

Pennsylvania, then objected to the vote on the ground that a quorum was not present. The Speaker concurring, an automatic roll call was commenced.

Two hundred fourteen Members voted on the call. The Record then reveals the following:

THE SPEAKER: The Clerk will call my name.

The Clerk called the name of Mr. Rayburn and he answered "no."

So the motion to recommit was rejected.

*Parliamentarian's Note:* Normally, of course, it takes 218 Members to comprise a quorum in the House. However, on this particular day [Nov. 14, 1942], there were six vacancies in the membership—thus, the quorum figure had been lowered to 215 Members.

### § 30. Recorded Votes; In General

Until Jan. 22, 1971,<sup>(12)</sup> clause 5 of House Rule I stated the method by which the Speaker was to put questions before the House, specified the procedure by which a division vote was to be cast, and provided for the taking of teller votes if the Chair was in doubt or if a count was "required by at

12. See Rule I clause 5, *House Rules and Manual* § 630 (1971).

least one fifth of a quorum. . . ." <sup>(13)</sup>

On that date, however, by virtue of the Legislative Reorganization Act of 1970,<sup>(14)</sup> a provision was added to the clause which specified that before tellers were named, Members could request "tellers with clerks." And, if such requests were supported by at least one-fifth of a quorum, the names of those voting on each side of the question and the names of those not voting . . . [would] be recorded by clerks or by electronic device, and . . . [would] be entered in the Journal.<sup>(15)</sup>

Thus the 92d Congress marked the first instance in which the House rules made provisions for the recording of votes in the Committee of the Whole.<sup>(16)</sup>

In the 93d Congress, the House further altered this clause by eliminating the phrase, "tellers with clerks," and substituting therefor the more simple language of "a recorded vote."<sup>(17)</sup> In addi-

13. Rule I clause 5, *House Rules and Manual* § 630 (1969.).

14. 84 Stat. 1140.

15. Rule I clause 5, *House Rules and Manual* § 630 (1971).

16. See adoption of H. Res. 5, 92d Cong. 1st Sess., Jan. 22, 1971.

17. When not taken by electronic device, recorded votes are taken by a process similar to that previously utilized

tion, the two-step procedure previously necessary to obtain a recorded vote was abandoned in favor of a one-step method which did not oblige a Member to wait until tellers had been ordered before seeking a recorded teller vote. Instead, the Member merely requested a recorded vote which, if supported by the requisite number, would

be taken by electronic device, unless the Speaker in his discretion . . . [ordered] clerks to tell the names of those voting on each side of the question and such names . . . [would then] be recorded by electronic device or by clerks, as the case may be, and . . . entered in the Journal.<sup>(18)</sup>

The requirement of one-fifth of a quorum to second the demand for a recorded vote<sup>(19)</sup> continues to

for tellers-with-clerks procedure. As Members pass through the appropriate “aye” or “no” aisle, they simply cast their votes by depositing a signed green (yea) or red (no) card in a ballot box. See § 30.1, *infra*.

18. Rule I clause 5, *House Rules and Manual* § 630 (1995).
19. There is a semantic distinction between a “recorded vote” and the frequently used phrase, “record vote.” The latter term is usually employed in a broad, generic sense, i.e., any vote by which a Member’s position or absence is made evident permanently for all to know. Thus, it would include roll calls prompted by a demand for the yeas and nays, automatic roll calls, tellers with clerks,

be applicable in the House; but in the Committee of the Whole the requisite number for a second was changed in the 96th Congress to the fixed number of twenty-five.<sup>(20)</sup>

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**§ 30.1 In the 92d Congress, the Speaker described the method by which nonelectronic votes would be taken when tellers with clerks were ordered.**

On Feb. 25, 1971,<sup>(1)</sup> the Speaker<sup>(2)</sup> proceeded to explain how recorded teller votes would be taken under the then-prevailing rule<sup>(3)</sup> when the electronic voting system could not be used:<sup>(4)</sup>

and, of course, recorded votes. The “recorded vote,” however, refers solely to those votes taken under the provisions of the last two sentences of Rule I clause 5. As used herein, the reader should note that the term thus encompasses all votes taken by “tellers with clerks” under the now-abandoned two-step procedure employed during the 92d Congress.

20. Rule XXIII clause 2(b), *House Rules and Manual* § 864 (1995), adopted Jan. 15, 1979, H. Res. 5, 125 CONG. REC. 16, 96th Cong. 1st Sess.
  1. 117 CONG. REC. 3833, 3834, 92d Cong. 1st Sess.
  2. Carl Albert (Okla.).
  3. Rule I clause 5, *House Rules and Manual* § 631 (1971).
  4. Although the teller vote with clerks has been supplanted by the recorded

If tellers with clerks are ordered, the Chair will name four Member tellers, two from each side of the question. The Chair will designate the aisle adjacent to the center aisle and to the Chair's left as the aisle for "yea" votes, and the corresponding aisle adjacent to the center aisle to the Chair's right as the aisle for the "no" votes.

Two Member tellers, one from each side of the question, will take their places in the "aye" aisle toward the rear of the Chamber, and the other two Member tellers will take their places in the "no" aisle toward the rear of the Chamber.

Two ballot boxes will be used. One marked "yea," with green trimming. The other marked "no," with red trimming. These boxes will be placed on seats along the "aye" and "no" aisles, respectively, immediately adjacent to the two Member tellers who have positioned themselves along those aisles. One tally clerk will stand behind each of the boxes.

Green "aye" and red "no" cards will be available in the cloakrooms and in the well of the House. These cards will have spaces for the Members to fill in his name, State, and district.

The Chair will state: "Members will pass between the tellers, be counted, and recorded." Members desiring to vote in the affirmative will proceed from the well up the "aye" aisle and, as counted by the Member tellers, will give their green "aye" card, properly

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vote, when the electronic system is not utilized, the present procedure is identical to that described above, except Members no longer act as tellers in the recording of teller votes. See § 33.1, *infra*.

filled in, to the "aye" tally clerk, who will, after examination, place it in the green ballot box.

Members who wish to be counted against the proposition will at the same time proceed from the well up the "no" aisle between the Member tellers and, as they are counted, will hand the filled-in red "no" card to the second tally clerk who will, after examination, place it in the red "no" box. The Member tellers will report to the Chair when all Members have been counted and have handed in their ballots.

To avoid confusion in the well, the Chair asks that Members obtain and fill in the appropriate green or red card in advance of the recorded teller vote, if possible.

After the "no" vote is reported, Members who arrive within the allotted time—which under the rule must be at least 12 [now 15] minutes from the naming of tellers with clerks—will be permitted to fill in the card, be counted, and recorded. No Member will be counted unless, at the time he passes between the Member tellers, he hands a filled-in card to one of the two tally clerks.

The Chair will then announce the vote, but not before the expiration of at least 12 [now 15] minutes from the naming of tellers with clerks, nor until the Chair ascertains that no further Members are present who desire to be recorded.

Immediately after the Chair has announced the vote and before any further business is conducted, Members wishing to be recorded as "present" will announce their presence to the Chair.

The names of Members voting in the affirmative, in the negative, those recorded as present, and those not voting will be printed in the Journal and in the Congressional Record.

One bell and light will signal that tellers have been ordered.

Two bells and lights will indicate that a recorded teller vote has been ordered and is in progress. This second signal should be distinguishable from a two-bell and light rollcall vote because it will come very shortly after the one bell and light teller vote call.

The first signal—for tellers—one bell and light—will be repeated at the end of 5 minutes. And, after a brief pause, the second signal—for recorded tellers—two bells and lights—will also be repeated. At this point Members will be on notice that the recorded teller vote could be closed in 7 [now 10] minutes.

May the Chair add that we believe this is the most practicable way in which to implement the rule. If time and experience prove otherwise, we can of course change the procedure.

These ground rules have been modified as the House has utilized the system. Current practices are discussed in other portions of this chapter.

### *In the Committee of the Whole*

#### **§ 30.2 Yea and nay votes on questions are not permitted in the Committee of the Whole.**

On June 2, 1977,<sup>(5)</sup> the Committee of the Whole had under

5. 123 CONG. REC. 17292, 95th Cong. 1st Sess.

consideration the Department of Energy Organization Act (H.R. 6804). Mr. John N. Erlenborn, of Illinois, offered an amendment which was rejected on a voice vote. Mr. Erlenborn then asked for a recorded vote.

THE CHAIRMAN:<sup>(6)</sup> The question is on the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. Erlenborn).

The question was taken; and the Chairman announced that the noes appeared to have it.

MR. ERLBORN: Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

MR. ERLBORN: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count. Eighty-one Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to clause 2, rule XXIII, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

At the time the point of order of no quorum was made, the amendment in

6. Lucien N. Nedzi (Mich.).

the nature of a substitute offered by the gentleman from Illinois (Mr. Erlernborn) was before the Committee, a recorded vote had been refused, and in the opinion of the Chair the amendment in the nature of a substitute had not carried.

For what purpose does the gentleman from Illinois (Mr. Erlernborn) rise?

MR. ERLERNBORN: Mr. Chairman, on the question of my amendment in the nature of a substitute, I demand a division.

On a division (demanded by Mr. Erlernborn) there were—ayes 29, noes 51.

MR. [STEVEN D.] SYMMS [of Idaho]: Mr. Chairman, on that I ask unanimous consent for a recorded vote.

THE CHAIRMAN: Is there objection to the request of the gentleman from Idaho?

MR. [LLOYD] MEEDS [of Washington]: Mr. Chairman, I object.

THE CHAIRMAN: Objection is heard.

So the amendment in the nature of a substitute was rejected.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. BROWN of Ohio: Mr. Chairman, is it appropriate to ask for the yeas and nays at this point?

THE CHAIRMAN: The Chair will state in response to the gentleman's parliamentary inquiry that it is not in order to ask for the yeas and nays in Committee of the Whole.

Are there amendments to title I?

A similar situation occurred in the 98th Congress<sup>(7)</sup> where a

7. 130 CONG. REC. 21259, 98th Cong. 2d Sess., July 26, 1984.

Member asked for the yeas and nays in Committee of the Whole following refusal of his request for a recorded vote on an amendment. Proceedings were as follows:

THE CHAIRMAN PRO TEMPORE:<sup>(8)</sup> The question is on the amendment offered by the gentleman from Montana [Mr. Williams].

The question was taken; and on a division (demanded by Mr. Williams of Montana) there were—ayes 19, noes 21.

MR. [PAT] WILLIAMS of Montana: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN PRO TEMPORE: The Chair will count; 44 Members are present, not a quorum.

Pursuant to the provisions of clause 2, rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device. . . .

THE CHAIRMAN PRO TEMPORE: Three hundred ninety-six Members have answered to their names, a quorum is present, and the Committee will resume its business.

The pending business is the demand of the gentleman from Montana [Mr. Williams] for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

MR. WILLIAMS of Montana: Mr. Chairman, a parliamentary inquiry.

8. Abraham Kazen, Jr. (Tex.).

THE CHAIRMAN PRO TEMPORE: The gentleman will state it.

MR. WILLIAMS of Montana: Mr. Chairman, may I request the yeas and nays on that last vote?

THE CHAIRMAN PRO TEMPORE: A recorded vote had been requested and refused.

MR. WILLIAMS of Montana: May I ask for the yeas and nays.

THE CHAIRMAN PRO TEMPORE: Not at this time.

The Chair will tell the gentleman from Montana that that would not be permitted in the Committee of the Whole.

MR. WILLIAMS of Montana: Mr. Chairman, a further parliamentary inquiry; may I ask for a division?

THE CHAIRMAN PRO TEMPORE: There has already been one.

MR. WILLIAMS of Montana: I understand that. My question is, May I ask for another?

THE CHAIRMAN PRO TEMPORE: No.

MR. WILLIAMS of Montana: I thank the Chairman.

### ***Effect of Taking a Recorded Vote on Demand for Yeas and Nays on Same Question***

**§ 30.3 In the 92d Congress, the Speaker stated that a vote taken by tellers with clerks pursuant to the rules would not preclude the constitutional right of a Member to demand the yeas and nays on that question.**

On Aug. 17, 1972,<sup>(9)</sup> the Speaker having put the question on the

9. 118 CONG. REC. 28915, 92d Cong. 2d Sess.

passage of a bill (H.R. 13915) to further equal educational opportunities, Mr. Roman C. Pucinski, of Illinois, demanded tellers on the question. The Chair then sought to determine the number of Members in favor of the Pucinski demand at which time Mr. Albert H. Quie, of Minnesota, demanded the yeas and nays. Mr. Pucinski then revised his request and demanded tellers with clerks.<sup>(10)</sup>

THE SPEAKER:<sup>(11)</sup> The gentleman from Illinois has demanded a vote by tellers and a request has been made that the Members rise. The Chair is counting.

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. GERALD R. FORD: Mr. Speaker, if we have a vote by tellers with clerks, is it possible to have a record vote subsequently?<sup>(12)</sup>

THE SPEAKER: A record vote is a constitutional prerogative of the Members of the House.<sup>(13)</sup>

*Parliamentarian's Note:* In the 105th Congress, a change was

10. See Rule I clause 5, *House Rules and Manual* § 630 (1995). See also § 30.1, *supra*.

11. Carl Albert (Okla.).

12. It should be noted that the use of the words, "record vote," by both the Speaker and Mr. Ford in this exchange is meant to denote a vote taken by the yeas and nays.

13. See U.S. Const. art. I, § 7, clause 2.

made to Rule I clause 5(a)<sup>(14)</sup> which renders this precedent obsolete. Clause 5(a) was amended to read as follows:

In clause 5(a) of rule I, insert before the last sentence the following: "A recorded vote taken pursuant to this paragraph shall be considered a vote by the yeas and nays."

Following the adoption of this amendment, a recorded vote, whether taken electronically or by clerks, would preclude a demand for the yeas and nays.

### § 31. The Electronic Voting System

The electronic voting system was first used in the House on Jan. 23, 1973.<sup>(15)</sup> The pertinent rule [Rule XV clause 5(a)] was adopted in 1972.<sup>(16)</sup> Since its installation, it has been used almost exclusively for votes taken by the yeas and nays in the House and for recorded votes in the House and in Committee of the Whole. Back-up procedures have been used on rare occasions where the

14. See § 24(a) of H. Res. 5, adopted Jan. 7, 1997, 143 CONG. REC. p. \_\_\_\_\_, 105th Cong. 1st Sess.

15. 119 CONG. REC. 1793, 93d Cong. 1st Sess.

16. H. Res. 1123, 118 CONG. REC. 36005-12, 92d Cong. 2d Sess., Oct. 13, 1972.

electronic system was inoperable.<sup>(17)</sup> The use of the electronic system, with the shortened voting times the system permits, coupled with the rules change in the 92d Congress which for the first time permitted recorded votes in Committee of the Whole,<sup>(18)</sup> has changed the culture of the House. In the 90th Congress when the Members responded verbally when their names were called by the reading clerk, there were 875 roll calls (397 quorum calls and 478 votes by the yeas and nays), while in the 103d, utilizing the electronic system, there were 1,122 (only 28 quorum calls, 468 yeas and nays, and 626 recorded votes), and in the 104th, there were 1,340 (19 quorum calls, 522 yeas and nays, and 799 recorded votes).

The procedures used in conducting electronic votes have been altered as the House lived with the system and learned its capabilities. Various changes in the pertinent rules and in the manner of using the system have been adopted by the House or announced by the Speaker. These

17. 119 CONG. REC. 6699, 93d Cong. 1st Sess., Mar. 7, 1973; 129 CONG. REC. 18858, 98th Cong. 1st Sess., July 13, 1983.

18. H. Res. 5, 117 CONG. REC. 132-44, 92d Cong. 1st Sess., Jan. 22, 1971.