

the Whole to make a unanimous-consent request although a point of order was pending at the time.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

MR. [ROBERT] HALE [of Maine]: Mr. Chairman, I offer a substitute amendment.

THE CHAIRMAN:⁽¹⁶⁾ The Clerk will read the amendment.

The Clerk read as follows: . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the amendment because it provides for items that are not authorized by law. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, can a unanimous-consent request be propounded while a point of order is pending before the committee?

THE CHAIRMAN: The Chair would entertain such a unanimous-consent request. Any Member can object if he so desires. Does the gentleman from Maine care to make such a request?

MR. HALE: Mr. Chairman, I want to be heard on the point of order.

THE CHAIRMAN: The gentleman can be heard and he is recognized. The Chair is interested in disposing of the point he raised a moment ago.

MR. HALE: I will be happy to have any solution of the parliamentary situation.

THE CHAIRMAN: The gentleman can ask unanimous consent to withdraw

was H.R. 12858, making appropriations for civil functions administered by the Departments of the Army, Interior, etc.

16. Hale Boggs (La.).

the substitute and offer an amendment.

§ 12. Relationship of Quorum Requirements to Points of Order

Since 1974, the House has altered the rules regarding enforcement of the constitutional requirement that a quorum—a majority of the House—must be present to do business.⁽¹⁷⁾ The first, and most notable, change is that a quorum is not required for mere debate; and the Chair is not permitted to recognize for a point of no quorum unless the pending question has been put.⁽¹⁸⁾ Both the Speaker and the Chairman of a Committee of the Whole have a limited discretion, under the new procedures, to entertain a proper motion to obtain a quorum by recognizing for a motion for a call of the House or, in Committee, to recognize for a point of no quorum and invoke a call of the Committee.⁽¹⁹⁾ Once a quorum of the Committee has been established on a day, the Chair is restricted in

17. See U.S. Const. art. I, §5, *House Rules and Manual* §52; see also, Rule XV cl. 6, §774c (1997).

18. See Ch. 20, supra; see also §12.16, infra.

19. See Rule XXIII cl. 2(a), *House Rules and Manual* §863 (1997).

recognizing for another point of no quorum unless the Committee is operating under the five-minute rule and the question has been put on a pending question or motion. When a question is put, and is pending,⁽²⁰⁾ the lack of a quorum, if the point is raised, takes precedence over a demand for a record vote.⁽¹⁾ The concept of when there is a “pending motion or proposition” (the condition specified in Rule XXIII clause 2(a)) has been the focus of several decisions.⁽²⁾

When the lack of a quorum has been declared by the Speaker or Chairman, no business can be conducted (other than a motion to adjourn or to rise) until a quorum is reestablished.⁽³⁾ If a recorded vote is refused, the requisite second not having risen to be counted, the demand for a recorded vote cannot then be renewed, although a division can still be requested.⁽⁴⁾

The current practice has been challenged on several occasions by points of order.⁽⁵⁾ An appeal has been unsuccessfully taken from the Chair’s decision that the new

20. See § 12.6, *infra*.

1. See §§ 12.1, 12.8, 12.11, 12.13, *infra*.

2. See §§ 12.7, 12.8, 12.10, *infra*.

3. See §§ 12.4, 12.5, 12.17, *infra*.

4. See § 12.9, *infra*.

5. See § 12.2, *infra*.

rules were consistent with the House’s constitutional authority to make its own rules.⁽⁶⁾

Precedence of Point of No Quorum

§ 12.1 In Committee of the Whole, where there is a demand for a recorded vote and a point of order that a quorum is not present, the point of order must be disposed of first, and once a quorum is ascertained, the pending business is then the demand for a recorded vote.

On Mar. 14, 1975,⁽⁷⁾ where the Committee of the Whole had under consideration the Surface Mining and Reclamation Act, the Chair announced that the ayes appeared to prevail on a voice vote on the pending amendment. The proceedings and inquiries which eventually led to a record vote on the amendment were as follows:

THE CHAIRMAN:⁽⁸⁾ The question is on the amendment offered by the gentleman from Ohio (Mr. Seiberling).

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

MR. [SAM] STEIGER of Arizona: Mr. Chairman, on that I demand a re-

6. See § 12.3, *infra*.

7. 121 CONG. REC. 6707, 6708, 94th Cong. 1st Sess.

8. Neal Smith (Iowa).

corded vote and make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count.

MR. STEIGER of Arizona: I am told, Mr. Chairman, that you are not honoring my point of order that a quorum is not present.

THE CHAIRMAN: The Chair has counted 21 Members to this point.

MR. STEIGER of Arizona: Mr. Chairman—

THE CHAIRMAN: The Members will be seated. The Chair is counting for a quorum.

MR. STEIGER of Arizona: Mr. Chairman, another point of order. I do not want to confuse anyone here. I would ask the Chair this: Is it true that if 21 Members are standing, that is a sufficient number on which to base a roll-call vote and we would then avoid the necessity of demanding a quorum? It obviously is not here anyway.

THE CHAIRMAN: Is the gentleman from Arizona withdrawing his point of no quorum?

MR. STEIGER of Arizona: No. I am just asking, if there are 21 Members who responded to my demand for a rollcall, which I coupled very cleverly with a point of order that a quorum was not present, that is sufficient if 20 were standing, but the Chair announced that 21 were standing.

THE CHAIRMAN: The point of no quorum must be disposed of first.

MR. STEIGER OF ARIZONA: Even though the demand preceded the point of order?

THE CHAIRMAN: Yes.

MR. STEIGER of Arizona: This is very interesting. I want all the Members to remember that.

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Chairman, if the gentleman will yield, I ask him to withdraw it and I will support his request for a vote and we will thereby save time.

MR. STEIGER of Arizona: All right. I think it is going to work out.

THE CHAIRMAN: Sixty-eight Members are present, evidently not a quorum.

The Chair announces that 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.

Points of No Quorum Under New Rule

§ 12.2 Pending consideration of motions to suspend the rules, the Speaker ruled: (1) that clause 6(e) prohibits a Member from making or the Chair from entertaining a point of no quorum in the House when a pending question has not been put to a vote; (2) that a point of order of no quorum during debate in the House would not lie independently under the Constitution (article I, section 5) since clause 6(e), Rule XV, is a proper exercise of the House's rulemaking authority and can be construed consistently with the constitutional requirement that a quorum be present to con-

duct business; (3) and that under the same clause, the Speaker is authorized, at his discretion, to recognize a Member for a call of the House.

On Sept. 12, 1977,⁽⁹⁾ Speaker Thomas P. O'Neill, Jr., of Massachusetts, faced a somewhat similar situation, on a day when suspension motions were in order. The Speaker had announced his intention to postpone suspension votes, and in response to a point of order and a parliamentary inquiry, he clarified the application of clause 6(e).

THE SPEAKER: The Chair desires to make an announcement.

Pursuant to the provisions of clause 3(b) of rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, a point of order.

Mr. Speaker, I move a call of the House, since there is not a quorum present and not even close to a quorum present.

THE SPEAKER: The gentleman is aware of the rule of the House that the Chair cannot recognize the gentleman for a point of no quorum unless there is a pending question being put to a vote. . . .

There is no question or business being put to a vote at the moment, so under clause 6 of rule XV the gentleman's point is not well taken. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, the gentleman from Ohio (Mr. Ashbrook) has just pointed out the fact that there are possibly less than 50 Members present on the floor at this point. He made the further point that the Constitution, article I, section 5, requires that the House have a quorum at all times to do business. We are in the full House. We are not in the Committee of the Whole. I raise again the question whether or not the House can conduct its business for 4 or 5 hours today on 13 separate bills under suspension without having a majority of the membership here and recorded present.

I think any legislation we act upon could be challenged in court as not having been considered by a quorum, and a quorum is not here.

Also I am under the impression that rule XV requires or permits at least one quorum call to establish a quorum at the opening of each day's session.

THE SPEAKER: With regard to the gentleman's statement, the Constitution does require what the gentleman says—a quorum to do business. The rules of the House reflect this requirement. But under the circumstances, the Chair will recognize a Member to move a call of the House.

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Speaker, I move a call of the House.

9. 123 CONG. REC. 28800, 28801, 95th Cong. 1st Sess.

A call of the House was ordered.

The call was taken by electronic device

§ 12.3 The Speaker's refusal to entertain a point of order of no quorum when there is no pending question being put to a vote is not subject to an appeal, since Rule XV clause 6(e) states an absolute prohibition against the Chair's entertaining such a point of order and to allow an appeal would permit a direct change in that rule.

The Speaker Pro Tempore, Ms. Barbara Jordan, of Texas, refused to entertain an appeal in this case since the rule involved leaves no discretionary interpretation to the Chair. The proceedings of Sept. 16, 1977,⁽¹⁰⁾ are shown below.

MR. [J. WILLIAM] STANTON [of Ohio]: Madam Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. Wylie), a very distinguished and important member of our committee.

MR. [JOHN M.] ASHBROOK [of Ohio]: Madam Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman from Ohio (Mr. Ashbrook) that the point of order is not in order at this time under rule XV, clause 6(e).

MR. ASHBROOK: Madam Speaker, I appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman that is not an appealable ruling. The rule contains an absolute prohibition against a Member making or the Chair entertaining such a point of order at this time, leaving no interpretive authority in the Chair and no authority to recognize for such a point of order. The rule itself, and not the ruling of the Chair, governs in this situation. To permit an appeal would be tantamount to permitting a direct change in the rule itself.

Withdrawal of Point of Order After Absence of Quorum Is Announced

§ 12.4 A point of order that a quorum is not present may not be withdrawn, even by unanimous consent, after the Chair has announced the absence of a quorum.

Once the absence of a quorum has been ascertained and announced, no business, even by unanimous consent, can be conducted. Only two options remain: to adjourn or to secure a quorum. An instance where the latter option was exercised is excerpted from the Sept. 21, 1977,⁽¹¹⁾ proceedings as shown below.

THE CHAIRMAN:⁽¹²⁾ The question is on the amendment offered by the gen-

10. 123 CONG. REC. 29594, 95th Cong. 1st Sess.

11. 123 CONG. REC. 30083, 95th Cong. 1st Sess.

12. Barbara Jordan (Tex.).

tleman from Pennsylvania (Mr. Coughlin).

The question was taken; and on a division (demanded by Mr. Coughlin) there were—ayes 13, noes 19.

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Madam Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Evidently a quorum is not present.

MR. COUGHLIN: Madam Chairman, if I can get a recorded vote, I will withdraw my point of order.

THE CHAIRMAN: The Chair had announced that a quorum is not present and the gentleman may not withdraw his request at this time.

MR. COUGHLIN: Madam Chairman, I ask unanimous consent to withdraw my request.

THE CHAIRMAN: The Chair will advise the gentleman that he cannot withdraw his request even by unanimous consent.

The Chair announces that pursuant to clause 2, rule XXIII, she 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 rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

RECORDED VOTE

THE CHAIRMAN: The pending business is the demand of the gentleman

from Pennsylvania (Mr. Coughlin) for a recorded vote.

A recorded vote was ordered.

Motion To Rise in Absence of Quorum

§ 12.5 The motion that the Committee of the Whole rise is in order pending a point of no quorum and a request for a recorded vote, since the motion to rise does not require the presence of a quorum.

Where the Committee of the Whole rose after a point of no quorum had been made on Jan. 28, 1980,⁽¹³⁾ the Chair announced that the pending request for a recorded vote would be before the Committee when it resumed its sitting.

THE CHAIRMAN:⁽¹⁴⁾ The question is on the amendment offered by the gentleman from Illinois (Mr. Michel).

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

MR. [ROBERT W.] EDGAR [of Pennsylvania]: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

MR. [RAY] ROBERTS [of Texas]: Mr. Chairman, I move that the Committee do now rise.

13. 126 CONG. REC. 898, 96th Cong. 2d Sess.

14. Matthew F. McHugh (N.Y.).

The motion was agreed to.

MR. EDGAR: Mr. Chairman, a point of order.

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

MR. EDGAR: Mr. Chairman, does that make in order at the opening of tomorrow morning's session the vote, lacking a quorum at this time?

THE CHAIRMAN: The Chair will put the question for a recorded vote when the Committee of the Whole reconvenes.

MR. EDGAR: I thank the Chair.

Right of Member To Make a Point of No Quorum

§ 12.6 A point of no quorum can be made only when a question is pending; and where the vote on a suspension motion is objected to on the ground that a quorum is not present and is then postponed, there is no longer a question before the House and the point of no quorum "is considered as withdrawn."

On Sept. 24, 1979,⁽¹⁵⁾ the Speaker Pro Tempore stated the pending business as shown and the proceedings that follow indicate one more skirmish in the battle over Rule XV clause 6(e).

THE SPEAKER PRO TEMPORE:⁽¹⁶⁾ The question is on the motion offered by

15. 125 CONG. REC. 25876, 96th Cong. 1st Sess.

16. John J. Cavanaugh (Nebr.).

the gentleman from Alabama (Mr. Nichols) that the House suspend the rules and pass the bill, H.R. 5168.

The question was taken.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

MR. ASHBROOK: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

MR. ASHBROOK: Mr. Speaker, I insist on my point of order.

THE SPEAKER PRO TEMPORE: The point of order is considered withdrawn.

The question is no longer pending.

MR. ASHBROOK: Mr. Speaker, I move a call of the House.

THE SPEAKER PRO TEMPORE: The Chair did not recognize the gentleman for that purpose.

What Is a "Pending Question" Which Permits Point of No Quorum

§ 12.7 The Chair may not entertain a point of no quorum pending a request that a committee be permitted to sit during the five-minute rule, since the requirement of Rule XV clause 6(e) that a question be pending before a point of no quorum can be made has not been met.

On June 18, 1980,⁽¹⁷⁾ the Speaker Pro Tempore did not entertain a point of no quorum in circumstances where no question was being put to a vote. The circumstances are set forth herein.

MR. [THOMAS N.] KINDNESS [of Ohio]: Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit today and tomorrow during the 5-minute rule for consideration of the criminal code.

THE SPEAKER PRO TEMPORE:⁽¹⁸⁾ Is there objection to the request of the gentleman from Ohio?

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, reserving the right to object, the gentleman from Wisconsin (Mr. Sensenbrenner) has requested that I object. I am bound to object, and I indeed will object.

THE SPEAKER PRO TEMPORE: Those Members objecting please rise.⁽¹⁹⁾

Messrs. Ashbrook, Bauman, Devine, Myers of Indiana, Rousselot, and Hansen rose.

THE SPEAKER PRO TEMPORE: An insufficient number of Members have arisen.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I object to the Chair's ruling on the ground that a quorum is not present.

THE SPEAKER PRO TEMPORE: The request is not a motion or proposition put by the Chair to a vote.

17. 126 CONG. REC. 15316, 15317, 96th Cong. 2d Sess.

18. Marty Russo (Ill.).

19. The prohibition against committees sitting during the five-minute rule if ten or more Members rendered objections was dropped from Rule XI in the 105th Congress.

MR. BAUMAN: Mr. Speaker, I make a point of order that under the Constitution the requirement is that a quorum be present to do any business of the House. A quorum is not present at this time, and the request for permission to sit for a committee is business being conducted in the absence of a quorum.

CALL OF THE HOUSE

MR. BAUMAN: Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names: . . .

THE SPEAKER PRO TEMPORE: On this rollcall, 362 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

REQUEST FOR PERMISSION FOR COMMITTEE ON THE JUDICIARY TO SIT TODAY AND THURSDAY, JUNE 19, UNDER 5-MINUTE RULE

MR. BAUMAN: Mr. Speaker, I renew my point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state his point of order.

MR. BAUMAN: Mr. Speaker, I renew my point of order.

THE SPEAKER PRO TEMPORE: There is no point of order. The Chair will state that under the rules of the House, the request that was made was not subject to a point of order of a quorum not being present because such a request in the House does not require the presence of a quorum, as nothing is being put to a vote.

The gentleman then moved a call of the House. The Chair was not given an

opportunity to count the House at that time, so we can presume a quorum present. A quorum now being present, there is no point of order that lies at this time.

MR. BAUMAN: Mr. Speaker, I make a point of order that the request was not in order and could not be granted unless a quorum was present at that time. I made the point of order at the time the request was ruled upon by the Chair, that the ruling was not correct, that a quorum had to be here because the Constitution requires a quorum at all times to do business, and a request for the committee to sit is business.

If I may be heard further, if it is the Chair's position that a quorum is not required, requests for committees to sit can be made at any time, after special orders, at any time of the day, to the disadvantage of Members, and, therefore, preclude the right of Members to exercise their power to prevent a committee from sitting.

THE SPEAKER PRO TEMPORE: In response to the gentleman, under the rules of the House, the Chair is not permitted to entertain a point of order, because such a request is not a motion or proposition being put to a vote and the rule does not provide that the Chair can entertain such a request.

The request was made. The Chair asked whether or not any Member objected. Ten Members did not stand, permission was granted. The gentleman then made a point of order. The Chair, under the rules, cannot entertain such a point of order at the particular time. The Chair in the past has used its discretion in not accepting requests for committees to sit when such requests are made during special or-

ders. The Chair will continue to exercise that discretion.

PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Is it the Chair's position that a quorum of the House is not required at any time when a request for a committee to sit is made?

THE SPEAKER PRO TEMPORE: The rules do not permit a point of no quorum at that particular point. The Chair has so stated.

MR. BAUMAN: I renew my parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BAUMAN: The question is not whether the rules of the House permit a point of no quorum. I am inquiring of the Chair whether or not a quorum is required to be present when a request for a committee to sit is made.

THE SPEAKER PRO TEMPORE: The Chair will state again that the Chair does not interpret the Constitution when there is an explicit House rule on point. The Chair has already twice given the gentleman his interpretation of the rules of the House.

When Question Is "Pending" To Permit Point of No Quorum

§ 12.8 As long as the Chair has put the question on the pending proposition but has not announced the final re-

sult there on, any Member can make a point of order that a quorum is not present, and a Member is not required to have been on his feet when another Member made the point of order and then withdrew it.

Mr. Richardson Preyer, of North Carolina, was presiding as Chairman of the Committee of the Whole on Aug. 20, 1980,⁽²⁰⁾ when he announced that on a division vote, an amendment was agreed to. The division showed that a quorum of the Committee did not vote and the proceedings were as indicated herein.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Pennsylvania (Mr. McDade).

The question was taken; and on a division (demanded by Mr. McDade) there were—ayes 36, noes 22.

MR. [ALLEN E.] ERTEL [of Pennsylvania]: Mr. Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

THE CHAIRMAN: The gentleman asks for a recorded vote.

MR. ERTEL: Mr. Chairman, I withdraw my request for a recorded vote.

MR. [ROBERT] GARCIA [of New York]: Mr. Chairman, just a parliamentary inquiry.

Am I in a position to make mention that a quorum is not present?

Mr. Chairman, I withdraw the request.

MR. [HENRY B.] GONZALEZ [of Texas]: Mr. Chairman, I demand a recorded vote, and I make the point of order that a quorum is not present.

MR. [RICHARD L.] OTTINGER [of New York]: A point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman, if he wishes to demand a vote, may do so.

MR. GONZALEZ: A point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman has the right to ask for a recorded vote or make the point of order that a quorum is not present.

MR. OTTINGER: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman from New York (Mr. Ottinger) will state his point of order.

MR. OTTINGER: The point of order, Mr. Chairman, is that the gentleman was not on his feet to make such a request at the appropriate time.

THE CHAIRMAN: The Chair will state that the gentleman was relying on another gentleman being on his feet and making the point of order, and he would have the right under these circumstances to renew the point of order, since the Chair has not finally announced the result of the vote.

MR. GONZALEZ: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Evidently a quorum is not present.

Once Refused, Request for Recorded Vote Not Renewable

§ 12.9 A recorded vote having been refused in Committee of

20. 126 CONG. REC. 22149, 96th Cong. 2d Sess.

the Whole, a point of no quorum may still lie under Rule XXIII clause 2, if the pending question has not been disposed of by a division vote, but a demand for a recorded vote cannot be renewed.

During consideration of the first concurrent resolution on the budget for fiscal 1983, Chairman Pro Tempore Leo C. Zeferetti, of New York, had to vote to break a tie where a recorded vote was denied when requested on the adoption of an amendment. The proceedings of May 27, 1982,⁽¹⁾ are carried herein.

THE CHAIRMAN PRO TEMPORE: The question is on the amendment offered by the gentleman from Mississippi (Mr. Whitten) to the amendment in the nature of a substitute offered by the gentleman from Wisconsin (Mr. Aspin).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

MR. [RALPH] REGULA [of Ohio]: Mr. Chairman, I demand a recorded vote.

THE CHAIRMAN PRO TEMPORE: A recorded vote is demanded.

All those in favor of taking this vote by a recorded vote will rise and be counted.

Twenty-four Members, an insufficient number.

So a recorded vote was refused.

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

present, and pending that, I demand a recorded vote.

THE CHAIRMAN PRO TEMPORE: The Chair has already announced an insufficient number.

The gentleman can make a point of order but he cannot ask for a recorded vote.

MR. REGULA: Mr. Chairman, I demand a division.

On a division (demanded by Mr. Regula) there were—ayes 42, noes 43.

MR. [JAMES J.] HOWARD [of New Jersey]: Mr. Chairman, I demand tellers.

Tellers were ordered and the Chairman pro tempore appointed as tellers Mr. Whitten and Mr. Jones of Oklahoma.

The Committee again divided, and the tellers reported that there were—ayes 72, noes 72.

THE CHAIRMAN PRO TEMPORE: The Chair votes “aye.”

“Permission To Sit” Not Such Business as Requires Quorum

§ 12.10 The pendency of a request under the then applicable rule (Rule XI clause 2(i)) for a committee to sit during the five-minute rule, which would be granted unless 10 Members objected to the request, was not considered equivalent to the Chair’s putting the question and did not set the stage for a point of no quorum under Rule XV clause 6(e).

1. 128 CONG. REC. 12470, 97th Cong. 2d Sess.

Monday, Aug. 16, 1982,⁽²⁾ was a “suspension day” and the leadership had announced that votes on such motions would be postponed until a following day. When Chairman John D. Dingell, of Michigan, then came to the floor to ask for permission for the Committee on Energy and Commerce to sit during the five-minute rule for the balance of the week, there were not sufficient Members on the floor or in their offices to object, ten objections being required by the rule then in effect to prevent a committee from sitting.⁽³⁾ The following colloquy shows the difficulty of allowing such requests to be made on a day when no votes are scheduled.

REQUEST FOR PERMISSION FOR COMMITTEE ON ENERGY AND COMMERCE TO SIT TODAY AND THE REST OF THE WEEK DURING 5-MINUTE RULE

THE SPEAKER PRO TEMPORE:⁽⁴⁾ For what purpose does the gentleman from Michigan (Mr. Dingell) rise?

MR. DINGELL: Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce have the permission of the House to sit

2. 128 CONG. REC. 21219, 21315, 21316, 97th Cong. 2d Sess.
3. The prohibition against committees sitting during the five-minute rule if ten or more Members rendered objections was dropped from Rule XI in the 105th Congress.
4. Thomas S. Foley (Wash.).

today and for the rest of the week for the purposes of the consideration of legislation while the House is sitting under the 5-minute rule.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Speaker, reserving the right to object, I wonder if the gentleman from Michigan can enumerate what legislation this request relates to.

MR. DINGELL: It is my expectation to consider the Clean Air Act amendments.

MR. DANNEMEYER: Reserving the right to object, the request relates only to the legislation dealing with the Clean Air Act?

MR. DINGELL: That is correct.

MR. DANNEMEYER: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

MR. [HENRY A.] WAXMAN [of California]: Mr. Speaker, I move a call of the House.

THE SPEAKER PRO TEMPORE: The Chair is not recognizing the gentleman for that purpose at this time.

MR. WAXMAN: Reserving the right to object, and pending that, Mr. Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: That is not in order at this point. I wonder if we could ask the gentleman from Michigan to temporarily withhold his request.

MR. DINGELL: Mr. Speaker, I believe that this is proper business of the House. The Chair has just considered a request of this kind. If it is the wish of

the gentleman from California to obfuscate and delay the business of the Committee on Energy and Commerce, the business of the House, then it is his right to do so, and I think it is my right to have him take that step.

PARLIAMENTARY INQUIRY

MR. WAXMAN: Mr. Speaker, a point of parliamentary procedure.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WAXMAN: I would like to know how the rules would protect Members who have been informed that a controversial unanimous-consent request would not be brought up on a day when there are no votes, except to allow a Member to ask for a quorum call so the Members can participate in a decision that is made.

MR. DINGELL: I call for the regular order.

THE SPEAKER PRO TEMPORE: The Chair has indicated that a motion at this time or objection at this time that a quorum is not present is not in order. The gentleman from Michigan insists on his unanimous-consent request.

MR. DINGELL: That is correct.

MR. WAXMAN: A point of parliamentary procedure.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WAXMAN: I renew my inquiry to the Speaker on how the rules are permitted to protect Members when there are no indications of any controversy being brought up on a day when the House is not required to have votes.

MR. DINGELL: Mr. Speaker, I demand the regular order. I make the

point of order that is not a proper parliamentary inquiry.

Mr. Speaker, I demand the regular order.

THE SPEAKER PRO TEMPORE: The gentleman insists on the regular order. The gentleman from California insists on his right to make an objection, pending which he makes the point of order a quorum is not present.

MR. [JOHN F.] SEIBERLING [of Ohio]: Mr. Speaker, will the gentleman withhold for a minute his point of order?

THE SPEAKER PRO TEMPORE: Does the gentleman yield to the gentleman from Ohio?

MR. WAXMAN: I will be pleased to yield.

MR. SEIBERLING: Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit while the House is reading for amendment under the 5-minute rule on Tuesday, Wednesday, and Thursday, August 17, 18, and 19, 1982.

MR. DINGELL: I have a similar request pending, and I object.

THE SPEAKER PRO TEMPORE: The gentleman is within his rights to object to yield for that purpose. The gentleman did not recognize the gentleman for that purpose at this time.

The Chair at this time will withhold recognition for any further purpose for a period. The Chair will protect the gentleman from Michigan's rights in this matter.

MR. DINGELL: Mr. Speaker, I am entitled to have a ruling on my unanimous-consent request.

THE SPEAKER PRO TEMPORE: The Chair will reserve a ruling. The Chair will protect the gentleman's rights.

MR. DINGELL: Mr. Speaker, I believe I am entitled to be protected at this time.

THE SPEAKER PRO TEMPORE: It is a matter of recognition, and the Chair is going to exercise his rights of recognition at this time. The Chair assures the gentleman that his rights will be protected.

MR. DINGELL: Mr. Speaker, I would observe that if I am denied recognition at this time, I may very well be denied my rights. I have a unanimous-consent request for which I was properly recognized. I would point out another request was recognized for a similar unanimous consent just previous to me. That request was granted.

THE SPEAKER PRO TEMPORE: It was not granted.

MR. DINGELL: Perhaps the Speaker can explain to me why I am being denied my rights.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio withdrew his request.

MR. DINGELL: The gentleman previous to that.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio withdrew his request.

MR. DINGELL: Are you forgetting that another Member had just made a request on behalf of the Armed Services Committee?

THE SPEAKER PRO TEMPORE: The gentleman from the Armed Services Committee, Mr. White of Texas, asked to file a report, and that unanimous-consent request was granted.

MR. DINGELL: Unanimous-consent request that the Armed Services Committee be permitted to sit.

THE SPEAKER PRO TEMPORE: I am sorry to disagree with the gentleman. The Chair did not grant permission to sit or entertain that motion from the gentleman from Texas.

The Chair will take 1 minute speeches at this time. . . .

REQUEST FOR PERMISSION FOR COMMITTEE ON ENERGY AND COMMERCE TO SIT DURING 5-MINUTE RULE ON TODAY AND BALANCE OF THE WEEK

MR. DINGELL: Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce be permitted to sit for the purposes of considering legislation during the time that the House is sitting under the 5-minute rule today and for the balance of the week.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

MR. WAXMAN: Mr. Speaker, I reserve the right to object.

CALL OF THE HOUSE

MR. WAXMAN: Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names: . . .

MR. PHILLIP BURTON [of California]: Mr. Speaker, regular order.

Mr. Speaker, regular order.

THE SPEAKER PRO TEMPORE: The Chair is observing the regular order.

MR. PHILLIP BURTON: Mr. Speaker, regular order as to the time to note the presence of Members has expired.

THE SPEAKER PRO TEMPORE: Are there any Members who have not yet recorded their presence?

The Chair will advise the gentleman from California that 15 minutes is a minimum, not a maximum.

ADJOURNMENT

MR. [E (KIK)] DE LA GARZA [of Texas]: Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to: accordingly (at 1 o'clock and 17 minutes p.m.), under its previous order, the House adjourned until Tuesday, August 17, 1982, at 10 a.m.

Relative Precedence, Point of No Quorum and Objection to Vote Because of No Quorum

§ 12.11 When a question is pending, any Member can make a point of order that a quorum is not present and get a quorum call before the vote is taken; but another Member can preempt the quorum call by objecting to the vote on the ground that a quorum is not present, thereby producing an automatic call under Rule XV clause 4.

On Aug. 18, 1982,⁽⁵⁾ Mr. Silvio O. Conte, of Massachusetts, intended to provoke a call of the House before the question was put on disposing of a Senate amendment in disagreement. His intention was thwarted by the more privileged point of order and objection to the vote raised by Mr. F. James Sensenbrenner, Jr., of Wisconsin.

THE SPEAKER PRO TEMPORE:⁽⁶⁾ The question is on the motion offered by

5. 128 CONG. REC. 22037, 97th Cong. 2d Sess.
6. Abraham Kazen, Jr. (Tex.).

the gentleman from Maryland (Mr. Long).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

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

MR. SENSENBRENNER: Mr. Speaker, I object to the vote on the ground that a quorum is not present.

THE SPEAKER PRO TEMPORE: Is the gentleman from Massachusetts (Mr. Conte) objecting to the vote?

MR. CONTE: No, Mr. Speaker, I am just making the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The gentleman from Wisconsin (Mr. Sensenbrenner) has a right to object to the vote.

MR. SENSENBRENNER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Point of No Quorum During General Debate

§ 12.12 The Chairman of the Committee of the Whole may, in his discretion, entertain a point of no quorum during general debate.

On Dec. 1, 1982,⁽⁷⁾ the Chairman of the Committee of the

7. 128 CONG. REC. 28205, 97th Cong. 2d Sess.

Whole entertained a point of order that a quorum was not present while general debate was underway. Members who were expected to participate in the debate were not on the floor and the quorum call allowed them to be notified about the proceedings.

MR. [JAMES T.] BROYHILL [of North Carolina]: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN:⁽⁸⁾ Under clause 2, rule XXIII, as adopted by the House of Representatives on January 5, 1981, the Chair, in his discretion, may entertain a point of order that a quorum is not present.

The Chair will entertain the point of no quorum and announces that pursuant to the provisions of 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.

Where Quorum Present, Objection to Vote Does Not Lie

§ 12.13 It is not in order to object to a vote on the ground that a quorum is not present under Rule XV clause 4, if the Chair has counted the House and announced that a quorum is in fact present

8. George E. Brown, Jr. (Calif.).

and no business has intervened since his count.

On Dec. 17, 1982,⁽⁹⁾ the House was considering amendments in disagreement to the District of Columbia appropriation bill, fiscal 1983. A motion that the House recede and concur in Senate amendment number 40 had been divided, and the Speaker Pro Tempore proceeded to put the question on receding from disagreement. The exchanges between Mr. Robert S. Walker, of Pennsylvania, and the Speaker Pro Tempore, Mr. John P. Murtha, of Pennsylvania, follow:

THE SPEAKER PRO TEMPORE: The question is whether the House shall recede from disagreement to Senate amendment 40.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

MR. WALKER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will count. Two hundred nineteen Members are present, a quorum.

MR. WALKER: Mr. Speaker, that was an interesting count. I thank the Speaker.

Mr. Speaker, I demand the yeas and nays.

The yeas and nays were refused.

9. 128 CONG. REC. 31951, 97th Cong. 2d Sess.

So the motion was agreed to.

MR. WALKER: Mr. Speaker, I might say we are going to have more votes, then, this evening.

THE SPEAKER PRO TEMPORE: The question is now on concurring in the Senate amendment with an amendment.

The question was taken and the Speaker pro tempore announced that the ayes appeared to have it.

MR. WALKER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will count for a quorum. Two hundred nineteen Members are present, a quorum.

MR. WALKER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will advise the gentleman that he just counted a quorum.

Point of No Quorum During General Debate in House

§ 12.14 Pursuant to Rule XV clause 6(e)(1), a point of order of no quorum cannot be made during general debate in the House; and while the Speaker has discretion to entertain a motion for a call of the House he does not recognize for a point of no quorum unless he has put

the pending question to a vote.

During debate in the House on H.R. 3706, a bill making the birthday of Martin Luther King, Jr., a national holiday, the Speaker Pro Tempore⁽¹⁰⁾ declined on two occasions to recognize Ms. Mary Rose Oakar, of Ohio, for a point of no quorum. Proceedings were as follows:⁽¹¹⁾

THE SPEAKER PRO TEMPORE: The gentleman from California (Mr. Dannemeyer) has 1 minute remaining.

MR. [WILLIAM E.] DANNEMEYER [of California]: I reserve the balance of my time.

MS. OAKAR: Mr. Speaker, I make a point of order that a quorum is not present.

MR. DANNEMEYER: I yield to the gentleman from Kansas such time as he may consume.

MS. OAKAR: Regular order.

THE SPEAKER PRO TEMPORE: The Chair will not entertain the point of order at this time.

The gentleman from California yielded to whom? . . .

The gentlewoman from Indiana.

MRS. [KATIE] HALL of Indiana: Mr. Speaker, I ask that the gentleman from California yield back the balance of his time.

MR. DANNEMEYER: The gentleman from California reserves the balance of his time.

10. Dale E. Kildee (Mich.).

11. 129 CONG. REC. 22233, 22234, 98th Cong. 1st Sess., Aug. 2, 1983.

THE SPEAKER PRO TEMPORE: The gentlewoman from Indiana.

MS. OAKAR: Will the gentlewoman yield to me?

MRS. HALL of Indiana: I yield to the gentlewoman.

MS. OAKAR: Mr. Speaker, I make a point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair does not have to entertain a motion for a call of the House at this time and chooses not to.

MS. OAKAR: I am sorry, I did not hear the Speaker.

THE SPEAKER PRO TEMPORE: The point of order cannot be made when the Chair has not put the pending question, and the Chair has discretion whether to entertain a motion for a call of the House at this time and now recognizes the gentlewoman from Indiana.

MRS. HALL of Indiana: Mr. Speaker, I yield 2 minutes to the distinguished majority leader of the U.S. House of Representatives, the gentleman from Texas (Mr. Wright).

Points of No Quorum During Five-minute Rule

§ 12.15 Once a quorum has been established by a recorded vote during the five-minute debate in Committee of the Whole, a subsequent quorum call during debate may be accomplished only by unanimous consent.

On May 10, 1984,⁽¹²⁾ Chairman Les AuCoin, of Oregon, during

12. 130 CONG. REC. 11836, 11837, 11869, 11870, 98th Cong. 2d Sess.

five-minute debate on an amendment in Committee of the Whole, stated that since a quorum had been established on an earlier recorded vote, another quorum call would not be in order until the question was put on the pending amendment. Since Members on both sides of the aisle wanted to have a quorum present to hear the final speeches, a call of the committee was conducted by unanimous consent.

Rule XXIII clause 2(a)⁽¹³⁾ provides that “[a]fter the roll has been once called to establish a quorum during such day, the Chairman may not entertain a point of order that a quorum is not present unless the . . . Chairman has put the pending motion or proposition to a vote”.

The proceedings were as follows:

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Massachusetts (Mr. Studds).

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

MR. [WILLIAM S.] BROOMFIELD [of Michigan]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 128, noes 287, not voting 18. . . .

13. *House Rules and Manual* §863 (1997).

So the amendment was rejected.

The result of the vote was announced as above recorded. . . .

MR. BROOMFIELD: Mr. Chairman, I would like to make a point of order that a quorum is not present for the final few speakers.

THE CHAIRMAN: The Chair will state that the Chair cannot entertain that point of order unless the question has been put on a pending proposition.

MR. BROOMFIELD: Mr. Chairman, I make a point of order—

THE CHAIRMAN: The Chair will state again that he cannot entertain a point of order at this point unless the question has been put on a pending matter, a quorum having been established on a prior recorded vote today in this Committee of the Whole.

Does the gentleman from Florida (Mr. Fascell) reserve the balance of his time?

PARLIAMENTARY INQUIRY

MR. [DANTE B.] FASCELL [of Florida]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. FASCELL: Mr. Chairman, I am sorry, but I did not hear the Chair. I have no objection to a rollcall if that is what the gentleman from Michigan asks for. But I did not hear what the Chair said.

THE CHAIRMAN: The Chair will state to the gentleman from Florida and to the gentleman from Michigan that by unanimous consent, if a quorum is sought, a quorum can be sought by unanimous consent.

MR. FASCELL: Mr. Chairman, I am saying I have no objection.

THE CHAIRMAN: Does the gentleman from Michigan ask unanimous consent for a quorum to be called.

MR. BROOMFIELD: I do, Mr. Chairman.

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

There was no objection.

THE CHAIRMAN: A quorum call is ordered.

Members will record their presence by electronic device.

Improper Parliamentary Inquiry

§ 12.16 During debate in the House, when a point of no quorum cannot be entertained by the Speaker, he has declined to respond to a parliamentary inquiry asking “how many Members are in the Chamber?” since it would be improper under the guise of such an inquiry to attempt to show the absence of a quorum.

The brief parliamentary inquiry described above occurred on Oct. 28, 1987,⁽¹⁴⁾ and was as follows:

MR. [F. JAMES] SENSENBRENNER [Jr., of Wisconsin]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:⁽¹⁵⁾ The gentleman will state it.

14. 133 CONG. REC. 29682, 100th Cong. 1st Sess.

15. W. J. (Billy) Tauzin (La.).

MR. SENSENBRENNER: Mr. Speaker, how many Members are present now?

THE SPEAKER PRO TEMPORE: The Chair cannot respond to that as a parliamentary inquiry.

When Chair Must Entertain Point of No Quorum

§ 12.17 The Chairman of the Committee of the Whole must entertain a point of order that a quorum is not present during the five-minute rule over other requests for recognition, since Rule XXIII clause 2 gives the point of no quorum the highest priority where a quorum has not been established in the Committee on that day.

The proceedings of June 30, 1993,⁽¹⁶⁾ in Committee of the Whole, demonstrate the mandatory nature of a point of order of no quorum under certain conditions.

MRS. [NITA M.] LOWEY [of New York]: Mr. Chairman, I point out the absence of a quorum.

THE CHAIRMAN:⁽¹⁷⁾ The gentlewoman from New York [Mrs. Lowey] makes this point of order that a quorum is not present.

MR. [HENRY J.] HYDE [of Illinois]: Mr. Chairman, Mr. Chairman.

MR. [ROBERT K.] DORNAN [of California]: Mr. Chairman, the gentleman

from Illinois was on his feet first, clearly.

THE CHAIRMAN: A point of no quorum takes precedence over other motions and other requests for recognition.

The gentlewoman has made a point of order of no quorum.

The Chair will need to count for a quorum.

PARLIAMENTARY INQUIRY

MR. DORNAN: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. DORNAN: Could I please have a parliamentary reading on whether the Chairman sitting in the chair clearly ignored the gentleman from Illinois for minutes before he recognized the gentlewoman?

THE CHAIRMAN: The Chair may not ignore a point of no quorum, under rule XXIII where a quorum has not been previously established during the amendment stage.

Previously, the Chair recognized the distinguished gentleman from Illinois [Mr. Hyde], and the Chair will be pleased to do so again at the appropriate moment.

A Member has made the point that a quorum is not present. Therefore, the Chair must count for a quorum of 100 Members in the Committee of the Whole House.

Evidently a quorum is not present.

Members will record their presence by electronic device.

The call was taken by electronic device.

§ 13. Appeals

The right of appeal from decisions of the Speaker on questions

16. 139 CONG. REC. 14882, 103d Cong. 1st Sess.

17. Philip R. Sharp (Ind.).