

The Clerk proceeded to read the amendment.

MR. [JOHN EDWARD] PORTER [of Illinois] (during the reading): Mr. Chairman, is the Chair not going to ask for points of order on this segment?

THE CHAIRMAN: The Clerk had completed reading the section, so the Chair did not ask for points of order.

### § 3. Waiver of Points of Order; Perfecting Text Permitted to Remain

Points of order against provisions of an appropriation bill may be waived by unanimous consent or special rule. Such waiver will not preclude points of order against amendments offered from the floor; but, of course, the waiver of points of order may be made applicable to such amendments, or to specified amendments.

In addition, language of the bill or amendment that is subject to a point of order may be permitted to remain through mere failure to make the point of order.

Language that has been permitted to remain in the bill or amendment may be modified by a further amendment, provided that such amendment is germane and does not contain additional legislation or additional separately earmarked unauthorized items of appropriation.

The precedents which follow discuss these principles.

#### *Waiver by Unanimous Consent*

**§ 3.1 The House may grant unanimous consent that points of order be waived against all of the provisions contained in an appropriation bill, even before such bill is reported to the full committee by a subcommittee.**

On May 23, 1944,<sup>(8)</sup> a unanimous-consent request was granted, as follows, relating to H.R. 4879, the national war agencies appropriation bill:

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I ask unanimous consent that it may be in order to take up the war agencies bill immediately after disposition of business on the Speaker's table on Thursday next, that points of order on the bill be waived, and that general debate be confined to the bill.

THE SPEAKER [SAM RAYBURN, of Texas]: Is there objection to the request of the gentleman from Missouri (Mr. Cannon)?

MR. [JOHN] TABER of New York: Mr. Speaker, reserving the right to object, the gentleman means points of order on matters contained in the bill?

MR. CANNON of Missouri: Yes; only points of order on matters reported by

8. 90 CONG. REC. 4917, 78th Cong. 2d Sess.

the committee, not points of order that may be raised during consideration of any amendment that may be offered to the bill in the Committee of the Whole.

MR. TABER: Did the gentleman incorporate in his request that debate be confined to the bill?

MR. CANNON of Missouri: Yes; that debate be confined to the bill.

THE SPEAKER: Is there objection to the request of the gentleman from Missouri [Mr. Cannon]?

MR. [JOHN W.] McCORMACK [of Massachusetts]: Mr. Speaker, reserving the right to object, may I ask the chairman of the Appropriations Committee if any arrangements have been made as to the period of general debate, so that it may be in the Record?

MR. CANNON of Missouri: General debate will not exceed 1 day. We hope to begin reading the bill before the close of the day.

THE SPEAKER: Is there objection to the request of the gentleman from Missouri [Mr. Cannon]? There was no objection.

On May 25, 1944,<sup>(9)</sup> H.R. 4879 was reported to the House and the following proceedings took place:

MR. CANNON of Missouri, from the Committee on Appropriations, reported the bill (H.R. 4879) making appropriations for war agencies for the fiscal year ending June 30, 1945, and for other purposes (Rept. No. 1511), which was . . . with the accompanying report, referred to the Committee of the Whole House on the state of the Union and ordered to be printed.

9. 90 CONG. REC. 4990-92, 78th Cong. 2d Sess.

MR. TABER: Mr. Speaker, I reserve all points of order on the bill, and I desire to propound a parliamentary inquiry at this time.

THE SPEAKER: The gentleman will state it.

MR. TABER: Mr. Speaker, on Tuesday afternoon prior to adjournment the gentleman from Missouri [Mr. Cannon] asked unanimous consent in substance that it might be in order to take up this bill today and that all points of order against it be waived. There being no objection, that consent was given.

My parliamentary inquiry is: That bill not having been reported by the subcommittee to the full Committee on Appropriations or by the full Committee on Appropriations of this House, were points of order against the bill waived? . . .

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Speaker, it has been my observation that unanimous-consent requests to waive points of order against appropriation bills have always been submitted after the bill has been reported, I am not aware of any practice of coming in 2 days ahead of the reporting of a bill at a late hour in the afternoon when very few Members are on the floor and obtaining unanimous consent to waive points of order against a bill which has not even been formulated, not even introduced, not even as yet considered by the committee from which it is to be reported.

MR. TABER: Mr. Speaker, I have known of at least 10 cases in the last 10 years where the same practice has been followed.

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

. . . It has been held that the Committee on Rules may report a resolu-

tion providing for the consideration of a bill which has not been introduced. When a rule is reported it can be adopted only by a majority vote of the House.

It would seem to the Chair that a unanimous-consent request about which there was no contest would be even stronger than that.

MR. [CLIFTON A.] WOODRUM of Virginia: Would the Chair hold that the Committee on Appropriations, which does not have legislative authority, would have no right to report a legislative provision, unanimous consent having been obtained before the bill was even reported to the full committee, no matter what objectionable legislative features may have been put in the bill by the full committee, and yet when it comes to the House it would not be subject to a point of order?

THE SPEAKER: Any time that any Member of the House desires to object to a request of this kind he may exercise his right to do it.

The Chair holds that points of order against the provisions in this bill have been waived.

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Speaker, in view of the importance of this as a matter of setting a precedent, I respectfully appeal from the decision of the Chair and ask for recognition. . . .

The question involved is whether or not you want the Speaker to recognize Members to ask for the consideration of appropriation bills with points of order waived and let that recognition come at any time regardless of whether or not the bill has been reported to the House.

Mr. Speaker, I move the previous question.

MR. MCCORMACK: Mr. Speaker, I move that the appeal be laid on the table.

THE SPEAKER: The motion of the gentleman from Massachusetts is preferential.

The question was taken; and the Chair being in doubt, the House divided; and there were—ayes 175, noes 54.

MR. [EZEKIEL C.] GATHINGS [of Arkansas]: Mr. Speaker, I ask for the yeas and nays.

THE SPEAKER: Twenty-six Members have risen, not a sufficient number.

The yeas and nays were refused.

So the motion was agreed to.

THE SPEAKER: The motion offered by the gentleman from Massachusetts is agreed to, and the decision of the Chair sustained.

### *Waiver by Special Rules, Generally*

#### **§ 3.2 The House may adopt a resolution waiving points of order against a section of an appropriation bill which contains legislative provisions in violation of Rule XXI clause 2.**

On May 27, 1969,<sup>(10)</sup> the following proceedings took place:

MR. [CLAUDE D.] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 424 and ask for its immediate consideration.

10. 115 CONG. REC. 14055, 14056, 91st Cong. 1st Sess.

The Clerk read the resolution, as follows:

H. RES. 424

*Resolved*, That during the consideration of the bill (H.R. 11582) making appropriations for the Treasury and Post Office Departments, the Executive Office of the President, and certain independent agencies, for the fiscal year ending June 30, 1970, and for other purposes, all points of order against section 502 of said bill are hereby waived.

THE SPEAKER:<sup>(11)</sup> The gentleman from Florida [Mr. Pepper] is recognized for 1 hour.

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

Mr. Speaker, House Resolution 424 provides for a rule waiving all points of order against section 502 of H.R. 11582, the Treasury, Post Office, and Executive Office appropriation bill, 1970.

The reason for the waiver is that section 502 constitutes legislation on an appropriation bill.

This section 502 would set aside, Mr. Speaker, only for 1 year the personnel ceiling on the Treasury, Post Office, and Executive Office which ceiling was placed on the governmental agency by Public Law 90-364.

The resolution was agreed to.

### ***Use and Importance of Special Rules***

#### **§ 3.3 A statement was made by the Chairman of the Com-**

11. John W. McCormack (Mass.).

**mittee on Appropriations as to the use of resolutions, reported by the Committee on Rules and adopted by the House, waiving points of order against legislation in appropriation bills; the chairman then indicated to government departments and legislative committees of the House that, in the next session, nothing would be included in an appropriation bill, however customary or urgent, that was not specifically authorized by law.**

On Mar. 23, 1945,<sup>(12)</sup> Mr. Clarence Cannon, of Missouri, made the following statement concerning House Resolution 194, a resolution waiving points of order against legislative provisions of H.R. 2689, the Agriculture Department appropriation for 1946:

. . . [The resolution] is not in contravention of the rules because the rules specifically provide in rule XI that the Committee on Rules can at any time come in here and report a resolution giving a legislative committee appropriating power or giving an appropriating committee legislative power. The proposition before us is entirely and completely within the purview of the rules of the House. . . .

Mr. Speaker, what has brought about the necessity for this rule? We

12. 91 CONG. REC. 2671, 2672, 79th Cong. 1st Sess.

have brought in and considered all the appropriation bills of this session up to this time without such a rule.

And we would have brought in this bill without a rule, but for the fact that certain Members of the House . . . objected to every minor legislative provision inserted. . . .

. . . In this instance, the great Committee on Agriculture, which has jurisdiction, approved the bill and the Committee on Rules approved it; otherwise we would not have reported it to the House. But I would like to take advantage of the opportunity to add as an individual member of the committee that in view of the fact that points of order have been so persistently raised on this bill that the Committee on Appropriations should in the future, notwithstanding the needs of the departments in the transaction of their routine business, be like Caesar's wife: innocent of even the implication of any infringement upon any rule or practice of the House. I should like to give notice to the departments, to the legislative committees of the House and to all concerned that in the next session nothing will be included in any appropriation bill, however customary or however urgent, that is not specifically authorized by law. I trust this notice is in ample time to permit any department to make application to legislative committees having jurisdiction, and in time for such committees to report such authorization, if they so desire.

**§ 3.4 On an occasion when the Committee on Rules failed to grant a rule waiving points of order against provisions in an appropriation bill, a**

**member of the Committee on Appropriations cited the need for such rule and made points of order against several paragraphs of the bill as it was read for amendment, for purposes of demonstrating the desirability of waiving points of order against provisions in appropriation bills.**

On July 14, 1955,<sup>(13)</sup> the following proceedings took place:

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7278) making supplemental appropriations for the fiscal year ending June 30, 1956, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate proceed not to exceed 4 hours. . . .

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, with malice toward nobody but with determination to do my duty as I see it, I want to report to this House that yesterday I appeared before the Committee on Rules, as was the request of the full Committee on Appropriations. I told the Committee on Rules that this bill was filled with paragraphs that were subject to points of order; that the bill probably contained very few pages where a ruling could be denied against points of order, and the bill would be

13. 101 CONG. REC. 10572, 10573, 84th Cong. 1st Sess.

bad. I said there were so few pages that I limited it to about four pages that would not be subject to a point of order.

I read to the committee a prepared statement and said the bill contained many of the paragraphs that were in the final supplemental bill as handled by the Committee on Appropriations every year, and that rule is usually granted.

The gentleman from New York (Mr. Taber), the gentleman from California (Mr. Phillips), and the gentleman from Wisconsin (Mr. Davis) were present and opposed a rule. Mr. Davis lent his moral support.

Past history always allowed a rule. To my surprise the committee failed to act, and we find ourselves with a bill involving approximately \$1,650,000,000. . . .

Rather than to have a field day on points of order I intend to ask unanimous consent to ask for deletion from the bill of all the paragraphs subject to a point of order so the House may work its will on that part of the bill on which the decision of the Rules Committee permits us to function. This will represent a big saving in time and much useless talk. . . .

. . . So this is my notice that I intend to cite the paragraphs that are subject to points of order and ask for their deletion from this bill.

MR. [JOHN] TABER [of New York]: . . . Mr. Chairman, I opposed the rule because there was a paragraph in the bill that I felt was not proper, and I do not believe that the Members of the House will feel it is proper if they read it. When that point is reached I propose to offer a point of order against it.

On the other hand, there are in the bill an enormous number of items, as always appear in a supplemental bill at the end of the session, that contain language that makes them particularly subject to a point of order. Those paragraphs have been before the House time after time and very seldom, if ever, have points of order been raised against them.

Frankly, I do not see how we can meet our responsibility in connection with the Government without consideration of a very large number of items that are covered in this bill. I cannot understand just why any Member of the House would feel that he should want to make a point of order against an item unless that item was, in his opinion, against the interests of the Government. That will be my approach to the problem and I will confine my points of order to what I believe may not be in the interest of the Government.

With that statement, I shall feel obliged to object to an omnibus request to be made before the reading of the individual paragraphs.

In the proceedings that followed with respect to the bill, Mr. Rabaut made numerous points of order against provisions of the bill.

### *Illustrative Forms of Special Rules*

**§ 3.5 A resolution reported from the Committee on Rules, waiving points of order against consideration of a general appropriation**

**bill which had not been reported for three calendar days, and waiving points of order against certain provisions in the bill which were not authorized by law or which constituted legislation.**

On May 14, 1970,<sup>(14)</sup> the following proceedings took place:

MR. [RAY J.] MADDEN [of Indiana]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1004 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1004

*Resolved*, That upon the adoption of this resolution it shall be in order to move, clause 6 of Rule XXI to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 17575) making appropriations for the Departments of State, Justice, and Commerce, and Judiciary, and related agencies for the fiscal year ending June 30, 1971, and for other purposes, and all points of order against the provisions contained under the following headings are hereby waived: "Law Enforcement Assistance Administration" beginning on page 19, line 14 through line 19; "Economic Development Administration" beginning on page 23, line 5 through line 23; "National Bureau of Standards" beginning on page 29, line 7 through line 16; "Maritime Administration" begin-

14. 116 CONG. REC. 15575, 91st Cong. 2d Sess.

ning on page 30, line 13 through page 33, line 12; "Arms Control and Disarmament Agency" beginning on page 43, line 8 through line 12; "Commission on Civil Rights" beginning on page 43, line 14 through line 17; and "Small Business Administration" beginning on page 45, line 17 through page 46, line 10.

After debate, the resolution was agreed to.

**§ 3.6 The form of a resolution waiving points of order against certain paragraphs in an appropriation bill not authorized by law or containing legislative language is set out below, accompanied by related proceedings.**

On June 24, 1969,<sup>(15)</sup> the following proceedings took place:

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 449 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 449

*Resolved*, That during the consideration of the bill (H.R. 12307) making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1970, and for other purposes, all points of order

15. 115 CONG. REC. 17045, 91st Cong. 1st Sess.

against the provisions contained under the following headings are hereby waived: "Appalachian Regional Development Programs" beginning on page 3, line 22, through page 4, line 3, "Independent offices—Appalachian Regional Commission" beginning on page 4, line 15 through page 4, line 21, "National Aeronautics and Space Administration" beginning on page 21, line 13, through page 23, line 3; and "National Science Foundation" beginning on page 23, line 5, through page 25, line 2.

THE SPEAKER:<sup>(16)</sup> The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour.

MR. BOLLING: Mr. Speaker, I yield 30 minutes to the gentleman from California (Mr. Smith) and pending that I yield myself such time as I may consume.

Mr. Speaker, the three specific waivers of points of order are necessary because the items on which the waivers are given or proposed by this resolution have not been authorized by law. I explained this to the House during the colloquy between the majority and minority leaders last Thursday. The items are, as anyone who listened to the reading of the resolution knows, the National Aeronautics and Space Administration, the National Science Foundation, and a part of the Appalachian development programs. The waiver makes it possible for Members of the House to work their will on the specific provisions of the appropriation, and the Committee on Rules felt that it was wiser to handle the matter in this fashion rather than permitting a situation to develop in which the Senate almost surely would add the items

16. John W. McCormack (Mass.).

on the Senate side when the matter came up, and the only participation of the House would be in conference, and on the conference report.

Therefore the Committee on Rules recommends the waiver on these three points of order.

I urge the adoption of the resolution.

The resolution was adopted.

**§ 3.7 The form of a resolution waiving points of order against one title of an appropriation bill is set out below. On June 16, 1964,<sup>(17)</sup> a rule in the following form was adopted:**

MR. [B. F.] SISK [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 785, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That during the consideration of the bill (H.R. 11579), making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Saint Lawrence Seaway Development Corporation, the Tennessee Valley Authority, and the Delaware River Basin Commission, for the fiscal year ending June 30, 1965, and for other purposes, all points of order against title III of said bill are hereby waived.<sup>(18)</sup>

17. 110 CONG. REC. 13953, 88th Cong. 2d Sess.

18. *Parliamentarian's Note*: The resolution waiving points of order was requested since the atomic energy au-

After debate, the resolution was agreed to.

**§ 3.8 The form of a resolution providing that during the consideration of a general appropriation bill all points of order against a specified chapter thereof or any provision contained therein be waived, and further waiving points of order against a designated amendment containing legislation, is set forth below.**

On May 9, 1950,<sup>(19)</sup> the following proceedings took place:

MR. [EDWARD E.] COX [of Georgia]: Mr. Speaker, I call up House Resolution 593 and ask for its immediate consideration.

The Clerk read the resolution (H. Res. 593), as follows:

*Resolved*, That during the consideration of the bill (H.R. 7786) making appropriations for the support of the Government for the fiscal year ending June 30, 1950, and for other purposes, all points of order against chapter XI of said bill or any provision contained therein are hereby waived and all points of order against the following amendment to such chapter are hereby waived:

On Page 425, after line 13, insert:

thorization bill, H.R. 10945, had not passed the Senate at the time this appropriation bill was called up in the House.

19. 96 CONG. REC. 6725, 81st Cong. 2d Sess.

"Sec. 1113. Notwithstanding the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Secretary of State may, in his absolute discretion, during the current fiscal year, terminate the employment of any officer or employee of the Department of State or of the Foreign Service of the United States whenever he shall deem such termination necessary or advisable in the interests of the United States.

"Notwithstanding the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Secretary of Commerce may, in his absolute discretion, during the current fiscal year, terminate the employment of any officer or employee of the Department of Commerce whenever he shall deem such termination necessary or advisable in the best interests of the United States."

Following debate, the resolution was adopted.

**§ 3.9 The form of a resolution waiving points of order against the legislative provisions of a supplemental appropriation bill.**

On Sept. 23, 1940,<sup>(20)</sup> the following proceedings took place:

MR. [ADOLPH J.] SABATH [of Illinois], from the Committee on Rules, submitted the following report on the bill (H.R. 10539) making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes, which was read and referred to the

20. 86 CONG. REC. 12480, 76th Cong. 3d Sess.

House Calendar and ordered to be printed:

HOUSE RESOLUTION 609

*Resolved*, That during the consideration of the bill (H.R. 10539) making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes, all points of order against the legislative provisions of the bill are hereby waived.

After debate, the resolution was agreed to.

**§ 3.10 The form of a resolution making in order, during the consideration of the foreign aid appropriation bill, the offering of a specific amendment containing legislation.**

On May 26, 1949,<sup>(1)</sup> the following resolution was considered and agreed to:

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 228 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That during the consideration of the bill (H.R. 4830) making appropriations for foreign aid for the fiscal year ending June 30, 1950, and for other purposes, it shall be in order to consider without the intervention of any point of order the following amendment:

"On page 4, line 7, strike out the period, insert a colon, and the fol-

lowing: '*Provided further*, That the entire amount may be apportioned for obligation or may be obligated and expended, if the President after recommendation by the Administrator deems such action necessary to carry out the purposes of said act during the period ending May 15, 1950'.

***Form of Resolution Providing for Consideration of Joint Resolution***

**§ 3.11 The form of a resolution providing for consideration of a joint resolution making appropriations, waiving all points of order against provisions in the joint resolution, making in order without the intervention of any point of order any amendment offered by direction of the Committee on Appropriations.**

On May 12, 1938,<sup>(2)</sup> the following resolution was called up and agreed to:

MR. [JOHN J.] O'CONNOR of New York: Mr. Speaker, I call up House Resolution 497.

The Clerk read the resolution, as follows:

HOUSE RESOLUTION 497

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

1. 95 CONG. REC. 6890, 81st Cong. 1st Sess.

2. 83 CONG. REC. 6777, 75th Cong. 3d Sess.

House on the state of the Union for the further consideration of House Joint Resolution 679, a joint resolution making appropriations for work relief, relief, and otherwise to increase employment by providing loans and grants for public works projects, and all points of order against said joint resolution are hereby waived. That upon the expiration of the general debate fixed by order of the House of May 4, 1938, the joint resolution shall be read by sections for amendment under the 5-minute rule. It shall be in order to consider without the intervention of any point of order any amendment offered by direction of the Committee on Appropriations. At the conclusion of such consideration the Committee shall rise and report the joint resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the joint resolution and the amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

### *Amendment of Waiver in Special Rule*

**§ 3.12 Where the Committee on Rules had intended to recommend a waiver of points of order against unauthorized items in a general appropriation bill but not against legislative language therein, the Member calling up the resolution offered an amendment to reflect that intention.**

On July 21, 1970,<sup>(3)</sup> the following proceedings took place:

MR. [JOHN A.] YOUNG [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1151 and ask for its immediate consideration.

The Clerk read the resolution as follows:

#### H. RES. 1151

*Resolved*, That during the consideration of the bill (H.R. 18515) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1971, and for other purposes, all points of order against said bill for failure to comply with the provisions of clause 2, rule XXI are hereby waived.

MR. YOUNG: . . . Mr. Speaker, House Resolution 1151 is a resolution waiving points of order against certain provisions of H.R. 18515, the Departments of Labor, Health, Education, and Welfare and related agencies appropriation bill for fiscal year 1971. . . .

Because the authorizations have not been enacted, points of order are waived against the bill for failure to comply with the first provision of clause 2, rule XXI. By mistake, the second provision was covered by the rule—so I have an amendment at the desk to correct the resolution.

Now, Mr. Speaker, as stated there is a clerical error in the rule and at the proper time I shall send to the desk a committee amendment to correct the clerical error.

3. 116 CONG. REC. 25240-42, 91st Cong. 2d Sess.

Mr. Speaker, I urge the adoption of the resolution. . . .

The Clerk read as follows:

Amendment offered by Mr. Young: Strike out lines 5 through 7 of the resolution and insert in lieu thereof the following: "purposes, all points of order against appropriations carried in the bill which are not yet authorized by law are hereby waived."

The amendment was agreed to.

The resolution was agreed to.

***Waiver of Points of Order Against Amendments***

**§ 3.13 The previous question was rejected on a resolution reported from the Committee on Rules waiving points of order against a general appropriation bill, and the resolution was amended to permit consideration of an amendment to the bill containing legislation.**

On May 10, 1973,<sup>(4)</sup> the following proceedings took place:

MR. [JOHN A.] YOUNG of Texas: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 389 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 389

*Resolved*, That during the consideration of the bill (H.R. 7447) mak-

4. 119 CONG. REC. 15273-81, 93d Cong. 1st Sess.

ing supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes, all points of order against said bill for failure to comply with the provisions of clause 2 and clause 5 of rule XXI are hereby waived.

THE SPEAKER:<sup>(5)</sup> The gentleman from Texas is recognized for 1 hour.

MRS. [PATSY T.] MINK [of Hawaii]: Mr. Speaker, I rise in opposition to the rule for the purpose of asking the House to vote down the previous question in order that an amendment to H.R. 7447 can be offered, which will correct a grievous error which was made in the urgent supplemental, which restricted the allocation of funds under impact aid for category B children to the rate of 54 percent.

The rule which we are now considering, which waives in other instances 109 points of order, did not offer us this same opportunity to present this amendment to the House to permit the House to work its will. . . .

MR. YOUNG of Texas: Mr. Speaker, I move the previous question on the resolution.

THE SPEAKER: The question is on ordering the previous question.

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

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

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

5. Carl Albert (Okla.).

The vote was taken by electronic device, and there were—yeas 184, nays 222, not voting 27, as follows: . . .

So the previous question was not ordered. . . .

MRS. MINK: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. Mink: Strike out the period at the end of House Resolution 389 and insert “and it shall be in order to consider, without the intervention of any point of order, an amendment on page 10, after the heading on line 13, in the following form: . . .

“The paragraph under this heading in Public Law 93-25 is amended by striking out “54%”. . . .”

[The resolution as amended was agreed to.]

### ***Extent of Waiver; Applicability to Amendments***

#### **§ 3.14 Where a general appropriation bill is considered under terms of a special resolution “waiving points of order against said bill,” the waiver applies only to the provisions of the bill and not to amendments thereto.**

On Oct. 18, 1966,<sup>(6)</sup> the Committee of the Whole was considering H.R. 18381, a supplemental appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Glenard P.] Lipscomb [of California]: On page 2, after line 10 insert: . . .

6. 112 CONG. REC. 27417, 89th Cong. 2d Sess.

#### **“PROCUREMENT OF AIRCRAFT AND MISSILES, NAVY**

“For an additional amount for ‘Procurement of aircraft and missiles, Navy,’ \$431,000,000, to remain available until expended.”, and renumber the succeeding chapter and section numbers accordingly.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:<sup>(7)</sup> The gentleman will state the point of order.

MR. MAHON: The point of order is that the Committee on Appropriations operates under authorizing legislation, which we often refer to as “412,” providing annual authorization for the procurement of aircraft, ships, missiles, and so forth. The House Armed Services Committee has not reported, and Congress has not authorized these additional funds, this \$431 million for the procurement of additional aircraft.

So I make the point of order against the amendment on the grounds that it would exceed the authorization. I would withhold the point of order if the gentleman wishes to discuss the amendment, but I must insist upon the point of order. . . .

It is true that we are operating under a rule waiving points of order,<sup>(8)</sup>

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

8. See H. Res. 1058, 112 CONG. REC. 27405, 89th Cong. 2d Sess., Oct. 18, 1966, stating:

“Resolved, That during the consideration of the bill (H.R. 18381) making supplemental appropriations for the fiscal year ending June 30, 1967, and for other purposes, all points of order against said bill are hereby waived.”

but the rule waived points of order only with respect to the content of the bill, not with respect to amendments.

Clearly it seems to me that this amendment is subject to a point of order.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Texas has stated the content of the resolution providing for the consideration of the bill before the Committee of the Whole correctly. The resolution waives points of order against the bill but it does not waive points of order against amendments to the bill.

Inasmuch as there seems to be agreement between the gentleman from Texas and the gentleman from California that the funds contained in the amendment are not authorized by legislation enacted into law, the point of order is sustained.

The Clerk will read.

**§ 3.15 Where the House had adopted a resolution providing that “during the consideration of” a general appropriation bill “the provisions of Rule XXI clause 2 are hereby waived,” the Chair, based on legislative history during debate on the resolution, ruled that the waiver extended only to provisions in the bill and not to amendments offered from the floor.**

On June 22, 1973,<sup>(9)</sup> during consideration in the Committee of the

9. 119 CONG. REC. 20981–83, 93d Cong. 1st Sess.

Whole of a general appropriation bill (H.R. 8825), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

The Clerk read as follows:

Amendments offered by Mr. [Robert O.] Tiernan [of Rhode Island]: Page 4, line 18, strike out “to remain available” and insert in lieu thereof “which shall be obligated and expended for such assistance as authorized by such title, and shall remain available for that purpose”.

Page 5, line 2, strike out “to remain available” and insert in lieu thereof “which shall be obligated and expended for such grants as authorized by such title and section, and shall remain available for that purpose”.

Page 5, line 13, strike out “to remain available” and insert in lieu thereof “which shall be obligated and expended for such grants and assistance as authorized by such title, and shall remain available for that purpose”.

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Chairman, I reserve a point of order on all three amendments. . . .

Mr. Chairman, [the provision] is clearly legislation on an appropriation bill and mandates spending for which there is no legislation. It appears in statutory responsibility otherwise provided by law relating to the Secretary.

THE CHAIRMAN:<sup>(10)</sup> Does the gentleman from Rhode Island desire to be heard on the point of order?

MR. TIERNAN: Yes, I do.

First of all, the chairman said this would provide for mandatory spending

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

in programs that are not authorized. Under the rule we adopted today, all points of order with regard to that would be waived. . . .

THE CHAIRMAN: . . . The gentleman from Connecticut (Mr. Giaimo) is correct in asserting that if the amendment offered by the gentleman from Rhode Island (Mr. Tiernan) is out of order at all it is out of order because of the second sentence of clause 2 of rule XXI, which contains the provisions that "nor shall any provision in any such bill or amendment thereto changing existing law be in order," and so forth, setting forth exceptions. But the gentleman from Connecticut (Mr. Giaimo) contends and the gentleman from Rhode Island (Mr. Tiernan) concurs, that the resolution providing for the consideration of the bill waives the provisions of that rule. The Chair has again read the rule. It says:

*Resolved*, That during the consideration of the bill (H.R. 8825) making appropriations for the Department of Housing and Urban Development . . . the provisions of clause 2, rule XXI are hereby waived.

It does not say that points of order are waived only with respect to matters contained in the bill. It says "During the consideration of the bill" the provisions of clause 2 of rule XXI are waived.

The Chair was troubled by that language and has examined the statements made by the members of the Committee on Rules who presented the rule to see if their statements in any way amplified or explained or limited that language. The Chair has found that both the gentleman from Louisiana (Mr. Long) and the gentleman from Ohio (Mr. Latta) in their expla-

nations of the resolution did, indeed, indicate that it was their intention, and the intention of the committee, that the waiver should apply only to matters contained in the bill and that it was not a blanket waiver.

Therefore whatever ambiguity there may have been in the rule as reported, the Chair is going to hold, was cured by the remarks and legislative history made during the presentation of the rule, which were not disputed in any way by the gentleman from Connecticut or anyone else. However, the Chair recognizes that it is a rather imprecise way of achieving that result and would hope that in the future such resolutions would be more precise in their application. . . .

The amendment offered by the gentleman from Rhode Island provides: "These funds shall be expended."

These are the words used by the amendment. Affirmative direction by a long line of precedents has been held to be legislation on appropriation bills.

The Chair is not holding that it is not within the power of Congress to give such affirmative directions. It may or it may not; that is a subject of some dispute right now. The Chair simply holds that an appropriation bill is no place to do it, and the Chair, therefore, sustains the point of order.

### ***Extent of Waiver; Applicability to House Resolutions Incorporated in Bill***

#### **§ 3.16 Where the House is considering a general appropriation bill under a resolution waiving all points of order**

**against the bill, a paragraph enacting the provisions of several House-passed resolutions as permanent law, though concededly legislative in character, is not subject to a point of order.**

On Dec. 10, 1970,<sup>(11)</sup> during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 19928), a point of order was raised against the following provision, and proceedings ensued as indicated below:

The provisions of House Resolutions 1270 and 1276, relating to certain official allowances; House Resolution 1241, relating to compensation of the clerks to the Official Reporters of Debates; and House Resolution 1264, relating to the limitation on the number of employees who may be paid from clerk hire allowances, all of the Ninety-first Congress, shall be the permanent law with respect thereto.

MR. [H.R.] GROSS [of Iowa]: Mr. Chairman, I rise to make a point of order against the language beginning on line 23 of page 12 and running through line 4 of page 13 as being legislation on an appropriation bill and not a retrenchment.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the gentleman's point of order would be appropriate except, of course, for the fact that we do have a rule waiving points of order against the bill.

11. 116 CONG. REC. 40941, 91st Cong. 2d Sess.

THE CHAIRMAN:<sup>(12)</sup> The Chair is prepared to rule. Does the gentleman from Iowa care to be heard further?

MR. GROSS: No, sir.

THE CHAIRMAN: Under the resolution the House adopted points of order against the bill are waived. The point of order is not sustained.

### ***Legal Effect of Legislative Language After Enactment***

**§ 3.17 Legislation in an appropriation bill may be subject to a point of order under Rule XXI clause 2, but if not challenged it becomes permanent law where it is permanent in its language and nature and as such may serve as sufficient authorization in law for subsequent appropriations.**

On May 20, 1964,<sup>(13)</sup> during consideration in the Committee of the Whole of the Agriculture Department appropriations bill (H.R. 11202), the following point of order was raised, and proceedings ensued as indicated below:

MR. [PAUL] FINDLEY [of Illinois]: My point of order is to lines 3 through 9, the portion of the section beginning with the figure in parentheses 5. I will read it. It reads as follows:

(5) not in excess of \$25,000,000 to be used to increase domestic con-

12. Claude D. Pepper (Fla.).

13. 110 CONG. REC. 11422, 11423, 88th Cong. 2d Sess.

sumption of farm commodities pursuant to authority contained in Public Law 88-250, the Department of Agriculture and Related Agencies Appropriation Act, 1964, of which amount \$2,000,000 shall remain available until expended for construction, alteration and modification of research facilities.

There is legislation in an appropriation bill.

THE CHAIRMAN:<sup>(14)</sup> The gentleman will include the word "and" on line 2, I assume.

MR. FINDLEY: Yes.

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

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I call attention to the section in the bill, last year where Congress passed permanent legislation authorizing this in the appropriation act in which we said hereafter this could be done. It is in last year's appropriation act which was written for this specific purpose and provides hereafter not to exceed \$25 million may be appropriated for these purposes. We cite chapter and verse there, so to speak, and it is quite clear.

MR. FINDLEY: Mr. Chairman, may I be heard on that? . . .

My point is that the activity which would be appropriated for in this paragraph (5) has not been authorized in legislation heretofore.

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

The Chair has had called to its attention the section which was contained in Public Law 88-250, in which it appears that the appropriation here,

which incidentally is also in the nature of a limitation, was authorized by the Congress by the inclusion of the words pointed out by the gentleman from Mississippi that "hereafter such sums (not in excess of \$25,000,000 in any one year) as may be approved by the Congress shall be available for such purpose," and so forth.

The Chair therefore holds that the language in that public law cited is authority for the inclusion in the pending bill of the language to which the point of order was addressed, and therefore overrules the point of order.

MR. FINDLEY: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. FINDLEY: The language authority cited in the public law was a reference to a public law which was an appropriation act; am I correct?

THE CHAIRMAN: The Chair pointed that out. The Chair might say, incidentally, that while legislation on an appropriation bill may be subject to a point of order, if none is made it is perfectly valid legislation and becomes permanent law if it is permanent in its language and nature.

### *Amendments Adding Further Legislation*

**§ 3.18 The fact that legislative provisions restricting the uses of funds in other acts for certain purposes have been permitted to remain in a general appropriation bill by failure to make a point of order does not permit the of-**

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

**fering of an amendment adding additional legislation prohibiting the availability of funds in other acts for certain other purposes.**

On Aug. 1, 1973,<sup>(15)</sup> the following proceedings occurred in the Committee of the Whole:

Mr. [DANTE B.] FASCELL [of Florida]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Fascell: On page 36, after line 23, insert a new section: . . . .

(b) No part of any appropriation contained in this or any other Act, or of funds available for expenditure by any corporation or agency, shall remain available to any agency whenever either House of Congress, or any committee or subcommittee thereof (to the extent of matter within its jurisdiction) requests the presence of an officer or employee of an agency for testimony regarding matters within the agency's possession or under its control unless the officer or employee shall appear and supply all information requested. . . .

MR. [HOWARD W.] ROBISON of New York: Mr. Chairman, I make a point of order again on the proposed amendment as amended by the gentleman from Florida on the ground that it is still legislation on an appropriation act, resting that again on the basis that the language makes it apply to "this or any other act."

MR. FASCELL: Mr. Chairman, the amendment seeks to be strictly a limitation within the purview of the rule. I call the attention of the Chair to the language in 607(a), which says—

No part of any appropriations contained in this or any other Act, or of funds available for expenditure by any corporation or agency, shall be used for publicity . . . .

Once having done that in this legislation, it seems to me that where language is clearly a limitation within the purview of the legislation or extending the legislation, that the amendment would be in order.

THE CHAIRMAN:<sup>(16)</sup> The mere fact that this similar language remains in the bill does not protect the gentleman's amendment from the fact that it adds additional legislation to that which has been permitted to remain in the bill and is itself subject to a point of order.

The point of order is sustained.

**§ 3.19 To a section of an appropriation bill providing that the Secretary of the Army be authorized to require from the Chief of Engineers a planning report for each river and harbor project, and each flood control project, an amendment seeking to give such authority to the Secretary of the Interior as well was held to add further legislation.**

On Aug. 20, 1951,<sup>(17)</sup> the Committee of the Whole was considering H.R. 5215, a supplemental appropriation bill. When the fol-

16. Richard Bolling (Mo.).

17. 97 CONG. REC. 10406, 10408, 82d Cong. 1st Sess.

15. 119 CONG. REC. 27291, 27292, 93d Cong. 1st Sess.

lowing section was pending for amendment, a motion to strike out the section was offered. A perfecting amendment to the section was then offered and was ruled out as legislation, as follows:

Sec. 1313. In the administration of the various acts authorizing construction of river and harbor and flood-control projects, the following shall be hereafter applicable:

(a) The Secretary of the Army is authorized and directed to have the Chief of Engineers prepare a planning report for each river and harbor project, and for each flood-control project, heretofore or hereafter adopted and authorized by law. Appropriation for construction of an adopted and authorized project, or authorized modification thereof, is authorized only after submission by the Secretary of the Army of a planning report to Congress and the printing thereof as a document of Congress. . . .

After the planning report for a project has been submitted to Congress, and after initial construction funds have been appropriated, such project shall be reviewed by the Chief of Engineers in the first half of each succeeding fiscal year, and a statement of progress thereon, in such form as to permit of ready comparison with the planning report, shall be filed by him with the Appropriations Committees of Congress not later than the following 1st day of February.

(b) The Chief of Engineers is directed to make a report to the Congress not later than December 31, 1952, upon all river and harbor projects, and flood-control projects,

adopted and authorized since March 3, 1925, the construction or further improvement of which under present conditions is undesirable, inadvisable, or uneconomical, or in which curtailment of the projects should be made for any other reason.

MR. [HENRY] LARCADE [of Louisiana]: Mr. Chairman, I offer an amendment which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Larcade: On page 42, line 3, strike out all of section 1313.

THE CHAIRMAN:<sup>(18)</sup> The gentleman from Louisiana is recognized.

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, will the gentleman yield for a parliamentary inquiry?

Mr. LARCADE: I yield briefly.

Mr. FORD: Mr. Chairman, I have an amendment which I would like to offer as a substitute for the amendment offered by the gentleman from Louisiana. May I offer that subsequent to his presentation and debate and prior to the vote on his amendment?

THE CHAIRMAN: The proposed substitute offered by the gentleman from Michigan (Mr. Ford) is rather in the nature of a perfecting amendment and would have to be taken up by the committee first.

The gentleman may offer his amendment after the gentleman from Louisiana has concluded. . . .

Amendment offered by Mr. Ford:

Page 42, line 6, strike out the word "is" and insert "and the Secretary of the Interior are."

Page 42, line 7, after the word "engineers" insert the following "and the Commissioner of Reclamation".

<sup>18</sup> Edward J. Hart (N.J.).

Page 42, line 13, after the word "Army" insert the following, "and the Secretary of the Interior."

Page 43, line 23, after the word "engineers" insert the following "and the Commissioner of Reclamation".

Page 44, line 1, strike out the word "him" and insert the word "them."

Page 44, line 3, strike out the word "is" and insert "and the Commissioner of Reclamation are."

MR. [JOHN J.] DEMPSEY [of New Mexico]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. DEMPSEY: The amendment is not germane to this section, and in addition to that, it is purely legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Michigan desire to address himself to the point of order?

MR. FORD: Mr. Chairman, in reply to the point of order made by the gentleman from New Mexico, I would like to say first that under the rule adopted at the time this legislation came to the floor all points of order were waived. Secondly, I think that the amendment is germane because it does apply to engineering and construction of Federal projects, and section 1313 in itself applies to engineering and construction of Federal projects. . . .

THE CHAIRMAN: The Chair is ready to rule.

With respect to the question of waiving all points of order, that runs only to the provisions of the bill and not to amendments offered to the bill. A proposition in an appropriation bill proposing to change existing law but permitted to remain, may be perfected

by germane amendments, provided they do not add further legislation. The Chair is of the opinion that this amendment does add further legislation, and, therefore, sustains the point of order.

**§ 3.20 To an amendment containing legislation (because prohibiting activities from funds "in this or any other act") but permitted to be offered to a general appropriation bill pursuant to a resolution waiving points of order against that amendment, an amendment adding additional legislation (making the activities illegal) to that permitted to remain was ruled out in violation of Rule XXI clause 2.**

On June 29, 1973,<sup>(19)</sup> during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9055), the following proceedings occurred:

MR. [JOHN J.] FLYNT Jr., [of Georgia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Flynt: Page 57, line 21, strike out all of section 307 and insert a new section 307, as follows:

Sec. 307. None of the funds herein appropriated under this Act or heretofore appropriated under any other

19. 119 CONG. REC. 22352, 22362, 93d Cong. 1st Sess.

act may be expended to support directly or indirectly combat activities in, over or from off the shores of Cambodia or in or over Laos by the U.S. forces. . . .

MR. [CHARLES E.] BENNETT [of Florida]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Bennett to the amendment offered by Mr. Flynt: At the end of the Flynt Amendment strike the period and insert a semicolon and the words "and from the date of the enactment of this law it shall be illegal for anyone to participate in, or order, any such activities."

THE CHAIRMAN:<sup>(20)</sup> All time under the limitation having expired, the question is on the amendment offered by the gentleman from Florida (Mr. Bennett) to the amendment offered by the gentleman from Georgia (Mr. Flynt).

MR. [ELFORD A.] CEDERBERG [of Michigan]: Mr. Chairman, I make a point of order against the amendment.

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

MR. CEDERBERG: Legislation on an appropriation bill is subject to a point of order. . . .

THE CHAIRMAN: The Chair is ready to rule.

The Chair feels that the amendment offered by the gentleman from Georgia (Mr. Flynt) was protected by the rule. An amendment to that amendment which would add language making an act illegal would be in effect legislation on an appropriation bill, in violation of clause 2, rule XXI, and the point of order is sustained.

20. Jack B. Brooks (Tex.).

**§ 3.21 Legislative language in a general appropriation bill which is permitted to remain therein because of a waiver of points of order may be perfected by germane amendment but such amendment may not contain additional legislation.**

On June 26, 1973,<sup>(1)</sup> the Committee of the Whole was considering the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 8877), which read in part:

OFFICE OF EDUCATION  
ELEMENTARY AND SECONDARY  
EDUCATION

For carrying out, to the extent not otherwise provided, title I (\$1,810,000,000), title III (\$146,393,000) . . . and section 222(a)(2) of the Economic Opportunity Act of 1964, \$2,105,393,000: Provided, That the aggregate amounts made available to each State under title 1-A for grants to local education agencies with that State shall not be less than such amounts as were made available for that purpose for fiscal year 1972: *Provided further*, That the requirements of section 307(e) of Public Law 89-10, as amended, shall be satisfied when the combined fiscal effort of the local education agency and the State for the preceding fiscal year was not less than such combined fiscal effort in the second preceding fiscal year.

1. 119 CONG. REC. 21388, 21389, 93d Cong. 1st Sess.

An amendment was then offered:

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Quie: On page 18, line 7, insert "(1)" before "shall", strike out line 9, and insert in lieu thereof the following: purpose for fiscal year 1972; but (2) shall not be more than  $\frac{3}{4}$  the difference between the amounts which would be made available to such State under this Act without application of this clause and the amounts made available to such State for that purpose for fiscal year 1972, and (3) shall not be more than 110 percent of the amounts made available to such State for that purpose for fiscal year 1972, plus  $\frac{1}{2}$  the difference between such amounts and the amounts which would be made available to such State under this Act without application of this clause or clause (2) of this proviso: *Provided further*, that the

MR. [NEAL] SMITH [of Iowa]: Mr. Chairman, I rise to make a point of order against the amendment on the ground it is legislation on an appropriation bill.

THE CHAIRMAN:<sup>(2)</sup> The Chair will hear the gentleman.

MR. SMITH of Iowa: That is the sum and substance of it. It is legislation on an appropriation bill.

It might be said that the provision it seeks to amend is also legislation on an appropriation bill, but that point was waived in the rule. . . .

MR. QUIE: . . . I believe the gentleman is correct in saying that the

language the amendment seeks to amend would have been subject to a point of order if the committee had not gone to the Rules Committee to get a waiver of points of order. However, under the Holman Rule there is permitted language which would retrench expenditures, and the effect of this amendment would be to retrench expenditures. For that reason I believe the amendment is in order. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, under the provisions of clause 2 of rule XXI, which forbids legislation on an appropriation bill, it is made clear that if an amendment modifies such legislation as has been left in the bill—and it is admitted that this is legislation which is left in by reason of the resolution under which we are considering it—that amendment modifying legislation which is already in the bill will be permitted, although if it attempts to add something new it will not be permitted.

I should like to point out, Mr. Chairman, that the Quie amendment simply modifies that language. The language says:

Shall receive not less than the amount received in 1972.

The Quie amendment says:

Shall receive not less than  $\frac{3}{4}$  of the amount received in 1972.

MR. QUIE: Mr. Chairman, if the gentleman will yield, my amendment says, "Not more than," so it is truly a limitation.

MR. O'HARA: "Not more than".

In any event, it is simply a modification of the 100-percent figure that is already in the bill.

2. Chet Holifield (Calif.).

THE CHAIRMAN: . . . The Quie amendment does strike out words in line 9, but it also adds a considerable amount of language to that already in the bill.

The language is as follows:

(2) but shall not be more than 3/4 the difference between the amounts which would be made available to such State under this Act without application of this clause and the amounts made available to such State for that purpose for fiscal year 1972, and (3) shall not be more than 110 percent of the amounts made available to such State for that purpose for fiscal year 1972, plus 1/2 the difference between such amounts and the amounts which would be made available to such State under this Act without application of this clause or clause (2) of this proviso:

The amendment would add language which the Chair feels is legislation on an appropriation bill, and it is not in order as a certain retrenchment of expenditures.

The Chair sustains the point of order.

**§ 3.22 Where a general appropriation bill containing legislative provisions is being considered under a procedure waiving all points of order against the bill, amendments which add further legislation are not in order.**

On Dec. 8, 1971,<sup>(3)</sup> during consideration in the Committee of the Whole, under a resolution waiving

3. 117 CONG. REC. 45495, 92d Cong. 1st Sess.

points of order, of the foreign assistance appropriation bill (H.R. 12067), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

The Clerk read as follows:

Amendment offered by Mr. [Thomas M.] Pelly [of Washington]: On page 10 after line 21 insert the following: "Sec. 114. No part of any appropriations contained in this Act may be used to provide assistance to Ecuador, unless the President determines that the furnishing of such assistance is important to the national security of the United States and reports within 30 days such determination to the Congress."

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I reserve a point of order against the amendment. . . .

THE CHAIRMAN:<sup>(4)</sup> Does the gentleman from Louisiana insist on and desire to be heard on his points of order?

MR. PASSMAN: I do, Mr. Chairman, and I do so reluctantly, because there is a lot of merit to the amendment offered by the gentleman from Washington (Mr. Pelly), but I think it would impose additional duties upon the President. I believe it would be subject to a point of order. I shall not press the point further, or elaborate at length, but ask for a ruling.

THE CHAIRMAN: Unless the gentleman from Washington desires to be heard the Chair is ready to rule.

The gentleman from Washington (Mr. Pelly) submitted an amendment

4. Charles M. Price (Ill.).

to limit the funds available in this bill to Ecuador, contingent upon a decision and a report to be made by the President of the United States. The key words of the amendment are: "unless the President determines and reports within 30 days to the Congress." Obviously, in the opinion of the Chair, that is legislation on an appropriation bill. Therefore the Chair sustains the point of order.

***Germane Exception From Legislative Provision***

**§ 3.23 An amendment which comprises legislation on an appropriation bill but which has been permitted to remain because no point of order was raised against it, may be perfected by germane amendments.**

On Jan. 31, 1938, the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. The following amendment was agreed to: <sup>(5)</sup>

Amendment offered by Mr. [Ambrose J.] Kennedy of Maryland: Page 13, line 2, after the period, insert a new paragraph, as follows:

"For the use of the House District of Columbia Committee to employ such clerical help as will be necessary to make a complete study of the various surveys previously made of the government of the District of Columbia for

the express purpose of forming such legislation as will effect a more efficient and economic handling of the government affairs of the District of Columbia, \$5,000."

An amendment was then offered, as follows:

Amendment offered by Mr. [Millard F.] Caldwell [of Florida]: Page 13, line 2, after the amendment offered by Mr. Kennedy, insert a new paragraph, as follows:

"For a complete investigation of the administration of public relief in the District of Columbia, to be made under the supervision and direction of the Commissioners, including the employment of personal services without reference to the Classification Act of 1923, as amended, and civil-service requirements, \$5,000."

Subsequently Mr. Caldwell offered an amendment to his amendment: <sup>(6)</sup>

The Clerk read as follows:

Amendment offered by Mr. Caldwell to the amendment pending: After the word "relief" in the proposed amendment, insert "not including the activities of the Works Progress Administration."

MR. [CLAUDE A.] FULLER [of Arkansas]: Mr. Chairman, I make the point of order against the amendment for the reason that it is legislation on an appropriation bill and, furthermore, that it seeks to make an appropriation for an item not authorized by law. . . .

THE CHAIRMAN: <sup>(7)</sup> Objection is heard. The Chair is ready to rule. The

5. 83 CONG. REC. 1309, 75th Cong. 3d Sess.

6. *Id.* at 1312.

7. William J. Driver (Ark.).

gentleman from Florida offers an amendment to the pending amendment in the following language:

After the word "relief" in the proposed amendment, insert "not including the activities of the Works Progress Administration."

That is the amendment to the amendment offered and to which the gentleman from Arkansas addresses his point of order. The original amendment proposed legislation on an appropriation bill, but no point of order was raised against it. That being so, an amendment that would contain an exception would be germane and in order, certainly. Therefore, the point of order that the gentleman directs to the amendment to the amendment must be overruled.

Mr. Fuller then contended that his right to make a point of order against the original Caldwell amendment was renewed by the attempt to amend that amendment. The Chair rejected this conclusion, reiterating the grounds for his ruling.

**§ 3.24 To a legislative section permitted to remain in an appropriation bill and providing that hereafter no funds shall be available to pay for annual leave accumulated and unused at the end of a year, an amendment exempting a designated class of employees from the operation of such provision was held to be in order as a valid**

**exception which did not add further legislation to that permitted to remain.**

On Mar. 21, 1952,<sup>(8)</sup> the Committee of the Whole was considering H.R. 7072, an independent offices appropriation bill. The Clerk read as follows:

TITLE IV—GENERAL PROVISIONS

Sec. 401. Hereafter no part of the funds of, or available for expenditure by any corporation or agency included in this or any other act, including the government of the District of Columbia, shall be available to pay for annual leave accumulated by any civilian officer or employee during any calendar year and unused at the close of business on June 30th of the succeeding calendar year: *Provided*, That the head of any such corporation or agency shall afford an opportunity for officers or employees to use the annual leave accumulated under this section prior to June 30 of such succeeding calendar year: . . . *Provided further*, That this section shall not apply with respect to the payment of compensation for accumulated annual leave in the case of officers or employees who leave their civilian positions for the purpose of entering upon active military or naval service in the Armed Forces of the United States.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rees of Kansas: On page 62, line 17, after

8. 98 CONG. REC. 2690, 82d Cong. 2d Sess.

the words "United States", insert "or employees who are entitled to less than 15 days of annual leave."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:<sup>(9)</sup> The gentleman will state it.

MR. THOMAS: Mr. Chairman, it adds additional duties and it is legislation on an appropriation bill. . . .

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

The Chair has had an opportunity to analyze the language of the amendment and feels that the amendment is an exception to the legislative limitation starting on line 5 of page 62 of the pending bill. Section 401, which starts on line 5 of page 62, is a legislative provision allowed by waiver of points of order to remain in an appropriation bill. The pending amendment appears to the Chair merely to be a perfecting amendment which is germane to the provision to which it applies and one which does not add legislation. Therefore, the point of order is overruled.

**§ 3.25 Where a legislative provision in a general appropriation bill is permitted to remain by the adoption by the House of a resolution waiving points of order, and where there is pending an amendment in the form of a limitation to that provision, it is in order to offer an amendment to such amendment which provides a ger-**

**mane exception from the limitation and which does not constitute additional legislation.**

On May 7, 1970,<sup>(10)</sup> during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 17399), the following occurred after the Clerk had read a legislative paragraph protected by the special rule waiving points of order:

The Clerk read as follows: . . .

Sec. 501. (a) Expenditures and net lending (budget outlays) of the Federal Government during the fiscal year ending June 30, 1971, shall not exceed \$200,771,000,000: *Provided*, That whenever action, or inaction, by the Congress on requests for appropriations and other budgetary proposals varies from the President's recommendations reflected in the Budget for 1971 (H. Doc. 91-240, part 1), the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect of such action or inaction on budget outlays, and the limitation set forth herein shall be correspondingly adjusted: *Provided further*, That the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect on budget outlays of other actions by the Congress (whether initiated by the President or the Congress) and the limitation set forth herein shall be correspondingly adjusted, and reports, so far as practicable, shall indicate whether such other actions were initiated by the President or by the Congress.

10. 116 CONG. REC. 14569-71, 91st Cong. 2d Sess.

9. Wilbur D. Mills (Ark.).

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Boland: On page 53 on line 25 after the amount (\$200,771,000,000), insert the following: “, of which expenditures none shall be available for use for American ground combat forces in Cambodia.” . . .

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment to the amendment offered by the gentleman from Massachusetts (Mr. Boland).

The Clerk read as follows:

Amendment offered by Mr. Findley to the amendment offered by Mr. Boland: In front of the period insert the following: “except those which protect the lives of American troops remaining within South Vietnam.”

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:<sup>(11)</sup> The gentleman will state his point of order.

MR. MAHON: I make a point of order on the ground that the amendment requires particular and special duties.<sup>(12)</sup>

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

11. James G. O'Hara (Mich.).
12. The imposition of additional duties on officials as constituting a “legislative” enactment is discussed in detail in §§52 and 53, *infra*. The Chair here apparently took the view that the determination of the purpose of American troops in Cambodia was not such a newly required duty as would constitute a change in existing law.

MR. FINDLEY: Mr. Chairman, I feel that it does not impose any specific duties. No report is required. No determination is required. It applies simply to troops that are there for a specific purpose.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make the further point of order that it is legislation on an appropriation bill.

THE CHAIRMAN: The Chair has examined the proposed amendment to the amendment. In the opinion of the Chair the proposed amendment to the amendment constitutes an exception to the limitation that was offered by the gentleman from Massachusetts, does not constitute additional legislation, and is germane. Therefore the Chair overrules the point of order.

### ***Restriction on Contract Authority Contained in Bill***

**§ 3.26 To a section of an Agriculture Department appropriation bill containing legislation authorizing the Secretary of Agriculture to make such additional commitments as may be necessary in order to provide full parity payments, an amendment providing that the payments shall not exceed an amount necessary to equal parity “when added to the market price and the payment made for conservation . . . of agricultural land resources,” was held a proper limitation restricting the availability of**

**funds which did not add further legislation to that already contained in the bill.**

On Mar. 9, 1942,<sup>(13)</sup> during consideration in the Committee of the Whole of the Agriculture Department appropriation bill, the Clerk read the following provisions:

PARITY PAYMENTS

To enable the Secretary of Agriculture to make parity payments to producers of wheat, cotton, corn (in the commercial corn-producing area), rice, and tobacco pursuant to the provisions of section 303 of the Agricultural Adjustment Act of 1938, there are hereby reappropriated the unobligated balances of the appropriations made under this head by the Department of Agriculture Appropriation Acts for the fiscal years 1941 and 1942, to remain available until June 30, 1945, and the Secretary is authorized and directed to make such additional obligations as may be necessary in order to provide for full parity payments: . . . *Provided further*, That such payments with respect to any such commodity shall be made with respect to a farm in full amount only in the event that the acreage planted to the commodity for harvest on the farm in 1943 is not in excess of the farm acreage allotment established for the commodity under the agricultural conservation program, and, if such allotment has been exceeded, the parity payment with respect to the commodity shall be reduced by not more than 10 percent for each 1 per-

cent, or fraction thereof, by which the acreage planted to the commodity is in excess of such allotment. The Secretary may also provide by regulations for similar deductions for planting in excess of the acreage allotment for the commodity on other farms or for planting in excess of the acreage allotment or limit for any other commodity for which allotments or limits are established under the agricultural conservation program on the same or any other farm.

An amendment was offered, as follows:

Amendment offered by Mr. [John] Taber [of New York]: On page 77, line 5, after the word "farm," strike out the period, insert a colon and a proviso as follows: "*Provided further*, That parity payments, under the authority of this paragraph, shall not exceed such amount as is necessary to equal parity when added to the market price and the payment made or to be made for conservation and use of agricultural land resources under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act approved February 29, 1936, as amended; and the provisions of the Agricultural Adjustment Act of 1938 as amended; *Provided further*, That the total expenditures made and the contracts entered into in pursuance of this paragraph shall not exceed in all \$212,000,000.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I submit a point of order against the amendment proposed by the gentleman from New York [Mr. Taber]. . . .

MR. TABER: . . . The bill, on page 75, provides that the Secretary is au-

13. 88 CONG. REC. 2124, 2125, 77th Cong. 2d Sess.

thorized and directed to make such additional commitments or incur such additional obligations as may be necessary in order to provide for full parity payments.

That is legislation. It is brought in order under the rule. The language that I have submitted is clearly germane to that provision because it provides a method. It is purely a limitation to the payments that shall be made for parity under the authority of this paragraph. For this reason it is clearly germane and it is clearly in order.

It would be in order if there was no legislation in the paragraph because it is a pure limitation.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, may I be heard?

THE CHAIRMAN:<sup>(14)</sup> The Chair will hear the gentleman from South Dakota.

MR. CASE of South Dakota: Mr. Chairman, may I make the observation that if the proposal is clearly a limitation, even though it embraces some legislation, it is in order under the Holman rule.

THE CHAIRMAN: The Chair would like to ask the gentleman from New York [Mr. Taber] if there are any funds other than those appropriated in this bill to be used for parity payments?

MR. TABER: None.

THE CHAIRMAN: Just the funds in this bill?

MR. TABER: That is correct.

THE CHAIRMAN: The amendment the gentleman is offering is to limit the funds offered in this bill?

MR. TABER: That is my intention. I think perhaps I ought to insert after

the word "payments" in the third line the words "under the authority of this paragraph." With that in, it would clearly be in order.

THE CHAIRMAN: Does the gentleman from New York [Mr. Taber] ask to modify his amendment?

MR. TABER: I do, Mr. Chairman.

THE CHAIRMAN: The gentleman from New York asks unanimous consent to modify his amendment by inserting after the word "payments" "under the authority of this paragraph." Is there objection to the request of the gentleman from New York [Mr. Taber]?

There was no objection.

THE CHAIRMAN: The gentleman from New York [Mr. Taber] has offered an amendment, on page 77, line 5, undertaking to provide further limitations on the payment and the administration of parity payments, to which the gentleman from Georgia has made a point of order.

It seems to the Chair that the language of the amendment offered by the gentleman from New York constitutes a limitation upon the funds appropriated by this paragraph or proposed to be appropriated by this paragraph and does not constitute legislation.

The Chair therefore overrules the point of order.

### ***Increasing Limitation on Expenditures***

**§ 3.27 Where the House had adopted a resolution waiving points of order against a section of an appropriation bill setting a limitation on fiscal year expenditures and con-**

14. Robert Ramspeck (Ga.).

**taining legislative provisions, an amendment increasing the limitation by an amount equal to certain budgetary fixed costs was allowed as a germane amendment perfecting that portion of the bill.**

On May 21, 1969,<sup>(15)</sup> during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 11400), the following section of the bill was read:

TITLE IV

LIMITATION ON FISCAL YEAR 1970  
BUDGET OUTLAYS

Sec. 401. (a) Expenditures and net lending (budget outlays) of the Federal Government during the fiscal year ending June 30, 1970, shall not exceed \$192,900,000,000: *Provided*, That whenever action, or inaction, by the Congress on requests for appropriations and other budgetary proposals varies from the President's recommendations thereon, the Director of the Bureau of the Budget shall report to the President and to the Congress his estimate of the effect of such action or inaction on expenditures and net lending, and the limitation set forth herein shall be correspondingly adjusted.

15. 115 CONG. REC. 13270, 13271, 91st Cong. 1st Sess. See also 113 CONG. REC. 32886, 32887, 90th Cong. 1st Sess., Nov. 16, 1967, and 113 CONG. REC. 32966, 32967, 90th Cong. 1st Sess., Nov. 17, 1967 (proceedings relating to H.R. 13893).

(b) The Director of the Bureau of the Budget shall report periodically to the President and to the Congress on the operation of this section. The first such report shall be made at the end of the first month which begins after the date of approval of this Act; subsequent reports shall be made at the end of each calendar month during the first session of the Ninety-first Congress, and at the end of each calendar quarter thereafter.

An amendment was offered, as follows:

Amendment offered by Mr. [Jeffery] Cohelan of California: On page 62, line 3, add the following as a new section:

"(c) The limitation set forth in subsection (a), as adjusted in accordance with the proviso to that subsection, shall be increased by an amount equal to the aggregate amount by which expenditures and net lending (budget outlays) for the fiscal year 1970 on account of items designated as "Open-ended programs and fixed costs" in the table appearing on page 16 of the Budget for the fiscal year 1970 may be in excess of the aggregate expenditures and net lending (budget outlays) estimated for those items in the April review of the 1970 budget."

The following proceedings then took place:

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

Mr. Chairman, the rule pertaining to title IV only protects what is in the bill, not amendments to the bill. . . .

THE CHAIRMAN:<sup>(16)</sup> The Chair is ready to rule.

16. Chet Holifield (Calif.).

The Chair has examined title IV. This [amendment] is a new subparagraph to title IV. Title IV is legislation in a general appropriation bill, and all points of order have been waived (against) title IV, as a result of [its] being legislation. Therefore the Chair holds that the amendment is germane to the provisions contained in title IV and overrules the point of order.

***Striking Out Legislation Permitted to Remain, Inserting Identical Language With Numerical Change***

**§ 3.28 An amendment striking out a legislative provision that had been allowed by waiver of points of order to remain in the independent offices appropriation bill, and reinserting said provision in identical terms except for a change in the number of housing units authorized by such provision, was held proper as not adding further legislation.**

On Mar. 20, 1952,<sup>(17)</sup> the Committee of the Whole was considering H.R. 7072, an independent offices appropriation bill, which read in part:

PUBLIC HOUSING ADMINISTRATION

Annual contributions: For the payment of annual contributions to public

17. 98 CONG. REC. 2626-29, 82d Cong. 2d Sess.

housing agencies in accordance with section 10 of the United States Housing Act of 1937, as amended (42 U.S.C. 1410), \$29,880,000: . . . *Provided further*; That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, (1) authorize during the fiscal year 1953 the commencement of construction of in excess of 25,000 dwelling units, or (2) after the date of approval of this act, enter into any agreement, contract, or other arrangement which will bind the Public Housing Administration with respect to loans, annual contributions, or authorizations for commencement of construction, for dwelling units aggregating in excess of 25,000 to be authorized for commencement of construction during any one fiscal year subsequent to the fiscal year 1953, unless a greater number of units is hereafter authorized by the Congress. . . .

An amendment was offered by Mr. Sidney R. Yates, of Illinois:<sup>(18)</sup>

Amendment offered by Mr. Yates: On page 24, line 11, after the words "*Provided further*", strike out the remainder of line 11 and all lines thereafter through the word "Congress" in line 25, and insert in lieu thereof the following: "That notwithstanding the provisions of the Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949, authorize during the fiscal year 1953 the commencement of construction of in excess of 50,000 dwelling units."

18. *Id.* at p. 2627.

Subsequently, Mr. O. Clark Fisher, of Texas, offered a substitute amendment:<sup>(19)</sup>

Amendment offered by Mr. Fisher as a substitute for the amendment offered by Mr. Yates: Page 24, strike out line 11, all the language down to and including the word "Congress" in line 25 and insert the following: "*Provided further*, That notwithstanding the provisions of the United States Housing Act of 1937, as amended, the Public Housing Administration shall not, with respect to projects initiated after March 1, 1949 (1) authorize during the fiscal year 1953 the commencement of construction of in excess of 5,000 dwelling units, or (2) after the date of approval of this act enter into any agreement, contract, or other arrangement which will bind the Public Housing Administration in respect to loans, annual contributions, or authorizations for commencement of construction, for dwelling units aggregating in excess of 5,000 to be authorized for commencement of construction during any one fiscal year subsequent to the fiscal year 1953, unless a greater number of units is hereafter authorized by the Congress."

Mr. Franklin D. Roosevelt, Jr., of New York, here ascertained by parliamentary inquiry that a waiver of points of order against the above provisions of the bill did not apply to amendments.

MR. ROOSEVELT: Mr. Chairman, I make the point of order against the amendment on the ground that it is

legislation on an appropriation bill in the future as well as at present.

THE CHAIRMAN:<sup>(20)</sup> The Chair is ready to rule.

The Chair has had an opportunity to read and to analyze the amendment offered by the gentleman from Texas [Mr. Fisher]. The gentleman's amendment is identical with the language in the bill on page 24, beginning with line 11 through the word "Congress" in line 25, except for the figures in lines 16 and 22, where the gentleman's amendment would strike the words "twenty-five" in each instance and insert "five." That, to the Chair, is a perfecting amendment, and under the rules it is entirely possible for this procedure to be followed. The section of the bill to which the amendment is offered is legislation which has been permitted to remain by waiver of points of order. Such legislative provisions can be perfected by germane amendments which add no further legislation. The amendment before us is germane and adds no further legislation. Therefore, the Chair overrules the point of order.

***Examples of Perfecting Amendments Ruled Out as Adding Legislation to That in Bill***

**§ 3.29 A section which proposes legislation in a general appropriation bill, being permitted to remain, may be perfected by a germane amendment, but this does not permit an amendment which adds further legisla-**

19. *Id.* at p. 2628.

20. Wilbur D. Mills (Ark.).

**tion; thus, where a provision in the Defense Department appropriation bill required the Secretary of Defense to furnish certain information on proposed purchases to small business enterprises, an amendment requiring expenditures to be made in accordance with provisions of other laws relating to small business was held to be additional legislation and not in order.**

On May 10, 1956,<sup>(1)</sup> a section of the Defense Department appropriation bill (H.R. 10986) was read in Committee of the Whole, and an amendment offered, as indicated:

The Clerk read as follows:

Sec. 609. Insofar as practicable, the Secretary of Defense shall assist American small business to participate equitably in the furnishing of commodities and services financed with funds appropriated under this act by making available or causing to be made available to suppliers in the United States, and particularly to small independent enterprises, information, as far in advance as possible, with respect to purchases proposed to be financed with funds appropriated under this act, and by making available or causing to be made available to purchasing and contracting agencies of the Department of Defense information as to commodities and services produced

and furnished by small independent enterprises in the United States, and by otherwise helping to give small business an opportunity to participate in the furnishing of commodities and services financed with funds appropriated by this act.

MR. [JAMES] ROOSEVELT [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Roosevelt: On page 36, line 13, section 609 is amended by adding at the end thereof the following language:

"The expenditures of all appropriations contained in this act effected by this section shall be made in accordance with the policies and provisions of Public Law 413, 80th Congress, Section 2(b) and Public Law 163, 83d Congress, section 203."

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I reserve a point of order on the amendment. . . .

Mr. Chairman, the gentleman from California [Mr. Roosevelt] was good enough to give me in advance a copy of his proposed amendment, and I have submitted it to a number of my committee colleagues. We are all very much in favor of helping small business. The bill as written is designed to that end. Because of the views entertained by those with whom I have conferred, however, I feel constrained to insist on the point of order.

THE CHAIRMAN:<sup>(2)</sup> Does the gentleman from California desire to be heard on the point of order?

MR. ROOSEVELT: No, Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is conceded.

1. 102 CONG. REC. 7967, 7968, 84th Cong. 2d Sess.

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

The Chair therefore sustains the point of order.

**§ 3.30 Where an appropriation for an object not authorized by law is allowed to remain in an appropriation bill under a resolution waiving points of order, an amendment requiring not less than a certain portion of that appropriation to be used for a different purpose not authorized by law was held to be legislation in violation of the rule.**

On July 27, 1954,<sup>(3)</sup> during consideration in the Committee of the Whole of the mutual security appropriation bill (H.R. 10051), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

MR. [JOHN] PHILLIPS [of California]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Phillips: On page 3, line 24, after "\$100,000,000", insert "of which not less than \$4,100,000 shall be made available to the Food and Agriculture Organization of the United Nations for carrying out multilateral technical cooperation programs authorized by section 306."

MR. [JOHN M.] VORYS [of Ohio]: Mr. Chairman, I make a point of order

3. 100 CONG. REC. 12286, 12287, 83d Cong. 2d Sess.

against the amendment on the ground that it is legislation on an appropriation bill and is not authorized by law. . . .

THE CHAIRMAN:<sup>(4)</sup> Does the gentleman from New York [Mr. Taber] desire to be heard on the point of order?

MR. [JOHN] TABER: Yes, Mr. Chairman. The language is not authorized by law. There is no authorization for any of these items here except the rule under which the bill was brought in.

MR. PHILLIPS: Mr. Chairman, on that point, I will have to concede the point of order. In other words, everything in the bill would be subject to a point of order, except for the fact that the Committee on Rules waived points of order against the printed bill.

The Chairman: The Chair is constrained to sustain the point of order.

**§ 3.31 To a provision in an appropriation bill imposing a penalty upon persons who accept employment, the compensation for which is paid from funds in the bill, if such persons belong to a specified type of organization, an amendment extending such penalty to persons who refuse to answer questions before a committee of Congress regarding their membership in such an organization was ruled out of order as adding further legislation to that in the bill and as not being germane to the section to which offered.**

4. Louis E. Graham (Pa.).

On July 2, 1953,<sup>(5)</sup> the Committee of the Whole was considering the Defense Department appropriation bill (H.R. 5969), which, in part, provided for penalties upon persons who accept employment for which compensation is paid from funds in the bill, if such persons belong to an organization which asserts the right to strike against the government or which advocates overthrow of the government. An amendment was offered to such provision, and a point of order made against the amendment:

MR. [JAMES P.] SUTTON [of Tennessee]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Sutton: On page 46, line 10, after "violence", insert the following: "or refuses to answer questions before any committee of Congress regarding his or her membership in or affiliation with such organization on the ground that such testimony may incriminate such person."

MR. [ERRETT P.] SCRIVNER [of Kansas]: Mr. Chairman, a point of order.

THE CHAIRMAN:<sup>(6)</sup> The gentleman will state it.

MR. SCRIVNER: Mr. Chairman, although the committee understands the purpose of the amendment and knows the results it might obtain, we nevertheless feel that the amendment is

subject to a point of order, and insist on the point of order that it is legislation on an appropriation bill.

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

MR. SUTTON: Mr. Chairman, this is a restriction on an appropriation. I talked with the chairman of the full Committee on Appropriations about this amendment and also talked to the chairman of the subcommittee handling the bill and also the ranking minority member of the subcommittee. I was hopeful they would accept this amendment. To me it is a restriction on an appropriation and is something I believe the entire Congress would be in favor of. I hope the gentleman will withdraw his point of order and let this amendment go into the appropriation bill. I still insist, Mr. Chairman, that it is a restriction.

THE CHAIRMAN: In the opinion of the Chair, the amendment offered by the gentleman from Tennessee adds further legislation to that in the bill, and the amendment is not germane to the section to which it is offered. The Chair, therefore, sustains the point of order.

**§ 3.32 Where a provision in a general appropriation bill established a continuing fund in the "Southeastern Power Area," to be available for designated expenditures in such area, an amendment establishing a similar fund from receipts of the "Southwestern Power Administration" for similar expendi-**

5. 99 CONG. REC. 7974, 83d Cong. 1st Sess.

6. Leo E. Allen (Ill.).

**tures in the southwestern area was held to add legislation unauthorized by law.**

On Apr. 24, 1951<sup>(7)</sup>, the Committee of the Whole was considering H.R. 3790, an Interior Department appropriation. The following paragraph was pending:

All receipts from the transmission and sale of electric power and energy under the provisions of section 5 of the Flood Control Act of December 22, 1944 (16 U.S.C. 825s), generated or purchased in the southeastern power area, shall be covered into the Treasury of the United States as miscellaneous receipts, except that the Treasury shall set up and maintain from such receipts a continuing fund of \$50,000, and said fund shall be placed to the credit of the Secretary, and shall be subject to check by him to defray emergency expenses necessary to insure continuity of electric service and continuous operation of Government facilities in said area.

MR. [BOYD] TACKETT [of Arkansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Tackett: Strike out the period on line 18, page 3, following the word "area" and insert the following language: "*Provided, further,* That all receipts from the transmission and sale of electric power and energy under the provisions of section 5 of the Flood Control Act of December 22, 1944 (16 U.S.C. 825s), generated or purchased by the Southwestern Power Administration, shall be covered into

the Treasury of the United States as miscellaneous receipts, except that the Treasury shall set up and maintain from such receipts a continuing fund of \$250,000. . . ."

MR. [JAMES W.] TRIMBLE [of Arkansas]: Mr. Chairman, I make the point of order against the amendment on the ground that it is legislation on an appropriation bill and that the language used changes the purpose of the legislation to be considered.

THE CHAIRMAN:<sup>(8)</sup> Does the gentleman from Arkansas desire to be heard on the point of order?

MR. TACKETT: Yes, Mr. Chairman.

I contend, Mr. Chairman, that this is a limitation upon legislation and that it is germane to the provisions of the bill, because the Southwestern Power Administration and the Southeastern Power Administration are both authorized under section 5 of the Flood Control Act of December 22, 1944, and that this amendment places the Southwestern Power Administration and other such agencies under the Department of the Interior under the same provisions and entitlement so far as the continuing fund is concerned. It is certainly germane, Mr. Chairman, for the simple reason that both such agencies are set up under the Flood Control Act of 1944, and this is a limitation upon the legislation that is provided by this section of the proposal now before the committee. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Arkansas [Mr. Tackett] has offered an amendment on page 3, line 18, to a paragraph of the bill which has to do with the con-

7. 97 CONG. REC. 4293, 4294, 82d Cong. 1st Sess.

8. Wilbur D. Mills (Ark.).

tinuing fund of the Southeastern Power Administration. The gentleman from Arkansas [Mr. Trimble] makes a point of order against the amendment. The Chair has had an opportunity to read and analyze the amendment offered by the gentleman from Arkansas, which has to do with the generation or purchase of electric power by another agency than the Southeastern Power Administration, the Southwestern Power Administration. The amendment contains language that is clearly legislation.

In answer to the suggestion of the gentleman from New York, even though legislation may appear in an appropriation bill, that language cannot be amended by other language which adds legislation. Briefly, a proposition in an appropriation bill proposing to change existing law, but permitted to remain, may be perfected by germane amendments, but such amendments may not add legislation, and it is the opinion of the Chair that the amendment offered by the gentleman from Arkansas proposes to add legislation not authorized by law.

Therefore, the Chair sustains the point of order made by the gentleman from Arkansas [Mr. Trimble].

**§ 3.33 A paragraph which proposes legislation in a general appropriation bill being permitted to remain may be perfected by a germane amendment, but this does not make in order an amendment which contains additional legislation.**

On June 1, 1944,<sup>(9)</sup> the Committee of the Whole was consid-

9. 90 CONG. REC. 5152, 5153, 78th Cong. 2d Sess.

ering H.R. 4899, a Department of Labor and Federal Security Agency appropriation bill. The Clerk read as follows:

Employment office facilities and services: For all necessary expenses of the War Manpower Commission in connection with the operation and maintenance of employment office facilities and services, and the performance of functions, duties, and powers relating to employment service transferred to the War Manpower Commission by Executive Order No. 9247, including the recruitment and placement of individuals for work or training in occupations essential to the war effort; such expenses to include . . . travel expenses (not to exceed \$2,268,000); and rent in the District of Columbia: . . . *Provided further*, That the Chairman of the War Manpower Commission may transfer funds from this appropriation to the Social Security Board for "grants to States for unemployment compensation administration" as authorized in title III of the Social Security Act, as amended to meet costs incurred by States in making available to the War Manpower Commission premises, equipment, supplies, facilities, and services, needed by the Commission in the operation and maintenance of employment office facilities and services, any sum so transferred and not expended in accordance with this proviso to be retransferred to this appropriation, \$57,968,079. . . . *Provided further*, That no portion of the sum herein appropriated shall be expended by any Federal agency for the salary of any person who is engaged for more than half of the time, as determined by the State director of

unemployment compensation, in the administration of the State unemployment compensation act, including claims taking but excluding registration for work.

At this point, an amendment was offered.

MR. [FRANK B.] KEEFE [of Wisconsin]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Keefe: On page 61, line 4, strike out the period, insert a semicolon, and insert the following: "*Provided further*, That pending the return of the employment offices and services to the States, the Federal agency administering the United States Employment Service shall maintain that service as an operating entity, and during the period of its administration shall maintain all functions performed by State employment offices on the date said offices were loaned to the Federal Government."

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, a point of order.

THE CHAIRMAN:<sup>(10)</sup> The gentleman will state it.

MR. TARVER: Mr. Chairman, I have two points of order. First, the amendment comes too late. The succeeding paragraph "training within industry service" has already been read and the Clerk had begun to read section 702. The amendment is offered at a point preceding the paragraph relating to training within industry. Second, the amendment is legislative in character and proposes legislation on an appropriation bill. Points of order against all legislative matters contained in the bill

were by unanimous consent waived by the House on Monday of this week. But that waiver does not include legislative provisions which may be offered by amendment and which are not contained in the bill, and in this case do not relate to any legislative provision contained in the bill. The Wagner-Peyser Act authorizes the making of appropriations to the employment service which has now been transferred by Executive Order No. 9247 to Federal jurisdiction. But the appropriations for that service are authorized by the Wagner-Peyser Act and the duties of administrative officials in the administration of the Wagner-Peyser Act are clearly defined by law. The gentleman by his amendment proposes to place upon them certain designated duties which are not specifically required in existing law, and to that extent proposes an alteration, if not an expansion, of the provisions of the Wagner-Peyser Act. . . .

MR. KEEFE: Mr. Chairman, addressing myself to [the point of order, that this is legislation upon an appropriation bill], if I understand the gentleman's argument it is that here is a legislative attempt to change the provisions of the Wagner-Peyser Act and to impose conditions upon the employment offices of the country at variance with the provisions of the Wagner-Peyser Act. . . . The fact of the matter is that the employment offices in many of the States of this Union prior to the enactment of the Wagner-Peyser Act in 1933, on the 6th of June, were State offices and State maintained and operated, pursuant to State law, and they were financed in whole by State appropriations. Then, in 1933, we passed the Wagner-Peyser Act, the sole purpose of

10. John J. Sparkman (Ala.).

which was to extend Federal aid to States in connection with the operation of a State employment service. . . . Now then, this is a simple limitation on this appropriation bill in the form of this amendment, simply saying that the Federal Government in the operation of these State offices that have been turned over to the Federal Government for the duration of the war, shall be operated on the same basis and with the same functions that they were operated before the States turned them over to the Federal Government; that they shall not do away with their functions, but shall maintain them as an operating entity. . . . I find no inference so far as I am able to see, which in any way seeks to change the law of 1933, the Wagner-Peyser Act, or which seeks to enact into this bill any legislative provision at all. It is simply a limitation to the extent that they shall not do away with functions that were functions in the offices when the Federal Government took those offices over, when they were maintained as State offices. There is not anything in the Wagner-Peyser Act which is contrary to that position at all, because these State offices with State functions were maintained with Wagner-Peyser Act funds before the Federal Government took them over.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Wisconsin [Mr. Keefe] offered an amendment to which the gentleman from Georgia [Mr. Tarver] interposed a point of order.

The general rule relating to this may be stated as follows:

A paragraph which proposes legislation in a general appropriation bill

being permitted to remain may be perfected by a germane amendment; but this does not permit an amendment which adds additional legislation.

The Chair is of the opinion that the amendment is germane, but it certainly appears that it is additional legislation, in that it directs that something shall be done.

Therefore, the Chair is constrained to sustain the point of order.

***Adding New Class to Those Covered by Legislative Direction; Ruled Out***

**§ Sec. 3.34 To a legislative provision permitted to remain in an appropriation bill, authorizing the Secretary of Transportation to allow applicants for mass transit assistance to continue use of preferential fare systems to an existing class covered by those systems, an amendment requiring the applicants to extend their preferential fare systems to a new class of recipients not then covered was ruled out of order as adding legislation to that permitted to remain.**

On June 22, 1983,<sup>(11)</sup> the Committee of the Whole had under consideration the Department of Transportation appropriation bill

11. 129 CONG. REC. —, 98th Cong. 1st Sess.

(H.R. 3329), when an amendment was offered and proceedings ensued as indicated below:

The Clerk read as follows:

Sec. 305. None of the funds provided under this Act for Formula grants shall be made available to support mass transit facilities, equipment, or operating expenses unless the applicant for such assistance has given satisfactory assurances in such manner and forms as the Secretary may require . . . that the rates charged elderly and handicapped persons during nonpeak hours shall not exceed one-half of the rates generally applicable to other persons at peak hours: *Provided*, That the Secretary, in prescribing the terms and conditions for the provision of such assistance shall (1) permit applicants to continue the use of preferential fare systems for elderly or handicapped persons where those systems were in effect on or prior to November 26, 1974. . . .

MR. [ROBERT J.] MRAZEK [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Mrazek: Insert the following on page 36, line 24, ending with the phrase "prior to November 26, 1974," "provided that said applicant adopts and implements appropriate standards of eligibility which includes those citizens who reside in the district served by the mass transit system".

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I reserve a point of order against the amendment. . . .

I would remind the House under the rules of the House, though, an issue of this kind with substantive merit needs

to come before the House—under the rules adopted primarily with votes from the majority side earlier in this Congress—needs to come before the body in the authorization bills rather than in the appropriations bills.

In this particular instance, the amendment that we have before us constitutes legislation in an appropriation bill under the provisions of clause 2 of Rule XXI.

My objection to the amendment rests on that procedural grounds that legislation in an appropriations bill is beyond the scope of the present consideration and that this amendment must properly be brought before the House in the course of the authorization process. . . .

MR. [RICHARD L.] OTTINGER [of New York]: Mr. Chairman, I think the gentleman's point of order is not well taken. The gentleman might have and I indeed had considered making a point of order against the section as being not in order for reasons that the gentleman has stated with respect to this amendment.

No such point of order was made, however. Therefore, it is too late to knock out the legislation on the basis that it is legislation on an appropriation bill.

This amendment merely seeks to make technical changes in the language which is already there and to which no objection was made. Therefore, it should be in order. . . .

MR. [DENNIS M.] HERTEL of Michigan: Mr. Chairman, it seems clear that the amendment proposed now that is in question deals with perfecting language. We are talking about the very same standards in this amendment

that are recognized in the bill. All we are talking about is extending those standards to another group of citizens that are covered by this bill and this authority. . . .

THE CHAIRMAN:<sup>(12)</sup> If no other Member wishes to be heard, the Chair is prepared to rule.

Although the pending section of the bill includes legislation which was allowed to remain when no point of order was raised, the fact is that the amendment adds additional legislative requirements that appropriate standards of eligibility be determined for an additional category of citizens not covered by section 305 and, therefore, the Chair must rule that it is more than perfecting and in fact does constitute additional legislation on an appropriation and is out of order at this time.

### ***Rule Waiving Rule XXI Pending Authorization***

**§ 3.35 The Chairman and members of the Committee on Armed Services on one occasion first opposed the adoption of a rule waiving points of order against the Defense Department appropriation bill, then agreed to support the rule after the Chairman of the Committee on Appropriations announced that the appropriation bill would not be called up pending final conference action on the authorization measure.**

12. Philip R. Sharp (Ind.).

On July 26, 1968,<sup>(13)</sup> the following proceedings took place:

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1273 and ask for its immediate consideration.

The Clerk read the resolution as follows:

#### H. RES. 1273

*Resolved*, That during the consideration of the bill (H.R. 18707) making appropriations for the Department of Defense for the fiscal year ending June 30, 1969, and for other purposes, all points of order against said bill are hereby waived.

MR. COLMER: . . . Mr. Speaker, this resolution simply makes in order the consideration of the appropriation bill for the Department of Defense for fiscal year 1969. Of course, as the membership is aware, the Appropriations Committee reports and bills are privileged. They do not require ordinarily a rule to bring them to the floor. But in this case a rule was requested and granted simply because the authorizing legislation which ordinarily precedes the reporting and consideration of an appropriation bill has not been finally enacted.

The matter is now in conference, and the Committee on Appropriations, I understand, with the concurrence of the leadership, came to the Committee on Rules and requested a rule waiving points of order. . . .

MR. [L. MENDEL] RIVERS [of South Carolina]: Mr. Speaker, of course,

13. 114 CONG. REC. 23622, 23623, 23627, 23628, 90th Cong. 2d Sess.

there has been cooperation. This is perfectly satisfactory. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, the gentleman from South Carolina and the gentleman from Texas agree that upon the adoption of the rule, the bill will not be called up in the House by the Committee on Appropriations until the conference report on the authorization bill has been adopted by both bodies.

MR. RIVERS: Mr. Speaker, that is agreeable to me. . . .

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

The previous question was ordered.

THE SPEAKER:<sup>(14)</sup> The question is on the resolution.

MR. [DONALD] RUMSFELD [of Illinois]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

The resolution was agreed to.

A motion to reconsider was laid on the table.

### ***Recognition for Debate on Legislation Permitted to Remain***

**§ 3.36 The Chairman of the Committee of the Whole on one occasion ruled that, during consideration of a general appropriation bill, members of the Committee on Appropriations are ordinarily entitled to preference in recognition, but that when a rule is adopted waiving**

**points of order against legislative provisions in the bill, recognition may be divided between members of the Committee on Appropriations and other Members interested in the bill.**

On Mar. 5 and 6, 1941,<sup>(15)</sup> the following proceedings took place:

THE CHAIRMAN:<sup>(16)</sup> The gentleman from Georgia [Mr. Pace] has been seeking recognition. The Chair realizes that this is an appropriation bill, and that ordinarily members of that committee would be entitled to preference, but under the rule adopted yesterday we made this part of it a legislative bill by making certain legislation in order. The Chair is going to divide the time between the members of the Appropriations Committee and the other Members of the House who are vitally interested in this proposition. The Chair now recognizes the gentleman from Georgia [Mr. Pace], a member of the Committee on Agriculture.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. RICH: The Chair made the statement that this is not an appropriation bill; that it is a legislative bill. . . .

THE CHAIRMAN: The gentleman from Pennsylvania misunderstood the occupant of the chair. . . .

Permit the Chair to make a statement.

15. 87 CONG. REC. 1846, 1921, 1922, 77th Cong. 1st Sess.

16. John E. Rankin (Miss.).

14. John W. McCormack (Mass.).

On yesterday the question of recognizing members of the committee to the exclusion of other Members of the House was raised. The Chair stated that since we were operating under a rule that makes in order legislation on an appropriation bill, the Chair did not feel the policy that has grown up in recent years of recognizing members of the committee to the exclusion of other Members of the House should be followed. The Chair does not know what attitude future Chairmen of the Committee of the Whole may assume, but the present occupant of the chair wishes to lay down what the Chair believes to be a sound principle in this respect.

There are 40 members of the Committee on Appropriations. They have control of all the time for general debate on bills coming from that committee just as members of the Committee on Foreign Affairs, members of the Committee on Ways and Means, or other committees have control of the time under general debate on bills coming from their respective committees. There is no written or adopted rule of this House giving members of the committee in control of the bill the exclusive right to recognition under the 5-minute rule over other Members of the House, but a custom to that effect seems to have grown up in recent years which the Chair thinks is wrong.

It is all right to give preference to the chairman of a subcommittee or to the ranking minority member on that subcommittee in connection with important amendments under the 5-minute rule, but the Chair does not think it is fair to the rest of the membership of the House to follow a policy, and gradually petrify it into the rules of the House, of recognizing all mem-

bers of a committee handling the bill under the 5-minute rule to the exclusion of other Members of the House.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I trust the Chair has no intention of announcing a formal decision, which would be in contravention of the practice of the House, which has been in effect for a hundred years. From time immemorial the members of the committee in control of the bill and charged with its passage have been given precedence in recognition, other things being equal. . . .

. . . The members of a committee through months—sometimes years—of work on a certain class of legislation or a recurring bill are naturally more familiar with it, and under the rules of the House are responsible for its disposition. And it naturally follows that they must be in position to secure the floor and must be accorded priority of recognition when that subject or that bill is under consideration in order to expedite the business of the House. There is no specific provision in the body of the rules, but the practice has not only been established in the long history of the American Congress but came down to us from the English Parliament from which we received originally our parliamentary code. . . .

THE CHAIRMAN: . . . The Chair may say to the gentleman from Missouri [Mr. Cannon] that there is no written rule on this subject, but within the last two or three decades appropriations have been taken away from other committees and concentrated in the hands of one committee. The Chair is not speaking any more with reference to the Committee on Appropriations than any other committee. It is perfectly fair for a committee to have charge of gen-

eral debate and probably debate under the 5-minute rule to a large extent, but the Chair does not think it is fair—especially under conditions such as we have here, where a rule has been adopted making legislation that ordinarily comes from the Committee on Agriculture and from other committees of the House in order on the bill—the Chair does not think it fair to the rest of the membership of the House to recognize members of the Committee on Appropriations under the 5-minute rule to the exclusion of the other Members of the House. . . .

MR. [EVERETT M.] DIRKSEN [of Illinois]: Is this to be regarded as a ruling today, or is it merely an observation of the Chair?

THE CHAIRMAN: It is a ruling as far as this bill is concerned.

***On Rare Occasions the Committee on Appropriations Has Been Authorized to Report Legislation***

**§ 3.37 The Committee on Appropriations has been authorized by House resolution to examine allegations that certain persons in the government were unfit for such service because of subversive interests, and to incorporate in any appropriation measure any legislation approved by such committee as a result of such investigation.**

On Feb. 9, 1943,<sup>(17)</sup> House Resolution 105, authorizing the Com-

17. 89 CONG. REC. 734, 78th Cong. 1st Sess.

mittee on Appropriations to investigate subversive activities, was reported from the Committee on Rules, considered, and adopted by the House. The resolution is as follows:

*Resolved*, That the Committee on Appropriations, acting through a special subcommittee thereof appointed by the chairman of such committee for the purposes of this resolution, is authorized and directed to examine into any and all allegations or charges that certain persons in the employ of the several executive departments and other executive agencies are unfit to continue in such employment by reason of their present association or membership in or with organizations whose aims or purposes are or have been subversive to the Government of the United States. Such examination shall be pursued with the view of obtaining all available evidence bearing upon each particular case and reporting to the House the conclusions of the committee with respect to each such case in the light of the factual evidence obtained. . . . Any legislation approved by the committee as a result of this resolution may be incorporated in any general or special appropriation measure emanating from such committee or may be offered as a committee amendment to any such measure notwithstanding the provisions of clause 2 of rule XXI.

***Changing Sum of Unauthorized Appropriation Permitted to Remain; Held in Order***

**§ 3.38 Where an unauthorized appropriation is permitted to remain in a general appropriation bill by failure to raise, or by waiver of, a point**

**of order, an amendment merely changing that amount and not adding legislative language or earmarking separate funds for another unauthorized purpose is in order.**

On June 8, 1977, <sup>(18)</sup> the Committee of the Whole was considering a Department of Transportation appropriation bill (H.R. 7557), when an amendment was offered and ruled in order as indicated below:

The Clerk read as follows:

COAST GUARD

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the operation and maintenance of the Coast Guard, not otherwise provided for; purchase of not to exceed twelve passenger motor vehicles, for replacement only; and recreation and welfare; \$871,865,000 of which \$205,977 shall be applied to Capehart Housing debt reduction:  
. . .

MR. [MARIO] BIAGGI [of New York]: Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Biaggi: On page 3, line 7, strike "\$871,865,000" and insert in lieu thereof "\$878,865,000". . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Madam Chairman, the amend-

ment under rule XXI, clause 2, the amendment of the gentleman from New York is out of order because it has not been authorized. The authorization for this is pending and the House has requested a conference on this. . . .

THE CHAIRMAN:<sup>(19)</sup> The Chair is ready to rule.

The Chair has before it the amendment which is offered by the gentleman from New York (Mr. Biaggi). That amendment simply changes an unauthorized appropriations figure in the bill, striking that figure and inserting in lieu thereof another. The gentleman does not seek, in his amendment, to earmark these additional funds at all.

Under the precedents, then, where an amendment only seeks to change an unauthorized amount permitted to remain in the bill by failure to raise a point of order or by a waiver, and does not add any legislative language or earmark for a specific unauthorized project, that amendment is in order. (Deschler's ch. 25, sec. 23.11.)

Therefore, the point of order is overruled and the gentleman is recognized for 5 minutes.

**§ 3.39 Where an unauthorized appropriation is permitted to remain in a general appropriation bill by a resolution waiving points of order, an amendment merely changing that amount and not adding legislative language is in order.**

18. 123 CONG. REC. 17941, 17942, 95th Cong. 1st Sess.

19. Barbara Jordan (Tex.).

On Oct. 1, 1975,<sup>(20)</sup> during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 9861), a point of order against an amendment was overruled, as indicated below:

The Clerk read as follows:

Amendment offered by Mr. [Bill] Chappell [Jr., of Florida]: on page 31, line 10, strike out "\$3,146,050,000" and insert in lieu thereof the following: "\$3,093,150,000";

And on page 31, line 14, strike out "\$801,419,000" and insert in lieu thereof the following: "\$796,119,000".

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Chairman, I make a point of order against the amendment. . . .

[A]s I understood the gentleman's explanation, he says that this continues research on the F-401 engine, but I would point out to the Chair that on page 285 of the report, it is indicated that this fiscal year 1976 budget requests \$2 million for additional termination charges for this engine, and any money that would continue the research and development on this would not have a proper authorization. Therefore, this would constitute legislation in an appropriation bill. . . .

MR. [JOSEPH P.] ADDABBO [of New York]: Mr. Chairman, the Chappell amendment totally reduces the figure reported in the bill. There is no other language in the amendment, so therefore it must be pointed out, Mr. Chairman, the point of order must be over-

ruled because there is no other legislative language included in this amendment. It strictly goes to the dollar figure in the bill. . . .

THE CHAIRMAN:<sup>(1)</sup> The Chair is ready to rule.

For the reasons so eloquently stated by the gentleman from New York (Mr. Addabbo), and where as here an appropriation for an object not authorized by law is allowed to remain in an appropriation bill under a resolution (H. Res. 752) waiving points of order against unauthorized items in the bill, an amendment merely changing the amount of such appropriation is in order (Chairman Graham, July 27, 1954). Also it is obvious that the amendment offered by the gentleman from Florida reduces amounts covered in the bill, and is in order under clause 2, rule XXI.

The Chair overrules the point of order.

### ***Changing Unauthorized Figure Not Yet Read For Amendment; Ruled Out***

**§ 3.40 Where by unanimous consent amendments were offered en bloc to a paragraph of a general appropriation bill containing an unauthorized amount not yet read for amendment, one of the amendments, which increased that unauthorized figure, was ruled out in violation of Rule XXI clause 2, since at that point it was not**

20. 121 CONG. REC. 31058, 31059, 94th Cong. 1st Sess.

1. Daniel D. Rostenkowski (Ill.).

**being offered to a paragraph which had been read and permitted to remain by the Committee of the Whole.**

On June 21, 1984,<sup>(2)</sup> during consideration of the Treasury Department appropriation bill (H.R. 5798), the following proceedings occurred:

MR. [GLENN] ENGLISH [of Oklahoma]: Mr. Chairman, I have really three amendments that I am offering today which are all related to one issue, namely, the restoration of funds needed to effectively operate the air support branches of the Customs Service, and since the amendments do not change the overall totals contained with the bill, but rather simply restore the funds to the accounts for which the Office of Management and Budget approved them, I ask unanimous consent that all three amendments be considered en bloc.

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

MR. [BILL] FRENZEL [of Minnesota]: . . . I reserve a point of order on the English amendment. . . .

THE CHAIRMAN: The Clerk will report the remaining amendments.

The Clerk read as follows:

Amendments offered by Mr. English: Page 3, line 2, strike out "22,768,000" and insert in lieu thereof "\$20,768,000".

Page 6, line 7, strike out "\$32,070,000" and insert in lieu thereof "\$36,070,000". . . .

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

3. Anthony C. Beilenson (Calif.).

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

Mr. Chairman, I make a point of order that the amendment offered by the gentleman from Oklahoma contains appropriations of funds not previously authorized, and, therefore, is in violation of clause 2 of rule XXI. . . .

The amendment provides \$4 million in additional funds for the Customs Service on page 6. Funding for the Customs Service has not been authorized by the Congress and, in addition, the amounts contemplated by the English amendment are inconsistent with those approved by the authorizing committee, the Committee on Ways and Means.

Mr. Chairman, I make a point of order that the funding in the English amendment has not been authorized and, therefore violates clause 2 of rule XXI. . . .

MR. [EDWARD R.] ROYBAL [of California]: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The Chair sustains the point of order.

*Parliamentarian's Note:* Had Mr. English waited until the Customs Service paragraph was read, and if no point of order were raised against the unauthorized amount in that paragraph, and had he then obtained unanimous consent to offer the same three amendments en bloc by returning to prior paragraphs to accomplish the reductions contemplated, his amendments en bloc would not have been subject to a point of order, since he would have been

merely perfecting an unauthorized amount permitted to remain by failure to raise a point of order against the paragraph. Mr. Frenzel, however, did make a point of order against the paragraph on the Customs Service interdiction program when that paragraph was read for amendment subsequently.

***Lesser Duty Than That Contemplated by Pending Legislation; Held in Order***

**§ 3.41 A legislative provision permitted to remain in a general appropriation bill may be perfected by germane amendment as long as the amendment does not add further legislation.**

On June 27, 1984,<sup>(4)</sup> during consideration in the Committee of the Whole of the Treasury Department and Postal Service appropriation bill (H.R. 5798), an amendment was offered as follows:

The Clerk read as follows:

Sec. 618. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or cov-

erages for abortions, under such negotiated plans after the last day of the contracts currently in order. . . .

The Clerk read as follows:

Sec. 619. The provisions of section 618 shall not apply where the life of the mother would be endangered if the fetus were carried to term.

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

The Clerk read as follows:

Amendment offered by Mrs. Schroeder: On page 51, in line 6, delete "life" and insert in lieu thereof "health". . . .

MR. [CHRISTOPHER H.] SMITH [of New Jersey]: Mr. Chairman, this is legislating on an appropriations bill, in violation of rule XXI, clause 2, and I ask that it be ruled in such a way by the Chair. . . .

MRS. SCHROEDER: Mr. Chairman, clause 2(b) of rule XXI states, "No provision changing existing law shall be reported in any general appropriation bill. . . ." Out of this language comes the general restriction prohibiting the consideration of legislation as part of an appropriation bill. One way the Chair decides whether a limitation constitutes legislation is to determine whether the provision adds new affirmative directions for administrative officers.

Clearly, section 619 of H.R. 5798 would have been subject to a valid point of order, had any Member sought to raise one. The "life of the mother" exception to a limitation on funding for abortions on an appropriations measure has on numerous occasions been ruled out of order. This happened last year on this very legislation.

4. 130 CONG. REC. —, 98th Cong. 2d Sess.

But, no Member raised that point of order on section 619. My amendment seeks to amend section 619 by enlarging the exception to apply to the "health of the mother," rather than to the "life of the mother." The appropriate test is not whether section 619, as amended, would be subject to a point of order but, rather, the test is whether my amendment adds new or different affirmative directions to an administrative officer. The question is whether my amendment would change the nature of the legislation already on this bill.

To answer that question, we must refer to section 618 of the bill, which prohibits the use of funds appropriated by the bill to pay for an abortion or for administrative expenses in connection with any health plan under the Federal Employees Health Benefit Program [FEHBP] which provides benefits or coverages for abortions. Clearly, the first part of this section is a nullity, because there is no authorization to use one penny appropriated by the bill to pay directly for an abortion. The operative language is the second part.

The administrative burden imposed by section 619 is that the Director of the Office of Personnel Management is required to review contracts with health care providers to ensure that they provide no reimbursement for abortions, unless the life of the mother is at stake. Examining those same contracts to ensure that they provide no reimbursement for abortions unless the health of the mother is at stake is precisely the same administrative burden. Each involves reviewing 130 contracts to see whether certain language appears in them. There is no different administrative burden.

Arguably, section 619 creates another administrative burden which requires the Director of the Office of Personnel Management to monitor the implementation of health benefit plans to ensure compliance with the restriction. In this role, section 619 asks the Director of the Office of Personnel Management to second guess doctors and insurance carriers to decide whether the life of the mother would truly have been endangered if the fetus had been carried to term. Undoubtedly, this is an affirmative obligation which is nowhere authorized in law and which the Director of the Office of Personnel Management is uniquely unqualified to perform.

My amendment reduces this administrative obligation. If the Director of the Office of Personnel Management were obliged to ensure compliance with section 619, as amended, he would merely have to determine whether the health of the mother would have been endangered if the fetus were carried to term. This is a much smaller burden.

The life of the mother is a narrow subset of the health of the mother. Medical personnel can say with far greater assurance that the health of a patient might be impaired than that the life of the patient might be lost. To make a determination that the life of the mother would be endangered if the fetus were carried to term, one must make a prior determination that the health of the mother was also endangered. Hence, section 619, as amended by my amendment, would impose a part of the administrative burden imposed by section 619, as reported, but a substantially reduced part. . . .

THE CHAIRMAN:<sup>(5)</sup> The Chair is prepared to rule.

5. Anthony C. Beilenson (Calif.).

Under the precedents, a legislative provision permitted to remain in a general appropriations bill may be perfected by amendment so long as the amendment does not add further legislation. The Chair would refer to Mr. Deschler, chapter XXVI, section 2.3.

In the opinion of the Chair, the determinations required by section 619 of this bill, the present bill, as to whether the life of the mother is in danger necessarily subsume determinations as to whether the health of the mother is in danger and, for that reason, the amendment adds no different or more onerous requirements for medical determination to those already required and contained in section 619.

The Chair, therefore, would overrule the gentleman's point of order.

***Perfecting Unauthorized Figure but Mandating Expenditures; Ruled Out***

**§ 3.42 While an unauthorized item permitted to remain in a general appropriation bill by a waiver of points of order may be changed by amendment, an increase in that figure may not be accompanied by legislative language directing certain expenditures.**

On June 18, 1976,<sup>(6)</sup> H.R. 14239 (Departments of State, Justice, Commerce, and Judiciary appropriations for fiscal 1977), was

6. 122 CONG. REC. 19297, 94th Cong. 2d Sess.

under consideration, which provided in part:

For economic development assistance as authorized by titles I, II, III, IV, and IX of the Public Works and Economic Development Act of 1965, as amended, and title II of the Trade Act of 1974, \$300,000,000.

An amendment was offered, as follows:

MR. [PHILIP E.] RUPPE [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ruppe: In Title III, page 27, line 2, strike out "\$300,000,000," and insert in lieu thereof: "\$329,500,000, of which not less than \$77,000,000 shall be used for economic adjustment as authorized by title IX of the Public Works and Economic Development Act of 1965, as amended." . . .

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, the amendment would violate clause 2 of rule XXI which provides:

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

The rule adopted earlier, waiving all points of order against certain provisions in the bill for failure to comply with the provisions of clause 2, rule XXI, applies only to those provisions in the bill. The waiver does not apply to amendments which would add additional provisions.

This amendment, Mr. Chairman, would add a provision to the bill earmarking \$77 million for economic adjustment under title IX of the Public

Works and Economic Development Act of 1965, as amended. Extension of that legislation which is required for fiscal year 1977 has not been enacted. . . .

MR. RUPPE: . . . Mr. Chairman, my amendment would increase the funding level of title IX of this section from \$47.5 to \$77 million. It is my understanding that that section does fund economic development assistance for titles I, II, III, IV, and IX of the Public Works and Economic Development Act of 1965.

THE CHAIRMAN:<sup>(7)</sup> The Chair is ready to rule.

If the amendment of the gentleman merely changed the unauthorized figure permitted to remain in the appropriation bill, it would be in order; but the amendment does mandate the expenditure of not less than a certain amount of money for a purpose which has not been authorized and as such constitutes legislation in an appropriation bill.

The Chair sustains the point of order.

***Expressing Different Congressional Policy to That in Bill; Ruled Out***

**§ 3.43 To a provision in a general appropriation bill (permitted to remain by failure to raise a point of order) stating the sense of Congress that any new Panama Canal treaty must protect the vital interests of the United States in the Canal Zone and in the**

7. Otis G. Pike (N.Y.).

**operation, maintenance, and defense of the Canal, an amendment striking that provision and inserting a statement that it was the sense of Congress that any such treaty must not abrogate or vitiate the “traditional interpretation” of past Panama Canal treaties, with special reference to territorial sovereignty, was ruled out as constituting a different statement of legislative policy, not merely perfecting in nature, which was further legislation.**

On June 10, 1977,<sup>(8)</sup> during consideration in the Committee of the Whole of the Departments of State, Justice, Commerce, and the Judiciary appropriation bill, a point of order was sustained against the following amendment:

MR. [ELDON J.] RUDD [of Arizona]: Mr. Chairman, I offer an amendment.

(The portion of the bill to which the amendment relates is as follows:)

Sec. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property and defense of the Panama Canal.

The Clerk read as follows:

8. 123 CONG. REC. 18402, 18403, 95th Cong. 1st Sess.

Amendment offered by Mr. Rudd: Page 14, delete lines 1 through 5 and insert in lieu thereof:

Sec. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must not abrogate or vitiate the traditional interpretation of the treaties of 1903, 1936, and 1955, with special reference to matters concerning territorial sovereignty. . . .

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, I make a point of order reluctantly, because the amendment deals with matters not addressed in the bill and is clearly legislation on an appropriation bill. . . .

MR. RUDD: . . . This is simply a clarification to section 104. We have heard many statements here this afternoon and this morning regarding the desire by many of our distinguished colleagues here, and I think that they are in favor of retaining the Panama Canal. All this does is to clarify this language, put it in proper perspective, so that there will be no question about the retention of the Panama Canal.

THE CHAIRMAN:<sup>(9)</sup> The Chair is prepared to rule.

The gentleman from Arizona (Mr. Rudd) offered an amendment to section 104, which is a sense of the Congress section.

The amendment offered by the gentleman from Arizona (Mr. Rudd) would change the sense of the Congress legislation permitted to remain in the bill and would clearly alter it. The gentleman's amendment would be further legislation on an appropriation bill and subject to a point of order. The Chair must sustain the point of order made by the gentleman from West Virginia (Mr. Slack).

9. Walter Flowers (Ala.).

***Repeating Existing Legislation Verbatim; Held in Order***

**§ 3.44 An amendment to a general appropriation bill may not add further legislation to that permitted to remain in the bill; and the amendment is not subject to a point of order if containing, verbatim, a legislative provision already contained in the bill.**

On Aug. 27, 1980,<sup>(10)</sup> where an amendment to a general appropriation bill prohibited the use of funds therein for the Occupational Health and Safety Administration for certain purposes, but exempted from such prohibitions persons "engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees," the Chair, in overruling a point of order against the amendment, stated,

No new duties or determination are required [by the amendment] and the final proviso, while requiring findings as to the temporary status of a farm labor camp, is already in the bill and the amendment does not add legislation to that permitted to remain in the bill.<sup>(11)</sup>

10. 126 CONG. REC. 23519-21, 96th Cong. 2d Sess.

11. The proceedings are discussed in more detail in Sec. 73.11, *infra*.

***Earmarking Part of Unauthorized Lump Sum; Ruled Out***

**§ 3.45 An unauthorized item in a general appropriation bill being permitted to remain by a special rule waiving points of order, figures in such item may be perfected but the provision may not be changed by an amendment substituting funds for a different and specified unauthorized purpose.**

For an item in a general appropriation bill containing funds for a nuclear aircraft carrier program, against which points of order had been waived for failure of the authorization bill to be enacted into law, a substitute amendment striking out those funds and inserting unauthorized funds for a conventional-powered aircraft carrier program was ruled out under Rule XXI clause 2, as unprotected by the waiver against the bill. The proceedings of Aug. 7, 1978,<sup>(12)</sup> were as follows:

The Clerk read as follows:

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants;

12. 124 CONG. REC. 24710, 24712, 95th Cong. 2d Sess.

. . . as follows: . . . for the CVN-71 nuclear aircraft carrier program, \$2,129,600,000. . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Yates: On page 20, line 2, after "\$128,000,000"; strike the words and amount on lines 2 and 3: "for the CVN-71 nuclear aircraft carrier program, \$2,129,600,000;"

On page 20, line 8, after "in all:" strike "\$5,688,000,000," and insert in lieu thereof "\$3,558,400,000," . . . .

MR. [BILL D.] BURLISON of Missouri: Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Burlison of Missouri as a substitute for the amendment offered by Mr. Yates: Page 20, line 2, strike out "for the CVN-71 nuclear aircraft carrier program, \$2,129,600,000;" and insert in lieu thereof "for the conventional-powered aircraft carrier program, \$1,535,000,000." . . . .

MR. [CHARLES E.] BENNETT [of Florida]: Mr. Chairman, it would seem to me that this amendment would be subject to a point of order. I have not deeply researched the matter, but we do have a bill before us which passed both the House and the Senate, and that language provided for a nuclear carrier. This bill that is before us specifically provides for a nuclear carrier, and it does not provide for any other type of carrier. . . .

THE CHAIRMAN:<sup>(13)</sup> The Chair will observe that the Committee on Rules did waive points of order to the pend-

13. Daniel D. Rostenkowski (Ill.).

ing paragraph, but it did not waive points of order against amendments.

The Chair will point out that unauthorized items in a general appropriation bill being considered under a special rule waiving all points of order may be perfected by germane amendments merely changing a figure, but such procedure does not permit the offering of amendments adding further unauthorized items on appropriation. As far as the Chair is aware, the conventional powered aircraft carrier is not authorized, and the Chair would have to sustain the point of order made by the gentleman from Florida.

MR. BURLISON of Missouri: Mr. Chairman, I believe the Chairman has not addressed the point that I raised about the authorization bill itself failing to designate what ships are to be built. In other words, there is a single figure in the authorization bill for ship-building, and that is what my amendment is to.

THE CHAIRMAN: The Chair would also have to observe that the authorization bill is not signed and, therefore, it is not yet law.

The Chair sustains the point of order.

#### § 4. The Holman Rule

The Holman rule (Rule XXI clause 2), which had its inception in the 44th Congress, underwent various modifications between 1876 and 1911. At times it was dropped completely. The formulation of Rule XXI clause 2, from 1911 until the 98th Congress, and under which most of the decisions contained in this section were made, was as follows:<sup>(14)</sup>

14. *House Rules and Manual* Sec. 834 (1973). See also the note following

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill: *Provided*, That it shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law or the House Members of any such commission having jurisdiction of the subject matter of such amendment, which amendment being germane to the subject matter of the bill shall retrench expenditures.

The second sentence of the clause comprises the Holman rule exception to Rule XXI, and permits legislative provisions in general appropriation bills or amendments, provided the stated conditions are met. The exception, of course, is to the prohibition against "changing existing law," not to the prohibition against unauthorized appropriations.

A distinction should be noted between provisions meeting the

Sec. 834, *House Rules and Manual*, for history of the rule.