

ernment. Corporations must do their share in investing in our nation's most vulnerable in our society.

The Mink bill is financed through raising the top corporate income rate by 1.25% to 36.25 percent. This is estimated to raise \$20.25 billion over 5 years.

After further debate, the Chair put the question, as follows:

THE CHAIRMAN: All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentlewoman from Hawaii [Mrs. Mink].

The question was taken; and the Chairman announced that three-fifths of those present not having voted in the affirmative, the noes appeared to have it.

#### RECORDED VOTE

MRS. MINK of Hawaii: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 96, noes 336, not voting 2, . . . .

So, three-fifths of those present not having voted in the affirmative, the amendment in the nature of a substitute was rejected.

The result was announced as above recorded.

**§ 5.8 A special order reported by the Committee on Rules, adopted by a majority vote, may waive the three-fifths requirement for passage of a measure containing a federal income tax rate increase.**

On Oct. 26, 1995,<sup>(13)</sup> the Speaker Pro Tempore,<sup>(14)</sup> responded to a parliamentary inquiry regarding the application of Rule XXI clause 5(c)<sup>(15)</sup> to H.R. 2491, Seven-Year Balanced Budget Reconciliation Act of 1995, being considered under the provisions of House Resolution 245, a special order reported by the Committee on Rules. The inquiry and the Speaker Pro Tempore's response follow:

MR. [MICHAEL D.] WARD [of Kentucky]: My inquiry is, I have studied the rules and rule XXI applies to bills. This is a bill, and it is a tax increase. Why does rule XXI not apply to this bill?

THE SPEAKER PRO TEMPORE: The Chair will state that the House, by adopting House Resolution 245, has waived that requirement of the rule. Therefore, the Chair's response at this point would be purely hypothetical, and the Chair cannot respond further at this point.

## § 6. Finality of Votes Once Cast

When a vote is cast by a system where there is human intervention in recording the result, such as a vote cast by a roll call or by

13. 141 CONG. REC. p. \_\_\_\_\_, 104th Cong. 1st Sess.

14. Dan Burton (Ind.).

15. *House Rules and Manual* §846c (1995).

tellers with clerks, and there is an error in the recordation of the vote,<sup>(16)</sup> the Chair has the discretion to entertain a request to correct the vote if it does not change the result of the vote as previously announced from the Chair. Obviously, where a vote is taken by voice, and the Chair has heard the responses from the “ayes” and the “noes,” a Member cannot change his response. Similarly, when a vote is by division, and the Chair has counted those standing in the affirmative and the negative and has announced the result, a Member cannot change his mind. The same is true of all votes cast: a vote once given cannot be retracted or changed. A Member who casts a vote by mistake can admit his error and state for the Record how he intended to vote, and by unanimous consent such an explanation may be inserted in the Record following the vote in question.

**§ 6.1 A Member may not change a vote once cast, even by unanimous consent, after the result has been announced.**

On June 17, 1986,<sup>(17)</sup> Mr. Fernand J. St Germain, of Rhode Island, asked the

16. See § 38.1, *infra*.

17. 132 CONG. REC. 14038, 99th Cong. 2d Sess.

Chair if he could change his vote from yea to nay “because his attention was diverted at the time he voted and he did not understand the issue.”

MR. ST GERMAIN: Mr. Speaker, on this vote, rollcall No. 168, my attention was diverted at the time I voted. By mistake or through distraction, I cast a “nay” vote, whereas I should have cast a “yea” vote. Subsequently I was called to the phones.

Mr. Speaker, I ask unanimous consent that my vote be changed in the permanent Record to reflect a “yea” vote on rollcall No. 168.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The Chair would advise the gentleman that he cannot change his vote. The gentleman’s statement will appear in the Record, immediately following the vote.

**§ 6.2 The Speaker cannot permit voting corrections after the announcement of the result of a vote by electronic device, based upon the presumed infallibility of that device and upon the responsibility of each Member to correctly cast and verify his vote.**

On Apr. 18, 1973,<sup>(19)</sup> the Speaker declined to entertain a unanimous-consent request that the Record be corrected to indicate that a Member had voted by electronic device on a recorded vote in Committee of the Whole despite

18. G. V. (Sonny) Montgomery (Miss.).

19. 119 CONG. REC. 13081, 93d Cong. 1st Sess.

assurances by that Member that he had verified his vote by re-inserting his card.

MR. [ROBERT O.] TIERNAN [of Rhode Island]: Mr. Speaker, yesterday here, on rollcall No. 100, the vote on the Roybal amendment to strike out the funds for the extension of the west front of the Capitol, I voted “no”

Mr. Speaker, I placed my card in the box. It registered “no.” I actually took the card back out and put it back in, and it showed a red “no” again.

Last night, to my chagrin, I was told that I was not recorded as voting. I

was here. Other Members of the House were present with me and saw me vote and record my vote as “no.”

I hope that the House committee which is in charge of this electronic voting system will check that out, because there is no question of it.

THE SPEAKER:<sup>(20)</sup> The Chair hopes the same thing.

MR. TIERNAN: Apparently there is no way of correcting the Record at this time.

THE SPEAKER: Not under the procedure which has been adopted. The Chair is powerless to act.

## B. NON-RECORDED VOTES

### § 7. Voice Votes

The voice vote is the first voting procedure referred to by the House rules.<sup>(1)</sup> Specifying how the Speaker is to fulfill his duty to present matters for a decision, Rule I prescribes<sup>(2)</sup> that he:

. . . shall put questions in this form, to wit: “As many as are in favor (as the question may be), say ‘Aye.’; and after the affirmative voice is expressed, “As many as are opposed, say ‘No’.” . . .

The voice vote, as the term is used in the House, means a vocal response, in unison, as indicated above. The Chair listens to the response and announces the vote as

he discerns it. His “call” on a voice vote is not subject to direct challenge.<sup>(3)</sup> Putting the question in this prescribed form is the duty of the Chair and must precede any demand for a yea or nay or recorded vote.<sup>(4)</sup> The remedy available to any Member not agreeing with the Chair’s announcement on the voice vote is to demand a division or recorded vote. The Speaker, if he is in doubt as to whether he correctly heard the will of the House on the voice vote, or any Member, can ask for a division.

The voice vote, like the unanimous-consent request, serves as

20. Carl Albert (Okla.).

1. Rule I clause 5, *House Rules and Manual* §§ 629, 630 (1995).

2. *Id.* at § 629.

3. See § 7.2, *infra*.

4. See § 7.1, *infra*.