

**D. PROVISIONS AS CHANGING EXISTING LAW:
APPROPRIATIONS SUBJECT TO CONDITIONS**

§ 47. Conditions Contrary to or Not Required by Law

The precedents in this section generally support the view that provisions in an appropriation bill which make funds available only after a specified condition has occurred will be ruled out as legislation, if the condition specifies actions or circumstances which are contrary to, or not contemplated in, existing law. Thus, provisions making an appropriation contingent upon actions not already required by law may be ruled out of order, while a contingency may be permitted provided the contingency itself has previously been authorized in law. Of course, a seeming "condition" may be in the nature of a permissible limitation, as where funds may be made available for use by or on behalf of designated beneficiaries only if such beneficiaries fulfill certain conditions or become qualified to receive the benefit of the funds in the manner prescribed,⁽⁹⁾ if that prescribed manner is not shown to contravene existing law.

The legislative character of a condition may consist in imposing

additional duties, not already required in law, on federal officials.⁽¹⁰⁾ Similarly, a condition may be seen as amounting to legislation if it affects funds in other acts rather than being limited to funds contained in the bill. And in some cases, even where the point of order has been based on the legislative character of a provision, the ruling itself may in fact turn on issues of germaneness, as where an amendment attempting to make the availability of funds depend on an unrelated contingency is seen as beyond the scope of the bill.⁽¹¹⁾

It is important to distinguish between precedents in which the whole appropriation is made contingent upon an event or circumstance and those in which the disbursement to a particular participant is conditioned on the occurrence of an event. In either case, the weight of precedent would disqualify such conditions as legislative in effect. Some of the decisions in this section, section 7, *supra*, and section 48, *infra*, are similar in language but

9. See the "note on contrary rulings," following § 53.6, *infra*, especially the reference to the ruling of June 11, 1968.

10. The imposition of duties on state or local officials raises various issues which are discussed in § 53, *infra*.

11. See, for example, § 48.11, *infra*.

are carried in a particular part of the chapter to illustrate the different approaches taken by the Chair in reaching the conclusion that the amendment is not strictly negative and limiting.

—

Action by Federal Official Disbursing Funds; "No Funds Unless or Until"

§ 47.1 An amendment forbidding expenditure of an appropriation "unless" action contrary to existing law is taken is legislation and not in order as a limitation: an amendment providing that funds appropriated for International Information, Department of State, shall not be available for any broadcast of information about the United States until the radio script for such broadcast has been approved by the Daughters of the American Revolution was held to be legislation and not in order.

On July 26, 1951,⁽¹²⁾ during consideration in the Committee of the Whole of a general appropriation bill (H.R. 4740), a point of order

^{12.} 97 CONG. REC. 8960, 82d Cong. 1st Sess.

was raised against the following amendment:

Amendment offered by Mr. [John T.] Wood of Idaho: Page 15, line 25, before the period insert a colon and the following: "*Provided further*, That funds appropriated herein shall not be available for any broadcast of any information about the United States until the radio script for such broadcast has been submitted to and approved by a committee of members of the Daughters of the American Revolution, appointed by the president general of such organization."

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN:⁽¹³⁾ Does the gentleman from Idaho desire to be heard on the point of order?

MR. WOOD of Idaho: Yes, Mr. Chairman.

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

MR. WOOD of Idaho: Mr. Chairman, I submit that this is a limitation and not legislation.

THE CHAIRMAN: Has the gentleman completed his statement on the point of order?

MR. WOOD of Idaho: Yes.

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

The Chair invites attention to the fact that the amendment definitely provides for certain things to be done and invites attention to a decision ren-

^{13.} Jere Cooper (Tenn.).

dered by the distinguished gentleman from Michigan [Mr. Michener] in which it is stated:

An amendment withholding expenditures of appropriations unless and until certain books were supplied free to the National Library for the Blind is ruled out of order.

The amendment very clearly contains legislation which is sought to be offered to an appropriation bill in violation of the rules of the House.

The Chair sustains the point of order.

Condition on Disbursement to Recipient

§ 47.2 An amendment to a supplemental appropriation bill, making the payment of certain contractual obligations of the United States contingent upon the adoption of a compromise agreement or upon litigation resolving the dispute, was held to impose a condition on disbursement of funds not required by existing law and was ruled out on a point of order.

On May 11, 1971,⁽¹⁴⁾ during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 8190), a point of order was raised against the following amendment:

The Clerk read as follows:

14. 117 CONG. REC. 14468, 92d Cong. 1st Sess.

BUREAU OF MINES

HELIUM FUND

The Secretary is authorized to borrow from the Treasury for payment to the helium production fund pursuant to section 12(a) of the Helium Act, to carry out the provisions of the Act and contractual obligations thereunder, including helium purchases, to remain available without fiscal year limitation, \$15,077,000, in addition to amounts heretofore authorized to be borrowed.

MR. [CHARLES A.] VANIK [of Ohio]:
Mr. Chairman, I offer an amendment.
The Clerk read as follows:

Amendment offered by Mr. Vanik: Page 6, line 9, after the word "borrowed" strike out the period, insert a comma "provided, however, that none of the funds appropriated by this act will be disbursed to any individual contractor until the claims of that contractor have been determined either by agreement or by litigation."

MRS. [JULIA BUTLER] HANSEN of Washington: Mr. Chairman, on this amendment I make a point of order.

THE CHAIRMAN:⁽¹⁵⁾ The gentlewoman will state her point of order.

MRS. HANSEN of Washington: The wording is "until the claims of that contractor have been determined either by agreement or by litigation."

That is legislation on an appropriation bill and extends the act beyond the intention.

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

MR. VANIK: Mr. Chairman, I believe it has been well established in this

15. Wayne N. Aspinall (Colo.).

Chamber that a limitation on expenditures is a perfectly valid amendment to an appropriation bill.

I might say, Mr. Chairman, the amendment should read, "full claims of the contractors have been determined."

I believe it has been well established that this type of amendment is in order on this kind of bill.

THE CHAIRMAN: The Chair is ready to rule.

The language of the amendment does constitute legislation on an appropriation bill, and in this particular situation provides for a condition subsequent.

Therefore, the Chair will have to sustain the point of order.

Contingent Upon Enactment of Authorization

§ 47.3 Language in an appropriation bill providing funds for projects not yet authorized by law is legislation and not in order.

On Sept. 5, 1961,⁽¹⁶⁾ during consideration in the Committee of the Whole of a general appropriation bill (H.R. 9033), a point of order was raised against the following provision:

The Clerk read as follows:

TITLE V—PEACE CORPS

Funds Appropriated to the President

Peace Corps

For expenses necessary to enable the President to carry out the provi-

sions of the Peace Corps Act, including purchase of not to exceed sixteen passenger motor vehicles for use outside the United States, \$20,000,000: *Provided*, That this paragraph shall be effective only upon enactment into law of S. 2000 or H.R. 7500, Eighty-seventh Congress, or similar legislation to provide for a Peace Corps.

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:⁽¹⁷⁾ The gentleman will state it.

MR. HIESTAND: Title V, which has just been read, has not yet been authorized and therefore is subject to a point of order.

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

MR. [OTTO E.] PASSMAN [of Louisiana]: We concede the point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from Louisiana concedes the point of order and the Chair sustains the point of order made by the gentleman from California (Mr. Hiestand).

Parliamentarian's Note: A conditional appropriation based on enactment of authorization is a concession on the face of the language that no prior authorization exists. See § 7, *supra*, for further discussion of the necessity of prior authorization for appropriations.

§ 47.4 In a supplemental appropriation bill, a paragraph making an appropriation

17. Wilbur D. Mills (Ark.).

16. 107 CONG. REC. 18179, 87th Cong. 1st Sess.

contingent upon the subsequent enactment of authorizing language is in violation of Rule XXI clause 2.

On May 3, 1967,⁽¹⁸⁾ during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 9481), a point of order was raised against the following provision:

The Clerk read as follows:

CHAPTER VIII

MILITARY CONSTRUCTION

FAMILY HOUSING

HOMEOWNERS ASSISTANCE FUND,
DEFENSE

For the Homeowners Assistance Fund, established pursuant to section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89-754, approved November 3, 1966), \$5,500,000, to remain available until expended: *Provided*, That this paragraph shall be effective only upon enactment into law of S. 1216, Ninetieth Congress, or similar legislation.

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

THE CHAIRMAN:⁽¹⁹⁾ The gentleman will state his point of order.

MR. HALL: Mr. Chairman, I wish to make a point of order asking the Chair to strike chapter 8 of the second sup-

plemental appropriation bill, to be found on page 17, lines 6 through 16 thereof, for the reason there has been no authorization of this appropriation and that it is contrary to rule XXI (2) of this body. Consideration of S. 1216 is now before this body's Committee on Rules, it is controversial, it has mixed jurisdictional parentage, and it came out of the Committee on Armed Services with eight or more opposing votes. It can be defeated on the floor.

THE CHAIRMAN: Does the gentleman from Florida seek to be heard on this point of order?

MR. [ROBERT L. F.] SIKES [of Florida]: I do, Mr. Chairman.

Mr. Chairman, as the bill states and as the report states, there is a requirement for the enactment of authorizing legislation. The bill which is before the House clearly requires that appropriations for the acquisition of properties must be authorized by a military construction authorization act, and that no moneys in the fund may be used except as may be provided in an appropriation act, and it would clearly protect the Congress and fulfill the requirements of the law.

What we are seeking to do is to put into operation an immediate program. If we do not provide funds now for people who need money for losses in their property as a result of base closures, it is going to be some months before it can be done, probably, in the regular appropriation bill.

Of course, the language is subject to a point of order. We concede that. If the gentleman insists on his point of order, that is the story, but the homeowners will be the ones who suffer unnecessarily.

18. 113 CONG. REC. 11589, 90th Cong. 1st Sess. See Parliamentarian's Note in §47.3, *supra*, as to appropriations conditioned on subsequent authorization.

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

THE CHAIRMAN: The Chair is prepared to rule. As the gentleman from Florida has conceded, the language objected to by the gentleman from Missouri is subject to a point of order in that no authorization has been enacted into law. The Chair, therefore, sustains the point of order.

§ 47.5 An item of appropriation providing for an expenditure not previously authorized by law is not in order; and delaying the availability of the appropriation pending enactment of an authorization does not protect the item of appropriation against a point of order under Rule XXI clause 2.

On Apr. 26, 1972,⁽²⁰⁾ during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 14582), a point of order was raised against the following provision:

The Clerk read as follows:

FEDERAL RAILROAD ADMINISTRATION

GRANTS TO NATIONAL RAILROAD
PASSENGER CORPORATION

To enable the Secretary of Transportation to make grants to the National Railroad Passenger Corporation, as authorized by section 601 of the Rail Passenger Service Act of 1970, as amended, \$170,000,000, to remain available until expended: *Provided*, That this appropriation

shall be available only upon the enactment into law of authorizing legislation by the Ninety-second Congress. . . .

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order against the \$170 million appropriation for Amtrak.

THE CHAIRMAN:⁽¹⁾ The gentleman will state his point of order.

MR. VANIK: Mr. Chairman, the authorization has not yet been made. The fact that the authorization passed the House of Representatives would not make the appropriation valid. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the House has passed the authorization bill. It has not been enacted into law. I think the point of order is well taken.

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

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

THE CHAIRMAN: The Chair understands that the chairman of the committee concedes the point of order. Therefore, the point of order is sustained.

Requiring Application of Standards not Demonstrably Required by Law

§ 47.6 It is not in order on a general appropriation bill to require, as a condition to the availability of funds, the imposition of standards of quality or performance not required by law, whether or

20. 118 CONG. REC. 14455, 92d Cong. 2d Sess.

1. Jack B. Brooks (Tex.).

not such standards are applicable by law to other programs or activities.

On Nov. 18, 1981,⁽²⁾ an amendment to a general appropriation bill prohibiting the use of funds therein to procure foreign-made items unless their inspection for quality assurance “uses the same standards” which would be required for domestic products by the Department of Defense was ruled out as legislation imposing additional duties absent any showing that existing law already required such inspection of items produced in foreign countries. The proceedings during consideration of the defense appropriation bill,⁽³⁾ were as follows:

MR. [JIM] DUNN [of Michigan]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dunn: Page 68 after line 15, insert the following:

Sec. 792. None of the funds appropriated in this Act may be available for the procurement of any item manufactured in a foreign country unless, during manufacture, the inspection of such item for quality assurance uses the same standards of inspection during manufacture which would be required by the Department of Defense if such item were manufactured domestically.

MR. DUNN (during the reading): Mr. Chairman, I ask unanimous consent

2. 127 CONG. REC. 28076, 28077, 97th Cong. 1st Sess.

3. H.R. 4995.

that the amendment be considered as read and printed in the Record.

THE CHAIRMAN:⁽⁴⁾ Is there objection to the request of the gentleman from Michigan?

There was no objection

MR. [BILL] FRENZELL [of Minnesota]: Mr. Chairman, I rise to make a point of order against the amendment.

THE CHAIRMAN: The Chair recognizes the gentleman from Minnesota (Mr. Frenzel) on his point of order.

MR. FRENZEL: Mr. Chairman, in my judgment the amendment is contrary to rule XXI, clause 2, which provides that no amendment changing existing law can be made on an appropriation bill. The amendment clearly gives the Secretary additional duties, to determine what kind of quality assurance or inspection is required under the terms of the amendment and, therefore, the amendment constitutes legislation on an appropriation bill.

Mr. Chairman, I believe the point of order should be sustained.

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

MR. DUNN: Mr. Chairman, the gentleman, I believe, is incorrect. The Secretary already has that discretion. We are simply, in this amendment, trying to make certain that the powers that he uses for national companies are the same as for international companies. He already has that power. It does not change his power.

THE CHAIRMAN: As the Chair reads the amendment, there is clearly a mandatory authority imposing additional duties, absent any showing that

4. Daniel D. Rostenkowski (Ill.).

existing law already requires such inspection of items produced in foreign countries, the Chair sustains the point of order made by the gentleman from Minnesota (Mr. Frenzel).

Parliamentarian's Note: This decision effectively overrules the ruling of the Chair on July 28, 1959,⁽⁵⁾ wherein an amendment denying use of funds to finance construction projects abroad that had not met the criteria used in determining the feasibility of flood control projects in the United States was held a proper limitation, despite any lack of showing that existing law required domestic standards to be applied to foreign construction projects. It should be noted that it is not just the imposition of new standards that constitutes legislation rendering language subject to a point of order, but the requirement of new procedures or duties involved in making the standards applicable in a setting not contemplated in the existing law.

Presidential Appointment to be Made

§ 47.7 To an appropriation bill, an amendment proposing that no part of the appropriation therein be paid to any commissioned officer or

5. 105 CONG. REC. 14522, 14524, 86th Cong. 1st Sess.

any civilian employee in the office of the Judge Advocate, unless such officer or employee is subject to the authority of a general counsel appointed by the President, who shall be the chief legal officer, was conceded to be legislation and therefore held not in order.

On May 12, 1955,⁽⁶⁾ during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 6042), a point of order was raised against an amendment as described above. The proceedings were as follows:

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

THE CHAIRMAN:⁽⁷⁾ Does the gentleman from New Jersey desire to be heard on the point of order?

MR. [FRANK] THOMPSON [Jr.] of New Jersey: Mr. Chairman, I concede the point of order. . . .

THE CHAIRMAN: The point of order is sustained.

Funds Made Subject to Audit

§ 47.8 An amendment to a legislative branch appropria-

6. 101 CONG. REC. 6245, 6246, 84th Cong. 1st Sess. See § 41.2, supra, for the language of the amendment.

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

tion bill denying the obligation or expenditure of certain funds contained therein unless such funds were subject to audit by the Comptroller General was ruled out of order as legislation where it appeared that the amendment was intended by its proponents to extend and strengthen the authority of the Comptroller General under law to audit legislative accounts.

On June 14, 1978,⁽⁸⁾ H.R. 12935, making appropriations for the legislative branch, was under consideration in Committee of the Whole. The following amendment was offered and discussed:

Amendment offered by Mr. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: On page 6, after line 23, insert the following new section:

Sec. 102. (a) None of the funds appropriated by any provision described in subsection (b) shall be expended or obligated for any purpose specified in such provision unless such funds so expended or obligated are subject to audit by the Comptroller General of the United States.

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Chairman, I reserve a point of order on the amendment.

MR. COUGHLIN: Mr. Chairman, this is identical to an amendment offered

last year by the gentlewoman from Massachusetts (Mrs. Heckler) and the gentlewoman from New York (Mrs. Chisholm) to provide for a GAO audit of Members and committee accounts. It is the identical amendment that was raised at that time. It was not objected to on a point of order. . . .

MRS. [MARGARET M.] HECKLER [of Massachusetts]: . . . Mr. Chairman, once again on my own behalf and for my distinguished colleague from New York (Mrs. Chisholm) I offer an amendment to the legislative branch appropriations to make all tax-funded accounts of Members subject to an audit by the General Accounting Office.

I offer this amendment with a two-fold purpose in mind. First, the amendment will bring Congress in line with other Federal agencies and give us, as Members, protection from accounting mistakes that happen—sometimes too easily—when there are no guidelines or procedures as is currently the case. Second, the amendment will go a long way toward restoring public confidence in the Congress by creating an accounting system for public money expended by Congress for its own operation.

I do not believe any Member of Congress has the time to maintain these accounts. Indeed, this function is always delegated. In my own case, my office manager handles the accounts, and, in addition, I have hired an outside accountant to oversee the process. Nonetheless, questions remain. I believe it is time to get the professionals to give us the answers.

When errors are made—for whatever reason—the Member of Congress is

8. 124 CONG. REC. 17650, 17651, 95th Cong. 2d Sess.

held accountable. In my judgment, a uniform, organized system of audits would not be an adversary to the Congress, rather, it would be a protection against the innumerable uncertainties of interpretation and variables which can make even the most carefully managed accounts vulnerable to public criticism.

The GAO audit would make public accountability a reality for the Congress.

Congress has never hesitated to require audits of other agencies. I believe the time has come when Congress should submit to an audit itself. . . .

Mr. Chairman, the operations of the Comptroller General under this amendment would continue as under existing circumstances in that site at the Capitol where the office is presently located. The authority would provide an audit of Members' accounts and committee accounts. It would provide that authority to be utilized by the GAO.

MR. SHIPLEY: Mr. Chairman, if the gentleman will yield further, does it extend in any way the present audit system that we have now in the House?

MR. COUGHLIN: Mr. Chairman, I yield to the gentlewoman from Massachusetts.

MRS. HECKLER: Mr. Chairman, it extends the authority that now exists in law but is not necessarily a change in existing law. It affirms the authority of the GAO which presently exists in the House; however, I do not believe that the GAO is able to examine Members' accounts and this amendment clarifies that authority. However, it does not mandate audits across the board of every Member at any particular time.

MR. SHIPLEY: Mr. Chairman, would the gentlewoman answer another question for me again. I am not quite clear in my own mind what exactly would this amendment require the Comptroller General to do specifically?

MRS. HECKLER: I believe that this amendment would provide an expansion of the number of accounts which the GAO is presently auditing including the tax-funded accounts of Members of Congress and our legislative committees, as covered by the general legislative appropriation bill. We are in this bill dealing with an appropriation of \$992 million. I believe that these public funds should be subject to audit. This amendment merely affirms the legal authority to the GAO to conduct such audits. . . .

MR. SHIPLEY: . . . Mr. Chairman, I object to the amendment and make a point of order against it on the grounds that it imposes additional duties on the Comptroller General and, as such, is in violation of clause 2, rule XXI of the House. The additional duties implied by the amendment might involve the Comptroller General insisting that time and attendance reporting systems be set up in Members and committee offices and may require setting up annual and sick leave systems and involve examination of Members' personal diaries, perhaps even their personal financial records. These are duties and procedures clearly beyond the offices of the Comptroller General's present audit authority. Under paragraph 842 of clause 2, rule XXI:

An amendment may not impose additional duties, not required by law, or make the appropriation contingent upon the performance of such duties . . . then it assumes the

character of legislation and is subject to a point of order. . . .

MR. COUGHLIN: Mr. Chairman, let me say that the amendment imposes no additional duties on the General Accounting Office. It proposes that these accounts be subject to audit by the GAO.

Title 31, section 67, of the United States Code annotated says as follows:

. . . the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States.

In a memorandum to the Comptroller General from the general counsel of the General Accounting Office, the following language appeared:

Our authority under the Budget and Accounting Act, 1921, to investigate all matters relating to the receipt, disbursement, and application of public funds also extends to the Congress.

I continue to quote from the memorandum, as follows:

Similarly, our authority in the Accounting and Auditing Act of 1950 to audit all financial transactions, not limited to accountable officer transactions, extends to legislative agencies . . .

Mr. Chairman, it is very clear that the General Accounting Office already has the authority and the duty to audit the accounts of the legislative branch, and this amendment in no way expands or extends that authority. The General Accounting Office has taken a

position that it is interested in having an expression of the will of the legislative branch as to whether it wishes the General Accounting Office to carry out that function. This amendment would be an expression of that will.

Mr. Chairman, the amendment would in no way expand the authority of the General Accounting Office or impose additional duties on the General Accounting Office; it would only make these accounts subject to audit. . . .

THE CHAIRMAN PRO TEMPORE:⁽⁹⁾ The Chair is ready to rule.

The Chair certainly agrees that the language in the amendment is ambiguous. The Chair takes into account, however, the debate, and the debate as observed by the Chair indicates the amendment certainly does extend the authority of the Comptroller General and is subject to a point of order.

The Chair does recognize that there are conflicting interpretations of the amendment under discussion. However, the Chair has a duty under the precedents to construe the rule against legislation strictly where there is an ambiguity. The Chair feels he must sustain the point of order based on the interpretations given the amendment during the debate.

Parliamentarian's Note: The amendment in this instance was ruled out of order because it appeared that it was intended by its proponents to work a change in the law and to require audits, rather than simply state a condition precedent for obligation and expenditure of the funds. (A sub-

9. Daniel D. Rostenkowski (Ill.).

sequent amendment which denied the use of funds not subject to audit "as provided by law" was offered and adopted.)

It should be noted that the June 14, 1978, ruling above effectively overrules an earlier ruling (see 116 CONG. REC. 18412, 91st Cong. 2d Sess., June 4, 1970), in which it had been held that language in a general appropriation bill, providing that no funds in the bill for "International Financial Institutions" shall be available for activities which are not subject to audit by the Comptroller General, was in order as a limitation on the use of funds in the bill.

Barring Funds for Enforcement of Current Law or Regulations

§ 47.9 It is not in order in a general appropriation bill to deny the use of funds for an executive agency to formulate or carry out regulations except for regulations in effect on a prior date, which are no longer permitted to be formulated or enforced under the current state of the law.

On Aug. 19, 1980,⁽¹⁰⁾ the following amendment was offered to

¹⁰ 126 CONG. REC. 21978-80, 96th Cong. 2d Sess.

H.R. 7583 (Treasury Department and Postal Service appropriations for fiscal 1981):

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

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

A point of order against the amendment was sustained. See the proceedings discussed in full in § 22.28, supra.

§ 47.10 An amendment to a general appropriation bill denying use of the funds therein for the Treasury Department to apply certain provisions of the Internal Revenue Code other than under audit practices, interpretations, regulations, and court decisions in effect on a prior date was ruled out of order as legislation since admittedly requiring the executive branch to follow laws no longer in effect in order to make the appropriation available.

On June 7, 1978,⁽¹¹⁾ during consideration in the Committee of the Whole of the Department of the Treasury and Postal Service appropriation bill (H.R. 12930), a point of order raised against an amendment was sustained as follows:

The Clerk read as follows:

Amendment offered by Mr. [Leon E.] Panetta [of California]: Page 30, after line 24, insert the following new section:

Sec. 510. None of the funds available under this Act shall be used by the Treasury Department to make or apply any determination as to whether any individual is an employee for purposes of chapter 21 (relating to Federal Insurance Contributions Act), 23 (relating to Federal Unemployment Tax Act), or 24 (relating to collection of income tax at source on wages) of the Internal Revenue Code of 1954 other than under the audit practices, interpretations, regulations, and federal court decisions in effect on December 31, 1975. . . .

MR. [TOM] STEED [of Oklahoma]: . . . Mr. Chairman, I make a point of order against the proposed amendment, because it is legislation on an appropriations bill, in violation of clause 2 of rule XXI. This amendment would impose new duties on an executive officer.

The Commissioner and employees of IRS would be required to make a determination as to whether or not a "certain audit, interpretation, regulation, or Federal appellate court deci-

sion" is "inconsistent with audit practices, interpretations, regulations, and Federal court decisions in effect on December 31, 1975."

The executive officer would be required by this amendment to interpret Federal appellate court decisions in 1975, interpret court decisions now, and make a decision as to whether or not they are inconsistent. This clearly imposes new duties on an executive officer and is clearly in violation of clause 2 of rule XXI. This can be found in section 843, page 572 of the current rules of the House of Representatives.

As further precedent, Mr. Chairman, I would like to cite the following from Cannon's Procedures in the House of Representatives, section 843 on page 64:

In construing an amendment offered as a limitation the practice of the House relating thereto should be construed strictly in order to avoid incorporation of legislation in appropriation bills under guise of limitations.

That is in volume VII, Cannon's Precedents, section 1720.

Further quoting:

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

That is in volume VII, Cannon's Precedents, section 1691.

Further quoting:

Legislation may not be proposed under the form of a limitation.

That is section 1607.

11. 124 CONG. REC. 16655, 16656, 95th Cong. 2d Sess.

Further quoting, this time from volume VII, Cannon's Precedents, section 1628:

And a provision which under the guise of limitation repeals or modifies existing law is legislation and is not in order on an appropriation bill.

For these reasons, Mr. Chairman, it is obvious that this amendment would impose additional duties on an executive officer and, therefore, clearly is subject to a point of order. . . .

MR. PANETTA: Mr. Chairman, in response to the point of order, I just make two points.

One, the fact that this is a limitation on an expenditure of funds, this is permitted under the House rules, that is, it is permitted where it involves small administrative detail, and that is essentially what we are dealing with here. We are not dealing with reinterpretation. We are not requiring new interpretation by the Internal Revenue Service, but what we are doing is telling them to abide by those procedures that were in effect in 1975.

Mr. Chairman, for those reasons, I think the amendment is in order.

THE CHAIRMAN:⁽¹²⁾ If the gentleman from California (Mr. Panetta) would permit the Chair to direct a question to the gentleman for clarification, as the Chair understood the statement of the gentleman's colleague from California in the concluding remarks, the amendment does, in fact, does it not, require going back to the law as it was prior to December 31, 1975, rather than the law as it exists today?

MR. PANETTA: Mr. Chairman, that is correct.

12. B. F. Sisk (Calif.).

THE CHAIRMAN: The Chair appreciates the candor of the gentleman from California (Mr. Panetta) in answer to the question. The Chair will state that he certainly did not mean to put the gentleman in this position purposely, but in view of the Chair's understanding of the language contained herein, he felt constrained to ask the question.

The statement of the gentleman from California (Mr. Panetta) would indicate that in fact the amendment would require a return to the law as it existed prior to December 31, 1975, and, therefore, the amendment does change existing law and constitutes legislation on an appropriation bill.

Therefore, the Chair sustains the point of order.

§ 48. Conditions Precedent to Spending

Requiring New Contractual Arrangements

§ 48.1 To an appropriation bill, an amendment making the money available on certain contingencies which would change the lawful mode of payment is legislation and not in order.

On Mar. 27, 1952,⁽¹³⁾ during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R.

13. 98 CONG. REC. 3064, 82d Cong. 2d Sess.