Points of Order; Parliamentary Inquiries

A. Points of order

§ 1. In General; Effect

A point of order is in effect an objection that the pending matter or proceeding is in violation of some rule or practice of the House. It may also constitute a demand for an immediate return to the regular order.[1] A point of order is not a vehicle for obtaining debate time or for injecting comments about a pending amendment or matter under consideration.[2]

Rule I clause 4[3] provides that it is the duty of the Speaker[4] to decide points of order, subject to a right of appeal by any Member. Apart from this rule, the disposition of points of order is largely governed by the discretion of the Chair and by precedent.[5] The Chair, without prompting from a Member, sometimes assumes an affirmative obligation to protect the rights of Members.[6] In the exercise of its discretion, the Chair may, for example, decide whether to entertain more than one point of order at the same time;[7] whether to decide one point or another first;[8] or whether to rule on points of order simultaneously.[9] On rare occasions,

1. For general discussion of the subject of points of order prior to 1936, see 5 Hinds' Precedents §§ 6863–6957; 8 Cannon's Precedents §§ 3427–3458.

   Points of order consume less time today than formerly. Mr. Clarence Cannon (Mo.), who was parliamentary clerk at the Speaker's table before becoming a Member, once estimated that discussion of points of order occupied a third of the time of the House in the early 20th century. See 101 CONG. REC. 10609, 84th Cong. 1st Sess., July 14, 1955.
2. See § 1.42, infra.
3. *House Rules and Manual* § 624 (1997).
4. In the Committee of the Whole, the Chairman decides questions of order and generally acts with the powers of the Speaker, as provided by Rule XXIII clause 1, *House Rules and Manual* § 861 (1997). See 5 Hinds' Precedents § § 6828, 6927.
5. See § 1.1, infra, as to the importance of precedents, generally.
6. See § 1.3, infra.
7. See § 1.8, infra.
8. See § 1.9, infra.
9. See § 1.13, infra.

   The Chair's discretion in this regard is guided by his understanding of the relative effects resulting from the sustaining of the various points of order.

the Chair will anticipate a parliamentary situation and—as with a question of privilege—rule without a point of order from the floor.[10]

At the beginning of a Congress, before rules are adopted, the Chair enforces "order" based on precedents and long-established customs—principles of general parliamentary law—which constitute and define proper decorum in debate.[11]

The Chair may refuse to rule on matters that are related to but not expressly raised in the point of order;[12] and points of order do not lie against the Chair's exercise of discretionary authority granted by the standing rules.[13] Moreover, the Chair does not rule on constitutional questions,[14] hypothetical questions,[15] or the effect of a bill's provisions.[16] Similarly, the Chair does not pass upon the consistency of proposed amendments[17] or resolve ambiguities in amendments.[18]

The effect of sustaining a point of order depends on the matter before the House. For example, a point of order against a portion of an amendment may cause the whole amendment to fall;[19] and a point of order against a conference report, if sustained, may vitiate the report and leave the House with the amendments in disagreement before it for disposition.[20]

The enforcement of committee rules—those which are not explicit rules of the House but are internal to a committee—is the responsibility of the pertinent committees. Normally, the Speaker is not compelled to rule on a point of order relating to the interpretation of such a committee rule.[1]

However, violations of certain committee rules are cognizable in the House under Rule XI clause 2.[2]

There are special procedures prescribed by standing rule[3] relating to words uttered in debate. The proper procedure is to demand that "words be taken down." But such demands must be time-

10. See § 1.51, infra.
11. See § 1.2, infra.
12. See § 1.28, infra.
13. See § 1.29, infra.
14. See § § 1.37–1.39, infra.
15. See § 1.40, infra.
16. See § 1.36, infra.
17. See § 1.36, infra
18. See § 1.41, infra.
19. See § 1.25, infra.
20. See § 1.27, infra.
1. See § 1.47, infra.
2. See, e.g., Rule XI clause 2(g)(5), *House Rules and Manual* § 708, and clause 2(l), § 713 (1997). See also § § 1.47, 1.48, 1.49, infra.
3. See Rule XIV, clauses 1, 4, and 5, *House Rules and Manual* § § 749, 760 (1997).

ly, before other debate intervenes.[4]

Importance of Precedents

§ 1.1 The Speaker follows the precedents of the House in deciding points of order.

On June 24, 1958,[5] Mr. Thomas B. Curtis, of Missouri, challenged a practice of the House with which he disagreed and sought to have Speaker Sam Rayburn, of Texas, overrule certain precedents which prevented discussion on the floor of the House of matters occurring in committees, unless the committees in question took action. The following exchange, emphasizing the importance of precedent in the Speaker's rulings, took place:

SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT

THE SPEAKER: Under previous order of the House, the gentleman from Missouri [Mr. Curtis], is recognized for 60 minutes.

MR. CURTIS of Missouri: . . . Mr. Speaker, I am very disturbed about the manner in which one of our House subcommittees has been conducting itself in the past few days. I refer to the subcommittee of the Interstate and Foreign Commerce Committee on Legislative Oversight. . . .

. . . Not only is this subcommittee, in my judgment, not doing the job that needs to be done, it has brought the institution again, in my judgment, into disrepute by disregarding the rules of the House and permitting a committee of the House to be used as a forum in this fashion.

MR. [OREN] HARRIS [of Arkansas]: Mr. Speaker, I must object again and ask that those words be deleted.

MR. CURTIS of Missouri: I would like to ask the gentleman before he does, just what language is he objecting to?

MR. HARRIS: To the charge that this committee is violating the rules of the House.

MR. CURTIS of Missouri: Well, I certainly do charge that and I think it is proper to charge such a thing if I have presented the evidence. How else are we going to present the case to the House?

THE SPEAKER: There is a long line of decisions holding that attention cannot be called on the floor of the House to proceedings in committees without action by the committee. The Chair has just been reading a decision by Mr. Speaker Gillett and the decision is very positive on that point.

MR. CURTIS of Missouri: Mr. Speaker, in addressing myself to that, may I say I am unaware of such a rule and I would argue, if I may, in all propriety, that that rule, if it does exist, should be changed because how else will the House ever go into the functioning and actions of its committees?

THE SPEAKER: That is not a question for the Chair to determine. That is a question for the House to change the rule.

MR. CURTIS of Missouri: Mr. Speaker, is it a rule or is it a ruling? If it is

4. See § 1.50, infra.

5. 104 CONG. REC. 12121, 12122, 85th Cong. 2d Sess.

a ruling of the Chair, then it is appropriate for the Chair to consider it.

THE SPEAKER: The precedents of the House are what the Chair goes by in most instances. There are many precedents and this Chair finds that the precedents of the House usually make mighty good sense.

MR. CURTIS of Missouri: But the Chair can change a precedent. That is why I am trying to present this matter.

THE SPEAKER: If the Chair did not believe in the precedents of the House, then the Chair might be ready to do that, but this Chair is not disposed to overturn the precedents of the House which the Chair thinks are very clear. . . .

THE SPEAKER: The Chair has made his ruling, and the Chair thinks it is correct.

§ 1.2 At the beginning of a new Congress, before rules are adopted, the Chair will entertain a point of order that proper decorum is not being followed and will enforce those rules relating to the Chair's power of recognition which embody long established custom.

On Jan. 3, 1991,[6] during debate on House Resolution 5, establishing rules for the 102d Congress, Mrs. Nancy L. Johnson, of Connecticut, was yielded time under the hour taken to debate the resolution. At the conclusion of her time, she refused to relinquish the floor and persisted in debate despite repeated admonitions from the Chair and the use of the Speaker's gavel. The rather raucous proceedings were as follows:

THE SPEAKER PRO TEMPORE:[7] The gentleman from New York [Mr. Solomon] has 1 minute remaining.

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, I yield such time as she may consume to the gentlewoman from Connecticut [Mrs. Johnson].

MRS. JOHNSON of Connecticut: Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong opposition to the substance of this proposal, and with deep concern for the subversion of the legislative process contained in this package.

The substance strikes at the heart of the budget agreement. The process strikes at the heart of democracy, and so I am going to use such time as I may consume, and I am not going to recognize the authority of the Speaker's gavel, because I want to make very clear the implications of what is happening here.

First of all, this House is operating under precedent, not under rule. Precedent is something that we honor because we hold ourselves to a standard of ethical conduct that requires honoring our rules.

If we do not hold ourselves to that standard of ethical conduct, then the

6. 137 CONG. REC. 58, 59, 102d Cong. 1st Sess.

7. Steny H. Hoyer (Md.).

line between self-government and chaos disintegrates. If we cannot operate ethically, we cannot govern ourselves as a free nation. So, honor is everything; word is bond.

I choose not to be governed by the gavel, because I want to demonstrate that where word is not bond, democracy cannot survive.

If we were doing that here today, democracy in its gut and at the level of trust that it demands would not be at risk; but the majority party is not proposing a statutory change for which they could be held accountable.

THE SPEAKER PRO TEMPORE: The time of the gentlewoman has expired.

MRS. JOHNSON of Connecticut: The majority party is proposing a rules change.

THE SPEAKER PRO TEMPORE: The Chair would state to the gentlewoman that whatever point she is trying to make that the Chair is going to make a point.

MRS. JOHNSON of Connecticut: It does not change the law.

THE SPEAKER PRO TEMPORE: The House will operate under proper decorum.

MRS. JOHNSON of Connecticut: . . . What is happening here is that individual desire for spending programs is overriding the public interest in deficit reduction.

MR. [GERRY] SIKORSKI [of Minnesota]: Mr. Speaker, regular order.

THE SPEAKER PRO TEMPORE: The gentlewoman is out of order. The gentlewoman is making the point of not following the rules.

MRS. JOHNSON of Connecticut: Mr. Speaker, I am sorry. I know this is unpleasant.

THE SPEAKER PRO TEMPORE: The gentlewoman will remove herself from the well within 30 seconds.

POINT OF ORDER

MR. [HENRY B.] GONZALEZ [of Texas]:

Mr. Speaker, I rise to a point of order. I rise to a point of order, Mr. Speaker.

MRS. JOHNSON of Connecticut: As I said, I am not going to talk at length but only for the very few minutes necessary to make clear my concern with the substance and process violations in this rules proposal.

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

MR. GONZALEZ: The gentlewoman is out of order and is defying the Chair's ruling and, therefore, I am imploring the Chair to exercise its authority to enforce the rules of the House by summoning the Sergeant at Arms and presenting the mace.

THE SPEAKER PRO TEMPORE: The Chair may do that.

Speaker Protects Parliamentary Rights of Members

§ 1.3 The Speaker may on his own initiative take action to protect the right of Members to raise appropriate points of order.

Until the 104th Congress adopted its rules on Jan. 4, 1995, points of order had to be "reserved" on general appropriation bills when they were reported. Failure to take this step deprived the Chairman of the Committee of the Whole of the right to "rule out," in re-

sponse to a point of order, a portion of the bill as being legislative or unauthorized in law as required by Rule XXI clause 2.[8] Rule XXI clause 8[9] was added in 1995 and provides: "At the time any appropriation bill is reported, all points of order shall be considered as reserved.". The following incident, on May 23, 1994,[10] showed the willingness of the Chair to protect the prerogatives of Members.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE A PRIVILEGED REPORT ON FOREIGN OPERATIONS APPROPRIATIONS BILL, 1995

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight, May 23, 1994, to file a privileged report to accompany a bill providing appropriations for Foreign Operations for fiscal year 1995, and for other purposes.

THE SPEAKER PRO TEMPORE:[11] Is there objection to the request of the gentleman from Wisconsin?

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, reserving the right to object, we would like to know if the minority has been informed. We are told that they have not been.

MR. OBEY: If the gentleman will yield, I do not think that is correct.

MR. SOLOMON: Mr. Speaker, I stand corrected. I understand that the minority is aware of it, and we have no objection on this side of the aisle.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

THE SPEAKER PRO TEMPORE: All points of order are reserved.

Priority of Committee Members in Recognition for Point of Order

§ 1.4 Members of the committee reporting a bill have priority of recognition to make points of order against proposed amendments to bills.

On Mar. 30, 1949,[12] in the Committee of the Whole, Chairman Jere Cooper, of Tennessee, confronted with points of order offered simultaneously by two Members, recognized the committee member.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I offer my amendment at this time and ask that it be read.

The Clerk read as follows: . . .

MR. [HENRY M.] JACKSON of Washington: Mr. Chairman, a point of order.

MR. [CARL T.] CURTIS [of Nebraska]: Mr. Chairman, a point of order.

THE CHAIRMAN: The Chair recognizes the gentleman from Washington,

8. *House Rules and Manual* § 834 (1997).

9. *House Rules and Manual* § 848a (1997).

10. 140 CONG. REC. p. _____, **103d Cong. 2d Sess.**

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

12. 95 CONG. REC. 3520, 81st Cong. 1st Sess. Under consideration was H.R. 3838, the Interior Department general appropriation bill for 1950.

a member of the committee, to state a point of order.

MR. JACKSON of Washington: Mr. Chairman, I make the point of order that this particular amendment is legislation on an appropriation bill and imposes additional duties on the Bureau of Reclamation.

THE CHAIRMAN: Does the gentleman from South Dakota desire to be heard on the point of order?

MR. CASE of South Dakota: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair will hear the gentleman on the point of order. . . .

Does the gentleman from Nebraska desire to be heard on the point of order?

MR. CURTIS: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair will hear the gentleman briefly.

MR. CURTIS: I rose to make the same point of order. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from South Dakota [Mr. Case] offers an amendment which has been reported, against which the gentleman from Washington [Mr. Jackson] makes a point of order on the ground it is legislation on an appropriation bill. . . .

The Chair sustains the point of order.

Authority of the Chair To Reverse an Earlier Decision

§ 1.5 The Chairman of the Committee of the Whole has the authority to reverse his ruling made earlier during the consideration of a bill for amendment and on rare occasions does so when additional information on the point of order is presented to him.

The Committee on Appropriations has the burden of proving the authorization for projects carried in a general bill and has sometimes cited an "organic law" as the legal basis for a particular item of appropriation.

While the Organic Act creating an agency can be cited to support an item of appropriation, on one occasion when such a law was cited and the Chair relied upon it to overrule a point of order, he later reversed his ruling when it was determined that the Organic Act had been amended to remove the portion thereof relied upon in the ruling.

On June 8, 1983,[13] Chairman Gerry E. Studds, of Massachusetts, entertained argument against an appropriation for "Salaries and Expenses, Bureau of the Mint." The point of order was brought by a member of the Committee on Banking, Finance and Urban Affairs, Frank Annunzio, of Illinois, who argued that the annual authorization for the Bureau had not been enacted into law.

13. 129 CONG. REC. 14854, 14855, 98th Cong. 1st Sess.

The chairman of the Subcommittee on Treasury, Post Office Appropriations, Edward R. Roybal, of California, cited the provisions of law carried in title 31 of the United States Code, which established the Bureau of the Mint. The Chair relied upon these citations in holding that the appropriation was in fact authorized by law.

THE CHAIRMAN: The Clerk will read.

The Clerk read as follows:

BUREAU OF THE MINT

SALARIES AND EXPENSES

For necessary expenses of the Bureau of the Mint: $49,558,000.

MR. ANNUNZIO: Mr. Chairman, I make a point of order that the appropriations for the Bureau of the Mint, salaries and expenses, contained in title I are not authorized by law.

THE CHAIRMAN: Does the gentleman from California (Mr. Roybal) wish to be heard on the point of order?

MR. ROYBAL: Yes, Mr. Chairman, I wish to be heard on the point of order.

The Bureau of the Mint has been operating under one form or another since this country was first founded. The Mint has been minting and issuing coins pursuant to authority found in title 31 of the United States Code. Section 251 of title 31 establishes the Bureau and I would just like to read to the Chairman the first part of section 251. It reads as follows:

> There shall be established in the Treasury Department a Bureau of the Mint embracing as an organization and under its control all mints for the manufacture of coin and all assay offices for the stamping of bars which has been or which may be authorized by law.

Section 253 states:

> The Director of the Mint shall have the general supervision of all mints and assay offices and shall make an annual report to the Secretary of the Treasury of their operations at the close of each fiscal year, and from time to time such additional reports setting forth the operational conditions of such institutions as the Secretary shall require, and shall lay before him the annual estimates for their support; and the Secretary of the Treasury shall appoint the number of clerks classified according to law necessary to discharge the duties of said Bureau.

Mr. Chairman, I would like to point out that in addition to the sections I have just read, sections 261 through 463 of title 31 set forth in detail the duties of the Bureau of the Mint, and those sections are replete with requirements that the mint must accomplish certain acts.

I would like to cite Deschler's and Brown's Procedure of the House, chapter 25, section 5.7, which states in part, as follows. Section 5.7 reads as follows:

> The failure of Congress to enact into law separate legislation specifically authorizing appropriations for existing programs does not necessarily render appropriations for those programs subject to a point of order, where more general existing law authorizes appropriations for such programs. Thus, a paragraph in a general appropriation bill purportedly containing some funds not yet specifically authorized by separate legislation was held not to violate

Rule XXI clause 2, where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question.

It is my opinion, Mr. Chairman, that the general existing law which I have just cited authorizes the appropriation. The United States Code specifically establishes the Bureau of the Mint, and because the Code requires the Mint to accomplish certain functions, there is implicit in law the authority for the Congress to appropriate funds to accomplish those objectives which Congress set forth in law.

Mr. Chairman, I ask that the point of order be overruled.

MR. ANNUNZIO: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair will recognize the gentleman from Illinois (Mr. Annunzio) but the Chair would ask him to address himself to the necessity, as he claims in his point of order, for an annual authorization for these funds.

MR. ANNUNZIO: Mr. Chairman, I listened closely to the explanation of the distinguished chairman of the subcommittee of the Committee on Appropriations.

If the Chair were to sustain the point of order, there would not be any need for authorizing committees to present their authorizations. The Appropriations Committee would be doing the job.

I would also like to cite that in clause 2, rule XXI of the rules of the House, it states that funds cannot be appropriated with an authorization.

THE CHAIRMAN: Does the gentleman from Massachusetts (Mr. Conte) wish to be heard on the point of order?

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I rise in opposition to the point of order.

The chairman of the subcommittee has cited a number of general authorizations, which taken together constitute authorization within the meaning and the application of rule XXI, clause 2.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Illinois makes the point of order that there is no authorization for the expenses contained in the line in question.

The gentleman from California cites an organic statute creating the office in question, namely, the Bureau of the Mint.

The Chair is aware of the bill, H.R. 2628, passed by the House earlier this year, but not yet law. That bill, if and when it becomes law, will authorize some Bureau of Mint appropriations for fiscal 1984 and provide other permanent authorizations for salaries and expenses. Absent citation to such a statute requiring annual authorization, however, the Chair believes that the gentleman from California may rely on an organic act creating the office and authorizing it as a standing authorization in law for the purposes of the Bureau and, therefore, overrules the point of order.

Later in the consideration of the bill,[14] more recent citations of law were called to the attention of the Chair which showed that the Organic Act had been supple-

14. H.R. 3132 (Treasury, Postal Service appropriation, 1984).

mented by a requirement in law for annual authorizations. The Chair then reversed his earlier decision. The proceedings were as follows: [15]

MR. ROYBAL: Mr. Chairman, I ask that the Chair return to page 5, lines 14 through 17, only for the purpose of hearing further arguments on the point of order raised by the gentleman from Illinois (Mr. Annunzio).

THE CHAIRMAN: The Chair will hear the gentleman.

MR. [BILL] FRENZEL [of Minnesota]: Reserving the right to object, Mr. Chairman—

THE CHAIRMAN: The gentleman did not propound a unanimous consent request.

MR. FRENZEL: A point of information, Mr. Chairman. Can the Chair restate what the gentleman from California propounded?

THE CHAIRMAN: The gentleman from California requested the Chair to entertain a return to a point of order earlier overruled.

The Chair in rare circumstances may agree to such a request and has recognized the gentleman to be heard.

MR. FRENZEL: Can the Chair tell us what position in the bill the point of order occurs?

MR. CHAIRMAN: will hear the gentleman from California and will recognize him for that purpose, and the gentleman will point that out.

MR. ROYBAL: Mr. Chairman, I yield to the gentleman from Illinois (Mr. Annunzio).

MR. ANNUNZIO: Mr. Chairman, for the benefit of my distinguished colleague, the gentleman from Minnesota, I am renewing my point of order that the appropriation violates clause 2 of rule XXI, on page 5, line 14, of the rules of the House, in that they appropriate funds without an authorization.

A misunderstanding concerning the point of order has occurred because of a change in the law that took place in 1981, the Omnibus Reconciliation Act. Prior to the passage of the act, the mint operated under a permanent authorization and needed only to come before the Appropriations Committee to obtain its funds.

In 1981, however, the Congress changed that law so that the mint had to first obtain a yearly authorization before obtaining an appropriation.

The report of the House Banking Committee on this legislation makes that point very clear, that each year a new authorization is needed. The report in part says:

> It is the intent of the Committee to repeal the permanent authorization of the salaries and expenses of the Bureau of the Mint.

Further, the statement of the managers in the conference report of the committee on the legislation makes the point even more clear, that it is to be a yearly authorization. In part the report states:

> The House bill terminated the permanent authorization for appropriations for salaries and expenses for the Bureau of the Mint. The Senate receded to the House.

THE CHAIRMAN: The Chair desires to make a statement. The Chair apologizes in advance to the Members for the length of the statement.

15. 129 CONG. REC. 14876, 14877, 98th Cong. 1st Sess.

Earlier, during consideration of the bill in the Committee of the Whole, the Chair overruled a point of order against the paragraph appropriating funds for the Bureau of the Mint, salaries and expenses, on page 5, lines 14 through 17. In argument on the point of order, the manager of the bill cited provisions of law establishing and delegating functions to the Bureau of the Mint, as sufficient authority to authorize appropriations for annual expenses and salaries. The Chair has since become aware that those provisions of law have been repealed, and that the statutes relating to the mint have been amended, first by the Omnibus Reconciliation Act of 1981, then by the Omnibus Reconciliation Act of 1982, and then by a complete recodification of title 31 of the United States Code. No specific authorization of appropriations for fiscal year 1984 has yet been enacted, but one has passed the House (H.R. 2628).

The Omnibus Reconciliation Act of 1981, Public Law 97–35, provided in section 382 that the sentence in the Code (31 U.S.C. 369) which had been construed to provide a permanent authorization of appropriations for the Bureau of the Mint be repealed, and replaced that language with an authorization of appropriations for fiscal year 1982 only. The report on that measure in the House stated, on page 129, that by repealing the existing statutory provision and by limiting the authorization to fiscal year 1982 only, it is the intent of the committee to repeal the permanent authorization for the salaries and expenses of the Bureau of the Mint. The joint explanatory statement of the conferees on the Reconciliation Act reiterated that the House bill terminated the permanent authorization for appropriations for salaries and expenses of the Bureau of the Mint (page 717). The Omnibus Reconciliation Act of 1982, Public Law 97–253, in section 202, changed the 1982 authorization into a fiscal year 1983 authorization. Public Law 97–258 codified in its entirety title 31 of the United States Code, and carried the 1982 authorization in section 5132 of title 31; all the old provisions of title 31 dealing with the mint, previously cited in argument on the point of order, have been repealed. Public Law 97–452 modified the codification to reflect the 1983 authorization carried in the 1982 Reconciliation Act. There remains no statutory language relating to the mint which may be construed as a permanent authorization.

The Chair recognizes that it is unusual for the Chair to reverse a decision or ruling previously made, and it is the opinion of the Chair that he should undertake such a course of action only where new and substantial facts or circumstances, which were not evident or stated in argument on a point of order, are subsequently brought to his attention.

In rare instances, the Chair has reversed a decision on his own initiative; for example, the Chairman of the Committee of the Whole in 1927, as cited in volume 8 of Cannon's Precedents section 3435, held that a provision in a general appropriation bill constituted legislation after reviewing a statute he was not previously aware of when he had rendered a contrary decision.

For the reasons stated, and in view of the unique and compelling circumstances, the Chair holds that the language in the bill on page 5, lines 14

through 17, appropriating funds for the Bureau of the Mint, is unauthorized and, therefore, rules the paragraph out of order.

Chair's Duty To Rule on Point of Order

§ 1.6 The Chair only rules on a point of order when required to do so, and will permit withdrawal of an amendment (by unanimous consent in Committee of the Whole) prior to ruling on a point of order raised against the amendment.

On June 7, 1983,[16] the energy and water development appropriation for fiscal 1984 (H.R. 3132), was under consideration in Committee of the Whole. An amendment, offered by Mr. Robert W. Edgar, of Pennsylvania, was subject to at least two possible points of order: it was "legislation" in violation of Rule XXI clause 2; and it affected the level of excise tax and was thus a violation of Rule XXI clause 5(b), which prohibits tax or tariff measures from being in order to a measure not reported by the Committee on Ways and Means. Points of order were reserved against the amendment, and, after discussion, the proponent of the amendment asked that it be withdrawn.

MR. EDGAR: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Edgar: On page 8, after line 2, add the following new section:

"SEC. 104. Within funds available in the construction general account, including but not limited to funds deferred, the Corps of Engineers is directed to complete the navigation and related features of the Tennessee-Tombigbee Waterway at a total additional Federal cost of $202,000,000. Section 206 of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following: '(27) Tennessee-Tombigbee Waterway: From the Pickwick Pool on the Tennessee River at RM 215 to Demopolis, Alabama, on the Tombigbee River at RM 215.4.'".

MR. [TOM] BEVILL [of Alabama]: Mr. Chairman, I reserve a point of order on this amendment.

THE CHAIRMAN:[17] The gentleman from Alabama (Mr. Bevill) reserves a point of order against the amendment.

MR. [RONNIE G.] FLIPPO [of Alabama]: Mr. Chairman, I also make a point of order against the gentleman's amendment on the grounds that it violates paragraph (b), clause 5, rule XXI of the rules of the House.

THE CHAIRMAN: Would the gentleman suspend.

MR. FLIPPO: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman reserves a point of order. . . .

MR. EDGAR: Mr. Chairman, with those assurances, I would like to ask

16. 129 CONG. REC. 14656, 14657, 98th Cong. 1st Sess.

17. Donald J. Pease (Ohio).

unanimous consent to withdraw my amendment at this time.

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

MR. FLIPPO: Mr. Chairman, I reserve the right to object to the unanimous-consent request.

I wish to make a point of order against the amendment because the amendment violates paragraph (b), clause 5, rule XXI of the Rules of the House of Representatives.

THE CHAIRMAN: If the gentleman would suspend a moment, proper procedure is for the gentleman to object to the unanimous-consent request of the gentleman from Pennsylvania, to withdraw his amendment and then to make a point of order.

MR. FLIPPO: I do object to the unanimous-consent request.

MR. EDGAR: Will the gentleman reserve the right to object?

MR. FLIPPO: I yield to the gentleman from Pennsylvania.

MR. EDGAR: Before the gentleman makes his objection, the gentleman from Pennsylvania is attempting to remove the impediment that the gentleman wants to call a point of order against, simply because the gentleman has made the assurances.

MR. FLIPPO: Mr. Chairman, I do not object to the gentleman's request and I withdraw my reservation of objection.

THE CHAIRMAN: Is there objection to the request of the gentleman from Pennsylvania to withdraw the amendment?

There was no objection.

Preliminary Argument on Point of Order

§ 1.7 Arguments in support of a point of order may be submitted for the information of the Speaker in advance of raising the point of order.

On July 12, 1935,[18] Mr. Thomas L. Blanton, of Texas, informed the Speaker of arguments that he intended to use to support anticipated points of order, thus enabling Speaker Joseph W. Byrns, of Tennessee, to research the applicable precedents and authorities ahead of time.

MR. BLANTON: Mr. Speaker, with the permission of the Chair, I should like to make a point of order with respect to certain bills that will come up next Tuesday, and then let the point of order be pending, so that the Speaker in the meantime may examine the authorities which may be presented by myself or by the Parliamentarian.

THE SPEAKER: The Chair will be glad to hear the gentleman.

Parliamentarian's Note: The Speaker would have discretion whether to recognize for such anticipatory argument and could request its informal submission in writing, in lieu of using the time of the House.

Discretion of Chair

§ 1.8 It is within the discretion of the Chair whether to en-

18. 79 CONG. REC. 11113, 11114, 74th Cong. 1st Sess. The discussion pertained to the provisions of the Private Calendar rule.

tertain more than one point of order to a paragraph at the same time.

On Mar. 29, 1966,[19] in the Committee of the Whole, the Chair entertained and overruled two points of order made against separate language in the same paragraph of a general appropriation bill simultaneously.

MR. [MELVIN R.] LAIRD [of Wisconsin]: Mr. Chairman, I raise a point of order against lines 6 through 22 on page 4 of the pending legislation, and desire to be heard on the point of order.

THE CHAIRMAN:[20] The gentleman will state his point of order.

MR. LAIRD: Mr. Chairman, the language contained in lines 15 through 22 [is] a clear violation of rule XXI of the Rules of the House of Representatives, wherein clause 2 states: . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. YATES: Mr. Chairman, I have a point of order on line 12, which reads "in any fiscal year." Is it in order to make that point now, or should it be made at the conclusion of the Chair's ruling?

THE CHAIRMAN: It can be made now. The Chair will rule on both points of order.

MR. YATES: Mr. Chairman, I make a point of order against the language appearing on line 12 . . . to the words "any fiscal year," on the grounds that it is legislation on an appropriation bill which binds the appropriations for all future times. . . .

MR. LAIRD: Mr. Chairman, I accept the inclusion of the point of order by the gentleman from Illinois, and under the terms of Hinds' Precedents, my point of order is raised against the entire section and I would include the point made by the gentleman from Illinois against the entire section.

THE CHAIRMAN: The Chair will pass on both points of order at this moment, and the Chair is prepared to rule.

The Chair finds that the decision of the Chair on H.R. 11588, a bill providing for supplemental appropriations, on the 14th of October 1965, did include language identical to that subject to the point of order made by the gentleman from Wisconsin and identical to that subject to the point of order made by the gentleman from Illinois. At that time both points of order were ruled upon by the Chairman of the Committee of the Whole House, Mr. Harris, of Arkansas. He ruled that the proviso constituted a limitation negative in nature that did not impose additional duties upon the administration and overruled the point of order on both points.

The Chair, on the basis of the ruling of the Chairman on the 14th of October 1965, referred to, overrules the point of order of the gentleman from Wisconsin and the point of order of the gentleman from Illinois.

Parliamentarian's Note: Since Mr. Laird incorporated Mr. Yates'

19. 112 CONG. REC. 7103, 7104, 89th Cong. 2d Sess. Under consideration was H.R. 14012, the second supplemental appropriation for fiscal 1966.

20. James G. O'Hara (Mich.).

point of order into his own as against the entire paragraph, it was proper for the Chair to rule simultaneously on both.

§ 1.9 It is within the discretion of the Chair as to which of several points of order he will hear or decide first.

On Dec. 15, 1937, in the Committee of the Whole, the following proceedings took place:[1]

> MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, will the gentleman yield to me to make a parliamentary inquiry?
>
> MR. [JERE] COOPER [of Tennessee]: Mr. Chairman, I yield.
>
> MR. SNELL: Mr. Chairman, it seems to me that one point of order ought to be disposed of before we start on another point of order, that that would be the better procedure and more orderly than to have all of these points of order made at one time, because they are all entirely different. When the gentleman from Tennessee began to state his point of order I thought it was along the same lines as my own.
>
> MR. COOPER: Of course, my point of order was raised at this time at the invitation of the Chair.
>
> MR. SNELL: I think one point of order should be considered at a time, Mr. Chairman.
>
> MR. COOPER: From my viewpoint I think they should all be presented.
>
> THE CHAIRMAN:[2] The Chair feels it is within the discretion of the Chair to hear all points of order at the same time that relate to germaneness, and also in the discretion of the Chair as to which one he will rule upon in the first instance. . . .
>
> The Chair feels it would be in the best interest of orderly conduct if the procedure indicated by the Chair is followed.

Parliamentarian's Note: Although several points of order against a proposition may be pending at the same time, the Chair may choose any one of them as a basis for ruling out the proposition without citing the remaining points of order. The Chair would normally follow the principle that he should avoid making an unnecessary ruling, if possible, by ruling first on points of order which he would sustain, thereby rendering moot the remaining points of order.

Multiple Points of Order Against Paragraph, Chair May Be Selective in Ruling

§ 1.10 Every argument raised against a paragraph in an appropriation bill need not be addressed when the Chair responds to a point of order; and if the language is subject to one point of order, since it is unauthorized by law, he need not refute other assertions not necessary to reach this decision.

1. 82 CONG. REC. 1579, 75th Cong. 2d Sess.
2. John W. McCormack (Mass.).

On Sept. 23, 1993,[3] the Department of Transportation appropriation bill for fiscal 1994 was being read for amendment. By unanimous consent, the Committee permitted a return to a paragraph already passed in the reading. A point of order was raised against the paragraph and the proceedings were as shown.

THE CHAIRMAN:[4] The Chair would advise the gentleman that the Clerk was beginning to read the paragraph beginning on line 16, page 21, but had not commenced the reading of that paragraph.

MR. [NORMAN Y.] MINETA [of California]: Let me ask about page 21, lines 1 through 7.

THE CHAIRMAN: That section has been read.

MR. MINETA: Mr. Chairman, I did not hear that portion being read, and I have a point of order on that provision.

THE CHAIRMAN: The Chair would advise the gentleman that that section of the bill has been passed in the reading and would ask the gentleman if he desires to make a unanimous-consent request that the Committee return to that section.

MR. MINETA: Since I did not, and I believe other Members have not heard that portion read, Mr. Chairman, I would ask unanimous consent that that portion be read for consideration at this point.

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

There was no objection.

THE CHAIRMAN: The Committee will return to line 1 on page 21.

The Clerk will read.

The Clerk read as follows:

KENTUCKY BRIDGE PROJECT

(HIGHWAY TRUST FUND)

For up to 80 percent of the expenses necessary for continuing construction to replace the Glover Cary Bridge in Owensboro, Kentucky, $12,000,000, to be derived from the Highway Trust Fund and to remain available until September 30, 1997. . . .

THE CHAIRMAN: Are there any points of order to be raised to that language?

POINT OF ORDER

MR. MINETA: Mr. Chairman, I rise to a point of order.

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

MR. MINETA: Mr. Chairman, I raise a point of order against page 21, lines 1 through 7, on the basis that this provision violates clause 2 of rule XXI. First of all, this project is unauthorized. And while there have been previous appropriations, the project has never been authorized by law.

In addition, the period of funding availability until September 30, 1997, is not authorized.

Also, this provision appropriates money out of the highway trust fund, contrary to section 9503(C)(1) of the Internal Revenue Code. That section provides that the highway trust fund may only be used to fund programs authorized in the Highway Acts of 1956, 1982, 1987, and 1991. Thus, because this provision provides funding from

3. 139 CONG. REC. 22172, 22173, 103d Cong. 1st Sess.

4. Rick Boucher (Va.).

the highway trust fund for a project not authorized by one of these laws, it has the effect of changing existing law, and, therefore, is in violation of rule XXI.

Finally, this provision does not come within the exception to rule XXI, clause 2(A), for continuation of appropriations for public works and objects which are already in progress.

It is clear from the precedents that the exception is narrowly construed and has been applied only to Federal projects. As applied specifically to highways, the precedents have required that the United States actually hold title to the road. The project in this paragraph does not meet this test. Thus, Mr. Chairman, for the reasons enumerated above, lines 1 through 7 on page 21 are in violation of rule XXI and subject to a point of order.

THE CHAIRMAN: Does the gentleman from Michigan [Mr. Carr] desire to be heard?

MR. [BOB] CARR of Michigan: Mr. Chairman, I do. This falls within the exceptions in rule XXI for works in progress, and we would ask the Chair to rule.

THE CHAIRMAN: Do other Members desire to be heard on the point of order?

The Chair is prepared to rule.

The gentleman from California [Mr. Mineta] makes the point of order that the funds appropriated in the paragraph entitled "Kentucky Bridge Project" are unauthorized and thus in violation of clause 2 of rule XXI. The gentleman from Michigan has argued that although the funds are indeed unauthorized they are in order under the exception to clause 2 of rule XXI which allows unauthorized appropriations to continue funding public works and objects which are already in progress, referred to as the "works-in-progress exception." The Chair need not rule on whether this project is exclusively a federally-owned project.

The legal authority for expending highway trust funds is outlined in section 9503(c) of the Internal Revenue Code. That section states in positive terms that highway trust fund moneys shall be available where authorized by specific enumerated acts. The paragraph in question circumvents that requirement. Deschler's Precedents, volume 8, chapter 26, section 8.9, stands for the proposition that the works-in-progress exception may not be invoked to circumvent existing law. Therefore, the Chair sustains the point of order.

Multiple Reasons for Sustaining a Point of Order

§ 1.11 Any number of reasons may be advanced at one time to determine whether a matter is subject to a point of order.

On Apr. 5, 1946,[5] Mr. Adam C. Powell, Jr., of New York, offered an amendment to a general appropriation bill prohibiting the use of the funds therein provided to any office, agency, or department of the District of Columbia which

5. 92 CONG. REC. 3227, 79th Cong. 2d Sess. Under consideration was H.R. 5990, a District of Columbia appropriation bill for fiscal 1947.

segregated the citizens of the District on the basis of race, color, creed, or place of national origin. Several points of order based upon the germaneness rule [Rule XVI clause 7, *House Rules and Manual* § 794 (1997)] and upon the rule precluding legislation on a general appropriation bill [Rule XXI clause 2(b), *House Rules and Manual* § 834b (1997)] were immediately raised against the amendment.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[6] The gentleman will state the point of order.

MR. RANKIN: Mr. Chairman, I make the point of order that the amendment is not germane, and that it is legislation on an appropriation bill, in that it attempts to change the fundamental laws of the District of Columbia. . . .

MR. [JOHN M.] COFFEE [of Washington]: Mr. Chairman, I make the point of order that the amendment proposes to incorporate a legislative provision in an appropriation bill that does not come within the purview of the Holman rule and that it sets up an affirmative agency in the law.

MR. [HOWARD W.] SMITH of Virginia: Mr. Chairman, I desire to add further points of order upon which I should like to be heard at a later time in the discussion.

These points of order led to the following exchange, which is illustrative of the rule:

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. MARCANTONIO: Then there will be two points of order pending at the same time.

THE CHAIRMAN: Any number of reasons can be given for the point of order.

Chair's Obligation in Case of Multiple Points of Order

§ 1.12 If several points of order are made against an amendment and the Chair sustains one of them, it is not necessary that he rule on the remainder as the amendment is no longer pending.

When the State, Justice, Commerce, and Judiciary appropriation bill for fiscal 1979 was under consideration in the Committee of the Whole on June 14, 1978,[7] an amendment, phrased as a restriction of all funds in the bill for certain types of advertising of unsafe products, was offered by Mr. Mark Andrews, of North Dakota. Mr. Bob Eckhardt, of Texas, raised two points of order against the amendment. The proceedings were as indicated:

MR. ANDREWS of North Dakota: Mr. Chairman, I offer an amendment.

6. Aime J. Forand (R.I.).

7. 124 CONG. REC. 17644, 17646, 17647, 95th Cong. 2d Sess.

The Clerk read as follows:

> Amendment offered by Mr. Andrews of North Dakota: on page 51 after line 16, insert the following:
>
> SEC. 605. Except for funds appropriated to the Judiciary in title IV of this act, no part of any appropriation contained in this act may be used to pay the salary or expenses of any person to limit the advertising of: (1) any food product that contains ingredients that have been determined to be safe for human consumption by the Food and Drug Administration or are considered to be "Generally Recognized as Safe" (GRAS) and does not contain ingredients that have been determined to be unsafe for human consumption by the FDA; (2) any toy which has not been declared hazardous or unsafe by the Consumer Product Safety Commission.

MR. ECKHARDT: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN:[8] The gentleman from Texas (Mr. Eckhardt) reserves a point of order. . . .

Does the gentleman from Texas (Mr. Eckhardt) desire to press his point of order?

MR. ECKHARDT: I do, Mr. Chairman.

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

MR. ECKHARDT: The amendment is legislation on an appropriation bill, and as such is subject to a point of order under rule XXI, clause 2.

Mr. Chairman, it is provided in the very first section of Deschler on this particular point that:

> When an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make new investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

That is the main thrust of my point of order but I also believe that in the colloquy it becomes rather apparent that this amendment was directed at the Federal Trade Commission section of the bill which has come out. Therefore, I would also offer alternatively, or additionally, the point of order that this is not germane to the bill as it is now before us.

On that latter objection, which I will speak to only very briefly, the argument and the thrust of the amendment clearly goes toward rulemaking authority. But I should primarily like to speak on the point of order based on the proposition that I just read, that is, that this constitutes legislation on an appropriations bill and gives to officers of the Government very, very large additional duties as the result of the passage of this amendment, should it be passed.

I point primarily to the case which I believe is directly in point. On June 21, 1974, there was a point of order made by the gentleman from California (Mr. Moss) to a provision in the appropriations bill at that time, section 511. The gentleman from California (Mr. Moss), asserted that the language would impose additional duties on every agency subject to the bill and was legislation on an appropriation. The language of the section was as follows:

> Except as provided in existing law, funds provided in this act shall be

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

> available only for the purposes for which they are appropriated.

Mr. Moss correctly pointed out that if that provision was sustained, it would be necessary in the use of any funds by an agency involved to go back and show that the Appropriations Committee had addressed the specific object of the use of those funds. The gentleman from California (Mr. Moss), pressed that point very strongly. The gentleman from Mississippi (Mr. Whitten) then contended that he considered this only as limiting the legislation to existing law, and the present speaker joined in supporting the Moss point of order.

I said at that time that as I understood the gentleman from Mississippi, Mr. Whitten's, position on the provision, it meant that each of the specific appropriations would have to be considered with respect to the process brought forth in that committee's hearings.

The Chair ruled as follows:

> The Chair is prepared to rule on the point of order. If the language means what the gentleman from Mississippi now says it does, then the language is a nullity because it just repeats existing law. The Chair is of the opinion, though, that there is a possibility, as earlier indicated during general debate and as suggested by the gentleman from California, that the amendment imposes an additional burden, and the Chair, therefore, sustains the point of order.

There are a number of cases, of course, in Deschler around this area that I have cited that bear out the point that I have made, but I know that the Chair is familiar with the general proposition and I shall not recite them. But I do want to say and show on that point of order if its facts should be sustained, then our contention that there is an additional burden on administrators is demonstrated in spades in this amendment. This amendment says that none of the funds appropriated "in this act may be used to pay the salary or expenses of any person to limit the advertising of: First, any food product that contains ingredients that have been determined to be safe for human consumption by the Food and Drug Administration or are considered to be 'generally recognized as safe.'."

The Food and Drug Administration does not list food products as safe or unsafe. The Food and Drug Administration only determines whether or not ingredients in food products are safe or unsafe. Therefore, if this restriction were placed in law, it would be necessary for an agency like the Federal Communications Commission, when it is determining whether or not funds might be used in order to take some action respecting unsafe foods, to look to see what ingredients were included in the particular food involved. In other words, the Federal Communications Commission would have to exercise the same type of expertise, the same type of technical research that the other agency has had to go through. In addition to this, the amendment says that none of these funds can be used with regard to any toy which has not been declared hazardous or unsafe by the Consumer Product Safety Commission. The Consumer Product Safety Commission does not list specific toys as unsafe.

The Consumer Product Safety Commission determines what minimum design or what minimum standards, per-

formance standards, are necessary in order for a toy to be permitted to go on the market. For instance, a toy that melts lead to make toy soldiers might be unsafe because of the method in which it melts the lead and exposes persons to heat.

The point, though, is that the Commission does not establish that this particular toy is unsafe. If we pass this restriction, we would place the burden on the FTC to go in and look at every toy and then apply the standards of the Consumer Product Agency to those toys to find out whether they could be advertised.

So, Mr. Chairman, I think this is a classic example of placing on every agency to whom this restriction would apply very extensive duties beyond that which they are now called upon to exercise.

In addition, it would place the same burden on other agencies, like the Consumer Product Safety Commission, to change their rules to make different modes of establishing and identifying unsafe toys.

Mr. Chairman, I urge that the point of order be sustained.

THE CHAIRMAN: Does the gentleman from North Dakota (Mr. Andrews) desire to be heard on the point of order?

MR. ANDREWS of North Dakota: I do, Mr. Chairman.

Mr. Chairman, it is clear that the House of Representatives has accepted as "in order" amendments to appropriations bills which are negative prohibitions, descriptive of employment not mandated by law which may not be undertaken if those individuals are to be compensated by funds in the bill.

This type of amendment is clearly described in Deschler's Procedure. The following are two examples of such an amendment:

On June 21, 1974, the House held in order an amendment by Representative Whitten of Mississippi to limit funds used by the FTC to collect line of business data.

On October 9, 1974, the House held in order an amendment to prohibit EPA from using funds to tax, limit or regulate parking facilities.

Mr. Chairman, addressing the question of germaneness, the House Manual, section 795, states that an amendment in the form of a new paragraph must be germane to the bill as a whole.

It certainly is, because the bill contains funding for the Federal Communications Commission, which is the only agency which has so far put in detail an investigation of this type of action.

Second, addressing the issue of legislation on an appropriation bill, to implement the limitation the agency only need examine information which it now receives under existing laws; so there are no additional substantive duties, judgments or determinations.

Therefore, since this amendment is based on a clearly discernible standard and since chapter 25, section 10.4 says:

> Where the manifest intent of a proposed amendment is to impose a limitation on the use of funds appropriated in the bill, the fact that the administration of the limitation will impose certain incidental but additional burdens on executive officers does not destroy the character of the limitation.

Mr. Chairman, based on this, I feel that the amendment is in order. I would hope the Chair would rule accordingly.

THE CHAIRMAN: Does the gentleman from Washington (Mr. Dicks) desire to be heard on the point of order?

MR. [NORMAN D.] DICKS [of Washington]: I do, Mr. Chairman.

Mr. Chairman, just to reiterate on this point, this amendment was aimed at limiting the Federal Trade Commission. Now that that section has been stricken, the only way it can apply is to the FCC. The FCC does not have to regulate itself for advertising. That jurisdiction falls within the jurisdiction of the Federal Trade Commission.

Therefore, it creates new legal duties for the FCC, which are beyond the scope of an appropriation bill, which makes it legislation within an appropriation bill and, therefore, subject to rule XXI, clause 2.

Also the ruling made by the Consumer Product Safety Commission is accurate. The language does not go to unsafe toys, and they would have additional duties created by this amendment.

Mr. Chairman, I also believe that clause 2, rule XXI, applies in this case.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Texas (Mr. Eckhardt) makes the point of order that the amendment offered by the gentleman from North Dakota (Mr. Andrews) constitutes legislation on an appropriation bill. In addition, he makes the point that because it was drafted originally to be applicable to the Federal Trade Commission and that section of the bill has been stricken, it is no longer germane to the bill.

The Chair does not find it necessary to rule, however, on the point of germaneness.

The amendment would prohibit use of any funds in the bill to limit advertising of food products and toys in relation to which determinations have been made by the Food and Drug Administration and the Consumer Product Safety Commission. As indicated by the arguments made on the point of order, this bill now contains no funds for the Federal Trade Commission but does contain funds for the Federal Communications Commission. The Chair feels it is necessary to lay that basis in order to determine whether the amendment requires new duties or determinations of a particular agency which are not now required by law.

The Federal Communications Commission has the authority under the law to regulate interstate and foreign communications and transmissions in wire and radio, but existing law contains no mandate that the Commission consider whether food and toy products are safe or unsafe in regulating broadcasts within its jurisdiction. The amendment would disallow funds for the Commission to limit advertising of certain products, even if the purpose for such regulatory limitations was totally unrelated to the safety of the product in question. In considering any proposal to limit advertising of food or toy products, the Commission would be required to first determine the scope and extent of determinations of other agencies on the safety of those products, and it is far from clear whether such determinations are readily available or sufficiently certain to determine whether the limitation would apply in a particular case.

Furthermore, in relation to food products, the Commission would have to determine whether the finished food

product contained ingredients which have been declared safe if the Food and Drug Administration had made no determination on the safety of such a finished product.

The Chair would also note that the amendment would prohibit advertising of food products containing ingredients considered to be generally recognized as safe, without specifically indicating whether that determination is to be made by the FDA or by the Federal Communications Commission.

For the reasons stated, the Chair finds that the amendment would impose substantial new duties and requirements on the Federal Communications Commission beyond its authorities under existing law and, therefore, sustains the point of order.

Points of Order Against En Bloc Amendments

§ 1.13 Where amendments to the pending paragraph of an appropriation bill and to the following section were, by unanimous consent, considered en bloc, a point of order was lodged against both amendments based on identical legislative language therein and was sustained by the Chair.

On July 31, 1969,[9] where amendments to a bill were considered en bloc in the Committee of the Whole, Chairman Chet Holifield, of California, ruled simultaneously on points of order against two amendments containing identical language.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer amendments and I ask unanimous consent that the amendments be considered en bloc.

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

There was no objection. . . .

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I wish to make a point of order against the amendment.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. SIKES: Mr. Chairman, it appears to me that the rulings of the Chair heretofore on this bill this afternoon show clearly that this is legislation on an appropriation bill. . . .

THE CHAIRMAN: The Chair is prepared to rule. The Chair recognizes that this is a very difficult matter. The proposed amendment for section 408 is different from section 408 of the bill in that it has added the words "in order to overcome racial imbalance.". . .

MR. CONTE: Mr. Chairman, may I be heard for a minute?

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman, regular order.

THE CHAIRMAN: The gentleman will please desist until the Chair has finished his ruling on the second amend-

9. 115 CONG. REC. 21675, 91st Cong. 1st Sess. Under consideration was H.R. 13111, the Departments of Labor and Health, Education, and Welfare appropriations for fiscal 1970.

ment because they are being considered en bloc.

The additional words in the amendment to section 409 are "in order to overcome racial imbalance" and this clearly requires additional duties on the part of the officials. Therefore, it is not negative in nature and is legislation on an appropriation bill.

The Chair, therefore, sustains the point of order.

§ 1.14 If a point of order is sustained against any portion of a package of amendments being considered "en bloc" on a general appropriation bill, all the amendments are ruled out and those not subject to a point of order must be reoffered separately.

On Sept. 16, 1981,[10] the House had under consideration the military construction appropriations for fiscal 1982. Amendments were offered, and by unanimous consent, were considered en bloc. The proceedings are carried below.

MR. [RONALD B. (BO)] GINN [of Georgia]: Mr. Chairman, I ask unanimous consent that the bill be considered as read and open to amendment at any point.

THE CHAIRMAN:[11] Is there objection to the request of the gentleman from Georgia?

There was no objection.

THE CHAIRMAN: Are there any points of order against the bill? The Chair hears none. . . .

MR. [M. CALDWELL] BUTLER [of Virginia]: Mr. Chairman, I offer amendments, and I ask unanimous consent that these amendments be considered en bloc.

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

There was no objection. . . .

Amendments offered by Mr. Butler: Page 2, line 11, strike out "$1,029,519,000" and insert in lieu thereof "$1,009,276,400".

Page 3, line 6, strike out "$1,404,883,000" and insert in lieu thereof "$1,354,096,100" . . .

Page 6, line 16, strike out "$36,000,000" and insert in lieu thereof "$34,345,000".

Page 6, line 22, strike out "$37,400,000" and insert in lieu thereof "$35,855,000".

Page 14, after line 13, insert the following new section:

SEC. 123. The provisions of the Act of March 3, 1931 (40 U.S.C. 276a-276a-5; 46 Stat. 1494), commonly referred to as the Davis-Bacon Act, shall not apply to the wages paid to laborers and mechanics for any work or services performed under any contract entered into on or after the date of enactment of this Act for the construction of any project funds for which are appropriated by this Act.

POINT OF ORDER

MR. GINN: Mr. Chairman, I make a point of order against the amendments.

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

MR. GINN: Mr. Chairman, I make a point of order against the amendments because they constitute legislation in

10. 127 CONG. REC. 20735–38, 97th Cong. 1st Sess.

11. Philip R. Sharp (Ind.).

an appropriations bill, which is in violation of clause 2, rule XXI.

The amendments proposed constitute a change in existing law, which under House rules is not allowed through an appropriations bill.

The amendments are legislative in nature and are in violation of clause 2, rule XXI. Therefore, Mr. Chairman, I ask for a ruling from the Chair. . . .

MR. [THOMAS F.] HARTNETT [of South Carolina]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. HARTNETT: We do not have a whole lot of on-the-job training for new Members who just arrived in the 97th Congress. In the event I would want to raise a point of order, as did the distinguished chairman from Georgia, that the amendment is what I would call double or triple barreled, that I, as a Member, although I may want to vote for some of the changes that are proposed by the gentleman from Virginia (Mr. Butler) in his amendment to the bill, I may not want to vote for others.

My inquiry is: Is this amendment being offered as one amendment, and if it is, would the point of order be in order that the amendment was not properly drawn and that I was being precluded from voting for—I would have to vote for or against all of them where, in fact, I may want to vote for one or the other?

THE CHAIRMAN: The Chair will respond to the gentleman's inquiry by stating that the gentleman from Virginia has already gotten unanimous consent to offer his amendments en bloc. However, if a point of order is sustained against those amendments or any portion thereof, under the precedent the remaining amendments will have to be reoffered, at which point the gentleman from Virginia will again have to ask permission to have them offered en bloc. If that is denied, then the amendments would have to be offered individually.

MR. HARTNETT: Mr. Chairman, what you are telling me is, in order for the gentleman from Virginia to offer a series of amendments like that, the gentleman has to obtain unanimous consent prior to doing that or, in fact, he would have to offer each one of them individually?

THE CHAIRMAN: The gentleman is correct. The very first action the gentleman from Virginia engaged in was to ask for such unanimous consent.

MR. HARTNETT: I thank the Chair.

Multiple Points of Order Against Paragraph in General Appropriation Bill

§ 1.15 Where two points of order are made against a paragraph in a general appropriation bill which has just been read, one against a proviso in the paragraph and the other against the totality of the paragraph, it is the broader point of order which the Chair must address and upon which he must rule.

During the reading for amendment of the supplemental appropriation bill, fiscal 1978, on Oct. 19, 1977,[12] a paragraph dealing

12. 123 CONG. REC. 34245, 34246, 95th Cong. 1st Sess.

with the Federal Energy Administration was read by the Clerk. Mr. Frank Horton, of New York, made a point of order against a proviso in the paragraph which contained a waiver of existing law. Mr. Robert L. Ottinger, of New York, then raised a point of order against the entire paragraph, addressing not only the change in law highlighted by Mr. Horton, but the unauthorized items funded in the paragraph. Chairman Sam Gibbons, of Florida, ultimately ruled out the entire paragraph.

THE CHAIRMAN: The Clerk will read. The Clerk read as follows:

RELATED AGENCIES

FEDERAL ENERGY ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $293,611,000, of which $266,145,000 shall become available only upon enactment of authorizing legislation as follows: (1) for conservation grants for schools and health care facilities, $200,000,000; for conservation grants for local government buildings, $25,000,000; for grants for financial assistance to utility regulatory commissions, $11,250,000; for solar heating and cooling installations in federal buildings, $25,000,000; to remain available for obligation until September 30, 1979; and (2) for administration of grants for schools and health care facilities, local government buildings, and utility rate reform, $1,480,000; and for a federal vanpooling program, $3,415,000: *Provided* That of the total amount of this appropriation, not to exceed $6,000,000, shall remain available until expended for a reserve to cover any defaults from loan guarantees issued to develop underground coal mines as authorized by Public Law 94–163: *Provided further*, That the indebtedness guaranteed or committed to be guaranteed under said law shall not exceed the aggregate of $62,000,000: *Provided further*, That notwithstanding 31 U.S.C. 638a(c)(2) government-owned vehicles may be used to initiate vanpool demonstration projects.

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

THE CHAIRMAN: The gentleman will state it.

MR. HORTON: Mr. Chairman, I make a point of order against the portion of this chapter which appropriates funds for a Federal vanpooling program. The appropriation is contained in lines 15 and 16 of page 8—in the words "; and for a Federal vanpooling program, $3,415,000". Related language, to which my point of order should also apply since these words have no meaning in the bill except as they pertain to the vanpooling appropriation, is contained in lines 23 and 24 of page 8 and lines 1 and 2 of page 9:

> *Provided further*, That notwithstanding 31 U.S.C. 638a(c)(2) government-owned vehicles may be used to initiate vanpool demonstration projects.

Mr. Chairman, these provisions violate rule XXI, clause 2, of the Rules of the House. This rule states, in pertinent part:

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in

continuation of appropriations for such public works and objects as are already in progress.

A Federal vanpooling program has never been authorized and is not now in progress. In fact, the House has rejected such a program twice, the second time by an even larger margin than the first. We considered vanpooling as section 701 of H.R. 8444, the National Energy Act, in August of this year. I moved to strike that section from the bill, and my amendment carried with strong bipartisan support, 232 to 184. When the bill was reported back to the House by the Committee of the Whole, a separate vote was demanded on my amendment. In the separate vote, the amendment was agreed to by a vote of 239 to 180.

Mr. Chairman, I am opposed to the House creating by a few words in an appropriation bill a program which it has twice explicitly rejected in the past. That is why I have raised this point of order against H.R. 9375's appropriation of funds for a Federal vanpooling program.

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

THE CHAIRMAN: The gentleman will state it.

MR. OTTINGER: Mr. Chairman, I make a point of order against the portion of the bill H.R. 9375 appropriating salaries and expenses for the Federal Energy Administration.

The particular provision appropriates $266,145,000 for several purposes all of which are prefaced by the phrase that such appropriation is subject to "enactment of authorizing legislation."

The purposes are:

Conservation grants for schools and health care facilities, $200 million;

Conservation grants for local government buildings, $25 million;

Grants for financial assistance to utility regulatory commissions, $11,250,000;

Solar heating and cooling installations in Federal buildings, $25 million;

Administration of grants for schools and health care facilities, local government buildings, and utility rate reform, $1,480,000; and

Federal vanpooling programs, $3,415,000.

Mr. Chairman, rule XXI, clause 2, provides that no appropriations shall be reported in any general appropriation bill for any expenditure not previously authorized by law. All of the above provisions are unauthorized. They are now a part of the versions of the National Energy Act legislation pending in the House and the Senate. The vanpooling provision was soundly rejected by the House last August in connection with H.R. 8444. The precedents show that an authorization must be enacted before the appropriation may be included in an appropriation bill. Thus, delaying the availability of an appropriation pending enactment of the authorization, as is done in H.R. 9375, does not protect the item of appropriation against the point of order under rule XXI, clause 2. See, *Congressional Record*, April 26, 1972, page 14455. See also, 114 *Congressional Record*, 15354, 90th Congress, second session, May 28, 1968, where it was ruled that an appropriation for a maritime ship construction operation and research not yet authorized by law for the fiscal year of the appropriation was

conceded to be unauthorized and was ruled in violation of rule XXI, clause 2. . . .

THE CHAIRMAN: Does any other Member desire to be heard?

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I think I should respond to the point of order. The gentleman is correct insofar as the point of order is concerned. The purpose of the subcommittee in placing these appropriations in this bill was in order to expedite the activities of the Federal Energy Administration at a critical time. It is my understanding that the conferees for both the House and the Senate have very nearly reached agreement on the bill.

The action of the gentleman in offering the point of order, in my judgment, will slow down the activities of the Federal Energy Administration. However, let me say that as far as the point of order itself is concerned, we are constrained to concede it. . . .

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

THE CHAIRMAN: The gentleman will state it.

MR. BAUMAN: Exactly what lines were stricken by the point of order?

THE CHAIRMAN: The point of order requests the striking of the language on page 8, line 2, through page 9, line 2; the entire section.

MR. YATES: Up to the line, "strategic petroleum reserve."

THE CHAIRMAN: Does anyone else desire to be heard on the point of order?

MR. HORTON: Mr. Chairman, I did not understand what the Chair said as to the language that is to be stricken.

THE CHAIRMAN: The language the gentleman from New York (Mr. Ottinger) wishes to be stricken on the point of order is the language beginning on page 8, line 2, going through page 9, line 2. All of that language, which includes the part the gentleman from New York (Mr. Horton) has raised his point of order against.

MR. HORTON: Mr. Chairman, I thank the Chair.

THE CHAIRMAN: The Chair is prepared to rule.

The point of order has been conceded, and the point of order is sustained. The language on page 8, line 2, through page 9, line 2, is stricken.

Effect of Sustaining Point of Order Against Part of Paragraph in Appropriation Bill

§ 1.16 When part of a pending paragraph in a general appropriation bill is subject to be stricken on a point of order as being legislation, the entire paragraph is also subject to a point of order.

On Apr. 15, 1957,[13] in the Committee of the Whole, Chairman Howard W. Smith, of Virginia, found it necessary to sustain a point of order against an entire paragraph after sustaining one against language in part of it.

MR. [ROBERT E.] JONES [Jr.] of Alabama: Mr. Chairman, a point of order.

13. 103 CONG. REC. 5684–86, 85th Cong. 1st Sess. Under consideration was H.R. 6870, the Second Urgent Deficiency Appropriations Act of 1957.

THE CHAIRMAN: The gentleman will state it.

MR. JONES of Alabama: Mr. Chairman, I make a point of order against the language commencing on page 2, line 23, after the words, "as amended" and reading: "And to be made available from the loan authorization contained in section 606(a) of the act of August 7, 1956 (Public Law 1020).". . .

I submit that this is legislation on an appropriation bill and is subject to a point of order. . . .

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I make a point of order against the entire paragraph on loan authorizations. . . .

MR. JONES of Alabama: I insist on the point of order, Mr. Chairman.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, we concede the point of order.

MR. BOW: I insist on my point of order, Mr. Chairman.

THE CHAIRMAN: The Chair is prepared to rule.

The point of order made by the gentleman from Alabama on line 23, page 2, is against the three lines beginning with the word "and" as being legislation upon an appropriation bill, which it obviously is.

Now, the gentleman from Ohio, however, offers a point of order against the entire paragraph. As the language which is sought to be stricken by the gentleman from Alabama is subject to a point of order and is part of the paragraph, then the whole paragraph is subject to a point of order, and the Chair is constrained to sustain both points of order.

§ 1.17 If any part of a paragraph of an appropriation bill is subject to a point of order, it is sufficient for the rejection of the entire paragraph.

On Mar. 15, 1945,[14] after it was conceded, in the Committee of the Whole, that certain lines in a paragraph were subject to a point of order, the Chair sustained a point of order against the entire paragraph.

THE CHAIRMAN:[15] Does the gentleman from Michigan [Mr. Rabaut] desire to be heard?

MR. [LOUIS C.] RABAUT: Mr. Chairman, I think the point of order might apply to the language appearing in lines 20 and 21. That is because of the excesses.

THE CHAIRMAN: Permit the Chair to understand the gentleman. The gentleman concedes that the language in lines 20 and 21 is bad and subject to a point of order?

MR. RABAUT: Yes.

THE CHAIRMAN: Does the gentleman from Kansas [Mr. Rees] insist on his point of order against the entire paragraph? . . .

MR. [EDWARD H.] REES of Kansas: I insist on the point of order to the entire paragraph, Mr. Chairman.

THE CHAIRMAN: In view of the fact that certain language in the paragraph is conceded to be subject to a point of

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14. 91 CONG. REC. 2305, 79th Cong. 1st Sess. Under consideration was H.R. 2603, a State, Justice, Commerce, Judiciary, and Federal Loan Agency appropriation for 1946.

15. Wilbur D. Mills (Ark.).

order, the entire paragraph is subject to a point of order.

The Chair sustains the point of order.

§ 1.18 A point of order may be made against a part of a paragraph in a general appropriation bill and, if sustained, will not affect the remainder of such paragraph if no point of order is made against it.

On Mar. 30, 1954,[16] in the Committee of the Whole, Mr. Jacob K. Javits, of New York, raised a point of order against only part of a paragraph, but declined to make his point of order against the remainder of the paragraph. Chairman Louis E. Graham, of Pennsylvania, then ruled that only the affected language was out of order and the balance of the paragraph would remain.

The Clerk read as follows: . . .

MR. JAVITS: Mr. Chairman, I make a point of order against the proviso appearing on page 28, lines 13 to 18, on the ground it is legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from California desire to be heard on the point of order?

MR. [JOHN] PHILLIPS [of California]: No, Mr. Chairman. I think we are compelled to concede the point of order and I submit an amendment to replace it. . . .

THE CHAIRMAN: The Chair sustains the point of order.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. WHITTEN: Mr. Chairman, is it possible to make a point of order to one part of a paragraph and have it limited to that particular part?

THE CHAIRMAN: A Member may make a point of order to any objectionable language in the paragraph.

MR. WHITTEN: Separating it from the remainder of the paragraph?

THE CHAIRMAN: Yes.

Effect of Sustaining Point of Order Against Portion of Amendment

§ 1.19 A point of order against a portion of an amendment to a general appropriation bill is sufficient, if sustained, to rule out the entire amendment.

On June 25, 1976,[17] during consideration of the Interior appropriation bill, fiscal 1977, an amendment of two parts was offered to the pending paragraph and one following. The amendments were, by general consent, considered en bloc. A point of

16. 100 CONG. REC. 4108, 4109, 83d Cong. 2d Sess. Under consideration was H.R. 8583, the independent offices appropriations bill of 1955.

17. 122 CONG. REC. 20551, 94th Cong. 2d Sess.

order was directed specifically against one portion of the amendments.

MR. [GILBERT] GUDE [of Maryland]: Mr. Chairman, I offer amendments.

The Clerk read as follows:

> Amendments offered by Mr. Gude: Amendment No. 1: Page 10, line 2, strike out "$272,635,000." and insert in lieu thereof "$284,399,871, except that $856,000 of this appropriation shall be available for obligation only upon the enactment into law of authorizing legislation providing for the establishment of the Valley Forge National Historical Park in the Commonwealth of Pennsylvania."
>
> Amendment No. 2: Page 10, beginning on line 19, strike out "$37,228,000" and insert in lieu thereof "$44,228,000".

MR. GUDE (during the reading): Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record, and that they be considered en bloc.

THE CHAIRMAN:[18] Is there objection to the request of the gentleman from Maryland?

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, reserving the right to object, I want to make a point of order against the amendments, and I do not know whether my rights are protected if I consent to the unanimous-consent request. So I object.

THE CHAIRMAN: Objection is heard. The Chair will protect the gentleman on his point of order.

The Clerk will read.

The Clerk concluded reading the amendments.

MR. YATES: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Maryland (Mr. Gude), as it violates clause 2, rule XXI, which states in part that:

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

Mr. Chairman, the amendment offered by the gentleman from Maryland (Mr. Gude) specifically provides for the allocation of funds for the Valley Forge National Historical Park. There is no authorization for the Valley Forge National Historical Park.

THE CHAIRMAN: Does the gentleman from Maryland wish to be recognized on the point of order?

MR. GUDE: I do, Mr. Chairman.

Mr. Chairman, the amendment reads that the money will be allocated to the Park Service. The fact that a part of it would be available for the Valley Forge Park I do not feel works to the entire amendment being out of order.

MR. [ROY A.] TAYLOR of North Carolina: Mr. Chairman, will the gentleman yield?

MR. GUDE: I yield to the gentleman from North Carolina (Mr. Taylor).

MR. TAYLOR of North Carolina: I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman is correct in stating that the authorization for Valley Forge National Historical Park has not yet become law. It has passed the House. In all probability, it shall become law. The act provides for the transfer to take place as of the beginning of the fiscal year 1977. We wanted the State

18. Walter Flowers (Ala.).

of Pennsylvania to operate it under this law. The fact is that we are going to have to have more personnel in order to have this park. Are we just going to have to take them away from other parks and spread the existing personnel more thin? They are too thin now.

MR. YATES: Mr. Chairman, I insist upon my point of order.

I cite, additionally, the following language:

> Delaying the availability of an appropriation pending enactment of an authorization does not protect the item of appropriation against a point of order under this clause.

THE CHAIRMAN: A point of order has been interposed against the amendment offered by the gentleman from Maryland (Mr. Gude).

The amendment offered by the gentleman from Maryland contemplates in its own language that there has been no authorization which has become law and, inasmuch as the point of order must be sustained to that part of it, under Deschler's chapter 26, section 8.1, it would apply to the entire amendment. The Chair must sustain the point of order raised by the gentleman from Illinois (Mr. Yates).

If Part of Amendment Is Legislative, the Whole Can Be Ruled Out

§ 1.20 If any portion of an amendment on a general appropriation bill constitutes legislation, the entire amendment is out of order.

On Aug. 7, 1978,[19] Chairman Dan Rostenkowski, of Illinois, ruled out an amendment, the first part of which might have qualified as a proper limitation but which was tainted by language in the amendment restricting discretion on the part of federal officials. The amendment, the point of order, and the ruling are set forth herein.

MR. JOHN T. MYERS [of Indiana]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. John T. Myers: On page 8, after line 10, add the following new section:
>
> None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses during the current fiscal year in connection with the demilitarization of any arms as advertised by the Department of Defense, Defense Logistics Agency sale number 31–8118 issued January 24, 1978, and listed as "no longer needed by the Federal Government" and that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308. . . .

MR. [ABNER J.] MIKVA [of Illinois]: Mr. Chairman, I make a point of order on the amendment.

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

MR. MIKVA: Mr. Chairman, I make a point of order on the amendment on the ground that I believe that it is leg-

19. 124 CONG. REC. 24707, 24708, 95th Cong. 2d Sess.

islation within a general appropriation bill and, therefore, violates the rules of the House.

THE CHAIRMAN: Does the gentleman from Indiana (Mr. John T. Myers) wish to be heard on the point of order?

MR. JOHN T. MYERS: Yes, I do, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes the gentleman from Indiana.

MR. JOHN T. MYERS: Mr. Chairman, this is a simple limitation amendment. It merely limits the Secretary of the Treasury to continue to carry out existing law. It does not provide any new law. It simply says that the Secretary of the Treasury shall carry out the prevailing, existing law.

THE CHAIRMAN: Does the gentleman from Ohio (Mr. Ashbrook) wish to be heard on the point of order?

MR. [JOHN M.] ASHBROOK [of Ohio]: I do, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes the gentleman from Ohio.

MR. ASHBROOK: Mr. Chairman, rule 21, clause 2, of the Rules of the House (House Rules and Manual pages 426–427) specifies that an amendment to an appropriation bill is in order if it meets certain tests, such as:

First. It must be germane;

Second. It must be negative in nature;

Third. It must show retrenchment on its face;

Fourth. It must impose no additional or affirmative duties or amend existing law.

WHY THE AMENDMENT COMPLIES WITH RULE 21

First. It is germane. As the amendment applies to the distribution of arms by the Defense Logistics Agency, it is not exclusively an Army of civilian marksmanship amendment, so should not be placed elsewhere in the bill. The overall Defense Department allocates sale and distribution to various military components (foreign sales, Navy, ROTC, Air Force, Division of Civilian Marksmanship, et cetera). It is therefore proper to place the amendment in the general Defense Department section of the bill: "Operation and maintenance, Defense Agencies."

Second. It is negative in nature. It limits expenditure of funds by the Defense Department by prohibiting the destruction and scrapping of arms which qualify for sale through the civilian marksmanship program, which is a division of the executive created by statute.

Third. It shows retrenchment on its face. Retrenchment is demonstrated in that the Department of Defense if prohibited from expending funds to destroy surplus military arms, and that the arms previously earmarked for destruction will be made available in accordance with existing statute. Actual cost savings is not a necessary element in satisfying the retrenchment test under rule 21. However, the Defense Department has attempted destruction of 290,000 M-1 rifles, leading to the waste by scrapping of a valuable stock of arms. The House, in adding this amendment, will secure additional funds for the Treasury which the General Accounting Office has determined is adequate to pay costs of handling the arms. For example, the M-1 rifles are to be sold at a cost of $110 each. These are the arms most utilized by the civilian marksmanship program. The Defense Department will not be

required to spend additional funds to process the sale of additional arms.

Fourth. Does not impose additional or affirmative duties or amend existing law. Title 10, United States Code, section 4308 provides in part:

> (a) The secretary of the Army, under regulations approved by him upon the recommendation of the National Board for the Promotion of Rifle Practice, shall provide for . . .
> (5) the sale to members of the National Rifle Association, at cost, and the issue to clubs organized for practice with rifled arms, ammunition, targets, and other supplies and appliances necessary for target practice . . .

In fact, the Army regulations relating to issuance of these arms contain no caveat that distribution shall be limited to any quantity. (AR 725–1 and AR 920–20.) By passing this amendment, we will see that additional funds are placed in the Treasury—certainly more than by scrapping the arms. Thus, by statute and regulation, such arms must be sold to qualified civilians. This amendment specifies that 290,800 of an available pool of 760,000 arms shall not be destroyed, and shall be available for use by this program. If my amendment prevails, the test as to whether these arms will be distributed will be:

First. Does the applicant qualify under the law?

Second. Are sufficient arms in this pool of 290,800 available for distribution?

Regulations issued (see tab M) AR 725–1 and AR 920–20 provide for the issuance of arms by application and qualification through the Director of Civilian Marksmanship. The DCM shall then submit sale orders for the Armament Readiness Military Command (ARMCOM) to fill the requests of these qualified civilians. Thus, the amendment simply requires the performance of duties already imposed by the Army's own regulation.

Minor administrative ministerial duties required by this amendment will not mandate such affirmative action, so as to exceed the responsibilities already imposed by statute. Assessing needs and communicating the needs by the Board would not cross the threshold so as to raise to the level of a newly created positive duty.

PRECEDENTS SUPPORTING THE OVERRULING OF POINT OF ORDER TO MY MOTION

There is ample precedent for language of this nature. A similar motion was offered by Mr. Myers of Indiana in connection with the curtailment of funds for implementation of an executive order pardoning draft evaders. Mr. Myers' amendment provided that the executive could not expend funds to pardon the evaders. This was an after-the-fact amendment following President Carter's Executive order. My amendment does nothing more than to track the same form of executive limitation as did the Myers amendment of March 16, 1977, when the parliamentarian ruled that amendment in order. This precedent will be found in the *Congressional Record*, pages 7706–7754, on H.R. 4877, a supplemental appropriations bill.

THE CHAIRMAN: Does the gentleman from Illinois (Mr. Mikva) wish to be heard further on the point of order?

MR. MIKVA: I do, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes the gentleman from Illinois.

MR. MIKVA: Mr. Chairman, I particularly call attention of the Chair to the second half of the amendment, which imposes an affirmative duty on the Secretary, saying that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308.

Under the general existing law, there are all kinds of discretions that are allowed to the Secretary to decide whether or not such arms shall be distributed. Under this amendment, the existing law is to be changed and those arms may not be withheld. The practical purpose is to turn lose 400,000 to 500,000 rifles into the body politic.

But the parliamentary effect is clearly to change the existing law under which the Secretary can exercise all kinds of discretion in deciding whether or not those arms will be distributed. Under this amendment it not only limits the fact that the funds may be obligated but it specifically goes on to affirmatively direct the Secretary to distribute such arms under title X, which is an affirmative obligation, which is exactly the kind of obligation the rules prohibit, and I renew my point of order.

MR. JOHN T. MYERS: Mr. Chairman, section 4307 provides for the sale of these surplus weapons. This amendment does nothing more than provide that, in this title of section X.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has read the section to which the gentleman refers, title 10, United States Code, section 4308, and is of the opinion that it does not require that all firearms be distributed to qualified purchasers. The Chair further feels that while the first part of the amendment is a limitation, the last part of the amendment is a curtailment of Executive discretion, and the Chair sustains the point of order.

The Clerk will read.

Effect of Point of Order Sustained Against a Portion of a Paragraph in a General Appropriation Bill

§ 1.21 A point of order, if sustained against a proviso containing legislation in a paragraph in a general appropriation bill, is sufficient to cause the whole paragraph to be stricken, even if the remainder of the paragraph is authorized.

On June 8, 1977,[20] while a general appropriation bill was being read for amendment under the five-minute rule in Committee of the Whole, a paragraph was read pertaining to the care and maintenance of the official residence of the Vice President. A point of order was directed at the proviso carried in the paragraph. Proceedings were as indicated.

The Clerk read as follows:

20. 123 CONG. REC. 17922, 17923, 95th Cong. 1st Sess.

OFFICIAL RESIDENCE OF THE VICE PRESIDENT

OPERATING EXPENSES

For the care, maintenance, repair and alteration, furnishing, improvement, heating and lighting, including electric power and fixtures, of the official residence of the Vice President, $61,000: *Provided* That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities.

MR. [HERBERT E.] HARRIS [II, of Virginia]: Mr. Chairman, I make a point of order against this portion of the bill on the basis previously stated.

THE CHAIRMAN:[1] Does the gentleman from Oklahoma (Mr. Steed) desire to be heard on the point of order?

MR. [TOM] STEED [of Oklahoma]: I do, Mr. Chairman.

Mr. Chairman, in this case there is authorization for the item. In the 93d Congress, Senate Joint Resolution 202, passed July 12, 1974, provides for the inclusion of this item in the bill. It is Public Law 93–346.

THE CHAIRMAN: Let the Chair direct a question to the gentleman from Virginia (Mr. Harris) so that the gentleman may clarify his point.

Against what portion of this paragraph does the gentleman make his point of order?

MR. HARRIS: Mr. Chairman, we are dealing with official entertaining expenses in this item, and that is not authorized under law.

THE CHAIRMAN: To what line is the gentleman referring? Will the gentleman from Virginia (Mr. Harris) explain it so we will know to what specific lines of the paragraph he directs his point of order?

MR. STEED: Mr. Chairman, if I may be heard, I believe the gentleman from Virginia (Mr. Harris) made the point of order against the entire item.

MR. HARRIS: Mr. Chairman, this is the item on the Official Executive Residence of the Vice President, Operating Expenses.

THE CHAIRMAN: Let the Chair state to the gentleman from Virginia (Mr. Harris) that there is authorization for appropriations for the official residence of the Vice President, if that is the point the gentleman is attempting to address in this matter. Therefore, that portion of the paragraph would not be subject to a point of order.

MR. HARRIS: I thank the Chair.

THE CHAIRMAN: The Chair, therefore, overrules the point of order.

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Chairman, I rise to make a point of order.

THE CHAIRMAN: The gentleman from Illinois (Mr. Derwinski) will state his point of order.

MR. DERWINSKI: Mr. Chairman, let me read this to be sure we are speaking of the same item.

I make a point of order against the language of the bill on page 8, lines 20 through 25, and on page 9, lines 1 and 2. That item is entitled "Official Residence of the Vice President—Operating Expenses," and this language violates rule XXI, clause 2, of the Rules of the House. That is the basis for the point of order.

Mr. Chairman, if I may be heard further, we have had previous points of order sustained against this item, and, in fact, in last year's appropriation bill a similar point of order was sustained.

1. B. F. Sisk (Calif.).

THE CHAIRMAN: Let the Chair state that the present occupant of the chair was the occupant of the chair last year and considered the proviso starting on line 25 of page 8 and continuing through line 26 and lines 1 and 2 on page 9. On that basis the point of order was sustained. However, the earlier designation, as the Chair understood the statement of the gentleman from Virginia (Mr. Harris), would not follow, because basically there is authority for the Vice President's residence.

That is the reason the Chair is giving ample opportunity to the Members to clarify the point of order. A point of order was in fact sustained on the proviso mentioned last year. I understand the gentleman from Illinois (Mr. Derwinski) is making a point of order based on that proviso.

MR. STEED: Mr. Chairman, if I may be heard on the point of order, if we read section 3 of this act, it says that the Secretary of the Navy shall, subject to the supervision and control of the Vice President, provide for the staffing, upkeep, alteration, and furnishing of an official residence and grounds for the Vice President.

Mr. Chairman, I do not know what more authority we need.

THE CHAIRMAN: The Chair will state that in line with the like ruling last year, a paragraph in a general appropriation bill containing funds for the official residence of the President and of the Vice President and providing for advances repayments or transfers of those funds to other departments or agencies—not just to General Services Administration—was conceded to change existing law and was ruled out as being in violation of clause 2, rule XXI.

Therefore, on the basis of the proviso, the point of order is sustained against the entire paragraph.

Reinserting Language Stricken by Point of Order

§ 1.22 Where a point of order is sustained against a paragraph in a general appropriation bill because a portion thereof is unauthorized and contains legislation, and the entire paragraph is therefore stricken, the authorized portion may then be reinserted by amendment.

When the legislative branch appropriations bill for fiscal 1978 was read for amendment in Committee of the Whole on June 29, 1977,[2] a point of order was made against the paragraph carrying appropriations for "Capitol Grounds". The paragraph contained a proviso amendment a prior appropriation law,[3] was conceded to be legislative. After

2. 123 CONG. REC. 21402, 95th Cong. 1st Sess.

3. The proviso in existing law amended by the paragraph was a provision in the Supplemental Appropriations Act, 1973, authorizing the Architect to use certain lands as a park area pending development of a contemplated Residential Page School, project which never materialized.

the paragraph was stricken by the Chair, the chairman of the Subcommittee on Legislative Branch Appropriations offered an amendment, deleting not only the legislative provision but with a lump sum appropriation figure which deleted funding for a Capitol parking facility which was not authorized by law.

THE CHAIRMAN:[4] The Clerk will read.

The Clerk read as follows:

CAPITOL GROUNDS

For care and improvement of grounds surrounding the Capitol, the Senate and House Office Buildings, and the Capitol Power Plant; personal and other services; care of trees; planting; fertilizer; repairs to pavements, walks, and roadways; waterproof wearing apparel; maintenance of signal lights; and for snow removal by hire of men and equipment or under contract without regard to section 3709 of the Revised Statutes, as amended, $2,402,500, including $483,000 to develop Square 764 into a temporary parking facility for the House of Representatives: *Provided* That chapter V of the Supplemental Appropriations Act, 1973 (Public Law 92–607, approved October 31, 1972, 86 Stat. 1513), is hereby amended by striking the words "green park area" in the third further proviso of the paragraph entitled "Acquisition of Property as an Addition to the Capitol Grounds", and inserting in lieu thereof, the following: "temporary parking facility".

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Chairman, I make a point of order against the entire paragraph starting on page 19, line 16, through line 7 on page 20, on the ground that in two respects it violates rule XXI, clause 2.

Mr. Chairman, this is a provision for the creation of a parking lot at the old Providence Hospital site about which the Chairman of the Committee on House Administration, the gentleman from New Jersey (Mr. Thompson) and I have had colloquy. There is no authorization in law for the development of this parking lot provided for in lines 23 to 25 on page 19.

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Chairman, will the gentleman yield?

MR. COUGHLIN: I yield to the gentleman from Illinois.

MR. SHIPLEY: I thank the gentleman for yielding.

The committee understands that this is subject to a point of order, as the Chairman of the Committee on House Administration, Mr. Thompson, mentioned earlier. The committee will concede the point of order.

MR. COUGHLIN: I thank the gentleman.

THE CHAIRMAN: The point of order is conceded and sustained against the entire paragraph.

MR. SHIPLEY: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Shipley: On page 19, after line 15, insert the following:

For care and improvement of grounds surrounding the Capitol, the Senate and House Office Buildings, and the Capitol Power Plant; personal and other services; care of trees; planting; fertilizer; repairs to pavements, walks, and roadways;

4. John M. Murphy (N.Y.).

waterproof wearing apparel; maintenance of signal lights; and for snow removal by hire of men and equipment or under contract without regard to section 3709 of the Revised Statutes, as amended, $1,919,500.

MR. SHIPLEY: Mr. Chairman, this amendment simply restores the appropriation language for the Capitol grounds at the lower figure, reflecting the reduction of the $483,000 for the temporary parking facility, which was eliminated by the point of order.

Special Rule Creating Jurisdictional Point of Order Against Portion of Text

§ 1.23 Pursuant to a special rule[5] permitting points of order against any "title, part or section" of a committee substitute within the jurisdiction of another committee, the Chair sustained a point of order against a section which contained a subsection outside that committee's jurisdiction (although the section as a whole was within that jurisdiction) under the principle that if a point of order is sustained against a portion of a pending section the entire section may be ruled out of order.

On Nov. 4, 1971,[6] in the Committee of the Whole, Mr. David N. Henderson, of North Carolina, raised a point of order relating to the jurisdiction of the Committee on Post Office and Civil Service with respect to legislation prepared by the Committee on Education and Labor.

MR. HENDERSON: Mr. Chairman, I was on my feet seeking recognition. I raise a point of order against section 1085 of this title.

THE CHAIRMAN PRO TEMPORE:[7] The Chair will hear the gentleman.

MR. HENDERSON: Mr. Chairman, I raise a point of order against section 1805 of title XVIII.

Section 1805 authorizes the Secretary of Health, Education, and Welfare to establish a Council on Higher Education Relief Assistance, and includes provisions that the Secretary may appoint not more than 10 individuals, without regard to the civil service or classification laws, as members of the staff of the Council.

An exemption to the civil service or classification laws is a matter clearly within the Federal civil service generally. Under clause 15 of rule XI of the Rules of the House of Representatives, a matter relating to the Federal civil service generally is a matter clearly within the jurisdiction of the Committee on Post Office and Civil Service.

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5. H. Res. 661, agreed to Oct. 27, 1971. 117 CONG. REC. 37765–69, 92d Cong. 1st Sess.

6. 117 CONG. REC. 39287, 92d Cong. 1st Sess. Under consideration was H.R. 7248, amending and extending the Higher Education Act of 1965.

7. Edward P. Boland (Mass.).

Mr. Chairman, I urge that the point of order be sustained on the basis that section 1805 includes matters that are within the jurisdiction of the Post Office and Civil Service Committee. . . .

THE CHAIRMAN PRO TEMPORE: The Chair is ready to rule. . . .

Clause 15(f), rule XI, gives the Committee on Post Office and Civil Service jurisdiction over the status of officers and employees of the United States, including their compensation, classification, and retirement. Section 1805 includes a portion which, if considered separately, contains subject matter within the jurisdiction of the Committee on Post Office and Civil Service. Under the precedents of the House, if a point of order is sustained against a portion of a pending section or paragraph, the entire section or paragraph may be ruled out of order.

The Chair, therefore, sustains the point of order against section 1805, and the language of the section is stricken from the committee amendment.

Effect of Sustaining Point of Order Against Part of Amendment in Legislative Bill

§ 1.24 If a point of order is made against an amendment, the entire amendment is ruled out, although only a portion of such amendment is objectionable.

On June 30, 1955,[8] in the Committee of the Whole, the Chairman invoked the general principle that a point of order against a part of an amendment renders the whole amendment subject to a point of order.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Chairman, I make the point of order against the amendment, of course, that it is not germane to the bill.

THE CHAIRMAN:[9] Does the gentleman from South Carolina desire to be heard?

MR. [JAMES P.] RICHARDS [of South Carolina]: Mr. Chairman, may I ask if the gentleman raises the point of order in both instances?

MR. MILLS: I base the point of order on the language of the amendment on page 19, lines 1 through 6. I am not advised as to the remainder of the amendment, but I do know that the language referred to is not germane to this bill. . . .

MR. RICHARDS: I concede the point of order, Mr. Chairman.

THE CHAIRMAN: The point of order is conceded and the point of order is sustained. A point of order to a part of an amendment makes the whole amendment subject to a point of order, so the whole amendment goes out on the point of order.

§ 1.25 A point of order against any part of an amendment, if sustained, has the effect of invalidating the entire amendment.

8. 101 CONG. REC. 9662, 84th Cong. 1st Sess. Under consideration was S. 2090, amending the Mutual Security Act of 1954.

9. Jere Cooper (Tenn.).

On June 15, 1970,[10] Speaker Pro Tempore Carl Albert, of Oklahoma, answered a parliamentary inquiry, as follows:

> MR. [H. ALLEN] SMITH of California: Mr. Speaker . . . I make a parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE: The gentleman will state it.
>
> MR. SMITH of California: Mr. Speaker, on H.R. 17966, the so-called Udall substitute, that is in my understanding one amendment in the nature of a substitute. If any part of that bill is not germane or subject to a point of order, would not the entire H.R. 17966 be subject to a point of order if points of order are not waived against it? That was my understanding of the situation.
>
> THE SPEAKER PRO TEMPORE: The gentleman has correctly stated the rule. Should points of order not be waived, then if any part of the amendment is not in order, the entire amendment is not in order.

Reinserting Remainder of Section Where Part Is Subject to Point of Order

§ 1.26 Where a portion of a section of a legislative bill is out of order, the entire section is rejected, but it is in order to offer an amendment reinserting that part of the section which would otherwise have been in order.

On July 13, 1939,[11] Mr. John Taber, of New York, made a point of order against part of a bill as being an appropriation of funds by a committee not having such jurisdiction, which point of order Chairman John W. Boehne, Jr., of Indiana, sustained.

> Sec. 205. (a) A Board to be known as the Trustees of the Franklin D. Roosevelt Library is hereby established. . . .
>
> MR. TABER: Mr. Chairman, I make a point of order against the section on the ground that it contains an appropriation of public funds and that it is reported by a committee not having jurisdiction to bring into the House an appropriation bill.

Mr. Taber called attention to specific language that he deemed improper.

> THE CHAIRMAN: Does the gentleman from New York limit his point of order to the sentence which he read?
>
> MR. TABER: Mr. Chairman, I made the point of order against the section. . . .
>
> THE CHAIRMAN: The Chair is ready to rule.
>
> The Chair is of the opinion that the point of order made by the gentleman from New York against the section is

10. 116 CONG. REC. 19841, 91st Cong. 2d Sess. Being discussed was H. Res. 1077, providing for consideration of H.R. 17070, the Postal Reform Act of 1970.

11. 84 CONG. REC. 9060, 9061, 76th Cong. 1st Sess. S.J. Res. 118, to provide for the establishment and maintenance of the Franklin D. Roosevelt Library.

well taken, and therefore sustains the point of order.

Subsequently, Mr. Sam Rayburn, of Texas, offered an amendment, whose purpose he explained as follows:

The amendment I offer leaves out the language objected to by the gentleman from New York in lines 7, 8, 9, and 10 on page 6. . . .

The amendment was agreed to.

Where Point of Order Sustained Against Conference Report

§ 1.27 A conference report containing new spending authority not subject to advance appropriations having been ruled out as in violation of the Congressional Budget Act, the manager of the bill moved to recede and concur in the Senate amendment containing the offending language with an amendment rendering the new spending authority subject to amounts specified in advance in appropriation acts.

When the conference report on the Health Professional Education Assistance Act of 1976 was called up by the chairman of the Committee on Interstate and Foreign Commerce, a point of order was lodged against the report by Mr. Brock Adams, of Washington, chairman of the House Committee on the Budget. The proceedings of Sept. 27, 1976,[12] were as follows:

CONFERENCE REPORT ON H.R. 5546, HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE ACT OF 1976

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the bill (H.R. 5546), to amend the Public Health Service Act to revise and extend the programs of assistance under title VII for training in the health and allied health professions, to revise the National Health Service Corps program, and the National Health Service Corps scholarship training program, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

MR. ADAMS: Mr. Speaker, I make a point of order on the conference report.

THE SPEAKER PRO TEMPORE:[13] The gentleman from Washington will state his point of order.

MR. ADAMS: Mr. Speaker, the conference agreement on H.R. 5546, the Health Professions Assistance Act of 1976, contains a provision which appears to provide borrowing authority which is not subject to advance appropriations. Consequently, it would be subject to a point of order under section 401(a) of the Congressional Budget Act.

Section 401(a) provides:

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12. 122 CONG. REC. 32655, 32656, 32679, 32685, 32703, 94th Cong. 2d Sess.

13. John J. McFall (Calif.).

> It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(A) or (B) (or any amendment which provides such new spending authority), unless that bill, resolution, or amendment also provides that such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts.

Section 401(c)(2)(B) of the Budget Act defines spending authority as authority "to incur indebtedness-other than indebtedness incurred under the second Liberty Bond Act-for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation acts." This form of spending authority is commonly known as borrowing authority.

The conference report accompanying H.R. 5546 contains a provision creating a student loan insurance fund under section 734 of the Public Health Service Act.

Clearly, the requirement that the Secretary of the Treasury purchase these obligations constitutes borrowing authority.

And since the provision contains no requirement that the authority be limited to amounts provided in advance in appropriation acts, it appears to give rise to a section 401(A) point of order.

The fact that the provision relates to default payments which might arise pursuant to a loan guarantee program does not bring the provision within the "loan guarantee" exception to section 401 of the Budget Act. Although the loan guarantee itself may not be subject to advance appropriation, the default payment made pursuant to the provision in question does not constitute a loan guarantee and it is fully subject to the requirements of section 401.

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

MR. ADAMS: I yield to the gentleman from West Virginia, the chairman of the committee.

MR. STAGGERS: Mr. Speaker, I concede the point of order.

Mr. Speaker, I have a motion.

THE SPEAKER PRO TEMPORE: The gentleman from West Virginia (Mr. Staggers) concedes the point of order.

Therefore, the point of order is sustained.

The Clerk will report the Senate amendment in disagreement.

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

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

MR. BAUMAN: Mr. Speaker, it was my understanding that the gentleman from West Virginia (Mr. Staggers) called up a conference report, and a point of order was made against that conference report, which was sustained.

Is the conference report still before the House, Mr. Speaker?

THE SPEAKER PRO TEMPORE: The conference report is not, but the Senate amendment in disagreement is; and a motion will be offered, the Chair will state to the gentleman from Maryland, that could cure the point of order. Therefore, if the gentleman will bear with us for the sake of orderly proce-

dure, we will have this matter properly before the House. . . .

[Reading of the amendment in disagreement was dispensed with.]

MR. STAGGERS: Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Staggers moves that the House recede from its disagreement to the amendment of the Senate to the bill H.R. 5546, and agree to the same with an amendment as follows:
>
> In lieu of the matter proposed to be inserted by the Senate amendment insert the following:
>
> SHORT TITLE: REFERENCE TO ACT
>
> SECTION 1. (a) This Act may be cited as the "Health Professions Educational Assistance Act of 1976". . . .
>
> "STUDENT LOAN INSURANCE FUND
>
> "SEC. 734. (a) There is hereby established a student loan insurance fund (hereinafter in this section referred to as the 'fund') which shall be available without fiscal year limitation to the Secretary for making payments in connection with the default of loans insured by him under this subpart. . . .
>
> . . . but only in such amounts as may be specified from time to time in appropriations Acts. . . .

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

MR. BAUMAN: Mr. Speaker, I reserve the right to object to the unanimous consent request made by the gentleman from West Virginia (Mr. Staggers).

My inquiry of the Chair is the same as I made before, and that is that in view of the fact that a point of order has been made to any consideration of the conference report, is the motion that is being made to agree with the Senate amendment to the amendment of the House deleting the offending phrase?

THE SPEAKER PRO TEMPORE: When a conference report is ruled out of order, as this one was, then the Senate amendment in disagreement is before the House. This motion, if passed, would remedy the point of order that was made.

Rulings on Matters Not Raised in Point of Order

§ 1.28 The Chair does not rule on statutory interpretations not presented in a point of order or comment upon legal questions which might collaterally result from an interpretation of the challenged language.

On June 28, 1949,[14] in the Committee of the Whole, Chairman Hale Boggs, of Louisiana, declined to rule on more than was necessary to resolve a point of order.

> MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, the point of order I make is that subparagraphs (e) and (f) of section 102 in title I constitute the appropriation of funds from the Federal Treasury, and that the Committee on Banking and Currency is without jurisdiction to report a bill car-

14. 95 CONG. REC. 8536–38, 81st Cong. 1st Sess. Under consideration was H.R. 4009, the Housing Act of 1949.

rying appropriations under clause 4, rule 21, which says that no bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations. . . .

. . . I make this point of order because this proposes to expand and develop a device or mechanism for getting funds out of the Federal Treasury in an unprecedented degree.

The Constitution has said that no money shall be drawn from the Treasury but in consequence of appropriations made by law. It must follow that the mechanism which gets the money out of the Treasury is an appropriation.

I invite the attention of the Chairman to the fact that subparagraph (e) states:

> To obtain funds for loans under this title, the Administrator may issue and have outstanding at any one time notes and obligations for purchase by the Secretary of the Treasury in an amount not to exceed $25,000,000, which limit on such outstanding amount shall be increased by $225,000,000 on July 1, 1950, and by further amounts of $250,000,000 on July 1 in each of the years 1951, 1952, and 1953, respectively—

Within the total authorization of $1,000,000,000.

Further that subparagraph (f) provides that—

> The Secretary of the Treasury is authorized and directed—

And I call particular attention to the use of the words "and directed"—

> to purchase any notes and other obligations of the Administrator issued under this title and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended—

And so forth. The way in which this particular language extends this device of giving the Secretary authority to subscribe for notes by some authority is this: It includes the words "and directed."

In other words, the Secretary of the Treasury has no alternative when the Administrator presents to him some of these securities for purchase but to purchase them. The Secretary of the Treasury is not limited to purchasing them by proceeds from the sale of bonds or securities. He is directed to purchase these notes and obligations issued by the Administrator. That means he might use funds obtained from taxes, that he might use funds obtained through the assignment of miscellaneous receipts to the Treasury, that he might use funds obtained through the proceeds of bonds.

This proposal will give to the Committee on Banking and Currency, if it should be permitted, authority which the Committee on Appropriations does not have, for in the reporting of an appropriation bill for a fiscal year, any appropriation beyond the fiscal year would be held out of order. Here this committee is reporting a bill which proposes to make mandatory extractions from the Treasury during a period of 4 years. . . .

Mr. Chairman, this is not, as I said earlier, a casual point of order; we are here dealing with the fundamental power of the Congress to control appropriations. No such device has ever before, so far as I can find out, been pre-

sented to the Congress for getting money in the guise of a legislative bill without its having been considered by the Committee on Appropriations. It is a mandatory extraction of funds from the Public Treasury, and, consequently, constitutes an appropriation and is beyond the authority or the jurisdiction of the Committee on Banking and Currency to report in this bill. . . .

MR. [BRENT] SPENCE [of Kentucky]: Mr. Chairman, the raising of funds by public debt transaction has been frequently authorized by the Congress: The Export-Import Bank raises funds by that method; the Bretton Woods Agreement, in my recollection, is carried out by that method; the British loan was financed by that method, and the Federal Deposit Insurance Corporation was also financed by that method. It does not seem to me that this is a seasonable objection. This has been the policy of the Congress for years.

Mr. Chairman, this is not raising money to be appropriated for the purposes that ordinary appropriation bills carry. All of this money is to be used as loans.

The gentleman says that in other acts the Secretary of the Treasury is "authorized" but not "directed." I contend that the meaning of "authorized" and "directed" in this act is absolutely the same.

Do you think when you authorize the Secretary of the Treasury to raise funds to carry out a great public purpose it is in his discretion whether he shall raise those funds and that that shall depend on the discretion of the Secretary of the Treasury? I say "authorized" in this sense means "directed." It could not mean anything else, otherwise you would be delegating to an officer of the Government entire discretion as to whether or not great national acts should be carried out and the purposes of Congress should be subserved.

MR. CASE of South Dakota. Mr. Chairman, in most of the acts which the gentleman has suggested, points of order were waived, and I refer to Bretton Woods and some of the other bills. But as to the particular point here in issue, the question whether the words "and directed" have any meaning, if they do not have any meaning why are they there? The present housing act merely authorizes the Secretary of the Treasury to purchase. It does not say "and directed." The very inclusion of the words "and directed" is evidence of the fact they have a special meaning. They create a mandatory extraction of funds from the Public Treasury. . . .

MR. [JOHN W.] MCCORMACK [of Massachusetts]: . . . The gentleman from South Dakota has referred to the Constitution. The Constitution says:

> No money shall be drawn from the Treasury but in consequence of appropriations made by law.

The word "appropriations" is used.

The rule referred to, clause 4, rule 21, says:

> No bill or resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations.

You will note the word "appropriations" is used. Now, let us see what "appropriations" means.

I have before me Funk & Wagnalls Standard Dictionary and "appropriations" is defined as follows:

To set apart for a particular use. To take for one's own use.

The provisions of this bill are not taking for one's own use, because this is a loan designed purely for loan purposes. It is not a definite appropriation. It is giving authority to utilize for loan purposes and the money comes back into the Treasury of the United States with interest. . . .

The provision in paragraph (f) that my friend has raised a point of order against relates entirely to loans. As we read section 102 of title I it starts out with loans. Throughout the bill, a number of times, there is reference to loans. . . .

. . . Certainly, the word "appropriations" is used in the Constitution. And, I think it is the rule of the House that must govern, and that is what the Chair has to pass upon, because the Congress could determine by proper legislation what the word "appropriation" means as contained in the Constitution itself. . . . Now, if the House intended that it should apply to provisions of this kind, instead of saying, "No bill or joint resolution carrying appropriations shall be reported" the House might have said, "No bill or joint resolution carrying appropriations or having directly or indirectly the effect." There is a difference between cause and effect. Certainly, it applies to this case. The House, in its wisdom, in adopting this rule, confined it to appropriations made to an agency of Government for use by that agency in carrying out what the Congress considered to be essentially the function of the Government during the coming fiscal year or during the period for which the appropriation has been made.

I respectfully submit that it must call for an appropriation out of the general funds of the Treasury in order to violate the rules of the House. This permits the use of money raised by the sale of bonds under the Second Liberty Bond Act for loans to these public agencies, such loans to be repaid with interest. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The Chair agrees with the gentleman from South Dakota that the point which has been raised is not a casual point of order. As a matter of fact, as far as the Chair has been able to ascertain, this is the first time a point of order has been raised on this issue as violative of clause 4 of rule XXI.

As the Chair sees the point of order, the issue involved turns on the meaning of the word "appropriation." "Appropriation," in its usual and customary interpretation, means taking money out of the Treasury by appropriate legislative language for the support of the general functions of Government. The language before us does not do that. This language authorizes the Secretary of the Treasury to use proceeds of public-debt issues for the purpose of making loans. Under the language, the Treasury of the United States makes advances which will be repaid in full with interest over a period of years without cost to the taxpayers.

Therefore, the Chair rules that this language does not constitute an appropriation, and overrules the point of order.

MR. CASE of South Dakota: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CASE of South Dakota: Would the Chair hold then that that language restricts the Secretary of the Treasury to using the proceeds of the securities issued under the second Liberty Bond Act and prevents him from using the proceeds from miscellaneous receipts or tax revenues?

THE CHAIRMAN: The Chair does not have authority to draw that distinction. The Chair is passing on the particular point which has been raised.

MR. CASE of South Dakota: However, Mr. Chairman, it would seem implicit in the ruling of the Chair and I thought perhaps it could be decided as a part of the parliamentary history. It might help some courts later on.

THE CHAIRMAN: The Chair can make a distinction between the general funds of the Treasury and money raised for a specific purpose by the issuance of securities. That is the point involved here.

Point of Order Against Speaker's Appointment of Conferees

§ 1.29 A point of order does not lie against the Speaker's exercise of his discretionary authority under Rule X clause 6(e) in appointing conferees who "generally supported the House position, as determined by the Speaker."

The portion of Rule X clause 6(f) involved in the following point of order raised by Mr. Erlenborn explicitly gives the Speaker discretion to make the determination in appointing conferees who generally supported the House position. Other provisions of the clause are mandatory on the Speaker: he must name Members who are primarily responsible for the legislation, for example. Speaker O'Neill's response to the Erlenborn point of order as excerpted from the proceedings of Oct. 12, 1977,[15] is carried below.

THE SPEAKER:[16] The Chair appoints the following conferees: Messrs. Perkins, Dent, Phillip Burton, Gaydos, Clay, Biaggi, Zeferetti, Quie, Erlenborn, and Ashbrook; and an additional Member, Mr. Pickle, solely for the consideration of section 12 of the House bill and modifications thereof committed to conference.

MR. [JOHN N.] ERLENBORN [of Illinois]: Mr. Speaker, I make a point of order against the naming of the conferees as not being in compliance with the provisions of section 701(e), rule X of the Rules of the House.

THE SPEAKER: Does the gentleman from Illinois (Mr. Erlenborn) wish to be heard on his point of order?

MR. ERLENBORN: Yes, Mr. Speaker.

Mr. Speaker, rule X, section 701(e) provides in part:

> In appointing members to conference committees the Speaker shall appoint no less than a majority of members who generally supported the House position as determined by the Speaker.

15. 123 CONG. REC. 33434, 33435, 95th Cong. 1st Sess.

16. Thomas P. O'Neill (Mass.).

Mr. Speaker, as I pointed out in debate earlier today, the three items in contention between this body and the other body are the rate structure, the tip credit, and the small business amendment. Every one of the majority Members, with the exception of the gentleman from Pennsylvania (Mr. Gaydos), did not support the House position during the consideration of the bill on the floor.

I will admit, Mr. Speaker, that all of the Members who were present did vote for the passage of the bill. The passage of the bill is not in contention. Those items that are in contention between this body and the other body are the three items that I have mentioned, and the majority of the conferees named by the Speaker are not among those Members who supported the majority position in the House.

THE SPEAKER: Does the gentleman from Kentucky (Mr. Perkins) wish to be heard on the point of order?

MR. [CARL D.] PERKINS [of Kentucky]: I do, Mr. Speaker.

Mr. Speaker, there were numerous amendments offered to the minimum wage bill. Perhaps the major amendment that was adopted was the one increasing the exceptions from $250,000 to $500,000 for small businesses. The Speaker has taken care of that situation by appointing the gentleman from Texas (Mr. Pickle).

If we were to follow the argument of the gentleman from Illinois (Mr. Erlenborn), as it might apply to a situation in which some 30 or 40 Members outside the committee had offered amendments, I would think that it would set a precedent that this House could not live with.

But notwithstanding that, the Members who have been suggested to the Speaker by myself as chairman of the Committee on Education and Labor, the seven ranking members of the Subcommittee on Labor Standards, headed by the gentleman from Pennsylvania (Mr. Dent), voted for the majority of the amendments that were offered to the bill on the floor of the House. By and large, all the conferees suggested to the Speaker generally supported the legislation, and that is the rule.

We must look at this picture as a whole and not pick out one or two select amendments that the gentleman from Illinois (Mr. Erlenborn) is primarily interested in and overlook all the other amendments that the other members supported and that the suggested conferees supported.

Therefore, Mr. Speaker, it is my contention that the point of order raised by the gentleman from Illinois (Mr. Erlenborn) is without merit and should be overruled.

THE SPEAKER: The Chair is ready to rule.

This is the judgment of the Chair concerning the following language: "The Speaker shall appoint no less than a majority of Members who generally supported the House position as determined by the Speaker, and the Speaker shall name Members who are primarily responsible for the legislation and shall, to the fullest extent feasible, include the principal proponents of the major provisions of the bill as it passed the House."

That language is found in clause 6(e) of rule X of the Rules of the House.

In the opinion of the Chair, after looking over the list of conferees, and

in view of the fact that the Chair has only had one additional request to name a conferee—and that is the gentleman from Texas (Mr. Pickle), whom the Chair has named as a limited conferee—the Members that the Chair has named as conferees meet the qualification of being "primarily responsible for the legislation."

The Chair's appointment under the remaining provisions of the rule is ultimately a matter within his discretion, which the Chair feels he has properly exercised, and there is nothing in the rule requiring the Chair to consider the conferees' positions solely on the matter in dispute.

The Chair overruled the point of order.

Chair's Recognition Not Subject to Point of Order

§ 1.30 Recognition for unanimous-consent requests to address the House for one minute before legislative business is within the discretion of the Chair, and the Chair's refusal to entertain such requests is not subject to a point of order.

When the House convened on July 25, 1980,[17] Speaker Pro Tempore James C. Wright, Jr., of Texas, announced that the conduct of legislative business should precede recognition for one-minute speeches. Several Members sought recognition to challenge this exercise of the Speaker's power of recognition. Attempts to state opposition to this policy by raising questions of the privilege of the House were unsuccessful. The Chair's announcement and the events which followed are carried herein.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

THE SPEAKER PRO TEMPORE: The Chair desires to make an announcement.

As the Chair announced yesterday, requests to address the House for 1 minute will be entertained at the conclusion of the legislative business today, rather than at the beginning. This should not deprive any Member of the privilege of being heard on any subject of his choice, so long as the Member is willing to await the conclusion of the business of the House.

The Chair believes there is genuine value in the 1-minute rule in the exercise of free expression on subjects, the variety of which is limited only by the individual imaginations of the Members. The Chair would not desire to deny any Member this privilege. For all its value, however, the Chair does not believe that the 1-minute rule must necessarily precede, nor be permitted to postpone, the business of the House. On several occasions this year, the exercise of the 1-minute rule has delayed a beginning on the business of the day by periods extending from 45 minutes to 1 hour.

Only 38 legislative days remain, including Mondays and Fridays, between now and October 4, the date of our re-

17. 126 CONG. REC. 19762–64, 96th Cong. 2d Sess.

cess or adjournment sine die. Nine major appropriations bills remain to be acted upon by the House. No major appropriations bill at this time has completed the legislative process.

In addition to those very basic and indispensable legislative priorities, there are other bills, including the budget reconciliation legislation, the second budget resolution for fiscal year 1981, and a considerable number of important legislative initiatives, which, in the public interest, must be completed before the Congress can adjourn.

Under those circumstances, the Chair requests the understanding and cooperation of all the Members in expediting the necessary legislative business of the House, which is of course our first duty to the American people. The Chair assures all Members, to the extent that any such reassurance may be desired, that their rights under the rules will be fully respected and assiduously protected.

PARLIAMENTARY INQUIRY

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

THE SPEAKER PRO TEMPORE: The gentleman from Maryland asks a parliamentary inquiry. The gentleman will state it.

MR. BAUMAN: Mr. Speaker, yesterday the gentleman from Maryland heard the Chair answer a question regarding 1-minute speeches. The gentleman from Maryland asked the Chair whether or not limits on such speeches is to be a policy to be followed for the remainder of the session, and the Chair, as recorded on page H6404, said that the Chair was not announcing a policy for the remainder of the session, but only for Thursday and Friday.

Do I take the Chair's announcement this morning to mean that this will be the policy for the remainder of this session?

THE SPEAKER PRO TEMPORE: No; as the Chair stated yesterday in response to a question from the gentleman from Maryland, the present occupant of the chair is not in a position to announce a policy for the remainder of the session, and so stated.

The policy for the remainder of the session would be more appropriately determined and stated by Speaker O'Neill. At this present time, that is all the Chair has to say, or all that he properly should or could say.

QUESTION OF PRIVILEGE OF THE HOUSE

MR. [E. G. (BUD)] SHUSTER [of Pennsylvania]: Mr. Speaker, I rise to a point of privilege.

THE SPEAKER PRO TEMPORE: The gentleman will state his privilege.

MR. SHUSTER: Mr. Speaker, I offer a privileged resolution.

THE SPEAKER PRO TEMPORE: The Clerk will report the resolution.

The Clerk read as follows:

> Whereas the custom of allowing one-minute speeches is a longstanding tradition of the House, begun by Speaker Sam Rayburn in the 1940's;
>
> Whereas the ability of the Minority to be heard rests to a large degree on the one-minute speeches; permitted in a timely fashion; and
>
> Whereas the integrity of the proceedings of the House is impugned where all Members are not accorded a full opportunity to speak; Now, therefore, be it

Resolved, That the Speaker exercise his prerogative and reinstitute the custom of allowing one-minute speeches at the beginning of the session.

THE SPEAKER PRO TEMPORE: The Chair must declare that a question of the privileges of the House under rule IX cannot impinge upon the Speaker's right of recognition. The gentleman's proposal is not, under rule IX, a privileged resolution, and the Chair will so rule. The Chair does not entertain the resolution at this time.

MR. SHUSTER: Mr. Speaker, I rise to a point of privilege.

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

MR. SHUSTER: Mr. Speaker, I reluctantly send a second privileged resolution to the desk.

THE SPEAKER PRO TEMPORE: The Clerk will report the second resolution.

The Clerk read as follows:

H. RES. 753

Whereas the structural deficiencies of the West Front of the Capitol include walls that are "cracked, the stones are misaligned, the ties have rusted away, and the walls are held in place by a system of shores and braces;" and

Whereas the portico ceiling at the West Capitol Front is composed of "stone joints that have failed;" and

Whereas "the exterior walls of the west central portion of the Capitol are distorted and cracked, and require corrective action for safety and durability;" now, therefore, be it

Resolved, That an independent investigation be immediately initiated into the safety of the Members of the House.

MOTION TO TABLE OFFERED BY MR. BRADEMAS

MR. [JOHN] BRADEMAS [of Indiana]: Mr. Speaker, I move to table the resolution.

THE SPEAKER PRO TEMPORE: The question is on the motion to table offered by the gentleman from Indiana (Mr. Brademas).

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

MR. SHUSTER: 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.

The Chair will state that the vote is on the motion offered by the gentleman from Indiana (Mr. Brademas) to table the resolution offered by the gentleman from Pennsylvania (Mr. Shuster).

The vote was taken by electronic device, and there were—yeas 222, nays 137, not voting 74, as follows: . . .

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

POINT OF ORDER

MR. BAUMAN: Mr. Speaker, a point of order. . . .

Mr. Speaker, prior to the privileged or nonprivileged motions just offered by the gentleman from Pennsylvania, the Chair unilaterally issued a ruling regarding the 1-minute speeches and stated in essence, if I recall, that these speeches would not be permitted today

or during his tenure as Speaker pro tempore because of the press of legislative business in the remainder of the session. I believe that was the import of his remarks.

THE SPEAKER PRO TEMPORE: The Chair would correct the gentleman, if the gentleman would permit.

The Chair did not exactly say that, but the gentleman will state his point of order.

MR. BAUMAN: I make a point of order against the ruling of the Chair. I make a point of order that the Chair cannot in fact deny the 1-minute speeches on the ground which he stated, and as authority for that, I cite chapter 21, section 7 of Deschler's, wherein there are several instances, including those referring to July 22, 1968; June 17, 1970; and October 19, 1966, where the Chair declined to recognize Members for 1-minute speeches because of the press of business, a heavy legislative schedule, which is Deschler's phrase, and proceeding to unfinished business.

Mr. Speaker, my point of order is that the traditions of the House, as evidenced in these precedents, indicate the Chair has the discretion to deny 1-minute speeches on those grounds, but that the ruling of the gentleman from Texas (Mr. Wright), the Speaker pro tempore, has, in fact, allowed an arbitrary ground to be used at a time when there is no press of heavy legislative business manifested by the fact that the Speaker and others have announced that we will adjourn today at 3 o'clock when we can easily stay here and deal with any pressing legislative business if that exists.

Further my point of order is that the Speaker has departed from past traditions and, therefore, has exceeded his discretion in regard to 1-minutes as supported by the traditions of the House.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule on the point of order, unless other Members insist on being heard. The Chair is prepared to rule.

The gentleman's point of order in the first place comes too late. But the Chair is prepared to state that in any event it is not a sustainable point of order.

The gentleman from Maryland is aware, because he is a scholar of the rules of the House, and he is aware of the great thrust of the very section to which he made reference, paragraph 7 of chapter 21 of Deschler's Procedure.

The Chair would simply recite one or two of the precedents therein reported. Recognition for 1-minute speeches is within the discretion of the Speaker, and his evaluation of the time consumed is a matter for the Chair and is not subject to challenge or question by parliamentary inquiry.

Now that was May 9, 1972.

On December 16, 1971, the Speaker pro tempore announced that he would recognize Members to address the House for longer than 1 minute for reasons that he felt desirable. On a number of occasions, July 22, 1968; June 17, 1970; October 19, 1966, the same rule was applied. Recognition for 1-minute speeches is within the discretion of the Speaker, and when the House has a heavy legislative schedule, he sometimes refuses to recognize Members for that purpose.

So the traditions of the House are clear, and the customs have not been

broken; and the Chair has tried to state to the gentleman his intention and his firm determination assiduously to protect the rights of all Members, minority as well as majority.

The Chair has had a conversation with the gentleman from Pennsylvania, and with the Chairman who will preside in the Committee of the Whole House and has asked that Chairman as a favor to the Chair and as an exercise in abundant fairness to be extremely tolerant of the rules of relevance so as to permit the gentleman from Pennsylvania to speak his mind on an amendment that he will be offering.

Now, the Chair has bent over backward in an effort to be fair with the minority, and the Chair believes the gentleman from Maryland is aware of that fact; and so the point of order is overruled.

MR. BAUMAN: Mr. Speaker, I appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland appeals from the ruling of the Chair.

The Chair recognizes the gentleman from Indiana (Mr. Brademas).

MR. BRADEMAS: Mr. Speaker, I move to lay the appeal on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Indiana (Mr. Brademas).

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

MR. BAUMAN: 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 233, nays 139, answered "present" 1, not voting 60, as follows: . . .

Chair's Recognition Not Subject to Appeal

§ 1.31 The decision of the Chair on a matter of recognition is not subject to a point of order, since recognition is largely within the discretion of the Chair.

On July 7, 1980,[18] there was a contest for recognition in the Committee of the Whole when it had under consideration H.R. 7235, the Rail Act of 1980. The proceedings were as indicated.

MR. [JAMES J.] FLORIO [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Florio: Page 103, line 14, insert "or (c)" immediately after "subsection (b)".
>
> Page 104, line 20, strike out the closing quotation marks and the following period.
>
> Page 104, after line 20, insert the following new subsection: . . .

MR. [EDWARD R.] MADIGAN [of Illinois]: Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Madigan as a substitute for the amendment offered by Mr. Florio:
>
> Page 103, line 14, insert "or (c)" immediately after "subsection (b)".

18. 126 CONG. REC. 18285, 18290–92, 96th Cong. 2d Sess.

Page 104, line 20, strike out the closing quotation marks and the following period.

Page 104, after line 20, insert the following new subsection: . . .

MR. MADIGAN: Mr. Chairman, this amendment includes a number of provisions designed to resolve problems which had been expressed by agricultural groups since the bill was reported from committee. . . .

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[19] The gentleman will state his inquiry.

MR. ECKHARDT: Mr. Chairman, I was not aware at the time that this amendment was offered that it would purport to deal with a number of very different subjects. I assume that it would not be in order to raise a point of order concerning germaneness at this late time, not having reserved it, but I would like to ask if the question may be divided. There are several subjects that are quite divisible in the amendment offered here, and that deal with different matters.

THE CHAIRMAN: The Chair will advise the gentleman from Texas that he is correct, it is too late to raise a point of order on the question of germaneness.

The Chair will further advise the gentleman from Texas that a substitute is not divisible.

AMENDMENT OFFERED BY MR. ECKHARDT TO THE AMENDMENT OFFERED BY MR. MADIGAN AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. FLORIO

MR. ECKHARDT: Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

THE CHAIRMAN: The Clerk will report the amendment to the substitute amendment.

POINT OF ORDER

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

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

MR. MADIGAN: Mr. Chairman, I understand that the procedure is that the members of the subcommittee would be recognized for amendments first, and that the gentleman from Texas sought recognition for the purpose of making a parliamentary inquiry and was recognized for that purpose, and was not recognized for the purpose of offering an amendment.

I further understand that the gentlewoman from Maryland, a member of the subcommittee, was on her feet seeking recognition for the purpose of offering an amendment, as well as the gentleman from North Carolina (Mr. Broyhill).

MS. [BARBARA A.] MIKULSKI [of Maryland]: Mr. Chairman, that is correct.

THE CHAIRMAN: The Chair will respond to the gentleman by saying to him that the normal procedure is to recognize members of the full committee by seniority, alternating from side to side, which the Chair has been doing. The gentleman was recognized under that procedure, and the Chair's recognition is not in any event subject to challenge.

Therefore, the gentleman is recognized, and any point of order that the gentleman from Illinois would make on that point would not be sustained.

19. Les AuCoin (Oreg.).

MR. MADIGAN: Further pursuing my point of order, and with all due respect to the Chair, am I incorrect in assuming that the gentleman from Texas was recognized for the point of raising a parliamentary inquiry?

THE CHAIRMAN: The gentleman is correct. He was recognized for that purpose; then separately for the purpose of the amendment that he is offering, which the Clerk will now report.

The Clerk read as follows:

> Amendment offered by Mr. Eckhardt to the amendment offered by Mr. Madigan as a substitute for the amendment offered by Mr. Florio: page 3, strike out lines 14 through 20.
>
> Page 3, line 5, strike out "(i)".
>
> Page 3, line 13, strike out "; or" and insert in lieu thereof a period.
>
> Pages 4 and 5, strike out "20,000" and insert in lieu thereof "5,000".

MR. FLORIO: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman from New Jersey reserves a point of order.

MR. FLORIO: We have not got a copy of the amendment, and what was just shown does not comply with what was just read.

THE CHAIRMAN: The Chair will advise the gentleman from New Jersey that the amendment that has been read is the amendment that is pending. The fact that the gentleman does not have a copy of the amendment does not give rise to a point of order.

MR. FLORIO: I would like to reserve a point of order until we have an opportunity to see the amendment.

THE CHAIRMAN: The gentleman reserves a point of order.

Order of Amendments, Chair's Discretion

§ 1.32 Recognition to offer amendments in the Committee of the Whole is within the discretion of the Chair, and no point of order lies against the Chair's recognition of one Member over another, absent a special rule which gives one amendment a special priority.

During consideration of the Panama Canal Act of 1979, which had been considered by several committees of the House and was being debated under the provisions of a rather complicated special order, a dispute arose about the order of recognition to offer the next amendment. The pertinent proceedings of June 21, 1979,[20] were as follows:

> MR. [JOHN M.] MURPHY of New York: Mr. Chairman, I move to strike the last word.
>
> Mr. Chairman, I rise at this time with so many Members in the well and on the floor to ask as many Members as possible to try to stay on the floor throughout the next hour and 50 minutes. . . .
>
> MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:

20. 125 CONG. REC. 15999, 16000, 96th Cong. 1st Sess.

Amendment offered by Mr. Bauman: Page 187, strike out line 19 and all that follows through line 20 on page 189 and insert in lieu thereof the following:

Chapter 2—IMMIGRATION

SEC. 1611. SPECIAL IMMIGRANTS.—(a) Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), relating to the definition of special immigrants, is amended— . . .

MS. [ELIZABETH] HOLTZMAN [of New York] (during the reading): Mr. Chairman, I want to raise a point of order. My point of order is that under the rule the Committee on the Judiciary was given the right to offer an amendment to strike section 1611, and I believe that is the import of the amendment offered. The gentleman's amendment goes to that section, and I was on my feet.

THE CHAIRMAN:[1] First the amendment should be read, and then the Chair will recognize the gentlewoman.

The Clerk will read.

The Clerk continued the reading of the amendment.

MS. HOLTZMAN: Mr. Chairman, I renew the point of order that I tried to state at an earlier time.

THE CHAIRMAN: The gentlewoman will state the point of order.

MS. HOLTZMAN: Mr. Chairman, at the time that the last amendment was voted on, I was on my feet seeking to offer an amendment on behalf of the Committee on the Judiciary with respect to striking in its entirety section 1611 of the bill. The right to offer that amendment is granted under the rule, in fact on page 3 of House Resolution 274. I want to ask the Chair whether I am entitled to be recognized or was entitled to be recognized to make first a motion, which was a motion to strike the entire section before amendments were made to the text of the bill.

THE CHAIRMAN: Unless an amendment having priority of consideration under the rule is offered, it is the Chair's practice to alternate recognition of members of the several committees that are listed in the rule, taking amendments from the majority and minority side in general turn, while giving priority of recognition to those committees that are mentioned in the rule.

The gentlewoman from New York (Ms. Holtzman) is a member of such a committee, but following the adoption of the last amendment the gentleman from New York (Mr. Murphy), the chairman of the Committee on Merchant Marine and Fisheries, sought recognition to strike the last word. Accordingly, the Chair then recognized the gentleman from Maryland (Mr. Bauman) to offer a floor amendment, which is a perfecting amendment to section 1611 of the bill.

The rule mentions that it shall be in order to consider an amendment as recommended by the Committee on the Judiciary, to strike out section 1611, if offered, but the rule does not give any special priority to the Committee on the Judiciary to offer such amendments, over perfecting amendments to that section.

MS. HOLTZMAN: Mr. Chairman, may I be heard further? The gentleman said that he was going to recognize members of the committees that had a right to offer amendments under the rule al-

1. Thomas S. Foley (Wash.).

ternately. I would suggest to the Chair that no member of the Committee on the Judiciary has been recognized thus far in the debate with respect to offering such an amendment and, therefore, the Chair's principle, as I understood he stated it, was not being observed in connection with recognition.

THE CHAIRMAN: The Chair would observe that the Chair is attempting to be fair in recognizing Members alternately when they are members of committees with priority and that the rule permits but does not give the Committee on the Judiciary special priority of recognition over other floor amendments, which under the precedents would take priority over a motion to strike.

Second, the Chair would like to advise the gentlewoman from New York that recognition is discretionary with the Chair and is not subject to a point of order. Does the gentlewoman have any further comment to make on the point of order?

The Chair overrules the point of order and recognizes the gentleman in the well.

Addressing Rules of Procedure Through Question of Privilege of House

§ 1.33 While ordinary questions of procedure or interpretations of the House rules cannot be raised by a question of privilege under Rule IX, since it is the duty of the Speaker under Rule I clause 4 to rule on all questions of order, a question of privilege was once based upon the assertion that integrity of House proceedings would be violated if the House could not determine as a question of privilege the vote required to extend the time for ratification of a constitutional amendment already submitted to the states.

The Equal Rights Amendment was proposed to the states for ratification in the 92d Congress. In the text of that joint resolution, there was a provision stating that ratification should be completed within seven years of its submission to the states. In the 95th Congress, the House Committee on the Judiciary reported another joint resolution (H.J. Res. 638) proposing to extend the time for ratification. The difficult question presented was the vote needed to pass this joint resolution.

After the House had adopted a special rule making consideration of H.J. Res. 638 in order, Mr. Quillen, of the Committee on Rules, offered H. Res. 1315 as a question of privilege under Rule IX. This resolution declared that a two-thirds vote was required to pass the joint resolution extending the ratification period. The proceedings of Aug. 15, 1978,[2] are carried in full.

2. 124 CONG. REC. 26203, 26204, 95th Cong. 2d Sess.

PROVIDING FOR A TWO-THIRDS VOTE OF MEMBERS PRESENT AND VOTING ON FINAL PASSAGE OF HOUSE JOINT RESOLUTION 638

(Mr. Quillen asked and was given permission to address the House for 1 minute.)

MR. [JAMES H.] QUILLEN [of Tennessee]: Mr. Speaker, at the conclusion of my remarks I shall offer a resolution involving a question of the privileges of the House and ask for its immediate consideration.

Mr. Speaker, the "Resolved" clause of my resolution demands a two-thirds vote on final passage of the constitutional resolution extending the ERA. At the appropriate time I will offer my privileged resolution.

THE SPEAKER:[3] The Chair will state to the gentleman from Tennessee (Mr. Quillen) that now is the time for the gentleman to offer his resolution.

PRIVILEGES OF THE HOUSE—PROVIDING FOR A TWO-THIRDS VOTE OF MEMBERS PRESENT AND VOTING ON FINAL PASSAGE OF HOUSE JOINT RESOLUTION 638

MR. QUILLEN: Mr. Speaker, I rise to a question of the privileges of the House and offer a privileged resolution (H. Res. 1315) involving a question of the privileges of the House, and I ask for its immediate consideration.

THE SPEAKER: The Clerk will report the resolution.

First, the Chair will state that he has had an opportunity to examine the resolution as offered by the gentleman from Tennessee (Mr. Quillen), and in the opinion of the Chair the resolution presents a question of the privileges of the House and may be considered under rule IX of the rules of the House.

The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 1315

Whereas H.J. Res. 638 of this Congress amends H.J. Res. 208 of the 92nd Congress, proposing an amendment to the Constitution;

Whereas H.J. Res. 208 of the 92nd Congress was passed by an affirmative vote of two-thirds of the Members present and voting, as required by Article V of the Constitution, and submitted for ratification on March 22, 1972;

Whereas the integrity of the process by which the House considers changes to H.J. Res. 208 of the 92nd Congress would be violated if H.J. Res. 638 were passed by a simple majority of the Members present and voting; and

Whereas the constitutional prerogatives of the House to propose amendments to the Constitution and to impose necessary conditions thereto in accordance with Article V of the Constitution would be abrogated if H.J. Res. 638 were passed by a simple majority of the Members present and voting;

Resolved, That an affirmative vote of two-thirds of the Members present and voting, a quorum being present, shall be required on final passage of H.J. Res. 638.

MR. [DON] EDWARDS of California: Mr. Speaker, I move to table the resolution.

THE SPEAKER: The question is on the motion offered by the gentleman from California (Mr. Edwards).

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

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

MR. QUILLEN: 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 230, nays 183, not voting 19, as follows: . . .

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER: The Chair recognizes the gentleman from California (Mr. Edwards) to offer a motion. . . .

MR. [CHARLES E.] WIGGINS [of California]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WIGGINS: Mr. Speaker, upon the conclusion of our consideration of House Joint Resolution 638, including the adoption of any amendments to it, when the question is put on the final passage of that resolution, must the vote of the House to adopt the joint resolution be by a simple majority of those present and voting or by two-thirds of those present and voting?

THE SPEAKER: In response to the parliamentary inquiry raised by the gentleman from California, the Chair feels that the action of the House in laying on the table House Resolution 315 was an indication by the House that a majority of the Members feel a majority vote is required for the final passage of House Joint Resolution 638. The Chair would cite the precedent contained in Cannon's VIII, section 2660, that affirmative action on a motion to lay on the table, while not a technical rejection, is in effect an adverse disposition equivalent to rejection.

The Chair, by ruling that House Resolution 1315 properly raised a question of the privileges of the House under rule IX, believed it essential that the question of the vote required to pass House Joint Resolution 638 be decided by the House itself. The House now having laid that resolution on the table, the Chair feels that the result of such a vote, combined with the guidance on this question furnished by the Committee on the Judiciary on page 6 of its report, justifies the Chair in responding that, following the expression of the House, House Joint Resolution 638 will be messaged to the Senate if a majority of those present and voting, a quorum being present, vote for passage.

MR. WIGGINS: I have a further parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

MR. WIGGINS: Do I understand the ruling of the Chair correctly to be that a vote not to consider a privileged resolution is equivalent to a rejection of the text of the resolution itself?

THE SPEAKER: The vote was not on the question of consideration. The Chair will state that he believes he has answered the question raised in the gentleman's original inquiry. The Chair has stated that a motion to table is an adverse disposition.

MR. WIGGINS: Mr. Speaker, I understood the answer, then, to be "Yes?"

THE SPEAKER: The answer is "Yes."

Parliamentarian's Note: The question of the vote required, a majority or two-thirds, was unique. Section 508, Jefferson's Manual, states that "The voice of the majority decides; for the lex majoris partis is the law of all

councils, elections, etc. where not otherwise expressly provided."

A supermajority is required in the Constitution, Article V: "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution. . . ."

Since 1917, Congress has, when proposing a constitutional amendment for ratification, provided in the joint resolution a time limit within which the requisite number of states must ratify; in four cases since that date the time limit has appeared in the text of the constitutional amendment, but since the 23d amendment the time limit has appeared independently in the proposing clause.

Chair Does Not Rule on Consistency of Pending Bill

§ 1.34 The Speaker does not rule on a point of order alleging that a pending bill is not consistent with existing law.

On May 3, 1949,[4] Mr. Adam C. Powell, Jr., of New York, pointed out the apparent incongruity of language in proposed legislation that referred to federal courts under nomenclature that was obsolete because of court reorganization.

> MR. POWELL: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER:[5] The gentleman will state it.
>
> MR. POWELL: If this bill uses language which is no longer in keeping with our laws, I raise the point of order that it is incorrectly drawn. On page 53, line 13, this bill uses the language, "to review by the appropriate circuit court of appeals." I make the point of order that there is no longer any circuit court of appeals.
>
> THE SPEAKER: There might be 203 Members take the same position that the gentleman from New York does, but that does not alter the situation.
>
> The question is on the engrossment and third reading of the bill.

Chair Does Not Rule on Consistency of Amendments

§ 1.35 The Chair does not rule on the consistency of a proposed amendment with another amendment already adopted to a different portion of the bill.

When the Committee of the Whole had under consideration the bill H.R. 3744, the Fair Labor Standards Act of 1977, an amendment was offered and agreed to which established the minimum wage levels for three years. Later during the consideration of the

4. 95 CONG. REC. 5543, 5544, 81st Cong. 1st Sess. Under consideration was H.R. 2032, the National Labor Relations Act of 1949.

5. Sam Rayburn (Tex.).

measure, another amendment relating to minimum wage levels was offered by Mr. Burton. The proceedings of Sept. 15, 1977,[6] were as follows:

MR. [JOHN N.] ERLENBORN [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Erlenborn: Page 4, strike out lines 16 and 17 and insert in lieu thereof "INCREASE IN MINIMUM WAGE".

Page 4, line 18, redesignate "SEC. 2.(a)(1)" as "SEC. 2.(a)", and beginning with line 20 strike out everything through line 21 on page 5 and insert in lieu thereof:

"(1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.85 an hour during the year beginning January 1, 1979, and not less than $3.05 an hour after December 31, 1979, except as otherwise provided in this section;". . . .

THE CHAIRMAN:[7] The question is on the amendment offered by the gentleman from Illinois (Mr. Erlenborn).

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

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 223, noes 193, not voting 18, as follows: . . .

MR. PHILLIP BURTON [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Phillip Burton: Page 9, insert after line 5 of the following:

(b) Section 6 (29 U.S.C. 206) is amended by adding at the end the following:

"(9)(1) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: during the period ending December 31, 1977, not less [than] $2.30 an hour, during the year beginning January 1, 1978, not less than $2.65 an hour, during the year beginning January 1, 1979, not less than 52 per centum of the average hourly earnings excluding overtime, during the twelve-month period ending in June 1978, of production and related workers on manufacturing payrolls, during the year beginning January 1, 1980, and during each of the next three years, not less than 53 per centum of the average hourly earnings excluding overtime, during the twelve-month period ending in June of the year preceding such year, or production and related workers on manufacturing payrolls, and during the year beginning January 1, 1984, and during each succeeding year, not less than the minimum wage rate in effect under this paragraph for the year beginning January 1, 1983. For purposes of computing the minimum wage prescribed by this paragraph, the Secretary shall, not later than August 1, 1979, and August 1 of each of the next five years, publish in the Federal Register an estimate of the average hourly earnings (excluding overtime), during the twelve-month period ending in June of such year, of production and related workers on manufacturing payrolls, and shall, not later than November 1, 1978, and November 1 of each of the next five years, publish in the Fed-

6. 123 CONG. REC. 29431, 29436, 29440, 95th Cong. 1st Sess.

7. William H. Natcher (Ky.).

eral Register such earnings for such period.".

"(2) the minimum wage rate prescribed by paragraph (1) shall apply in any year, in lieu of the wage rate prescribed by subsection (a)(1), in which the wage rate prescribed by paragraph (1) is higher than that prescribed by subsection (a)(1).".

MR. ERLENBORN: Mr. Chairman, I reserve a point of order against the amendment. . . .

MR. [CLIFFORD R.] ALLEN [of Tennessee]: Mr. Chairman, a point of order. I can find no copy of this amendment. I would like to be able to read the amendment and I believe under the rules a certain number of copies are supposed to be available.

THE CHAIRMAN: The gentleman does not state a point of order.

MR. PHILLIP BURTON: Mr. Chairman, I yield back the balance of my time.

THE CHAIRMAN: Does the gentleman from Illinois (Mr. Erlenborn) insist upon his point of order?

MR. ERLENBORN: Yes, Mr. Chairman.

I must first say I have had only a few minutes to look at the amendment which is thrown together rather hastily in an attempt, as the gentleman said, to get a recount on the issue of indexing, but, Mr. Chairman, I make a point of order against the amendment on the ground that the Committee has voted on the issue of indexing, has expressed its will, and this is an amendment which merely would have the House again vote on the same issue already disposed of.

THE CHAIRMAN: Does the gentleman from California (Mr. Phillip Burton) desire to be heard on the point of order?

MR. PHILLIP BURTON: No, other than to say that we have developed this amendment so that a point of order does not lie.

THE CHAIRMAN: The Chair is ready to rule.

The amendment offered by the gentleman from California (Mr. Phillip Burton) simply adds a new subsection to the end of the section. In the opinion of the Chair the amendment is germane. As to whether or not it is inconsistent with the amendment of the gentleman from Illinois (Mr. Erlenborn) adopted a few moments ago, the Chair cannot rule upon that. The Chair holds the amendment to be germane and not to directly change the amendment already adopted. The point of order is overruled. . . .

So the amendment was agreed to.

The result of the vote was announced as above recorded.

§ 1.36 The Chair does not pass upon the consistency of proposed amendments or on their legal effect, if adopted.

On Aug. 22, 1949,[8] in the Committee of the Whole, Chairman Walter A. Lynch, of New York, refused to rule on the consistency of an amendment to an authorization bill.

MR. [USHER L.] BURDICK [of North Dakota]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

8. 95 CONG. REC. 11994, 81st Cong. 1st Sess. Under consideration was H.R. 5472, dealing with public works on rivers and harbors for navigation and flood control.

Amendment offered by Mr. Burdick: On page 19, line 10, strike out lines 10, 11, 12, 13, 14, and 15 and insert "$250,000,000."

MR. [WILLIAM M.] WHITTINGTON [of Mississippi]: Mr. Chairman, I make a point of order against the amendment, that the amendment is really without meaning or significance, because it authorizes no appropriation. The Congress cannot make an appropriation unless it is authorized by law. There is no authorization. The gentleman from North Dakota wants to strike out the entire paragraph and merely insert $250,000,000. He wants to strike out on page 19 this language:

In addition to previous authorizations there is hereby authorized to be appropriated the sum of $250,000,000 for the prosecution of the comprehensive plan for the Missouri River Basin to be undertaken by the Corps of Engineers, approved by the act of June 28, 1938, as amended and supplemented by subsequent acts of Congress.

He wants to insert "$250,000,000", without saying it is an authorization or what it is. The amendment is without meaning. It is frivolous—meaningless. . . .

THE CHAIRMAN: The Chair will address himself to the point of order and say that, in the opinion of the Chair, the point of order is not well taken, for the reason that whether or not this is consistent is not within the province of the Chair.

The Chair Does Not Rule on Questions of Constitutionality

§ 1.37 The Speaker does not rule on the question of whether a bill is constitutional or unconstitutional.

On July 21, 1947,[9] it was demonstrated that the Chair does not rule on the constitutionality of proposed amendments.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I make the point of order against the bill that it violates the Constitution of the United States and that the Congress has no right to pass such legislation, and I should like to be heard on the point of order.

THE SPEAKER:[10] The Chair will hear the gentleman from Mississippi briefly on the point of order.

MR. RANKIN: . . . I submit, Mr. Speaker, that this bill is not legally before the House, and that my point of order should be sustained.

THE SPEAKER: The Chair is ready to rule. The bill is properly before the House. It is not within the jurisdiction of the Chair to determine what is constitutional and what is not constitutional. The point of order is overruled.

§ 1.38 It is for the House and not the Chair to determine on the constitutionality of a bill; and the Chair has declined to respond to a parliamentary inquiry about whether a bill contravenes the Constitution.

On Feb. 7, 1995,[11] during debate on H.R. 729, a bill dealing

9. 93 CONG. REC. 9522, 9523, 80th Cong. 1st Sess.
10. Joseph W. Martin, Jr. (Mass.).
11. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

with the imposition of the death penalty under federal sentencing procedures, an inquiry was raised about the vote required on passage of the bill. The question and the Chair's response are carried here.

PARLIAMENTARY INQUIRIES

MR. [CLEO] FIELDS of Louisiana: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[12] The gentleman will state his parliamentary inquiry.

MR. FIELDS of Louisiana: Mr. Chairman, since we are about to vote on this measure, I have a question: Since this bill that is before us modifies the Constitution to some degree, would this not call for a two-thirds vote of the House?

THE CHAIRMAN: The simple answer is no. The amendment before us is not a constitutional amendment.

MR. FIELDS of Louisiana: A further parliamentary inquiry, Mr. Chairman:

My inquiry was on the bill and not the amendment.

THE CHAIRMAN: The Chair will issue the same ruling:

This is a bill and not a constitutional amendment.

MR. FIELDS of Louisiana: A further parliamentary inquiry, Mr. Chairman:

The bill precisely says that evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the grounds that the search or seizure was in violation of the fourth amendment.

How is that not, Mr. Chairman, making the fourth amendment of the Constitution moot or at least revising it?

THE CHAIRMAN: The gentleman is not stating a parliamentary inquiry. He is raising a question of constitutional law.

That is a matter for the House to decide.

§ 1.39 The constitutional requirement that "All Bills for raising Revenue shall originate in the House . . ." may be raised when a measure is before the House for consideration, and the issue is determined by the House, voting on a question of privilege which may provide for returning the offending measure to the Senate. But the challenge is in order only when the House is in possession of the papers and cannot be raised collaterally or after the fact when the bill has passed and is no longer in possession of the House.

On Apr. 6, 1995,[13] a resolution was offered from the floor as a question of privilege under Rule IX. The resolution provided as follows:

MR. [PETER] DEUTSCH [of Florida]: Mr. Speaker, I rise to a question of

12. Frank D. Riggs (Calif.).

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

privilege under rule IX of the House rules and I offer a House Resolution No. 131.

THE SPEAKER PRO TEMPORE:[14] The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 131

Whereas rule IX of the Rules of the House of Representatives provides that questions of privilege shall arise whenever the rights of the House collectively are affected;

Whereas, under the precedents, customs, and traditions of the House pursuant to rule IX, a question of privilege has arisen in cases involving the constitutional prerogatives of the House;

Whereas section 7 of Article I of the Constitution requires that revenue measures originate in the House of Representatives; and

Whereas the conference report on the bill H.R. 831 contained a targeted tax benefit which was not contained in the bill as passed the House of Representatives and which was not contained in the amendment of the Senate: Now, therefore, be it

Resolved, That the Comptroller General of the United States shall prepare and transmit, within 7 days after the date of the adoption of this resolution, a report to the House of Representatives containing the opinion of the Comptroller General on whether the addition of a targeted tax benefit by the conferees to the conference report on the bill H.R. 831 (A bill to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, and for other purposes) violates the requirement of the United States Constitution that all revenue measures originate in the House of Representatives.

The Chair ruled that the resolution did not qualify as a proper question of Rule IX privilege. After debate, the Chair's decision was sustained on appeal.

THE SPEAKER PRO TEMPORE: Does the gentleman from Florida [Mr. Deutsch] wish to be heard on whether the question is one of privilege? . . .

MR. DEUTSCH: I thank the Chair.

Mr. Speaker, article I, section 7 of the Constitution specifically states that revenue measures must originate in this Chamber, in the House of Representatives. It is an infringement of the House prerogatives when that is not done, and in fact this House has consistently ruled that as a question of privilege when that occurs. It consistently occurs when the other body does a revenue provision.

What occurred in this case, as most Members at this point are well aware, is that this revenue measure which did originate in the House, then went to the other body, went to a conference committee. . . .

The House has consistently held that that type of instance is a violation of our prerogatives.

Furthermore, the Chair has consistently ruled that on issues of this nature the House has the right, and the appropriate action is for the House to decide itself what is a prerogative and what is a violation in terms of the privileges of the House. . . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

14. Scott McInnis (Colo.).

MR. DEUTSCH: Mr. Speaker——

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The Chair rules that the resolution does not constitute a question of privilege under rule IX.

The resolution offered by the gentleman from Florida collaterally questions actions taken by a committee of conference on a House-originated revenue bill by challenging the inclusion in the conference report of additional revenue matter not contained in either the House bill nor the Senate amendment committed to conference. The resolution calls for a report by the Comptroller General on the propriety under section 7 of article I of the Constitution of those proceedings and conference actions on a bill that has already moved through the legislative process.

In the opinion of the Chair, such a resolution does not raise a question of the privileges of the House. As recorded in Deschler's Precedents, volume 3, chapter 13, section 14.2, a question of privilege under section 7 of article I of the Constitution may be raised only when the House is "in possession of the papers." In other words, any allegation of infringement on the prerogatives of the House to originate a revenue measure must be made contemporaneous with the consideration of the measure by the House and may not be raised after the fact.

The Chair rules that the resolution does not constitute a question of the privileges of the House. . . .

MR. DEUTSCH: Mr. Speaker, I respectfully appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The gentleman from Florida has appealed the ruling of the Chair. The gentleman is recognized.

MR. DEUTSCH: Mr. Speaker, I believe I am recognized for an hour.

THE SPEAKER PRO TEMPORE: The gentleman will suspend.

MOTION TO TABLE OFFERED BY MR. WALKER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

> Mr. Walker moves to lay the appeal on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion to table.

PARLIAMENTARY INQUIRIES

MR. [GENE] TAYLOR of Mississippi: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman from the State of Mississippi [Mr. Taylor] is recognized.

MR. TAYLOR of Mississippi: Mr. Speaker, since the rules of the House clearly state that when the question of the integrity of the proceedings of this House have been violated, that is indeed a privileged resolution. Now, I realize that the Chair responded to the written request of my colleague, but I have also asked the Chair to respond to whether or not it is prima facie evidence that a question relating to the integrity of the proceedings of this body are called into question when one individual who earlier this session offered the Speaker of the House an over $4 million book deal which the Speaker

turned down, but he still offered it and with—that is a parliamentary inquiry. I have just as much right as the Members.

THE SPEAKER PRO TEMPORE: Regular order. This is a parliamentary inquiry. The gentleman will suspend. The Chair has ruled previously on all points on this issue as textually raised by the resolution. We now have the motion before the House.

MR. TAYLOR of Mississippi: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The motion is not debatable.

MR. TAYLOR of Mississippi: Mr. Speaker, I have a parliamentary inquiry.

MR. [KWEISI] MFUME [of Maryland]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman from Mississippi [Mr. Taylor] may state a legitimate parliamentary inquiry. . . .

MR. MFUME: Mr. Speaker, yesterday evening when there was an appeal of the ruling of the Chair; then there was from the other side of the aisle a request to table. Following that, there were questions raised on this side of the aisle about why is it so difficult to get a vote on an appeal of the ruling of the Chair? . . .

The gentleman has legitimately appealed it and ought to, at least at some point in time, have a vote, so I would say to my distinguished colleague, the gentleman from Pennsylvania, that, while we will vote on the motion to table the appeal, that there may in fact be another motion to appeal the Chair, and another one after that, and, if that is what it is going to take to get one vote on the appeal of the Chair, then this side is prepared to do that. I would rather not do it. They will win in either case, but this side is just asking for a clean vote on the appeal of the Chair.

THE SPEAKER PRO TEMPORE: It is the Chair's ruling that the motion that is currently pending is, in fact, a proper motion under the rules of the House.

MR. MFUME: I do not dispute that, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The question before the House is the motion to table.

Are there further parliamentary inquiries?

The question is on the motion offered by the gentleman from Pennsylvania [Mr. Walker] to lay on the table the appeal of the ruling of the Chair.

The question was taken; and the Speaker pro tempore announced that the noes 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: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 230, nays 192, not voting 12, as follows: . . .

So the motion to lay on the table the appeal of the ruling of the Chair was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Chair Does Not Rule on Hypothetical Questions

§ 1.40 Although the Chair responds to parliamentary inquiries concerning the rules of order and decorum in debate, he does not rule on hypothetical questions; rule retrospectively on questions not timely raised; or rule anticipatorily on questions not yet presented.

On Nov. 20, 1989,[15] the House had under debate House Resolution 295 providing for consideration of a measure relating to appropriations for foreign operations.

During the hour, the debate became somewhat intemperate.

> MR. [BOB] MCEWEN [of Ohio]: Mr. Speaker, it is a difficult time to represent the interest of the left when around the world from Managua to Moscow it is being exposed that communism is a violation of human rights and human dignity. Indeed, those who have supported the Marxist guerrillas in Central America this week, having killed hundreds of innocent civilians throughout El Salvador, have not taken the floor to make any protestation of that death. . . .
>
> MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker——
>
> THE SPEAKER PRO TEMPORE:[16] For what purpose does the gentleman from Wisconsin rise?
>
> MR. OBEY: Mr. Speaker, I am about to ask that the gentleman's words be taken down.
>
> Mr. Speaker, would the gentleman yield for a possible correction? I do not want to make a motion to embarrass the gentleman. Would the gentleman yield?
>
> THE SPEAKER PRO TEMPORE: Would the gentleman from Ohio yield to the gentleman from Wisconsin?
>
> MR. MCEWEN: I yield to the gentleman. . . .
>
> MR. OBEY: Mr. Speaker, I would simply suggest—I would be happy to give him another minute because I will not take more than a minute.
>
> I think I heard the gentleman say that those who support Marxist revolutions around the world have not taken specific action on this floor. I hope that the gentleman is not suggesting that anyone on this floor is in support of Marxist revolutions. We are going to have an acrimonious enough debate today without leaving mistaken impressions like that. . . .
>
> ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE
>
> THE SPEAKER PRO TEMPORE: Before the Chair recognizes the gentleman from Massachusetts, the Chair would like to say to Members on both sides of the aisle that the Chair may intervene to prevent the arraignment of the motives of other Members. The Chair would, therefore, echo the sentiments expressed by the honorable minority leader, the gentleman from Illinois [Mr. Michel], this morning when he asked the Members to debate the issue and the policy and not to become involved in attacking or laying for question the motives of other Members.

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15. 135 CONG. REC. 30225, 30226, 101st Cong. 1st Sess.

16. Pat Williams (Mont.).

PARLIAMENTARY INQUIRIES

MR. [VIN] WEBER [of Minnesota]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WEBER: Mr. Speaker, I just would like to clarify on the ruling of the Chair right now.

Does the Chair believe, if someone did suggest that Members, not by name, but that Members of this body supported Marxist revolution, that would be unparliamentary language?

THE SPEAKER PRO TEMPORE: The Chair is not called upon to rule on possible prior violation of the rules of the House or Jefferson's Manual.

Ambiguities in Legislative Language

§ 1.41 The Chair does not rule on points of order as to whether an amendment is ambiguous.

On July 5, 1956,[17] in the Committee of the Whole, Chairman Francis E. Walter, of Pennsylvania, pointed out that the Chair does not rule on the ambiguity of proposed amendments.

Amendment offered by Mr. [James] Roosevelt [of California] to the Powell amendment: Strike the word "provisions" and insert the word "decisions."

MR. [ROSS] BASS of Tennessee: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. BASS of Tennessee: I make the point of order that the amendment is not germane to the bill.

THE CHAIRMAN: It is certainly germane to the amendment offered by the gentleman from New York to substitute the word "decisions" for the word "provisions." The Chair so rules.

MR. BASS of Tennessee: Mr. Chairman, a further point of order.

THE CHAIRMAN: The gentleman will state it.

MR. BASS of Tennessee: I make the point of order that the word "provisions" is ambiguous and has no meaning whatever and would make the amendment not germane.

THE CHAIRMAN: The Chair does not rule on the question of ambiguity. It is a question of germaneness solely, and the Chair has ruled that the amendment is germane.

Legal Effect of Bill Not Subject of Point of Order

§ 1.42 It is not a proper point of order to inquire as to the legal effect of the adoption of an amendment.

On Aug. 7, 1986,[18] during consideration of the Surface Transportation and Uniform Relocation Assistance Act of 1986 (H.R. 3129) in the Committee of the Whole,

17. 102 CONG. REC. 11875, 84th Cong. 2d Sess. Under consideration was H.R. 7537, dealing with federal assistance to states for school construction.

18. 132 CONG. REC. 19675, 99th Cong. 2d Sess.

Chairman Bob Traxler, of Michigan, declined to respond to a point of order seeking information concerning the effect of an amendment.

MR. [ROD] CHANDLER [of Washington]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

MS. [BOBBI] FIEDLER [of California]: I have a point of order, Mr. Chairman.

THE CHAIRMAN PRO TEMPORE: The gentlewoman will state her point of order.

MS. FIEDLER: Mr. Chairman, I would like to ask whether or not a vote in favor of this particular amendment would require the elimination of such signs along a route for hospitals or other urgent or emergency care.

THE CHAIRMAN PRO TEMPORE: The Chair would like to state to the gentlewoman that that is not a point of order.

A recorded vote has been ordered.

Point of Order Does Not Lie Against Competency of Drafting of Amendment

§ 1.43 The issue of whether an amendment is properly and competently drafted to accomplish its legislative purpose is not questioned by a point of order but is a matter to be disposed of by debate on the merits.

The purpose of raising a point of order is to determine whether a motion or action is in compliance with the rules. It is not properly used to question whether an amendment is properly drafted to achieve its stated purpose. The proceedings of Feb. 4, 1976,[19] illustrate this distinction.

MR. [WILLIAM M.] BRODHEAD [of Michigan]: Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

> Amendment offered by Mr. Brodhead to the amendment in the na-ture of a substitute offered by Mr. Krueger: Strike out section 105 and designate the succeeding sections of title I accordingly.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Chairman, I reserve a point of order on the amendment.

THE CHAIRMAN:[20] The gentleman from Ohio reserves a point of order on the amendment. . . .

Does the gentleman from Ohio (Mr. Brown) insist on his point of order?

MR. BROWN of Ohio: I do, Mr. Chairman.

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

MR. BROWN of Ohio: Mr. Chairman, my point of order against the amendment mentioned is that while it has a purpose with which I am not totally unsympathetic, it does not make the conforming amendments necessary to accomplish that purpose without leaving a lot of loose ends hanging in the legislation. For example, it strikes section 105, which is entitled, "Prohibition

19. 122 CONG. REC. 2371, 94th Cong. 2d Sess.

20. Richard Bolling (Mo.).

of the Use of Natural Gas as Boiler Fuel."

In section 102, the "purpose" section of the amendment, it says:

> . . . to grant the Federal Energy Administration authority to prohibit the use of natural gas as boiler fuel; . . .

That would be left in the legislation without any language under this section 105 which provides for that.

I think there are other references in the language that I have not had a chance to dig out.

I would suggest that if the gentleman from Michigan would like to withdraw his amendment, I think that we can provide the gentleman with an amendment that would have all the necessary conforming language.

THE CHAIRMAN: The Chair will state that the gentleman from Ohio (Mr. Brown) is no longer speaking on his point of order. The Chair will state that the question the gentleman from Ohio raises is not a valid point of order, it is rather a question of draftsmanship and the Chair overrules the point of order.

If the gentleman from Ohio desires to be heard in opposition to the amendment offered by the gentleman from Michigan (Mr. Brodhead) then the Chair would be glad to recognize the gentleman for 5 minutes.

Points of Order Against Relevancy of Debate

§ 1.44 Where a special rule provides that general debate in the Committee of the Whole shall be confined to the bill, a Member must confine his remarks to the bill, and if he continues to talk of other matters after repeated points of order, the Chairman will request that he take his seat.

On Mar. 29, 1944,[1] Chairman James Domengeaux, of Louisiana, sustained a point of order against Emanuel Celler, of New York, after the Member repeatedly strayed from the subject before the House.

MR. [ADOLPH J.] SABATH [of Illinois]: Mr. Chairman, I rise to a point of order.

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

MR. SABATH: The gentleman is not speaking to the bill. He has been admonished several times, he has refused, and I am obliged to make the point of order myself, though I regret it.

THE CHAIRMAN: The point of order is sustained and the gentleman is again requested to confine himself to the bill.

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1. 90 CONG. REC. 3263, 78th Cong. 2d Sess. Under consideration was H.R. 4257, dealing with the expatriation of persons evading military service.

Absent language in the special rule (H. Res. 482, 78th Cong.) confining general debate to the subject of the bill, debate would have been permitted in the Committee of the Whole on any subject. See 5 Hinds' Precedents §§5233–38; 8 Cannon's Precedents §2590; 120 CONG. REC. 21743, 93d Cong. 2d Sess., June 28, 1974.

MR. [NOAH M.] MASON [of Illinois]: Mr. Chairman, a parliamentary inquiry. How many times do we have to call the gentleman to order and try to get him to confine his remarks to the bill before the privilege of the House is withdrawn?

THE CHAIRMAN: This will be the last time. If the gentleman does not proceed in order, he will be requested to take his seat.

Point of Order Based on Violation of Ramseyer Rule Lies Only in House

§ 1.45 A point of order that a committee report fails to comply with the Ramseyer rule will not lie in the Committee of the Whole.

On July 25, 1966,[2] Chairman Richard Bolling, of Missouri, ruled that a point of order raised by Mr. John Bell Williams, of Mississippi, against consideration of the bill on the ground that the report of the Committee on the Judiciary accompanying the bill did not comply with requirements of the Ramseyer rule, would not lie in the Committee of the Whole. Mr. Williams had attempted to raise the point of order prior to the House's resolving itself into the Committee of the Whole, but, as Speaker John W. McCormack, of Massachusetts, later acknowledged, the Chair did not hear Mr. Williams make his point of order. After initial debate in the Committee of the Whole, the Committee voted to rise; and the Speaker resumed the Chair. The Speaker then stated that under the circumstances Mr. Williams could make his point of order at that time.

The dialogue was as follows:

MR. [EMANUEL] CELLER [of New York]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14765) to assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes.

MR. WILLIAMS: Mr. Speaker, a point of order.

THE SPEAKER: The question is on the motion offered by the gentleman from New York [Mr. Celler].

MR. WILLIAMS: Mr. Speaker, a point of order.

THE SPEAKER: All those in favor of the motion will let it be known by saying "aye." All those opposed by saying "no." The motion was agreed to.

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 14765, with Mr. Bolling in the chair.

MR. WILLIAMS: Mr. Chairman, a point of order. Mr. Chairman, I have a point of order. I was on my feet—

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

2. 112 CONG. REC. 16840, 89th Cong. 2d Sess. Under consideration was H.R. 14765, the Civil Rights Act of 1966. For more on the Ramseyer rule, see Ch. 17, supra.

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman.

THE CHAIRMAN: Under the rule, the gentleman from New York [Mr. Celler] will be recognized for 5 hours and the gentleman from Ohio [Mr. McCulloch] will be recognized for 5 hours.

MR. WILLIAMS: Mr. Chairman.

MR. WAGGONNER: Mr. Chairman.

MR. [WILLIAM M.] MCCULLOCH: Mr. Chairman.

THE CHAIRMAN: For what purpose does the gentleman from Ohio rise?

MR. MCCULLOCH: Mr. Chairman, I rise for a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. MCCULLOCH: I would like to know if the resolution unqualifiedly guarantees the minority one-half of the time during general debate and nothing untoward will happen so that it will be diminished or denied contrary to gentlemen's agreements.

THE CHAIRMAN: The Chairman will reply by rereading that portion of his opening statement. Under the rule, the gentleman from New York [Mr. Celler] will be recognized for 5 hours, the gentleman from Ohio [Mr. McCulloch] will be recognized for 5 hours. The Chair will follow the rules.

MR. MCCULLOCH: I thank you, Mr. Chairman.

MR. WILLIAMS: Mr. Chairman.

MR. CELLER: Mr. Chairman, I yield myself such time as I may care to use.

Mr. Chairman, Negroes propose to be free. Many rights have been denied and withheld from them. The right to be equally educated with whites. The right to equal housing with whites. The right to equal recreation with whites.

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

MR. CELLER: Regular order, Mr. Chairman.

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

MR. WILLIAMS: Mr. Chairman, immediately before the House resolved itself into the Committee of the Whole House I was on my feet on the floor seeking recognition for the purpose of making a point of order against consideration of H.R. 14765 on the ground that the report of the Judiciary Committee accompanying the bill does not comply with all the requirements of clause 3 of rule XIII of the rules of the House known as the Ramseyer rule and intended to request I be heard in support of that point of order. I was not recognized by the Chair. I realize technically under the rules of the House at this point, my point of order may come too late, after the House resolved itself into the Committee of the Whole House on the State of the Union.

MR. CELLER: Mr. Chairman.

MR. WILLIAMS: But I may say, Mr. Chairman, that I sought to raise the point of order before the House went into session. May I ask this question? Is there any way that this point of order can lie at this time?

THE CHAIRMAN: Not at this time. It lies only in the House, the Chair must inform the gentleman from Mississippi.

MR. WILLIAMS: May I say that the Parliamentarian and the Speaker were notified in advance and given copies of the point of order that I desired to raise, and I was refused recognition although I was on my feet seeking recognition at the time.

MR. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Chairman, I appeal the ruling of the Chair.

THE CHAIRMAN: The Chair will have to repeat that the gentleman from Mississippi is well aware that this present occupant of the chair is powerless to do other than he has stated.

MR. WAGGONNER: Mr. Chairman, I appeal the ruling of the Chair.

THE CHAIRMAN: The question is, Shall the decision of the Chair stand as rendered?

The question was taken; and on a division (demanded by Mr. Williams) there were—ayes 139, noes 101.

The decision of the Chair was sustained.

MR. WILLIAMS: Mr. Chairman, I move that the Committee do now rise, and on that I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Celler and Mr. Williams.

The Committee again divided, and the tellers reported that there were—ayes 168, noes 144.

So the motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. Bolling, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 14765) to assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes, had come to no resolution thereon.

THE SPEAKER: The Chair recognizes the gentleman from Mississippi.

MR. WILLIAMS: Mr. Speaker, the House resolved itself into the Committee of the Whole House on the State of the Union a moment ago. When the question was put by the Chair, I was on my feet seeking recognition for the purpose of offering a point of order against consideration of the legislation. Although I shouted rather loudly, apparently the Chair did not hear me. Since the Committee proceeded to go into the Committee of the Whole, I would like to know, Mr. Speaker, if the point of order which I had intended to offer can be offered now in the House against the consideration of the bill; and, Mr. Speaker, I make such a point of order and ask that I be heard on the point of order.

THE SPEAKER: The Chair will state that the Chair did not hear the gentleman make his point of order. There was too much noise. Under the circumstances the Chair will entertain the point of order.

Chairman of Committee of the Whole Does Not Rule on House Procedure

§ 1.46 The Speaker, and not the Chairman of the Committee of the Whole, rules on the propriety of amendments included in a motion to recommit with instructions.

On July 28, 1983,[3] during consideration of H.R. 2760, a bill pro-

3. 129 CONG. REC. 21471, 98th Cong. 1st Sess.

hibiting covert assistance to Nicaragua in 1983, Chairman William H. Natcher, of Kentucky, responding to a parliamentary inquiry, stated:

> The Chair would advise the gentleman that the rule does not protect such a motion to recommit, but that would be up to the Speaker when we go back into the House to answer that question specifically.

Points of Order Against Committee Procedure

§ 1.47 A point of order that a measure was reported from a committee in violation of a committee rule requiring advance notice of the committee meeting will not lie in the House—the interpretation of committee rules being with the cognizance of the committee.

On Oct. 12, 1978,[4] Mr. Bolling filed a privileged report emanating from the Committee on Rules. Mr. Bauman, a member of that committee, complained about the procedure used in the Committee on Rules in ordering the resolution reported.

> Mr. Bolling, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1769) on the resolution (H. Res. 1426) providing for the consideration of reports from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.
>
> MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I do not think the gentleman from Missouri has properly filed his report. The resolution was considered this morning in the Rules Committee with no agenda, no notice. It was the intention of the gentleman from Maryland to move to reconsider this resolution. Now, it is jammed through here when we have been in session in the Rules Committee for only 15 minutes.
>
> I think the members of the Rules Committee deserve something better than that. I question whether a quorum was even present.
>
> THE SPEAKER:[5] The report has been filed.
>
> MR. BAUMAN: I make a point of order that a quorum was not present in the Rules Committee at the time the action was taken.
>
> MR. [RICHARD] BOLLING [of Missouri]: If the gentleman will yield——
>
> MR. BAUMAN: I do not have the floor.
>
> THE SPEAKER: The Chair will recognize the gentleman from Missouri.
>
> MR. BOLLING: Mr. Speaker, there was a quorum present. The vote was perfectly proper. No objection was heard, and I filed the report.
>
> MR. BAUMAN: And there was no notice given, as the rules of the Rules Committee require, of that proposed action.
>
> THE SPEAKER: Is the gentleman addressing the Chair?
>
> MR. BAUMAN: Mr. Speaker, the gentleman is addressing the gentleman

4. 124 CONG. REC. 36382, 95th Cong. 2d Sess.

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

from Missouri, who filed this; through the Chair.

THE SPEAKER: Well, as far as notice is concerned, that is a matter of the interpretation of the rules of the Rules Committee, to be raised within the committee and not in the House.

—*May Be Raised in House Only if Improperly Disposed of in Committee*

§ 1.48 Certain points of order based on procedures in committees retain viability in the House only if first raised and improperly disposed of in committee; and the Speaker Pro Tempore has advised that a point of order that a bill was reported to the House without a majority of the committee actually being present does not lie in the House unless made in committee in a timely manner and improperly disposed of therein.

On Aug. 10, 1994,[6] the Speaker was about to declare the House resolved into the Committee of the Whole for the consideration of a pending measure. A Member pressed a parliamentary inquiry, pointing out that the report accompanying the bill stated that a quorum was present when the bill was ordered reported from the committee. The Member then averred that the facts were to the contrary and that committee records disputed the assertion in the report. The proceedings are carried here in full (after a special order providing for consideration of the bill had been adopted).

PARLIAMENTARY INQUIRY

MR. [DAVID] DREIER [of California]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[7] The gentleman will state it.

MR. DREIER: Mr. Speaker, House rule XI, in clause (l)(2)(A) reads: "No measure or recommendation shall be reported from any committee unless a majority of the committee was actually present, which shall be deemed the case if the records of the committee establish that a majority of the committee responded on a rollcall vote on that question."

Mr. Speaker, I realize that the rule goes on to say a point of order will lie in the House that a quorum was not present unless it was first made in the committee.

But my question is this: If the records of the committee show a quorum was not present on a rollcall vote to report a measure, can a committee still claim in its report that a quorum was present?

THE SPEAKER PRO TEMPORE: The gentleman has correctly stated the rule.

MR. DREIER: I know I have correctly stated the rule. I wonder if the com-

6. 140 CONG. REC. P. _____, 103d Cong. 2d Sess.

7. José E. Serrano (N.Y.).

mittee can still claim in its report that a quorum was present?

THE SPEAKER PRO TEMPORE: The Chair is giving the gentleman credit for stating the rule properly. In response to the gentleman's first inquiry, the Chair would state that, while it may not be accurate or proper for a committee to state in its report that a quorum was present if its records show a quorum was not actually present, that is an issue which must first be raised and preserved in the committee by a committee member for a point of order to survive in the House.

MR. DREIER: Mr. Speaker, continuing my parliamentary inquiry, can a committee report a measure without a quorum being present, even when there is a rollcall vote, or must the committee then utilize a rolling quorum until an actual majority of the members respond to their names?

THE SPEAKER PRO TEMPORE: In response to the gentleman's second inquiry, the Chair would state that if a point of no quorum is raised by a committee member when the measure is ordered reported, then the chairman of the committee must either await the appearance of a quorum if there is not to be a rollcall vote, or a rollcall vote must reveal a majority of the committee having responded at some point in time before the measure is ordered reported.

MR. DREIER: Mr. Speaker, if I could pose one final question on my parliamentary inquiry, if a committee can order a measure reported with less than a majority being present, can the committee report a bill with just the chairman present as long as he does not make a point of order against himself?

THE SPEAKER PRO TEMPORE: In response to the third inquiry, the Chair would state that it would be the responsibility of any and all committee members, at a properly convened meeting of the committee, to remain available to assure that at the time the measure is ordered reported a point of order is made that a quorum is not present in order to preserve that point of order in the House.

MR. DREIER: Mr. Speaker, I thank the Chair for that very cogent explanation.

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 514 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4822.

Timing of Point of Order Against Sufficiency of Committee Report

§ 1.49 Responding to a parliamentary inquiry, the Chair indicated that the proper time to raise a point of order against deficiencies in a committee report would be pending the Speaker's declaration that the House resolve itself into Committee of the Whole for consideration of the measure reported.

The rules of the House prescribe that certain information relating to the committee process leading up to the filing of a committee re-

port be set out in the report. Failure to include such information may subject the report to a point of order.

Inquiries relating to the proper time to make a point of order of deficiencies in a committee report were directed to the Speaker on Jan. 19, 1995,[8] pending the consideration of H.R. 5, the Unfunded Mandate Reform Act of 1995.

PARLIAMENTARY INQUIRIES

MR. [PAUL E.] KANJORSKI [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:[9] The gentleman will state it.

MR. KANJORSKI: Mr. Speaker, as I understand the new rule in clause 2(l)(2)(B) of rule XI, adopted on January 4 of this year as the new rules of the House, each committee report must accurately reflect all rollcall votes on amendments in committee; is that correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. KANJORSKI: Mr. Speaker, as a further parliamentary inquiry, the report accompanying H.R. 5, as reported from the Committee on Government Reform and Oversight, House Report 104–1, part 2, lists many rollcall votes on amendments. On amendment 6, the report states that the committee defeated the amendment by a rollcall vote of 14 yes and 22 no. However, the tally sheet shows 35 members voting "aye" and 1 member voting "nay."

Mr. Speaker, would a point of order under clause 2(l)(2)(B) of rule XI apply?

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, the gentleman is correct.

MR. KANJORSKI: Mr. Speaker, if that were the case, it is clear that this bill could not proceed under its present rule; is that correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct, if it is an error on behalf of the committee. If it is a printing error. That would be a technical problem which would not be sustained in the point of order.

MR. KANJORSKI: Mr. Speaker, I am not going to insist or raise a point of order. However, I bring this to the attention of the Chair and to my colleagues on the other side. Some of the hesitancy to proceed as quickly as we are proceeding on this bill and others that are part of the Contract With America is the fear on the minority side that this haste may bring waste, that speed may bring poor legislation. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania has been recognized for the purpose of a parliamentary inquiry. The gentleman may continue regarding the inquiry. . . .

MRS. [CAROLYN B.] MALONEY [of New York]: Mr. Speaker, this was my amendment, and it is a printing record error. The Republicans voted against exempting the most vulnerable citizens in our society, children, that cannot vote, cannot speak for themselves in the unfunded mandates bill. But it is a

8. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

9. Steve Gunderson (Wis.).

printing error. They did not vote for it. . . .

MRS. [CARDISS] COLLINS of Illinois: A parliamentary inquiry, Mr. Speaker.

Mr. Speaker, under clause 2(j)(1) of rule XI it states "Whenever any hearing is conducted by any committee upon any measure or matter, the minority party members on the committee shall be entitled, upon request to the chairman by a majority of them before completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least 1 day of hearing thereon."

Mr. Speaker, the Committee on Government Reform and Oversight is the committee of original jurisdiction on this bill. On January 10, the Committee on Government Reform and Oversight began its markup on H.R. 5.

MR. [DAVID] DREIER [of California]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: There is a parliamentary inquiry before the House at the present time. . . .

MRS. COLLINS of Illinois: After two opening statements, the chairman of the committee invited a member of the majority party who was not a member of the committee to testify before the committee. At the conclusion of his testimony, the witness thanked the chairman of the committee for holding the hearing.

Mr. Speaker, minority members of the committee protested in a timely fashion. No opportunity was given to Members on our side of the aisle to question the witness. Democrats requested that an additional formal hearing be conducted on this measure so that their witnesses could be called. That request was denied and the minority was told that the only procedure allowed would be to continue the full committee markup of the bill. Efforts on the part of the minority members to raise questions over possible violations of House rules were dismissed by the chairman.

Mr. Speaker, in my view, allowing a Member not on the committee to testify changed the meeting from a straight markup to a hearing.

It is true that in many committee markups the majority requests the presence of certain experts, usually administration officials or committee staff, to answer questions about the interpretation or effect of different proposals.

The Member's appearance before the committee, the Member who is not a member of the committee, was not like that. Questions were not put to him. He provided a statement and read his testimony in the way any witness testifies at any hearing.

Mr. Speaker, we do not protest the presence of Members not on the committee at the markup and hearing. Our complaint is that we were denied the opportunity to ask questions and to call our own witnesses, as we were entitled to do under the rules.

The only remedy, Mr. Speaker, is a point of order at this stage of deliberation.

Is it correct that I would be required to raise a point of order, Mr. Speaker, when the committee resolves itself into the Committee of the Whole?

THE SPEAKER PRO TEMPORE: If the gentlewoman insists on her point of order, that point of order would be timely at this point in the process.

MRS. COLLINS of Illinois: Thank you, Mr. Speaker. However, because, Mr. Speaker, I do not want to engage in any kind of dilatory tactics, such as I have heard before in the 103d Congress and previous Congresses, I will not insist upon a point of order at this time.

THE SPEAKER PRO TEMPORE: Does the gentlewoman seek a response from the Chair regarding the inquiry?

MRS. COLLINS of Illinois. Not at this time, Mr. Speaker. I think I have made my point.

Point of Order Against Words Used in Debate

§ 1.50 A point of order may not be made or reserved against remarks delivered in debate after subsequent debate has intervened, the proper remedy being a demand that words be taken down as soon as they are uttered.

On Aug. 20, 1980,[10] a brief exchange relating to the procedure for "taking down words" occurred during the five-minute debate on the Treasury, Postal Service, and general government appropriations, 1981. The exchange between Mr. Robert K. Dornan, of California, and Mr. Henry A. Waxman, of California, followed a contentious amendment offered and then withdrawn by Mr. Dornan. Both the prior statement by Mr. Dornan, the Chair's admonition about referring, even indirectly, to a member of the Senate, and the exchange at issue are carried below.

(By unanimous consent, Mr. Dornan was allowed to proceed for 3 additional minutes.)

MR. DORNAN: I want to repeat that line, listen to it well, every Member of this body. . . .

He tells me there is a criminal investigation of the elected Federal official and that I cannot question this prisoner about this particular elected official. Then lo and behold, 2 days after I confront this elected Federal official in his office, he is on an airplane with Justice Department help, and he gets to see the felon. . . .

. . . The FEC never asked for the proof. It was all on supposition, on the word of this felon, sitting in the former General Counsel's office, the office of William Oldaker, and "the elected Federal official." . . .

(By unanimous consent, Mr. Dornan was allowed to proceed for 1 additional minute.)

THE CHAIRMAN:[11] The gentleman from California (Mr. Dornan) has also asked unanimous consent to withdraw his amendment.

Is there objection to the request of the gentleman from California?

MR. [RONNIE G.] FLIPPO [of Alabama]: Reserving the right to object, if I might reserve the right to object and I shall not object, the gentleman is making some statements in regard to

10. 126 CONG. REC. 22151–54, 96th Cong. 2d Sess.

11. Richardson Preyer (N.C.).

his opinion of the Federal court's action on the matter regarding Alabama, and he is speaking with great conviction. I wonder if the gentleman has been following the trials taking place in Alabama in regard to this matter. I wish the gentleman would refrain from referring to the Senator from Alabama, and give the Senator an opportunity to do what he needs to do to explain the situations. He does not need to be tried by the Jack Andersons of this world. We have a proper court procedure and a way to proceed in that regard.

I would hope that the gentleman would refrain from bringing up the name of any official from Alabama, or any other State official's name up, in a manner that would tend to encourage people to believe that they had done something wrong, when no such thing exists or it has not been proven in a court of law. I know the gentleman's high regard for court proceedings.

MR. DORNAN: If the gentleman will yield, I believe I have discovered a major coverup; a terribly inept, if not illegal obstruction of justice by Justice Department people assigned to the fair State of Alabama. I gave the Senator mentioned before a face-to-face opportunity, alone in his office, to explain his involvement but he would not do so.

MR. FLIPPO. Mr. Chairman, I ask that the gentleman's words be taken down.

THE CHAIRMAN: The gentleman may not refer to Members of the other body.

MR. FLIPPO: Mr. Chairman, I would ask that the gentleman's words be taken down.

I will yield to what the gentleman wants, then.

THE CHAIRMAN: The Chair will state to the gentleman from California (Mr. Dornan) that under the rules of the House it is not in order to refer to Members of the other body and in the light of that the Chair would ask the gentleman from California if he wishes to withdraw his remarks concerning the Member of the other body.

MR. DORNAN: Mr. Chairman, as of about a year-and-a-half ago, video tape records of House proceedings have been made. Taking that into consideration I will accede to the Chair's suggestion and remove all statements in the written Record pertaining to Members of the other body.

THE CHAIRMAN: The gentleman will proceed. The gentleman has agreed to remove all the statements in question from the Record. . . .

Does the gentleman from Alabama still reserve his point of order?

MR. FLIPPO: Mr. Chairman, I no longer reserve the right to object. . . .

MR. WAXMAN: Mr. Chairman, and my colleagues, I am not familiar with the allegations being made. This amendment has been offered for the purpose of our colleague using the time of the House of Representatives to engage in a good number of accusations attacking the integrity of men in public office and those who would seek to be in public office and those who have assisted them. The gentleman may be absolutely correct; I just do not know. It does, however, seem to me quite curious to have an amendment offered for the sole purpose of using the time of the House to air all these accusations. If there are accusations of serious moment they ought to be brought to the proper authorities: the law en-

forcement authorities, if a crime is committed; the Federal Election Commission which has jurisdiction over the questions of violations of the law should that be involved.

Mr. Chairman, I just wanted to take this opportunity to say this strikes me as curious and gives me a great deal of hesitancy to see that an amendment would be offered solely for the purpose of discussing other matters than what is proposed in the amendment and that relates to the gentleman's campaign for reelection. . . .

MR. DORNAN: Mr. Chairman, I thank the gentleman for his additions.

THE CHAIRMAN: Is there objection to the request of the gentleman from California (Mr. Dornan) to withdraw his amendment? If not, the amendment is withdrawn.

MR. DORNAN: Mr. Chairman, I reserve a point of order.

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

MR. DORNAN: Mr. Chairman, I reserve a point of order in opposition to the Member's words against me.

To suggest that someone's remarks are demagogic is impugning the motives of that Member. I could have had my good colleague's words taken down. I reserve the point of order, but add that I am emotionally concerned about a 1-year coverup by the Federal officials who are charged with investigating these matters here. Please have some sympathy, if not empathy, for my position. That is why I do not mind your initial and quick analysis of my motives here. It is understandable, but wrong.

MR. WAXMAN: Will the gentleman yield?

MR. DORNAN: I will be glad to yield.

THE CHAIRMAN: The gentleman has no standing to raise the point of order at this point. Debate has intervened. There is no other amendment before the Committee, and the Chair will ask the Clerk to read.

The Clerk read as follows: . . .

Speaker's Responsibility To Rule on Questions of Privilege of the House Under Rule IX

§ 1.51 It is the duty of the Speaker to decide whether a resolution offered as privileged qualifies for the special privileged status bestowed by Rule IX on questions of "privilege of the House" and he may rule on this question without awaiting a point of order from the floor.

On Jan. 23, 1984,[12] Mr. William E. Dannemeyer, of California, rose to a question of privilege of the House and offered a resolution. The Speaker[13] asked the gentleman why he thought the resolution qualified for that special status under Rule IX, listened to the presentation, and then ruled that the resolution, since it was in effect a change in House rules, did not qualify. The resolu-

12. 130 CONG. REC. 78, 98th Cong. 2d Sess.

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

tion, the arguments, and the ruling are carried herein.

THE SPEAKER: The Chair had intended to recognize Members for 1-minute speeches at this time, unless the gentleman has a question of privilege.

MR. DANNEMEYER: Mr. Speaker, I raise a question of the privileges of the House, and I offer a privileged resolution (H. Res. 390) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 390

Resolved, That effective 30 days after the adoption of this resolution, each Standing and Select Committee of the House, except for the Committee on Standards of Official Conduct, shall be constituted in a ratio which is proportionate to the membership of the two political parties in the House as a whole; and each subcommittee thereof shall also be so constituted; and insofar as practicable, the staffs of each Committee shall also reflect these same ratios.

THE SPEAKER: The gentleman from California has been kind enough to advise the Chair that he was going to offer this resolution as a question of privilege at the appropriate time, and now is the appropriate time.

Would the gentleman state why he feels the resolution constitutes a question of privilege?

MR. DANNEMEYER: I would be happy to, Mr. Speaker. It has long been recognized that the integrity of the proceedings by which bills are considered is a matter of privilege. (Hinds' Precedents III, 2597–2601, 2614; and IV, 3383, 3388, 3478).

I especially draw the Chair's attention to III, 2602 and III, 2603 which show that error or obstruction of minority views are matters of privilege. In the first instance, in the year 1880, it was held that the matter of correcting the reference of a public bill presented a question of privilege at a time when there was not any other means of correction provided for in the rules. The point was made on the floor that this matter was one involving the integrity of the proceedings of the House and as such was privileged.

In the next reference, a charge investigated in 1863 as a question of privilege was "the charge that the minority views of a committee had been abstracted from the Clerk's office by a Member * * *." Both of these precedents indicate that it is a longstanding matter that the minority is granted its "day in court" on questions such as these which are questions impacting on the integrity of the proceedings of the House. And further, these questions indicate that it is the process by which legislation is developed which affects the integrity of the proceedings of the House. I submit that the disproportional ratio of committee membership and staffing even more profoundly impacts on the process by which legislation is developed and that there is no question that my resolution involves a question of privilege.

Some might argue that my resolution does not fall within the ambit of privilege because they would say it is a motion to amend the rules of the House or would "effect a change in the rules of the House of their interpretation." (Ruling by Speaker O'Neill, Dec. 7, 1977, pp. 38470–73.) However, upon close examination the Chair will find

that my resolution is indeed a question of privilege and that the December 7, 1977, ruling does not apply here.

My resolution does not amend the rules of the House because the practice we are attempting to change is not a rule. It is a custom—a longstanding custom of the majority party that suppresses the legitimate representation of the rights of the minority. I have been unable to find—and I challenge any Member of the House to show me where in the House rules it says the ratio in the Rules Committee, for example, shall be nine majority and four minority. It is certainly not in rules X and XI which set forth the establishment and conduct of committees.

The first and only mention of this ratio appears in official records of the House when the committee assignments are made by the Democratic Caucus or the Republican Conference after the Speaker has notified the Republican leader of the number of party vacancies on each of the several committees.

Mr. Speaker, my resolution is not effecting a change in the rules. I am simply attempting to change the arbitrary political policy of the House—an arbitrary custom which indeed adversely affects the integrity of the proceedings of the House.

THE SPEAKER: The Chair knows it is the duty of the Chair to preside and to determine questions of privilege.

Under the precedents of the House cited on page 329 of the House Rules and Manual, a question of the privileges of the House may not be invoked to effect a change in the rules of the House or their interpretation. The gentleman from California contends that the resolution which he has presented addresses not a specific standing rule of the House, but the customs and traditions of the House, and is thus not to be governed by the precedents in the manual.

In the opinion of the Chair, the resolution does constitute a change in the rules of the House, by imposing a direction that the composition of all standing committees be changed within 30 days. The rules of the House do address the question of the procedure by which full committee membership and staff selections are to be accomplished. As indicated on page 399 of the manual, rule X, clause 6, the respective party caucus and conference perform an essential role in presenting privileged resolutions to the House, both at the commencement of a Congress and subsequently to fill vacancies. Because the issue of committee ratios can be properly presented to the House in a privileged manner by direction of the party conference or caucus, and because rule XI, clause 6, establishes a procedure for selection of permanent committee professional and clerical staff, the Chair rules that the resolution constitutes an attempt to change procedures established under the rules of the House and does not therefore present a question of the privileges of the House.

MR. DANNEMEYER: I thank the Speaker.

§ 1.52 On his own volition, without a question from the floor, the Speaker ruled that a motion offered in the House to correct the Record, no allegation being made

that the integrity of the proceedings of the House were involved, failed to qualify as a question of privilege under Rule IX. An appeal from his decision was tabled.

The proceedings of Apr. 25, 1985,[14] offer another illustration of the Chair's responsibility under Rule IX to qualify motions or resolutions as questions of "privilege of the House."

MR. [VIN] WEBER [of Minnesota]: Mr. Speaker, I offer a privileged motion.

The Clerk read as follows:

Motion offered by Mr. Weber: Mr. Weber moves to correct the Congressional Record by striking out on page 2281 the remarks beginning with the words "We" down to and including the word "confederation" and inserting the word "are" before "a".

THE SPEAKER PRO TEMPORE:[15] The Chair does not believe the motion as offered by the gentleman states a question of privilege.

MR. WEBER: Mr. Speaker, I appeal the ruling of the Chair.

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I move to lay the appeal on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion to lay on the table offered by the gentleman from Washington [Mr. Foley].

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

MR. WEBER: 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 200, nays 156, answered "present" 1, not voting 76. . . .

The Chair Rules Whether a Resolution States a Question of Privilege Under Rule IX and No Longer Submits the Question to the House

§ 1.53 Although an earlier practice in the House was for the Speaker to submit the question of whether a resolution raised a question of privilege, the Speaker now rules directly on such matters without waiting for a point of order from the floor.

On Feb. 7, 1995,[16] Mr. Gene Taylor, of Mississippi, offered a resolution alleging unconstitutional actions on the part of the President. House Resolution 57 was directed to the Comptroller General and demanded an accounting of certain public funds. The resolution, the Chair's ruling, and a portion of the colloquy which followed are carried here.

MR. TAYLOR of Mississippi: Mr. Speaker, I would like to use this 1 minute to inform my colleagues that

14. 131 CONG. REC. 9419, 99th Cong. 1st Sess.

15. Tommy Robinson (Ark.).

16. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

within a matter of minutes this House will be given the privilege that the President of the United States did not give us; and that is, to decide for ourselves whether or not we thought the Mexican bailout was a good idea.

The privileged motion that will be before the House in just a few minutes is to require the comptroller general to tell us if the law was obeyed when the President used $20 billion from the stabilization fund to bail out Mexico. . . .

ENSURING EXECUTIVE BRANCH ACCOUNTABILITY TO THE HOUSE IN EXPENDITURE OF PUBLIC MONEY

MR. TAYLOR of Mississippi: Mr. Speaker, I offer a privileged resolution (H. Res. 57) to preserve the constitutional role of the House of Representatives to provide for the expenditure of public money and ensure that the executive branch of the U.S. Government remains accountable to the House of Representatives for each expenditure of public money, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 57

Whereas rule IX of the Rules of the House of Representatives provides that questions of privilege shall arise whenever the rights of the House collectively are affected;

Whereas, under the precedents, customs, and traditions of the House pursuant to rule IX, a question of privilege has arisen in cases involving the constitutional prerogatives of the House;

Whereas section 8 of Article I of the Constitution vests in Congress the power to "coin money, regulate the value thereof, and of foreign coins"; Whereas section 9 of Article I of the Constitution provides that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law"; . . .

Whereas the obligation or expenditure of funds by the President without consideration by the House of Representatives of legislation to make appropriated funds available for obligation or expenditure in the manner proposed by the President raises grave questions concerning the prerogatives of the House and the integrity of the proceedings of the House; . . .

Whereas the commitment of $20,000,000,000 of the resources of the exchange stabilization fund to Mexico by the President without congressional approval may jeopardize the ability of the fund to fulfill its statutory purposes: Now, therefore, be it

Resolved, That the Comptroller General of the United States shall prepare and transmit, within 7 days after the adoption of this resolution, a report to the House of Representatives containing the following:

(1) The opinion of the Comptroller General on whether any of the proposed actions of the President, as announced on January 31, 1995, to strengthen the Mexican peso and support economic stability in Mexico requires congressional authorization or appropriation. . . .

THE SPEAKER:[17] Does the gentleman from Mississippi [Mr. Taylor] wish to be heard briefly on whether the resolution constitutes a question of privilege?

MR. TAYLOR of Mississippi: Yes, Mr. Speaker.

Mr. Speaker, in the past few days a dozen Members of Congress, ranking

17. Newt Gingrich (Ga.).

from people on the ideological right, like the gentleman from Kentucky [Mr. Bunning] and the gentleman from California [Mr. Hunter], all the way to people on the ideological left, like the gentleman from Vermont [Mr. Sanders], have asked the question of whether or not the role of Congress has been shortchanged in the decision by the President to use this fund to guarantee the loans to Mexico. . . .

One provision of our Nation's Constitution that is most clearly mandatory in nature is article I, section 9, clause 7. It states, "No money shall be drawn from the Treasury but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Mr. Speaker, this Congress cannot stand idly by and avoid our constitutional duty, a duty mandatory in nature.

I request that the Chair rule immediately on this resolution, and in making that ruling abide by section 664 of rule IX, General Principles, as to precedents of question and privilege.

Once again, it states that "Certain matters of business arising under the provisions of the Constitution mandatory in nature have been held to have a privilege which has superseded the rules establishing the order of business." . . .

Mr. Speaker, since there were a dozen cosponsors of this resolution, each of us with an equal input, I would like the Chair to oblige those other Members who would like to speak on the matter.

THE SPEAKER: The Chair is willing to hear other Members. The Chair recognizes the gentlewoman from Ohio [Ms. Kaptur].

MS. [MARCY] KAPTUR [of Ohio]: Mr. Speaker, I rise as an original sponsor of this legislation and in full support of our bipartisan efforts to get a vote on this very serious matter. Our resolution is very straightforward in attempting to reassert our rightful authority under the Constitution of the United States. . . .

We believe that this is a question of privilege of the House because of the constitutional role of the House of Representatives to provide for the expenditure of public money and ensure that the executive branch of the U.S. Government remains accountable to the House for each such expenditure of public money. . . .

THE SPEAKER: Having heard now from five Members, the Chair is prepared to rule on this. The Chair would first of all point out that the question before the House right now is not a matter of the wisdom of assistance to Mexico, nor is the question before the House right now a question of whether or not the Congress should act, nor is what is before the House a question of whether or not this would be an appropriate topic for committee hearings, for legislative markup, and bills to be reported.

What is before the House at the moment is a very narrow question of whether or not the resolution offered by the gentleman from Mississippi [Mr. Taylor] is a question of privilege. On that the Chair is prepared to rule.

The privileges of the House have been held to include questions relating to the constitutional prerogatives of the House with respect to revenue leg-

islation, clause 1, section 1, article I of the Constitution, with respect to impeachment and matters incidental, and with respect to matters relating to the return of a bill to the House under a Presidential veto.

Questions of the privileges of the House must meet the standards of rule IX. Those standards address privileges of the House as a House, not those of Congress as a legislative branch.

As to whether a question of the privileges of the House may be raised simply by invoking one of the legislative powers enumerated in section 8 of article I of the Constitution or the general legislative "power of the purse" in the seventh original clause of section 9 of that article, the Chair finds helpful guidance in the landmark precedent of May 6, 1921, which is recorded in Cannon's Precedents at volume 6, section 48. On that occasion, the Speaker was required to decide whether a resolution purportedly submitted in compliance with a mandatory provision of the Constitution, section 2 of the 14th amendment, relating to apportionment, constituted a question of the privileges of the House.

Speaker Gillett held that the resolution did not involve a question of privilege. . . .

The House Rules and Manual notes that under an earlier practice of the House, certain measures responding to mandatory provisions of the Constitution were held privileged and allowed to supersede the rules establishing the order of business. Examples included the census and apportionment measures mentioned by Speaker Gillett. But under later decisions, exemplified by Speaker Gillett's in 1921, matters that have no other basis in the Constitution or in the rules on which to qualify as questions of the privileges of the House have been held not to constitute the same. The effect of those decisions has been to require that all questions of privilege qualify within the meaning of rule IX.

The ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules of the House, without necessarily being accorded precedence as questions of the privileges of the House. . . .

The Chair will continue today to adhere to the same principles enunciated by Speaker Gillett. The Chair holds that neither the enumeration in the fifth clause of section 8 of article I of the Constitution of Congressional Powers "to coin money, regulate the value thereof, and of foreign coins," nor the prohibition in the seventh original clause of section 9 of that article of any withdrawal from the Treasury except by enactment of an appropriation, renders a measure purporting to exercise or limit the exercise of those powers a question of the privileges of the House. . . .

It bears repeating that questions of privileges of the House are governed by rule IX and that rule IX is not concerned with the privileges of the Congress, as a legislative branch, but only with the privileges of the House, as a House.

The Chair holds that the resolution offered by the gentleman from Mississippi does not affect "the rights of the House collectively, its safety, dignity, or the integrity of its proceedings" within the meaning of clause 1 of rule IX. Although it may address the aspect

of legislative power under the Constitution, it does not involve a constitutional privilege of the House. Were the Chair to rule otherwise, then any alleged infringement by the executive branch, even, for example, through the regulatory process, on a legislative power conferred on Congress by the Constitution would give rise to a question of the privileges of the House. In the words of Speaker Gillett, "no one Member ought to have the right to determine when it should come in in preference to the regular rules of the House." . . .

MR. TAYLOR of Mississippi: Mr. Speaker, I would also like to point out that the original custom of this body was to present any question of a privilege of the House to the Members and let the Members decide whether they felt it was a privilege of the House that was being violated. Is the Speaker willing to grant the Members of this House that same privilege?

THE SPEAKER: The Chair would simply note that the Chair is following precedent as has been established over the last 70 years and that that precedent seems to be more than adequate. And in that context, the Chair has ruled this does not meet the test for a question of privilege.

MR. TAYLOR of Mississippi: Mr. Speaker, a further parliamentary inquiry: What is the procedure for——

THE SPEAKER: The only appropriate procedure, if the gentleman feels that the precedents are wrong, would be to appeal the ruling of the Chair and allow the House to decide whether or not to set a new precedent by overruling the Speaker.

MR. TAYLOR of Mississippi: Mr. Speaker, I appeal the ruling of the Chair, and I would like Members of Congress to be granted the 1 hour that the House rules allow for to speak on this matter.

PREFERENTIAL MOTION OFFERED BY MR. ARMEY

MR. [RICHARD K.] ARMEY [of Texas]: Mr. Speaker, I offer a preferential motion.

THE SPEAKER: The Clerk will report the preferential motion.

The Clerk read as follows:

> Mr. Armey moves to lay on the table the appeal of the ruling of the Chair.

PARLIAMENTARY INQUIRY

MS. KAPTUR: I have a parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentlewoman will state the parliamentary inquiry.

MS. KAPTUR: Mr. Speaker, am I correct in understanding that the motion to table this appeal is not debatable?

THE SPEAKER: The gentlewoman is correct.

MS. KAPTUR: And thus, Mr. Speaker, Members of Congress will be deprived by this vote without any type of a debate on the authority vested in our constitutional rights to vote on this issue?

THE SPEAKER: The Chair would say to the gentlewoman that the motion is not debatable.

The question is on the preferential motion offered by the gentleman from Texas [Mr. Armey].

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

MR. TAYLOR of Mississippi: 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: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

This vote will be 17 minutes total.

The vote was taken by electronic device, and there were—yeas 288, nays 143, not voting 3, as follows: . . .

So the motion to lay on the table the appeal of the ruling of the Chair was agreed to.

Floor Manager of Bill May Press Point of Order Against His Own Bill

§ 1.54 Instance where the manager of a general appropriation bill made (on behalf of another) and then conceded a point of order against a paragraph of his own bill.

On June 18, 1993,[18] during consideration of the Treasury-Postal appropriation bill, fiscal 1994, the bill manager made a point of order against a provision therein, honoring a commitment he had made to an absent colleague.

MR. [STENY H.] HOYER [of Maryland]: Mr. Chairman, I have a point of order.

THE CHAIRMAN:[19] The gentleman will state his point of order.

MR. HOYER: Mr. Chairman, I raise a point of order against the language beginning with the words, "Provided further," on page 17, line 2, through the word "Code," on line 5.

Mr. Chairman, I raise the point of order on behalf of the gentleman from Missouri [Mr. Clay], the chairman of the Committee on Post Office and Civil Service, pursuant to the colloquy that just occurred with the gentleman from Virginia [Mr. Wolf] who is the sponsor of this amendment and which is included in our bill.

The language in fact constitutes legislation on an appropriation bill and we, therefore, concede the point that would be made by the chairman that it violates clause 2 of rule XXI.

THE CHAIRMAN: Does any other Member wish to be heard on the point of order?

If not, for the reasons stated, and because the point of order was not waived by the rule, the point of order is sustained and the language is stricken.

Bill Manager's Motivation in Making Points of Order

§ 1.55 Motivation for raising points of order against provisions in a bill are varied; and the manager of a bill has pressed points of order against his own bill to expedite its consideration.

On Sept. 30, 1993,[20] Mr. John P. Murtha, of Pennsylvania,

18. 139 CONG. REC. 13364, 13365, 103d Cong. 1st Sess.

19. Gerry E. Studds (Mass.).

20. 139 CONG. REC. 23110, 23123, 103d Cong. 1st Sess.

Chairman of the Defense Subcommittee of the Committee on Appropriations, raised points of order against vulnerable provisions in his own bill where their inclusion was opposed by the Chairman of the committee having jurisdiction over the "legislative provisions" in the bill.

[The following paragraph was reached in the reading.]

GLOBAL COOPERATIVE INITIATIVES, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For support of Department of Defense responses to national and international natural disasters and the expenses of other global disaster relief activities of the Department of Defense; . . . *Provided further*, That none of the funds appropriated under this heading shall be obligated or expended for costs incurred by United States Armed Forces in carrying out any international humanitarian assistance, peacekeeping, peacemaking or peace-enforcing operation unless, at least fifteen days before approving such operation, the President notifies the Committees on Appropriations and Armed Services of each House of Congress in accordance with established reprogramming procedures: *Provided further*, That any such notification shall specify—

(1) the estimated cost of the operation;

(2) whether the method by which the President proposes to pay for the operation will require supplemental appropriations, or payments from international organizations, foreign countries, or other donors;

(3) the anticipated duration and scope of the operation;

(4) the goals of the operation; and . . .

MR. MURTHA: Mr. Chairman, I ask unanimous consent that the bill, through page 125, line 19, be considered as read, printed in the Record, and open to amendment at any point.

THE CHAIRMAN:[1] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

POINTS OF ORDER

MR. MURTHA: Mr. Chairman, I have four points of order.

THE CHAIRMAN: The gentleman will state the points of order.

MR. MURTHA: Mr. Chairman, I make points of order against the following language in the bill. Beginning on page 27, line 23, through line 25;

Beginning with "Provided" on page 20, line 17, through "operations" on page 21, line 21, of the bill;

Against section 8099, beginning on page 198, line 20, through page 109, line 5; and

Against section 8113, beginning on page 114, line 3, through page 115, line 10.

These provisions give affirmative direction, impose additional duties, set aside existing law, go beyond the funding in this bill and appropriate for an unauthorized project.

This constitutes legislation in an appropriations bill and is in violation of clause 2 of rule XXI.

THE CHAIRMAN: Does the gentleman from Florida wish to be heard on the points of order?

MR. [C. W. BILL] YOUNG of Florida: Mr. Chairman, we reluctantly concede the points of order.

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1. Dan Rostenkowski (Ill.).

THE CHAIRMAN: The Chair recognizes the gentleman from Indiana [Mr. Hamilton].

MR. [LEE H.] HAMILTON [of Indiana]: Mr. Chairman, let me just express my appreciation for the consideration by the chairman in accepting these points of order. As chairman of the Committee on Foreign Affairs, I appreciate that very much.

THE CHAIRMAN: Does any other Member wish to be heard on the points of order?

If not, the points of order are conceded.

Following disposition of the points of order, Mr. Murtha asked unanimous consent to curtail debate on the remainder of the bill and amendments thereto.

Priority of Points of Order Over Debate

§ 1.56 Points of order against a paragraph in a general appropriation bill are entertained and disposed of before recognizing Members to debate the provision under pro forma amendments.

On Sept. 23, 1993,[(2)] during the reading of a general appropriation bill under the five-minute rule, a Member sought recognition to strike out the last word to debate the pending portion of the bill. Another Member wished to make a point of order. The Chair indicated that the point of order should be disposed of first.

MR. [NORMAN Y.] MINETA [of California]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN:[(3)] The gentleman will state his parliamentary inquiry.

MR. MINETA: Mr. Chairman, the fact that the Clerk has now read page 23, line 14, does this preclude me from raising a point of order if the gentleman from Ohio [Mr. Traficant] is recognized?

THE CHAIRMAN: The point of order will have to be made first.

POINT OF ORDER

MR. MINETA: Mr. Chairman, I raise a point of order on page 23, line 14.

THE CHAIRMAN: The Clerk will read the paragraph beginning on line 14.

The Clerk read as follows:

HIGHWAY PROJECT STUDIES

(HIGHWAY TRUST FUND)

For up to 80 percent of the expenses necessary for feasibility and environmental studies for certain highway and surface transportation projects and parking facilities that improve safety, reduce congestion, or otherwise improve surface transportation, $7,150,000, to be derived from the Highway Trust Fund and to remain available until September 30, 1996.

THE CHAIRMAN: For what purpose does the gentleman from California rise?

POINT OF ORDER

MR. MINETA: Mr. Chairman, I raise a point of order against the provision on page 23, lines 14 through 22.

2. 139 CONG. REC. 22177, 103d Cong. 1st Sess.

3. Rick Boucher (Va.).

This provision violates clause 2 of rule XXI because it would appropriate $7.150 million out of the highway trust fund for general feasibility and environmental studies. These studies are not authorized.

In addition, the period of funding availability until September 30, 1996, is not authorized. Thus this provision constitutes an unauthorized appropriation and is subject to a point of order.

THE CHAIRMAN: Do other Members desire to be heard on the point of order?

MR. [BOB] CARR of Michigan: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: For what purpose does the gentleman from Texas rise?

MR. [TOM] DELAY [of Texas]: Mr. Chairman, I would like to be heard on the point of order. . . .

One could argue that the request for $250,000 for this highway study is authorized. Under section 1105 of the ISTEA legislation titled "High Priority Corridors on National Highway System" U.S. Highway 59, including the portion of the highway I propose to study, has been designated a high priority corridor. Under this designation there are several interesting factual points the ISTEA legislation makes. . . .

Mr. Chairman, in my opinion, this is an authorized project, it is authorized money, and I urge the Chair to rule against the point of order.

THE CHAIRMAN: The Chair is prepared to rule.

For those reasons stated by the gentleman from California [Mr. Mineta] in making the point of order, and sustained in prior points of order, the point of order is sustained.

Where Point of Order Is Determined by Voting on Consideration; Unfunded Mandate Legislation

§ 1.57 Under the Unfunded Mandates Act, where a point of order is raised against a provision in a bill or amendment which contains such a mandate, the decision on the point of order is made by the House, by voting on a motion to consider the provision, rather than by a ruling of the Chair.

On Jan. 31, 1995,[4] the House was continuing its consideration of H.R. 5, the Unfunded Mandate Reform Act of 1995. During the consideration of title III for amendment, Mr. David Dreier, of California, offered an amendment which provided in essence that points of order under Sections 425 and 426 of the Budget Act would be disposed of by a vote, and not be dependent on a ruling by the Chair. The amendment is carried herein, along with the explanation of its proponent, Mr. Dreier.

"SEC. 425. POINT OF ORDER.

"(a) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider—

"(1) any bill or joint resolution that is reported by a committee unless the committee has published the statement of the Director pursuant to section 424(a) prior to such consideration, except that this para-

4. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

graph shall not apply to any supplemental statement prepared by the Director under section 424(a)(4); or

"(2) any bill, joint resolution, amendment, motion, or conference report that contains a Federal intergovernmental mandate having direct costs that exceed the threshold specified in section 424(a)(1)(A), or that would cause the direct costs of any other Federal intergovernmental mandate to exceed the threshold specified in section 424(a)(1)(A), unless—. . .

"SEC. 426. 5ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.

"It shall not be in order in the House of Representatives to consider a rule or order that waives the application of section 425(a): *Provided however,* That pending a point of order under section 425(a) or under this section a Member may move to waive the point of order. Such a motion shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent but, if offered in the House, shall otherwise be decided without intervening motion except a motion that the House adjourn. The adoption of a motion to waive such a point of order against consideration of a bill or joint resolution shall be considered also to waive a like point of order against an amendment made in order as original text.". . . .

SEC. 303. EXERCISE OF RULEMAKING POWERS.

The provisions of this title (except section 305) are enacted by Congress—

(1) as an exercise of the rulemaking powers of the House of Representatives and the Senate, and as such they shall be considered as part of the rules of the House of Representatives and the Senate, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of the House of Representatives and the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House of Representatives or the Senate, respectively. . . .

MR. DREIER: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dreier: In section 301, in the proposed section 425 of the Congressional Budget Act of 1974, strike subsection (d) and redesignate subsection (e) as subsection (d).

In section 301, in the proposed section 426 of the Congressional Budget Act of 1974, strike: "*Provided however,*" and all that follows through the close quotation marks.

In section 301, after such proposed section 426, add the following:

"SEC. 427. DISPOSITION OF POINTS OF ORDER.

"(a) IN GENERAL.—As disposition of points of order under section 425(a) or 426, the Chair shall put the question of consideration with respect to the proposition that is the subject of the points of order.

"(b) DEBATE AND INTERVENING MOTIONS.—A question of consideration under this section shall be debatable for 10 minutes by each Member initiating a point of order and for 10 minutes by an opponent on each point of order, but shall otherwise be decided without intervening motion except one that the House adjourn or that the Committee of the Whole rise, as the case may be.

"(c) EFFECT ON AMENDMENT IN ORDER AS ORIGINAL TEXT.—The disposition of the question of consideration under this section with respect

to a bill or joint resolution shall be considered also to determine the question of consideration under this section with respect to an amendment made in order as original text.". . . .

MR. DREIER: Mr. Chairman, during consideration of H.R. 5 in the Committee on Rules, an amendment to section 426 was adopted that creates a mechanism to allow any Member to make a motion to waive points of order against a mandate in any bill, joint resolution, amendment or conference report that does not include a CBO cost estimate or a means for paying for the mandate.

The language currently in section 426 is preferable to the language in H.R. 5 as introduced for several reasons.

First, it more directly achieves the goal of the authors of H.R. 5 to guarantee votes in the House specifically on unfunded mandates. Second, it does not place undue constraints on the legislative schedule by requiring our Committee on Rules to report two rules every time a decision is made to waive the application of section 425.

Third, it relieves some of the burden on the presiding officer when making a determination with respect to a point of order.

Since H.R. 5 was reported to the House, I have been working with the Parliamentarian and a lot of other Members have been working with the Parliamentarian on language to address two additional concerns raised by section 426. The language is contained in the amendment that I am now offering, Mr. Chairman.

First, the amendment further reduces the burden on the presiding officer to rule on points of order with respect to not only the existence of a mandate but whether the cost of the mandate exceeds the threshold of $50 million. This will be particularly troublesome in situations where a motion to waive such a point of order is not made.

Second, the amendment addresses a concern raised by a number of my colleagues on the other side of the aisle with respect to the role of the chairman of the Committee on Government Reform and Oversight in advising the Chair about the question of unfunded mandates. Under my amendment, that advice would no longer be necessary.

Essentially, Mr. Chairman, the amendment provides that whenever points of order are raised pursuant to section 425(a) or 426, the points of order shall be disposed of by a vote of the Committee of the Whole.

The question would be debatable for 20 minutes, 10 minutes by the Member initiating the point of order and 10 minutes by an opponent of the point of order. . . .

AMENDMENT OFFERED BY MR. MOAKLEY TO THE AMENDMENT OFFERED BY MR. DREIER

MR. [JOHN JOSEPH] MOAKLEY [of Massachusetts]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Moakley to the amendment offered by Mr. Dreier:

In the proposed new section 427, insert the following new subsection (a) (and redesignate the existing subsections accordingly):

"(a) In order to be cognizable by the Chair, a point of order under sec-

tion 425(a) or 426 must specify the precise language on which it is premised.". . .

MR. MOAKLEY: Mr. Chairman, the Dreier amendment is a major improvement over the text of the bill. I would, however, make one suggestion. . . .

My amendment makes the Member who is raising the point of order show exactly where the unfunded mandate exists and explain how that language constitutes a violation. . . .

MR. DREIER: Mr. Chairman, I thank the gentleman for yielding. . . .

It seems to me that on this issue the burden of proof should in fact lie with the Member raising the point of order. This is a very effective way to address that concern. I strongly support the amendment offered by the gentleman from Massachusetts [Mr. Moakley] to the amendment I have offered. The gentleman from Pennsylvania [Mr. Clinger] will be let off the hook with this amendment. . . .

MR. [WILLIAM F.] CLINGER [Jr., of Pennsylvania]: Mr. Chairman, that is precisely what I wanted to say. In the legislation presently drafted, the task of determining what was or was not an unfunded mandate would have fallen on the shoulders of the chairman of the Committee on Government Reform and Oversight, and/or perhaps the ranking member of that committee, so I certainly appreciate the fact that this is now going to ensure that this matter will be decided by the House itself. That is the appropriate place for this decision to be made. I am pleased to support the amendment.

THE CHAIRMAN:[5] The question is on the amendment offered by the gentleman from Massachusetts [Mr. Moakley] to the amendment offered by the gentleman from California [Mr. Dreier].

The amendment to the amendment was agreed to.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from California [Mr. Dreier] as amended.

The amendment, as amended, was agreed to.

§ 2. Manner of Making Point of Order

The formalities followed in making a point of order are relatively simple. Members making points of order must address the Chair and be recognized before proceeding,[6] the Member should be specific as to the language to which he objects,[7] and the Member should make clear that he is making a point of order.[8] The Chair controls debate on a point of order, and a Member recognized on a point of order may not yield to another Member for debate thereon.

Addressing the Chair

§ 2.1 Members making points of order must address the Speaker and be recognized before proceeding.

5. Bill Emerson (Mo.).

6. See § 2.1, infra.

7. See § 2.2, infra.

8. See § 2.3, infra.