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 nongermane 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

text of a bill. Where the House waives all points of order against a bill, such waiver does not apply to amendments offered from the floor.[14] Waiver of points of order against the text of a bill for other reasons, by adoption of the resolution making its consideration a special order of business, does not vitiate the rule that amendments from the floor must be germane.[15]

The issue of germaneness cannot be raised against an amendment when all points of order against that amendment have specifically been waived.[16]

A resolution providing for consideration of a bill may waive points of order against the text of another bill proposed to be offered as an amendment.[17]

A resolution providing for consideration of a bill may waive points of order against nongermane committee amendments, whether the resolution provides for an open[18] or closed[19] rule. Language such as the following is used in effecting such waiver:

> It shall be in order to consider without the intervention of any point of order the amendments recommended by the Committee on ———— now printed in the bill.

A special rule adopted by the House may waive points of order against a nongermane committee substitute, as in the following resolution:[20]

> H. RES. 390
>
> *Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6444) to amend the Railroad Retirement Act of 1937 to provide a 10 per centum increase in

14. See § 31.43, supra.

15. See § 19.26, supra.

16. See §§ 45.3 et seq., infra. See also § 19.4, supra.

17. See § 45.7, infra.

18. See H. Res. 471 (Committee on Rules), 113 Cong. Rec. 12621, 90th Cong. 1st Sess., May 15, 1967, providing for consideration of a bill (H.R. 1318) authorizing appropriations for the Food Stamp Act of 1964. The bill as introduced amended only the section of the Food Stamp Act of 1964 relating to authorizations for appropriations. Committee amendments were to other sections of the act and broadened the scope of the bill.

19. See H. Res. 1005, 112 CONG. REC. 22209, 89th Cong. 2d Sess., Sept. 12, 1966.

20. H. Res. 390, 117 CONG. REC. 12320, 92d Cong. 1st Sess., Apr. 28, 1971.

> annuities. . . . It shall be in order to consider, without the intervention of any point of order under clause 7, rule XVI, the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule.

Where a bill is being considered under the provisions of a resolution which specifies that committee amendments shall be in order, "any rule of the House to the contrary notwithstanding," no issue can properly be raised as to the germaneness of any such amendment.[1] But where the House has adopted a resolution waiving points of order against committee amendments, no immunity is granted Members to offer amendments which are not germane.[2] Where a resolution providing for consideration of a bill merely states that, after a specified time allowed for general debate, the bill shall be read for amendment under the five-minute rule, amendments to the bill are in order in accordance with the standing rules of the House.[3]

As noted above,[4] nongermane amendments generally are not barred unless the point of order is actually raised against them. Of course, 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.[5] Similarly, where an amendment to a general appropriation bill proposes a change in existing law but is permitted to remain because no point of order is raised against it, the amendment may be perfected by germane amendments that do not contain additional legislation.[6] Moreover, a legislative provision in a general appropriation bill, permitted to remain pursuant to a resolution waiving points of order against the bill, may be perfected by germane amendment that does not add further legislation.[7]

---

1. See the remarks of Chairman William H. Natcher (Ky.), in response to a parliamentary inquiry by Mr. H. R. Gross (Ia.), at 106 CONG. REC. 10575, 86th Cong. 2d Sess., May 18, 1960. H.R. 5 (Committee on Ways and Means), the Foreign Investment Incentive Tax Act of 1960, was being considered pursuant to the provisions of H. Res. 468.

2. See § 13.12, supra.

3. See, for example, the remarks of Speaker John W. McCormack (Mass.) at 111 CONG. REC. 18076, 89th Cong. 1st Sess., July 26, 1965, in response to a parliamentary inquiry by Mr. Gerald R. Ford.

4. See § 43, supra.

5. See § 13.19, supra.

6. See § 15.49, supra. See also § 15.45, supra.

7. See § 15.35, supra. See also § 15.15, supra.

Illustrative Forms of Special Rules Waiving Points of Order

§ 45.1 The following House Resolution, agreed to on Sept. 15, 1983, is illustrative of special rules waiving points of order based on the germaneness rule; such rules are frequently used in the modern practice in prescribing procedures for the consideration of particular bills.

The following special rule, H. Res. 309,[8] illustrates the form that may be taken by rules that waive points of order under the germaneness rule. The resolution provided an "open" rule for consideration of a bill reported by two committees to which it had been jointly referred; provided for general debate divided between the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation; provided, in lieu of the two committees' amendments printed in the bill, for consideration of a compromise text, that of another introduced bill as an amendment in the nature of a substitute as an original bill for amendment, each section to be considered as read; waiving germaneness points of order against a described amendment relating to certain subject matter ("cost overruns") if printed in the Record and if offered by a designated Member; provided for a separate vote, and for a motion to recommit, with or without instructions.

COAL PIPELINE ACT OF 1983

MR. [GILLIS W.] LONG of Louisiana: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 309 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 309

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1010) to amend the Mineral Leasing Act of 1920 with respect to the movement of coal, including the movement of coal over public lands, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed three hours, one and one-half hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs and one and one-half hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, the bill shall be con-

8. See 129 CONG. REC. 24306, 24307, 98th Cong. 1st Sess., Sept. 15, 1983 (agreed to, at p. 24312).

sidered for amendment under the five-minute rule. In lieu of the amendments recommended by the Committees on Interior and Insular Affairs and Public Works and Transportation now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text of the bill H.R. 3857 as an original bill for the purpose of amendment under the five-minute rule, and each section of said substitute shall be considered as having been read. It shall be in order to consider an amendment relating to cost overruns printed in the Congressional Record of September 14, 1983, by, and if offered by, Representative (E. G.) Shuster of Pennsylvania and all points of order against said amendment for failure to comply with the provisions of clause 7, rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Parliamentarian's Note: The Shuster amendment addressed regulation of railroads by the ICC, and not regulation of coal pipelines, and was thus not germane. This rule, describing the amendment made in order and waiving all points of order under the germaneness rule, did require the amendment to be printed in the Record. The Committee on Rules has on a number of occasions made in order amendments to be printed in the Record, with germaneness waivers, on the word of the Member that only the amendments that the Member has verbally presented to the Committee on Rules would be printed and offered. (By the strict terms of the rule, Representative Shuster could have printed more than one amendment on "cost overruns" in the Record on any subject, and if the Chair had been satisfied that his amendment was related to that subject, though not necessarily the amendment presented in the Committee on Rules, the first such amendment offered in the Committee of the Whole would have been in order.)

§ 45.2 In an earlier example of a practice that is common today, a resolution reported by the Committee on Rules waived points of order, including those based on the rule as to germaneness, against a committee amendment in the nature of a substitute.

In the 90th Congress, a committee amendment in the nature of a substitute to the Postal Revenue and Federal Salary Act of

1967 added two new titles to the bill, neither of which was germane to the bill as introduced. The bill as introduced related only to postal rates and revenue, whereas the titles added by the committee amendment related respectively to federal salary increases and to the regulation of mailing advertisements of a "pandering" nature. A resolution [9] reported by the Committee on Rules, providing for consideration of the bill [10] with the committee amendment, stated in part as follows: [11]

> *Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7977) to adjust certain postage rates, and for other purposes. . . . It shall be in order to consider without the intervention of any point of order the amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service now printed in the bill, and such substitute for the purpose of amendment shall be considered under the five-minute rule as an original bill, and read by titles instead of by sections. . . .

9. H. Res. 939 (Committee on Rules).
10. H.R. 7977 (Committee on Post Office and Civil Service).
11. 113 CONG. REC. 28406, 90th Cong. 1st Sess., Oct. 10, 1967.

Special Rule Making Portion of Amendment Subject to Points of Order—Consideration of Remainder of Amendment

§ 45.3 The Committee on Rules may report a special rule altering the ordinary test of the germaneness of an amendment, as by rendering only one portion of an amendment subject to the point of order that it is not germane to the introduced bill, while preserving consideration of the remainder of the amendment as original text and waiving other germaneness points of order. Thus, in the 95th Congress, the following resolution was reported which provided an "open" rule; provided for consideration of a committee substitute as an original bill by titles and waiving points of order against such substitute containing an appropriation and nongermane matter; but allowing a point of order when consideration of said substitute begins that a designated section thereof would be nongermane if offered to the bill as introduced, and providing, if said point of order is sustained,

for consideration of such substitute without that section as original text by titles, and waiving points of order against such substitute; making in order an amendment printed in the Record if offered as an amendment in the nature of a substitute to the committee substitute; providing for a separate vote on amendments adopted to the bill or to the substitute made in order, and for a motion to recommit with or without instructions.

A special rule as described above was reported on May 23, 1978:[12]

PROVIDING FOR CONSIDERATION OF H.R. 10929, DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1979

MR. [LLOYD] MEEDS [of Washington]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1188 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1188

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 10929) to authorize appropriations during the fiscal year 1979, for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedos, and other weapons, and research, development, test and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense, to authorize the military training student loads, and to authorize appropriations for civil defense, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed three hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Armed Services now printed in the bill as an original bill for the purposes of amendment, said substitute shall be read for amendment by titles instead of by sections and all points of order against said substitute for failure to comply with the provisions of clause 5, rule XXI and clause 7, rule XVI, are hereby waived, except that it shall be in order when consideration of said substitute begins to make a point of order that section 805 of said substitute would be in violation of clause 7, rule XVI if offered as a separate amendment to H.R. 10929 as introduced. If such point of order is sustained, it shall be in order to con-

12. See the proceedings at 124 CONG. REC. 15094–96, 95th Cong. 2d Sess. For discussion of a point of order made, under the terms of H. Res. 1188, against a section of the amendment in the nature of a substitute being read as original text for amendment, see § 21.18, supra.

sider said substitute without section 805 included therein as an original bill for the purpose of amendment, said substitute shall be read for amendment by titles instead of by sections and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI and clause 5, rule XXI are hereby waived. It shall be in order to consider the amendment printed in the Congressional Record of May 17, 1978, by Representative [Milton R.] Carr [of Michigan] if offered as an amendment in the nature of a substitute for the amendment in the nature of a substitute recommended by the Committee on Armed Services. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. . . .

MR. MEEDS: . . . Mr. Speaker, House Resolution 1188 provides for the consideration of H.R. 10929, the Department of Defense Appropriation Authorization Act of 1979. On May 17, by a nonrecord vote, the Committee on Rules granted the rule requested by the Committee on Armed Services for consideration of this legislation with two exceptions. The committee granted an open rule providing 3 hours of general debate and making the committee amendment in the nature of a substitute to be considered as an original bill for the purpose of amendment and providing that the substitute shall be read for amendment by titles instead of by sections.

One exception to the Armed Services request provided in the rule would allow a point of order against section 805 of the bill concerning Korea troop withdrawal provisions on the basis of nongermaneness. In testimony before the Committee on Rules, the chairman of the Committee on International Relations, Mr. Zablocki, and the chairman of the Subcommittee on Asian and Pacific Affairs, Mr. Wolff, had requested this exception in the rule because they believed that section 805 is a matter of jurisdiction for their committee.

The other exception in the rule requested makes in order the substitute of Representative Carr printed in the Congressional Record of May 17, 1978. Under the open rule, Mr. Carr would already be entitled to offer his amendment in the nature of a substitute. Although this provision in the rule does not give Mr. Carr special or preferred status under the rule, it does indicate the Rules Committee's desire to have all the diverse viewpoints on the DOD legislation available for consideration by the House. . . .

MR. DEL CLAWSON [of California]: . . . Mr. Speaker, House Resolution 1188 provides for the consideration of H.R. 10929, the Department of Defense Appropriation Authorization Act, 1979. This is an open rule providing 3 hours of debate. The rule is fairly simple in principle, though it does furnish some unusual procedures. While most of these provisions should be relatively familiar, a couple are out-of-the-ordinary.

More usual aspects of the rule allow the committee amendment in the na-

ture of a substitute to be made in order as an original bill for the purpose of amendment. The bill will be read for amendment by title instead of by sections. All points of order are waived against the substitute for two reasons. The first waiver is for failure to comply with clause 5, rule 21, which deals with appropriations in a legislative measure. The second is of clause 7, rule 16, the germaneness rule, since several unrelated provisions were added to the original bill.

Less common facets of the rule may be a bit complicated in procedure, but simple in objective. The rule acknowledges that a point of order may lie against section 805 of the committee substitute under the germaneness rule. Should a point of order be sustained, the entire substitute must be stricken out. Deletions may not be made by sections nor titles; a substitute is a "package deal." If necessary, then, the rule would make the committee substitute in order as the original bill once again, but without that particular section. In short, this is the method by which that section may be ruled out of order.

The final major provision of the rule acknowledges the right of the gentleman from Michigan (Mr. Carr) to offer an amendment in the nature of a substitute which was previously entered in the Record. All other amendments are accorded the same rights whether or not they are mentioned in the rule. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I would like to put a parliamentary inquiry to the Chair regarding the language on page 2 of the rule, line 24, through line 4 on page 3. It appears to me that the making in order of the offering of a substitute to the committee amendment by the gentleman from Michigan (Mr. Carr) is nothing more than an expression of the right of any Member of the House to offer such amendment at any time in the Committee of the Whole. My question to the Chair is whether or not the appearance of this language in the rule in any way changes the right of the Chair to recognize members of the committee in order of seniority at the Chair's discretion.

THE SPEAKER PRO TEMPORE [James C. Wright, of Texas]: The recognition will be a matter for the Chairman of the Committee of the Whole House to determine. . . .

MR. BAUMAN: My specific question, Mr. Speaker, was whether or not this varies the precedents regarding recognition and confers upon the gentleman from Michigan (Mr. Carr) some special status as opposed to the Chair's recognizing other members of the Committee on Armed Services handling the bill.

THE SPEAKER PRO TEMPORE: It would still be up to the Chairman of the Committee of the Whole House on the State of the Union to determine the priorities of recognition. To some degree, that could depend upon the debate that was held upon the rule.

Certainly nothing contained in the sentence to which the gentleman refers would in and of itself prejudice any right that any other Member might have to offer any other germane amendment. . . .

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Speaker, under the language of the rule I understand that the amendment of the gentleman from Michigan would be in order, even after

other amendments would be possibly adopted to the committee substitute.

MR. MEEDS: My understanding of the parliamentary situation is that that would not be correct; that this would have to be offered immediately after the reading of the first section or at the end; so from the standpoint that it would be offered at the end, it certainly could be offered after other amendments and, indeed, other substitutes had been offered.

MR. VOLKMER: Mr. Speaker, if the gentleman will yield further, that is what I mean; if offered at the end after other amendments are adopted or even after another substitute had been adopted, even if the other substitute had been adopted, then the substitute amendment of the gentleman from Michigan, as I read the rule, would be in order at that time. . . .

MR. DEL CLAWSON: . . . Mr. Speaker, if I may just make an observation, it is my understanding that the Committee on Rules, while they did make in order the substitute amendment of the gentleman from Michigan, it is my understanding it was not intended to confer upon the gentleman any special privilege that is not the prerogative of any other Member, providing they are recognized in the regular order of the business of the House.

THE SPEAKER PRO TEMPORE: Let the Chair respond by stating that the rules of the House will apply and will not be abridged by reason of the adoption of this rule. If another amendment in the nature of a substitute should have been adopted, it would not perforce thereafter be in order to offer an additional amendment, whether it be the Carr amendment or any other.

As the Chair interprets the inclusion of the language referred to in the rule, it confers no special privilege upon the amendment in the nature of a substitute referred to as the Carr substitute. It presumes and makes in order such language as an amendment in the nature of a substitute. Beyond that, it does not foreclose consideration of any other germane language that otherwise would be in order.

MR. VOLKMER: Mr. Speaker, if I understand the Chair properly, then, following my colloquy and my questions of the gentleman from Washington (Mr. Meeds), the rule does not so provide as I had thought, and so if along the way a substitute is adopted other than that offered by the gentleman from Michigan (Mr. Carr), then at the end of our consideration the substitute of the gentleman from Michigan (Mr. Carr) would not be in order; is that correct?

THE SPEAKER PRO TEMPORE: The Chair believes the gentleman from Missouri (Mr. Volkmer) has correctly stated the parliamentary situation, if any amendment in the nature of a substitute is adopted, then additional amendments would not be in order.

Parliamentarian's Note: Section 805 of the committee substitute related to troop withdrawals from Korea, a matter unrelated to the bill and beyond the jurisdiction of the Committee on Armed Services; the Committee on International Relations successfully urged the Committee on Rules to render that section and that section alone subject to a germane-

ness point of order, while protecting the consideration of the remainder of the substitute as original text. Since a point of order against any portion of an amendment renders the entire amendment subject to the point of order, language was necessary in the rule to in effect allow the consideration of a new amendment without the offending section. For a similar rule, see § 45.4, infra.

§ 45.4 The following special rule is here included as a further illustration, being in effect similar to that described in § 45.3, supra. The resolution here waives points of order against consideration of a bill authorizing enactment of new budget authority and not reported by May 15 preceding the fiscal year in question; provides for reading a committee substitute as an original bill by titles; waives all points of order against such substitute for failure to comply with the germaneness rule but allows one point of order, when consideration of said substitute begins, that two titles of the substitute (taken together) would violate the germaneness rule if offered as a separate amendment to the bill as introduced; provides that if such point of order is sustained, such substitute, without those two titles shall be read as an original bill by titles for amendment, and waives all points of order against the substitute for failure to comply with the germaneness rule; and provides for a separate vote and a motion to recommit with or without instructions.

The following resolution was reported on Aug. 11, 1978:[13]

MR. [LLOYD] MEEDS [of Washington]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1307 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1307

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93–344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11280) to reform the civil service laws. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the

13. See 124 CONG. REC. 25705, 95th Cong. 2d Sess.

bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be read for amendment by titles, instead of by sections, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI are hereby waived, except that it shall be in order when consideration of said substitute begins to make one point of order that titles IX and X would be in violation of clause 7, rule XVI if offered as a separate amendment to H.R. 11280 as introduced. If such point of order is sustained, it shall be in order to consider said substitute without titles IX and X included therein as an original bill for the purpose of amendment, said substitute shall be read for amendment by titles instead of by sections and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendments in the nature of a substitute made in order by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Special Rule Permitting Amendments Printed in Record To Be Offered—Amendment Differing From Printed Amendment

§ 45.5 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 (14) in the Committee of the Whole on Oct. 5, 1977,(15) 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

14. The Labor Reform Act of 1977.

15. 123 CONG. REC. 32510, 32511, 95th Cong. 1st Sess.

the dissemination thereof . . . shall not constitute grounds for, or evidence 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:[16] 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.

16. William H. Natcher (Ky.).

Amendment Made in Order as New Title

§ 45.6 Where the resolution providing for consideration of a bill makes in order a specific amendment to the bill as a new title, it need not be germane to an existing title.[17]

Waiver as to "Text of" Another Bill

§ 45.7 Where a resolution providing for the consideration of a bill makes in order, irrespective of questions of germaneness, "the text of" a specified bill as an amendment, only those points of order are considered to be waived which are directed against the complete text of that bill offered as an amendment; if a part or parts of the specified bill are offered as independent amendments, they must meet the test of germaneness.

In the 91st Congress, a resolution was under consideration which provided in part as follows:[18]

17. See § 19.4, supra.

18. See 115 CONG. REC. 38123, 91st Cong. 1st Sess., Dec. 10, 1969.

H. RES. 714

Resolved, That upon the adoption of this resolution, it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4249) to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices. After general debate . . . the bill shall be read for amendment. . . . It shall be in order to consider, without the intervention of any point of order, the text of the bill H.R. 12695 as an amendment to the bill. . . .

During the proceedings, the Speaker Pro Tempore[19] responded to a series of parliamentary inquiries, as follows:[20]

MR. [CLARK] MACGREGOR [of Minnesota]: Mr. Speaker, under the resolution (H. Res. 714), if adopted, should the bill, H.R. 12695, be considered and rejected, would it then be in order, following rejection of H.R. 12695, should that occur, to offer a portion or portions of H.R. 12695 as amendments to H.R. 4249?

THE SPEAKER PRO TEMPORE: The Chair will state that would be in order subject to the rule of germaneness, if germane to the bill H.R. 4249. . . .

MR. MACGREGOR: Mr. Speaker, should a portion of H.R. 12695 be offered under the conditions set forth in my previous inquiry and should it not be germane, a motion to that effect, to rule it out of order, would be then in order and be sustained, I gather?

THE SPEAKER PRO TEMPORE: That, of course, would be a matter for the Chairman of the Committee of the Whole to consider when it is before him.

MR. MACGREGOR: Mr. Speaker, I have one additional parliamentary inquiry. Under House Resolution 714, if adopted, would it be in order to include in the motion to recommit a portion or portions of H.R. 12695 which might otherwise be subject to a point of order on the point of germaneness?

THE SPEAKER PRO TEMPORE: The Chair would not want to pass upon that hypothetically. At the time the occasion arises the Chair would pass upon it.

Waiver of Points of Order Against Amendment—Germane Amendments to Such Amendment

§ 45.8 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 amended.

19. Carl Albert (Okla.).

20. 115 CONG. REC. 38130, 91st Cong. 1st Sess., Dec. 10, 1969.

On July 22, 1975,[1] during consideration of H.R. 7014[2] in the Committee of the Whole, it was held that 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:

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:[3] 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.

---

1. 121 CONG. REC. 23990, 23991, 94th Cong. 1st Sess. See also § 2.18, supra, in which a substitute amendment was held to be germane to the amendment for which offered, the Chair noting that any question as to the waiver of points of order, by special rule, against the original amendment was not relevant, the only test being the germaneness of the substitute to the original amendment.

2. Energy Conservation and Oil Policy Act of 1975.

3. Richard Bolling (Mo.).

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 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 amend-

ment 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.[4]

§ 45.9 Where a special rule waives points of order against a specific amendment to be offered to a bill, a germane amendment to that amendment may be allowed.

On July 22, 1975,[5] during consideration of H.R. 7014, the Energy Conservation and Oil Policy Act of 1975, there was pending in the Committee of the Whole an amendment (the Krueger amendment) relating to the decontrol of oil prices. The amendment, made in order by House Resolution 599, was to become effective only upon a presidential certification that certain tax legislation, described in detail, had been enacted. To such amendment, an amendment was offered which substituted congressional certification (by concurrent resolution) for the presidential certification as to enactment of the tax legislation. The Krueger amendment, which had been offered on July 18,[6] was as follows:

4. This ruling is also discussed at § 44.2, supra.

5. 121 CONG. REC. 23995–97, 94th Cong. 1st Sess.

6. *Id.* at pp. 23525, 23526.

See also § 2.18, supra, in which a substitute amendment was held to be germane to the amendment for which offered, the Chair noting that any question as to the waiver of points of order, by special rule, against the original amendment was not relevant, the only test being the germaneness of the substitute to the original amendment.

MR. [BOB] KRUEGER [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Krueger: Strike out all from beginning of line four, page 214 to end of line 3, page 223 (section 301 of the Committee substitute) and insert in lieu thereof the following:

CRUDE OIL PRICE REGULATION

Sec. 301. (a) The Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new section:

Sec. 8. (a) For the purposes of this section:

"(1) The term 'crude oil' means a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. . . .

"(b) Except as provided in subsections (e) and (d), no price ceiling shall apply to any first sale by a producer of domestic crude oil from a property. . . .

(d)(1) The provisions of subsections (b) and (c) of section 8 shall not take effect unless the President finds that there is in effect (A) an inflation minimization tax consonant with the purposes of this section applicable to sales from a property, from which domestic crude oil was produced and sold in one or more of the months of May through December 1972, in volume amounts greater than the production volume subject to a ceiling price under subsection (c), but less than the base period control volume, and (B) a production maximization tax consonant with the purposes of this section applicable to sales of domestic crude oil from any stripper well lease or from a property from which domestic crude oil was not produced and sold in one or more of the months of May through December 1972, or with respect to amounts produced and sold in any month in excess of the base period control volume (in the case of a property from which domestic oil was produced and sold in one or more of the months of May through December 1972).

On July 22, when the Committee of the Whole resumed consideration of the bill, Mr. James C. Wright, Jr., of Texas, offered the following amendment to the amendment and the proceedings ensued as indicated below:

The Clerk read as follows:

Amendment offered by Mr. Wright to the amendment offered by Mr. Krueger: Strike Subsection (d) of the new Section 8 added to the Emergency Petroleum Act of 1973 and insert in lieu thereof a new Subsection (d) as follows: "The provisions of (b) and (c) shall not take effect unless the Congress finds and so declares by concurrent resolution that there is in effect a tax which couples a redistribution of tax receipts mechanism to substantially mitigate the effect of increased energy costs on consumers with an excise tax or other tax applicable to sales of crude oil from a property: *Provided* that such tax shall provide an incentive for the production of new domestic crude oil.". . .

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, I press my point of order at this time.

THE CHAIRMAN:[7] The gentleman will state his point of order.

MR. ECKHARDT: Mr. Chairman, my point of order is that, No. 1, this amendment is not germane to the Krueger amendment; and No. 2, that

7. Richard Bolling (Mo.)

this amendment, if added to the Krueger amendment, creates an extensively and fundamentally different principle not covered by the exception to the rules.

Mr. Chairman, I cite primarily from page 415 of Deschler's Procedure, section 36.9, which reads:

> The fact that a resolution providing for the consideration of a bill specifically waives points of order against a particular amendment is not determinative of the issue of the germaneness of other, similar amendments.

There is reference to 106 Congressional Record 5655, 86th Congress, 2d Session, March 14, 1960.

I should like to point out to the Chair how widely divergent this amendment is from the original Krueger amendment. The original Krueger amendment had some appeal to the committee because it did a very specific thing: It said that in providing that there is what the gentleman from Texas (Mr. Krueger) always called a specific recycling process with respect to the taxes collected under the windfall profits tax, that specific recycling process constituted the sending of the application, as I recall, of half the receipts to low- and middle-income brackets and the rest to a division of cities and others, the exact details of which I do not recall.

Then if this contingency occurred and it was a contingency based on a clearly and specifically defined action to become law, then and then only would the windfall profits tax provisions be in effect. Otherwise the bill would fall back to essentially the provisions of an extension of the existing Allocation Act. . . .

The effect of this amendment is something extremely different, and it is something that I feel sure we members of the Committee on Interstate and Foreign Commerce would have appeared before the Committee on Rules and strenuously objected to, because the amendment would simply say that we will put this pricing mechanism into effect and we will leave open to the absolute unrestrained determination of another committee what the tax structure would be.

In effect the result of that would be a complete reneging by the committee setting the price and a movement from a specific contingency to a complete delegation of authority to define that contingency to another committee. . . .

MR. [CHARLES A.] VANIK [of Ohio]: . . . I would just like to say that the resolution under which the committee considers this proposal today, House Resolution 599, on page 2, line 10, sets forth as follows:

> 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 of Monday, July 14, 1975, by Representative Robert Krueger.

I think that the rule specifically indicates what would be in order would be the Krueger amendment and not amendments to the Krueger amendment.

For example, I do not believe that it would have been in order, under this rule, for the Committee on Ways and Means windfall profits section to have been introduced as an amendment to the Krueger amendment. . . .

MR. [CLARENCE J.] BROWN of Ohio: . . . Mr. Chairman, the amendment has within it the two factors which are also contained in the basic Krueger amendment: first, a modification, as any amendment would, of the finding or the method by which a finding can be made of what an appropriate tax is; and second, a description of what an appropriate tax is that can be found, so that the basic provisions of the Krueger amendment can be put into effect; that is, the decontrol process.

The Committee on Rules properly, I think, made in order the Krueger amendment for decontrol, and . . . hinged that decontrol on a suitable tax and the finding of a suitable tax.

The amendment offered by the gentleman from Texas (Mr. Wright) merely modifies that process.

The question of the jurisdiction of the Committee on Interstate and Foreign Commerce to write this into its legislation was raised by the gentleman from Texas (Mr. Eckhardt) in his comments on the point of order.

It seems to me that it is the prerogative of the Committee on Rules to combine legislation, to see that legislation is brought to the floor in tandem, so that it might be combined on the floor by the committee, in its wisdom, and in this case, specifically made in order by rule.

The prospect was that the job of the Committee on Interstate and Foreign Commerce, the jurisdictional job, decontrol, would proceed on the basis of a finding of a suitable tax and it left the establishment or the enactment of that tax to the Committee on Ways and Means.

Nothing in the amendment of the gentleman from Texas (Mr. Wright) changes the basic thrust of the rule granted by the Committee on Rules in that regard, and it occurs to me that the amendment of the gentleman from Texas (Mr. Wright) is perfectly appropriate and germane. It does, in fact, as any amendment would, modify the situation; but it leaves to the full committee, the Committee of the Whole, the job of making that modification, in its wisdom. . . .

THE CHAIRMAN: The Chair is ready to rule.

Although a great many matters have been discussed in connection with the point of order, the Chair proposes to rule only very narrowly.

The question is whether the amendment offered by the gentleman from Texas [Mr. Wright] offered to the amendment offered by the gentleman from Texas [Mr. Krueger] is germane as within the limitations of the precedents with regard to its scope.

The Chair finds, basically on the arguments made by the gentleman from Ohio (Mr. Brown) that it is germane, and within the scope of the type of "windfall profits tax" defined by the Krueger amendment, although the description of the tax is somewhat less precise than the definition in the Krueger amendment. The fact that Congress, in the Wright amendment, rather than the President, as in the Krueger amendment must make the findings of enactment of the tax does not render the amendment not germane. Therefore the Chair overrules the various points of order and finds the amendment in order.

Waiver of Points of Order Against Legislative Provision in Appropriation Bill—Germane Amendment to Such Provision

§ 45.10 Where a legislative provision contained in a general appropriation bill is not subject to a point of order, the House having by resolution waived points of order against such provision, the provision may be perfected by a germane amendment which does not add legislation.

On May 21, 1969,[8] a point of order was raised against an amendment to an appropriation bill, on the grounds that such amendment constituted legislation. Acknowledging a waiver of points of order, the Member making the objection (George H. Mahon, of Texas) contended that the waiver pertained only to matter contained in the bill, not amendments to the bill. The Chairman,[9] relying on the principle that a provision as to which points of order have been waived may be perfected by germane amendment, overruled the point of order. The proceedings were as follows:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Jeffery] Cohelan of California: On page 62, line 3, add the following as a new section:
>
> "(c) The limitation set forth in subsection (a), as adjusted in accordance with the proviso to that subsection, shall be increased by an amount equal to the aggregate amount by which expenditures and net lending (budget outlays) for the fiscal year 1970 on account of items designated as "Open-ended programs and fixed costs" in the table appearing on page 16 of the Budget for the fiscal year 1970 may be in excess of the aggregate expenditures and net lending (budget outlays) estimated for those items in the April review of the 1970 budget."
>
> MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment in that it is legislation on an appropriation bill.
>
> Mr. Chairman, the rule pertaining to title IV only protects what is in the bill, not amendments to the bill.
>
> THE CHAIRMAN: The Chair is ready to rule.
>
> The Chair has examined title IV. This is a new subparagraph to title IV. Title IV is legislation in a general appropriation bill, and all points of order have been waived in title IV, as a result of it being legislation. Therefore the Chair holds that the amendment is germane to the provisions contained in title IV and overrules the point of order.[10]

8. 115 CONG. REC. 13271, 91st Cong. 1st Sess. Under consideration was H.R. 11400 (Committee on Appropriations), comprising supplemental appropriations for fiscal 1970.

9. Chet Holified (Calif.).

10. See H. Res. 414 at 115 CONG. REC. 13246, 91st Cong. 1st Sess., May 21,

Parliamentarian's Note: The Chair's ruling stands for the proposition that to a provision fixing an expenditure limitation in a dollar amount for a fiscal year, an amendment increasing the limitation by an amount to be computed pursuant to a specified formula is germane and does not add further legislation to the expenditure limit already in the bill.

Waiver of Points of Order Against Particular Amendment—Germaneness of Other Similar Amendments

§ 45.11 The fact that a resolution providing for the consideration of a bill specifically waives points of order against a particular amendment is not determinative of the issue of the germaneness of other, similar amendments.

On Mar. 14, 1960, a bill[11] was under consideration which related to enforcement of voting rights. The rule[12] under which the bill was being considered provided that,

> . . . It shall be in order to consider, without the intervention of any point of order, the text of the bill, H.R. 10035, as introduced under the date of January 28, 1960, as an amendment to the bill, H.R. 8601.

Mr. John V. Lindsay, of New York, offered the amendment[13] against which points of order had been so waived. He stated, in describing the purposes of the amendment:[14]

> MR. LINDSAY: . . . The amendment I have just offered is the original voting referee proposal which was contained in the bill H.R. 10035, originally introduced by the gentleman from Ohio [Mr. McCulloch]. . . .
>
> Mr. Chairman, may I say that the parliamentary situation is such under the rule that the only voting referee measure at this point that may be offered is the text of H.R. 10035. This is the bill which provides for voting referees under the auspices and supervision of the Federal courts. . . . It provides that in any area where there has been a voting case under the 1957 Civil Rights Act the Federal judge deciding the matter shall have the power to make a determination that such denials are pursuant to a discriminating pattern or practice. . . .
>
> If the court should find a pattern or practice of voting denials, referees may then be appointed by the court in order to receive applications from persons of like color who claim that they also have been denied the right to vote. . . .

A substitute amendment was offered[15] by Mr. William M.

1969, waiving points of order against Title IV of H.R. 11400.

11. H.R. 8601 (Committee on the Judiciary).

12. H. Res. 359, at 106 CONG. REC. 5192, 5193, 86th Cong. 2d Sess., Mar. 10, 1960.

13. 106 CONG. REC. 5482, 86th Cong. 2d Sess., Mar. 14, 1960.

14. *Id.* at pp. 5482, 5483.

15. *Id.* at pp. 5483, 5484.

McCulloch, of Ohio, for purposes of modifying and clarifying the Lindsay amendment. Mr. McCulloch stated:[16]

> . . . I have offered H.R. 10625 with certain improvements as a substitute for the Lindsay amendment. Both of these bills with improvements are administration measures and embody the Attorney General's plan for the use of a Federal voting referee in areas where a pattern or practice of discrimination exists because of race or color.
>
> I introduced H.R. 10035 on January 28, 1960. Shortly thereafter, Judge Lawrence E. Walsh, the Deputy Attorney General of the United States, testified before a full meeting of the Judiciary Committee. . . .
>
> As the result of Judge Walsh's testimony several improvements in the procedure to be followed in the Federal voting referee plan were suggested. These changes primarily relate to the procedure to be followed by the referee and to the nature of the exceptions which State officials will be permitted to file to the findings in the referee's report. These changes are reflected in H.R. 10625. . . .

Mr. Robert W. Kastenmeier, of Wisconsin, offered an amendment[17] to the McCulloch substitute. Mr. Kastenmeier explained his amendment as follows:[18]

> . . . The amendment is based on the fundamental proposition that Congress has the constitutional authority and political obligation to aid the courts and to work with the courts to guarantee equal rights to all our citizens regardless of race or color. . . .
>
> Precisely what would my amendment do? Where a court or the Civil Rights Commission finds that people have been denied the right to register because of race or color, the President is notified. If he feels it necessary, he may appoint a Federal enrollment officer, from among Federal employees and officers already registered to vote in the affected local district. . . .
>
> If an enrollment officer is appointed, applicants deprived of their voting rights because of race or color may go to the enrollment officer and prove their qualifications. . . .

The Kastenmeier amendment was agreed to.[19] The McCulloch substitute, having thus been amended to provide for Presidential appointment of enrollment officers, was agreed to. But the Lindsay amendment, as amended by the McCulloch substitute, was rejected. Subsequently, Mr. McCulloch offered an amendment[20] that incorporated provisions substantially similar to those of the Lindsay amendment and the McCulloch substitute. Against the amendment so offered, the following point of order was raised:[1]

> MR. [HOWARD W.] SMITH of Virginia: Mr. Chairman, I make a point of order

16. *Id.* at p. 5484.

17. 106 CONG. REC. 5644, 5645, 86th Cong. 2d Sess., Mar. 15, 1960.

18. *Id.* at p. 5645.

19. *Id.* at p. 5655.

20. *Id.* at pp. 5655, 5656.

1. *Id.* at p. 5657.

against this amendment for several reasons. One is that the rule under which we are operating gives protection only to H.R. 10035 and to no other substitute proposal. In other words, the original bill, the Lindsay amendment, which has already been defeated, was a bill that the rule makes in order. We have already voted upon this bill within the last 30 minutes. The only difference between this bill and the bill we just voted down is two or three very minor corrections. . . .

Mr. Chairman, of course I made the point that the bill is not germane, but if I may enlarge upon that for a moment, as I said before, the rule protects only H.R. 10035. The rule would not have been granted if it had not been understood that it was not germane to the original bill, which it is not. While the rule protected that bill, it did not protect any question of germaneness. In other words, if it was not included in the rule, H.R. 10035, the rule does not protect the germaneness of any other bill.

Mr. Charles A. Halleck, of Indiana, stated in response to the point of order:

The gentleman from Virginia [Mr. Smith] has spoken of the rule that undertook to specifically make the provisions of the original bill in order. Without undertaking to state what the facts were . . . the fact that the rule makes specific provision in that regard does not mean that the measure itself on its merits is not germane. In other words, if I understand the Rules Committee correctly, out of an excess of precaution, it provided by the special rule that the bill which was offered originally would be in order as an amendment. When it was originally offered we operated under that rule. However, addressing myself to the point of germaneness, and I must say that I agree with the gentleman from New York [Mr. Celler], title III has to do with the Federal election records. As has been pointed out, the basic purpose of this legislation is to deal with the right to vote—voting rights. Certainly the amendment offered by the gentleman from Ohio [Mr. McCulloch]—and may I say parenthetically it is a different bill from the one we voted on; it is different in a material respect. As we have listened to the debate, it is a referee, voting rights bill. So in my opinion it should be held germane to the original bill reported by the Committee on the Judiciary.

The Chairman,[2] in ruling on the point of order, stated:

It is quite true that the rule House Resolution 359, under which H.R. 8601 is being considered, contains the language that the gentleman from Virginia mentioned a moment ago, concerning putting in order H.R. 10035 in order to eliminate any question of germaneness of that particular proposal.

The Chair dislikes to substitute the judgment of the Chair for that of the distinguished Committee on Rules, but, frankly, the Chair does not believe that including this language necessarily binds the present occupant of the chair.

It is quite true that the measure, H.R. 8601, deals with Federal election records, and the Chair is quite certain that the membership agrees with the

2. Francis E. Walter (Pa.).

Chair that the scope is rather narrow. However, the Chair feels that the amendment offered by the gentleman from Ohio has to do with the basic purpose of title 3 of the bill H.R. 8601.

The Chair overrules the point of order.

Resolution Making Consideration of Amendment in Order But Not Waiving Points of Order; Effect; Adoption of One Amendment in Nature of Substitute as Precluding the Offering of Another

§ 45.12 A resolution reported from the Committee on Rules which merely makes in order the consideration of a particular amendment in the nature of a substitute but does not waive points of order or otherwise confer a privileged status upon the amendment does not, in the absence of a legislative history establishing a contrary intent by that committee, alter the principles that recognition to offer an amendment under the five-minute rule is within the discretion of the Chairman of the Committee of the Whole and that adoption of one amendment in the nature of a substitute precludes the offering of another.

The proceedings of May 23, 1978, relating to H. Res. 1188, are discussed in § 45.3, supra.

§ 46. Factors in Chair's Ruling; Refusal by Chair To Rule; Anticipatory and Hypothetical Rulings

The Chair ordinarily does not give anticipatory rulings and declines to prejudge the germaneness of any amendment not actually before the House. The Chair does not indicate in advance what his ruling would be as to the germaneness of an amendment if offered.[3]

For example, where there was pending to a bill both an amendment in the form of a new section and a substitute therefor, the Chair[4] declined to indicate, in response to a parliamentary inquiry, whether the pending substitute, if defeated, would thereafter be germane and in order if subsequently offered as an amendment in the form of a new section.[5] In this instance, there

3. 84 CONG. REC. 8706, 8707, 76th Cong. 1st Sess., July 6, 1939 (remarks of Speaker Sam Rayburn (Tex.) in response to a parliamentary inquiry by Mr. Costello).
4. William H. Natcher (Ky.).
5. See the proceedings at 116 CONG. REC. 25811, 91st Cong. 2d Sess., July 27, 1970.