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when the absence of a quorum is announced; following the establishment of a quorum, further proceedings under the call may be dispensed with by unanimous consent.

On Jan. 21, 1971,[16] before the adoption of rules, a call of the House was ordered in the absence of a quorum. After a quorum of 395 Members had answered to their names, further proceedings under the call were dispensed with by unanimous consent.

§ 10. Adoption of Rules; Applicability

Under the Constitution of the United States, "Each House may determine the Rules of its Proceedings . . . ."[17] The Supreme Court has interpreted this clause to mean that the House possesses nearly absolute power to adopt its own procedural rules. In *United States* v *Ballin*,[18] judicial inquiry into the validity of a House rule was limited to the question of whether the House possessed the power to adopt the rule. The Court determined the only limitations on that power to be that the rule must not violate constitutional rights, and the method of proceeding must be reasonably related to the desired result. The wisdom or folly of the rule was held not to be subject to judicial scrutiny.

The House, through the rulings of the Speaker, has interpreted its constitutional power to determine its own procedural rules very broadly. Since the late 1800s,[19] the rulings of the Speaker on the subject have consistently embodied the principle that such power must be exercised by each Congress. The procedural rules of the preceding Congress are no longer in effect at the opening session of the new Congress,[20] and the House proceeds under general parliamentary law until the rules are adopted.[1] Similarly, Congress may not, by rule or statute, provide that the House is to be governed by certain procedural rules during a future Congress.[2] Such

16. 117 CONG. REC. 14, 92d Cong. 1st Sess.

17. U.S. Const. art. I, § 5, clause 2.

18. 144 U.S. 5 (1892).

19. See 5 Hinds' Precedents §§ 6743–6755.

20. 8 Cannon's Precedents § 3383; 5 Hinds' Precedents § 6002.

1. See § 1, supra, and §§ 10.1, 10.2, infra; see also 8 Cannon's Precedents §§ 3383–3386; 5 Hinds' Precedents §§ 6758–6763.

2. See § 1, supra, and § 10.1, infra; see also 1 Hinds' Precedents §§ 187, 210. At one time, the theory that a House

provisions must be incorporated into the standing rules by the current House if they are to be in effect.[3]

The House traditionally exercises its constitutional power to adopt the rules at the opening session of each Congress.[4] The resolution adopting the rules, which is usually offered by the former Chairman of the Committee on Rules,[5] at the direction of the majority party caucus, generally provides that the rules of the preceding House, with amendments, if any, shall be the rules of the current House.[6] Thus despite the fact that the rules are adopted *de novo* at the beginning of each Congress, in actual practice, a system of permanent standing rules has been developed.

The resolution adopting the rules is one of several resolutions considered under general parliamentary law each Congress, before standing rules are adopted. This body of general parliamentary law, which is further defined by each new ruling on the subject by the Speaker, has traditionally been construed to embrace those rules of procedure which embody practices of long established custom.[7]

Thus the Speaker follows as closely as practicable the customs and practices of the House under former rules,[8] and gives weight to the precedents of the House in interpreting general parliamentary law.[9] It is important to note, however, that general parliamentary law may differ substantially from the rules adopted by the House in the preceding Congress, in which case the rules may be deemed inapplicable.[10]

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might make its rules binding on the succeeding House was much discussed, and even followed in practice. See 5 Hinds' Precedents §§ 6743–6755.

3. See 8 Cannon's Precedents § 3383; 5 Hinds' Precedents § 6002.

4. See § 10.3, infra. For the sequence of the adoption of rules in relation to other organizational business, see § 7, supra.

5. See § 10.4, infra.

6. See § 10.5, infra. The resolution incorporates applicable provisions of the Legislative Reorganization Acts of 1946 and 1970.

7. 6 Cannon's Precedents § 191.

8. 8 Cannon's Precedents § 3386.

9. 8 Cannon's Precedents § 3384. For a general discussion of the parliamentary law applied in the House, see § 1, supra. For general procedure before rules adoption, see § 8, supra, and for motions practice before rules adoption, see § 9, supra.

10. For example, on Jan. 7, 1959, Speaker Sam Rayburn (Tex.), when the previous question was moved without debate, ruled that the House rule, as adopted by the previous Congress, which prescribed 40 minutes of debate in such situations,

On a number of occasions the Speaker has been called upon to interpret general parliamentary law in connection with the adoption of the rules.[11] It has been ruled, for example, that amendments to the resolution may be offered only when the Member in control of it yields for that purpose or when the previous question is rejected,[12] and that clerical errors may be corrected in the engrossment of the resolution after adoption.[13]

Right of Each House To Determine Its Procedural Rules

§ 10.1 Congress may not, by rule or statute, prescribe rules of procedure for a future House.

On Jan. 22, 1971,[14] during the debate on the resolution adopting the rules, the following point of order was raised:

> MR. HALL:[15] Mr. Speaker, I do desire to make a point of order against consideration of Resolution 5 [the resolution adopting the rules], inasmuch as it is against the law of the land.
>
> THE SPEAKER:[16] The gentleman will state his point of order.
>
> MR. HALL: Mr. Speaker, the Legislative Reorganization Act of 1970 is in fact now the law of the land, Public Law No. 91–510, and section 601 (6) thereof states that the effective date of the act is January 1, 1971. . . .
>
> Now, Mr. Speaker, the gentleman from Missouri full well realizes the precedents of the House, the fact that we operate until such time as rules are adopted, under "general parliamentary procedure," and that this is subject to wide interpretation.
>
> On the other hand, Mr. Speaker, my point of order is lodged on the fact that the law of the land, first, says that any committee report or legislation, resolution, must be available to Members for 3 calendar days prior to consideration—section 108(b)(4); and, second that any minority has 3 calendar days to file views with the clerk of any subcommittee—section 107(b). . . .
>
> . . . I pray that, based on the precedents, based on Jefferson's Rules of Procedure, which a former Speaker has ruled are indeed the greater bulk of existing parliamentary procedure, that we do not go forward with consideration of this resolution at this time until we have had due process, the Members have had the resolution in their hands for a minimum of 3 days, that minority reports have had an opportunity for preparation and distribution, and so that true compliance of the law of the land be accomplished.
>
> THE SPEAKER: The Chair is ready to rule. . . .

was not applicable. 105 CONG. REC. 14, 86th Cong. 1st Sess.

11. See §§ 10.1, and 10.2, infra. For general parliamentary law relating to action on resolutions, see § 12, infra.

12. See § 10.9, infra.

13. See § 10.12, infra.

14. 117 CONG. REC. 132, 92d Cong. 1st Sess.

15. Mr. Durward G. Hall (Mo.).

16. Carl Albert (Okla.).

The Constitution is, of course, superior to any public statute and the Constitution in article I, section 5, gives each House the authority to determine the rules of its proceedings, and it has been repeatedly held that the power of each new House to make its own rules may not be impaired or controlled by the rules or actions of a preceding House.

These principles are, in fact, recognized and enunciated in Public Law 91–510, the Legislative Reorganization Act. Section 101 of the act states in part that the rules changes recommended therein are enacted "as an exercise of the rule-making power of the House subject to and with full recognition of the power of the House to enact or change any rule of the House at any time in its exercise of its constitutional right to determine the rules of its proceedings."

The Chair overrules the point of order.

§ 10.2 The House proceeds under general parliamentary law before rules are adopted at the beginning of each Congress.

On Jan. 3, 1953, after the previous question was moved on the resolution adopting the rules for the 83d Congress, the following parliamentary inquiry was raised:

MR. EBERHARTER:[17] Mr. Speaker, are we proceeding now under the rules we are going to adopt later, and which have not yet been adopted? Under what rules is the House proceeding, or is it proceeding under any rules?

THE SPEAKER:[18] The House is proceeding under the general parliamentary rules we have had for many years.

MR. EBERHARTER: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. EBERHARTER: Mr. Speaker, if the rules are not adopted today and the question goes over until next week, would we still proceed under some other rules that have not yet been adopted by the Eighty-third Congress?

THE SPEAKER: If the rules were not adopted today, we would proceed as we are this very moment, under general parliamentary law.[19]

Introduction of Resolution Adopting the Rules

§ 10.3 Traditionally the resolution adopting the rules is offered at the opening session of the new Congress after the adoption of the resolution authorizing the Clerk to inform the President of the election of the Speaker and the Clerk of the House of Representatives.

17. Mr. Herman P. Eberharter (Pa.).

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

19. 99 CONG. REC. 24, 83d Cong. 1st Sess., Jan. 3, 1953. For a more recent statement, by Speaker Carl Albert (Okla.), that the House proceeds under general parliamentary law prior to the adoption of the rules, see 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971.

At the opening session of the 91st Congress,[1] following the adoption of a resolution authorizing the appointment of a committee to notify the President of the assembly of Congress (H. Res. 5), the House adopted a resolution instructing the Clerk to inform the President that the House had elected John W. McCormack, Speaker, and W. Pat Jennings, Clerk (H. Res. 6). Mr. William M. Colmer, of Mississippi, then introduced the resolution providing for the adoption of the rules for the 91st Congress (H. Res. 7), which was agreed to without debate.[2]

On occasion, the resolution adopting the rules has been immediately preceded by a unanimous-consent request,[3] or by another resolution.[4] And in the 73d Congress,[5] the House passed a bill of major importance before the adoption of the rules.

§ 10.4 Generally, the resolution adopting the rules is offered by the former Chairman of the Committee on Rules at the direction of the majority caucus.

In the 92d Congress, Mr. William M. Colmer, of Mississippi, introduced the resolution adopting the rules,[6] and later during the debate thereon remarked that he was presenting the resolution by direction of the Democratic Caucus, but was opposed to one of the provisions contained therein.[7]

Parliamentarian's Note: When the former Chairman of the Com-

1. 115 CONG. REC. 35, 91st Cong. 1st Sess., Jan. 3, 1969. For other recent examples of this order of proceedings see 117 CONG. REC. 13, 92d Cong. 1st Sess., Jan. 21, 1971; 113 CONG. REC. 28, 90th Cong. 1st Sess., Jan. 10, 1967.
2. While this order of proceeding is generally followed, several deviations are noted in Hinds' Precedents. In one instance the rules were adopted immediately after the election of the Speaker (1 Hinds' Precedents § 93), and in another the rules were adopted before the election of the Clerk (1 Hinds' Precedents § 245).
3. See 84 CONG. REC. 13, 76th Cong. 1st Sess., Jan. 3, 1939; 79 CONG. REC. 13, 74th Cong. 1st Sess., Jan. 3, 1935 (unanimous consent requested for permission for the House to recess).
4. See 111 CONG. REC. 20, 21, 89th Cong. 1st Sess., Jan. 4, 1965 (resolution on clerk-hire).
5. 77 CONG. REC. 83, 73d Cong. 1st Sess., Mar. 9, 1933 (see § 12.8, infra).
6. 117 CONG. REC. 13, 92d Cong. 1st Sess., Jan. 21, 1971. For other recent examples, see 115 CONG. REC. 35, 91st Cong. 1st Sess., Jan. 3, 1969; 107 CONG. REC. 25, 87th Cong. 1st Sess., Jan. 3, 1961; 105 CONG. REC. 15, 86th Cong. 1st Sess., Jan. 7, 1959.
7. 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971.

mittee on Rules is opposed to key provisions of the resolution adopting the rules, the resolution may be offered by the Majority Leader.

In the 88th,[8] 89th,[9] and 90th Congresses,[10] the resolution was introduced by Majority Leader Carl Albert, of Oklahoma, at the direction of the Democratic Caucus.[11] The debate over the adoption of the rules for the 88th Congress was focused on the merits of a provision which would increase the size of the Committee on Rules from 12 to 15 members.[12] Howard W. Smith, of Virginia, the former Chairman of the Committee on Rules, indicated his opposition to that provision as follows:

> If this resolution passes, you all know what it means, and it will happen again, and that is to say whenever the President wants a bill passed or the Speaker wants a bill submitted to the floor, he gets it. Now, I think that there ought to be some discretion about this matter so that the Committee on Rules could do now like they have done in the past, at least give the matter some looking over, give it some consideration and a little time, so that the country might know what some of these measures are about. I hope none of my southern friends are going to be complaining around here when certain measures come up that are going to come up, and come up quite promptly, if the Committee on Rules is packed again. And, I hope that when they go to vote on this resolution that they will remember that there are some things involved in this that will greatly and adversely affect their States; not just how many people should be on the Committee on Rules or who shall govern the Committee on Rules.[13]

In the 89th and 90th Congresses, the resolution adopting the rules incorporated the 21-day rule, providing for the discharge of the Committee on Rules from the consideration of a special order by a majority vote of the House. On both occasions, the former Chairman of the Committee on Rules demonstrated his opposition to the resolution by voting against the motion on the previous question.[14]

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8. 109 CONG. REC. 14, 88th Cong. 1st Sess., Jan. 9, 1963.

9. 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965.

10. 113 CONG. REC. 28, 90th Cong. 1st Sess., Jan. 10, 1967.

11. 111 CONG. REC. 23, 89th Cong. 1st Sess., Jan. 4, 1965 (remarks of Mr. Albert).

12. 109 CONG. REC. 14, 88th Cong. 1st Sess., Jan. 9, 1963.

13. 109 CONG. REC. 18, 88th Cong., 1st Sess., Jan. 9, 1963.

14. 111 CONG. REC. 24, 89th Cong., 1st Sess., Jan. 4, 1965 (Howard W. Smith, [Va.], former Chairman of the Committee on Rules); 113 CONG. REC. 31, 90th Cong. 1st Sess., Jan. 10, 1967 (William M. Colmer, [Miss.], former Chairman of the Committee on Rules).

Form of Resolution

§ 10.5 The resolution adopting the rules usually provides that the rules of the preceding House, with or without amendments shall be the rules of the current House.

The following proceedings in the 87th Congress[15] illustrate the practice whereby the House adopts the rules of the preceding Congress:

> MR. HOWARD W. SMITH, of Virginia: Mr. Speaker, I offer a resolution.
>
> The Clerk read as follows:
>
> *Resolved*, That the Rules of the House of Representatives of the 86th Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, be, and they are hereby, adopted as the Rules of the House of Representatives of the 87th Congress.

In recent Congresses,[16] the resolution adopting the rules of the previous Congress frequently has provided for amendments to those rules. Such a resolution[17] routinely contains language substantially similar to the resolution adopting the rules of the previous Congress intact, with the following addition:

> [The rules of the preceding Congress are adopted], with the following amendment therein as a part thereof, to wit: . . .

Although a resolution adopting the rules usually takes the above form, the entire set of standing rules may be drafted as part of the resolution. In the 83d Congress[18] the resolution adopting the rules provided in part:

> *Resolved*, That the following be, and they are hereby, adopted as the rules of the Eighty-third Congress. . . .

Withdrawing or Postponing the Resolution to Adopt Rules

§ 10.6 The resolution adopting the rules may be withdrawn at any time before action is taken thereon.

In the 92d Congress[19] the reading of the resolution adopting the rules by the Clerk was interrupted by the following proceedings:

> THE SPEAKER:[20] The Clerk will suspend the reading of the resolution.

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15. 107 CONG. REC. 25, 87th Cong. 1st Sess., Jan. 3, 1961. For similar examples, see 113 CONG. REC. 28, 90th Cong. 1st Sess., Jan. 10, 1967; 105 CONG. REC. 15, 86th Cong. 1st Sess., Jan. 7, 1959; 103 CONG. REC. 47, 85th Cong. 1st Sess., Jan. 3, 1957.

16. See, *e.g.*, 117 CONG. REC. 13, 92d Cong. 1st Sess., Jan. 21, 1971; 115 CONG. REC. 35, 91st Cong. 1st Sess., Jan. 3, 1969; 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965.

17. See, *e.g.*, 109 CONG. REC. 14, 88th Cong. 1st Sess., Jan. 9, 1963.

18. 99 CONG. REC. 15–24, 83d Cong. 1st Sess., Jan. 3, 1953.

19. 117 CONG. REC. 13, 92d Cong. 1st Sess., Jan. 21, 1971.

20. Carl Albert (Okla.).

The Chair recognizes the gentleman from Mississippi (Mr. William M. Colmer).

MR. COLMER: Mr. Speaker, I am advised that an error was made in the haste here and that the wrong resolution was submitted. Therefore, I ask unanimous consent——

THE SPEAKER: The gentleman from Mississippi can withdraw the resolution.

MR. COLMER: Mr. Speaker, I withdraw the resolution.

MR. GROSS:[1] Mr. Speaker, reserving the right to object——

MR. SPEAKER: The reservation of objection is not in order.

MR. GROSS: Mr. Speaker, did not the gentleman from Mississippi offer a resolution to the House?

THE SPEAKER: Yes, he did; but he has withdrawn it; and he has that right to withdraw it.

§ 10.7 Consideration of the resolution adopting the rules may be postponed, on motion, until the following day.

At the opening session of the 92d Congress,[2] after the resolution adopting the rules was read and a point of order was reserved against it, the following motion was offered:

MR. COLMER:[3] Mr. Speaker, I move that further consideration of the resolution be put over until tomorrow, and that the resolution be printed in the Record.

THE SPEAKER:[4] The question is on the motion offered by the gentleman from Mississippi.

The motion was agreed to.

Non-Divisibility of the Resolution

§ 10.8 The Speaker indicated, in response to a parliamentary inquiry, that a resolution adopting the rules of the preceding Congress with three amendments was not subject to a demand for a division of the question.

A question as to the divisibility of the vote on the resolution arose in the 89th Congress[5] in the form of a parliamentary inquiry:

MR. SMITH:[6]. . .

There is another question I want to ask, and I think maybe the gentleman might yield. There are three distinct changes of existing rules of the House which have been in effect for a long time. . . .

. . . Under the rules perhaps this is a parliamentary inquiry. Is the oppor-

1. Mr. Harold R. Gross (Iowa).
2. 117 CONG. REC. 15, 92d Cong. 1st Sess., Jan. 21, 1971.
3. Mr. William M. Colmer (Miss.).
4. Carl Albert (Okla.).
5. 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965. In Hinds' Precedents, a similar situation is noted in which the Speaker, David B. Henderson (Iowa), ruled that it was not in order to demand a separate vote on each rule. 5 Hinds' Precedents § 6159.
6. Mr. Howard W. Smith (Va.)

tunity for a division of the question going to be had so we can vote for what we want to vote for and vote against what we do not want to vote for instead of having to swallow the whole dose at one time.

THE SPEAKER:[7] The gentleman is making a parliamentary inquiry. In reply, the Chair may say this resolution is not divisible.

Amending the Resolution

§ 10.9 When the Member in control of the resolution adopting the rules refuses to yield for the introduction of amendments, they may be offered only if the previous question on the resolution is first voted down.

At the opening session of the 83d Congress,[8] the Member who had offered the resolution adopting the rules indicated that he would not yield for the introduction of amendments. The following parliamentary inquiry was then raised:

MR. CELLER:[9] Mr. Speaker, do I correctly understand that the parliamentary situation is that if the motion for the previous question is not voted down, no opportunity will be given to offer an amendment by way of liberalizing the rules?

THE SPEAKER:[10] The gentleman states the situation accurately.

The proceedings in connection with the adoption of the rules of the 92d Congress are illustrative of the procedure usually followed when amendments to the resolution are offered. On Jan. 22, 1971,[11] the previous question on the resolution, which incorporated the controversial 21-day rule for discharging the Committee on Rules as part of the standing rules, was rejected. An amendment deleting that provision was then offered, and subsequently agreed to by the House.[12]

§ 10.10 Although generally, an amendment may be offered only after the previous question is voted down on the resolution to adopt rules,[13] there are exceptions to this rule.

In the 79th Congress,[14] an amendment to the resolution adopting the rules was introduced without objection even though the Member in charge of the resolu-

7. John W. McCormack (Mass.)

8. 99 CONG. REC. 24, 83d Cong. 1st Sess., Jan. 3, 1953.

9. Mr. Emanuel Celler (N.Y.).

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

11. 117 CONG. REC. 140. 92d Cong. 1st Sess.

12. 117 CONG. REC. 143, 92d Cong. 1st Sess., Jan. 22, 1971.

13. 113 CONG. REC. 31, 90th Cong. 1st Sess., Jan. 10, 1967; 97 CONG. REC. 17, 92d Cong. 1st Sess., Jan. 3, 1951; 95 CONG. REC. 10, 81st Cong. 1st Sess., Jan. 3, 1949.

14. 91 CONG. REC. 10, 79th Cong. 1st Sess., Jan. 3, 1945.

tion had not yielded for that purpose, nor had he moved the previous question.

Speaker's Participation in Debate on the Resolution

§ 10.11 The Speaker may participate in the debate on the resolution adopting the rules.

In the 89th Congress,[15] the Speaker, John W. McCormack, of Massachusetts, took the floor in support of the resolution adopting the rules, and in the course of his remarks, explained his reasons for so doing:

> MR. MCCORMACK: Mr. Speaker, as this resolution involves changes in the rules, I feel that my views should be known to the Members of the House. I strongly favor the resolution offered by the gentleman from Oklahoma [Mr. Albert]. I think the 21-day rule is a rule that is for the benefit of the individual Member of the House without regard to party affiliation in giving [him] the opportunity of passing upon legislation that has been reported out of a standing committee.

Correction of the Resolution

§ 10.12 The House, by unanimous consent, may direct the Clerk to correct clerical errors in the engrossment of the resolution adopting the rules.

The resolution adopting the rules for the 90th Congress, as passed by the House on Jan. 10, 1967,[16] contained several errors. On Jan. 12, 1967,[17] Majority Leader Carl Albert, of Oklahoma; who had introduced the resolution, asked the House for unanimous consent to direct the Clerk to make the following corrections in the engrossment of the resolution: First, to strike out "Ninetieth Congress" and insert "Eighty-ninth Congress"; and second, to insert the clause "With the following amendment, to wit:", which was necessary to integrate the amendment into the resolution. There was no objection to the request. Mr. Albert then obtained unanimous consent for the resolution as corrected to be printed in the Journal and in the Record.[18]

§ 11. Resumption of Legislative Business

Once the two Houses of Congress have assembled, elected offi-

15. 111 CONG. REC. 23, 89th Cong. 1st Sess., Jan. 4, 1965. See also 109 CONG. REC. 14–22, 88th Cong. 1st Sess., where Speaker McCormack took the floor to debate the resolution adopting the rules and increasing the membership of the Committee on Rules.

16. 113 CONG. REC. 33, 90th Cong. 1st Sess.

17. 113 CONG. REC. 430, 90th Cong. 1st Sess.

18. 113 CONG. REC. 431, 90th Cong. 1st Sess., Jan. 12, 1967.