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 shipbuilding, 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: [14]

> 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

14. *House Rules and Manual* Sec. 834 (1973). See also the note following Sec. 834, *House Rules and Manual,* for history of the rule.

criteria of the Holman rule and "limitations" of the kind discussed in the latter part of this chapter.[15] Under the Holman rule, a provision that is admittedly "legislative" in nature is nevertheless held to fall outside the general prohibition against such provisions, because it accomplishes specified ends. The "limitations" discussed in later sections are not "legislation" and are permitted on the theory that Congress is not bound to appropriate funds for every authorized purpose.

Paragraph (b) of Rule XXI clause 2, as amended in the 98th Congress narrowed the "Holman rule" exception so that it covered only retrenchments reducing amounts of money covered by the bill, and not retrenchments resulting from reduction of the number and salary of officers of the United States or of the compensation of any person paid out of the U.S. Treasury. Paragraph (b) also eliminated separate authority conferred upon legislative committees or commissions with proper jurisdiction to report amendments retrenching expenditures, and permitted legislative committees to recommend such retrenchments to the Appropriations Committee for discretionary inclusion in the reported bill. Paragraph (d) as added in the 98th Congress provides a new procedure for consideration of all retrenchment amendments only when reading of the bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House.[16]

In applying the Holman rule, care should be taken, of course, in assessing the relevance of those decisions which involved interpretation of that rule but which did not reflect the current form or interpretation of the rule.[17]

Generally; Abolishing Offices

§ 4.1 Legislation to be in order under the Holman rule must be germane, must retrench expenditures, and the language used must be essential to the accomplishment of that retrenchment.

On Feb. 29, 1932,[18] the Treasury and Post Office Departments

15. See Sec. 64–79, infra.

16. See Rule XXI clause 2, *House Rules and Manual* § 834 (1983).

17. Some of the precedents which would now be found to be inapplicable, for example, are those at 4 Hinds' Precedents Sec. 3846, 3885–92; 7 Cannon's Precedents §§ 1484, 1486–92, 1498, 1500, 1515, 1563, 1564, 1569; and the decision of June 1, 1892, found at 23 CONG. REC. 4920, 52d Cong. 1st Sess.

18. 75 CONG. REC. 4957, 4958, 72d Cong. 1st Sess.

appropriation bill[19] as under consideration. A provision was read as follows:

> The offices of comptrollers of customs, surveyors of customs, and appraisers of merchandise (except the appraiser of merchandise at the port of New York), 29 in all, with annual salaries aggregating $153,800, are hereby abolished. The duties imposed by law and regulation upon comptrollers, surveyors, and appraisers of customs, their assistants and deputies (except the appraiser, his assistants and deputies at the port of New York) are hereby transferred to, imposed upon, and continued in positions, now established in the Customs Service by or pursuant to law, as the Secretary of the Treasury by appropriate regulation shall specify. . . .

A point of order was then made:

> MRS. [FLORENCE P.] KAHN [of California]: Mr. Chairman, I make a point of order against the section, beginning in line 16, page 11, and running through line 8, on page 12, that it is legislation on an appropriation bill and therefore out of order.

In responding to the point of order, Mr. Joseph W. Byrns, of Tennessee, stated:

> Mr. Chairman, the committee acknowledges that the provision to which the point of order has been made, abolishing these offices of appraisers, comptrollers, and surveyors of customs, is legislation on an appropriation bill and changes existing law.
>
> Under the provisions of clause 2 of Rule XXI, known as the Holman rule, legislation is in order upon an appropriation bill if it conforms to that rule.
>
> The pertinent portion of clause 2 of that rule is as follows:
>
> > 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. . . .
>
> The committee contends that the paragraph in this bill to which objection has been raised is in order under the provisions of the Holman rule.
>
> Under previous decisions legislation to be in order under this rule must be germane to the bill and must retrench expenditures in one of the three methods set forth in the rule, namely (1) by reduction of the number and salary of officers of the United States, (2) by the reduction of the compensation of any person paid out of the Treasury of the United States, or (3) by the reduction of the amounts of money covered by the bill.
>
> Under previous decisions of the House it has also been held that it is not enough merely to reduce the number and compensation of officers of the United States or the compensation of any person paid out of the Treasury, but the legislation must retrench ex-

19. H.R. 9699.

penditures in doing that. On this point Chairman Saunders, in a decision on December 9, 1922, said:

> The many rulings on this question are fairly uniform. They all hold that when, on the face of the bill, the proposed new legislation retrenches expenditures in one of three ways the point of order should be overruled, and the rule is generally laid down that the construction should be liberal in favor of retrenchment of government expenditures.

Under previous decisions it has also been held that the retrenchment in expenditures must not be conjectural or speculative but must show on the face of the legislation. In this connection Speaker Kerr held:

> In considering the question whether an amendment operates to retrench expenditures, the Chair can only look to what is properly of record before him—that is, the pending bill, the specific section under consideration, the law of the land, so far as it is applicable, and the parliamentary rules and practice of the House; and beyond these he is not permitted to go in deciding the question.

In discussing the question of the saving, Chairman Saunders also said:

> The Chair can only act upon the proposition which is presented on the face of that proposition.

In presenting this paragraph under the Holman rule the committee believes that it answers all of the requirements laid down under sound decisions:

(1) It is germane; (2) it reduces the number and salary of officers of the United States; (3) it retrenches expenditures; (4) the retrenchment is not speculative or argumentative but is specific; (5) every part of the legislation is essential.

1. Germaneness: The bill makes appropriations for the Customs Service, and customarily carries salaries for the offices proposed to be abolished.

2. Reduction of offices and salaries: The paragraph provides for the abolition of 29 offices established by law and now in existence, with salaries aggregating annually $153,800. Under the provisions of the paragraph these offices are eliminated commencing with the date of approval of this bill. The incumbents in them will at that time be removed from the pay roll.

3. Retrenchment of expenditures: The paragraph retrenches expenditures by the elimination of these offices and the saving of the salaries. That is complete on the face of the legislation.

4. The retrenchment is not speculative: The definiteness of the saving can not be controverted. The bill abolishes the 29 positions. They will be gone. The duties are transferred specifically to other positions in the service. The work will be continued. No added expense will come from this transfer, because the paragraph provides that the Secretary of the Treasury shall make the transfer and carry out the legislation without adding any new positions. The retrenchment is specific, definite, and complete. There is no escape from saving $153,800, and in making up this bill the committee has taken out that amount.

5. Every part of the legislation proposed is necessary to the reduction: The legislation is divided into the following parts:

(a) Abolition of the positions; (b) transfer of the duties to positions now

in the service; (c) change in title of existing positions after the transfer to make the title accord to the new duties transferred to them; (d) require the Secretary to administer the transfer of duties in such a way as not to establish any new position.

The necessity of all portions of the legislation and its intimate relationship to the effectiveness and conclusiveness of the retrenchment must be apparent. Without all of the parts the legislation would not be effective.

The Chairman, Edgar Howard, of Nebraska, ruled as follows:

I am afraid the Chair is not in harmony with the position of the lady from California. It would seem to the Chair that this paragraph is safely enfolded in the embrace of the Holman Rule. For the benefit of the lady from California the Chair will say that to be in order under the Holman Rule three things must concur—first, it must be germane; second, it must retrench expenditures; and, third, the language embodied in the paragraph must be confined solely to the purpose of retrenching expenditures.

The Chair finds upon examination of the paragraph that it is germane to the portion of the bill wherein it is inserted. The paragraph on its face definitely reduces the number of officers of the United States by 29 and thereby saves $153,800, thus retrenching expenditures.

The remaining question for the Chair to determine is whether there is any language in the paragraph that is legislation which does not contribute to the retrenchment of the $153,800.

The Chair has examined the paragraph with considerable care in order to determine whether the legislation is coupled up with and essential to the reduction of money. The Chair finds that the paragraph abolishes a number of positions, that it transfers the duties heretofore performed by the officers holding those positions to positions now in the service, that in order to accomplish that it confers upon the Secretary of the Treasury authority to designate the titles of the employees now in the service who are to perform the additional duties, that it requires the Secretary to administer the transfer of duties in such a way as not to establish any new positions. It is apparent to the Chair that all the legislation to be found in the paragraph is necessary to accomplish the purpose of retrenching expenditures. The Chair thinks that the paragraph clearly comes within the provisions of the Holman Rule and overrules the point of order.

§ 4.2 A provision in an appropriation bill abolishing the offices of the surveyor of customs at the Port of New York and seven comptrollers of customs and transferring the duties of these officers to positions already established in the Customs Service, was held to be in order under the Holman rule.

On Feb. 27, 1939,[20] during consideration in the Committee of the Whole of the Treasury and Post

20. 84 CONG. REC. 1961, 1962, 76th Cong. 1st Sess.

Office Departments appropriation bill (H.R. 4492), a point of order was raised against the following proviso, and proceedings then followed as indicated below:

Salaries and expenses: For collecting the revenue from customs, for the detection and prevention of frauds upon the customs revenue, and not to exceed $100,000 for the securing of evidence of violations of the customs laws . . . *Provided further,* That the offices of the surveyor of customs at the port of New York and seven comptrollers of customs, with annual salaries aggregating $51,600, are hereby abolished. The duties imposed by law and regulations upon the surveyor of customs at the port of New York and comptrollers of customs, their assistants and deputies are hereby transferred to, imposed upon, and continued in positions now established in the Customs Service by or pursuant to law, as the Secretary of the Treasury by appropriate regulations shall specify; and he is further authorized to designate the titles by which such positions shall be officially known hereafter. The Secretary of the Treasury, in performing the duties imposed upon him by this paragraph, shall administer the same in such a manner that the transfer of duties provided hereby will not result in the establishment of any new positions in the Customs Service.

MR. [JAMES M.] FITZPATRICK [of New York]: A point of order, Mr. Chairman.

THE CHAIRMAN:[21] The gentleman will state it.

MR. FITZPATRICK: Mr. Chairman, I make a point of order against the language on page 16, line 14, beginning with the words "Provided further," and extending down to line 5, on page 17, as legislation on an appropriation bill, especially that part of the language beginning in line 23, which states "and he is further authorized to designate the titles by which such positions shall be officially known hereafter."

To me this seems to be purely legislation on an appropriation bill. . . .

THE CHAIRMAN: Does the gentleman from Indiana wish to be heard?

MR. [LOUIS] LUDLOW [of Indiana]: Yes, Mr. Chairman. I do not believe there is any necessity for extended comment on this point of order.

In 1932 a provision in substantially identical language was included in the Treasury-Post Office appropriation bill. The gentlewoman from California [Mrs. Kahn] made a point of order against the provision. The Chair ruled that the five considerations essential to the application of the Holman rule were present in the language proposed, namely, (1) that it was germane, (2) that it reduced the number and salaries of officers of the United States, (3) that it retrenched expenditures, (4) that the retrenchment was not speculative or argumentative but was specific, and (5) that every part of the legislation was essential.

The point of order was, therefore, overruled and I submit it should be in the instant case.

May I say further there is no doubt about the application of the Holman rule in cases where it is ascertainable that there will be a substantial saving, whether or not any specific amount of saving is indicated. However, in the instant case we have the peculiarly ad-

21. John W. Boehne, Jr. (Ind.).

vantageous position of being able to certify to the exact amount in dollars and cents that will be saved, namely, $51,600. Therefore, I submit to the Chair this comes clearly within the Holman rule. I direct the Chair's attention to the fact that we have complied scrupulously with the Ramseyer rule, and he will find set forth on page 47 of our report the text of existing legislation and the text of the legislation we propose in place of it. Having done this, we have only to comply with the Holman rule to make the provision invulnerable to a point of order, and this we have done. I ask for the ruling of the Chair.

MR. FITZPATRICK: Mr. Chairman, the gentleman from Indiana states there will be a saving of $51,000. If the Chair will refer to page 18 of the report he will see that new positions involving a total of $51,600 will be created in the same department so the saving is just $600. Therefore, any claim that there will be a saving of $51,000 is just not so. The report shows new positions are being created in the same department.

MR. [VITO] MARCANTONIO [of New York]: If the gentleman will yield, may I say that this particular proviso takes powers away from one branch of a department and confers them on another, which clearly is legislation.

MR. LUDLOW: Of course, the one has no connection, relation, or relevancy to the other. All that is necessary for us to say is that in this transaction by abolishing certain positions we make a saving of $51,600. If we appropriate a similar amount of money to another branch for some other purpose, what connection does that have with this?

MR. FITZPATRICK: The money is to be appropriated to the same department for men to perform the same duties as the comptrollers whose positions you are abolishing.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York [Mr. Fitzpatrick] makes the point of order against the proviso on page 16 on the grounds that it embraces legislation in an appropriation bill. The gentleman from Indiana contends that although it is legislation on an appropriation bill it comes within the Holman rule and is therefore in order. The Holman rule may be found in the second sentence of clause 2 of rule XXI, and is as follows:

> 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.

In order to justify language in an appropriation bill under the Holman rule three things must concur: First, it must be germane; second, it must retrench expenditures in one of the ways enumerated in the rule; and, third, the language embodied in the provision must be confined solely to the purpose of retrenching expenditures.

The Chair has carefully examined the proviso to which the point of order is directed and is of the opinion that the language is germane and that on its face it definitely shows a reduction of the officers of the United States and a retrenchment of expenditures in the amount of $51,600.

It is also apparent to the Chair that all the legislation to be found in the paragraph is necessary to accomplish the purpose of retrenching expenditures. The Chair has been fortified in his opinion on this proposition by a decision made by Chairman Howard on February 29, 1932, on a proposition almost identical with the pending proviso. In that instance the Chair overruled the point of order on the ground that the provision came clearly within the Holman rule.

For the reasons stated the Chair is of the opinion that the language to which the point of order has been directed clearly comes within the provisions of the Holman rule, and, therefore, overrules the point of order.

Parliamentarian's Note: In both of the decisions cited above, an argument might have been advanced that a permanent change in law (the abolishment of an office) rendered the amendment or provision not germane to a one-year appropriation bill. In another ruling, in 1966, an amendment providing that appropriations "herein and heretofore made" shall be reduced by $70 million through the reduction of federal employees as the President determines was held to be legislative and not germane to the bill, since it went to funds other than those carried therein, and was therefore not within the Holman rule exception.[1]

Thus, one of the criteria frequently cited[2] as essential for application of the Holman rule was not met. Moreover, the Chair in the 1966 instance ruled that a reappropriation of unexpended balances, prohibited by Rule XXI clause 5 (now clause 6),[3] is not in order on a general appropriation bill under the guise of a Holman rule exception to Rule XXI clause 2.

Reduction in Number of Naval Officers

§ 4.3 An amendment reducing the number of naval officers and providing the method by which the reduction should be accomplished was allowed under the Holman rule.

On Jan. 20, 1938, during consideration in the Committee of the Whole of the Navy Department appropriation bill (H.R. 8993), a provision was read as follows:[4]

Pay of naval personnel: For pay and allowances prescribed by law of officers on sea duty and other duty, and officers on waiting orders, pay—$35,461,649 . . .; pay and allowances of the Nurse Corps, including assistant

1. See 112 CONG. REC. 27424, 27425, 89th Cong. 2d Sess., Oct. 18, 1966. See also § 5.9, infra.

2. See, in addition to the above 1939 ruling, § 4.1, supra.

3. See the discussion of this rule in Ch. 25, § 3, supra.

4. 83 CONG. REC. 853, 75th Cong. 3d Sess.

superintendents, directors, and assistant directors—pay, $560,020; rental allowance, $24,000; subsistence allowance, $23,871; pay, retired list, $271,976; in all $879,867; rent of quarters for members of the Nurse Corps; . . . reimbursement for losses of property as provided in the act approved October 6, 1917 (34 U.S.C. 981, 982) . . . $10,000; . . . in all, $176,845,282; and no part of such sum shall be available to pay active-duty pay and allowances to officers in excess of nine on the retired list, except retired officers temporarily ordered to active duty as members of retiring and selection boards as authorized by law: *Provided,* That, except for the public quarters occupied by the Chief of Office of Naval Operations . . . and messes temporarily set up on shore for officers attached to seagoing vessels, to aviation units based on seagoing vessels including officers' messes at the fleet air bases, and to landing forces and expeditions . . . no appropriation contained in this act shall be available for the pay, allowances, or other expenses of any enlisted man or civil employee performing service in the residence or quarters of an officer or officers on shore as a cook, waiter, or other work of a character performed by a household servant.

An amendment was then offered, and a point of order made, as indicated:[5]

The Clerk read as follows:

Amendment offered by Mr. [Byron N.] Scott [of California]: Page 26, line 8, after the word "*Provided*", insert "That commissioned line officers of the active list of the line of the Navy (Marine Corps) carried by law as additional numbers or passed over, shall be counted within the authorized total number of such commissioned officers of the active list of the line of the Navy: *Provided further*."

MR. [WILLIAM B.] UMSTEAD [of North Carolina]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman. I am willing to reserve the point of order if the gentleman would like to be heard.

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

MR. UMSTEAD: Mr. Chairman, I make the point of order that it is legislation upon an appropriation bill, that it is contrary to existing law, and that it does not and will not result in any reduction in expenditures under this section.

THE CHAIRMAN: Does the gentleman from California [Mr. Scott] care to be heard?

MR. SCOTT: Mr. Chairman, I expect the amendment will be held germane under the exception known as the Holman rule.

I call attention to the fact the act of July 22, 1933, fixes the maximum commissioned line officers' strength of the Navy— that is, the number of line officers that we can have in the Navy at any one time—at 6,531. This is exclusive of those officers who are known as additional numbers in grade or additional numbers.

On page 84 of the hearings had by the subcommittee of the Appropriations Committee and in the second table thereon, it will be seen that in-

5. *Id.* at pp. 854, 855.

6. R. Ewing Thomason (Tex.).

cluding additional numbers the line officers' strength after the commissioning of the class graduating from the Naval Academy in June, 1938, would [be] 6,562 and after the commissioning of the graduating class in June 1939, which is within the fiscal year for which this bill makes appropriation, the number will be 6,824.

The amendment does change existing law by providing that officers in additional numbers category shall be included in the authorized line-officer strength of the Regular Navy. At the present time additional numbers are not counted as a part of the authorized line-officer strength, which, as I have said, is 6,531. If the amendment which I have offered is agreed to, the effect would be—that is, if no counteracting legislation passes in the meantime—to deny commissions to at least 293 midshipmen. It would deny commissions to at least 293 midshipmen graduating in June 1939. This would make a difference between 6,824 and the 6,531 which is the line strength authorized by law.

The table on page 91 of the hearings indicates there will be 591 graduates in June 1939. This would mean a reduction of 293 officers who otherwise would have to be appropriated for and would retrench expenditures by reduction of the number and salary of the officers of the United States as follows:

For pay, subsistence, and transportation in the Navy, $44,975 in pay, including subsistence allowance, and $1,418 in transportation, which is borne out by the figures on pages 236, 242 and 275, page 236 providing for pay, page 242 subsistence and allowance, and page 275 for transportation. This would show the exact amount that would be saved by denying commissions to 293 midshipmen graduating in June 1939.

If the amendment is ruled in order I shall later offer amendments carrying into effect the reduction of amounts that would be caused if we commissioned the 293 graduates of the academy to whom I expect to deny commissions. . . .

THE CHAIRMAN: The Chair is ready to rule, unless the gentleman from North Carolina would like to be heard further.

In the opinion of the Chair, there is no question about the germaneness of the amendment. It seems to resolve itself largely into a question of facts and figures as to whether or not the amendment comes within the Holman rule. The part of the Holman rule, with which the members of the Committee are familiar, that is relevant here, is subsection 2 of rule XXI, which reads as follows:

> 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.

Section 1511 of volume VII of Cannon's Precedents of the House, reads as follows:

> A proposition reducing the number of Army officers and providing the method by which the reduction should be accomplished was held to come within the exceptions under

which legislation retrenching expenditure is in order on an appropriation bill.

A reading of the amendment, together with the facts stated by the gentleman from California which, in the opinion of the Chair, have not been successfully controverted, that the amendment will actually reduce the number of officers as well as effect a retrenchment of expenditures thereby brings the amendment within the Holman rule cited by the Chair, and therefore the point of order is overruled.

Ceiling on Employment

§ 4.4 To an appropriation bill, an amendment providing that no part of any appropriation therein shall be used to pay the compensation of any incumbent appointed to any position which may become vacant during the year, except when the agency involved has reduced its number of personnel in a specified manner, was held to be in order under the Holman rule as a reduction in the number and salary of the officers of the United States.

On Mar. 21, 1952,[7] after an amendment had been offered to the independent offices appropriation bill (H.R. 7072), the following point of order was raised, and the decision of the Chair was as indicated above. The amendment was as follows:

Amendment offered by Mr. Jensen: Page 64, after line 21, insert a new section as follows:

"No part of any appropriation or authorization contained in this act shall be used to pay the compensation of any incumbent appointed to any civil office or position which may become vacant during the fiscal year beginning on July 1, 1952: *Provided,* That this inhibition shall not apply—

"(a) to not to exceed 25 percent of all vacancies;

"(b) to positions filled from within a department, independent executive bureau, board, commission, corporation, agency or office, provided for in this act. . . . *Provided further,* That when any department, independent executive bureau, board, commission, corporation, agency or office, contained in this act shall, as the result of the operation of this amendment reduce its personnel to a number not exceeding 90 percent of the total number provided for in this act, such amendment may cease to apply and said 90 percent shall become a ceiling for employment during the fiscal year 1953, and if exceeded at any time during fiscal year 1953 this amendment shall again become operative."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill, and on the further ground that it places extra burdens and duties on the various boards, agencies, and bureaus.

7. 98 CONG. REC. 2696, 82d Cong. 2d Sess.

THE CHAIRMAN:[8] Will the gentleman point out the specific language in the amendment to which he refers?

MR. THOMAS: Yes, it is near the end:

> As the result of the operation of this amendment reduce its personnel to a number not exceeding 90 percent of the total number provided for in this act, such amendment may cease to apply and said 90 percent shall become a ceiling for employment during the fiscal year 1953, and if exceeded—

There is an alternative there, as the Chair will see—

> at any time during fiscal year 1953 this amendment shall again become operative.

Somebody has got to make some decisions there; it places extra duties in order to arrive at decisions; and on top of that it is legislation.

THE CHAIRMAN: The Chair will be glad to hear the gentleman from Iowa briefly if he desires to be heard on the point of order.

[MR. [BEN F.] JENSEN [of Iowa]: Mr. Chairman, the best evidence that this amendment is germane to the bill and is not legislation is the fact that the amendment was adopted by the House last year and was held to be germane by the Chair. Points of order were raised against it at that time, as I recall.

The amendment is not mandatory in the sense that the word "may" is used where the additional burdens and responsibilities might be placed on the agencies other than the 10 percent reduction that must be made which is purely a limitation on an appropriation bill and comes within the language and the intent of the Holman rule.

MR. [ALBERT A.] GORE [of Tennessee]: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair will hear the gentleman.

MR. GORE: Mr. Chairman, the amendment offered by the gentleman from Iowa is legislation on an appropriation bill for the following reasons: As stated in the next to the fourth line from the bottom, upon the attainment of that condition under operation of the amendment, thereupon the amendment affirmatively legislates in the following language:

> Said 90 percent shall become a ceiling for employment during the fiscal year 1953.

That language, I respectfully submit, Mr. Chairman, is legislation, it is affirmatively fixing a legal ceiling upon the employment upon the attainment of a condition in the amendment; therefore I respectfully suggest it is legislation on an appropriation bill.

THE CHAIRMAN: . . . The gentleman from Tennessee says that the language contained in the amendment "said 90 percent shall become a ceiling for employment during the fiscal year 1953" is legislation.

The Chair is of the opinion that even if that language is legislation, it is clearly within the Holman rule, as suggested by the gentleman from Iowa (Mr. Jensen). This, in the opinion of the Chair, is a limitation within the meaning of the Holman rule by limiting the number of employees within these agencies of Government covered by this bill and the amount of money to be made available under this bill.

. . . The Chair is of the opinion that the amendment is in order and there-

8. Wilbur D. Mills (Ark.).

fore overrules the point of order made by the gentleman from Texas.

Reduction of Total Appropriation

§ 4.5 To a general appropriation bill, an amendment providing that total appropriations therein be reduced by a specified amount was held in order (even though legislative in form) since it provided for a retrenchment of expenditures and thus came within the Holman rule.

On Apr. 5, 1966, [9] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 14215), the following proceedings took place:

[MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bow: On page 46, after line 21, insert a new section as follows:

"Sec. 302. Appropriations made in this Act are hereby reduced in the amount of $7,293,000."

MR. [WINFIELD K.] DENTON [of Indiana]: Mr. Chairman, I make a point of order against the amendment, but will reserve the point of order. . . .

Mr. Chairman, there are numerous agencies covered by this appropriation bill. While the executive branch has discretion not to spend this money, the proposed amendment would force the Executive to assign priorities to the various agencies. It would place discretionary action with the President and, it is the Congress who determines how funds shall be appropriated. The amendment would take that authority from the Congress and give it to the Executive.

THE CHAIRMAN: [10] I understand that the gentleman from Indiana is insisting on his point of order?

MR. DENTON: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair is prepared to rule. The amendment would reduce the appropriations in this bill in the amount of $7,293,000. The so-called Holman rule provides:

> 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.

Therefore, the Chair overrules the point of order.

Reducing Funds, Prohibiting Particular Use

§ 4.6 An amendment reducing an amount in a general appropriation bill for the Postal Service and providing that no funds therein be used to

9. 112 Cong. Rec. 7689, 89th Cong. 2d Sess.

10. Charles M. Price (Ill.).

implement special bulk third-class rates for political committees was held in order either as a negative limitation not specifically requiring new determinations or as a retrenchment of expenditures under the "Holman Rule" even assuming its legislative effect, since the reduction of the amount in the bill would directly accomplish the legislative result.

On July 13, 1979,[11] during consideration in the Committee of the Whole of H.R. 4393 (Treasury Department, Postal Service and general government appropriation bill) a point of order against an amendment was overruled as indicated below:

THE CHAIRMAN:[12] The Clerk will read.

The Clerk read as follows:

For payment to the Postal Service Fund for public service costs and for revenue foregone on free and reduced rate mail, pursuant to 39 U.S.C. 2401 (b) and (c), and for meeting the liabilities of the former Post Office Department to the Employees' Compensation Fund and to postal employees for earned and unused annual leave as of June 30, 1971, pursuant to 39 U.S.C. 2004, $1,697,558,000.

[MR. [DAN] GLICKMAN [of Kansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Glickman: On page 9, line 3, delete "$1,697,558,000." and insert in lieu thereof "$1,672,810,000: *Provided,* That no funds appropriated herein shall be available for implementing special bulk third-class rates for 'qualified political committees' authorized by Public Law 95–593.". . .

[MR. [ROBERT C.] ECKHARDT [of Texas]: My point of order is that the amendment places a burden on the Postal Department which would not exist but for this amendment. . . . [I]f the amendment is passed, it does not merely withhold funds, but it requires the Postal Department to adjust the rates of the Postal Department in order to comply with the limitation contained in this amendment. Therefore, this is not a mere limitation on an appropriation but it is a limitation which requires the Postal Department, as the gentleman has stated in his letter, to adjust all rates, determine which rates need adjustments, which ones qualify or would not qualify under the provision, and, thus, reduce those rates to the figures that would permit the reduction in revenue. Therefore, it seems clear to me that this affords an extremely heavy burden on the Postal Department which would not otherwise exist but for the passage of the amendment. If this were not true, the situation would create an anomalous condition which I had pointed out in my initial question to the gentleman in the well and the author of the amendment. It would create a situation in which the benefits provided under section 3626 of title 39 would still be enjoyed by qualifying political committees, and yet the Postal Department would not

11. 125 CONG. REC. 18453–55, 96th Cong. 1st Sess.

12. Richardson Preyer (N.C.).

be able to receive the adjustment due to the additional costs. It seems to me that in effect if the gentleman is correct and if adjustments are made in the rate, there is another change in substantive law occasioned by the adjustment in rates. That is, the adjustment in rates substantively changes Public Law 95–593 so as to deprive qualified political committees, including the Democratic Committee and the Republican Committee, and all others that qualify, of the benefits that we have enacted in another piece of legislation, not one that deals with the Postal Department but deals generally with the rates of political parties with respect to the use of the mails.

MR. GLICKMAN: . . . The amendment is strictly one of limitation. It reduces funding by $25 million and limits the use of that funding with respect to the charging of postal rates. I would state for the gentleman and for the Chair that section 3627 of title 39, United States Code is discretionary authority to adjust rates if the appropriation fails and is not mandatory authority and, therefore, I do believe that the amendment is merely a limitation and is germane. . . .

THE CHAIRMAN: The Chair is prepared to rule on the point of order.

In the opinion of the Chair, the amendment constitutes a negative limitation on how funds in the bill are spent rather than being legislation on an appropriations bill. No new determinations are required. Even if the amendment should be considered as constituting legislation, it constitutes a retrenchment because it cuts the amounts in the bills and the legislative effect directly contributes to that reduction.

The Chair, therefore, overrules the point of order.

Exception From a Retrenchment

§ 4.7 To an amendment in order under the Holman rule containing legislation but retrenching expenditures by a formula reduction for every agency funded by the bill, an amendment exempting from that reduction several specific programs does not add further legislation and is in order.

On July 30, 1980, [13] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 7591), a point of order against an amendment was not sustained, as indicated below:

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Whitten to the amendment offered by Mr. (Herbert E.) Harris (of Virginia): Strike (out the) period and add: ", except that this limitation shall not apply to emergency or disaster programs of the Farmers Home Administration and the Agricultural Stabilization and Conservation Service and programs for the control of infectious or contagious diseases of hu-

13. 126 Cong. Rec. 20503, 96th Cong. 2d Sess.

mans and animals carried out by the Food and Drug Administration and the Animal and Plant Health Inspection Service.".

MR. HARRIS: Mr. Chairman, I would like to make a point of order on that amendment. . . .

I feel the amendment is clearly legislation on an appropriation bill and does in fact do violence to my amendment. . . .

MR. WHITTEN: . . . Deschler's Procedure, chapter 25, section 9.7 (states):

> An exception to a valid limitation in a general appropriation bill is in order, providing the exception does not add language legislative in effect.

I do not consider that this adds legislative language to the amendment. It is an exception to the limiting provision as offered. I respectfully submit that it is in order and should be considered.

THE CHAIRMAN:[14] The Chair is ready to rule.

An exception to a limitation or a retrenchment which does not add legislation is clearly in order under the precedents, and the point of order is not sustained.

Exception From a Limited Use

§ 4.8 To an amendment retrenching expenditures in a general appropriation bill by reducing amounts therein and prohibiting their availability to particular recipients, an amendment lessening the amount of the reduction and also providing an exception from the limitation may be in order as a perfection of the retrenchment if funds contained in the bill remain reduced thereby.

On July 13, 1979,[15] it was held that, to an amendment to a general appropriation bill limiting the use of funds for the Postal Service to implement special mail rates for qualified political committees as authorized by law, an amendment lessening the amount of the reduction of funds in the original amendment and also excepting from the limitation certain congressional political committees as defined in law was in order either as an exception from a valid limitation which did not add legislation (since the determinations as to which political committees fit those descriptions were already required by law of the Postal Service) or as perfecting a retrenchment amendment while still reducing funds in the bill. The proceedings were as follows:

MR. [WILLIAM D.] FORD of Michigan: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Ford of Michigan to the amendment offered

14. James C. Corman (Calif.).

15. 125 CONG. REC. 18456, 18457, 96th Cong. 1st Sess.

by Mr. [Dan] Glickman [of Kansas]: On page 9, line 3, delete "$1,697,558,000." and insert in lieu thereof "$1,676,810,000" and strike the period after "Public Law 95–593" and insert the following: ", other than the national, state or congressional committee of a major or minor party as defined in Public Law 92–178, as amended.". . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, the Ford amendment, is, indeed legislation on an appropriations act, because by limiting the amount available under the bill, the Postal Service will be required to establish two different rates; one for major and minor political parties entitled under the bill and another rate for political parties which do not qualify.

Unlike the discretionary authority under section 3627, this adjustment would be mandatory.

I would like to point out that the reference in the bill is to Public Law 92–178, which in its title VII deals with certain tax incentives for contributions to candidates for public office and which sets out certain definitions with respect to national committees of national political parties and State committees of a national political party as designated by the national committee of such party. . . .

Now, there are definitions here and those definitions must be addressed by another body besides the Post Office Department; but here the Post Office Department is going to have to determine whether a committee is a State committee of a national political party as designated by the national committee of such party and must apply the definitions as the result of additional duties attributed and ascribed to the Postal Department that are not previously attributable to that Department; so there is, indeed, an additional burden with respect to defining or establishing and applying the definition of a major or minor party as defined under this law and also with respect to establishing two separate rates in order to accomplish the objective sought here. . . .

MR. FORD of Michigan: . . . First, I believe that the gentleman from Texas (Mr. Eckhardt) confuses the addition of duties to the executive branch that require the exercise of discretion and the imposition of an obligation to make determinations that would not otherwise have to be made.

What our amendment does is it simply refers them to a clearly defined interpretation, consistent with virtually everything else that is contained in the postal code, with respect to qualifying and nonqualifying people. . . .

The second point is that I would refer to the gentleman's argument against the amendment offered by the gentleman from Kansas (Mr. Glickman) on this point of order in which he pointed out that the effect of not adopting the amendment offered by the gentleman from Kansas (Mr. Glickman) would be that the law would not be changed, and that the Post Office Department would have a continuing duty to determine whether a political party was a political party for the purpose of giving them a subsidy, even without the Glickman amendment. I suggest that the effect of knocking out my amendment will be to leave the duty of the Postal Service to make that determination much broader and much more complex then it would with the narrowing effect of our amendment which requires that they need only

pick up the telephone and call the Federal Election Commission and ask, "Who, if anyone, qualifies for this class of mail? We have got some people who are applying for a permit. Shall we grant them the permit?"

The way this discretion is exercised is not that you mail a letter and wait to see if the Post Office catches you; you go down to the Post Office first and you say, "I am representing the Democratic"—or the Republican—"National Committee. We wish to have a permit with a number assigned to us so that our mail is clearly identified and to entitle us to mail as a nonprofit organization third class bulk mail."

At that point the Postal Service makes a determination as to whether or not you qualify. They do not make a determination as to whether the Democratic Party or the Republican Party qualifies; they simply pick up the phone and call the FEC and find out. . . .

THE CHAIRMAN:[16] The Chair is prepared to rule.

Exceptions to limitations or retrenchments permitted to remain in the bill are permitted if not constituting additional legislation. In the opinion of the Chair, the law already imposes a duty on the Postal Service, under Public Law 95–593, to determine whether any political committee is a National, State, or congressional committee of a political party.

Public Law 95–593 provides definitions of what constitutes political parties. Since these standards exist in the law, it is the opinion of the Chair that no additional burden is imposed by the amendment, or, in any event, the amendment remains a retrenchment, and the point of order is overruled.

16. Richardson Preyer (N.C.).

§ 5. Provisions Not Within the Halman Rule

Certainty of Reduction Must Appear

§ 5.1 An amendment to a general appropriation bill, proposing legislation which may result in a future deficiency appropriation and therefore does not patently reduce expenditures, though providing for a reduction in the figures of an appropriation, is not in order under the Holman rule.

On June 3, 1959,[17] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7454), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

> Amendment offered by Mr. [Daniel J.] Flood [of Pennsylvania]: Page 2, line 12, strike out "$3,233,063,000" and insert "$3,233,000,000, to be disbursed in such manner that the military personnel, Regular Army, shall be maintained at not less than 900,000 during fiscal year 1960."

17. 105 CONG. REC. 9714, 9715, 86th Cong. 1st Sess.