MR. STEED: That is correct, Mr. Chairman.

THE CHAIRMAN: The gentleman concedes the point of order.

The point of order is sustained.

§ 22. In General; Burden of Proof

The sections that follow discuss application of the rule prohibiting provisions "changing existing law" in general appropriation bills. The rule itself, and the broad qualifications on its use, are discussed in detail at the beginning of this chapter.[10]

By way of contrast, some rulings which belong under part F of this chapter, "Permissible Limitations on Use of Funds," are carried in parts C, D, and E, which discuss provisions "changing existing law," to permit the reader to better understand the subtle distinctions between these two lines of precedent.

As noted in prior sections of this chapter, clause 2 of Rule XXI proscribes both (1) appropriations not authorized by law, and (2) provisions changing existing law. Some rulings interrelate these two separate proscriptions more than is technically necessary, and this chapter is intended, in part, to place the proper emphasis on the most appropriate portion of Rule XXI clause 2 relied upon by the Chair in its ruling.

Availability of Appropriation Contingent on Further Legislative Action

§ 22.1 Language in an appropriation bill changing existing law by imposing a new committee approval requirement for the availability of funds is legislation and not in order.

On June 29, 1959,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against the following provision:

The Clerk read as follows:

For contractual research, development, operations, technical services, repairs, alterations, and minor construction, and for supplies, materials, and equipment necessary for the conduct and support of aero-

10. See § 1, supra.

See supplements to this edition as they appear for discussion of recently adopted rules, including the requirement that the Committee on Appropriations include, in its reports on general appropriation bills, a statement describing the effect of any provision changing the application of existing law.

11. 105 CONG. REC. 12125, 86th Cong. 1st Sess.

nautical and space research and development activities of the National Aeronautics and Space Administration, including not to exceed $5,000 for representation allowances overseas and official entertainment expenses, to be expended upon the approval or authority of the Administrator; not to exceed $500 for newspapers and periodicals; and purchase of thirty-two passenger motor vehicles, of which nineteen shall be for replacement only; $300,000,000, to remain available until expended: *Provided,* That this appropriation shall also be available for other items of a capital nature only after such items in excess of $250,000 shall first receive the approval in writing of the Committee on Science and Astronautics of the House of Representatives and the Committee on Aeronautical and Space Sciences of the Senate: *Provided further,* That no part of this appropriation shall be available for payment of salaries of National Aeronautics and Space Administration personnel.

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. TABER: I make the point of order against the language on page 4, lines 16 to 22, inclusive, beginning with the word, "*Provided*" and ending with the word "Senate" on the ground that it is legislation on an appropriation bill and requires additional duties.

THE CHAIRMAN: Does the gentleman from Texas [MR. THOMAS] desire to be heard on the point of order?

MR. [ALBERT] Thomas: Mr. Chairman, unquestionably the point of order is good. We were merely trying to straighten out some language in that Act, and I send an amendment to the Clerk's desk.

THE CHAIRMAN: The gentleman from Texas concedes the point of order, and the Chair sustains the point of order.

Extending Availability of Funds Beyond That Specified in Existing Law

§ 22.2 Language in an appropriation bill making an appropriation for a census of agriculture available beyond the time for which it was originally authorized was held to be legislation on an appropriation bill and not in order.

On Dec. 7, 1944,[13] the Committee of the Whole was considering H.R. 5587, a supplemental appropriation. A point of order was raised against a paragraph of the bill providing for a census of agriculture:

Census of agriculture: For an additional amount for census of agriculture, including the objects specified under this head in the Department of Commerce Appropriation Act, 1945, $5,500,000, to remain available until December 31, 1946.

MR. [FRANK B.] KEEFE [of Wisconsin]: Mr. Chairman, I make the point of order against the paragraph and call attention to the language on page 23, line 3, "$5,500,000 to remain available until December 31, 1946," as not being authorized by law and being legislation on an appropriation bill.

12. Paul J. Kilday (Tex.).

13. 90 CONG. REC. 8995, 8996, 78th Cong. 2d Sess.

THE CHAIRMAN:[14] does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. [J. BUELL] SNYDER [of Pennsylvania]: The title of the bill provides for just what the gentleman states. This work is under way, and this is just an additional amount to carry on.

THE CHAIRMAN: Does the gentleman from Pennsylvania hold that this amount is authorized?.

MR. SNYDER: I do, Mr. Chairman.

THE CHAIRMAN: Will the gentleman cite the authorization?.

MR. SNYDER: The authorization is the Agricultural Appropriation Act for the current fiscal year.

THE CHAIRMAN: Does the gentleman from Wisconsin further contend that the amount is not authorized?.

MR. KEEFE: I contend, Mr. Chairman, that the provision making the amount available until December 31, 1946, makes it objectionable, as it carries it beyond any authorization.

THE CHAIRMAN: Does the gentleman from Pennsylvania wish to be heard further on the point of order?.

MR. SNYDER: Nothing further, Mr. Chairman.

THE CHAIRMAN: The Chair sustains the point of order.

Amending Dates in Authorization Law

§ 22.3 To a paragraph of an appropriation bill making appropriations for the United Nations Relief and Rehabilitation Administration, an amendment seeking to extend the dates named in the proviso clause of the first paragraph of the UNRRA Act for 90 days was held to be legislation on an appropriation bill and not in order.

On June 27, 1946,[15] during consideration in the Committee of the Whole of a deficiency appropriation bill (H.R. 6885), a point of order was raised against the following amendment:

MR. [EMMET] O'NEAL [of Kentucky]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. O'Neal: On page 4, line 14, after "1947", insert "*Provided*, That the dates named in the proviso clause of the first paragraph of the United Nations Relief and Rehabilitation Administration Participation Act, 1946, are each hereby extended for 90 days."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill not authorized by existing law.

MR. O'NEAL: Mr. Chairman, I should like to be heard on the point of order.

The gentleman makes the point of order that it is legislation on an appropriation bill. The amendment offered applies directly to the legislation referred to in the same paragraph, the Rehabilitation Administration Participation Act, 1946. The provisions of

14. Herbert C. Bonner (N.C.).

15. 92 CONG. REC. 7758, 79th Cong. 2d Sess.

that act are referred to in this paragraph, and the amendment affects one of the parts of the Participation Act. It seems clear to me, since it touches on the very matter referred to in the paragraph, that it is certainly not legislation which is not in conformity with the rest of the paragraph.

MR. TABER: The law now provides a period within which certain things may be done. This changes the law so as to make that period 90 days longer. There is nothing in the bill at the present time to which this amendment is germane.

THE CHAIRMAN:[16] The Chair is ready to rule. In the opinion of the Chair, the amendment is clearly legislation on an appropriation bill. The point of order is sustained.

Conferring Discretion

§ 22.4 An amendment to an appropriation bill, providing that no appropriations in the bill be available for contracts for procurements from private contractors except where a federal official determines to the contrary was held to confer new discretionary authority and to be legislation.

On Apr. 13, 1949,[17] during consideration in the Committee of the Whole of the military establishment appropriation bill (H.R. 4146), a point of order was raised against an amendment containing the following provision:

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Page 90, following line 21, insert a new section, as follows:

"Sec. 629. No part of the appropriations made in this act shall be available . . . and no moneys herein appropriated for the Naval Establishment or made available therefor shall be used or expended under contracts hereafter made for the repair, purchase, or acquirement, by or from any private contractor, of any naval vessel, machinery, article, or articles that at the time of the proposed repair, purchase, or acquirement can be repaired, manufactured, or produced in each or any of the Government naval shipyards or arsenals of the United States, when time and facilities permit, and when, in the judgment of the Secretary, such repair, purchase, acquirement, or production would not involve an appreciable increase in cost to the Government, except when the repair, purchase, or acquirement, by or from any private contractor, would, in the opinion of the Secretary, be advantageous to the national defense."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, the proposed amendment clearly imposes additional duties.

THE CHAIRMAN:[18] Does the gentleman from Rhode Island desire to be heard on the point of order?

16. Harold D. Cooley (N.C.).

17. 95 CONG. REC. 4534, 4535, 81st Cong. 1st Sess.

18. Eugene J. Keogh (N.Y.).

MR. FOGARTY: Mr. Chairman, in offering this amendment today I am not attempting to offer something that has not been in previous appropriation bills. The exact language of the amendment I am offering has appeared in appropriation bills for the military and the naval establishments for the past 25 or 30 years. Without any hearings on this particular section of the bill it was stricken out by the subcommittee handling the bill before use this afternoon. The House has acted upon this very same amendment in the past, and it was considered germane. In a conference between the House and the Senate a year ago this provision was agreed on. I think the amendment is in order at the present time.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Rhode Island offers an amendment against which a point of order is made on the ground that it is legislation on an appropriation bill. While it would seem to be a limitation of appropriation, the Chair calls the attention of the Committee to the fact that the amendment does confer discretionary authority upon the Secretary. It is the opinion of the Chair that to that extent the amendment is legislation on an appropriation bill. Therefore, the Chair sustains the point of order.

Incorporation of Legislative Language by Reference

§ 22.5 The incorporation by reference of a legislative provision in a former appropriation act is not in order in a general appropriation bill: language in the D.C. appropriation bill providing that employment on playgrounds shall be distributed in accordance with corresponding employment provided for in the D.C. appropriation act for a former fiscal year was held to be legislation.

On Apr. 2, 1937,[19] during consideration in the Committee of the Whole of the District of Columbia appropriation bill, a point of order was raised against the first clause in the proviso in the following paragraph:

COMMUNITY CENTER DEPARTMENT

For personal services of the director, general secretaries, and community secretaries in accordance with the act approved June 4, 1924 (43 Stat., pp. 369, 370); clerks and part-time employees, including janitors on account of meetings of parent-teacher associations and other activities; for personal services for public playgrounds adjacent to and in the vicinity of school buildings: *Provided*, That employments on such playgrounds, except directors who shall be employed for 12 months, shall be distributed as to duration in accordance with corresponding employments provided for in the District of Columbia Appropriation Act for the fiscal year 1924; for keeping open public-school playgrounds, including playgrounds operated during the summer months and daily after school hours;

19. 81 CONG. REC. 3107, 75th Cong. 1st Sess.

for general maintenance, repairs, improvements, equipment, supplies, lighting fixtures, and other incidental and contingent expenses, including labor; and including $10,000 for health and physical education teachers to supervise play in schools of the central area bounded by North Capitol Street on the east, Florida Avenue on the north, the Mall on the south, and Twelfth Street on the west, $216,565.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, I make a point of order against the paragraph beginning in line 23, on page 26, down to and inclusive of line 18, on page 27, for the reason that it changes existing law and is, therefore, legislation on an appropriation bill.

THE CHAIRMAN:[20] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: I do not, Mr. Chairman, except to say that the only provision of the paragraph subject to the point of order is the proviso.

THE CHAIRMAN: Does the gentleman from Oklahoma make the point of order against the entire paragraph?

MR. NICHOLS: Mr. Chairman, I modify my point of order and direct it to that portion of the paragraph beginning in line 4, page 27, which is the proviso.

THE CHAIRMAN: The Chair is prepared to rule. . . .

The proviso on page 27, beginning at line 4 and continuing through the figures "1924" in line 9, is the language against which the point of order is made. The appropriation act of 1924 was law for that year and did not become permanent law. This provision would incorporate into this bill the legislative provision of the act of 1924, and is therefore legislation on an appropriation bill.

The Chair sustains the point of order.

20. Jere Cooper (Tenn.).

§ 22.6 A provision making restrictions and conditions imposed on similar programs in other appropriation acts applicable to the funds being appropriated in the bill under consideration was conceded to be legislation and was ruled out as in violation of Rule XXI clause 2.

On May 15, 1957,[1] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 7441), the following point of order was raised:

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I make a point of order with regard to the language beginning with the words "*Provided further,*" on line 8, at page 10, down to and including the word "Service" on line 14, the language being as follows:

> *Provided further,* That provisions of the act of August 1, 1956 (70 Stat. 890–892), and provisions of a similar nature in appropriation acts of the Department of State for the current and subsequent fiscal years which facilitate the work of the Foreign

1. 103 CONG. REC. 7012, 85th Cong. 1st Sess.

Service shall be applicable to funds available to the Foreign Agricultural Service.

I make the point of order, Mr. Chairman, on the ground that this language is legislation on an appropriation bill.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, may I be heard?

THE CHAIRMAN:[2] The Chair recognizes the gentleman from Mississippi [Mr. Whitten].

MR. WHITTEN: Mr. Chairman, the committee concedes the point of order.

THE CHAIRMAN: The gentleman from Mississippi concedes the point of order. The point of order is sustained.

House Resolution Made Permanent Law

§ 22.7 Language in a general appropriation bill prescribing that the provisions of a House-passed resolution "shall be the permanent law with respect thereto" was conceded to be legislation in violation of Rule XXI clause 2 and was ruled out on a point of order.

On June 4, 1971,[3] during consideration in the Committee of the Whole of the legislative branch appropriation bill (H.R. 8825), a point of order was raised against the following provision:

POSTAGE STAMP ALLOWANCES

Postage stamp allowances for the second session of the Ninety-second Congress, as follows: Clerk, $1,120; Sergeant at Arms, $840; Doorkeeper, $700; Postmaster, $560; each Member, the Speaker, the majority and minority leaders, the majority and minority whips, and each standing committee, as authorized by law; $321,090: *Provided*, That the provisions of House Resolution 420, Ninety-second Congress, shall be the permanent law with respect thereto.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language to be found on page 7, line 7, which states as follows:

Provided, That the provisions of House Resolution 420, Ninety-second Congress shall be the permanent law with respect thereto.

I make a point of order against that language on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:[4] The Chair will inquire of the gentleman from Alabama if he wishes to be heard on the point of order.

MR. [GEORGE W.] ANDREWS of Alabama: Again we were following the intent of the House and a custom which is established.

THE CHAIRMAN: Does the gentleman concede the point of order?

MR. ANDREWS of Alabama: We do.

THE CHAIRMAN: The point of order against the proviso is sustained, and the Clerk will read.

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2. Paul J. Kilday (Tex.).

3. 117 CONG. REC. 18040, 92d Cong. 1st Sess.

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

Reference to Legislative Provision Elsewhere in Bill

§ 22.8 To a bill appropriating emergency funds for the President, an amendment to make the provisions of another section of the bill [which contained legislation subject to a point of order] applicable to the appropriation was held to be legislation.

On May 25, 1959,[5] during consideration in the Committee of the Whole of the general government matters appropriation bill (H.R. 7176), a point of order was raised against an amendment to the following section:

EMERGENCY FUND FOR THE PRESIDENT, NATIONAL DEFENSE

For expenses necessary to enable the President, through such officers or agencies of the Government as he may designate, and without regard to such provisions of law regarding the expenditure of Government funds or the compensation and employment of persons in the Government service as he may specify, to provide in his discretion for emergencies affecting the national interest, security, or defense which may arise at home or abroad during the current fiscal year, $1,000,000: *Provided,* That no part of this appropriation shall be available for allocation to finance a function or project for which function or project a budget estimate of appropriation was transmitted pursuant to law during the Eighty-sixth Congress, and such appropriation denied after consideration thereof by the Senate or House of Representatives or by the Committee on Appropriations of either body. . . .

MR. [PORTER] HARDY [Jr., of Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Hardy: On page 5, line 6, strike the period, insert a colon and the following: "*Provided further,* That section 209 of this Act shall be fully applicable to this appropriation.". . .

[Note: Section 209 of the bill provided: "No part of any appropriation contained in this Act, or of the funds available for expenditure by any individual, corporation, or agency included in this Act, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."]

MR. [IVOR D.] FENTON [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[6] Does the gentleman desire to be heard on the point of order?

MR. FENTON: I do, Mr. Chairman. It is legislation on an appropriation bill. . . .

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

MR. HARDY: Yes, Mr. Chairman. I do not know how it can be said that this

5. 105 CONG. REC. 9006, 9007, 9011, 86th Cong. 1st Sess.

6. Carl Albert (Okla.).

is legislation on an appropriation bill when it refers to a section of the bill itself.

THE CHAIRMAN: The Chair will advise the gentleman that that section may have legislation in it and the fact that the amendment refers to a section of the bill is not an answer to the point of order.

MR. HARDY: That may be true, Mr. Chairman, but I would certainly have to express the feeling to ask how is it improper anywhere in a piece of legislation to say that a section of the legislation is applicable to the rest of it.

THE CHAIRMAN: Under the rules of the House, any language in an appropriation bill or any amendment to an appropriation bill which contains legislation is subject to a point of order. Therefore, the point of order is sustained.

Exceeding Limitation in Permanent Law

§ 22.9 Where a limitation on the amount of an appropriation to be annually available for expenditure by an agency has become law, language in a subsequent appropriation bill seeking to change this limitation on such funds was held to change existing law and therefore to be legislation on an appropriation bill.

On Mar. 15, 1945,[7] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 2603), a point of order was raised against the following provision:

The Clerk read as follows:

Foreign Service Buildings Fund: For the purpose of carrying into effect the provisions of the act of May 25, 1938, entitled "An act to provide additional funds for buildings for the use of the diplomatic and consular establishments of the United States" (22 U.S.C. 295a), including the initial alterations, repair, and furnishing of buildings acquired under said act, $1,466,000, notwithstanding the amount [of the] limitation in the act of May 25, 1938 (22 U.S.C. 295a), to remain available until expended: *Provided*, That expenditures for furnishing made from appropriations granted pursuant to the act of May 7, 1926, and subsequent acts providing funds for buildings for the use of diplomatic and consular establishments of the United States shall not be subject to the provisions of section 3709 of the Revised Statutes.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make a point of order against the paragraph beginning in line 14, page 16, down to and including line 3, page 17, on the ground it is a violation of the basic law.

Appropriation is asked notwithstanding the amount (of the) limitation in the act of May 25, 1938 (22 U.S. Code, sec. 295a), as follows:

Sections 292 et seq. authorized the acquisition of properties abroad for the State Department, and section 295a authorized "to be appropriated, in addition to the amount authorized by such act, an amount not to exceed $5,000,000, of which not more than $1,000,000 shall be appropriated for any 1 year," and so forth.

7. 91 CONG. REC. 2305, 79th Cong. 1st Sess.

No necessity or reason is shown for the lifting of that $1,000,000 yearly limitation on these appropriations, and the present proposal amounts to, and is, permanent and repealing legislation on an appropriation act.

THE CHAIRMAN:[8] 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. 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 order, the entire paragraph is subject to a point of order.

The Chair sustains the point of order.

§ 22.10 An amendment to an appropriation bill seeking to change a limitation on expenditures carried in a previous appropriation bill was held to be legislation and not in order.

8. Wilbur D. Mills (Ark.).

On Dec. 6, 1944,[9] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R 5587), a point of order was raised against the following amendment:

Amendment offered by Mr. [Malcolm C.] Tarver [of Georgia]: On page 19, line 3, insert a new paragraph, as follows:

CONSERVATION AND USE OF AGRICULTURAL LAND RESOURCES

"The limitation on expenditures under the 1944 program of soil-building practices and soil- and water-conservation practices established in the fourth proviso clause of appropriation Conservation and use of agricultural land resources, in the Department of Agriculture Appropriation Act, 1944, is hereby increased from $300,000,000 to $313,000,000 (exclusive of the $12,500,000 provided in the Department of Agriculture Appropriation Act, 1945, for additional seed payments)."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. The change of a limitation is a change of existing law, and it has been so held repeatedly.

MR. TARVER: Mr. Chairman, the Soil Conservation and Domestic Allotment Act authorizes the promulgation of programs to cost not in excess of $500,000,000 annually. In the Agricultural Appropriation Act of 1944 the Congress undertook to impose a limitation of $300,000,000 upon the adminis-

9. 90 CONG. REC. 8940, 8941, 78th Cong. 2d Sess.

trative authorities in the promulgation of the over-all program for the calendar year 1944, which program included not only payments and grants for soil-conservation and water-conservation practices, but the furnishing in advance of seeds, limes, fertilizers, trees and other agricultural materials to be used in soil-conservation work and to be charged against the benefits accruing to the farmers in subsequent crop years.

. . . [T]his amendment, if adopted, does not appropriate or make available to the administrative authorities one single dollar of moneys which are not already available to them but it simply authorizes the use by them of moneys which have been allocated to the seed, fertilizer, lime, and tree program for the discharge of liabilities incurred under the program for the payments and grants for soil- and water-conservation practices. It is, therefore, in effect a reallocation of the funds which have already been appropriated by Congress.

I may say that that original allocation of funds was not made by the Congress in the enactment of the Agricultural Appropriation Act of 1944, but was made by departmental authorities without mandatory instructions from the Congress to make such allocations, although it probably was a matter within their administrative discretion. So I insist that the Congress by the imposition of the limitation in the Agricultural Appropriation Act of 1944 did not so tie its hands as to make it impossible for the same Congress or for a subsequent Congress to appropriate funds or to review and revise the allocation of funds already appropriated for the purposes outlined in the Soil Conservation and Domestic Allotment Act, so long as it does not exceed the limitation for maximum appropriation provided in that act, which, as I have pointed out, is $500,000,000.

I respectfully insist, Mr. Chairman, that the amendment is in order and the point of order should be overruled.

THE CHAIRMAN:[10] Does the gentleman from New York insist on his point of order?

MR. TABER: I do, Mr. Chairman.

THE CHAIRMAN: The point of order raised by the gentleman from New York is correct, and the Chair sustains the point of order.

Striking Out Language in Legislation Permitted to Remain

§ 22.11 An amendment merely striking out descriptive language in an appropriation bill may not be subject to a point of order as being legislation, if germane and if it does not broaden the appropriation beyond its authorized purpose.

On May 25, 1959,[11] during consideration in the Committee of the Whole of the general government matters appropriation bill (H.R. 7176), a point of order was raised against an amendment to the following language:

The Clerk read as follows:

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10. Herbert C. Bonner (N.C.).

11. 105 CONG. REC. 9013, 86th Cong. 1st Sess.

Sec. 202. Unless otherwise specified and during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in continental United States unless such person (1) is a citizen of the United States, (2) is a person in the service of the United States on the date of enactment of this Act who, being eligible for citizenship, had filed a declaration of intention to become a citizen of the United States prior to such date, (3) is a person who owes allegiance to the United States, or (4) is an alien from the Baltic countries lawfully admitted to the United States for permanent residence: *Provided,* That for the purpose of this section, an affidavit signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his status have been complied with. . . .

MR. [JAMES G.] O'HARA of Michigan: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. O'Hara of Michigan: On page 9, lines 5 and 6, after "alien" strike out the words "from the Baltic countries".

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Chairman, a point of order.

THE CHAIRMAN:[12] The gentleman will state it.

MR. GARY: Mr. Chairman, that is legislation on an appropriation bill.

THE CHAIRMAN: The Chair would advise the gentleman that the amendment simply strikes out certain language in the bill.

The point of order is overruled.

Construing the Use of Funds To Be in Conformity With Existing Law

§ 22.12 A provision in a general appropriation bill making appropriations therein available for purchase of station wagons without such vehicles being considered as passenger motor vehicles was held to constitute legislation.

On May 2, 1951,[13] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 3709), a point of order was raised against the following provision:

The Clerk read as follows:

GENERAL PROVISIONS—DEPARTMENT OF THE INTERIOR

Sec. 102. Appropriations made in this act shall be available for the purchase of station wagons without such vehicles being considered as passenger motor vehicles.

MR. [PAUL C.] JONES of Missouri: Mr. Chairman, I make the point of order against this section on the ground that it is legislation on an appropriation bill.

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, I concede the point of order.

THE CHAIRMAN:[14] The gentleman from Washington concedes the point of

12. Carl Albert (Okla.).

13. 97 CONG. REC. 4737, 4738, 82d Cong. 1st Sess.

14. Wilbur D. Mills (Ark.).

order and the Chair sustains the point of order.

§ 22.13 Where an appropriation bill placed a limit on administrative expenses, a provision defining certain expenses now or hereafter incurred as "non-administrative," for purposes of making the computation under any applicable limitation was held to be legislative and was ruled out on a point of order.

On Jan. 17, 1940,[15] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7922), a point of order was raised against the following provision:

The Clerk read as follows:

Electric Home and Farm Authority, salaries and administrative expenses: Not to exceed $600,000 of the funds of the Electric Home and Farm Authority, established as an agency of the Government by Executive Order No. 7139 of August 12, 1935, and continued as such agency until June 30, 1941 by the act of March 4, 1939 (Public Act No. 2, 76th Cong.), shall be available during the fiscal year 1941 for administrative expenses of the Authority, including personal services in the District of Columbia and elsewhere; travel expenses, in accordance with the Standardized Government Travel Regulations and the act of June 3, 1926, as amended (5 U.S.C. 821–833); not exceeding $3,000 for expenses incurred in packing, crating, and transporting household effects (not exceeding 5,000 pounds in any one case) of personnel when transferred in the interest of the service from one official station to another for permanent duty when specifically authorized in the order directing the transfer; printing and binding; law books and books of reference; not to exceed $200 for periodicals, newspapers, and maps; procurement of supplies, equipment, and services; typewriters, adding machines, and other labor-saving devices, including their repair and exchange; rent in the District of Columbia and elsewhere; and all other administrative expenses: *Provided*, That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, care, repair, and disposition of any security or collateral now or hereafter held or acquired by the Authority shall be considered as nonadministrative expenses for the purposes hereof.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make the point of order against the paragraph that it contains legislation in the proviso beginning on page 21, line 3, and reading as follows:

Provided, That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, care, repair, and disposition of any security or collateral now or hereafter held or acquired by the Authority shall be considered as nonadministrative expenses for the purposes hereof.

I make the point of order merely against the proviso, Mr. Chairman, not against the paragraph.

15. 86 CONG. REC. 439, 76th Cong. 3d Sess.

The Chairman:[16] Does the gentleman from Virginia desire to be heard on the point of order?

MR. [CLIFTON A.] WOODRUM of Virginia: I do not, Mr. Chairman.

THE CHAIRMAN: As the language pointed out by the gentleman from South Dakota [Mr. Case] attempts to construe existing law, the Chair believes the point of order is well taken. The point of order is, therefore, sustained, and the proviso is stricken out.

Change in Contract Authorization

§ 22.14 Language in an appropriation bill seeking to change a contract authorization contained in a previous appropriation bill passed by another Congress was held to be legislation and not a retrenchment of funds in the bill.

On Apr. 25, 1947,[17] during consideration in the Committee of the Whole of the Department of the Interior appropriation bill for fiscal year 1948 (H.R. 3123), the following point of order was raised:

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I wish to reserve the point of order first in order that I may get some information before I make the point of order finally, and that is with respect to the language which appears at the bottom of page 51, which reads as follows:

> *Provided further,* That the contract authorization of $15,000,000 contained in the Interior Department Appropriation Act, fiscal year 1946, is hereby reduced to $9,750,000.

My point of order, Mr. Chairman, is that that is legislation amending a previous act and not within the purview of this bill making appropriations for fiscal 1948. It constitutes legislation on an appropriation bill for it destroys existing legislation.

Before I make the point of order, may I ask the chairman of the committee what the reason is for carrying that language? I feel that the development of the synthetic liquid fuel program is very essential to national defense and is probably the cheapest money we can spend in that direction.

MR. [ROBERT F.] JONES of Ohio: The purpose of this language is to limit the amount to be expended further on this project to the authorization provided in the basic act. In other words, the amount remaining after this appropriation will be the amount of $9,750,000, and will tie the entire appropriation to the basic authorization.

MR. CASE of South Dakota: What was the reason, then, for the increase of the authorization to $15,000,000 in the act of 1946 and establishment of contract authority?

MR. JONES of Ohio: That was to tie the appropriations to the $30,000,000 authorization

MR. CASE of South Dakota: Mr. Chairman, having introduced a bill which seeks to accomplish about that very thing, I am constrained to make the point of order and do make the point of order.

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16. Lindsay C. Warren (N.C.).

17. 93 CONG. REC. 4098, 80th Cong. 1st Sess.

THE CHAIRMAN:[18] Does the gentleman from Ohio desire to be heard on the point of order?

MR. JONES of Ohio: Mr. Chairman, the only purpose of the language is to limit the amount appropriated over all to the $30,000,000 authorization. It seems to me it is merely a restatement of the basic law and clearly in order under the Holman rule because on its face it saves money.

THE CHAIRMAN: This language changes a contract authorization contained in a previous appropriation bill passed by another Congress. The Chair sustains the point of order.

Delegation of Statutory Authority

§ 22.15 Language in an appropriation bill providing that the head of the department or establishment concerned may delegate to such officials his authority to authorize payment of expenses of travel and of transportation of household goods and immediate families of civilian officers and employees on change of official station was held legislation on an appropriation bill and not in order.

On Feb. 8, 1945,[19] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 1984), a point of order was raised against the following provision:

The Clerk read as follows:

(e) During the fiscal year 1946 the head of the department or establishment concerned may delegate to such officials as he may designate his authority to authorize payment of expenses of travel and of transportation of household goods and immediate families of civilian officers and employees on change of official station.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make the point of order against the paragraph, particularly the words "may designate," that it is legislation on an appropriation bill, I believe it is a matter that ought to be covered by general legislation.

MR. [CLIFTON A.] Woodrum of Virginia: Mr. Chairman, I concede the point of order.

Bestowing Discretion to Waive Law

§ 22.16 Language in an appropriation bill providing funds for additional court facilities and waiving provisions of existing law where this is "determined to be necessary by the judicial council of the appropriate circuit" was conceded to be legislation and was ruled out on a point of order.

18. Earl C. Michener (Mich.).

19. 91 CONG. REC. 965, 79th Cong. 1st Sess.

On Sept. 15, 1961,[20] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9169), a point of order was raised against the two provisions in the following paragraph:

ADDITIONAL COURT FACILITIES

For expenses, not otherwise provided for, necessary to provide, directly or indirectly, additional space, facilities and courtrooms for the judiciary, including alteration and extension of Government-owned buildings and acquisition of additions to sites of such buildings; rents; furnishings and equipment; repair and alteration of rented space; moving Government agencies in connection with the assignment and transfer of space; preliminary planning; preparation of drawings and specifications by contract or otherwise; and administrative expenses; $1,000,000, to remain available until expended: *Provided,* That buildings constructed pursuant to the Public Buildings Purchase Contract Act of 1954 (40 U.S.C. 356) shall be considered to be Government-owned buildings for the purposes of this appropriation: *Provided further,* That this appropriation shall be available for the provision of court facilities in places which are otherwise subject to the restrictions of section 142 of title 28, United States Code, but only if such facilities are determined to be necessary by the judicial council of the appropriate circuit.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Chairman, I make the point of order against the language on page 11 from line 6 on down to the bottom of the page, including line 25. It is legislation It changes existing legislation. . . .

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I cannot do anything but concede the point of order.

THE CHAIRMAN:[1] The gentleman from Texas concedes the point of order. The point of order is sustained.

Delegating Authority to Suspend Existing Law

§ 22.17 To a general appropriation bill an amendment providing that in reducing personnel the determination as to which individual employees shall be retained shall be made by the head of the agency concerned was held to be legislation.

On June 28, 1952,[2] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8370), a point of order was raised against the following amendment:

Amendment offered by Mr. [Abraham A.] Ribicoff [of Connecticut] to the amendment offered by Mr. [Ben F.] Jensen [of Iowa]: After (b), No. 3, add a new paragraph as follows:

"4. That 90 days after the enactment of this act, the number of civilian em-

20. 107 CONG. REC. 19729, 87th Cong. 1st Sess.

1. Oren Harris (Ark.).

2. 98 CONG. REC. 8503, 82d Cong. 2d Sess.

ployees who are United States citizens, receiving compensation or allowances from the administrative expense appropriations provided by this act, employed in the United States and overseas by or assigned to the Mutual Security Agency, or employed by or assigned to the Department of State or the Department of Defense for carrying out programs the appropriations for which are provided by this act, and the military personnel assigned to such programs, shall be in the aggregate at least 15 percent less than the number so employed or assigned on June 1, 1952, except for such personnel of the Department of Defense engaged in the manufacturing, repair, rehabilitation, packing, handling, crating, or delivery of materiel: *Provided further,* That after the Director has determined the reduction to be effected in each agency, the determination as to which individual employees shall be retained shall be made by the head of the agency concerned.". . .

THE CHAIRMAN:[3] Does the gentleman from Virginia make his point of order?

MR. [J. VAUGHAN] GARY [of Virginia]: Yes. Mr. Chairman, as I understand the amendment, it leaves the discharge of employees entirely to the Administrator, which contravenes existing laws with reference to veterans' preference and also the civil-service laws. It is legislation; it contravenes existing legislation.

MR. [JOHN] TABER [of New York]: Mr. Chairman, the point of order comes too late; the amendment had been debated.

MR. GARY: I will say to the gentleman from New York that I reserved the point of order at the time the amendment was offered.

THE CHAIRMAN: The Chair is ready to rule. Part of the language of the amendment offered by the gentleman from Connecticut, after the proviso, reads:

> That after the Director has determined the reduction to be effected in each agency, the determination as to which individual employees shall be retained shall be made by the head of the agency concerned.

This portion of the amendment does, in the opinion of the Chair, alter the civil-service laws and laws relating to veterans' preferences, and therefore constitutes legislation on an appropriation bill. The point of order is sustained.

Funding Through Different Department

§ 22.18 Where a law authorizes an appropriation to one department for the purpose of prosecuting a certain activity itself or through another department it was held that an amendment proposing to appropriate money directly to the latter department for the purpose of prosecuting such activity changed existing law and was, therefore, not in order on an appropriation bill.

On Mar. 25, 1937,[4] during consideration in the Committee of the

3. Francis E. Walter (Pa.).

4. 81 CONG. REC. 2775–77, 75th Cong. 1st Sess.

Whole of a general appropriation bill providing funds for the Department of Labor (H.R. 5779), a point of order was raised against the following amendment:

MR. [JAMES M.] MEAD [of New York]: Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

> Page 103, line 8, after the word "labor", insert "to enable the Division of Labor Standards in the Department of Labor to engage in a program to formulate and promote the furtherance of standards of apprenticeship and apprentice training, $50,000."

MR. [ROBERT L.] BACON [of New York]: Mr. Chairman, I make a point of order against the amendment. . . .

THE CHAIRMAN:[5] The Chair is ready to rule.

The gentleman from New York [Mr. Mead] has offered an amendment to insert a new paragraph, as follows:

> To enable the Division of Labor Standards in the Department of Labor to engage in a program to formulate and promote the furtherance of standards of apprenticeship and apprentice training, $50,000.

To this amendment the gentleman from New York [Mr. Bacon] has made the point of order that the amendment is not germane to the paragraph to which it is offered, and the further point of order that it is legislation on an appropriation bill.

Unquestionably the amendment is not germane to the paragraph to which it is offered, and on that ground the Chair could sustain the point of order. It is the understanding of the Chair, however, that the gentleman from New York [Mr. Mead] under these circumstances would desire to return to the appropriate paragraph by unanimous consent of the Committee and again offer the amendment, and for this reason the Chair desires to state that, after an examination of the authorities and the precedents existing and of the act of February 23, 1917, which the gentleman from New York has cited, the Chair feels that the rules and precedents of the House have well established that a general statement of the purpose for which a department is established, as the Department of Labor, as set forth in its organic act, is not to be construed as an authorization for an appropriation which is not definitely and specifically provided for either in that act or in subsequent legislation creating bureaus within such Department. No authority has been cited to the Chair, other than the new suggestion made by the gentleman from New York with reference to the Vocational Education Act, which would take this particular amendment out of the ruling cited by the gentleman from New York (Mr. Bacon) made by Chairman Garner in the Committee of the Whole House some years ago. The Vocational Education Act, insofar as it applies to the point raised by the gentleman from New York, reads as follows:

> When the Interior Department deems it advisable, such studies, investigations, and reports concerning trades and industries for purposes of trade and industrial education may be made in cooperation with or through the Department of Labor.

The act, however, makes such investigations, studies, and so forth, de-

5. Frank H. Buck (Calif.).

pendent upon the determination of the Department of Interior for which the pending bill does not purport to make any appropriation.

Without desiring to bind any future occupant of the chair who may preside over the Interior Department appropriation bill as to the germaneness of such an amendment as the gentleman from New York offers today, the Chair feels it is entirely beyond the scope of the present bill and that it would be definite legislation on an appropriation bill, transferring from the Interior Department to the Department of Labor these particular activities which would be obnoxious to the rules of the House. For this reason the Chair sustains the point of order.

Granting Discretion to Approve Expenditure

§ 22.19 Language in a paragraph of a general appropriation bill providing for the expenditure of funds therein "on the approval or authority of the Secretary of the Air Force, and payment may be made on his certificate of necessity for confidential military purposes" was held to change existing law and was ruled out in violation of Rule XXI clause 2 when the Committee on Appropriations failed to cite statutory authority for that method of payment.

On Nov. 30, 1973,[6] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 11575), a point of order was raised against the following provision:

THE CHAIRMAN:[7] the Clerk will read.

The Clerk read as follows:

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; as follows: for Strategic forces, $1,124,154,000; for General purpose forces, $1,014,091,000; for Intelligence and communications, $532,343,000; for Airlift and sealift, $179,240,000; for Central supply and maintenance, $2,318,938,000; for Training operations and other general personnel activities, $517,736,000; for Medical activities, $377,398,000; for Administration and associated activities, $211,467,000; and for the Support of other nations, $256,733,000; in all: $6,532,100,000: *Provided,* That of the total amount of this appropriation, not to exceed $2,343,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payment may be made on his certificate of necessity for confidential military purposes: *Provided further,* That not less than $215,000,000 of the total amount of this appropriation shall be available only for the maintenance of real property facilities. . . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, I make a point

6. 119 CONG. REC. 38821, 38822, 93d Cong. 1st Sess.

7. Daniel D. Rostenkowski (Ill.).

of order on the language commencing on page 8, line 15, "to be expended on the approval of authority of the Secretary of the Air Force, and payment may be made on his certificate of necessity for confidential military purposes:".

The point of order is based on rule XXI, clause 2, in that such language is a provision in an appropriation bill for an existing law and is not contained in the authorization legislation and for other reasons. It is in violation of rule XXI. . . .

MR. [WILLIAM E.] MINSHALL of Ohio: Mr. Chairman, I cannot cite the actual legislative authority, but we do have general legislative authority for just this provision in the bill. It has been in the bill for many, many previous years.

THE CHAIRMAN: Did the gentleman from Ohio state that he cannot cite any authority for this language?

MR. MINSHALL of Ohio: Mr. Chairman, I said I could not, right at this moment. It has been in the previous bill for many, many year.

THE CHAIRMAN: The language to which the point of order is directed is the language the gentleman from Texas cited on line 15, as follows:

> To be expended on the approval or authority of the Secretary of the Air Force and payment may be made on his certificate of necessity for confidential military purposes.

If there is no authority in law for this language, the Chair holds that it must be construed as legislation in violation of clause 2, rule XXI.

The Chair sustains the point of order.

Sufficiency of Vouchers for Expenditure

§ 22.20 In a paragraph appropriating funds for general operating expenses for the District of Columbia, a proviso stating that certificates of the Commissioner and Chairman of the City Council shall be sufficient vouchers for expenditure from that appropriation was conceded to be legislation in violation of Rule XXI clause 2 and was ruled out on a point of order.

On June 7, 1972,[8] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 15259), the following point of order was raised:

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I raise a point of order.

THE CHAIRMAN:[9] The gentleman from Missouri will state his point of order.

MR. HALL: Mr. Chairman, my point of order should lie on page 3, line 8, following the colon, against the phrase:

> *Provided,* That the certificate of the Commissioner (for $2,500) and of the Chairman of the City Council (for $2,500) shall be sufficient voucher for expenditures from this appropriation for such purposes, exclusive of ceremony expenses, as they may respectively deem necessary:

In other words, Mr. Chairman, I am raising a point of order against all after the colon on line 8, through the colon on line 13.

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8. 118 CONG. REC. 19900, 19901, 92d Cong. 2d Sess.

9. Dante B. Fascell (Fla.).

This was not authorized, and it is an appropriation bill without authorization

THE CHAIRMAN: The Chair will state to the gentleman from Missouri that that part of the bill to which the gentleman has raised his point of order was previously read prior to the unanimous-consent request.

MR. HALL: But, Mr. Chairman, I submit that the unanimous-consent request was granted to the entire bill, that it be open to amendment and open for points of order at any point. This request was granted and therefore I have gone back to this point of order.

THE CHAIRMAN: Does the gentleman from Kentucky desire to be heard on the point of order raised by the gentleman from Missouri?

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Chairman, the gentleman from Missouri (Mr. Hall) is correct, and we concede the point of order.

THE CHAIRMAN: The point of order is conceded, and the point of order is sustained.[10]

Various Grounds for Objection

§ 22.21 An entire title in an appropriation bill for the Atomic Energy Commission which included, in part, provisions for (1) the employment of aliens; (2) rental of space upon a determination of need by the Administrator of General Services; (3) use of unexpended balances of previous years; (4) transfer of sums to other agencies; (5) a sum to remain available until expended; (6) reappropriation of funds for plant and equipment; and (7) a power reactor project not authorized by law, was held to be in violation of Rule XXI clause 2.

On July 24, 1956,[11] during consideration in the Committee of the Whole of the second supplemental appropriation bill, a point of order was raised against a title containing provisions as described above. The proceedings were as follows:

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I ask unanimous consent that the bill be considered as read and now be open to points of order and amendments to any part of the bill.

THE CHAIRMAN:[12] Is there objection to the request of the gentleman from Missouri?

There was no objection.

MR. CANNON: Mr. Chairman, I make a point of order against title I and also the item for the Bureau of Reclamation on page 7.

THE CHAIRMAN: Is the gentleman making a point of order against the entire title I?

10. See also 119 CONG. REC. 20068, 93d Cong. 1st Sess., June 18, 1973 [H.R. 8658].

11. 102 CONG. REC. 14289, 84th Cong. 2d Sess.

12. Oren Harris (Ark.).

MR. CANNON: Title I and the material indicated as well as on page 7.

THE CHAIRMAN: Let us pass on one point of order at a time, please. Does anybody wish to be heard on the point of order made by the gentleman from Missouri [Mr. Cannon] against title I?

MR. [WALTER H.] JUDD [of Minnesota]: On what basis is the point of order made?

MR. CANNON: Not authorized by law and is legislation on an appropriation bill.

MR. JUDD: A lot of it is authorized by law.

MR. [JOHN] TABER [of New York]: Mr. Chairman, the items in title I, with the exception of the several provisos, are entirely within the statute and are authorized. I thought I had an understanding that the only item to go out was the $400 million item, but as long as the point of order is made on that, I will offer an amendment to cover everything except that last proviso after the point of order is disposed of.

MR. CANNON: Mr. Chairman, title I, in its entirety, is subject to a point of order. Part of the paragraph being subject to a point of order, the entire paragraph is subject to a point of order.

Title I is subject to a point of order on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Missouri makes the point of order against title I of the pending bill on the ground that it is legislation on an appropriation bill or contains appropriations not authorized by law. The Chair has gone through title I and has observed that every paragraph in it either contains legislation on an appropriation bill, which is in violation of the rules of the House, or contains appropriations which are not authorized by law, which is also in violation of the rules of the House.

The Chair sustains the point of order.

Change in Policy by Negative Restriction on Use of Funds

§ 22.22 While a limitation may not involve a permanent change of existing law, the allegation that it may result in a change of administrative policy would not itself render it subject to a point of order if only a negative limitation on use of funds.

On May 11, 1960,[13] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 12117), a point of order was raised against the following section:

> Sec. 408. No part of the funds appropriated by this Act shall be used to pay the compensation of any employee or officer of the Department, except the Secretary of Agriculture, who, in addition to other regularly assigned responsibilities, serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation after February 1, 1961.

13. 106 CONG. REC. 10053, 10054, 86th Cong. 2d Sess.

MR. [PAUL] BROWN of Georgia: Mr. Chairman, a point of order.

THE CHAIRMAN:[14] The gentleman will state it.

MR. BROWN of Georgia: Mr. Chairman, section 408 provides that none of the funds appropriated by H.R. 12117, making appropriations for the Department of Agriculture and Farm Credit Administration, shall be used to pay the salary of any officer or employee of the Department—except the Secretary—who serves as a member of the Board of Directors of CCC, or as an officer of CCC, in addition to other regular duties with the Department.

This reverses a decision made by the Banking and Currency Committee and the Congress in 1949, when the CCC Charter Act was amended to strike out a similar restriction which had been enacted in 1948. It is, therefore, legislation, and the mere fact it is put in the form of a limitation on the use of funds appropriated by the bill does not save it. As paragraph 1691, volume 7, of Cannon's Precedents of the House of Representatives puts it:

> The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change of policy rather than a matter of administrative detail it is not in order.

Again in paragraph 1606 of the same volume, the following is found:

> Whenever a purported limitation makes unlawful that which before was lawful or makes lawful that which before was unlawful it changes existing law and is not in order on an appropriation bill.
>
> A proper limitation is negative and in the nature of a veto, and when it assumes affirmative form by direction to an executive in the discharge of his duties under existing law it ceases to be a limitation and becomes legislation.

Section 408 in effect requires the Secretary to take affirmative action. To carry out the farm programs financed by CCC, the Secretary would have to appoint new Board members, recruited from private life, to replace the six Department officers other than himself who now serve on the Board. He would also have to recruit and appoint new personnel to serve as officers of the Corporation. This not only means the section constitutes legislation, but also means it is not entitled to the protection of the Holman rule, because it would not save the Government money. On the contrary, it would require hiring new employees at additional expense to the Government.

THE CHAIRMAN: Does the gentleman from Mississippi [Mr. Whitten] desire to be heard on the point of order?

MR. [JAMIE L.] WHITTEN: Mr. Chairman, the section clearly provides a limitation on the use of funds that are appropriated in this bill. It does not change the Commodity Credit Corporation charter. It does not change any basic law. It just simply limits what the money in this bill can be used for. It has been my experience and observation during the years here that the Chair has many times said that it is a negative limitation on the use of money and that it is clearly in order, and on that I rest the committee's position.

14. Paul J. Kilday (Tex.).

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Georgia [Mr. Brown] makes a point of order against the language in section 408 of the bill on the ground that it constitutes legislation on an appropriation bill.

The Chair has had an opportunity to examine the precedents in this connection, including the precedents to which the gentleman from Georgia has referred and from which he has read. The Chair would also refer to paragraph 1694 of Cannon's Precedents, volume 7, the language being:

> While a limitation may not involve change of existing law or affirmatively restrict executive direction, it may properly effect a change of administrative policy and still be in order.

The Chair has examined additional precedents bearing on this question. The Chair is constrained to hold that section 408 is a restriction on a manner in which the funds can be used, and constitutes a negative limitation, and therefore, overrules the point of order.

Parliamentarian's Note: There are other recent rulings in which the Chair has chosen to rely on the headnote in 7 Cannon's Precedents

§ 1694 rather than on

§ 1691 in permitting limitations on use of funds. See 118 CONG. REC. 30749, 30750, 92d Cong. 2d Sess., Sept. 14, 1972; 120 CONG. REC. 20601, 20602, 93d Cong. 2d Sess., June 21, 1974; 120 CONG. REC. 34716, 93d Cong. 2d Sess., Oct. 9, 1974.

Changing Limitation in Prior Law

§ 22.23 A limitation in an appropriation bill having become law, a provision in a subsequent appropriation bill for that fiscal year seeking to change this limitation was conceded to be legislation and was ruled out on a point of order.

On Aug. 26, 1960,[15] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 12740), the following point of order was raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language in the bill on page 7, beginning on line 11, running through line 4 on page 8, as being legislation on an appropriation bill. The language referred to is as follows:

FOREIGN CLAIMS SETTLEMENT COMMISSION

Salaries and expenses

For an additional amount for "Salaries and expenses," including allowances and benefits similar to those provided by title IX of the Foreign Service Act of 1946, as amended, as determined by the Commission . . . hire of passenger motor vehicles

15. 106 CONG. REC. 17899, 86th Cong. 2d Sess.

abroad; insurance on official motor vehicles abroad; and advances of funds abroad; $145,000: *Provided,* That the limitation under this head in the General Government Matters Appropriation Act, 1961, on the amount available for expenses of travel, is increased from "$10,000" to "$20,000".

THE CHAIRMAN:[16] Does the gentleman from Texas desire to be heard on the point of order?

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, the gentleman from Iowa is right. This is the first time that these people have operated overseas and they asked for a little oversea allowance The Bureau of the Budget recommended it. We did not feel that we wanted to be the least bit oppressive on it. Mr. Chairman, the point of order is conceded.

THE CHAIRMAN: The point of order made by the gentleman from Iowa is sustained.[17]

Provision Applicable "Hereafter"

§ 22.24 Language in an appropriation bill imposing duties upon an executive not contemplated by law is legislation and not in order.

On Mar. 30, 1955,[18] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 5240), the following point of order was raised:

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Chairman, I make a point of order against the language on page 20 of the bill at line 18 running through line 1, on page 21.

THE CHAIRMAN:[19] The gentleman will state the point of order.

MR. HOFFMAN of Michigan: Mr. Chairman, the proviso beginning on page 20 of H.R. 5240 at line 18 and running through line 1, on page 21, as follows: "*Provided,* That the clause under this head in the 'Independent Offices Appropriation Act, 1955,' relating to the Administrator's general supervision and coordination responsibilities, is amended to read as follows: 'and the Administrator's general supervision and coordination responsibilities under Reorganization Plan No. 3 of 1947 shall hereafter carry full authority, where applicable, to promote economy, efficiency, and fidelity in the operations of the Housing and Home Finance Agency,'" is legislation on an appropriation bill in that—

First. It changes existing law—see House Report No. 304, page 17—by amending permanent legislation enacted in the Independent Offices Appropriation Act, 1955, and by amending Reorganization Plan No. 3 of 1947.

Second. It imposes new duties on an administrative official. . . .

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The Chair is ready to rule. Obviously, the language

16. Herbert C. Bonner (N.C.).

17. See also 111 CONG. REC. 7128, 89th Cong. 1st Sess., Apr. 6, 1965 [H.R. 7091].

18. 101 CONG. REC. 4067, 4068, 84th Cong. 1st Sess.

19. Albert Rains (Ala.).

against which the point of order is made is legislation upon an appropriation bill and the point of order is sustained.

Proponent of Amendment Has Burden if Point of Order Is Raised Requiring New Execution Determination

§ 22.25 The burden of proof is on the proponent of an amendment to a general appropriation bill to show that a proposed executive determination is required by existing law, and the mere recitation that the determination is to be made pursuant to existing law and regulations, absent a citation to the law imposing that responsibility, is not sufficient to overcome a point of order that the amendment constitutes legislation.

On Sept. 16, 1980,[20] during consideration in the Committee of the Whole of H.R. 8105, the Defense Department appropriation bill, a point of order was sustained against an amendment offered to a provision of the bill as indicated below:

> *Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further,* That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

The Clerk read as follows:

> Amendment offered by Mr. [Joseph P.] Addabbo [of New York]: Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:" on page 42, line 1, and insert in lieu thereof "*Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations:". . . .

MR. [JACK] EDWARDS of Alabama: Mr. Chairman, I make a point of order against the amendment as legislation in a general appropriation bill, and therefore in violation of clause 2 of rule XXI.

I respectfully direct the attention of the Chair to Deschler's Procedure, chapter 25, section 11.2 which states:

> It is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make.

I also respectfully direct the attention of the Chair to section 843 of the House Manual, which states in part:

20. 126 CONG. REC. 25606, 25607, 96th Cong. 2d Sess.

> The fact that a limitation on the use of funds may . . . impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken under existing law.

The amendment prohibits the payment of price differentials on contracts except "as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations."

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under current law.

Although the determination is limited "pursuant to existing laws and regulations", there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law, and require this new determination. . . . Mr. Chairman, the amendment prohibits the payment of price differentials on contracts except—and I quote:

> As may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations.

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under the current law. Although the determination is limited "pursuant to existing laws and regulations," there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law and require this new determination.

I would urge that the Chair rule that this amendment is out of order. . . .

THE CHAIRMAN:[1] The Chair is ready to rule.

The amendment would appear to call for a determination by the Secretary of Defense as to appropriateness by reason of national security considerations. Unless the gentleman from New York (Mr. Addabbo) can cite to the Chair those provisions of existing law requiring such determinations with respect to defense contracts, the Chair must conclude that the amendment would impose new duties upon the Secretary and would constitute legislation.

MR. ADDABBO: I accept the point of order, Mr. Chairman.

THE CHAIRMAN: The Chair has sustained the point of order.

Amendment's Proponent Carries Burden of Showing No Change in Existing Law

Restrictions on Apportionment of Funds as Distinguished From Limitation on Amount, Purpose, or Object of Funds

§ 22.26 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

1. Daniel D. Rostenkowski (Ill.).

within the category of permissible limitations described by 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,[2] the Committee of the Whole having under consideration the Department of Housing and Urban Development and independent agencies appropriation bill (H.R. 7631), an amendment was offered and ruled upon as follows:

MR. [HERBERT E.] HARRIS [II, of Virginia]: 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 CHAIRMAN:[3] Does the gentleman from Indiana [MR. MYERS] insist on his point of order?

MR. [JOHN T.] 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. . . .

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. HARRIS: . . . 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

2. 126 CONG. REC. 19924, 19925, 96th Cong. 2d Sess.

3. Elliott H. Levitas (Ga.).

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 apportionment 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 apportion 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 CHAIRMAN: . . . 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[4] 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 limita-

4. See § 51.23, infra.

tions 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.

Committee Has Burden of Defending Provisions of Bill

§ 22.27 Provisions in a general appropriation bill described in the accompanying report pursuant to Rule XXI clause 3 as directly or indirectly changing the application of existing law are presumably legislation in violation of Rule XXI clause 2(c), in the absence of rebuttal by the committee.

On May 31, 1984,[5] during consideration in the Committee of the Whole of the Departments of State, Justice, and Commerce appropriation bill (H.R. 5172), a point of order was made and sustained, as follows:

> MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I have a point of order.
>
> The portion of the bill to which the point of order relates is as follows:
>
> ADMINISTRATION OF FOREIGN AFFAIRS
>
> SALARIES AND EXPENSES
>
> For necessary expenses of the Department of State and the Foreign Service, not otherwise provided for, including obligations of the United

5. 130 CONG. REC. ——, 98th Cong. 2d Sess.

States abroad pursuant to treaties, international agreements, and binational contracts (including obligations assumed in Germany on or after June 5, 1945) and notwithstanding section 602 of this Act for administering the contribution to the United States India Fund for Cultural, Educational, and Scientific Cooperation; expenses authorized by section 9 of the Act of August 31, 1964, as amended (31 U.S.C. 3721), and section 2 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669). . . .

Mr. Chairman, I refer to the committee report in which this particular section is listed as a change in the application of existing law. Therefore, that would be in violation of rule XXI and therefore I think my point of order should be sustained.

THE CHAIRMAN:[6] Does the gentleman from Iowa wish to be heard any further?

MR. [NEAL] SMITH of Iowa: No, Mr. Chairman.

THE CHAIRMAN: It is the opinion of the Chair that since the committee report concedes that this is a change in existing law, the point of order should be upheld, and the point of order is upheld.

Language Requiring Official to Apply Standards Held Unconstitutional by Competent Court

§ 22.28 Rule XXI clause 2 prohibits an amendment to a general appropriation bill which changes existing court-made as well as statutory law; an amendment to a general appropriation bill containing funds for the Internal Revenue Service, to deny use of funds therein to formulate or carry out any regulation which would cause loss of tax-exempt status to private religious schools, unless in effect prior to Aug. 22, 1978, was ruled out of order as legislation, since a federal court had enjoined the Internal Revenue Service from applying the regulations in effect on Aug. 22, 1978, and the amendment had the effect of requiring the Internal Revenue Service to apply interpretations of the Internal Revenue Code no longer in accordance with the law.

On Aug. 19, 1980,[7] during consideration in the Committee of the

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

7. 126 CONG. REC. 21978–80, 96th Cong. 2d Sess. See also the note in § 77.10, infra, as to the effect of rulings under clause 5(b) of Rule XXI, which provides that no bill or joint resolution carrying a tax or tariff measure shall be reported by any committee not having jurisdiction to report tax and tariff measures, nor shall an amendment in the House or proposed by the Senate carrying a tax or tariff measure be in order during the consideration of a bill or joint

Whole of the Department of Treasury and Postal Service appropriation bill, a point of order was sustained against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [JOHN M.] ASHBROOK [of Ohio]: On page 8, after line 22, insert the following new section:

"Sec. 103. None of the funds made available pursuant to the provisions of this Act shall be used to formulate or carry out any rule, policy, procedure, guideline, regulation, standard, or measure which would cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501(c)(3) of the Internal Revenue Code of 1954 unless in effect prior to August 22, 1978.". . . .

MR. [LOUIS] STOKES [of Ohio]: Mr. Chairman, I make a point of order against the proposed amendment on the grounds that it is legislation on an appropriation bill in violation of clause 2 of rule XXI.

Chapter 26, section 11.1 of Deschler's Procedure states:

When an amendment . . . explicitly places new duties on officers of the government, or implicitly requires them to make 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.

This amendment would impose additional executive duties. Under the provisions of this amendment the Commissioner and employees of IRS would be required to make a determination as to whether or not "any policy, procedure, guideline, regulation, standard, or measure" that the IRS proposed to "formulate or carry out" would cause the "loss of tax exempt status" of private schools. It would require Federal officials to make new determinations as to the current tax-exempt status of each private school, what that tax-exempt status was on August 22, 1978 and whether the proposed action would cause the loss of that tax exemption. This amendment places new duties on executive officials to make judgments and determinations not required under existing law.

In addition, Mr. Chairman, rule XXI, clause 2 specifically states that no "amendment changing existing law" shall be in order. The proposed amendment does change existing law. The application of section 501(c)(3) of the Internal Revenue Service Code (title 26 of the U.S. Code) has been modified over the years by court decision.

For example, in Green against Connally in 1971 the Supreme Court held that a segregative private school is not entitled to tax-exempt status even though that section of the code says absolutely nothing directly or indirectly about racial discrimination or segregative schools. It is clear, Mr. Chairman, that the Federal courts, through their interpretation of the Constitution, have the authority under the Constitution to change the application of existing law through judicial interpretation. I would maintain that section 501(c)(3) as it was applied on August 22, 1978 has now been changed by Federal court interpretation of that section. I refer specifically to the recent Federal court order Green against Mil-

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resolution reported by a committee not having that jurisdiction.

ler, which is referred to as Green II, decided on May 5, 1980. I need not go into the specific details relative to that case, but it is certainly apparent, Mr. Chairman, I think, that this decision has changed the application of section 501(c)(3). Thus, the proposed amendment by the gentleman from Ohio would require that the Internal Revenue Service return to the law as it was interpreted on August 22, 1978. This then would be a change from the interpretation now given that section.

A recent precedent, Mr. Chairman, is the ruling by the Chair on an amendment to the Treasury, Postal Service appropriation bill for 1979 which can be found on page H5096 in the Congressional Record of June 7, 1978. That amendment attempted to prohibit the Internal Revenue Service from determining whether or not an individual is an employee "other than under the audit practices, interpretations, regulations and Federal court decisions in effect on December 31, 1975." The Chair ruled that the amendment would "require a return to the law as it existed prior to" that date and therefore changed existing law and was not in order.

For those reasons, Mr. Chairman, I believe the amendment to be in violation of rule XXI, clause 2, and urge the approval of the point of order. . . .

MR. ASHBROOK: . . . As we all know, there are three primary tests of germaneness in the House rules. They are:

First, subject matter. "An amendment must relate to the subject matter under consideration." This amendment deals with the exercise of authority by the IRS, the funding for which is included in H.R. 7583. There is no holding by the Parliamentarian that, in a similar case, would find the amendment to be nongermane. . . .

"The primary tests of germaneness are not exclusive though; an amendment and the matter to which it is offered may be related to some degree under the tests of subject matter, purpose, and jurisdiction, and still not be considered under the precedents." Neither of the precedents cited in either the rules and Deschler's would indicate that the Ashbrook amendment is nongermane. . . .

On the point he made regarding changing existing law, I would call the Chair's attention to Revenue Procedure 7550. It clearly cites the decision that he had indicated that is preserved by this particular ruling, and that ruling is in effect prior to the time that is listed in my amendment. My amendment does not require IRS to make any new judgments not already being made or able to be made pre-August 1978.

Probably the best argument for defeating the point of order on this amendment is that it has been adopted by the House in the fiscal year 1980 Treasury appropriations bill and the fiscal year 1980 supplemental appropriations bill. Likewise, controversial amendments restricting the use of funds appropriated in an appropriations bill have been consistently adopted in the past, the most well known of these, of course, being the Hyde amendment to restrict Federal funds on abortion, and several amendments to restrict the use of Federal funds to support the busing of school children. . . .

MR. [CHARLES B.] RANGEL [of New York]: I would like to speak in support

of the point of order. Mr. Chairman, this amendment is not a limitation on the use of money but actually is legislation. What it does in fact do is to nullify an administrative law court decision after the date that is in the amendment, and it also restricts the IRS from issuing rulings that would allow charitable organizations to allow their contributors to deduct these charitable deductions that are made. So what it actually does is nullify existing law, and by doing that, it nullifies a Federal court decision. In addition to that, Mr. Chairman, this amendment interferes with the non-discretionary authority of the executive branch of Government. As pointed out by my colleague, the gentleman from Ohio (Mr. Stokes), the courts did not tell the IRS what they could or could not do but mandated by giving guidelines that they must remove the tax exemptions from institutions that were racially discriminating against groups of people.

In addition to that, Mr. Chairman, this amendment violates the separation of powers. There is no question that the judiciary has the obligation, the constitutional responsibility, to review legislation enacted by this Congress and to give their opinions, and if in fact we dislike any opinion given by the court, whether it is the Green case, one or two, or any other judiciary decision, we have the authority to legislate, but we cannot do that with an appropriations bill. . . .

THE CHAIRMAN:[8] the Chair is prepared to rule.

The gentleman from Ohio [Mr. Stokes] makes the point of order that the amendment offered by the gentleman from Ohio [Mr. Ashbrook] is legislation on an appropriation bill in violation of clause 2, rule XXI. . . .

The gentleman from Ohio (Mr. Ashbrook) has cited precedents relating to germaneness. The Chair is of the opinion that this is not a germaneness question.

The Chair is aware that in a currently binding Federal court order and permanent injunction in the case of Green against Miller, the Internal Revenue Service has been enjoined and restrained from according tax-exempt status to, and from continuing the tax-exempt status now enjoyed by, all Mississippi private schools or the organizations that operate them which have been determined to discriminate racially. This is the uncontroverted status of the law as interpreted by the courts with respect to the authority of the IRS in according tax-exempt status.

As indicated on page 533 of the House Rules and Manual, on June 7, 1978, an amendment by the gentleman from California (Mr. Panetta) denying the use of funds for the Treasury Department to apply certain provisions of the Internal Revenue Code other than under regulations and court decisions in effect on a prior date was held to be legislation, since requiring an official to apply interpretations no longer current or legal in order to render the appropriation applicable. In the opinion of the Chair, the pending amendment falls within the same category and is, therefore, legislation in violation of clause 2, rule XXI.

The Chair sustains the point of order.

8. Richardson Preyer (N.C.).

Where Amendment Is Challenged as Changing Law, Proponent Has Burden of Refuting

§ 22.29 The proponent of an amendment against which a point of order has been raised and documented as constituting legislation on an appropriation bill has the burden of proving that the amendment does not change existing law.

Precedents are few on the burden of proof where an amendment is challenged as being legislative, but by analogy to precedents under Rule XXI clause 2, requiring the committee or Member offering an amendment to show an authorization for a proposed appropriation, it may be concluded that the proponent of the amendment must prove to the satisfaction of the Chair that language which has been challenged is not legislative, after an initial argument has been made, pursuant to a point of order, that it does change existing law. The Chair so concluded in a ruling on July 17, 1975,[9] in sustaining a point of order against an amendment to H.R. 8597 (Treasury, Postal Service, and general governmental appropriations for fiscal 1976). The proceedings are discussed in § 51.22, infra.

Where Provision in Bill Challenged as Legislation, Committee Has Burden

§ 22.30 Where a point of order is raised against a provision in a general appropriation bill as constituting legislation in violation of Rule XXI clause 2, the burden of proof is on the Committee on Appropriations to show that the language constitutes a valid limitation under the precedents which does not change existing law.

On Nov. 30, 1982,[10] a provision in a general appropriation bill prohibiting the use of funds therein by the Office of Management and Budget to "interfere with" the rulemaking authority of any regulatory agency was ruled out as legislation which would implicitly require that agency to make determinations not required by law in evaluating and executing its responsibilities mandated by law. In the course of its ruling, the Chair stated:

> The Committee on Appropriations has not sustained the burden of show-

9. 121 CONG. REC. 23239, 94th Cong. 1st Sess.

10. 128 CONG. REC. 28063, 97th Cong. 2d Sess.

ing that the proposed language would not change and augment the responsibilities imposed by law on the Office of Management and Budget and, therefore, [the Chair] sustains the point of order.

The proceedings are discussed in

§ 52.43, infra.

§ 23. Incorporating or Restating Existing Law

Reference as Merely Descriptive

§ 23.1 It is in order in a general appropriation bill to include language descriptive of authority provided in law for the operation of government corporations and agencies funded in the bill so long as the description is precise and does not change that authority in any respect.

On June 15, 1973,[11] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 8619), a point of order was raised against the following provision:

CORPORATIONS

The following corporations and agencies are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided:

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order against the language found in line 13, through line 22, on page 20, on the basis that it is legislation in an appropriation bill.

THE CHAIRMAN:[12] The gentleman from Ohio (Mr. Vanik) makes a point of order against the language found on page 20, line 13 through line 22.

Does the gentleman from Ohio wish to be heard?

MR. VANIK: Mr. Chairman, it is legislation on an appropriation bill. It clearly says, "The following corporations," meaning the Federal Crop Insurance Corporation and the Commodity Credit Corporation, "are authorized to make expenditures."

This is the work of the legislative committee, and I contend that this is legislation on an appropriation bill and that this ought to be handled by the legislative committee rather than made a part of the appropriation bill.

THE CHAIRMAN: Does the gentleman from Mississippi (Mr. Whitten), desire to be heard?

MR. [JAMIE L.] WHITTEN: Mr. Chairman, I rise to make the point that the

11. 119 CONG. REC. 19843, 19844, 93d Cong. 1st Sess.

12. James C. Wright, Jr. (Tex.).