

Special Rule Permitting Amendments That Have Been Printed in Record

§ 43.12 Where a special rule permits the offering of only those germane amendments to a bill which have been printed in the Record, an amendment which differs in any respect from a printed amendment may not be offered (except by unanimous consent) even to cure a germaneness defect in a printed amendment previously ruled out.

During consideration of H.R. 8410⁽¹⁰⁾ in the Committee of the Whole on Oct. 5, 1977,⁽¹¹⁾ the Chair sustained a point of order against the following amendment under the circumstances described above:

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Ashbrook: Page 17, line 5, insert "(1)" after "(A)" and insert the following new subparagraph (ii) after line 15:

"(ii) which shall assure that the expressing of any views . . . opinion, or the making of any statement or the dissemination thereof . . . shall not constitute grounds for, or evi-

dence justifying, setting aside the results of any election conducted under section 9(c)(6) of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

THE CHAIRMAN:⁽¹²⁾ The Chair would like to inquire of the gentleman from Ohio (Mr. Ashbrook) if this amendment which was reported by the Clerk is printed in the Record?

MR. ASHBROOK: Mr. Chairman, I would say the amendment was printed in the Record. The Chair previously ruled it out of order and I have struck certain language to make it conform with the ruling of the Chair.

MR. [FRANK] THOMPSON [JR., of New Jersey]: Mr. Chairman, I make the point of order that the amendment was not printed in the Record, notwithstanding the attempt of my good friend to revise it in such a way as to indicate that it was. . . .

THE CHAIRMAN: The Chair would have to sustain the point of order. . . .

MR. ASHBROOK: Mr. Chairman, is the Chair indicating an amendment that was printed in the Record on Monday and ruled out of order for parliamentary reasons cannot be revised and offered as a substitute?

THE CHAIRMAN: The Chair would like to advise the gentleman that the amendment was not printed in the Record in the form in which the gentleman now presents it as an amendment to the bill.

MR. ASHBROOK: The gentleman from Ohio would concede that.

THE CHAIRMAN: And the Chair would be constrained to sustain the point of order.

§ 44. Timeliness of Point of Order

10. The Labor Reform Act of 1977.

11. 123 CONG. REC. 32510, 32511, 95th Cong. 1st Sess.

12. William H. Natcher (Ky.).

A germaneness point of order must be made or reserved immediately after the reading of an amendment.⁽¹³⁾ No business must intervene between the reading of the amendment and the raising of the point of order. The Member pressing the point of order must be diligent in seeking prompt recognition after the amendment is read or its reading dispensed with.⁽¹⁴⁾

A point of order against a proposed amendment comes too late after debate has begun. But mere recognition for debate does not preclude a point of order against an amendment before the Member recognized has begun his remarks.⁽¹⁵⁾ Indeed, a point of order

13. See §§ 44.1, 44.2, *infra*.

14. A point of order has been held dilatory if a parliamentary inquiry intervenes between the reading of the amendment and the point of order. See the ruling of Chairman Earl C. Michener (Mich.) at 93 CONG. REC. 11279, 80th Cong. 1st Sess., Dec. 11, 1947. Under consideration was H.R. 4604 (Committee on Foreign Affairs), providing for aid to certain foreign countries.

In this instance, Mr. Fulton, who raised the point of order that a proffered amendment was not germane, stated that he had been on his feet in time, but had yielded for a parliamentary inquiry.

The Chairman took the view that, by doing so, Mr. Fulton had forfeited his right to make the point of order.

15. See § 31.44, *supra*.

against an amendment is not precluded by the Chair's recognition of the Member offering the amendment if the Member raising the point of order was on his feet, seeking recognition, before debate on the amendment began.⁽¹⁶⁾ It is held that a point of order as to the germaneness of a proposed amendment does not come too late if the Member was on his feet attempting to make the point of order when debate started.⁽¹⁷⁾

In fact, on one occasion, although the proponent of an amendment had been recognized and had begun his discussion, the Chair entertained a point of order against the amendment by a Member who stated he had been on his feet, seeking recognition for that purpose when the discussion began.⁽¹⁸⁾

Of course, a point of order against an amendment does not come too late where the Member raising the question was on his feet seeking recognition at the time the amendment was read.⁽¹⁹⁾

Where one point of order is made against an amendment and

16. For discussion of when and in what manner a point of order must be made, generally, see Ch. 31 on points of order. See also § 9.12, *supra*.

17. See § 35.37, *supra*.

18. See § 30.34, *supra*.

19. See § 33.28, *supra*.

overruled, another can be pressed although the proponent thereof was not on his feet at the time the first point of order was made.⁽²⁰⁾

Points of order reserved on the question of the germaneness of an amendment should be made or withdrawn when the sponsor of the amendment ends his five-minute debate,⁽¹⁾ although the Chair may in its discretion permit additional debate on the amendment before ruling on the reserved point of order. The reservation of a point of order by one Member generally does not preclude another from pressing a point of order,⁽²⁾ and the reservation of a point of order inures to all Members, so that if the point of order is not pressed by the Member reserving it, another may press it. But the Chair has also respected the reservation of a point of order and declined to rule on a point of order subsequently made without reservation.⁽³⁾

20. For discussion of when and in what manner a point of order must be made, generally, see Ch. 31 on points of order; see also §33.28, *supra*.

1. See the remarks of Chairman Alfred L. Bulwinkle (N.C.) at 92 CONG. REC. 3663, 79th Cong. 2d Sess., Apr. 13, 1946, in response to a parliamentary inquiry by Mr. May.
2. See §35.101, *supra*.
3. See §39.24, *supra*.

It should be remembered that the fact that no point of order was made against a particular amendment does not waive points of order against subsequent amendments of a related nature.⁽⁴⁾

A point of order against a motion to recommit with instructions has been made prior to completion of the reading of such motion where the matter contained in the instructions had been ruled out as not germane when offered as an amendment in the Committee of the Whole.⁽⁵⁾

In the House, it is too late to interpose a germaneness point of order against an amendment reported from the Committee of the Whole House on the state of the Union.⁽⁶⁾

When Point of Order Must Be Made or Reserved

§ 44.1 A point of order against the germaneness of an amendment must be made or reserved immediately after the amendment is read and comes too late after the pro-

4. See §13.19, *supra*.
5. See §23.3, *supra*.
6. See the remarks of Speaker Sam Rayburn (Tex.) at 102 CONG. REC. 13857, 84th Cong. 2d Sess., July 21, 1956, in response to a parliamentary inquiry by Mr. Bow.

ponent of the amendment has been recognized and permitted to revise and extend his remarks.

On Sept. 17, 1975,⁽⁷⁾ during consideration of H.R. 7014⁽⁸⁾ in the Committee of the Whole, the Chair ruled that a point of order came too late and recognized the proponent of the amendment for 5 minutes in support of that amendment. The proceedings were as follows:

THE CHAIRMAN:⁽⁹⁾ The Chair recognizes the gentleman from Maine (Mr. Emery) for 5 minutes in support of his amendment.

(Mr. [David F.] Emery [of Maine] asked and was given permission to revise and extend his remarks.)

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I wish to reserve a point of order against the amendment.

THE CHAIRMAN: The Chair will state to the gentleman from Michigan (Mr. Dingell) that his reservation comes too late. The Chair had already recognized the gentleman from Maine (Mr. Emery), and the point of order comes too late.

The Chair recognizes the gentleman from Maine for 5 minutes in support of his amendment.

7. 121 CONG. REC. 28937, 94th Cong. 1st Sess.

8. The Energy Conservation and Oil Policy Act of 1975.

9. Richard Bolling (Mo.).

—Amendments to Amendment Which Has Been Made in Order by Waiver of Points of Order

§ 44.2 A point of order against the germaneness of an amendment must be made immediately following the reading and prior to consideration, and where points of order have been waived against a specific amendment which has then been altered by amendment, a point of order will not lie against the modified amendment as not coming within the coverage of the waiver.

On July 22, 1975,⁽¹⁰⁾ during consideration of H.R. 7014⁽¹¹⁾ in the Committee of the Whole, it was held that where a special rule waives points of order against the consideration of a designated amendment which might otherwise not be germane if offered to a bill, and does not specifically preclude the offering of amendments thereto, germane amendments to that amendment may be offered and, if adopted, it is then too late to challenge the germaneness of the original amendment as

10. 121 CONG. REC. 23990, 23991, 94th Cong. 1st Sess.

11. Energy Conservation and Oil Policy Act of 1975.

amended. The proceedings were as follows:

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

The Clerk read as follows:

Amendment offered by Mrs. Schroeder to the amendment offered by Mr. Krueger: In section 8(d)(2)(E)(ii)(a)(1) of the Emergency Petroleum Allocation Act of 1973 as amended by Mr. Krueger's amendment, strike the words "(including development or production from oil shale," and insert a comma after "gas".

In section 8(d)(2)(E)(ii)(a)(2) of the Emergency Petroleum Allocation Act of 1973 (as amended by Mr. Krueger's amendment) strike the words "oil shale,". . . .

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, I reserve a point of order, and pending that I have a parliamentary inquiry.

THE CHAIRMAN:⁽¹²⁾ The gentleman from Texas reserves a point of order, and the gentleman will state his parliamentary inquiry.

MR. ECKHARDT: The parliamentary inquiry is what determines germaneness of this amendment, if it is germane, to the Krueger amendment? It would then be admissible at this time as germane, as I understand it. In other words, the relation to the Krueger amendment would determine germaneness in this instance, I would assume.

THE CHAIRMAN: If the gentleman is asking whether the amendment offered by the gentlewoman from Colorado has to be germane, the answer, of course,

is "yes". Is the gentleman contending that it is not germane?

MR. ECKHARDT: No. The gentleman merely asks whether or not on the question of germaneness with respect to this amendment, the question is determined on whether or not this amendment is germane to the Krueger amendment.

THE CHAIRMAN: That is correct. . . . The question is on the amendment offered by the gentlewoman from Colorado (Mrs. Schroeder) to the amendment offered by the gentleman from Texas (Mr. Krueger).

The question was taken; and on a division (demanded by Mr. Brown of Ohio) there were—ayes 39, noes 31.

So the amendment to the amendment was agreed to.

MR. ECKHARDT: Mr. Chairman, I reserve a point of order against the Krueger amendment.

THE CHAIRMAN: The Chair will have to state he believes the point of order comes too late. . . .

MR. ECKHARDT: Mr. Chairman, if the Chair would permit me, I should make a point of order now if I must do so or I will at such time as the vote arises on the Krueger amendment on the ground that the Krueger amendment is now outside the rule.

If the Chair will recall, I queried of the Chair whether or not the question of germaneness on the amendment offered by the gentlewoman from Colorado was based upon its germaneness to the Krueger amendment or if that were the standard. The Chair answered me that it was. Therefore, the amendment offered by the gentlewoman from Colorado was not subject to a point of order at that time and I

12. Richard Bolling (Mo.).

point out to the Chair that the question of germaneness rests upon whether or not the amendment is germane to the amendment to which it is applied.

At that time it was not in order for me to urge that the amendment offered by the gentlewoman from Colorado was not germane because it was indeed germane to the Krueger amendment, but the rule protects the Krueger amendment itself from a point of order on the grounds of germaneness and specifically says that it shall be in order to consider without the intervention of any point of order the text of an amendment which is identical to the text of section 301 of H.R. 7014 as introduced and which was placed in the Congressional Record on Monday and it is described.

The Krueger amendment upon the adoption of the Schroeder amendment becomes other than the identical amendment which was covered by the rule. At this point the question of germaneness of the Krueger amendment rests on the question of whether or not it is at the present time germane to the main body before the House.

It is not germane to the main body before the House because of the—and I cite in this connection Deschler on 28, section 24 in which there are several precedents given to the effect that an amendment which purports to create a condition contingent upon an event happening, as for instance the passage of a law, is not in order. For instance 24.6 on page 396 says:

To a bill authorizing funds for construction of atomic energy facilities in various parts of the Nation, an amendment making the initiation of any such project contingent upon the enactment of federal or state fair

housing measures was ruled out as not germane.

There are a number of other authorities in that connection, that is, an amendment postponing the effectiveness of legislation pending contingency.

Now, with respect to the question of timeliness, the gentleman from Texas could not have raised the point of order against the Schroeder amendment because of the fact that the Schroeder amendment was, in fact, germane to the Krueger amendment. It is clearly stated that the test of germaneness must rest on the question of the body upon which the amendment acts, and as I queried the Chair at the time, I asked that specific question, would the germaneness of the Schroeder amendment rest upon the question whether it is germane to the Krueger amendment. . . .

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I only state that it seems to me that the rule makes the Krueger amendment in order by its text, but it does not prohibit it being amended by subsequent action of this body and that if the text had been changed by the gentleman from Texas (Mr. Krueger) in its introduction, the point of order might have been appropriate; but the point of order that is attempted to prohibit this body from amending the text of the Krueger amendment after it has been properly introduced and been made germane by the rule would prohibit those others in the majority of this body from acting on any perfection of the Krueger amendment. I do not think that is the purpose of the rule. . . .

THE CHAIRMAN: The Chair is ready to rule.

The rule under which the matter is being considered did in fact make in order the so-called Krueger amendment, and any amendment to that amendment which is germane to that amendment was thus, at the same time, made in order. There was no need for special provision to make amendments germane to the Krueger amendment in order, and the argument made by the gentleman from Ohio (Mr. Brown) is very much to the point.

The Chair, therefore, overrules the point of order.⁽¹³⁾

—Committee Amendment in Nature of Substitute Being Read for Amendment by Title

§ 44.3 Where a committee amendment in the nature of a substitute is being read as an original bill for amendment by title, a point of order that the committee amendment is not germane to the original bill may be raised following the reading of the first title of the committee amendment.

The proceedings of Aug. 2, 1973, which related to H.R. 9130 (the trans-Alaska pipeline authorization) are discussed in §30.36, *supra*.

¹³. This ruling is also discussed at §45.8, *infra*.

§ 45. Consideration Under Special Rule: Waiver of Points of Order; Effect on Germaneness Requirement

Points of order against non-germane amendments may be waived either by the terms of a special rule or through the mere failure to raise points of order. In recent years, it has become common practice to delineate in some detail the conditions under which a bill may be considered, including with some specificity the points of order based on the germaneness rule that will or will not be waived. The terms of a special rule may thus apply to all amendments, specific amendments, or amendments of a specified nature; the Committee on Rules may even report a special rule altering the ordinary test of the germaneness of an amendment, such as rendering only one portion of an amendment subject to a germaneness point of order, while preserving consideration of the remainder of the amendment as original text and waiving germaneness points of order with respect thereto.

Of course, a waiver of points of order against amendments should be distinguished from a waiver of other points of order against the