§ 5. Timeliness as Against Bills or Provisions Therein

The principles governing the timeliness of points of order against bills or provisions therein and amendments are similar. Points of order against a bill are considered by the Chair prior to recognition of Members to offer amendments;[2] and a point of order against a section of a bill must be made immediately after the section is read and comes too late after an amendment to that section has been considered.[3]

On the other hand, it is not too late to make a point of order against a paragraph merely because there has been argument on a point of order against a proviso within the paragraph.[4] A point of order against a part of a paragraph or section, if sustained, results in the elimination of the whole,[5] unless it is the desire of the offeror of the point of order to limit his point to only part of the paragraph.[6]

The time for making points of order against unauthorized items or legislation in an appropriation bill is after the House has resolved itself into the Committee of the Whole and after the paragraph containing such items has been read for amendment.[7]

But points of order against appropriations in legislative bills, under Rule XXI clause 5, can be raised "at any time," which has been held to mean during consideration of that portion of the bill, or of the amendment, under the five-minute rule.[8]

A point of order against a paragraph in a general appropriation bill comes too late after the sponsor of an amendment to it is recognized to debate his amendment,[9] or after the amendment has been read and agreed to.[10] It is too late to make such points after the Clerk has begun reading the next paragraph.[11] The Chair often displays some leniency, however, to Members who missed their opportunity to raise a point of order, when such Members were on their feet seeking recognition at the appropriate time.[12]

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2. See §§ 5.1–5.8, infra.
3. See § 5.10, infra.
4. See § 5.13, infra.
5. See §§ 1.16–1.18, supra.
6. See § 1.19, supra.
7. See §§ 5.12–5.15, infra.
8. See §§ 5.28, 5.29, infra.
9. See § 5.18, infra.
10. See § 5.20, infra.
11. See § 5.21, infra.
12. See §§ 5.23, 5.24, infra.

Prior to Recognition for Amendments

§ 5.1 Points of order against a paragraph of a bill are considered by the Chairman before Members are recognized to offer amendments to that paragraph.

On June 4, 1970,[13] the Committee of the Whole had under consideration H.R. 17867, the foreign assistance appropriation for fiscal 1971.

The Clerk read as follows:

ECONOMIC ASSISTANCE

Technical assistance: For necessary expenses as authorized by law $310,000,000, distributed as follows:

(1) World-wide, $150,000,000 (section 212);

(2) Alliance for Progress, $75,000,000 (section 252(a)); and

(3) Multilateral organizations, $85,000,000 (section 302(a)), of which not less than $13,000,000 shall be available only for the United Nations Children's Fund: *Provided* That no part of this appropriation shall be used to initiate any project or activity which has not been justified to the Congress, except projects or activities relating to the reduction of population growth: *Provided further,* That the President shall seek to assure that no contribution to the United Nations Development Program authorized by the Foreign Assistance Act of 1961, as amended, shall be used for projects for economic or technical assistance to the Government of Cuba, so long as Cuba is governed by the Castro regime.

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN:[14] The gentleman will state it.

MR. ZABLOCKI: If a Member desired to raise a point of order to paragraph (3) on page 2, would he have to wait until the Clerk has read the entire title?

THE CHAIRMAN: No, he would have to wait only until the Clerk had read the paragraph carrying the language to which the gentleman wishes to make his point of order.

MR. ZABLOCKI: Mr. Chairman, I have a point of order to language appearing on page 2. The gentleman from Wisconsin was on his feet.

THE CHAIRMAN: The Clerk has read the section to which the gentleman wishes to make his point of order.

MR. [RICHARD H.] ICHORD [of Missouri]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. ICHORD: I wish to offer an amendment affecting lines 9, 10, 11, 12, 13 and 14 on page 2. Is the amendment in order at this time?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. PASSMAN: It is my understanding that the Clerk has already read that section and has even gone into a reading of the third page of the bill.

THE CHAIRMAN: The gentleman from Wisconsin was on his feet seeking rec-

13. 116 CONG. REC. 18395, 18396, 91st Cong. 2d Sess.

14. Hale Boggs (La.).

ognition, and the Chair will protect his rights.

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

THE CHAIRMAN: The gentleman from Missouri will defer offering his amendment. The Chair will hear the gentleman from Wisconsin on his point of order.

MR. ZABLOCKI: Mr. Chairman, I make the point of order that the entire proviso beginning on line 20 and ending on line 25 of page 2 is legislation in an appropriation. I am for its objectives, but in effect it simply says that the President should try to enforce existing law. The provisions in existing law, section 620 of the Foreign Assistance Act are stronger and there is no sense in this useless repetition in an appropriation.

Mr. Chairman, I make the point of order that this is legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Louisiana wish to be heard on the point of order?

MR. PASSMAN: Yes, sir, Mr. Chairman. The proviso was added by the Committee on Appropriations for the foreign assistance appropriation bill for fiscal year 1971 in order to insure that no U.S. contribution to the UNDP would be used to give any type of economical or technical assistance to Cuba as long as Cuba is governed by the Castro regime.

I would like to interpret this as a limitation on an appropriation bill and ask for a ruling.

THE CHAIRMAN: The language in question is as follows: Line 20, page 2:

> *Provided further,* That the President shall seek to assure . . .
>
> And so forth.
>
> That is obviously a directive to the President of the United States, it is not limited in application to the funds appropriated in this bill or any section thereof, and the Chair sustains the point of order.

The Chair then recognized Mr. Ichord to offer an amendment.

§ 5.2 Points of order reserved against a proposition must be disposed of before amendments thereto are in order.

On May 14, 1937,[15] it was ruled that one could not reserve a point of order and offer an amendment simultaneously.

> The Clerk read as follows: . . .
>
> MR. [GERALD J.] BOILEAU [of Wisconsin]: Mr. Chairman, I reserve the point of order against the proviso. . . .
>
> THE CHAIRMAN:[16] The time of the gentleman from Wisconsin has expired. Without objection the pro-forma amendment will be withdrawn.
>
> MR. BOILEAU: I do not withdraw my reservation to the point of order, Mr. Chairman, but I have an amendment that I desire to offer.
>
> THE CHAIRMAN: The point of order will have to be disposed of before an amendment is in order.
>
> MR. BOILEAU: I reserve the point of order, if that reservation does not continue.

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15. 81 CONG. REC. 4596, 4597, 75th Cong. 1st Sess. Under consideration was H.R. 6958, the Interior Department appropriation for 1938.

16. Jere Cooper (Tenn.).

THE CHAIRMAN: The reservation does not continue if the gentleman wants to offer an amendment.

MR. BOILEAU: It can continue by unanimous consent, can it not?

THE CHAIRMAN: The Chair thinks it is his duty to protect the bill to that extent.

MR. BOILEAU: Mr. Chairman, I withdraw the point of order.

Before Amendments Are Offered

§ 5.3 Where, by unanimous consent, an authorization bill is considered read and open to amendment at any point, points of order against possible appropriations therein, though in order "at any time," should be stated before amendments are offered.

On Oct. 3, 1962,[17] the principle was expressed that points of order should be raised before taking up amendments to a bill, although in actuality the principle was waived by unanimous consent.

MR. [JOHN A.] BLATNIK [of Minnesota]: Mr. Chairman, I ask unanimous consent that titles I and II be considered as read.

THE CHAIRMAN:[18] And open for amendment at any point?

MR. BLATNIK: Open at any point for amendment.

MR. [WILLIAM C.] CRAMER [of Florida]: Mr. Chairman, reserving the right to object, that does not preclude the right to raise points of order at any time, does it?

THE CHAIRMAN: Of course not.

Is there objection to the request of the gentleman from Minnesota [Mr. Blatnik], that the first two titles will be considered as read?

There was no objection.

MR. [JOHN F.] BALDWIN [of California]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. BALDWIN: Mr. Chairman, do points of order have to be brought up before any amendments are offered?

THE CHAIRMAN: The Chair will state that they should be, but they may be raised.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I ask unanimous consent that points of order be in order at any time.

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

There was no objection.

Parliamentarian's Note: Since, under rules in effect in the 87th Congress, no other points of order would have been in order against a provision in a legislative bill except one directed at an appropriation in violation of Rule XXI clause 5(a), which would have been in order at any time, whether or not debate or amendments

17. 108 CONG. REC. 21883, 87th Cong. 2d Sess. Under consideration was H.R. 13273, concerning omnibus river and harbors authorizations for 1962.

18. Francis E. Walter (Pa.).

had intervened, this unanimous-consent request was unnecessary. Had the bill under consideration been a general appropriation bill, or a highway bill providing for a specific road in violation of present Rule X clause 1(p), then Mr. Gross' unanimous-consent request would have been relevant.

Permitting Points of Order Against Portion of Bill Not Yet Read

§ 5.4 Where the Committee of the Whole had agreed by unanimous consent to consider points of order directed to paragraphs not yet read, the Chair directed the Clerk to report each such provision and entertained points of order as they were presented.

The special order reported from the Committee on Rules which protected legislative provisions in the dire emergency supplemental appropriation bill, funding expenses of the Desert Storm military operation against Iraq, waived all points of order against three provisions, which the Committee on Public Works and Transportation had argued should remain vulnerable to points of order. The special order, adopted Mar. 7, 1991,[19] read, in pertinent part, as follows:

> MR. [MARTIN] FROST [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 103, and ask for its immediate consideration.
>
> The Clerk read the resolution, as follows:
>
> H. RES. 103
>
> *Resolved*, That all points of order for failure to comply with the provisions of sections 302(f) and 311(a) of the Congressional Budget Act of 1974 and with clause 2(l)(6) of rule XI and clause 7 of rule XXI are hereby waived against consideration of the bill (H.R. 1281) making dire emergency supplemental appropriations for the consequences of Operation Desert Storm/Desert Shield, food stamps, unemployment compensation administration, veterans compensation and pensions, and other urgent needs for the fiscal year ending September 30, 1991, and for other purposes. During consideration of the bill, all points of order against provisions in the bill for failure to comply with the provisions of clauses 2 and 6 of rule XXI are hereby waived, except against the provisions beginning on page 24, line 17 through page 25, line 10; beginning on page 28, lines 14 through 21; and beginning on page 32, lines 15 through 22. . . .

During the consideration of the bill H.R. 1281 in Committee of the Whole on Mar. 7, 1991,[20] the chairman of the legislative committee wished to address the un-

19. 137 CONG. REC. 5478, 102d Cong. 1st Sess.

20. *Id.* at pp. 5496–98.

protected paragraphs as soon as consideration under the five-minute rule began.

THE CHAIRMAN:[1] All time for general debate on this bill has expired.

The Clerk will read.

The Clerk read as follows:

H.R. 1281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to provide dire emergency supplemental appropriations for the fiscal year ending September 30, 1991, and for other purposes, namely: . . .

MR. [ROBERT A.] ROE [of New Jersey]: Mr. Chairman, I have three points of order to paragraphs not protected by the rule, and I ask unanimous consent that the paragraphs beginning on page 24, line 17, through page 25, line 10; page 28, lines 14 through 21; and page 32, lines 15 through 22, be considered at this time so I can exercise my rights under the rule. . . .

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

There was no objection.

THE CHAIRMAN: Pursuant to the unanimous-consent order, the Clerk will report the first paragraph against which the gentleman from New Jersey may raise a point of order.

The Clerk read as follows:

ARCHITECT OF THE CAPITOL

ADMINISTRATIVE PROVISION

(TRANSFER OF FUNDS)

Notwithstanding any other provision of law and subject to approval by the Joint Committee on the Library, the Architect of the Capitol is authorized (1) to procure, through a rental, lease, or other agreement, not more than 25,000 square feet of temporary storage and warehouse space outside the Capitol Grounds for use by the Library of Congress during fiscal year 1991, and (2) to incur incidental expenses in connection with such use. Subject to approval by the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate, amounts for the purposes of the preceding sentence may be transferred from the appropriation "Library of Congress, Salaries and expenses" to the appropriation "Architect of the Capitol, Library buildings and grounds, Structural and mechanical care". Amounts so transferred shall be available for expenditure upon vouchers approved by the Architect of the Capitol.

THE CHAIRMAN: Does the gentleman from New Jersey [Mr. Roe] have a point of order on this paragraph?

MR. ROE: Yes, Mr. Chairman.

Mr. Chairman, I raise a point of order against the provision in title II, chapter VI, entitled "Architect of the Capitol," beginning on page 24, line 17 through page 25, line 10. That provision violates clause 2 of rule XXI because it is legislation in an appropriation bill.

THE CHAIRMAN: The Chair recognizes the gentleman from Florida [Mr. Smith].

MR. [LAWRENCE J.] SMITH of Florida: Mr. Chairman, I would hope the gen-

1. Dennis E. Eckart (Ohio).

tleman would not insist on his point of order. . . .

THE CHAIRMAN: Does any other Member wish to be heard on the point of order raised by the gentleman from New Jersey [Mr. Roe]?

MR. [JOHN PAUL] HAMMERSCHMIDT [of Arkansas]: Mr. Chairman, I would like to be heard. . . .

THE CHAIRMAN: Does any other Member wish to be heard on the point of order?

MR. ROE: Mr. Chairman, may I be heard further? . . .

THE CHAIRMAN: The Chair is prepared to rule.

Based on the reasons asserted by the gentleman from New Jersey [Mr. Roe], the point of order is sustained, and the paragraph is stricken.

The Clerk will report the next paragraph in dispute. The Clerk read as follows:

Page 28, beginning on line 13,

CHAPTER X

GENERAL SERVICES ADMINISTRATION

None of the funds made available by this or any other Act with respect to any fiscal year may be used by the General Services Administration to obligate or expend any funds for the award of contracts for the construction of the Northern Virginia Naval Systems Command Headquarters project without advance approval in writing of the House Committee on Appropriations.

THE CHAIRMAN: Does the gentleman from New Jersey [Mr. Roe] wish to be heard on his point of order?

MR. ROE: Yes, Mr. Chairman, I reserve a point of order against the provision of title II, chapter X, entitled "General Services Administration" beginning on page 28, lines 14 through 21. That provision violates clause 2 of rule XXI because it again is recommending legislation in an appropriations bill.

THE CHAIRMAN: The Chair recognizes the gentleman from Virginia [Mr. Wolf].

MR. [FRANK R.] WOLF [of Virginia]: Mr. Chairman, I ask unanimous consent that the provision entitled "General Services Administration" be modified by inserting in line 21, after the word "the," the words, "House Committee on Public Works and Transportation and the". . . .

THE CHAIRMAN: The gentleman from Virginia [Mr. Wolf] seeks unanimous consent to modify the language subject to the reservation of the point of order of the gentleman from New Jersey [Mr. Roe].

Is there objection to the request of the gentleman from Virginia?

There was no objection.

The remaining unprotected paragraphs were then reported and points of order were entertained.

Where Bill "Considered Read and Open to Amendment," the Chair Takes Points of Order Before Amendments

§ 5.5 Where the Committee of the Whole agrees to a request that "the remainder of the paragraphs of the appropriation bill be considered as read and open to amendment," the Chair queries for

points of order before entertaining amendments to or debate on the paragraphs.

During the reading for amendment of the legislative branch appropriation bill for fiscal 1992, Mr. Vic Fazio, of California, subcommittee chairman and manager of the bill, asked unanimous consent that the remainder of the bill (except the last two lines) be considered read and open to amendment. There being no objection, the Chairman of the Committee of the Whole, Brian J. Donnelly, of Massachusetts, solicited points of order to the portion considered read. The following proceedings occurred on June 5, 1991:[2]

MR. FAZIO: Mr. Chairman, I ask unanimous consent that the remainder of the bill, except for lines 22 and 23 on page 40, be considered as read, printed in the Record, and open to amendment at any point.

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

There was no objection.

The text of the remainder of the bill, through line 21 on page 40 is as follows:

SALARIES, OFFICERS AND EMPLOYEES . . .

SEC. 310. (a) The Clerk of the House of Representatives shall maintain and operate a child care center (to be known as the "House of Representatives Child Care Center") to furnish pre-school child care—

(1) for children of individuals whose pay is disbursed by the Clerk of the House of Representatives or the Sergeant at Arms of the House of Representatives and children of support personnel of the House of Representatives; and . . .

THE CHAIRMAN: Are there any points of order against that section of the bill?

POINT OF ORDER

MR. [JOEL] HEFLEY [of Colorado]: Mr. Chairman, I raise a point of order against section 310 on the ground that it violates clause 2(b) of rule XXI of the House of Representatives by changing existing law. . . .

THE CHAIRMAN: Does the gentleman from California [Mr. Fazio] wish to be heard on the point of order?

MR. FAZIO: Mr. Chairman, I thought that the Chair had passed the point in the bill where this was appropriate to be offered. That is my understanding, that the gentleman has passed that point, and the gentleman no longer has the right to offer that.

MR. CHAIRMAN: The bill is open for amendment at any point. The Chair then queries whether there be any points of order. The Chair has requested whether there be any points of order against that section of the bill that was open, and that is when the gentleman arose and made his point of order.

Does the gentleman from California wish to speak on that point?

MR. FAZIO: Not at the moment.

THE CHAIRMAN: Are there any other Members requesting to speak on the gentleman's point of order?

2. 137 CONG. REC. 13567, 13571, 13572, 102d Cong. 1st Sess.

If not, the Chair is then prepared to rule. For the reasons stated by the gentleman from Colorado, the point of order is sustained. Section 310 is stricken from the bill. Are there any amendments to that section of the bill?

Points of Order Against Provisions and Amendments Where Bill "Open" at Any Point

§ 5.6 Where the Committee of the Whole agrees that the remainder of an appropriation bill be considered as read and open at any point to points of order and amendments, the Chairman asks if there are any points of order and then if there are any amendments, and points of order made against items in the bill subsequent to the offering of amendments are not recognized.

On Aug. 19, 1949,[3] it was emphasized that, following the dispensing of the reading of the remainder of a bill, points of order should be made immediately, before the offering of amendments.

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and be open at any point to points of order and amendments.

THE CHAIRMAN:[4] Is there objection to the request of the gentleman from Michigan?

There was no objection.

THE CHAIRMAN: Are there any points of order?

If not, are there any amendments?

MR. [WILLIAM M.] WHEELER [of Georgia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

MR. [JAMES P.] SUTTON [of Tennessee]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. SUTTON: Mr. Chairman, I make the point of order against the language on page 19 that it is legislation on an appropriation bill.

THE CHAIRMAN: The point of order comes too late. At the time the further reading of the bill was dispensed with the Chair requested Members desiring to make points of order to do so at that time.

§ 5.7 Where a general appropriation bill is considered as read and open to amendment at any point, points of order must be made before amendments are offered and cannot be "reserved" pending subsequent action on amendments, since points of order lie separately against provisions in the reported bill and then separately against amendments in the reported bill.

3. 95 CONG. REC. 11870, 11876, 81st Cong. 1st Sess. Under consideration was H.R. 6008, a supplemental appropriation bill for 1950.

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

On Dec. 1, 1982,[5] Chairman Don Fuqua, of Florida, was presiding over the Labor, Health and Human Services appropriation bill, fiscal 1983, when the manager of the bill, Mr. William H. Natcher, of Kentucky, asked unanimous consent that the bill be considered read and open to amendment at any point. No objection being heard, a point of order was raised against one paragraph of the bill. The proceedings were as follows:

MR. NATCHER (during the reading): Mr. Chairman, I ask unanimous consent that the bill be considered as read and open to amendment at any point.

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

There was no objection.

THE CHAIRMAN: Are there any points of order against the bill?

POINT OF ORDER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I have a point of order against a section of the bill.

The portion of the bill to which the point of order relates is as follows:

HIGHER AND CONTINUING EDUCATION

For carrying out titles III; VI, part A; VIII; IX, parts B, D and E; title X; and sections 417, 420, and 734 of the Higher Education Act; section 406A(2) of the General Education Provisions Act (20 U.S.C. 1221e–1b(2)); section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961; title XIII, part H, subparts 1 and 2 of the Education Amendments of 1980; H.R. 3598 as passed the House on November 4, 1981; and title V, section 528(5) of the Omnibus Budget Reconciliation Act of 1981, without regard to section 512(b) of the Omnibus Budget Reconciliation Act of 1981, $400,990,000: *Provided,* That $9,000,000 shall be available in connection with the establishment and construction of the General Daniel James Memorial Education Center at Tuskegee Institute, Tuskegee, Alabama, and such sums shall be used for an aerospace science and engineering center and shall remain available for obligation until September 30, 1988: *Provided further,* That funds made available in Public Law 96-536, section 110 for the Wayne Morse Chair of Law and Politics shall remain available for obligation until September 30, 1985: *Provided further,* That $3,000,000 shall be available until expended for the Carl Albert Congressional Research and Studies Center: *Provided further,* That $25,000,000 made available for interest subsidy grants under section 734 of the Higher Education Act shall remain available until expended: *Provided further,* That sections 922(b)(2) and 922(e)(2) of the Higher Education Act shall not apply to funds in this Act.

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

MR. WALKER: Mr. Chairman, on page 44, lines 11 through 13, there is a section of the bill which is in violation of rule XXI, clause 2, because there is no authorization legislation that has been passed by the Congress for the funding which is appropriated in the bill, and I make a point of order against that language in the bill.

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

MR. NATCHER: On the point of order, yes, Mr. Chairman, I would like to be

5. 128 CONG. REC. 28174, 28175, 97th Cong. 2d Sess.

heard, but I would like to have a colloquy at this time, with the permission of the gentleman from Pennsylvania (Mr. Walker).

THE CHAIRMAN: The Chair will permit the gentleman from Pennsylvania to yield to the gentleman from Kentucky although ordinarily the Chair controls debate on a point of order.

MR. WALKER: I am glad to yield to the gentleman from Kentucky.

MR. NATCHER: Mr. Chairman, let me say to the gentleman from Pennsylvania that, as he knows, this project has been authorized in the House. As I understand, it is before the committee on the other side. I would hope that the gentleman from Pennsylvania would not insist on his point of order at this time. This facility, as the gentleman knows, is being utilized at the present time in honor of one of the great Members who served in this body, the Honorable Carl Albert from Oklahoma, a distinguished Member of the House for many years, later serving as Speaker of the House before his retirement.

I would hope that the gentleman would not insist on his point of order. As the gentleman knows, this project has not yet been authorized on the other side. It has been authorized on this side. We would hope that the gentleman would not insist on his point of order. Then we would see if it could not be handled quickly on the other side by way of authorization, so that this amount could stay in the 1983 bill and not have to wait until the next appropriation bill. . . .

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

MR. [NEAL] SMITH of Iowa: Not on this point of order, no, Mr. Chairman. I do have a parliamentary inquiry concerning another point of order.

THE CHAIRMAN: The Chair will protect the gentleman.

Will the gentleman from Pennsylvania (Mr. Walker) clarify for the Chair the exact language to which he objects in insisting on his point of order?

MR. WALKER: Mr. Chairman, the language the gentleman objects to under the point of order is beginning at line 11 on page 44, "That $3,000,000 shall be available until expended for the Carl Albert Congressional Research and Studies Center:" ending with the colon on line 13.

THE CHAIRMAN: The appropriation is not yet authorized by law and the Chair sustains the point of order. Are there any other points of order against the bill?

PARLIAMENTARY INQUIRY

MR. SMITH of Iowa: Mr. Chairman, I have a parliamentary inquiry.

The portion of the bill to which the parliamentary inquiry relates is as follows:

SPECIAL PROGRAMS

For carrying out the consolidated programs and projects authorized under chapter 2 of the Education Consolidation and Improvement Act of 1981; title IX, part C of the Elementary and Secondary Education Act; title IV of the Civil Rights Act of 1964; the Follow Through Act; sections 1524 and 1525 of the Education Amendments of 1978; and Public Law 92–506, $538,920,000: *Provided* That $454,810,000 to carry out chapter 2 of the Education Consolidation

and Improvement Act shall become available for obligation on July 1, 1983, and shall remain available until September 30, 1984: *Provided further,* That $29,030,000 for the purpose of subchapter D of the Education Consolidation and Improvement Act shall become available for obligation on October 1, 1982: *Provided further,* That $3,000,000 of the amount appropriated above shall be for the purpose of Public Law 92–506 of which $1,500,000 shall become available on July 1, 1983, and shall remain available until September 30, 1984.

THE CHAIRMAN: The gentleman from Iowa (Mr. Smith) will state his parliamentary inquiry.

MR. SMITH of Iowa: Mr. Chairman, is it possible, since the bill is open to amendment at any point, to reserve a point of order and to make it at a later time against certain lines in the bill?

THE CHAIRMAN: The Chair will state that the point of order must be made at this time, before amendments are offered.

MR. SMITH of Iowa: Then, Mr. Chairman, if it is made at this time, would it be possible to replace the language to which I am making a point of order at a later time?

THE CHAIRMAN: The Chair will state to the gentleman that a proper amendment could be offered to replace the language.

§ 5.8 Where unanimous consent is granted that the remainder of a general appropriation bill be considered as read and all portions thereof be subject to amendments and to points of order, the Chairman suggests that points of order be disposed of first since it would be too late to make such points after amendments to the bill have been considered.

On Apr. 25, 1947,[6] the following proceedings took place:

MR. [ROBERT F.] JONES of Ohio: Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and that all portions thereof be subject to amendment and to points of order.

THE CHAIRMAN:[7] Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE CHAIRMAN: The Chair suggests that the points of order be disposed of first under this procedure, before the amendments.

Points of Order Against Paragraph Not Entertained During General Debate

§ 5.9 The proper time for raising a point of order that a paragraph in a general appropriation bill violates Rule XXI clause 2 (legislation on an appropriation bill) is when the paragraph is reached in the reading for

6. 93 CONG. REC. 4098, 80th Cong. 1st Sess. Under consideration was H.R. 3123, an Interior Department appropriation bill for 1948.
7. Earl C. Michener (Mich.).

amendment under the five-minute rule, and not during general debate on the bill.

On June 28, 1989,[8] during general debate on the energy and water appropriation bill, fiscal 1990, an inquiry was directed to the Chair as follows:

IN THE COMMITTEE OF THE WHOLE

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. 2696, with Mr. Pease in the chair.

The Clerk read the title of the bill.

By unanimous consent, the bill was considered as having been read the first time.

THE CHAIRMAN:[9] Under the unanimous-consent agreement, the gentleman from Alabama (Mr. Bevill) will be recognized for 30 minutes, and the gentleman from Indiana (Mr. Myers) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Alabama (Mr. Bevill).

PARLIAMENTARY INQUIRY

MR. [JOHN PAUL] HAMMERSCHMIDT [of Arkansas]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HAMMERSCHMIDT: Mr. Chairman, would this be the proper time to raise a point of order on section 110 and section 112 of the bill?

THE CHAIRMAN: It would not be the proper time. The proper time would be when those sections are read under the 5-minute rule.

MR. [TOM] BEVILL [of Alabama]: Mr. Chairman, I yield myself such time as I may consume.

Point of Order Against Paragraph Must Precede Amendment

§ 5.10 A point of order against a section of a general appropriation bill must be made immediately after the section is read and comes too late after an amendment to that section has been considered.

On June 3, 1944,[10] Chairman William M. Whittington, of Mississippi, ruled that a point of order came too late after the offending section had been read, amended, and the next section read.

The Clerk read as follows:

Sec. 103. This title may be cited as "Defense Aid Appropriation Act, 1945."

Mr. [Joseph P.] O'Hara [of Minnesota]: Mr. Chairman, I had a point of order to submit against section 102 which has not been completely read, and which point of order I wish to submit at this time.

THE CHAIRMAN: The Clerk has just read section 103.

8. 135 CONG. REC. 13669, 13670, 101st Cong. 1st Sess.

9. Don J. Pease (Ohio).

10. 90 CONG. REC. 5245, 78th Cong. 2d Sess. Under consideration was H.R. 4937, the Foreign Economic Administration Act of 1945.

MR. O'HARA: Mr. Chairman, the Clerk was just reading section 102, and I wish to make a point of order against that section.

THE CHAIRMAN: The gentleman from Missouri [Mr. Bell] offered an amendment which was considered by the Committee and agreed to by the Committee, an amendment to section 2 after it had been read.

MR. O'HARA: Mr. Chairman, I wish to make a point of order against section 102 on the ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN: The gentleman from Minnesota makes a point of order that section 102 is legislation on an appropriation bill. The point of order comes too late. As the Chair has previously announced, the Committee has already considered and agreed to an amendment to section 102 offered by the gentleman from Missouri [Mr. Bell].

The point of order is overruled.

Timing of Point of Order Against Provision in Bill Text

§ 5.11 A point of order against a paragraph of a general appropriation bill comes too late after amendments have been offered thereto.

On Apr. 16, 1975,[11] a general appropriation bill was being read for amendment in Committee of the Whole. Section 314 of the bill was read, and by unanimous consent an amendment was offered, and agreed to, which amended that section as well as the following section, 315, which had not been read. Ms. Abzug then offered two amendments, designed to strike out both sections 314 and 315. The proceedings transpired as follows:

MS. [BELLA S.] ABZUG [of New York]: Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Ms. Abzug: on page 16, after line 11, strike out sections 314 and 315 and renumber accordingly.

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

THE CHAIRMAN:[12] The gentleman will state it.

MR. BAUMAN: Have not these sections already been read for amendment?

THE CHAIRMAN: Only section 314 has been read for amendment.

MR. BAUMAN: Mr. Chairman, I make the point of order that the amendment comes too late.

THE CHAIRMAN: Section 315 has not been read. Therefore, it would not foreclose consideration at this time of a further amendment offered to section 314.

The amendment offered by the gentlewoman from New York contains an additional part proposing to strike section 315, which has not been read. Absent a unanimous-consent agreement, she could not offer an amendment to strike section 315 if it had not been read.

11. 121 CONG. REC. 10377, 10378, 94th Cong. 1st Sess.

12. James C. Wright, Jr. (Tex.).

MS. ABZUG: Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

THE CHAIRMAN: Is there objection to the request of the gentlewoman from New York?

MR. [FORTNEY H. (PETE)] STARK [of California]: Mr. Chairman, reserving the right to object, would this preclude my making a point of order against section 314?

THE CHAIRMAN: The Chair would advise the gentleman that section 314 has already been read and subject to legislative action in the form of the amendment offered by the gentleman from Louisiana and, therefore, a point of order would not be timely against section 314. The Chair would advise the gentleman that if he wishes to make a point of order against section 315, the moment for that would be after the Clerk has read that section and before someone offers an amendment and legislative consideration has taken place.

Point of Order Too Late After Amendment Offered

§ 5.12 A point of order against a paragraph of a general appropriation bill comes too late after amendments have been offered to that paragraph.

The proceedings in Committee of the Whole on June 8, 1977,[13] illustrate two important principles relating to the application of clause 2, Rule XXI relating to unauthorized appropriations. The first is that where an unauthorized appropriation is permitted, by waiver or failure to raise a point of order, the paragraph can then be perfected by an amendment which merely changes the unauthorized figure in the paragraph. Second, the proceedings demonstrate that a point of order must be timely and comes too late after the paragraph has been considered.

The bill under consideration was the Department of Transportation appropriation bill for fiscal 1978.

The Clerk read as follows:

COAST GUARD

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the operation and maintenance of the Coast Guard, not otherwise provided for; purchase of not to exceed twelve passenger motor vehicles, for replacement only; and recreation and welfare; $871,865,000 of which $205,977 shall be applied to Capehart Housing debt reduction: *Provided* That the number of aircraft on hand at any one time shall not exceed one hundred and seventy-nine exclusive of planes and parts stored to meet future attrition: *Provided further*, That amounts equal to the obligated balances against the appropriations for "Operating expenses" for the two preceding years shall be transferred to and merged with this appropriation, and such

13. 123 CONG. REC. 17941, 17942, 17945, 95th Cong. 1st Sess.

merged appropriation shall be available as one fund, except for accounting purposes of the Coast Guard, for the payment of obligations properly incurred against such prior year appropriations and against this appropriation.

MR. [MARIO] BIAGGI [of New York]: Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Biaggi: On page 3, line 7, strike "$871,865,000" and insert in lieu thereof "$878,865,000".

MR. [SILVIO O.] CONTE [of Massachusetts]: Madam Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[14] The gentleman from Massachusetts will state the point of order.

MR. CONTE: Madam Chairman, the amendment under rule XXI, clause 2, the amendment of the gentleman from New York is out of order because it has not been authorized. The authorization for this is pending and the House has requested a conference on this.

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

MR. BIAGGI: Yes, Madam Chairman. . . .

Madam Chairman, I will address myself to the point of order.

The point of order now is whether or not there is any authorization. I will stick to that point of order, and if the Chair maintains that the point of order is a valid one, then I would only concede that it is valid. If that be a valid point of order, then it is precedent for a subsequent point of order which I will offer immediately after this one is settled.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has before it the amendment which is offered by the gentleman from New York (Mr. Biaggi). That amendment simply changes an unauthorized appropriations figure in the bill, striking that figure and inserting in lieu thereof another. The gentleman does not seek, in his amendment, to earmark these additional funds at all.

Under the precedents, then, where an amendment only seeks to change an unauthorized amount permitted to remain in the bill by failure to raise a point of order or by a waiver, and does not add any legislative language or earmark for a specific unauthorized project, that amendment is in order. (Deschler's ch. 25, sec. 2311.)

Therefore, the point of order is overruled and the gentleman is recognized for 5 minutes. . . .

The question is on the amendment offered by the gentleman from New York (Mr. Biaggi).

The amendment was agreed to. . . .

THE CHAIRMAN: Are there other amendments to this section?

There being none, the Clerk will read. . . .

MR. CONTE: Madam Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CONTE: Madam Chairman, is the Clerk through reading "operating expenses"? If not, I would like to raise a point of order against that section.

THE CHAIRMAN: The Clerk has read the "operating expenses" paragraph of the bill.

14. Barbara Jordan (Tex.).

MR. CONTE: Madam Chairman, am I in order to raise a point of order against that section?

THE CHAIRMAN: Not against the "operating expenses" paragraph, that is the paragraph which has been read and has been amended, and the point of order would come too late.

MR. CONTE: All right, then I am out of order.

THE CHAIRMAN: The gentleman from Massachusetts will be seated and the Clerk will read.

Points of Order Considered Seriatim

§ 5.13 A point of order against a proviso having been disposed of, it is not too late to make a point of order against the paragraph of which the proviso is a part merely because debate has been had on the point of order against such proviso.

On Feb. 26, 1943,[15] a point of order was held timely although debate on another point of order against a proviso in the paragraph had intervened after the reading of the paragraph.

MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I make the further point of order against the language in lines 6 to 13 on page 23 that it is legislation on an appropriation bill, not authorized by law.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, the point of order comes too late. There has been debate since the paragraph was read. It is now too late to interpose a point of order.

THE CHAIRMAN:[16] The Chair will remind the gentleman from Missouri that we have not gone beyond the point at which a point of order can be made. The paragraph is still under consideration.

Does the gentleman desire to point out to the Chair anything further the Chair may consider in view of the second point of order made against the language in the paragraph?

MR. CANNON of Missouri: We have passed the proposition, Mr. Chairman; we are now on the proviso. The point of order made by the gentleman did not apply to the first portion, which is a separate entity as against the proviso. Inasmuch as the point of order was not interposed at the time, it now comes too late.

THE CHAIRMAN: The Chair advises the gentleman from Missouri that he will hold that the point of order does not come too late, in view of the fact that the proviso is a part of the paragraph.

Items in General Appropriation Bills

§ 5.14 The time for making points of order against items in an appropriation bill is after the House has resolved

15. 89 CONG. REC. 1369, 78th Cong. 1st Sess. Under consideration was H.R. 1975, the first deficiency appropriation of 1943.

16. Howard W. Smith (Va.).

itself into the Committee of the Whole and after the paragraph containing such items has been read for amendment.

On July 4, 1945,[17] after Mr. Clarence Cannon, of Missouri, moved that the House resolve itself into the Committee of the Whole for the consideration of the bill at hand, another Member, Vito Marcantonio, of New York, inquired as to when would be the proper time to make points of order against many items in the bill.

MR. MARCANTONIO: Mr. Speaker, if, as in this case, the bill contains many items that are subject to a point of order, is it not in order to make a point of order against sending this bill to the Committee of the Whole?

THE SPEAKER:[18] Under the rules of the House, it is not.

MR. MARCANTONIO: Then the procedure to make the point of order is to make it as the bill is being read for amendment?

THE SPEAKER: As the paragraphs in the bill are reached.

§ 5.15 In the Committee of the Whole, a point of order against a paragraph of an appropriation bill is not in order until that paragraph is read for amendment.

On Feb. 19, 1970,[19] Chairman Chet Holifield, of California, ruled that a point of order was raised prematurely.

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Chairman, we have a couple of points of order to make, particularly as to the Michel amendment. When will it be in order to make the point of order to the Michel amendment?

THE CHAIRMAN: The Chair will ask the gentleman from Kentucky, to what section of the bill is the gentleman referring?

MR. PERKINS: Section 411.

THE CHAIRMAN: The Chair will state that it will not be in order until that section of the bill is read.

The Clerk will read.

Timing of Points of Order Against Paragraph in Bill

§ 5.16 A point of order against a paragraph in a general appropriation bill must be made immediately following the reading of the paragraph or following unanimous-con-

17. 91 CONG. REC. 7226, 79th Cong. 1st Sess. Under consideration was H.R. 3649, the war agencies appropriation for fiscal 1946.

For further discussion of appropriations bills, see Ch. 25, supra.

18. Sam Rayburn (Tex.).

19. 116 CONG. REC. 4012, 91st Cong. 2d Sess. Under consideration was H.R. 15931, involving the Departments of Labor and Health, Education, and Welfare, and related agencies appropriations for fiscal 1970.

sent permission to consider the title of the bill containing the paragraph as having been read.

The manager of a general appropriation bill will often strive to expedite the reading of the bill for amendment under the five-minute rule. One device is to ask unanimous consent that portions of the bill be considered as read and open for amendment, rather than proceeding paragraph by paragraph. Mr. John M. Slack, of West Virginia, the subcommittee chairman and manager of the bill under consideration on June 18, 1976,[20] employed this tactic. Proceedings were as indicated.

THE CHAIRMAN:[1] The Clerk will read.

The Clerk proceeded to read the bill.

MR. SLACK (during the reading): Mr. Chairman, I ask unanimous consent that title V be considered as read and open for amendment at any point.

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

MR. [BOB] ECKHARDT [of Texas]: Mr. Chairman, reserving the right to object, I have a point of order which would be lodged at the provisions contained on page 44, starting with line 9, through line 25 and I should like to be sure as to whether my position will be jeopardized if this unanimous-consent request were granted, and where and when I would have to make the point of order.

THE CHAIRMAN: The Chair will state that if the unanimous-consent request is granted, the gentleman from Texas (Mr. Eckhardt) will be recognized to make his point of order immediately thereafter.

MR. ECKHARDT: Mr. Chairman, I withdraw my reservation of objection.

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

There was no objection.

MR. ECKHARDT: Mr. Chairman, I raise a point of order.

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

(The portion of the bill to which the point of order refers is as follows:)

> No part of these funds may be used to pay the salary of any employee, including Commissioners, of the Federal Trade Commission who—
>
> (1) make any publication based on the line-of-business data furnished by individual firms without taking reasonable precautions to prevent disclosure of the line-of-business data furnished by any particular firm; or
>
> (2) permits anyone other than sworn officers and employees of the Federal Trade Commission to examine the line-of-business reports from individual firms; or
>
> (3) uses the information provided in the line-of-business program for any purpose other than statistical purposes. Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under existing practices and procedures or as changed by law.

MR. ECKHARDT: Mr. Chairman, I have a point of order which I make at

20. 122 CONG. REC. 19308, 94th Cong. 2d Sess.

1. Otis G. Pike (N.Y.).

lines 9 through 25 on page 44 in that the provisions contained therein constitute legislation on an appropriation bill in that new duties are imposed upon the Federal Trade Commission, particularly with respect to the language beginning on lines 12 through 16. It is provided that no part of these funds may be used to pay the salaries of any employee who makes any publication based on line of business data furnished by individual firms without taking reasonable precautions to prevent disclosure of the line of business data furnished by any particular firm. The only thing that limits or controls the question of divulging information respecting such line of business information is contained in the Freedom of Information Act, and this is only to provide an exception from the Freedom of Information Act which would embrace such material, but the Freedom of Information Act leaves it wholly to the Federal Trade Commission to devise whatever systems it desires with respect to such information.

The provisions in the appropriations bill to which I have referred would require a standard of reasonable precautions to prevent disclosure of the line of business data furnished by any particular firm, and in so doing would create a new and different standard from that which exists in existing law.

Second, the point of order is specifically lodged to lines 22 through 25 in which it is said:

> Such information for carrying out specific law enforcement responsibilities of the Federal Trade Commission shall be obtained under existing practices and procedures or as changed by law.

It has been held that even though a duty imposed on a commission may be a duty now accepted by that commission, to place it as a duty in law constitutes specific legislation on an Appropriation Act.

I cite here in support of the point of order provisions in Deschler's procedure, page 305 and the following pages, chapter 26, paragraphs 11 et sequentia. I may say that I do level the point of order at lines 9 through 25.

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

The language which the gentleman refers to was designed to protect the privacy and the security of data obtained in the line of a business program. However, if the gentleman insists on the point of order, of course, we will concede the point of order.

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

Are there any other points of order against the remainder of title V?

When Point of Order Comes Too Late in Reading Bill for Amendment

§ 5.17 Where a chapter of a general appropriation bill is considered read by unanimous consent and open to amendment at any point, and no amendments are offered, the Clerk begins to read the next chapter, and it is then too late to raise a point of order against a paragraph in the chapter passed in the reading.

On June 11, 1985,[2] during the reading of a general appropriation bill in Committee of the Whole, Chairman Pro Tempore Philip R. Sharp, of Indiana, in response to a point of order from the floor, ruled that it was too late to lodge a point of order against a provision in the preceding chapter of the bill.

THE CHAIRMAN PRO TEMPORE: . . .

The Clerk will read.

The Clerk read as follows:

CHAPTER X

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

WORKING CAPITAL FUND

The "Limitation on working capital fund" is reduced to $65,470,000. . . .

RAILROAD-HIGHWAY CROSSINGS

DEMONSTRATION PROJECTS

For an additional amount for "Railroad-highway crossings demonstration projects", to remain available until expended, $5,300,000, of which $3,533,333 shall be derived from the Highway Trust Fund. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi] (during the reading): Mr. Chairman, I ask unanimous consent that chapter X be considered as read, printed in the Record, and open to amendment at any point.

THE CHAIRMAN PRO TEMPORE: Is there objection to the request of the gentleman from Mississippi?

There was no objection.

THE CHAIRMAN PRO TEMPORE: Are there any points of order against chapter X?

Are there any amendments to chapter X?

The Clerk will read.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN PRO TEMPORE: The Chair has asked if there are any amendments to chapter X.

Hearing no requests, the Clerk will read.

MR. CONTE: Reserving a point of order, the gentleman from Pennsylvania [Mr. Walker] wanted to reserve a point of order on page 65, I believe, on the bottom there.

THE CHAIRMAN PRO TEMPORE: Would the gentleman from Massachusetts indicate what he is trying to indicate to the Chair?

MR. CONTE: The gentleman from Pennsylvania [Mr. Walker] made a request.

MR. WALKER: Mr. Chairman, I have a point of order on page 65.

MR. [WILLIAM] LEHMAN of Florida: Mr. Chairman, I think that chapter has been passed already.

THE CHAIRMAN PRO TEMPORE: The gentleman from Florida is making the point of order that the chapter has already been passed in the reading and that no one raised a timely point of order; is that the gentleman's point of order?

MR. LEHMAN of Florida: It is, Mr. Chairman.

THE CHAIRMAN PRO TEMPORE: Does anyone contest that point?

If not, the Chair will sustain the gentleman's point of order.

2. 131 CONG. REC. 15181, 15182, 99th Cong. 1st Sess.

A Point of Order Comes Too Late—After Amendment Has Been Offered

§ 5.18 A point of order against a paragraph in an appropriation bill comes too late after an amendment to it has been reported and the sponsor of such amendment is recognized to debate it.

On Nov. 28, 1945,[3] it was ruled that a point of order came too late even though the Member, Arthur L. Miller, of Nebraska, had been standing to make the point of order when the sponsor of an amendment rose to speak.[4]

MR. [CLEVELAND M.] BAILEY [of West Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

THE CHAIRMAN:[5] The Chair recognizes the gentleman from West Virginia.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, will the gentleman yield for a unanimous-consent request?

MR. BAILEY: I yield to the gentleman from Missouri.

MR. CANNON of Missouri: I ask unanimous consent, Mr. Chairman, that all debate on this amendment close in 20 minutes, the last 5 minutes to be reserved to the committee.

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

MR. MILLER of Nebraska: Mr. Chairman, reserving the right to object, I wish to make a point of order against the last part of the paragraph.

MR. CANNON of Missouri: Mr. Chairman, the gentleman's point of order comes too late.

MR. MILLER of Nebraska: I asked for recognition on the point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from West Virginia has already been recognized, and the gentleman from Nebraska made no remarks prior to that time.

MR. MILLER of Nebraska: I asked for recognition, and I was standing here.

THE CHAIRMAN: The Chair did not know for what purpose the gentleman had risen. The point of order comes too late.

—After Amendment Has Been Adopted

§ 5.19 A point of order against legislation in a paragraph of a general appropriation bill must be lodged immediately after the paragraph is read and comes to late after an amendment has been adopted thereto.

The proceedings of Nov. 30, 1982,[6] illustrate the importance

3. 91 CONG. REC. 11128, 79th Cong. 1st Sess. Under consideration was H.R. 4805, the Defense appropriation bill for fiscal 1946.

4. But see §§ 6.22–6.24, infra.

5. R. Ewing Thomason (Tex.).

6. 128 CONG. REC. 28057, 28058, 28060, 97th Cong. 2d Sess.

of being timely when pressing a point of order during the reading of a general appropriation bill for amendment.

THE CHAIRMAN:[7] The Clerk will read.

The Clerk read as follows:

UNITED STATES CUSTOMS SERVICE

SALARIES AND EXPENSES

For necessary expenses of the United States Customs Service, including purchase of two hundred passenger motor vehicles for replacement only, including one hundred and ninety for police-type use; acquisition (purchase of 1), operation and maintenance of aircraft; hire of passenger motor vehicles and aircraft; and awards of compensation to informers, as authorized by section 1 of title VI of the Act of June 15, 1917 (22 U.S.C. 401); $528,700,000, of which not to exceed $150,000 should be available for payment for rental space in connection with preclearance operations: *Provided,* That none of the funds made available by this Act shall be available for administrative expenses to pay any employee overtime pay in an amount in excess of $25,000: *Provided further,* That the Commissioner or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service: *Provided further,* That none of the funds made available by this Act shall be available for administrative expenses to reduce the number of Customs Service regions below nine during fiscal year 1983 without advance approval from both House and Senate Committees on Appropriations: *Provided further,* That none of the funds made available by this Act may be used for administrative expenses in connection with the proposed redirection of the Equal Employment Opportunity Program.

AMENDMENT OFFERED BY MR. CONTE

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Conte: On page 4, line 22, strike out "$528,700,000," and insert in lieu thereof the following: "$548,700,000, of which not to exceed $30,000,000 shall be available for Project Exodus, and". . . .

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Massachusetts (Mr. Conte), as amended.

The amendment, as amended, was agreed to.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Chairman, I make a point of order against the language in lines 6 through 10 on page 5 of H.R. 7158. These lines constitute legislation on an appropriation bill and are, therefore, in violation of clause 2 of rule XXI. If the Chair will permit me, I would like to be heard on my point of order.

THE CHAIRMAN: The Chair will advise the gentleman from Minnesota that the paragraph in question has already been read and amended. Therefore, a point of order to the paragraph comes too late.

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman will state it.

MR. FRENZEL: Mr. Chairman, at what point would a point of order have been timely?

7. Gerry E. Studds (Mass.).

THE CHAIRMAN: The Chair will advise the gentleman that a point of order would be in order between the time when the paragraph had been read by the Clerk and the time when an amendment to that paragraph had been offered or the Committee had gone to another paragraph.

MR. FRENZEL: Mr. Chairman, I was on my feet when the previous amender was recognized, and I do not recall having heard that language being read. Can the Chair give me some assurance on that?

THE CHAIRMAN: The Chair will advise the gentleman that the first amendment offered to the paragraph in question was offered by the gentleman from Massachusetts (Mr. Conte). The Chair observed the gentleman on his feet, although not pressing a point of order, at the time that the amendment to the amendment was offered, but not at the time the original amendment was offered.

MR. FRENZEL: And to be timely, my point of order would have to have been made before the gentleman from Massachusetts offered his amendment?

THE CHAIRMAN: The gentleman is correct.

MR. FRENZEL: I thank the Chair.

THE CHAIRMAN: The Clerk will read.

§ 5.20 A point of order against language in a paragraph of an appropriation bill comes too late after the paragraph has been read and an amendment thereto has been agreed to.

On June 13, 1961,[8] a Member was advised that his point of order came too late.

MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows: . . .

MR. [GEORGE W.] ANDREWS [of Alabama]: Mr. Chairman, the committee accepts the amendment.

THE CHAIRMAN:[9] The question is on the amendment offered by the gentleman from Texas.

The amendment was agreed to.

The Clerk read as follows: . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. GROSS: Is a point of order to the language on page 29 in order?

THE CHAIRMAN: If it is to language preceding line 5 on page 29 it is not in order.

MR. GROSS: It does precede line 5 on page 29. The Clerk did not read the language on page 29, lines 1 to 5.

THE CHAIRMAN: The Clerk has read and an amendment has been adopted to the paragraph starting on page 28, line 8, and ending on page 29, line 5.

MR. GROSS: Then a point of order to the language on page 29, line 5, is not in order?

THE CHAIRMAN: The Chair will advise the gentleman it comes too late at this time.

—After Next Paragraph Is Read

§ 5.21 Points of order must be made immediately after a

8. 107 CONG. REC. 10178, 87th Cong. 1st Sess. Under consideration was H.R. 7577, making appropriations for the executive office and Department of Commerce for fiscal 1962.

9. Carl Albert (Okla.).

paragraph of an appropriation bill is read, and it is too late to make such points of order after the Clerk has begun reading the next paragraph.

On Apr. 15, 1943,[10] Chairman William M. Whittington, of Mississippi, ruled that a point of order against a paragraph came too late after the Clerk had completed reading the next paragraph, even though the Member protested that he was on his feet seeking recognition during the reading.

MR. [HAMPTON P.] FULMER [of South Carolina]: I make the point of order that the language on page 22 beginning in line 19 and ending in line 25 . . . is legislation on an appropriation bill.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. TARVER: I make the point of order that the point of order comes too late inasmuch as the portion of the bill against which the point of order is made has been read and the Clerk was reading the next paragraph.

THE CHAIRMAN: The Chair sustains the point of order raised by the gentleman from Georgia. The Clerk had read a substantial part of the following paragraph and had reached line 17 on page 23.

MR. FULMER: I think, Mr. Chairman, I made my point of order in time. Maybe the Clerk had started the following paragraph, but I was on my feet and feel that I made my point of order in time.

THE CHAIRMAN: The Chair has ruled that the reading of the paragraph had been completed. Under the rules it is essential that a point of order against a paragraph be made immediately after the reading of the paragraph.

—*After Debate*

§ 5.22 After debate has been had on a paragraph of an appropriation bill it is too late to make a point of order against that paragraph.

On Mar. 15, 1945,[11] certain Members debated the subject of a paragraph before one of them made a point of order, but the delay was fatal to the point of order.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I move to strike out the last word.

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10. 89 CONG. REC. 3420, 3421, 78th Cong. 1st Sess. Under consideration was H.R. 2481, an agricultural appropriation bill.

11. 91 CONG. REC. 2306 et seq., 79th Cong. 1st Sess. Under consideration was H.R. 2603, the State, Justice, Commerce, Judiciary, and Federal Loan Agency appropriation bill for 1946.

See also 88 CONG. REC. 754, 77th Cong. 2d Sess., Jan. 27, 1942. Under consideration was H.R. 6460, the Navy Department appropriation for 1943.

I do this for the purpose of asking the majority leader a question. I am wondering if the majority leader can tell us what is to be the program for the balance of this week and the first part of next week? . . .

MR. [CARL] HINSHAW [of California]: Mr. Chairman, I have asked for this time in order to inquire of the chairman of the committee regarding the language appearing in the bill beginning in line 17 on page 23 and ending in line 23 on page 24. I do not see where any money item is included. Is this intended to be an authorization for construction or is it an appropriation?

MR. [LOUIS C.] RABAUT [of Michigan]: That is just the preamble, general language.

MR. HINSHAW: Is that in the nature of an authorization to do this work, or is there any law cited that would authorize it?

MR. RABAUT: It is based on law and on a treaty.

MR. HINSHAW: There is no law quoted in this language to which I refer, and I do not know of any treaty that authorizes it; none is stated here.

Mr. Chairman, I am forced to make a point of order against the language contained in the lines beginning in line 17 on page 23 and ending in line 23 on page 24, as not being authorized by law.

MR. RABAUT: It is language that has always been carried, I may say to the gentleman.

MR. HINSHAW: That may well be; but I insist on the point of order.

THE CHAIRMAN:[12] The Chair must inform the gentleman from California that his point of order comes too late.

MR. HINSHAW: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HINSHAW: Did not the Clerk finish reading it?

THE CHAIRMAN: The subject matter of the paragraph was discussed under the gentleman's amendment to strike out the last word [and] also under the amendment offered by the gentleman from New York. Business having intervened the point of order comes too late. The Chair therefore overrules the point of order.[13]

Diligence of Members in Seeking Recognition

§ 5.23 In a few instances, a Member who was on his feet seeking recognition at the proper time to make a point of order has been recognized even though the Clerk had read past the paragraph to which the point of order was directed.

Although failure to raise a point of order immediately after the

12. Wilbur D. Mills (Ark.).

13. For similar rulings, see 103 CONG. REC. 5032, 85th Cong. 1st Sess., Apr. 3, 1957 [H.R. 6287, making appropriations for the Departments of Labor and Health, Education, and Welfare]; 89 CONG. REC. 3485, 78th Cong. 1st Sess., Apr. 16, 1943 [H.R. 2481, an agriculture appropriation for 1944]; and 89 CONG. REC. 3421, 3422, 78th Cong. 1st Sess., Apr. 14, 1943 [H.R. 2481].

reading of a paragraph by the Clerk is usually fatal to the point of order, an exception to this rule may be invoked where a Member was on his feet, actively seeking recognition at the time the Clerk was reading the paragraph. For example, on Sept. 15, 1961,[14] Chairman Oren Harris, of Arkansas, entertained such a point of order under the following circumstances:

The Clerk read as follows: . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language on page 9, line 8 through line 12, on the same ground, that it changes existing law. It is, therefore, in violation of the rules.

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

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, the objection came too late. We will waive that point of order because the Clerk started reading the next paragraph, and we will not press that point that his objection came too late. The point is well taken, but I would remind my friend again that not 1 penny of that expenditure is taxpayers' money. It is a limitation on the funds they have earned by virtue of that operation. Will not my friend withdraw it?

MR. GROSS: No.

MR. THOMAS: Well I am not going to press my point of order that his point came too late.

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Chairman, I make the point of order that the gentleman's point of order came too late.

THE CHAIRMAN: The Chair observed that the gentleman was on his feet seeking recognition while the Clerk was reading.

Does the gentleman from Texas concede the point of order?

MR. THOMAS: I do, Mr. Chairman.

THE CHAIRMAN: The point of order is sustained.

§ 5.24 A point of order against language in a paragraph of a bill is not precluded by intervening debate where the Member raising the point of order was on his feet, seeking recognition before debate began.

On May 11, 1959,[15] intervening debate did not preclude a point of order against language in an appropriation bill.

MR. [H. R.] GROSS [of Iowa]: I must insist on my point of order in protection of the committee and in protection of the Civil Service Commission.

14. 107 CONG. REC. 19729, 87th Cong. 1st Sess. Under consideration was H.R. 9169, making supplemental appropriations for fiscal 1962. To the same effect, see 116 CONG. REC. 18395, 91st Cong. 2d Sess., June 4, 1970. Under consideration was H.R. 17867, a foreign assistance appropriation bill for fiscal 1971.

15. 105 CONG. REC. 7905, 86th Cong. 1st Sess. Under consideration was H.R. 7040, the independent offices appropriation for 1960.

MR. [ALBERT] THOMAS [of Texas]: I oppose the point of order because the paragraph was read.

THE CHAIRMAN:[16] The Chair thinks the gentleman from Iowa was within his rights to make the point of order. He observed the gentleman standing when unanimous consent was granted to go back to the previous section.

MR. THOMAS: Well, the point of order is good, then. We admit it, then.

THE CHAIRMAN: The Chair sustains the point of order.

§ 5.25 The mere fact that a Member was on his feet does not entitle him to make a point of order where he has not affirmatively sought recognition of the Chair at the time the language complained of was read for amendment.

On Apr. 14, 1970,[17] in the Committee of the Whole, despite the assertion of Mr. William D. Ford, of Michigan, that he had been on his feet seeking recognition, Chairman Chet Holifield, of California, ruled that his point of order came too late.

THE CHAIRMAN: For what purpose does the gentleman from Michigan (Mr. William D. Ford) rise?

MR. WILLIAM D. FORD: Mr. Chairman, I make a point of order as to the language in the proviso in the paragraph entitled "School Assistance in Federally Affected Areas." The point I make goes to the language which appears on line 6, page 2, extending down through and including all of line 12. I make the point of order, it is in violation of rule XXI of the rules of the House.

THE CHAIRMAN: Does the gentleman from Pennsylvania (Mr. Flood), care to be heard on the point of order?

MR. [DANIEL J.] FLOOD: Yes, Mr. Chairman, I do.

I do not like to operate this way, but I am the chairman of the subcommittee and obviously I must object, and make a point of order because the point of order comes much, much too late. We have passed that point in the bill.

THE CHAIRMAN: The Chair will state that the Clerk had read past that paragraph of the so-called title I, and stopped at line 14 on page 3. The gentleman was not on his feet seeking recognition at the time the first section, down through line 12 on page 2, was read.

MR. WILLIAM D. FORD: Mr. Chairman, the paragraphs are not being read. The bill is being read by paragraph headings. I was on my feet at the beginning of the reading. As a matter of fact, I moved from there to here as soon as the Clerk began to read. I was never off my feet from the moment he started the reading. I was trying to get to the point in the bill.

THE CHAIRMAN: The Chair cannot observe the movements of the Members from place to place. The gentleman was not seeking recognition at the time when he should have been,

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16. Frank N. Ikard (Tex.).

17. 116 CONG. REC. 11648, 91st Cong. 2d Sess. Under consideration was H.R. 16916, Office of Education appropriations, fiscal 1971.

under the rules. He should have been seeking recognition vocally, not by standing.

The Chair sustains the point of order made by the gentleman from Pennsylvania (Mr. Flood).

Reading General Appropriation Bill for Amendment

§ 5.26 General appropriation bills are read by paragraphs, and where one section of the bill contains several paragraphs, a point of order must be made immediately after a paragraph is read and cannot be delayed until the entire section is read.

On July 29, 1982,[18] during consideration of the supplemental appropriation bill, fiscal 1982, the Clerk had proceeded to read two paragraphs in a particular section of the bill. Mr. Robert S. Walker, of Pennsylvania, wished to lodge a point of order against the first two paragraphs. The proceedings which denied him that opportunity are carried herein.

MR. WALKER: Mr. Chairman, on page 17 under Administrative Provisions now being read by the Clerk, I raise a point of order against those sections, that they are legislation on an appropriations bill and therefore violate clause 2 of rule XXI.

THE CHAIRMAN:[19] Does the gentleman make his point against all four paragraphs on page 17 in that section?

MR. WALKER: That is correct, Mr. Chairman.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I would point out that the Clerk had read the first two sections.

We would concede the point of order to the remainder.

THE CHAIRMAN: The gentleman from Mississippi is correct, the first two paragraphs of that section had been read and hence the gentleman's point of order comes too late with regard to those two sections.

MR. WALKER: In that case, Mr. Chairman, I withdraw my point of order.

THE CHAIRMAN: The gentleman withdraws his point of order.

The Clerk will read.

Proper Time To Determine Whether Bill Requires a Three-fifths Vote Because It Carries a Tax Rate Increase

§ 5.27 In response to a parliamentary inquiry, the Chair stated that the proper time to raise a point of order under Rule XXI clause 5(c) that a bill carries a "federal income tax rate increase" is when the question is put on final passage.

H.R. 1215, the Contract with American Tax Relief Act of 1995, was to be considered in the House on Apr. 5, 1995.[20] The Speaker

18. 128 CONG. REC. 18626, 97th Cong. 2d Sess.
19. George E. Brown, Jr. (Calif.).
20. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.

was asked by Mr. James P. Moran, of Virginia, if the provisions of the bill did in fact carry a tax rate increase which would require a three-fifths vote, and while the Chair stated that the question was premature, he did indicate that the proper time to press a point of order on that basis would be when the question of final passage was before the House.

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

THE SPEAKER PRO TEMPORE:[1] The gentleman will state his parliamentary inquiry.

MR. MORAN: Mr. Speaker, it is my recollection that this body passed legislation earlier this term, in fact, on the first day of this session, that required that any tax increase be passed with a three-fifths vote of this body.

Since there is a tax increase to be leveled on Federal employees, in the case of the Federal Employees Retirement System, a 313 percent increase on their retirement contribution; in the case of the Civil Service Retirement System there was a 35 percent increase in their retirement contribution. This is clearly a tax increase, Mr. Speaker.

Therefore, it seems to me, to be consistent with the legislation this body previously passed, it would require a three-fifths vote. I would reserve my point of order, but I would make that parliamentary inquiry at this time.

THE SPEAKER PRO TEMPORE: The Chair will take the gentleman's inquiry under advisement and rule on it at the appropriate time.

MR. MORAN: Mr. Speaker, I would ask, when would be the appropriate time for a ruling on this parliamentary inquiry?

THE SPEAKER PRO TEMPORE: Pending final passage of the legislation.

MR. MORAN: Mr. Speaker, when would I be able to get a division of the question on that issue?

THE SPEAKER PRO TEMPORE: The Chair will state that the rule relates to the vote on passage. The question becomes ripe for the House upon passage of the legislation. . . .

If the gentleman will suspend. At this point the Chair is merely not responding to an anticipatory parliamentary inquiry. The Chair will rule at the appropriate time.

MR. [KWEISI] MFUME [of Maryland]: When is the appropriate time, Mr. Speaker? When is the appropriate time?

THE SPEAKER PRO TEMPORE: The appropriate time is upon final passage.

Points of Order Which May Be Raised "at Any Time"

§ 5.28 A waiver of points of order against an appropriation in a legislative bill does not inure to the protection of an amendment containing an identical appropriation, as under Rule XXI clause 5, a point of order against any such bill or amendment can be raised "at any time."

1. Robert W. Goodlatte (Va.).

On Apr. 23, 1975,[2] the House had under consideration, in Committee of the Whole, the Vietnam Humanitarian and Evacuation Assistance Act (H.R. 6096). The bill was called up under a special rule reported from the Committee on Rules which waived points of order against appropriations in the language of the bill but did not explicitly protect amendments which contained appropriation language. In a case of "first impression," Chairman Otis G. Pike, of New York, sustained a point of order against an amendment, as amended. Proceedings were as follows:

THE CHAIRMAN: . . . Are there any other amendments?

If not, the question is on the substitute offered by the gentleman from Texas (Mr. Eckhardt) to the amendment in the nature of a substitute offered by the gentleman from Pennsylvania (Mr. Edgar).

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

MR. [ROBERT W.] EDGAR [of Pennsylvania]: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 272, noes 146, not voting 14, as follows: . . .

So the substitute amendment for the amendment in the nature of a substitute was agreed to. . . .

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

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

MR. EDGAR: Mr. Chairman, I make the point of order that my substitute is not in order at this time because of the Eckhardt substitute, and I reserve a point of order according to rule XXI of our rules.

THE CHAIRMAN: The gentleman from Pennsylvania will have to state his point of order at this time. The point of order, as the Chair understands, was against the Edgar amendment in the nature of a substitute, as amended by the Eckhardt substitute?

MR. EDGAR: That is correct.

I make that point of order for two reasons: In the original rule that brought the committee bill to the floor, all points of order against section 3 and section 6 were waived. Our rules say that no general appropriation bill or amendment thereto shall be received or considered if it contains a provision reappropriating unexpended balances of appropriations; except that this provision shall not apply to appropriations in continuation of appropriations for public works.

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

MR. [BOB] ECKHARDT [of Texas]: I do, Mr. Chairman.

Mr. Chairman, I first wish to point out that the point of order comes too late, and I assert that the point of order may not be timely considered after the vote has occurred.

In addition to that, of course, this is not an appropriation bill. This is an authorization bill, as I understand it.

2. 121 CONG. REC. 11512, 11513, 94th Cong. 1st Sess.

MR. EDGAR: Mr. Chairman, if the gentleman will yield, I might say that we checked with our legal counsel when we originally drafted the bill, and we had in my substitute some of the things contained in the original House bill, and we were informed that those parts of the House bill were not in order in my substitute simply because we did not have a waiver.

MS. [BELLA S.] ABZUG [of New York]: Mr. Chairman, if the gentleman from Texas will yield, the point of order raised has been that an amendment which provides funds for certain purposes derived from funds previously appropriated is in violation of clause 5 of rule XXI.

THE CHAIRMAN: Did the gentlewoman say clause 5 of rule XXI?

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Chairman, a point of order.

I make a point of order against the point of order as coming too late.

THE CHAIRMAN: The Chair will state that the Chair desires to hear the point of order before the Chair is able to rule on the question of its timeliness.

The Chair will read clause 5 of rule XXI of the 94th Congress. The Chair will state that the Chair does not believe it is that which was cited by the gentleman from Pennsylvania (Mr. Edgar):

> No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. . . .

The Chair will state that the Chair believes that what the gentleman from Pennsylvania read was clause 4 of rule XXI in the old version.

Is the gentleman now referring to the same language which the Chair has just read?

MR. EDGAR: We are referring to the same language which the Chair has read.

THE CHAIRMAN: Does the gentleman from Texas (Mr. Eckhardt) desire to be heard further?

MR. ECKHARDT: Mr. Chairman, I only want to make it clear that I am raising the point of order that this point of order is made too late. I wish to reiterate the statement that I made before. The point of order is too late and, therefore, it is itself not in order.

THE CHAIRMAN: The Chair is ready to rule.

The Chair did not read the entirety of that section. The section ends

> A question of order on an appropriation in any such bill, joint resolution, or amendment thereto, may be raised at any time.

Accordingly, the rule under which this legislation was considered waived points of order against the original bill. It did not waive points of order against the amendment. The rule does provide that the point of order may be raised at any time (Deschler chapter 25, section 3.2).

The point of order is sustained. The Edgar amendment, as amended, is now ruled out of order.

The Clerk will read.

"At Any Time" Means While the Amendment Is Pending

§ 5.29 The provision in Rule XXI clause 5, that a point of

order against an amendment containing an appropriation to a legislative bill can be made "at any time" has been interpreted to require the point of order to be raised during the pendency of the amendment under the five-minute rule.

On Apr. 28, 1975,[3] where the Committee of the Whole had completed consideration of a measure, had adopted an amendment in the nature of a substitute, and reported the bill, as amended back to the House, the following events occurred:

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. Perkins to the amendment in the nature of a substitute offered by Mr. O'Hara: Page 7, line 17, strike out "the following new paragraph:" and insert in lieu thereof "the following: Beginning with the fiscal year ending June 30, 1976, the income guidelines prescribed by each State educational agency for reduced price lunches for schools in that State under the fifth sentence of this paragraph shall be 100 per centum above the applicable family size income levels in the income poverty guideline prescribed by the Secretary, and any child who is a member of a household, if that household has an annual income which falls between (A) the applicable family size income level of the income guideline for free lunches prescribed by the State educational agency in accordance with the third and fourth sentences of this paragraph and (B) 100 per centum above the applicable family size income levels in the income poverty guideline prescribed by the Secretary, shall be served a reduced price lunch at a price not to exceed 20 cents." . . .

THE CHAIRMAN:[4] The question is on the amendment offered by the gentleman from Kentucky (Mr. Perkins) to the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. O'Hara).

The amendment to the amendment in the nature of a substitute was agreed to. . . .

THE CHAIRMAN: The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment, in the nature of a substitute, as amended, was agreed to.

THE CHAIRMAN: Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. O'Neill) having assumed the chair, Mr. Evans, of Colorado, 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. 4222) to amend the National School Lunch and Child Nutrition Acts in order to extend and revise the special food service program for children and the school breakfast program, and for other purposes related to strengthening the school lunch and child nutrition programs, pursuant

3. 121 CONG. REC. 12043, 12044, 12048, 12049, 94th Cong. 1st Sess.

4. Frank E. Evans (Colo.).

to House Resolution 352, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

THE SPEAKER PRO TEMPORE:[5] Under the rule, the previous question is ordered.

There was no objection.

THE SPEAKER PRO TEMPORE: Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I make a point of order.

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

MR. BAUMAN: Mr. Speaker, I make a point of order against further consideration of the bill on the ground that the amendment offered by the gentleman from Kentucky (Mr. Perkins) on page 17, line 7, constitutes an appropriation in a legislative authorization bill in that it gives to the Secretary of Agriculture the duty of providing all necessary funds to carry out and maintain certain other programs to be used as sources of these funds, but leaves to his discretion the other programs that might possibly be used as sources for these funds and, therefore, constitutes an appropriation of moneys in a legislative authorization bill.

Therefore, Mr. Speaker, I make a point of order against the bill.

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

MR. PERKINS: Mr. Speaker, I desire to be heard on the point of order.

Mr. Speaker, the point of order made by the gentleman from Maryland (Mr. Bauman), comes too late, would be my first point. But, Mr. Speaker, on the merits of the bill, the point of order is not well taken because, on page 22 of the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. O'Hara) we find this language:

> (b) In order to carry out the program provided for under subsection (a) of this section during each of the fiscal years ending June 30, 1976, September 30, 1977, and September 30, 1978, there is authorized to be appropriated the sum of $250,000,000 for each such fiscal year.

So that the authorization is plain, and the only thing we do is to mandate some regulations to the effect if the money is appropriated that the Secretary may be required to spend the money.

MR. BAUMAN: Mr. Speaker, may I be heard further on the point of order?

THE SPEAKER PRO TEMPORE: The gentleman from Maryland will proceed.

MR. BAUMAN: Mr. Speaker, under the rules of the House, specifically, this point of order lies at any time, and it does not come too late. The rules of the House provide that it may be made at any time prior to the final consideration of the bill.

In this respect, Mr. Speaker, I refer the Chair to the question that was ruled on last week on either Wednesday or Thursday in regard to the Vietnamese war.

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

THE SPEAKER PRO TEMPORE: The Chair will state that the point of order raised by the gentleman from Maryland (Mr. Bauman) comes at a time when the amendment is not being considered, and cannot be directed against consideration of the bill itself. In view of the fact that the gentleman from Maryland did not raise his point of order at the time of the consideration of the amendment the Chair holds that the point of order is out of order.

MR. BAUMAN: But, Mr. Speaker, the rules of the House directly provide for this.

THE SPEAKER PRO TEMPORE: The Chair again will state that the point of order is not well taken.

The Chair has already ruled.

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: A parliamentary inquiry, Mr. Speaker.

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

MR. WAGGONNER: My parliamentary inquiry is this: Does the Chair rule this way in view of the decision of the Chair last week when the gentleman from New York (Mr. Pike) was the Chairman of the Committee of the Whole, and who ruled that a point of order could be made at any time?

THE SPEAKER PRO TEMPORE: The Chair will state it can be made at any time that the House is in the Committee of the Whole, and the amendment is pending. The House is not in the Committee of the Whole at this time, and the amendment has been agreed to.

MR. WAGGONNER: The words "at any time," then, may be interpreted in a different way today than they were last week?

THE SPEAKER PRO TEMPORE: No; the rulings are consistent.

MR. WAGGONNER: I thank the Speaker.

THE SPEAKER PRO TEMPORE: The question is on the engrossment and third reading of the bill.

§ 6. Timeliness as Against Amendments

Generally, a point of order against an amendment is properly made immediately after the reading thereof by the Clerk.[6] At the Chair's discretion, the point of order may be raised even before the Clerk has finished the reading, when enough of the text has been read to show that it is out of order.[7] While there is a requirement that copies of an amendment be made available to Members, no point of order lies against the failure of the Clerk to comply with this instruction.[8] A point of order against an amendment is not entertained where some business has intervened between the reading of the amendment and the making of the point of order. Such disqualifying business may consist of the granting of a unanimous-consent request,[9] a res-

6. See §§ 6.1, 6.2, infra.
7. See § 6.10, infra.
8. See § 6.12, infra.
9. See § 6.17, infra.