

Amendment offered by Mr. [Earl] Chudoff [of Pennsylvania]: On page 3, at the end of the page add a new section, as follows:

Sec. 4. Any tax recovered by any State by virtue of the enforcement of this act shall pay into the Treasury of the United States a sum equal to 10 percent of all such taxes recovered.

A point of order was raised against the amendment, as follows:

MR. [JERE] COOPER [of Tennessee]: Mr. Chairman, I make the point of order against the amendment that it is not germane to this bill or any provision of the bill.

The Chairman,<sup>(11)</sup> in ruling on the point of order, stated:

The amendment offered by the gentleman from Pennsylvania adds a new section, section 4, which is, by its own language, legislation that is not germane to the bill in question. The point of order is sustained.

***Bill Amending Small Business Act—Senate Amendment Providing for Legal Fees for Parties Prevailing Against United States***

**§ 19.35 To a House bill narrowly amending the Small Business Act reported from the Committee on Small Business, a Senate amendment adding a new title pro-**

11. James W. Trimble (Ark.).

**viding for the payment of attorney fees and other court expenses to parties prevailing against the United States in court litigation and amending title 28 (within the jurisdiction of the Committee on the Judiciary) was held not germane (pending a motion to recede and concur in the Senate amendment with an amendment including such provisions, after the conference report on the bill had been ruled out of order).**

The proceedings of Oct. 1, 1980, relating to H.R. 5612 (addressing small business assistance and reimbursement for certain fees), are discussed in § 26.26, *infra*.

**§ 20. Amendment Striking Portion of Text of Bill or Amendment**

A proposal to strike out a portion of a text may be ruled out of order as not germane to the proposition under consideration. Generally, an amendment which, by striking out a portion of the text, changes the purpose and scope of the bill is not germane.<sup>(12)</sup> Thus, if the effect of an amendment striking out language is to alter the

12. See, for example, §§ 20.3, 20.4, *infra*.

scope and import of the text to such extent as to present a different subject from that under consideration, the amendment is not germane.<sup>(13)</sup> Similarly, it is sometimes stated that a proposal to eliminate portions of a text, thereby extending the scope of its provisions to subjects other than those originally presented, is in violation of the rule requiring germaneness.<sup>(14)</sup>

Conversely, an amendment which by striking out a portion of the text limits, narrows or does not change the purpose and scope of the bill may be germane.<sup>(15)</sup>

Perfecting amendments to a title in a bill may be offered while there is pending a motion to strike out the title, and are required to be germane to the text to which offered, not to the motion to strike out.<sup>(16)</sup>

### ***Amendment as Changing Scope and Meaning of Text***

**§ 20.1** An amendment simply striking out language already in a bill may not be ruled out as non-germane unless the effect of such amend-

13. See § 15.44, supra.

14. See §§ 9.12, supra, and 20.3, infra.

15. See § 20.6, infra.

16. See § 18.2, supra.

**ment would change the scope and meaning of the text.**

The proceedings of June 7, 1977, relating to the Federal Employees Political Activities Act of 1977,<sup>(17)</sup> wherein the Chair ruled out amendments to strike language because the effect of the amendments was to enlarge the scope of the bill, are discussed in § 20.2, infra.

### ***Provision Excluding Uniformed Services From Coverage of Bill Affecting Federal Employees—Amendment To Strike Exclusion***

**§ 20.2** To a bill governing the political activities of a certain class of federal employees, an amendment broadening the scope of the bill to cover another class of federal employees is not germane; thus, where a bill contained a provision excluding from its coverage a particular class (members of the uniformed services), the effect of which was to narrow the scope of the bill to another single class (federal civilian employees), amendments proposing to strike out that exclusion from coverage, thereby broadening

17. H.R. 10.

**the scope of the bill to include the separate class, were held not germane.**

On June 7, 1977,<sup>(18)</sup> during consideration of the Federal Employees' Political Activities Act of 1977,<sup>(19)</sup> the Chair held that an amendment which by deleting an exception to the definition of the class covered by the bill and by inserting new provisions has the effect of including another class, is not germane. The amendment and proceedings related thereto were as follows:

The Clerk read as follows:

Amendments offered by Mr. [Thomas N.] Kindness [of Ohio]: Page 28, line 12, strike out "but does not include a member of the uniformed services" and insert "including any member of the uniformed services". . . .

Page 38, line 14, immediately before the period insert "or by reason of being a member of the uniformed services".

Page 45, before line 8, insert the following:

"(j) The preceding provisions of this section shall not apply in the case of a violation by a member of a uniformed service. Procedures with respect to any such violation shall, under regulations prescribed by the Secretary concerned, be the same as those applicable with respect to violations of section 892 of title 10.

Page 46, after line 12, insert the following:

"(c) The preceding provisions of this section shall not apply in the

case of a violation by a member of the uniformed services. Any such violation shall, under regulations prescribed by the Secretary concerned, be subject to the same penalties as apply in the case of a violation of section 892 of title 10."

Page 47, after line 21, insert the following:

"(d) In the case of members of the uniformed services, the Secretary concerned shall carry out the responsibilities imposed on the Commission under the preceding provisions of this section." . . .

Page 48, after line 17, insert:

"(c) In the case of members of the uniformed services, the Secretary concerned shall prescribe the regulations the Commission is required to prescribe under this section, section 7322(9), and section 7324(c)(2) and (3) of this title." . . .

MR. [WILLIAM] CLAY [of Missouri]: Mr. Chairman, I raise the point of order on the grounds that the matter contained in the amendment is in violation of the germaneness rule stated in clause 7 of House rule XVI.

The instant amendment proposes to make the bill applicable to an entirely new class of individuals other than what is covered under the bill.

The reported bill applies only to civilian employees in executive branch agencies, including the Postal Service and the District of Columbia government, who are presently under the Hatch Act.

The amendment seeks to add a totally different class of individuals to the bill; namely, military personnel who are not now covered by the Hatch Act. Accordingly the amendment is not germane to the bill. . . .

MR. KINDNESS: Responding [to] the point of order, Mr. Chairman, the bill,

18. 123 CONG. REC. 17713, 17714, 95th Cong. 1st Sess.

19. H.R. 10.

as before us at this time, has been expanded in considerable degree by the Clay amendment and by other amendments that have been adopted during the course of the consideration of the bill in the Committee of the Whole.

However, I would point out that the amendment is germane, and I particularly direct the attention of the chairman and the Members to line 12 of page 28 where, in the definition of the word "employee" the words appear, on line 12, "but does not include a member of the uniformed services."

Mr. Chairman, that is the very crux of this whole point. The committee has given consideration, apparently, to the inclusion or exclusion of members of uniformed services under the provisions of this bill. A conscious decision was apparently made; and as reported to the House, this bill has that conscious decision reflected in it not to include members of the uniformed services.

Mr. Chairman, the issue is directly before the House in that form, so that the amendment offered by the gentleman from Ohio is in order, is pertinent, and is germane. It could not be nongermane.

THE CHAIRMAN: <sup>(20)</sup> The Chair is prepared to rule on the point of order.

The gentleman from Missouri (Mr. Clay) makes a point of order that the striking of the language, "but does not include a member of the uniformed services," and the remainder of the amendment broadens the scope of the bill in violation of rule XVI, clause 7.

The gentleman from Ohio (Mr. Kindness) argues that because the exclusion

from coverage for the military is in the bill and has received consideration, that the germaneness rule should be more liberally interpreted.

An annotation to clause 7, rule XVI, says that, in general, an amendment simply striking out words already in a bill may not be attacked as not germane unless such action would change the scope and meaning of the text. Cannon's VIII, section 2921; Deschler's chapter 28, sec. 15.3.

On October 28, 1975, Chairman Jordan of Texas ruled, during the consideration of a bill H.R. 2667, giving the right of representation to Federal employees during questioning as follows:

In a bill amending a section of title 5, United States Code, granting certain rights to employees of executive agencies of the Federal Government, an amendment extending those rights to, in that case, legislative branch employees, as defined in a different section of that title, was held to go beyond the scope of the bill and was ruled out as not germane.

The class of employees included in this legislation is confined to civilian employees of the Government, and those specifically so stated and described as being civilian employees of the executive agencies, of the Postal Service and of the District of Columbia government, and a reference to the Hatch Act as currently in force indicates that military personnel are not included in that act.

It is obvious that the purpose and the scope of the act before us as referred to in its entirety as amended by this bill, is, "to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as pri-

**20.** James R. Mann (S.C.).

vate citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.”

The Chair finds that the striking of the language excluding military employees and inserting language covering the military broadens the class of the persons covered by this bill to an extent that it substantially changes the text and substantially changes the purpose of the bill. The fact that the exclusion of military personnel was stated in the bill does not necessarily bring into question the converse of that proposition. The Chair therefore finds that the amendment is not germane and sustains the point of order. . . .

MR. KINDNESS: Mr. Chairman, I have [a] parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. KINDNESS: Mr. Chairman, my parliamentary inquiry is this: Is there a way to appeal the ruling of the Chair within the rules of the House?

THE CHAIRMAN: Yes, there is.

MR. KINDNESS: So that I may respectfully appeal the ruling of the Chair at this point?

THE CHAIRMAN: If the gentleman from Ohio desires to do so.

Does the gentleman desire to appeal the ruling of the Chair?

MR. KINDNESS: No, Mr. Chairman, I do not so desire at this point.

Subsequently, Mr. Kindness offered another amendment deleting the language excluding the uniformed services from coverage under the bill:

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

The Clerk read as follows:

Amendment offered by Mr. Kindness: Page 8, line 12, strike out “but does not include a member of the uniformed services” and insert “including any member of the uniformed services”.

Page 35, line 2, strike out “or a member of a uniformed service.”.

MR. CLAY: Mr. Chairman, I make a point of order that the amendment is not germane, that it goes beyond the scope of the bill, and that it amends existing law not cited in the bill. . . .

MR. KINDNESS: Mr. Chairman, I carefully listened to the ruling of the Chair on a prior amendment which dealt in greater detail with the subject of members of the uniformed services who are specifically excluded from this bill but only by the language that is included in this amendment. All this amendment does is to strike language that is in the bill. That has to be germane. It has to be a part of the bill before us, in the most germane sense, the most consistent sense.

I would urge that the point of order is not well taken on its face, because the amendment only strikes language that is in the bill.

THE CHAIRMAN: The Chair feels that it covered the point made at this time by the gentleman from Ohio (Mr. Kindness) in its first ruling, in which the Chair cited from the House Rules and Manual of the 95th Congress, paragraph 7, of rule XVI and precedents contained in Cannon’s volume VIII, sections 2917–2921.

Let the Chair quote the language that the gentleman from Ohio (Mr. Kindness) would find to be most favorable. The language is as follows:

In general, an amendment simply striking out words already in a bill

may not be ruled out as not germane unless such action would change the scope and meaning of the text.

The Chair would say that the gentleman's position was stronger in the first instance wherein he did supply language, and the Chair feels in making this second ruling that the broadening aspect of the gentleman's initial language is such as to take it out of the scope of the bill. By reversing that language and striking it out and putting it in affirmative terms, as the gentleman now does, the gentleman's amendment is subject to the point of order, and the ruling is the same.

The point of order is sustained, and the amendment is not in order.

***Amendment Broadening Definition of Criminal Offense***

**§ 20.3 To a bill making it a penal offense for three or more persons acting in concert without authority of law to kill or injure any person in the custody of a peace officer, an amendment proposing to strike out the words "in the custody of a peace officer" was held to be not germane.**

In the 75th Congress, an anti-lynching bill<sup>(1)</sup> was under consideration, which stated:<sup>(2)</sup>

Be it enacted, etc., That for the purposes of this act the phrase "mob or ri-

1. H.R. 1507 (Committee on Rules discharged).
2. See 81 CONG. REC. 3544, 75th Cong. 1st Sess., Apr. 15, 1937.

otous assemblage," when used in this act, shall mean an assemblage composed of three or more persons acting in concert without authority of law to kill or injure any person in the custody of any peace officer with the purpose or consequence of depriving such person of due process of law or the equal protection of the laws.

An amendment was offered, as follows:

Amendment offered by Mr. [William M.] Colmer [of Mississippi]: On page 1, strike out all of lines 3 to 9, inclusive, and insert in lieu thereof the following:

That for the purpose of this act the phrase "mob or riotous assemblage" when used in this act shall mean an assemblage composed of two or more persons acting in concert without authority of law to kill, injure, or kidnap any person with the purpose or consequence of depriving such person of due process of law and the equal protection of the law.

Mr. Joseph A. Gavagan, of New York, raised the point of order that the amendment was not germane to the bill. He stated:

. . . The gentleman's amendment refers to the crime of kidnaping, entirely different from the crime we are attempting to legislate in this bill.

The Chairman,<sup>(3)</sup> in ruling on the point of order, stated:

. . . The gentleman from Mississippi offers an amendment to the first section of the bill to include kidnaping in addition to the crime of lynching, but in addition thereto the gentleman, by

3. John J. O'Connor (N.Y.).

his amendment, strikes out the words in line 7 “in the custody of any peace officer.” The gentleman’s amendment would extend the class to which this bill applies to kidnaping. The addition of kidnaping might not be objectionable, but this bill applies to the death or injury of persons “in the custody of a peace officer”, while the proposed amendment takes those words, quoted, out of the bill. The Chair does not think the amendment is germane, and sustains the point of order.

The following amendment was then offered:

Amendment by Mr. Colmer: Page 1, line 5, strike out the word “three” and insert in lieu thereof the word “two”, and in line 7, strike out the words “in the custody of any peace officer.”

Mr. Gavagan having again raised a point of order, the Chairman ruled as follows:

. . . The ruling of the Chair just made on the previous amendment offered by the gentleman from Mississippi will apply to this amendment, as to the second provision in the amendment striking out the language of the bill “in the custody of any peace officer.” The Chair therefore sustains the point of order.

***Exportation of Arms to Spain—  
Amendment To Strike Reference to Spain***

**§ 20.4 To a joint resolution prohibiting the exportation of arms and ammunition to Spain, an amendment pro-**

**posing to strike out the reference to Spain was held to be not germane.**

In the 75th Congress, a bill<sup>(4)</sup> was under consideration which prohibited the exportation of arms to Spain.<sup>(5)</sup> An amendment was offered<sup>(6)</sup> as described above. In response to a point of order raised by Mr. Samuel D. McReynolds, of Tennessee,<sup>(7)</sup> the Speaker<sup>(8)</sup> stated:

Now, what is the purpose and scope of the Senate resolution which is under consideration? There can be no controversy that it relates entirely to the question of the shipment of arms and ammunition to Spain—one particular country—and regulates certain phases of shipments to warring civil factions in that country; but under the suggestion made in the amendment offered by the gentleman from Texas it certainly departs entirely from the limitation with reference to the shipment of munitions to the one Government of Spain, and broadens the field so as to apply to any government.

Relying on the principle that, “an amendment which, by striking out a portion of the text, changes the purpose and scope of a bill, is not germane,” the Speaker sustained the point of order.

4. S.J. Res. 3.

5. See 81 CONG. REC. 90, 75th Cong. 1st Sess., Jan. 6, 1937.

6. *Id.* at p. 96.

7. *Id.* at p. 97.

8. William B. Bankhead (Ala.).

***Prohibition on Use of Federal Payment Funds for Abortions—Motion To Strike Reference to Federal Payment Funds***

**§ 20.5 A motion to strike out a portion of the text of an amendment, thereby extending its scope to a more general subject, is not germane; thus, to a substitute amendment to the District of Columbia Appropriation bill prohibiting the use of annual federal payment funds therein for the performance of abortions, an amendment striking the reference to federal payment funds, thereby broadening the scope of the substitute to cover any funds contained in the bill (such as “local” District of Columbia funds), was held to be not germane.**

During consideration of H.R. 4580<sup>(9)</sup> in the Committee of the Whole on July 17, 1979,<sup>(10)</sup> the Chair sustained a point of order against the amendment described above. The proceedings were as follows:

9. The District of Columbia Appropriations for fiscal 1980.
10. 125 CONG. REC. 19064, 19066, 96th Cong. 1st Sess.

Amendment offered by Mr. Dornan: Page 17, after line 2, add the following new section:

“Sec. 221. None of the funds appropriated under this Act shall be used to pay for abortions.”. . .

MR. CHARLES WILSON of Texas: Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Charles Wilson of Texas as a substitute for the amendment offered by Mr. Dornan: “None of the funds in this Act provided by the Federal payment shall be used to perform abortions.”. . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Bauman to the amendment offered by Mr. Charles Wilson of Texas as a substitute for the amendment offered by Mr. Dornan: delete from the amendment of the gentleman from Texas the following words: “provided by the Federal payment”.

A point of order was made, as follows:

MR. CHARLES WILSON of Texas: . . . As I understand the amendment it in essence takes it back to the original Dornan amendment without providing for the substitute. . . .

MR. BAUMAN: Mr. Chairman, that is not a point of order, it simply is an accurate description of the amendment.

MR. CHARLES WILSON of Texas: Mr. Chairman, I suppose the point of order is that it is a sham amendment in that it just repeats the intent of the original amendment.

THE CHAIRMAN:<sup>(11)</sup> In the opinion of the Chair, the gentleman from Texas is suggesting that the perfecting amendment broadens the scope of the substitute amendment, and for that reason is not germane. The point of order is sustained under the precedents that a motion to strike cannot broaden the scope of the pending proposition.

MR. BAUMAN: Mr. Chairman, I wonder if the Chair could cite a precedent for his ruling?

THE CHAIRMAN: Deschler's Procedure chapter 28, section 15.3.

***Surplus Agricultural Commodities—Language Concerning Transportation of Commodities***

**§ 20.6 To that provision in a bill authorizing the President to furnish emergency assistance to friendly nations from stocks of surplus agricultural commodities to be made available “f.o.b. vessels in United States ports,” an amendment striking out “f.o.b. vessels in United States ports” was held germane, taking into account other provisions in the bill already read for amendment.**

In the 83d Congress, during consideration of the Agricultural Trade Development and Assistance Act of 1954,<sup>(12)</sup> an amend-

11. Albert A. Gore, Jr. (Tenn.).

12. S. 2475 (Committee on Agriculture).

ment was offered<sup>(13)</sup> as described above. A point of order was raised against the amendment, as follows:

MR. [CLIFFORD R.] HOPE [of Kansas]: Mr. Chairman, I make the point of order that the amendment is not germane in that it extends the scope of authority which is given the Commodity Credit Corporation under this bill. . . . If the amendment were adopted, it would mean that the obligation of the Commodity Credit Corporation would be to furnish transportation anywhere in the world we might ship these commodities. . . .

In defending the amendment, the proponent, Mr. Thor C. Tollefson, of Washington, stated:

. . . This bill provides for the disposition of agricultural surplus products to foreign nations and involves necessarily the transportation of those surplus farm products. . . . The language of the present bill gives the President authority on page 6, line 21, and I read, “and shall make funds available to finance the sale and exportation of surplus agricultural commodities.”

That is contained, of course, in section 1, but it is in the bill, and it gives the President authority to finance the sale and to finance the exportation which would exclude the transshipment of products not only in the United States but on vessels to carry them abroad.

The Chairman,<sup>(14)</sup> in ruling on the point of order, stated:

13. 100 CONG. REC. 8370, 83d Cong. 2d Sess., June 16, 1954.

14. Gerald R. Ford, Jr. (Mich.).

It seems to the Chair, on the basis of section 204 of the bill, and other related portions of the bill which deal with the question of transportation of the commodities which are involved in this legislation, that the amendment offered by the gentleman from Washington [Mr. Tollefson] is germane; and the Chair so rules.

***Motion To Strike Not Germane as Substitute***

**§ 20.7 During consideration of a bill relating to salaries of government employees, it was held that, to an amendment seeking to change specific dollar amounts, an amendment offered as a substitute proposing to strike out other portions of the bill not amended by the original amendment was not germane.**

In the 77th Congress, a bill<sup>(15)</sup> was under consideration comprising an amendment to the Classification Act of 1923 to increase certain salaries. An amendment was offered<sup>(16)</sup> whose purpose was described by the proponent as follows:

MR. [ROBERT] RAMSPECK [of Georgia]: Mr. Chairman, this is the amendment which I stated during general de-

15. H.R. 6217 (Committee on Civil Service).

16. 88 CONG. REC. 5885, 77th Cong. 2d Sess., July 1, 1942.

bate I would offer for the purpose of eliminating the new salary provisions over and beyond the present range of the Classification Act.

Under the present classification law the Civil Service Commission has no authority to allocate any position at a salary greater than \$9,000 a year unless it is specifically provided for by Congress. Under this bill we originally provided a new grade starting at \$9,000 and going to \$10,000. The purpose of this amendment is to eliminate this new grade and confine the range of the Classification Act to a top figure of \$9,000.

Mr. Edward H. Rees, of Kansas, offered, as a substitute, an amendment striking out specified portions of the bill.<sup>(17)</sup> The following proceedings related to a point of order raised by Mr. Cochran:

MR. [JOHN J.] COCHRAN [of Mississippi]: An amendment is pending. The Clerk read this as an amendment and I doubt if it is germane.

THE CHAIRMAN:<sup>(18)</sup> The Chair rules that the gentleman can offer this after the Ramspeck amendment has been disposed of. . . .

. . . [T]he question is on the Ramspeck amendment. . . .

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

The gentleman from Kansas has offered a substitute for the amendment offered by the gentleman from Georgia. The only way that can fail to receive

17. *Id.* at p. 5887.

18. A. Willis Robertson (Va.).

consideration is by a point of order being made against it.

THE CHAIRMAN: The Chair understood that the gentleman from Missouri made the point of order that if (the Rees amendment) was a substitute it was not germane to the Ramspeck amendment and that, therefore, the Ramspeck amendment would have to be disposed of first before the gentleman from Kansas could offer his amendment.

### *Pro Forma Amendment*

#### **§ 20.8 A pro forma amendment to “strike out the last word” is germane.<sup>(19)</sup>**

#### **§ 21. Substitute Amendment; Amendment in Nature of Substitute; Amendment to Amendment**

An amendment offered to an amendment must be germane to that amendment.<sup>(20)</sup> Accordingly, where an amendment is offered to one part of a bill, a substitute amendment which relates to a different part of the bill is not germane to the original amendment.<sup>(21)</sup>

19. See § 17.2, *supra*.

20. See, for example, §§ 33.5, 33.6, 36.3, *infra*.

21. See the ruling of Chairman George A. Dondero (Mich.) at 94 CONG. REC. 7768, 80th Cong. 2d Sess., June 10, 1948. Under consideration was H.R. 6396 (Committee on the Judiciary), relating to admission into the United States of certain displaced persons.

A substitute must be germane to the amendment for which offered and must relate to the same portion of the bill being amended by the amendment.<sup>(1)</sup>

Perfecting amendments to amendments in the nature of a substitute or to substitute amendments need to be germane to the inserted language contained in said substitutes, it being irrelevant whether or not the perfecting amendment might be germane to the underlying (perhaps broader) bill which said substitute seeks to strike out and replace. The language of the underlying bill proposed to be stricken is not taken into consideration when determining the germaneness of a second degree amendment to a substitute proposing to insert other language. It is only the pending text under immediate consideration against which the germaneness of proposed amendments thereto is judged. This test of germaneness is consistent with Rule XIX governing the permissible degree of amendments in the House (see Ch. 27, Amendments, *supra*). At this stage the House has not finally adopted any version of a

1. See the proceedings of Oct. 8, 1975, relating to H.J. Res. 683, a bill to implement the United States proposal for an early-warning system in the Sinai, discussed in § 3.47, *supra*.