attitudes, which are conducive to good character, citizenship, and health; and

Whereas, by fostering in the youth of the Nation those qualities upon which our strength as a Nation is dependent, the Boy Scouts of America has made a contribution of inestimable value to the welfare of the entire Nation: Therefore be it

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby pays tribute to the Boy Scouts of America on the occasion of the fiftieth anniversary of the granting by Act of Congress of the charter of the Boy Scouts of America, and expresses its recognition of and appreciation for the public service performed by this organization through its contributions to the lives of the Nation's youth.

MR. MOORE: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Moore: Strike out all after the enacting clause and insert the provisions of House Concurrent Resolution 552 as passed.

THE SPEAKER PRO TEMPORE: Is the purpose of the gentleman from West Virginia to strike out the preamble?

MR. MOORE: My amendment would strike out the language of the Senate concurrent resolution and substitute in lieu thereof the language of the concurrent resolution just passed by the House.

THE SPEAKER PRO TEMPORE: Would the amendment of the gentleman from West Virginia strike out the preamble or all after the enacting clause and substitute the language of the House concurrent resolution just passed?

MR. MOORE: It would strike out all after the enacting clause.

THE SPEAKER PRO TEMPORE: That would not eliminate the preamble.

MR. MOORE: Then, Mr. Speaker, I move to strike the preamble.

The Senate concurrent resolution was agreed to and a motion to reconsider was laid on the table.

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment of the gentleman from West Virginia.

The Clerk read as follows:

Mr. Moore moves to strike out the preamble.

The amendment was agreed to.

A similar House concurrent resolution was laid on the table.

§ 3. Duty To Vote

In the First Congress, a rule was adopted which specified that "no Member shall vote on any question in the event of which he is immediately and particularly interested; or in any case where he was not present when the question was put."[18] Another rule, adopted on the same day, Apr. 7, 1789, provided that "every Member who shall be in the House when a question is put shall vote on the one side or the other, unless the House for special reasons shall excuse him;".[19] Finally, on Apr. 13, 1789, the House

18. See House Journal, First Cong. 1st Sess., p. 9, for adoption of "old rule 29," on Apr. 7, 1789.

19. First Cong. 1st Sess., Rule 31.

mandated "that no Member absent himself from the service of the House, unless he have leave or be sick and unable to attend;".[20]

In the 104th Congress, the corresponding clauses of Rule VIII address the same concepts. Clause 3, although implicitly a part of the accepted norms of House behavior, was not adopted until "ghost voting" problems surfaced in the House following the utilization of the electronic voting system.[1] The rule reads as follows:

> Rule VIII. Duties of the Members.
>
> Clause 1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question. . . .
>
> Clause 3. (a) A Member may not authorize any other individual to cast his vote or record his presence in the House or Committee of the Whole.
>
> (b) No individual other than a Member may cast a vote or record a Member's presence in the House or Committee of the Whole.
>
> (c) A Member may not cast a vote for any other Member or record another Member's presence in the House or Committee of the Whole.

In the 94th Congress, the House adopted a new provision to the Code of Official Conduct. Rule XLIII clause 10,[2] states that a Member of the House who pleads guilty to, or is convicted of, a crime for which the sentence could be two or more years imprisonment should refrain from voting in the House or its committees, including the Committee of the Whole, until judicial or executive proceedings reinstate the Member's presumption of innocence or until he is reelected to the House after his conviction.[3] The power of the House to deprive a Member of the right to vote on any question is certainly doubtful.[4] Clause 10 is not mandatory, but "directory."[5]

Personal or Pecuniary Interest, Member's Determination

§ 3.1 Observance of the requirement of Rule VIII, clause 1 that each Member shall vote unless he has a direct personal or pecuniary interest in the question, is the responsibility of the individual Member. And the

20. First Cong. 1st Sess., Journal p. 13.

1 127 CONG. REC. 98–113, 97th Cong. 1st Sess., H. Res. 5, Jan. 5, 1981.

2. *House Rules and Manual* § 839 (1995).

3. 121 CONG. REC. 10340, 94th Cong. 1st Sess., Apr. 16, 1975.

4. 5 Hinds' Precedents § 5952; 8 Cannon's Precedents § 3072.

5. See § 3.2, infra.

Speaker has indicated that he would not rule on a point of order challenging the personal or pecuniary interest of Members in a pending question, but would defer to the judgment of each Member as to the directness of their interest.

On June 27, 1972,[6] the House entertained consideration of a resolution (H. Res. 1021) providing for the consideration of a bill (H.R. 15390) to extend the then-temporary level of the public debt limitation.

In the course of the resolution's consideration, Mr. Durward G. Hall, of Missouri, sought to elicit an indication from the Speaker[7] as to whether the Chair intended to direct the Members with respect to assessing their own pecuniary interest in voting on the measure, as the following exchange[8] reveals:

> MR. HALL: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. HALL: Mr. Speaker, I am referring to rule VIII,[9] pertinent to the duties of Members, clause 657, which involves personal interest, stating in part: "Unless he has a direct personal or pecuniary interest in the event of such question."
>
> Furthermore, Mr. Speaker, leading up to the parliamentary inquiry, section 659 says:
>
> > It is a principle of "immemorial observance" that a Member should withdraw when a question concerning himself arises . . .
>
> Now, Mr. Speaker, my parliamentary inquiry is, in view of the Reorganization Act of 1970, and even prior to that, the establishment of the Standing Committee on the Conduct and Standards of Ethics of Members, inasmuch as it has become common knowledge as the result of reportorial objective enterprise that there are over 190 Members, including the gentleman from Missouri, that have pecuniary interest in banks and monetary exchange, would it be the intention of the Speaker to see that rule VIII applies in the vote on the previous question?
>
> THE SPEAKER: The Chair will state to the gentleman that the precedents under the rule to which the gentleman makes reference are clear that the Speaker has usually held that the Member himself should determine the question. It is a question for the conscience of the Member.
>
> MR. HALL: A further parliamentary inquiry, Mr. Speaker.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. HALL: Unless a point of order were made based on this rule it would not be the intention of the Chair to direct the Members that they should as a matter of conscience assess their own

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6. 118 CONG. REC. 22548, 92d Cong. 2d Sess.

7. Carl Albert (Okla.).

8. 118 CONG. REC. 22554, 92d Cong. 2d Sess.

9. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

pecuniary interest in voting on such a matter?

THE SPEAKER: The Chair would leave the matter of conscience to each Member's own judgment.

Point of Order Raised Against Vote

§ 3.2 Where a Member had voted on a motion to permit the reading in debate of a court transcript on which a pending resolution for his expulsion was in part based, the Chair overruled a point of order that such Member was prohibited because of his personal interest in the question from voting thereon, since the more recent precedents within the last 100 years indicate that it is the responsibility of each Member, and not of the Speaker, to determine whether he has a direct personal or pecuniary interest so as to prevent him from voting under Rule VIII.

On Mar. 1, 1979,[10] Mr. Newt Gingrich, of Georgia, rose to a question of privilege. The pertinent proceedings relating to Rule VIII are shown below:

MR. GINGRICH: Mr. Speaker, I rise to a question of the privileges of the House, and I offer a privileged resolution (H. Res. 142) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 142

Resolved, That Charles C. Diggs, Jr., a Representative from the Thirteenth District of Michigan, is hereby expelled from the House of Representatives.

MOTION OFFERED BY MR. WRIGHT

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Wright moves to refer House Resolution 142 to the Committee on Standards of Official Conduct.

THE SPEAKER:[11] The gentleman from Texas (Mr. Wright) is recognized for 1 hour.

MR. GINGRICH: Mr. Speaker, will the gentleman yield?

MR. WRIGHT: Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. Gingrich). . . .

MR. WRIGHT: Mr. Speaker, I yield 8 minutes to the gentleman from Virginia (Mr. Butler). . . .

MR. [M. CALDWELL] BUTLER [of Virginia]: . . . I will tell you, however, that I have read the testimony of Charles Diggs under oath before the court and in my opinion he affirmatively stated and admitted sufficient acts to constitute grounds for his expulsion today. Here again, I would prefer it to be determined with the recommendation of the appropriate committee and under more regular procedures await that process; but when the gentleman from Michigan insists on continued participation, then I have no choice but to share the facts I have now.

10. 125 CONG. REC. 3746, 3747, 96th Cong. 1st Sess.

11. Thomas P. O'Neill, Jr. (Mass.).

Bear in mind, I have not read the entire record. I make no representation about that. I only deal with what the gentleman from Michigan (Mr. Diggs) had to say on the charges against him. There are 29. My time is limited. I will only deal with samples, but I represent that these are fair samples.

PARLIAMENTARY INQUIRY

MR. [PARREN J.] MITCHELL of Maryland: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman from Maryland will state the parliamentary inquiry.

MR. MITCHELL of Maryland: Mr. Speaker, the Member in the well is going to attempt to read from a transcript in a trial. Ordinarily, I would have no objection to that if this body had constituted itself as a body to try Mr. Diggs. It has not done so. I have strenuous objections to reading any portion of that transcript when this body is not so constituted to receive that information.

Number two. Mr. Speaker, in doing so, if he is permitted to do so, is not the Member usurping authority of the Committee on Standards of Official Conduct?

I strenuously object to the reading of any portion of this transcript.

THE SPEAKER: The gentleman objects to the reading?

MR. MITCHELL of Maryland: Yes, I do, Mr. Speaker; any portion of the transcript, whether it is printed in the Record or not, I do not care. I object to its being read before this body as presently constituted.

THE SPEAKER: The gentleman from Virginia can continue to debate, but he cannot continue to read without the permission of the House.

MR. BUTLER: Mr. Speaker, may I have the permission of the House to read from the transcript?

MR. MITCHELL of Maryland: Mr. Speaker, I object to granting permission for the reading of the transcript.

THE SPEAKER: The question is: Shall the gentleman from Virginia be permitted to read the document? The question is on that matter.

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

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER: The gentleman from Maryland demands the yeas and nays.

Those in favor of taking this by the yeas and nays will arise.

In the opinion of the Chair, a sufficient number have arisen. The yeas and nays will be ordered. . . .

The Members will proceed to vote. Those in favor will vote "aye," those opposed will vote "no."

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 353, nays 53, not voting 26, as follows: . . .

MR. [JOHN J.] RHODES [of Arizona]: Mr. Speaker, I have a point of order.

THE SPEAKER: The gentleman from Arizona will state it.

MR. RHODES: Mr. Speaker, the electronic device by which the House votes indicates that the gentleman from Michigan (Mr. Diggs) has voted on the question which the House just considered. I would like to make a point of order against the vote by the gentleman from Michigan (Mr. Diggs)

based on rule VIII, clause 1, which of course states:

> Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.
>
> In making the point of order, I submit that the gentleman from Michigan clearly has a personal interest in the question just decided.

THE SPEAKER: The Chair is ready to rule on the gentleman's point of order. For the information particularly of the new Members as to how the pending vote came about, it is stated in the Rules of the House that a Member cannot read from a document upon which the House will not vote without the permission of the House. In this instance the gentleman was going to read from the records of the court. The gentleman from Maryland (Mr. Mitchell) objected. This has happened in the past.

It was on December 19, 1974, that there was an objection to the reading from a paper by the gentlewoman from New York, Mrs. Abzug, and the House voted that she could read from the paper.

The gentleman from Arizona (Mr. Rhodes) has addressed himself in an inquiry to the Chair on the application of rule VIII, clause 1, providing that each Member shall vote on each question unless he has a direct personal or pecuniary interest therein.

Speaker Clark held that the question of whether a Member's interest was such as to disqualify him from voting was an issue for the Member himself to decide and that the Speaker did not have the prerogative to rule against the constitutional right of a Member to represent his constituency.

Speaker Blaine stated that the power of the House to deprive one of its Members of the right to vote on any question was doubtful.

The Chair has been able to discover only two recorded instances in the history of the House where the Speaker has declared a Member disqualified from voting. The last decision occurred over 100 years ago.

Because the Chair severely doubts his authority to deprive the constitutional right of a Member to vote, and because of the overwhelming weight of precedent, the Chair holds that each Member should make his or her own determination whether or not a personal or pecuniary interest in a pending matter should cause him to withhold his vote. The point of order is overruled.

So the gentleman from Virginia (Mr. Butler) was allowed to read.

For Medical Reasons

§ 3.3 A Member may be excused from voting for medical reasons only by the House; the Committee of the Whole has no such authority, even by unanimous consent.

On Mar. 26, 1965,[12] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 2362) to strengthen and improve edu-

12. 111 CONG. REC. 6095, 6096, 89th Cong. 1st Sess.

cational quality and educational opportunities in the nation's elementary and secondary schools.

During the course of the bill's consideration, Mr. Adam C. Powell, of New York, asked unanimous consent that Mr. Charles E. Bennett, of Florida, and Mr. Elmer J. Holland, of Pennsylvania, be excused from any teller votes. Although both of these Members were present, Mr. Bennett had a broken leg and was confined to a wheelchair; and Mr. Holland was recovering from a severe stroke and found walking difficult.

The Chairman[13] was unable to permit the Powell request, however, stating that "That is not in order in the Committee of the Whole. . . ."

Abstentions and Announcements Thereof

§ 3.4 Two Members abstained from voting on a bill [to increase compensation for service-connected disabilities for veterans] in which they had a pecuniary interest.

On Apr. 2, 1962,[14] Mr. Olin E. Teague, of Texas, moved to suspend the rules and pass a bill (H.R. 10743) to amend title 38 of the United States Code. The purposes of the bill were to provide increases in the rates of service-connected disability compensation to reflect the change which had occurred in the cost of living since the previous compensation increase in 1957 and to more adequately compensate the nation's seriously disabled veterans.

Following discussion of the motion, the Speaker[15] put the question.[16] It was taken; and, the yeas and nays having been ordered, there were—yeas 347, answered "present" 2, not voting 87.

The two Members voting "present" were Mr. Robert H. Michel, of Illinois, and Mr. John Bell Williams, of Mississippi. Both of the aforementioned Members possessed service-connected disabilities.[17]

§ 3.5 A Member announced a disqualifying personal inter-

13. Richard Bolling (Mo.).
14. 108 CONG. REC. 5561, 87th Cong. 2d Sess.
15. John W. McCormack (Mass.).
16. 108 CONG. REC. 5568, 87th Cong. 2d Sess.
17. In an earlier instance, the same Mr. Williams along with Mr. Charles E. Potter (Mich.), notified the Speaker that they would be personally affected by a bill (S. 1864) to authorize the Administrator of Veterans' Affairs to purchase automobiles for certain disabled veterans. Accordingly, each indicated that he felt compelled to vote "present." See 97 CONG. REC. 13746, 82d Cong. 1st Sess., Oct. 20, 1951.

est in a pending bill [pertaining to marketing orders on pears] and stated his intention to vote "present" on the issue.

On Sept. 9, 1968,[18] the House resolved itself into the Committee of the Whole for the purpose of considering a bill (H.R. 10564) to amend section 2(3), section 8c(2), and section 8c(6)(I) of the Agricultural Marketing Agreement Act of 1937, as amended. The purpose of the bill was to add pears for canning or freezing to the list of commodities for which federal marketing orders may be made applicable and to permit the inclusion of a checkoff for marketing promotion projects, including paid advertising for the commodity.

In the course of the bill's consideration, Mr. Charles S. Gubser, of California, felt compelled to make the following statement:[19]

> Mr. Chairman, I am the owner and operator of a small pear orchard. So, obviously, I have a personal interest in this matter which I construe as a conflict of interest. I therefore take this time to announce to the membership of the House that if a rollcall is held on this bill, I shall vote "present."

§ 3.6 A Member announced that he had not voted on a roll call because of a pecuniary interest in the legislation, which dealt with urban renewal.

On July 27, 1965,[20] the House agreed to the conference report on a bill (H.R. 7984) to assist in the provision of housing for low and moderate-income families to promote orderly urban development, to improve living environment in urban areas, and to extend and amend laws relating to housing, urban renewal, and community facilities.

Following this vote, Mr. James H. Scheuer, of New York, requested unanimous consent to address the House for one minute. There being no objection, Mr. Scheuer made the following statement:

> Mr. Speaker, I would like to clarify for the record that on rollcall No. 204 concerning H.R. 7984, I was present but did not vote because I felt I had a direct personal interest in the legislation, and under rule 8 of the House was precluded from voting thereon.[1]

§ 3.7 Where a bill was pending relating to the reserves required to be maintained by certain banks, a Member disqualified himself on the vote

18. 114 CONG. REC. 26035, 90th Cong. 2d Sess.

19. *Id.* at p. 26038.

20. 111 CONG. REC. 18424, 18425, 89th Cong. 1st Sess.

1. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

because of a pecuniary interest in the question voted upon.

On July 1, 1959,[2] the House resolved itself into the Committee of the Whole for the further consideration of a bill (S. 1120) to amend the National Bank Act and the Federal Reserve Act with respect to the reserves required to be maintained by member banks of the Federal Reserve System against deposits and to eliminate the classification "central reserve city."

In the course of the Committee's deliberations, the Chairman[3] recognized Mr. Thomas M. Pelly, of Washington, who then made the following statement:[4]

> Mr. Chairman, I desire the Record to show that in conformity with rule 8 of the Rules of the House when this measure comes to a vote, I shall feel constrained to vote "present."[5]

Withdrawal of Vote Owing to Pecuniary Interest

§ 3.8 A Member has withdrawn his vote on a roll call because of a pecuniary interest in the question voted upon.

On July 21, 1954,[6] the House voted to suspend the rules and pass a bill (H.R. 9020) to provide increases in the monthly rates of compensation and pension payable to certain veterans and their dependents. Prior to the Speaker's[7] announcement of the result, Mr. John Bell Williams, of Mississippi, addressed the Speaker and asked how he was recorded. The Speaker responded by informing Mr. Williams that he was recorded as voting "yea."

Immediately thereafter, Mr. Williams made the following statement:

> Mr. Speaker, under rule 8, clause 1, of the Rules of the House of Representatives I do not feel qualified to vote on this particular measure. I therefore withdraw my vote of "yea" and vote "present."

The result of the vote was then announced, after which Mr. Williams sought and received unanimous consent to extend his remarks in the Record. In so doing, he said the following:

> Mr. Speaker, on the rollcall just completed, I am recorded as voting "present." In view of the fact that I am not recorded as favoring or opposing the measure, I feel that I should take this means to clarify my personal position on the bill just passed.

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2. 105 CONG. REC. 12481, 86th Cong. 1st Sess.

3. Howard W. Smith (Va.).

4. 105 CONG. REC. 12504, 86th Cong. 1st Sess.

5. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

6. 100 CONG. REC. 11262, 83d Cong. 2d Sess.

7. Joseph W. Martin, Jr. (Mass.).

Clause 1, rule VIII of the Rules of the House of Representatives provides that every Member "shall vote on each question put unless he has a direct or pecuniary interest in the event of such question."[8]

Further, Jefferson's Manual of Parliamentary Practice, paragraph 376, states:

> Where the private interests of a Member are concerned in a bill or question, he is to withdraw.

Mr. Speaker, due to the fact that I would be one of the veterans personally affected by the bill just passed, I felt compelled under the Rules of the House to withdraw from voting and to be recorded as voting "present"[9]

Where Subject Matter in Question Affects Class of Members

§ 3.9 The Chair has held that where the subject matter before the House affects a class of citizens, which includes some Members, rather than individual Members, the personal interest of Members who belong to that class is not such as to disqualify them from voting; and the Chair noted, in so ruling, that the power of the House to deprive one of its Members of the right to vote on any question is doubtful.

On May 31, 1939,[10] Mr. Edward E. Cox, of Georgia, by direction of the Committee on Rules, called up a resolution (H. Res. 205) and asked for its immediate consideration. The resolution provided, in part, that upon its adoption, the House would resolve itself into the Committee of the Whole:

> . . . for the consideration of H.R. 6466, a bill to provide for and promote the general welfare of the United States by supplying to the people a more liberal distribution and increase of purchasing power, retiring certain citizens from gainful employment, improving and stabilizing gainful employment for other citizens, stimulating agricultural and industrial production and general business, and alleviating the hazards and insecurity of old age and unemployment. . . .

Shortly thereafter,[11] Mr. Martin J. Kennedy, of New York, propounded a parliamentary inquiry—the answer to which comprised a rather lengthy statement by the Chair.

> MR. MARTIN J. KENNEDY: . . . I feel that in such an important issue as the

8. This language did not change in the intervening period of time. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

9. In the 84th Congress, Mr. Williams also withdrew a "yea" vote on a roll call to pass a bill of pecuniary interest to certain veterans for virtually the same reasons. See 102 CONG. REC. 12566, 84th Cong. 2d Sess., July 12, 1956.

10. 84 CONG. REC. 6359, 76th Cong. 1st Sess.

11. *Id.* at p. 6360.

pending one the House and the country are entitled to know whether or not these Members over the age of 60 are disqualified to vote under rule VIII of the House.[12] If this bill passes they will automatically become immediate beneficiaries under the provisions of the bill. Therefore, Mr. Speaker, my parliamentary inquiry is, Are such Members disqualified from voting on this bill?

THE SPEAKER:[13] The gentleman from New York has propounded a parliamentary inquiry which, of course, the Chair assumes is propounded in good faith, and the Chair imagines that the gentleman has in mind rule VIII of the House of Representatives, which is in the following language:

Every Member shall be present within the Hall of the House during its sittings unless excused or necessarily prevented, and shall vote on each question put unless he has a direct personal or pecuniary interest in the event of such question.

The Chair does not feel, in view of the pressing circumstances with respect to time, it is necessary to undertake to elaborate upon this question, as it is certainly not a novel one, and in the brief time since the gentleman gave notice he would propound his parliamentary inquiry the Chair has found that this question has been specifically presented to the House on a number of occasions and finds that very thoughtful and elaborate opinions have been rendered upon this point, particularly by Mr. Speaker Blaine (Hinds' Precedents, vol. V, sec. 5952), by Mr. Speaker Longworth (Cannon's Precedents, vol. VIII, sec. 3072), and by Mr. Speaker Clark (Cannon's Precedents, vol. VIII, sec. 3071), all of whom join in the conclusion stated in the syllabus of the Blaine opinion in the following language:

> Where the subject matter before the House affects a class rather than individuals, the personal interest of Members who belong to that class is not such as to disqualify them for voting.
>
> The power of the House to deprive one of its Members of the right to vote on any question is doubtful.

If the Chair were disposed to elaborate upon the opinion announced in the Blaine decision, it might be proper for him to read extracts from that decision. However, it seems to be well determined—and the Chair thinks it is based on sound reasoning and philosophy—that where a bill comes up affecting a general class of people and no direct or personal pecuniary interest of a Member as such is involved, Members are not proscribed in absolute good faith and in all morality from voting upon a bill of that character.

If the rule were otherwise, all of us would probably be subject to some prohibition in the way of voting upon Federal Taxation. It might be taken to excuse ourselves from voting upon such questions because our pecuniary interests are involved. A number of other suggestions might be made along the same line.

So the Chair answers the parliamentary inquiry of the gentleman from New York to the effect that under the

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12. The language of the first clause of Rule VIII did not change between 1939 and 1973. See Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

13. William B. Bankhead (Ala.).

rulings of former Speakers in well-considered opinions and as a matter of constitutional right the Members can, and should, in all good faith vote upon the bill now involved.

Votes and Ethics Inquiries

§ 3.10 A Member's stock ownership has been the subject of an investigation by the Committee on Standards of Official Conduct where it was alleged that the Member's votes on legislation before the House tended to benefit his investment.

In the 94th Congress, the Committee on Standards of Official Conduct investigated several charges of misconduct brought against Mr. Robert L. F. Sikes, of Florida. The committee eventually submitted a report urging a reprimand of the Representative which was adopted by the House.[14]

One of the charges against Mr. Sikes was that he had violated Rule VIII clause 1,[15] which provides that a Member not vote on questions in which he has a direct personal or pecuniary interest, in that he had voted on a general defense appropriation bill in 1974 which carried an appropriation of funds to purchase aircraft to be manufactured by a corporation in which he owned stock. The committee declined to recommend that the Member be punished for this vote and cited in support of its decision Speaker Albert's response to a parliamentary inquiry on Dec. 2, 1975.[16] In that instance, Speaker Albert had stated that a Member's ownership of stock did not disqualify him from voting on a bill general in scope where he would be within a class of numerous individuals with similar pecuniary interests. It is up to each Member to make a determination whether to withhold his vote under Rule VIII.

Committee Meeting as Excusing Duty To Vote

§ 3.11 Permission from the House to a committee to sit during House sessions, does not relieve committee members from their obligation to respond on House roll calls.

14. H. Res. 1421, 122 CONG. REC. 14381–83, 94th Cong. 2d Sess., July 29, 1976.

15. Rule VIII clause 1, provides: "Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question." *House Rules and Manual* § 656 (1995).

16. 121 CONG. REC. 38135, 94th Cong. 1st Sess.

On Aug. 5, 1937,[17] the House, by unanimous consent, granted its permission to the Committee on Ways and Means to sit during the sessions of the House for the remainder of the session. Immediately thereafter, Mr. Hamilton Fish, Jr., of New York, addressed the Speaker[18] and the following exchange took place:

> MR. FISH: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: Does the gentleman from Indiana yield to permit the gentleman from New York to submit a parliamentary inquiry?
>
> MR. [ARTHUR H.] GREENWOOD: I yield.
>
> MR. FISH: Mr. Speaker, when permission is given to a committee to sit during the sessions of the House, does that give any rights to any of the members of that committee on roll calls?
>
> THE SPEAKER: Absolutely none.
>
> MR. FISH: Not even on quorum roll calls?
>
> THE SPEAKER: It does not. On all quorum roll calls all Members who desire to be recorded must appear and vote on the roll call.

Right of Chairman of Committee of the Whole To Participate

§ 3.12 Appointment of a Member to Chair the Committee of the Whole does not effect a forfeiture of his right to vote or to object to a unanimous-consent request.

On Dec. 9, 1947,[19] the House resolved itself into the Committee of the Whole for the further consideration of a bill (H.R. 4604) providing aid to certain foreign countries. In the course of the lengthy discussion which followed, a question arose as to the possible invasion of the Chair's rights. Mr. August H. Andresen, of Minnesota, had sought unanimous consent to discuss his proposed amendment[20] in the Committee of the Whole on the following day. Objection being heard,[1] Mr. Andresen withdrew his request. However, Mr. John W. McCormack, of Massachusetts, sought to strike the last word in order to voice his reservations against such a request per se. Mr. McCormack felt constrained to say that he "would never agree to a unanimous-consent request which takes away from the Chairman of the Committee . . . the right to recognize Members in [the] Committee of the Whole."

In responding to Mr. McCormack's assertion, the Chair[2] in-

17. 81 CONG. REC. 8300, 75th Cong. 1st Sess.
18. William B. Bankhead (Ala.).
19. 93 CONG. REC. 11188, 80th Cong. 1st Sess.
20. *Id.* at p. 11230.
1. *Id.* at p. 11231.
2. Earl C. Michener (Mich.).

dicated that it did not believe any of its prerogatives would be forfeited if such a request were honored. Said Chairman Michener:

> As the Chair understands the rule, the presiding officer in the Committee is in a dual capacity. First, he is selected to be the presiding officer during the consideration of the bill. But by accepting such appointment he does not lose his right to vote and object as any other Member. That is, his district is not deprived of its rights by virtue of the Chairman selection. That being true, the Chair not making any objection, I cannot see how the rights of the Chair are infringed upon if the committee, by unanimous consent, wants to provide that a certain individual may speak at a certain hour during the Committee consideration. If the Chair is agreeable and all Members are agreeable.[3]

In the Senate

§ 3.13 The Senate by viva voce vote excused a Senator from voting on a yea and nay roll call because of his pecuniary interest in an amendment before that body.

The Senate having resumed consideration of a bill (H.R. 3687) to provide revenue, and for other purposes, Senator J. W. Elmer Thomas, of Oklahoma, called up an amendment pertaining to mineral depletion allowances.[4] Discussion ensued after which the Presiding Officer[5] put the question[6] on the amendment. Senator Thomas then requested the yeas and nays which were ordered shortly thereafter.

As the legislative clerk proceeded to call his name, Senator Warren R. Austin, of Vermont, initiated the following exchange:

> Mr. President, I ask to be excused from voting on this amendment. I am personally interested in one of the items affected, namely, talc.
>
> THE PRESIDING OFFICER: Shall the Senator from Vermont, for the reasons assigned by him, be excused from voting? [Putting the question.] The "ayes" have it, and the Senator is excused.

Parliamentarian's Note: While Members of the House are expected to vote on each question unless they have a "direct personal or pecuniary interest"[7]—a question which each Representative must decide on his own—members of the Senate are expected to vote unless "excused by

3. For specific precedents pertaining to votes by the Chair in the generic sense (i.e., by the Chairman of the Committee of the Whole, by the Speaker, and by the Speaker Pro Tempore) see §§ 15, 21, 29, infra.

4. 90 CONG. REC. 300, 78th Cong. 2d Sess., Jan. 18, 1944.

5. John L. McClellan (Ark.).

6. 90 CONG. REC. 304, 78th Cong. 2d Sess.

7. Rule VIII clause 1, *House Rules and Manual* § 656 (1995).

the Senate."[8] The procedure is described in part as follows:[9]

> When a Senator declines to vote on call of his name, he shall be required to assign his reasons therefor, and having assigned them, the Presiding Officer shall submit the question to the Senate: "Shall the Senator, for the reasons assigned by him, be excused from voting?" which shall be decided without debate.

Proxy Voting

§ 3.14 While the exercise of proxy voting is forbidden in the House, recognition of voting proxies by a standing committee has at some periods been left as a matter to be determined by the committee itself.

On Jan. 26, 1950,[10] the House briefly discussed a recent decision of the Committee on Rules to delay the reporting out of certain legislation because of the absence of two of the committee's minority members. As Mr. Clarence J. Brown, of Ohio, explained to the House, one of the missing members had been unavoidably absent because of his hospitalization, and had specifically requested that the Committee on Rules decision be delayed temporarily.

Shortly thereafter, a colloquy evolved as follows:

> MR. [HERMAN P.] EBERHARTER [of Pennsylvania]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER:[11] The gentleman will state it.
>
> MR. EBERHARTER: Mr. Speaker, would it not be within the rules of the House for the Committee on Rules to permit a member to give his proxy to another member so a vote could be had on an important matter in which the whole country is interested?
>
> THE SPEAKER: That is a matter for the committee to determine.
>
> The Chair may make this statement: He served on one committee for 24 years, and never was a proxy voted on that committee, because the present occupant of the Chair always voted against it.
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. RANKIN: The rules of the House are the rules of every committee of the House. I, as chairman of the Committee on Veterans' Affairs, have taken the position that since the rules of the House forbid voting by proxy, under the same rule a member cannot vote by proxy in the committee. Am I right or not?
>
> THE SPEAKER: Committees have always been permitted to decide that question.

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8. Rule XII clause 2, *Senate Manual* (1995).

9. *Id.* at clause 2.

10. 96 CONG. REC. 980, 81st Cong. 2d Sess.

11. Sam Rayburn (Tex.).

MR. RANKIN: The rule states that the committees shall be governed by the rules of the House: that the rules of the House shall be the rules of every committee, and I do not believe a committee can change its own rules to permit absentee voting.

THE SPEAKER: The Chair is going to hold as did Speaker Longworth, that it is a matter for the committee itself to determine.[12]

Parliamentarian's Note: Effective Jan. 22, 1971, the provisions of section 106(b) of the Legislative Reorganization Act of 1970 became part of the rules. Those provisions permitted committees to adopt written rules permitting proxies in writing, designating the person to execute the proxy, and limited to a specific measure or matter and amendments or motions relating thereto. Effective Jan. 3, 1975, proxies in committee were prohibited, but on Jan. 14, 1975, the rule was amended to permit proxies in committees with the additional restrictions requiring an assertion that the Member is absent on official business or otherwise unable to attend, requiring the Member to sign and date the proxy, and permitting general proxies for procedural matters. In the 103d Congress, Rule XI clause 2(f), was added which prohibited all proxy voting in all committees and subcommittees.[13]

"Absentee" or "Ghost" Voting

§ 3.15 An explicit prohibition against using a voting card for a colleague is now a part of the standing rules.

While the requirement that a Member has to be physically in the Chamber to cast his vote had been an "accepted" part of House procedures since the First Congress, either explicitly stated or universally understood as the norm of behavior, the necessity of adopting clause 3, Rule VIII arose after the implementation of the electronic voting system. The Committee on Standards of Official Conduct, in its report on "voting anomalies" issued in the 96th Congress recommended the adoption of an explicit rule.[14] The current clause 3 was actually made a part of Rule I on Jan. 5, 1981.[15]

§ 3.16 The House has reprimanded a Member who permitted votes on his behalf to be cast during his absences.

12. Speaker Longworth's statement on the use of proxies in committees is found in 8 Cannon's Precedents § 2219. See also Ch. 17, supra.

13. See H. Res. 6, Jan. 4, 1995.

14. H. Rept. No. 96–991.

15. 127 CONG. REC. 98–113, 97th Cong. 1st Sess., Jan. 5, 1981.

On Dec. 18, 1987,[16] the House considered a privileged resolution, reported from the Committee on Standards of Official Conduct, to reprimand Mr. Austin J. Murphy, of Pennsylvania, for allowing his voting card to be used to cast two votes during his absence.

MR. [JULIAN C.] DIXON [of California]: Mr. Speaker, I call up a privileged resolution (H. Res. 335) in the matter of Representative Austin J. Murphy, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 335

Resolved, That the House of Representatives adopt the report by the Committee on Standards of Official Conduct dated December 16, 1987, in the matter of Representative Austin J. Murphy of Pennsylvania.[17]

THE SPEAKER PRO TEMPORE:[18] The gentleman from California [Mr. Dixon] is recognized for 1 hour. . . .

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

THE SPEAKER PRO TEMPORE: The Chair would like to state that unanimous consent has been obtained for Members to extend their remarks on this matter. It is essential that the Congressional Record contain as true and accurate a record of the proceedings as possible. All insertions and extensions not delivered in debate will appear at the end of the proceedings printed in smaller type. The Chair trusts that Members will, in revising remarks they actually delivered in debate on this subject, confine their revisions to those which are necessary to correct grammatical errors and consistent with the permission obtained by the gentleman from California [Mr. Dixon] to refrain from making any changes in the substance of debate.

The Chair recognizes the gentleman from California [Mr. Dixon]: . . .

MR. DIXON: . . . Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, there were four counts that the committee sustained. Two counts dealt with what is commonly known as ghost voting. A third count dealt with the improper diversion of Government resources, and the fourth count dealt with what is known as a ghost employee; that is, Michael Corbett—from September 1981 to July 1982—failed to carry out the duties for which he was compensated.

I want to first take the time to deal with counts 1 and 2. The committee found that on July 14 and August 9, 1978, Representative Murphy was recorded as voting when he wasn't present in the Hall of the House.

He was recorded "present" on rollcall No. 543 at 10:23 a.m. on July 14, 1978. There was clear and convincing evidence and, as a matter of fact, it was

16. 133 CONG. REC. 36266–76, 100th Cong. 1st Sess.

17. The report of the Committee on Standards of Official Conduct (H. Rept. No. 100–485) set forth the findings of the committee and recommended a reprimand. By adopting the report, the House ratified the committee's findings as well as its recommendations.

18. Dave McCurdy (Okla.).

stipulated to that he was in Washington, PA, serving as master of ceremonies at Judge Samuel Rogers' swearing in at 10:30 a.m.

On August 9, 1978, on rollcall No. 663 at 10:26 a.m., he was recorded as being present. He was in Carmichaels, PA, at a ground-breaking ceremony at 11 a.m.

As a matter of fact, Representative Murphy has stipulated that he was present at these particular places. The defense for these actions are that his card was placed in his desk drawer while he was out of town and he had no personal knowledge how these votes occurred. He also asserts that, as a defense, it was not a violation of House rules at that time to proxy vote.

In 1978, rule VIII said, in part: Every Member shall be present *** and shall vote on each question put ***.

The committee came to the conclusion that Representative Murphy permitted, either in the sense that he knew or that he didn't guard against being voted on the floor of the House by safeguarding his voting card. Furthermore, he didn't, a short time thereafter, notify the House to disavow the ghost votes. . . .

It is the totality of this picture: That on at least two occasions ghost voting occurred; that there was an improper diversion of official resources; and that a ghost employee under Representative Murphy's direct supervision, did not carry out his job duties as subcommittee staff director, that this committee has recommended to you, on a vote of 11 ayes to 0 nays, that Representative Murphy be reprimanded. . . .

Mr. Speaker, I want to say to the Members of this body that I appreciate the attention that they have given to both sides of this issue. . . .

There is some confusion here as it relates to counts one and two, and let me tell you what the facts are. An analysis was made. The votes were not made here or anyplace else. They were made at station 33 with a card; so the issue of whether they were made here and all the confusion, in all respect to the respondent, he is trying to cloud the issue.

Prior to 1973, that was the year that the voting devices were installed, was there any doubt in any Member's mind that they have to be here physically on the floor and vote? I do not think so.

After that time in an honorable House with honorable men and women, no one thought to change the rule, and so there is an issue that arose in the Morgan Murphy case as to the crime or breach of confidence or House rule as it relates to someone who took the card, not the person that was responsible for their own vote; and yes, there was a rule change made in 1980 that said not only do you have to be present, but because of technology, the person who does the voting has breached the House rules. That is what occurred in the Morgan Murphy case.

Mr. Murphy in that case took the well on the Monday after and said he did not allow anyone to vote him.

Now, the gentleman from Pennsylvania, Mr. Austin Murphy, says that some of this came to the committee's attention, and he is correct in part, by a May 7 Times article. Did Mr. Murphy at that time look at the article, ex-

amine the dates, the specific two dates that were alleged, come to this well, notify the Speaker, "Yes, I was not here, and there was a recorded vote"? No, he waited until after a statement of alleged violation, after we knew where he was, and then he says, "Oh, yes, I leave my card—when I get this, now, when I in fact leave"——

MR. MURPHY: Will the gentleman yield just for a question?

MR. DIXON: I will not yield. The gentleman has placed his interpretation on the evidence. These are arguments I have a right to place my interpretation on the evidence.

I take my card and I put it in my desk drawer, and so when I leave here I do not have my identification card. With that, does he ever check his records to see if he has been recorded? No. He just does not know how it happened.

When you look at the fact that it did occur at station 33, there is no doubt that he either directed someone to do it, or he did not safeguard this card. . . .

THE SPEAKER PRO TEMPORE: All time has expired.

MR. DIXON: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the resolution.

MR. DIXON: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 324, nays 68, answered "present" 20, not voting 21, as follows: . . .

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Voting After Conviction for Felony

§ 3.17 In the 93d Congress, the House adopted a resolution expressing the sense of the House that Members should refrain from voting, in the House, its committees, including the Committee of the Whole, when convicted of a crime for which a sentence of two years or more may be imposed. This resolution was later added to the Code of Official Conduct, as clause 10 in Rule XLIII.

The resolution was considered and adopted on Nov. 14, 1973.[19]

H. RES. 128

Resolved, That it is the sense of the House of Representatives that any Member of, Delegate to, or Resident Commissioner in, the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is then a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of

19. 119 CONG. REC. 26944–46, 93d Cong. 1st Sess.

> the presumption of his innocence or until he is reelected to the House after the date of such conviction. This resolution shall not affect any other authority of the House with respect to the behavior and conduct of its Members.
>
> MR. [MEL] PRICE of Illinois: . . . [T]he committee is unanimous . . . in urging adoption of the pending resolution which would make it the sense of the House that a Member convicted of a crime carrying a possible sentence of 2 or more years' imprisonment should refrain from participation in the business of each committee of which he is a member and refrain from voting on any questions in the House.

After debate on the resolution, where certain Members addressed issues of constitutionality and of depriving constituents of representation, the House adopted the resolution by a vote of 388 to 18, 27 Members not voting.

Later in the 93d Congress, on Sept. 24, 1974, a Member resigned as a conferee, citing the provisions of H. Res. 128 as the reason for his action.

In the 94th Congress, in a report (94–76) issued by the Committee on Standards of Official Conduct, the committee stated that "conviction" in clause 10 includes a plea of guilty or a finding of guilty even though sentencing may be deferred.

§ 4. Pairs

The practice of "pairing votes" dates back to the early part of the 19th century.[20] The fundamental purposes of pairing were to indicate a Member's position on a roll call vote when he was unable to be present and to prevent his absence from improperly affecting the outcome. "Pairing" enabled him to effect a "cancellation" of the vote he would have cast on the particular issue through a gentleman's agreement with a Member of the opposite view. The latter Member either expected to be similarly unavailable for the vote in question or would willingly abstain from voting in deference to the "pair" and vote "present."

Initially criticized by Members of prominence,[21] the practice was not referred to in the rules until 1880.[1] Even then, the applicable rule[2] merely pertained to the announcing of pairs; and its promulgation appears to have constituted the legitimizing of a longstanding practice. Historically regarded as merely private agreements between Members, the pairing procedure grew more by custom than by direction; and the original purpose was occasionally lost in the

20. 8 Cannon's Precedents § 3076.

21. Indeed, John Quincy Adams once moved a resolution citing the practice as violative of the Constitution. *Id.* At § 3076.

1. Rule VIII clause 2, *House Rules and Manual* § 660 (1995).

2. *Id.*