

force of law and are binding on those for whose use the rules were established,⁽⁸⁾ there is a point beyond which courts will not venture in their disposition of cases concerning the rules. Thus, in a controversy involving a House rule that required testimony to be received by a committee in executive session only if the committee determined that the testimony of the witness would tend to defame, degrade, or incriminate any person, the court stated that it would be an unwarranted interference with the powers conferred by the Constitution upon the legislative branch for any court to presume to dictate that determination.⁽⁹⁾ It is worth noting that the court in this case also cited a presumption in favor of the regularity of all official conduct and stated that the presumption required that it be assumed that a committee would not disregard its rules.

§ 5. —Amendment

In the exercise of its rule-making power under the Constitution,⁽¹⁰⁾ the House may amend its

8. *Yellin v United States*, 374 U.S. 109 (1963); *Christoffel v United States*, 338 U.S. 84 (1949); *Randolph v Willis*, 220 F Supp 355 (1963).
9. *Randolph v Willis*, 220 F Supp 355 (1963).
10. See §3, supra.

rules at any time. It has been said⁽¹¹⁾ that the question of changing the rules of the House is a matter for decision by the House and not the Chair.

Generally, amendments are made by resolution, although, of course, rules may be, in effect, rescinded or modified through the use of a number of procedural devices, such as unanimous-consent requests.⁽¹²⁾ Similarly, statutes containing provisions as to procedure may have the effect of changing a rule of the House where the statute is the later reflection of the will of the House.⁽¹³⁾ In adopting the rules of the previous House, of course, the House frequently amends such rules, either by incorporating the amendments in the resolution adopting the rules, or adopting amendments after a negative vote on ordering the previous question on the resolution as first offered.⁽¹⁴⁾

The Committee on Rules has jurisdiction over the rules and joint rules, other than rules or joint rules relating to the Code of Offi-

11. See the proceedings at 104 CONG. REC. 12121, 85th Cong. 2d Sess., June 24, 1958 (especially remarks of Speaker Rayburn).
12. See §5.2 (amendment by unanimous consent) and §7 (abrogation or waiver), *infra*.
13. §6.2, *infra*.
14. Generally, see §3, supra.

cial Conduct or relating to financial disclosure by a Member, officer, or employee of the House.⁽¹⁵⁾ Thus, the Committee on Rules has jurisdiction over resolutions proposing amendments to the rules of the House, and may report a resolution referred to it to change the rules of the House except in a respect that would constitute violation of constitutional provisions.⁽¹⁶⁾ The Committee on Rules may itself recommend an amendment to the rules of the House, for the House to pass upon.⁽¹⁷⁾

The Committee on Standards of Official Conduct has jurisdiction over measures amending the rules of the House relating to financial disclosure by Members, officers and employees of the House.⁽¹⁸⁾

15. Rule XI, *House Rules and Manual* §715 (1973).

16. For further discussion of the scope of the rule-making power, see §4, *supra*.

17. See 92 CONG. REC. 5864, 79th Cong. 2d Sess., May 27, 1946 (remarks of Speaker Rayburn speaking in response to a parliamentary inquiry relating to the scope of authority of the Committee on Rules).

18. For an instance in which the Chairman of the Committee on Standards of Official Conduct inserted in the Record the text of a resolution, referred to that committee, amending the financial disclosure rule, see 116 CONG. REC. 1077, 91st Cong. 2d Sess., Jan. 26, 1970.

A rule⁽¹⁹⁾ provides that the Committee on Rules shall have leave to report at any time on rules, joint rules, and the order of business. In accordance with that principle, it has been held that reports of the Committee on Rules on resolutions proposing amendments to the rules of the House are privileged.⁽²⁰⁾

The rules of the House have frequently been amended for purposes of transferring jurisdiction over particular matters from one committee of the House to another,⁽¹⁾ or for purposes of changing the name of a committee.⁽²⁾ In such cases, the changes in the rules may be implemented by resolutions electing the members of the committee under its former name to the newly named committee, and transferring records, bills, and the like to that committee.

19. Rule XI, *House Rules and Manual* §726 (1973).

20. See §5.3, *infra*.

1. See 113 CONG. REC. 29560, 29564-67, 90th Cong. 1st Sess., Oct. 20, 1967.

2. See 115 CONG. REC. 3723, 3745-47, 91st Cong. 1st Sess., Feb. 18, 1969; 97 CONG. REC. 883, 82d Cong. 1st Sess., Feb. 2, 1951.

For discussion of standing committees and their jurisdiction generally, see Ch. 17, *infra*.

Amendment by Resolution**§ 5.1 Amendments to the rules are generally offered in the form of a privileged resolution reported and called up by the Committee on Rules.**

Amendments to the rules are typically brought about by resolution as in the following instance in the 90th Congress:⁽³⁾

MR. COLMER:⁽⁴⁾ Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 42 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 42

Resolved, That paragraph 4 of rule XXII of the Rules of the House of Representatives is amended by adding at the end thereof the following sentence: "Two or more but not more than ten Members may introduce jointly any bill, memorial, or resolution to which this paragraph applies."

[Mr. Colmer was recognized for one hour.]

MR. COLMER: . . . Mr. Speaker, this resolution . . . provides for a change in the rules of the House to provide that as many as 10 Members of the House may join in sponsoring a resolution or a bill. . . .

3. 113 CONG REC. 10708, 90th Cong. 1st Sess., Apr. 25, 1967.
4. William M. Colmer (Miss.) was the Chairman of the Committee on Rules.

Amendment by Unanimous Consent**§ 5.2 Propositions to make minor changes in the rules are frequently considered by unanimous consent.**

As an example of this practice, unanimous consent was asked in the 86th Congress⁽⁵⁾ for the immediate consideration of a resolution to amend the rules by renumbering certain paragraphs.

Reports of Committee on Rules as Privileged**§ 5.3 Reports of the Committee on Rules on resolutions proposing amendments to the rules of the House are privileged.**

In the 74th Congress, in the course of a discussion of a resolution amending the Private Calendar rule, Speaker Joseph W. Byrns, of Tennessee, in responding to a point of order cited the rule⁽⁶⁾ that the Committee on Rules shall have leave to report at any time on rules, joint rules, and

5. 105 CONG. REC. 1209, 86th Cong. 1st Sess., Jan. 27, 1959.

The practice of amending the rules by unanimous consent, and several examples thereof, are noted in 8 Cannon's Precedents §§ 3379-3381.

6. Now Rule XI, *House Rules and Manual* § 726 (1973).

the order of business, and then stated:⁽⁷⁾

The pending resolution proposes to amend the rules of the House, it relates to the order of business in the House, and, under the rule the Chair has just read, is made a matter of privilege.

Multiple Reports on Same Resolution

§ 5.4 Two reports may not be filed from the Committee on Rules on the same resolution.

In the 81st Congress, the Chairman of the Committee on Rules, Adolph Sabath, of Illinois, reported a privileged resolution proposing certain amendments to the rules, which was referred to the House Calendar and ordered to be printed. Responding to a subsequent attempt by another Member to file a report on the same resolution, Speaker Sam Rayburn, of Texas, stated,⁽⁸⁾ "The Chair is of opinion that two reports cannot be filed on the same resolution at the same time."

Parliamentarian's Note: In this case, Mr. Edward E. Cox, of Georgia, had been authorized to file the report because it was evidently feared that the Chairman,

7. 79 CONG. REC. 4482, 74th Cong. 1st Sess., Mar. 26, 1935.

8. 96 CONG. REC. 501, 81st Cong. 2d Sess., Jan. 17, 1950.

Mr. Sabath, either would not immediately do so or would not call it up within the seven days allowed him under the rule. Mr. Cox stepped aside to permit Mr. Sabath to file the report under an alleged understanding that Mr. Sabath would call it up on a specified day. During discussion of the matter, Mr. Cox attempted to file a report on the same resolution, whereupon Speaker Rayburn expressed his opinion as indicated.

Showing Proposed Changes of Rules

§ 5.5 The Ramseyer rule⁽⁹⁾ did not apply to reports of the Committee on Rules on resolutions amending the rules of the House.

In the 74th Congress, in the course of a discussion of a resolution amending the Private Calendar rule, Speaker Joseph W. Byrns, of Tennessee, in response to a parliamentary inquiry, stated:⁽¹⁰⁾

The Ramseyer rule . . . has to do with reports of committees on bills

9. Rule XIII, *House Rules and Manual* §745 (1973), relating to the requirement that a committee report on a bill amending existing law show the proposed changes in existing law. The Ramseyer rule is discussed in Ch. 17, *infra*.

10. 79 CONG. REC. 4482, 74th Cong. 1st Sess., Mar. 26 1935.

which amend the statutes. This resolution proposes to amend the rules of the House, and therefore does not come within the provisions of clause 2a of rule XIII, the so-called "Ramseyer rule." The Chair, therefore, does not think that the Ramseyer rule applies to this report of the Committee on Rules.

Special Orders; Consideration in Committee of the Whole

§ 5.6 A resolution or bill amending the rules of the House may be considered in the Committee of the Whole, pursuant to the terms of a special order reported from the Committee on Rules.

In the 90th Congress, a resolution amending the rules of the House, eligible for consideration in the House as privileged business and subject to the hour rule, was, pursuant to a special order, considered in the Committee of the Whole and debated for two hours.⁽¹¹⁾ Consideration of the resolution amending the rules proceeded in accordance with the following separate resolution:⁽¹²⁾

H. RES. 1119

Resolved, That upon the adoption of this resolution it shall be in order to

11. 114 CONG. REC. 8776-812, 90th Cong. 2d Sess., Apr. 3, 1968.
12. 114 CONG. REC. 8776, 90th Cong. 2d Sess., Apr. 3, 1968.

move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 1099) amending H. Res. 418, Ninetieth Congress, to continue the Committee on Standards of Official Conduct as a permanent standing committee of the House of Representatives, and for other purposes. After general debate, which shall be confined to the resolution and continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Standards of Official Conduct, the resolution shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the resolution for amendment, the Committee shall rise and report the resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the resolution and amendments thereto.

The purpose of the Committee on Rules in reporting the separate resolution relating to consideration of H. Res. 1099 was to afford the opportunity for adequate debate and the offering of amendments; had H. Res. 1099 come to the floor of the House without a special order, the effect would have been the same as that of a closed rule under which amendments could not be offered.⁽¹³⁾ In

13. See 114 CONG. REC. 8777, 90th Cong. 2d Sess., Apr. 3, 1968 (remarks of Mr. H. Allen Smith [Calif.]).

the course of consideration of the substantive resolution, a committee amendment was agreed to,⁽¹⁴⁾ and other amendments were offered.⁽¹⁵⁾

A resolution amending the rules of the House may be considered in the Committee of the Whole under an open rule pursuant to provisions of a resolution reported from the Committee on Rules.⁽¹⁶⁾

In some instances, a resolution has been reported from the Committee on Rules providing a rule "closed" in part, for consideration of a bill, also reported from that committee, amending the rules of the House. Thus, in the 91st Congress, the House adopted a resolution⁽¹⁷⁾ providing for consideration

14. 114 CONG. REC. 8803, 90th Cong. 2d Sess., Apr. 3, 1968.
15. See, for example, the amendment offered by Mr. Wayne L. Hays [Ohio] (114 CONG. REC. 8804, 90th Cong. 2d Sess., Apr. 3, 1968), against which a point of order was sustained, the Chair ruling that, to a resolution providing an official code of conduct for Members, officers, and employees of the House, an amendment making the code applicable to other persons not associated with the House was not germane.
16. See, for example, 116 CONG. REC. 17013, 91st Cong. 2d Sess., May 26, 1970 (H. Res. 971).
17. H. Res. 1093, providing for consideration of H.R. 17654 (Legislative Reorganization Act of 1970).

of a bill amending the rules of the House under a procedure prohibiting amendments that would change the jurisdiction of any standing committee. The proceedings in part were as follows:⁽¹⁸⁾

MR. [B.F.] SISK [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1093, and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1093

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 17654) to improve the operation of the legislative branch of the Federal Government, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Rules, the bill shall be read for amendment under the five-minute rule. No amendment to the bill shall be in order which would have the effect of changing the jurisdiction of any committee of the House listed in rule XI. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage

18. 116 CONG. REC. 23901, 91st Cong. 21 Sess., July 13, 1970.

without intervening motion except one motion to recommit.

After some discussion, the following proceedings took place:⁽¹⁹⁾

MR. [H. ALLEN] SMITH [of California]: . . .

This is a closed rule from the standpoint that no amendments to the bill will be permitted so far as changing the jurisdiction of any committee of the House as listed in rule XI is concerned.⁽²⁰⁾ Other than that, it is an open rule. . . .

The resolution was agreed to.

Amendments to Resolution

§ 5.7 On one occasion the Chairman of the Committee on Rules, after calling up a privileged resolution reported by his committee amending the rules of the House, offered an amendment not previously agreed to by the committee.

In the 90th Congress, in the course of consideration of a resolution amending the rules to permit

19. *Id.* at p. 23902.

20. As an example of the effect of the prohibition against amendments that would change committee jurisdiction, an amendment restricting the power of the Committee on Rules to report a closed rule was ruled out of order as effecting a change in that committee's jurisdiction. See 116 CONG. REC. 26414, 91st Cong. 2d Sess., July 29, 1970.

joint sponsorship of bills, the Chairman of the Committee on Rules offered an amendment as follows:⁽¹⁾

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Colmer: On page 1, line 4, after "than" strike out "ten" and insert "twenty-five".

The amendment was agreed to.

§ 5.8 A resolution reported by the Committee on Rules proposing to amend the rules may not be amended unless the Member in charge yields for that purpose or the previous question is voted down, nor is an amendment offered by the Member in charge subject to amendment.

The following proceedings took place in the 82d Congress:⁽²⁾

MR. [JOHN E.] LYLE [Jr., of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up H. Res. 386 and ask for its immediate consideration.

[The Clerk read the resolution, which proposed an amendment to the rules of the House.]

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I would like to in-

1. 113 CONG. REC. 10711, 90th Cong. 1st Sess., Apr. 25, 1967.

2. 97 CONG. REC. 11394, 11397, 82d Cong. 1st Sess., Sept. 14, 1951.

quire, as a parliamentary inquiry, whether or not this resolution would be subject to amendment if an amendment were offered for and on behalf of the Rules Committee.

THE SPEAKER [Sam Rayburn, of Texas]: The gentleman from Texas [Mr. Lyle] has control of the time. The gentleman from Texas can offer an amendment before he moves the previous question, which amendment the Chair hopes will be offered.

MR. HALLECK: In other words, if the question that has been raised is such as merits the attention of the House before we finally act on this matter, then it could be reached by some sort of amendment offered by the gentleman from Texas [Mr. Lyle]?

THE SPEAKER: Or he could yield to someone to offer an amendment. . . .

MR. [CLARK E.] HOFFMAN [of Michigan]: A parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

MR. HOFFMAN: But unless the gentleman from Texas does offer such an amendment the only way we could have an opportunity would be to vote down the previous question.

THE SPEAKER: That would be correct.

MR. LYLE: Mr. Speaker, when I introduced the resolution I called to the attention of the House the objection that had been raised to the proviso that has been under discussion. I have drawn an amendment which I expect to offer which would strike out lines 12, 13, and 14.

THE SPEAKER: Does the gentleman desire to offer the amendment now?

MR. LYLE: Mr. Speaker, I now offer the amendment.

The Clerk read as follows:

Amendment offered by Mr. Lyle:
Strike out lines 1, 13, and 14.

MR. HOFFMAN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HOFFMAN: Is an amendment to the amendment in order?

THE SPEAKER: Not unless the gentleman from Texas yields for that purpose.

The question is on the amendment offered by the gentleman from Texas.

The amendment was agreed to.

Rereferral or Recommittal of Resolution Amending Rule

§ 5.9 A resolution reported by the Committee on Rules proposing an amendment to the rules of the House was by unanimous consent recommitted to the Committee on Rules, a motion to recommit not being in order.

In the course of the proceedings described above⁽³⁾ relating to a resolution proposing an amendment to the rules, the following exchange took place:⁽⁴⁾

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

3. § 5.8, supra.

4. 97 CONG. REC. 11397, 82d Cong. 1st Sess., Sept. 14, 1951 (Speaker Sam Rayburn, Tex.).

MR. HOFFMAN: Is a motion to recommit in order?

THE SPEAKER: Not on a resolution from the Committee on Rules. . . .

MR. [JOHN E.] LYLE [of Texas]: Mr. Speaker, I ask unanimous consent that the resolution may be re-referred to the Committee on Rules.

THE SPEAKER: Is there objection to the request of the gentleman from Texas?

There was no objection.

Discharge of Committee on Rules; Adoption of Resolution

§ 5.10 The Committee on Rules was by motion discharged from further consideration of a resolution amending the rules of the House.

In the 78th Congress, a resolution amending the rules was read with respect to which Mr. John E. Rankin, of Mississippi, remarked:⁽⁵⁾

Mr. Speaker, this resolution was introduced a little more than a year ago, on January 6, 1943. We were unable to get it reported from the Rules Committee. I am reliably informed the Committee on Rules never had a chance to vote on it. It was never laid before them for a vote. Therefore it was petitioned out. Two hundred and

5. See 90 CONG. REC. 629, 78th Cong. 2d Sess., Jan. 24, 1944 (Speaker Sam Rayburn, Tex.).

As to discharging matters from committee consideration generally, see Ch. 18, *infra*.

eighteen Members of this House signed a petition bringing it before the House at this time. . . .

A motion to discharge the Committee on Rules was agreed to.⁽⁶⁾

§ 5.11 Where the Committee on Rules is discharged from further consideration of a resolution amending the rules, the House immediately votes on adoption of the resolution, and amendments are not in order.

In the course of the proceedings described above concerning a resolution to amend the rules,⁽⁷⁾ the following exchange took place:⁽⁸⁾

MR. [HAROLD D.] COOLEY [of North Carolina]: I wish to be advised for my own information and for the information of the House as to whether or not this resolution will be subject to amendment in the event of an affirmative vote on the motion to discharge. There seems to be some uncertainty about it.

THE SPEAKER [Sam Rayburn, of Texas]: The Chair will read the rule, which is very clear:

If the motion should prevail to discharge the Committee on Rules from any resolution pending before the committee the House shall immediately vote on the adoption of said resolution, the Speaker not enter-

6. 90 CONG. REC. 633, 78th Cong. 2d Sess., Jan. 24, 1944.

7. See § 5.10, *supra*.

8. 90 CONG. REC. 631, 78th Cong. 2d Sess., Jan. 24, 1944.

taining any dilatory or other intervening motions except one motion to adjourn.

MR. [ADOLPH J.] SABATH [of Illinois]: That is on the resolution itself, Mr. Speaker.

THE SPEAKER: On the resolution itself.

MR. COOLEY: My parliamentary inquiry was about the resolution after the discharge of the committee.

THE SPEAKER: That is exactly what the Chair was reading. It reads: "On the resolution." When the House votes to discharge the committee then the resolution is before the House for a vote.

MR. COOLEY: Under the general rules of the House providing for an amendment; or am I mistaken?

THE SPEAKER: This is not under the general rules of the House; this is under the discharge rule.

Discussion of Effect of Proposed Amendment

§ 5.12 The effect of a proposed amendment to the rules is a matter for debate and not within the jurisdiction of the Chair to decide on a parliamentary inquiry.

In the 90th Congress, in the course of debate on a resolution to amend the rules to permit joint sponsorship of bills, the following exchange took place:⁽⁹⁾

MR. [DURWOOD G.] HALL [of Missouri]: . . .

9. 113 CONG. REC. 10710, 90th Cong. 1st Sess., Apr. 25, 1967.

[W]ill the distinguished gentleman yield at this time for a parliamentary inquiry of the Chair, inasmuch as it is important that we try to envisage, in passing this legislation today, what effect it will have on the future rules of procedure in the House, and their application.

MR. [WILLIAM M.] COLMER [of Mississippi]: I yield to the gentleman from Missouri.

THE SPEAKER PRO TEMPORE:⁽¹⁰⁾ The Chair must advise the distinguished gentleman from Missouri that this is a matter for debate on a resolution pending and not a matter properly within the jurisdiction of the Chair on a parliamentary inquiry. It is up to the sponsor of the resolution to explain the terms of the resolution

§ 6. —Applicability; Construction

A rule⁽¹¹⁾ provides that the rules of proceeding in the House shall be observed in Committees of the Whole House so far as they may be applicable. Similarly, the rules of the House are the rules of its committees and subcommittees so far as applicable.⁽¹²⁾ Thus, Members may appeal from decisions of the chairmen of their respective committees in the same manner as Members have a right

10. Carl Albert (Okla.).

11. Rule XXIII, *House Rules and Manual* § 877 (1973).

12. Rule XI, *House Rules and Manual* § 735 (1973).