991,[20] the chairman of the legislative committee wished to address the un-

19. 137 CONG. REC. 5478, 102d Cong. 1st Sess.

20. *Id.* at pp. 5496–98.

protected paragraphs as soon as consideration under the five-minute rule began.

THE CHAIRMAN:[1] All time for general debate on this bill has expired.

The Clerk will read.

The Clerk read as follows:

H.R. 1281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to provide dire emergency supplemental appropriations for the fiscal year ending September 30, 1991, and for other purposes, namely: . . .

MR. [ROBERT A.] ROE [of New Jersey]: Mr. Chairman, I have three points of order to paragraphs not protected by the rule, and I ask unanimous consent that the paragraphs beginning on page 24, line 17, through page 25, line 10; page 28, lines 14 through 21; and page 32, lines 15 through 22, be considered at this time so I can exercise my rights under the rule. . . .

THE CHAIRMAN: Is there objection to the request of the gentleman from New Jersey?

There was no objection.

THE CHAIRMAN: Pursuant to the unanimous-consent order, the Clerk will report the first paragraph against which the gentleman from New Jersey may raise a point of order.

The Clerk read as follows:

ARCHITECT OF THE CAPITOL

ADMINISTRATIVE PROVISION

(TRANSFER OF FUNDS)

Notwithstanding any other provision of law and subject to approval by the Joint Committee on the Library, the Architect of the Capitol is authorized (1) to procure, through a rental, lease, or other agreement, not more than 25,000 square feet of temporary storage and warehouse space outside the Capitol Grounds for use by the Library of Congress during fiscal year 1991, and (2) to incur incidental expenses in connection with such use. Subject to approval by the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate, amounts for the purposes of the preceding sentence may be transferred from the appropriation "Library of Congress, Salaries and expenses" to the appropriation "Architect of the Capitol, Library buildings and grounds, Structural and mechanical care". Amounts so transferred shall be available for expenditure upon vouchers approved by the Architect of the Capitol.

THE CHAIRMAN: Does the gentleman from New Jersey [Mr. Roe] have a point of order on this paragraph?

MR. ROE: Yes, Mr. Chairman.

Mr. Chairman, I raise a point of order against the provision in title II, chapter VI, entitled "Architect of the Capitol," beginning on page 24, line 17 through page 25, line 10. That provision violates clause 2 of rule XXI because it is legislation in an appropriation bill.

THE CHAIRMAN: The Chair recognizes the gentleman from Florida [Mr. Smith].

MR. [LAWRENCE J.] SMITH of Florida: Mr. Chairman, I would hope the gen-

1. Dennis E. Eckart (Ohio).

tleman would not insist on his point of order. . . .

THE CHAIRMAN: Does any other Member wish to be heard on the point of order raised by the gentleman from New Jersey [Mr. Roe]?

MR. [JOHN PAUL] HAMMERSCHMIDT [of Arkansas]: Mr. Chairman, I would like to be heard. . . .

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

MR. ROE: Mr. Chairman, may I be heard further? . . .

THE CHAIRMAN: The Chair is prepared to rule.

Based on the reasons asserted by the gentleman from New Jersey [Mr. Roe], the point of order is sustained, and the paragraph is stricken.

The Clerk will report the next paragraph in dispute. The Clerk read as follows:

Page 28, beginning on line 13,

CHAPTER X

GENERAL SERVICES ADMINISTRATION

None of the funds made available by this or any other Act with respect to any fiscal year may be used by the General Services Administration to obligate or expend any funds for the award of contracts for the construction of the Northern Virginia Naval Systems Command Headquarters project without advance approval in writing of the House Committee on Appropriations.

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

MR. ROE: Yes, Mr. Chairman, I reserve a point of order against the provision of title II, chapter X, entitled "General Services Administration" beginning on page 28, lines 14 through 21. That provision violates clause 2 of rule XXI because it again is recommending legislation in an appropriations bill.

THE CHAIRMAN: The Chair recognizes the gentleman from Virginia [Mr. Wolf].

MR. [FRANK R.] WOLF [of Virginia]: Mr. Chairman, I ask unanimous consent that the provision entitled "General Services Administration" be modified by inserting in line 21, after the word "the," the words, "House Committee on Public Works and Transportation and the". . . .

THE CHAIRMAN: The gentleman from Virginia [Mr. Wolf] seeks unanimous consent to modify the language subject to the reservation of the point of order of the gentleman from New Jersey [Mr. Roe].

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

There was no objection.

The remaining unprotected paragraphs were then reported and points of order were entertained.

Where Bill "Considered Read and Open to Amendment," the Chair Takes Points of Order Before Amendments

§ 5.5 Where the Committee of the Whole agrees to a request that "the remainder of the paragraphs of the appropriation bill be considered as read and open to amendment," the Chair queries for

points of order before entertaining amendments to or debate on the paragraphs.

During the reading for amendment of the legislative branch appropriation bill for fiscal 1992, Mr. Vic Fazio, of California, subcommittee chairman and manager of the bill, asked unanimous consent that the remainder of the bill (except the last two lines) be considered read and open to amendment. There being no objection, the Chairman of the Committee of the Whole, Brian J. Donnelly, of Massachusetts, solicited points of order to the portion considered read. The following proceedings occurred on June 5, 1991:[2]

MR. FAZIO: Mr. Chairman, I ask unanimous consent that the remainder of the bill, except for lines 22 and 23 on page 40, be considered as read, printed in the Record, and open to amendment at any point.

THE CHAIRMAN: Is there objection to the request of the gentleman from California?

There was no objection.

The text of the remainder of the bill, through line 21 on page 40 is as follows:

SALARIES, OFFICERS AND EMPLOYEES . . .

SEC. 310. (a) The Clerk of the House of Representatives shall maintain and operate a child care center (to be known as the "House of Representatives Child Care Center") to furnish pre-school child care—

(1) for children of individuals whose pay is disbursed by the Clerk of the House of Representatives or the Sergeant at Arms of the House of Representatives and children of support personnel of the House of Representatives; and . . .

THE CHAIRMAN: Are there any points of order against that section of the bill?

POINT OF ORDER

MR. [JOEL] HEFLEY [of Colorado]: Mr. Chairman, I raise a point of order against section 310 on the ground that it violates clause 2(b) of rule XXI of the House of Representatives by changing existing law. . . .

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

MR. FAZIO: Mr. Chairman, I thought that the Chair had passed the point in the bill where this was appropriate to be offered. That is my understanding, that the gentleman has passed that point, and the gentleman no longer has the right to offer that.

MR. CHAIRMAN: The bill is open for amendment at any point. The Chair then queries whether there be any points of order. The Chair has requested whether there be any points of order against that section of the bill that was open, and that is when the gentleman arose and made his point of order.

Does the gentleman from California wish to speak on that point?

MR. FAZIO: Not at the moment.

THE CHAIRMAN: Are there any other Members requesting to speak on the gentleman's point of order?

2. 137 CONG. REC. 13567, 13571, 13572, 102d Cong. 1st Sess.

If not, the Chair is then prepared to rule. For the reasons stated by the gentleman from Colorado, the point of order is sustained. Section 310 is stricken from the bill. Are there any amendments to that section of the bill?

Points of Order Against Provisions and Amendments Where Bill "Open" at Any Point

§ 5.6 Where the Committee of the Whole agrees that the remainder of an appropriation bill be considered as read and open at any point to points of order and amendments, the Chairman asks if there are any points of order and then if there are any amendments, and points of order made against items in the bill subsequent to the offering of amendments are not recognized.

On Aug. 19, 1949,[3] it was emphasized that, following the dispensing of the reading of the remainder of a bill, points of order should be made immediately, before the offering of amendments.

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and be open at any point to points of order and amendments.

THE CHAIRMAN:[4] Is there objection to the request of the gentleman from Michigan?

There was no objection.

THE CHAIRMAN: Are there any points of order?

If not, are there any amendments?

MR. [WILLIAM M.] WHEELER [of Georgia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

MR. [JAMES P.] SUTTON [of Tennessee]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. SUTTON: Mr. Chairman, I make the point of order against the language on page 19 that it is legislation on an appropriation bill.

THE CHAIRMAN: The point of order comes too late. At the time the further reading of the bill was dispensed with the Chair requested Members desiring to make points of order to do so at that time.

§ 5.7 Where a general appropriation bill is considered as read and open to amendment at any point, points of order must be made before amendments are offered and cannot be "reserved" pending subsequent action on amendments, since points of order lie separately against provisions in the reported bill and then separately against amendments in the reported bill.

3. 95 CONG. REC. 11870, 11876, 81st Cong. 1st Sess. Under consideration was H.R. 6008, a supplemental appropriation bill for 1950.

4. Aime J. Forand (R.I.).

On Dec. 1, 1982,[5] Chairman Don Fuqua, of Florida, was presiding over the Labor, Health and Human Services appropriation bill, fiscal 1983, when the manager of the bill, Mr. William H. Natcher, of Kentucky, asked unanimous consent that the bill be considered read and open to amendment at any point. No objection being heard, a point of order was raised against one paragraph of the bill. The proceedings were as follows:

MR. NATCHER (during the reading): Mr. Chairman, I ask unanimous consent that the bill be considered as read and open to amendment at any point.

THE CHAIRMAN: Is there objection to the request of the gentleman from Kentucky?

There was no objection.

THE CHAIRMAN: Are there any points of order against the bill?

POINT OF ORDER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I have a point of order against a section of the bill.

The portion of the bill to which the point of order relates is as follows:

HIGHER AND CONTINUING EDUCATION

For carrying out titles III; VI, part A; VIII; IX, parts B, D and E; title X; and sections 417, 420, and 734 of the Higher Education Act; section 406A(2) of the General Education Provisions Act (20 U.S.C. 1221e–1b(2)); section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961; title XIII, part H, subparts 1 and 2 of the Education Amendments of 1980; H.R. 3598 as passed the House on November 4, 1981; and title V, section 528(5) of the Omnibus Budget Reconciliation Act of 1981, without regard to section 512(b) of the Omnibus Budget Reconciliation Act of 1981, $400,990,000: *Provided*, That $9,000,000 shall be available in connection with the establishment and construction of the General Daniel James Memorial Education Center at Tuskegee Institute, Tuskegee, Alabama, and such sums shall be used for an aerospace science and engineering center and shall remain available for obligation until September 30, 1988: *Provided further*, That funds made available in Public Law 96-536, section 110 for the Wayne Morse Chair of Law and Politics shall remain available for obligation until September 30, 1985: *Provided further*, That $3,000,000 shall be available until expended for the Carl Albert Congressional Research and Studies Center: *Provided further*, That $25,000,000 made available for interest subsidy grants under section 734 of the Higher Education Act shall remain available until expended: *Provided further*, That sections 922(b)(2) and 922(e)(2) of the Higher Education Act shall not apply to funds in this Act.

THE CHAIRMAN: The gentleman will state the point of order.

MR. WALKER: Mr. Chairman, on page 44, lines 11 through 13, there is a section of the bill which is in violation of rule XXI, clause 2, because there is no authorization legislation that has been passed by the Congress for the funding which is appropriated in the bill, and I make a point of order against that language in the bill.

THE CHAIRMAN: Does the gentleman from Kentucky (Mr. Natcher) desire to be heard on the point of order?

MR. NATCHER: On the point of order, yes, Mr. Chairman, I would like to be

5. 128 CONG. REC. 28174, 28175, 97th Cong. 2d Sess.

heard, but I would like to have a colloquy at this time, with the permission of the gentleman from Pennsylvania (Mr. Walker).

THE CHAIRMAN: The Chair will permit the gentleman from Pennsylvania to yield to the gentleman from Kentucky although ordinarily the Chair controls debate on a point of order.

MR. WALKER: I am glad to yield to the gentleman from Kentucky.

MR. NATCHER: Mr. Chairman, let me say to the gentleman from Pennsylvania that, as he knows, this project has been authorized in the House. As I understand, it is before the committee on the other side. I would hope that the gentleman from Pennsylvania would not insist on his point of order at this time. This facility, as the gentleman knows, is being utilized at the present time in honor of one of the great Members who served in this body, the Honorable Carl Albert from Oklahoma, a distinguished Member of the House for many years, later serving as Speaker of the House before his retirement.

I would hope that the gentleman would not insist on his point of order. As the gentleman knows, this project has not yet been authorized on the other side. It has been authorized on this side. We would hope that the gentleman would not insist on his point of order. Then we would see if it could not be handled quickly on the other side by way of authorization, so that this amount could stay in the 1983 bill and not have to wait until the next appropriation bill. . . .

THE CHAIRMAN: Does the gentleman from Iowa (Mr. Smith) wish to be heard on the point of order?

MR. [NEAL] SMITH of Iowa: Not on this point of order, no, Mr. Chairman. I do have a parliamentary inquiry concerning another point of order.

THE CHAIRMAN: The Chair will protect the gentleman.

Will the gentleman from Pennsylvania (Mr. Walker) clarify for the Chair the exact language to which he objects in insisting on his point of order?

MR. WALKER: Mr. Chairman, the language the gentleman objects to under the point of order is beginning at line 11 on page 44, "That $3,000,000 shall be available until expended for the Carl Albert Congressional Research and Studies Center:" ending with the colon on line 13.

THE CHAIRMAN: The appropriation is not yet authorized by law and the Chair sustains the point of order. Are there any other points of order against the bill?

PARLIAMENTARY INQUIRY

MR. SMITH of Iowa: Mr. Chairman, I have a parliamentary inquiry.

The portion of the bill to which the parliamentary inquiry relates is as follows:

SPECIAL PROGRAMS

For carrying out the consolidated programs and projects authorized under chapter 2 of the Education Consolidation and Improvement Act of 1981; title IX, part C of the Elementary and Secondary Education Act; title IV of the Civil Rights Act of 1964; the Follow Through Act; sections 1524 and 1525 of the Education Amendments of 1978; and Public Law 92–506, $538,920,000: *Provided* That $454,810,000 to carry out chapter 2 of the Education Consolidation

and Improvement Act shall become available for obligation on July 1, 1983, and shall remain available until September 30, 1984: *Provided further,* That $29,030,000 for the purpose of subchapter D of the Education Consolidation and Improvement Act shall become available for obligation on October 1, 1982: *Provided further,* That $3,000,000 of the amount appropriated above shall be for the purpose of Public Law 92–506 of which $1,500,000 shall become available on July 1, 1983, and shall remain available until September 30, 1984.

THE CHAIRMAN: The gentleman from Iowa (Mr. Smith) will state his parliamentary inquiry.

MR. SMITH of Iowa: Mr. Chairman, is it possible, since the bill is open to amendment at any point, to reserve a point of order and to make it at a later time against certain lines in the bill?

THE CHAIRMAN: The Chair will state that the point of order must be made at this time, before amendments are offered.

MR. SMITH of Iowa: Then, Mr. Chairman, if it is made at this time, would it be possible to replace the language to which I am making a point of order at a later time?

THE CHAIRMAN: The Chair will state to the gentleman that a proper amendment could be offered to replace the language.

§ 5.8 Where unanimous consent is granted that the remainder of a general appropriation bill be considered as read and all portions thereof be subject to amendments and to points of order, the Chairman suggests that points of order be disposed of first since it would be too late to make such points after amendments to the bill have been considered.

On Apr. 25, 1947,[6] the following proceedings took place:

MR. [ROBERT F.] JONES of Ohio: Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and that all portions thereof be subject to amendment and to points of order.

THE CHAIRMAN:[7] Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE CHAIRMAN: The Chair suggests that the points of order be disposed of first under this procedure, before the amendments.

Points of Order Against Paragraph Not Entertained During General Debate

§ 5.9 The proper time for raising a point of order that a paragraph in a general appropriation bill violates Rule XXI clause 2 (legislation on an appropriation bill) is when the paragraph is reached in the reading for

6. 93 CONG. REC. 4098, 80th Cong. 1st Sess. Under consideration was H.R. 3123, an Interior Department appropriation bill for 1948.
7. Earl C. Michener (Mich.).

amendment under the five-minute rule, and not during general debate on the bill.

On June 28, 1989,[8] during general debate on the energy and water appropriation bill, fiscal 1990, an inquiry was directed to the Chair as follows:

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2696, with Mr. Pease in the chair.

The Clerk read the title of the bill.

By unanimous consent, the bill was considered as having been read the first time.

THE CHAIRMAN:[9] Under the unanimous-consent agreement, the gentleman from Alabama (Mr. Bevill) will be recognized for 30 minutes, and the gentleman from Indiana (Mr. Myers) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Alabama (Mr. Bevill).

PARLIAMENTARY INQUIRY

MR. [JOHN PAUL] HAMMERSCHMIDT [of Arkansas]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HAMMERSCHMIDT: Mr. Chairman, would this be the proper time to raise a point of order on section 110 and section 112 of the bill?

THE CHAIRMAN: It would not be the proper time. The proper time would be when those sections are read under the 5-minute rule.

MR. [TOM] BEVILL [of Alabama]: Mr. Chairman, I yield myself such time as I may consume.

Point of Order Against Paragraph Must Precede Amendment

§ 5.10 A point of order against a section of a general appropriation bill must be made immediately after the section is read and comes too late after an amendment to that section has been considered.

On June 3, 1944,[10] Chairman William M. Whittington, of Mississippi, ruled that a point of order came too late after the offending section had been read, amended, and the next section read.

The Clerk read as follows:

Sec. 103. This title may be cited as "Defense Aid Appropriation Act, 1945."

Mr. [Joseph P.] O'Hara [of Minnesota]: Mr. Chairman, I had a point of order to submit against section 102 which has not been completely read, and which point of order I wish to submit at this time.

THE CHAIRMAN: The Clerk has just read section 103.

8. 135 CONG. REC. 13669, 13670, 101st Cong. 1st Sess.

9. Don J. Pease (Ohio).

10. 90 CONG. REC. 5245, 78th Cong. 2d Sess. Under consideration was H.R. 4937, the Foreign Economic Administration Act of 1945.

MR. O'HARA: Mr. Chairman, the Clerk was just reading section 102, and I wish to make a point of order against that section.

THE CHAIRMAN: The gentleman from Missouri [Mr. Bell] offered an amendment which was considered by the Committee and agreed to by the Committee, an amendment to section 2 after it had been read.

MR. O'HARA: Mr. Chairman, I wish to make a point of order against section 102 on the ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN: The gentleman from Minnesota makes a point of order that section 102 is legislation on an appropriation bill. The point of order comes too late. As the Chair has previously announced, the Committee has already considered and agreed to an amendment to section 102 offered by the gentleman from Missouri [Mr. Bell].

The point of order is overruled.

Timing of Point of Order Against Provision in Bill Text

§ 5.11 A point of order against a paragraph of a general appropriation bill comes too late after amendments have been offered thereto.

On Apr. 16, 1975,[11] a general appropriation bill was being read for amendment in Committee of the Whole. Section 314 of the bill was read, and by unanimous consent an amendment was offered, and agreed to, which amended that section as well as the following section, 315, which had not been read. Ms. Abzug then offered two amendments, designed to strike out both sections 314 and 315. The proceedings transpired as follows:

MS. [BELLA S.] ABZUG [of New York]: Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Ms. Abzug: on page 16, after line 11, strike out sections 314 and 315 and renumber accordingly.

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

THE CHAIRMAN:[12] The gentleman will state it.

MR. BAUMAN: Have not these sections already been read for amendment?

THE CHAIRMAN: Only section 314 has been read for amendment.

MR. BAUMAN: Mr. Chairman, I make the point of order that the amendment comes too late.

THE CHAIRMAN: Section 315 has not been read. Therefore, it would not foreclose consideration at this time of a further amendment offered to section 314.

The amendment offered by the gentlewoman from New York contains an additional part proposing to strike section 315, which has not been read. Absent a unanimous-consent agreement, she could not offer an amendment to strike section 315 if it had not been read.

11. 121 CONG. REC. 10377, 10378, 94th Cong. 1st Sess.

12. James C. Wright, Jr. (Tex.).

MS. ABZUG: Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

THE CHAIRMAN: Is there objection to the request of the gentlewoman from New York?

MR. [FORTNEY H. (PETE)] STARK [of California]: Mr. Chairman, reserving the right to object, would this preclude my making a point of order against section 314?

THE CHAIRMAN: The Chair would advise the gentleman that section 314 has already been read and subject to legislative action in the form of the amendment offered by the gentleman from Louisiana and, therefore, a point of order would not be timely against section 314. The Chair would advise the gentleman that if he wishes to make a point of order against section 315, the moment for that would be after the Clerk has read that section and before someone offers an amendment and legislative consideration has taken place.

Point of Order Too Late After Amendment Offered

§ 5.12 A point of order against a paragraph of a general appropriation bill comes too late after amendments have been offered to that paragraph.

The proceedings in Committee of the Whole on June 8, 1977,[13] illustrate two important principles relating to the application of clause 2, Rule XXI relating to unauthorized appropriations. The first is that where an unauthorized appropriation is permitted, by waiver or failure to raise a point of order, the paragraph can then be perfected by an amendment which merely changes the unauthorized figure in the paragraph. Second, the proceedings demonstrate that a point of order must be timely and comes too late after the paragraph has been considered.

The bill under consideration was the Department of Transportation appropriation bill for fiscal 1978.

The Clerk read as follows:

COAST GUARD

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the operation and maintenance of the Coast Guard, not otherwise provided for; purchase of not to exceed twelve passenger motor vehicles, for replacement only; and recreation and welfare; $871,865,000 of which $205,977 shall be applied to Capehart Housing debt reduction: *Provided* That the number of aircraft on hand at any one time shall not exceed one hundred and seventy-nine exclusive of planes and parts stored to meet future attrition: *Provided further*, That amounts equal to the obligated balances against the appropriations for "Operating expenses" for the two preceding years shall be transferred to and merged with this appropriation, and such

13. 123 CONG. REC. 17941, 17942, 17945, 95th Cong. 1st Sess.

merged appropriation shall be available as one fund, except for accounting purposes of the Coast Guard, for the payment of obligations properly incurred against such prior year appropriations and against this appropriation.

MR. [MARIO] BIAGGI [of New York]: Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Biaggi: On page 3, line 7, strike "$871,865,000" and insert in lieu thereof "$878,865,000".

MR. [SILVIO O.] CONTE [of Massachusetts]: Madam Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[14] The gentleman from Massachusetts will state the point of order.

MR. CONTE: Madam Chairman, the amendment under rule XXI, clause 2, the amendment of the gentleman from New York is out of order because it has not been authorized. The authorization for this is pending and the House has requested a conference on this.

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

MR. BIAGGI: Yes, Madam Chairman. . . .

Madam Chairman, I will address myself to the point of order.

The point of order now is whether or not there is any authorization. I will stick to that point of order, and if the Chair maintains that the point of order is a valid one, then I would only concede that it is valid. If that be a valid point of order, then it is precedent for a subsequent point of order which I will offer immediately after this one is settled.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has before it the amendment which is offered by the gentleman from New York (Mr. Biaggi). That amendment simply changes an unauthorized appropriations figure in the bill, striking that figure and inserting in lieu thereof another. The gentleman does not seek, in his amendment, to earmark these additional funds at all.

Under the precedents, then, where an amendment only seeks to change an unauthorized amount permitted to remain in the bill by failure to raise a point of order or by a waiver, and does not add any legislative language or earmark for a specific unauthorized project, that amendment is in order. (Deschler's ch. 25, sec. 2311.)

Therefore, the point of order is overruled and the gentleman is recognized for 5 minutes. . . .

The question is on the amendment offered by the gentleman from New York (Mr. Biaggi).

The amendment was agreed to. . . .

THE CHAIRMAN: Are there other amendments to this section?

There being none, the Clerk will read. . . .

MR. CONTE: Madam Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CONTE: Madam Chairman, is the Clerk through reading "operating expenses"? If not, I would like to raise a point of order against that section.

THE CHAIRMAN: The Clerk has read the "operating expenses" paragraph of the bill.

14. Barbara Jordan (Tex.).

MR. CONTE: Madam Chairman, am I in order to raise a point of order against that section?

THE CHAIRMAN: Not against the "operating expenses" paragraph, that is the paragraph which has been read and has been amended, and the point of order would come too late.

MR. CONTE: All right, then I am out of order.

THE CHAIRMAN: The gentleman from Massachusetts will be seated and the Clerk will read.

Points of Order Considered Seriatim

§ 5.13 A point of order against a proviso having been disposed of, it is not too late to make a point of order against the paragraph of which the proviso is a part merely because debate has been had on the point of order against such proviso.

On Feb. 26, 1943,[15] a point of order was held timely although debate on another point of order against a proviso in the paragraph had intervened after the reading of the paragraph.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make the further point of order against the language in lines 6 to 13 on page 23 that it is legislation on an appropriation bill, not authorized by law.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, the point of order comes too late. There has been debate since the paragraph was read. It is now too late to interpose a point of order.

THE CHAIRMAN:[16] The Chair will remind the gentleman from Missouri that we have not gone beyond the point at which a point of order can be made. The paragraph is still under consideration.

Does the gentleman desire to point out to the Chair anything further the Chair may consider in view of the second point of order made against the language in the paragraph?

MR. CANNON of Missouri: We have passed the proposition, Mr. Chairman; we are now on the proviso. The point of order made by the gentleman did not apply to the first portion, which is a separate entity as against the proviso. Inasmuch as the point of order was not interposed at the time, it now comes too late.

THE CHAIRMAN: The Chair advises the gentleman from Missouri that he will hold that the point of order does not come too late, in view of the fact that the proviso is a part of the paragraph.

Items in General Appropriation Bills

§ 5.14 The time for making points of order against items in an appropriation bill is after the House has resolved

15. 89 CONG. REC. 1369, 78th Cong. 1st Sess. Under consideration was H.R. 1975, the first deficiency appropriation of 1943.

16. Howard W. Smith (Va.).

itself into the Committee of the Whole and after the paragraph containing such items has been read for amendment.

On July 4, 1945,[17] after Mr. Clarence Cannon, of Missouri, moved that the House resolve itself into the Committee of the Whole for the consideration of the bill at hand, another Member, Vito Marcantonio, of New York, inquired as to when would be the proper time to make points of order against many items in the bill.

MR. MARCANTONIO: Mr. Speaker, if, as in this case, the bill contains many items that are subject to a point of order, is it not in order to make a point of order against sending this bill to the Committee of the Whole?

THE SPEAKER:[18] Under the rules of the House, it is not.

MR. MARCANTONIO: Then the procedure to make the point of order is to make it as the bill is being read for amendment?

THE SPEAKER: As the paragraphs in the bill are reached.

§ 5.15 In the Committee of the Whole, a point of order against a paragraph of an appropriation bill is not in order until that paragraph is read for amendment.

On Feb. 19, 1970,[19] Chairman Chet Holifield, of California, ruled that a point of order was raised prematurely.

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Chairman, we have a couple of points of order to make, particularly as to the Michel amendment. When will it be in order to make the point of order to the Michel amendment?

THE CHAIRMAN: The Chair will ask the gentleman from Kentucky, to what section of the bill is the gentleman referring?

MR. PERKINS: Section 411.

THE CHAIRMAN: The Chair will state that it will not be in order until that section of the bill is read.

The Clerk will read.

Timing of Points of Order Against Paragraph in Bill

§ 5.16 A point of order against a paragraph in a general appropriation bill must be made immediately following the reading of the paragraph or following unanimous-con-

17. 91 CONG. REC. 7226, 79th Cong. 1st Sess. Under consideration was H.R. 3649, the war agencies appropriation for fiscal 1946.

For further discussion of appropriations bills, see Ch. 25, supra.

18. Sam Rayburn (Tex.).

19. 116 CONG. REC. 4012, 91st Cong. 2d Sess. Under consideration was H.R. 15931, involving the Departments of Labor and Health, Education, and Welfare, and related agencies appropriations for fiscal 1970.

sent permission to consider the title of the bill containing the paragraph as having been read.

The manager of a general appropriation bill will often strive to expedite the reading of the bill for amendment under the five-minute rule. One device is to ask unanimous consent that portions of the bill be considered as read and open for amendment, rather than proceeding paragraph by paragraph. Mr. John M. Slack, of West Virginia, the subcommittee chairman and manager of the bill under consideration on June 18, 1976,[20] employed this tactic. Proceedings were as indicated.

THE CHAIRMAN:[1] The Clerk will read.

The Clerk proceeded to read the bill.

MR. SLACK (during the reading): Mr. Chairman, I ask unanimous consent that title V be considered as read and open for amendment at any point.

THE CHAIRMAN: Is there objection to the request of the gentleman from West Virginia?

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, reserving the right to object, I have a point of order which would be lodged at the provisions contained on page 44, starting with line 9, through line 25 and I should like to be sure as to whether my position will be jeopardized if this unanimous-consent request were granted, and where and when I would have to make the point of order.

THE CHAIRMAN: The Chair will state that if the unanimous-consent request is granted, the gentleman from Texas (Mr. Eckhardt) will be recognized to make his point of order immediately thereafter.

MR. ECKHARDT: Mr. Chairman, I withdraw my reservation of objection.

THE CHAIRMAN: Is there objection to the request of the gentleman from West Virginia?

There was no objection.

MR. ECKHARDT: Mr. Chairman, I raise a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

(The portion of the bill to which the point of order refers is as follows:)

> No part of these funds may be used to pay the salary of any employee, including Commissioners, of the Federal Trade Commission who—
>
> (1) make any publication based on the line-of-business data furnished by individual firms without taking reasonable precautions to prevent disclosure of the line-of-business data furnished by any particular firm; or
>
> (2) permits anyone other than sworn officers and employees of the Federal Trade Commission to examine the line-of-business reports from individual firms; or
>
> (3) uses the information provided in the line-of-business program for any purpose other than statistical purposes. Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under existing practices and procedures or as changed by law.

MR. ECKHARDT: Mr. Chairman, I have a point of order which I make at

20. 122 CONG. REC. 19308, 94th Cong. 2d Sess.

1. Otis G. Pike (N.Y.).

lines 9 through 25 on page 44 in that the provisions contained therein constitute legislation on an appropriation bill in that new duties are imposed upon the Federal Trade Commission, particularly with respect to the language beginning on lines 12 through 16. It is provided that no part of these funds may be used to pay the salaries of any employee who makes any publication based on line of business data furnished by individual firms without taking reasonable precautions to prevent disclosure of the line of business data furnished by any particular firm. The only thing that limits or controls the question of divulging information respecting such line of business information is contained in the Freedom of Information Act, and this is only to provide an exception from the Freedom of Information Act which would embrace such material, but the Freedom of Information Act leaves it wholly to the Federal Trade Commission to devise whatever systems it desires with respect to such information.

The provisions in the appropriations bill to which I have referred would require a standard of reasonable precautions to prevent disclosure of the line of business data furnished by any particular firm, and in so doing would create a new and different standard from that which exists in existing law.

Second, the point of order is specifically lodged to lines 22 through 25 in which it is said:

> Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under existing practices and procedures or as changed by law.

It has been held that even though a duty imposed on a commission may be a duty now accepted by that commission, to place it as a duty in law constitutes specific legislation on an Appropriation Act.

I cite here in support of the point of order provisions in Deschler's procedure, page 305 and the following pages, chapter 26, paragraphs 11 et sequentia. I may say that I do level the point of order at lines 9 through 25.

MR. SLACK: Mr. Chairman, may I be heard on the point of order.

The language which the gentleman refers to was designed to protect the privacy and the security of data obtained in the line of a business program. However, if the gentleman insists on the point of order, of course, we will concede the point of order.

THE CHAIRMAN: The point of order is conceded and sustained and the paragraph is stricken.

Are there any other points of order against the remainder of title V?

When Point of Order Comes Too Late in Reading Bill for Amendment

§ 5.17 Where a chapter of a general appropriation bill is considered read by unanimous consent and open to amendment at any point, and no amendments are offered, the Clerk begins to read the next chapter, and it is then too late to raise a point of order against a paragraph in the chapter passed in the reading.

On June 11, 1985,[2] during the reading of a general appropriation bill in Committee of the Whole, Chairman Pro Tempore Philip R. Sharp, of Indiana, in response to a point of order from the floor, ruled that it was too late to lodge a point of order against a provision in the preceding chapter of the bill.

THE CHAIRMAN PRO TEMPORE: . . .

The Clerk will read.

The Clerk read as follows:

CHAPTER X

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

WORKING CAPITAL FUND

The "Limitation on working capital fund" is reduced to $65,470,000. . . .

RAILROAD-HIGHWAY CROSSINGS

DEMONSTRATION PROJECTS

For an additional amount for "Railroad-highway crossings demonstration projects", to remain available until expended, $5,300,000, of which $3,533,333 shall be derived from the Highway Trust Fund. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi] (during the reading): Mr. Chairman, I ask unanimous consent that chapter X be considered as read, printed in the Record, and open to amendment at any point.

THE CHAIRMAN PRO TEMPORE: Is there objection to the request of the gentleman from Mississippi?

There was no objection.

THE CHAIRMAN PRO TEMPORE: Are there any points of order against chapter X?

Are there any amendments to chapter X?

The Clerk will read.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN PRO TEMPORE: The Chair has asked if there are any amendments to chapter X.

Hearing no requests, the Clerk will read.

MR. CONTE: Reserving a point of order, the gentleman from Pennsylvania [Mr. Walker] wanted to reserve a point of order on page 65, I believe, on the bottom there.

THE CHAIRMAN PRO TEMPORE: Would the gentleman from Massachusetts indicate what he is trying to indicate to the Chair?

MR. CONTE: The gentleman from Pennsylvania [Mr. Walker] made a request.

MR. WALKER: Mr. Chairman, I have a point of order on page 65.

MR. [WILLIAM] LEHMAN of Florida: Mr. Chairman, I think that chapter has been passed already.

THE CHAIRMAN PRO TEMPORE: The gentleman from Florida is making the point of order that the chapter has already been passed in the reading and that no one raised a timely point of order; is that the gentleman's point of order?

MR. LEHMAN of Florida: It is, Mr. Chairman.

THE CHAIRMAN PRO TEMPORE: Does anyone contest that point?

If not, the Chair will sustain the gentleman's point of order.

2. 131 CONG. REC. 15181, 15182, 99th Cong. 1st Sess.

A Point of Order Comes Too Late—After Amendment Has Been Offered

§ 5.18 A point of order against a paragraph in an appropriation bill comes too late after an amendment to it has been reported and the sponsor of such amendment is recognized to debate it.

On Nov. 28, 1945,[3] it was ruled that a point of order came too late even though the Member, Arthur L. Miller, of Nebraska, had been standing to make the point of order when the sponsor of an amendment rose to speak.[4]

MR. [CLEVELAND M.] BAILEY [of West Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

THE CHAIRMAN:[5] The Chair recognizes the gentleman from West Virginia.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, will the gentleman yield for a unanimous-consent request?

MR. BAILEY: I yield to the gentleman from Missouri.

MR. CANNON of Missouri: I ask unanimous consent, Mr. Chairman, that all debate on this amendment close in 20 minutes, the last 5 minutes to be reserved to the committee.

THE CHAIRMAN: Is there objection to the request of the gentleman from Missouri?

MR. MILLER of Nebraska: Mr. Chairman, reserving the right to object, I wish to make a point of order against the last part of the paragraph.

MR. CANNON of Missouri: Mr. Chairman, the gentleman's point of order comes too late.

MR. MILLER of Nebraska: I asked for recognition on the point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from West Virginia has already been recognized, and the gentleman from Nebraska made no remarks prior to that time.

MR. MILLER of Nebraska: I asked for recognition, and I was standing here.

THE CHAIRMAN: The Chair did not know for what purpose the gentleman had risen. The point of order comes too late.

—After Amendment Has Been Adopted

§ 5.19 A point of order against legislation in a paragraph of a general appropriation bill must be lodged immediately after the paragraph is read and comes to late after an amendment has been adopted thereto.

The proceedings of Nov. 30, 1982,[6] illustrate the importance

3. 91 CONG. REC. 11128, 79th Cong. 1st Sess. Under consideration was H.R. 4805, the Defense appropriation bill for fiscal 1946.

4. But see §§ 6.22–6.24, infra.

5. R. Ewing Thomason (Tex.).

6. 128 CONG. REC. 28057, 28058, 28060, 97th Cong. 2d Sess.

of being timely when pressing a point of order during the reading of a general appropriation bill for amendment.

THE CHAIRMAN:[7] The Clerk will read.

The Clerk read as follows:

UNITED STATES CUSTOMS SERVICE

SALARIES AND EXPENSES

For necessary expenses of the United States Customs Service, including purchase of two hundred passenger motor vehicles for replacement only, including one hundred and ninety for police-type use; acquisition (purchase of 1), operation and maintenance of aircraft; hire of passenger motor vehicles and aircraft; and awards of compensation to informers, as authorized by section 1 of title VI of the Act of June 15, 1917 (22 U.S.C. 401); $528,700,000, of which not to exceed $150,000 should be available for payment for rental space in connection with preclearance operations: *Provided*, That none of the funds made available by this Act shall be available for administrative expenses to pay any employee overtime pay in an amount in excess of $25,000: *Provided further*, That the Commissioner or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service: *Provided further*, That none of the funds made available by this Act shall be available for administrative expenses to reduce the number of Customs Service regions below nine during fiscal year 1983 without advance approval from both House and Senate Committees on Appropriations: *Provided further*, That none of the funds made available by this Act may be used for administrative expenses in connection with the proposed redirection of the Equal Employment Opportunity Program.

AMENDMENT OFFERED BY MR. CONTE

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Conte: On page 4, line 22, strike out "$528,700,000," and insert in lieu thereof the following: "$548,700,000, of which not to exceed $30,000,000 shall be available for Project Exodus, and". . . .

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Massachusetts (Mr. Conte), as amended.

The amendment, as amended, was agreed to.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order against the language in lines 6 through 10 on page 5 of H.R. 7158. These lines constitute legislation on an appropriation bill and are, therefore, in violation of clause 2 of rule XXI. If the Chair will permit me, I would like to be heard on my point of order.

THE CHAIRMAN: The Chair will advise the gentleman from Minnesota that the paragraph in question has already been read and amended. Therefore, a point of order to the paragraph comes too late.

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman will state it.

MR. FRENZEL: Mr. Chairman, at what point would a point of order have been timely?

7. Gerry E. Studds (Mass.).

THE CHAIRMAN: The Chair will advise the gentleman that a point of order would be in order between the time when the paragraph had been read by the Clerk and the time when an amendment to that paragraph had been offered or the Committee had gone to another paragraph.

MR. FRENZEL: Mr. Chairman, I was on my feet when the previous amender was recognized, and I do not recall having heard that language being read. Can the Chair give me some assurance on that?

THE CHAIRMAN: The Chair will advise the gentleman that the first amendment offered to the paragraph in question was offered by the gentleman from Massachusetts (Mr. Conte). The Chair observed the gentleman on his feet, although not pressing a point of order, at the time that the amendment to the amendment was offered, but not at the time the original amendment was offered.

MR. FRENZEL: And to be timely, my point of order would have to have been made before the gentleman from Massachusetts offered his amendment?

THE CHAIRMAN: The gentleman is correct.

MR. FRENZEL: I thank the Chair.

THE CHAIRMAN: The Clerk will read.

§ 5.20 A point of order against language in a paragraph of an appropriation bill comes too late after the paragraph has been read and an amendment thereto has been agreed to.

On June 13, 1961,[8] a Member was advised that his point of order came too late.

MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

MR. [GEORGE W.] ANDREWS [of Alabama]: Mr. Chairman, the committee accepts the amendment.

THE CHAIRMAN:[9] The question is on the amendment offered by the gentleman from Texas.

The amendment was agreed to.

The Clerk read as follows: . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. GROSS: Is a point of order to the language on page 29 in order?

THE CHAIRMAN: If it is to language preceding line 5 on page 29 it is not in order.

MR. GROSS: It does precede line 5 on page 29. The Clerk did not read the language on page 29, lines 1 to 5.

THE CHAIRMAN: The Clerk has read and an amendment has been adopted to the paragraph starting on page 28, line 8, and ending on page 29, line 5.

MR. GROSS: Then a point of order to the language on page 29, line 5, is not in order?

THE CHAIRMAN: The Chair will advise the gentleman it comes too late at this time.

—After Next Paragraph Is Read

§ 5.21 Points of order must be made immediately after a

8. 107 CONG. REC. 10178, 87th Cong. 1st Sess. Under consideration was H.R. 7577, making appropriations for the executive office and Department of Commerce for fiscal 1962.

9. Carl Albert (Okla.).

paragraph of an appropriation bill is read, and it is too late to make such points of order after the Clerk has begun reading the next paragraph.

On Apr. 15, 1943,[10] Chairman William M. Whittington, of Mississippi, ruled that a point of order against a paragraph came too late after the Clerk had completed reading the next paragraph, even though the Member protested that he was on his feet seeking recognition during the reading.

MR. [HAMPTON P.] FULMER [of South Carolina]: I make the point of order that the language on page 22 beginning in line 19 and ending in line 25 . . . is legislation on an appropriation bill.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. TARVER: I make the point of order that the point of order comes too late inasmuch as the portion of the bill against which the point of order is made has been read and the Clerk was reading the next paragraph.

THE CHAIRMAN: The Chair sustains the point of order raised by the gentleman from Georgia. The Clerk had read a substantial part of the following paragraph and had reached line 17 on page 23.

MR. FULMER: I think, Mr. Chairman, I made my point of order in time. Maybe the Clerk had started the following paragraph, but I was on my feet and feel that I made my point of order in time.

THE CHAIRMAN: The Chair has ruled that the reading of the paragraph had been completed. Under the rules it is essential that a point of order against a paragraph be made immediately after the reading of the paragraph.

—*After Debate*

§ 5.22 After debate has been had on a paragraph of an appropriation bill it is too late to make a point of order against that paragraph.

On Mar. 15, 1945,[11] certain Members debated the subject of a paragraph before one of them made a point of order, but the delay was fatal to the point of order.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I move to strike out the last word.

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10. 89 CONG. REC. 3420, 3421, 78th Cong. 1st Sess. Under consideration was H.R. 2481, an agricultural appropriation bill.

11. 91 CONG. REC. 2306 et seq., 79th Cong. 1st Sess. Under consideration was H.R. 2603, the State, Justice, Commerce, Judiciary, and Federal Loan Agency appropriation bill for 1946.

See also 88 CONG. REC. 754, 77th Cong. 2d Sess., Jan. 27, 1942. Under consideration was H.R. 6460, the Navy Department appropriation for 1943.

I do this for the purpose of asking the majority leader a question. I am wondering if the majority leader can tell us what is to be the program for the balance of this week and the first part of next week? . . .

MR. [CARL] HINSHAW [of California]: Mr. Chairman, I have asked for this time in order to inquire of the chairman of the committee regarding the language appearing in the bill beginning in line 17 on page 23 and ending in line 23 on page 24. I do not see where any money item is included. Is this intended to be an authorization for construction or is it an appropriation?

MR. [LOUIS C.] RABAUT [of Michigan]: That is just the preamble, general language.

MR. HINSHAW: Is that in the nature of an authorization to do this work, or is there any law cited that would authorize it?

MR. RABAUT: It is based on law and on a treaty.

MR. HINSHAW: There is no law quoted in this language to which I refer, and I do not know of any treaty that authorizes it; none is stated here.

Mr. Chairman, I am forced to make a point of order against the language contained in the lines beginning in line 17 on page 23 and ending in line 23 on page 24, as not being authorized by law.

MR. RABAUT: It is language that has always been carried, I may say to the gentleman.

MR. HINSHAW: That may well be; but I insist on the point of order.

THE CHAIRMAN:[12] The Chair must inform the gentleman from California that his point of order comes too late.

MR. HINSHAW: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HINSHAW: Did not the Clerk finish reading it?

THE CHAIRMAN: The subject matter of the paragraph was discussed under the gentleman's amendment to strike out the last word [and] also under the amendment offered by the gentleman from New York. Business having intervened the point of order comes too late. The Chair therefore overrules the point of order.[13]

Diligence of Members in Seeking Recognition

§ 5.23 In a few instances, a Member who was on his feet seeking recognition at the proper time to make a point of order has been recognized even though the Clerk had read past the paragraph to which the point of order was directed.

Although failure to raise a point of order immediately after the

12. Wilbur D. Mills (Ark.).

13. For similar rulings, see 103 CONG. REC. 5032, 85th Cong. 1st Sess., Apr. 3, 1957 [H.R. 6287, making appropriations for the Departments of Labor and Health, Education, and Welfare]; 89 CONG. REC. 3485, 78th Cong. 1st Sess., Apr. 16, 1943 [H.R. 2481, an agriculture appropriation for 1944]; and 89 CONG. REC. 3421, 3422, 78th Cong. 1st Sess., Apr. 14, 1943 [H.R. 2481].

reading of a paragraph by the Clerk is usually fatal to the point of order, an exception to this rule may be invoked where a Member was on his feet, actively seeking recognition at the time the Clerk was reading the paragraph. For example, on Sept. 15, 1961,[14] Chairman Oren Harris, of Arkansas, entertained such a point of order under the following circumstances:

The Clerk read as follows: . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language on page 9, line 8 through line 12, on the same ground, that it changes existing law. It is, therefore, in violation of the rules.

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

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, the objection came too late. We will waive that point of order because the Clerk started reading the next paragraph, and we will not press that point that his objection came too late. The point is well taken, but I would remind my friend again that not 1 penny of that expenditure is taxpayers' money. It is a limitation on the funds they have earned by virtue of that operation. Will not my friend withdraw it?

MR. GROSS: No.

MR. THOMAS: Well I am not going to press my point of order that his point came too late.

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Chairman, I make the point of order that the gentleman's point of order came too late.

THE CHAIRMAN: The Chair observed that the gentleman was on his feet seeking recognition while the Clerk was reading.

Does the gentleman from Texas concede the point of order?

MR. THOMAS: I do, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

§ 5.24 A point of order against language in a paragraph of a bill is not precluded by intervening debate where the Member raising the point of order was on his feet, seeking recognition before debate began.

On May 11, 1959,[15] intervening debate did not preclude a point of order against language in an appropriation bill.

MR. [H. R.] GROSS [of Iowa]: I must insist on my point of order in protection of the committee and in protection of the Civil Service Commission.

14. 107 CONG. REC. 19729, 87th Cong. 1st Sess. Under consideration was H.R. 9169, making supplemental appropriations for fiscal 1962. To the same effect, see 116 CONG. REC. 18395, 91st Cong. 2d Sess., June 4, 1970. Under consideration was H.R. 17867, a foreign assistance appropriation bill for fiscal 1971.

15. 105 CONG. REC. 7905, 86th Cong. 1st Sess. Under consideration was H.R. 7040, the independent offices appropriation for 1960.

MR. [ALBERT] THOMAS [of Texas]: I oppose the point of order because the paragraph was read.

THE CHAIRMAN:[16] The Chair thinks the gentleman from Iowa was within his rights to make the point of order. He observed the gentleman standing when unanimous consent was granted to go back to the previous section.

MR. THOMAS: Well, the point of order is good, then. We admit it, then.

THE CHAIRMAN: The Chair sustains the point of order.

§ 5.25 The mere fact that a Member was on his feet does not entitle him to make a point of order where he has not affirmatively sought recognition of the Chair at the time the language complained of was read for amendment.

On Apr. 14, 1970,[17] in the Committee of the Whole, despite the assertion of Mr. William D. Ford, of Michigan, that he had been on his feet seeking recognition, Chairman Chet Holifield, of California, ruled that his point of order came too late.

THE CHAIRMAN: For what purpose does the gentleman from Michigan (Mr. William D. Ford) rise?

MR. WILLIAM D. FORD: Mr. Chairman, I make a point of order as to the language in the proviso in the paragraph entitled "School Assistance in Federally Affected Areas." The point I make goes to the language which appears on line 6, page 2, extending down through and including all of line 12. I make the point of order, it is in violation of rule XXI of the rules of the House.

THE CHAIRMAN: Does the gentleman from Pennsylvania (Mr. Flood), care to be heard on the point of order?

MR. [DANIEL J.] FLOOD: Yes, Mr. Chairman, I do.

I do not like to operate this way, but I am the chairman of the subcommittee and obviously I must object, and make a point of order because the point of order comes much, much too late. We have passed that point in the bill.

THE CHAIRMAN: The Chair will state that the Clerk had read past that paragraph of the so-called title I, and stopped at line 14 on page 3. The gentleman was not on his feet seeking recognition at the time the first section, down through line 12 on page 2, was read.

MR. WILLIAM D. FORD: Mr. Chairman, the paragraphs are not being read. The bill is being read by paragraph headings. I was on my feet at the beginning of the reading. As a matter of fact, I moved from there to here as soon as the Clerk began to read. I was never off my feet from the moment he started the reading. I was trying to get to the point in the bill.

THE CHAIRMAN: The Chair cannot observe the movements of the Members from place to place. The gentleman was not seeking recognition at the time when he should have been,

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16. Frank N. Ikard (Tex.).

17. 116 CONG. REC. 11648, 91st Cong. 2d Sess. Under consideration was H.R. 16916, Office of Education appropriations, fiscal 1971.

under the rules. He should have been seeking recognition vocally, not by standing.

The Chair sustains the point of order made by the gentleman from Pennsylvania (Mr. Flood).

Reading General Appropriation Bill for Amendment

§ 5.26 General appropriation bills are read by paragraphs, and where one section of the bill contains several paragraphs, a point of order must be made immediately after a paragraph is read and cannot be delayed until the entire section is read.

On July 29, 1982,[18] during consideration of the supplemental appropriation bill, fiscal 1982, the Clerk had proceeded to read two paragraphs in a particular section of the bill. Mr. Robert S. Walker, of Pennsylvania, wished to lodge a point of order against the first two paragraphs. The proceedings which denied him that opportunity are carried herein.

MR. WALKER: Mr. Chairman, on page 17 under Administrative Provisions now being read by the Clerk, I raise a point of order against those sections, that they are legislation on an appropriations bill and therefore violate clause 2 of rule XXI.

THE CHAIRMAN:[19] Does the gentleman make his point against all four paragraphs on page 17 in that section?

MR. WALKER: That is correct, Mr. Chairman.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I would point out that the Clerk had read the first two sections.

We would concede the point of order to the remainder.

THE CHAIRMAN: The gentleman from Mississippi is correct, the first two paragraphs of that section had been read and hence the gentleman's point of order comes too late with regard to those two sections.

MR. WALKER: In that case, Mr. Chairman, I withdraw my point of order.

THE CHAIRMAN: The gentleman withdraws his point of order.

The Clerk will read.

Proper Time To Determine Whether Bill Requires a Three-fifths Vote Because It Carries a Tax Rate Increase

§ 5.27 In response to a parliamentary inquiry, the Chair stated that the proper time to raise a point of order under Rule XXI clause 5(c) that a bill carries a "federal income tax rate increase" is when the question is put on final passage.

H.R. 1215, the Contract with American Tax Relief Act of 1995, was to be considered in the House on Apr. 5, 1995.[20] The Speaker

18. 128 CONG. REC. 18626, 97th Cong. 2d Sess.
19. George E. Brown, Jr. (Calif.).
20. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

was asked by Mr. James P. Moran, of Virginia, if the provisions of the bill did in fact carry a tax rate increase which would require a three-fifths vote, and while the Chair stated that the question was premature, he did indicate that the proper time to press a point of order on that basis would be when the question of final passage was before the House.

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

THE SPEAKER PRO TEMPORE:[1] The gentleman will state his parliamentary inquiry.

MR. MORAN: Mr. Speaker, it is my recollection that this body passed legislation earlier this term, in fact, on the first day of this session, that required that any tax increase be passed with a three-fifths vote of this body.

Since there is a tax increase to be leveled on Federal employees, in the case of the Federal Employees Retirement System, a 313 percent increase on their retirement contribution; in the case of the Civil Service Retirement System there was a 35 percent increase in their retirement contribution. This is clearly a tax increase, Mr. Speaker.

Therefore, it seems to me, to be consistent with the legislation this body previously passed, it would require a three-fifths vote. I would reserve my point of order, but I would make that parliamentary inquiry at this time.

THE SPEAKER PRO TEMPORE: The Chair will take the gentleman's inquiry under advisement and rule on it at the appropriate time.

MR. MORAN: Mr. Speaker, I would ask, when would be the appropriate time for a ruling on this parliamentary inquiry?

THE SPEAKER PRO TEMPORE: Pending final passage of the legislation.

MR. MORAN: Mr. Speaker, when would I be able to get a division of the question on that issue?

THE SPEAKER PRO TEMPORE: The Chair will state that the rule relates to the vote on passage. The question becomes ripe for the House upon passage of the legislation. . . .

If the gentleman will suspend. At this point the Chair is merely not responding to an anticipatory parliamentary inquiry. The Chair will rule at the appropriate time.

MR. [KWEISI] MFUME [of Maryland]: When is the appropriate time, Mr. Speaker? When is the appropriate time?

THE SPEAKER PRO TEMPORE: The appropriate time is upon final passage.

Points of Order Which May Be Raised "at Any Time"

§ 5.28 A waiver of points of order against an appropriation in a legislative bill does not inure to the protection of an amendment containing an identical appropriation, as under Rule XXI clause 5, a point of order against any such bill or amendment can be raised "at any time."

1. Robert W. Goodlatte (Va.).

On Apr. 23, 1975,[2] the House had under consideration, in Committee of the Whole, the Vietnam Humanitarian and Evacuation Assistance Act (H.R. 6096). The bill was called up under a special rule reported from the Committee on Rules which waived points of order against appropriations in the language of the bill but did not explicitly protect amendments which contained appropriation language. In a case of "first impression," Chairman Otis G. Pike, of New York, sustained a point of order against an amendment, as amended. Proceedings were as follows:

THE CHAIRMAN: . . . Are there any other amendments?

If not, the question is on the substitute offered by the gentleman from Texas (Mr. Eckhardt) to the amendment in the nature of a substitute offered by the gentleman from Pennsylvania (Mr. Edgar).

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

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 272, noes 146, not voting 14, as follows: . . .

So the substitute amendment for the amendment in the nature of a substitute was agreed to. . . .

MR. EDGAR: Mr. Chairman, I make a point of order.

THE CHAIRMAN: The gentleman from Pennsylvania will state his point of order.

MR. EDGAR: Mr. Chairman, I make the point of order that my substitute is not in order at this time because of the Eckhardt substitute, and I reserve a point of order according to rule XXI of our rules.

THE CHAIRMAN: The gentleman from Pennsylvania will have to state his point of order at this time. The point of order, as the Chair understands, was against the Edgar amendment in the nature of a substitute, as amended by the Eckhardt substitute?

MR. EDGAR: That is correct.

I make that point of order for two reasons: In the original rule that brought the committee bill to the floor, all points of order against section 3 and section 6 were waived. Our rules say that no general appropriation bill or amendment thereto shall be received or considered if it contains a provision reappropriating unexpended balances of appropriations; except that this provision shall not apply to appropriations in continuation of appropriations for public works.

THE CHAIRMAN: Does the gentleman from Texas (Mr. Eckhardt) desire to be heard on the point of order?

MR. [BOB] ECKHARDT [of Texas]: I do, Mr. Chairman.

Mr. Chairman, I first wish to point out that the point of order comes too late, and I assert that the point of order may not be timely considered after the vote has occurred.

In addition to that, of course, this is not an appropriation bill. This is an authorization bill, as I understand it.

2. 121 CONG. REC. 11512, 11513, 94th Cong. 1st Sess.

MR. EDGAR: Mr. Chairman, if the gentleman will yield, I might say that we checked with our legal counsel when we originally drafted the bill, and we had in my substitute some of the things contained in the original House bill, and we were informed that those parts of the House bill were not in order in my substitute simply because we did not have a waiver.

MS. [BELLA S.] ABZUG [of New York]: Mr. Chairman, if the gentleman from Texas will yield, the point of order raised has been that an amendment which provides funds for certain purposes derived from funds previously appropriated is in violation of clause 5 of rule XXI.

THE CHAIRMAN: Did the gentlewoman say clause 5 of rule XXI?

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Chairman, a point of order.

I make a point of order against the point of order as coming too late.

THE CHAIRMAN: The Chair will state that the Chair desires to hear the point of order before the Chair is able to rule on the question of its timeliness.

The Chair will read clause 5 of rule XXI of the 94th Congress. The Chair will state that the Chair does not believe it is that which was cited by the gentleman from Pennsylvania (Mr. Edgar):

> No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. . . .

The Chair will state that the Chair believes that what the gentleman from Pennsylvania read was clause 4 of rule XXI in the old version.

Is the gentleman now referring to the same language which the Chair has just read?

MR. EDGAR: We are referring to the same language which the Chair has read.

THE CHAIRMAN: Does the gentleman from Texas (Mr. Eckhardt) desire to be heard further?

MR. ECKHARDT: Mr. Chairman, I only want to make it clear that I am raising the point of order that this point of order is made too late. I wish to reiterate the statement that I made before. The point of order is too late and, therefore, it is itself not in order.

THE CHAIRMAN: The Chair is ready to rule.

The Chair did not read the entirety of that section. The section ends

> A question of order on an appropriation in any such bill, joint resolution, or amendment thereto, may be raised at any time.

Accordingly, the rule under which this legislation was considered waived points of order against the original bill. It did not waive points of order against the amendment. The rule does provide that the point of order may be raised at any time (Deschler chapter 25, section 3.2).

The point of order is sustained. The Edgar amendment, as amended, is now ruled out of order.

The Clerk will read.

"At Any Time" Means While the Amendment Is Pending

§ 5.29 The provision in Rule XXI clause 5, that a point of

order against an amendment containing an appropriation to a legislative bill can be made "at any time" has been interpreted to require the point of order to be raised during the pendency of the amendment under the five-minute rule.

On Apr. 28, 1975,[3] where the Committee of the Whole had completed consideration of a measure, had adopted an amendment in the nature of a substitute, and reported the bill, as amended back to the House, the following events occurred:

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. Perkins to the amendment in the nature of a substitute offered by Mr. O'Hara: Page 7, line 17, strike out "the following new paragraph:" and insert in lieu thereof "the following: Beginning with the fiscal year ending June 30, 1976, the income guidelines prescribed by each State educational agency for reduced price lunches for schools in that State under the fifth sentence of this paragraph shall be 100 per centum above the applicable family size income levels in the income poverty guideline prescribed by the Secretary, and any child who is a member of a household, if that household has an annual income which falls between (A) the applicable family size income level of the income guideline for free lunches prescribed by the State educational agency in accordance with the third and fourth sentences of this paragraph and (B) 100 per centum above the applicable family size income levels in the income poverty guideline prescribed by the Secretary, shall be served a reduced price lunch at a price not to exceed 20 cents." . . .

THE CHAIRMAN:[4] The question is on the amendment offered by the gentleman from Kentucky (Mr. Perkins) to the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. O'Hara).

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

THE CHAIRMAN: The question is on the committee amendment in the nature of a substitute, as amended.

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

THE CHAIRMAN: Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. O'Neill) having assumed the chair, Mr. Evans, of Colorado, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 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, pursuant

3. 121 CONG. REC. 12043, 12044, 12048, 12049, 94th Cong. 1st Sess.

4. Frank E. Evans (Colo.).

to House Resolution 352, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

THE SPEAKER PRO TEMPORE:[5] Under the rule, the previous question is ordered.

There was no objection.

THE SPEAKER PRO TEMPORE: Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I make a point of order.

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

MR. BAUMAN: Mr. Speaker, I make a point of order against further consideration of the bill on the ground that the amendment offered by the gentleman from Kentucky (Mr. Perkins) on page 17, line 7, constitutes an appropriation in a legislative authorization bill in that it gives to the Secretary of Agriculture the duty of providing all necessary funds to carry out and maintain certain other programs to be used as sources of these funds, but leaves to his discretion the other programs that might possibly be used as sources for these funds and, therefore, constitutes an appropriation of moneys in a legislative authorization bill.

Therefore, Mr. Speaker, I make a point of order against the bill.

THE SPEAKER PRO TEMPORE: Does the gentleman from Kentucky (Mr. Perkins) desire to be heard on the point of order?

MR. PERKINS: Mr. Speaker, I desire to be heard on the point of order.

Mr. Speaker, the point of order made by the gentleman from Maryland (Mr. Bauman), comes too late, would be my first point. But, Mr. Speaker, on the merits of the bill, the point of order is not well taken because, on page 22 of the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. O'Hara) we find this language:

> (b) In order to carry out the program provided for under subsection (a) of this section during each of the fiscal years ending June 30, 1976, September 30, 1977, and September 30, 1978, there is authorized to be appropriated the sum of $250,000,000 for each such fiscal year.

So that the authorization is plain, and the only thing we do is to mandate some regulations to the effect if the money is appropriated that the Secretary may be required to spend the money.

MR. BAUMAN: Mr. Speaker, may I be heard further on the point of order?

THE SPEAKER PRO TEMPORE: The gentleman from Maryland will proceed.

MR. BAUMAN: Mr. Speaker, under the rules of the House, specifically, this point of order lies at any time, and it does not come too late. The rules of the House provide that it may be made at any time prior to the final consideration of the bill.

In this respect, Mr. Speaker, I refer the Chair to the question that was ruled on last week on either Wednesday or Thursday in regard to the Vietnamese war.

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

THE SPEAKER PRO TEMPORE: The Chair will state that the point of order raised by the gentleman from Maryland (Mr. Bauman) comes at a time when the amendment is not being considered, and cannot be directed against consideration of the bill itself. In view of the fact that the gentleman from Maryland did not raise his point of order at the time of the consideration of the amendment the Chair holds that the point of order is out of order.

MR. BAUMAN: But, Mr. Speaker, the rules of the House directly provide for this.

THE SPEAKER PRO TEMPORE: The Chair again will state that the point of order is not well taken.

The Chair has already ruled.

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: A parliamentary inquiry, Mr. Speaker.

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

MR. WAGGONNER: My parliamentary inquiry is this: Does the Chair rule this way in view of the decision of the Chair last week when the gentleman from New York (Mr. Pike) was the Chairman of the Committee of the Whole, and who ruled that a point of order could be made at any time?

THE SPEAKER PRO TEMPORE: The Chair will state it can be made at any time that the House is in the Committee of the Whole, and the amendment is pending. The House is not in the Committee of the Whole at this time, and the amendment has been agreed to.

MR. WAGGONNER: The words "at any time," then, may be interpreted in a different way today than they were last week?

THE SPEAKER PRO TEMPORE: No; the rulings are consistent.

MR. WAGGONNER: I thank the Speaker.

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

§ 6. Timeliness as Against Amendments

Generally, a point of order against an amendment is properly made immediately after the reading thereof by the Clerk.[6] At the Chair's discretion, the point of order may be raised even before the Clerk has finished the reading, when enough of the text has been read to show that it is out of order.[7] While there is a requirement that copies of an amendment be made available to Members, no point of order lies against the failure of the Clerk to comply with this instruction.[8] A point of order against an amendment is not entertained where some business has intervened between the reading of the amendment and the making of the point of order. Such disqualifying business may consist of the granting of a unanimous-consent request,[9] a res-

6. See §§ 6.1, 6.2, infra.
7. See § 6.10, infra.
8. See § 6.12, infra.
9. See § 6.17, infra.

ervation of objection against a unanimous-consent request,[10] except one to dispense with reading of the amendment,[11] the intervention of a parliamentary inquiry after a Member has been recognized for debate,[12] but not the intervention of another point of order if no debate has intervened.[13]

The making of a point of order against an amendment after the "mere recognition" for debate of the Member who has proposed the amendment has been permitted,[14] although there are rulings to the effect that points of order may be held too late if the Chair has already recognized the Member who offered the amendment to make his remarks on the amendment and some intervening business, such as a unanimous-consent request to revise and extend or to proceed for more time, has been conducted.[15] Where a Member begins speaking on his amendment, before being recognized, a point of order may still be timely.[16]

Where a Member has exhibited due diligence and has been overlooked by the Chair while he was on his feet seeking recognition at the appropriate time, then a point of order may be permitted notwithstanding its lateness.[17]

A Member seeking to raise a point of order must actively seek recognition, by standing and addressing the Chair.[18]

In General

§ 6.1 A point of order against an amendment is properly made immediately after the reading thereof.

On Mar. 29, 1966,[19] Chairman James G. O'Hara, of Michigan, ruled that it was not too late for Mr. Joseph L. Evins, of Tennessee, to make a point of order immediately following the Clerk's reading of an amendment, al-

10. See § 6.19, infra.

11. See §§ 6.5, 6.6, 6.18, infra.

12. See §§ 6.20, 6.21, infra.

13. See § 6.22, infra.

14. See §§ 6.23, 6.24, infra.

15. See §§ 6.27–6.29, infra.

16. See § 6.30, infra.

17. See §§ 6.38–6.42, infra.

18. See § 6.8, infra.

19. 112 CONG. REC. 7118, 89th Cong. 2d Sess. Under consideration was H.R. 14012, the second supplemental appropriations bill of fiscal 1966. A unanimous-consent request had been agreed to that debate on the pending paragraph and all amendments thereto be concluded in 15 minutes.

See also 86 CONG. REC. 2904, 2905, 76th Cong. 3d Sess., Mar. 14, 1940. Under consideration was H.R. 7079, dealing with the appointment of additional federal judges.

though the Chairman had been about to put the question.

MR. [ELFORD A.] CEDERBERG [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cederberg: On page 4, line 22, after "program" and before the period add, "*Provided further*, That no part of these funds shall be obligated until funds made available for the construction of family housing for the Army, Navy, Marine Corps, Air Force, and Defense agencies in Public Law 89–202, have been obligated."

MR. EVINS of Tennessee: Mr. Chairman, I make a point of order.

MR. [MELVIN R.] LAIRD [of Wisconsin]: Mr. Chairman, the point of order comes too late. The Chair was about to state the question.

THE CHAIRMAN: The question had not yet been put. The Chair was about to state the question, but the question had not yet been put. The gentleman will state his point of order.

MR. EVINS of Tennessee: Mr. Chairman, I make a point of order against the amendment on the ground that it relates to funds previously appropriated and which are not carried in this bill and interferes with executive discretion given to the President under existing law to do what he wishes with the funds. . . .

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

The amendment offered by the gentleman from Michigan places an unrelated contingency upon the use of funds provided in this paragraph, and as such is legislation in an appropriation bill, and not germane to the paragraph.

The point of order is sustained.

§ 6.2 A point of order may be made or reserved against an amendment only when the amendment has been offered and read by the Clerk.

On Mar. 10, 1971,[20] Chairman George W. Andrews, of Alabama, indicated that a Member could not logically reserve a point of order against an amendment which had not yet been offered.

THE CHAIRMAN: The Chair will state that the Clerk has not read the amendment as yet.

MR. [WRIGHT] PATMAN [of Texas]: Then I will reserve a point of order, Mr. Chairman.

MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. GROSS: My parliamentary inquiry is this, Mr. Chairman. How can a point of order be reserved to an amendment that has not been read?

THE CHAIRMAN: The Chair will state to the gentleman from Iowa that the gentleman is correct. The Chair has already stated that the Clerk has not read the amendment as yet.

However, the Chair will state to the gentleman from Texas that if the gentleman has a point of order to raise

20. 117 CONG. REC. 5857, 92d Cong. 1st Sess. Under consideration was H.R. 4246, extending laws relating to interest rates, mortgage credit controls, and cost-of-living stabilization.

concerning the amendment, the gentleman can raise his point of order at the proper time after the Clerk has read the amendment.

Chair's Observations on Germaneness of Amendment

§ 6.3 Although the Chair may indicate in response to a parliamentary inquiry that a pending amendment might not be germane to the proposition to which offered, he will not declare the amendment out of order unless a proper point of order is made.

On Apr. 4, 1979,[1] an amendment in the second degree was offered during consideration of the International Development Cooperation Act. Before the amendment was offered, its proponent asked if his contemplated amendment would be in order. Chairman Elliott H. Levitas, of Georgia, responded to parliamentary inquiries immediately before and then after the amendment was read.

MR. [WILLIAM H.] HARSHA [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harsha: Page 18, after line 25, insert the following:

ASSISTANCE FOR NIGERIA

SEC. 127. None of the funds authorized to be appropriated by the amendments made by this title may be made available for assistance for Nigeria unless the President determines, and reports to the Congress, that assistance for Nigeria is in the national interest of the United States.

(Mr. Harsha asked and was given permission to revise and extend his remarks.) . . .

MR. [JOHN] BUCHANAN [of Alabama]: If the gentleman added the other countries, that would improve the amendment; but in my judgment, it would still constitute a mistake and it is unlikely that I would support it.

MR. [JOSEPH G.] MINISH [of New Jersey]: Mr. Chairman, will the gentleman yield?

MR. BUCHANAN: Certainly, I would be glad to.

MR. MINISH: Mr. Chairman, I will satisfy the gentleman's wishes, because I have an amendment that deals with all the OPEC countries.

PARLIAMENTARY INQUIRY

MR. MINISH: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. MINISH: Mr. Chairman, would my amendment be in order as a substitute for the Harsha amendment?

THE CHAIRMAN: If the gentleman desires to offer his amendment, the Chair will be better able to respond to the gentleman's inquiry when the amendment is offered.

AMENDMENT OFFERED BY MR. MINISH AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. HARSHA

MR. MINISH: Mr. Chairman, I offer an amendment as a substitute for the amendment.

1. 125 CONG. REC. 7242, 7245, 96th Cong. 1st Sess.

The Clerk read as follows:

Amendment offered by Mr. Minish as a substitute for the amendment offered by Mr. Harsha: Page 18, immediately after line 25, insert the following new section:

PROHIBITION ON ASSISTANCE TO MEMBERS OF THE ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES

SEC. 127. Funds authorized to be appropriated by this title may not be used to provide assistance to any country which is a member of the Organization of Petroleum Exporting Countries.

THE CHAIRMAN: The Chair will respond to the gentleman's parliamentary inquiry.

The subject matter of the gentleman's amendment is broader than the specific subject matter of the amendment of the gentleman from Ohio and, therefore, technically might not be germane. However, unless a point of order is made against it, the Chair will not rule on that question.

MR. HARSHA: Mr. Chairman, reserving a point of order, and I shall not insist upon my point of order, does the gentleman's amendment strike out the amendment that I offered?

THE CHAIRMAN: The amendment of the gentleman from New Jersey is a substitute for the amendment of the gentleman from Ohio and applies to any country which is a member of the Organization of Petroleum Exporting Countries.

MR. HARSHA: In the event the gentleman's amendment were adopted it would take the place of my amendment and Nigeria would not be in it, if Nigeria is not an OPEC country. Is that not correct?

THE CHAIRMAN: The Chair is not in a position to interpret the effect of the amendment.

§ 6.4 While the Chair will ordinarily not render anticipatory rulings on whether an amendment might be in order, he has responded to a parliamentary inquiry about the germaneness of an amendment printed in the Record and whether it could be in order as a substitute for a pending amendment.

Where a perfecting amendment relating to the budget for one fiscal year was pending to a concurrent resolution on the budget, the Chair indicated that a noticed amendment in the nature of a substitute, encompassing other fiscal years, would not be germane at that point in the proceedings. The pertinent excerpts from the Record of May 9, 1979,[2] are carried below.

MRS. [MARJORIE S.] HOLT [of Maryland]: Mr. Chairman, I offer a perfecting amendment.

The Clerk read as follows:

Perfecting amendment offered by Mrs. Holt: Strike out sections 1 through 5 and insert in lieu thereof the following:

That the Congress hereby determines and declares, pursuant to sec-

2. 125 CONG. REC. 10485, 10486, 96th Cong. 1st Sess.

tion 301(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on October 1, 1979— . . .

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

THE CHAIRMAN:[3] The gentleman from Maryland (Mr. Mitchell) will state his parliamentary inquiry.

MR. MITCHELL of Maryland: Mr. Chairman, this gentleman had planned to offer his amendment as a substitute for the Holt-Regula amendment.

It is my understanding that when the gentlewoman spoke to her amendment, the gentlewoman called it a perfecting amendment. I do not know whether that embraces fiscal year 1979 and 1980. My amendment does.

This inquiry is whether mine can be offered as a substitute to the Holt-Regula amendment.

THE CHAIRMAN: The Chair will advise the gentleman from Maryland (Mr. Mitchell) that since the gentleman's amendment which is at the desk would go to the fiscal years 1979 and 1980 and is in the nature of a substitute for the entire resolution, it would not be germane or otherwise in order, since the amendment offered by the gentlewoman from Maryland (Mrs. Holt) is perfecting in nature and only goes to the fiscal year 1980.

Timing of Point of Order Against Offered Amendment

§ 6.5 A point of order against an amendment must be made or reserved immediately after the amendment is read, and where unanimous consent is granted that the amendment be considered as read, the point of order must be raised following the disposition of that request.

On Mar. 29, 1972,[4] Chairman Neal Smith, of Iowa, informed Mr. H. John Heinz, III, of Pennsylvania, that a point of order could be reserved after the disposition of a unanimous-consent request following the reading of the amendment by the Clerk:

MR. HEINZ (during the reading): Mr. Chairman, I ask unanimous consent to dispense with the reading of the amendment and ask that it be printed at this point in the Record.

MR. [WILLIAM H.] HARSHA [of Ohio]: Mr. Chairman, reserving the right to object, I want to make a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HARSHA: Mr. Chairman, I intend to make a point of order against this amendment and, if the unanimous-consent request is granted, do I then waive my right to make that point of order at the appropriate time?

THE CHAIRMAN: The gentleman will not waive his right if he makes it immediately after the unanimous consent is granted.

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3. William H. Natcher (Ky.).

4. 118 CONG. REC. 10749, 92d Cong. 2d Sess. Under consideration was H.R. 11896, to amend the Federal Water Pollution Control Act.

MR. HARSHA: I reserve a point of order against the amendment, and if the waiver of the reading of the amendment will not waive my right to a point of order——

THE CHAIRMAN: The gentleman can make his point of order immediately following the granting of the unanimous-consent request.

§ 6.6 A point of order may be made or reserved against an amendment after it is "considered as read" but before the proponent of the amendment has been recognized to debate it.

On Mar. 9, 1978,[5] during the reading of an amendment which he had offered, Mr. James M. Jeffords, of Vermont, asked unanimous consent that it be considered as read. The following inquiry follows:

AMENDMENTS OFFERED BY MR. JEFFORDS AS A SUBSTITUTE FOR THE AMENDMENTS OFFERED BY MR. SARASIN

MR. JEFFORDS: Mr. Chairman, I offer amendments as a substitute for the amendments offered by the gentleman from Connecticut (Mr. Sarasin).

The Clerk read as follows:

Amendments offered by Mr. Jeffords as a substitute for the amendments offered by Mr. Sarasin: Page 64, line 16, strike out "and productivity" and insert in lieu thereof "productivity, and reasonable price stability".

Page 64, line 22, before "and" insert "reasonable price stability, which shall be set at a rate which would, within five years, bring the annual rate of inflation, as measured by the Consumer Price Index as determined by the Bureau of Labor Statistics in the Department of Labor, to not more than 3 percent".

Page 69, after the period in line 6 add the following new sentence: "Beginning with the third Economic Report submitted after the date of the enactment of the Full Employment and Balanced Growth Act of 1978, the President shall set forth in each Economic Report the programs and policies being used to reduce inflation and the degree of progress made.".

Strike out line 13 on page 73 and all that follows down through line 5 on page 75, and insert in lieu thereof the following:

"SEC. 9. (a) The Congress determines that reasonable stability as described in section 3(a)(3) and sections 4(a) and 4(b)(2) will be achieved under the procedures and requirements of section 5(b). . . .

MR. JEFFORDS (during the reading): Mr. Chairman, I ask unanimous consent that the amendments offered as a substitute be considered as read and printed in the Record.

THE CHAIRMAN:[6] Is there objection to the request of the gentleman from Vermont?

MR. [AUGUSTUS F.] HAWKINS [of California]: Mr. Chairman, I reserve a point of order on the amendments.

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

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

5. 124 CONG. REC. 6285, 6286, 95th Cong. 2d Sess.

6. William H. Natcher (Ky.).

THE CHAIRMAN: The gentleman will state it.

MR. BAUMAN: Mr. Chairman, as the gentleman from Vermont has already made the request that the amendment be considered as read and that request was granted, therefore I think the point of order comes too late.

THE CHAIRMAN: The Chair would advise the gentleman from Maryland that the point of order can still be made or reserved before the gentleman proceeds with his remarks. Therefore, the reservation is in order.

§ 6.7 A point of order may be made against an amendment before debate on the amendment begins.

On Mar. 31, 1937, after the Clerk's reading of an amendment, but prior to debate on it, a Member sought to make a point of order, which was challenged as coming too late.[7]

The Clerk read as follows:

Amendment by Mr. [Ross] Collins [of Mississippi]: Page 19, after line 19, insert a new paragraph, as follows:

"For additional services in the office of each Member and Delegate and the Resident Commissioner from Puerto Rico, in the discharge of his official and representative duties, at a rate not to exceed $1,800 per annum, as to each such office, $783,000."

MR. COLLINS: Mr. Chairman, I ask recognition.

THE CHAIRMAN:[8] The gentleman from Mississippi.

MR. [LINDSAY C.] WARREN [of North Carolina]: Mr. Chairman——

THE CHAIRMAN: For what purpose does the gentleman from North Carolina rise?

MR. WARREN: I rise to make the point of order that [the appropriation] is not authorized by law.

MR. FRED M. VINSON [of Kentucky]: The point of order comes too late, Mr. Chairman. . . .

THE CHAIRMAN: The gentleman had not begun his remarks. . . .

The Chair does not believe that the point of order comes too late. The gentleman from North Carolina was on his feet seeking recognition at the time the gentleman rose.

A Point of Order Against an Amendment Must Be Timely

§ 6.8 A point of order against an amendment comes too late after the proponent has made his introductory comments in explanation of the amendment.

A point of order against an amendment must be made or reserved as soon as the amendment is read or its reading is dispensed with. When the Chamber is crowded and noisy, due diligence requires the Member wishing to make the point of order to address the Chair, and merely being on

7. 81 CONG. REC. 2980, 2981, 75th Cong. 1st Sess. Under consideration was H.R. 5966, the legislative appropriation bill for 1938.

8. Scott W. Lucas (Ill.).

his feet does not protect his right. The events of Oct. 1, 1985,[9] during the reading of the Food Security Act of 1985, show how a Member may lose his opportunity to raise a point of order.

MR. [BARNEY] FRANK [of Massachusetts]: Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Frank as a substitute for the amendment offered by Mr. Dorgan of North Dakota: Page 70, strike out line 19 and all that follows thereafter through page 71, line 19, and insert in lieu thereof the following:

"(C) The established price for wheat shall be $4.38 per bushel for the 1986 crop; $4.16 per bushel for the 1987 crop; $3.96 per bushel for the 1988 crop; $3.76 per bushel for the 1989 crop; and $3.57 per bushel for the 1990 crop, respectively.

MR. FRANK (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN:[10] Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

MR. FRANK: Mr. Chairman, I realize that this bill, in its short stay on the floor, has apparently already outlasted the membership's attention span, but this is a very important amendment which I choose to offer anyway.

This is an amendment which embodies the position of the Reagan administration on this particular bill.

MR. ROBERT F. SMITH [of Oregon]: Mr. Chairman, I reserve a point of order on this amendment.

THE CHAIRMAN: The Chair would point out to the gentleman from Oregon that it is too late to reserve a point of order. The point of order has to be reserved before the gentleman from Massachusetts begins his remarks.

MR. ROBERT F. SMITH: If I may, Mr. Chairman, it was very difficult to hear. I did not even hear the amendment proposed and I was timely in my reservation of my point of order, Mr. Chairman. I was attempting to get order, as the Chair was. I suggest that I did not even hear the amendment offered.

THE CHAIRMAN: The Chair asked if there was objection to the waiving of the reading of the amendment and the Chair did not hear an objection.

MR. ROBERT F. SMITH: Mr. Chairman, with due respect, I did not even hear the amendment offered, and it has never been read. I was standing here before you, sir.

THE CHAIRMAN: The Chair would note that there were literally dozens of people standing. The Chair was not addressed by the gentleman from Oregon and there was a waiving of the reading of the amendment.

Chair's Responsibility Where Amendment Improperly Read

§ 6.9 The Chairman of the Committee of the Whole may direct the re-reporting of an amendment where it was not read in its entirety when offered.

9. 131 CONG. REC. 25439, 25440, 99th Cong. 1st Sess.

10. David E. Bonior (Mich.).

When an improper reporting of an amendment by the Clerk is called to the Chair's attention, he may direct it to be reported again so that Members have a proper reference for deciding whether to raise a point of order. An amendment must be read in full unless the further reading is dispensed with by special rule or unanimous consent. When part of the amendment was omitted by the Clerk, the Chair correctly directed that it be read again, in full. The proceedings of June 16, 1983,[11] are illustrative.

MR. [DAN] BURTON [of Indiana]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Burton: On page 12, between lines 17 and 18, insert the following new paragraph:
>
> (14) Commodities provided under this Act shall be distributed by means of a system developed by the Secretary of Agriculture and State agencies.

MR. BURTON: Mr. Chairman, I think we all want to help the truly needy, but we also want to make sure we do not at the same time hurt the private sector. . . .

MR. [BILL] EMERSON [of Missouri]: Mr. Chairman, I move to strike the last word.

Mr. Chairman, the amendment as read by the Clerk does not conform with the amendment that was delivered to me. I wonder if the Clerk might read the amendment again so that we know what we are talking about.

THE CHAIRMAN:[12] Without objection, the Clerk will re-report the amendment.

There was no objection.

The Clerk read as follows:

> Amendment offered by Mr. Burton: On page 12, between lines 17 and 18, insert the following new paragraph.
>
> (14) Commodities provided under this Act shall be distributed by means of a system developed by the Secretary of Agriculture and State agencies.
>
> Eligible organizations must acknowledge receipt of such commodities. Eligible individual recipients shall be provided such commodities by means of commodity coupons distributed under the food stamp program pursuant to rules and regulations issued by the Secretary of Agriculture as authorized by the Food Stamp Act of 1977, as amended.

MR. EMERSON: I thank the Chair.

MR. [E (KIKA)] DE LA GARZA [of Texas]: Mr. Chairman, will the gentleman yield to me?

MR. EMERSON: I yield to the chairman of the committee.

MR. DE LA GARZA: Mr. Chairman, I appreciate the fact the amendment has been read, but there is some confusion here. Is this a re-reporting of the amendment or just a re-reading of the amendment?

THE CHAIRMAN: The Chair will state that it is a re-reporting. The Clerk did not report the entire amendment.

MR. DE LA GARZA: Mr. Chairman, I make that inquiry because, as the gen-

11. 129 CONG. REC. 16031, 16032, 98th Cong. 1st Sess.

12. Charles E. Bennett (Fla.).

tleman from Texas recollects, there was no unanimous consent to dispense with further reading. Therefore, the amendment was not read in its entirety, and I would have raised a point of order at that time had the amendment been correctly read.

Mr. Chairman, I will inquire, is it proper at this point, if the amendment has been re-reported, to raise a point of order?

Mr. Chairman, since there was some confusion, I felt obligated to bring the matter before the House, but I will state now that I would not raise a point of order at this time, and we may proceed on the amendment.

Mr. Chairman, I thank the gentleman for yielding to me.

Discretion of Chair

§ 6.10 While a point of order may be pressed in the Chair's discretion against an amendment when enough of the text has been read to show that it is out of order, the Chairman may decline to rule on the point of order until the entire amendment has been read.

On Dec. 14, 1973,[13] a Member sought to press his point of order during the reading of an amendment with the following result:

The Clerk continued to read the amendment.

MR. [BOB] ECKHARDT [of Texas] (during the reading): Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[14] The gentleman will state his parliamentary inquiry.

MR. ECKHARDT: Mr. Chairman, would it be in order for me to press my point of order at this time?

THE CHAIRMAN: Did the Chair understand the gentleman to say, to press his point of order?

MR. ECKHARDT: Yes, Mr. Chairman.

Would it be in order for me to urge my point of order at this time?

THE CHAIRMAN: The Chair feels that the reading of the amendment should be concluded.

The Chair, on His Own Initiative, May Rule Out an Amendment Which Is Not in Proper Form

§ 6.11 The Chair may examine an offered amendment to determine its propriety and may rule it out of order even where no point of order is raised.

On May 8, 1980,[15] when the Committee of the Whole resumed consideration of the Food Stamp Amendments of 1980, the Chair announced that amendments to section 1 were in order. Mr. Robert S. Walker, of Pennsylvania, offered what he termed "an amend-

13. 119 CONG. REC. 41717, 93d Cong. 1st Sess. Under consideration was H.R. 11450, the Energy Emergency Act.

14. Richard Bolling (Mo.).

15. 126 CONG. REC. 10421, 96th Cong. 2d Sess.

ment in the nature of a substitute." Mr. Walker asked that reading be dispensed with and was recognized to begin his explanation. The Chair interrupted his presentation to inform him that the amendment offered was not "a proper amendment in the nature of a substitute."

THE CHAIRMAN:[16] When the Committee of the Whole rose on Wednesday, May 7, section 1 had been considered as having been read and open to amendment at any point. It shall be in order to consider an amendment to title I of said substitute printed in the *Congressional Record* on April 30, 1980, and said amendment shall not be subject to amendment except for the offering of pro forma amendments for the purpose of debate. No further amendments are in order which further change or affect the Internal Revenue Code.

Are there any amendments to section 1?

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

MR. WALKER: Mr. Chairman, I offer an amendment in the nature of a substitute. . . .

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Walker: Page 39, after line 22 insert the following new title:

MR. WALKER (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN: Is there objection to the request of the gentleman from Pennsylvania?

There was no objection. . . .

THE CHAIRMAN: The gentleman will suspend for just a moment. The Chair is advised by the Parliamentarian that the gentleman has not offered a proper amendment in the nature of a substitute here. An amendment in the nature of a substitute would strike everything after the enacting clause. This is an amendment adding a new title III.

MR. WALKER: Mr. Chairman, it was my understanding that the amendment was prepared in the form of a substitute.

THE CHAIRMAN: The amendment at the desk is not prepared in that form, the Chair is advised. When the committee reaches title II, the first part of the gentleman's amendment would be in order. The Chair will rule that the amendment is not pending at this time.

MR. WALKER: I thank the Chairman, and I am sorry for that confusion.

THE CHAIRMAN: Are there any amendments to section 1?

MR. [STEVEN D.] SYMMS [of Idaho]: Mr. Chairman, I offer an amendment.

THE CHAIRMAN: The gentleman from Idaho has an amendment to section 1. This is the short title of the bill.

MR. SYMMS: It is on page 24, Mr. Chairman.

THE CHAIRMAN: The Chair doubts that that is an amendment to section 1. The amendment of the gentleman from Idaho (Mr. Symms) is not to section 1, but to title I.

The Clerk will read title I.

The Clerk read as follows:

16. Paul Simon (Ill.).

TITLE I—REDUCTION IN FOOD STAMP ERROR AND FRAUD AND REVISION OF DEDUCTIONS

Points of Order Against Amendments Because Copies Unavailable

§ 6.12 While the rules impose a duty on the Clerk to transmit copies of an amendment to the majority and minority, a point of order does not lie based on the Clerk's inability to comply with this requirement.

Rule XXIII clause 5(a), specifies that "Upon the offering of any amendment by a Member, when the House is meeting in the Committee of the Whole, the Clerk shall promptly transmit to the majority committee table five copies of the amendment and five copies to the minority committee table. Further, the Clerk shall deliver at least one copy of the amendment to the majority cloak room and at least one copy to the minority cloak room."[17] This rule was added as part of the Legislative Reorganization Act of 1970,[18] but from its inception it has been interpreted as an assignment of responsibility to the Clerk but not as a provision which inhibits the consideration of an amendment. The proceedings of Mar. 25, 1976,[19] are illustrative.

> MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Bauman: On page 6, line 3 insert the following new section, and renumber the succeeding sections:
>
> "SEC. 9. Notwithstanding any other provision of law the Director of the National Science Foundation shall keep all Members of Congress including the members of the Committee on Science and Technology of the House of Representatives and the Committee on Labor and Public Welfare of the Senate fully and currently informed with respect to all the activities of the National Science Foundation. Upon the receipt of a written request from any Member of Congress for information regarding the activities, programs, grants, or contracts of the National Science Foundation, the Director shall furnish such information within 15 days. . . .
>
> MR. [JAMES W.] SYMINGTON [of Missouri]: Mr. Chairman, a point of order. We do not have five copies of the amendment as far as I can tell.
>
> THE CHAIRMAN:[20] That is not a point of order, although the Chair hopes the copies will be provided.

17. Rule XXIII clause 5(a), *House Rules and Manual* § 870 (1997).

18. The concept was included in Sec. 124, 84 Stat. 1140 and was included in Rule XXIII in the 92d Cong., H. Res. 5, Jan. 22, 1971, p. 144.

19. 122 CONG. REC. 7997, 94th Cong. 2d Sess.

20. George E. Danielson (Calif.).

No Point of Order Where Copies of Offered Amendment Are Not Available

§ 6.13 No point of order lies against an amendment on the ground that copies thereof have not been made available to Members by the Clerk.

Rule XXIII clause 5, places upon the Clerk the responsibility of making copies of an offered amendment available to the majority and minority tables and to the cloakrooms. This portion of clause 5 was adopted as part of the Legislative Reorganization Act of 1970, and from its inception, it has been held that noncompliance does not inhibit the consideration of an amendment. The Chair has consistently held that failure or inability of the Clerk to comply does not state a point of order. For an example of such a ruling, see the proceedings of Sept. 15, 1977, during consideration of the Fair Labor Standards Act of 1977 (H.R. 3744) carried in § 1.35, supra.

Timeliness of Ruling on Pending Points of Order

§ 6.14 A pending point of order against certain language must be decided prior to recognition of another Member to offer an amendment to the challenged language.

On May 18, 1966,[1] Chairman Eugene J. Keogh, of New York, informed Mr. Wright Patman, of Texas, that his substitute amendment was premature until the pending point of order against a pending committee amendment was disposed of.

> MR. [CHARLES R.] JONAS [of North Carolina]: Mr. Chairman, a point of order.
>
> THE CHAIRMAN: The gentleman from North Carolina will state the point of order.
>
> MR. JONAS: Mr. Chairman, I make a point of order. . . .
>
> THE CHAIRMAN: Does the gentleman from Texas desire to be heard on the point of order?
>
> MR. PATMAN: Yes. I have a substitute amendment, and I hope it will be acceptable.
>
> THE CHAIRMAN: The Chair will state to the gentleman from Texas that we are under the obligation of disposing of the point of order.

§ 6.15 Points of order raised against a proposition must be disposed of before amendments to the challenged language are in order.

On May 14, 1937,[2] a Member unsuccessfully attempted to re-

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1. 112 CONG. REC. 10894, 89th Cong. 2d Sess. Under consideration was H.R. 14544, the Participation Sales Act of 1966.
2. 81 CONG. REC. 4596, 4597, 75th Cong. 1st Sess. Under consideration

serve a point of order and offer a substitute amendment at the same time.

MR. [GERALD J.] BOILEAU [of Wisconsin]: Mr. Chairman, I reserve the point of order against the proviso and move to strike out the last word, to ask the gentleman from Oklahoma the reason for the language in lines 17 and 18. . . .

I do not withdraw my reservation of the point of order, Mr. Chairman, but I have an amendment that I desire to offer.

THE CHAIRMAN:[3] The point of order will have to be disposed of before an amendment is in order.

Timing of Point of Order Against Amendment

§ 6.16 A point of order against an amendment must be raised immediately after the reading of the amendment and before there is any debate on the amendment.

Where a substitute amendment was offered in Committee of the Whole to a bill under consideration, a point of order was raised after the proponent of the amendment had begun the explanation of this amendment. The proceedings of Mar. 17, 1975,[4] were as indicated:

MR. [JOHN F.] SEIBERLING [of Ohio]: Mr. Chairman, I offer an amendment as a substitute for the amendment offered by the gentleman from North Dakota (Mr. Andrews).

The Clerk read as follows:

Amendment offered by Mr. Seiberling as a substitute for the amendment offered by Mr. Andrews of North Dakota: page 194, line 9, adopt the sentence starting on line 9, but change "35" to "50".

MR. SEIBERLING: Mr. Chairman, the effect of my substitute is simply to adopt the language presently appearing on line 9 in the sentence beginning in that line on page 194 with the change offered by the gentleman from North Dakota but with an additional change.

I would simply change the rate that appears on line 11 from 35 cents per ton to 50 cents per ton.

POINT OF ORDER

MR. [SAM] STEIGER of Arizona: Mr. Chairman, I raise a point of order.

THE CHAIRMAN:[5] The gentleman will state it.

MR. STEIGER of Arizona: Mr. Chairman, I am afraid that the gentleman from Ohio has made a parliamentary error. His intention is not compatible with the substitution of his amendment for that of the gentleman from North Dakota.

THE CHAIRMAN: The gentleman's point of order comes too late.

MR. [MARK] ANDREWS of North Dakota: A parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

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was H.R. 6958, the Interior Department appropriation for 1938.

3. Jere Cooper (Tenn.).

4. 121 CONG. REC. 6798, 6799, 94th Cong. 1st Sess.

5. Neal Smith (Iowa).

MR. ANDREWS of North Dakota: My amendment is on page 194, line 15.

I would point out that the amendment of the gentleman from Ohio would probably be better standing on its own, since it affects strip mining all over the country and my amendment affects strip mining only in two or three States.

THE CHAIRMAN: The Chair will state that the amendment of the gentleman from North Dakota beginning on page 194, line 15, while it might have been subject to a point of order earlier, it is not subject to a point of order at the present time.

Intervention of Unanimous-consent Request

§ 6.17 A point of order against an amendment is not entertained where business (the granting of a unanimous-consent request) has intervened between the reading of the amendment and the making of the point of order; but if, by unanimous consent, the intervening business is vacated, the Chairman may then entertain the point of order.

On June 24, 1969,[6] Chairman John S. Monagan, of Connecticut, suggested to Mr. William F. Ryan, of New York, that his point of order, which was untimely because of intervening business between the point of order and reading of the amendment, could be perfected by seeking unanimous consent to have the intervening business vacated.

[Mr. William Steiger, of Wisconsin, after his amendment was read, asked and was given permission to revise and extend his remarks.]

MR. RYAN: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN: The Chair will state that the gentleman's point of order comes a little late.

MR. RYAN: Mr. Chairman, I was on my feet.

THE CHAIRMAN: The Chair will state that the gentleman from Wisconsin (Mr. Steiger) had obtained a unanimous-consent request prior to the gentleman from New York being observed by the Chair.

The Chair will ask the gentleman if the gentleman was on his feet prior to the unanimous-consent request made by the gentleman from Wisconsin?

MR. RYAN: The gentleman was on his feet at the point the amendment was read.

THE CHAIRMAN: The gentleman from New York was on his feet during the reading of the amendment?

MR. RYAN: That is correct.

THE CHAIRMAN: The Chair will state that the gentleman was simply not observed by the Chair prior to the granting of the unanimous-consent request of the gentleman from Wisconsin. Unless the gentleman from Wisconsin de-

6. 115 CONG. REC. 17081, 91st Cong. 1st Sess. Under consideration was H.R. 12307, the independent offices and housing and urban development appropriation bill for fiscal 1970.

sires to make a unanimous-consent request that his previous unanimous-consent request be vacated, the Chair will state that there is no way the gentleman from New York can be heard on his point of order.

MR. STEIGER of Wisconsin: Mr. Chairman, I do not wish to make such a request.

Timeliness of Point of Order; a Mere Request for Permission To Revise and Extend Not "Intervening Business"

§ 6.18 The mere making of a unanimous-consent request to dispense with further reading of an amendment and that the proponent be permitted to revise and extend is not "intervening business" or "debate" which would render a point of order against the amendment as untimely.

During the reading of an amendment to the American Technology Preeminence Act of 1991, Mr. Robert S. Walker, of Pennsylvania, offered an amendment and during the reading by the Clerk made a request. The proceedings of July 16, 1991,[7] are shown herein.

TITLE IV—NATIONAL COMMISSION ON REDUCING CAPITAL COSTS FOR EMERGING TECHNOLOGY

SEC. 401. NATIONAL COMMISSION ON REDUCING CAPITAL COSTS FOR EMERGING TECHNOLOGY.

(a) ESTABLISHMENT AND PURPOSE.—There is established a National Commission on Reducing Capital Costs for Emerging Technology (hereafter in this section referred to as the "Commission"), for the purpose of developing recommendations to increase the competitiveness of United States industry by encouraging investments in research, the development of new process and product technologies, and the production of those technologies. . . .

AMENDMENT OFFERED BY MR. WALKER

MR. WALKER: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Walker: Page 40, after line 7, insert the following new title:

TITLE V—COMPREHENSIVE NATIONAL POLICY FOR COMMERCIALIZATION OF EMERGING TECHNOLOGIES

SEC. 501. COMPREHENSIVE NATIONAL POLICY FOR COMMERCIALIZATION OF EMERGING TECHNOLOGIES.

It is the sense of the Congress that in order to improve the competitiveness of United States industry—

(1) the research and experimentation tax credit should be raised to 25 percent and made permanent;

(2) the capital gains tax should be reduced to levels comparable to that of our major trading partners; and

(3) the National Cooperative Research Act of 1984 should be extended to include joint production ventures.

Redesignate existing titles V and VI as titles VI and VII, and redesig-

7. 137 CONG. REC. 18391, 18392, 102d Cong. 1st Sess.

nate the sections in such titles accordingly.

MR. WALKER (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record, and I ask unanimous consent to revise and extend my remarks.

THE CHAIRMAN:[8] Is there objection to the request of the gentleman from Pennsylvania?

POINT OF ORDER

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Chairman, I raise the point of order against the amendment.

THE CHAIRMAN: The gentleman will state his point of order.

MR. ROSTENKOWSKI: Mr. Chairman, I raise the point of order that the amendment is not germane to the bill under consideration.

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman will state it.

MR. WALKER: The point of order comes too late.

THE CHAIRMAN: Does the gentleman reserve his point of order? Does the gentleman wish to make the point of order?

MR. ROSTENKOWSKI: Mr. Chairman, I intended to make a point of order against the gentleman's amendment.

MR. WALKER: Mr. Chairman, the point of order comes too late. Business has taken place in the House that would preclude the point of order from being made.

MR. ROSTENKOWSKI: Mr. Chairman, I was seeking recognition. I was on my feet. I reserved the point of order.

THE CHAIRMAN: The Chair will state to the gentleman from Pennsylvania the point of order is timely. Debate has not yet begun on the amendment.

MR. WALKER: Mr. Chairman, I asked unanimous consent to revise and extend my remarks, which means that debate had in fact begun and the unanimous consent was agreed to, which means that the point of order does not come timely.

THE CHAIRMAN: No order of the Committee has been entered on that manner. The point of order has been reserved.

The Chair recognizes the gentleman from Illinois [Mr. Rostenkowski] on the point of order.

§ 6.19 After an amendment has been read by the Clerk and a reservation of objection has been made against a unanimous-consent request for an additional five minutes' debate, it is too late to raise a point of order against the amendment.

On Feb. 1, 1938,[9] a point of order against an amendment was ruled untimely by Chairman William J. Driver, of Arkansas.

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Chairman, I offer an amendment.

8. Pat Williams (Mont.).

9. 83 CONG. REC. 1364, 75th Cong. 3d Sess. Under consideration was H.R. 9181, the District of Columbia appropriation for 1939.

The Clerk read as follows:

Amendment offered by Mr. Dirksen: On page 57, in line 19, strike out "$900,000" and insert in lieu thereof "$1,900,000."

MR. DIRKSEN: Mr. Chairman, I ask unanimous consent to proceed for an additional 5 minutes.

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, reserving the right to object——

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that this increase is not authorized by law.

THE CHAIRMAN: The point of order of the gentleman from New York comes too late. A request has already been presented, and there has been a reservation of objection to it.

Intervention of Parliamentary Inquiry

§ 6.20 A point of order against an amendment is properly raised immediately after the reading thereof and comes too late after the Chairman has entertained and responded to a parliamentary inquiry from another Member.

On Nov. 5, 1969,[10] immediately after the reading of a substitute amendment, Chairman Chet Holifield, of California, responded to a parliamentary inquiry.

The Clerk read as follows:

Amendment offered by Mr. Bennett as a substitute for the amendment offered by Mr. Bevill: strike lines 12 through 23 and insert:

"d. The Bank Holding Company Act of 1956 is amended by adding at the end of section 2 the following new subsection:

"'Sec. 4. The provisions of this law shall not apply to one-bank holding companies with bank-assets of less than $30,000,000 and non-bank assets of less than $10,000,000.'"

PARLIAMENTARY INQUIRY

MR. [BENJAMIN B.] BLACKBURN [of Georgia]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. BLACKBURN: Mr. Chairman, do I understand we are preparing to vote, and if so, what will we be voting upon? I understand there is another amendment now. . . .

MR. [GARY E.] BROWN of Michigan: Mr. Chairman, I raise a point of order on the amendment offered by the gentleman from Florida (Mr. Bennett) in that it is not germane to the bill.

THE CHAIRMAN: Does the gentleman wish to be heard on his point of order?

MR. BROWN of Michigan: Yes, Mr. Chairman; I would like to be heard on my point of order.]

MR. [CHARLES E.] BENNETT: Mr. Chairman, I make a point of order that I think the point of order . . . is too late, but I think the amendment is germane, anyway.

THE CHAIRMAN: The Chair will state that the point of order raised by the gentleman from Michigan is too late. The gentleman from Georgia had arisen for a parliamentary inquiry.

MR. BROWN of Michigan: Mr. Chairman, if I could be heard on that, as I

10. 115 CONG. REC. 33133, 91st Cong. 1st Sess. Under consideration was H.R. 6778, amending the One Bank Holding Company Act of 1956.

recall the activity of the House at that time the amendment was offered, it was read, the parliamentary inquiry was made as to what was before the Committee, the Chair explained what was before the Committee at that time, and at that time I made my point of order.

THE CHAIRMAN: The Chair will state that the gentleman's point of order comes too late because we have had a parliamentary inquiry in the meantime, and the Chair has responded.

§ 6.21 A point of order must be made immediately after the reading of an amendment and comes too late if a parliamentary inquiry intervenes.

On Dec. 11, 1947,[11] Chairman Earl C. Michener, of Michigan, answered an inquiry suggesting the importance of making a point of order immediately after the reading of an amendment.

MR. [JAMES G.] FULTON [of Pennsylvania]: Mr. Chairman, may I have a specific ruling as to whether a parliamentary inquiry made before a point of order makes a point of order out of order?

THE CHAIRMAN: A point of order must be made immediately after the reading of the amendment. No business must intervene between the reading of an amendment and the raising of the point of order. A point of order comes too late if a parliamentary inquiry intervenes.

Intervention of Another Point of Order

§ 6.22 After a point of order against an amendment has been overruled, the Chairman may entertain a further point of order if the Member offering the amendment has not yet begun debate thereon.

On Nov. 17, 1971,[12] Chairman Daniel D. Rostenkowski, of Illinois, entertained a further point of order after overruling the first, as nothing else had intervened.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, am I recognized?

THE CHAIRMAN: The gentleman from Illinois is recognized for 5 minutes.

MR. [JOHN J.] RHODES [of Arizona]: Mr. Chairman, a further point of order.

MR. YATES: Mr. Chairman, I understand the point of order has been overruled.

THE CHAIRMAN: The Chair has overruled the point of order of the gentleman from Texas, but the gentleman from Illinois has not yet begun his remarks.

MR. RHODES: Mr. Chairman, a parliamentary inquiry, is not a further point of order in order?

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11. 93 CONG. REC. 11279, 80th Cong. 1st Sess. Under consideration was H.R. 4604, a foreign aid bill.

12. 117 CONG. REC. 41801, 41802, 92d Cong. 1st Sess. Under consideration was H.R. 11731, the Department of Defense appropriations for 1972.

THE CHAIRMAN: The Chair will hear the gentleman from Arizona on the parliamentary inquiry.

MR. YATES: Mr. Chairman, I thought I had been recognized.

MR. RHODES: Mr. Chairman, a parliamentary inquiry is whether or not a further point of order can be made at this time?

THE CHAIRMAN: The Chair will hear the point of order.

Effect of Recognition for Debate

§ 6.23 Mere recognition for debate does not preclude a point of order against an amendment if no debate has intervened.

On July 30, 1969,[13] following the reading of the amendment by the Clerk, Chairman Chet Holifield, of California, recognized the proponent, Mr. Torbert H. Macdonald, of Massachusetts, to speak on it, but, before Mr. Macdonald could begin his remarks, Mr. Daniel J. Flood, of Pennsylvania, raised a point of order, which led to the following exchange:

THE CHAIRMAN: The Chair recognizes the gentleman from Massachusetts (Mr. Macdonald) for 5 minutes in support of his amendment.

MR. FLOOD: Mr. Chairman, I make a point of order against the amendment.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, the point comes too late.

MR. FLOOD: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN: The gentleman will state the point of order. . . .

MR. MACDONALD of Massachusetts: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. MACDONALD of Massachusetts: Could I be enlightened as to when a Member who has been recognized and starts to talk has given up his right of recognition?

THE CHAIRMAN: A point of order can intervene before debate is conducted on an amendment, particularly when the chairman of the subcommittee is on his feet seeking recognition. There had been no debate on the merits of the amendment.

§ 6.24 Mere recognition by the Chairman of a Member proposing an amendment does not preclude a point of order being raised by a Member who has shown due diligence.

On Mar. 31, 1937,[14] Mr. Ross A. Collins, of Mississippi, had

13. 115 CONG. REC. 21458, 21459, 91st Cong. 1st Sess. Under consideration was H.R. 1311, the Departments of Labor and Health, Education, and Welfare appropriations for fiscal 1970. But see 99 CONG. REC. 2106, 83d Cong. 1st Sess., Mar. 18, 1953.

14. 81 CONG. REC. 2980, 2981, 75th Cong. 1st Sess. Under consideration was H.R. 5966, an appropriations bill fixing compensation of employees

been recognized to speak on his amendment when Chairman Scott W. Lucas, of Illinois, permitted another Member, Lindsay C. Warren, of North Carolina, to raise a point of order that the amendment was an unauthorized appropriation on a general appropriation bill. The Chairman allowed the point of order to be made because Mr. Warren had been on his feet seeking recognition at the time Mr. Collins rose.

MR. COLLINS: Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows: . . .

THE CHAIRMAN: The gentleman from Mississippi.

MR. WARREN: Mr. Chairman——

THE CHAIRMAN: For what purpose does the gentleman from North Carolina rise?

MR. WARREN: I rise to make the point of order that it is not authorized by law.

MR. FRED M. VINSON [of Kentucky]: The point of order comes too late, Mr. Chairman.

THE CHAIRMAN: Does the gentleman make the point of order?

MR. WARREN: I make the point of order, Mr. Chairman.

MR. COLLINS: And I make the further point of order that I had secured recognition from the Chair before the point of order was made, and therefore the point of order comes too late.

THE CHAIRMAN: The gentleman had not begun his remarks. The Chair will hear the gentleman from Mississippi on the point of order.

MR. COLLINS: Mr. Chairman, I make the point of order that the point of order comes too late. I was on my feet and had been recognized by the Chair, as will be shown by the stenographic notes.

THE CHAIRMAN: The Chair does not believe that the point of order comes too late. The gentleman from North Carolina was on his feet seeking recognition at the time the gentleman rose.

MR. COLLINS: On the contrary, I had secured recognition from the Chair and was approaching the Well of the House for the purpose of speaking to my amendment before the gentleman addressed the Chair, all of which will be shown by the stenographic notes.

THE CHAIRMAN: The gentleman from Mississippi had not begun debate on the amendment, and even though the Chair had recognized the gentleman from Mississippi, the gentleman from North Carolina was on his feet at practically the same time, and the Chair does not believe that the point of order has been raised too late.

§ 6.25 Points of order against proposed amendments come too late after a Member has been recognized to debate his amendment and a unanimous-consent request has

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of the legislative branch for fiscal 1938.

See also 101 CONG. REC. 12408, 84th Cong. 1st Sess., July 30, 1955. Under consideration was H.R. 6857, authorizing the General Services Administration to convey realty to the city of Milwaukee, Wisconsin.

been granted on that Member's time.

On Mar. 18, 1953,[15] Chairman Kenneth B. Keating, of New York, recognized the proponent of an amendment, William L. Dawson, of Illinois, but, before the Member could speak, Mr. Clare E. Hoffman, of Michigan, made a unanimous-consent request that the amendment be reread, which request was granted. Mr. Hoffman then attempted to make a point of order, still before Mr. Dawson had commenced his remarks, but the Chair ruled the point of order came too late.

THE CHAIRMAN: The gentleman from Illinois is recognized in support of his amendment.

MR. HOFFMAN of Michigan: Mr. Chairman, I ask unanimous consent that the amendment be read again.

THE CHAIRMAN: Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk reread the Dawson amendment.

MR. HOFFMAN of Michigan: Mr. Chairman, I make a point of order against the amendment.

MR. DAWSON of Illinois: Mr. Chairman, the point of order comes too late.

MR. HOFFMAN of Michigan: It does not specify wherein the resolution that is now before the Committee is to be amended and, further, Reorganization Plan No. 1 is not before the Committee at this time.

THE CHAIRMAN: The gentleman's point of order comes too late. The gentleman from Illinois had already been recognized.

Point of Order Precluded by Proponent's Requests To Revise and Extend and That the Amendment Be Reread

§ 6.26 Where a Member had been recognized to debate his proposed amendment, had asked permission to revise and extend, and had received unanimous consent to have the amendment reread (since a quorum call intervened between the offering of the amendment and his recognition), the Chair stated that it was too late to raise a point of order.

Until Jan. 4, 1977, it was still possible to make a point of order that a quorum of the Committee of the Whole was not present at any time during the five-minute rule.[16] In the proceedings

15. 99 CONG. REC. 2106, 83d Cong. 1st Sess., relating to H.J. Res. 223, providing that Reorganization Plan No. 1 of 1953 take effect within 10 days.

16. Rule XXIII clause 2, was amended in the 95th Congress to permit a point of no quorum, after a quorum of the Committee has once been established on that day, only when the Chair has put the question on a pending proposition. See *House Rules and Manual* § 863 and annotation thereto (1997).

of June 26, 1975,[17] when an amendment was offered at a point when few Members were on the floor, Mr. Robert E. Bauman, of Maryland, made the point that a quorum was not present. A call of the Committee followed, and after one hundred Members responded, the Chair terminated proceedings under the call and recognized the proponent of the amendment for debate. The *Congressional Record* shows the following exchange:

MR. [M. G. (GENE)] SNYDER [of Kentucky]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Snyder: On page 16, after line 14, add the following new section:
>
> "Sec. 104. None of the funds appropriated in this title shall be used for the purposes of negotiating the surrender or relinquishment of any U.S. rights in the Panama Canal Zone."

MR. BAUMAN: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN:[18] The Chair will count. Thirty-six Members are present, not a quorum.

The Chair announces that he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

The Chair recognizes the gentleman from Kentucky (Mr. Snyder).

(Mr. Snyder asked and was given permission to revise and extend his remarks.)

MR. SNYDER: Mr. Chairman, in view of the fact that there are a few Members on the floor who were not here a while ago, I ask unanimous consent that the Clerk reread my amendment.

THE CHAIRMAN: Is there objection to the request of the gentleman from Kentucky?

There was no objection.

THE CHAIRMAN: The Clerk will reread the amendment.

The Clerk reread the amendment.

MR. [ROBERT L.] LEGGETT [of California]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. LEGGETT: Mr. Chairman, is it too late to make a point of order with respect to the amendment?

THE CHAIRMAN: The Chair informs the gentleman from California (Mr. Leggett) that it is too late.

§ 6.27 A point of order against an amendment came too late after the proponent of the amendment had been recognized and had been granted permission to revise and extend his remarks.

On July 26, 1973,[19] in the Committee of the Whole, Chair-

17. 121 CONG. REC. 20945, 20946, 94th Cong. 1st Sess.

18. Charles A. Vanik (Ohio).

19. 119 CONG. REC. 26191, 26192, 93d Cong. 1st Sess. Under consideration

man Charles M. Price, of Illinois, ruled a point of order raised by Mr. Thomas E. Morgan, of Pennsylvania, came too late.

MR. [ANDREW] YOUNG of Georgia: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

Parliamentarian's Note: Mr. Young had been recognized and had asked and was given permission to revise and extend his remarks.

MR. MORGAN: Mr. Chairman, I just wonder if this section is the proper place for this amendment. I would like to reserve a point of order until we find out whether this is the proper location.

THE CHAIRMAN: The gentleman from Georgia has already been recognized.

§ 6.28 A point of order against the germaneness of an amendment must be made or reserved immediately after the amendment is read and comes too late after the proponent of the amendment has been recognized and has asked and received permission to revise and extend his remarks.

The proceedings of Sept. 17, 1975,[20] which illustrate the above headnote, are as follows:

THE CHAIRMAN:[1] The Chair recognizes the gentleman from Maine (Mr. Emery) for 5 minutes in support of his amendment.

(Mr. Emery asked and was given permission to revise and extend his remarks.)

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I wish to reserve a point of order against the amendment.

THE CHAIRMAN: The Chair will state to the gentleman from Michigan (Mr. Dingell) that his reservation comes too late. The Chair had already recognized the gentleman from Maine (Mr. Emery), and the point of order comes too late.

The Chair recognizes the gentleman from Maine for 5 minutes in support of his amendment.

§ 6.29 After a Member had been granted 15 minutes to address the Committee of the Whole on his amendment, it was held to be too late to make a point of order against the amendment.

On Apr. 17, 1943,[2] a point of order raised by Mr. Usher L. Burdick, of North Dakota, against an amendment to an agricultural appropriation bill was ruled untimely.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I ask unanimous consent to speak for 15 minutes. . . .

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was H.R. 9360, the Mutual Development and Cooperation Act of 1973.

20. 121 CONG. REC. 28937, 94th Cong. 1st Sess.

1. Richard Bolling (Mo.).

2. 89 CONG. REC. 3510, 78th Cong. 1st Sess. Under consideration was H.R. 2481, the agricultural appropriation for 1944.

There was no objection.

THE CHAIRMAN:[3] The gentleman is recognized for 15 minutes.

MR. BURDICK: Mr. Chairman, I reserve a point of order on the amendment. . . .

THE CHAIRMAN: The point of order comes too late. The gentleman has been recognized and has been granted permission to proceed for 15 minutes.

Effect of Failure To Obtain Recognition To Debate

§ 6.30 Recognition of a Member by the Chair to offer an amendment does not give such Member the privilege of debating his amendment; consequently a point of order against an amendment may be made in a proper case even though a Member has started debate thereon if he did not obtain recognition for that purpose (the Committee overruling the Chair on appeal).

On Feb. 1, 1938,[4] during consideration of amendments to H.R. 9181, the District of Columbia appropriations bill of 1939, it was contended that a point of order against an amendment was untimely in that it had been made after debate had begun. The proceedings were as follows:

The Clerk read as follows:

Amendment offered by Mr. Collins: On page 68, line 20, after the period, insert a new paragraph, as follows:

"Street lighting: For purchase, installation, and maintenance of public lamps, lampposts, street designations, lanterns, and fixtures of all kinds on streets, avenues, roads, alleys, and for all necessary expenses in connection therewith, including rental of storerooms, extra labor, operation, maintenance, and repair of motor trucks, this sum to be expended in accordance with the provisions of existing law, $765,000: *Provided,* That this appropriation shall not be available for the payment of rates for electric street lighting in excess of those authorized to be paid in the fiscal year 1927, and payment for electric current for new forms of street lighting shall not exceed 2 cents per kilowatt-hour for current consumed."

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, the language that is incorporated in the amendment——

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the amendment.

MR. COLLINS: Eliminates the language against which the gentleman made the point of order.

Mr. Chairman, I make the point of order that the gentleman's point of order comes too late.

THE CHAIRMAN:[5] The gentleman from Oklahoma makes a point of order on the amendment, and the gentleman from Mississippi makes the point of order that the point of order made by the gentleman from Oklahoma comes too late.

The point of order of the gentleman from Mississippi is sustained. . . .

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3. William M. Whittington (Miss.).

4. 83 CONG. REC. 1372, 1373, 75th Cong. 3d Sess.

5. William J. Driver (Ark.).

MR. NICHOLS: If the Chair did recognize the gentleman from Mississippi I may say the Chair recognized him while I was on my feet taking the only opportunity presented to me to address the Chair, in order that I might direct my point of order to the Chair.

THE CHAIRMAN: That may be true. The Chair does not care to indulge in any controversy on that question with the gentleman from Oklahoma. The Chair is merely stating what occurred. The Chair may state further to the gentleman from Oklahoma, in deference to the situation which has developed here, that if that had been true, under the rules it would have been the duty of the Chair to have recognized a member of the committee in preference to any other Member on the floor. The Chair was acting under the limitations of the rule. . . .

MR. [JESSE P.] WOLCOTT [of Michigan]: Mr. Chairman, the rule, as I understand it, is that if any action is taken on the amendment, then the point of order is dilatory. The only action that could have been taken was recognition by the Chair of the gentleman from Mississippi to debate his amendment.

I want to call the attention of the Chair to the fact the only manner in which the Chair can recognize a Member to be heard on this floor is to refer to the gentleman either by name or by the State from which the gentleman comes, and I call the attention of the Chair to the fact that the Chair in this particular instance did not say he recognized the gentleman from Mississippi or the gentleman [Mr. Collins], and for that reason there was no official proceeding and no official action taken between the time that the amendment was offered and the time the gentleman from Oklahoma made his point of order, and therefore the point of order was not dilatory.

THE CHAIRMAN: The Chair desires, in all fairness, to make this statement to the Committee, as well as directly to the gentleman from Michigan. Not only was the gentleman from Mississippi recognized, but he began an explanation of his amendment, and the Chair certainly presumes that the gentleman being on the floor at the time heard that; and when that occurred, the Chair does not think the gentleman will disagree with the Chair about the fact that the Chair is required, under the rules, to rule in deference to the situation that developed. The Chair does not desire to forestall proceedings and would be pleased to hear points of order, but the Chair must act within the definition of the rule.

MR. WOLCOTT: If the Chair will indulge me for a moment in that respect, the point I wish to make is this. The gentleman from Mississippi had no authority to address this Committee until he had been recognized by the Chair, and if the gentleman from Oklahoma made his point of order during a brief sentence by someone which had no right under the rules of this House even to be reported by the official reporter, then he cannot be estopped, under those circumstances, from making his point of order. The Chair of necessity must have recognized the gentleman from Mississippi to debate the amendment.

The offering of an amendment is not a proceeding which will estop the gentleman from Oklahoma from making his point of order. It is recognition by

the Chair of another gentleman to discuss the amendment, and the gentleman could have discussed the amendment only after recognition was given. . . .

MR. NICHOLS: If the Chair has made a final ruling, I would, in the most respectful manner I know, request an appeal from the decision of the Chair.

THE CHAIRMAN: The gentleman from Oklahoma appeals from the decision of the Chair on the ruling of the Chair on the point of order, as stated.

The question before the Committee is, Shall the ruling of the Chair stand as the judgment of the Committee?

The question was taken, and the Chair announced that the noes had it.

So the decision of the Chair does not stand as the judgment of the Committee.

After Debate on Amendment

§ 6.31 A point of order against an amendment comes too late after there has been debate on the amendment.

On June 1, 1961,[6] Chairman W. Homer Thornberry, of Texas, indicated that a point of order made by Mr. John J. Rooney, of New York, against an amendment offered by Mr. Clare E. Hoffman, of Michigan, came too late, as Mr. Hoffman had already begun his remarks on the amendment.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Gross of Iowa: "On page 7, strike out all of lines 21 through 25 and on page 8, strike all of lines 1 through 3." . . .

The amendment was rejected.

MR. HOFFMAN of Michigan: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Hoffman of Michigan: "On page 8, lines 2 and 3, strike all after the semicolon."

Parliamentarian's Note: Mr. Hoffman asked and was given permission to revise and extend his remarks.

MR. HOFFMAN of Michigan: Mr. Chairman, being a realist I understand——

MR. ROONEY: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. ROONEY: Mr. Chairman, I make the point of order that the amendment now offered by the gentleman from Michigan is the same in effect as that which was offered by the gentleman from Iowa and just defeated.

MR. GROSS: Mr. Chairman, I make the point of order that the point of order comes too late. The gentleman from Michigan had been recognized and started to speak.

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6. 107 CONG. REC. 9349, 9350, 87th Cong. 1st Sess. [H.R. 7371].

See also 113 CONG. REC. 32662, 90th Cong. 1st Sess., Nov. 15, 1967 [S. 2388]; 113 CONG. REC. 19417, 90th Cong. 1st Sess., July 19, 1967 [H.R. 421]; 101 CONG. REC. 3947, 3948, 84th Cong. 1st Sess., Mar. 29, 1955 [H.R. 3659]; and 93 CONG. REC. 4079, 80th Cong. 1st Sess., Apr. 25, 1947 [H.R. 3123].

THE CHAIRMAN: While the point of order does come too late, the amendment does strike out language different from that stricken out by the amendment offered by the gentleman from Iowa.

§ 6.32 A point of order against an amendment must be made or reserved immediately after it is read by the Clerk, and comes too late after debate has begun on the amendment.

On Nov. 25, 1970,[7] Chairman Chet Holifield, of California, ruled that a reservation of a point of order by Mr. George H. Fallon, of Maryland, came too late.

MR. [WILLIAM H.] HARSHA [of Ohio] (during the reading): Mr. Chairman, I ask unanimous consent that further reading of the amendment [offered by the gentleman from New York, Mr. Bingham] be dispensed with, since both the majority and the minority have copies of the amendment, and that it be printed in the Record.

THE CHAIRMAN: Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE CHAIRMAN: The gentleman from New York is recognized.

Mr. [JONATHAN B.] BINGHAM [of New York]: Mr. Chairman, the purpose of the amendment, which is to section 142 of the bill, is to strike out certain words in that section which limit the supplementary assistance that this bill now provides for mass transportation to highway transportation.

MR. FALLON: Mr. Chairman, will the gentleman yield?

MR. BINGHAM: the gentleman can get me additional time, I shall be glad to yield.

MR. FALLON: It will take less than a minute.

MR. BINGHAM: I yield to the chairman of the committee.

MR. FALLON: Would the gentleman's amendment transfer money out of the trust fund to be used for any other purpose?

MR. BINGHAM: I cannot answer that question that way, Mr. Chairman. If the chairman would allow me to proceed——

MR. FALLON: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman rises too late for that purpose. The gentleman from New York will proceed.

§ 6.33 A point of order against the germaneness of an amendment must be raised prior to debate thereon, and comes too late if the proponent has commenced his remarks.

On June 16, 1975,[8] a point of order was held to come too late where the amendment had been read, the proponent had received permission to revise and extend and had begun his brief remarks. The Record excerpt is as follows:

MR. [WILLIAM L.] ARMSTRONG [of Colorado]: Mr. Chairman, I offer an

7. 116 CONG. REC. 38991, 91st Cong. 2d Sess. Under consideration was H.R. 19504, the Federal Highway Act.

8. 121 CONG. REC. 19073, 94th Cong. 1st Sess.

amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

> An amendment offered by Mr. Armstrong to the amendment offered by Mr. Burke of Massachusetts as a substitute for the amendment offered by Mr. Vanik: Amend the Burke amendment by adding the following: and on line 6, strike the word "temporarily."

(Mr. Armstrong asked and was given permission to revise and extend his remarks.)

MR. ARMSTRONG: Mr. Chairman, I will take only a moment.

POINT OF ORDER

MR. [HERMAN T.] SCHNEEBELI [of Pennsylvania]: Mr. Chairman, I reserve a point of order, that the amendment is not germane.

THE CHAIRMAN:[9] The gentleman's point of order comes too late. The gentleman from Colorado has already commenced his statement.

§ 6.34 A point of order against an amendment must be made or reserved immediately following the reading of the amendment, and comes too late after the proponent of the amendment has begun his remarks.

On Mar. 20, 1975,[10] a Member attempted to reserve a point of order against an amendment offered during consideration of a bill providing emergency price supports for 1975 crops. The Chairman of the Committee of the Whole declared that the attempted reservation came too late, the proponent of the amendment having uttered a few words in explanation of his amendment. The proceedings were as shown below.

AMENDMENT OFFERED BY MR. JEFFORDS

Mr. [JAMES M.] JEFFORDS [of Vermont]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Jeffords: Page 3, after line 6 strike out "the support price of milk shall be established at no less than 80 per centum of the parity price therefor, on the date of enactment, and the support price shall be adjusted thereafter by the Secretary at the beginning of each quarter beginning with the second quarter of the calendar year 1975," and insert "the support price of milk shall be established at no less than 80 per centum of the parity price therefor, on the date of enactment, and the support price shall be adjusted thereafter by the Secretary to no less than 82 per centum of the parity price therefor, at the beginning of each quarter, beginning with the third quarter of the calendar year 1975,".

MR. JEFFORDS: Mr. Chairman, this amendment merely does this. It says that the 80 percent——

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Chairman, I was on my feet earlier when the amendment was read. I would like to reserve a point of order.

THE CHAIRMAN:[11] The Chair must advise the gentleman from Washington that his point of order comes too late.

9. James J. Delaney (N.Y.).

10. 121 CONG. REC. 7665, 94th Cong. 1st Sess.

11. John Brademas (Ind.).

§ 6.35 A point of order against an amendment cannot be reserved after the proponent of the amendment has been recognized and has begun his explanation of the amendment.

On May 27, 1969,[12] Chairman John H. Dent, of Pennsylvania, ruled that an attempted reservation of a point of order by Mr. Silvio O. Conte, of Massachusetts, came too late after the proponent of the amendment had been recognized and started his remarks.

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

THE CHAIRMAN: The gentleman from Iowa is recognized for 5 minutes.

MR. SMITH of Iowa: Mr. Chairman, this is really a simple amendment.

MR. CONTE: Mr. Chairman—

THE CHAIRMAN: For what purpose does the gentleman from Massachusetts rise?

MR. CONTE: I reserve a point of order to the amendment.

MR. SMITH of Iowa: The reservation comes too late. I object.

THE CHAIRMAN: The Chair is of the opinion that the request of the gentleman from Massachusetts comes a little too late. The gentleman from Iowa is proceeding.

§ 6.36 A point of order against an amendment comes too late after debate has begun on the amendment, and the rereading of the amendment by unanimous consent after there has been debate does not permit the intervention of a point of order against the amendment.

On Nov. 4, 1971,[13] debate had already begun on an amendment when Mr. Hugh L. Carey, of New York, sought, and obtained, a rereading of the amendment. Chairman Pro Tempore Edward P. Boland, of Massachusetts, then advised Mr. Gerald R. Ford, of Michigan, that he could not then make a point of order against the amendment.

MR. CAREY of New York: Mr. Chairman, I ask unanimous consent that the amendment be read again.

THE CHAIRMAN PRO TEMPORE: Is there objection to the unanimous-consent request that the amendment be read again?

MR. GERALD R. FORD: Mr. Chairman, reserving the right to object, may I make a parliamentary inquiry?

THE CHAIRMAN PRO TEMPORE: The gentleman will state it.

MR. GERALD R. FORD: If the amendment is read again it will not then be subject to a point of order if it is not germane?

THE CHAIRMAN PRO TEMPORE: The Chair will state that a point of order relative to the germaneness of this amendment would come too late.

12. 115 CONG. REC. 14074, 91st Cong. 1st Sess.

13. 117 CONG. REC. 39302, 39303, 92d Cong. 1st Sess. Under consideration was H.R. 7248, to amend and extend the Higher Education Act of 1965 and other acts dealing with higher education.

§ 6.37 A point of order against an amendment in the House comes too late after there has been debate thereon and the previous question has been ordered.

On Mar. 1, 1967,[14] after an amendment was offered, debated for an hour, and the previous question on the amendment voted upon, the following exchange took place:

The result of the vote was as above recorded.

MR. [PHILLIP] BURTON of California: Mr. Speaker, I raise a point of order.

THE SPEAKER:[15] The gentleman will state his point of order.

MR. BURTON of California: In view of the fact that this resolution, among other things, states that the Member from New York is ineligible to serve in the other body, and therefore clearly beyond our power to so vote; and in addition to that fact it anticipates election results in the 18th District of New York, a matter upon which we cannot judge at this time, I raise the point of order that the resolution is an improper one for the House to consider, and that it clearly exceeds our authority.

THE SPEAKER: The Chair will observe to the gentleman that if the point of order would be in order it would have been at a previous stage in the proceedings, and the gentleman's point of order comes too late.

14. 113 CONG. REC. 5020, 5036–38, 90th Cong. 1st Sess. Under consideration was H. Res. 278, relating to the right of Representative-elect Adam Clayton Powell to be sworn.

15. John W. McCormack (Mass.).

Effects of Diligence in Seeking Recognition

§ 6.38 A point of order against an amendment does not come too late where the Member raising the point was on his feet, seeking recognition, at the time the amendment was read.

On Sept. 29, 1969,[16] after recognition of the proponent of an amendment, Chairman Charles E. Bennett, of Florida, permitted Mr. John P. Saylor, of Pennsylvania, to make a point of order that would otherwise have come too late, when Mr. Saylor explained that he had been on his feet trying to obtain recognition.

THE CHAIRMAN: The gentleman from Texas is recognized for 5 minutes in support of his amendment.

MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman——

MR. SAYLOR: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN: The gentleman makes his point too late. The gentleman from Texas was recognized.

MR. SAYLOR: Mr. Chairman, I was on my feet trying to get recognition.

THE CHAIRMAN: The gentleman states he was on his feet at the time the amendment was read?

16. 115 CONG. REC. 27351, 91st Cong. 1st Sess. Under consideration was H.R. 13369, extending the authority of the Administrator of Veterans' Affairs to set interest rates on mortgages.

MR. SAYLOR: I have been on my feet for the last 5 minutes. . . .

Mr. Chairman, my point of order is that the gentleman's amendment comes too late. The committee amendment has been adopted.

THE CHAIRMAN: The committee amendment, as amended, is still pending and the Chair has not put the question thereon. The gentleman from Texas is recognized for 5 minutes in support of his amendment.

§ 6.39 A point of order against an amendment is not precluded by the Chairman's recognition of the Member offering the amendment if the Member raising the point of order was on his feet, seeking recognition, before debate on the amendment began.

On Aug. 30, 1961,[17] following the reading of an amendment to a bill dealing with the prevention and control of juvenile delinquency, Mr. James Roosevelt, of California, sought to make a point of order, although the proponent had already been recognized and started his remarks. Chairman Francis E. Walter, of Pennsylvania, nevertheless permitted the point of order to be raised as Mr. Roosevelt was on his feet actively seeking recognition at the time the proponent, Mr. Robert P. Griffin, of Michigan, started his remarks:

THE CHAIRMAN: The gentleman from Michigan is recognized for 5 minutes on his amendment.

MR. GRIFFIN: Mr. Chairman, these are conforming amendments to draw the bill in accordance with the previous amendment and to make sense in the legislation. I ask that they be adopted.

MR. ROOSEVELT: Mr. Chairman, I make a point of order against the amendments.

THE CHAIRMAN: The gentleman will state his point of order.

MR. GRIFFIN: Mr. Chairman, I make the point of order that the point of order comes too late.

THE CHAIRMAN: The gentleman from California was on his feet.

MR. GRIFFIN: The amendment was offered and I was recognized to explain the amendment, and I proceeded to explain the amendment.

THE CHAIRMAN: The gentleman from California was on his feet seeking recognition. The gentleman from California will state his point of order.

Time of Making or Reserving Point of Order

§ 6.40 A point of order against an amendment may be made or reserved immediately after an amendment is read; but where several Members are on their feet, and the

17. 107 CONG. REC. 17612, 87th Cong. 1st Sess. [H.R. 8028].

See also 115 CONG. REC. 21458, 91st Cong. 1st Sess., July 30, 1969 [H.R. 13111].

Chair recognizes the offeror of the amendment, another Member who has exercised due diligence and persists in his attempt to gain the attention of the Chair can still be recognized to reserve a point of order.

It is the duty of the Chair to protect the rights of Members seeking recognition. He did so, over objections, when he allowed a point of order to be reserved against an amendment offered by Mr. Henry B. Gonzalez, of Texas, on June 11, 1987.[18]

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT OFFERED BY MR. HILER

MR. GONZALEZ: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Gonzalez to the amendment offered by Mr. Hiler: In the matter proposed to be inserted by the amendment—

(1) strike "in excess of" and insert ", the amounts provided shall not exceed"; and

(2) strike "as passed" and all that follows through "applicable level."

(3) strike "or subfunction" the first place it appears.

MR. [JOHN] HILER [of Indiana]: Mr. Chairman, I reserve a point of order on the amendment.

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN:[19] The gentleman will state it.

MR. GONZALEZ: Mr. Chairman, did the Chair recognize the gentleman's interposition of a point of order?

THE CHAIRMAN: The Chair will state that the gentleman from Indiana was on his feet and he has properly maintained his right to reserve a point of order.

MR. GONZALEZ: Mr. Chairman, may I pursue my parliamentary inquiry?

THE CHAIRMAN: The gentleman may proceed.

MR. GONZALEZ: Mr. Chairman, it is my recollection that I had been recognized by the Chair on my amendment, at which time the gentleman interposed his objection.

In my opinion and according to the precedents I have listened to, that is not in a timely fashion interposing a motion.

THE CHAIRMAN: The Chair states that the gentleman was on his feet at the time that the gentleman from Texas was recognized. The matter of precedent does not lie on this case.

Does the gentleman from Indiana insist on his point of order?

MR. HILER: Mr. Chairman, I would like to reserve my point of order.

THE CHAIRMAN: The gentleman from Indiana reserves his point of order. . . .

Does the gentleman from Indiana (Mr. Hiler) press his point of order?

MR. HILER: Mr. Chairman, I withdraw my point of order.

18. 133 CONG. REC. 15541, 15543, 100th Cong. 1st Sess.

19. Brian J. Donnelly (Mass.).

THE CHAIRMAN: The point of order is withdrawn.

MR. HILER: Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the gentleman's amendment.

§ 6.41 Although the proponent of an amendment had been recognized and had begun his discussion, the Chairman entertained a point of order against the amendment by a Member who stated he had been on his feet, seeking recognition for that purpose when the discussion began.

On Sept. 26, 1967,[20] Chairman Charles E. Bennett, of Florida, allowed Mr. Carl D. Perkins, of Kentucky, to make a point of order after the time therefor had passed, because Mr. Perkins had been on his feet seeking recognition.

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman, I offer two amendments, and I ask unanimous consent that they be considered en bloc.

THE CHAIRMAN: Is there objection to the request of the gentleman from Louisiana [Mr. Waggonner]?

There was no objection.

The Clerk read as follows:

MR. WAGGONNER: Mr. Chairman, these two amendments——

MR. PERKINS: Mr. Chairman, a point of order.

I hate to raise the question, but I do make the point of order that the amendments are not germane.

My point of order being that we are now by these amendments trying to reach other acts and exclude.

MR. GERALD R. FORD [of Michigan]: Mr. Chairman, I make the point of order that the gentleman's point of order comes too late.

The gentleman from Louisiana had started his discussion of the amendment, and there was no previous point of order made prior to the discussion.

MR. PERKINS: Mr. Chairman, I was on my feet seeking recognition at the time the gentleman commenced to address the Chair.

THE CHAIRMAN: Was the gentleman from Kentucky on his feet seeking recognition?

MR. PERKINS: I was, Mr. Chairman.

THE CHAIRMAN: The Chair then overrules the point of order made by the gentleman from Michigan, and the Chair will hear the gentleman from Kentucky on his point of order.

MR. GERALD R. FORD: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. GERALD R. FORD: Mr. Chairman, how far in the discussion of a man who offers an amendment can such a point of order be made, then?

THE CHAIRMAN: The Chair will state that the gentleman from Kentucky was on his feet seeking recognition, and so stated. Therefore, the gentleman from Kentucky will be recognized to make his point of order.

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20. 113 CONG. REC. 26878, 90th Cong. 1st Sess. Under consideration was H.R. 12120, the Juvenile Delinquency Prevention and Control Act of 1967.

§ 6.42 A member who has shown due diligence is recognized to make a point of order against a proposed amendment even though the sponsor of the amendment had commenced his remarks.

On June 23, 1945,[1] Chairman Jere Cooper, of Tennessee, allowed Mr. Brent Spence, of Kentucky, to make a late point of order because Mr. Spence had been on his feet seeking recognition when the Chair recognized Mr. Francis H. Case, of South Dakota, to explain the amendment which he had proposed.

> MR. CASE of South Dakota: Mr. Chairman, this amendment proposes——
>
> MR. SPENCE: Mr. Chairman, a point of order. . . .
>
> MR. CASE of South Dakota: Mr. Chairman, I think the gentleman's point of order comes too late, because I had been recognized and started to debate the amendment.
>
> THE CHAIRMAN: The gentleman from Kentucky was on his feet, and the point of order does not come too late.

§ 7. Debate

The Chair allows debate on a point of order at his discretion and the Chair normally refuses to allow Members to yield to other Members during arguments on points of order.[2]

It is clear from the precedents that debate on a point of order is limited to it and may not go to the merits of the legislative proposition involved.[3]

Although a Member, even one sponsoring an amendment against which a point of order has been raised, may concede a point of order, the Chair still rules on the point of order.[4]

The time consumed in argument on a point of order is not charged against that allotted to the proponent of an amendment,[5] but where a limitation is imposed on total debate time, or time is fixed "by the clock," argument on a point of order may reduce the time an individual Member may be allotted.[6]

The Chair does not permit Members to "revise and extend" their remarks on a point of order,[7] and since the 104th Congress, the Chair's ability to edit his own ruling has been curtailed.[8]

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1. 91 CONG. REC. 6597, 79th Cong. 1st Sess. Under consideration was H.J. Res. 101, extending the Price Control and Stabilization Acts.

2. See §§ 7.1, 7.2, 7.4–7.7, infra.

3. See §§ 7.9–7.11, infra.

4. See § 7.20, infra.

5. See §§ 7.12, 7.20, infra.

6. See § 7.19, infra.

7. See § 7.22, infra.

8. See Rule XIV clause 9(a) *House Rules and Manual* §§ 764a, 764b (1997); and see § 7.23, infra.

Discretion of the Chair

§ 7.1 Debate on a point of order is within the discretion of the Chair.

On Apr. 13, 1951,[9] there was an exchange in the Committee of the Whole, which exemplifies the discretionary power of the Chair in permitting debate on a point of order.

> THE CHAIRMAN:[10] Does the gentleman from Connecticut desire to be heard on the point of order?
>
> MR. [ANTONI N.] SADLAK [of Connecticut]: Mr. Chairman, a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman will state it.
>
> MR. SADLAK: Mr. Chairman, how much time will be allotted to me for that purpose?
>
> THE CHAIRMAN: That is in the discretion of the Chair. The gentleman's argument must be confined to the point of order.[11]

§ 7.2 Recognition and time for debate on a point of order are within the discretion of the Chair, and a Member speaking on a point of order does not control a fixed amount of time which he can reserve or yield.

On Sept. 30, 1976,[12] during consideration of the conference report on H.R. 13367, to extend the State and Local Fiscal Assistance Act of 1972, a point of order was made, as follows:

> MR. [BROCK] ADAMS [of Washington]: Mr. Speaker, I raise a point of order against the conference agreement on H.R. 13367, to extend the State and Local Fiscal Assistance Act of 1972. The conference agreement contains a provision, not included in the House bill, which provides new spending authority for fiscal years 1978 and 1979 over the amounts provided for fiscal year 1977. This new entitlement increment for succeeding fiscal years violates section 303(a) of the Congressional Budget Act. . . .

After some debate on the point of order, the following exchange occurred:

> MR. ADAMS: I yield to the gentleman from Ohio (Mr. Brown).
>
> MR. [CLARENCE J.] BROWN of Ohio: I thank the gentleman for yielding.
>
> Mr. Speaker, I refer to Public Law 93–344, the language that exists on page 22(d)(2).
>
> MR. ADAMS: Would the gentleman refer to the motion, please? I am using both the conference report and the statute.
>
> MR. BROWN of Ohio: Section 401.
>
> MR. ADAMS: Is the gentleman referring to the statute or the conference report?

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9. 97 CONG. REC. 3910, 82d Cong. 1st Sess.

10. Jere Cooper (Tenn.).

11. See also 102 CONG. REC. 6891, 84th Cong. 2d Sess., Apr. 24, 1956.

12. 122 CONG. REC. 34075, 94th Cong. 2d Sess. See also 124 CONG. REC. 4451, 95th Cong. 2d Sess., Feb. 23, 1978.

MR. BROWN of Ohio: Section 401 of the statute.

THE SPEAKER:[13] The Chair has been liberal in enforcing the rules on arguing on a point of order. The Chair controls the time and each individual Member desiring to be heard should address the Chair and not yield to other Members.

Securing Time To Oppose Point of Order

§ 7.3 The proper method for opposing a point of order is for a Member to seek recognition from the Chair for that purpose at the proper time, not by making a point of order against the point of order.

On Sept. 18, 1975,[14] during consideration under the five-minute rule of the Energy Conservation and Oil Policy Act of 1975, two points of order were reserved immediately after an amendment was read. The proceedings and inquiries were as indicated below:

THE CHAIRMAN:[15] Are there further amendments to title VI?

MR. [HENRY B.] GONZALEZ [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Gonzalez: On page 338, after line 25, insert a new section.

"Sec. 507. An additional $100,000,000 is authorized for the Energy Research and Development Administration for a high priority program exclusively geared to the practical application of fusion energy."

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I rise to reserve a point of order.

THE CHAIRMAN: The gentleman from Michigan reserves a point of order.

MR. [MIKE] MCCORMACK [of Washington]: Mr. Chairman, I rise to reserve a point of order.

THE CHAIRMAN: The gentleman from Washington reserves a point of order.

(Mr. Gonzalez asked and was given permission to revise and extend his remarks.)

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

THE CHAIRMAN: The gentleman will state it.

MR. GONZALEZ: Mr. Chairman, is there such a thing as a point of order against a point of order?

THE CHAIRMAN: The gentleman can oppose the point of order when it is made for any proper reason. The gentleman could insist that the point of order be made now.

MR. GONZALEZ: Mr. Chairman, I would like to have my say that I have been recognized for. . . .

THE CHAIRMAN: Does the gentleman from Washington (Mr. McCormack) insist on his point of order?

MR. MCCORMACK: I do insist on my point of order, Mr. Chairman. May I speak on my point of order at this time?

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13. Carl Albert (Okla.).

14. 121 CONG. REC. 29333, 29334, 29335, 94th Cong. 1st Sess.

15. Richard Bolling (Mo.).

THE CHAIRMAN: The Chair will hear the gentleman on his point of order.

MR. MCCORMACK: Mr. Chairman, my point of order is that the amendment comes to the wrong bill and to the wrong committee. The authorization for nuclear research should come to the Joint Committee on Atomic Energy and the Energy Research and Development Administration. . . .

THE CHAIRMAN: The gentleman from Michigan (Mr. Dingell) also reserved a point of order against the amendment.

Does the gentleman wish to be heard on his point of order?

MR. DINGELL: Mr. Chairman, I do wish to be heard.

I would like to commend my good friend, the gentleman from Texas (Mr. Gonzalez) for offering what I think is a very well written amendment. Unfortunately, no hearings have been held on it, and it has not been considered. . . .

THE CHAIRMAN: The Chair will hear the gentleman from Texas (Mr. Gonzalez) on the points of order.

MR. GONZALEZ: Mr. Chairman, it is almost getting monotonous. Almost exactly 24 hours ago I heard the same trite argument in the name of germaneness.

In arguing the point of germaneness, I will address myself first to the remarks of the gentleman from Washington (Mr. McCormack).

I in no way intended to transgress on the jurisdiction of his committee. I know he has developed and he wants to have these 10,000 little electric cars running around, but what I am saying is that we need more than that. That is not what the country needs.

If we are going to debate on a point of order the merits of the amendment, it is contrary to the clear indication in Deschler's Procedure, one of which decisions I quoted yesterday, on page 73, which says that one does not look to the material content of the general purposes of the bill to determine the specificity-there is a good Watergate word-the specificity of the pending amendment. . . .

THE CHAIRMAN: The Chair is ready to rule.

The title of title VI is exceptionally broad, in the opinion of the Chair.

If the content of title VI were as broad as the title, the Chair believes that the arguments of the eloquent gentleman from Texas (Mr. Gonzalez) might bear more weight. But it is the content of the pending title and not its heading against which the germaneness of the amendment must be weighed.

The Chair has had the opportunity to examine with some care all of title VI and also language on pages 17 and 18 of the committee report which deals with title VI. The Chair will not read from those words except to say that the Chair only refers to those words in that they support his view that title VI actually deals with the conversion from oil or gas to coal and thus the scope of the title is quite narrow. The amendment therefore does not fit the rule of germaneness despite the eloquence of the gentleman from Texas and the Chair feels compelled to rule that the amendment is not germane to title VI and therefore sustains the various points of order.

Controlling Argument on Point of Order

§ 7.4 Recognition and time for debate on a point of order

are within the discretion of the Chair, and a Member speaking on a point of order can neither yield or reserve time.

During consideration of a bill providing supplementary financing for the International Monetary Fund, on Feb. 23, 1978,[16] under the five-minute rule there were several amendments offered. Some of the amendments were adopted which had the effect of narrowing the scope of the measure, thus making it possible to challenge some anticipated amendments as not germane. When an amendment was offered by Mr. Tom Harkin, of Iowa, a point of order was in fact raised on this basis. A portion of the amendment process is shown below, as well as the argument on the point of order.

COMMITTEE AMENDMENT

THE CHAIRMAN:[17] The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 2, after line 15, insert:

SEC. 2. Section 3(c) of the Bretton Woods Agreements Act (22 U.S.C. 286a(c)) is amended by inserting "(1)" immediately after "(c)" and by adding at the end thereof the following:

(2) The United States executive director to the Fund shall not be compensated by the Fund at a rate in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code. The United States alternate executive director to the Fund shall not be compensated by the Fund at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

"(3) The Secretary of the Treasury shall instruct the United States executive director to the Fund to present to the Fund's Executive Board a comprehensive set of proposals, consistent with maintaining high levels of competence of Fund personnel and consistent with the Articles of Agreements with the objective of assuring that salaries of Fund employees are consistent with levels of similar responsibility within national government service or private industry. The Secretary shall report these proposals together with any measures adopted by the Fund's Executive Board to the relevant committees of the Congress prior to July 1, 1978.

MR. [STEPHEN L.] NEAL [of North Carolina]: Mr. Chairman, I offer an amendment to the committee amendment.

The Clerk read as follows:

Amendment offered by Mr. Neal to the committee amendment:

Page 2, strike out line 20 and insert in lieu thereof "The individual who represents the United States in matters concerning the Supplementary Financing Facility".

Page 2, lines 24 and 25, strike out "The United States alternate executive director to the Fund" and insert in lieu thereof "The alternate to the individual who represents the

16. 124 CONG. REC. 4426, 4427, 4451, 4452, 95th Cong. 2d Sess.

17. Lucien N. Nedzi (Mich.).

United States in matters concerning the Supplementary Financing Facility".

Page 3, line 5, strike "United States executive director to the Fund" and insert in lieu thereof "individual who represents the United States in matters concerning the Supplementary Financing Facility".

MR. [M. DAWSON] MATHIS [of Georgia]: Mr. Chairman, I rise in opposition to the amendment to the committee amendment. . . .

So the amendment to the committee amendment was agreed to.

The result of the vote was announced as above recorded.

THE CHAIRMAN: The question is on the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

MR. [JOHN J.] CAVANAUGH [of Nebraska]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cavanaugh: At the end of the bill add the following:

The Bretton Woods Agreements Act (22 U.S.C. 286–286k–2), as amended, is further amended by adding at the end thereof the following new section:

SEC. 29. The Secretary of the Treasury shall instruct the United States Executive Director to seek to assure that no decision by the International Monetary Fund on use of the Facility undermines or departs from United States policy regarding the comparability of treatment of public and private creditors in cases of debt rescheduling where official United States credits are involved. . . .

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

The amendment was agreed to.

MR. HARKIN: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harkin: Page 3, immediately after line 14, insert the following:

SEC. 3. The Bretton Woods Agreements Act (22 USC 286–286k–2), as amended, is further amended by adding at the end thereof the following new section:

"SEC. 29. (a) The Secretary of the Treasury shall instruct the United States Executive Director on the Executive Board of the International Monetary Fund to initiate a wide consultation with the Managing Director of the Fund and other member country Executive Directors with regard to encouraging the IMF staff to formulate stabilization programs which, to the maximum feasible extent, foster a broader base of productive investment and employment, especially in those productive activities which are designed to meet basic human needs.

"(b) In accordance with the unique character of the International Monetary Fund, the Secretary of the Treasury shall direct the U.S. Executive Director to take all possible steps to the end that all Fund transactions, including economic programs developed in connection with the utilization of Fund resources, do not contribute to the deprivation of basic human needs, nor to the violation of basic human rights, such as torture, cruel or inhumane treatment or degrading punishment, prolonged detention without charge, or other flagrant denials of life, liberty and the security of person; and to oppose all such transactions which would contribute to such deprivations or violations.

"(c) In order to gain a better understanding of the social, political

and economic impact of the Fund's stabilization programs on borrowing countries, especially as it relates to the poor majority within those countries, the U.S. Governor of the Fund shall prepare and submit, not later than 180 days after the close of each calendar year, a report to the Congress. Such report shall evaluate, with respect to countries to which loans are made by the Fund during the year, the effects of the policies of those countries which result from the standby agreement(s) on the ability of the poor in such countries to obtain:

"(1) an adequate supply of food with sufficient nutritional value to avoid the debilitating effects of malnutrition;

"(2) shelter and clothing;

"(3) public services, including health care, education, clean water, energy resources, and transportation;

"(4) productive employment that provides a reasonable and adequate wage.". . .

MR. NEAL: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. NEAL: Mr. Chairman, we have just established that we are only considering the so-called Witteveen Facility of the International Monetary Fund, and this amendment goes far beyond that.

THE CHAIRMAN: Does the gentleman from Iowa (Mr. Harkin) desire to be heard on the point of order?

MR. HARKIN: Yes, I do, Mr. Chairman.

I would respond to that argument by saying that my amendment is entirely in order because, if we look at the different sections, the first section of my amendment goes toward instructing the U.S. Executive Director of the IMF to do certain positive things about initiating wide consultations, and so forth, which would help to promote those kinds of programs that would help meet the basic human needs in other countries. This is a directive to our Director on the Board of the International Monetary Fund.

The last part of my amendment, subparagraph (c) also mandates that the Executive Director do other positive things by submitting a report to the Congress not later than 180 days after the close of each calendar year outlining the effects of the policies that were followed on the Fund which were designed to meet these basic human needs of people in other countries.

As far as the Fund or the Witteveen Facility itself is concerned, by subparagraph (b), which is the human rights section, speaks directly to the Witteveen Facility and directs the U.S. Executive Director to make sure that the basic human rights of people are not violated.

MR. MATHIS: Mr. Chairman, will the gentleman yield to me on the point of order?

MR. HARKIN: Yes, I yield to the gentleman from Georgia.

MR. MATHIS: Mr. Chairman, I thank the gentleman for yielding, and I would like very much to have the attention of the Chair while the point of order is being argued.

The gentleman from North Carolina (Mr. Neal) is attempting now to say that the legislation before us has been narrowed in scope to the point where it only deals with the Witteveen Facility, and that has been the thrust of the previous committee amendments that I

have argued against, because I knew we were going to arrive at a point where the gentleman was going to raise this point of order.

Mr. Chairman, the clumsy attempt to do that has obviously failed in this fashion because subsection (3) of section 2 of the bill still deals with the question of the Secretary of the Treasury instructing the Executive Director of the Fund to present a comprehensive set of proposals that do not deal with that issue. So the committee amendment, which has already been adopted, very clearly deals with the original Bretton Woods Act, and it is not restrictive in its scope.

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Chairman, will the gentleman yield on his point of order?

THE CHAIRMAN: The Chair will recognize the gentleman on the point of order.

Has the gentleman from Iowa (Mr. Harkin) concluded?

MR. HARKIN: Mr. Chairman, I have not concluded. I would like to reserve the balance of my time to speak further on the point of order.

THE CHAIRMAN: It is not in order to reserve debate time on a point of order. The gentleman has no dock of time to reserve.

MR. HARKIN: Then I would like to continue, Mr. Chairman.

THE CHAIRMAN: The Chair is hearing arguments on the point of order at the present time. The gentleman from Iowa (Mr. Harkin) will be recognized in support of his amendment at a subsequent time if the point of order is not sustained.

MR. HARKIN: Then, Mr. Chairman, do I understand I will be recognized further?

THE CHAIRMAN: Yes. The gentleman will be recognized to debate his amendment if the point of order is not sustained.

MR. HARKIN: No. Mr. Chairman, I want to speak further before the Chair rules on the point of order.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. HARKIN: Mr. Chairman, I think the gentleman from Georgia (Mr. Mathis) has raised an interesting point. In the bill, under paragraph (3) on page 3, it does in fact provide that the U.S. Executive Director to the Fund has to do a certain positive thing. He has to present to the Fund's Executive Board a comprehensive set of proposals, et cetera. So it does not speak simply about the Witteveen Facility.

I think that my amendment, which mandates that the Executive Director do other positive things, fits in very nicely with subparagraph (3).

I am not making any kind of argument for any other amendments that might be offered or I am not speaking about any other amendments that might go beyond the scope of instructing the Executive Director of the IMF to do certain things. That would be for the Chair to rule later on, on the germaneness of those. In terms of instructing the Executive Director to do certain things, my amendment is quite germane.

MR. MATHIS: Mr. Chairman, will the gentleman from Iowa yield further on the point of order?

THE CHAIRMAN: Has the gentleman from Iowa (Mr. Harkin) concluded his statement on the point of order?

MR. HARKIN: Mr. Chairman, I would like to yield to the gentleman.

THE CHAIRMAN: There is no yielding on a point of order.

MR. HARKIN: Mr. Chairman, I yield back the balance of my time.

THE CHAIRMAN: The Chair recognizes the gentleman from Georgia (Mr. Mathis).

MR. MATHIS: Mr. Chairman, I think, after consultation with the Parliamentarian, I am now told that the amendment that was offered by the gentleman from North Carolina (Mr. Neal) has been changed beyond what was read into the Record to go to page 3, line 5, where the language of the amendment very clearly says page 2, line 5, as it was read by the Clerk at the time.

THE CHAIRMAN: That is the gentleman's copy and not the copy which was handed to the desk.

MR. MATHIS: Mr. Chairman, I do not know what the procedure is for having words read back. But I think this is an attempt to try to close off amendments which are going to be offered. The Parliamentarian now explains to me that changing the words "Executive Director" can preclude this amendment on the basis of germaneness.

If that is so, I would point out that this House has just adopted an amendment offered by the gentleman from Nebraska (Mr. Cavanaugh) that contains the words "Executive Director." So we are still talking about the Executive Director to the Fund.

It is a clumsy attempt to try to prevent the Members of this House from offering amendments.

Very clearly, Mr. Chairman, the amendment offered by the gentleman from Iowa is germane to the bill, just as much as the Cavanaugh amendment. If the distinguished chairman of the committee is going to make a point of order, he should have made it on the Cavanaugh amendment, because that went back to the Executive Director of the Fund.

MR. NEAL: Mr. Chairman, I would say that the amendment before us is not germane because it is not germane to the fundamental purpose of the bill nor does it relate exclusively to the subject matter under consideration.

Under the Rules of the House, no motion or proposition on a subject different from that under consideration shall be admitted under disguise of an amendment.

MR. HARKIN: Mr. Chairman, will the gentleman yield?

THE CHAIRMAN: The gentleman from Iowa is recognized.

MR. HARKIN: Mr. Chairman, I am interested in why there was not a point of order raised against the amendment offered by the gentleman from Nebraska (Mr. Cavanaugh). He speaks of "Executive Director," just as I do.

THE CHAIRMAN: The Chair is prepared to rule and perhaps clarify that question for the gentleman from Iowa.

The gentleman from North Carolina (Mr. Neal) made a point of order that the amendment offered by the gentleman from Iowa (Mr. Harkin) is not germane to the bill H.R. 9214 in its perfected form. In its perfected form the bill, while amending the Bretton Woods Agreement Act, relates only to the authority of the United States to participate in the supplementary financing facility of the International Monetary Fund and to the salaries of the IMF employees who are employees who administer that supplemental fi-

nancing facility, the so-called Witteveen Facility, but it does not deal with the other operations of the International Monetary Fund.

The precedents indicate:

> To a bill amending one section of existing law to accomplish a particular purpose, an amendment proposing changes in another section of that law in a matter not within the terms of the bill is not germane. (Deschler's Procedure, chapter 28, section 32.1, section 32.14.)
>
> In passing on the germaneness of an amendment, the Chairman considers the relationship of the amendment to the bill as modified by the Committee of the Whole. (Deschler's Procedure, chapter 28, section 2.4.)

The bill as modified by the Committee of the Whole is not sufficiently broad, in the opinion of the Chair, to permit amendments affecting operations of the IMF which are not directly and solely related to the Witteveen Facility. As indicated throughout the report on the bill, that special function of the IMF is separate and distinct from other operations of the IMF, both from the standpoint of qualification for participation in the facility and from the point of view of disposition of assets and the liabilities of participating nations.

Let the Chair just add that the Cavanaugh amendment to H.R. 9214 reserved itself to decisions by the IMF on the use of the facility, referring to the Witteveen Facility, thereby confining itself to that narrow aspect of the bill and not amending the entire act.

Accordingly, the Chair sustains the point of order.

Argument on Points of Order; Chair's Discretion

§ 7.5 Discussion on a point of order is within the discretion of the Chair, and a Member recognized to argue on a point of order may not yield to other Members.

Where a point of order is raised against consideration of a conference report, the Chair may entertain debate, in the nature of argument on the point of order, before making a decision to sustain or overrule it. If a Member recognized for this purpose attempts to yield to another, the Chair may intervene to reassert his control of this debate. The proceedings of Sept. 30, 1976,[18] are illustrative.

> MR. [JACK] BROOKS [of Texas]: Mr. Speaker, I call up the conference report on the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.
>
> The Clerk read the title of the bill.[19]. . .
>
> MR. [BROOK] ADAMS [of Washington]: Mr. Speaker, I raise a point of order against the conference agreement.

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18. 122 CONG. REC. 34074, 34075, 94th Cong. 2d Sess.

19. For provisions of the conference report, see 122 CONG. REC. 33132-44, 94th Cong. 2d Sess., legislative day Sept. 28, 1976.

THE SPEAKER:[20] The gentleman will state the point of order.

MR. ADAMS: Mr. Speaker, I raise a point of order against the conference agreement on H.R. 13367, to extend the State and Local Fiscal Assistance Act of 1972. The conference agreement contains a provision, not included in the House bill, which provides new spending authority for fiscal years 1978 and 1979 over the amounts provided for fiscal year 1977. This new entitlement increment for succeeding fiscal years violates section 303(a) of the Congressional Budget Act which provides in part:

> It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides— . . . new spending authority described in section 401(c)(2)(C) to become effective during a fiscal year . . . until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301.

By increasing the fiscal year 1978 entitlement by $200 million over the amounts for fiscal year 1977, H.R. 13367 does provide new spending authority to become effective for a fiscal year for which a budget resolution has not been adopted. It would thereby allow that new spending increment to escape the scrutiny of the fiscal year 1978 budget process. While section 303 provides an exception for new budget authority and revenue changes for a succeeding fiscal year, entitlement programs were expressly omitted from the exception by the House-Senate conference on the Congressional Budget Act.

MR. [FRANK] HORTON [of New York]: Mr. Speaker, I rise in opposition to the point of order.

The applicable provision of the Budget Act in this matter concerns section 303(d)(1). This provision provides an exception for any bills on the full fiscal year for which the current resolution applies. The $200 million increase contained in the conference report begins in fiscal year 1978, the next fiscal year beyond 1977, the year for which our present budget resolution applies.

The $200 million increase, since it begins in fiscal year 1978, technically conforms with the Budget Act and deserves to be retained in the conference report. I might say to the membership that in making this point of order, this was brought up in the conference and we purposely did not provide for any increase in fiscal year 1977. We purposely skipped the first three-quarters. We agreed upon a term of 3¾ years for the Revenue Sharing Act to be in effect, but we skipped the first three-quarter year and applied a $200 million increment for the first fiscal year thereafter, namely, 1978, and for each of the 3 years subsequent thereto; or a total of $600 million. So, we purposely skipped this fiscal year 1977 so that we would not violate the budget resolution.

Accordingly, I believe that the point of order should be overruled.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Speaker, I also would like to be heard on the point of order.

THE SPEAKER: The gentleman is recognized. . . .

THE SPEAKER: The Chair recognizes the gentleman from Washington (Mr. Adams).

20. Carl Albert (Okla.).

MR. ADAMS: Mr. Speaker, in response to the comments made by the gentleman from New York (Mr. Horton), the provision that he refers to regards new budget authority, not entitlement programs where there is a reference over to the Committee on Appropriations and it is controlled in that fashion. . . .

I would say to the Members that the same amount of money will go in fiscal year 1977 to the cities, regardless of what happens, so long as the bill is passed this year. There is no dispute about the amount for this year. It is the violation of the budget process for fiscal year 1978, fiscal year 1979, and fiscal year 1980.

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

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

MR. ADAMS: I yield to the gentleman from New York (Mr. Horton).

MR. HORTON: I thank the gentleman for yielding.

Mr. Speaker, the gentleman understands, does he not, there is no additional amount in fiscal year 1977?

MR. ADAMS: That is correct.

MR. HORTON: The amount involved, $200 million, would not be applicable until fiscal year 1978. And in the next Congress, the next session, the Budget Committee would at that time have an opportunity to act on that budget.

MR. ADAMS: No, the gentleman is not correct, because this represents one of the worst kinds of problems in budgeting. . . .

MR. BROWN of Ohio: Mr. Speaker, will the gentleman yield?

MR. ADAMS: I yield to the gentleman from Ohio (Mr. Brown).

MR. BROWN of Ohio: I thank the gentleman for yielding.

Mr. Speaker, I refer to Public Law 93–344, the language that exists on page 22(d)(2).

MR. ADAMS: Would the gentleman refer to the motion, please? I am using both the conference report and the statute.

MR. BROWN of Ohio: Section 401.

MR. ADAMS: Is the gentleman referring to the statute or the conference report?

MR. BROWN of Ohio: Section 401 of the statute.

THE SPEAKER: The Chair has been liberal in enforcing the rules on arguing on a point of order. The Chair controls the time and each individual Member desiring to be heard should address the Chair and not yield to other Members.

Does the gentleman from Ohio (Mr. Brown) desire to be heard?

MR. BROWN of Ohio: Yes, Mr. Speaker, I do desire to be heard.

Mr. Speaker, I refer to Public Law 93–344 of the 93d Congress which was enacted July 12, 1974, and I refer to page 22 of that legislation, section 401(d)(2). Section 401(d) is entitled "Exceptions." Subsection (d)(2), under "Exceptions," says as follows: . . .

THE SPEAKER: The Chair is prepared to rule. The Chair thinks he has heard about all the arguments he needs to hear.

MR. BROWN of Ohio: Mr. Speaker, may I make one final comment in response to the statement of the gentleman from Washington (Mr. Adams)?

THE SPEAKER: The Chair will hear the gentleman briefly. . . .

THE SPEAKER: The Chair is ready to rule.

The gentleman from Washington (Mr. Adams) makes a point of order against the conference report on the bill H.R. 13367 on the ground that section 5(a) of the conference report provides new spending authority and entitlement increment for fiscal years 1978 and 1979 over the amounts provided for in fiscal year 1977, in violation of section 303(a) of the Congressional Budget Act of 1974.

The gentleman from New York (Mr. Horton) and the gentleman from Ohio (Mr. Brown) rebut this argument by contending that a mere incremental increase in an entitlement for subsequent fiscal years is not new spending authority as prescribed in section 401(c)(2)(C) to become effective during the subsequent fiscal years, but rather, a continuation of the spending authority for fiscal year 1977, which is permitted under section 303(a).

The Chair has examined the conference report, and section 5(a) is structured so as to provide separate authorization for entitlement payments for each of the fiscal years 1977, 1978, and 1979, with a higher authorization for 1978 and 1979 than for 1977.

In the opinion of the Chair, such a separate increase in entitlement authorizations is new spending authority to become effective during those subsequent fiscal years, which may not be included in a bill or an amendment prior to the adoption of the first concurrent resolution for fiscal years 1978 and 1979, which does not come within the exception contained in section 303(b) for new budget authority, and which does not come within the section 401(d) revenue-sharing exception—applicable only to . . . spending authority as defined in subsections (a) and (b) of section 401(c)—cited by the gentleman from Ohio.

The Chair therefore sustains the point of order against the conference report.

AMENDMENT IN DISAGREEMENT

THE SPEAKER: The Clerk will report the Senate amendment in disagreement.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "State and Local Fiscal Assistance Amendments of 1976".

Controlling Debate on Point of Order

§ 7.6 Debate on a point of order is within the discretion of the Chair, and Members recognized on a point of order may not yield to other Members.

The Chair has a responsibility to control the argument on a point of order, and within his discretion, he can recognize Members who wish to argue the point before the Chair renders his decision. The following excerpt from the proceedings of Nov. 14, 1980,[1] are illustrative:

MR. [LES] AUCOIN [of Oregon]: Mr. Chairman, I offer an amendment.

1. 126 CONG. REC. 29615–17, 96th Cong. 2d Sess.

The Clerk read as follows:

Amendment offered by Mr. AuCoin: On page 69, after line 17, insert:

(n)(1) The Administrator may not acquire any resource derived from a new nuclear generating facility until such time as the Nuclear Regulatory Commission has licensed the operation of a permanent storage facility for high level nuclear waste and spent fuel from commercial nuclear generating facilities.

(2) For purposes of this subsection, the term "new nuclear generating facility" shall not include any nuclear generating facility for which a construction permit was issued by the Nuclear Regulatory Commission before the date of enactment of this Act.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I reserve a point of order on the amendment. . . .

THE CHAIRMAN:[2] Does the gentleman from Michigan (Mr. Dingell) insist upon his point of order?

MR. DINGELL: I do, Mr. Chairman.

THE CHAIRMAN: The gentleman will state it.

MR. DINGELL: Mr. Chairman, the bill before us establishes a planning council. It provides for a planning council. It provides for a program for conservation and for a fish and wildlife program. It provides for the sale of power. It provides for the establishing of rates, and it provides for the acquisition of resources to produce power. . . .

These nuclear generating facilities are not within the Bonneville Power market area but are anywhere in the United States. And it could include those in the Northeast, the Southeast, the Southwest, in Alaska, or in Hawaii—none of them within the area served. The amendment is much more broad than the bill and deals with quite different matters.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, will the gentleman yield?

THE CHAIRMAN: The Chair controls the time. Does the gentleman from Ohio wish to be heard on the point of order?

MR. BROWN of Ohio: Mr. Chairman, I would like to be heard on the point of order, but I would like to exchange a view with the gentleman from Michigan to reinforce the point of order.

MR. JOHN L. BURTON [of California]: Regular order, Mr. Chairman.

THE CHAIRMAN: There is no colloquy on a point of order.

MR. BROWN of Ohio: Mr. Chairman, I would be happy to speak on the point of order, to reinforce the position of the gentleman from Michigan. . . .

THE CHAIRMAN: Does the gentleman from Oregon (Mr. AuCoin) wish to be heard on the point of order?

MR. AUCOIN: I do, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes the gentleman from Oregon.

MR. AUCOIN: Mr. Chairman, I am somewhat surprised to hear suggestions in defending the point of order that the people of the Pacific Northwest ought to be inflicted with a burden of building additional nuclear powerplants without safeguards. It is the people in the region who will have to live with the consequences of cooling towers in the Pacific Northwest. . . .

THE CHAIRMAN: Does the gentleman from California wish to be heard on the point of order?

2. Matthew F. McHugh (N.J.).

MR. JOHN L. BURTON: I would like to speak in opposition to the point of order.

THE CHAIRMAN: The Chair recognizes the gentleman from California (Mr. John L. Burton).

MR. JOHN L. BURTON: Mr. Chairman, I do not believe that the statement of the distinguished gentleman from Texas saying that the NRC cannot license nuclear powerplants without safeguarding the people by dealing with the hazardous waste that is involved is a horrendous task placed on the NRC. I think that the point of order should be overruled. And I think that the bill is the biggest rape and ripoff of the public that I have ever seen in my life.

MR. AUCOIN: Mr. Chairman, could I be heard on one additional point?

THE CHAIRMAN: The Chair recognizes the gentleman from Oregon (Mr. AuCoin).

MR. AUCOIN: Mr. Chairman, my friend from Texas, the subcommittee chairman, for whom I have a great deal of respect, has, I think, confused, momentarily, the difference between an amendment that would force the Nuclear Regulatory Commission to take an action as opposed to imposing on the Nuclear Regulatory Commission a new responsibility. . . .

THE CHAIRMAN: The Chair is prepared to rule.

In the opinion of the Chair, the amendment offered by the gentleman from Oregon would impose a contingency which is not solely related to the issue of purchase and transmission of power in the Northwest region and which addresses potentially new NRC licensing authority for all Government and privately owned storage facilities on a national basis.

The Chair would cite, specifically, chapter 28 of Deschler's Procedures, section 24.15:

> An amendment delaying the effectiveness of a bill pending the enactment of other legislation and requiring actions by committees and agencies not involved in the administration of the program affected by the bill was ruled out as not germane.

On that basis, the Chair is constrained to sustain the point of order.

The Chair Controls Debate or Argument on a Point of Order

§ 7.7 A Member may not yield for purposes of debate under a reservation of a point of order; the Chair controls the debate by recognizing Members to speak in favor of or in opposition to the point of order.

On Oct. 1, 1985,[3] during the reading for amendment of the Food Security Act of 1985, Chairman David E. Bonior, of Michigan, invited amendments to the title of the bill which was open to amendment. An amendment was then offered which went to the pending title and the next. A point of order was first reserved, then pressed, against the amendment for this reason.

THE CHAIRMAN: When the Committee of the Whole rose on Thursday, September 26, title IV was open to amendment at any point to amend-

3. 131 CONG. REC. 25418–20, 99th Cong. 1st Sess.

ments printed in the Congressional Record before September 24, 1985.

Are there amendments to title IV?

AMENDMENT OFFERED BY MR. GLICKMAN

MR. [DANIEL R.] GLICKMAN [of Kansas]: Mr. Chairman, I offer an amendment.

MR. [EDWARD R.] MADIGAN [of Illinois]: Mr. Chairman, I reserve a point of order on the amendment.

The Clerk read as follows:

Amendment offered by Mr. Glickman: Title IV of H.R. 2100 is amended by—

On page 65, after line 8, striking all through "shall" on line 11 and inserting in lieu thereof the following:

"(2) If the Secretary determines that the availability of nonrecourse loans and purchases will not have an adverse effect on the program provided for in paragraph (3), the Secretary may";

On page 67, after line 5, striking "The Secretary may" and inserting in lieu thereof the following:

"(3)(A) Unless the Secretary, at the Secretary's discretion, makes available nonrecourse loans and purchases to producers under paragraph (2) for a crop of wheat, the Secretary shall";

On page 68, line 23 before the "." inserting the following: ", except that the Secretary shall not make available payments under this paragraph to any producer with a wheat acreage base of less than 15 acres for the crop.";

On page 70, after line 11, striking all through line 12, page 71 and inserting in lieu thereof the following:

"(C) For each crop of wheat, the established price shall not be less than the following levels for each farm:

"(i) $4.50 per bushel for any portion of the crop produced on each farm that does not exceed fifteen thousand bushels and

"(ii) $4.00 per bushel for any portion of the crop produced on each farm that exceeds fifteen thousand bushels.";

On page 86, line 15 striking "may not" and inserting in lieu thereof the following: "shall";

On page 86, line 18 striking "may" and inserting in lieu thereof the following: "shall"; and

Title V of H.R. 2100 is amended by—

On page 87, after line 15, striking all through "shall" on line 18 and inserting in lieu thereof the following— . . .

There was no objection.

MR. GLICKMAN: Mr. Chairman, rather than taking the time of the full House, rather than talking about the substance of the amendment, in order to expedite the process, I wonder if we might deal with the point of order right now, and if the Chair rules that it is out of order, there is no reason why I have to spend 5 or 10 minutes explaining the amendment.

POINTS OF ORDER

THE CHAIRMAN: Does the gentleman from Illinois insist on his point of order?

MR. MADIGAN: Mr. Chairman, under my reservation, I yield to the gentleman from Oregon [Mr. Robert F. Smith].

THE CHAIRMAN: The gentleman will suspend. Under a reservation of a point of order, the gentleman cannot yield time. If other Members have points of order, they can make them and they will be so recognized.

MR. MADIGAN: Mr. Chairman, I believe a point of order would lie against

the amendment offered by the gentleman from Kansas [Mr. Glickman] because the amendment, if I understand the amendment that is being offered, goes to more than one title of the bill, and I think that because it goes to more than one title of the bill, it would not be in order at this point.

MR. GLICKMAN: Mr. Chairman, may I speak to the point of order?

THE CHAIRMAN: The gentleman from Kansas [Mr. Glickman] is recognized.

MR. GLICKMAN: Mr. Chairman, the amendment amends two titles of the bill. To be frank with the Chair, it was submitted as one amendment, but the intention of the author of this amendment as well as the other authors was to deal with the issues as they affected title IV and then title V. I put it in one title of the bill, but, to be honest with the Chair, the issues are divisible, they are separate. I could have amended it and put it in two separate amendments. I did not because that is not the way the issue came up in the Committee on Agriculture.

The issues relating to the issue of targeting deficiency payments to small- and medium-sized farmers and utilizing a device called the marketing loan as a way to deal with our exports; they are in the wheat section, title IV, and there is a separate matter, deals with it separately in the feed grains section, title V.

The amendments are divisible. The language is divisible, and I would hope that the Chair would understand that it was the intent of the author of the amendment to really consider these two as two separate concepts, but I put them together for the ease of putting them in one amendment, since feed grains in the committee were dealt with as one basic issue.

MR. ROBERT F. SMITH [of Oregon]: Mr. Chairman, I make a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. ROBERT F. SMITH: I thank the Chair.

Mr. Chairman, rule III of the rules provides that considerations can only be by title, not by section. I think the point remains that there is no question that this amendment does affect two titles. There are several other amendments, Mr. Chairman, that I will rise on this same issue affecting both sides of the aisle. I think to keep this whole discussion clean, we should follow the rule. The rule clearly states that you cannot amend two titles in one amendment.

THE CHAIRMAN: Are there others who wish to be heard?

Does the gentleman from Minnesota [Mr. Stangeland] make a point of order on this?

MR. [ARLAN] STANGELAND [of Minnesota]: Mr. Chairman, I reserve the right to make a point of order. I reserve the point of order.

THE CHAIRMAN: Is the gentleman making a point of order on this amendment?

MR. STANGELAND: Mr. Chairman, I am arguing against the point of order.

THE CHAIRMAN: The Chair will hear the gentleman.

The gentleman from Minnesota is recognized.

MR. STANGELAND: I thank the Chair. I just want to make the point that the amendment was printed in two distinctly separate sections. One portion of the amendment dealt with wheat

and target prices and marketing loans. The second section of the amendment deals with title V, the feed grain section. Two distinctly different amendments but introduced in the Record as, unfortunately, one amendment. But they deal with the two sections separately. I would just appeal to the Chair that the intent of the authors was that because they were handled en bloc in committee, we would run that way, but they are divisible, they can be addressed to title IV and title V very distinctly in the amendment.

I thank the Chair.

THE CHAIRMAN: The Chair is prepared to rule.

The Chair would state that the Chair can only look at the form in which the amendment has been submitted for printing in the Record. According to the rule, the substitute shall be considered for amendment by title instead of by sections, and only amendments to the bill which have been printed in the Record by September 24 may be offered.

Therefore, the only way in which the amendment that the gentleman from Kansas [Mr. Glickman] wishes to offer could be considered is by unanimous consent.

The Chair sustains the point of order.

Parliamentary Inquiry; Who Gets Charged for Time

§ 7.8 While time for a parliamentary inquiry is normally charged to the Member controlling time who yields for such an inquiry, the Chair may exercise his discretion to recognize for an inquiry between speakers when time is not running against any Member.

Time for general debate on the concurrent resolution on the budget, fiscal 1994–1998, having been fixed by a special rule, and placed by that rule in the control of certain named Members, the Committee of the Whole, by unanimous consent, reconstituted the time used in a colloquy and did not deduct it from the Member controlling time. On another point during the debate, the Chair recognized for a parliamentary inquiry before recognizing a Member to control a block of two hours time. The pertinent proceedings of Mar. 17, 1993,[4] are set out below:

THE CHAIRMAN:[5] The gentleman from New York [Mr. Solomon] reserves the balance of his time.

PARLIAMENTARY INQUIRY

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. WALKER: Mr. Chairman, is the process now that we are going to the discussion of another budget, the Black Caucus budget?

4. 139 CONG. REC. 5394–96, 103d Cong. 1st Sess.

5. José E. Serrano (N.Y.).

THE CHAIRMAN: The process is that the gentleman from Maryland [Mr. Mfume] is going to be recognized for 2 hours.

MR. WALKER: And that would be pursuant to the rule, House Resolution 131; is that correct?

THE CHAIRMAN: The gentleman is correct.

MR. WALKER: And this is the 2 hours of time controlled by the gentleman from Maryland [Mr. Mfume] under that rule; is that correct?

THE CHAIRMAN: Those 2 hours have not changed. . . .

The Chair clarifies that the gentleman from Maryland [Mr. Mfume] controls the 2 hours.

MR. WALKER: But it is permissible for him to yield that time to the opposition if he so wishes?

THE CHAIRMAN: The gentleman can do with his 2 hours whatever he wishes.

MR. WALKER: I thank the Chair for that, and, if in fact he were to do that, that would, in fact, even up the time between the majority and minority where right now there is a disparity of about an hour of time between the majority and minority as a result of the way the rule was structured, thereby leaving the minority short of its time to present its case.

So, it would have that impact; is that correct?

THE CHAIRMAN: The gentleman is drawing a conclusion, and that is not part of an inquiry.

The gentleman from Maryland [Mr. Mfume] will be recognized for 2 hours.

MR. WALKER: Mr. Chairman, will the gentleman yield?

MR. [KWEISI] MFUME [of Maryland]: I yield to the gentleman from Pennsylvania.

MR. WALKER: Mr. Chairman, I thank the gentleman from Maryland [Mr. Mfume] for yielding to me. . . .

MR. MFUME: Mr. Chairman, reclaiming my time, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. MFUME: I would like to ask the Chair whether or not the time for the colloquy was counted against the time allotted.

THE CHAIRMAN: Yes. That colloquy consumed 6 minutes.

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Chairman, that is really not in order. I mean this was a colloquy. We were not propounding parliamentary procedures, but we were speaking out of order.

THE CHAIRMAN: The gentleman from New York [Mr. Solomon] did ask the gentleman from Maryland [Mr. Mfume] to yield, and he yielded three times to three different Members.

MR. SOLOMON: Mr. Chairman, I do not think that is fair. I understand why it is being done, but I ask unanimous consent that the gentleman from Maryland [Mr. Mfume] be given an extra 6 minutes to restore his 2 hours. That is only fair in this body.

THE CHAIRMAN: Without objection, so ordered.

There was no objection.

Scope of Debate

§ 7.9 Debate on a point of order is limited to the question of order and may not go to the merits of the legislative proposition.

On July 19, 1967,[6] during consideration of a bill prescribing penalties for interstate travel to incite riots, a Member, Richard D. McCarthy, of New York, proposed an amendment dealing with gun control, particularly mail order guns. This amendment was challenged as being not germane.

THE CHAIRMAN:[7] Does the gentleman from New York [Mr. McCarthy] wish to be heard on the point of order?

MR. MCCARTHY: Yes, Mr. Chairman.

Mr. Chairman, I think this amendment is germane. There is no doubt about it in my mind.

Let me explain that H.R. 421 would become section 2 of that bill, and with this amendment added it would create a new section 1, which is essentially, with a very slight change at the beginning, the administration's firearms bill, which would prohibit the mail-order sales of firearms and require anyone dealing in, manufacturing, or importing firearms to have a Federal license.

Mr. Chairman, this amendment is germane because the pattern of these riots is clear. Guerrilla warfare in the streets with snipers pouring deadly gunfire from roofs and windows above at ambulances with children in them. In Newark killing a fire captain. There was the shooting of firearms and even the shooting up of a hospital.

Friday a tired Governor Hughes said this.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I would hope that the gentleman would confine his remarks to the point of order.

THE CHAIRMAN: The gentleman from New York will confine himself to the point of order.

MR. MCCARTHY: I am trying to point out, Mr. Chairman, that in my view this amendment is germane to the intent of this legislation.

The Governor said that the riots and the sniping, with the use of even automatic weapons and machineguns, pointed to the need for an interstate firearms law. It can be said that New Jersey already has a strict law. I say to that it is 1 year old. Many of these guns were in possession of these people before that. Second, we have ample evidence——

MR. GROSS: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. GROSS: I submit that the gentleman is not directing his argument to the point of order.

THE CHAIRMAN: The gentleman must confine his remarks to the point of order.

MR. GROSS: There is no relevancy of the law in the State of New Jersey.

THE CHAIRMAN: The gentleman will confine himself to the merits of the point of order and not the substance of the bill.

Argument on Point of Order Should Not Address Merits of Amendment

§ 7.10 Argument on a point of order must be confined to

6. 113 CONG. REC. 19412, 90th Cong. 1st Sess. Under consideration was H.R. 421, prescribing penalties for travel in interstate commerce to incite riots.

7. Joseph L. Evins (Tenn.).

the point of order and should not go to the merits of the proposition being challenged.

During consideration of the Labor and Health, Education, and Welfare appropriation bill for fiscal 1977, on June 24, 1976,[8] Mrs. Millicent Fenwick, of New Jersey, offered an amendment. Two Members sought recognition to speak to a point of order raised against the amendment. Another raised the issue of whether their debate was directed to the point of order. Proceedings were as shown below:

MRS. FENWICK: Mr. Chairman, I offer an amendment as a substitute for the amendment offered by the gentleman from Kansas (Mr. Skubitz).

The Clerk read as follows:

Amendment offered by Mrs. Fenwick as a substitute for the amendment offered by Mr. Skubitz: On page 7, strike the period at the end of line 25, and insert in lieu thereof: ": *Provided* That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation which employs five or fewer employees." . . .

MR. [GARY] MYERS of Pennsylvania: Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Myers of Pennsylvania to the amendment offered by Mrs. Fenwick as a substitute for the amendment offered by Mr. Skubitz: At the end of the amendment offered by Mrs. Fenwick strike the period and add the following: "*Provided further*, That the funds appropriated under this paragraph shall be obligated or expended to assure full compliance of the Occupational Safety and Health Act of 1970 by Members of Congress and their staffs."

MR. [WILLIAM D.] FORD of Michigan: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[9] The Chair recognizes the gentleman from Michigan.

MR. FORD of Michigan: Mr. Chairman, the amendment is not germane. It is also in violation of the rule against legislating on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Pennsylvania (Mr. Myers) desire to be heard on the point of order?

MR. MYERS of Pennsylvania: I do, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes the gentleman from Pennsylvania (Mr. Myers).

MR. MYERS of Pennsylvania: Mr. Chairman, because of my great concern for the safety of all workers and because of the fact that Members of Congress are allowed in fact to have several offices and up to 18 full-time employees, some of those who travel vehicular equipment on the highways are exposed to extreme hazards, and because of my background and experience in the steel industry, knowing

8. 122 CONG. REC. 20370, 20371, 94th Cong. 2d Sess.

9. James C. Wright, Jr. (Tex.).

what the regulations are, I see a noncompliance in many of the offices, such as boards across walkways, people standing on chairs instead of ladders, storage facilities not properly put in place. I have a concern about industry and for those people who work in industry.

It applies also to employees in our offices.

The objective of this bill is to appropriate money to see that OSHA is bringing under compliance all workers who work in an environment such as an industrial office or similar facilities.

MR. [RONALD A.] SARASIN [of Connecticut]: Mr. Chairman, I make a point of order.

THE CHAIRMAN: The gentleman from Pennsylvania (Mr. Myers) is being heard on a point of order.

MR. SARASIN: Mr. Chairman, it would appear that the gentleman is not addressing himself to the point of order, but he is addressing himself to the amendment.

THE CHAIRMAN: The gentleman is correct.

The gentleman from Pennsylvania (Mr. Myers), at this point, should address his comments to the point of order made by the gentleman from Michigan (Mr. Ford), to—wit, that the amendment offered by the gentleman from Pennsylvania (Mr. Myers) would not be germane to the language of the substitute which it would seek to amend and, further, that it would constitute legislation on an appropriation bill.

Does the gentleman desire to touch on that?

MR. MYERS of Pennsylvania: Mr. Chairman, I was simply laying the groundwork for my response to the point of order.

It simply is that in this bill we are communicating to OSHA their commitments, and it is simply that message I want to address and require that they do set aside funds for this compliance.

THE CHAIRMAN: The Chair is prepared to rule.

The gentlewoman from New Jersey (Mrs. Fenwick) has offered a substitute for an amendment offered by the gentleman from Kansas (Mr. Skubitz).

Both the amendment offered by the gentleman from Kansas (Mr. Skubitz) and the proposed substitute offered by the gentlewoman from New Jersey (Mrs. Fenwick) are applicable to farmworkers and have a precise reference to the number of employees engaged by a farmer.

The gentleman from Pennsylvania (Mr. Myers) would add to the substitute additional provisions requiring that funds appropriated under the program shall be obligated and expended to assure compliance with the Occupational Safety and Health Act by Members of Congress and their staffs.

Manifestly, this does constitute legislation on an appropriation bill; and, beyond that, it would not be germane, in the opinion of the Chair, to the pending substitute.

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

MR. MYERS of Pennsylvania: I thank the Chairman for his even-handed evaluation of the situation.

§ 7.11 Debate on a point of order against an amendment is limited to the question of order and may not go to the merits of the amendment.

On Nov. 25, 1970,[10] during discussion of the provisions of a federal highway bill, Mr. Samuel S. Stratton, of New York, introduced an amendment dealing with the plight of prisoners of war. A point of order was then raised against the amendment. In the ensuing debate on the point of order, the Member repeatedly referred to the amendment, not the point of order. This in turn provoked another point of order, with the ultimate result that Chairman Chet Holifield, of California, had to rule the Member out of order.

THE CHAIRMAN: A point of order is made against the amendment by the gentleman from Ohio (Mr. Harsha).

MR. STRATTON: Mr. Chairman, I desire to be heard on the point of order.

THE CHAIRMAN: The Chair will hear the gentleman from New York on the point of order. . . .

MR. STRATTON: Mr. Chairman, this amendment seeks to enlist the support of this House for action taken in an effort to rescue these prisoners. This is a resolution which the gentleman from Illinois (Mr. Findley) and I have introduced and on which we are seeking support. I think it is appropriate for two reasons.

This is an amendment——

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman from Iowa will state the point of order.

MR. GROSS: Mr. Chairman, the gentleman is not addressing himself to the point of order.

MR. STRATTON: I am addressing myself to the point of order, if the gentleman from Iowa will allow me to continue.

Mr. Chairman, this amendment——

THE CHAIRMAN: The gentleman from New York will suspend. This bill is a bill having to do with the highway system of the United States. The Chair regrets to rule that the gentleman——

MR. STRATTON: Mr. Chairman, allow me to make my point. I have a couple of very valid points.

THE CHAIRMAN: The gentleman has not addressed himself to the point of order and the Chair is constrained to rule that the gentleman is out of order.

§ 7.12 Debate on a point of order is confined to the question of order, may not extend to the merits of the bill, and is for the edification of the Chair who may decline to hear further argument.

On June 13, 1991,[11] while the Committee of the Whole was debating amendments under the five-minute rule during consideration of a general appropriation measure, Mr. Richard K. Armey, of Texas, raised a point of order against an amendment offered by Mr. Byron L. Dorgan, of North Dakota. Several Members seemed inclined to discuss not the amendment or the

10. 116 CONG. REC. 38971, 38972, 91st Cong. 2d Sess. Under consideration was H.R. 19504, the Federal Highway Act.

11. 137 CONG. REC. 14690, 14691, 102d Cong. 1st Sess.

point of order but the broader "savings and loan" crisis. The following colloquy illustrates the efforts of the Chair to confine the debate to the question of order.

MR. ARMEY: Mr. Chairman, I desire to be heard on my point of order.

THE CHAIRMAN:[12] The gentleman will state his point of order.

MR. ARMEY: Mr. Chairman, I make the point of order that this amendment violates clause 2 of rule XXI which prohibits this in appropriations bills.

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

MR. DORGAN of North Dakota: Mr. Chairman, my understanding is the gentleman has not asserted a point of order at this moment, is that correct?

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman will state the parliamentary inquiry.

MR. ARMEY: Mr. Chairman, it is my understanding that once I stipulate the point of order, I have an opportunity to discuss my point of order.

THE CHAIRMAN: The gentleman has stated his point of order. He does have the opportunity to be heard. The Chair thought that he had expressed it.

MR. ARMEY: Mr. Chairman, I had intended to discuss my point of order and my reasons for holding that.

THE CHAIRMAN: The gentleman may proceed.

MR. ARMEY: Mr. Chairman, let me say first of all I have enormous respect not only for the gentleman from North Dakota, but in particular, for what it is he is attempting to do.

I have a concern, on the other hand, Mr. Chairman, that we would be doing it in this matter with respect to legislative procedure, encumber the work of the Committee on Appropriations and circumvent the work of several committees, including the Committee on the Judiciary, the Committee on Banking, Finance and Urban Affairs, and his own Committee on Ways and Means. . . .

THE CHAIRMAN: The Chair would just like to state that the gentleman should speak rather narrowly to the point of order, not to the merits of the proposal.

MR. ARMEY: Mr. Chairman, I appreciate the Chair's advice.

Mr. Chairman, very narrowly, let me say I hold a point of order that the gentleman from North Dakota [Mr. Dorgan], for all his good work, all his good intentions, violates clause 2 of rule XXI.

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

MR. DORGAN of North Dakota: Mr. Chairman, I indicated in my opening remarks that I understood a point of order could lie on this provision. The gentleman from Texas fully understands the conditions under which this legislation is being discussed on the floor today. . . .

MR. [HAROLD] ROGERS [of Kentucky]: Mr. Chairman, I wish to be heard on the point of order.

The question is, whether or not there is legislative procedure on an appropriations bill. That is the object of my discussion in these 5 minutes, or the time the Chair allows me.

12. George E. Brown (Calif.).

Mr. Chairman, there is already established in the current law in the Department of Justice a financial institutions fraud unit. It is already there. It is in the law. We appropriate money to it in this bill.

Now, they want to call it a savings and loan criminal fraud unit.

THE CHAIRMAN: Would the gentleman merely talk to the merits of the point of order?

MR. ROGERS: Mr. Chairman, the gentleman from North Dakota spoke broadly about the merits.

THE CHAIRMAN: He did, and the Chair is trying to discourage others from making his mistake.

MR. ROGERS: I insist upon the privilege of doing so.

THE CHAIRMAN: The Chair will recognize the gentleman to speak to the point of order. . . .

Are there additional Members who desire to be heard on the point of order?

MR. [DENNIS E.] ECKART [of Ohio]: Mr. Chairman, I would like to be heard on the point of order.

THE CHAIRMAN: The Chair would like to advise the gentleman to stick to the point of order. . . .

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. ARMEY: Mr. Chairman, is there something in the rules of the House that I have not found that says that there is more latitude granted to Members who speak in opposition to a point of order than the person who makes the point of order?

THE CHAIRMAN: There is nothing in the rules that states that.

MR. ARMEY: Then, Mr. Chairman, may I be heard on the point of order with as much latitude to speak about the crime bill?

THE CHAIRMAN: The gentleman has already been heard on the point of order. The Chair thinks enough Members have been heard.

MR. ARMEY: Mr. Chairman, may I be heard to speak on the crime bill?

THE CHAIRMAN: The Chair is ready to rule.

A point of order has been raised by the gentleman from Texas [Mr. Armey] against the proposed amendment of the gentleman from North Dakota on the grounds that it violates clause 2 of rule XXI in that it constitutes legislation on an appropriation bill.

For the reasons stated by the gentleman from Texas and others, the Chair agrees with the point of order and rules that the amendment violates the rules of the House and is therefore not in order.

Debate on Point of Order Does Not Come Out of Time to Which the Proponent of an Amendment Is Entitled Under the Five-minute Rule.

§ 7.13 The proponent of an amendment against which a point of order has been reserved may not reserve a portion of his time under the five-minute rule to oppose any points of order, if made, since the Chair has discre-

tion to recognize for separate debate time on any point of order.

Where points of order are reserved against an offered amendment, the proponent may proceed under the five-minute rule to discuss the merits of his amendment and need not reserve time to refute any point of order which is pressed. The proceedings of Aug. 1, 1975,[13] illustrate how the Chair differentiates between debate on the merits and argument on a point of order.

THE CHAIRMAN:[14] Are there further amendments to title III?

AMENDMENT OFFERED BY MR. BROWN OF OHIO

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Brown of Ohio: Strike out Title III, as amended, and reinsert all except for Section 301, as amended.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I reserve a point of order against the amendment.

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, I also reserve a point of order.

MR. BROWN of Ohio: Mr. Chairman, the thrust of this amendment is to strike from the bill the provisions of the Staggers pricing amendment, section 301, by revising title III to strike the whole title and to reinsert all in the title, except section 301.

Mr. Chairman, may I speak on the amendment?

THE CHAIRMAN: The gentleman has been recognized for 5 minutes, so the gentleman may proceed.

MR. BROWN of Ohio: Mr. Chairman, may I reserve 2 minutes of my time to speak on the points of order?

THE CHAIRMAN: The Chair will recognize the gentleman to speak on the points of order at the appropriate time.

MR. DINGELL: Mr. Chairman, I have not yet made the point of order. I reserved it.

THE CHAIRMAN: The Chair has recognized the gentleman from Ohio to speak on the gentleman's amendment for 5 minutes. Then the gentlemen who reserved the points of order may press them or they may not.

MR. BROWN of Ohio: Mr. Chairman, the purpose of this amendment, as I said, is to strike section 301, the pricing section, from the bill.

Time Consumed on Point of Order When Overall Time Is Limited

§ 7.14 Where debate under the five-minute rule has been limited to a time certain, time consumed in argument on a point of order comes out of the total time under the limitation, thus reducing the time which can be allotted to other Members seeking recognition. The time is not

13. 121 CONG. REC. 26945, 94th Cong. 1st Sess.

14. Richard Bolling (Mo.).

charged only against the proponent of the amendment against which the point of order is made.

On Apr. 26, 1978,[15] debate under the five-minute rule was proceeding the Public Disclosure of Lobbying Act of 1978. Mr. George E. Danielson, of California, moved that all debate on the bill and amendments end at 7:30 that evening. The events following the imposition of this limitation were as follows.

MR. DANIELSON: Mr. Chairman, I move that all debate on this bill and all amendments thereto be terminated at the hour of 7:30 o'clock p.m. tonight.

THE CHAIRMAN:[16] The question is on the motion offered by the gentleman from California (Mr. Danielson).

The question was taken; and the Chairman being in doubt, the Committee divided, and there were—ayes 22, noes 20.

MR. GARY A. MYERS [of Pennsylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Gary A. Myers: Page 39, insert the following after line 7:
>
> (g) If any lobbying communication was made on the floor of the House of Representatives or adjoining rooms thereof, or on the floor of the Senate or adjoining rooms thereof, a statement that such lobbying communication was made.

MR. DANIELSON: Mr. Chairman, I have a point of order on the amendment.

THE CHAIRMAN: The gentleman will state his point of order.

MR. DANIELSON: Mr. Chairman, I make the point of order that this amendment is not germane to the bill. The bill calls for disclosure of lobbying activities under the terms of expenditure and the like, and related lobbying activities as to influencing the conduct and disposition of legislation. This has to do with activities within the Capitol Building and is not necessarily within the purview of the bill.

THE CHAIRMAN: Does the gentleman from Pennsylvania (Mr. Gary A. Myers) desire to be heard on the point of order?

MR. GARY A. MYERS: I do, Mr. Chairman. I would like to be heard on the point of order.

THE CHAIRMAN: The gentleman may proceed.

MR. GARY A. MYERS: Mr. Chairman, I would like to point out that the amendment is more narrowly drafted than the amendment which I offered last year. It only requires an item of disclosure by those individuals who otherwise would have to be reporting. This bill does not in any way define the geographical location in which lobbying activity would not be reported. Nowhere in the bill does it say that if the lobbyist speaks to a House Member in the Capitol that that is not a reportable item. The only thing this amendment would do would require the reporting of any specific activity discussed on the floor of the House. In last year's amendment there was a point of order raised about the invasion of the House rules. It would seem to me that article I, section 5 of the Constitution clearly states that:

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15. 124 CONG. REC. 11641, 11642, 95th Cong. 2d Sess.

16. Lloyd Meeds (Wash.).

. . . each House may determine the rules of its proceedings.

Numerous precedents have held that the power to make rules is not impaired by rules of previous Congresses or by laws passed by previous Congresses. So that this amendment in no way adds to or impairs the rules of the House.

It has been recognized that a law passed by an existing Congress can bind that Congress in matters of procedure—and I refer to Hinds' Precedents, volume 5, sections 6767 and 6768. However, this amendment does not even go that far since it in no way binds this or any other Congress. It merely makes available information to the Congress and to the general public. If the Congress chooses to act on that information it can do so according to its rules and procedures.

Mr. Chairman, it seems to me the amendment is germane, it is simply another item of reporting.

I also believe it would be inappropriate for this House to object to this type of reporting.

THE CHAIRMAN: The Chair is prepared to rule.

For the reasons stated by the gentleman from Pennsylvania (Mr. Gary A. Myers), and in addition, since this amendment does not seek to restrain or regulate conduct but only requires disclosure, the Chair will rule that the point of order is not well taken and the amendment is germane as adding a further reporting requirement to those contained in the bill. . . .

The Chair will notify the members of the committee that time taken from the allotted time for the discussion of the point of order was not allotted to the gentleman from Pennsylvania but will come out of the general time and will reduce everyone's time to 5 minutes each.

Are there further amendments?

§ 7.15 Time consumed on a point of order that debate is not relevant does not come out of that allotted to the Member holding the floor under the five-minute rule.

On June 15, 1983,[17] the House had under consideration the Defense Department Authorization Act of 1984 (H.R. 2969). The following exchange occurred during the five-minute rule:

MR. [ED] BETHUNE [of Arkansas]: . . . Nineteen years they have been working on this bomb, and they finally decided to test it under something similar to what they might actually face in the modern combat world, and it blew up on them.

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Chairman, I wish to make a point of order.

THE CHAIRMAN PRO TEMPORE:[18] The gentleman will state it.

MR. STRATTON: Mr. Chairman, I make a point of order against the gentleman from Arkansas. The gentleman is discussing a munition that is not funded in this section of the bill, and he is spending considerable time of the Committee in discussing that, although there are no funds for the production

17. 129 CONG. REC. 15818, 98th Cong. 1st Sess.

18. John P. Murtha, Jr. (Pa.).

of the weapon that he refers to. I think he is proceeding out of order.

THE CHAIRMAN PRO TEMPORE: The gentleman from Arkansas is discussing chemical weapons, and it is difficult to restrict the gentleman to a narrow interpretation of that in the comments he is making.

MR. STRATTON: Mr. Chairman, if I may be heard further on the point of order, there are a number of things that are funded in the bill. Binary systems is the basic issue which the gentleman from Wisconsin addressed himself to. But the particular one that the gentleman from Arkansas is debating is something that is not funded in this portion of the bill, and it seems to me that this is a proceeding out of order and abusing the time of the Committee.

THE CHAIRMAN PRO TEMPORE: Does the gentleman from Arkansas (Mr. Bethune) wish to be heard on the point of order?

MR. BETHUNE: Mr. Chairman, is my time protected while the gentleman from New York makes his point of order?

THE CHAIRMAN PRO TEMPORE: The gentleman's time is protected.

MR. BETHUNE: I thank the Chair.

Mr. Chairman, I would just simply say that the bill does ask for moneys to build buildings, facilities, to do tooling work, to build the casings for the Big Eye bomb. I do not know what could be more relevant than to discuss whether or not it works before we start building facilities and the QL mix that would go in the bomb.

MR. STRATTON: Mr. Chairman, may I be heard further on the point of order?

THE CHAIRMAN PRO TEMPORE: The gentleman from New York may be heard further on the point of order.

MR. STRATTON: Mr. Chairman, the thrust of the gentleman's argument in discussing an item that is not funded in the legislation is to create the impression that all of the activities of the Department of the Army in dealing with chemical weapons, and particularly the binary weapons which are funded in this section, is defective. But the item which he is constantly referring to, and with all of its mistakes, is not included; and the problems that it had led the committee to remove the money for that particular weapon. If the gentleman wants to discuss it, it ought to be discussed in the research and development title of the bill rather than in the procurement and production title with which we are engaged now.

THE CHAIRMAN PRO TEMPORE: The Chair will rule.

The money in the bill is unearmarked and the arguments of the gentleman from Arkansas are considered relevant to the debate on his amendment which is pending and which addresses the issues being debated.

The Chair will overrule the point of order.

Time Consumed by Parliamentary Inquiries

§ 7.16 When the Member holding the floor in debate refuses to yield for a parliamentary inquiry, the time consumed by repeated requests for him to yield does not come out of his allotted time.

Where the Member making a statement during general debate on a bill in Committee of the Whole refuses to yield for an inquiry until he has finished his statement, the minutes taken by repeated requests for him to yield is not taken from his time. Proceedings on Nov. 22, 1993,[19] were as indicated.

MR. [CHRISTOPHER] COX [of California]: Mr. Chairman, I yield 4 minutes to the gentleman from Texas [Mr. Armey], chairman of the Republican conference.

MR. [DICK] ARMEY [of Texas]: Mr. Chairman, I thank the gentleman for yielding the time. . . .

I will not yield to the gentleman, so do not bother asking.

MR. [RONALD D.] COLEMAN [of Texas]: Parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN:[20] The gentleman from Texas [Mr. Armey] has the time.

MR. COLEMAN: Parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: For what purpose does the gentleman from Texas rise?

MR. COLEMAN: I want to ask a parliamentary inquiry.

THE CHAIRMAN: Does the gentleman from Texas [Mr. Armey] yield to the gentleman from Texas [Mr. Coleman] for a parliamentary inquiry?

MR. ARMEY: I will not yield to the gentleman from Texas until I have finished my statement.

THE CHAIRMAN: The gentleman from Texas has the time and the gentleman does not yield.

MR. COLEMAN: Parliamentary inquiry.

THE CHAIRMAN: The gentleman from Texas does not yield for a parliamentary inquiry.

MR. COLEMAN: He does not have to. I am asking a question.

THE CHAIRMAN: The gentleman from Texas does not yield for a parliamentary inquiry. The gentleman from Texas has the time.

MR. ARMEY: I would ask the Chair, if he does not mind, that time used to explain the rules will not come out of my time?

THE CHAIRMAN: That will not count against the time of the gentleman from Texas.

MR. COLEMAN: Mr. Chairman, do you mean to tell me when I ask a parliamentary inquiry, it does not ask that of the Chair?

THE CHAIRMAN: Under the rules, the gentleman does not have to yield, as long as he has the floor, for a parliamentary inquiry. The gentleman from Texas has the time, and this time will not be counted against the gentleman from Texas.

Chair Controls Argument on Point of Order

§ 7.17 Argument on a point of order is at the discretion of the Chair, and Members seeking to be heard must address the Chair and cannot engage in "colloquies" on the point of order.

19. 139 CONG. REC. 31981, 103d Cong. 1st Sess.

20. William J. Hughes (N.J.).

On Sept. 18, 1986,[1] the House had under consideration in Committee of the Whole a bill dealing with minimum altitude for aircraft flying over national parks. When a section dealing with the restrictions pertaining to the Grand Canyon was reached in the reading, Mr. Robert K. Dornan, of California, offered an amendment that required the installation of collision avoidance systems in all aircraft. A portion of the amendment and the related proceedings are carried herewith.

THE CHAIRMAN:[2] Are there any amendments to section 2? If not, the Clerk will designate section 3.

The text of section 3 is as follows:

SEC. 3. GRAND CANYON NATIONAL PARK.

(a) Noise associated with aircraft overflight at the Grand Canyon National Park is causing a significant adverse effect on the natural quiet and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users.

MR. DORNAN of California: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dornan of California: At the end of the bill add the following:

SEC. 4. COLLISION AVOIDANCE SYSTEM.

Section 312(c) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353(c)), which relates to research and development, is amended by inserting "(1)" immediately after "(c)" and by adding at the end thereof the following new paragraph:

"(2) In carrying out his functions, powers, and duties under this section pertaining to aviation safety, the Secretary of Transportation shall coordinate and take whatever steps necessary (including research and development) to promulgate standards for an airborne collision avoidance system for all United States aircraft, civil and military, to improve aviation safety. The Secretary of Transportation shall promulgate such standards within one year after the date of enactment of this Act. Such standards shall require that such collision avoidance system be designed— . . .

[A point of order was reserved against the amendment.]

THE CHAIRMAN: The time of the gentleman from California (Mr. Dornan) has expired.

Does the gentleman from Minnesota (Mr. Vento) insist on his point of order?

MR. [BRUCE F.] VENTO [of Minnesota]: Yes, Mr. Chairman, I insist on my point of order.

THE CHAIRMAN: The gentleman from Minnesota is recognized.

POINT OF ORDER

Mr. Vento: Mr. Chairman, under the rule of germaneness, rule XVI, clause 7, no subject different from that under consideration shall be admitted under the color of an amendment. The amendment of the gentleman from California (Mr. Dornan) violates that rule and I must reluctantly insist on my point of order, Mr. Chairman.

THE CHAIRMAN: Does the gentleman from California wish to be heard on the point of order?

1. 132 CONG. REC. 24082–84, 99th Cong. 2d Sess.

2. J. J. Pickle (Tex.).

MR. DORNAN of California: Yes, Mr. Chairman, I would like to speak to it.

THE CHAIRMAN: The gentleman from California is recognized.

MR. DORNAN of California: Mr. Chairman, I understand the gentleman's objection and I would ask for some help. Under my 5 minutes here, I would like to ask for a colloquy with my good friend and distinguished colleague, the gentleman from California (Mr. Mineta).

THE CHAIRMAN: The Chair will advise the gentleman that he cannot have a colloquy during a point of order.

MR. DORNAN of California: All right, Mr. Chairman, here is what I will ask rhetorically and publicly. . . .

Now, I would ask the gentleman from California (Mr. Mineta) if there is any way that we can get some kind of a hearing in the remaining 2 or 3 weeks, God forbid that we come back into a special session, so that this 99th Congress, which suffered a midair collision over the Grand Canyon on June 18 does something in this Congress.

Mr. Chairman, I ask the gentleman to withdraw his objection.

THE CHAIRMAN: The Chair will advise the gentleman from California that he is still not speaking to the point of order and will ask the gentleman to conclude his remarks on the point of order, without the colloquy or the questions.

The gentleman may proceed.

MR. DORNAN of California: That is all, Mr. Chairman.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from California (Mr. Dornan) has offered an amendment adding a section 4 pertaining to the collision avoidance system.

The Chair has had an opportunity to examine the amendment and it is the opinion of the Chair that the amendment is not germane. The bill before us, H.R. 4430, is a narrow one addressing only overflights over certain national park areas.

The amendment goes to an unrelated subject amending an act not amended by the bill.

Therefore, the Chair sustains the point of order.

Scope of Debate on Point of Order; on Motion To Recommit

§ 7.18 Debate on a point of order raised against a motion to recommit a conference report with instructions to the conferees must be confined to the question of order and may not go to the merits of the underlying proposition.

Where a point of order was raised against the instructions included in a motion to recommit a conference report on the ground that the instructions exceeded the differences committed to conference, the argument on the point of order tended to roam to the merits of the bill in conference and away from the merits of the point of order. At one point, the Chair had to bring the debate back to the issue at hand. The

proceedings of Apr. 9, 1992,[3] are set out below:

THE SPEAKER PRO TEMPORE:[4] The question is on the conference report.

MOTION TO RECOMMIT OFFERED BY MR. WALSH

MR. [JAMES T.] WALSH [of New York]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report in its present form?

MR. WALSH: Mr. Speaker, I am.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Walsh moves to recommit the conference report on the bill S. 3 to the Committee of Conference with instructions to the managers on the part of the House to include in the conference report the provisions of H.R. 3770 including:
>
> 1. The requirement that a majority of a candidate's contributions come from individuals residing in the candidate's district.
>
> 2. A limit of $1,000 on PAC contributions to candidates.
>
> 3. A total ban on soft money contributions to political parties.
>
> And to further include the requirement that no taxpayer dollars may be used to finance congressional campaigns.

POINT OF ORDER

MR. [SAM] GEJDENSON [of Connecticut]: Mr. Speaker, I rise to a point of order.

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

MR. GEJDENSON: Mr. Speaker, I would make a point of order that the instructions exceed the scope of the conference report. It is clear that the requirement of in-district funding is beyond the scope of the conference report, and I would move that therefore the motion to recommit should be ruled out of order.

THE SPEAKER PRO TEMPORE: Does the gentleman from New York [Mr. Walsh] wish to be heard in opposition to the point of order?

MR. WALSH: Mr. Speaker, I believe that this motion adds to the fairness of the conference report, and I would urge that it be added.

THE SPEAKER PRO TEMPORE: Does the gentleman from New York [Mr. Walsh] concede the point of order?

MR. WALSH: Mr. Speaker, I do not.

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

MR. [PAUL B.] HENRY [of Michigan]: Mr. Speaker, I wish to be heard on the point of order.

THE SPEAKER PRO TEMPORE: The point of order is contested. The gentleman from Michigan [Mr. Henry] is recognized on the point of order.

MR. HENRY: Mr. Speaker, I want to be sure we understand what the point of order is and what the question is and what the contest is. . . .

MR. GEJDENSON: Mr. Speaker, the objection is because it is beyond the scope of the conference. At this stage of the game to try to rewrite the whole conference is really in fact an attempt to kill campaign finance reform, at least at this session, in my perspective. . . .

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3. 138 CONG. REC. 9021, 9022, 102d Cong. 2d Sess.

4. Dennis E. Eckart (Ohio).

THE SPEAKER PRO TEMPORE: Does the gentleman from Iowa [Mr. Leach] wish to be heard on the point of order?

MR. [JIM] LEACH [of Iowa]: Mr. Speaker, I do think this body ought to understand what is taking place here. The minority resolution talked about a $1,000 cap on PAC's. The House bill passed a $5,000 limit. The Senate bill passed a zero or up to a thousand, if the court threw it out.

So what the majority is attempting to do is stifle a very thoughtful amendment of the minority for real reform of the political action system and is using the Rules of the House against real reform. And there is nothing more germane to this bill.

The subject matter of this bill is containing political action committees. I think the public record ought to indicate it.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Leach] is entitled to be heard on the point of order under the rules of the House. That does not entitle the gentleman to be heard on the merits of the bill.

If the gentleman has remarks to make, they should be confined to the point of order before the House. . . .

The Chair is prepared to rule.

The gentleman from Connecticut makes a point of order against the motion offered by the gentleman from New York on the ground that the instructions therein exceed the scope of the conference.

The motion offered by the gentleman from New York proposes to instruct the managers on the part of the House to include in the conference report three features of a separate bill, H.R. 3770. Each of these three initiatives falls outside the matters committed to the conference as disagreements between the Senate bill and the House amendment thereto.

Therefore, under clause 3 of rule XXVIII, a conference report may not include a matter although germane that was not committed to the conference of either House.

In the opinion of the Chair, the instructions proposed in the motion offered by the gentleman from New York exceed the scope of the differences committed to the conference and the point of order is sustained.

Senate Rules as Authority

§ 7.19 Parliamentarian's Note: It is in order in debate on a question of order to read a rule of the House or Senate for the Chair's information if it relates to the point of order.

On July 16, 1935,[5] during debate on a point of order in the House, a Member was permitted to read aloud excerpts from the Senate rules as authority for his argument.

MR. [THOMAS L.] BLANTON [of Texas]: I refer the Chair to the following portion of rule XXVIII of the United States Senate:

> Messages shall be sent to the House of Representatives by the Secretary, who shall previously certify the determination of the Senate

5. 79 CONG. REC. 11262, 74th Cong. 1st Sess.

upon all bills, joint resolutions, and other resolutions.

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, I make the point of order that the gentleman cannot read from any document or from any other papers.

THE SPEAKER:[6] This is for the information of the Chair, and the point of order is overruled. The gentleman from Texas will proceed in order.

Conceding Points of Order During Debate

§ 7.20 Where a point of order is made against language in a bill and the point is conceded in debate by the Member handling the bill, the Chair rules on the point of order unless there is further argument by another Member against the validity of the point of order.

For example, on Apr. 12, 1960,[7] in the Committee of the Whole, Chairman W. Homer Thornberry, of Texas, ruled on a point of order against an amendment immediately after the proponent conceded during debate that the point of order was well taken.

MR. [H. R.] GROSS [of Iowa]: . . . Mr. Chairman, I make the point of order that this violates rule 21, paragraph 2, of Cannon's Procedures which provides that no appropriation shall be made without prior authorization.

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

MR. [JOHN J.] ROONEY [of New York]: Yes, Mr. Chairman. . . .

. . . I am now constrained to concede that the point of order is well taken and I shall immediately offer an amendment.

THE CHAIRMAN: The point of order is conceded and sustained.

Argument on Point of Order; Revisions and Extensions Not Permitted

§ 7.21 The Chair will not entertain unanimous-consent requests to revise and extend remarks when hearing argument on a point of order.

On Oct. 7, 1977,[8] a rather involved point of order was raised against a conference report on the Energy Research and Development Administration Authorization Act of 1978. The report was called up by Mr. Teague, Chairman of the Committee on Science and Technology. The argument in favor of the point of order was advanced by Mr. Udall, Chairman of the Committee on Interior and Insular Affairs. The proceedings

6. Joseph W. Byrns (Tenn.).

7. 106 CONG. REC. 7941, 86th Cong. 2d Sess. Under consideration was H.R. 11666, which made appropriations for certain departments of the executive branch.

8. 123 CONG. REC. 33770, 33771, 95th Cong. 1st Sess.

leading up to the unanimous-consent request cited above, were as follows:

CONFERENCE REPORT ON S. 1811, ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION AUTHORIZATION ACT OF 1978

MR. [OLIN E.] TEAGUE [of Texas]: Mr. Speaker, I call up the conference report on the Senate bill (S. 1811) to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:[9] Is there objection to the request of the gentleman from Texas?

There was no objection. . . .

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. UDALL: Mr. Speaker, I desire to make a point of order against the conference report. Is this the appropriate time?

THE SPEAKER: It is.

MR. UDALL: Mr. Speaker, I make a point of order against the conference report.

THE SPEAKER: The Chair will hear the gentleman.

MR. UDALL: Mr. Speaker, I make a point of order. Section 106(d)(3), adopted by the conference committee on the bill now before the House, exceeds the authority of the conference committee in that it inserts new substantive provisions in the legislation which were not included in the bill, either as passed by the House or passed by the Senate.

I would like to be heard briefly on the point of order.

THE SPEAKER: The gentleman from Arizona is recognized. . . .

MR. UDALL: The point of order, Mr. Speaker, is based on the conference report violation of rule 28, which requires that the report shall not include matter not committed to the conference committee by either House. The offending provision of the conference report is section 106. It amends section 103 of Public Law 91–273 as amended, and imposes new requirements on the Clinch River breeder project. . . .

After several other Members were heard on the point of order, Mr. Carr sought recognition.

MR. [M. ROBERT] CARR [of Michigan]: Mr. Speaker, I desire to rise in support of the point of order.

THE SPEAKER: The Chair will hear the gentleman.

MR. CARR: Mr. Speaker, I ask unanimous consent that I may be permitted to revise and extend my remarks.

THE SPEAKER: The Chair will inform the gentleman that his request to revise and extend his remarks is not in order on a point-of-order discussion.

The gentleman from Michigan (Mr. Carr) will be heard.

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

Sanctity of Argument on Point of Order

§ 7.22 The Chair will not entertain unanimous-consent requests by Members to "revise and extend" their arguments on points of order.

Since it is essential that the Chair's ruling on a point of order be responsive to the arguments actually made in support of the point of order, requests to revise and extend those remarks are not entertained. In the proceedings which are carried herein, the arguments on the point of order were complex and the Chair had to have the benefit of all the presentations to make his decision.(10)

MR. [DAN R.] COATS [of Indiana]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Coats: Page 36, after line 4, insert the following:

SEC. 11. INEFFECTIVENESS OF ACT IN CASE OF COMPENSATION BY, OR RETALIATION AGAINST, UNITED STATES AGRICULTURAL OR OTHER INDUSTRIES

Notwithstanding any other provision of law, neither the Secretary nor any other party shall take any action under this act if the implementation of any provision of this Act either—

(1) would violate the obligations of the United States under the General Agreement on Tariffs and Trade and could therefore result in retaliation by another country; or

(2) would entitle any other country to compensation from the United States in the form of reduced restrictions on imports of agricultural, industrial or other products from other countries or to retaliation against the United States in the form of increased restrictions against exports of agricultural, industrial or other products from the United States.

Notwithstanding any other provision of this Act, the United States district court for the appropriate judicial district shall have jurisdiction to resolve disputes arising under this section.

MR. [JOHN D.] DINGELL [Jr., of Michigan]: Mr. Chairman, I reserve a point of order against the amendment. . . .

Mr. Chairman, I make the point of order that the amendment is not germane.

Mr. Chairman, it is within the rules of the House and the interpretation of the rule of germaneness that the amendment must relate to the purposes of the legislation before the House.

I would observe that the purposes of the legislation before the House are to assure that automobiles will have a certain percentage of domestic content in automobiles which are sold inside the United States. The legislation before the House at this time deals with automobiles and the trade in automobiles inside the boundaries of the United States. The legislation before the House sets up no new causes of action.

There are provisions in the legislation which are essentially disclaimers. The Chair will note that on page 15, in

10. 129 CONG. REC. 30542, 30545–47, 98th Cong. 1st Sess., Nov. 2, 1983.

line 5, there is language which relates to disclaimers of an intention to violate GATT and which do not confer any new jurisdiction upon any court in the United States to consider or to resolve conflicts related to GATT or "to alter or amend any law existing on the date of enactment. . . .."

I would observe that the amendment is much more broad, and I would like the attention of the Chair with regard to a number of points.

First of all, in the last four lines of the amendment, the language is:

> Notwithstanding any other provision of this Act, the United States district court for the appropriate judicial district shall have jurisdiction to resolve disputes arising under this section.

That is a very broad conferral of jurisdiction upon all of the Federal courts of the United States in their respective judicial districts to deal with disputes. That kind of an amendment would necessarily have either gone initially or sequentially to the Judiciary Committee because of the jurisdiction of that committee relative to disputes and causes of action. I would refer the Chair to the letter which relates to this matter as written by Chairman Rodino on judicial matters.

Mr. Chairman, there are some other points I would like to make concerning the scope and the sweep of this matter. First of all, the jurisdiction conferred upon U.S. district courts would be to determine whether the Secretary had carried out his responsibilities under lines 4 through 7 of the amendment, as to whether the Secretary or any other party had taken any other action under the act if the implementation of any provision of this act—and then it goes on to say this—"would violate the obligations of the United States under the General Agreement on Tariffs and Trade. . . ."

So that question would be reviewable. The question would also be reviewable as to whether or not the action of the Secretary would result in retaliation by another country. I would observe that an amendment which is contingent upon some future indeterminate action is also violative of the rules on germaneness.

Beyond this, the question would be placed before the courts upon action by any citizen feeling aggrieved, under the last four lines, lines 19 through 22, as to whether any other country would be entitled to compensation from the United States in the form of reduced restrictions on imports of agricultural, industrial, or other products.

This section confers jurisdiction relative to actions which would be taken in other countries regarding a whole series of other commodities, agricultural, industrial, and whatever they might happen to otherwise be.

In addition to this, it says, "or other products from other countries or to retaliation against the United States in the form of increased restrictions. . . ."

So those matters would again be subject to judicial review and independent litigation by any person under the provisions of this amendment.

I would point out further that the amendment says, Mr. Chairman, that the Secretary may not take action to implement the law if it violates GATT. It also says, if it would entitle any other country to compensation from the United States.

Now, in Cannon's, VIII, 3029, it states that an amendment delaying operation of a proposed enactment pending an ascertainment of a fact is germane when the fact to be ascertained relates solely to the subject matter of the bill.

Here the condition to be ascertained, whether the act violates GATT or would entitle another country to compensation, is not germane.

There are general foreign policy questions and concerns that have to be addressed, as in the case of the prior amendment offered by the gentleman from Kansas (Mr. Glickman) and which caused that to be ruled out of order as not germane.

Mr. Chairman, the bill also creates a broad new jurisdiction in the U.S. district court, a form of judicial relief to determine if the act violates GATT. That is, of course, an entirely new provision relating to commodities, agricultural, industrial, or other, which is far more broad than that in the bill.

While this bill does allow the district court to enforce the bill, this is an entirely new form of review and confers a cause of action far more broad than any found anywhere else in the legislation.

Mr. Chairman, I would point out that this would confer broad jurisdiction on private persons to enter the courts of the United States. A provision of this sort would necessarily involve jurisdiction of the committee having jurisdiction over that matter, and that is, of course, the Judiciary Committee.

THE CHAIRMAN:[11] Does the gentleman from Indiana (Mr. Coats) wish to be heard on the point of order?

MR. COATS: Yes, I do, Mr. Chairman.

THE CHAIRMAN: The gentleman from Indiana (Mr. Coats) may proceed.

MR. COATS: Mr. Chairman, I ask unanimous consent that I may be permitted to revise and extend my remarks.

THE CHAIRMAN: The Chair will advise the gentleman that in presenting his remarks on the point of order, he cannot make a request to revise and extend.

MR. COATS: I will withdraw my unanimous consent to revise and extend my remarks, Mr. Chairman.

THE CHAIRMAN: The gentleman may proceed.

MR. COATS: Mr. Chairman, the committee report issued by the Committee on Energy and Commerce chaired by the gentleman from Michigan (Mr. Dingell) specifically states in section 2(c), which was an amendment to the bill adopted by the committee, that:

> It is the intent of Congress that this act shall not be deemed to modify or amend the terms or conditions of any international treaty, convention, or agreement ***.

That alone expands the jurisdiction of the bill beyond specific auto content.

Second, we also adopted an amendment which directed the Secretary of Transportation and the Federal Trade Commission, in fact it mandated a study as to the impact on agriculture. That again expands the jurisdiction beyond what the gentleman claimed in his point of order, that it is auto-specific. It is broader that auto-specific because the bill itself as adopted by the committee contains a direction that a study be conducted of the impact on agriculture and that goes directly to

11. Leon E. Panetta (Calif.).

the heart of the amendment that I am offering.

In addition, let me just make a couple comments about the jurisdiction of the courts. In the Energy and Commerce Committee, the bill's proponents offered language which would in effect strip the U.S. courts of jurisdiction to hear disputes under the act. After lengthy debate on this issue, some of that language was withdrawn and the bill now purports to be neutral on jurisdiction.

This language in the amendment simply makes clear that as is the normal case in any other case, U.S. courts would have jurisdiction under this section to resolve disputes. These matters of conflict between U.S. international obligations and U.S. statutes should be decided by U.S. tribunals and not left solely to international machinery.

So I think it is clear that the amendment before us clearly fits within the bill that we are taking up, that the jurisdiction is broader than just an auto-specific content, as stated by the congressional findings, purpose, and disclaimer, section 2(c) and as stated in section 8(G) on page 33, which mandates a study as to the effect on agriculture by the Secretary of Transportation and the Federal Trade Commission.

For that reason, I urge the Chair to rule against the point of order.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, may I be heard against the point of order?

THE CHAIRMAN: The gentleman from Minnesota is recognized.

MR. FRENZEL: Mr. Chairman, I am not going to repeat the arguments of the gentleman from Indiana that his amendment is clearly germane to section 2(c) on page 15 of the bill, but I think the Chair's perusal of that section will verify that fact.

The point I would like to add in addition is that when the Chair ruled against the Glickman amendment, it took pains to specifically point out that the effect of the Glickman amendment or its effectuation would take place because of items external to the workings of the bill.

The Coats amendment, on the other hand, would be effectuated clearly by items that are covered by the bill and, therefore, it is, to use a pardonable phrase, "a horse of quite a different color."

THE CHAIRMAN: Is there any further argument with regard to the point of order?

The Chair recognizes the gentleman from Michigan (Mr. Dingell).

MR. DINGELL: Mr. Chairman, I would just observe that my good friend, the gentleman from Minnesota, has been reading the language of a disclaimer. Never, I believe, in the history of the House has a disclaimer been used to expand the jurisdiction or to expand the purposes or the scope of legislation for purposes of defining whether or not a matter is germane.

Now, if the Chair will refer to the report of the committee, the Chair will find that the disclaimer is constructed, and it says how the disclaimer is to be constructed, and the disclaimer says as follows:

> The subsection also contains a disclaimer that the Act should not be construed to confer new jurisdiction on any Federal court to consider and resolve such conflicts. In short, it states that the Act is not to be con-

strued to confer jurisdiction where none presently exists. At the same time, it declares that the Act does not alter or amend any law existing on the date of enactment of this Act which may confer such jurisdictions on the courts.

MR. [RICHARD L.] OTTINGER [of New York]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The gentleman from New York is recognized.

MR. OTTINGER: Mr. Chairman, under the General Agreement on Tariff and Trade, there is an elaborate procedure that is prescribed with respect to complaints under that act. There is no jurisdiction in the Federal courts at the present time that somebody can go in and seek to enforce the provisions of GATT in our courts.

What the bill says on page 15 is that nothing in this act shall be construed to confer jurisdiction.

Were we to have gone ahead and sought to confer jurisdiction, it clearly would have been beyond the jurisdiction of our committee. It would have had to go to the Judiciary Committee.

The disclaimer was put in to protect that at the express request of Chairman Rodino.

Therefore, since this amendment does seek to confer jurisdiction which presently is not there, and that is a matter not within the jurisdiction of the bill, I urge that the Chair sustain the point of order.

THE CHAIRMAN: Are there any further arguments with regard to the point of order?

If not, the Chair is prepared to rule.

First of all, the Chair would note that the bill before the House at the present time differs from the bill that was before the House in the last session.

In the legislation that is currently before the House, the committee dealt with the issue of the relationship between this legislation and other law in section 2(c) which states:

It is the intent of Congress that this Act shall not be deemed to modify or amend the terms or conditions of any international treaty, convention, or agreement that may be applicable to automotive products entered for sale and distribution in interstate commerce and to which the United States, on the date of the enactment of this Act, is a party, including, but not limited to, the terms or conditions of any such treaty, convention, or agreement which provide for the resolution of conflicts between the parties thereto. Nothing in this Act shall be construed (1) to confer jurisdiction upon any court of the United States to consider and resolve such conflicts, or (2) to alter or amend any law existing on the date of enactment of this Act which may confer such jurisdiction in such courts.

Section 2(c) therefore addresses the issue of interpretation of the bill as it applies to treaties, conventions, and other agreements applicable to automotive products.

The amendment that has been offered by the gentleman from Indiana deals specifically with the actions of the Secretary in the implementation of provisions that may relate to treaties, specifically the General Agreement on Tariffs and Trade.

It would appear, therefore, that the amendment does relate to subject matter that has already been introduced in the bill by virtue of section 2(c).

With regard to the court jurisdiction argument, that issue is addressed within the bill, specifically on page 30, relating to appropriate judicial circuits for judicial review and other provisions that relate to the jurisdiction of Federal courts. So the Chair feels that the issue of court jurisdiction has, in fact, been presented within the legislation.

With regard to the disclaimer argument, it is the position of the Chair that if the provision in the bill was merely a narrow and technical disclaimer, then the argument of the gentleman from Michigan might prevail; but since it can be read as an overall provision that relates to the broad interpretation of the bill as it applies to trade agreements, and since the test the Chair must apply is the relationship of the amendment to the bill as a whole, it is the position of the Chair that the point of order should not be sustained.

Is there any further discussion with regard to the amendment?

Chair's Right To Clarify Ruling in Record

§ 7.23 The Chair formerly exercised the right under the precedents and applicable standards regarding "accuracy in the Record" to refine his ruling on a point of order in the Record to clarify, but not to change the substance of, the ruling.

On Feb. 19, 1992,[12] Mr. Robert S. Walker, of Pennsylvania, who had debated the Chair at length following his ruling of Feb. 5, again raised the issue. Comparing the audio transcripts of the Chair's ruling with what appeared in the Record on the Feb. 5 proceedings, Mr. Walker determined that a change had been made. The Chair had in the ruling used the word "because" as a conjunction between two independent clauses. He had stated that House Resolution 258 came within the exception in clause 5(c), Rule XI. The change made in the transcript was as follows: "It is the ruling of the Chair at this time that the task force comes under that exception because the task force is a subunit of the Committee on Foreign Affairs and not a separate entity. In the revisions, the Chair replaced "because" with a comma and made the two clauses independent.

The Chair's exchange with Mr. Walker is carried in full.

PARLIAMENTARY INQUIRY

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

THE SPEAKER PRO TEMPORE:[13] The gentleman will state his parliamentary inquiry.

MR. WALKER: Mr. Speaker, if a Member has reason to believe that the Chair has made an inaccurate ruling, and if, further, that Member has rea-

12. 138 CONG. REC. 2461, 102d Cong. 2d Sess.

13. Michael R. McNulty (N.Y.).

son to believe that that inaccurate ruling was further made problematic by the addition of words to the Record spoken by the Chair or the deletion of words in the Record spoken by the Chair, what is the recourse of action available to the Member to bring about the appropriate correction?

THE SPEAKER PRO TEMPORE: Would the Member discuss the nature of the concern with the Chair so that he can further understand the concern?

MR. WALKER: I will be glad to, Mr. Speaker. On Wednesday, February 5, the Chair was asked to rule on the matter of the rule on the task force concerning the holding of hostages by Iran in 1980.

At that time, this Member suggested that the Chair had ruled inaccurately by suggesting that this matter did not apply, because we were dealing with a subunit of the Committee on Foreign Affairs.

When I go back and find the Record, I discover that that is precisely what the Chair ruled. I at that point challenged the ruling of the Chair. We had a vote. The Chair was upheld despite the fact that the ruling is inaccurate.

Later on, in raising questions about that, the Chair then made a number of statements to clarify its position. When I put the Record of the House, the written Record of the House, against the tapes of that day, I find that words were added to the Chair's message. I also find that things were deleted from what the Chair actually said in the course of clarifying its decision. . . .

I would now like to figure out how it is we can go about correcting both the ruling of the Chair and the fact that the Record has been changed with regard to the words of the Chair.

THE SPEAKER PRO TEMPORE: The Chair would remind the gentleman from Pennsylvania that the ruling of the Chair that day was sustained by a vote, and that the Chair subsequently has the right to clarify his ruling. . . .

And it did not change the thrust of the ruling.

MR. WALKER: In clarifying its ruling, does not the Chair have an obligation to the House to accurately reflect his ruling in the presentation to the House and not then modify that statement later on by both adding words and deleting words from the Chair's statement as the official Record appears? . . .

Well, if that is the case, then why does the permanent Record of the House as reflected on the videotape differ with the Record reflected in the printed Record of the House?

THE SPEAKER PRO TEMPORE: Because the gentleman was attempting to clarify his ruling as a result of the inquiry from the gentleman from Pennsylvania.

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Even in matters then where precedent is being set, we can have the person who occupies the Chair modify their words in the Record and thereby change, in my opinion, the intent of the ruling.

THE SPEAKER PRO TEMPORE: Without changing the ruling, the Chair may do that.

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Is it not true that Members are not granted that right, so therefore that is a special right that has now been created for the Chair.

THE SPEAKER PRO TEMPORE: Members have the right to revise and extend their remarks continuously.

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Under recent rulings, Members have been admonished very clearly that they are not to change in any way the substantive value of what they say in those revisions and extensions. In my opinion, the Chair has done that here.

THE SPEAKER PRO TEMPORE: To the best of the knowledge of the Chair, the person who was in the Chair on that day did not change the substance of his ruling.

§ 7.24 The Speaker announced that consistent with clause 9 of Rule XIV, adopted in the 104th Congress, statements and rulings of the Chair appearing in the Record would be a substantially verbatim account of those words as spoken during the proceedings of the House, subject only to technical, grammatical, and typographical corrections.

The Speaker made the following announcement on Jan. 20, 1995:[14]

THE SPEAKER:[15] The Chair announces that consistent with clause 9 of rule XIV, statements and rulings of the Chair appearing in the Record will be a substantially verbatim account of those words as spoken during the proceedings of the House, subject only to technical, grammatical, and typographical corrections.

Without objection, the permanent Record of January 18 at pages 301 and 303 will reflect this policy.

There was no objection.

This announcement was precipitated by a point of order raised under clause 9 of Rule XIV on Jan. 19, 1995,[16] against modifications made in certain statements by the Chair. The point of order and inquiries on that earlier day are carried here.

POINT OF ORDER

MR. [BARNEY] FRANK of Massachusetts: Mr. Speaker, I make a point of order.

THE SPEAKER PRO TEMPORE:[17] The gentleman from Massachusetts is recognized.

MR. FRANK of Massachusetts: Mr. Speaker, at the beginning of this session, the House adopted a new rule which says the *Congressional Record* shall be a substantially verbatim account of remarks made during the proceedings of the House, subject only to technical, grammatical, and typographical corrections authorized by the Member making the remarks involved.

14. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

15. Newt Gingrich (Ga.).

16. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

17. David Dreier (Calif.).

In the *Congressional Record* that we received this morning, reflecting yesterday's proceedings, at page H301 in the transcript of the remarks of the Speaker pro tempore, the gentleman from Florida, there are two changes that were made between what he, in fact, said and what is in the Record.

The first change is as follows:

He said yesterday with regard to the statements of the gentlewoman from Florida about the book of the Speaker, "It is the Speaker's opinion that innuendo and personal references to the Speaker's conduct are not in order."

That has been altered and that does not appear verbatim in the *Congressional Record*. Instead, it says, "It is the Speaker's opinion that innuendo and critical references to the Speaker's personal conduct are not in order."

Additionally, later on in response to a parliamentary inquiry from the gentleman from Missouri, the Speaker pro tempore said, as I recollect it, "it has been the Chair's ruling, and the precedents of the House support this, a higher level of respect is due to the Speaker."

In the *Congressional Record* that has been changed to "a proper level of respect."

Now, I do not believe that changing "personal" to "critical" and "proper" to "higher" is either technical, grammatical, or typographical. Both make quite substantive changes. Indeed, Mr. Speaker, it seems to me that by the standard that the Speaker yesterday uttered, the gentlewoman from Florida was judged, but if you take today's standard of revised, illegitimately revised version that is in the Record, there would be no objection to what the gentlewoman from Florida said.

THE SPEAKER PRO TEMPORE: The Chair might respond to the gentleman.

The Chair would recite from the manual that in accordance with existing accepted practices, the Speaker may make such technical or parliamentary insertions, or corrections in transcript as may be necessary to conform to rule, custom, or precedent. The Chair does not believe that any revision changed the meaning of the ruling.

The Chair would under the circumstances inform the House on behalf of the Parliamentarian that the new rule is as it might apply to the role of the Chair will be examined.

PARLIAMENTARY INQUIRIES

MR. FRANK of Massachusetts: Mr. Speaker, I am puzzled, and I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts is recognized.

MR. FRANK of Massachusetts: The Speaker cited previous references to the House rules and manual. That predates the rules change adopted this year. This is not simply a case of making a technical change in a ruling. We are talking also about substantive changes in the debate in the House.

THE SPEAKER PRO TEMPORE: The Chair has made it very clear, the Chair would say to the gentleman.

MR. FRANK of Massachusetts: No, the Chair has not.

THE SPEAKER PRO TEMPORE: The Chair has made it clear that the Parliamentarian plans to examine this issue.

MR. FRANK of Massachusetts: Mr. Speaker, I have a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts is recognized.

MR. FRANK of Massachusetts: In the first instance, I thought the Speaker was the responsible ruler in this situation, while the Parliamentarian advised him.

THE SPEAKER PRO TEMPORE: The gentleman is correct.

§ 8. Burden of Proof on Points of Order

When a point of order is stated on the floor, the Speaker or the Chairman of the Committee of the Whole has the obligation under the rules[18] to decide the question presented.

He may be guided in making the decision by argument on the point of order, which is for the Chair's information. In deciding questions of order, the Chair is constrained to give precedent its proper respect, for one of the duties of the Chair is to preserve and enforce the authority of parliamentary law.[19]

Under the precedents interpreting various rules which create or permit a point of order, certain precepts about which party to a dispute has the burden of proof have been established.[20] When a point of order is directed at the germaneness of an amendment, for example, the burden is on the proponent of the amendment to show its relationship to the pending text.[1] On a general appropriation bill, the burden of proof that an appropriation carried in the bill has proper authorization in law falls on the committee.[2] The proponent of an amendment carrying an appropriation has the burden of showing authorization.[3] Similarly, where an amendment is offered and supported as a "limitation" on funds, it is for the proponent of the amendment to show that it does not change existing law.[4] On the other hand, a Member challenging an amendment under Rule XXI clause 5(b),[5] as a "tax measure" must show the inevitability of tax consequences to support his contention that the cited rule has been violated.[6]

Under some parts of the Congressional Budget Act, the Chair is guided in making a decision by

18. See *House Rules and Manual* (1997) Rule I clause 4 §§ 624 and 627; and Rule XXIII clause 1a § 861b.

19. See Rule I clause 4, *House Rules and Manual* § 627 (1997).

20. See, for example, Rule XVI clause 7, *House Rules and Manual* § 794 (1997); see also § 8.15, infra.

1. See 8 Cannon's Precedents § 2995; and § 8.1, infra.

2. See § 8.4, infra.

3. See § 8.11, infra.

4. See Rule XXI clause 2(f), *House Rules and Manual* § 835 (1997); and see §§ 8.4, 8.5, and 8.7, infra.

5. See *House Rules and Manual* § 846b (1997).

6. See § 8.15, infra.

estimates of costs provided by the Committees on the Budget.[7]

Burden of Proof on Question of Germaneness

§ 8.1 When a point of order is raised against an amendment on the ground that it is not germane, the burden of proof is on the proponent of the amendment to sustain the germaneness.

Where an amendment is challenged by a point of order on the ground that it is not germane, and the amendment is ambiguous and susceptible to an interpretation that would render it not germane, the Chair will sustain the point of order. Proceedings in the Committee of the Whole on June 20, 1975,[8] when an amendment was offered by Mr. Barry Goldwater, Jr., of California, illustrate the importance of drafting an amendment precisely so that it cannot be read and interpreted more broadly than intended.

> Sec. 307. The Federal Nonnuclear Energy Research and Development Act of 1974 (88 Stat. 1878; 42 U.S.C. 5901) is amended by adding at the end thereof the following new section:
>
> "Sec. 17. The Administrator shall establish, develop, acquire, and maintain a central source of information on all energy resources and technology, including proved and other reserves, for research and development purposes. This responsibility shall include the acquisition of proprietary information, by purchase, donation, or from another Federal agency, when such information will carry out the purposes of this Act. In addition the Administrator shall undertake to correlate, review, and utilize any information available to any other Government agency to further carry out the purposes of this Act. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5, United States Code, and section 1905 of title 18, United States Code, and to other Government agencies in a manner that will facilitate its dissemination." . . .

MR. GOLDWATER: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Goldwater: Page 43, line 6, before the period, insert the following ": *Provided* That any such proprietary information obtained by compulsory process by any Federal agency shall not be subject to the mandatory disclosure provisions of 5 U.S.C. 552 and further, where the Administrator so finds, any proprietary information obtained by other means shall be deemed to qualify for exemption from mandatory disclosure under 5 U.S.C. 552(b)(4)".

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I reserve a point of order against the amendment offered by the gentleman from California (Mr. Goldwater).

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7. See § 8.14, infra.

8. 121 CONG. REC. 19934, 19966, 19967, 94th Cong. 1st Sess.

THE CHAIRMAN:[9] The gentleman from California (Mr. Goldwater) is recognized for approximately 1 minute.

MR. GOLDWATER: Mr. Chairman, would it be possible for us not to take up the time of this body to have the ruling on the point of order?

THE CHAIRMAN: Does the gentleman from Michigan (Mr. Dingell) wish to pursue his point of order?

MR. DINGELL: Mr. Chairman, if the gentleman wishes, I will pursue the point of order at this time.

POINT OF ORDER

MR. DINGELL: Mr. Chairman, I make a point of order against the amendment.

Mr. Chairman, the amendment is, among other things, not germane.

THE CHAIRMAN: The Chair would advise the gentleman from Michigan that the time limit pertains to the clock, and not to minutes.

MR. DINGELL: Mr. Chairman, I have asked to be heard on the point of order.

THE CHAIRMAN: And the Chair recognizes the gentleman on the point of order, and in doing so gently reminds the gentleman of the factor of time.

MR. DINGELL: Mr. Chairman, the amendment offered by the gentleman from California (Mr. Goldwater) is not germane to the legislation before us, and I am prepared to be heard on the point of order at the pleasure of the Chair.

THE CHAIRMAN: The Chair has recognized the gentleman from Michigan to make his point of order.

MR. DINGELL: The point of order is that the amendment is not germane. The amendment appears to relate to the language of the bill at page 43, line 6. In point of fact, the amendment seeks to amend the Freedom of Information Act, 5 United States Code 552, which is cited therein. It might appear that the amendment is subject to a number of different meanings. I can think of at least two at the moment, and perhaps three or four others. The first instance is that any proprietary information received by compulsory process by any Federal agency shall not be subject to the mandatory disclosure provisions of 5 United States Code 552—and I am literally quoting from the language of the amendment—and that being so, the amendment is defective as seeking to amend legislation not presently before the House and not within the jurisdiction of the particular committee that is presenting the legislation before us, and relating to entirely different matters.

It is possible that it refers to earlier legislation or, rather, refers to earlier clauses and sentences of the legislation before us. It is also possible that the legislation that the amendment would have the law amended is that once proprietary information had fallen into the hands of the Federal Government by compulsory process and had, through any methodology whatsoever, arrived in the hands of ERDA, that the original Federal agency which had ownership or custody of that information would thereupon be sterilized in making that information available pursuant to the provisions of 5 United States Code 552, the Freedom of Information Act.

In either the first instance or in the second instance the amendment seeks to amend legislation not properly be-

9. J. Edward Roush (Ind.).

fore us at this time, the Freedom of Information Act, which is not under the jurisdiction of the committee or which, by notice, has not properly been available to the Members as to the offer of this amendment.

The amendment is, therefore, in my view, on at least two of the three interpretations violative of the rules of the House, and violative of the rules of germaneness, and is subject to a point of order.

THE CHAIRMAN: Does the gentleman from California (Mr. Goldwater), desire to be heard upon the point of order?

MR. GOLDWATER: I do, Mr. Chairman. I rise in opposition to the point of order.

Mr. Chairman, I would point out to the gentleman from Michigan that if the gentleman will read the amendment it refers to not all proprietary information, but any such proprietary information, specifically narrowing it to ERDA as this particular bill addresses itself.

This amendment does not seek to amend the Freedom of Information Act, but merely to apply the Freedom of Information Act. It is, in essence, a limitation upon ERDA and as specifically authorized by the Freedom of Information Act under subsection (d), subsection (3). That this section, in other words, the Freedom of Information Act, does not apply to matters that are specifically exempted from disclosure by statute. The other statute is what, in essence, I am speaking. It is not an amendment to the Freedom of Information Act, but in essence is a limitation on the activities of ERDA, and merely applies the regulations of the Freedom of Information Act.

THE CHAIRMAN: Does the gentleman from Texas (Mr. Eckhardt) desire to be heard upon the point of order?

MR. [BOB] ECKHARDT [of Texas]: I do, Mr. Chairman. I rise to speak on the point of order.

The amendment states that any such proprietary information obtained by a compulsory process by a Federal agency shall not be subject to mandatory disclosure under the Freedom of Information Act. Such information refers back to the sentence immediately preceding the amendment in the bill on page 43, beginning in line 2:

> This responsibility shall include the acquisition of proprietary information, by purchase, donation, or from another Federal agency.

So if information is obtained from another Federal agency, and that Federal agency has obtained such by compulsory process, such purports to say that such information, wherever it may appear, is excluded from the effect of the Freedom of Information Act. The Freedom of Information Act provides that each agency in accordance with published rules shall make available for public inspection and copying any information of the type described here which appears in a final opinion or statement of policy on administrative staff manual or instructions to staff, et cetera. If that information has ultimately found its way to ERDA, it becomes such information, and under the terms of the amendment would, thus, be insulated from the Freedom of Information Act wherever it might appear. That, I think, clearly alters the Freedom of Information Act which specifically states in its last clause that the exceptions to the Freedom of Infor-

mation Act do not authorize withholding of information or limit the availability of records to the public except as specifically stated in this section.

This adds another exception, and that is the exception of information that has passed into the hands of ERDA.

If the language is ambiguous, or if it is reasonably subject to more than one construction, and if a reasonable construction of the language alters another act, then it is the burden of the person offering the amendment to clarify the amendment to make absolutely certain that the amendment does not affect the other act.

The gentleman has not done so. The language is, therefore, subject reasonably to the construction of changing processes of other agencies and is, therefore, not germane.

THE CHAIRMAN: The Chair is prepared to rule on this rather difficult question which confronts the committee at this time.

The burden of sustaining the germaneness of the amendment lies with the author. In the opinion of the Chair, the author of the amendment has not sustained that burden, and it does appear to the Chair that the amendment as presently offered would possibly mean that this restriction on the information would apply wherever the information might reside not just within ERDA. The amendment is, therefore, ambiguous and could be construed to go beyond the scope of the bill before the committee at this time.

The point of order is sustained.

In Ruling on Germaneness, the Chair Relies on the Text of the Amendment

§ 8.2 In ruling on the germaneness of an amendment, the Chair confines his analysis to its text and should not be guided by conjecture as to other legislation and administrative actions, within the jurisdiction of other committees, which might but are not required to result from adoption of the amendment.

On July 27, 1977,[10] the Committee of the Whole had under consideration the bill H.R. 7171, the Agricultural Act of 1977. An amendment was offered by Mr. Jeffords dealing with the recovery of excess food stamp benefits paid to persons whose income exceeded certain minimum requirements. During the argument on a point, Mr. Stark, a member of the Committee on Ways and Means, argued that the administration of the amendment would fall on the Internal Revenue Service, within the jurisdiction of his Committee. A portion of the argument on the germaneness point of order and

10. 123 CONG. REC. 25249, 25252, 95th Cong. 1st Sess.

the Chair's response are indicated below.

MR. [JAMES M.] JEFFORDS [of Vermont]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Jeffords to the amendment offered by Mr. Foley:

In title XIII, page 28, insert after line 8 the following new section:

"RECOVERY OF BENEFITS WHERE INDIVIDUAL'S ADJUSTED GROSS INCOME FOR YEAR EXCEEDS TWICE POVERTY LEVEL

"Sec. 1210. (a)(1) If—

"(A) any individual receives food stamps during any calendar year after 1977, and

"(B) such individual's adjusted gross income for such calendar year exceeds the exempt amount,

then such individual shall be liable to pay the United States the amount determined under subsection (b) with respect to such individual for such calendar year. Such amount shall be due and payable on April 15 of the succeeding calendar year and shall be collected in accordance with the procedures prescribed pursuant to subsection (g). . . .

"(2) In the case of any individual whose taxable year is not a calendar year, this section shall be applied under regulations prescribed by the Secretary.

"(f) All funds recovered pursuant to the provisions of this section shall be deposited as miscellaneous receipts of the Treasury and shall be available to the Secretary of the Treasury to defray administrative costs incurred in carrying out the provisions of this section and shall be available to the Secretary of Agriculture to carry out the provisions of this Act in such amounts as may be specified in appropriation Acts.

"(g) The Secretary of the Treasury shall collect any liability imposed by this section in accordance with regulations prescribed by him (after consultation with the Secretary).

"(h) Nothing in this section shall be construed to affect . . . the application of any provision of the Internal Revenue Code of 1954." . . .

THE CHAIRMAN:[11] Does the gentleman from California (Mr. Stark) insist on his point of order?

MR. [FORTNEY HL (PETE)] STARK [of California]: Mr. Chairman, I reserve a point of order. I would like to engage the author of the amendment in colloquy.

Mr. Chairman, will the gentleman yield?

MR. JEFFORDS: I yield to the gentleman from California.

MR. STARK: Mr. Chairman, I would like to ask the distinguished gentleman from Vermont who or what branch of Government the gentleman feels would collect this money from the people?

MR. JEFFORDS: Under the amendment, the Department of the Treasury would be required to collect the money.

MR. STARK: It would be the Treasury Department and in no way did the gentleman intend that the Internal Revenue Service participate in any of the collection or in collecting the forms or collecting revenue?

MR. JEFFORDS: No, on the contrary, it is my understanding and belief that the Internal Revenue Service would be charged with and do the collecting.

11. Frank E. Evans (Colo.).

MR. STARK: They would do the collecting?

MR. JEFFORDS: Yes, that is correct.

MR. STARK: Mr. Chairman, I would press my point of order.

THE CHAIRMAN: The gentleman will state the point of order.

MR. STARK: Mr. Chairman, I make a point of order that the jurisdiction of the Internal Revenue Service lies wholly within the jurisdiction of the Committee on Ways and Means.

This amendment, as the gentleman has stated it, would be counting on the Internal Revenue Service to perform the functions as put down under this amendment. The amendment would not be in order and would not be within the jurisdiction of this committee.

THE CHAIRMAN: Does the gentleman from Vermont wish to be heard?

MR. JEFFORDS: I certainly do, Mr. Chairman.

As I understand the rules here, I can ask for an amendment that can be proposed, as can anybody, to the collection. We could make the State Department or anyone else do the collection, but we cannot do what I have not done, and very specifically have not done in this amendment, which is to change any statute of the way it is done, which is under the jurisdiction of the Committee on Ways and Means. If I am wrong on this, there are so many places in this bill where the same thing is done that I do not know why a number of Members have not raised points of order.

We have asked the Postal Service to do something; we have asked the social security office to do things; we have mandated different agencies all over the place. We do not interfere with any statutes which are under committee jurisdiction of other committees. I have not done so here. The question is, do we change any statute which is under the jurisdiction of the Ways and Means Committee, and we do not. They are the guardian over those statutes, but they are not the guardian over any agency which happens to be involved with those statutes.

MR. STARK: Mr. Chairman, I think it is quite clear that the gentleman, in terms of both the committee report and in his response to questions here, in his statement on the floor that this amendment, although it really says that the Secretary of the Treasury shall collect any liability, clearly the intention is that the Internal Revenue Service shall collect W–2 forms, match them against income figures which are now under the law not to be given even to the Secretary of the Treasury, but are for collecting income tax and Internal Revenue matters.

Clearly, the intent of the amendment is to direct the Internal Revenue Service to participate in that. The jurisdiction of the Internal Revenue Service and all matters pertaining thereto is under the Committee on Ways and Means. I would ask that this amendment be ruled out of order on that basis.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from California makes the point of order that the amendment offered by the gentleman from Vermont (Mr. Jeffords) is not germane to the food stamp title of the pending bill. The thrust of the gentleman's point of order is that the collection procedure for overpayments of

food stamp benefits to persons above the poverty level involves responsibilities of the Treasury Department, and in effect mandates the establishment of regulations which would involve the disclosure of tax returns and tax information and utilization of the Internal Revenue Service—all matters within the jurisdiction of the Committee on Ways and Means.

The Chair notes that the amendment does contain the provision that "nothing in this section shall be construed to affect in any manner the application of any provision of the Internal Revenue Code of 1954," and it seems to the Chair to follow that, under the explicit provisions of the amendment. Secretary of the Treasury would therefore have to establish an independent collection procedure separate and apart from the mandated use of the Internal Revenue Service. The Chair does not have to judge the germaneness of the amendment by contemplating possible future legislative actions of the Congress not mandated by the amendment.

In the opinion of the Chair, the authority of the Secretary of the Treasury under the rules of the House as collector of overpayments of any sort is not subject explicitly and exclusively within the jurisdiction of the Committee on Ways and Means under rule X, and even if this were true, committee jurisdiction is not an exclusive test of germaneness where, as here, the basic thrust of the amendment is to modify the food stamp program—a matter now before the Committee of the Whole.

The Chair overrules the point of order.

Burden of Proof on Whether Amendment Is Germane

§ 8.3 The burden of proof is on the proponent of an amendment to establish that it is germane, and where the proponent admits to an interpretation which would render it not germane, the Chair will rule it out of order.

Argument on a point of order sometimes determines whether a point of order will be sustained or overruled by the Chair. An example of the Chair's reliance on an explanation of an amendment offered by its proponent is found in the proceedings of Dec. 11, 1979,[12] when the Committee of the Whole had under consideration the bill H.R. 4962, a bill providing Medicare services to low-income children and pregnant women. A pertinent part of the bill text follows:

> STUDY AND REPORT ON EFFECTIVENESS OF HEALTH ASSURANCE PROGRAM
>
> SEC. 14. (a)(1) The Secretary shall conduct or arrange (through grants or contracts) for the conduct of an ongoing study of the effectiveness of the child health assurance program under section 1913 of the Social Security Act. Not later than two years after the effective date prescribed by section 16(a)(1) and each two years thereafter, the Secretary shall report

12. 125 CONG. REC. 35425, 35438, 35439, 96th Cong. 1st Sess.

to Congress the results of the study and include in the report (1) the effect of preventive and primary care services on the health status of individuals under the age of 21 assessed under such program, (2) the incidence of the various disorders identified in assessments conducted under the program, and (3) the costs of identifying, in such program, such disorders.

(2) The authority of the Secretary to enter into contracts under paragraph (1) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) For the fiscal year ending September 30, 1981, and for each fiscal year thereafter there are authorized to be appropriated for purposes of carrying out subsection (a) an amount equal to one-eighth of 1 percent of the amount appropriated in the preceding fiscal year for payments to States under title XIX of the Social Security Act for the provision of ambulatory services for individuals under the age of 21 . . .

AMENDMENT OFFERED BY MR. PHILIP M. CRANE

MR. PHILIP M. CRANE [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Philip M. Crane: On page 38, following line 15, insert the following new subsection:

(2)(a) No officer, employee, or agent of the Federal Government or of an organization conducting medical reviews for purposes of carrying out the study provided for in subsection (a)(1) of this section shall inspect (or have access to) any part of an individually identifiable medical record (as described in subsection (c)) of a patient which relates to medical care not provided directly by the Federal Government or paid for (in whole or in part) under a Federal program or under a program receiving Federal financial assistance, unless the patient has authorized such disclosure and inspection in accordance with subsection (b).

(b) A patient authorizes disclosure and inspection of a medical record for purposes of subsection (a) only if, in a signed and dated statement, he—

(1) authorizes the disclosure and inspection for a specific period of time;

(2) identifies the medical record authorized to be disclosed and inspected; and

(3) specifies the agencies which may inspect the record and to which the record may be disclosed.

(c) For purposes of this section:

(1) The term "individually identifiable medical record" means a medical, psychiatric, or dental record concerning an individual that is in a form which either identifies the individual or permits identification of the individual through means (whether direct or indirect) available to the public.

(2) The term "medical care" includes preventive and primary medical, psychiatric, and dental assessments, care and treatment.

MR. [HENRY A.] WAXMAN [of California]: Mr. Chairman, I reserve a point of order on the amendment. . . .

THE CHAIRMAN:[13] Does the gentleman from California (Mr. Waxman) insist upon his point of order?

MR. WAXMAN: I would like a clarification, Mr. Chairman, if I might, before I pursue whether I have a point of order.

THE CHAIRMAN: The gentleman from California reserves his point of order, and the gentleman is recognized for his remaining time under the allocation.

13. Bruce F. Vento (Minn.).

MR. WAXMAN: I would like to make an inquiry of the gentleman from Illinois (Mr. Philip M. Crane) who has offered the amendment, if I might. The section (2)(a) on page 38 following line 15 as it would be inserted by this amendment says:

> No officer, employee, or agent of the Federal Government or of an organization conducting medical reviews for purposes of carrying out the study provided for in subsection (a)(1) of this section shall inspect (or have access to). . . .

Is this a parenthetical clause: "Or of an organization conducting medical reviews for purposes of carrying out the study provided for," or are we also referring only to the officers, employees, or agents of the Federal Government who are conducting medical reviews for purposes of carrying out the study?

MR. PHILIP M. CRANE: If the gentleman will yield, the reason for the seeming redundancy of language was to guarantee that there would not be any commission or what I would classify as an agent, but which might be open to some debate, or group of private individuals performing a function under the auspices of the Federal Government. I would define that as an agent and, therefore, that language would be, then, redundant to that extent. My concern is quibbling over fine points of definitions, and to the extent that there is a potential here for some private group with the full authority of the Federal Government to conduct these kinds of studies, I want to make sure that those do not in any way have the possibility of falling into the hands of Government officials without the written consent of the patient involved.

MR. WAXMAN: If I might further inquire, is it fair to say that the limitation, "No officer, employee, or agent of the Federal Government" pertains specifically to the carrying out of the study provided for in subsection (a)(1)? Is it specifically addressed to carrying out that study?

MR. PHILIP M. CRANE: In the process of carrying out the study, my understanding is there is a potential for examination, obviously, of medical records, and to the extent there is, then I think if they are identifiable medical records, the potential exists for those to come into the hands of Government officials unbeknownst to the patient.

MR. WAXMAN: But I am trying to ascertain whether it is limited to carrying out the study provided for in subsection (a)(1) and the medical records are viewed only for the purpose of carrying out that study.

MR. PHILIP M. CRANE: Does the gentleman mean is it confined to that?

MR. WAXMAN: Yes.

MR. PHILIP M. CRANE: No, it is not. That would not be my understanding of the amendment.

THE CHAIRMAN: Does the gentleman from California (Mr. Waxman) insist on his point of order?

MR. WAXMAN: Mr. Chairman, I am going to pursue my point of order, then.

THE CHAIRMAN: The gentleman will state his point of order.

MR. WAXMAN: Mr. Chairman, as I read this section without the limitation that I tried to determine was included there, I believe it is overly broad and, therefore, not germane, and I make a point of order of the fact that it is not germane to the bill before us.

THE CHAIRMAN: Does the gentleman from Illinois (Mr. Philip M. Crane) wish to be heard on the point of order?

MR. PHILIP M. CRANE: I do, Mr. Chairman. I think it is, indeed, germane because, Mr. Chairman, the language of the amendment, I think, addresses the specific narrow concern that the Chairman has upon which he bases his point of order, but, on the other hand, there are implications in the language of the bill that I think this additional language in this paragraph addresses, and that is the potential to go beyond those narrow constraints that I think the gentleman, the Chairman, would presume exist within this legislation.

I am less sure and less confident that those restraints are there. I would argue that the specificity of the first part of this sentence that "No officer, employee, or agent of the Federal Government or of an organization conducting medical reviews for purposes of carrying out the study provided for in" that subsection indicated is language narrow enough to be germane to the intent of the bill.

THE CHAIRMAN: Are there further Members who wish to be heard on the point of order? If not, the Chair is prepared to rule.

The Chair, in listening to and weighing the arguments, finds that the point of order is well taken. The argument seems to establish that the amendment offered by the gentleman from Illinois (Mr. Philip M. Crane) could go to confidentiality of other medical records that would not otherwise be covered by the pending legislation and as such represents, then, too broad an amendment. The records could deal with additional information that would usually be under the confidentiality of physician-and-patient relationship, that would be outside the services rendered through this program if the conduct of Federal officers is not to be confined to the carrying out of the study in section 14. Therefore, the Chair states that the point of order is well taken.

MR. PHILIP M. CRANE: Mr. Chairman, may I direct a question to the chairman of the committee?

THE CHAIRMAN: The point of order is sustained. The amendment is ruled out of order.

Burden of Proof, Point of Order Against Content of Bill

§ 8.4 The burden falls on the proponents of a provision in a general appropriation bill to show that it does not constitute legislation, and the Chair will sustain the point of order if the committee or other Members do not fulfill this responsibility.

During debate under the five-minute rule during consideration of the Labor and Health, Education, and Welfare appropriation bill for fiscal 1978, a provision in the bill was read by the Clerk, and a point of order was then raised against the proviso carried in the paragraph. The point of order was raised by a member of the Committee on Ways and Means, Mr. James C. Corman, of California, who argued that the proviso created new and additional duties for officials administering the welfare programs

funded in the paragraph. The rather elaborate arguments for and against the point of order illustrate the complexities which sometimes confront the Chair in determining the effect of a so-called "limitation" in a general appropriation bill. The proceedings of June 16, 1977,[14] were as follows:

The Clerk read as follows:

GRANTS TO STATES FOR UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICES

For grants for activities authorized by the Act of June 6, 1933, as amended (29 U.S.C. 49–49n; 39 U.S.C. 3202(a)(1)(E); Veterans' Employment and Readjustment Act of 1972, as amended (38 U.S.C. 2001–2013); title III of the Social Security Act, as amended (42 U.S.C. 501–503); sections 312 (e) and (g) of the Comprehensive Employment and Training Act of 1973, as amended; and necessary administrative expenses for carrying out 5 U.S.C. 8501–8523, 19 U.S.C. 1941–1944, 1952, and chapter 2, title II, of the Trade Act of 1974, including, upon the request of any State, the payment of rental for space made available to such State in lieu of grants for such purpose, $53,600,000, together with not to exceed $1,529,000,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund, and of which $174,400,000 shall be available only to the extent necessary to meet increased costs of administration resulting from changes in a State law or increased salary costs resulting from changes in insurance claims filed and claims paid or increased salary costs resulting from changes in State salary compensation plans embracing employees of the State generally over those upon which the State's basic grant was based, which cannot be provided for by normal budgetary adjustments: *Provided* That any portion of the funds granted to a State in the current fiscal year and not obligated by the State in that year shall be returned to the Treasury and credited to the account from which derived: *Provided further,* That none of the funds appropriated or otherwise made available in this paragraph shall be obligated or expended to pay Federally funded unemployment compensation to an individual who refuses employment which pays at least the prevailing wage and which meets the labor standards specified in section 3304(a)(5) of the Internal Revenue Code of 1954, as amended, after having received unemployment compensation for 26 or more consecutive weeks, unless such individual is enrolled in a training program under the Comprehensive Employment and Training Act of 1973, as amended.

MR. CORMAN: Mr. Chairman, I have a point of order.

THE CHAIRMAN:[15] The gentleman will state his point of order.

MR. CORMAN: Mr. Chairman, I make a point of order with respect to the proviso on page 5, beginning with the words "Provided further" on line 6 and continuing through line 16. This proviso is in violation of clause 2 of rule XXI, of the Rules of the House.

Clause 2 of rule XXI provides that no provision in an appropriation bill that changes existing law will be in order.

14. 123 CONG. REC. 19362–64, 95th Cong. 1st Sess.

15. Richard Bolling (Mo.).

The proviso on page 5 would prohibit the use of these appropriated funds for any administrative costs associated with the payment of federally funded unemployment compensation benefits to an individual who had refused a job paying the prevailing wage, after that individual had collected 26 or more weeks of unemployment compensation.

In order to be in compliance with this proviso, unemployment compensation agencies will have to either deny benefits to such individuals, or pay for the administrative costs associated with the payment of benefits to such individuals out of State or other Federal funds. Either alternative will impose new duties and require additional determinations, not required under present Federal law, on the part of the administrators of the unemployment compensation program.

Specifically, both of these alternatives would require the administering agency, with regard to every claimant who had collected 26 or more weeks of unemployment compensation, to determine whether or not the individual had refused a job paying prevailing wages. This determination would have to be made either for the purpose of denying benefits to such individuals or to identify that portion of a State's administrative costs that could not be paid out of Federal funds provided in this appropriation bill.

Such a determination is not required under present Federal law. This proviso changes present law in that it requires this new and costly determination on the part of UC administrators. Furthermore, there are no funds provided to cover the costs associated with this additional determination and responsibility.

It has been argued that this proviso requires no new duties or determinations beyond those required under section 3304(a)(5) of the Internal Revenue Code. This argument is incorrect.

Section 3304(A)(5) prohibits a State from denying benefits to an individual who has refused a job that pays less than prevailing wages. This section of present law, in other words, prohibits a State from taking certain actions. It does not require a State to do anything, unless a claimant appeals a prior State action. In fact, a State can comply with this section of present law by never denying UC benefits to anyone on grounds of a refusal to accept work.

The proviso on page 5 of the appropriation bill before us is just the reverse. It requires unemployment compensation administrators to make certain determinations and take certain actions based on those determinations. Specifically, for every claimant who has collected 26 or more weeks of UC benefits, the administrator must determine whether or not he has refused any job that paid prevailing wages, and, if so, the administrator must either deny him any additional benefits or recover costs associated with the processing and payments of additional benefits from a new source of funds.

Furthermore, the proviso is in conflict with the work requirement provisions of the Emergency Unemployment Compensation Act of 1977, Public Law 95–19, as it applies to individuals who apply for or are collecting Federal supplemental benefits. This law, enacted in April of this year, prohibits the payment of Federal supplemental benefits to an individual who refuses a job, if the job:

Is within his capabilities;

Pays the minimum wage and gross wages equal to the individual's unemployment benefits, including any supplemental unemployment benefits for which the individual is entitled because of agreements with previous employers;

Is offered in writing or listed with the employment service;

Meets other requirements of Federal and State law pertaining to suitable or disqualifying work that are not inconsistent with the three conditions just stated.

The effect of the proviso would be that, in the 20 States where Federal supplemental benefits are presently being paid, there will be two different and inconsistent Federal work requirements for claimants of Federal supplemental benefits who have collected 26 or more weeks of benefits.

Present Federal law pertaining to the Federal supplemental benefits program denies supplemental benefits to an individual who refuses a job paying the minimum wage, and provides a number of carefully worked out conditions, protections, and procedures necessary for the proper and effective administration of this kind of a Federal standard. Whereas, the proviso on page 5 of the bill before us refers to "prevailing" rather than "minimum" wages, which can be substantially different. Also the proviso would appear to negate all the other conditions, procedures, and protections contained in present law and carefully developed by the Committee on Ways and Means. This clearly constitutes a change in present Federal law pertaining to the Federal supplemental benefits program.

As I have explained, the proviso on page 5 imposes a new responsibility on the part of the agencies that administer the unemployment compensation program. It requires a costly determination not required under present law and provides no funds to cover the costs of this additional determination.

With respect to the Federal supplemental benefits program, it changes, or is in conflict with, a provision that, over a period of many weeks, was very carefully formulated and specified.

Consequently, this provision is in violation of clause 2 of rule XXI of the Rules of the House.

THE CHAIRMAN: Does the gentleman from Pennsylvania (Mr. Flood) desire to be heard on the point of order?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: I do, Mr. Chairman.

We believe that this language is simply a limitation on the use of the appropriated funds in the bill. It gives no affirmative direction to the executive branch, in our judgment. It imposes no new or additional duties and requires no determination that would not normally be made.

Therefore, Mr. Chairman, we ask the Chair to overrule the point of order.

THE CHAIRMAN: Does the gentleman from Illinois (Mr. Michel) desire to be heard on the point of order?

MR. [ROBERT H.] MICHEL [of Illinois]: Yes, Mr. Chairman, I would like to be heard on the point of order.

> Nor shall any provision in any such bill or amendment thereto changing existing law be in order, . . .

This appears to be the real question involved in the point of order raised by the gentleman from California (Mr.

Corman). But I would like to ask the present occupant of the chair, who is so well skilled in the rules and parliamentary procedures and the precedents of the House, to examine the rest of that clause.

Historically this provision has been amended many times. At one time the Committee on Rules could not agree as to the proper position after questions arose of increased power which some said would come to the Committee on Appropriations.

I mention this for a special reason. Our appropriations process has now been modified by enactment of the Budget Act and is constantly challenged, as we will no doubt find during consideration of the present bill. The challenge to the appropriation process is currently in the form of limitation amendments such as the one on this subject, and upon which the Chair is constantly being called upon for a ruling as to whether it is a proper limitation under this rule and the existing precedents and statutes.

Having said that, the question again is whether the language does in effect change the existing law. I contend it does not change existing law and does not place an additional duty upon the executive officer as a result of this position. I do not believe that the gentleman from California (Mr. Corman) has adequately demonstrated that the language does change existing law.

The rationale behind the precedent on the rule for limitations in appropriation bills, is that this body has the right to decline to appropriate for any purpose which they deem improper, although that purpose may be authorized by law. Based on this premise, there are many rulings that if the House has the right not to appropriate funds for a specific purpose authorized by law, then it has the right to appropriate for only a part of that purpose and prohibit the use of money for the rest of the purpose authorized by law.

This language, I contend, is not a change of law but rather a restriction on the use of funds to pay federally funded unemployment compensation to those who do not meet certain qualifications.

If the Chair will indulge us a few further moments, specifically, as the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. Flood) has said, the language is simply a limitation. It was written as such. It is limited to the funds appropriated in this bill. It does not change existing law. It is very similar in nature to the Findley OSHA limitation 3 years ago and to the OSHA and busing limitations we considered in connection with the Labor-HEW bill last year, all of which were subject to points of order and overruled then by the Chair.

This limitation, like the others, is simply a negative restriction on the moneys contained in this bill.

As to those supposedly additional duties imposed upon the executive branch that my friend the gentleman from California (Mr. Corman) alludes to, let me say:

Prevailing wages are already determined by the Labor Department. They are determined under Davis-Bacon for construction jobs, under the Service Contracts Act for jobs involved in such contracts, as part of the certification process for the employment of aliens, and for in-season agricultural jobs. In

addition, and most importantly, when an employer lists a job with the Employment Service, the Employment Service must determine whether or not the wages paid are "substandard." The Employment Service considers standard wages as prevailing wages and substandard wages are thus those wages falling below prevailing wages. If substandard wages are paid, the job listing is so designated, and the Employment Service does not refer applicants to such jobs.

We can refer further for authority to the employment security manual on that item. Furthermore, under the requirements of the Federal Unemployment Tax Act, an individual cannot be recruited for employment, and unemployment benefits cannot be denied to an individual who refuses to accept work, "if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality."

On that we have authority again from the head, Mr. Weatherford, of the Unemployment Compensation Office in the Department of Labor. Both of these last two standards, in other words, require the Employment Service to determine the prevailing wage in order to carry out the standards, and this is being done. Under regulations prescribed by the Secretary of Labor, individuals receiving unemployment benefits are required to register with the Employment Service. The limitations in the bill thus apply to individuals registered with the Employment Service and jobs listed with the Employment Service. Since a determination of the prevailing wage is made for the jobs listed and to which individuals are referred, there will be no extra effort required on the part of the Department then to carry out the limitation language.

Let me address myself now to the 26 weeks the gentleman referred to. The limitation does not apply to any benefits until after an individual has received benefits for 26 weeks. The Unemployment Insurance Office keeps track of how long each individual has received benefits. In addition, when a recipient of unemployment benefits registers with the Employment Service, the Unemployment Insurance Office tells the Employment Service the date when the individual started receiving benefits. So the information as to the length of time benefits have been received and, thus, the point when 26 weeks have passed is readily available and will not require any extra effort.

As to when the Federal benefits begin, after the State has concluded its obligation or there is a shared benefit, the Unemployment Insurance Office retains separate accounts for benefits paid by different sources of funds, so that when there is a change in the source of funding for an individual's benefits such as after 26 weeks when the Federal Government in most cases pays half, a new bookkeeping transaction takes place. It is a simple matter for the unemployment insurance arm to notify the Employment Service arm of this without any increased effort, since both are part of the same State employment security agency and most of the time are located in the same suite or facility around the country.

I think there are some other specific points to which we might make ref-

erence, but I think that pretty well ought to give the Chair good grounds upon which he could overrule the point of order raised by the gentleman from California.

THE CHAIRMAN: Does the gentleman from California (Mr. Corman) desire to be heard further?

MR. CORMAN: I would like to be heard for just a moment. There seems to be some confusion in some minds about how unemployment compensation works. The first 26 weeks is not necessarily the State program. The first half of one's entitlement is that. We have just spelled out in substantial detail the work requirements under FSB. About 25 percent of those who draw FSB draw it within the first 26 weeks in which they work. After that period of time we would have legislated to separate inconsistent work requirements, and that is clearly legislation on an appropriation bill. It would be next to impossible for an administrator to administer because the job requirements would be inconsistent.

THE CHAIRMAN: The gentleman from California has made a very scholarly and thorough point of order, and he has received a very scholarly and thorough reply. This is a very complicated matter and a difficult one for the Chair to rule on.

The Chair feels that the crux of the matter lies in whether or not the Federal officials who now process unemployment compensation claims are presently required to make a judgment with regard to the refusal of work paying the prevailing wage.

The Chair does not believe that the arguments on either side have done anything to demonstrate that this would not be an additional duty for those particular officials. Therefore the Chair feels that on this ground and some that he would like to read the point of order is valid and the Chair will sustain the point of order at the conclusion of his statement.

The gentleman from California makes a point of order against the proviso in the bill on the grounds that it constitutes legislation on an appropriation bill.

The proviso prohibits the use of funds in the bill for processing of unemployment compensation benefits after 26 weeks to individuals refusing work which pays the prevailing wage. As indicated by the argument of the gentleman from California, the executive officials administering the program are not under a responsibility as they process claims pursuant to existing Federal law, to make case-by-case determinations as to the prevailing wage for positions of employment. The proviso in the bill would place affirmative duties on persons whose salaries are paid by funds in this bill to make such determinations.

Despite the excellence of the argument of the gentleman from Illinois, the Chair still feels that the weight of the argument lies on the side of the gentleman from California, and therefore the Chair, for those reasons and the reasons that he has suggested, sustains the point of order and the proviso is stricken.

Burden of Proof That Appropriation Authorized

§ 8.5 The burden of proving that an item carried in a gen-

eral appropriation bill is in fact authorized by law falls to the Committee on Appropriations, which must cite specific authority for the appropriation.

On Aug. 3, 1978,[16] during consideration of the Foreign Aid Appropriation bill for fiscal 1979, an item was read allowing certain funds in the bill to be used for entertaining expenses. When an amendment was raised against the paragraph as legislation, the manager of the bill responded in an imprecise manner. The proceedings were as follows:

The Clerk read as follows:

> SEC. 111. Of the funds appropriated or made available pursuant to this Act, not to exceed $73,900 shall be for entertainment expenses relating to the Military Assistance Program, International Military Education and Training, and Foreign Military Credit Sales during fiscal year 1979: *Provided*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, a point of order.

THE CHAIRMAN:[17] The gentleman will state it.

MR. BAUMAN: Mr. Chairman, I make a point of order against the total section 111 on the grounds it is not authorized in law and lines 17 through 19 constitute legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Maryland (Mr. Long) desire to speak to the point of order?

MR. [CLARENCE D.] LONG of Maryland: Mr. Chairman, I oppose the point of order being made by the gentleman.

The language the gentleman refers to is not legislation in that it does not direct nor does it require a U.S. Government official to use U.S.-owned foreign currencies. It merely states that steps should be taken, where possible, to utilize U.S.-owned foreign currencies in lieu of dollars.

In addition, in section 612(b) of the Foreign Assistance Act of 1961, as amended, which is the paragraph that authorizes the use of foreign currencies, the following language appears:

> The President shall take all appropriate steps to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

Therefore, the language the gentleman is raising a point of order against is merely a restatement of the language contained in the authorizing legislation and does not constitute legislation in an appropriation bill. I ask for a ruling by the Chair.

THE CHAIRMAN: Does the gentleman from Maryland (Mr. Bauman) desire to be heard further on the point of order?

MR. BAUMAN: Mr. Chairman, the language of section 111 goes well beyond assigning duties by the President and assumes by its proviso that the duties are assigned to anyone that

16. 124 CONG. REC. 24252, 95th Cong. 2d Sess.

17. Abraham Kazan, Jr. (Tex.).

might have the appropriate authority and that certainly goes beyond the scope which the gentleman has cited as legislative authority for that amount of money, which is entertainment expenses.

THE CHAIRMAN: The Chair feels that the question of authorization may be a valid point of order. The Chair will call on the chairman of the committee to show that this sum is authorized. Can the gentleman from Maryland (Mr. Long) make such a showing?

MR. LONG of Maryland: Mr. Chairman, we have no specific authorization, merely citations.

THE CHAIRMAN: The Chair then will sustain the point of order and the entire section is stricken.

§ 8.6 A Member wishing to make a point of order against a pending paragraph of a bill being read for amendment must specify the precise text to which he objects, and a generalized point of order against "anything in the paragraph which is not authorized" will not be entertained by the Chair.

On June 7, 1991,[18] during the consideration in Committee of the Whole of the Defense appropriation bill for fiscal 1992, the bill manager, Mr. John P. Murtha, of Pennsylvania, asked that the title of "Operation and Maintenance" be considered read and open for amendment. Following agreement to this request, the Chairman invited points of order. Mr. James A. Traficant, Jr., of Ohio, then raised a generalized inquiry as follows:

The Clerk read as follows:

TITLE II—OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

(INCLUDING TRANSFER OF FUNDS)

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $14,437,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes; $18,362,945,000: . . .

OPERATION AND MAINTENANCE, NAVY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; . . .

OPERATION AND MAINTENANCE, MARINE CORPS

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law; $2,082,500,000; . . .

OPERATION AND MAINTENANCE, AIR FORCE

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; . . .

18. 137 CONG. REC. 13973-76, 102d Cong. 1st Sess.

MR. MURTHA (during the reading): Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the Record, and open to amendment at any point.

THE CHAIRMAN:[19] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

PARLIAMENTARY INQUIRIES

MR. TRAFICANT: Mr. Chairman, I have a parliamentary inquiry. I would like to inquire of the Chairman if it is in order to ask if there is any legislating on this section of the bill that has not been, in fact, waived from such legislating or allowed to legislate by the Rules Committee. I would then be forced to object to any legislating language that is appropriating in title II of the bill.

MR. MURTHA: Mr. Chairman, if the gentleman will yield, the only thing that it protected in the language is the normal appropriation paragraph protection that we afford to the bill or to parts of the bill when there is no final authorization. . . .

MR. TRAFICANT: Further reserving my right to object, I am not so sure I have an answer. I want to know if there is any legislation in title II that has not been specifically protected from objection on the floor.

MR. MURTHA: Sure.

MR. TRAFICANT: If there are some that have not been protected by the Rules Committee, then I will object to any section of title II that is not officially protected by the Rules Committee as in fact legislating on an appropriation bill.

THE CHAIRMAN: The Chair would advise the gentleman from Ohio that the gentleman must be specific as to the provisions against which he makes points of order.

MR. TRAFICANT: Is the Chair instructing the Member that a Member cannot request a blanket prohibition of legislation on an appropriation bill in title II of the defense bill?

THE CHAIRMAN: The gentleman is correct. The Chair is advising the gentleman that a point of order may be made but it must specify the provision of the bill against which it is made.

MR. TRAFICANT: The specificity is, in fact, that any part of the legislation that has not been in fact protected from objection and to be stricken by the Rules Committee.

THE CHAIRMAN: The Chair would restate for the gentleman from Ohio that he must specify the provisions in the bill to which he objects and on which he wishes to make a point of order.

MR. TRAFICANT: So the Chair then has ruled that a Member must be specific in stating what legislative language there is?

THE CHAIRMAN: Those are the rules of the House. The gentleman may not enter a general objection to "such legislation as may be unprotected by waiver." His point of order must identify text and articulate grounds.

MR. TRAFICANT: That he cannot ask for a specific blanket objection for all legislative language on an appropriation bill that has not been protected under the rule? Is that what the Chair's ruling is?

THE CHAIRMAN: The Chair will elaborate further for the gentleman.

The Chair cannot accept the gentleman's assumption that language may

19. James L. Oberstar (Minn.).

be objectionable merely because there is not a waiver provided for it. That is why the practice and precedents of the House require that such points of order be specific.

MR. TRAFICANT: Would it be in order then, Mr. Chairman, for the gentleman to read each section of title II and object to them officially and to, in fact, reserve the right to object on each specific section for, in fact, legislating on an appropriation bill?

THE CHAIRMAN: If the gentleman objects to opening this title, then the Clerk will read by paragraph. . . .

MR. MURTHA: This is the operation and maintenance title for the entire armed services. This title provides the training money for the services that you are deleting. This is training money and operation and maintenance money for the services.

MR. TRAFICANT: Mr. Chairman, I certainly would like to have a Buy American in that section. . . .

THE CHAIRMAN: Is there objection to opening up title II of the bill?

There was no objection.

THE CHAIRMAN: Are there any points of order against title II?

POINTS OF ORDER

MR. TRAFICANT: Mr. Chairman, I bring a point of order against title II of the bill on page 9, line 10, Operation and Maintenance of the Navy, for language which is, in fact, specifically legislation on an appropriation bill.

THE CHAIRMAN: Will the gentleman restate his point of order? The gentleman makes a point of order against which line?

MR. TRAFICANT: Reserving my right to further object, on page 9, line 10, the section under title II, Operation and Maintenance, Navy, that, in fact, that section from page 9, line 10, through, in fact, page 10, line 17, constitutes legislating on an appropriation bill. I say it should be stricken unless specifically protected by the rule.

THE CHAIRMAN: The Chair will advise the gentleman that the text from page 9, line 10 through the first portion of page 9, line 23 is protected under the rule. The balance, beginning with "Provided further" on line 23 through line 17 on page 10 is not protected.

MR. TRAFICANT: The gentleman then officially objects to title II, starting on page 9, line 23, through and continuously through page 10, line 17, for, in fact, being legislating on an appropriation bill that has not passed through an authorizing committee, and it should be stricken.

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

MR. MURTHA: We concede it is legislation. However, we want the gentleman to know that he is very seriously harming the defense of this country by making these deletions which he admits himself he is not aware of the impact that they are having on the bill. . . . But I have to concede the point of order. If you want to knock it out, it would be knocked out under the point of order. . . .

THE CHAIRMAN: The gentleman from Ohio will refrain from debating the merits of the bill on his point of order.

The Chair wishes to advise, again, that the point of order is made against the two provisos, one beginning on line 23, on page 9, and the other beginning on line 11 on page 10.

The gentleman from Pennsylvania has conceded the point of order. Accordingly, the two provisos are stricken. . . .

MR. TRAFICANT: The point of order is legislating on an appropriation bill, page 11, line 1, through line 11, of the section of Operation, Maintenance, Marine Corps, and I ask that it be stricken for legislating on an appropriation bill.

THE CHAIRMAN: The gentleman is advised that on page 11, only lines 1 through 8, after "September 1, 1992," are unprotected.

MR. TRAFICANT: Mr. Chairman, I move that language be stricken.

THE CHAIRMAN: Does the gentleman from Pennsylvania wish to be heard on the point of order?

MR. TRAFICANT: Mr. Chairman, I would like an answer on this.

THE CHAIRMAN: The gentleman has made his point of order. The Chair has inquired of the chairman of the committee whether he wishes to be heard on the point of order.

MR. MURTHA: Mr. Chairman, I concede the point of order. . . .

I agree with what the gentleman is trying to do, but what the gentleman is doing here is decimating things under the normal procedure that are important to the defense of this country.

MR. TRAFICANT: Continuing my point of order, Mr. Chairman, and to respond——

THE CHAIRMAN: The Chair will hear argument on the point of order, not on collateral issues.

MR. TRAFICANT: Continuing on my point of order, Mr. Chairman, this gentleman is not here on any ego trip. I think the procedures of the House have finally brought us to this.

THE CHAIRMAN: Does the gentleman insist on his point of order?

MR. TRAFICANT: I insist on my point of order, Mr. Chairman.

THE CHAIRMAN: The point of order has been conceded and is sustained, and accordingly, the language on line 1 of page 11 beginning with "Provided further," through line 8, concluding with "decision:" is stricken.

Are there other points of order against the provisions of title II?

Burden of Proof Where Point of Order Is Made Against "Legislation" in a General Appropriation Bill

§ 8.7 The proponent of an amendment to a general appropriation bill has the burden of refuting a point of order accompanied by argument that the amendment-although phrased as a limitation on funds-changes existing law, and the Chair will sustain the point of order where the proponent of the amendment does not cite law or precedent supporting her position.

On July 17, 1975,[20] during consideration of the Treasury, Postal Service and general government appropriations for fiscal 1976, an amendment was offered in the form of a limitation on funds in

20. 121 CONG. REC. 23239, 94th Cong. 1st Sess.

the bill. The chairman of the Subcommittee on Treasury, Post Office Appropriations, Mr. Tom Steed, of Oklahoma, who was managing the bill, raised a point of order that the limitation in fact interfered with the discretionary authority of the Postal Rate Commission. The proponent of the amendment declined to be heard on the point of order, and the Chair then ruled based on the argument presented by Mr. Steed.

MRS. [MILLICENT] FENWICK [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. Fenwick: Add a new section 613 on page 45, line 21: "None of the funds appropriated under this Act shall be available to permit Parcel Post to be handled at less than its attributable cost."

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

THE CHAIRMAN:[1] The gentleman from Oklahoma reserves a point of order. . . .

THE CHAIRMAN: Does the gentleman from Oklahoma insist on his point of order?

MR. STEED: I insist on my point of order, Mr. Chairman. This amendment would have the effect of changing existing law. The Congress enacted the Postal Service Corporation bill and created the Rate Commission and delegated to the Rate Commission the sole and final authority on all postal rates. The impact of this amendment would be to limit and change that postal ratemaking power that is inherent in the law creating the Postal Corporation.

If the amendment here is permitted to prevail then all sorts of amendments affecting the operation of the Postal Service would be applicable and the whole purpose of the Postal Service Corporation law would be destroyed. So I think it is very imperative since this does change the law and the powers invested in the Rate Commission that we hold it is obviously legislation on an appropriation bill.

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

MRS. FENWICK: No, Mr. Chairman.

THE CHAIRMAN: Permit the Chair to direct a question to the gentleman from Oklahoma.

Is the gentleman's position such that in his opinion this amounts to a change in law? Would the gentleman speak to that point?

MR. STEED: Yes. The sole authority to determine what will be charged for parcel post, whether it is more or less than cost, is vested in the Postal Rate Commission and to accept this amendment here would limit that authority which would change the law which vests that total power in that Commission. So it would require an action on the part not only of the ratemaking Commission but the Postmaster General in that he does not now have to abide by this sort of demand.

The whole purpose of the corporation was to take the power to do that sort of thing out of Congress and leave it in the Postal Corporation for the postal rate commitment.

1. B. F. Sisk (Calif.).

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Oklahoma makes a point of order against the amendment offered by the gentlewoman from New Jersey dealing with the availability of funds in connection with the matter of parcel post where the Postal Service permits parcel post to be handled at less than attributable costs.

The Chair feels that the point of order made by the gentleman from Oklahoma to the effect that, in essence, this changes basic law, must be sustained in light of the fact that the Chair does not feel that the gentlewoman from New Jersey has made a sufficient case that it would be otherwise.

Therefore, the Chair is constrained to sustain the point of order.

Parliamentarian's Note: Subsequent analysis of the law surrounding the responsibilities of the Postal Rate Commission (39 USC 3622 (b)(3)) and precedents dealing with limitation language which may curtail discretion suggest that a well-documented argument against the point of order might have been successful.

Before the proceedings reported above there was a paucity of strong precedent on who has the burden of proof where an amendment is challenged as being legislative. But by analogy to the precedents under Rule XXI clause 2, requiring the committee or Member offering an amendment to show an authorization for a proposed appropriation, it seems that the proponent of an amendment should at least have the burden to come forward with some showing that the language offered is not legislative in effect.

Burden of Proof, Amendment to General Appropriation Bill

§ 8.8 The burden of proof is on the proponent of an amendment to a general appropriation bill to show that the amendment does not have the effect of changing existing law.

On June 16, 1977,[2] Chairman Bolling, presiding in Committee of the Whole during the consideration of the Labor and Health, Education, and Welfare appropriation bill for fiscal 1978, having ruled out a proviso in the bill as legislative in effect, was faced with an amendment which addressed the same issue but with a modified approach. Again, the burden of proof was on the advocates of the amendment and the Chair ruled that the burden was not met.

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment.

THE CHAIRMAN:[3] The Chair feels that under the circumstances he must recognize the gentleman from Illinois.

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2. 123 CONG. REC. 19364, 19365, 95th Cong. 1st Sess.

3. Richard Bolling (Mo.).

The Clerk will report the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Michel: On page 5, line 6, after "derived", strike the period and insert in lieu thereof, ": *Provided further*, That none of the funds appropriated or otherwise made available in this paragraph shall be obligated or expended to pay federally funded unemployment compensation to an individual who refuses employment which pays the higher of the minimum wage or the average unemployment benefit in a state and which meets the labor standards specified in Section 3304(a)(5) of the Federal Unemployment Tax Act after having received unemployment compensation for 26 or more consecutive weeks, unless such individual is enrolled in a training program under the Comprehensive Employment and Training Act of 1973, as amended."

MR. [JAMES C.] CORMAN [of California]: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman from California has reserved a point of order, and the gentleman from Illinois is recognized for 5 minutes.

MR. MICHEL: Mr. Chairman, in view of the ruling by the Chair, I am offering amended language which seeks to overcome the point of order problem. Instead of using the prevailing wage as the standard, I am using the minimum wage or the average State unemployment benefit payment level, whichever is higher.

This is the language which is already in the law for recipients of Federal supplemental benefits. That standard applies to recipients after 39 weeks of benefits, and I am simply proposing to extend it to all Federal benefits after 26 weeks of having received unemployment benefits. This standard is consistent with the authorizing legislation, and certainly does not result in any additional effort because it is already determined by the Department of Labor.

I offer this amendment because I believe it is particularly important that we zero in on the problem whereby many of the long-term unemployed seem to find it more comfortable to continue to receive unemployment benefits rather than take a job that may be a couple of cuts below what they may desire. . . .

THE CHAIRMAN: Does the gentleman from California make the point of order and insist on the point of order?

MR. CORMAN: Mr. Chairman, I insist on the point of order.

THE CHAIRMAN: The Chair will listen to the gentleman, of course, to make the point of order and the argument for it; but the Chair, while no expert on unemployment, is concerned about having the argument go to the question of when the Federal official, who must make a determination on the payment of unemployment compensation, has to make a determination with regard to a job that has been refused, that pays a certain level of wage. The Chair is interested in knowing the timing on that in the discussion that will come forth.

MR. CORMAN: Mr. Chairman, I thank the Chairman for that guidance.

There is considerable confusion as to what periods of time, which programs pay an unemployed worker. Those who are entitled to the maximum period of unemployment insurance have 26

weeks of regular insurance paid for out of State employer taxes, the administration for which is paid for out of Federal employer taxes.

At the end of that 26 weeks, if he has not been employed, he has an additional 13 weeks called extended unemployment benefits. That is paid, one-half out of State employer tax, one-half out of Federal employer tax, and the administration for which is paid out of Federal funds. During all of that period of time the suitability of work requirement is based on State law, with a Federal minimum below which suitability may not fall.

After that 39-week period there is a Federal supplemental benefit program which has been triggered in some 22 States. In those States where the unemployment rate is over 6 percent, one draws an additional 13 weeks financed totally out of the Federal Treasury. For that 13 weeks, there is a Federal suitability of work requirement which was adopted by this House this year. It is a reasonably good one; it is not the one read by the gentleman from Illinois; it is very different from that.

Now, the dilemma is that about a third of the employees who are drawing benefits do not draw the maximum benefit, and so in that first 26 weeks some would be totally under the State program; some for a portion of the time would be under State and State/Federal; and some would be under State, State/Federal and totally Federal. There is nothing that can disclose at what period of time one triggers in, because whatever his entitlement may be, it is one-half State, a quarter State/Federal, and a quarter Federal.

The greatest problem of all for the administrator would be attempting to apply suitability of work requirement, which is totally inconsistent, but was the direction of the Congress for those people drawing FSB within the first 23 weeks. There is no question but that there would be an additional requirement on administrators to ascertain the suitability of work inconsistent with and different from their own State requirements and the recently-passed Federal requirement. That is my point of order.

THE CHAIRMAN: Does the gentleman from Illinois desire to be heard?

MR. MICHEL: Only to say, Mr. Chairman, that what the gentleman is saying about what conditions do prevail, other than the wage, after 39 weeks, we are simply seeking to impose at the expiration of the 26 weeks. All that information is at hand, and there are absolutely no additional duties required. We are simply tightening up 13 weeks on what the gentleman's position is with respect to what flows after 39 weeks.

It is perfectly in order that what we are doing here again, I say, is a limitation. Under chapter 25, section 10, Deschler's Procedure, it is not in order in an appropriation bill to insert by way of amendment a proposition which places additional duties on the executive officer, but the mere requirement that the executive officer be the recipient of information is not considered as imposing upon him any additional burdens, and is in order. There are, of course, ample precedents for that. I rest my case.

MR. CORMAN: I may just respond to the one point, Mr. Chairman, by saying that the amendment proposed is not consistent with the Federal supple-

mental benefit requirements. Even if it were, I believe a point of order would lie, but it is not consistent.

THE CHAIRMAN: The Chair will state again that this is a very difficult and complicated problem. The Chair feels that, although the gentleman from Illinois has made a strong argument, that the Chair is required by the precedents to construe limitations strictly. The weight of the argument, in the Chair's opinion, falls on the side of the gentleman from California, and the Chair, for the reasons stated in his prior ruling[4] and after hearing the additional argument made by the gentleman from California, sustains the point of order against the amendment.

Construing the Rule Against Legislating in Appropriation Bill

§ 8.9 Where an amendment to a general appropriation bill is subject to two interpretations, one of which would render the amendment subject to a point of order, the Chair strictly construed the rule against legislating in an appropriation bill and sustained a point of order against the amendment.

Where an amendment was offered to a general appropriation bill, similar to one held in order in a previous Congress as a proper limitation, the Chair was convinced by the argument on the point of order that the language was intended to impose new duties and sustained a point of order that the amendment violated Rule XXI clause 2. The proceedings of June 14, 1978,[5] relevant to the amendment and the Chair's ruling are carried below.

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Chairman, I offer an amendment, my amendment No. 2.

The Clerk read as follows:

Amendment offered by Mr. Coughlin: On page 6, after line 23, insert the following new section:

SEC. 102. (a) None of the funds appropriated by any provision described in subsection (b) shall be expended or obligated for any purpose specified in such provision unless such funds so expended or obligated are subject to audit by the Comptroller General of the United States.

(b) For purposes of subsection (a), any provision in Title I of this Act following the provision relating to "COMPENSATION OF MEMBERS" and preceding the heading "JOINT ITEMS" is a provision described in this subsection. . . .

(Mr. Coughlin asked and was given permission to revise and extend his remarks.)

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Chairman, may I make an inquiry? I was unable to determine which amendment this is.

MR. COUGHLIN: The amendment No. 2, which I believe the gentleman has.

MR. SHIPLEY: I might want to reserve a point of order, but I am not sure which amendment the gentleman is offering.

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4. See § 8.4, supra.

5. 124 CONG. REC. 17650, 17651, 17667, 95th Cong. 2d Sess.

THE CHAIRMAN PRO TEMPORE:[6] The Clerk will again report the amendment.

The Clerk rereported the amendment.

MR. COUGHLIN: I raise a point of order, Mr. Chairman. I thought that we were on my 5 minutes.

THE CHAIRMAN PRO TEMPORE: The gentleman from Pennsylvania had not proceeded to his debate.

MR. SHIPLEY: Mr. Chairman, I reserve a point of order on the amendment.

MR. COUGHLIN: Mr. Chairman, this is identical to an amendment offered last year by the gentlewoman from Massachusetts (Mrs. Heckler) and the gentlewoman from New York (Mrs. Chisholm) to provide for a GAO audit of Members and committee accounts. It is the identical amendment that was raised at that time. It was not objected to on a point of order. . . .

MR. SHIPLEY: Mr. Chairman, I would like to ask exactly what would take place in this type of audit.

MR. COUGHLIN: Mr. Chairman, I yield to the gentlewoman from Massachusetts (Mrs. Heckler).

MRS. [MARGARET M.] HECKLER [of Massachusetts]: Mr. Chairman, the operations of the Comptroller General under this amendment would continue as under existing circumstances in that site at the Capitol where the office is presently located. The authority would provide an audit of Members' accounts and committee accounts. It would provide that authority to be utilized by the GAO.

MR. SHIPLEY: Mr. Chairman, if the gentleman will yield further, does it extend in any way the present audit system that we have now in the House?

MR. COUGHLIN: Mr. Chairman, I yield to the gentlewoman from Massachusetts.

MRS. HECKLER: Mr. Chairman, it extends the authority that now exists in law but is not necessarily a change in existing law. It affirms the authority of the GAO which presently exists in the House; however, I do not believe that the GAO is able to examine Members' accounts and this amendment clarifies that authority. However, it does not mandate audits across the board of every Member at any particular time.

MR. SHIPLEY: Mr. Chairman, would the gentlewoman answer another question for me again. I am not quite clear in my own mind what exactly would this amendment require the Comptroller General to do specifically?

MRS. HECKLER: I believe that this amendment would provide an expansion of the number of accounts which the GAO is presently auditing including the tax-funded accounts of Members of Congress and our legislative committees, as covered by the general legislative appropriation bill. We are in this bill dealing with an appropriation of $992 million. I believe that these public funds should be subject to audit. This amendment merely affirms the legal authority to the GAO to conduct such audits.

MR. SHIPLEY: Mr. Chairman, I still reserve my point of order. . . .

Mr. Chairman, I would like to be heard on the point of order.

Mr. Chairman, I insist on my point of order.

Mr. Chairman, I object to the amendment and make a point of order

6. Dan Rostenkowski (Ill.).

against it on the grounds that it imposes additional duties on the Comptroller General and, as such, is in violation of clause 2, rule XXI of the House. The additional duties implied by the amendment might involve the Comptroller General insisting that time and attendance reporting systems be set up in Members and committee offices and may require setting up annual and sick leave systems and involve examination of Members' personal diaries, perhaps even their personal financial records. These are duties and procedures clearly beyond the offices of the Comptroller General's present audit authority. Under paragraph 842 of clause 2, rule XXI:

> An amendment may not impose additional duties, not required by law, or make the appropriation contingent upon the performance of such duties . . . then it assumes the character of legislation and is subject to a point of order.

MR. COUGHLIN: Mr. Chairman, may I be heard further on the point of order?

THE CHAIRMAN PRO TEMPORE: The gentleman from Pennsylvania (Mr. Coughlin) is recognized.

MR. COUGHLIN: Mr. Chairman, let me say that the amendment imposes no additional duties on the General Accounting Office. It proposes that these accounts be subject to audit by the GAO.

Title 31, section 67, of the United States Code annotated says as follows:

> . . . the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States.

In a memorandum to the Comptroller General from the general counsel of the General Accounting Office, the following language appeared:

> Our authority under the Budget and Accounting Act, 1921, to investigate all matters relating to the receipt, disbursement, and application of public funds also extends to the Congress.

I continue to quote from the memorandum, as follows:

> Similarly, our authority in the Accounting and Auditing Act of 1950 to audit all financial transactions, not limited to accountable officer transactions, extends to legislative agencies . . .

Mr. Chairman, it is very clear that the General Accounting Office already has the authority and the duty to audit the accounts of the legislative branch, and this amendment in no way expands or extends that authority. The General Accounting Office has taken a position that it is interested in having an expression of the will of the legislative branch as to whether it wishes the General Accounting Office to carry out that function. This amendment would be an expression of that will.

Mr. Chairman, the amendment would in no way expand the authority of the General Accounting Office or impose additional duties on the General Accounting Office; it would only make these accounts subject to audit.

MR. SHIPLEY: Mr. Chairman, may I be heard further on my point of order?

THE CHAIRMAN PRO TEMPORE: The Chair will hear the gentleman.

MR. SHIPLEY: Mr. Chairman, in the colloquy with the gentlewoman from Massachusetts (Mrs. Heckler), she stated that the amendment would extend the present authority of the GAO.

Again, Mr. Chairman, I press my point of order.

MR. COUGHLIN: Mr. Chairman, if I may be heard further on the point of order, I will say in answer to the gentleman from Illinois (Mr. Shipley) that I do not think the amendment would extend the present authority of the GAO.

THE CHAIRMAN PRO TEMPORE: The Chair is ready to rule.

The Chair certainly agrees that the language in the amendment is ambiguous. The Chair takes into account, however, the debate, and the debate as observed by the Chair indicates the amendment certainly does extend the authority of the Comptroller General and is subject to a point of order.

The Chair does recognize that there are conflicting interpretations of the amendment under discussion. However, the Chair has a duty under the precedents to construe the rule against legislation strictly where there is an ambiguity. The Chair feels he must sustain the point of order based on the interpretations given the amendment during the debate.

MR. COUGHLIN: Mr. Chairman, may I inquire, is the debate subject to a point of order?

THE CHAIRMAN PRO TEMPORE: The Chair will state that it has to make a determination based on the debate, and the Chair sustains the point of order.

MRS. HECKLER: Mr. Chairman, may I be heard?

THE CHAIRMAN PRO TEMPORE: The Chair sustains the point of order. . . .

MR. COUGHLIN: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Coughlin: On page 6, after line 23, insert the following new section:
>
> SEC. 102. None of the funds appropriated on pages 2 through 6 of this Act shall be made available for obligation unless such funds are subject to audit by the Comptroller General of the United States in accordance with the provisions of title 31, section 67 of the U.S.C.A.

Burden of Proof Where Language Is Susceptible to More Than One Interpretation

§ 8.10 The proponent of an amendment to a general appropriation bill has the burden of proving that the amendment does not change existing law and, if in the form of a "limitation" falls within the categories of permissible limitations delineated in the precedents arising under Rule XXI clause 2; and if the amendment is susceptible to more than one interpretation, it is incumbent on the proponent to show that it is not in violation of the rule.

On July 28, 1980,[7] the Committee of the Whole had under

7. 126 CONG. REC. 19924, 19925, 96th Cong. 2d Sess.

consideration the Housing and Urban Development-independent agencies appropriation bill, fiscal 1981. An amendment offered by Mr. Herbert E. Harris, II, of Virginia, to the bill was a restriction, not on the amount of funds in the bill, but on the timing of their obligation.

MR. HARRIS: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harris: Page 45, after line 23, insert the following:

SEC. 413. No more than an amount equal to 20 percent of the total funds appropriated under this Act for any agency for any fiscal year and apportioned to such agency pursuant to section 3679 of the Revised Statutes of the United States (31 U.S.C. 665) may be obligated during the last two months of such fiscal year.

The point of order raised against the amendment by Mr. John T. Myers, of Indiana, the ranking member of the subcommittee bringing the bill to the floor, and the response to the point of order by the proponent of the amendment, as well as the Chair's ruling are carried below.

THE CHAIRMAN:[8] Does the gentleman from Indiana (Mr. Myers) insist on his point of order?

MR. MYERS of Indiana: I do, Mr. Chairman.

Mr. Chairman, the gentleman has offered an amendment to limit the appropriations to a specific time; but I respectfully suggest that the fact the gentleman has added the words, "No more than" is still not, in fact, a limitation.

The House has long established and the Committee has long established that Congress does have the right to limit how money shall be spent for a specific purpose. I quote:

> The House's practice has established the principle that certain "limitations" may be admitted. It being established that the House under its rules may decline to appropriate for a purpose authorized by law, so it may by limitation prohibit the use of money for part of the purpose, while appropriating for the remainder of it.

The first precedent that I want to cite is Hinds' Precedents, volume IV, section 3936, where on January 17, 1896, the Chairman of the Committee of the Whole, Nelson Dingley, ruled:

> The House in Committee of the Whole has the right to refuse to appropriate for any object which it may deem improper, although that object may be authorized by law; and it has been contended, and on various occasions sustained by the Committee of the Whole, that if the Committee has the right to refuse to appropriate anything for a particular purpose authorized by law, it can appropriate for only a part of that purpose and prohibit the use of the money for the rest of the purpose authorized by law.

Mr. Chairman, it has been firmly established a number of times, I could go on and quote, on January 31, 1925, the Chairman of the Committee of the Whole, John Tilson of Connecticut, ruled:

> Congress may appropriate for one subject authorized by law and refuse

8. Elliott H. Levitas (Ga.).

> to appropriate for another object authorized by law.

This firmly establishes the principle that a limitation must apply to a specific purpose or an object.

Mr. Chairman, this does not do that.

I further cite that on June 25, Chairman Sharp of Indiana sustained a point of order that was asked by this gentleman on an appropriation bill, that he limits the discretionary power of the executive.

Now, this particular amendment has been remedied somewhat, or there has been an attempt to remedy, in citing section 3679 of the revised statutes of United States Code 31 U.S. 665.

Now, Mr. Chairman, the rules of the House of Representatives, rule XXI, section 843, says this:

> In construing a proposed limitation, if the Chair finds the purpose to be legislative, in that the intent is to restrict executive discretion to a degree that it may be fairly termed a change in policy rather than a matter of administrative detail he should sustain the point of order.

The key here, Mr. Chairman, is that if the intent is to restrict executive discretion to agree that it may be fairly termed a change in policy rather than a matter of administrative detail he should sustain the point of order.

Mr. Chairman, the fact that you are limiting here, not directing, but limiting the authority to the last 2 months how much may be spent takes away the discretionary authority of the Executive which might be needed in this case. It clearly is more than an administrative detail when you limit and you take away the right of the Executive to use the funds prudently, to take advantage of saving money for the Executive, which we all should be interested in, and I certainly am, too; but Mr. Chairman, rule 843 provides that you cannot take away that discretionary authority of the Executive.

This attempt in this amendment does take that discretionary authority to save money, to wisely allocate money prudently and it takes away, I think, authority that we rightfully should keep with the Executive, that you can accumulate funds and spend them in the last quarter if it is to the advantage of the taxpayer and the Executive.

Mr. Chairman, this clearly is in violation of the rules of the House.

THE CHAIRMAN: Does the gentleman from Virginia desire to be heard?

MR. HARRIS: I do, Mr. Chairman.

Mr. Chairman, let me first address the last point, probably because it is the weakest that the gentleman has made with respect to his point of order.

With respect to the discretion that we are in any way limiting the President, we cannot limit the discretion which we have not given the President directly through legislation. There is no discretion with regard to legislation that we have overtly legislated and given to the President.

Mr. Chairman, section 665(c)(3) of title 31 of the United States Code, which states the following:

> Any appropriation subject to appointment shall be distributed as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments.

Clearly grants agency budget officers the discretionary authority to appor-

tion the funds in a manner they deem appropriate. My amendment would not interfere with this authority to apportion funds. On the contrary, my amendment reaffirms this section of the United States Code, as Deschler's Procedures, in the U.S. House of Representatives, chapter 26, section 1.8, states:

> The provision of the rule forbidding in any general appropriation bill a "provision changing existing law" is construed to mean the enactment of law where none exists, or a proposition for repeal of existing law. Existing law may be repeated verbatim in an appropriation bill, but the slightest change of the text causes it to be ruled out.

My amendment, Mr. Chairman, as the Chair will note, specifically restates by reference the existing law, which in no way gives discretion as to spending, but gives discretion as to apportionment.

Mr. Chairman, as the Chair knows, the budget execution cycle has many steps. Whereas the Chair's earlier ruling related to the executive branch authority to apportion, my amendment addresses the obligation rate of funds appropriated under the fact. As OMB circular No. A–34 (July 15, 1976) titled "Budget Execution" explains:

> Apportionment is a distribution made by OMB.
>
> Obligations are amounts of orders placed, contracts awarded, services received, and similar transactions.

Mr. Chairman, my amendment proposes some additional duties, but only a very minimal additional duty upon the executive branch.

Deschler's chapter 26, section 11.1 says:

> The application of any limitation on an appropriation bill places some minimal extra duties on Federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation.

The fact of the matter, Mr. Chairman, is that this is a very carefully drawn limitation on appropriations. It is consistent with a number of previous rulings of the Chair.

Mr. Chairman, I would urge my colleague to withdraw his point of order, because even a narrow interpretation of the rules will not satisfy the other body on this. The other body has made it clear that this restriction will go into the appropriation bill.

I think it is a shame, after this House has voted this past week 350 to 52, that it not go ahead and enact this type of provision on the HUD bill. I think the Members want to vote for it. I think the Members should be permitted to vote for it. I think it is a shame to just allow the other body to take the initiative on what I think is an extraordinarily important reform in our budgetary process.

THE CHAIRMAN: Does the gentleman from Indiana desire to be heard further?

MR. MYERS of Indiana: I do, Mr. Chairman.

The citation cited by the gentleman from Virginia points to the fact that this amendment, if adopted, would cause the Executive to unwisely allocate and spend money in quarters earlier or in the year earlier when it might not be wise to spend it. This amendment, while the intent I do not disagree with, the spirit that would be carried out would cause the Executive

to allocate and spend money unwisely because it was forced by this amendment to allocate a portion according to this. But the amendment does not do what the gentleman aspires for it to do.

THE CHAIRMAN: Does the gentleman from Texas desire to be heard?

If not, the Chair is prepared to rule based upon the arguments made with respect to the point of order.

In the first instance, the Chair would observe that it is not the duty of the Chair or the authority of the Chair to rule on the wisdom or the legislative effect of amendments.

Second, the Chair will observe that the gentleman from Virginia, in the way in which his amendment has been drafted, satisfies the requirements of the Apportionment Act, which was the subject of a prior ruling of the Chair in connection with another piece of legislation.

The Chair agrees with the basic characterization made by the gentleman from Indiana that the precedents of the House relating to limitations on general appropriation bills stand for the proposition that a limitation to be in order must apply to a specific purpose, or object, or amount of appropriation. The doctrine of limitations on a general appropriation bill has emerged over the years from rulings of Chairmen of the Committee of the Whole, and is not stated in clause 2, rule XXI itself as an exception from the prohibition against inclusion of provisions which "change existing law." Thus the Chair must be guided by the most persuasive body of precedent made known to him in determining whether the amendment offered by the gentleman from Virginia (Mr. Harris) "changes existing law." Under the precedents in Deschler's Procedure, chapter 26, section 1.12, the proponent of an amendment has the burden of proving that the amendment does not change existing law.

The Chair feels that the basic question addressed by the point of order is as follows: Does the absence in the precedents of the House of any ruling holding in order an amendment which attempts to restrict not the purpose or object or amount of appropriation, but to limit the timing of the availability of funds within the period otherwise covered by the bill require the Chair to conclude that such an amendment is not within the permissible class of amendments held in order as limitations? The precedents require the Chair to strictly interpret clause 2, rule XXI, and where language is susceptible to more than one interpretation, it is incumbent upon proponent of the language to show that it is not in violation of the rule (Deschler's chapter 25, section 6.3).

In essence, the Chair is reluctant, based upon arguments submitted to him, to expand the doctrine of limitations on general appropriation bills to permit negative restrictions on the use of funds which go beyond the amount, purpose, or object of an appropriation, and the Chair therefore and accordingly sustains the point of order.

Burden of Proving Authorization for Appropriation

§ 8.11 The burden of proof to cite the authorization to sustain an appropriation for a

project is on the proponent of the amendment.

On Oct. 29, 1991,[9] when an amendment dealing with an environmental study was offered to the dire emergency appropriation bill in 1991, a point of order against the amendment was sustained where no authorization was cited.

AMENDMENT OFFERED BY MR. GILCHREST

The Clerk read as follows:

Amendment offered by Mr. Gilchrest: Page 10, after line 20, insert the following new paragraph:

ENVIRONMENTAL PROTECTION AGENCY

STUDY OF WETLANDS DELINEATION

For necessary expenses for entering into an arrangement with the National Academy of Sciences to conduct a study to examine the scientific basis for methods used in identifying and delineating wetlands (including the Federal manual for Identifying and Delineating Jurisdictional Wetlands, published January 10, 1989, revisions to such manual proposed by the Environmental Protection Agency on August 14, 1991, and previous manuals and methodologies), $500,000.

MR. [WAYNE T.] GILCHREST [of Maryland] (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN:[10] Is there objection to the request of the gentleman from Maryland?

There was no objection.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I reserve a point of order against the amendment.

MR. [JAMES A.] HAYES of Louisiana: Mr. Chairman, I reserve a point of order, as well, against the amendment.

MR. GILCHREST: . . . The point of order is not well taken.

Mr. Chairman, just before I came to the House floor, someone told me, and it was an interest group, that wetlands should not be a science issue. It should be a political issue. Well, I take issue with that statement. We need the science. We need wetlands determination. We need a policy based on fact, not a policy based on politics.

POINT OF ORDER

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

MR. HAYES of Louisiana: Mr. Chairman, yes, I do.

I make a point of order against the amendment, because it proposes to change existing law, constituting legislation in an appropriation bill, therefore, violating clause 2 of rule XXI, the rule which states in pertinent part that no amendment to a general appropriation bill shall be in order if changing existing law.

This amendment imposes additional duties. It, in fact, instructs the EPA to make and enter into an arrangement with the National Academy of Sciences all of this to include, by specific ref-

9. 137 CONG. REC. 28791, 28792, 28802, 102d Cong. 1st Sess.

10. Gerry E. Studds (Mass.).

erence of this amendment, the Federal manual for identifying and delineating jurisdictional wetlands, all of which comes under section 404 of the Clean Water Act, the appropriate jurisdiction of which belongs with the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation.

There is no doubt but that this is, in fact, imposing legislative intent upon an appropriation bill, and I ask for a ruling from the Chair.

THE CHAIRMAN: Does the gentleman from Maryland [Mr. Gilchrest] wish to be heard on the point of order.

MR. GILCHREST: Mr. Chairman, we are not legislating an appropriation.

MR. HAYES of Louisiana: Mr. Chairman, I have a question for the gentleman.

The question would be: Is it not that the exact language says that the Environmental Protection Agency will have the expenses for entering into an arrangement with the National Academy of Sciences? I am reading directly from the amendment. Therefore, this is an appropriation of $500,000 for the express and sole purpose of entering into an arrangement with the National Academy of Sciences which is, in fact, legislating on an appropriation bill and imposing the additional duties on the EPA, duties which are not in existence now.

MR. GILCHREST: We are appropriating money for a study. We are not legislating here.

MR. HAYES of Louisiana: Mr. Chairman, I would just proceed to ask the Chair for a ruling.

THE CHAIRMAN: The Chair is prepared to rule.

The Chair is unaware of any current statutory authorization for the activities called for in the amendment and, consequently, the reasons stated by the gentleman from Louisiana constitute a violation of clause 2, rule XXI.

The Chair sustains the point of order. . . .

AMENDMENT OFFERED BY MR. GILCHREST

MR. GILCHREST: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Gilchrest: Page 15, after line 20, insert the following new chapter:
>
> STUDY OF WETLANDS DELINEATION
>
> For necessary expenses for entering into an arrangement with the National Academy of Sciences to conduct a study to examine the scientific basis for methods used in identifying and delineating wetlands, for purposes of the conservation of fish and wildlife resources and their habitat, as authorized by 16 U.S.C., 742f. $500,000.

MR. GILCHREST: Mr. Chairman, this is the same amendment that I offered earlier. We have cleared up some of the problems with the amendment. The purpose of the amendment is for a study, I am asking for this study for the purposes of conservation, fish and wildlife resources, and their habitat.

Chair's Ability To Look Behind Proponents Characterization of Motion

§ 8.12 Where a motion to concur in a Senate amendment with an amendment was of-

fered as "preferential," the Speaker Pro Tempore, without the benefit of a point of order from the floor, on his own initiative declared that the motion did not in fact qualify for that status and recognized another Member to offer a motion to concur with an amendment. On appeal, the Chair was sustained.

On July 2, 1980,[11] the House had under consideration a series of amendments reported in disagreement from conference. A motion offered by Mr. Jamie L. Whitten, of Mississippi, to disagree with a particular Senate amendment was pending. The manager of the conference report, Mr. Clarence D. Long, of Maryland, then offered a preferential motion to concur in the Senate amendment with a further amendment. This motion was also rejected. At this point, Mr. Robert E. Bauman, of Maryland, offered a "preferential" motion to concur with an amendment. The proceedings following the rejection of Mr. Long's motion were then as indicated below.

PREFERENTIAL MOTION OFFERED BY MR. BAUMAN

MR. BAUMAN: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Bauman moves to recede and concur in the amendment of the Senate, (No. 95) with an amendment as follows: In lieu of the matter stricken and inserted by said amendment insert the following:

CHAPTER VI

FOREIGN OPERATIONS

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL DISASTER ASSISTANCE

For an additional amount to carry out the provisions of Section 491 of the Foreign Assistance Act of 1961, as amended, $43,000,000 to remain available until expended.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For an additional amount for "Payment to the Foreign Service Retirement and Disability Fund", $1,020,000.

OPERATING EXPENSES

For an additional amount for "Operating Expenses of the Agency for International Development", $2,000,000, to remain available until expended.

MR. BAUMAN (during the reading): Mr. Speaker, that happens to be the end of the motion. I am not sure why the gentleman is reading further. That is the end of the motion I sent to the desk.

PARLIAMENTARY INQUIRY

MR. [ALLEN E.] ERTEL [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

11. 126 CONG. REC. 18357, 18359–61, 96th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:[12] The gentleman will state his parliamentary inquiry.

MR. ERTEL: Mr. Speaker, how is this particular amendment a preferential motion?

THE SPEAKER PRO TEMPORE: The gentleman rose and was recognized to offer a preferential motion. The Clerk has not completed the reading of the motion.

MR. BAUMAN: The gentleman from Maryland would advise the Speaker that the Clerk has completed reading the motion that I sent to the desk. I am not sure what the Clerk is now reading.

THE SPEAKER PRO TEMPORE: Has the Clerk finished reading the motion?

The Clerk will rereport the motion.

MR. ERTEL (during the reading): Mr. Speaker, I reserve a point of order.

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania reserves a point of order.

PARLIAMENTARY INQUIRIES

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

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

MR. ERTEL: Mr. Speaker, inasmuch as the motion was partially read before, how is this a preferential motion which the gentleman has been recognized for; on what basis?

THE SPEAKER PRO TEMPORE: The Long amendment having been to concur with an amendment and being defeated, another motion to concur with an amendment is a preferential motion.

MR. ERTEL: Mr. Speaker, I have an additional parliamentary inquiry.

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

MR. ERTEL: Mr. Speaker, did we not though vote to recede and concur in the Senate amendment previously?

THE SPEAKER PRO TEMPORE: The House has, on reconsideration refused to concur in the Senate amendment No. 95 with an amendment.

The Clerk will continue to read the motion.

The Clerk read as follows:

> Mr. Bauman moves to concur in the amendment of the Senate (No. 95) with an amendment as follows: In lieu of the matter stricken and inserted by said amendment insert the following:

CHAPTER VI

FOREIGN OPERATIONS

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL DISASTER ASSISTANCE

For an additional amount to carry out the provisions of Section 491 of the Foreign Assistance Act of 1961, as amended, $43,000,000 to remain available until expended.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For an additional amount for "Payment to the Foreign Service Retirement and Disability Fund", $1,020,000.

OPERATING EXPENSES

For an additional amount for "Operating Expenses of the Agency for International Development",

12. Paul Simon (Ill.).

$2,000,000, to remain available until expended. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Maryland is recognized.

PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, under the rules, does not the gentleman from Mississippi have the time? I would like for him to yield to me, but I believe he has the time.

MR. LONG of Maryland: Mr. Speaker, I have a preferential motion.

MR. BAUMAN: Mr. Speaker, I have been recognized, I believe.

MR. LONG of Maryland: Mr. Speaker, I was on my feet.

POINT OF ORDER

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

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

MR. BAUMAN: Mr. Speaker, I have the floor and I do not yield.

MR. LONG of Maryland: Mr. Speaker, I was on my feet for a preferential motion.

THE SPEAKER PRO TEMPORE: On this motion the gentleman from Maryland (Mr. Bauman) has the time.

MR. BAUMAN: Mr. Speaker, I would like to take my time at this point.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Bauman) is recognized.

MR. BAUMAN: Mr. Speaker, I do not want to complicate an already complicated situation. The motion which I have just offered, and the Members should at least try and understand it because we are apparently going to have to vote on it, in essence returns the House to the position that we went to the conference with on the foreign aid issue. It provides amounts of money for three funds that the administration informed the House was necessary for inclusion in the supplemental appropriation bill. It does not include any of the funding which was added by the other body and, therefore, amounts to roughly about $46 million. . . .

Mr. Speaker, for purposes of debate only I yield to the gentleman from New York (Mr. McEwen).

MR. [ROBERT C.] MCEWEN [of New York]: Mr. Speaker, I thank the gentleman for yielding.

THE SPEAKER PRO TEMPORE: For what purpose does the gentleman from Massachusetts rise?

MR. [THOMAS P.] O'NEILL [Jr., of Massachusetts]: Mr. Speaker, in view of the fact that the gentleman from Maryland did not offer a preferential motion, I offer a preferential motion that is at the desk.

MR. BAUMAN: Mr. Speaker, I did not yield to the gentleman to offer a motion.

MR. O'NEILL: I was recognized.

MR. BAUMAN: Well, I did not yield for that purpose, Mr. Speaker. I control the time, do I not?

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Bauman) has 30 minutes, the majority side has 30 minutes.

Does the gentleman from Maryland wish to use more time?

MR. BAUMAN: I do and I was in the course of using the time when I was interrupted. I do not believe I can be interrupted unless I yield.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland may proceed.

MR. BAUMAN: I do not yield for that purpose. I yield for debate only to the——

MR. O'NEILL: I want the House to know that I reserve my right and before the previous question is put, I will offer for a preferential motion.

MR. BAUMAN: Mr. Speaker, I yield to the gentleman from New York for the purpose of debate only. . . .

My parliamentary inquiry is that the Chair stated a moment ago that the time on a preferential motion to concur with an amendment is divided between the majority and the minority. Is it not controlled by the maker of the motion? Only amendments in disagreement are divided.

THE SPEAKER PRO TEMPORE: The practice of the House is clearly on a motion of this type after an initial motion has been rejected on an amendment reported from conference in disagreement that the time is divided between the majority and the minority parties.

MR. BAUMAN: The second question I have is, has not the gentleman from Maryland made a preferential motion which is now pending?

THE SPEAKER PRO TEMPORE: The gentleman from Maryland made a motion which was in form a preferential motion. Upon examination by the Chair, it is in fact a motion to insist upon the original House position rather than a motion to amend the Senate amendment.

MR. BAUMAN: A further parliamentary inquiry. The House's previous action on this amendment was a vote to recede from the position of the House. At that point——

THE SPEAKER PRO TEMPORE: If the Chair could—the House has not voted to reconsider the motion to recede——

MR. BAUMAN: Precisely. That is what the gentleman from Maryland is observing, that the House has voted to recede from its position. At that point a preferential motion to concur with an amendment is in order. That is what the gentleman from Maryland has offered.

THE SPEAKER PRO TEMPORE: What the House has done is to recede from its initial disagreement, not from the House position.

MR. BAUMAN: Well, is not the gentleman from Maryland's motion a preferential motion under the rule?

THE SPEAKER PRO TEMPORE: In form it is but upon examination it is in fact a motion to insist upon the House position.

MR. BAUMAN: Well, does not the Chair have to be subjected to a point of order at an appropriate time in order to make that ruling? Does the Chair on its own inquire behind the form of motion?

THE SPEAKER PRO TEMPORE: The Chair is responding to a parliamentary inquiry of the gentleman from Maryland.

MR. BAUMAN: Well, but the Chair made a statement a few moments ago, unsolicited by anyone that my motion was not a preferential motion. This gentleman would like to ask upon what authority the Chair is able to rule a preferential motion offered in proper form is nonpreferential when no one has raised the issue.

THE SPEAKER PRO TEMPORE: The Chair has not ruled out the motion of

the gentleman from Maryland. It is still pending. The parliamentary inquiry was whether it was a preferential motion.

MR. BAUMAN: Mr. Speaker, further using my time on parliamentary inquiry of the Chair, who controls the preferential motion on the previous question under these circumstances?

THE SPEAKER PRO TEMPORE: Is the gentleman asking if another motion is made?

MR. BAUMAN: I am asking the Chair, under the parliamentary inquiry, who controls the preferential motion of the previous question? Who may move the previous question on this motion?

THE SPEAKER PRO TEMPORE: If a motion is privileged it may be offered by any Member of the House.

MR. BAUMAN: Mr. Speaker, I move the previous question on the motion.

THE SPEAKER PRO TEMPORE: For what purpose does the gentleman from Massachusetts (Mr. O'Neill) seek recognition?

PREFERENTIAL MOTION OFFERED BY MR. O'NEILL

MR. O'NEILL: Mr. Speaker, I offer a preferential motion.

MR. BAUMAN: Mr. Speaker, a point of order. I moved the previous question on the pending motion.

THE SPEAKER PRO TEMPORE: The motion for the previous question does not rule out a preferential motion, if moved while time is remaining to the opposite party. The previous question is not yet in order.

The Clerk will read the preferential motion.

The Clerk read as follows:

> Mr. O'Neill moves that the House concur in the amendment of Senate numbered 95 with an amendment as follows:
>
> In lieu of the matter deleted and inserted by said amendment, insert the following:
>
> FUNDS APPROPRIATED TO THE PRESIDENT
>
> INTERNATIONAL DISASTER ASSISTANCE
>
> For an additional amount to carry out the provisions of section 491 of the Foreign Assistance Act of 1961, as amended, $43,000,000 to remain available until expended.
>
> DISABILITY FUND
>
> For an additional amount for "Payment to the Foreign Service Retirement and Disability Fund," $1,020,000.
>
> OPERATING EXPENSES
>
> For an additional amount for "Operating Expenses of the Agency for International Development," $2,000,000, to remain available until expended.
>
> ECONOMIC SUPPORT FUND
>
> For an additional amount of $80,000,000 for necessary expenses to carry out the provisions of sections 531 through 535, provided that these funds shall not be available for obligation or expenditure until October 1, 1980.

POINT OF ORDER

MR. BAUMAN: Mr. Speaker, I make a point of order against the motion.

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

MR. BAUMAN: Mr. Speaker, I make a point of order that this motion is not a preferential motion. It is, in fact, an amendment to the pending motion of the gentleman from Maryland, which sought to concur in the Senate amend-

ment with an amendment. This is simply another motion seeking to concur in the Senate amendment with a slightly different amendment, and therefore it has no preference over my pending motion.

I make a point of order against it on that ground.

The Chair, stating that the motion to concur with an amendment took precedence over a motion to insist on the House position, overruled the point of order. Mr. Bauman then made another point of order as indicated below:

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

The gentleman from Maryland has offered a motion to concur in the amendment of the Senate with an amendment, and now another motion to concur in the amendment of the Senate with an amendment is being offered. That additional motion is not in order at this point.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland has offered an amendment which in form was a motion to concur with an amendment. In fact, it is a motion to insist on the original House language.

MR. BAUMAN: I make a point of order against the pending motion by the gentleman from Massachusetts (Mr. O'Neill) that it is not preferential because it is, in form, simply a motion to insist on the House position and is not, in fact, a preferential motion. If my motion is not [in] order, his is not either.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland is not correct. The point is not well taken.

MR. BAUMAN: Mr. Speaker, I appeal the ruling of the Chair.

If that is the way you are going to play the game, let us fight it to the end.

THE SPEAKER PRO TEMPORE: The gentleman appeals the ruling of the Chair. The question is, shall the Chair's decision stand as the judgment of the Committee.

MOTION TO TABLE OFFERED BY MR. BOLLING

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, I move to lay the appeal from the Chair on the table.

MR. BAUMAN: And that the motion be reduced to writing.

MR. BOLLING: It is at the desk. It is at the desk.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Bolling moves to lay the appeal on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion to table.

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

MR. BAUMAN: Mr. Speaker, on that I demand the yeas and nays, so that we can go on record on the fairness in this House.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 222, nays 140, answered "present" 1, not voting 70, as follows: . . .

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts (Mr.

O'Neill) is recognized in support of his preferential motion.

Chair's Role in Clarifying Amendment

§ 8.13 In attempting to construe an ambiguous amendment, the Chair may inquire of the author the meaning of certain language therein, and then rely on those responses, and additional debate, in rendering a decision on a point of order.

On Oct. 29, 1991,[13] Chairman Gerry E. Studds, of Massachusetts, presiding over the dire emergency appropriation bill, 1991, was faced with an amendment and a point of order that it was legislation in violation of Rule XXI clause 2. The Chair elicited some debate on the matter to help clarify the meaning of the amendment.

AMENDMENT OFFERED BY MR. BOEHNER

MR. [JOHN A.] BOEHNER [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Boehner: At the appropriate place in the bill, add the following new chapter:

CHAPTER—LEGISLATIVE BRANCH

HOUSE OF REPRESENTATIVES COMMITTEE ON HOUSE ADMINISTRATION—HOUSE INFORMATION SYSTEMS

For an additional amount for "Committee on House Administration, House Information Systems", $1.00 to cancel the contract with Aristotle Industries for the CD–ROM Voter Registration Lists project.

MR. [VIC] FAZIO [of California]: Mr. Chairman, I reserve a point of order on the gentleman's amendment. . . .

THE CHAIRMAN: The gentleman will state his point of order.

MR. FAZIO: Mr. Chairman, I believe this language is legislation on an appropriation bill. It seems to direct that the Committee on House Administration should cancel a contract, and, if that is the thrust of the amendment, and that is the Chairman's interpretation of it, I would suggest that this is language that should be removed.

Mr. Chairman, I object and insist on my point of order.

THE CHAIRMAN: Does the gentleman from Ohio wish to be heard on the point of order? . . .

The Chair would inquire of the author of the amendment whether it is his intention and understanding with respect to his amendment that it directs the Committee on House Administration to cancel the contract.

MR. BOEHNER: That is correct.

THE CHAIRMAN: This is his intention?

MR. BOEHNER: Yes. . . .

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

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, as I read the amendment, the amendment reads that House Administration is given $1 to cancel the contract of Aristotle Industries. This is not an absolute mandate upon the committee. That $1 may be sufficient to do that job, it may not

13. 137 CONG. REC. 28818, 28819, 102d Cong. 1st Sess.

be, so it seems to me the language of the amendment is such that there is an optional nature to it. It is not a mandate under the terms of the amendment and so, therefore, it should be in order in the House for offering before the House.

MR. FAZIO: Mr. Chairman, may I be heard further on the point of order?

THE CHAIRMAN: The Chair will hear the gentleman from California [Mr. Fazio].

MR. FAZIO: Mr. Chairman, I think the author of the amendment has stated his purpose. He said it did direct the committee to cancel the contract. Others who have attempted to intervene and reinterpret this statement have no standing. The gentleman who offered the amendment is accurate in his purpose. He stated it very clearly, and I would further insist that this point of order be upheld.

THE CHAIRMAN: The Chair will inquire of the author of the amendment as to whether or not he intends to direct the committee to cancel the contract.

MR. BOEHNER: My intent, Mr. Chairman, is that the contract be canceled. That is my intent. We do not direct that, though, in the amendment.

THE CHAIRMAN: The Chair is prepared to rule.

Under existing law and procedures the Committee on House Administration is clearly authorized to cancel contracts into which it has entered on behalf of the House. Thus the funds in the amendment are authorized by law. Whether the amendment constitutes legislation depend on whether the amendment directs the committee to do that which it merely has discretion to do or not to do, the amendment on its face does not state such a direction, and that is why the Chair inquired twice of the author of the amendment as to his intention.

The Chair has no alternative other than to rely on the more recent assurance of the gentleman from Ohio [Mr. Boehner] that it is not his intention to direct the committee, but merely to appropriate funds authorized by law, and, consequently, the point of order is overruled.

Basis for Rulings on Points of Order Under Budget Act

§ 8.14 Under some provisions of the Congressional Budget Act, the Chair must be guided in his rulings by estimates of costs provided by the Committee on the Budget (see sections 302 and 311); in other cases, particularly where a point of order is raised under section 303 of the Act, the Chair's judgment is shaped by the text of the bill and not bound by Budget Committee estimates.

Many factors help shape the Chair's decision on a point of order: the rule under which the point of order is brought, its legislative history, precedents, and prior interpretations of the rule in question. The Congressional Budget Act, adopted by the House as an exercise of its rulemaking

authority, specifies in several instances that estimates furnished by the Committee on the Budget are dispositive when a question is raised about the cost of legislation. Language of the following type is found in several sections of the Act: "For purposes of this section, levels of new budget authority, spending authority . . . outlays . . . for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget. . .".

On Mar. 26, 1992,[14] during consideration of the Higher Education Amendments of 1992, an amendment was offered by Mr. Scott Klug, of Wisconsin, which had the effect of enlarging the class of borrowers under student loan provisions. The Committee on the Budget had told Mr. Klug that there were no costs associated with his amendment. The Chair held to the contrary and sustained a point of order raised under section 303 of the Act.

THE CHAIRMAN:[15] The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Klug: Page 169, line 23, and page 170, line 16, strike "and" and on page 170 after line 5 and after line 23, insert the following new clauses:

"(iii) not in excess of 3 years during which the borrower is engaged as a full-time teacher in a public or nonprofit private elementary or secondary school in a teacher shortage area established by the Secretary pursuant to paragraph (4) of this subsection;

Page 177, strike lines 13 through 16 and redesignate the succeeding subsections accordingly.

Page 177, line 18, strike "428(b)(4) of the Act as redesignated)" and insert "428(b)(5) of the Act".

Page 178, line 4, and page 179, lines 14 and 23, redesignate paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7), respectively.

MR. KLUG (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN: Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

POINT OF ORDER

MR. [WILLIAM D.] FORD of Michigan: Mr. Chairman, I am constrained to and must make a point of order on this amendment.

THE CHAIRMAN: The gentleman will state his point of order.

MR. FORD of Michigan: Mr. Chairman, I would have reserved a point of order, but what just happened when we tried to do that is an illustration that we will never get finished here if we use the reservation of a point of order for unlimited debate. For that reason I make the point of order without a reservation.

Mr. Chairman, in section 303(a) of the Congressional Budget Act it is not in order to consider any measure

14. 138 CONG. REC. 7185, 7186, 102d Cong. 2d Sess.

15. Don J. Pease (Ohio).

which creates entitlement authority or directs spending authority first effective in the fiscal year prior to the budget resolution for that fiscal year.

The amendment would require the Government to pay an interest subsidy for an extended period of time for individuals not otherwise subsidized by the bill.

The amendment expands the class of individuals entitled to an interest subsidy in repayment of their student loans. Consequently, the amendment establishes a beneficiary and a right to the benefit in the subsidy satisfying the definition of new entitlement authority under the Budget Act.

While the Congressional Budget Office did not credit the committee with savings for changes in the deferment terms of the student loan programs in the act, the present amendment expands the class of individuals entitled to the economic benefit of loan principal repayment deferments and interest subsidies. . . .

THE CHAIRMAN: Does the gentleman from Wisconsin wish to be heard on the point of order?

MR. KLUG: Yes, very briefly, I might add, Mr. Chairman.

THE CHAIRMAN: The gentleman may proceed.

MR. KLUG: First of all, Mr. Chairman, this amendment, like the amendment offered by my colleague, the gentlewoman from Hawaii just a few minutes ago, attempts to expand the higher education authority to also allow deferments for teachers involved in teacher shortage areas. In fact, right now, 34 States have made application to the Federal Government because of shortages of teachers, much like the shortage of physicians in rural areas across the United States.

I accept the gentleman's point of order, but let me tell you, there is some frustration that I feel in that we in good faith went to the Congressional Budget Office last week and asked for an analysis, only to have now today an indication that the CBO estimate no longer holds. They told us there would be no additional expense. We come to the floor and suddenly find out that in this case the Congressional Budget Office, which happens to support our position, no longer holds.

I think that is a very dangerous precedent. If we are going to ask the CBO to do an analysis, then my sense is the CBO analysis should be the rule of law on this floor.

THE CHAIRMAN: Does anyone else wish to be heard on the point of order?

MR. [ROBERT S.] WALKER [of Pennsylvania]: Yes, Mr. Chairman.

THE CHAIRMAN: The gentleman from Pennsylvania may proceed.

MR. WALKER: Mr. Chairman, I am very troubled with what is happening here. In previous iterations of this kind of challenge, the Parliamentarians have ruled that the Congressional Budget Office determinations with regard to the cost of an amendment would in fact hold.

Now under this particular challenge, we have the Parliamentarians overruling the Congressional Budget Office in what the Congressional Budget Office feels is the true nature of the situation. As I understand it, the Congressional Budget Office has said that the category of people that the gentleman from Wisconsin [Mr. Klug] wishes to cover in his amendment were already

assumed by them to be included, and so therefore there is no cost involved in extending this particular benefit. . . .

MR. FORD of Michigan: Mr. Speaker, may I be heard further on the point of order?

THE CHAIRMAN: The gentleman from Michigan may proceed.

MR. FORD of Michigan: Mr. Chairman, the gentleman from Pennsylvania apparently was not on the floor when the previous ruling was made by the Chair on precisely the same point of order, and the point of order was raised from that side of the aisle. . . .

THE CHAIRMAN: Does anyone else desire to be heard on the point of order? If not, the Chair is prepared to rule.

The Chair would observe that the fact that CBO assumed the inclusion of these borrowers in its estimating model is not dispositive to the question of order under section 303. Moreover, under section 303 the Chair must be guided by the text and, unlike sections 302 and 311, is not required to accept Budget Committee estimates as conclusive.

Having said that, the Chair would point out that the issue here is identical to what it was in the amendment raised by the gentlewoman from Hawaii, and based on the same reasoning the Chair sustains the point of order.

Burden of Proof on Points of Order

§ 8.15 In response to most points of order against provisions in an appropriation bill or against amendments, the burden is on those supporting the provision or amendment to prove that it does not violate the pertinent rule; but where a limitation of funds amendment is challenged as being a "tax provision" in violation of Rule XXI clause 5(b), the person advocating the point of order must show the inevitability of tax consequences in or- der to successfully press the point of order.

The proceedings of June 18, 1991,[16] show the difficulty of carrying the burden of proof where a point of order is raised under rule XXI clause 5(b), especially where the tax measure is a provision in or amendment to an appropriation bill.

The Clerk read as follows:

Amendment offered by Mr. Obey: Page 13, line 7, insert before the period the following:

: Provided further, That additional amounts above fiscal year 1991 levels for the information reporting program shall be used instead for the examination of the tax returns of high-income and high-asset taxpayers.

POINT OF ORDER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[17] The gentleman will state his point of order.

16. 137 CONG. REC. 15189–91, 102d Cong. 1st Sess.
17. Gerry E. Studds (Mass.).

MR. WALKER: Mr. Chairman, I make a point of order against the amendment of the gentleman from Wisconsin on grounds that it violates clause 5(b) of House rule XXI and ask to be heard on my point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. WALKER: Mr. Chairman, clause 5(b) of rule XXI states at the relevant part that, and I quote:

No amendment in the House or proposed by the Senate carrying a tax or tariff measure [shall] be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction.

The proposed amendment would transfer the increased funds in the bill over last year's appropriation for the Information Reporting Program to be used instead for the examination of the tax returns of high-income and high-asset taxpayers.

It is my contention, Mr. Chairman, that under the precedents surrounding clause 5(b) of rule XXI, this amendment constitutes a tax measure to a bill not reported by the committee having jurisdiction over tax measures-the House Ways and Means Committee.

In this regard, I cite the footnote at section 846(b) of the *House Rules and Manual* for the 101st Congress, and I quote:

In determining whether a limitation in a general appropriation bill constitutes a tax or tariff measure proscribed by this clause, the Chair will consider argument as to the certainty of impact on revenue collections and tax status or liability.

That particular reference was to a point of order raised on August 1, 1986, against a provision in a Treasury, Postal Service appropriations bill to prohibit the use of funds in the bill to implement certain specified Treasury regulations. Those regulations required taxpayers to maintain detailed information to substantiate the deductibility of certain expenses on their tax returns.

. . . And while new regulations could be promulgated, there would be a necessary delay in doing so, and this would, and I quote, "necessarily result in a direct loss of revenue to the Federal Treasury."

The Chair concluded that the progression of decisions under clause 5(b), rule XXI, support the proposition that a provision constitutes a tax or tariff measure, and again I quote the Chair:

> Where it can be conclusively shown that the imposition of the restriction on IRS funding for the fiscal year will effectively and inevitably either preclude the IRS from collecting revenues otherwise due and owing under provisions of the Internal Revenue Code or require collection of revenue not legally due and owing. . . .

But all we are concerned with in this point of order is whether shifting funds from the information matching system to audits will be a revenue gainer or loser in fiscal 1992. And the testimony of the IRS commissioner is that keeping that money in the Information Reporting System is more efficient and will yield a larger revenue return.

Finally, Mr. Chairman, while I think I have provided ample proof that this amendment will deprive the IRS of net revenues it would otherwise receive in the coming fiscal year, under parliamentary practice, the burden of

proof is on the proponent of the amendment to show that the amendment does not violate the rule. In other words, it is up to the gentleman from Missouri to prove that his amendment will not "inevitably preclude the IRS from collecting revenues otherwise due and owing under the provision of the Internal Revenue Code."

I therefore urge that my point of order be sustained.

THE CHAIRMAN: The proponent of the amendment is entitled to be recognized on the point of order.

MR. [DAVID R.] OBEY [of Wisconsin]: . . . There is no way to ascertain whether an audit of a taxpayer will or will not result in increased revenue or lowered revenue to the Treasury of the United States. And to suggest otherwise, I think, would be to suggest that this subcommittee could take virtually no action which would impact the rules of the IRS or any other agency that either audits or imposes fines.

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

MR. [EDWARD R.] ROYBAL [of California]: Mr. Chairman, I just wanted to add that the rule protects this amendment. The rule states as follows:

> It shall be in order to consider the amendment printed in the report of the Committee on Rules accompanying this resolution, and all points of order against said amendment for failure to comply with the provisions of clause 2 of rule XI are hereby waived.

I ask the Chair to rule on it.

MR. WALKER: Mr. Chairman, may I be heard further on the point of order?

THE CHAIRMAN: The gentleman from Pennsylvania may be heard further.

MR. WALKER: I thank the Chair.

First of all, my point of order does not relate to clause 2 of rule XI. I am making my point of order based upon clause 5(b) of rule XXI. . . .

Finally, Mr. Chairman, I would quote from section 835 of the *House Rules and Manual* relating to points of order on appropriations bills:

> If the amendment is susceptible to more than one interpretation, it is incumbent upon the proponent to show that it is not in violation of the rule.

Moreover, it might be advisable here to apply the principle used for germaneness points of order, since clause 5(b) of rule XXI is very similar. To quote from section 594 of the manual:

> The burden of proof is on the proponent of the amendment to establish its germaneness, and where an amendment is equally susceptible to more than one interpretation, one of which will render it not germane, the Chair will rule it out of order.

I would submit in conclusion, Mr. Chairman, that even if the proponent were able to claim that his amendment is a revenue gainer rather than a net revenue loser, the existence of clear evidence to the contrary should compel the Chair to rule against the amendment on grounds that it is susceptible to more than one interpretation. . . .

THE CHAIRMAN: The Chair is prepared to rule.

Whether greater scrutiny of certain tax returns will, by the use of funds contained in this bill will, in fact, lead to a loss or a gain in tax liability and in tax collection is a matter of conjecture as was pointed out by the gentleman from Wisconsin [Mr. Obey].

The amendment itself goes only to funding in the bill. It does not necessarily result in a loss or gain of revenues, as was shown to be the case in the arguments on the points of order cited by the gentleman from Pennsylvania.

The test here is certainty and inevitability of such a tax gain or loss, and just to complete the record, the gentleman from Pennsylvania cited a ruling by Chairman Beilenson on August 1, 1986.

Let the Chair read fully from that paragraph:

> A limitation on the availability of funds for the Internal Revenue Service otherwise in order under clause 2(c), rule XXI may still be construed as a tax measure in violation of clause 5(b), rule XXI where it can be shown that the imposition of the restriction on IRS funding for the fiscal year will effectively and inevitably—

And I underline the words "effectively and inevitably,"—

> preclude the IRS from collecting revenues otherwise due and owing by law or require collection of revenue not legally due or owing.

Absent a showing of inevitable or absolutely inevitable certain effects, the test is not met with respect to funding restrictions on annual appropriation bills and the point of order is overruled.

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. WALKER: The Chair did not refer to the rulings, however, where it is clear that the Chair is prepared to sustain points of order where the amendment is equally susceptible to more than one interpretation which clearly this particular amendment is. I did not hear the Chair rule on the point of order that I raised in that regard.

THE CHAIRMAN: The Chair will simply remind and repeat to the gentleman that in this line of precedent on funding restrictions on appropriation bills the test of inevitability of a tax increase or decrease is consistent through all the precedents. For that reason, again, the Chair rules the point of order out of order.

Under the rule, debate on this amendment and all amendments thereto shall not exceed 1 hour.

The Chair recognizes the gentleman from Wisconsin [Mr. Obey] for 5 minutes.

§ 9. Waiver

The rules of the House are enforced by points of order, usually raised by a Member calling the attention of the Chair and his colleagues to what the Member perceives to be an infraction of a rule. On some occasions, the Speaker or Member presiding will move to bring a violation of a rule before the body. The Chair will, for example, on his own initiative, call a Member to order for remarks uttered in debate which violate proper decorum.[18]

18. See §§ 9.17, 9.18, infra.

Since the House is given "rule-making" authority by the Constitution[19] and creates its procedural and parliamentary code anew in each Congress, it can also use this same authority to change or waive a rule. A rule can be waived, mooted, or by-passed by unanimous consent,[20] by suspension of the rules, or by adoption of a special order reported from the Committee on Rules. Even a rule based on a provision of a statute can be waived under the House's "rule-making" authority.[1] A waiver can be put in place after consideration of a bill has commenced.[2]

The requirement that points of order be made at the proper time also may be waived by agreement in the House or in the Committee of the Whole.[3] The requirement may also be waived by the adoption of a special rule from the Committee on Rules,[4] or by the granting of unanimous consent by the House.[5] On one occasion, the proceedings whereby a provision in a bill was stricken by a valid point of order was later vacated by unanimous consent and the provision was reinserted in the text.[6] Sometimes, too, the effect of earlier proceedings is such that a point of order is considered waived and cannot later be asserted against the proposition in question. Thus, if a motion that is susceptible to a point of order is agreed to by the House, no point of order being raised against it, the point is deemed waived.[7] Where the scope of a rule waiving points of order is questioned, the Chair may be called upon to interpret the language.[8] It should also be noted that a House Rule may

19. See Art. 1, Sec. 5, *House Rules and Manual* § 58 (1997).

20. See § 9.4, infra.

1. See § 9.2, infra.

2. See § 9.7, infra.

3. See Ch. 19, supra; and § 9.5, infra.

4. See § 9.1, infra.

For more complete discussion of special rules from the Committee on Rules waiving points of order, see § 10 of this chapter and Ch. 21, supra.

5. See § 9.3, infra. But where points of order againstconsideration of a bill are not specifically waived as part of a unanimous-consent request for immediate consideration, a point of order that a quorum of the committee was not present when the bill was ordered reported will lie despite the unanimous-consent request. See the proceedings at 114 CONG. REC. 30751, 90th Cong. 2d Sess., Oct. 11, 1968, wherein such a point of order was sustained against consideration of S. 1507 although unanimous consent for immediate consideration of the bill had been granted.

6. See § 9.19, infra.

7. See §§ 9.6, 9.16, infra.

8. See § 9.8, infra.

specify that a particular type of point of order may be in order at any time. For example, under the provisions of Rule XXI clause 5, a point of order against an amendment proposing an appropriation on a bill reported by a committee not having that jurisdiction is in order at any time.[9] However, even under this rule the precedents dictate that the point of order must be timely, i.e., during the five-minute rule in Committee of the Whole or before the amendment is adopted.[10]

In General

§ 9.1 Special "rules" or resolutions from the Committee on Rules often contain provisions expressly waiving points of order against certain language in the bill rather than against all provisions in the bill.

On May 8, 1968,[11] Mr. William M. Colmer, of Mississippi, called up House Resolution 1164, which provided:

> *Resolved,* That during the consideration of the bill (H.R. 17023) making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1969, and for other purposes, all points of order against the provisions contained under the heading "National Aeronautics and Space Administration" beginning on page 19, line 17, through page 21, line 8, are hereby waived.

Mr. Colmer advised that the Committee on Rules in this instance had waived the points of order against certain specific items in the appropriations bill, rather than for all items in the bill.

> MR. COLMER: . . . I might add also for the information of the gentleman—and of the Members of the House—that the Committee on Rules has recently adopted a course of procedure where these rules waiving points of order will be limited to specific items, as has been done in this instance.

Parliamentarian's Note: Points of order were waived against the provisions of the bill pertaining to the National Aeronautics and Space Administration since the annual authorization bill for that agency had not yet become law.

Motion To Suspend Application of a Statutory Rule

§ 9.2 A motion to suspend the rules and pass a bill suspends all rules, including statutory provisions of law

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9. Rule XXI clause 5, *House Rules and Manual* § 846 (1997). For further discussion, see Chs. 25, 26, supra.

10. See 92 CONG. REC. 2365, 79th Cong. 2d Sess., Mar. 18, 1946.

11. 114 CONG. REC. 12220, 12221, 90th Cong. 2d Sess.

enacted under the rule-making power of the House, and since under article I, section 5 of the Constitution, each House may make and change its rules, the House is not precluded from waiving a rule enacted as a statute.

On Nov. 1, 1977,[12] Mr. Stephen J. Solarz, of New York, moved to suspend the rules and pass the Congressional Salary Deferral Act, H.R. 9282. Mr. Robert E. Bauman, of Maryland, raised a point of order against the suspension motion on the ground that it infringed the jurisdiction of the Committee on the Budget, in violation of section 306 of the Budget Act. The arguments on the point of order and the ruling of Speaker Pro Tempore George E. Brown, Jr., of California, are shown in the Record of that date.

CONGRESSIONAL SALARY DEFERRAL

MR. SOLARZ: Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 9282) to provide that adjustments in the rates of pay for Members of Congress shall take effect at the beginning of the Congress following the Congress in which they are approved, and for other purposes.

The Clerk read as follows:

H.R. 9282

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31), relating to congressional salary adjustment, is amended by striking out "Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which" and inserting in lieu thereof "Effective at the beginning of the Congress following any Congress during which". . . .

SEC. 2. (a) It shall not be in order in either the House of Representatives or the Senate to consider any appropriation bill, budget, resolution, or amendment thereto, which directly or indirectly prevents the payment of increases in pay rates resulting from a pay adjustment deferred under the amendments made by the first section of this Act.

(b) For purposes of subsection (a), the term "budget resolution" means any concurrent resolution on the budget, as such term is defined in section 3(a)(4) of the Congressional Budget and Impoundment Control Act of 1974.

(c) The provisions of subsection (a) are enacted by the Congress—

(1) as an exercise of the rule-making power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SEC. 3. The provisions of this Act shall take effect on the date of the enactment of this Act.

12. 123 CONG. REC. 36309–11, 95th Cong. 1st Sess.

THE SPEAKER PRO TEMPORE: Is a second demanded?

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

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

MR. BAUMAN: Mr. Speaker, I make a point of order against the present consideration of the bill under suspension on the ground that the bill itself and the manner in which it was considered is in violation of Public Law 93–344, the Congressional Budget Act, specifically section 306.

Section 306 of the Budget Act says as follows:

> No bill or resolution and no amendment to any bill or resolution dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee of the Budget of that House or from the consideration of which such committee has been discharged, or unless it is an amendment to such bill or resolution.

Mr. Speaker, the bill before us specifically, in section 2, seeks to repeal part of the jurisdiction of the Committee on the Budget. Specifically it says the following:

> SEC. 2. (a) It shall not be in order in either the House of Representatives or the Senate to consider any appropriation bill, budget resolution, or amendment thereto, which directly or indirectly prevents the payment of increases in pay rates resulting from a pay adjustment deferred under the amendments made by the first section of this Act.

Mr. Speaker, the Budget Act is very clear that so far as the rules of procedure governing the Budget Act itself are concerned, that is within the jurisdiction of the Committee on Rules. This bill was reported by the Committee on Post Office and Civil Service, the committee of original jurisdiction, and I understand the jurisdiction was waived by the Committee on Rules. Nevertheless, section 306 makes it plain that since this bill, if it becomes statutory law, repeals part of the jurisdiction of the Committee on the Budget, it should have also been considered, in the opinion of the gentleman from Maryland, by the Committee on the Budget or their jurisdiction should have been waived. This was not done.

I would say further, Mr. Speaker, that if in fact any committee of the House is able to report a bill which prevents the Committee on the Budget from dealing with subject matters under that reporting committee's jurisdiction, then the Committee on the Budget in fact could be, over a period of time, destroyed as far as its capability of dealing with the Budget Act.

For all of those reasons, I make a point of order against consideration of this bill. I would further point out that section 306 does not deal with reporting or with whether or not the House can suspend the rules, but it forbids consideration by the House at any time of any legislation that repeals or changes the jurisdiction of the Committee on the Budget without that committee's acting upon it.

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

MR. SOLARZ: I do, Mr. Speaker.

I have unbounded admiration for the parliamentary sagacity of my good

friend, the gentleman from Maryland. Who am I, after all, to challenge the validity of this rather sophisticated parliamentary analysis? But may I suggest, Mr. Speaker, that the substantive merits of the gentleman's objection notwithstanding, the fact is that from a procedural point of view I do believe it has to be found wanting. The reason for that is that under the suspension of the rules, which are the terms under which the legislation is being considered, all existing rules of the House are waived, and to the extent that the provision to which the gentleman from Maryland referred is itself incorporated in the rules of the House, which do, after all, provide for the consideration of these budget resolutions, I would suggest that his objection is not relevant to this resolution and, therefore, is not germane.

MR. BAUMAN: Mr. Speaker, may I be heard further?

The gentleman makes the contention that by making a motion to suspend the rules of the House, this wipes out a rule against consideration in any form, including the suspension of the requirements of the Budget Act. There is ample precedent in the House for situations in which the Chair has ruled that a bill may not even be brought up under suspension if it has not in fact been considered by the committee of proper jurisdiction. I refer the Chair to Hinds' Precedents, volume 5, section 6848, page 925, in which it was ruled by the Chair that a committee, the Committee on the Census, could not bring up for consideration under a motion to suspend the rules a bill relating to the printing of a compendium of a census, because it had not been brought before the Committee on Printing.

It is quite obvious that this is a question of consideration. It is written into the statutory law that no such bill can be considered, and I am not aware that that rule of consideration can be suspended or repealed by a simple motion to suspend the rules. If, in fact, that is the case, the Budget Act is meaningless.

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Connecticut.

MR. GIAIMO: Mr. Speaker, the charge has been made and the objection has been raised that this legislation, particularly section 2, invades the jurisdiction of the Budget Committee in that it purports to prohibit the Budget Committee from exercising its jurisdiction over budget resolutions insofar as they would apply to pay raises and cost-of-living increases. I must submit that that is a proper interpretation.

However, I do believe that the argument of the gentleman from New York that this matter is being brought up under suspension of the rules is a very valid one and that the House of Representatives can in its wisdom by a two-thirds vote suspend the rules and deprive the Budget Committee and in fact the Appropriations Committee of jurisdiction in effecting pay raises or cost-of-living increases by a two-thirds vote.

THE SPEAKER PRO TEMPORE: Are there any other Members who desire to be heard on the point of order? If not, the Chair is prepared to rule.

The gentleman from Maryland makes a point of order against the con-

sideration of the bill H.R. 9282 under suspension of the rules on the grounds that section 306 of the Congressional Budget Act states that no bill or resolution nor amendment to any bill or resolution dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House or from consideration of which such committee has been discharged or unless it is an amendment to such a bill or resolution.

The Chair need not rule on the jurisdictional issue raised by the gentleman and points out to the gentleman from Maryland that under the specific provisions of section 904 of the Budget Act, the provisions of title III including section 306, which he cites, are stipulated as being an exercise of the rulemaking power of the House of Representatives with full recognition of the constitutional right of either House to change such rules so far as relating to such House at any time in the same manner and to the same extent as in the case of any other rule of such House. It is the opinion of the Chair therefore that it is within the discretion of the Chair under rule XXVII to entertain a motion to suspend the rules and to consider the bill at this time. Of course, the precedent cited by the gentleman from Maryland applies only to a provision which is no longer in rule XXVII relating to motions to suspend the rules made by committees. Accordingly the point of order is overruled.

MR. BAUMAN: Mr. Speaker, may I be heard further, at the sufferance of the Chair?

THE SPEAKER PRO TEMPORE: The Chair will hear the gentleman.

MR. BAUMAN: I thank the Speaker for permitting me to be heard further.

I would just point out that the Speaker has pointed out that it is within the prerogatives of the House to change the rules of the House, but this is not a rule of the House. It is a provision of a statute which is being waived, and while I would not appeal the ruling, I do not think that is a proper basis for the ruling.

THE SPEAKER PRO TEMPORE: The specific provision which the gentleman states has the status of a rule of the House of Representatives under the statute and under the Constitution.

Is a second demanded?

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Speaker, I demand a second.

Interpreting What Waiver Covers

§ 9.3 Instance where a unanimous-consent waiver of all points of order against a bill combined with a unanimous-consent agreement to consider the bill on a day certain was held to waive all points of order against the consideration of the bill for failure of the accompanying report to be available or to be sufficient under the rules.

On July 19, 1947,[13] Speaker Joseph W. Martin, Jr., of Massa-

13. 93 CONG. REC. 9396, 80th Cong. 1st Sess. Under consideration was the National Security Act of 1947.

chusetts, ruled on the effect of a waiver on several points of order raised against a bill. The points of order had been waived pursuant to a unanimous-consent request which had been agreed upon three days previously.[14] The unanimous-consent agreement provided as follows:

> MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I ask unanimous consent that it may be in order on Friday next and thereafter to consider the bill H.R. 4214, that all points of order against the said bill be considered as waived, and that there be not to exceed 5 hours of general debate, to be confined to the bill and to be equally divided and controlled by the chairman and ranking minority member of the Committee on Expenditures in the Executive Departments; and further, Mr. Speaker, I ask unanimous consent that after the passage of the bill H.R. 4214 the Committee on Expenditures shall be discharged from the further consideration of the bill S. 758, and it shall then be in order in the House to move to strike out all after the enacting clause of the Senate bill and insert in lieu thereof the provisions contained in H.R. 4214 as passed.

The proceedings on July 19 were as follows:

> MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4214) to promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security; and pending that, Mr. Speaker, I ask unanimous consent that all those who may speak on the bill may include in their remarks any relevant material, and that all Members who so desire may have five legislative days in which to extend their remarks in the Record on this subject.
>
> THE SPEAKER: Is there objection to the request of the gentleman from Michigan?
>
> There was no objection.
>
> MR. [W. STERLING] COLE of New York: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. COLE of New York: My parliamentary inquiry is whether it would be in order at this time to make a point of order against the motion upon the ground that at least 24 hours have not intervened between the time the bill was available and the time the bill was called up.
>
> THE SPEAKER: In reply to the inquiry of the gentleman from New York, the Chair would say that under the unanimous-consent agreement which was reached on July 16, appearing in the *Congressional Record* at page 9095, all points of order against the bill were waived.

14. 93 CONG. REC. 9095, 80th Cong. 1st Sess., July 16, 1947.

MR. COLE of New York: Mr. Speaker, a further parliamentary inquiry. I am further advised that although the bill is available this morning, the report accompanying the bill is not. Would it be in order to raise a point of order against the motion of the gentleman from Michigan [Mr. Hoffman] upon the ground that the report is not now available?

THE SPEAKER: It would not be in order because the same ruling would apply. All points of order were waived under the unanimous-consent agreement.

MR. COLE of New York: Mr. Speaker, a further parliamentary inquiry. I am informed that the report does not comply with the rules of the House in that it does not set forth the alterations proposed by the bill to existing law. My inquiry is whether the request of the gentleman from Indiana, the majority leader, that points of order against the bill be waived also carried with it the waiving of points of order against the report which is supposed to accompany the bill.

THE SPEAKER: The Chair is compelled to make the same ruling in this instance also. All points of order were waived under the unanimous-consent agreement and, therefore, the raising of that point of order at this time would not be in order.

MR. COLE of New York: Mr. Speaker, without undertaking to dispute the decision, I call your attention to the fact that the request for waiving points of order was directed to the bill itself. Does the Speaker rule that the waiving of points of order against the bill carried with it the waiving of points of order against the report?

THE SPEAKER: Yes.

Parliamentarian's Note: Under the modern practice, points of order based upon insufficiency or unavailability of the accompanying report or upon certain Budget Act violations go to the question of consideration and not to the bill itself and must be separately waived. If points of order against the consideration of a bill are waived by unanimous consent, such waiver applies to the committee report on the bill.

Unanimous Consent for Consideration of a Bill; What It Waives

§ 9.4 A unanimous-consent agreement "to consider a bill in the House on tomorrow or any day thereafter" may waive the three-day availability requirement but does not waive other points of order against consideration when the bill is called up under the agreement.

Where a non-privileged appropriation bill (not a general bill) was reported from the Committee on Appropriations, the chairman of that committee made a unanimous-consent request so the bill could be called up without meeting the three-day layover requirement. In response to an inquiry,

the Speaker indicated that if the request were granted, points of order under the Budget Act could still be raised when the bill was called up. The proceedings of Feb. 4, 1982,[15] were as follows:

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I ask unanimous consent that it may be in order on tomorrow or any day thereafter to consider in the House the joint resolution (H.J. Res. 391) making an urgent supplemental appropriation for the Department of Labor for the fiscal year ending September 30, 1982.

THE SPEAKER:[16] Is there objection to the request of the gentleman from Mississippi?

MR. [TRENT] LOTT [of Mississippi]: What about section 311(a) of the Budget Act? Is there a budget problem of hitting the ceiling?

MR. WHITTEN: In the first place, I do not know how that applies. It is my information that technically we are not in excess of the budget right now. That might be open to question on this, that, or the other thing. My purpose in offering this is so we could move ahead regardless. What I had in mind was the 3-day rule.

THE SPEAKER: May I answer the gentleman? It does not waive all points of order.

MR. LOTT: Mr. Speaker, that is what I wanted to ask.

THE SPEAKER: I say to the gentleman from Mississippi that it does not waive all points of order but makes it in order to call the bill up under the conditions stated.

MR. LOTT: If I could, Mr. Speaker, I would address the question to the chairman, or perhaps the Chair could respond.

THE SPEAKER: The Chair understands the gentleman is speaking, of course, with regard to the Budget Act, the budget authority. This request, as stated, does not waive a point of order, if some Member would get on the floor to offer a point of order under the Budget Act.

MR. LOTT: Mr. Speaker, is it my understanding a point of order would lie on this point of the Budget Act when it comes to the House?

THE SPEAKER: The Chair would state that a proper point of order at that time would be entertained.

Unanimous Consent for Protection of a Specific Section

§ 9.5 The House may by unanimous consent agree to consider a section of a general appropriation bill without the intervention of a point of order.

On May 4, 1948,[17] as an alternative to obtaining a rule waiving points of order from the Committee on Rules, the House granted unanimous consent to consider a section [containing legislation in

15. 128 CONG. REC. 844, 845, 97th Cong. 2d Sess.

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

17. 94 CONG. REC. 5264, 80th Cong. 2d Sess. Under consideration was H.R. 6430, a District of Columbia appropriations bill for fiscal 1949.

an appropriation bill] without that section being vulnerable to a point of order.

Mr. Horan, from the Committee on Appropriations, reported the bill (H.R. 6430) making appropriations for the government of the District of Columbia. . . .

Mr. Fogarty reserved all points of order on the bill.

MR. [WALTER F.] HORAN [of Washington]: Mr. Speaker, I ask unanimous consent that in the consideration of the bill making appropriations for the District of Columbia for the fiscal year 1949 it may be in order to consider without intervention of a point of order a section which I send to the desk and ask to have read.

The Clerk read as follows:

Sec. 2. Except as otherwise provided herein, all vouchers covering expenditures of appropriations contained in this act shall be audited before payment by or under the jurisdiction only of the Auditor for the District of Columbia and the vouchers as approved shall be paid by checks issued by the Disbursing Officer without countersignature.

THE SPEAKER:[18] Is there objection to the request of the gentleman from Washington?

There was no objection.

Where Valid Point of Order Is Not Pressed Against an Amendment

§ 9.6 An amendment which is not in order because it is not germane to a pending amendment may, by unanimous consent, be offered and considered notwithstanding this infirmity.

On occasion, the Committee of the Whole may proceed to consider and debate an amendment notwithstanding a decision that it is not germane. For example, on Oct. 31, 1975,[19] the proponent of an amendment not otherwise in order was permitted to offer it although it was not germane.

MR. [ROBERT G.] STEPHENS [Jr., of Georgia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Stephens: Section 306 of title III of H.R. 10024 as reported is amended by striking the word "person" on line 22, page 15 and substituting therefor the phrase "state chartered depository institution" and by adding the words "state chartered" before the words "depository institution" on line 12, page 16. . . .

MR. [ALBERT W.] JOHNSON of Pennsylvania: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Johnson of Pennsylvania to the amendment offered by Mr. Stephens: Insert at the end of section 306(b) the following language: "Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced under—

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

19. 121 CONG. REC. 34563, 34564, 94th Cong. 1st Sess.

"(1) Section 8 of the Federal Deposit Insurance Act in the case of national banks, by the Comptroller of the Currency; and

"(2) Section 5(d) of the Home Owners Loan Act of 1933 in the case of any institution subject to that provision, by the Federal Home Loan Bank Board."

THE CHAIRMAN:[20] The Chair observes that this is not a proper amendment to the pending amendment and should be offered separately.

The Chair will recognize the gentleman after the amendment of the gentleman from Georgia (Mr. Stephens) has been disposed of.

MR. JOHNSON of Pennsylvania: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. JOHNSON of Pennsylvania: Mr. Chairman, would it be in order to tack them together by unanimous consent at this point?

THE CHAIRMAN: By unanimous consent, yes. Is the gentleman making that request?

MR. JOHNSON of Pennsylvania: Mr. Chairman, I ask unanimous consent that my amendment be offered as an amendment to the pending amendment.

THE CHAIRMAN: Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Time of Adoption of Resolution of Waiver

§ 9.7 A resolution waiving points of order against a certain provision in a general appropriation bill has been considered and agreed to by the House after the general debate on the bill has been concluded and reading for amendment has begun in the Committee of the Whole.

On May 21, 1969,[1] a waiver of the points of order against a particular section of a bill was adopted after the first paragraph of the bill was read for amendment. The proceedings on the resolution waiving points of order were as follows:

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 414 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 414

Resolved, That during the consideration of the bill (H.R. 11400) making supplemental appropriations for the fiscal year ending June 30, 1969, and for other purposes, all points of order against title IV of said bill are hereby waived.

MR. COLMER: Mr. Speaker, I yield the customary 30 minutes to the minority, to the very able and distin-

20. Spark M. Matsunaga (Ha.).

1. 115 CONG. REC. 13246, 13251, 91st Cong. 1st Sess. Under consideration was H. Res. 414, waiving points of order against title IV, H.R. 11400, supplemental appropriation bill of 1969.

guished gentleman from California (Mr. Smith). Pending that I yield myself such time as I may consume.

Mr. Speaker, I shall not use all the time on this resolution. This is a rather unusual situation that we find ourselves in, parliamentarily speaking. We have debated the supplemental appropriation bill at some length under the privileged status of the Appropriations Committee. Now we come in with a resolution from the Rules Committee for one purpose and one purpose alone; that is, to waive points of order against a particular section of the bill. . . .

The language that the rule waives the point of order against is found in title IV of the bill. Title IV of the bill places a ceiling upon the amount of the expenditures that the Chief Executive can make within the fiscal year. Now, that amount is, roughly, $192 billion. . . .

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

The previous question was ordered.

THE SPEAKER PRO TEMPORE:[2] The question is on the resolution.

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

Interpretation of Resolution Providing Waiver

§ 9.8 In construing a resolution waiving certain points of order, the Chairman of the Committee of the Whole may examine debate on the resolution in the House in determining the scope of the waiver.

On June 22, 1973,[3] Chairman James G. O'Hara, of Michigan, was called upon to interpret the intention of the Committee on Rules in the adoption of language waiving certain provisions of a House rule in the consideration of an appropriation bill.

THE CHAIRMAN: The Chair is prepared to rule.

The Chair feels that it will be necessary first to speak on the contention raised by the gentleman from Rhode Island (Mr. Tiernan) and amplified upon by the gentleman from Connecticut (Mr. Giaimo) with respect to the provisions of the resolution under which the bill is being considered, and whether or not the provisions of that resolution have an effect on the point of order made by the gentleman from Massachusetts (Mr. Boland).

The gentleman from Connecticut (Mr. Giaimo) is correct in asserting that if the amendment offered by the gentleman from Rhode Island (Mr. Tiernan) is out of order at all it is out of order because of the second sentence of clause 2 of Rule XXI, which contains the provisions that "nor shall any provision in any such bill or amendment thereto changing existing law be in order," and so forth setting forth exceptions. But the gentleman from Con-

2. Edmond Edmondson (Okla.).

3. 119 CONG. REC. 20983, 93d Cong. 1st Sess. Under consideration was H.R. 8825, the HUD-independent agencies appropriations for fiscal 1974.

necticut (Mr. Giaimo) contends, and the gentleman from Rhode Island (Mr. Tiernan) concurs, that the resolution providing for the consideration of the bill waives the provisions of that rule. The Chair has again read the rule. It says:

> *Resolved*, That during the consideration of the bill (H.R. 8825) making appropriations for the Department of Housing and Urban Development . . . the provisions of clause 2, rule XXI are hereby waived.

It does not say that points of order are waived only with respect to matters contained in the bill. It says "During the consideration of the bill" the provisions of clause 2 of Rule XXI are waived.

The Chair was troubled by that language and has examined the statements made by the members of the Committee on Rules who presented the rule to see if their statements in any way amplified or explained or limited that language. The Chair has found that both the gentleman from Louisiana (Mr. Long) and the gentleman from Ohio (Mr. Latta) in their explanations of the resolution did, indeed, indicate that it was their intention, and the intention of the committee, that the waiver should apply only to matters contained in the bill and that it was not a blanket waiver.

Therefore whatever ambiguity there may have been in the rule as reported, the Chair is going to hold, was cured by the remarks and legislative history made during the presentation of the rule, which were not disputed in any way by the gentleman from Connecticut or anyone else. However, the Chair recognizes that it is a rather imprecise way of achieving that result and would hope that in the future such resolutions would be more precise in their application.

The Chair then sustained the point of order raised against the amendments offered by Mr. Tiernan.

Waiver Against Bill Does Not Cover Amendments

§ 9.9 Where the House has adopted a resolution waiving points of order against a bill, no immunity is granted to Members to offer amendments which are not germane.

On June 15, 1948,[4] Mr. Leo E. Allen, of Illinois, called up House Resolution 671, which provided as follows:

> *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 House on the State of the Union for consideration of the bill (H.R. 6401) to provide for the common defense by increasing the strength of the armed forces of the United States and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and continue not to exceed 3 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed

4. 94 Cong. Rec. 8340, 80th Cong. 2d Sess.

Services, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment, the Committee shall rise and report the same 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. After the passage of the bill (H.R. 6401) it shall be in order in the House to take from the Speaker's table the bill, S. 2655, and to move to strike out all after the enacting clause of said Senate bill and to insert in lieu thereof the provisions contained in H.R. 6401 as passed.

The resolution was agreed to.[5]

On June 17, 1948,[6] an amendment to the bill was offered by Mr. Edward H. Rees, of Kansas.

The Clerk read as follows:

Amendment offered by Mr. Rees: At the end of line 12, page 23, add the following and number the succeeding sections accordingly:

"Sec. 8. (a) The training under this act shall be administered and carried out on the highest possible moral, religious, and spiritual plane.

"(b) It shall be unlawful within such reasonable distance of any military camp, station, fort, post, cantonment, or training or mobilization place, where training under this act is being given, as the Secretary of National Defense may determine to be necessary to the protection of the health, morals, and welfare of such persons who are receiving training under this act and shall designate and publish in general orders or bulletins, to establish or keep houses of ill fame, brothels, bawdy houses, or places of entertainment which are public nuisances, or other like facilities detrimental to the health and morals of persons who are being trained under this act, or to receive or permit to be received for immoral purposes any person in any vehicle, place, structure, or building used for the purpose of lewdness, assignation, or prostitution within said distance determined by the Secretary of Defense or to knowingly rent, lease, or permit the use of any property for such purposes. Any person, corporation, partnership, or association violating any of the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than 12 months, or both.

"(c) The sale of or dealing in, beer, wine, or any intoxicating liquors by any person in any post exchange, canteen, ship's store, or Army, Navy, or Marine transport or upon any premises used for military or naval purposes by the United States is hereby prohibited. The Secretary of Defense is authorized and directed to take appropriate action to carry out the provision of this subsection."

MR. [WALTER G.] ANDREWS of New York: Mr. Chairman, I make the point of order against the amendment that the provisions thereof are not germane to the provisions of this bill.

THE CHAIRMAN (Mr. Francis H. Case of South Dakota): The Chair is ready to rule.

The gentleman from New York [Mr. Andrews] has made the point of order that the amendment offered by the

5. *Id.*

6. 94 CONG. REC. 8685, 8686, 80th Cong. 2d Sess. Under consideration was H.R. 6401, Selective Service Act of 1948.

gentleman from Kansas [Mr. Rees] is not germane to the bill. Several of the Members who have spoken have called attention to other provisions in the bill. The Chair must remind the committee that the provisions in the bill as reported by the committee were made in order by a special rule adopted by the House of Representatives. There may be provisions in the bill which would not be germane if offered as an amendment by individual Members, but are in order in the bill because they were made in order by the rule adopted by the House.

So every amendment offered must stand on its own bottom as to whether or not it is germane.

The Chair invites attention to the fact that the amendment includes such language as "It shall be unlawful to maintain certain institutions," and further on says, "Any person, corporation, partnership, or association violating any of the provisions of this subsection shall be deemed guilty of a misdemeanor" and so forth. In that respect it seems to the Chair that the amendment goes beyond the provisions of the bill, imposing penalties and sanctions on persons outside the armed forces.

Therefore, the Chair is constrained to sustain the point of order.

Effect on Amendments

§ 9.10 Where a resolution providing for the consideration of a bill specifies that "all points of order against said bill are hereby waived," the waiver is applicable only to the text of the bill and not to amendments.

On May 1, 1968,[7] Speaker Pro Tempore Carl Albert, of Oklahoma, advised Mr. Durward G. Hall, of Missouri, as to whether points of order would lie against amendments to a bill after the adoption of a House resolution waiving points of order against the bill.

MR. [CLAUDE D.] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1150 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1150

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 House on the State of the Union for the consideration of the bill (H.R. 16729) to extend for two years certain programs providing assistance to students at institutions of higher education, to modify such programs, and to provide for planning, evaluation, and adequate leadtime in such programs, and all points of order against said bill are hereby waived. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Florida [Mr. Pepper] is recognized for 1 hour. . . .

MR. HALL: Mr. Speaker, a parliamentary inquiry.

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7. 114 CONG. REC. 11304–06, 90th Cong. 2d Sess. Being discussed was H. Res. 1150, providing for consideration of H.R. 16729, extending the higher education student loan program.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALL: Mr. Speaker, in view of our colloquy and our understanding of House Resolution 1150, which says, on lines 8 and 9, that "all points of order against such bill are hereby waived," my parliamentary inquiry is whether or not amendments submitted—inasmuch as on line 1, page 2, the resolution states "the bill shall be read for amendment under the 5-minute rule"—could not be subject to a point of order or a point of order made and lie against such amendments if they were nongermane or otherwise did not come under a rule of the House? A mirror image of my question is, does a point of order lie against all amendments that might be offered?

THE SPEAKER PRO TEMPORE: The resolution does not apply to amendments that might be offered. . . .

There is nothing in the resolution which would provide for a waiver of points of order against any amendment which might be offered to the bill, if such amendment were not germane under the rules of the House.

§ 9.11 Where the House by adoption of a resolution waives all points of order against any provisions in an appropriation bill, such action does not waive points of order against amendments offered from the floor.

On Aug. 20, 1951,[8] the Chairman[9] held that points of order would lie against amendments offered from the floor, despite a rule waiving points of order against the bill.

MR. [JOHN J.] DEMPSEY [of New Mexico]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. DEMPSEY: The amendment is not germane to this section, and in addition to that, it is purely legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Michigan desire to address himself to the point of order?

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, in reply to the point of order made by the gentleman from New Mexico, I would like to say first that under the rule adopted at the time this legislation came to the floor all points of order were waived. Secondly, I think that the amendment is germane. . . .

MR. DEMPSEY: Mr. Chairman, the Committee on Rules waived points of order to the bill, but they certainly cannot waive points of order to an amendment which might be offered, which the gentleman is proposing to do.

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8. 97 CONG. REC. 10408, 82d Cong. 1st Sess. [H.R. 5215, a supplemental appropriation bill for fiscal 1952]; *Id.* at p. 11682 [H.R. 2982, to readjust postal rates]; 100 CONG. REC. 9629, 83d Cong. 2d Sess., July 2, 1954 [H.R. 9680, Agricultural Act of 1954].

9. Edward J. Hart (N.Y.).

THE CHAIRMAN: The Chair is ready to rule.

With respect to the question of waiving all points of order, that runs only to the provisions of the bill and not to amendments offered to the bill. A proposition in an appropriation bill proposing to change existing law but permitted to remain, may be perfected by germane amendments, provided they do not add further legislation. The Chair is of the opinion that this amendment does add further legislation, and, therefore, sustains the point of order.

§ 9.12 Where points of order have not been waived against committee amendments in a bill, such committee amendments occupy the same status as those offered from the floor with respect to points of order.

On Aug. 9, 1954,[10] absent a special rule waiving points of order, a committee amendment was ruled nongermane.

MR. [JOSEPH P.] O'HARA of Minnesota: Mr. Speaker, I make a point of order against the amendment on the ground that it is not germane to the bill as passed by the Senate. . . .

MR. [ARTHUR L.] MILLER of Minnesota: Mr. Speaker, this amendment was offered not here today in the House but . . . was voted and written into the bill when a full quorum was present in a regularly constituted meeting of the District of Columbia Committee. I am not sure what the vote was, but it was a substantial vote. Therefore it is not being offered here today as a new amendment. . . .

THE SPEAKER:[11] The Chair is prepared to rule.

In response to the parliamentary inquiry propounded by the gentleman from Nebraska [Mr. Miller] the Chair may say that the committee amendment assumes the same status in the House as any other amendment that might be offered from the floor. That is why the Committee on Rules is sometimes asked to report special rules waiving points of order against committee amendments. Those points of order usually involve questions of germaneness. . . .

The Chair is of the opinion that the amendment is not germane and, therefore, sustains the point of order.

§ 9.13 A resolution adopted by the House waiving points of order against a committee substitute does not waive such points against amendments to the substitute.

On Aug. 31, 1944,[12] the Committee of the Whole considered S. 2051 pursuant to a House Resolution (H. Res. 627), adopted two days previously by the House. This resolution provided:[13]

10. 100 CONG. REC. 13807, 83d Cong. 2d Sess. Under consideration was S. 3506, amending the District of Columbia Alley Dwelling Act.

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

12. 90 CONG. REC. 7463, 7464, 78th Cong. 2d Sess.

13. 90 CONG. REC. 7350, 78th Cong. 2d Sess., Aug. 29, 1944.

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 House on the State of the Union for the consideration of the bill S. 2051, an act to amend the Social Security Act, as amended, to provide a national program for war mobilization and reconversion, and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and continue not to exceed 2 days to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the 5-minute rule. It shall be in order to consider without the intervention of any point of order the substitute amendment recommended by the Committee on Ways and Means now in the bill, and such substitute for the purpose of amendment shall be considered under the 5-minute rule as an original bill. 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 of the amendments adopted in the Committee of the Whole to the bill or committee 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.

In response to a point of order raised by Mr. John Taber, of New York, it was held that the waiver of points of order against a committee substitute was limited to these provisions only, and the waiver did not apply, according to Chairman Fritz G. Lanham, of Texas, to possible amendments to the committee substitute.[14]

MR. [AIME J.] FORAND [of Rhode Island]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Forand: Page 39, after the period in line 24, add a new section as follows:

"UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

"Sec. 403. (a) The Social Security Act, as amended, is further amended by adding at the end thereof the following new title: . . .

MR. TABER: Mr. Chairman, I make the point of order against the amendment that it is an appropriation of funds in violation of clause 4 of rule XXI of the House. . . .

THE CHAIRMAN: . . . Can the gentleman from Rhode Island show how that is not included in the prohibition in the rule cited by the gentleman from New York?

MR. FORAND: Mr. Chairman, I have not studied that point. I did not expect it was going to be raised. It has been carried in the Senate bill all the way through without a question, and I contend that title 301(a), under title III, is in the same category. No point of order has been raised against that. So if one is subject to a point of order, I imagine both would be.

14. 90 CONG. REC. 7463, 7464, 78th Cong. 2d Sess., Aug. 31, 1944.

THE CHAIRMAN: The Chair will state to the gentleman from Rhode Island that the rule under which we are considering this measure, waives points of order against the committee substitute, but not against the amendments which would be offered to that substitute. . . .

Waiver for Text of Bill Offered as Amendment May Not Cover Portions Thereof Individually

§ 9.14 Where a resolution providing for the consideration of a bill makes in order the text of a specific bill as an amendment, points of order are considered as waived only against the complete text of the proposed bill and not against portions thereof.

On Dec. 10, 1969,[15] Speaker Pro Tempore Carl Albert, of Oklahoma, explained the effect of a waiver to Mr. Clark MacGregor, of Minnesota.

MR. [RAY J.] MADDEN [of Indiana]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 714, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 714

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 House on the State of the Union for the consideration of the bill (H.R. 4249). . . . It shall be in order to consider, without the intervention of any point of order, the text of the bill H.R. 12695 as an amendment to the bill. At the conclusion of the consideration of H.R. 4249 for amendment, the Committee shall rise and report the bill to the House with such amendments as may have [been] adopted. . . .

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. MACGREGOR: Mr. Speaker, under the resolution (H. Res. 714), if adopted, should the bill, H.R. 12695, be considered and rejected, would it then be in order, following rejection of H.R. 12695, should that occur, to offer a portion or portions of H.R. 12695 as amendments to H.R. 4249?

THE SPEAKER PRO TEMPORE: The Chair will state that would be in order subject to the rule of germaneness, if germane to the bill H.R. 4249.

Constructive Waiver

§ 9.15 *Parliamentarian's Note:* Where a motion which might have been subject to a point of order (if a point of order had been raised in a timely fashion) is, in the absence of a point of order, agreed to—it represents the will of the House and governs its proce-

15. 115 CONG. REC. 38123, 38130, 91st Cong. 1st Sess. Being discussed was H. Res. 714, which provided for the consideration of H.R. 4249, extending portions of the 1965 Voting Rights Act.

dure until the House orders otherwise (or until a proper collateral challenge to that procedure is made).

On Oct. 9, 1968,[16] following the Chair's disclosure of the absence of a quorum, the House adopted the following motion made by Mr. Brock Adams, of Washington:

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I move a call of the House.

MR. ADAMS: Mr. Speaker, as a part of the motion of a call of the House, I further move under Rule II, under which a call of the House is in order, that a motion be made for the majority here that those who are not present be sent for wherever they are found and returned here on the condition that they shall not be allowed to leave the Chamber until such time as the pending business before this Chamber on this legislative day shall have been completed.

THE SPEAKER:[17] The question is on the motion offered by the gentleman from Washington [Mr. Adams].

The motion was agreed to.

The Clerk proceeded to call the roll.[18] . . .

THE SPEAKER: On this rollcall 222 Members have answered to their names, a quorum.

There was discussion then concerning whether this motion would have been subject to a point of order, had one been made. The Speaker stated that the motion as adopted expressed the will of the majority of the Members present, and indicated that the question was moot.

MR. BROCK: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BROCK: Is it not so that the rules of the House provide for the highly unusual procedure of calling in absent Members only in the case of the establishment of a nonquorum? Is that not true? And was the motion not illegal and improper on its face, having been made prior to the establishment of no quorum?

THE SPEAKER: The Chair will observe that we can always attempt to have Members attend who are not present at this time or actually in the Chamber at some particular time. Further, the Chair might also observe that every effort is being made on the Democratic side in connection with notifying Members of the situation that has existed for the past 12 or so hours.

MR. BROCK: But the parliamentary inquiry, Mr. Speaker, was to the question of whether or not the motion was in fact outside the normal rules of the House.

MR. ALBERT: Mr. Speaker, will the Chair yield?

THE SPEAKER: Does the gentleman from Oklahoma desire to be heard on the parliamentary inquiry of the gentleman from Tennessee?

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16. 114 CONG. REC. 30212–14, 90th Cong. 2d Sess. At the time the Clerk was reading the Journal.

17. John W. McCormack (Mass.).

18. 114 CONG. REC. 30213, 30214, 90th Cong. 2d Sess.

MR. ALBERT: The gentleman from Oklahoma would only suggest if a point of order would have been eligible as against the motion made by the distinguished gentleman from Washington, it certainly has come too late in view of the action of the House.

THE SPEAKER: The Chair will state without passing on the question as to whether or not a point of order would lie if made at the proper time when the gentleman from Washington made his motion, that after the motion had been adopted no point of order was made. Therefore, the motion expressing the will of the majority of the Members present will be adhered to.

Parliamentarian's Note: As indicated in the Parliamentarian's note in Chapter 11, § 3.2, supra, this instance does not establish a precedent that a "constructive waiver of a point of order" may be accomplished in the absence of a quorum. In such circumstances, a proper collateral challenge to an improper order of the House may be made, as the discussion in that chapter indicates.

Where No Point of Order Is Lodged, Proceedings May Continue

§ 9.16 Where an amendment is offered and no point of order is raised against its consideration, although a valid point of order could have been raised, the Chair may use his parliamentary discretion to clarify the situation so that the amendment may be debated and voted on.

The proceedings of Mar. 21, 1975,[19] illustrate the discretion that the Chair may sometimes exercise to allow the Committee of the Whole to work its will in an ambiguous situation.

Mrs. Millicent Fenwick, of New Jersey, had offered a perfecting amendment to the pending section of the Emergency Middle-Income Housing Act of 1975, which was being read for amendment under the five-minute rule. Her amendment struck out one paragraph of the section under consideration and inserted new language. After debate on the Fenwick amendment Mr. Les AuCoin, of Oregon, offered "a perfecting amendment" which was not in order, since only one perfecting amendment can be pending at a time. When no point of order was raised, the AuCoin amendment was debated. The Chair could have treated the second amendment as a substitute for the first but chose to entertain it as a perfecting amendment to the text which would be stricken if the Fenwick amendment were adopted.[20] The relevant pro-

19. 121 CONG. REC. 7950, 7952, 7953, 94th Cong. 1st Sess.

20. See § 469 of Jefferson's Manual, *House Rules and Manual* (1997), for

ceedings are carried in § 15.21, infra.

Chair's Initiative in Enforcing Rules

§ 9.17 In certain instances, particularly with respect to questions of propriety in debate, the Chair takes the initiative in enforcing the rules and does not await a point of order.

Jefferson's Manual provides that "it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House."[1] Because of this admonition from Jefferson, the Chair has customarily differentiated between debate which engages in personalities toward other House Members, where the Chair normally awaits a point of order from the floor, and debate which raises the issue of comity between the Houses.

Since the amendment to Rule XIV clause 1, in the 101st Congress, the standards of what is permissible debate with reference to the Senate has changed. But the duty of the Chair remains as stated by Jefferson.

An example of the Chair taking the initiative is shown in the following exchange of Apr. 17, 1975,[2] which predated the amendment to Rule XIV mentioned herein.

> (Mr. Cleveland asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)
>
> MR. [JAMES C.] CLEVELAND [of New Hampshire]: Mr. Speaker, I am amazed that four Democratic members of the Rules Committee of the other body, reviewing the challenge of Democrat John Durkin to the seating of Senator-elect Louis Wyman, should have yesterday voted to take away from Wyman 10 straight Republican ballots that had been properly counted for him in New Hampshire. These critically important votes belong to Mr. Wyman by settled New Hampshire law in a contest with an existing margin of two votes.
>
> As even Durkin's counsel acknowledged before the committee, the ballots were and would have consistently been counted for Wyman in New Hampshire. On each the voter had voted a cross in the straight Republican circle with no marks on the Democratic side of the ballot. He had also voted a cross in every voting square except Mr. Wyman's. By operation of statute and court decision in New Hampshire for 60 years-as well as in other States

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discussion of the doctrine of perfecting text proposed to be stricken.

1. *House Rules and Manual* § 374 (1997).

2. 121 CONG. REC. 10458, 94th Cong. 1st Sess.

having the straight ticket option-a vote in the straight ticket circle is a vote for every candidate under the circle and a vote in every box under the circle by operation of law.

Worse yet, similar ballots for Durkin in the original New Hampshire recount had not been challenged by Wyman because under settled New Hampshire law they were recognized as valid votes. These remain in the totals relied on by the Senate committee, counted for Durkin.

On April 9 in this Record I called for a new election in New Hampshire and surely this has now become a compelling necessity, unless we are to witness a legislative Watergate.

THE SPEAKER:[3] The Chair must ask the gentleman to desist and must call to the attention of the gentleman from New Hampshire that his remarks are in violation of the rules of the House and rules of comity. The Chair has been very lenient, but this goes far beyond the bounds.

It is not proper to criticize the actions of the other body, or any committee of the other body, in any matter relating to official duties.

MR. CLEVELAND: Mr. Speaker, would it be in order for me to quote a Member of the other body who characterized this?

THE SPEAKER: No, it would not be. The Chair was very lenient by letting the gentleman make his point, but the Chair is going to be strict in observing the rules of comity between the two bodies. Otherwise we cannot function as an independent, separate legislative body under the Constitution of the United States.

3. Carl Albert (Okla.).

Points of Order Against Improper Debate

§ 9.18 The Speaker reaffirmed his intention to enforce the provision in Jefferson's Manual which prohibits improper references to the Senate and to exercise his own initiative in calling Members to order where infractions occur.

On June 16, 1982,[4] Speaker Thomas P. O'Neill, of Massachusetts, anticipating that the House would shortly be considering an amendment directed at activities of the Senate, cautioned Members against violating the provision of Jefferson's Manual. The announcement and subsequent inquiries are carried below.

THE SPEAKER: The Chair appreciates the fact that there is an amendment that will be offered very shortly concerning the Senate.

The Chair deems it necessary to make a statement at this time to firmly establish an understanding that improper references to the other body or its Members during debate are contrary to the rules and precedents of the House and will not be tolerated. The Chair will quote from section 374 of Jefferson's Manual which is a part of the rules of the House:

> It is the duty of the House, and more particularly of the Speaker, to

4. 128 CONG. REC. 13843, 13873, 97th Cong. 2d. Sess.

interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder.

Traditionally when a Member inadvertently transgresses this rule of the House, the Chair upon calling the Member to order prevails upon that Member to remove the offending remarks from the Record. With the advent of television, however, the Chair is not certain that such a remedy is sufficient. Henceforth, where a Member's references to the other body are contrary to the important principle of comity stated in Jefferson's Manual, the Chair may immediately deny further recognition to that Member at that point in the debate subject to permission of the House to proceed in order. The Chair requests all Members to abide by this rule in order to avoid embarrassment to themselves and to the House.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CONTE: Mr. Speaker, in order to abide by the rules, which are very difficult, does the Senate have the same rule? Does the other body?

THE SPEAKER: No; the Senate does not have the same rule, but it is a rule of our House and we are going to abide by it as long as I am Speaker.

MR. CONTE: Is it permissible to refer to them as 'the other body'?

THE SPEAKER: That is permissible, the other body . . .

MR. [DAVID R.] OBEY [of Wisconsin]: If the gentleman will yield on that point, I do not want to behave like the other body. I am fed up with Members of the other body posing for holy pictures on congressional pay and then running around, collecting $60,000 in outside income.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

THE SPEAKER PRO TEMPORE: The Chair is constrained to admonish the body, in accordance with the warning of the Speaker earlier, that the Members should be careful in their references to the other body.

Vacating Point of Order Proceedings

§ 9.19 Where several items in an appropriation bill had been stricken on points of order, the Committee of the Whole subsequently agreed to vacate the point of order proceedings, thereby causing the stricken language to be reinserted in the bill.

On June 7, 1991,[5] during the consideration of the Defense appropriation bill, fiscal 1992, Mr. James A. Traficant, Jr., of Ohio, successfully made several points of order against provisions in the Operation and Maintenance title of the bill. He announced his in-

5. 137 CONG. REC. 13976, 102d Cong. 1st Sess.

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:[6] 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.[7] Special rules can insulate a bill or amendments from points of order; they often are designed to expedite consideration.[8]

6. James L. Oberstar (Minn.).

7. See § 10.16, infra.

8. See §§ 10.15, 10.19–10.22, infra.

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

A special order can be selective, protecting some provisions or amendments and leaving others vulnerable.[14]

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.[15] Such an order, if adopted by the House, can even modify the normal application of a standing rule or order.[16]

Waiving Points of Order Against Violation of Rule Established by Statute

§ 10.1 One House may, pursuant to its constitutional authority 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,[17] 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

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.
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 recommit.

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:[18] 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.

18. 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.[19] 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:[20] 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 ruling 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,[1] 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 return 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,[2] 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. 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:[3] 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.

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

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,[4] 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:[5] 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.[6]

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 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 recommit.

THE SPEAKER:[7] 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.[8] 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.[9]

MR. [GILLIS W.] LONG of Louisiana: Mr. Speaker, by direction of the Committee 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:[10] 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).

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.

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,[11] 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,[12] when the amendment in the nature of a substitute was pending in the House were as follows:

THE CHAIRMAN:[13] 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.

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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:[14]

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:[15] The gentleman from Texas (Mr. Frost) is recognized for 1 hour. . . .

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

14. 129 CONG. REC. 27329, 98th Cong. 1st Sess., Oct. 5, 1983.

15. Dale E. Kildee (Mich.).

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,[16] 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 substitute 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 [17] 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,[18] and carried herein:

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-

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

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:[19] 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

19. 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,[20] 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 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:[1] 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.

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

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], dealing 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 general- ly 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 commonplace. The following special order excerpted from the proceedings of Sept. 12, 1986,[2] is illustrative:

WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF H.R. 5313, DEPARTMANT 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,[3] 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 CNSIDERATION OF H.R. 4264, NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEAR 1989

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

The Clerk read the resolution, as follows:

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 request for military functions of the Department of Defense and to prescribe 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 purposes, no further amendment to the bill or to the amendment in the nature of a substitute, as modified and as amended, shall be in order except the amendments designated in section 2 of this resolution, in the report of the Committee on Rules accompanying this resolution, or by paragraph (2) of section 2 of H. Res. 435. Said amendments shall be considered only in the order and in the manner specified. The amendments designated in this resolution shall be printed in the report of the Committee 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 resolution, or their designee. Debate on each of said amendments shall not exceed the time designated in said report, to be equally divided and controlled between the proponent and an opponent. All points of order are waived against the amendments contained 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 Committee on Rules. No amendment, except for amendments printed in section 3 of the report of the Committee on Rules, shall be subject to amendment except as specified in this resolution or in the report of the Committee on Rules accompanying this resolution, or to a demand for a division of the question in the House or in the Committee of the Whole. Debate on any amendment offered to an amendment printed in section 3 of the report of the Committee on Rules shall be limited to ten minutes, equally divided and controlled by the proponent of the amendment and a member opposed thereto. Any particular amendment under consideration 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 consideration of the bill, pro forma amendments 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:[4] 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?

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, reappropriations 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-

4. Marvin Leath (Tex.).

plemental appropriation bill for fiscal 1989, H.R. 2072, on Apr. 26, 1989,[5] 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,[6] 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:[7] 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,[8] 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:[9] 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.

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

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9. Brian J. Donnelly (Mass.).

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,[10] when H. Res. 71, reported from the Committee on Rules, was called up for consideration were not unique. So-called "hereby" resolutions have been challenged by points of order on other occasions.[11]

While assuming that the Senate amendment to the bill H.R. 1, the Family and Medical Leave Act of 1993, would indeed by 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

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

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:[12] 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,[13] 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 amendment 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:[14] 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.[15] On Feb. 24, 1993,[16] 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:[17] . . . Does the gentleman from Pennsylvania have another point of order?

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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,[18] 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."

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.

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

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:[19] 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 resolution 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:[1] 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?

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.[2] A timely point of order may be made while another Member has the floor, and his consent is not required.[3] A point of order may even interrupt a Member stating a question of privilege.[4] A timely

20. 141 CONG. REC. p. ____ 311122 881663 5211 325530 312 866 7116 266

1. John T. Doolittle (Calif.).

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.

point of order takes precedence of a parliamentary inquiry.[5] There are motions which supersede a point of order, however. One such motion is a motion that the Committee of the Whole rise[6] or that the House adjourn. It may be entertained by the Chair pending a decision on a point of order.[7] The Chairman of the Committee of the Whole may entertain a unanimous-consent request to withdraw or modify an amendment even though a point of order is pending against it.[8]

Interrupting Members in Debate

§ 11.1 Points of order may be made while a Member has the floor, and the consent of such Member is not required.

On Mar. 13, 1942,[9] a Member was permitted to interrupt another to make a point of order.

> [Mr. May, of Kentucky, was proceeding to debate a motion that the Committee rise and report the bill under consideration back to the House with the recommendation that the enacting clause be stricken out.]
>
> MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, a point of order.
>
> THE CHAIRMAN:[10] The gentleman from Missouri will state the point of order.
>
> MR. [ANDREW J.] MAY [of Kentucky]: Mr. Chairman, I have not yielded for a point of order.
>
> MR. CANNON of Missouri: Mr. Chairman, I make the point of order that under the unanimous-consent agreement all time for debate has expired and the gentleman cannot be recognized on a motion to strike out the enacting clause offered to secure time for debate, and not offered merely to secure time for debate.
>
> THE CHAIRMAN: Does the gentleman from Kentucky desire to be heard on the point of order?
>
> MR. MAY: Yes, Mr. Chairman.
>
> THE CHAIRMAN: The Chair will hear the gentleman briefly.
>
> MR. MAY: In the first place, Mr. Chairman, I did not yield to the gentleman from Missouri for the purpose of his making a point of order.
>
> THE CHAIRMAN: The gentleman from Missouri did not have to ask the gentleman from Kentucky to yield in order to submit a point of order.

§ 11.2 A point of order may interrupt a Member stating a question of privilege.

On June 30, 1939,[11] Speaker William B. Bankhead, of Alabama, per-

5. See § 11.4, infra.
6. See § 11.3, infra.
7. See § 11.3, infra.
8. See § 11.5, infra.
9. 88 CONG. REC. 2439, 77th Cong. 2d Sess. Under consideration was H.R. 6709, an agricultural appropriation bill for 1943.
10. Robert Ramspeck (Ga.).
11. 84 CONG. REC. 8468, 8469, 76th Cong. 1st Sess.

mitted several Members to raise points of order while Mr. Clare E. Hoffman, of Michigan, stated a question of personal privilege.

THE SPEAKER: The gentleman from Michigan [Mr. Hoffman] will state his question of personal privilege.

MR. HOFFMAN: Mr. Speaker . . . .

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Speaker, I make the point of order that the gentleman is not stating a question of personal privilege.

THE SPEAKER: The Chair will allow the gentleman some latitude in stating his question, but the gentleman must state a question of privilege.

MR. [JOHN D.] DINGELL [of Michigan]: I insist that the gentleman be allowed only a small amount of latitude.

MR. HOFFMAN: Mr. Speaker, I did not hear the remarks made by the gentleman from Michigan [Mr. Dingell].

THE SPEAKER: The Chair is interested in hearing the gentleman state his question of personal privilege.

MR. HOFFMAN: Mr. Speaker, I am interested in the right of free speech, and when the gentleman interrupts to make a remark I am entitled to hear it. . . .

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

THE SPEAKER: The gentleman will state it.

MR. NICHOLS: I make the point of order, Mr. Speaker, that the gentleman is not stating a question of personal privilege.

MR. HOFFMAN: I do not yield for that, Mr. Speaker.

MR. NICHOLS: In order to state a question of privilege the gentleman must state something that somebody said about him. The gentleman is quoting statements he himself made.

MR. HOFFMAN: Mr. Speaker, have I the floor or not?

THE SPEAKER: The gentleman has the floor, but unless the gentleman proceeds to state his point of privilege he will not occupy the floor very much longer.

MR. HOFFMAN: Mr. Speaker, I am endeavoring to state the point as concisely as I may, and I trust that the Speaker will bear with me in my ignorance and my inexperience and let me state it. . . .

Mr. Speaker, may I be free from such interruptions as occurred then when a Member of the House [Mr. Hook] said, "I agree"? Otherwise, I will have to demand that the words be taken down.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a point of order.

MR. HOFFMAN: I do not yield for a point of order, Mr. Speaker.

THE SPEAKER: The gentleman from Mississippi will state his point of order.

MR. RANKIN: Mr. Speaker, I make the point of order that the statement that the gentleman from Michigan is making does not in any way constitute a question of high constitutional privilege. . . .

MR. HOFFMAN: Mr. Speaker, it is a strange situation when I cannot state a question of personal privilege without interruption.

THE SPEAKER: The gentleman from Mississippi had a perfect right to make the point of order. The Chair is entitled to hear the point of order made by the gentleman from Mississippi.

Motions Interrupting Point of Order

§ 11.3 In the Committee of the Whole, a motion that the

Committee rise may be entertained pending a decision of the Chair or further argument on a point of order.

On June 4, 1957,[12] a proponent of a bill, Mr. Harold D. Cooley, of North Carolina, forestalled a ruling by Chairman Brooks Hays, of Arkansas, on a point of order, by moving that the Committee of the Whole rise.[13]

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I rise to a point of order against the entire bill, H.R. 6974, on the ground that it is a bill from a committee not having authority to report an appropriation. . . .

MR. COOLEY: . . . I am a little bit apprehensive that the point of order may be sustained, if the Chair is called upon to rule on it. But, I think it would be very unfortunate for us to delay final action on the bill, and in the circumstances we have no other alternative other than to move that the Committee do now rise, and so, Mr. Chairman, I make that motion.

THE CHAIRMAN: The Chair is prepared to rule on the point of order, but the motion offered by the gentleman from North Carolina that the Committee do now rise is in order, and the Chair will put the question.

Precedence of Point of Order Over Parliamentary Inquiry

§ 11.4 A timely point of order takes precedence over a parliamentary inquiry, and the reservation of a parliamentary inquiry gives no priority for that purpose, since recognition is in the discretion of the Chair.

On June 7, 1977,[14] the Committee of the Whole, chaired by Mr. James R. Mann, of South Carolina, was operating under the five-minute rule. The following proceedings are related to the topic of this section:

MR. [THOMAS N.] KINDNESS [of Ohio]: Mr. Chairman, I offer amendments, and I wish to make a parliamentary inquiry with respect thereto.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. KINDNESS: Mr. Chairman, may I reserve my parliamentary inquiry and make it after the reading of the amendments?

THE CHAIRMAN: Certainly, the gentleman may do that.

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12. 103 CONG. REC. 8318, 8319, 85th Cong. 1st Sess. Under consideration was H.R. 6974, to extend the Agricultural Trade Development and Assistance Act of 1954.

13. *Parliamentarian's Note:* In this case the language of the bill was in violation of the provisions of Rule XXI clause 4, and the Member in charge of the bill moved that the Committee rise so application could be made to the Committee on Rules for a resolution waiving points of order against the bill. See H. Res. 274, 85th Cong. 1st Sess. (1957).

14. 123 CONG. REC. 17713, 17714, 95th Cong. 1st Sess.

The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. Kindness: Page 28, line 12, strike out "but does not include a member of the uniformed services" and insert "including any member of the uniformed services".

Page 30, line 12, strike out "and".

Page 32, line 3, strike out the period and insert "; and".

Page 32, after line 3, insert:

"(10) 'Secretary concerned' has the same meaning as given such term in section 101(5) of title 37.

Page 35, line 2, strike out "or a member of a uniformed service.".

Page 38, line 14, immediately before the period insert "or by reason of being a member of the uniformed services".

Page 45, before line 8, insert the following:

"(j) The preceding provisions of this section shall not apply in the case of a violation by a member of a uniformed service. Procedures with respect to any such violation shall, under regulations prescribed by the Secretary concerned, be the same as those applicable with respect to violations of section 892 of title 10.". . .

MR. [WILLIAM] CLAY [of Missouri]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN: The gentleman from Missouri will state his point of order.

MR. CLAY: Mr. Chairman, I raise the point of order on the grounds that the matter contained in the amendment is in violation of the germaneness rule stated in clause 7 of House rule XVI.

The instant amendment proposes to make the bill applicable to an entirely new class of individuals other than what is covered under the bill.

The reported bill applies only to civilian employees in executive branch agencies, including the Postal Service and the District of Columbia government, who are presently under the Hatch Act.

The amendment seeks to add a totally different class of individuals to the bill; namely, military personnel who are not now covered by the Hatch Act. Accordingly the amendment is not germane to the bill.

Mr. Chairman, I insist on my point of order.

THE CHAIRMAN: Does the gentleman from Ohio (Mr. Kindness) wish to speak to the point of order?

MR. KINDNESS: I do, Mr. Chairman.

Mr. Chairman, I understood that I was recognized prior to the reading of the amendment for the purpose of stating a parliamentary inquiry.

THE CHAIRMAN: The Chair will state that the gentleman chose to defer his inquiry.

MR. KINDNESS: Mr. Chairman, I suggest that the gentleman's point of order is out of order.

THE CHAIRMAN: The Chair will state that a point of order is now in order and has preference.

§ 11.5 Although a point of order is pending against a substitute for an amendment, the Chairman of the Committee of the Whole may entertain a unanimous-consent request to withdraw or modify the substitute.

On June 18, 1958,[15] it was ruled in order in the Committee of

15. 104 CONG. REC. 11641–43, 85th Cong. 2d Sess. Under consideration

the Whole to make a unanimous-consent request although a point of order was pending at the time.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

MR. [ROBERT] HALE [of Maine]: Mr. Chairman, I offer a substitute amendment.

THE CHAIRMAN:[16] The Clerk will read the amendment.

The Clerk read as follows: . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment because it provides for items that are not authorized by law. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, can a unanimous-consent request be propounded while a point of order is pending before the committee?

THE CHAIRMAN: The Chair would entertain such a unanimous-consent request. Any Member can object if he so desires. Does the gentleman from Maine care to make such a request?

MR. HALE: Mr. Chairman, I want to be heard on the point of order.

THE CHAIRMAN: The gentleman can be heard and he is recognized. The Chair is interested in disposing of the point he raised a moment ago.

MR. HALE: I will be happy to have any solution of the parliamentary situation.

THE CHAIRMAN: The gentleman can ask unanimous consent to withdraw the substitute and offer an amendment.

§ 12. Relationship of Quorum Requirements to Points of Order

Since 1974, the House has altered the rules regarding enforcement of the constitutional requirement that a quorum—a majority of the House-must be present to do business.[17] The first, and most notable, change is that a quorum is not required for mere debate; and the Chair is not permitted to recognize for a point of no quorum unless the pending question has been put.[18] Both the Speaker and the Chairman of a Committee of the Whole have a limited discretion, under the new procedures, to entertain a proper motion to obtain a quorum by recognizing for a motion for a call of the House or, in Committee, to recognize for a point of no quorum and invoke a call of the Committee.[19] Once a quorum of the Committee has been established on a day, the Chair is restricted in

was H.R. 12858, making appropriations for civil functions administered by the Departments of the Army, Interior, etc.

16. Hale Boggs (La.).

17. See U.S. Const. art. I, § 5, *House Rules and Manual* § 52; see also, Rule XV cl. 6, § 774c (1997).

18. See Ch. 20, supra; see also § 12.16, infra.

19. See Rule XXIII cl. 2(a), *House Rules and Manual* § 863 (1997).

recognizing for another point of no quorum unless the Committee is operating under the five-minute rule and the question has been put on a pending question or motion. When a question is put, and is pending,[20] the lack of a quorum, if the point is raised, takes precedence over a demand for a record vote.[1] The concept of when there is a "pending motion or proposition" (the condition specified in Rule XXIII clause 2(a)) has been the focus of several decisions.[2]

When the lack of a quorum has been declared by the Speaker or Chairman, no business can be conducted (other than a motion to adjourn or to rise) until a quorum is reestablished.[3] If a recorded vote is refused, the requisite second not having risen to be counted, the demand for a recorded vote cannot then be renewed, although a division can still be requested.[4]

The current practice has been challenged on several occasions by points of order.[5] An appeal has been unsuccessfully taken from the Chair's decision that the new rules were consistent with the House's constitutional authority to make its own rules.[6]

Precedence of Point of No Quorum

§ 12.1 In Committee of the Whole, where there is a demand for a recorded vote and a point of order that a quorum is not present, the point of order must be disposed of first, and once a quorum is ascertained, the pending business is then the demand for a recorded vote.

On Mar. 14, 1975,[7] where the Committee of the Whole had under consideration the Surface Mining and Reclamation Act, the Chair announced that the ayes appeared to prevail on a voice vote on the pending amendment. The proceedings and inquiries which eventually led to a record vote on the amendment were as follows:

> THE CHAIRMAN:[8] The question is on the amendment offered by the gentleman from Ohio (Mr. Seiberling).
>
> The question was taken; and the Chairman announced that the ayes appeared to have it.
>
> MR. [SAM] STEIGER of Arizona: Mr. Chairman, on that I demand a re-

20. See § 12.6, infra.
1. See §§ 12.1, 12.8, 12.11, 12.13, infra.
2. See §§ 12.7, 12.8, 12.10, infra.
3. See §§ 12.4, 12.5, 12.17, infra.
4. See § 12.9, infra.
5. See § 12.2, infra.
6. See § 12.3, infra.
7. 121 CONG. REC. 6707, 6708, 94th Cong. 1st Sess.
8. Neal Smith (Iowa).

corded vote and make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count.

MR. STEIGER of Arizona: I am told, Mr. Chairman, that you are not honoring my point of order that a quorum is not present.

THE CHAIRMAN: The Chair has counted 21 Members to this point.

MR. STEIGER of Arizona: Mr. Chairman——

THE CHAIRMAN: The Members will be seated. The Chair is counting for a quorum.

MR. STEIGER of Arizona: Mr. Chairman, another point of order. I do not want to confuse anyone here. I would ask the Chair this: Is it true that if 21 Members are standing, that is a sufficient number on which to base a rollcall vote and we would then avoid the necessity of demanding a quorum? It obviously is not here anyway.

THE CHAIRMAN: Is the gentleman from Arizona withdrawing his point of no quorum?

MR. STEIGER of Arizona: No. I am just asking, if there are 21 Members who responded to my demand for a rollcall, which I coupled very cleverly with a point of order that a quorum was not present, that is sufficient if 20 were standing, but the Chair announced that 21 were standing.

THE CHAIRMAN: The point of no quorum must be disposed of first.

MR. STEIGER OF ARIZONA: Even though the demand preceded the point of order?

THE CHAIRMAN: Yes.

MR. STEIGER of Arizona: This is very interesting. I want all the Members to remember that.

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Chairman, if the gentleman will yield, I ask him to withdraw it and I will support his request for a vote and we will thereby save time.

MR. STEIGER of Arizona: All right. I think it is going to work out.

THE CHAIRMAN: Sixty-eight Members are present, evidently not a quorum.

The Chair announces that he will vacate proceedings under the call when a quorum of the committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

Points of No Quorum Under New Rule

§ 12.2 Pending consideration of motions to suspend the rules, the Speaker ruled: (1) that clause 6(e) prohibits a Member from making or the Chair from entertaining a point of no quorum in the House when a pending question has not been put to a vote; (2) that a point of order of no quorum during debate in the House would not lie independently under the Constitution (article I, section 5) since clause 6(e), Rule XV, is a proper exercise of the House's rulemaking authority and can be construed consistently with the constitutional requirement that a quorum be present to con-

duct business; (3) and that under the same clause, the Speaker is authorized, at his discretion, to recognize a Member for a call of the House.

On Sept. 12, 1977,[9] Speaker Thomas P. O'Neill, Jr., of Massachusetts, faced a somewhat similar situation, on a day when suspension motions were in order. The Speaker had announced his intention to postpone suspension votes, and in response to a point of order and a parliamentary inquiry, he clarified the application of clause 6(e).

THE SPEAKER: The Chair desires to make an announcement.

Pursuant to the provisions of clause 3(b) of rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, a point of order.

Mr. Speaker, I move a call of the House, since there is not a quorum present and not even close to a quorum present.

THE SPEAKER: The gentleman is aware of the rule of the House that the Chair cannot recognize the gentleman for a point of no quorum unless there is a pending question being put to a vote. . . .

There is no question or business being put to a vote at the moment, so under clause 6 of rule XV the gentleman's point is not well taken. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, the gentleman from Ohio (Mr. Ashbrook) has just pointed out the fact that there are possibly less than 50 Members present on the floor at this point. He made the further point that the Constitution, article I, section 5, requires that the House have a quorum at all times to do business. We are in the full House. We are not in the Committee of the Whole. I raise again the question whether or not the House can conduct its business for 4 or 5 hours today on 13 separate bills under suspension without having a majority of the membership here and recorded present.

I think any legislation we act upon could be challenged in court as not having been considered by a quorum, and a quorum is not here.

Also I am under the impression that rule XV requires or permits at least one quorum call to establish a quorum at the opening of each day's session.

THE SPEAKER: With regard to the gentleman's statement, the Constitution does require what the gentleman says—a quorum to do business. The rules of the House reflect this requirement. But under the circumstances, the Chair will recognize a Member to move a call of the House.

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Speaker, I move a call of the House.

9. 123 CONG. REC. 28800, 28801, 95th Cong. 1st Sess.

A call of the House was ordered.

The call was taken by electronic device . . . .

§ 12.3 The Speaker's refusal to entertain a point of order of no quorum when there is no pending question being put to a vote is not subject to an appeal, since Rule XV clause 6(e) states an absolute prohibition against the Chair's entertaining such a point of order and to allow an appeal would permit a direct change in that rule.

The Speaker Pro Tempore, Ms. Barbara Jordan, of Texas, refused to entertain an appeal in this case since the rule involved leaves no discretionary interpretation to the Chair. The proceedings of Sept. 16, 1977,[10] are shown below.

MR. [J. WILLIAM] STANTON [of Ohio]: Madam Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. Wylie), a very distinguished and important member of our committee.

MR. [JOHN M.] ASHBROOK [of Ohio]: Madam Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman from Ohio (Mr. Ashbrook) that the point of order is not in order at this time under rule XV, clause 6(e).

MR. ASHBROOK: Madam Speaker, I appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman that is not an appealable ruling. The rule contains an absolute prohibition against a Member making or the Chair entertaining such a point of order at this time, leaving no interpretive authority in the Chair and no authority to recognize for such a point of order. The rule itself, and not the ruling of the Chair, governs in this situation. To permit an appeal would be tantamount to permitting a direct change in the rule itself.

Withdrawal of Point of Order After Absence of Quorum Is Announced

§ 12.4 A point of order that a quorum is not present may not be withdrawn, even by unanimous consent, after the Chair has announced the absence of a quorum.

Once the absence of a quorum has been ascertained and announced, no business, even by unanimous consent, can be conducted. Only two options remain: to adjourn or to secure a quorum. An instance where the latter option was exercised is excerpted from the Sept. 21, 1977,[11] proceedings as shown below.

THE CHAIRMAN:[12] The question is on the amendment offered by the gen-

10. 123 CONG. REC. 29594, 95th Cong. 1st Sess.

11. 123 CONG. REC. 30083, 95th Cong. 1st Sess.

12. Barbara Jordan (Tex.).

tleman from Pennsylvania (Mr. Coughlin).

The question was taken; and on a division (demanded by Mr. Coughlin) there were—ayes 13, noes 19.

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Madam Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Evidently a quorum is not present.

MR. COUGHLIN: Madam Chairman, if I can get a recorded vote, I will withdraw my point of order.

THE CHAIRMAN: The Chair had announced that a quorum is not present and the gentleman may not withdraw his request at this time.

MR. COUGHLIN: Madam Chairman, I ask unanimous consent to withdraw my request.

THE CHAIRMAN: The Chair will advise the gentleman that he cannot withdraw his request even by unanimous consent.

The Chair announces that pursuant to clause 2, rule XXIII, she will vacate proceedings under the call when a quorum of the Committee appears. Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

RECORDED VOTE

THE CHAIRMAN: The pending business is the demand of the gentleman from Pennsylvania (Mr. Coughlin) for a recorded vote.

A recorded vote was ordered.

Motion To Rise in Absence of Quorum

§ 12.5 The motion that the Committee of the Whole rise is in order pending a point of no quorum and a request for a recorded vote, since the motion to rise does not require the presence of a quorum.

Where the Committee of the Whole rose after a point of no quorum had been made on Jan. 28, 1980,[13] the Chair announced that the pending request for a recorded vote would be before the Committee when it resumed its sitting.

THE CHAIRMAN:[14] The question is on the amendment offered by the gentleman from Illinois (Mr. Michel).

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

MR. [ROBERT W.] EDGAR [of Pennsylvania]: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

MR. [RAY] ROBERTS [of Texas]: Mr. Chairman, I move that the Committee do now rise.

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13. 126 CONG. REC. 898, 96th Cong. 2d Sess.

14. Matthew F. McHugh (N.Y.).

The motion was agreed to.

MR. EDGAR: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. EDGAR: Mr. Chairman, does that make in order at the opening of tomorrow morning's session the vote, lacking a quorum at this time?

THE CHAIRMAN: The Chair will put the question for a recorded vote when the Committee of the Whole reconvenes.

MR. EDGAR: I thank the Chair.

Right of Member To Make a Point of No Quorum

§ 12.6 A point of no quorum can be made only when a question is pending; and where the vote on a suspension motion is objected to on the ground that a quorum is not present and is then postponed, there is no longer a question before the House and the point of no quorum "is considered as withdrawn."

On Sept. 24, 1979,[15] the Speaker Pro Tempore stated the pending business as shown and the proceedings that follow indicate one more skirmish in the battle over Rule XV clause 6(e).

THE SPEAKER PRO TEMPORE:[16] The question is on the motion offered by the gentleman from Alabama (Mr. Nichols) that the House suspend the rules and pass the bill, H.R. 5168.

The question was taken.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

MR. ASHBROOK: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

MR. ASHBROOK: Mr. Speaker, I insist on my point of order.

THE SPEAKER PRO TEMPORE: The point of order is considered withdrawn.

The question is no longer pending.

MR. ASHBROOK: Mr. Speaker, I move a call of the House.

THE SPEAKER PRO TEMPORE: The Chair did not recognize the gentleman for that purpose.

What Is a "Pending Question" Which Permits Point of No Quorum

§ 12.7 The Chair may not entertain a point of no quorum pending a request that a committee be permitted to sit during the five-minute rule, since the requirement of Rule XV clause 6(e) that a question be pending before a point of no quorum can be made has not been met.

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15. 125 CONG. REC. 25876, 96th Cong. 1st Sess.

16. John J. Cavanaugh (Nebr.).

On June 18, 1980,[17] the Speaker Pro Tempore did not entertain a point of no quorum in circumstances where no question was being put to a vote. The circumstances are set forth herein.

MR. [THOMAS N.] KINDNESS [of Ohio]: Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit today and tomorrow during the 5-minute rule for consideration of the criminal code.

THE SPEAKER PRO TEMPORE:[18] Is there objection to the request of the gentleman from Ohio?

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, reserving the right to object, the gentleman from Wisconsin (Mr. Sensenbrenner) has requested that I object. I am bound to object, and I indeed will object.

THE SPEAKER PRO TEMPORE: Those Members objecting please rise.[19]

Messrs. Ashbrook, Bauman, Devine, Myers of Indiana, Rousselot, and Hansen rose.

THE SPEAKER PRO TEMPORE: An insufficient number of Members have arisen.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I object to the Chair's ruling on the ground that a quorum is not present.

THE SPEAKER PRO TEMPORE: The request is not a motion or proposition put by the Chair to a vote.

MR. BAUMAN: Mr. Speaker, I make a point of order that under the Constitution the requirement is that a quorum be present to do any business of the House. A quorum is not present at this time, and the request for permission to sit for a committee is business being conducted in the absence of a quorum.

CALL OF THE HOUSE

MR. BAUMAN: Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names: . . .

THE SPEAKER PRO TEMPORE: On this rollcall, 362 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

REQUEST FOR PERMISSION FOR COMMITTEE ON THE JUDICIARY TO SIT TODAY AND THURSDAY, JUNE 19, UNDER 5-MINUTE RULE

MR. BAUMAN: Mr. Speaker, I renew my point of order.

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

MR. BAUMAN: Mr. Speaker, I renew my point of order.

THE SPEAKER PRO TEMPORE: There is no point of order. The Chair will state that under the rules of the House, the request that was made was not subject to a point of order of a quorum not being present because such a request in the House does not require the presence of a quorum, as nothing is being put to a vote.

The gentleman then moved a call of the House. The Chair was not given an

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17. 126 CONG. REC. 15316, 15317, 96th Cong. 2d Sess.

18. Marty Russo (Ill.).

19. The prohibition against committees sitting during the five-minute rule if ten or more Members rendered objections was dropped from Rule XI in the 105th Congress.

opportunity to count the House at that time, so we can presume a quorum present. A quorum now being present, there is no point of order that lies at this time.

MR. BAUMAN: Mr. Speaker, I make a point of order that the request was not in order and could not be granted unless a quorum was present at that time. I made the point of order at the time the request was ruled upon by the Chair, that the ruling was not correct, that a quorum had to be here because the Constitution requires a quorum at all times to do business, and a request for the committee to sit is business.

If I may be heard further, if it is the Chair's position that a quorum is not required, requests for committees to sit can be made at any time, after special orders, at any time of the day, to the disadvantage of Members, and, therefore, preclude the right of Members to exercise their power to prevent a committee from sitting.

THE SPEAKER PRO TEMPORE: In response to the gentleman, under the rules of the House, the Chair is not permitted to entertain a point of order, because such a request is not a motion or proposition being put to a vote and the rule does not provide that the Chair can entertain such a request.

The request was made. The Chair asked whether or not any Member objected. Ten Members did not stand, permission was granted. The gentleman then made a point of order. The Chair, under the rules, cannot entertain such a point of order at the particular time. The Chair in the past has used its discretion in not accepting requests for committees to sit when such requests are made during special orders. The Chair will continue to exercise that discretion.

PARLIAMENTARY INQUIRY

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

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

MR. BAUMAN: Is it the Chair's position that a quorum of the House is not required at any time when a request for a committee to sit is made?

THE SPEAKER PRO TEMPORE: The rules do not permit a point of no quorum at that particular point. The Chair has so stated.

MR. BAUMAN: I renew my parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BAUMAN: The question is not whether the rules of the House permit a point of no quorum. I am inquiring of the Chair whether or not a quorum is required to be present when a request for a committee to sit is made.

THE SPEAKER PRO TEMPORE: The Chair will state again that the Chair does not interpret the Constitution when there is an explicit House rule on point. The Chair has already twice given the gentleman his interpretation of the rules of the House.

When Question Is "Pending" To Permit Point of No Quorum

§ 12.8 As long as the Chair has put the question on the pending proposition but has not announced the final re-

sult there on, any Member can make a point of order that a quorum is not present, and a Member is not required to have been on his feet when another Member made the point of order and then withdrew it.

Mr. Richardson Preyer, of North Carolina, was presiding as Chairman of the Committee of the Whole on Aug. 20, 1980,[20] when he announced that on a division vote, an amendment was agreed to. The division showed that a quorum of the Committee did not vote and the proceedings were as indicated herein.

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

The question was taken; and on a division (demanded by Mr. McDade) there were—ayes 36, noes 22.

MR. [ALLEN E.] ERTEL [of Pennsylvania]: Mr. Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

THE CHAIRMAN: The gentleman asks for a recorded vote.

MR. ERTEL: Mr. Chairman, I withdraw my request for a recorded vote.

MR. [ROBERT] GARCIA [of New York]: Mr. Chairman, just a parliamentary inquiry.

Am I in a position to make mention that a quorum is not present?

Mr. Chairman, I withdraw the request.

MR. [HENRY B.] GONZALEZ [of Texas]: Mr. Chairman, I demand a recorded vote, and I make the point of order that a quorum is not present.

MR. [RICHARD L.] OTTINGER [of New York]: A point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman, if he wishes to demand a vote, may do so.

MR. GONZALEZ: A point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman has the right to ask for a recorded vote or make the point of order that a quorum is not present.

MR. OTTINGER: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman from New York (Mr. Ottinger) will state his point of order.

MR. OTTINGER: The point of order, Mr. Chairman, is that the gentleman was not on his feet to make such a request at the appropriate time.

THE CHAIRMAN: The Chair will state that the gentleman was relying on another gentleman being on his feet and making the point of order, and he would have the right under these circumstances to renew the point of order, since the Chair has not finally announced the result of the vote.

MR. GONZALEZ: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Evidently a quorum is not present.

Once Refused, Request for Recorded Vote Not Renewable

§ 12.9 A recorded vote having been refused in Committee of

20. 126 CONG. REC. 22149, 96th Cong. 2d Sess.

the Whole, a point of no quorum may still lie under Rule XXIII clause 2, if the pending question has not been disposed of by a division vote, but a demand for a recorded vote cannot be renewed.

During consideration of the first concurrent resolution on the budget for fiscal 1983, Chairman Pro Tempore Leo C. Zeferetti, of New York, had to vote to break a tie where a recorded vote was denied when requested on the adoption of an amendment. The proceedings of May 27, 1982,[1] are carried herein.

THE CHAIRMAN PRO TEMPORE: The question is on the amendment offered by the gentleman from Mississippi (Mr. Whitten) to the amendment in the nature of a substitute offered by the gentleman from Wisconsin (Mr. Aspin).

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

MR. [RALPH] REGULA [of Ohio]: Mr. Chairman, I demand a recorded vote.

THE CHAIRMAN PRO TEMPORE: A recorded vote is demanded.

All those in favor of taking this vote by a recorded vote will rise and be counted.

Twenty-four Members, an insufficient number.

So a recorded vote was refused.

MR. REGULA: Mr. Chairman, I make the point of order that a quorum is not present, and pending that, I demand a recorded vote.

THE CHAIRMAN PRO TEMPORE: The Chair has already announced an insufficient number.

The gentleman can make a point of order but he cannot ask for a recorded vote.

MR. REGULA: Mr. Chairman, I demand a division.

On a division (demanded by Mr. Regula) there were—ayes 42, noes 43.

MR. [JAMES J.] HOWARD [of New Jersey]: Mr. Chairman, I demand tellers.

Tellers were ordered and the Chairman pro tempore appointed as tellers Mr. Whitten and Mr. Jones of Oklahoma.

The Committee again divided, and the tellers reported that there were—ayes 72, noes 72.

THE CHAIRMAN PRO TEMPORE: The Chair votes "aye."

"Permission To Sit" Not Such Business as Requires Quorum

§ 12.10 The pendency of a request under the then applicable rule (Rule XI clause 2(i)) for a committee to sit during the five-minute rule, which would be granted unless 10 Members objected to the request, was not considered equivalent to the Chair's putting the question and did not set the stage for a point of no quorum under Rule XV clause 6(e).

1. 128 CONG. REC. 12470, 97th Cong. 2d Sess.

Monday, Aug. 16, 1982,[2] was a "suspension day" and the leadership had announced that votes on such motions would be postponed until a following day. When Chairman John D. Dingell, of Michigan, then came to the floor to ask for permission for the Committee on Energy and Commerce to sit during the five-minute rule for the balance of the week, there were not sufficient Members on the floor or in their offices to object, ten objections being required by the rule then in effect to prevent a committee from sitting.[3] The following colloquy shows the difficulty of allowing such requests to be made on a day when no votes are scheduled.

REQUEST FOR PERMISSION FOR COMMITTEE ON ENERGY AND COMMERCE TO SIT TODAY AND THE REST OF THE WEEK DURING 5-MINUTE RULE

THE SPEAKER PRO TEMPORE:[4] For what purpose does the gentleman from Michigan (Mr. Dingell) rise?

MR. DINGELL: Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce have the permission of the House to sit today and for the rest of the week for the purposes of the consideration of legislation while the House is sitting under the 5-minute rule.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Speaker, reserving the right to object, I wonder if the gentleman from Michigan can enumerate what legislation this request relates to.

MR. DINGELL: It is my expectation to consider the Clean Air Act amendments.

MR. DANNEMEYER: Reserving the right to object, the request relates only to the legislation dealing with the Clean Air Act?

MR. DINGELL: That is correct.

MR. DANNEMEYER: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

MR. [HENRY A.] WAXMAN [of California]: Mr. Speaker, I move a call of the House.

THE SPEAKER PRO TEMPORE: The Chair is not recognizing the gentleman for that purpose at this time.

MR. WAXMAN: Reserving the right to object, and pending that, Mr. Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: That is not in order at this point. I wonder if we could ask the gentleman from Michigan to temporarily withhold his request.

MR. DINGELL: Mr. Speaker, I believe that this is proper business of the House. The Chair has just considered a request of this kind. If it is the wish of

2. 128 CONG. REC. 21219, 21315, 21316, 97th Cong. 2d Sess.

3. The prohibition against committees sitting during the five-minute rule if ten or more Members rendered objections was dropped from Rule XI in the 105th Congress.

4. Thomas S. Foley (Wash.).

the gentleman from California to obfuscate and delay the business of the Committee on Energy and Commerce, the business of the House, then it is his right to do so, and I think it is my right to have him take that step.

PARLIAMENTARY INQUIRY

MR. WAXMAN: Mr. Speaker, a point of parliamentary procedure.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WAXMAN: I would like to know how the rules would protect Members who have been informed that a controversial unanimous-consent request would not be brought up on a day when there are no votes, except to allow a Member to ask for a quorum call so the Members can participate in a decision that is made.

MR. DINGELL: I call for the regular order.

THE SPEAKER PRO TEMPORE: The Chair has indicated that a motion at this time or objection at this time that a quorum is not present is not in order. The gentleman from Michigan insists on his unanimous-consent request.

MR. DINGELL: That is correct.

MR. WAXMAN: A point of parliamentary procedure.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WAXMAN: I renew my inquiry to the Speaker on how the rules are permitted to protect Members when there are no indications of any controversy being brought up on a day when the House is not required to have votes.

MR. DINGELL: Mr. Speaker, I demand the regular order. I make the point of order that is not a proper parliamentary inquiry.

Mr. Speaker, I demand the regular order.

THE SPEAKER PRO TEMPORE: The gentleman insists on the regular order. The gentleman from California insists on his right to make an objection, pending which he makes the point of order a quorum is not present.

MR. [JOHN F.] SEIBERLING [of Ohio]: Mr. Speaker, will the gentleman withhold for a minute his point of order?

THE SPEAKER PRO TEMPORE: Does the gentleman yield to the gentleman from Ohio?

MR. WAXMAN: I will be pleased to yield.

MR. SEIBERLING: Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit while the House is reading for amendment under the 5-minute rule on Tuesday, Wednesday, and Thursday, August 17, 18, and 19, 1982.

MR. DINGELL: I have a similar request pending, and I object.

THE SPEAKER PRO TEMPORE: The gentleman is within his rights to object to yield for that purpose. The gentleman did not recognize the gentleman for that purpose at this time.

The Chair at this time will withhold recognition for any further purpose for a period. The Chair will protect the gentleman from Michigan's rights in this matter.

MR. DINGELL: Mr. Speaker, I am entitled to have a ruling on my unanimous-consent request.

THE SPEAKER PRO TEMPORE: The Chair will reserve a ruling. The Chair will protect the gentleman's rights.

MR. DINGELL: Mr. Speaker, I believe I am entitled to be protected at this time.

THE SPEAKER PRO TEMPORE: It is a matter of recognition, and the Chair is going to exercise his rights of recognition at this time. The Chair assures the gentleman that his rights will be protected.

MR. DINGELL: Mr. Speaker, I would observe that if I am denied recognition at this time, I may very well be denied my rights. I have a unanimous-consent request for which I was properly recognized. I would point out another request was recognized for a similar unanimous consent just previous to me. That request was granted.

THE SPEAKER PRO TEMPORE: It was not granted.

MR. DINGELL: Perhaps the Speaker can explain to me why I am being denied my rights.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio withdrew his request.

MR. DINGELL: The gentleman previous to that.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio withdrew his request.

MR. DINGELL: Are you forgetting that another Member had just made a request on behalf of the Armed Services Committee?

THE SPEAKER PRO TEMPORE: The gentleman from the Armed Services Committee, Mr. White of Texas, asked to file a report, and that unanimous-consent request was granted.

MR. DINGELL: Unanimous-consent request that the Armed Services Committee be permitted to sit.

THE SPEAKER PRO TEMPORE: I am sorry to disagree with the gentleman. The Chair did not grant permission to sit or entertain that motion from the gentleman from Texas.

The Chair will take 1 minute speeches at this time. . . .

REQUEST FOR PERMISSION FOR COMMITTEE ON ENERGY AND COMMERCE TO SIT DURING 5-MINUTE RULE ON TODAY AND BALANCE OF THE WEEK

MR. DINGELL: Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce be permitted to sit for the purposes of considering legislation during the time that the House is sitting under the 5-minute rule today and for the balance of the week.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

MR. WAXMAN: Mr. Speaker, I reserve the right to object.

CALL OF THE HOUSE

MR. WAXMAN: Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names: . . .

MR. PHILLIP BURTON [of California]: Mr. Speaker, regular order.

Mr. Speaker, regular order.

THE SPEAKER PRO TEMPORE: The Chair is observing the regular order.

MR. PHILLIP BURTON: Mr. Speaker, regular order as to the time to note the presence of Members has expired.

THE SPEAKER PRO TEMPORE: Are there any Members who have not yet recorded their presence?

The Chair will advise the gentleman from California that 15 minutes is a minimum, not a maximum.

ADJOURNMENT

MR. [E (KIKA)] DE LA GARZA [of Texas]: Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to: accordingly (at 1 o'clock and 17 minutes p.m.), under its previous order, the House adjourned until Tuesday, August 17, 1982, at 10 a.m.

Relative Precedence, Point of No Quorum and Objection to Vote Because of No Quorum

§ 12.11 When a question is pending, any Member can make a point of order that a quorum is not present and get a quorum call before the vote is taken; but another Member can preempt the quorum call by objecting to the vote on the ground that a quorum is not present, thereby producing an automatic call under Rule XV clause 4.

On Aug. 18, 1982,[5] Mr. Silvio O. Conte, of Massachusetts, intended to provoke a call of the House before the question was put on disposing of a Senate amendment in disagreement. His intention was thwarted by the more privileged point of order and objection to the vote raised by Mr. F. James Sensenbrenner, Jr., of Wisconsin.

THE SPEAKER PRO TEMPORE:[6] The question is on the motion offered by the gentleman from Maryland (Mr. Long).

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

MR. CONTE: Mr. Speaker, I make the point of order that a quorum is not present.

MR. SENSENBRENNER: Mr. Speaker, I object to the vote on the ground that a quorum is not present.

THE SPEAKER PRO TEMPORE: Is the gentleman from Massachusetts (Mr. Conte) objecting to the vote?

MR. CONTE: No, Mr. Speaker, I am just making the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The gentleman from Wisconsin (Mr. Sensenbrenner) has a right to object to the vote.

MR. SENSENBRENNER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Point of No Quorum During General Debate

§ 12.12 The Chairman of the Committee of the Whole may, in his discretion, entertain a point of no quorum during general debate.

On Dec. 1, 1982,[7] the Chairman of the Committee of the

5. 128 CONG. REC. 22037, 97th Cong. 2d Sess.

6. Abraham Kazen, Jr. (Tex.).

7. 128 CONG. REC. 28205, 97th Cong. 2d Sess.

Whole entertained a point of order that a quorum was not present while general debate was underway. Members who were expected to participate in the debate were not on the floor and the quorum call allowed them to be notified about the proceedings.

MR. [JAMES T.] BROYHILL [of North Carolina]: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN:[8] Under clause 2, rule XXIII, as adopted by the House of Representatives on January 5, 1981, the Chair, in his discretion, may entertain a point of order that a quorum is not present.

The Chair will entertain the point of no quorum and announces that pursuant to the provisions of clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

Where Quorum Present, Objection to Vote Does Not Lie

§ 12.13 It is not in order to object to a vote on the ground that a quorum is not present under Rule XV clause 4, if the Chair has counted the House and announced that a quorum is in fact present and no business has intervened since his count.

On Dec. 17, 1982,[9] the House was considering amendments in disagreement to the District of Columbia appropriation bill, fiscal 1983. A motion that the House recede and concur in Senate amendment number 40 had been divided, and the Speaker Pro Tempore proceeded to put the question on receding from disagreement. The exchanges between Mr. Robert S. Walker, of Pennsylvania, and the Speaker Pro Tempore, Mr. John P. Murtha, of Pennsylvania, follow:

THE SPEAKER PRO TEMPORE: The question is whether the House shall recede from disagreement to Senate amendment 40.

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

MR. WALKER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will count. Two hundred nineteen Members are present, a quorum.

MR. WALKER: Mr. Speaker, that was an interesting count. I thank the Speaker.

Mr. Speaker, I demand the yeas and nays.

The yeas and nays were refused.

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

9. 128 CONG. REC. 31951, 97th Cong. 2d Sess.

So the motion was agreed to.

MR. WALKER: Mr. Speaker, I might say we are going to have more votes, then, this evening.

THE SPEAKER PRO TEMPORE: The question is now on concurring in the Senate amendment with an amendment.

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

MR. WALKER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will count for a quorum. Two hundred nineteen Members are present, a quorum.

MR. WALKER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will advise the gentleman that he just counted a quorum.

Point of No Quorum During General Debate in House

§ 12.14 Pursuant to Rule XV clause 6(e)(1), a point of order of no quorum cannot be made during general debate in the House; and while the Speaker has discretion to entertain a motion for a call of the House he does not recognize for a point of no quorum unless he has put the pending question to a vote.

During debate in the House on H.R. 3706, a bill making the birthday of Martin Luther King, Jr., a national holiday, the Speaker Pro Tempore[10] declined on two occasions to recognize Ms. Mary Rose Oakar, of Ohio, for a point of no quorum. Proceedings were as follows:[11]

THE SPEAKER PRO TEMPORE: The gentleman from California (Mr. Dannemeyer) has 1 minute remaining.

MR. [WILLIAM E.] DANNEMEYER [of California]: I reserve the balance of my time.

MS. OAKAR: Mr. Speaker, I make a point of order that a quorum is not present.

MR. DANNEMEYER: I yield to the gentleman from Kansas such time as he may consume.

MS. OAKAR: Regular order.

THE SPEAKER PRO TEMPORE: The Chair will not entertain the point of order at this time.

The gentleman from California yielded to whom? . . .

The gentlewoman from Indiana.

MRS. [KATIE] HALL of Indiana: Mr. Speaker, I ask that the gentleman from California yield back the balance of his time.

MR. DANNEMEYER: The gentleman from California reserves the balance of his time.

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10. Dale E. Kildee (Mich.).

11. 129 CONG. REC. 22233, 22234, 98th Cong. 1st Sess., Aug. 2, 1983.

THE SPEAKER PRO TEMPORE: The gentlewoman from Indiana.

MS. OAKAR: Will the gentlewoman yield to me?

MRS. HALL of Indiana: I yield to the gentlewoman.

MS. OAKAR: Mr. Speaker, I make a point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair does not have to entertain a motion for a call of the House at this time and chooses not to.

MS. OAKAR: I am sorry, I did not hear the Speaker.

THE SPEAKER PRO TEMPORE: The point of order cannot be made when the Chair has not put the pending question, and the Chair has discretion whether to entertain a motion for a call of the House at this time and now recognizes the gentlewoman from Indiana.

MRS. HALL of Indiana: Mr. Speaker, I yield 2 minutes to the distinguished majority leader of the U.S. House of Representatives, the gentleman from Texas (Mr. Wright).

Points of No Quorum During Five-minute Rule

§ 12.15 Once a quorum has been established by a recorded vote during the five-minute debate in Committee of the Whole, a subsequent quorum call during debate may be accomplished only by unanimous consent.

On May 10, 1984,[12] Chairman Les AuCoin, of Oregon, during five-minute debate on an amendment in Committee of the Whole, stated that since a quorum had been established on an earlier recorded vote, another quorum call would not be in order until the question was put on the pending amendment. Since Members on both sides of the aisle wanted to have a quorum present to hear the final speeches, a call of the committee was conducted by unanimous consent.

Rule XXIII clause 2(a)[13] provides that "[a]fter the roll has been once called to establish a quorum during such day, the Chairman may not entertain a point of order that a quorum is not present unless the . . . Chairman has put the pending motion or proposition to a vote".

The proceedings were as follows:

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

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

MR. [WILLIAM S.] BROOMFIELD [of Michigan]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 128, noes 287, not voting 18. . . .

12. 130 CONG. REC. 11836, 11837, 11869, 11870, 98th Cong. 2d Sess.

13. *House Rules and Manual* § 863 (1997).

So the amendment was rejected.

The result of the vote was announced as above recorded. . . .

MR. BROOMFIELD: Mr. Chairman, I would like to make a point of order that a quorum is not present for the final few speakers.

THE CHAIRMAN: The Chair will state that the Chair cannot entertain that point of order unless the question has been put on a pending proposition.

MR. BROOMFIELD: Mr. Chairman, I make a point of order——

THE CHAIRMAN: The Chair will state again that he cannot entertain a point of order at this point unless the question has been put on a pending matter, a quorum having been established on a prior recorded vote today in this Committee of the Whole.

Does the gentleman from Florida (Mr. Fascell) reserve the balance of his time?

PARLIAMENTARY INQUIRY

MR. [DANTE B.] FASCELL [of Florida]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. FASCELL: Mr. Chairman, I am sorry, but I did not hear the Chair. I have no objection to a rollcall if that is what the gentleman from Michigan asks for. But I did not hear what the Chair said.

THE CHAIRMAN: The Chair will state to the gentleman from Florida and to the gentleman from Michigan that by unanimous consent, if a quorum is sought, a quorum can be sought by unanimous consent.

MR. FASCELL: Mr. Chairman, I am saying I have no objection.

THE CHAIRMAN: Does the gentleman from Michigan ask unanimous consent for a quorum to be called.

MR. BROOMFIELD: I do, Mr. Chairman.

THE CHAIRMAN: Is there objection to the request of the gentleman from Michigan?

There was no objection.

THE CHAIRMAN: A quorum call is ordered.

Members will record their presence by electronic device.

Improper Parliamentary Inquiry

§ 12.16 During debate in the House, when a point of no quorum cannot be entertained by the Speaker, he has declined to respond to a parliamentary inquiry asking "how many Members are in the Chamber?" since it would be improper under the guise of such an inquiry to attempt to show the absence of a quorum.

The brief parliamentary inquiry described above occurred on Oct. 28, 1987,[14] and was as follows:

MR. [F. JAMES] SENSENBRENNER [Jr., of Wisconsin]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[15] The gentleman will state it.

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14. 133 CONG. REC. 29682, 100th Cong. 1st Sess.

15. W. J. (Billy) Tauzin (La.).

MR. SENSENBRENNER: Mr. Speaker, how many Members are present now?

THE SPEAKER PRO TEMPORE: The Chair cannot respond to that as a parliamentary inquiry.

When Chair Must Entertain Point of No Quorum

§ 12.17 The Chairman of the Committee of the Whole must entertain a point of order that a quorum is not present during the five-minute rule over other requests for recognition, since Rule XXIII clause 2 gives the point of no quorum the highest pri-ority where a quorum has not been established in the Committee on that day.

The proceedings of June 30, 1993,[16] in Committee of the Whole, demonstrate the mandatory nature of a point of order of no quorum under certain conditions.

MRS. [NITA M.] LOWEY [of New York]: Mr. Chairman, I point out the absence of a quorum.

THE CHAIRMAN:[17] The gentlewoman from New York [Mrs. Lowey] makes this point of order that a quorum is not present.

MR. [HENRY J.] HYDE [of Illinois]: Mr. Chairman, Mr. Chairman.

MR. [ROBERT K.] DORNAN [of California]: Mr. Chairman, the gentleman from Illinois was on his feet first, clearly.

THE CHAIRMAN: A point of no quorum takes precedence over other motions and other requests for recognition.

The gentlewoman has made a point of order of no quorum.

The Chair will need to count for a quorum.

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman will state it.

MR. DORNAN: Could I please have a parliamentary reading on whether the Chairman sitting in the chair clearly ignored the gentleman from Illinois for minutes before he recognized the gentlewoman?

THE CHAIRMAN: The Chair may not ignore a point of no quorum, under rule XXIII where a quorum has not been previously established during the amendment stage.

Previously, the Chair recognized the distinguished gentleman from Illinois [Mr. Hyde], and the Chair will be pleased to do so again at the appropriate moment.

A Member has made the point that a quorum is not present. Therefore, the Chair must count for a quorum of 100 Members in the Committee of the Whole House.

Evidently a quorum is not present.

Members will record their presence by electronic device.

The call was taken by electronic device.

§ 13. Appeals

The right of appeal from decisions of the Speaker on questions

16. 139 CONG. REC. 14882, 103d Cong. 1st Sess.

17. Philip R. Sharp (Ind.).

of order is provided for by the House rules. In Rule I clause 4, it is provided:

> He [the Speaker] shall . . . decide all questions of order, subject to an appeal by any Member, on which appeal no Member shall speak more than once, unless by permission of the House.

Although amended in 1811, the portion of the rule pertaining to appeals of points of order dates from 1789.[18]

Although appeals from rulings of the Chair on points of order are permissible, such appeals have been infrequent. The only issue presented by an appeal is the propriety of the Chair's ruling under the rules and precedents, and not the merits of the proposition to which the ruling applies.[19] Certain determinations by the Chair are not subject to appeal, such as his discretion in exercising the power of recognition,[20] his count to determine whether a quorum is present,[1] or his count on whether a sufficient number of Members have risen to order the yeas and nays.[2] Members are not recognized to appeal from the Chair's response to a parliamentary inquiry.[3]

Decisions of the Chair on points of order raised in the Committee of the Whole may be appealed, although such are also rare. In such cases the decision of the Chairman is appealed to the Committee.[4] In the House an appeal is not voted on directly if the House agrees to a motion to table the appeal,[5] but the motion to table is not available in the Committee of the Whole.

In General

§ 13.1 The Chair suggested, in response to a parliamentary inquiry, that the question of the constitutionality of a provision in a pending bill was a matter for the House to determine by its vote on the merits of that language, rather than by voting on a possible appeal from the Chair's decision declining to rule upon that constitutional issue.

May 10, 1973,[6] in the Committee of the Whole, Chairman Jack Brooks, of Texas, declined to

18. Rule I clause 4, *House Rules and Manual* § 624 (1997).

19. See §§ 13.1, 13.2, infra.

20. See § 13.11, infra.

1. See § 3.12, infra.

2. See §§ 13.13, 13.14, infra.

3. See § 14.4, infra.

4. See §§ 13.3, 13.6–13.9, infra.

5. See §§ 13.15, 13.16, infra.

6. 119 CONG. REC. 15290, 15291, 93d Cong. 1st Sess. Under consideration was H.R. 7447, supplemental appropriations for fiscal 1973.

rule upon the constitutionality of certain language that Mr. Sidney R. Yates, of Illinois, found objectionable.

MR. YATES: Mr. Chairman, I have a point of order against the language beginning at page 6, line 10 through line 12.

THE CHAIRMAN: The gentleman will state his point of order.

MR. YATES: Mr. Chairman, I make a point of order against the language set forth in lines 10, 11, and 12, on page 6.

Article I, section 8, of the Constitution of the United States says:

> The Congress shall have the power to declare war. . . .

Congress has not declared war against Cambodia or Laos or against any other country in Southeast Asia for that matter. Congress has not given the President any authority to use the American Armed Forces in Cambodia and Laos. Nevertheless, on order of President Nixon, American military planes are bombing in both those countries. The appropriation contained in the transfer authority includes funds to continue the bombing of Cambodia and Laos. . . .

Mr. Chairman, under that rule it is not enough that there be ordinary legislative authority which is required for other appropriations. It is not enough that there be ordinary legislative authority upon which to base an appropriation for American Armed Forces to engage in war.

There must be constitutional authority for that appropriation as well, namely, there must be congressional approval for American forces to engage in a war. Both authorizations are essential for that kind of appropriation. . . .

I am asking the Chair for its ruling on two points. One, I ask the Chair to rule with respect to military appropriations which provide funds for American Armed Forces to engage in war under rule XXI, section 2, of the Rules of Procedure of the House of Representatives, which states there must be, as well as any other legislation authorizing such action, compliance with article I, section 8, of the U.S. Constitution, which requires the approval of the Congress for American Armed Forces to engage in that war; and, secondly, I am asking the Chair to rule that the requirements in article XI, section 8, cannot be waived by any rule of the Committee on Rules. . . .

THE CHAIRMAN: . . . The Chair is not in a position, nor is it proper for the Chair to rule on the constitutionality of the language, or on the constitutionality or other effect of the action of the House in adopting the resolution of the Committee on Rules. In the headnotes in the precedents of the House it very clearly states that it is not the duty of a chairman to construe the Constitution as it may affect proposed legislation, or to interpret the legality or effect of language; and the Chair therefore overrules the point of order raised by the gentleman from Illinois (Mr. Yates).

MR. YATES: Mr. Chairman, I want to make some comments on the ruling of the Chair with the thought that I may appeal from the ruling of the Chair.

THE CHAIRMAN: The Chair has ruled. The gentleman is perfectly within his right to move to strike the last word, and he may proceed.

MR. YATES: The point I make, Mr. Chairman, is that in the ruling that the Chair made on precedents, as I recall that ruling, it also says that while the Chair does not interpret the constitutionality of the provision, it leaves that for the House to decide. Is my memory correct on that?

THE CHAIRMAN: The Chair believes that is correct in that the committee may later vote on the provision.

MR. YATES: Mr. Chairman, while I believe the ruling to be not on the points I made I accept the ruling of the Chair. Let the House vote on the amendment which will be offered.

Purpose of Appeal; Validity of Chair's Ruling

§ 13.2 An appeal from a ruling of the Chair goes only to the propriety of the Chair's ruling—whether he has correctly applied the precedents and rules in making the decision—and the vote thereon should not be interpreted as reflecting the sentiments of the Members as to the merits of the underlying issue.

A decision of the Chair in response to a point of order may impact on an emotional or politically volatile issue, and may determine whether the issue can be debated or voted upon. Some Members have suggested, even attempted, to generate an appeal as a way of putting Members on record. One such occurrence almost surfaced during consideration of the Labor-HHS appropriation bill, fiscal 1992, on June 26, 1991.[7]

PARLIAMENTARY INQUIRY

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE:[8] The gentleman will state his parliamentary inquiry.

MR. DANNEMEYER: Mr. Chairman, if a point of order is raised against the Weber language on parental notification in this bill, and if the Chairman would sustain the point of order, would I be in order at that time to ask for a rollcall vote on that sustaining of that point of order, making parental notification not in order of this bill?

THE CHAIRMAN PRO TEMPORE: Any such ruling of the Chair is subject to an appeal, as the gentleman is aware.

MR. DANNEMEYER: The only way to get the rollcall vote is to appeal the ruling of the Chair?

THE CHAIRMAN PRO TEMPORE: That might depend on the effect of the Chair's ruling.

MR. DANNEMEYER: A further parliamentary inquiry: Is the appeal of a ruling of a Chair interpreted by some in this body as a procedural matter, as distinguished from a substantive matter?

THE CHAIRMAN PRO TEMPORE: An appeal of the Chair's ruling goes only to the propriety of the Chair's ruling under the rules.

MR. DANNEMEYER: Mr. Chairman, I interpret the Chair's remarks to mean

7. 137 CONG. REC. 16436, 102d Cong. 1st Sess.

8. Alan Wheat (Mo.).

it is procedural in nature rather than substantive.

THE CHAIRMAN PRO TEMPORE: It should not be interpreted as a vote on the merits of the issue at hand.

§ 13.3 In response to a parliamentary inquiry, the Chair stated that an appeal was a proper mechanism to contest the Chair's decision on a point of order.

On May 16, 1979,[9] an appeal was taken in the Committee of the Whole from a decision on the germaneness of an amendment made by Chairman E de la Garza, of Texas.

AMENDMENT OFFERED BY MR. KINDNESS

MR. [THOMAS N.] KINDNESS [of Ohio]: Mr. Chairman, I offer an amendment and ask unanimous consent for its immediate consideration.

The Clerk read as follows:

On page 2, following line 2, add the following new sections to the bill:

"SEC. 2. Subsection (c) of section 207 of title 18, United States Code, is hereby repealed.

"SEC. 3. Section 207 of title 18, United States Code is further amended—

(1) in subsection (d) by striking out "(c)" and inserting in lieu thereof "(b)(ii)";

(2) in subsection (e) by striking out "(c)" and inserting in lieu thereof "(b)(ii)";

(3) in subsection (f) by striking out "(a), (b), and (c)" and inserting in lieu thereof "(a) and (b)";

(4) in subsection (i) by striking out "(c)" and inserting in lieu thereof "(b)(ii)";

(5) in subsection (j) by striking out "(a), (b), or (c)" and by inserting in lieu thereof "(a) or (b)"; and

(6) by redesignating subsection (d) through (j) as subsections (c) through (i), respectively. . . .

MR. [GEORGE E.] DANIELSON [of California]: I make a point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from California makes a point of order?

Mr. DANIELSON: Yes, I do.

THE CHAIRMAN: Will the gentleman state his point of order. . . .

THE CHAIRMAN: The Chair will hear the gentleman from California on his point of order.

MR. DANIELSON: Mr. Chairman, the gentleman's amendment would repeal subsection (c) of title 207 of the United States Code. I respectfully submit that it is not germane inasmuch as the bill pending before the committee at this time refers only to subsection (b) of section 207 of the United States Code. It has nothing to do with subsection (c). Therefore, it is beyond the scope of the bill and is not germane.

MR. KINDNESS: Mr. Chairman.

THE CHAIRMAN: The gentleman from Ohio.

MR. KINDNESS: Mr. Chairman, I wish to be heard on the point of order.

THE CHAIRMAN: The gentleman is recognized for that purpose.

MR. KINDNESS: This railroad is running pretty fast. The chairman of the subcommittee has just shown a lack of confidence in this bill. So much so that all we can consider under a very narrowly drawn committee amendment is just a little bit of the section that is in-

9. 125 CONG. REC. 11470–72, 96th Cong. 1st Sess.

volved. The real controversy lies outside of subsection (b). . . .

The previous ruling of the Chair related to the establishment of some other section of law; but this is right in the same section and it is inappropriate to limit the application of this bill to just a portion of the section which is, indeed, a sentence. To limit it to only subsection (b) would not be to even consider the complete sentence.

MR. [CARLOS J.] MOORHEAD of California: Mr. Chairman, I wanted to speak to that point of order. The title of this bill is an act to amend section 207 of title 18, United States Code. That is exactly what this amendment does. It amends section 207 of title 18 of the United States Code. It should be relevant.

MR. KINDNESS: Mr. Chairman, on that point, in connection with the point raised by the gentleman from California (Mr. Moorhead), we must relate the ruling of the Chair on the point of order that has been raised to section 501 of title 18 of the United States Code. There can be no way to relate the ruling to section 501 of title 18 without it being in order and germane to consider everything within that section 501.

THE CHAIRMAN: Is there any other Member who wishes to be heard on the point of order?

The gentleman from Texas (Mr. Eckhardt) is recognized.

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, I speak in opposition to the point of order. As has been said before, both the matter before the House and the amendment relate to section 207. Both address the same question, the precise question, that was addressed by the original bill. This amendment is both germane to the original bill and germane to the committee amendment. . . .

THE CHAIRMAN: Does the gentleman from Missouri (Mr. Volkmer) wish to be heard on the point of order?

MR. [HAROLD L.] VOLKMER [of Missouri]: Briefly, Mr. Chairman, in support of the point of order.

I would just like to note that even though the title itself refers to the full section, the body of the bill relates only to subsection (b) and subsection (d) as originally passed by the Senate and sent over to this body. It does not relate in any way to subsection (c), which is the subject of the amendment and, therefore, I believe the germaneness rule, which I will acknowledge is a narrow interpretation, should be followed here, and that only amendments to those two parts of section 207 would be in order.

MR. KINDNESS: Mr. Chairman, will the gentleman yield on the point of order?

THE CHAIRMAN: The Chair will recognize the gentleman from Ohio (Mr. Kindness).

MR. KINDNESS: Mr. Chairman, will the gentleman tell me where the sentence ends?

In fact, subsections (a), (b), and (c) are not subsections; they are part of one sentence.

THE CHAIRMAN: The Chair is ready to rule.

The Chair can only rule with respect to the legislation which appears before the Committee of the Whole in its present form, and that is S. 869.

By a previous amendment adopted in the committee, the reference to sub-

section (d)(3) has been stricken from the bill. The only other subsection that remains in the bill is subsection (b) of section 207 of title 18 addressing one category of employees. Any mention made of the title to the bill is not considered as a substantive part of the legislation and does not determine the germaneness of an amendment to the test.

Therefore, under the precedents as studied by the Chair, the Chair will sustain the point of order.

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman from Ohio (Mr. Kindness) will state his parliamentary inquiry.

MR. KINDNESS: Mr. Chairman, in order to appeal the ruling of the Chair to the Committee of the Whole, is it in order at this point to move that the question be presented by way of a direct appeal of the ruling of the Chair?

THE CHAIRMAN: The gentleman has the right to appeal.

MR. KINDNESS: Mr. Chairman, I appeal the ruling of the Chair.

THE CHAIRMAN: The question is, Shall the decision of the Chair be sustained?

The question was taken; and the Chairman being in doubt, the Committee divided, and there were, ayes 15, noes 6.

MR. KINDNESS: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that quorum is not present.

THE CHAIRMAN: Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device. . . .

THE CHAIRMAN: Three hundred and forty-nine Members have answered to their name, a quorum is present, and the Committee will resume its business.

Does the gentleman from Ohio (Mr. Kindness) insist upon his request for a recorded vote?

MR. KINDNESS: Mr. Chairman, I ask unanimous consent to withdraw the request for a recorded vote on appealing the ruling of the Chair.

THE CHAIRMAN: The gentleman can withdraw his request without unanimous consent.

The Chair Does Not Rule on Questions of Constitutionality

§ 13.4 The Chair does not rule on the constitutionality of the rules adopted by the House of Representatives.

Rule XV clause 6(e), which prohibits the Speaker from entertaining a point of no quorum unless the pending motion or proposition has been put to a vote, was included as part of H. Res. 5, which was considered and adopted on Jan. 4, 1977.[10] On several occasions during the first session of the 95th Congress, Members sought to challenge that new rule by various parliamentary means.

10. 123 CONG. REC. 53–70, 95th Cong. 1st Sess.

Two such challenges are shown in this and the following section. The first example is from the proceedings of Sept. 8, 1977.[11]

THE SPEAKER PRO TEMPORE:[12] The gentleman from Texas (Mr. Mahon) is recognized for 30 minutes, and the gentleman from Alabama (Mr. Edwards) is recognized for 30 minutes. . . .

The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

> Senate amendment No. 41: Page 25, line 12, strike out "$7,417,705,–000" and insert "$6,111,600,000".

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Mahon moves that the House recede from its disagreement to the amendment of the Senate numbered 41 and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment insert: "$7,693,400,000". . . .

MR. [JACK] EDWARDS of Alabama: Mr. Speaker, I yield myself such time as I may consume.

MR. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Speaker, I make the point of order a quorum is not present.

THE SPEAKER PRO TEMPORE: That point of order is not in order in the House at this time.

The gentleman from Alabama is recognized.

Mr. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, the Constitution of the United States requires that a quorum be present at all times to conduct business in the House of Representatives. We are sitting in the House and at this time there is a pending motion on an appropriations conference report being debated, and I can count. Obviously there are not 218 Members present. We have no quorum. I make a point of order that under the Constitution, article I, section 5, the House cannot continue to conduct its business in this way without a quorum and I move a call of the House.

THE SPEAKER PRO TEMPORE: The Chair has discretion to entertain a motion for a call of the House but he cannot entertain a point of order at this time.

MR. BAUMAN: A parliamentary inquiry. Under what authority does the Chair not entertain a point of no quorum when a quorum is not present?

MR. [JOHN] BRADEMAS [of Indiana]: Mr. Chairman, I move a call of the House.

THE SPEAKER PRO TEMPORE: The gentleman from Indiana moves a call of the House.

Under rule XV clause 6(e) the Chair cannot entertain a point of no quorum at this time.

MR. BAUMAN: A parliamentary inquiry. Does rule XV allow discretion in the Chair whether or not a point of no quorum will be permitted? There is not a quorum present.

THE SPEAKER PRO TEMPORE: The only discretion the Chair would have under clause 6(e)(2) of rule XV is whether to entertain a motion for a

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11. 123 CONG. REC. 28114, 28122–24, 95th Cong. 1st Sess.

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

call of the House. The Chair has entertained such a motion.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond: . . .

THE SPEAKER PRO TEMPORE: On this rollcall 353 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

The Chair wishes to clarify the point which was raised by the gentleman from Maryland (Mr. Bauman) prior to the quorum call, and since the gentleman is perhaps much more familiar with the rules than is the Chair, the Chair wishes to quote clause 6 of rule XV which deals with quorum calls in the House. The provision of the rules which the Chair wishes to cite is specifically clause 6(e)(1), which reads as follows:

> Except as provided by subparagraph (2), it shall not be in order to make or entertain a point of order that a quorum is not present unless the Speaker has put the pending motion or proposition to a vote.

In this instance the Speaker pro tempore had not put the pending motion or proposition to a vote to make it possible for a quorum call to qualify under the rules. It is, of course, imperative that the Chair follow the rules in a matter of this sort.

This point has been further stressed by Speaker O'Neill when the matter has been brought up on previous occasions.

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

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

MR. BAUMAN: Mr. Speaker, not that I wish to belabor the point, but the Constitution of the United States, article I, section 5, requires that at all times a majority of the House be present for the conduct of business. The point that I made prior to the quorum call was that there was not a majority of the House present, and in the absence of a majority, any business that would be conducted would not be legally or constitutionally conducted, the rules of the House notwithstanding.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Bauman) is perhaps more familiar with the Constitution than is the Chair, who is not in a position to rule upon the constitutionality of the rule, but the new rule does not anticipate, according to the understanding of the Chair, that the mere conduct of debate would constitute business in the sense as contemplated by the Constitution, and the rule does provide that a point of order is in order if a question has been put to a vote.

Appeal Does Not Lie

§ 13.5 The Speaker's refusal to entertain a point of order of no quorum when there is no pending question being put to a vote is not subject to an appeal, since Rule XV clause 6(e) states an absolute prohi-

bition against the Chair's entertaining such a point of order and to allow an appeal would permit a direct change in that rule.

The Speaker Pro Tempore, Ms. Barbara Jordan, of Texas, refused to entertain an appeal in this case since the rule involved leaves no discretionary interpretation to the Chair. The proceedings of Sept. 16, 1977,[13] are shown below.

MR. [J. WILLIAM] Stanton [of Ohio]: Madam Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. Wylie), a very distinguished and important member of our committee.

MR. [JOHN M.] ASHBROOK [of Ohio]: Madam Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman from Ohio (Mr. Ashbrook) that the point of order is not in order at this time under rule XV, clause 6(e).

MR. ASHBROOK: Madam Speaker, I appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman that is not an appealable ruling. The rule contains an absolute prohibition against a Member making or the Chair entertaining such a point of order at this time, leaving no interpretive authority in the Chair and no authority to recognize for such a point of order. The rule itself, and not the ruling of the Chair, governs in this situation. To permit an appeal would be tantamount to permitting a direct change in the rule itself.

Appeal in Committee of the Whole—Chair Sustained

§ 13.6 The Chair's ruling on a point of order in the Committee of the Whole was sustained on appeal by division vote of the Committee.

On Mar. 31, 1937,[14] arguing that a point of order against his amendment had been raised too late, Mr. Ross A. Collins, of Mississippi, appealed a ruling of Chairman Scott W. Lucas, of Illinois. To Mr. Collins' proposed amendment, Mr. Lindsay C. Warren, of North Carolina, had raised a point of order that it was legislation in an appropriation bill and, hence, out of order. To this Mr. Collins responded that it was too late because he had already been recognized in debate, although it was disputed as whether he had actually said anything or not. Chairman Lucas ruled that Mr. Warren could raise his point of order because he had shown due diligence in seeking recognition. Further, the Chairman upheld the point of order against

13. 123 CONG. REC. 29594, 95th Cong. 1st Sess.

14. 81 CONG. REC. 2980, 2981, 75th Cong. 1st Sess. Under consideration was H.R. 5966, an appropriation bill for the legislative branch for fiscal 1938.

the amendment. Thereupon, Mr. Collins made the following unsuccessful appeal of the Chairman's ruling:

THE CHAIRMAN: The Chair is ready to rule on the point of order made by the gentleman from North Carolina. In the opinion of the Chair, there is no authorization under the law for the additional clerks as is proposed by the amendment offered by the gentleman from Mississippi [Mr. Collins]. Obviously, it is an attempt to pass legislation upon an appropriation bill. The Chair sustains the point of order made by the gentleman from North Carolina [Mr. Warren].

MR. COLLINS: Mr. Chairman, I appeal from the ruling of the Chair.

THE CHAIRMAN: The question is, Shall the decision of the Chair stand as the judgment of the Committee?

The question was taken; and on a division (demanded by Mr. Snell) there were ayes 72 and noes 23.

So the decision of the Chair stood as the judgment of the Committee.

§ 13.7 On appeal, the Chair's ruling on a question of germaneness was upheld on a voice vote.

During consideration of the Justice System Improvement Act, 1979, an appeal was taken by Mr. John M. Ashbrook, of Ohio, from a decision by the Chair that Mr. Ashbrook's second degree amendment was not germane. The proceedings of Oct. 12, 1979,[15] were as follows:

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Volkmer: Page 164, lines 24 and 25, amend the bill by adding the following after the word "project," "including photographic equipment, and fingerprint equipment, for law enforcement purposes.".

MR. ASHBROOK: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Ashbrook to the amendment offered by Mr. Volkmer: Insert after the word "including" "bulletproof vests.".

THE CHAIRMAN:[16] Does the gentleman from New York insist on his point of order?

MR. [PETER A.] PEYSER [of New York]: Mr. Chairman, I do.

Mr. Chairman, I do this to my friend from Ohio because my concern is exactly the same as his, which is to guarantee that we do include in this bill the availability of bulletproof vests, because it is a whole different subject. I raise the point that it is not germane to this particular equipment that is being discussed at this time. When we previously discussed this with the Parliamentarian the point was made that it could not be amended on the other side by having the bulletproof vest amendment amended by adding cameras and other equipment. It is not a germane fact to this issue and the type of equipment we are dealing with and discussing, and for that reason it should be ruled out of order.

15. 125 CONG. REC. 28123, 28124, 96th Cong. 1st Sess.

16. Mike McCormack (Wash.).

I will say that it is my intention, to the gentleman from Ohio, to offer this amendment as I did the other day, offer the exact same amendment. I intend to offer it today as soon as this discussion is finished.

Does the gentleman from Ohio wish to be heard on the point of order?

MR. ASHBROOK: Mr. Chairman, I would merely say in response that I do not believe my colleague from New York has stated adequate grounds on the point of order. I think the proposition he propounded, the question placed to the Parliamentarian was on the Volkmer amendment when we were in an entirely different position the other day and we have already opened up two categories. It seems to me this comes within the general description of the type of police gear, type of police paraphernalia, electronic devices that could be used, and I would think the point of order should be overruled.

THE CHAIRMAN: Does the gentleman from Missouri wish to speak on the point of order?

MR. VOLKMER: Yes, Mr. Chairman, I would like to speak on the point of order. As to the question of germaneness, as I understand it my amendment says, "including photographic equipment, fingerprint equipment," and then the words "for law enforcement purposes."

Therefore, in my opinion anything that would be in there for law enforcement purposes would be germane. In other words, if somebody would offer an amendment for pistols, or offer an amendment for bullets, or offer an amendment for police caps or cars or anything else for law enforcement purposes, it is germane. This is not restricted just to a certain type of equipment. We have photographic equipment and fingerprint equipment. They are not related at all. Bulletproof vests are for law enforcement purposes.

THE CHAIRMAN: The Chair is prepared to rule.

The question really comes down to how to define and segregate categories of law enforcement equipment. The Chair is persuaded that the term, "photographic equipment and fingerprint equipment" is a generic category that deals with information rather than protection of law enforcement officers.

Bulletproof vests are within the different category of equipment for the protection of law enforcement officers. The Chair recognizes that this is a fine line, but rules that under the precedents the amendment is not germane to the pending amendment and the point of order is sustained.

MR. ASHBROOK: Mr. Chairman, is the point of order upheld?

THE CHAIRMAN: Yes.

MR. ASHBROOK: Mr. Chairman, I appeal the ruling of the Chair.

THE CHAIRMAN: The question is, Shall the Chair's ruling stand as the judgment of the Committee?

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

MR. ASHBROOK: MR. CHAIRMAN, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Evidently a quorum is not present.

Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces

that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: Three hundred and twelve Members have answered to their names, a quorum is present, and the Committee will resume its business.

The pending business is the demand of the gentleman from Ohio (Mr. Ashbrook) for a recorded vote appealing the decision of the Chair.

Does the gentleman from Ohio (Mr. Ashbrook) insist upon his demand for a recorded vote?

MR. ASHBROOK: I do not, Mr. Chairman.

Appeal in Committee of the Whole—Chair Overruled

§ 13.8 Where a ruling on a point of order by the Chairman of the Committee of the Whole was appealed and voted upon, the Chair's ruling was overturned.

In a rare instance in which a ruling by the Chairman was appealed, on Feb. 1, 1938,[17] the Committee of the Whole voted to overrule the decision of the Chairman, William J. Driver, of Arkansas. The situation occurred following the offering of an amendment by Mr. Ross A. Collins, of Mississippi, to which Mr. Jack Nichols, of Oklahoma, raised a point of order after Mr. Collins had spoken only a few words on the amendment. Mr. Collins then made the point of order, which the Chair sustained, that the point of order raised by Mr. Nichols came too late, as Mr. Collins had already begun his remarks.

MR. COLLINS: Mr. Chairman, the language that is incorporated in the amendment—

MR. NICHOLS: MR. CHAIRMAN, I MAKE A POINT OF ORDER AGAINST THE AMENDMENT.

MR. COLLINS: Eliminates the language against which the gentleman made the point of order.

Mr. Chairman, I make the point of order that the gentleman's point of order comes too late.

It was disputed whether Mr. Collins had been recognized at the time he commenced his remarks, although the Chair maintained that he had been recognized. In any event, those supporting Mr. Nichols' position argued that he had had no opportunity to make his point of order. The following then took place:

MR. NICHOLS: If the Chair has made a final ruling, I would, in the most re-

17. 83 CONG. REC. 1372, 1373, 75th Cong. 3d Sess. Under consideration was H.R. 9181, a District of Columbia appropriation bill for 1939.

spectful manner I know, request an appeal from the decision of the Chair.

THE CHAIRMAN: The gentleman from Oklahoma appeals from the decision of the Chair on the ruling of the Chair on the point of order, as stated.

The question before the Committee is, Shall the ruling of the Chair stand as the judgment of the Committee?

The question was taken, and the Chair announced that the noes had it.

So the decision of the Chair does not stand as the judgment of the Committee.

Form of Question When Decision Is Appealed

§ 13.9 Where a decision of the Chair ruling an amendment out of order is appealed, the question is put: "Shall the decision of the Chair stand as the judgment of the Committee" and if the Chair's ruling is not sustained, the amendment would be debated under the five-minute rule.

On Aug. 1, 1989,[18] when an appeal was taken from a ruling of the Chairman of the Committee of the Whole, Mr. George E. Brown, Jr., of California, the Majority Leader directed several inquiries to the Chair to inform Members of the consequences of such an appeal.

AMENDMENT OFFERED BY MR. RIDGE

MR. [THOMAS J.] RIDGE [of Penn-sylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Ridge: Page 20, after line 3, insert the following:
>
> SEC. 604. No part of any appropriation contained in title I shall knowingly be used to enumerate any undocumented alien in the 1990 decennial census.

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

THE CHAIRMAN: . . . The gentleman from Iowa (Mr. Smith) makes a point of order that the amendment violates clause 2 of rule XXI by legislating on a general appropriations bill. The amendment offered by the gentleman from Pennsylvania (Mr. Ridge) is in the form of a limitation on funds in the bill and, by its use of the modifier, "knowingly," refrains from requiring any affirmative investigation or determination on the part of government officials.

However, the amendment requires the exclusion from the census of population persons having a certain known status who under current law are not required to be excluded. Article I, section 2 of the Constitution and the 14th amendment require a decennial census of the whole number of persons in each State, excluding Indians not taxed.

To fulfill the constitutional mandate, section 141(a) of title 13 of the United States Code directs the Secretary of

18. 135 CONG. REC. 17154–56, 101st Cong. 1st Sess.

Commerce to make a census of the population. The statute authorizes the Secretary to determine the form and content of the census. Although subject to judicial review, the Secretary's sole discretion under the statute has been described by the court as broad.

The amendment would impinge upon the discretion of the Secretary of Commerce by requiring him to exclude from the census of population persons having a certain status should he know that status. Under the statute, however, the Secretary's discretion is not so bounded. He is not required to exclude persons having that status. An amendment to a general appropriation bill that subjects the discretion of a government official to a limit not contained in existing law is legislation in violation of clause 2 of rule XXI.

In volume 8 of Deschler's precedents, at section 64, the following test is set forth as one of the fundamental tests of the propriety of a proposed limitation; and I quote:

> Does the limitation curtail or extend, modify or alter, existing powers or duties, or terminate old or confirm new ones? If it does, then it must be conceded that legislation is involved, for without legislation these results could not be accomplished.

It is the opinion of the Chair that the amendment in this case must involve legislation, and, accordingly, the Chair sustains the point of order.

MR. RIDGE: Mr. Chairman, I respectfully appeal the ruling of the Chair and ask for a recorded vote.

PARLIAMENTARY INQUIRY

MR. [RICHARD A.] GEPHARDT [of Missouri]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. GEPHARDT: Would the Chair state for us the effect of the appealing and ruling of the Chair?

THE CHAIRMAN: The Chair was about to state the question.

The question is: Shall the decision of the Chair stand as the judgment of the Committee? An aye vote would support the Chair's ruling. A no vote would not.

MR. [WILLIAM H.] GRAY [III, of Pennsylvania]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. GRAY: The question that I have, Mr. Chairman, is, if the Chair's ruling is not sustained, what would be the parliamentary situation at that time?

THE CHAIRMAN: At that point, if the decision of the Chair is not sustained, the amendment would be debatable on the merits under the 5-minute rule in the normal course of procedure.

The Chair then put the question and, on a recorded vote, the decision of the Chair was sustained.

Withdrawal of an Appeal

§ 13.10 An appeal was taken from a decision of the Speaker and then withdrawn, before the question was put on a motion to lay the appeal on the table.

In recent years appeals from rulings of the Chair on points of order have been tabled in the House more often than they have

been voted upon. Thus, Nov. 28, 1967,[19] Mr. Paul C. Jones, of Missouri, opposed a Senate amendment to a House bill, stating:

> As the other body has done so many times in the past, they have taken a bill of no great merit and of interest probably to only one Member of Congress, and have attached to that bill an amendment which would affect practically every Member of Congress and each one of the 200 million inhabitants of the United States. They have tried by subterfuge to obtain the passage of a bill in the form of an amendment which they cannot pass directly.[20]

Mr. Jones raised a point of order against the amendment "to restore comity and equality" between the Houses:

> THE SPEAKER PRO TEMPORE:[1] The Chair will recognize the gentleman to make his point of order.
>
> MR. JONES of Missouri: I will make the point of order now.
>
> THE SPEAKER PRO TEMPORE: The gentleman will state his point of order. . . .
>
> MR. JONES of Missouri: I am making the point of order on the basis of the rule of equity. I am making the point of order on the basis of what the distinguished Speaker of the House of Representatives has said on many occasions, that these two bodies are equal. I am making the point of order to restore comity and equality. As everyone in the House knows, if I were a lawyer, I would not be up here trying to make this point today.

After Speaker John W. McCormack, of Massachusetts, overruled the point of order, Mr. Jones appealed the ruling, but when Mr. Price moved to table the appeal, Mr. Jones withdrew it:

> THE SPEAKER: The Chair is prepared to rule. The Chair has given serious consideration to the point of order raised by the gentleman from Missouri. The Committee on Rules has reported out a special rule. It is within the authority of the rules, and a reporting out by the Rules Committee is consistent with the rules of the House. Therefore, the Chair overrules the point of order.
>
> MR. JONES of Missouri: Mr. Speaker, I know this has never been done, but I am going to appeal from the rule of the Chair and ask for a rollcall.
>
> MR. PRICE of Illinois: Mr. Speaker, I move to lay on the table the appeal of the gentleman.
>
> MR. JONES of Missouri: Mr. Speaker, I withdraw my request, but it is still within my heart.
>
> THE SPEAKER: The gentleman from Missouri withdraws his request.

Where Appeal Is Not Entertained

§ 13.11 Under clause 2 of Rule XIV, recognition is wholly

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19. 113 CONG. REC. 34032, 90th Cong. 1st Sess. Under consideration was H. Res. 985, providing for concurring in Senate amendments to H.R. 2275, an act to provide for the relief of Dr. R. V. Samala, with Senate amendments relating to congressional redistricting.

20. *Id.* at p. 34033.

1. Charles M. Price (Ill.).

within the discretion of the Chair, who may decline to recognize a Member to propound a unanimous-consent request relating to an order of business, and such a decision of the Chair on recognition is not subject to appeal.

On Feb. 27, 1992,[2] Speaker Pro Tempore Michael R. McNulty, of New York, had recognized the chairman of the Committee on Rules to discuss the agenda of that committee and the floor schedule which might result from actions taken by the committee. Mr. James A. Traficant, Jr., of Ohio, attempted to propound a unanimous-consent request to alter the House schedule. The proceedings which followed are carried here.

MR. [JOE] MOAKLEY [of Massachusetts]: I rise to notify members about the Rules Committee's plans for two measures: The budget resolution for fiscal year 1993 and H.R. 3732, the Budget Process Reform Act of 1991. . . .

I take this opportunity to advise Members who wish to offer an amendment to either the budget resolution or to H.R. 3732, the Budget Process Reform Act. . . .

I have just been informed that the budget will be available at the committee offices tomorrow.

MR. TRAFICANT: Mr. Speaker, will the chairman yield to me?

MR. MOAKLEY: I am glad to yield to the gentleman from Ohio.

MR. TRAFICANT: Mr. Speaker, I want to rise in support of what was just stated on the floor. I think that every Member of this body should have at least 7 days to read thoroughly and to understand the budget of our country.

I think this. I do not know if it is in order, but I would like to ask unanimous consent that there be at least 1 week's availability for all Members of this House to read the budget before action for amendments or pending rules be considered.

Mr. Speaker, I put that in the form of a unanimous-consent request.

THE SPEAKER PRO TEMPORE: The gentleman's request is not in order. . . .

REQUEST THAT MEMBERS BE GIVEN 1 WEEK TO READ BUDGET PROPOSAL

THE SPEAKER PRO TEMPORE: For what reason does the gentleman from Ohio rise?

MR. TRAFICANT: Mr. Speaker, I rise for the purpose of offering a unanimous-consent request to the Congress.

Mr. Speaker, I ask unanimous consent that all Members be given 1 week to read next year's budget proposal from the Budget Committee and that no rule be recommended or considered until that 1-week reading opportunity is granted to all Members of the House.

MR. [JAMES H.] BILBRAY [of Nevada]: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: The Chair has the power of recognition and the Chair declines to recognize the

2. 138 CONG. REC. 3655, 3656, 102d Cong. 2d Sess.

gentleman for that purpose and the gentleman cannot challenge that denial.

POINT OF ORDER

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

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

MR. TRAFICANT: Mr. Speaker, I would like to know under what rule of the House such action by the Chair is taken.

THE SPEAKER PRO TEMPORE: Clause 2, rule XIV.

§ 13.12 An appeal does not lie to the Chair's count determining that a quorum is present.

Where a vote first taken by a division is objected to on the ground that a quorum is not present, and the Chair counts the House and announces that a quorum is in fact present, that count is not subject to challenge by appeal. A demand for the yeas and nays, if supported by one-fifth of those present, would produce an accurate vote and count of those present. The events of Aug. 3, 1977,[3] preceding and during consideration in the House of a conference report on the Foreign Relations Authorization Act of 1978, where the Chair was faced with a parliamentary inquiry, illustrate the point of the headnote.

MR. [WILLIAM A.] STEIGER [of Wisconsin]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

> Mr. Steiger moves, pursuant to section 152(d)(3) of the Trade Act of 1974, to postpone indefinitely the motion that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of House Resolution 653.

THE SPEAKER PRO TEMPORE:[4] The question is on the preferential motion offered by the gentleman from Wisconsin (Mr. Steiger).

The question was taken; and on a division (demanded by Mr. Ashbrook) there were—ayes 149, noes 33.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will count.

Two hundred and twenty-four Members are present, a quorum.

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

The yeas and nays were refused.

So the preferential motion was agreed to.

A motion to reconsider was laid on the table. . . .

CONFERENCE REPORT ON H.R. 6689, FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1978

MR. [DANTE B.] FASCELL [of Florida]: Mr. Speaker, I call up the conference

3. 123 CONG. REC. 26528, 26532, 95th Cong. 1st Sess.

4. Dan Rostenkowski (Ill.).

report on the bill (H.R. 6689) to authorize fiscal year 1978 appropriations for the Department of State, the U.S. Information Agency, and the Board for International Broadcasting, to make certain changes in the Foreign Service personnel system, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

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

MR. ASHBROOK: Reserving the right to object, I believe the 224 Members who are present want to hear this.

Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will read the conference report.

(The Clerk commenced reading the conference report).

MR. [JOHN] BUCHANAN [of Alabama] (during the reading): Mr. Speaker, I ask unanimous consent that further reading of the conference report be dispensed with.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Alabama?

MR. ASHBROOK: Mr. Speaker, reserving the right to object, I would like to propound a parliamentary inquiry of the Chair. It is my understanding under the rules there is no appealing a ruling of the Chair that can be made as to those present. Am I correct?

THE SPEAKER PRO TEMPORE: The gentleman is asking about an appeal to the count of the Chair?

MR. ASHBROOK: An appeal to the count of the Chair cannot be taken?

THE SPEAKER PRO TEMPORE: That is correct.

MR. ASHBROOK: Further reserving the right, then, to object, all that the Members can rely on for the count of the Chair is the integrity of the Chair and the capacity of the Chair to make a correct count.

THE SPEAKER PRO TEMPORE: The gentleman can ask for the yeas and nays.

MR. ASHBROOK: I would like to do that later if I could be assured we probably could get that count.

But having made that point, I withdraw my reservation of objection.

MR. BUCHANAN: I thank the gentleman.

§ 13.13 The Speaker's count of the House to determine whether one-fifth of those present have seconded a demand for the yeas and nays is not subject to appeal.

On Sept. 12, 1978,[5] the Speaker Pro Tempore put the question on a motion to suspend the rules and pass the Miscellaneous Revenue Act of 1978 (H.R. 12578). On a voice vote, the Chair announced that two-thirds had voted in favor of the motion. The yeas and nays were then requested. Proceedings were as indicated.

THE SPEAKER PRO TEMPORE:[6] The question is on the motion offered by

5. 124 CONG. REC. 28949, 28950, 95th Cong. 2d Sess.

6. B. F. Sisk (Calif.).

the gentleman from Oregon (Mr. Ullman) that the House suspend the rules and pass the bill H.R. 12578, as amended.

The question was taken.

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, two-thirds have voted in the affirmative.

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

THE SPEAKER PRO TEMPORE: The gentleman from Missouri (Mr. Volkmer) demands the yeas and nays. All those in favor of taking this vote by the yeas and nays will rise and remain standing until counted.

Not a sufficient number have risen.

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

Is the requirement one-fifth of the Members present?

THE SPEAKER PRO TEMPORE: Yes. The Chair will state that the requirement is that one-fifth of the Members present be standing for the yeas and nays, and there is not one-fifth of the Members standing.

MR. VOLKMER: Mr. Speaker, I count four Members standing.

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, an insufficient number have arisen.

The Chair will be glad to count, if the gentleman desires.

MR. VOLKMER: Would the Chair count, please? I believe there are only 25 Members here.

THE SPEAKER PRO TEMPORE: The Chair will count. Thirty Members are present.

Two-thirds having voted in the affirmative, the rules are suspended and the bill, as amended, is passed, and without objection, a motion to reconsider is laid on the table.

There was no objection.

MR. [JOHN F.] SEIBERLING [of Ohio]: Mr. Speaker, is it in order to appeal the ruling of the Chair on the last vote?

THE SPEAKER PRO TEMPORE: The Chair will state to the gentleman that no appeal lies on the count of the Chair.

§ 13.14 No appeal lies against the count of the Chair of the number of Members supporting or seconding a procedural request.

During the 95th through the 102d Congresses, standing committees of the House were not permitted to sit when the House was reading a bill under the five-minute rule unless they were granted permission to do so by the House. Such permission was considered granted when the permission was sought on the floor unless ten or more Members indicated objection. The Chair would state the permission sought and ask "Is there objection?". If ten or more Members then stood, permission of the House was denied.

The following proceedings of Sept. 12, 1978,[7] demonstrate the practice.

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7. 124 CONG. REC. 28983, 28984, 95th Cong. 2d Sess.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO MEET TOMORROW AND THURSDAY DURING FIVE-MINUTE RULE

MR. GEORGE E.] DANIELSON [of California]: Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may meet tomorrow and Thursday, September 13 and 14, 1978, notwithstanding the 5-minute rule.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from California? . . .

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, further reserving the right to object, it is my understanding that the civil service reform bill will be up tomorrow morning. That was the order of the business as I understood it at about midnight last night when we left here on Monday. I have the greatest admiration for my hardworking friend and colleague, the gentleman from Illinois (Mr. McClory), but if that bill is going to come up tomorrow, I am constrained to object and I do object.

THE SPEAKER PRO TEMPORE: The Chair will state that it takes 10 Members to object, and the objectors will have to remain standing until counted.

An insufficient number have arisen.

Therefore, the request is granted.

MR. ASHBROOK: Mr. Speaker, I appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The Chair will state that no appeal is in order in a matter of this kind.

Appeal Tabled

§ 13.15 An appeal was taken from the decision of the Chair and that appeal, on motion, was laid on the table.

On July 7, 1971,[8] Ms. Bella Abzug, of New York, moved to discharge a resolution of inquiry from the Committee on Armed Services. A point of order was raised against the motion on the ground that the resolution of inquiry called for opinions, not factual information, relative to the Vietnam war and was therefore not privileged under Rule XXII clause 5. The Speaker's ruling that the motion was not in order was appealed by Ms. Abzug.[9]

MR. [F. EDWARD] HÉBERT [of Louisiana]: Mr. Speaker, I make the point of order that the resolution is not privileged under the rules.

THE SPEAKER:[10] Does the gentleman insist on his point of order?

MR. HÉBERT: Mr. Speaker, I reserve the point of order in order to give the gentlewoman from New York an opportunity to speak to the point of order.

THE SPEAKER: The gentleman from Louisiana reserves the point of order.

Does the gentlewoman from New York desire to be heard?

MS. ABZUG: Yes, Mr. Speaker. . . .

After hearing arguments on the points of order in support of the

8. 117 CONG. REC. 23810, 23811, 92d Cong. 1st Sess. Under consideration was H. Res. 491, directing the Secretaries of State and Defense and the Director of the CIA to furnish a report on U.S. military involvement in Southeast Asia.

9. For further discussion of resolutions of inquiry, see Ch. 13, supra.

10. Carl Albert (Okla.).

respective positions, Speaker Albert ruled.

THE SPEAKER: The Chair is prepared to rule.

The gentlewoman from New York has moved to discharge the Committee on Armed Services from further consideration of the resolution, House Resolution 491. The gentlewoman has furnished the Chair a copy of the resolution, and the Chair appreciates that fact, since it gives an opportunity to the Chair to examine the resolution prior to ruling on the point of order.

The resolution under consideration has not been reported by the committee to which it has been referred.

Clause 5 of Rule XXII provides that:

> All resolutions of inquiry addressed to the heads of executive departments shall be reported to the House within one week after presentation.

The gentleman from Louisiana makes a point of order against the motion to discharge on the ground that the resolution is not privileged under the rule because it calls for opinions in addition to factual information.

It has been consistently held that to retain the privilege under the rule, resolutions of inquiry must call for facts rather than opinions—Cannon's Precedents, volume VI page 413 and pages 418 to 432. Speaker Longworth, on February 11, 1926, held that a resolution inquiring for such facts as would inevitably require the statement of an opinion to answer such inquiry was not privileged—Record, page 3805.

Among other requests, House Resolution 491 calls for the furnishing of one, the "rationale" for U.S. involvement in South Vietnam since the completion of the study; two, the nature and "capacity" of the Government of the Republic of Vietnam, including "analyses" of their military "capabilities"; their capacity for self-sufficiency which would include analyses of the Government's political base, the scope of malfunction and corruption, the depth of popular support; and three, analyses of U.S. involvement in 1971 elections in South Vietnam.

In at least these particulars, executive officials are called upon—not for facts—but to furnish conclusions, which must be, essentially, statements of opinion.

The Chair therefore holds that House Resolution 491 is not a privileged resolution within the meaning of clause 5, rule XXII, and that the motion to discharge the Committee on Armed Services from its further consideration is not in order.

MS. ABZUG: Mr. Speaker, I appeal from the ruling of the Chair.

MR. [HALE] BOGGS [of Louisiana]: Mr. Speaker, I move to lay that appeal on the table.

THE SPEAKER: The question is on the motion offered by the gentleman from Louisiana.

The question was taken; and the Speaker announced that the ayes had it.

So the decision of the Chair stands.

Motion To Reconsider Tabling of Appeal

§ 13.16 The House has tabled a motion to reconsider the vote whereby an appeal from a decision of the Chair was laid on the table.

On Oct. 8, 1968,[11] the reading of the Journal was interrupted by numerous points of order of no quorum. A motion was made by Mr. Brock Adams, of Washington, and adopted by the House, that absent Members be sent for and thereafter detained until the disposition of the pending business of the day. This motion provoked some Members to express concern about their personal liberty and rights. In this context, Mr. Robert Taft, Jr., of Ohio, attempted to interrupt the reading of the Journal with what he contended was a question of privilege, but which Speaker John W. McCormack, of Massachusetts, determined not to properly raise a question of privilege of the House in the form and manner argued, and consequently not in order at that time. From this ruling, Mr. Taft appealed. Mr. Carl Albert, of Oklahoma, moved the appeal be laid on the table which motion was successful. Mr. Craig Hosmer, of California, then moved to reconsider the vote on the motion to table.

MR. HOSMER: Mr. Speaker, I move to reconsider the vote on the motion to lay the appeal from the Chair on the table.

MR. ALBERT: Mr. Speaker, I move that the motion be laid on the table.

THE SPEAKER: The gentleman from California moves to reconsider the vote on the motion to lay the appeal from the decision of the Chair on the table, and the gentleman from Oklahoma moves that that motion be laid on the table.

MR. HOSMER: Mr. Speaker, I make a point of order against the motion of the gentleman from Oklahoma to lay my motion on the table because that motion does not lie.

THE SPEAKER: The Chair will state that a motion to lay on the table, on a motion to reconsider, is a recognized motion.

The question is on the motion to lay on the table.

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

The yeas and nays were ordered. . . .

So the motion to lay on the table was agreed to.

§ 14. In General

Parliamentary inquiries are in the nature of procedural questions of the Chair, relating to the pending order of business. Compared to points of order, the raising of a parliamentary inquiry is a relatively informal procedure. In contrast to points of order, no appeal will lie from the Chair's response to a parliamentary inquiry.[1] It is

11. 114 CONG. REC. 30214–16, 90th Cong. 2d Sess. [Calendar Day of Oct. 9, 1968].

1. See § 14.4, infra. See also 5 Hinds' Precedents §§ 6955, 8 Cannon's Precdents §§ 3457.

within the discretion of the Chair whether to recognize Members for the purpose of propounding parliamentary inquiries.[2] Like points of order, however, parliamentary inquiries are properly submitted only to the Chair.[3] And where an inquiry is directed to House procedure, the Chairman of the Committee of the Whole may suggest that the inquiry be addressed to the Speaker when he is presiding.[4] Similarly, the Speaker may defer an inquiry properly within the cognizance of the Member presiding over the Committee of the Whole.[5] Where both an inquiry and a point of order are directed to the Chair, the point of order, if timely, takes precedence.[6]

Examples of subjects deemed suitable for parliamentary inquiries include the anticipated order of business,[7] the status of the Clerk's progress in reading a document which is before the House,[8] the proper or accepted interpretation of a rule,[9] the order in which amendments should be offered,[10] and the like. Subjects that may not be raised by way of a parliamentary inquiry include hypothetical questions,[11] a request for an advisory opinion,[12] the effect of a vote about to be taken,[13] the future exercise of the Chair's power of recognition,[14] and the construction or meaning of language in a bill[15] or in an amendment.[16] The Chair may defer his response to a parliamentary inquiry until he has time to research the applicable precedents.[17] It is an improper use of a parliamentary inquiry to secure recognition for the limited purpose of making an inquiry, and then attempting to offer an amendment,[18] or to debate the merits of a pending proposition.

Discretion of Chair

§ 14.1 Recognition of Members for the purpose of propounding parliamentary in-

2. See §§ 14.1, 14.2, 14.5, infra. See also 6 Cannon's Precedents §§ 541.
3. See § 14.14, infra.
4. See §§ 14.39, 14.43, infra.
5. See §§ 14.40, 14.41, infra.
6. See § 14.3, infra.
7. See § 14.7, infra.
8. See § 14.12, infra.
9. See §§ 14.6, 14.8, 14.44, infra.
10. See § 14.10, infra.
11. See §§ 14.16, 14.17, infra. See also Ch. 5, supra.
12. See §§ 14.19, 14.33, infra.
13. See § 14.20, infra.
14. See § 14.42, infra.
15. See § 14.18, infra.
16. See §§ 14.18, 14.22, 14.35, infra, and 6 Cannon's Precedents § 254.
17. See §§ 14.24–14.28, infra.
18. See § 14.38, infra.

quiries is within the discretion of the Chair.

On Sept. 11, 1968,[19] numerous parliamentary inquiries were posed to Speaker John W. McCormack, of Massachusetts, who responded as follows:

MR. [L. MENDEL] RIVERS [of South Carolina]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RIVERS: Mr. Speaker, as long as these delaying tactics are observed, is this preventing the military appropriation bill from being considered—to take care of our fighting men?

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, a further parliamentary inquiry.

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

MR. HALL: Mr. Speaker, is the conference report agreed to on the Speaker's desk, as agreed to by the other body?

THE SPEAKER: The Chair, in reply, will say that it has been returned from the Senate and is available. . . .

MR. [THOMAS G.] ABERNETHY [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ABERNETHY: I thank the Speaker.

Is there any parliamentary procedure whereby these parliamentary inquiries may be brought to a parliamentary conclusion?

THE SPEAKER: The Chair will state that a parliamentary inquiry is a matter of discretion with the Chair. The Chair knows that the gentleman from Mississippi would want to preserve the right of any occupant of the Chair in that respect.

§ 14.2 Recognition for parliamentary inquiries is within the discretion of the Chair, who may decline to entertain an inquiry not relevant to the immediately pending question.

On June 8, 1972,[20] Speaker Carl Albert, of Oklahoma, refused to entertain a parliamentary inquiry which did not relate to a pending motion for the previous question on a conference report.

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I do want to point out that we have most important provisions affecting the Vocational Educational Act of 1963. Certain of those programs will expire unless the conference report is adopted.

Mr. Speaker, I move the previous question.

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Speaker, a parliamentary inquiry.

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19. 114 CONG. REC. 26453–56, 90th Cong. 2d Sess. See also 114 CONG. REC. 30214–16, 90th Cong. 2d Sess., Oct. 9, 1968.

20. 118 CONG. REC. 20339, 92d Cong. 2d Sess. Under consideration was the conference report on S. 659, the higher education amendments of 1972.

THE SPEAKER: Does the gentleman's parliamentary inquiry relate to the previous question?

MR. WAGGONNER: Mr. Speaker, it does not relate to the vote on the previous question.

THE SPEAKER: The question is on ordering the previous question.

The previous question was ordered.

Relative Precedence of Point of Order and Parliamentary Inquiry

§ 14.3 A timely point of order takes precedence over a parliamentary inquiry, and the reservation of a parliamentary inquiry gives no priority to that purpose, since recognition is within the discretion of the Chair.

While the Federal Employees' Political Activities Act of 1977 was being read for amendment under the five-minute rule in Committee of the Whole, on June 7, 1977,[1] an amendment was challenged as being not germane. The proceedings were as follows:

MR. [THOMAS N.] KINDNESS [of Ohio]: Mr. Chairman, I offer amendments, and I wish to make a parliamentary inquiry with respect thereto.

THE CHAIRMAN:[2] The gentleman will state his parliamentary inquiry.

MR. KINDNESS: Mr. Chairman, may I reserve my parliamentary inquiry and make it after the reading of the amendments?

THE CHAIRMAN: Certainly, the gentleman may do that.

The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. Kindness: Page 28, line 12, strike out "but does not include a member of the uniformed services" and insert "including any member of the uniformed services".

Page 30, line 12, strike out "and".

Page 32, line 3, strike out the period and insert "; and".

Page 32, after line 3, insert: "(10) 'Secretary concerned' has the same meaning as given such term in section 101(5) of title 37.

Page 35, line 2, strike out "or a member of a uniformed service,".

Page 38, line 14, immediately before the period insert "or by reason of being a member of the uniformed services".

Page 45, before line 8, insert the following:

"(j) The preceding provisions of this section shall not apply in the case of a violation by a member of a uniformed service. Procedures with respect to any such violation shall, under regulations prescribed by the Secretary concerned, be the same as those applicable with respect to violations of section 892 of title 10.

Page 46, after line 12, insert the following:

"(c) The preceding provisions of this section shall not apply in the case of a violation by a member of the uniformed services. Any such violation shall, under regulations prescribed by the Secretary concerned, be subject to the same penalties as apply in the case of a violation of section 892 of title 10.".

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1. 123 CONG. REC. 17713, 17714, 95th Cong. 1st Sess.

2. James R. Mann (S.C.).

Page 47, after line 21, insert the following:

"(d) In the case of members of the uniformed services, the Secretary concerned shall carry out the responsibilities imposed on the Commission under the preceding provisions of this section.".

Page 48, line 17, strike out the close quotation mark and the period.

Page 48, after line 17, insert:

"(c) In the case of members of the uniformed services, the Secretary concerned shall prescribe the regulations the Commission is required to prescribe under this section, section 7322(9), and section 7324(c)(2) and (3) of this title.".

MR. [WILLIAM] CLAY [of Missouri]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN: The gentleman from Missouri will state his point of order.

MR. CLAY: Mr. Chairman, I raise the point of order on the grounds that the matter contained in the amendment is in violation of the germaneness rule stated in clause 7 of House rule XVI.

The instant amendment proposes to make the bill applicable to an entirely new class of individuals other than what is covered under the bill.

The reported bill applies only to civilian employees in executive branch agencies, including the Postal Service and the District of Columbia government, who are presently under the Hatch Act.

The amendment seeks to add a totally different class of individuals to the bill; namely, military personnel who are not now covered by the Hatch Act. Accordingly the amendment is not germane to the bill.

Mr. Chairman, I insist on my point of order.

THE CHAIRMAN: Does the gentleman from Ohio (Mr. Kindness) wish to speak to the point of order?

MR. KINDNESS: I do, Mr. Chairman.

Mr. Chairman, I understood that I was recognized prior to the reading of the amendment for the purpose of stating a parliamentary inquiry.

THE CHAIRMAN: The Chair will state that the gentleman chose to defer his inquiry.

MR. KINDNESS: Mr. Chairman, I suggest that the gentleman's point of order is out of order.

THE CHAIRMAN: The Chair will state that a point of order is now in order and has preference.

MR. KINDNESS: Responding, then, to the point of order, Mr. Chairman, the bill, as before us at this time, has been expanded in considerable degree by the Clay amendment and by other amendments that have been adopted during the course of the consideration of the bill in the Committee of the Whole.

However, I would point out that the amendment is germane, and I particularly direct the attention of the Chairman and the Members to line 12 of page 28 where, in the definition of the word "employee" the words appear, on line 12, "but does not include a member of the uniformed services."

Mr. Chairman, that is the very crux of this whole point. The committee has given consideration, apparently, to the inclusion or exclusion of members of uniformed services under the provisions of this bill. A conscious decision was apparently made; and as reported to the House, this bill has that conscious decision reflected in it not to include members of the uniformed services.

Mr. Chairman, the issue is directly before the House in that form, so that the amendment offered by the gentleman from Ohio is in order, is pertinent, and is germane. It could not be nongermane.

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

The gentleman from Missouri (Mr. Clay) makes a point of order that the striking of the language, "but does not include a member of the uniformed services," and the remainder of the amendment broadens the scope of the bill in violation of rule XVI, clause 7.

The gentleman from Ohio (Mr. Kindness) argues that because the exclusion from coverage for the military is in the bill and has received consideration, that the germaneness rule should be more liberally interpreted.

An annotation to clause 7, rule XVI, says that, in general, an amendment simply striking out words already in a bill may not be attacked as not germane unless such action would change the scope and meaning of the text. Cannons VIII, section 2921; Deschler's chapter 28, sec. 15.3.

On October 28, 1975, Chairman Jordan of Texas ruled, during the consideration of a bill H.R. 2667, giving the right of representation to Federal employees during questioning as follows:

> In a bill amending a section of title 5, United States Code, granting certain rights to employees of executive agencies of the Federal Government, an amendment extending those rights to, in that case, legislative branch employees, as defined in a different section of that title, was held to go beyond the scope of the bill and was ruled out as not germane.

The class of employees included in this legislation is confined to civilian employees of the Government, and those specifically so stated and described as being civilian employees of the executive agencies, of the Postal Service and of the District of Columbia government, and a reference to the Hatch Act as currently in force indicates that military personnel are not included in that act.

It is obvious that the purpose and the scope of the act before us as referred to in its entirety as amended by this bill, is, "to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes."

The Chair finds that the striking of the language excluding military employees and inserting language covering the military broadens the class of the persons covered by this bill to an extent that it substantially changes the text and substantially changes the purpose of the bill. The fact that the exclusion of military personnel was stated in the bill does not necessarily bring into question the converse of that proposition. The Chair therefore finds that the amendment is not germane and sustains the point of order.

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

THE CHAIRMAN: The gentleman from Ohio will state his parliamentary inquiry.

MR. KINDNESS: Mr. Chairman, has the Chairman ruled on that part of the position stated by the gentleman from Ohio that the bill has already been expanded in scope by reason of the inclusion of provisions with respect to gov-

ernment employees very similar in category to those who are in the uniformed services and indeed include some in the uniformed services, I believe?

THE CHAIRMAN: The Chair will state that the Chair finds that the general language of the uniformed services is capable of clear interpretation as meaning the military forces of this country.

MR. KINDNESS: Mr. Chairman, I have another parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. KINDNESS: Mr. Chairman, my parliamentary inquiry is this: Is there a way to appeal the ruling of the Chair within the rules of the House?

THE CHAIRMAN: Yes, there is.

MR. KINDNESS: So that I may respectfully appeal the ruling of the Chair at this point?

THE CHAIRMAN: If the gentleman from Ohio desires to do so.

Does the gentleman desire to appeal the ruling of the Chair?

MR. KINDNESS: No, Mr. Chairman, I do not so desire at this point.

Appeals

§ 14.4 Appeals from responses by the Chair to parliamentary inquiries are not recognized and collateral challenges to proceedings not immediately subjected to points of order cannot be made by appeals from responses to parliamentary inquiries pertaining thereto.

On Sept. 4, 1940,[3] there was particularly acrimonious debate on the floor of the House between supporters of peacetime conscription and those opposed to it. Apparently, there was even a scuffle between two Members. Not satisfied that the words of Mr. Beverly M. Vincent, of Kentucky, had been taken down properly, Mr. Clare E. Hoffman, of Michigan, disputed the handling of the matter by Speaker Pro Tempore Jere Cooper, of Tennessee, and attempted to appeal the response to a parliamentary inquiry.

MR. HOFFMAN: Mr. Speaker, a point of order and a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HOFFMAN: Mr. Speaker, a moment ago certain words were uttered by the gentleman on the floor of the House which I demanded be taken down. No report was made of those words. I demand the regular order-the taking down of the words, the report of the words, and the reading by the Clerk.

THE SPEAKER PRO TEMPORE: Subsequently, unanimous consent was granted for the words to be withdrawn.

MR. HOFFMAN: Oh, no, Mr. Speaker; three Members were on their feet. I was one of them, and objecting to that.

3. 86 CONG. REC. 11516, 11517, 76th Cong. 3d Sess. Under consideration was H.R. 10132, providing for compulsory military training and service.

THE SPEAKER PRO TEMPORE: That was the ruling of the Chair.

MR. HOFFMAN: I appeal from the ruling of the Chair then.

THE SPEAKER PRO TEMPORE: This is not a ruling, it is just an answer to a parliamentary inquiry.

Chair Controls Recognition for Parliamentary Inquiry

§ 14.5 Recognition for a parliamentary inquiry is within the discretion and control of the Chair, and a Member so recognized may not yield to other Members.

On Mar. 16, 1988,[4] a Member who had been recognized for a one- minute speech refused to end his remarks at the end of that time, despite repeated admonitions from the Chair. Eventually, the Speaker Pro Tempore ordered the Sergeant at Arms to turn off the microphone on the floor so that the Member would desist. Inadvertently, the persons regulating the House coverage by television turned off the sound on the broadcast of the House proceedings. Several Members then came to the floor to protest this action. Various parliamentary inquiries were entertained by the Chair and eventually he felt it necessary to reiterate that Members may not carry on a dialogue with each other under the guise of a parliamentary inquiry. A portion of these hectic proceedings is carried herein.

LET US HAVE ANOTHER VOTE ON CONTRA AID

(Mr. Dornan of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

MR. [ROBERT K.] DORNAN of California: Mr. Speaker, and I address a different Member of this Chamber from New York, because you have left your chair, and Mr. Majority Whip from California, you have also fled the floor. In 10 years Jim and Tony—I am not using any traditional titles like "distinguished gentleman"—Jim and Tony, in 10 years I have never heard on this floor so obnoxious a statement as I heard. . . .

THE SPEAKER PRO TEMPORE:[5] The time of the gentleman from California (Mr. Dornan) has expired.

MR. DORNAN of California: Wait a minute. On Honduran soil and on Nicaraguan soil.

THE SPEAKER PRO TEMPORE: The time of the gentleman has expired.

MR. DORNAN of California: And it was set up in this House as you set up the betrayal of the Bay of Pigs.

THE SPEAKER PRO TEMPORE: The time of the gentleman has expired.

MR. DORNAN of California: I ask—wait a minute—I ask unanimous consent for 30 seconds. People are dying.

THE SPEAKER PRO TEMPORE: The time of the gentleman has expired.

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4. 134 CONG. REC. 4081, 4084–87, 100th Cong. 2d Sess.

5. Gary L. Ackerman (N.Y.).

MR. DORNAN of California: People are dying.

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Speaker, regular order, regular order.

THE SPEAKER PRO TEMPORE: The time of the gentleman has expired. Will the Sergeant at Arms please turn off the microphone?

MR. DORNAN of California: You get your regular order, people are dying. You get your regular order now. People are dying because of this Chamber. I demand a Contra vote on aid to the Democratic Resistance and the freedom fighters in Central America. In the name of God and liberty and decency I demand another vote in this Chamber next week.

Don't get a hernia and break your gavel. Don't get a hernia.

PARLIAMENTARY INQUIRIES

MR. [JUD] GREGG [of New Hampshire]: Mr. Speaker, I have a parliamentary inquiry.

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

MR. GREGG: Mr. Speaker, I was just in my office viewing the proceedings here, and during one of the proceedings, when the gentleman from California (Mr. Dornan) was addressing the House, it was drawn to my attention that the Speaker requested that Mr. Dornan's microphone be turned off, upon which Mr. Dornan's microphone was turned off.

Mr. Speaker, my inquiry of the Chair is: Under what rule does the Speaker decide to gag opposite Members of the House? Under what rule does the Speaker decide to close down the debate and pursue a policy of shutting up the opposition by not allowing us access to the public and to the media and to our own microphones, the microphones of this House? Under what rule of this House or of our country or our Constitution is freedom of the speech so grossly violated in this institution?

THE SPEAKER PRO TEMPORE: The gentleman asked to proceed for 1 minute——

MR. GREGG: No, I am asking that of the Chair.

THE SPEAKER PRO TEMPORE: The Chair is referring to Mr. Dornan. He requested permission of the Chair to proceed for 1 minute, and that permission was granted by the House. Mr. Dornan grossly exceeded the limits and abused the privilege far in excess of 1 minute, and the Chair proceeded to restore order and decorum to the House.

. . .

MR. GREGG: I have a further parliamentary inquiry, Mr. Speaker. Is it the Chair's intention to turn off my microphone?

THE SPEAKER PRO TEMPORE: What is the gentleman's parliamentary inquiry?

MR. GREGG: My parliamentary inquiry is that I want to know how the Chair can specifically turn off the microphone and what rule the Chair does it under, because the Chair has not answered that question.

THE SPEAKER PRO TEMPORE: The Chair has responded to the parliamentary inquiry of the gentleman from New Hampshire.

MR. GREGG: Mr. Speaker, I reserve my time, and yield to the gentlewoman from Illinois (Mrs. Martin).

MR. [DANIEL E.] LUNGREN [of California]: Mr. Speaker, parliamentary inquiry.

MRS. [LYNN] MARTIN of Illinois: Parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair advises that a Member may not yield time to another Member under a parliamentary inquiry.

Mrs. MARTIN of Illinois: Mr. Speaker, I have a parliamentary inquiry. . . .

MR. [PAUL B.] HENRY [of Michigan]: Mr. Speaker, I rise for a point of parliamentary inquiry.

Mr. Speaker, I was among those who were on the floor during the exchange which we have been debating and would like to indicate it was the consensus of many of us that when the gentleman from California (Mr. Dornan) was addressing the House the floor microphones were not turned off but the difficulty arose in part that the television broadcast, the C-SPAN microphones were cut off. Mr. Speaker, the rules of the House clearly stipulate that electronic broadcast of the proceedings of the House shall be a fair and accurate proceedings, recording and rendering of proceedings of the House.

I am wondering if the Speaker would respond as to the appropriateness in this instance when apparently the C-SPAN electronic broadcast of the proceedings of the House were cut off while the House microphones were not.

THE SPEAKER PRO TEMPORE: Let the Chair assure the gentleman that the Chair was directing his remarks to the in-house microphones and certainly not to the coverage of the proceedings of the House by electronic media or the press. . . .

MR. HENRY: Mr. Speaker, I have a point of parliamentary inquiry and to respond. I had been recognized on this issue and I would like to be very clear for the Record because of the serious importance of this issue: As I understand the Chair's response we are told that your instructions were in fact to turn off the House floor microphones—whether that is appropriate or not is another question—but that was mistakenly acted upon by the internal broadcast mechanism so in fact the House floor's inadvertently remained on and the electronic microphones for internal broadcast system which the other electronic relays rely on was cut off. Am I correct in that, Mr. Speaker? I want to clarify very clearly that the Chair does not have the power to turn off——

THE SPEAKER PRO TEMPORE: The gentleman is correct for coverage of proceedings of the House. It was the intent of the Chair to turn off the House microphones.

MR. HENRY: Thank you very much, Mr. Speaker.

Parliamentary Inquiries at Chair's Discretion

§ 14.6 Parliamentary inquiries are entertained at the discretion of the Chair, and on occasion, the Chair will respond to inquiries, following a ruling on a point of order, as to the basis for or consequence of that ruling.

On Feb. 5, 1992,[6] a resolution creating a task force of members

6. 138 CONG. REC. 1621–23, 102d Cong. 2d Sess.

of the Foreign Affairs Committee to investigate certain allegations concerning the holding of Americans as hostages by Iran in 1980 was called up for consideration. The resolution had been reported from both the Committee on Foreign Affairs and the Committee on House Administration, since it both created the task force and funded its operations. A point of order was lodged against the consideration of the resolution based on the contention that a primary expense resolution had not been reported to fund the task force, as required by Rule XI clause 5, or, if the resolution was itself a primary expense resolution, it failed to meet the standards set for such a resolution by the rule. After argument, the Chair overruled the point of order and his decision was sustained on appeal. After the ruling, Mr. Robert S. Walker, of Pennsylvania, directed a series of inquiries to the Chair. The point of order, the Chair's ruling, and the subsequent "interrogatories" are set forth here.

CREATING A TASK FORCE TO INVESTIGATE CERTAIN ALLEGATIONS CONCERNING THE HOLDING OF AMERICANS AS HOSTAGES BY IRAN IN 1980

MR. [BUTLER C.] DERRICK [Jr., of South Carolina]: Mr. Speaker, pursuant to House Resolution 303, I call up the resolution (H. Res. 258) creating a task force of members of the Foreign Affairs Committee to investigate certain allegations concerning the holding of Americans as hostages by Iran in 1980, and ask for its immediate consideration.

The Clerk read the title of the resolution.

POINT OF ORDER

MR. [BOB] MCEWEN [of Ohio]: Mr. Speaker, I make a point of order against House Resolution 258 on grounds that it is in violation of clause 5(a) of House rule XI, and I ask to be heard on my point of order.

THE SPEAKER PRO TEMPORE:[7] The gentleman will state his point of order.

MR. MCEWEN: I thank the Chair.

Mr. Speaker, House rule XI, clause 5(a) provides that whenever a committee, commission or other entity is to be granted authorization for the payment from the contingent fund of the House of its expenses in any year, "such authorization initially shall be procured by one primary expense resolution for the committee, commission or other entity."

The rule goes on to require that "any such primary expense resolution reported to the House shall not be considered in the House unless a printed report on that resolution" shall "state the total amount of the funds to be provided to the committee, commission or other entity under the primary expense resolution for all anticipated activities and programs * * *."

Mr. Speaker, it is my assumption that this resolution, which was reported by the House Administration and authorizes the payment of ex-

7. David R. Obey (Wis.).

penses from the contingent fund, is the primary expense resolution for the task force. And yet the committee report on this resolution, House Report 102–296, part II, does not "state the total amount of funds to be provided" as required by rule XI, clause 5(a).

If, on the other hand, it is argued that House Resolution 258 is not a primary expense resolution, then it is not in order since House rule XI, clause 5(a) requires that whenever any entity such as this task force is to be granted authorization for the payment of expenses from the contingent fund, and I quote, "such authorization initially shall be procured by one primary expense resolution for the committee, commission or other entity." In other words, this resolution is not in order until after a primary expense resolution has been adopted by this House.

I urge that my point of order be sustained.

THE SPEAKER PRO TEMPORE: Does the gentleman from South Carolina desire to be heard on the point of order?

MR. DERRICK: Mr. Speaker, under clause 5(c), the funds will be provided to the Committee on Foreign Affairs and they will, in turn, provide the funds to the subcommittee, I mean to the committee that we are establishing.

MR. MCEWEN: Mr. Speaker, does Chairman Whitten share that view?

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

MR. DERRICK: Mr. Speaker, I would be glad to read clause 5(c) on page 482 of the House Rules Manual. I would be glad to read that for you.

MR. MCEWEN: Mr. Speaker, do I understand the gentleman to say that the money is coming from the Committee on Foreign Affairs funds; is that what he is saying?

MR. DERRICK: Mr. Speaker, the House Administration Committee, in its forthcoming resolution, will provide funds to the Committee on Foreign Affairs and they will provide it to the committee that is being established. And this authority is provided under 5(c).

THE SPEAKER PRO TEMPORE: Does the gentleman desire to be heard further on the point of order?

MR. WALKER: Mr. Speaker, I wish to be heard.

Mr. Speaker, it sounds to me as though the gentleman from South Carolina is contending that the money is previously authorized under the House Administration's budget and so therefore the money is allocated there. When the House Administration Committee's budget was put into place, there was absolutely nothing in the House Administration budget which indicated that this task force was going to be formed. The new entity being created under the rules is the entity of the task force. It is that entity to which the gentleman from Ohio has referred, it is that entity to which the House rules speak. Either the House rules are going to apply to this or we are going to completely abandon any pretense that the House rules have meaning with regard to spending. This is very much of a spending issue because if in fact we do not obey House rules there, we have open ended the fund for this task force for as far out into the future as we can see.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule unless the

gentleman from Ohio wishes to be heard further on his point of order.

MR. MCEWEN: Mr. Speaker, I would only say as a member of the Committee on Rules, reading the rules, it says that if we are going to spend money, it has to be authorized under a resolution. It is not before us. There is no rule that permits us to proceed at this time.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio, in a point of order, suggests to the House that under rule XI, clause 5(a), there needs to be a total amount stated in the report of the Committee on House Administration for funding of the task force, and the Chair would simply point out that the primary expense resolution for the Committee on Foreign Affairs and all other committees will be reported to the House later this year.

As the gentleman from South Carolina has attempted to point out to the House, clause 5(c) of rule XI reads as follows:

> The preceding provisions of this clause do not apply to—
>
> (1) any resolution providing for the payment from the contingent fund of the House of sums necessary to pay compensation for staff services performed for, or to pay other expenses of, any committee, commission or other entity at any time from and after the beginning of any year and before the date of adoption by the House of the primary expense resolution providing funds to pay the expenses of that committee, commission or other entity for that year.

It is the ruling of the Chair at this time that the task force comes under that exception. The task force is a subunit of the Committee on Foreign Affairs and not a separate entity.

The point of order is, therefore, overruled.

MR. WALKER: Mr. Speaker, I respectfully appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania [Mr. Walker] appeals the ruling of the Chair.

The question is, Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. DERRICK

MR. DERRICK: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

> Mr. Derrick moves to lay on the table the appeal by the gentleman from Pennsylvania [Mr. Walker] on the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The question is on the motion to table offered by the gentleman from South Carolina [Mr. Derrick].

The question was taken; and on a division (demanded by Mr. Walker) there were—ayes 19, noes 29. . . .

So the motion to table the appeal of the ruling of the Chair was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PARLIAMENTARY INQUIRIES

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

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

MR. WALKER: Mr. Speaker, the parliamentary inquiry is that the Chair in its ruling on the previous point of order indicated, and I think the video record of the House will confirm this, that the reason for the ruling was that the entity being created is a subunit of the Foreign Affairs Committee. Is that not what the Chair ruled?

THE SPEAKER PRO TEMPORE: The Chair has ruled on the basis that clause 5(c) of rule XI simply provides an applicable exception, and the Chair has ruled on that basis.

MR. WALKER: Mr. Speaker, I have a further parliamentary inquiry. My understanding of the Chair was that 5(c) applied because this was a subunit of the Foreign Affairs Committee. The Chair specifically mentioned the Foreign Affairs Committee in his ruling. It is now my understanding, after further consultation, that that is not the case, and so, therefore, the Chair's ruling was based upon an understanding which does not exist under section 5(c).

Would the Chair clarify for the House the entity we are about to create?

THE SPEAKER PRO TEMPORE: Under the resolution, the task force consists of members of and reports to the Committee on Foreign Affairs. But in any event, the Chair has ruled that the clause (c) exception applies to the task force. This is the first example, since the rule cited the creation of an entity and its funding at the same time. That is why the resolution was sequentially referred to the House Administration Committee. In any event, the clause 5(c) exception applies to any entity, not to any preexisting entity. . . .

MR. WALKER: I have a further parliamentary inquiry. If that was the impression of the Chair at the time, is that what the Chair ruled?

THE SPEAKER PRO TEMPORE: The Chair ruled as the Chair stated.

MR. WALKER: The Chair ruled on section (c).

THE SPEAKER PRO TEMPORE: On any entity being excepted under (c).

MR. WALKER: I have a further parliamentary inquiry. The Chair ruled on section 5(c) based upon his contention that it was a subunit of the Foreign Affairs Committee. What I am seeking to find out is whether or not the Chair is now withdrawing that contention.

THE SPEAKER PRO TEMPORE: The Chair's ruling was based on the literal ruling of 5(c).

MR. WALKER: I thank the Chair for pointing out it was based upon a literal ruling of 5(c). However, the specific ruling of the Chair, and again, I point out the video record of the House will certainly confirm this, that he ruled on 5(c) based upon——

THE SPEAKER PRO TEMPORE: The Chair has already commented on that and does not care to repeat himself. . . .

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

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

MR. MCEWEN: Mr. Speaker, under my point of order under clause 5(a) of House rule XI, I stated that the new entity being created by the resolution currently before us had to meet the requirements of that. You have stated now that this new entity is a subunit.

Can the Chair rule for me the circumstances under which my rule cited here, clause 5(a) of rule XI, would apply ever?

THE SPEAKER PRO TEMPORE: The Chair read the exception as it applies in this instance and has ruled accordingly.

MR. MCEWEN: So can the Chair state for me of an instance or example in which the rule that I cited under the belief that it applied to the House would be applicable to anything stated?

THE SPEAKER PRO TEMPORE: The Chair cannot speculate about other situations, and the Chair has provided the ruling, and the House has spoken.

Scope of Permissible Inquiries

§ 14.7 Parliamentary inquiries concerning the anticipated order of business may be entertained by the Chair.

On Sept. 11, 1968,[8] Speaker John W. McCormack, of Massachusetts, answered a question concerning what item would next be taken up by the House.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman from Texas will state his parliamentary inquiry.

MR. MAHON: Mr. Speaker, will the Chair advise whether or not the conference report has been sent over by message from the Senate, indicating that the authorization bill has now cleared both Houses—that is, for the Defense Department bill—and, if that is correct, would it be in order for the Committee on Appropriations to call up the $72 billion Defense appropriation bill?

THE SPEAKER: The Chair will state that the Senate has approved the conference report. The Department of Defense appropriation bill is programmed for today. All Members recognize the importance, I am sure, of having this bill acted upon as quickly as possible, and, after the Journal is read and approved, the Defense appropriation bill will be the next order of business to be brought up.

Use of a Parliamentary Inquiry—the Proper Interpretation of a New Rule

§ 14.8 A parliamentary inquiry may address the proper interpretation of a new rule.

In response to a parliamentary inquiry, the Chairman of the Committee of the Whole indicated that a new rule (Rule XXIII clause 5), requiring distribution of offered amendments by the Clerk, was not a mandatory requirement and that the Clerk's distribution was a matter of courtesy and not a mandatory prerequisite for consideration of an amendment. The inquiry and the Chair's response made on Mar. 14, 1975,[9] were as follows:

MR. [SAM] STEIGER of Arizona: Mr. Chairman, I have a parliamentary inquiry.

8. 114 CONG. REC. 26455, 90th Cong. 2d Sess.

9. 121 CONG. REC. 6708, 94th Cong. 1st Sess.

THE CHAIRMAN:[10] The gentleman will state his parliamentary inquiry.

MR. STEIGER of Arizona: Mr. Chairman, without a copy of the amendment, we cannot understand the purpose of the amendment.

I thought that under the new rules we are under some obligation to provide some sort of amendment in written form so that those Members who wish to go to the extra effort might read and understand what is going on.

Am I correct or incorrect, Mr. Chairman?

THE CHAIRMAN: It does not stop the consideration of an amendment, although that is supposed to be the custom.

MR. STEIGER of Arizona: Mr. Chairman, the rule is simply a matter of courtesy rather than one of mandate?

THE CHAIRMAN: The gentleman is correct.

MR. STEIGER of Arizona: I thank the Chair.

Proper Uses of Parliamentary Inquiries

§ 14.9 In response to a parliamentary inquiry, the Chair stated that committee reports that erroneously reflect the information required under clause 2(l)(2)(B) of Rule XI (that committee reports reflect the total number of votes cast for and against any public measure or matter and any amendment thereto and the names of those voting for and against) would be subject to a point of order against its consideration; however, a point of order would not lie if the error was introduced by the Government Printing Office.

On Jan. 15, 1995,[11] an inquiry was directed to the Presiding Officer regarding a rule adopted at the commencement of the 104th Congress.

PARLIAMENTARY INQUIRIES

MR. [PAUL E.] KANJORSKI [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[12] The gentleman will state it.

MR. KANJORSKI: Mr. Speaker, as I understand the new rule in clause 2(l)(2)(B) of rule XI, adopted on January 4 of this year as the new rules of the House, each committee report must accurately reflect all rollcall votes on amendments in committee; is that correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. KANJORSKI: Mr. Speaker, as a further parliamentary inquiry, the report accompanying H.R. 5, as reported from the Committee on Government Reform and Oversight, House Report 104–1, part 2, lists many rollcall votes on amendments. On amendment 6, the

10. Neal Smith (Iowa).

11. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

12. Steve Gunderson (Wis.).

report states that the committee defeated the amendment by a rollcall vote of 14 yes and 22 no. However, the tally sheet shows 35 members voting "aye" and 1 member voting "nay".

Mr. Speaker, would a point of order under clause 2(l)(2)(B) of rule XI apply?

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, the gentleman is correct.

MR. KANJORSKI: Mr. Speaker, if that were the case, it is clear that this bill could not proceed under its present rule; is that correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct, if it is an error on behalf of the committee. If it is a printing error. That would be a technical problem which would not be sustained in the point of order.

MR. KANJORSKI: . . . I would urge that the majority, in consideration of the fact that we are not going to use this tactic to delay this debate, take into consideration that their rules must be applied on a day-to-day basis, because the majority is responsible for having passed this rule.

§ 14.10 In response to a parliamentary inquiry, the Chair indicated that the adoption of an amendment adding a new section would preclude further amendment to the pending section.

During consideration of a bill setting emergency price support levels for the 1975 crop year, an amendment was offered which would add a new section following the one then open for amendment. Following a reservation of a germaneness point of order against the amendment, a parliamentary inquiry was made by another Member who wished to offer a perfecting amendment to the section which had been read by the Clerk. The proceedings were as shown in the Record of Mar. 20, 1975.[13]

MR. [PETER A.] PEYSER [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Peyser: Page 3, immediately after line 16, insert the following new section:

"Sec. 3. Notwithstanding any other provision of law, there shall be no acreage allotment, marketing quota or price support for rice effective with the 1975 crop of such commodity."

MR. [THOMAS S.] FOLEY [of Washington] reserved a point of order on the amendment.

MR. [STEVEN D.] SYMMS [of Idaho]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[14] The gentleman will state his parliamentary inquiry.

MR. SYMMS: Mr. Chairman, I have another amendment to section 2 of the bill. Will this amendment preclude the offering of the next amendment?

THE CHAIRMAN: It will if the amendment is agreed to.

Does the gentleman from Washington insist on his point of order?

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13. 121 CONG. REC. 7666, 94th Cong. 1st Sess.

14. John Brademas (Ind.).

MR. FOLEY: I do, Mr. Chairman. I insist on the point of order against this amendment.

The amendment is not germane to the bill, and violates rule XVI, clause 7.

H.R. 4296 deals with price supports, established prices, and loan rates for wheat, feed grains, cotton, and milk under sections 103, 105, 107, and 201 of the Agricultural Act of 1949.

The bill does not relate to acreage allotments, or marketing quotas on any commodity. The amendment offered would affect the provisions of the Agricultural Adjustment Act of 1938.

Accordingly, the amendment is not germane to the bill, and I therefore press my point of order against the amendment.

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

MR. PEYSER: I do, Mr. Chairman.

The reason I offered the amendment was because of the ruling of the Chair dealing with the Conte amendment some hour or so ago, where we were discussing it, and the Chair ruled in favor of nuts and fruits, and some other items, and I therefore felt that introducing the question of rice would be substantially within the germaneness of this bill as the other items that have been offered, and that the Chair had ruled in favor of.

THE CHAIRMAN: The Chair is prepared to rule.

The Chair has heard the point of order made by the gentleman from Washington (Mr. Foley), and has listened to the response made by the gentleman from New York (Mr. Peyser).

The Chair would observe in respect of its earlier ruling on the amendment offered by the gentleman from Massachusetts that the earlier amendment was a price support amendment. The purpose of the bill under consideration, as the gentleman from Washington has already pointed out, runs to price supports. Acreage and allotments and marketing quotas are not within the scope of the bill, and the Chair rules, therefore, that the amendment is not germane, and sustains the point of order.

§ 14.11 A parliamentary inquiry is an appropriate vehicle to ascertain the proper time for making a point of order against the content of an unprivileged committee report.

On May 16, 1989,[15] a bill which had been ordered reported by the Committee on Banking, Finance and Urban Affairs was filed in the House. Not having a privileged status, the report was filed through the hopper. Mr. Robert S. Walker, of Pennsylvania, was under the impression that certain changes had been made in the report after the committee action. His inquiries were directed toward the appropriate time to make a point of order if his allegations were well founded.

MR. WALKER: Mr. Speaker, it is bad enough that this House is up to its eyeballs in creating the problem that

15. 135 CONG. REC. 9329, 9355, 9356, 101st Cong. 1st Sess.

led to the savings and loans crisis. Now as we are about to consider legislation to deal with the S&L crisis that this House helped create, we hear a rumor that the process and the procedures of the House are about to be abandoned as we bring that legislation to the floor.

Evidently the chairman of the Committee on Banking, Finance and Urban Affairs has unilaterally changed the legislation and intends to file a report later today which is his personal version of the bill rather than that reported from his committee.

Mr. Speaker, when is someone going to stop this kind of abuse? We cannot have chairmen of committees overruling the work of their committees.

There is a lot of controversy about this particular legislation for FSLIC. It should be resolved unilaterally by one chairman. The Chair should refuse to let the report be filed until the House is assured that it is the committee's report and not the chairman's personal report.

PARLIAMENTARY INQUIRIES

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

THE SPEAKER PRO TEMPORE:[16] The gentleman will state it.

MR. WALKER: Mr. Speaker, it is my understanding that in the course of the day today, or perhaps later on today, there will be a report filed from the Committee on Banking, Finance and Urban Affairs with regard to the FSLIC bill. Can the Chair, first of all, tell me whether that report has been filed?

THE SPEAKER PRO TEMPORE: The report has just been filed.

MR. WALKER: The report has been filed.

Mr. Speaker, it is my understanding that the language in that report differs markedly from the language as reported from the Committee on Banking, Finance and Urban Affairs, that in fact substantive sections of the bill have been changed unilaterally by the chairman, and that is reflected in the report before the House in the new language as defined by the chairman rather than the language as reported from the committee.

Mr. Speaker, can the Chair tell me whether or not a point of order rests against the filing of that report under those kinds of circumstances?

THE SPEAKER PRO TEMPORE: Under these circumstances, the normal time to question the validity of a committee report is when the bill comes up for consideration in the House or at a hearing before the Committee on Rules.

MR. WALKER: Mr. Speaker, if I understand correctly then, this question could be raised about the change of the language before the Committee on Rules, or should a rule be adopted with regard to consideration of the bill, a point of order would rest against consideration of the bill on the House floor given the fact that language was changed subsequent to committee action; is that correct?

THE SPEAKER PRO TEMPORE: If the bill was improperly reported, the gentleman from Pennsylvania (Mr. Walker) is correct.

§ 14.12 The status of the Clerk's progress in reading a

16. Thomas A. Luken (Ohio).

document which is before the House is a proper subject for a parliamentary inquiry.

On Oct. 8, 1968,[17] before the transaction of legislative business, the roll was taken numerous times to ascertain the presence of a quorum. After unanimous consent was sought to dispense with the reading of the Journal, the following exchange occurred:

MR. [GEORGE W.] ANDREWS of Alabama: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[18] The gentleman will state it.

MR. ANDREWS of Alabama: I would like to know how many pages have been read and how many remain.

THE SPEAKER: That is a very proper inquiry.

MR. ANDREWS of Alabama: I am most interested in the reading.

THE SPEAKER: The Chair will state that there are 68 pages and the Clerk has already read 38.

Chair's Comments on Matters Pending at Desk

§ 14.13 In response to a parliamentary inquiry, the Speaker may examine a report at the desk and render an advisory opinion about its validity.

On Oct. 8, 1986,[19] when the Chairman of the Committee on Rules filed a hastily assembled report from that committee, a series of inquiries sought assurances that the report was complete. The Chair's response is carried herein.

MR. [CLAUDE] PEPPER [of Florida]: Mr. Speaker, will the gentleman yield?

MR. [LOUIS] STOKES [of Ohio]: I am delighted to yield to the gentleman from Florida.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3810, IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1985

Mr. Pepper, from the Committee on Rules, submitted a privileged report (Rept. No. 99–980) on the resolution (H. Res. 580) providing for the consideration of the bill (H.R. 3810) to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PARLIAMENTARY INQUIRY

MR. [F. JAMES] SENSENBRENNER [Jr., of Wisconsin]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[20] The gentleman will state his parliamentary inquiry.

MR. SENSENBRENNER: Mr. Speaker, the rule just filed by the distinguished chairman of the Committee on Rules, the gentleman from Florida (Mr. Pep-

17. 114 CONG. REC. 30100, 90th Cong. 2d Sess. At the time the Clerk was reading the Journal.

18. John W. McCormack (Mass.).

19. 132 CONG. REC. 29803, 29804, 99th Cong. 2d Sess.

20. Tim Valentine (N.C.).

per) references 14 amendments which are made in order that are not contained in the rule but are contained in the report of the Committee on Rules. May I ask if the texts of those amendments are contained in the report of the Committee on Rules that has just been filed by the chairman of the committee as a privileged report?

THE SPEAKER PRO TEMPORE: The Chair would say to the gentleman that the Chair presumes that that is the case.

MR. SENSENBRENNER: A further parliamentary inquiry, Mr. Speaker. The gentleman from Wisconsin wishes to know if the text of the one substitute and the 14 amendments to the substitute that are referenced are in the report and thus available to the Members as of this legislative day?

THE SPEAKER PRO TEMPORE: The Chair would state to the gentleman that there are 14 numbered amendments in the report.

MR. SENSENBRENNER: A further parliamentary inquiry, Mr. Speaker. The resolution that was just filed by the chairman of the Committee on Rules also makes reference to an amendment in the nature of a substitute. Is the text of that amendment in the nature of a substitute contained in the report that has just been filed?

THE SPEAKER PRO TEMPORE: The Chair would state to the gentleman that it is not, but it has been introduced separately and it will be printed and available to the Members in the morning.

MR. SENSENBRENNER: I thank the Chair.

POINT OF ORDER

MR. [HENRY B.] GONZALEZ [of Texas]: Mr. Speaker, I have a point of order.

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

MR. GONZALEZ: Mr. Speaker, is it not necessary that at the time the motion is made to file a report that that report be in hand, completed as approved by the committee submitting the report?

THE SPEAKER PRO TEMPORE: That is the rule as the Chair understands it, and that is the case.

MR. GONZALEZ: Mr. Speaker, my understanding is that the rule as approved by the Rules Committee less than an hour ago is not complete and, therefore, cannot be presented in a complete form at this time, and I challenge the validity of that procedure.

THE SPEAKER PRO TEMPORE: The Chair would say to the gentleman that the Chair believes that it is complete, and of course it has been filed.

MR. GONZALEZ: Mr. Speaker, will the Chair point to the report as filed?

THE SPEAKER PRO TEMPORE: The Chair would state to the gentleman from Texas that the report is here at the desk and available for examination by the gentleman from Texas.

MR. GONZALEZ: Mr. Speaker, I thank the Chair and I withdraw my point of order.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio (Mr. Stokes) still has the time and may proceed.

Inquiries Properly Submitted to Speaker

§ 14.14 Inquiries concerning the parliamentary situation on the floor are properly directed to the Chair, and it is not customary for a Member

to request that the notes of the official reporters be read to ascertain what motions have been put by the Chair.

On May 22, 1968,[1] in a confusing parliamentary situation involving the consideration of a conference report, Minority Leader Gerald R. Ford, of Michigan, requested that the reporter's notes be read back to clarify the legislative situation. Speaker John W. McCormack, of Massachusetts, rejected the request, and, a few moments later, the Speaker went on to remind the Members of their duty to address questions of order to the Chair, not to other Members.

MR. GERALD R. FORD: Mr. Speaker, so that the record is crystal clear, I request that the notes of the reporter be reread to the Members.

THE SPEAKER: The Chair will state that this has never been done before so far as the knowledge of the Chair is concerned. . . .

The Chair will suggest that the Members can carry on their colloquy but the position of the Chair is clear—the gentleman from Texas called up the conference report and had asked that the statement of the managers on the part of the House be read and after the Clerk had proceeded to read the statement, the gentleman from Texas asked unanimous consent that the further reading of the statement of the managers on the part of [the] House be dispensed with and that it be placed in the Record.

The gentleman from Texas was standing and the Chair rose and said—'The question is on agreeing to the conference report." The Chair did it deliberately—and the report was agreed to. The Chair acted most deliberately. . . .

The gentleman from Virginia reserves the right to object.

MR. [RICHARD H.] POFF [of Virginia]: Mr. Speaker, I reserve the right to object in order to propound a question to the distinguished majority leader. In the event the House agrees to the request of the gentleman, would the minority maintain the right under the rules of the House to offer motions to recommit if it were so disposed?

THE SPEAKER: The gentleman ought to address his question to the Chair. That question should be addressed to the Chair, and, assuming that the gentleman did address the Chair, the Chair will state that point has gone by, and a motion to recommit under those circumstances would not be in order.

Not Cognizable by Parliamentary Inquiry

§ 14.15 The Chair responds to parliamentary inquiries relating to the pending proceedings but is not required to verify allegations placing current events in historical context.

On June 25, 1992,[2] during discussion regarding the adoption of a re-

1. 114 CONG. REC. 14403–05, 90th Cong. 2d Sess. Under consideration was H. Rept. No. 1397 on S. 5, the Consumer Credit Protection Act.

2. 138 CONG. REC. 16174, 16175, 102d Cong. 2d Sess.

strictive rule on a general appropriation bill, Mr. Robert S. Walker, of Pennsylvania, posed an inquiry to the Speaker Pro Tempore, Mr. Michael R. McNulty, of New York.

PARLIAMENTARY INQUIRY

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

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

MR. WALKER: Mr. Speaker, in this morning's newspaper, the Speaker of the House is quoted as saying the process under which we are operating on this rule, or on this bill, is a common practice; namely, the practice of having closed rules on appropriation bills of a general character. My research tells me that we have only had such rules five times in the history of the Congress. My research indicates that only five times in the history of the Congress have we had a situation where general appropriation bills have been considered under a closed rule. Three of those have been during this speakership.

I am asking the Chair whether or not the Chair can confirm that that is, indeed, the situation that this is only the sixth time in history that we will be considering this bill under such a process.

THE SPEAKER PRO TEMPORE: The gentleman must state a parliamentary inquiry.

Inquiries Which Chair Does Not Entertain

§ 14.16 The Chairman of the Committee of the Whole does not respond to hypothetical questions raised under the guise of a parliamentary inquiry.

On Mar. 26, 1965,[3] in the Committee of the Whole, Chairman Richard Bolling, of Missouri, declined to answer a hypothetical question raised in the guise of a parliamentary inquiry.

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. QUIE: Mr. Chairman, if I had risen to move to strike out the last word, rather than offering an amendment which would be voted on, then would the extra 5 minutes have been divided equally?

THE CHAIRMAN: The Chair is not in position to answer that kind of question.

MR. QUIE: It may happen in the future as we go along with the debate.

THE CHAIRMAN: The Chair will meet the situation as it arises.

§ 14.17 The Speaker does not entertain hypothetical questions.

On Sept. 14, 1944,[4] at a time when there was no bill or resolu-

3. 111 CONG. REC. 6114, 89th Cong. 1st Sess. Under consideration was H.R. 2362, the Elementary and Secondary Education Act of 1965.

4. 90 CONG. REC. 7772, 78th Cong. 2d Sess.

tion before the House, a Member asked about the status of certain funds.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[5] The gentleman will state it.

MR. HOFFMAN: I gathered from statements which were made on the floor today that a statement going back as far as 1920 and containing information as to the amounts of money requested by the military establishments of the Government, as to the amounts that had been recommended by the executive department, and as to the amounts finally appropriated by Congress, had been sent to the Committee on Appropriations, but for some 2 years it had been in the safe over there, inaccessible to Members of the House. By what authority or what rule of Congress or what rule governing committees was that suppressed?

THE SPEAKER PRO TEMPORE: The present occupant of the chair has no knowledge of any such facts, and therefore is not in a position to answer the gentleman's inquiry.

MR. HOFFMAN: Does the Chair mean he does not have any knowledge that that is true?

THE SPEAKER PRO TEMPORE: The Chair has no knowledge of that, except that somebody has said it is true, according to the gentleman's statement.

MR. HOFFMAN: Submitting that then as a hypothetical question.

THE SPEAKER PRO TEMPORE: The Chair does not entertain a hypothetical question, and does not think that the parliamentary inquiry is pertinent at this stage of the proceedings and at this particular time in the absence of the Speaker.

What Is Not a Proper Parliamentary Inquiry

§ 14.18 It is not a proper parliamentary inquiry to inquire of the Chair whether his ruling striking a portion of a paragraph in a general appropriation bill leaves a certain program without sufficient funds.

On Oct. 26, 1983,[6] during the reading of the Defense appropriations bill of 1984, certain language was conceded to be a reappropriation of funds, in violation of Rule XXI clause 6, and was stricken from the bill. The proceedings and the resulting inquiry are carried herein.

The Clerk read as follows:

MISSILE PROCUREMENT, ARMY

(INCLUDING TRANSFER OF FUNDS)

For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor,

5. Orville Zimmerman (Mo.).

6. 129 CONG. REC. 29416, 29417, 98th Cong. 1st Sess.

without regard to section 4774, title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, as follows: For Other Missile Support, $9,200,000; for the Patriot program, $885,000,000; for the Stinger program, $100,500,000, and in addition, $37,300,000 to be derived by transfer from "Missile Procurement, Army, 1983/1985"; for the Laser Hellfire program, $218,800,000; for the TOW program, $189,200,000; for the Pershing II program, $407,700,000; for the MLRS program, $532,100,000; for modification of missiles, $123,300,000; for spares and repair parts, $261,702,000; for support equipment and facilities, $108,200,000; in all: $2,807,702,000, and in addition $37,300,000 to be derived by transfer, to remain available until September 30, 1986: *Provided* That within the total amount appropriated, the subdivisions within this account shall be reduced by $28,000,000 for revised economic assumptions.

MR. [RICHARD] RAY [of Georgia]: Mr. Chairman, I make a point of order that the language on page 19, line 5, after "$100,500,000" through "1983/85" on line 6 constitutes a reappropriation of unexpended balances of appropriations and thus is not in order under rule XXI, clause 6.

The $37,300,000 that would be transferred from the Army missile funds, 1983–1985, would be extended in availability to September 30, 1986.

Such an extension of these funds through appropriation is prohibited by the rules.

THE CHAIRMAN:[7] Does the gentleman from New York wish to be heard on the point of order?

MR. [JOSEPH P.] ADDABBO [of New York]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

MR. [DAVID] DREIER of California: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. DREIER of California: Does the ruling of the Chair on the gentleman's point of order mean that title IV is underfunded by $37.3 million for Stinger missile procurement in fiscal year 1984?

THE CHAIRMAN: The Chair will state that the gentleman is not making a parliamentary inquiry.

Chair Does Not Signal His Ruling on Future Amendment

§ 14.19 The Chair can respond to a parliamentary inquiry about the effect of voting down the previous question on a special order—"a germane amendment would be in order"—but will not render an advisory opinion as to whether a particular described amendment would be in order.

7. Dan Rostenkowski (Ill.).

On June 16, 1994,[8] where the previous question had been moved on a special order reported from the Committee on Rules, the Speaker Pro Tempore responded to parliamentary inquiries as follows:

MR. [BART] GORDON [of Tennessee]: Mr. Speaker, I move the previous question on the resolution.

PARLIAMENTARY INQUIRY

MR. [PORTER J.] GOSS [of Florida]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[9] The gentleman will state it.

MR. GOSS: Mr. Speaker, if the previous question is rejected, would it be in order for me to offer an amendment to the rule to strike the exception that leaves the Wolf provision subject to a point of order?

THE SPEAKER PRO TEMPORE: While the Chair cannot give a specific anticipatory ruling, in the opinion of the Chair, should the previous question be rejected, any germane amendment to the rule may be offered.

MR. GOSS: Mr. Speaker, the Chair's answer is "yes" and that would be my intention.

THE SPEAKER PRO TEMPORE: The Chair stands by his statement. Any germane amendment can be offered.

MR. GOSS: I was not asking a parliamentary inquiry about germaneness. I wish to know whether or not that would be in order.

THE SPEAKER PRO TEMPORE: The Chair has responded.

The question is on ordering the previous question.

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

Chair Does Not Interpret Whether Votes Are Consistent

§ 14.20 A request that the Chair announce the effect on an earlier House political position of a vote about to be taken is not a parliamentary inquiry.

On June 26, 1942,[10] Speaker Pro Tempore Jere Cooper, of Tennessee, sustained a point of order against Mr. Clarence Cannon, of Missouri, when he made an inquiry as to the effect of a vote on a pending motion.

MR. CANNON of Missouri: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. CANNON of Missouri: A vote against the motion is a vote to sustain the position of the House?

THE SPEAKER PRO TEMPORE: A vote against the pending motion is a vote for the defeat of the pending motion.

MR. CANNON of Missouri: Mr. Speaker, in view of the fact that the chair-

8. 140 CONG. REC. 13155, 13156, 103d Cong. 2d Sess.

9. Robert E. Wise, Jr. (W. Va.).

10. 88 CONG. REC. 5646, 77th Cong. 2d Sess. Under consideration was H.R. 6709, an agriculture appropriation for 1943.

man of the subcommittee has made this motion without authorization by a majority of the managers on the part of the House, it is only fair that the House understand the effect of this vote. Accordingly, Mr. Speaker, I desire to know if a vote against the pending motion is not a vote to sustain the position which the House took when it sent the bill to conference.

MR. [HERMAN P.] EBERHARTER [of Pennsylvania]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. EBERHARTER: The question raised by the gentleman from Missouri is not a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The point of order is sustained.

§ 14.21 The Chair will not comment on the consistency of amendments under the guise of responding to a parliamentary inquiry.

On May 15, 1991,[11] the House was considering amendments to a measure under consideration in the Committee of the Whole. One amendment had been agreed to when an inquiry was directed to the Chair.

MR. [MARTY] RUSSO [of Illinois]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE:[12] The gentleman will state his parliamentary inquiry.

MR. RUSSO: Mr. Chairman, as I understand the parliamentary situation, we are now voting on the Upton amendment which, if you voted for Berman, you would vote no to Upton.

THE CHAIRMAN PRO TEMPORE: The gentleman from Illinois is not stating a parliamentary inquiry.

The question is on the amendment offered by the gentleman from Michigan (Mr. Upton) as a substitute for the amendment en bloc offered by the gentlewoman from Maine (Ms. Snowe) as amended.

§ 14.22 The Chairman of the Committee of the Whole responds to parliamentary inquiries as to whether an amendment changing a lump-sum figure in a general appropriation bill is in order; but he does not interpret the effect of the adoption of such an amendment on a particular project which might be funded by the lump-sum figure.

On Oct. 21, 1990,[13] during consideration of the legislative branch appropriation bill for fiscal 1991 in Committee of the Whole, there was pending an amendment reducing a lump-sum figure in the bill. The announced goal of the proponent of the amendment was to eliminate funding for certain garage attendants. Another Mem-

11. 137 CONG. REC. 11116, 102d Cong. 1st Sess.1

12. Jim McDermott (Wash.).

13. 136 CONG. REC. 31673, 31674, 31689–91, 101st Cong. 2d Sess.

ber wished to eliminate yet another service, and attempted to get a ruling from the Chair whether by an amendment to the pending amendment he could accomplish that goal. The discussion was as follows:

The Clerk read as follows:

H.R. 5399

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending September 30, 1991, and for other purposes, namely:

TITLE I—CONGRESSIONAL OPERATIONS

HOUSE OF REPRESENTATIVES

MILEAGE OF MEMBERS

For mileage of Members, as authorized by law, $210,000.

SALARIES AND EXPENSES

For salaries and expenses of the House of Representatives, $667,–010,000, to remain available until expended, as follows:

MR. [VIC] FAZIO [of California]: Mr. Chairman, as provided in the rule, at this time I yield to the gentleman from Oklahoma Mr. [Synar] and the gentleman from California Mr. [McCandless], who are cosponsoring this amendment, for the purpose of offering the en bloc amendments numbered one and printed in the report of the Committee on Rules.

AMENDMENTS EN BLOC OFFERED BY MR. SYNAR

MR. [MIKE] SYNAR [of Oklahoma]: Mr. Chairman, on behalf of the gentleman from California Mr. [McCandless] and myself, I offer amendments en bloc under the rule.

THE CHAIRMAN:[14] The Clerk will report the amendments en bloc.

The Clerk read as follows:

Amendments en bloc offered by Mr. Synar:

Page 2, line 8, strike "$677,010,–000" and insert "$663,510,000".

Page 14, line 4, strike "$27,238,–000" and insert "$22,721,000". . . .

Page 14, line 18, strike "$32,285,–000" and insert "$30,950,000". . . .

THE CHAIRMAN: Pursuant to House Resolution 510, the amendments en bloc are not subject to amendment or to a demand for a division of the question, may amend portions of the bill not yet read for amendment and if adopted, shall become original text for the purpose of further amendment. . . .

So the amendments en bloc were agreed to. . . .

AMENDMENT OFFERED BY MR. CONTE

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Conte: Page 14, line 18, strike "$30,950,000" and insert "$30,800,000". . . .

MR. CONTE: Mr. Chairman, I spoke before on this situation. It has simply gotten out of hand: I'm talking about the garage attendant problem. . . .

14. Dale E. Kildee (Mich.).

MR. [HARRIS W.] Fawell [of Illinois]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his inquiry.

MR. FAWELL: Mr. Chairman, I have an amendment to the Conte amendment, and I am desirous, of course, of presenting that. I do not want to be foreclosed from so doing.

THE CHAIRMAN: Does the gentleman wish to offer his amendment?

MR. CONTE: Mr. Chairman, I have a parliamentary inquiry. I have agreed with the chairman of the committee that I would go along with this compromise. Can we not put that to a vote and get rid of that?

THE CHAIRMAN: The Chair has to recognize that the gentleman from Illinois [Mr. Fawell] rose, saying that he has an amendment to the amendment. The Chair has to protect the right of the gentleman from Illinois [Mr. Fawell].

MR. FAWELL: Mr. Chairman, in furtherance of my parliamentary inquiry, as long as I am not foreclosed from presenting my amendment to the amendment, I simply wanted to make sure that the section does not close, and that I do have the right to present my amendment.

THE CHAIRMAN: Once the figure in the bill is agreed to by the adoption of the Conte amendment, the gentleman cannot then at that time make another amendment to that figure. . . .

AMENDMENT OFFERED BY MR. FAWELL TO THE AMENDMENT OFFERED BY MR. CONTE

MR. FAWELL: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Fawell to the amendment offered by Mr. Conte: Page 14, line 18, strike "$30,950,000" and insert "$30,550,–000".

PARLIAMENTARY INQUIRIES

MR. CONTE: Mr. Chairman, may I make a parliamentary inquiry?

THE CHAIRMAN: The gentleman may state his inquiry. . . .

The Fawell amendment strikes $30,950,000 and inserts $30,550,000.

MR. CONTE: Mr. Chairman, if the Fawell amendment is adopted, therefore, my amendment is wiped out, because the gentleman does not make the savings.

THE CHAIRMAN: The figure inserted by the Conte amendment would be reduced by an additional $250,000.

MR. CONTE: Well, Mr. Chairman, the gentleman's amendment is for $400,000 for the beauty shop and gym study.

MR. FAZIO: Mr. Chairman, may I state further in this parliamentary inquiry, we cannot do the Fawell and the Conte amendments in their entirety simultaneously. One or the other is out of order.

MR. CONTE: That is right.

THE CHAIRMAN: The Chair can only read the figures in each amendment.

MR. CONTE: Well, Mr. Chairman, let us go over this again.

THE CHAIRMAN: The Chair cannot interpret those figures which are to be a lump sum amount for the House Office Building. The Chair can only read them in response to the gentleman's inquiry.

MR. CONTE: Mr. Chairman, may I further inquire, the gentleman from Il-

linois is trying to cut $400,000, is that right?

THE CHAIRMAN: The amendment offered by the gentleman from Illinois [Mr. Fawell] would cut an additional $250,000 from the amendment offered by the gentleman from Massachusetts [Mr. Conte].

MR. CONTE: Which would leave no cut for the garage attendants.

THE CHAIRMAN: The Chair cannot interpret the effect of that. The Chair can give the gentleman the arithmetic only.

Chair's Power of Recognition

§ 14.23 The Chair will not render an anticipatory decision on whom he will recognize to offer a motion if the previous question on a pending question is defeated but reserves the option of making that determination after hearing debate and ascertaining to his satisfaction who has "led the opposition" to ordering the previous question.

Where there was an effort to defeat the previous question on a pending motion to instruct conferees, the proponent of the pending motion asked who would have the right to offer an amendment if the previous question were defeated. The Chair's response, excerpted from the proceedings of Sept. 22, 1988,[15] is carried herein.

MR. [JULIAN C.] DIXON [of California]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4776) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1989, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER:[16] Is there objection to the request of the gentleman from California?

There was no objection.

MOTION OFFERED BY MR. GREEN

MR. [BILL] GREEN [of New York]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Green moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 4776, be instructed to agree to the amendment of the Senate numbered 25.

THE SPEAKER: The gentleman from New York (Mr. Green) is recognized for 1 hour. . . .

PARLIAMENTARY INQUIRY

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

THE SPEAKER: The gentleman will state it.

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15. 134 CONG. REC. 24868, 24869, 100th Cong. 2d Sess.

16. James C. Wright, Jr. (Tex.).

MR. GREEN: Mr. Speaker, if the motion on the previous question loses, may I inquire whether it is the motion of this gentleman from California (Mr. Dannemeyer) or the more recent gentleman from California (Mr. Dornan) that gets offered?

THE SPEAKER: The Chair will determine recognition priorities at the appropriate time, ascertaining at such time who is entitled to recognition.

Does the gentleman have further comments on his motion?

Taking Parliamentary Inquiry Under Advisement

§ 14.24 The Chair may delay his response to a parliamentary inquiry pending an examination of the precedents.

A privileged disciplinary resolution, reported from the Committee on Standards of Official Conduct, was called up in the House on Oct. 13, 1978.[17] Immediately after the reading of the resolution, a Member asked, as a parliamentary inquiry, whether the one paragraph resolution was divisible. The proceedings were as follows:

IN THE MATTER OF REPRESENTATIVE EDWARD R. ROYBAL

Mr. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Speaker, I offer a privileged resolution (H. Res. 1416) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1416

Resolved, That Representative Edward R. Roybal be censured and that the House of Representatives adopt the Report of the Committee on Standards of Official Conduct dated October 6, 1978, In the matter of Representative Edward R. Roybal.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER:[18] The gentleman will state his parliamentary inquiry.

MR. ASHBROOK: Mr. Speaker, my parliamentary inquiry is directed toward the rules and the precedents of the House. I would propound a question to the Chair in my parliamentary inquiry as to whether the resolution is divisible when it comes to a vote.

THE SPEAKER: The Chair will state that the gentleman will have to indicate how he wanted to divide the vote.

MR. ASHBROOK: Mr. Speaker, the resolution says, "That Representative Edward R. Roybal be censured," which would seem to be divisible under the precedents of the House. The resolution calls upon the House of Representatives to adopt the report and to censure Mr. Roybal. I wonder whether or not the resolution can, therefore, be divided into two questions, one being censure and the second being the adoption of the report, which could be by separate votes.

THE SPEAKER: The gentleman's rights will be protected. The Chair will examine the precedents with regard to the gentleman's point.

17. 124 CONG. REC. 37009, 37016, 37017, 95th Cong. 2d Sess.

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

MR. ASHBROOK: Mr. Speaker, I thank the Chair for that consideration.

THE SPEAKER: The gentleman from Georgia (Mr. Flynt) is recognized for 60 minutes. . . .

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

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. ASHBROOK: Mr. Speaker, earlier I propounded a parliamentary inquiry to the Speaker as to whether or not, under the rules and precedents of the House, House Resolution 1416, as it stands, would be divisible.

THE SPEAKER: The Chair is ready to respond to the gentleman.

MR. ASHBROOK: I appreciate that, Mr. Speaker.

THE SPEAKER: The gentleman from Ohio (Mr. Ashbrook) has requested an opinion as to whether the question on House Resolution 1416 may be divided.

To be the subject of a division of the question under the precedents of the House, a proposition must constitute two or more separate substantive propositions so that if one of the propositions is removed, the remaining proposition constitutes a separate and distinct question, and that test must work both ways.

In the opinion of the Chair, the questions are substantially equivalent questions. For that reason, the Chair holds that House Resolution 1416 is not subject to a demand for a division of the question.

MR. ASHBROOK: I thank the Chair.

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

The previous question was ordered.

MR. BOB WILSON: [of California]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the resolution?

MR. BOB WILSON: I am.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Bob Wilson moves to recommit the resolution, House Resolution 1416, to the Committee on Standards of Official Conduct with instructions to report the same back forthwith with the following amendment. Strike all after the resolving clause and insert:
>
> That Edward R. Roybal be and he is hereby reprimanded.

THE SPEAKER: Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

MR. [BRUCE F.] CAPUTO [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

CAPUTO: Is time allowed for debate?

THE SPEAKER: The motion is not debatable.

The question is on the motion to recommit with instructions.

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

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

The yeas and nays were refused.

MRS. [MILLICENT] FENWICK [of New Jersey]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 219, nays 170, answered "present" 1, not voting 40, as follows: . . .

So the motion to recommit was agreed to.

The result of the vote was announced as above recorded.

MR. FLYNT: Mr. Speaker, pursuant to the instructions of the House, I report the resolution back to the House with an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Flynt: Strike all after the resolving clause and insert: That Edward R. Roybal be and he is hereby reprimanded.

The amendment was agreed to.

The resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

§ 14.25 Where a parliamentary inquiry does not relate to the immediate proceedings of the House, the Chair may take the matter under advisement, particularly where research is required into the origins of a rule.

On Apr. 7, 1992,[19] during a special order concerning the so-called "banking scandal" that preoccupied many Members of the House, a discussion involved the meaning of the admonition in Rule II that the officers of the House "shall keep the secrets of the House." The Speaker took the matter under advisement.

THOUGHTS ON THE SCANDAL-RIDDEN HOUSE

THE SPEAKER PRO TEMPORE:[20] Under a previous order of the House, the gentleman from Texas [Mr. DeLay] is recognized for 60 minutes.

MR. [TOM] DELAY [of Texas]: Mr. Speaker, I take this time in the well and before the House to express my opinions about what has been going on in this House or the lack of what has been going on in this House over the last few years, particularly during the scandal-ridden period of the last year or so. . . .

Mr. Speaker, I appreciate the gentleman giving us that little bit of history. I think it is very beneficial to the overall theme of this special order. That is that this has been going on, this lack of leadership, the mismanagement of the House, has been going on for many years. It just points up that when someone is in power for an inordinate amount of time, then this kind of oversight, this kind of corruption, if you will, continues and builds upon itself and sort of feeds on itself. . . .

MR. [RICHARD K.] ARMEY [of Texas]: . . . There is another question I would have about the secrets of the House.

PARLIAMENTARY INQUIRY

MR. DELAY: Would the gentleman hold right there?

Mr. Speaker, I have a parliamentary inquiry.

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

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19. 138 CONG REC. 8271–74, 102d Cong. 2d Sess.

20. Richard Ray (Ga.).

MR. DELAY: Mr. Speaker, I make an inquiry of what does it mean when it says in the rules of the House that the House must keep the secrets of the House, the officers must keep the secrets of the House?

THE SPEAKER PRO TEMPORE: The Chair is not prepared to respond to that, and will be consulting with the gentleman. . . .

The gentleman will state his parliamentary inquiry.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Do I understand the Chair correctly that the Chair is not prepared to rule at this time on what the phrase "secrets of the House" means?

THE SPEAKER PRO TEMPORE: In reference to that question, the Chair says to the gentleman from Pennsylvania, the word "secrets" has appeared in the rule for a great number of years. The Chair will endeavor to try to find out for the gentleman what the word "secrets" means.

Parliamentarian's Note: Rule II provides for the election of officers of the House (other than the Speaker) by viva voce vote, "each of whom shall take an oath to support the Constitution of the United States . . . and to keep the secrets of the House."

In section 635 of the *House Rules and Manual* it is recited that the "requirement that the officers be sworn to keep the secrets of the House is obsolete" (citing 1 Hinds' Precedents § 187). In that precedent the origin of the oath of secrecy requirement in the rule is discussed only in relationship to secret sessions of the House, "but inasmuch as no secret session has been held for about seventy years, the observance of this portion of the rule is naturally neglected." Thus, according to Asher Hinds, the oath of secrecy requirement had become obsolete at that time.

As indicated in section 914 of the *House Rules and Manual*, the House conducted its first secret session since 1830 on June 20, 1979, and then conducted three subsequent secret sessions on July 17, 1979, Feb. 25, 1980, and July 19, 1983. On all of those occasions, the Manual and Record indicate that "those officers and employees specified by the Speaker whose attendance was essential to the functioning of the secret session. . . would be required to sign an oath of secrecy."

§ 14.26 The Chair may in his discretion defer a response to a parliamentary inquiry pending his examination of the rule and the amendments in question.

On Oct. 4, 1990,[1] the Comprehensive Crime Control Act of 1990 was being considered under the provisions of a complex special order which permitted consider-

1. 136 CONG REC. 27511, 27512, 101st Cong. 2d Sess.

ation only of those amendments spelled out in the report of the Committee on Rules. The order of amendments was specified in the rule. When asked about the juxtaposition of two amendments to the same portion of the bill, the Chair needed to evaluate both the rule and the text of the amendments in order to respond to the parliamentary inquiry made by Mr. George W. Gekas, of Pennsylvania.

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

THE CHAIRMAN:[2] The gentleman will state his parliamentary inquiry.

MR. GEKAS: There is a bit of confusion reigning in my mind, if nowhere else, as to whether or not under previous instructions and rules of this type as to whether or not the Hughes-Gekas amendment is in the posture of king of the hill. Specifically, I would ask the Chair to let me know, at this juncture, is it so that if both pass, that the latter one, the Gekas amendment, would prevail?

THE CHAIRMAN: The Chair will advise the gentleman momentarily, as the Chair must now be advised on this and review both amendments.

The Chair would advise the gentleman from Pennsylvania [Mr. Gekas] as soon as the Chair has examined the two amendments.

MR. GEKAS: I thank the Chair. . . .

THE CHAIRMAN: The Chair will respond to the parliamentary inquiry just posed.

The Hughes amendments offered en bloc, if adopted, would insert several new sections, sections 212 through 218, into title II, and would make a minor change in title XXII. The Gekas amendment would rewrite all of title II as amended by Hughes and insert a new title.

In effect, the Gekas amendment, if adopted, would replace most of the Hughes amendment en bloc.

MR. GEKAS: I thank the Chair. That was our suspicion, and we wanted to have it confirmed from the summit itself.

§ 14.27 The Chair may take a certain parliamentary inquiry under advisement, especially where the inquiry does not relate to the immediate procedures of the House.

On May 26, 1993,[3] a new Member-elect arrived at the Capitol. A sitting Member inquired of the Chair whether the new Member-elect would be permitted to take the oath, although his credentials were not before the body. The Speaker Pro Tempore, Mr. Jim McDermott, of Washington, suggested that the question should be presented to the Speaker for his consideration.

MR. [F. JAMES] SENSENBRENNER: [Jr., of Wisconsin]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. SENSENBRENNER: Mr. Speaker, would it be in order for me to ask

2. Douglas H. Bosco (Calif.).

3. 139 CONG REC. 11251, 103d Cong. 1st Sess.

unanimous consent that the gentleman from Wisconsin [Mr. Barca] who has been elected to fill the vacant First District seat, be allowed to take the oath of office, notwithstanding the fact that a certificate of election for him has not arrived? The Republican candidate has conceded and, to my knowledge, there is no objection to Mr. Barca taking the oath of office from this side of the aisle.

THE SPEAKER PRO TEMPORE: The Chair would have to take that under advisement with the Speaker of the House.

§ 14.28 The Chair may take a parliamentary inquiry under advisement, particularly in a situation where a delay in responding to the inquiry does not interfere with the pending business of the House.

An inquiry of the Chair about the composition of the *Congressional Record,* and extensions of remarks therein, was taken under advisement, where the Chair did not have time to consult with the Official Reporters of Debates and the Government Printing Office during the proceedings. The pertinent excerpts from the Record of Feb. 11, 1994,[4] are set out below:

THE SPEAKER PRO TEMPORE:[5] Under a previous order of the House, the gentleman from Pennsylvania [Mr. Walker] is recognized for 5 minutes.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Madam Speaker, I would like to use my 5 minutes to begin with to propound a parliamentary inquiry relating to the matter of extensions of remarks in the *Congressional Record*.

In yesterday's *Congressional Record*, that would be February 10, on pages H 460 to H 476, material was submitted to the *Congressional Record* costing the taxpayers $6,132, where there was not an announcement of that cost prior to the material being submitted.

My parliamentary inquiry is this, does the Chair have a responsibility to ascertain the amount of taxpayer expense in Extensions of Remarks.

THE SPEAKER PRO TEMPORE: In response to the inquiry of the gentleman from Pennsylvania, the Chair understands the situation to be as follows: the gentlewoman from Colorado requested permission to address the House for 1 minute, to revise and extend her remarks and to include extraneous material. Due to the length of the matter submitted, the material was moved by the official reporters from the beginning of the day to appear following legislative business. This normally is a signal to the Government Printing Office to return the material to the Member should a printing estimate be required, submissions in excess of two *Congressional Record* pages. That apparently did not occur in this situation, so the submission was printed. . . .

MR. WALKER: So the Member has the responsibility, if they have a large amount of material, to present that to the House prior to asking the permission; is that correct?

THE SPEAKER PRO TEMPORE: To ask permission with the estimate of the cost in hand.

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4. 140 CONG. REC. 2244, 2245, 103d Cong. 2d Sess.

5. Jolene Unsoeld (Wash.).

MR. WALKER: And in this particular case, as I understand it, that procedure was not followed; is that correct?

THE SPEAKER PRO TEMPORE: The gentlewoman did not have an estimate and, for that reason, the matter was held over until the end of the Record.

MR. WALKER: Is there a procedure for recovering the amount of money spent that was spent and not properly agreed to.

THE SPEAKER PRO TEMPORE: The Chair would have to take that under advisement.

Improper Parliamentary Inquiry

§ 14.29 The Chair will not respond to a parliamentary inquiry whether a floor request conforms to "committee policy" where that policy is not a rule of the House.

On Apr. 29, 1988,[6] the House was considering a Defense authorization bill (fiscal 1989) under a series of complicated special orders. The rule under which the bill was being considered specified which amendments were to be in order, the order of their consideration, and their debate time. In the House, before resolving into the Committee of the Whole for further consideration of the measure, Chairman Les Aspin, of Wisconsin, asked unanimous consent to change the order of amendments. Several parliamentary inquiries were directed to the Speaker, in an attempt to determine whether certain amendments had been submitted in a timely fashion, pursuant to the announced policy of the Committee on Rules. The proceedings were as follows:

PERMISSION TO CONSIDER AMENDMENT NO. 20 PRINTED IN SECTION 3 OF HOUSE REPORT 100–590 AS AMENDMENT NO. 6 OF SECTION 2 OF REPORT ON H.R. 4264, NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEAR 1989

MR. ASPIN: Mr. Speaker, I ask unanimous consent that amendment No. 20, printed in section 3 of House Report 100–590 be considered as if it were amendment No. 6 of section 2 of the report.

THE SPEAKER PRO TEMPORE:[7] Is there objection to the request of the gentleman from Wisconsin? . . .

PARLIAMENTARY INQUIRY

MR. [JOHN R.] KASICH [of Ohio]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. KASICH: What I do not quite understand, Mr. Speaker, is if we are operating under a certain rule, somebody has got to know what the rule is to find out whether the amendment being offered should be accepted under the rule.

6. 134 CONG. REC. 9551, 9552, 100th Cong. 2d Sess.

7. James H. Bilbray (Nev.).

I have no objection to the amendment from how I understand it. I am just trying to understand if the rule is being followed here, and if there is an ability to get unanimous consent to offer something that did not follow within that deadline, then I would like to reserve the ability to be able to ask for that unanimous consent.

THE SPEAKER PRO TEMPORE: The amendment is in order. It is on page 55 of House Report 100–590, an amendment offered by Representative Pepper of Florida or Representative Lowry of Washington or his designee, debatable for not to exceed 40 minutes, to be equally divided between the proponent and opponent.

MR. KASICH: Mr. Speaker, a further parliamentary inquiry. I am not interested—if it is printed in there, I want to know if the amendment was filed by the time that we were supposed to have had these amendments filed. That is what I am inquiring.

THE SPEAKER PRO TEMPORE: It is presumed that that is correct. But again, it is something that has to be answered by the Rules Committee.

MR. KASICH: A further parliamentary inquiry, Mr. Speaker. I do not want us to presume anything. I want to know. I do not want to presume.

I do not have any objection, Mr. Speaker, to that amendment. It is just that if we are not going to abide by those rules, there are additional amendments that we would like to offer. I do not object, necessarily to the substance of the amendment.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio will have to accept that the Chair does not know the answer to the gentleman's question, nor does the chairman of the Armed Services Committee.

MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Chairman, will the gentleman yield?

MR. KASICH: Then I will object, Mr. Speaker, until we get an answer as to what the rule is, how it was filed.

MR. DICKINSON: Mr. Chairman, will the gentleman withhold his objection for a moment?

MR. KASICH: Yes; I will withhold, and simply reserve the right to object.

MR. ASPIN: Mr. Speaker, if the gentleman will yield, we will deal with this amendment today, because we have to get the unanimous consent in the House.

MR. KASICH: Then I will withdraw my objection so we can get those questions answered.

MR. ASPIN: The gentleman deserves an answer to his question, but I do not think we can answer it today.

§ 14.30 The Chairman of Committee of the Whole does not respond to inquiries about future legislative programs in the House.

On Feb. 3, 1995,[8] Mr. John A. Boehner, of Ohio, was presiding in Committee of the Whole.

PARLIAMENTARY INQUIRY

MR. [NEIL] ABERCROMBIE [of Hawaii]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

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8. 141 CONG. REC. p. ____, 104th Cong. 1st Sess.

MR. ABERCROMBIE: Mr. Chairman, is it the Chair's understanding that a ruling was arrived at or an understanding was arrived at with respect to the votes on Monday and the 2 o'clock versus 5 o'clock time? Because that is not clear to me.

THE CHAIRMAN: The Chairman of the Committee of the Whole is not in a position to rule on that question.

MR. ABERCROMBIE: Mr. Chairman, a further parliamentary inquiry. How might I go about making that inquiry? My understanding is that issue was not settled.

THE CHAIRMAN: The gentleman should inquire of the leadership who makes those decisions.

§ 14.31 Questions concerning informal guidelines of the Committee on Rules for submission of amendments may not be raised as parliamentary inquiries, since the Chair is not being called upon to interpret any rule of the House.

While the Chair responds to parliamentary inquiries concerning the application of House rules and precedents relating to pending business, he does not interpret committee policies or factual questions about matters not within his cognizance. The proceedings of May 5, 1988,[9] are illustrative:

MR. [DUNCAN] HUNTER [of California]: Mr. Chairman, I appreciate the Chair's admonition, and my only remarks with regard to the point of order is I hope the Chairman would allow us to cure the defect that he has pointed out in this particular package.

THE CHAIRMAN PRO TEMPORE:[10] Does the gentleman from Arkansas (Mr. Robinson) desire to be heard on the point of order?

MR. [TOMMY F.] ROBINSON [of Arkansas]: Yes, Mr. Chairman.

THE CHAIRMAN PRO TEMPORE: The gentleman from Arkansas is recognized.

MR. ROBINSON: Mr. Chairman, we had a date certain deadline for all amendments to the DOD bill to be submitted to the Rules Committee.

Parliamentary inquiry, was the Aspin amendment submitted to meet the deadline initially when we all had to abide by the rules to bring any amendment to this floor?

THE CHAIRMAN PRO TEMPORE: The Chair cannot answer that inquiry. That is not a parliamentary inquiry. . . .

Does the gentleman from California (Mr. Badham) desire to be heard on the point of order?

PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BADHAM [of California]: No, Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE: The gentleman will state it.

MR. BADHAM: Mr. Chairman, my parliamentary inquiry is that allusion was made to the fact that we had a deadline for submitting amendments.

9. 134 CONG. REC. 9938, 100th Cong. 2d Sess.

10. Kenneth J. Gray (Ill.).

Is it not true that there was no deadline for submitting amendments?

THE CHAIRMAN PRO TEMPORE: That would be a question the gentleman would have to ask the Rules Committee.

MR. BADHAM: I tried, Mr. Chairman, Lord knows I tried.

THE CHAIRMAN PRO TEMPORE: The Chair is not prepared to rule on that question.

§ 14.32 A Member may not use the guise of a parliamentary inquiry to register opposition to a unanimous-consent agreement already entered into.

On occasion, the Chair may feel an obligation to "indulge" a Member in stretching the use of a parliamentary inquiry to clarify a misunderstanding that has arisen in floor procedure. Such was the situation on Dec. 20, 1987,[11] when Mr. Dan Burton, of Indiana, felt his rights had been violated because of a scheduling agreement entered into by his leadership during special orders, a period when unanimous-consent requests relating to the business of the House are normally not entertained.

MR. [THOMAS S.] FOLEY [of Washington]: I hope all Members realize that in attempts to reach a conclusion on the continuing resolution and on the reconciliation bill, the joint leadership is trying to accommodate Members as much as possible. We had hoped that these bills might be ready today. . . .

MR. BURTON of Indiana: Mr. Speaker, will the gentleman yield?

MR. FOLEY: I yield to the gentleman from Indiana.

MR. BURTON of Indiana: I thank the gentleman for yielding.

Mr. Speaker, we are going to be asked this evening at 5 p.m. to vote on a 1-day CR so that the Government would not have to shut down. What I would like to advise the leadership now is that this gentleman intends to object unless we have some idea at that time whether or not agreement has been reached between not only the Republican and Democratic sides of both Houses, but also the White House.

If there is no agreement on that, I think we are——

MR. FOLEY: We have been advised by the representatives of the President that if he receives before tomorrow morning an action of the Congress extending for 24 hours until midnight tomorrow night the temporary continuing resolution, the President will sign it.

MR. BURTON of Indiana: I am not talking about that, if the gentleman will yield further.

I am talking about the big CR and the budget reconciliation act. If agreement has not been reached between both Houses and the White House and we have some pretty concrete evidence that the President is going to sign it, I intend to object this evening.

11. 133 CONG. REC. 36699, 36700, 100th Cong. 1st Sess.

MR. FOLEY: I do not think we intend to bring the matter by unanimous consent. The gentleman may vote against the bill if he wishes to.

MR. BURTON OF INDIANA: Unanimous consent is not required?

MR. FOLEY: No.

THE SPEAKER:[12] The Chair will advise the gentleman that unanimous consent would not be required.

The Chair wishes to express along with the majority leader and the minority leader a regret for any inconvenience that has been caused to Members and their schedules, but as the majority leader has explained, and the minority leader as well, the leadership has been attempting to try to create a situation in which we can work the will of the House and conclude the session of the Congress at a minimum of inconvenience to the membership.

In that regard, the Chair wants to thank the membership for their understanding.

PARLIAMENTARY INQUIRIES

MR. BURTON of Indiana: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BURTON OF INDIANA: Mr. Speaker, I would like to know when this rule was requested and granted. The Members when we left on Friday were not aware, to my knowledge, that there was going to be a rule requested for a 1-day CR. It seems like that is kind of something that was sneaked in on us, at least as far as I am concerned.

THE SPEAKER: The Chair will advise the gentleman that the Rules Committee was granted permission by this House, by unanimous consent, a request offered by the majority leader and understood by the minority leadership, they being present, that the Rules Committee should have—until noon today, to file privileged reports. And the Rules Committee has done so with respect to the short-term continuing resolution.

MR. BURTON of Indiana: If I might further inquire of the Chair, when did this take place, when did the leadership of both the majority and minority, or when were they informed about this requested rule?

THE SPEAKER: If the gentleman will be patient, the Chair will examine the notes in the Journal and try to give the gentleman a response as to when. It was sometime yesterday, approximately 5 p.m. yesterday afternoon.

MR. BURTON of Indiana: Five p.m. on Saturday after everybody had gone home?

THE SPEAKER: Well, the Chair will advise the gentleman that it is the responsibility of the majority and the minority leadership to try as best they can to accommodate the schedule of the membership.

MR. BURTON of Indiana: Mr. Speaker, where a unanimous consent is required or requested, it is my understanding that it is the entire body, not just the leadership that is supposed to be involved. And to go ahead——

THE SPEAKER: If the gentleman will permit the Chair to respond, it is a long—standing rule that unanimous consent requests-not by the rules of the House, but by the comity and the courtesy that exists between both sides—are cleared in advance of their

12. James C. Wright, Jr. (Tex.).

being requested, usually, with the minority leadership, and that they are not propounded unless someone representing the minority is present in the Chamber. That is a matter of precedent.

MR. BURTON of Indiana: I have a further parliamentary inquiry.

THE SPEAKER: Permit the Chair, please, to respond and the gentleman will be recognized.

There is no requirement that all Members be present. If there were, the House might never achieve a unanimous consent request, and I think the gentleman recognizes, as will all Members that the minority and majority have tried very earnestly to work together in a harmonious fashion. . . .

MR. BURTON of Indiana: I have a further parliamentary inquiry.

Mr. Speaker, there was some discussion privately of a 1-day CR on Friday, and, Mr. Speaker, when we left, it was the understanding of this gentleman, and, I think, most Members on our side of the aisle that no legislative action was going to take place that would preclude our right to object to a unanimous consent request to go to the Rules Committee or to pass a 1-day CR. Now, it did take place in our absence, and I submit, Mr. Speaker, that at least as far as I was concerned, I was misled. I do not know whether it was inadvertent or not, but I feel like I was misled because had I known that you were going to ask unanimous consent to go to the Rules Committee to get a special rule for a 1-day CR, a 1-day extension, I would have been here to object.

MR. [HENRY B.] GONZALEZ [of Texas]: A point of order, Mr. Speaker.

THE SPEAKER: The gentleman's point of order is well taken. The gentleman was not stating a parliamentary inquiry, but the Chair indulged him to make such statement as he desired to make.

§ 14.33 Although the Chair responds to parliamentary inquiries concerning the amendment process, he does not: (1) rule on hypothetical questions; (2) rule retrospectively on questions not raised in a timely fashion; and (3) rule anticipatorily on questions not yet presented.

On June 6, 1990,[13] the Committee of the Whole had under consideration the Export Facilitation Act of 1990. An amendment dealing with Soviet Union-Lithuanian relationships was pending when a parliamentary inquiry was raised about the possibility of considering additional amendments, involving other international relationships. The proceedings were as shown herein.

Amendment offered by Mr. Durbin: Page 48, insert the following after line 11:

SEC. 124. EXPORTS TO THE SOVIET UNION.

No exports to the Soviet Union otherwise permitted by virtue of the amendments made by this title may be made until the President certifies

13. 136 CONG. REC. 13189, 13193, 13194, 101st Cong. 2d Sess.

to the Congress that the Soviet Union is not imposing any economic sanctions on Lithuania and has entered into negotiations with the elected government of Lithuania for the purpose of restoring the independence of Lithuania.

MODIFICATION OF AMENDMENT OFFERED BY MR. DURBIN

AMENDMENT OFFERED BY MR. LEVINE OF CALIFORNIA TO THE AMENDMENT OFFERED BY MR. DURBIN, AS MODIFIED

MR. [MEL] LEVINE of California: Mr. Chairman, I offer an amendment to the amendment as modified.

The Clerk read as follows:

Amendment offered by Mr. Levine of California to the amendment as modified offered by Mr. Durbin:

Insert "(a) EXPORTS.—" before the first sentence.

Add the following at the end of the amendment.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that no reports to the Soviet Union otherwise permitted by virtue of the amendments made by this title should be made if the Soviet Union takes action to restrict the emigration of Jews from the Soviet Union. . . .

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[14] The gentleman will state his parliamentary inquiry.

MR. SOLOMON: Mr. Chairman, I wholeheartedly support the statement of the gentleman from California, and I support his amendment to the amendment.

My parliamentary inquiry is that we have a Member, the gentleman from Pennsylvania (Mr. Ritter), who would like to have the opportunity to offer an amendment to the amendment to be offered by the gentleman from Indiana (Mr. Burton) on Cuba, and the Ritter amendment would deal with Afghanistan along the same basis that the gentleman from California has been speaking.

I just question: what is the parliamentary procedure for the recognition of the amendment of the gentleman from California (Mr. Levine) and whether or not it would be in order at the appropriate time for the gentleman from Pennsylvania (Mr. Ritter) to offer his amendment to the amendment based on the same scenario?

THE CHAIRMAN: The pending situation has no bearing on what might be the situation to what the Chair cannot anticipate, that could develop subsequently on another amendment.

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

Mr. Chairman, on what basis is the gentleman from California (Mr. Levine) allowed to offer his amendment to the amendment? And, again, I do not question the basis of his amendment, because I support it. But I do not see it in the rule. That is why I was asking.

THE CHAIRMAN: The rule does not prevent amendments to the amendment, and no point of order with regard to its germaneness was raised in a timely fashion. . . .

MR. [DOUG] BEREUTER [of Nebraska]: Mr. Chairman, I would address my parliamentary inquiry to the Chair in this fashion: is it still timely to object or to raise reservations under

14. Al Swift (Wash.).

the point of nongermaneness to the amendment?

THE CHAIRMAN: The Chair would respond in this fashion: it is too late. That point of order would have to have come prior to the time the gentleman from California (Mr. Levine) was recognized to debate his amendment.

Chair Does Not Give Advisory Rulings

§ 14.34 The Chair may decline to indicate in advance whether a suggested resolution would be privileged, since the Chair does not give advisory opinions regarding parliamentary questions not related to pending business.

During the one-minute period at the beginning of the legislative day of Sept. 29, 1993,[15] two Members sought to suggest that an investigation into conduct by an executive branch official might be undertaken by a House committee. They pressed the Chair to say how such a resolution might be brought to the floor.

LY BINH TO BE IN MY OFFICE TOMORROW

(Mr. Burton of Indiana asked and was given permission to address the House for 1 minute.)

MR. [DAN] BURTON of Indiana: Mr. Speaker, the Clinton administration has taken two giant steps toward normalizing relations with Vietnam. . . .

Now we find out that a Cabinet official, Mr. Ron Brown, the Secretary of the Department of Commerce, is accused of taking $700,000 to influence these decisions. . . .

We have demanded an investigation into this, not unlike the Watergate or the Iran-Contra investigations, because it involves our foreign policy and a Cabinet official who may have influenced these decisions even though there are 2,200 POW/MIA's still unaccounted for in Vietnam. . . .

PARLIAMENTARY INQUIRIES

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I rise to propound a parliamentary inquiry. . . .

By what process can the House of Representatives begin an investigation of this very serious matter where we can be assured that the investigation will take place?

THE SPEAKER PRO TEMPORE:[16] The Chair advises the gentleman that committees of jurisdiction can initiate investigations on matters such as this.

MR. WALKER: Well, Mr. Speaker, the problem is that the gentleman from Indiana has already written the committees of jurisdiction and is being stonewalled. My question is:

By what means can we ensure that, if the chairmen of those committees refuse to hold hearings on this matter of major significance, the House of Representatives can order such an investigation to take place?

THE SPEAKER PRO TEMPORE: The Chair cannot respond more fully to the

15. 139 CONG. REC. 22988–90, 103d Cong. 1st Sess.

16. Bill Richardson (N. Mex.).

gentleman from Pennsylvania [Mr. Walker] at this time. . . .

MR. WALKER: . . . and I am seeking to know whether or not there is a resolution of some sort that can be brought to the floor that would force this investigation to take place.

THE SPEAKER PRO TEMPORE: The Chair cannot respond beyond the fact that a resolution can be introduced and referred to the appropriate committee of jurisdiction.

MR. WALKER: But there is no privileged resolution that can be brought to the floor that would force the investigation to take place, Mr. Speaker?

THE SPEAKER PRO TEMPORE: The Chair cannot comment on such an issue until seeing such a resolution.

MR. BURTON of Indiana: Mr. Speaker, I have a parliamentary inquiry.

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

MR. BURTON of Indiana: Mr. Speaker, I thank the gentleman from Pennsylvania [Mr. Walker] for his question.

I sent a letter to the chairman of the Committee on Foreign Affairs asking for an investigation. That appeared to me to be the committee of jurisdiction. He has indicated that he did not think he should do that, and he named a litany of other committees that ought to be notified, and that is what prompted the gentleman from Pennsylvania to ask these questions, and so we just want to know, if this merits an investigation, how do we do it?

THE SPEAKER PRO TEMPORE: If the gentleman wants to introduce a resolution, the Chair will refer it to the appropriate committee.

MR. BURTON of Indiana: Mr. Speaker, we will do that.

Parliamentary Inquiry as to Legal Effect of Proposal

§ 14.35 Questions about the legal effect of a pending legislative proposal are not entertained as parliamentary inquiries.

On Jan. 25, 1995,[17] where the House had under consideration a resolution directing certain committees to take action to report legislation to achieve a balanced budget, the Chair declined to respond to parliamentary inquiries regarding the legal or binding effect of the resolution.

MR. [MICHAEL P.] FLANAGAN [of Illinois]: Mr. Speaker, pursuant to House Resolution 44, as designee of the majority leader, I call up the concurrent resolution (H. Con. Res. 17) relating to the treatment of Social Security under any constitutional amendment requiring a balanced budget, and ask for its immediate consideration in the House.

The Clerk read the title of the concurrent resolution.

The text of House Concurrent Resolution 17 is as follows:

H. CON. RES. 17

Resolved by the House of Representatives (the Senate concurring), That, for the purposes of any constitutional amendment requiring a balanced budget, the appropriate committees of the House and the Senate shall report to their respec-

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

tive Houses implementing legislation to achieve a balanced budget without increasing the receipts or reducing the disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund to achieve that goal.

THE SPEAKER PRO TEMPORE:[18] Pursuant to the rule, the gentleman from Illinois [Mr. Flanagan] will be recognized for 30 minutes and the gentleman from Michigan [Mr. Bonior] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. Flanagan].

PARLIAMENTARY INQUIRY

MR. [CHAKA] FATTAH [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. FATTAH: Mr. Speaker, I would like to know the legal effect of the resolution in front of us. Is it binding?

THE SPEAKER PRO TEMPORE: The gentleman is not stating a parliamentary inquiry.

Not a Proper Inquiry-Meaning of an Amendment

§ 14.36 The construction or meaning of an amendment is not a proper subject for a parliamentary inquiry as such matters are for the House and not the presiding officer to determine.

On Oct. 12, 1966,[19] Chairman John J. McFall, of California, pointed out that it was the duty of the proponent of an amendment to explain it to other Members, not the duty of the Chair.

MR. [J. EDWARD] ROUSH [of Indiana]: Mr. Chairman, I offer an amendment to the substitute amendment offered by the gentleman from Arizona [Mr. Udall].

The Clerk read as follows: . . .

THE CHAIRMAN: The Chair recognizes the gentleman from Indiana [Mr. Roush].

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Chairman, will the gentleman yield for the purpose of propounding a parliamentary inquiry?

MR. ROUSH: I yield to the gentleman from Indiana.

THE CHAIRMAN: The gentleman from Indiana will state the parliamentary inquiry.

MR. HALLECK: Mr. Chairman, in view of the fact that all of the units of this proposed national park are fixed by reference to a map, is it in order to offer language in indefinite terms that would undertake to alter that?

The gentleman from Arizona offered an amendment which referred to another map, which is a matter of record.

I do not know and I do not know whether anybody else knows just what is meant when reference is made to Ogden Dunes or Burns Bog units.

THE CHAIRMAN: The Chair would reply that the Chair is not in a position to construe the amendment. The amendment technically is in order and it is up to the Member offering an

18. Jim Kolbe (Ariz.).

19. 112 CONG. REC. 26205, 89th Cong. 2d Sess. Under consideration was H.R. 51, the Indiana Dunes Lakeshore bill.

amendment to construe the amendment for the benefit of the Members.

Anticipatory Rulings by Chair

§ 14.37 The Chair declines to anticipate whether an amendment not yet offered might be precluded by adoption of a pending amendment.

On June 26, 1979,[20] during consideration of the Defense Production Act amendments of 1979, a lengthy amendment was offered by Morris K. Udall, of Arizona, Chairman of the Committee on Interior and Insular Affairs. When he asked that the reading of the amendment be waived, there was a reservation of objection and the following proceedings occurred.

> Amendment offered by Mr. Udall: Page 8, after line 13 add the following new subsection and renumber the subsequent sections accordingly:
>
> (g)(1) The Secretary of Energy is hereby authorized to designate a proposed synthetic fuel or feedstock facility as a priority synthetic project pursuant to the procedures and criteria provided in this section.
>
> (2) For the purposes of this section the term—
>
> (A) "Synthetic fuel or feedstock facility" means any physical structure, including any equipment, building, mine processing facility or other facility or installation used. . . .
>
> (4) The Secretary shall keep apprised of the processing of applications for priority synthetic projects by State and local governments. If the Secretary determines that a priority synthetic project is being delayed or threatened with delay by the inability or unwillingness of any State or local government to implement a schedule for timely review and decision, the Secretary shall notify the Governor of such State and transmit to the Congress a statement describing the delay and recommending action to alleviate or prevent the delay.

MR. UDALL (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN:[1] Is there objection to the request of the gentleman from Arizona?

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, reserving the right to object, I wish to make a point of order. Mr. Chairman, the amendment which I had offered and had printed in the Record would be an appropriate substitute amendment for the amendment offered by the gentleman from Arizona (Mr. Udall). Under the time limitation, if I understand correctly, I have 5 minutes to offer that amendment.

THE CHAIRMAN: That is correct if offered in the proper form.

MR. BROWN of Ohio: But if this amendment is not amended by my amendment and succeeds, then I may be precluded from offering that amendment; is that correct?

THE CHAIRMAN: It would be difficult for the Chair to rule on that without having seen the gentleman's amendment.

MR. BROWN of Ohio: The question I would put to the Chair as a parliamen-

20. 125 CONG. REC. 16681–83, 96th Cong. 1st Sess.

1. Gerry E. Studds (Mass.).

tary inquiry is: Does, then, my amendment become appropriate to this amendment and give me the right to 5 minutes to discuss my amendment?

THE CHAIRMAN: If the gentleman were to offer his amendment as a substitute for this amendment in the form printed in the Record, he would, indeed, have the 5 minutes guaranteed to him under the rule.

MR. BROWN of Ohio: Then, Mr. Chairman, I offer an amendment to the amendment offered by the gentleman from Arizona (Mr. Udall).

THE CHAIRMAN: The Chair will advise the gentleman that it is not yet in order.

Is there objection to the unanimous-consent request of the gentleman from Arizona (Mr. Udall)?

MR. BROWN of Ohio: Mr. Chairman, I reserve the right to object in order to make an inquiry of the Chair.

The amendment of the gentleman from Arizona now pending and in the process of being read, I think the Chair advised me, was amendable by the gentleman from Ohio who has an amendment printed in the Record.

THE CHAIRMAN: The Chair would advise the gentleman that any proper substitute for the amendment of the gentleman from Arizona would be in order.

MR. BROWN of Ohio: And the order of recognition for that purpose, may I inquire of the Chair, does not relate to the establishment of the fact that there was an amendment that is appropriate?

THE CHAIRMAN: The order of recognition, the Chair will say to the gentleman, depends on the discretion of the Chair, given which Members are seeking recognition at the time.

Chair Does Not Rule on Hypothetical Questions on Scope of Conference

§ 14.38 The Chair does not advise, in response to a parliamentary inquiry, whether the failure of conferees to abide by the terms of a motion to instruct would go beyond the scope of their authority.

While the Chair must rule under Rule XXLVIII clause 3, on a point of order that a specific motion to instruct goes beyond the scope of conference, he does not speculate about whether modification of the language to which the motion is directed would cause a violation of clause 3. The proceedings of Oct. 29, 1981,[2] illustrate the Chair's reluctance to get involved in such speculation.

MRS. [PATRICIA] SCHROEDER [of Colorado]: Mr. Speaker, I offer a privileged motion.

THE SPEAKER PRO TEMPORE:[3] The Clerk will report the motion.

The Clerk read as follows:

> Mrs. Schroeder moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendments to the bill S. 815 be instructed to agree to the provisions contained in section 922 of the Senate bill.

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2. 127 CONG. REC. 26046, 26049, 97th Cong. 1st Sess.

3. James C. Wright, Jr. (Tex.).

MOTION TO TABLE OFFERED BY MR. DICKINSON

MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Speaker, I offer a motion to table.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

> Mr. Dickinson moves to lay on the table the motion of the gentlewoman from Colorado.

THE SPEAKER PRO TEMPORE: The motion is not debatable.

The question is on the motion to table offered by the gentleman from Alabama (Mr. Dickinson).

The question was taken; and on a division (demanded by Mr. Dickinson) there were—yeas 28, nays 18.

MRS. SCHROEDER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present. . . .

So the motion to table was rejected.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The gentlewoman from Colorado (Mrs. Schroeder) is recognized for 1 hour.

MRS. SCHROEDER: Mr. Speaker, I yield myself such time as I may consume.

PARLIAMENTARY INQUIRY

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. DICKINSON: Mr. Speaker, I would like to ask if my understanding of the parliamentary procedure is correct.

The gentlewoman from Colorado has succeeded against the motion to table, in which case she has a privileged motion now pending. It is my understanding she will have 1 hour to debate the motion now pending, and is in control of that entire time. Is this correct?

THE SPEAKER PRO TEMPORE: The gentleman stated the issue correctly. . . .

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Speaker, the motion offered by Mrs. Schroeder was that the managers on the part of the House at the conference of the disagreeing votes of the two Houses to the bill S. 815 be instructed to agree to the provisions contained in section 922 of the Senate bill.

My inquiry is to what extent does that motion allow the House conferees to deviate in any way from the specific provisions of section 922 of the Senate bill?

THE SPEAKER PRO TEMPORE: The Chair advises the gentleman that no point of order would lie against the conference report if the House conferees do not follow the instructions of the House, should the House agree to the motion of the gentlewoman from Colorado.

MR. STRATTON: In other words, we could accept a provision on limiting cost growth that does not follow the precise wording of section 922 of the Senate bill?

THE SPEAKER PRO TEMPORE: The Chair is not going to rule on what will be in the scope of the conference. The Chair is advising only as to the effect of the motion.

MR. STRATTON: Does this mean, Mr. Speaker, that if the gentleman from Alabama and I, who have been working on a substitute for the Nunn amendment, come up with something that does not have one or two of the provisions of the Nunn amendment in it, we are not in violation of the motion offered by the gentlewoman from Colorado?

THE SPEAKER PRO TEMPORE: The Chair would restate the parliamentary situation; that no point of order would lie for the reason that the conferees have not followed the instructions should the House adopt the motion of the gentlewoman from Colorado.

The motion to instruct is advisory.

Offering Amendment With Inquiry

§ 14.39 A Member recognized to propound a parliamentary inquiry may not, having secured the floor for such limited purpose, offer an amendment.

On Mar. 12, 1964,[4] Chairman Chet Holifield, of California, recognized Mr. August E. Johansen, of Michigan, to pose a parliamentary inquiry, not to offer an amendment.

MR. JOHANSEN: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. JOHANSEN: I direct this inquiry to the Chair as to whether it will be in order if I secure recognition to offer an amendment to the amendment in the nature of a substitute for the amendment offered by the gentleman from Ohio.

THE CHAIRMAN: Of course, the gentleman, if he is recognized, may offer an amendment.

MR. [JAMES H.] MORRISON [of Louisiana]: A parliamentary inquiry, Mr. Chairman. The gentleman secured recognition first and asked the parliamentary inquiry.

THE CHAIRMAN: The gentleman has not been recognized, except for a parliamentary inquiry.

MR. MORRISON: The gentleman has a substitute amendment.

THE CHAIRMAN: The gentleman made the parliamentary inquiry as to whether he could offer an amendment and the Chair responded that the gentleman could offer an amendment if he was recognized.

Proper Forum for Inquiry

§ 14.40 The question of the vote required to adopt a special rule in the House is not properly addressed to the Chairman of the Committee of the Whole as a parliamentary inquiry but should be addressed to the Speaker in the House.

On June 13, 1946,[5] Chairman William M. Whittington, of Mis-

4. 110 CONG. REC. 5140, 88th Cong. 2d Sess. Under consideration was H.R. 8986 dealing with salary increases for federal officers and employees.

5. 92 CONG. REC. 6877, 6878, 79th Cong. 2d Sess. Under consideration

sissippi, declined to answer an inquiry concerning matters that were the responsibility of the Speaker of the House to determine:

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CASE of South Dakota: Would it be possible to get a rule making in order a paragraph which had previously been stricken from the bill on a point of order, unless that rule was adopted by a two-thirds vote?

THE CHAIRMAN: The Chair may say to the gentleman that that inquiry is not one that can be answered in the Committee of the Whole. It is a matter that would have to be determined by the Speaker of the House.

Inquiries Properly Submitted to Chairman of Committee of the Whole House

§ 14.41 The Speaker in reply to a parliamentary inquiry will not anticipate a ruling by a Chairman of the Committee of the Whole.

On Apr. 11, 1935,[6] Speaker Joseph W. Byrns, of Tennessee, declined to anticipate a ruling by a Chairman of the Committee of the Whole.

MR. [JOSEPH P.] MONAGHAN [of Montana]: Mr. Speaker——

THE SPEAKER: For what purpose does the gentleman from Montana rise?

MR. MONAGHAN: For the purpose of submitting a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MONAGHAN: Is not the statement that was made by the gentleman from Oregon [Mr. Mott] correct, that if this rule passes, then only one particular plan, the plan that we now have under discussion, may be passed upon by the Congress?

THE SPEAKER: The Chair is not in position to answer that parliamentary inquiry. That is a matter which will come up subsequently under the rules of the House. The Chair would not seek to anticipate what the Chairman of the Committee of the Whole may rule or what the Committee itself may do. The Chair feels very certain that the Chairman of the Committee will be governed, as all chairmen of committees are, by the rules and precedents of the House. Certainly the Chair would not anticipate his ruling; and in addition to this, the Chair cannot pass upon any particular amendment until it has been presented in all its phases.

§ 14.42 It is the responsibility of the Chairman of the Committee of the Whole to preserve decorum in that forum; and the Speaker will not render an anticipatory rul-

was H.R. 6777, the Government Corporations appropriation bill for 1947.

6. 79 CONG. REC. 5457, 5458, 74th Cong. 1st Sess. Under consideration was H. Res. 197, providing for the consideration of H.R. 7260, social security legislation.

ing on what exhibits might be in violation of proper decorum after the House resolves itself into the Committee.

Pending consideration of the National Foundation on Arts and Humanities Amendments of 1990, the Speaker was asked a series of parliamentary inquiries concerning what exhibits might be used in the debate. The Speaker elaborated on the concept of "freedom of speech," the constitutional right of the House to make its own rules, and the duty of the Presiding Officer to maintain decorum in debate. The Speaker outlined the authority and responsibility of the Chairman of the Committee of the Whole but refused to anticipate his ruling. The proceedings of Oct. 11, 1990,[7] were as follows:

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

THE SPEAKER PRO TEMPORE:[8] The gentleman will state his parliamentary inquiry.

MR. WALKER: Mr. Speaker, my parliamentary inquiry is with regard to the debate on the bill that is about to come up. Under the Rules of the House of Representatives, is the right to free speech protected as defined in the first amendment?

THE SPEAKER PRO TEMPORE: Yes, clearly it is, consistent with the rules of the House.

MR. WALKER: Consistent with the rules of the House. Some of the artwork that we are about to discuss has been ruled by the courts as being perfectly appropriate for public display. My parliamentary inquiry is, will that artwork be permitted under the rules of the House and under the provisions of free speech to be brought to the floor for display to the membership during the upcoming debate?

THE SPEAKER PRO TEMPORE: The Chair will make a determination based on the decorum of the House.

MR. WALKER: Mr. Speaker, I have a further parliamentary inquiry. Does the decorum of the House override the provisions of free speech?

THE SPEAKER PRO TEMPORE: Order has to be maintained in the House to conduct the business of the House.

MR. WALKER: But that is my question, Mr. Speaker. When it comes to the question of artwork, which has been declared by the courts as being appropriate artwork, and while being so referred to by proponents in this debate, will it be violative of the decorum of the House for such artwork to be brought to the House floor?

THE SPEAKER PRO TEMPORE: Under the rules of the House, the Chair makes the determination as to whether decorum is proper in the House, and the Chair will make that determination at the proper time.

MR. WALKER: I have a further parliamentary inquiry, Mr. Speaker. So the Speaker is saying that the right to free speech on the House floor can in fact be limited by the Chair, at the

7. 136 CONG. REC. 28629, 28630, 28650, 28651, 101st Cong. 2d Sess.

8. Dennis M. Hertel (Mich.).

Chair's discretion, despite the fact that there are court rulings that indicate that the artwork is perfectly appropriate for public display?

THE SPEAKER PRO TEMPORE: The gentleman knows that the Chair has the responsibility for the House to be in order, and that includes the decorum in the House. The gentleman from Pennsylvania knows that. The Chair will enforce that. . . .

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

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

MR. WALKER: Since a jury has interpreted that this artwork is appropriate for public display, is the Chair going to permit such artwork to be displayed on the floor during the course of the debate?

THE SPEAKER PRO TEMPORE: The Chair has already ruled and explained to the gentleman. The Chair will make sure that there is decorum in the House. The Chair will rule at any appropriated time that there will be decorum in the House. That is the Chair's ruling.

Pursuant to House Resolution 494 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4825.

[In Committee.]

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

THE CHAIRMAN:[9] The gentleman will state it.

MR. WALKER: Mr. Chairman, am I permitted to show such photographs on the House floor?

THE CHAIRMAN: The first amendment to the Constitution provides that Congress shall make no law abridging the freedom of speech. The Chair notes, however, the Constitution also provides that the House may determine the rules of its proceedings, and in clause 2 of rule I, the House has assigned to the Speaker the sole responsibility to preserve order and decorum.

In similar circumstances on September 13, 1989, the Chair advised he would prevent the display of exhibits that in his judgment might disrupt order or impair decorum in the Chamber. The current occupation of the Chair would intend to apply that standard.

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

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. WALKER: Mr. Chairman, how are we going to make that determination about what interferes with the decorum of the House?

THE CHAIRMAN: The Chair would not entertain any exhibits in this debate.

Chair Does Not Speculate on Future Recognition

§ 14.43 The Chairman of the Committee of the Whole does not speculate, in response to a parliamentary inquiry, as to whom the Speaker might recognize to offer a motion in the House.

Pending a preferential motion that the Committee of the Whole rise and report the bill back to the

9. John P. Murtha (Pa.).

House with the recommendation that the enacting clause be stricken, the Chair refused to advise what Member might be given recognition back in the House to offer a motion to refer before the question would be put on the recommendation to strike the enacting clause. The pertinent proceedings of Apr. 14, 1994,[10] were as follows:

MR. [BILL] MCCOLLUM [of Florida]: Mr. Chairman, I offer a preferential motion.

The Clerk read as follows:

Mr. McCollum of Florida moves that the Committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken out. . . .

PARLIAMENTARY INQUIRIES

MR. MCCOLLUM: Mr. Chairman, I have a parliamentary inquiry. If I would yield to the gentleman from Missouri [Mr. Volkmer] for the purposes of one, am I using my time up on the debate we are involved with here for purposes of this privileged motion?

THE CHAIRMAN:[11] The gentleman would be.

MR. MCCOLLUM: Mr. Chairman, another parliamentary inquiry:

Mr. Chairman, do I have the right to reserve time or on this motion do I have to consume all my 5 minutes?

THE CHAIRMAN: Under the rules of this House, the gentleman does not have the right to reserve time.

MR. MCCOLLUM: I do not?

THE CHAIRMAN: The gentleman does not.

MR. MCCOLLUM: Then I do not wish to yield at this point, Mr. Chairman.

Mr. Chairman, I would inquire how much time I have remaining.

THE CHAIRMAN: The gentleman from Florida [Mr. McCollum] has 5 minutes remaining.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, would the gentleman yield for a parliamentary inquiry?

MR. MCCOLLUM: I yield to the gentleman from Pennsylvania.

MR. WALKER: Mr. Chairman, parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. WALKER: Mr. Chairman, am I correct that should the motion carry, and this is not a motion to kill the bill, this is simply a motion for the Committee to rise, and it can at that point decide that another amendment can be made in order, is that right?

THE CHAIRMAN: The motion is to report to the House with a recommendation that the enacting clause be stricken out, an action that would reject the bill if carried in the House.

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

Mr. Chairman, as we established in the previous colloquy, I think that there is also an action available to the House at that point to further amend the bill, is that correct?

THE CHAIRMAN: A motion to refer would be in order.

MR. WALKER: Mr. Chairman, it would be in order, and it could be a motion to refer and report back forth-

10. 140 CONG. REC. 7453, 7454, 103d Cong. 2d Sess.

11. Robert G. Torricelli (N.J.).

with, which would in effect at that point allow an amendment on the floor?

THE CHAIRMAN: The Chair would say that a motion to refer could include that instruction.

MR. WALKER: Mr. Chairman, that has precedence over the motion to strike the enacting clause, is that correct?

THE CHAIRMAN: A motion to refer would be in order pending the question of the House's concurrence in the recommendation to strike out the enacting clause.

MR. WALKER: I thank the Chair.

THE CHAIRMAN: The time of the gentleman from Florida [Mr. McCollum] has expired.

MR. [HAROLD L.] VOLKMER [of Missouri]: I have a parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. VOLKMER: Mr. Chairman, in the event that the motion presently pending by the gentleman from Florida [Mr. McCollum] would prevail, would any Member then be eligible for recognition to make a motion to refer, or is the gentleman from Florida [Mr. McCollum] the only one that can make that?

THE CHAIRMAN: At that point we would be proceeding in the House and it would be for the Speaker to recognize.

MR. VOLKMER: I would ask the Chair, the Speaker could recognize any Member?

THE CHAIRMAN: The Speaker would have his usual power of recognition under the precedents.

Parliamentary Inquiries Regarding Budget Act Scorekeeping and Points of Order

§ 14.44 The Speaker has responded to parliamentary inquiries concerning the application of section 311 (the mechanism for enforcement of budget aggregates) of the Congressional Budget Act and the most recent concurrent resolution on the budget to upcoming appropriation measures prior to their actual consideration in the House.

On Mar. 6, 1984,[12] the Speaker,[13] in response to a parliamentary inquiry, informed the House the sources of information on which he would rely in deciding points of order raised against a bill on the ground that it would cause the budget ceilings detailed in Section 311 of the Congressional Budget Act to be exceeded.

Under Section 312(a), the Chair must rely on estimates and information provided by the Committee on the Budget in determining the current levels of new budget authority or outlays. In the instance shown below it was

12. 1130 CONG. REC. 4620–22, 98th Cong. 2d Sess.

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

the interrelationship between those estimates and the mandates of the latest concurrent resolution on the budget that created the need for an explanation by the Chair.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, pursuant to the order of the House of Wednesday, February 29, 1984, I call up for consideration in the House as in the Committee of the Whole the joint resolution (H.J. Res. 492) making an urgent supplemental appropriation for the fiscal year ending September 30, 1984, for the Department of Agriculture.

The Clerk read the title of the joint resolution.

PARLIAMENTARY INQUIRY

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

THE SPEAKER: The gentleman will state it.

MR. LOEFFLER: Mr. Speaker, I make this parliamentary inquiry because the bills under consideration today—House Joint Resolution 492 and House Joint Resolution 493, which provide for urgent supplementals for the Public Law 480 program and low income energy assistance—are the first appropriations bills to come before the House this year. It is my purpose to be certain that I and other Members fully understood the procedures that will be used in scorekeeping for these and future appropriations bills.

In particular, my inquiry relates to the enforcement of section 311 of the Congressional Budget Act. I have several questions, so if the Chair will bear with me, I will proceed as expeditiously as possible.

Mr. Speaker, I note that the Parliamentarian's status report on the current level of total Federal spending, printed in the *Congressional Record* of February 22, indicates that there are $3,079 million in budget authority and only $16 million in outlays remaining under the aggregate spending ceilings set forth in the concurrent resolution on the budget for fiscal year 1984.

Under section 311 of the Budget Act, once Congress has completed a second budget resolution, bills, resolutions or amendments providing new budget authority or new spending authority as described in section 401(c)(2)(C) of the Budget Act, would be subject to a point of order against their consideration in the House if their adoption would cause the aggregate budget authority or outlay ceilings in the most recently agreed to budget resolution to be exceeded.

For fiscal year 1984, as was the case in fiscal year 1983, the first budget resolution included language which allows enforcement of section 311 after October 1 of the fiscal year, if Congress does not adopt a second budget resolution by that date.

As reported by the Appropriations Committee, both bills under consideration would cause the aggregate outlay ceilings under the first budget resolution to be breached—although not the aggregate budget authority ceiling—which, under enforcement provisions in effect for fiscal year 1983, would have resulted in these bills being subject to a point of order under section 311.

Is my understanding correct that this year the operation of section 311 has been further modified by a provision, section 5(B), contained in House

Concurrent Resolution 91, the first concurrent resolution on the budget for fiscal year 1984—the so-called Fazio language?

Further, could the Chair explain how section 5(B) of House Concurrent Resolution 91 affects the applicability of section 311 points of order to spending bills, including those before us today, and to any amendments that may be offered to such bills?

Is it correct that neither the total level of outlays nor a committee's outlay allocation under section 302(A) of the Budget Act would be considered in determining whether a section 311 point of order would apply to spending bills or amendments thereto?

Could the Chair explain the basis upon which it makes a determination regarding the discretionary budget authority remaining available to committees of the House?

Further, is it not the case that once the Congress adopts a second budget resolution for fiscal year 1984, updating and revising the first budget resolution, that the provisions of section 5(B) in House Concurrent Resolution 91 would no longer be in effect, and section 311 would operate as set forth in the Budget Act, based on the newly established aggregate ceilings and provisions in the second budget resolution? Finally, can one assume that the Appropriations Committee's discretionary budget authority allocation will be reduced by the amounts in these bills plus any amendments adopted that increase spending, once they are enacted? . . .

THE SPEAKER: The Chair will respond to the inquiry of the gentleman from Texas.

The gentleman from Texas has requested the Chair to interpret the relationship between bills providing new spending for fiscal year 1984 and the provisions of the most recently agreed to budget resolution for that fiscal year.

As the gentleman has pointed out in his inquiry. The first concurrent resolution the budget for fiscal year 1984 (H. Con. Res. 91), adopted by the House and Senate on June 23, 1983, provided, in section 5, that it would become the second concurrent resolution on the budget for the purpose of section 311 of the Budget Act. Failing actual adoption of a second budget resolution by October 1, 1983. However, section 5(b) of the budget resolution provided for a more limited application of section 311 than would apply if a second budget resolution had actually been adopted. The Speaker received today from the chairman of the Committee on the Budget a revised status report on the current level of spending under the budget resolution. The status report indicates that any measure providing budget in excess of $6 million would cause the total level of outlays under the budget resolution to be exceeded. The chairman of the Committee on the Budget included in that letter a summary and explanation of the operation of section 5 of the budget resolution once outlays are exceeded, and the Chair will now read that statement, which is responsive to much of the gentleman's inquiry: "The procedural situation with regard to the spending ceiling will be affected this year by section 5(b) of House Concurrent Resolution 91. As I explained during debate on the conference report on that resolution, enforcement against

breaches of the spending ceiling under section 311(a) of the Budget Act will not apply where a measure would not cause a committee to exceed its appropriate allocation pursuant to section 302(a) of the Budget Act. In the House, the appropriate 302(a) allocation includes "new discretionary budget authority" and "new entitlement authority" only. It should be noted that under this procedure neither the total level of outlays nor a committee's outlay allocation is considered. This exception is only provided because an automatic budget resolution is in effect and would cease to apply if Congress were to revise the budget resolution for fiscal year 1984.

The intent of the section 302(a) discretionary budget authority and new entitlement authority subceiling provided by section 5(b) of the resolution is to protect a committee that has stayed within its spending allocation—discretionary budget authority and new entitlement authority—from points of order if the total spending ceiling has been breached for reasons outside of its control. The 302(a) allocations to House committees made pursuant to the conference report on House Concurrent Resolution 91 were printed in the *Congressional Record*, June 22, 1983, H4326.

The Chair has been advised that each of the supplemental appropriation joint resolutions scheduled for today, House Joint Resolution 492 and House Joint Resolution 493, provides more than $6 million in budget outlays for fiscal year 1984 and would thus cause the total level of outlays to be exceeded. The Committee on Appropriations has, however, a remaining allocation of $2 billion, $351 million in discretionary budget authority, according to tables prepared by the Budget Committee, inserted in the *Congressional Record* of March 1, 1984, and included in today's status report. The amount of budget authority contained in the joint resolutions scheduled for today is well within that allocation. As to amendments to those joint resolutions, or to other spending measures for fiscal year 1984, germane amendments which increase budget authority are in order as long as they do not cause the measure, as amended, to exceed the total remaining allocation of discretionary budget authority to the committee with jurisdiction over the measure or amendment.

The Chair's determination, whether a measure or amendment thereto, violates section 311 as made applicable by the budget resolution, is based upon estimates made by the Committee on the Budget, pursuant to section 311(b) of the Budget Act, of the remaining allocation to each committee. Once a bill providing new budget authority or entitlement authority is enacted, the remaining allocation of the committee with subject matter jurisdiction will be changed by the net amount of new budget authority contained in the measure, and the Chair is confident that the Committee on the Budget will keep the Chair currently informed as to the status of each committee.

The Chair would finally point out that the provisions of section 5 of the current budget resolution would cease to apply if Congress does adopt a second concurrent resolution on the budget for fiscal year 1984. In that event, the actual prohibition contained in section 311 of the Budget Act would take effect, unless modified by any special procedures contained in a second budget resolution.

§ 15. When in Order

Parliamentary inquiries are generally in order at any time, subject to the Chair's discretionary power of recognition. However, a Member who has the floor may not be interrupted by a parliamentary inquiry without his consent.[14]

If a Member does yield for a parliamentary inquiry while he has the floor, the time consumed by the inquiry and reply is taken out of his time.[15] And there are times when the Chair will not entertain an inquiry because of the occasion, as during the reading of the President's message on the state of the Union.[16] The Chair has also declined to accept parliamentary inquiries when a point of no quorum is pending,[17] during a roll call,[18] or during a teller[19] or division vote,[20] although there are exceptions permitting the asking of a parliamentary inquiry at such times as, for example, when the roll has been called but no Member has as yet responded to his name,[1] or inquiries relating to the conduct of the vote itself.

Interruption of Members in Debate

§ 15.1 A Member may not be taken from the floor by a parliamentary inquiry.

On July 22, 1965,[2] Chairman John J. Rooney, of New York, advised Mr. John H. Dent, of Pennsylvania, that he could not ask a parliamentary inquiry while another Member had the floor.

> MR. DENT: Mr. Chairman, a parliamentary inquiry.
>
> MR. [WILLIAM H.] AYRES [of Ohio]: Mr. Chairman, I do not yield for that purpose.
>
> MR. DENT: Mr. Chairman, under the rules I demand recognition for a parliamentary inquiry.
>
> THE CHAIRMAN: The gentleman [Mr. Ayres, of Ohio] declines to yield.
>
> The gentleman will proceed.

§ 15.2 One Member may not submit a parliamentary inquiry while another Member

14. See §§ 15.1–15.3, infra, and 8 Cannon's Precedents § 2455.
15. See §§ 15.4, 15.5, infra, and Ch. 29, supra.
16. See § 15.10, infra.
17. See § 15.12, infra.
18. See § 15.13, infra, and 8 Cannon's Precedents § 3132.
19. See § 15.17, infra.
20. See § 15.19, infra.

1. See § 15.16, infra.
2. 111 CONG. REC. 17931, 89th Cong. 1st Sess. Under consideration was H.R. 8283, amendments to the Economic Opportunity Act of 1965. See also106 CONG. REC. 11267, 86th Cong. 2d Sess., May 26, 1960.

has the floor without his consent.

On July 25, 1935,[3] Speaker Joseph W. Byrns, of Tennessee, during an acrimonious exchange between Mr. Thomas L. Blanton, of Texas, and Mr. Samuel Dickstein, of New York, found it necessary to remind the Members that a parliamentary inquiry may not interrupt a Member without his consent.

MR. BLANTON: . . . Oh, there is plenty for the gentleman to do if the gentleman would only do it. There is plenty here at home for him to look after, if he would protect our home folks and would attend to his own business, and let foreign governments attend to their own business.

MR. DICKSTEIN (from his seat): Why do you not attend to your own business?

MR. BLANTON: I am attending to mine and am performing a good job.

THE SPEAKER: The gentleman from Texas will suspend. It is distinctly against the rules for a gentleman in his seat to interrupt a Member who is speaking. . . .

The rules provide that a Member must rise and address the Chair. . . .

MR. DICKSTEIN: Mr. Speaker, a parliamentary inquiry.

MR. BLANTON: Mr. Speaker, I do not yield for a parliamentary inquiry.

THE SPEAKER: The gentleman from New York cannot take the gentleman from Texas off his feet by a parliamentary inquiry without his consent.

3. 79 CONG. REC. 11864, 74th Cong. 1st Sess.

Similarly on Mar. 13, 1936,[4] Speaker Joseph W. Byrns, of Tennessee, reiterated the right of a Member to speak without interruption.

THE SPEAKER: The Chair will state to the gentleman from Washington that the Chair is now entertaining a point of order made by the gentleman from Montana, and cannot recognize the gentleman from Washington to submit another point of order.

MR. [MARION A.] ZIONCHECK [of Washington]: I rise to a question of personal privilege then.

THE SPEAKER: The Chair declines to recognize the gentleman for that purpose while the gentleman from Montana has the floor.

The gentleman from Montana will proceed.

MR. [THOMAS] O'MALLEY [of Wisconsin]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman from Wisconsin cannot take the gentleman from Montana off the floor by a parliamentary inquiry. If the gentleman from Wisconsin will permit the gentleman from Montana to proceed in order, perhaps this matter can be disposed of in a very few minutes.

§ 15.3 A Member recognized by the Chair may be interrupted by a demand that his words be taken down, but he may decline to yield for a par-

4. 80 CONG. REC. 3720, 74th Cong. 2d Sess. Under consideration was H. Res. 447, entitled investigation of old age pension schemes.

liamentary inquiry about his words.

Chairman Barney Frank, of Massachusetts, clarified the rights of a Member holding the floor in debate when another Member attempted to be recognized for a parliamentary inquiry. The proceedings of July 13, 1989,[5] were as follows:

MR. [DON] YOUNG of Alaska: Mr. Chairman, will the gentleman yield?

MR. [ROBERT J.] MRAZEK [of New York]: No, I will not yield. I only have an additional minute.

MR. YOUNG of Alaska: Mr. Chairman, will the gentleman yield?

MR. MRAZEK: I will not yield.

MR. YOUNG of Alaska: Mr. Chairman, the gentleman used my name.

THE CHAIRMAN: The gentleman says that he will not yield.

MR. MRAZEK: I will not yield, Mr. Chairman.

MR. YOUNG of Alaska: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman has stated he will not yield, and the gentleman does not yield for that purpose.

MR. YOUNG of Alaska: But I have a parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN: The gentleman has not yielded to the gentleman from Alaska for the purpose of making a parliamentary inquiry. The gentleman from New York will proceed.

MR. YOUNG of Alaska: Mr. Chairman, do I understand that I have to have permission from a Member on the floor before I can make a parliamentary inquiry of the Chairman?

THE CHAIRMAN: Yes, if that Member has the floor.

MR. YOUNG of Alaska: That is a new rule, Mr. Chairman.

THE CHAIRMAN: For the information of the Members of the House, the Chair will point out that one Member cannot make a parliamentary inquiry when another Member is speaking without that Member's yielding. When the floor is not occupied, one may make a parliamentary inquiry of the Chair's discretion. The Chair wishes to point that out for the benefit of the gentleman from Alaska.

PARLIAMENTARY INQUIRY

MR. YOUNG of Alaska: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. YOUNG of Alaska: Mr. Chairman, when the gentleman refers to another gentleman, is it not true that he can ask the Chair for a point of order or a parliamentary inquiry?

THE CHAIRMAN: No. The Chair will state that at that point, if the gentleman wishes to have the gentleman's words taken down, he does not need the gentleman's permission.

MR. YOUNG of Alaska: I would not do that, Mr. Chairman.

THE CHAIRMAN: The gentleman has confused two points. A parliamentary inquiry requires the permission of the Member occupying the floor. An objection to his words and a request that they be taken down does not require his permission.

Time Used in Making Parliamentary Inquiry

§ 15.4 Although a Member may not be interrupted by an-

5. 135 CONG. REC. 14633, 14634, 101st Cong. 1st Sess.

other for a parliamentary inquiry without his consent, if he does yield for a parliamentary inquiry, the time consumed by the inquiry and reply is taken out of his time.

On May 26, 1960,[6] Mr. Donald R. Matthews, of Florida, declined to yield for a parliamentary inquiry while he had the floor.

MR. MATTHEWS: Mr. Chairman, the poet, Robert Frost, in his poem, "Road Not Taken," starts out with these lines——

MR. [CLEVELAND M.] BAILEY [of West Virginia]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[7] Does the gentleman from Florida yield for a parliamentary inquiry?

MR. MATTHEWS: Will it be taken out of my time?

THE CHAIRMAN: It will be taken out of the gentleman's time.

MR. MATTHEWS: I regret I cannot yield to my beloved colleague.[8]

§ 15.5 Where a Member to whom time has been yielded for a portion of general debate yields for a parliamentary inquiry, the time consumed in answering the inquiry comes out of the time for debate.

On Sept. 25, 1975,[9] Mr. Edward J. Derwinski, of Illinois, who was controlling part of the time allotted for general debate on a measure under consideration in Committee of the Whole, yielded time for debate. The following inquiry then was directed to the Chair:

MR. DERWINSKI: Mr. Chairman, I yield 5 minutes to the gentleman from Alabama (Mr. Buchanan).

(Mr. Buchanan asked and was given permission to revise and extend his remarks.)

MR. [JOHN] BUCHANAN [of Alabama]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[10] The gentleman will state his parliamentary inquiry.

MR. BUCHANAN: May I ask whether the making of this parliamentary inquiry is taken out of my time?

THE CHAIRMAN: The Chair will state that it will be taken out of the gentleman's time.

Time Used in Parliamentary Inquiry

§ 15.6 Time consumed on a parliamentary inquiry is

6. 106 CONG. REC. 11267, 11268, 86th Cong. 2d Sess. See also 110 CONG. REC. 1998, 88th Cong. 2d Sess., Feb. 5, 1964 [under consideration was H.R. 7152, the Civil Rights Act of 1963]; 81 CONG. REC. 3283–90, 75th Cong. 1st Sess., Apr. 8, 1937 [under consideration was H. Res. 83, involving an investigation of un-American activities].
7. Aime J. Forand (R.I.).
8. For further discussion of charging time in debate, see Ch. 29, supra.
9. 121 CONG. REC. 30196, 94th Cong. 1st Sess.
10. J. Edward Roush (Ind.).

counted against that of the Member controlling the floor who yields for that purpose.

On May 5, 1988,[11] during consideration of an amendment to the Defense authorization bill, fiscal 1988, the ranking minority member of the Committee on Armed Services was controlling time on a pending amendment. Another Member asked that he yield for a parliamentary inquiry.

> MR. [LES] AUCOIN [of Oregon]: Mr. Chairman, I make a parliamentary inquiry.
>
> THE CHAIRMAN PRO TEMPORE:[12] Does the gentleman from Alabama yield for the purpose of a parliamentary inquiry?
>
> MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Chairman, if it does not come out of my time.
>
> THE CHAIRMAN PRO TEMPORE: It does come out of the time of the gentleman from Alabama.
>
> MR. DICKINSON: Mr. Chairman, then I will not yield.
>
> THE CHAIRMAN PRO TEMPORE: The gentleman from Alabama declines to yield.

§ 15.7 The time used by a Member in posing a rhetorical question and waiting for an answer comes out of the time he has been allotted for debate.

A rhetorical question addressed to those present in the Chamber, like a parliamentary inquiry addressed to the Chair, comes out of the time of the Member holding the floor. The proceedings of June 27, 1990,[13] are illustrative:

> MR. [JAMES A.] TRAFICANT [of Ohio]: . . . Mr. Chairman, I ask unanimous consent that the House agree that my question be posed to anyone who can answer it, and I have 10 calendar days to receive such an answer.
>
> THE CHAIRMAN:[14] That is not a proper question to be made in the Committee of the Whole at this time. The gentleman is still recognized under the rule.
>
> MR. TRAFICANT: Mr. Chairman, I ask unanimous consent that because no one would answer my question that that time not be subtracted from my 10 minutes.
>
> THE CHAIRMAN: The Chair will advise the gentleman from Ohio, in propounding the question it is a procedure that he is entitled to make, and therefore is, in fact, deducted from his time. The gentleman is still recognized in support of his amendment under the rule.

Time Consumed by Parliamentary Inquiry Prior to Recognition

§ 15.8 When the Chair entertains a parliamentary in-

11. 134 CONG. REC. 9935, 100th Cong. 2d Sess.
12. Kenneth J. Gray (Ill.).
13. 136 CONG. REC. 15821, 101st Cong. 2d Sess.
14. Dennis E. Eckart (Ohio).

quiry before a Member who has called up a measure in the House has been recognized for debate, the time consumed by the inquiry is not deducted from the time to be allocated to the manager of the measure.

On Oct. 8, 1986,[15] it was demonstrated that where both the majority and minority managers of a conference report are in favor of the report, a Member opposed to the report may claim one-third of the time. An inquiry concerning the application of Rule XXVIII clause 2, intervened between the calling up of the report and the beginning of debate. The proceedings were as follows:

CONFERENCE REPORT ON H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, pursuant to the provisions of House Joint Resolution 577, I call up the conference report on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:[16] Pursuant to the rule, the conference report is considered as having been read. (For conference report, see proceedings of the House of Friday, October 3, 1986.)

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 577, the gentleman from Michigan (Mr. Dingell) will be recognized for 1 hour and 45 minutes and the gentleman from New York (Mr. Lent) will be recognized for 1 hour and 45 minutes.

PARLIAMENTARY INQUIRIES

MR. [PHILIP M.] CRANE [of Illinois]: Mr. Speaker, may I be recognized?

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

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

MR. DINGELL: Mr. Speaker, is the time that is now being used being taken out of the time that is fixed under the rule?

THE SPEAKER PRO TEMPORE: The gentleman has not been recognized yet, so this time is not being taken out of the gentleman's time.

MR. CRANE: Mr. Speaker, may I inquire as to whether the majority or minority managers of this conference report are opposed to it?

THE SPEAKER PRO TEMPORE: Is the gentleman from New York (Mr. Lent) opposed?

MR. [NORMAN F.] LENT [of New York]: Mr. Speaker, the gentleman from New York is supportive of the conference report.

THE SPEAKER PRO TEMPORE: The gentleman from Illinois (Mr. Crane) would be entitled to one-third of the time if he opposes.

MR. CRANE: Mr. Speaker, I do oppose, and under clause 2, rule XXVIII, as leader of the opposition, I will be reserved 1 hour and 10 minutes?

15. 132 CONG. REC. 29714, 99th Cong. 2d Sess.

16. Leon E. Panetta (Calif.).

THE SPEAKER PRO TEMPORE: The gentleman from Illinois will be entitled to that time.

MR. CRANE: I thank the Chair.

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

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

MR. DINGELL: I understand, under the ruling of the Chair, that the time is apportioned, one-third to the gentleman from Illinois (Mr. Crane), or some Member in opposition to the legislation; one-third to the gentleman from New York (Mr. Lent); and one-third to myself for subsequent apportionment.

THE SPEAKER PRO TEMPORE: The gentleman is correct.

Before Approval of Journal

§ 15.9 The Speaker has entertained a parliamentary inquiry relating to the order of business before the approval of the Journal.

On Feb. 28, 1979,[17] Speaker Thomas P. O'Neill, Jr., of Massachusetts, was about to announce his approval of the Journal when the following inquiry intervened:

Mr. [Robert E.] Bauman [of Maryland]: Mr. Speaker, I have a parliamentary inquiry.

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

MR. BAUMAN: Mr. Speaker, before the gentleman from Maryland decides whether, under clause 1, rule I, he would like to ask for a vote on the approval of the Journal, as that rule provides, could the Chair tell us whether or not he will entertain a motion for a call of the House and at what point he might entertain such a motion today?

MR. [JOHN] BRADEMAS [of Indiana]: Mr. Speaker, will the gentleman yield?

THE SPEAKER: The Chair will state it is his understanding the gentleman from Indiana (Mr. Brademas) intends to move a call of the House.

MR. BAUMAN: So, Mr. Speaker, there will be a call after the 1-minute speeches?

THE SPEAKER: The gentleman is correct.

MR. BAUMAN: I thank the Chair.

THE JOURNAL

THE SPEAKER: The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

During Reading of Presidential Message

§ 15.10 Parliamentary inquiries are not necessarily entertained during the reading of the President's message on the state of the Union.

On Jan. 21, 1946,[18] the Chair declined to entertain a parliamen-

17. 125 CONG. REC. 3465, 3466, 96th Cong. 1st Sess.

18. 92 CONG. REC. 164, 79th Cong. 2d Sess.

tary inquiry during the reading of the message of the President on the state of the Union and the budget.

MR. [ROBERT F.] RICH [of Pennsylvania] (interrupting the reading of the message): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[19] The Clerk read a message from the President of the United States, and the Chair feels that an inquiry at this time should not be entertained.[20]

Time for Inquiries on Amendments

§ 15.11 The Chair does not respond to a parliamentary inquiry concerning the propriety of an amendment until the amendment is offered.

On June 28, 1967,[1] Chairman John J. Flynt, Jr., of Georgia, declined to pass upon the propriety of an amendment to an appropriation bill until the amendment was offered.

MR. [JOSEPH E.] KARTH [of Minnesota]: Mr. Chairman, a further parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. KARTH: Mr. Chairman, if that figure cannot be further amended, and the gentleman chooses to pursue his amendment, and change the figure on page 2, would it then be a proper amendment?

THE CHAIRMAN: The Chair does not pass on that until an amendment described by the gentleman from Minnesota is offered.

Inquiries Following Point of No Quorum

§ 15.12 The Chair need not recognize a Member to propound a parliamentary inquiry while a point of no quorum is pending.

On July 23, 1942,[2] it was indicated that the Chair should decline to hear a parliamentary inquiry when a point of order of no quorum is pending.

MR. [WRIGHT] PATMAN [of Texas]: Mr. Speaker, I make the point of order that a quorum is not present.

MR. [ADOLPH J.] SABATH [of Illinois]: Mr. Speaker, may I ask unanimous consent that we call up a resolution?

MR. PATMAN: Mr. Speaker, I make the point of order that a quorum is not present.

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19. John W. McCormack (Mass.).

20. *Parliamentarian's Note:* The President's message contained approximately 25,000 words and took about three hours to read. Under the modern practice, the reading of a Presidential message of such length would be done "*scientifically*"—in abbreviated form-to shorten the time.

1. 113 CONG. REC. 17754, 90th Cong. 1st Sess. Under consideration was H.R. 10340, authorizing appropriations for the National Aeronautics and Space Administration.

2. 88 CONG. REC. 6540, 77th Cong. 2d Sess.

MR. [EARL C.] MICHENER [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[3] The Chair doubts the authority of the Chair to recognize the gentleman to propound a parliamentary inquiry when a point of order is made unless the gentleman from Texas withholds it.

Inquiries During Roll Calls and Votes

§ 15.13 The Speaker may in his discretion decline to permit a parliamentary inquiry during a roll call.

On Sept. 6, 1961,[4] Speaker Pro Tempore John W. McCormack, of Massachusetts, refused to recognize for a parliamentary inquiry during a roll call.

MR. [PETER F.] MACK [Jr., of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The Chair cannot recognize the gentleman for a parliamentary inquiry during a rollcall.

§ 15.14 A roll call may be interrupted for a parliamentary inquiry under the proper circumstances and at the discretion of the Chair.

On Oct. 12, 1962,[5] there were repeated instances in which the Speaker, John W. McCormack, of Massachusetts, permitted parliamentary inquiries to interrupt the roll call.

(After completion of first call of the roll:)

MR. [WILLIAM H.] AVERY [of Kansas]: Mr. Speaker——

THE SPEAKER: For what purpose does the gentleman from Kansas rise?

MR. AVERY: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. AVERY: What motion is the House presently voting on?

THE SPEAKER: The Chair will state that the parliamentary inquiry is very pertinent. The Chair will state in response that the House is voting on a motion which was made by the gentleman from Missouri [Mr. Cannon] to recede and concur in a Senate amendment, with an amendment.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, my motion was for the previous question.

THE SPEAKER: The House is voting on a motion made by the gentleman from Missouri to recede and concur in the Senate amendment, with an amendment.

That is the motion pending at the present time.

The Clerk will proceed to call the roll of those Members who failed to answer on the first rollcall.

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3. Sam Rayburn (Tex.).

4. 107 CONG. REC. 18256, 87th Cong. 1st Sess. Under consideration was H.R. 9000, the extension of Public Laws 815 and 875 and the National Defense Education Act.

5. 108 CONG. REC. 23433, 23434, 87th Cong. 2d Sess. Under consideration was H.R. 12900, the public works appropriations for fiscal 1963.

(The Clerk resumed calling the roll.)

MR. [WILLIAM C.] CRAMER [of Florida] (interrupting call of the roll): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. CRAMER: Mr. Speaker, do I understand the parliamentary situation to be that the motion now being voted upon is a motion to recede and concur in a Senate amendment with an amendment, and a vote "no" is a vote for $205,000 for the Florida Cross-State Barge Canal planning, and a vote of "aye" is against it?

THE SPEAKER: The Chair has already stated that the parliamentary inquiry is correct in response to the inquiry of the gentleman from Kansas [Mr. Avery]. The Chair is confident that the Members know what they are voting upon.

(The Clerk resumed calling the roll.)

Mr. Hardy, Mr. Abbitt, Mr. Gathings, Mr. Ashbrook, Mr. Byrnes of Wisconsin, and Mr. Gary changed their vote from "nay" to "yea."Mr. Blatnik, Mr. Bow, and Mr. Avery changed their vote from "yea" to "nay."

MR. [H. R.] GROSS [of Iowa] (interrupting the rollcall): Mr. Speaker, I demand the regular order.

THE SPEAKER: The regular order is proceeding.

MR. GROSS (interrupting the rollcall): Mr. Speaker, I demand the well be cleared.

THE SPEAKER: Members will take their places out of the well. . . .

MR. [EDMOND] EDMONDSON [of Oklahoma] (interrupting the rollcall): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. EDMONDSON: Mr. Speaker, is it possible to have a recapitulation of the votes that have been cast in advance of the announced vote?

THE SPEAKER: The Chair will state that there has been no vote announced as yet. Therefore, at this point it is not possible to request a recapitulation.

(The Clerk resumed calling the roll.)

MR. [WILLIAM M.] COLMER [of Mississippi] (interrupting the rollcall): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. COLMER: Mr. Speaker, in the event that a quorum is shown not to be present, what procedure is then left to the House?

THE SPEAKER: The House can wait until a quorum arrives, or a motion to adjourn would be in order.

MR. CANNON: Mr. Speaker, is a quorum present?

THE SPEAKER: The rollcall has not as yet been completed.

MR. CANNON: Mr. Speaker, in the absence of a quorum only one motion is in order, and that is to adjourn. I move that the House now adjourn.

THE SPEAKER: The Chair has not announced the fact that a quorum is not present as yet. At this point that motion is not in order.

(The Clerk resumed calling the roll.)

MR. EDMONDSON (interrupting the rollcall): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. EDMONDSON: May a recess be declared in advance of the completion of the vote?

THE SPEAKER: The Chair will state that [in] the present situation the

Chair may not declare a recess with a rollcall in process.

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask that the Chair announce the vote.

THE SPEAKER: On this vote there were 84 yeas and 120 nays.

So a quorum is not present.

Parliamentarian's Note: The leadership had kept the House in session on this date, hoping that the two Houses might reach agreement on certain outstanding issues and adjourn sine die. The roll call on Mr. Cannon's motion was taken very slowly in order that all available Members, and hopefully a quorum of the House, might reach the Chamber. When the call had proceeded for over 50 minutes the Majority Leader asked the Speaker to announce the vote. When it appeared that a quorum was not present, the Majority Leader moved to adjourn.

Parliamentary Inquiry During a Roll Call

§ 15.15 Although the Chair ordinarily refuses to recognize for a parliamentary inquiry during a roll call vote, the Chair may, in his discretion, entertain an inquiry relating to the conduct of the call.

On Mar. 14, 1978,[6] a roll call vote was being taken by electronic device in the House on the approval of the Journal. Members were late in reaching the Chamber to record their votes, and the Speaker determined to allow voting stations to remain open a bit longer than was customary.

THE SPEAKER PRO TEMPORE:[7] Are there Members in the Chamber who have failed to cast their votes?

The Chair will advise Members that the electronic voting stations are still open, and they will remain open for 5 minutes.

MR. [ROBERT E.] BADHAM [of California]: My card did not work, Mr. Speaker.

THE SPEAKER PRO TEMPORE: If there are Members who do not have cards, the Chair will certainly take the word of those Members and they may vote in the well.

MR. [GARRY] BROWN of Michigan: Mr. Speaker, I do not recall that the rules provide for qualification.

THE SPEAKER PRO TEMPORE: Members who desire to vote may do so. The voting stations will remain open for 5 minutes.

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

THE SPEAKER PRO TEMPORE: The Chair will take the parliamentary inquiry, although he is not required to do so during the vote.

MR. BAUMAN: The gentleman from Maryland thanks the Chair for his indulgence.

The gentleman from Maryland was aware that the Speaker of the House of

6. 124 CONG. REC. 6840, 6841, 95th Cong. 2d Sess.

7. Lloyd Meeds (Wash.).

Representatives had previously announced rules governing the operation of the electronic voting device. Is the Chair now announcing that those rules have been permanently changed, and that there will be no 5-minute closed period at the end of all 15-minute rollcalls?

THE SPEAKER PRO TEMPORE: The Chair will state that he is not making a change. He is just adapting the procedure to fit the situation.

MR. BAUMAN: I thank the Chair.

MR. [JAMES G.] MARTIN [of North Carolina]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. MARTIN: Mr. Speaker, the Speaker has announced that the electronic recording devices are open. They are, but they have neglected to throw the switch which will allow us to change our vote, which is what I have been trying unsuccessfully to do.

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman that the voting stations remain open for those Members who have not yet recorded their votes. Pursuant to the announcement of the Speaker on March 22, 1976, changes in votes already recorded may not be made from the voting stations during the last 5 minutes of a vote taken by electronic device, but must be made by card from the well.

MR. MARTIN: That is right, Mr. Speaker, because I have not been able to change my vote.

THE SPEAKER PRO TEMPORE: Will the gentleman from North Carolina (Mr. Martin) bring his card to the well?

The gentleman will not be able to change his vote at this time; he will be able to vote for the first time. If the gentleman desires to change his vote, he should come to the well when we take changes at the end of the 5 minutes.

THE SPEAKER PRO TEMPORE: Five minutes has expired. The Chair will accept changes for an additional 5 minutes.

Messrs. Johnson of Colorado, Schulze, Hagedorn, Ketchum, Wampler, Coughlin, O'Brien, Walker, Collins of Texas, Crane, Del Clawson and Treen changed their vote from "nay" to "yea."

Messrs. Kindness, Dickinson, Livingston, Martin, and Steers changed their vote from "yea" to "nay."

So the motion was agreed to.

The result of the vote was announced as above recorded.

MR. [MICKEY] EDWARDS of Oklahoma: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

> Mr. Edwards of Oklahoma moves to reconsider the vote whereby the Journal was approved.

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I move to lay the motion to reconsider on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion to table the motion to reconsider.

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

MR. EDWARDS of Oklahoma: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 308, nays 91, not voting 35, as follows: . . .

Mr. McEwen changed his vote from "present" to "yea."

Mr. Beard of Tennessee changed his vote from "yea" to "nay."

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

§ 15.16 Where no Member has as yet responded to his name during the roll call, an interruption of the call for a parliamentary inquiry may be permitted.

On June 27, 1935,[8] Speaker Joseph W. Byrns, of Tennessee, allowed a parliamentary inquiry after the Clerk had commenced calling the names on a roll call, although no Member had as yet responded.

THE SPEAKER: The question is on the passage of the bill.

The question was taken; and on a division (demanded by Mr. McFarlane and Mr. O'Malley) there were—ayes 145, noes 131.

MR. [WILLIAM D.] MCFARLANE [of Texas]: Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The Clerk proceeded to call the roll.

MR. [RALPH O.] BREWSTER [of Maine]: Mr. Speaker——

THE SPEAKER: For what purpose does the gentleman from Maine rise?

MR. BREWSTER: To propound a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BREWSTER: Mr. Speaker, it was my intention to offer a motion to recommit.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I rise to a point of order. The Clerk had already begun the calling of the roll and had called the first name, "Allen." I make the point of order the gentleman from Maine cannot interrupt the roll call.

THE SPEAKER: The Chair overrules the point of order. The gentleman from Maine is entitled to propound a legitimate parliamentary inquiry, and the Chair presumes that the inquiry propounded is a proper one. The gentleman from Maine will state his parliamentary inquiry.

MR. BREWSTER: Mr. Speaker, do I understand that a motion to recommit cannot be submitted at this stage?

THE SPEAKER: Such a motion is not in order at this time.

§ 15.17 The Chair has refused to entertain a parliamentary inquiry during a teller vote.

On June 28, 1967,[9] Chairman John J. Flynt, Jr., of Georgia, informed Mr. Joe D. Waggonner, of Louisiana, that a parliamentary

8. 79 CONG. REC. 10288, 10289, 74th Cong. 1st Sess. Under consideration was H.R. 8555, the Merchant Marine bill.

9. 113 CONG. REC. 17748, 90th Cong. 1st Sess. Under consideration was H.R. 10340, authorizing appropriations for the National Aeronautics and Space Administration.

inquiry would not be heard during a teller vote.

MR. [GEORGE P.] MILLER of California: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Roudebush and Mr. Miller of California.

THE CHAIRMAN: Those in favor of the amendment offered by the gentleman from Indiana [Mr. Roudebush] to the amendment offered by the gentleman from Pennsylvania [Mr. Fulton] will pass through the tellers.

MR. WAGGONNER: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The Committee is in the process of voting, and no parliamentary inquiry can be made at this time.

§ 15.18 The Speaker may entertain a parliamentary inquiry after the yeas and nays are ordered, but debate on the pending question is not in order.

On Oct. 25, 1967,[10] Speaker John W. McCormack, of Massachusetts, entertained an inquiry after the yeas and nays were ordered, but he did not allow Mr. Robert N. Giaimo, of Connecticut, to debate.

THE SPEAKER: The question is on the motion offered by the gentleman from Ohio [Mr. Kirwan] that the House recede from its disagreement to Senate amendment No. 2 and concur therein with an amendment.

MR. [JOHN J.] RHODES of Arizona: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

MR. GIAIMO: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GIAIMO: Mr. Speaker, is it the parliamentary situation at the present time in regard to the amendment No. 2 such that it would provide almost $1 billion for construction by the Corps of Engineers, and that we are voting on these funds without the $875,000 for Dickey-Lincoln?

THE SPEAKER: The Chair will state that the House has before it the motion by the gentleman from Ohio that the House recede from its disagreement to the amendment of the Senate numbered 2, and concur therein with an amendment, as follows: In lieu of the sum proposed, insert "$967,599,000".

MR. GIAIMO: In other words, Mr. Speaker, this takes out the $875,000 for Dickey-Lincoln?

THE SPEAKER: That is not within the prerogative of the Chair to state.

MR. GIAIMO: Mr. Speaker, can we get an explanation from the committee?

THE SPEAKER: The Chair will state that it is too late for that. However, it is the understanding of the Chair that would be the result.

§ 15.19 A Member may not interrupt a division vote with a parliamentary inquiry.

10. 113 CONG. REC. 29943, 90th Cong. 1st Sess. Under consideration was H.R. 11641, a public works appropriation for fiscal 1968.

On Feb. 13, 1946,[11] Mr. Howard W. Smith, of Virginia, offered a resolution raising a question of privilege of the House to correct the *Congressional Record* after another Member, Charles R. Savage, of Washington, had allegedly inserted something unauthorized therein. During the division vote demanded by Mr. Smith, Mr. Hugh De Lacy, of Washington, attempted to interpose a parliamentary inquiry, which Speaker Sam Rayburn, of Texas, held out of order.

MR. SMITH of Virginia: Mr. Speaker, I demand a division.

The House proceeded to divide.

MR. DE LACY (interrupting the division): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The House is dividing now. Nothing else is in order now.

§ 15.20 A parliamentary inquiry may not interrupt a division; but such inquiries are entertained until the Chair asks those in favor of the proposition to rise.

On Sept. 29, 1966,[12] after the request of Mr. John N. Erlenborn, of Illinois, for a division vote, but before the Chair called for the Members to rise, Mr. William D. Ford, of Michigan, interposed a parliamentary inquiry.

THE CHAIRMAN:[13] The question is on the amendment offered by the gentleman from Illinois [Mr. Erlenborn] to the amendment offered by the gentlewoman from Oregon [Mrs. Green].

The question was taken and the Chairman announced the Chair was in doubt.

MR. ERLENBORN: Mr. Chairman, I ask for a division.

MR. WILLIAM D. FORD: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. WILLIAM D. FORD: In the event that the amendment offered by the gentleman from Illinois [Mr. Erlenborn] which is offered to the amendment offered by the gentlewoman from Oregon [Mrs. Green] is defeated at this time and the amendment offered by the gentlewoman from Oregon [Mrs. Green] is also defeated, would the Erlenborn amendment then be in order if offered separately?

MR. [HAROLD R.] COLLIER [of Illinois]: Mr. Chairman, a point of order. Is a parliamentary inquiry in order at this time during the vote?

THE CHAIRMAN: The parliamentary inquiry was made before the Chair put the question pursuant to the demand of the gentleman from Illinois [Mr. Erlenborn] for a division.

In response to the parliamentary inquiry by the gentleman from Michigan,

11. 92 CONG. REC. 1274, 1275, 79th Cong. 2d Sess. Under consideration was H. Res. 523.

12. 112 CONG. REC. 24457, 89th Cong. 2d Sess. Under consideration was H.R. 15111, economic opportunity amendments of 1966.

13. Daniel J. Flood (Pa.).

the Chair will state that the amendment may be offered later as a separate amendment.

Parliamentary Inquiry Is Not "Intervening Business" Precluding Demand for a Division Vote on a Pending Amendment

§ 15.21 A parliamentary inquiry as to the status of the Chair's announcement of the result of a voice vote and the effect of the adoption of an amendment on subsequent amendments which might be offered is not such "intervening business" as to prevent a demand for a division vote.

During consideration of a bill for amendment under the five-minute rule in Committee of the Whole on Mar. 21, 1975,[14] some confusion was apparent about the status of pending amendments and the order of voting. A motion to strike out a paragraph in the section which was open for amendment and insert new language had been first offered, followed by a "perfecting amendment" which could have been construed as a substitute or as a perfecting amendment to the underlying text. The Chair treated the latter amendment as perfecting and it was adopted by a voice vote. The Chair then announced that the pending question was on the underlying motion to strike out and insert which had been offered by Mrs. Millicent Fenwick, of New Jersey. The Chair declared that the ayes had prevailed on a voice vote when a parliamentary inquiry intervened.

MRS. FENWICK: Mr. Chairman, I am not sure but that I have let the time go by, but I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. Fenwick: Page 11, strike out lines 1 through 12 and insert in lieu thereof:

"(d) Not more than 50 per centum of the aggregate mortgage amounts approved in appropriation Acts may be allocated (1) for use with respect to existing previously occupied dwellings which have not been substantially rehabilitated and (2) for use with respect to new, unsold dwelling units the construction of which commenced prior to the enactment of this Act. Not more than 10 per centum of the aggregate mortgage amounts approved in appropriation Acts may be allocated with respect to dwelling units with appraised values in excess of $38,000." . . .

MR. [LES] AUCOIN [of Oregon]: Mr. Chairman, I offer a perfecting amendment.

The Clerk read as follows:

Perfecting amendment offered by Mr. AuCoin: On page 11, line 1, strike out "25" and insert in lieu thereof "30".

On page 11, line 3, insert "with respect to existing units and" immediately after "use".

14. 121 CONG. REC. 7950, 7952, 7953, 94th Cong. 1st Sess.

THE CHAIRMAN:[15] The Chair will treat this amendment as a perfecting amendment to the paragraph of the bill and it will be voted on first. . . .

THE CHAIRMAN: The question is on the perfecting amendment offered by the gentleman from Oregon (Mr. AuCoin).

The perfecting amendment was agreed to.

THE CHAIRMAN: The question is on the amendment offered by the gentlewoman from New Jersey.

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

MR. [THOMAS L.] ASHLEY [of Ohio]: Mr. Chairman, a parliamentary inquiry.

Does the Chairman mean the amendment, as amended?

THE CHAIRMAN: The Chair will advise the gentleman that the amendment offered by the gentleman from Oregon (Mr. AuCoin) was a perfecting amendment to section 9(d) on page 11, line 1 through line 8. The amendment offered by the gentlewoman from New Jersey (Mrs. Fenwick) is an amendment which would strike all of the language in the paragraph of the bill and substitute her language.

The Chair will now preserve the rights of Members who were standing at the time of the vote when the Chair put the question and stated that the amendment offered by the gentlewoman from New Jersey (Mrs. Fenwick) had carried.

Does the gentleman from Ohio (Mr. Ashley) seek recognition?

MR. ASHLEY: Yes, I do, Mr. Chairman.

Mr. Chairman, a further parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. ASHLEY: It is on this basis, Mr. Chairman, that I misunderstood the parliamentary situation. I had thought that the gentleman's amendment was in the nature of a substitute. Inasmuch as the gentleman's amendment was adopted, is it also the fact that the amendment of the gentlewoman from New Jersey (Mrs. Fenwick) was adopted?

THE CHAIRMAN: Yes, thereby deleting the language which contained the perfecting amendment of the gentleman from Oregon.

MR. ASHLEY: In that case, Mr. Chairman, I would ask for a division on the vote.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I make a point of order.

THE CHAIRMAN: The gentleman from Maryland will state his point of order.

MR. BAUMAN: It is too late. Other business had intervened.

THE CHAIRMAN: The Chair will rule that no further business had intervened, that at the instant when the Chair was ready to declare the vote on the amendment of the gentlewoman from New Jersey, the gentleman from Ohio (Mr. Ashley) was on his feet seeking recognition with respect to whether to ask for a division vote on that amendment. The Chair has stated that he would protect the rights of the gentleman from Ohio.

The question is on the amendment of the gentlewoman from New Jersey (Mrs. Fenwick).

The question was taken; and on a division (demanded by Mr. Ashley) there were—ayes 34, noes 60.

15. Robert N. Giaimo (Conn.).

Affecting, point of order as
amendments offered en bloc, §§ 1.13, 1.14
amendments to appropriations bills, §§ 1.19–1.21
amendments to legislative bills, §§ 1.24–1.26
appointment of conferees does not lie, § 1.29
appropriations bills, §§ 1.15–1.18
committee reports failing to comply with the Ramseyer rule, § 1.45
conferee appointments not affected, § 1.29
conference reports, § 1.27
debate, relevancy in, § 1.44
recognition by Chair not subject to point of order, §§ 1.30–1.32
section of bill where only a portion of the section subject to a point of order, § 1.23
unfunded mandates, § 1.57

Amendments (see also Appropriations bills, points of order against amendments to)
Chair may rule out on his own initiative, § 6.11
Clerk's failure to transmit copies to majority and minority not subject to point of order, §§ 6.12, 6.13
committee members receive priority in recognition to make a point of order against an amendment, § 1.4
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