

The language of section 14, as adopted by the conferees, would therefore have been nongermane had such an amendment been offered in the House.

Section 17, which was a Senate amendment to the House bill, is also nongermane since it would revise permanent law through a 2-year authorization. This section would revise a statute dealing with the release of information concerning security measures by the Secretary of Energy, and other matters that involve the nuclear weapons program of the Department of Energy.

Parliamentarian's Note: The motion to reject the nongermane portions of the conference report was substantively and grammatically divisible, so that a division of the question on any of the three sections could have been demanded by any Member prior to the Chair's putting the question on the motion to reject, in order to avoid a subsequent point of order against one of the sections just to obtain a separate subsequent vote on a motion to reject that one section.

§ 27. —Amendment to Senate Amendment

The reader will note from prior sections in this chapter that when judging the germaneness of an amendment to a proposition under consideration and originating in

the House, the amendment must relate to the subject matter and to the pending text under immediate consideration. For example, in sections 2 and 18, *supra*, it is demonstrated that an amendment must be germane to the pending portion of the bill to which offered, or to the amendment to which offered, as the case may be, whether in the form of a motion to strike out and insert, to strike out, or to insert. Similarly, section 21, *supra*, indicates that perfecting amendments to amendments in the nature of a substitute or to substitute amendments need only be germane to the inserted language contained in said substitutes, it being irrelevant whether or not the perfecting amendment might be germane to the underlying (perhaps broader) bill which said substitute seeks to strike out and replace. In that contest, the language of the underlying bill proposed to be stricken is not taken into consideration when determining the germaneness of a second degree amendment to a substitute proposing to insert other language. It is only the pending text under immediate consideration against which the germaneness of proposed amendments thereto is judged. This test of germaneness is consistent with Rule XIX governing the permis-

sible degree of amendments in the House (see Chapter 27, Amendments, *supra*). At this stage, the House has not finally adopted any version of a House-passed bill and is free to reject the pending amendment(s) and proceed to other differently drafted amendments which may present another test of germaneness to the bill as a whole.

With respect to proposed House amendments to Senate amendments to a House-passed bill, however, the language of the underlying House-passed bill may be relevant to the question of the germaneness of a subsequently proposed amendment to a Senate amendment, especially where the Senate amendment has stricken out language in the House-passed bill, since in such a situation the House should not be bound only to language or a modification thereof which is germane to Senate inserted provisions, but should be permitted to insist upon retention of all or a portion of House-passed stricken language without having to insist upon disagreement with the entire Senate-inserted language, in an effort to reach a germane compromise with the Senate. Thus where a Senate amendment proposes to strike out language in a House bill, the test of the germaneness of a motion to

recede and concur with an amendment is the relationship between the language in the motion and the provisions in the House bill proposed to be stricken, as well as those to be inserted (if any) by the Senate amendment.⁽¹⁹⁾ On the other hand, it is not sufficient that an amendment to a Senate amendment be germane to the original House bill if it is not germane to the subject matter of a Senate amendment which merely inserts new matter and does not strike out House provisions.⁽²⁰⁾ In that case, House-passed text may have no direct bearing on the germaneness of a House amendment to the Senate-inserted amendment. Therefore, while it is generally true that a proposed House amendment must always be germane to the particular Senate amendment to which offered,⁽¹⁾ the form of the Senate amendment is relevant in determining whether underlying House-passed text is also language to which the proposed amendment must relate.

The test of the germaneness of an amendment to a motion to concur in a Senate amendment with

19. See §§ 27.9, 27.10, 27.13, 27.22, 27.25 and 27.41, *infra*.

20. See 5 Hinds' Precedents §6188 and 8 Cannon's Precedents §2936.

1. See 5 Hinds' Precedents §§6188-91, 8 Cannon's Precedents §2936 and §§27.2 and 27.34, *infra*.

an amendment is the relationship between the amendment and the motion, and not between the amendment and the Senate amendment to which the motion has been offered,⁽²⁾ since at that stage the amendment is being offered to a proposition initially pending in and not yet adopted by the House, rather than directly to a Senate amendment.

Formerly, a Senate amendment was not subject to the point of order that it was not germane to the House bill,⁽³⁾ but under recent changes in the rules points of order may be made and separate votes demanded on portions of Senate amendments and conference reports containing language which would not have been germane if offered in the House. Clause 4 of Rule XXVIII permits points of order against language in a conference report which was originally in the Senate bill or amendment and which would not have been germane if offered to the House-passed version, and permits a separate motion to reject such portion of the conference report if found nongermane.⁽⁴⁾ For purposes of that rule, the House-passed version, against which Senate provisions are compared,

2. See §27.6, *infra*.

3. See 8 Cannon's Precedents §3425.

4. See §26, *supra*.

is that finally committed to conference, taking into consideration all amendments adopted by the House, including House amendments to Senate amendments.⁽⁵⁾ Clause 5 of Rule XXVIII permits points of order against motions to concur or concur with amendment in nongermane Senate amendments, the stage of disagreement having been reached, and, if such points of order are sustained, permits separate motions to reject such nongermane matter. Clause 5 of Rule XXVIII is not applicable to a provision contained in a motion to recede and concur with an amendment (the stage of disagreement having been reached) which is not contained in any form in the Senate version, the only requirement in such circumstances being that the motion as a whole be germane to the Senate amendment as a whole under clause 7 of Rule XVI.⁽⁶⁾

When a Senate amendment reported in disagreement by conferees is under consideration, a proposal to amend must, under clause 7 of Rule XVI, be germane to the Senate amendment.⁽⁷⁾ A point of order may therefore be sustained against a motion to concur in a Senate amendment with

5. See §26.3, *supra*.

6. See §§27.4 and 27.12, *infra*.

7. See §27.35, *infra*.

an amendment, on the grounds that the proposed amendment is not germane to the Senate amendment.⁽⁸⁾

Accordingly, where a Senate amendment proposing legislation on a general appropriation bill is reported back in disagreement and a motion to concur in the Senate amendment with an amendment is offered, the proposed amendment is subject to the rule of germaneness.⁽⁹⁾

Senate amendments proposing legislation on appropriation bills may be amended by germane amendments. And while it has been held that a Senate amendment proposing legislation on a general appropriation bill may be subject to an amendment of a similar nature offered in the House, the requirement remains in such circumstances that the House amendment be germane to the Senate amendment.⁽¹⁰⁾

8. See §27.34, *infra*.

9. *Id.*

10. See the proceedings at 116 CONG. REC. 41504, 41505, 91st Cong. 2d Sess., Dec. 15, 1970, in which a Senate amendment proposing legislation on a general appropriation bill (H.R. 17755, Committee on Appropriations, comprising Department of Transportation appropriations for fiscal 1971) was reported back from conference in disagreement, pursuant to provisions of Rule XX clause 2

Where, in the consideration of a Senate bill reported from conference in total disagreement, a motion to concur in Senate amendments to a House amendment to the bill is pending or is rejected, the Senate amendments are open to germane amendments.⁽¹¹⁾

An amendment to a Senate amendment is germane if it merely changes the effective date of provisions of law contained in the Senate amendment.⁽¹²⁾

While it is normally not in order under the guise of an amendment

(*House Rules and Manual* §829) prohibiting conferees from agreeing to certain Senate amendments. A motion to concur in the amendment with a further amendment was held to be in order, even though such further amendment was also legislative in nature.

See the ruling of Speaker McCormack at p. 41505. For further discussion of the rules with respect to legislation on appropriation bills, see Ch. 26, *supra*.

11. See the remarks of Speaker McCormack at 113 CONG. REC. 19033, 90th Cong. 1st Sess., July 17, 1967, made in response to the parliamentary inquiry of Mr. Adams. The bill under consideration was S.J. Res. 81, providing for settlement of a railway labor dispute.

12. See the ruling of Speaker pro tempore John J. O'Connor (N.Y.) at 81 Cong. Rec. 976, 75th Cong. 1st Sess., Feb. 8, 1937, quoted in §27.16, *infra*.

to a numbered Senate amendment to amend an unamended portion of the House engrossed bill,⁽¹³⁾ a motion to delete all funding for a program has been offered as an amendment to a Senate amendment which reduced the funding in the original House bill—thus necessitating either an amendment to the House engrossed bill to strike the entire paragraph or some other drafting technique to eliminate the funding.⁽¹⁴⁾

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Senate Amendment Appropriating Funds for Asbestos Hazards Abatement—House Amendment Earmarking Funds for Refinancing Municipal Bond Debt

§ 27.1 When a motion is offered that the House recede from its disagreement to a Senate amendment and concur therein with an amendment, the proposed amendment must be germane to the Senate amendment; and where a Senate amendment appropriated funds for abatement

13. See §27.8, *infra*.

14. See 133 CONG. REC. 18297, 100th Cong. 1st Sess., June 30, 1987 (motion offered by Mr. Whitten during consideration of H.R. 1827, supplemental appropriations for fiscal 1987).

of asbestos hazards in schools, a proposed House amendment to such amendment which would also have earmarked a portion of those funds for the refinancing of the bond debt of the recycle energy system of a specified city was ruled out as non-germane, being totally unrelated to the issue of asbestos hazard.

On Aug. 10, 1984,⁽¹⁵⁾ during consideration in the House of a motion to recede from disagreement to a Senate amendment and concur with an amendment to the Senate amendment to the bill H.R. 6040,⁽¹⁶⁾ Speaker Pro Tempore Doug Barnard, Jr., of Georgia, ruled that the House amendment was not germane to the Senate amendment. The proceedings were as follows:

THE SPEAKER PRO TEMPORE: The Clerk will designate the next amendment in disagreement.

The amendment reads as follows:

Senate amendment No. 55: Page 17, after line 23, insert:

ABATEMENT, CONTROL, AND
COMPLIANCE

For an additional amount for "Abatement, control, and compli-

15. 130 CONG. REC. 23988, 23989, 98th Cong. 2d Sess.

16. Supplemental appropriations for fiscal year 1984.

ance”, \$50,000,000, to remain available until expended: *Provided*, That this amount shall be available for the purposes of the Asbestos School Hazards Abatement Act of 1984.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I offer a motion. The Clerk read as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 55 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following:

ABATEMENT, CONTROL, AND COMPLIANCE

For an additional amount for “Abatement, control, and compliance”, \$63,000,000, to remain available until expended. Of this amount, \$50,000,000 shall be available for the purposes of the Asbestos School Hazards Abatement Act of 1984 (including up to ten percent for administrative expenses as provided for in said Act): *Provided*, That this sum shall not be available for asbestos removal projects until the Environmental Protection Agency develops comprehensive guidelines to classify and evaluate asbestos hazards and appropriate abatement options. And of this amount, \$13,000,000 shall be available to the City of Akron, Ohio, to refinance the bond debt of the recycle energy system of such city: *Provided*, That such sum may not exceed sixty percent of such debt: *Provided further*, That the facilities of such recycle energy system shall be made available to the Federal Government as a laboratory facility for municipal waste to energy research. . . .

MR. [ROBERT L.] LIVINGSTON [of Louisiana]: Mr. Speaker, I make a point of order that the amendment in the motion is not germane to the Senate amendment.

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

MR. LIVINGSTON: Mr. Speaker, the Senate amendment provided \$5 million for abatement, control, and compliance, to remain available until expended for the purposes of the Asbestos School Hazards Abatement Act of 1984.

The amendment in the motion not only provides funds for the same product as the Senate amendment, but goes far beyond the scope of the Senate amendment by earmarking \$13 million for the city of Akron, OH, to refinance the bond debt of the recycle energy system of that city.

A motion to recede and concur in a Senate amendment with an amendment must be germane to the Senate amendment. This amendment introduces a new and wholly unrelated purpose and subject into the Senate amendment. There is no relationship whatever between the subject and purpose of the original Senate amendment, which is asbestos hazards, and the bond debt of the city of Akron for its recycle energy system. . . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The proposed amendment is not germane to the Senate amendment. Therefore, the Chair sustains the point of order.

Computation of Civil Service Retirement Annuities—House Amendment Regarding Mortgage Bond Taxability

§ 27.2 An amendment to a Senate amendment must be germane thereto; and where a

Senate amendment, reported from conference in disagreement on a joint resolution making continuing appropriations, provided for computation of civil service retirement annuities, an amendment (proposed in a motion to recede and concur with an amendment) which sought to amend provisions of the Omnibus Reconciliation Act relating to mortgage bond taxability under the Internal Revenue Code was held not germane.

On Dec. 13, 1980,⁽¹⁷⁾ during consideration of H.J. Res. 637 (further continuing appropriations, fiscal year 1981), the Chair sustained a point of order against a motion that the House recede from its disagreement to a Senate amendment and concur with an amendment. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:⁽¹⁸⁾ The Clerk will designate the next amendment in disagreement.

The amendment reads as follows:

Senate amendment 129: Page 64, after line 21, insert:

Sec. 196. (a) The annuity of an employee retiring under the civil service retirement system with at least five years but less than twenty years of

service as a law enforcement officer or firefighter under the civil service system, or any combination thereof, shall be computed with respect to the service of such employee as such a law enforcement officer or firefighter, or any combination thereof, by multiplying 2½ percent of such employee's average pay by the years of such service.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I offer a motion. The Clerk read as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 129 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment insert the following:

Sec. 196. The table contained in paragraph (1) of subsection (n) of section 1104 of the Omnibus Reconciliation Act of 1980 (Public Law 96-499, approved December 5, 1980) is amended by adding at the end thereof the following new item:

"San Bernardino, California—225,000,000 Financing owner-occupied residences in the overall Shandin Hills Project of the State College Redevelopment Project Number 4." . . .

MR. [ANDREW] JACOBS [Jr., of Indiana]: Mr. Speaker, I renew my point of order . . . on the grounds that [the amendment] is not germane to the Senate amendment or a House amendment on any provision passed in either House, and therefore amounts to legislation on an appropriation bill.

THE SPEAKER PRO TEMPORE: Does the gentleman from Mississippi desire to be heard on the point of order?

MR. WHITTEN: Mr. Speaker, I cannot argue the point of order. The basis for the committee bringing this to the Congress is that this really fits as an

17. 126 CONG. REC. 34097, 96th Cong. 2d Sess.

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

emergency situation which must be handled. If we wait it will force an 8- or 10-month delay. It was thought that we should bring it to the Members on emergency grounds. I have no defense against the point of order.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The motion is not germane to the Senate amendment, and the Chair sustains the point of order for that reason.

Special Census in Areas Impacted by Influx of—Legal Aliens—Amendment Prohibiting Counting of Aliens in Determining Reapportionment

§ 27.3 When a Senate amendment reported from conference in disagreement is under consideration, an amendment thereto must be germane to the Senate amendment; thus, to a Senate amendment authorizing the President to order a special census in state or local government areas determined to have been significantly impacted by an influx of legal aliens within 6 months of a regular census, an amendment not only modifying that provision but also prohibiting the counting of all aliens (legal and illegal) in determining reapportionment of the House of

Representatives was held to be not germane because broadening the scope of the Senate amendment beyond the issue of a special census in those areas impacted by legal aliens.

During consideration of House Joint Resolution 610 (continuing appropriations for fiscal 1981) in the House on Sept. 30, 1980,⁽¹⁹⁾ the proceedings described above occurred as follows:

THE SPEAKER:⁽²⁰⁾ The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 35: Page 12, after line 4, insert:

Sec. 121. Notwithstanding any other provision of law, when the President determines that a State, county, or local unit of general purpose government is significantly affected by a major population change due to a large number of legal immigrants within six months of a regular decennial census date, he may order a special census, pursuant to section 196 of title XIII of the United States Code, or other method of obtaining a revised estimate of the population, of such jurisdiction or subsections of that jurisdiction in which the immigrants are concentrated. Any such special census of revised estimate shall be conducted solely at Federal expense. Such special census or revised estimate shall be conducted no later than twelve months after the regular census date

19. 126 CONG. REC. 28503, 28504, 96th Cong. 2d Sess.

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

and shall be designated the official census statistics and may be used in the manner provided by applicable law.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I offer a motion. The Clerk read as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 35 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following:

Sec. 118. (a) Notwithstanding any other provision of law, when the President determines that a State, county, or local unit of general purpose government is significantly affected by a major population change due to a large number of legal immigrants within six months of a regular decennial census date, he may order a special census, pursuant to section 196 of title XIII of the United States Code. . . .

(b) Notwithstanding any other provision of law, the number of Representatives in Congress to which each State would be entitled under the twentieth decennial census shall be determined only on the basis of the number of persons in each State who are citizens of the United States.

MR. [ROBERT] GARCIA [OF NEW YORK]: Mr. Speaker, I raise a point of order against the motion to recede and concur in the Senate amendment with an amendment.

Mr. Speaker, the motion to recede and concur is not in order because it does not meet the germaneness test under clause 7 of rule 16 of the rules of the House which provide that, "no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

Under the precedents of the House germaneness is determined by the text of the amendment and the burden of proof must be carried by the proponent of the amendment.

The Senate amendment is limited to situations such as the unprecedented influx of Cuban refugees who were lawfully admitted into the country after the census got underway. Senator Chiles' amendment is limited in scope and addresses a unique problem not heretofore encountered in the census.

The amendment is limited to a specific period of time and to a specific category of people who enter the country lawfully around the time the census is taken.

Specifically, the Senate amendment authorizes the Secretary of Commerce to conduct a special census, within 6 months of the decennial census, in order where there has been an unprecedented influx of legal aliens. The number of legal aliens counted in this special census would then be added to the official census figures and used for all legal purposes. The House amendment on the other hand would fundamentally alter and enlarge the purpose of the Senate amendment, and accordingly, the entire motion to recede and concur with an amendment is not in order.

The House amendment directly impacts on the reapportionment of the House following the decennial census. Specifically, the amendment to the Senate amendment would base the apportionment of seats in the House on the number of citizens counted in the census. It would exclude legal as well as illegal aliens counted in the census and incorporated into the apportion-

ment base. Unlike the Senate amendment which is limited to a specific situation, the amendment to the Senate amendment encompasses legal as well as illegal aliens counted in the census. Moreover, it is not restricted to any time frame so that any alien who enters the country regardless of the circumstances and legality of their entry are subject to exclusion from the census.

Thus, the amendment is not germane because it vitiates the applicability of the Senate amendment for all legal purposes. Mr. Speaker, for the foregoing reasons, I must insist on my point of order. . . .

MR. [JOSEPH M.] MCDADE [of Pennsylvania]: . . . Mr. Speaker, I rise in opposition to the point of order. Under the precedents, when a motion is made to recede and concur in an amendment of the Senate with a further amendment, the only test is whether the proposed amendment is germane to the Senate amendment reported in disagreement.

This amendment is germane to the Senate amendment. Both the Senate amendment, and the amendment in the motion, constitute permanent law, since they both contain the phrase "Notwithstanding any other provision of law."

Both of the amendments deal with the same subject, that is, the census. Both deal with the question of who shall be included in the census.

The amendment is germane, and the point of order should be overruled. . . .

THE SPEAKER: The gentleman from New York makes the point of order that the amendment contained in the

motion offered by the gentleman from Mississippi (Mr. Whitten) is not germane to the Senate amendment No. 35. Under the precedents as cited in Deschler's Procedure, chapter 28, section 21, when a Senate amendment reported in disagreement by conferees is under consideration, a proposal to amend must be germane to the Senate amendment.

Senate amendment No. 35 provides that the President may order a special census to be taken if he determines that a State or local unit of government is significantly impacted by a major population change due to a large number of legal aliens within 6 months of a regular decennial census, and that such census in those areas when conducted would be designated as the official census under all applicable law.

The proposed amendment to the Senate amendment, in addition to a slight modification of the Senate language, contains, the additional requirement that representation in Congress to which each State would be entitled under the 20th Decennial Census shall be determined only on the basis of the number of persons in each State who are U.S. citizens. In the opinion of the Chair, the proposed amendment represents a significant broadening of the issue presented by the Senate amendment No. 35, as it addresses not only those areas impacted by legal immigrants within 6 months of a general census, but attempts to legislate on the issue of whether legal and illegal aliens in all areas of the United States should be counted for reapportionment of the House of Representatives. The Chair sustains the point of order.

Point of Order Should Be Based on Rule XVI, Not Rule XXVIII

§ 27.4 Where a motion is made to concur in a Senate amendment with an amendment, and such proposed House amendment contains new matter and is not germane to the Senate amendment, any point of order against the House amendment should be based on Rule XVI, clause 7, rather than on Rule XXVIII, clauses 5(a) and 5(b), which permits points of order against Senate matter (including Senate amendments proposed to be amended by a motion to concur with an amendment); thus, where a point of order is based on the contention that a Senate amendment as proposed to be amended would not have been germane to the House bill, under Rule XXVIII, the Chair may treat the point of order as having been raised under Rule XVI, clause 7.

On June 30, 1987,⁽¹⁾ during consideration of H.R. 1827 (supplemental appropriations for fiscal year 1987), the motion described

1. 133 CONG. REC. 18294, 18295, 100th Cong. 1st Sess.

above was offered to the following amendment in disagreement:

THE SPEAKER PRO TEMPORE:⁽²⁾ The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 5: Page 3, after line 7, insert:

ADMINISTRATIVE PROVISION

Notwithstanding any other provision of law, none of the funds appropriated for fiscal year 1987 shall be used for the purpose of granting any patent for vertebrate or invertebrate animals, modified, altered, or in any way changed through engineering technology, including genetic engineering.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 5 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following:

ECONOMIC DEVELOPMENT
ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE
PROGRAMS

Not to exceed \$14,100,000 appropriated and available for obligation and expenditure under section 108(a)(1) of Public Law 99-190, as amended, shall remain available for obligation through September 30, 1988: *Provided*, That the Economic

2. Dan Glickman (Kan.).

Development Administration shall close out the audits concerning grants to New York, New York pursuant to title I of the Local Public Works Capital Development and Investment Act of 1976, not later than August 1, 1987.

PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

None of the funds appropriated by this or any prior Act to the Patent and Trademark Office shall be used to purchase the mass storage requirement (PTO-10) portion of the U.S. Patent and Trademark Office Automation Project. . . .

MR. [BILL] FRENZEL [of Minnesota]: Mr. Speaker, I make a point of order against amendment No. 5 reported in disagreement of the supplemental appropriation conference report on page 13 of the report, and on page 3 lines 19 through 23 of the printed bill now before us which relates to procurement by the U.S. Patent and Trade Market Office automation project pursuant to rule XXVIII, clause 5(a)(1). This rule relates to nongermane matter in amendments in disagreement.

As I interpret it, the rule states that any matter introduced as a new issue in a conference committee which would have been otherwise ruled out of order if it came before the House, would likewise be made eligible for a point of order as reported in amendments in disagreement from the conference committee should there be a motion from the House to recede from its disagreement with the Senate.

Mr. Speaker, the Senate amendment introduced as new material in the conference committee would delay procurement funds for the Patent Office for the purchase of mass storage re-

quirement equipment. The purchase is part of the overall automation of the U.S. Patent Office and I urge my point of order be sustained.

THE SPEAKER PRO TEMPORE: The gentleman from Minnesota [Mr. Frenzel] is raising a point of order against the motion, is that correct, as being not germane to the Senate amendment under rule XVI, clause 7?

MR. FRENZEL: Yes, Mr. Speaker. . . .

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I concede the point of order.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Smith] concedes the point of order and the point of order is sustained against the motion.

Point of Order, Based on Non-germane Senate Matter, Against Portion of Motion To Recede and Concur With Amendment

§ 27.5 Pursuant to clause 5(b) of Rule XXVIII, a Member may make a point of order against a portion of a motion to recede and concur in a Senate amendment reported from conference in disagreement, with a further amendment, on the ground that that portion of the Senate amendment contained in the motion was not germane to the House-passed measure; and a motion rejecting that portion of the motion to re-

cede and concur with an amendment is in order if the point of order is sustained.

The proceedings of July 31, 1974, relating to the conference report on H.R. 8217, to provide exemptions from tariff duty of certain equipment on United States vessels, are discussed in section 26.30, *supra*.

Test of Germaneness of Amendment to Motion To Concur in Senate Amendment With Amendment

§ 27.6 The test of the germaneness of an amendment to a motion to concur in a Senate amendment with an amendment is the relationship between the amendment and the motion, and not between the amendment and the Senate amendment to which the motion has been offered.

On Aug. 3, 1973,⁽³⁾ there was pending a motion to concur in a Senate amendment to a House amendment to a Senate bill with a further amendment. The Speaker indicated in response to a parliamentary inquiry that any amendment offered to the pending motion upon rejection of the previous question thereon must be

3. 119 CONG. REC. 28121, 28122, 93d Cong. 1st Sess.

germane to the amendment contained in the motion. The proceedings were as follows:

MR. [WILLIAM R.] POAGE [of Texas]: Mr. Speaker, I call up the conference report on the bill (S. 1888) to extend and amend the Agricultural Act of 1970 for the purpose of assuring consumers of plentiful supplies of food and fiber at reasonable prices.

The Clerk read the title of the bill.

THE SPEAKER:⁽⁴⁾ The Clerk will read the conference report.

The Clerk read the conference report.

(For conference report and statement, see proceedings of the House of July 31, 1973.)

THE SPEAKER: The Clerk will read the Senate amendment to the House amendment.

The Clerk proceeded to read the Senate amendment to the House amendment.

(For Senate amendment to House amendment, see proceedings of the Senate of July 31, 1973.) . . .

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

The Clerk read as follows:

Mr. Poage moves to concur in the Senate amendment to the House amendment to the bill, S. 1888, with an amendment as follows: On page 48, line 14, in the engrossed Senate amendment, insert the following new subsection (d) to section 815 of paragraph 27:

“(d) The Secretary of Agriculture is directed to implement policies under this Act which are designed to encourage American farmers to produce to their full capabilities dur-

4. Carl Albert (Okla.).

ing periods of short supply to assure American consumers with an adequate supply of food and fiber at fair and reasonable prices.” . . .

MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Speaker, as I understand the situation now, it is a very delicate parliamentary situation. What we are voting on is a Senate amendment to a House amendment to a Senate bill. That means it has been amended to the first degree, and with the chairman of the Committee on Agriculture adding this innocuous amendment, that is an amendment to the second degree, and no more are allowed.

My question is, On the motion for the previous question, if the question is voted down, should a substitute or an amendment be offered to the motion of the chairman, must it be germane to the innocuous amendment?

THE SPEAKER: The amendment proposed by the gentleman from Texas is now before the House. The amendment contained in the motion of the gentleman from Texas would be subject to a germane amendment if the previous question on this motion were rejected.

Test of Germaneness of Portion of Conference Report Originally Contained in Senate Amendment—Effect of House Amendment to Senate Amendment Prior to Conference

§ 27.7 The test of germaneness under Rule XXVIII, clause 4, of a portion of a conference report originally contained in a Senate amendment is its relationship to the final

House version of the bill committed to conference, and not to the original House-passed bill which may have been superseded by a House amendment to the Senate amendment prior to conference; thus, where the House (by unanimous consent) amended a Senate amendment to include matter germane to the Senate amendment although not germane to the original House-passed bill, the Chair stated that a germaneness point of order would not lie against the Senate amendment as so modified in a conference report.

The proceedings of July 28, 1983, relating to the conference report on H.R. 2973 (interest and dividend tax withholding repeal), are discussed in § 26.3, supra.

Amendment to Provisions Not in Disagreement

§ 27.8 During consideration of a Senate amendment in disagreement, a motion to recede and concur in the Senate amendment with an amendment is not in order if its effect is to amend a part of the House-passed bill not in disagreement.

In the 78th Congress, a bill⁽⁵⁾ was under consideration making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944. During consideration of certain Senate amendments reported from conference in disagreement, Mr. Stephen Pace, of Georgia, made a motion that “the House recede and concur in the amendment of the Senate” with an amendment striking out unamended language passed by the House, in addition to language stricken by the Senate, and inserting language in lieu thereof not relevant to the language stricken by the Senate.⁽⁶⁾ A point of order was made as follows:

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Speaker, I make the point of order against the language of the motion offered by the gentleman from Georgia that it is not relevant to the subject matter. The motion is offered in part in lieu of language which has not been stricken from the bill and in regard to which the two Houses are not in disagreement. . . .

The Speaker,⁽⁷⁾ in ruling on the point of order, stated:

As the matter stands, the gentleman has offered a motion to strike out cer-

5. H.R. 2481 (Committee on Appropriations).
6. See motion reported at 89 CONG. REC. 7041, 78th Cong. 1st Sess., July 2, 1943.
7. Sam Rayburn (Tex.).

tain language that the two Houses have agreed to. The Chair sustains the point of order. . . .

Senate Amendment Striking Language in House Bill—Test of Germaneness of House Amendment

§ 27.9 Where a Senate amendment proposes to strike out language in a House bill, the test of the germaneness of a motion to recede and concur with an amendment is the relationship between the language in the motion and the provisions in the House bill proposed to be stricken by the Senate amendment.

The proceedings of Dec. 12, 1974, relating to H.R. 16901, the agriculture, environment and consumer appropriations bill for fiscal 1975, are discussed in §27.14, *infra*.

Reinserting or Amending Provisions Stricken by Senate Amendment

§ 27.10 Where a Senate amendment struck language of a House bill and inserted language in lieu thereof, an amendment offered in the House substantially retaining both the Senate language and the language of the

House bill was held to be germane. The Speaker in making his ruling relied in part on the relationship between the House amendment and the language proposed to be stricken from the House bill by the Senate amendment.

In the 78th Congress, during consideration of a bill⁽⁸⁾ comprising Treasury and Post Office appropriations for 1944, the following amendment was reported in disagreement:⁽⁹⁾

Amendment No. 26: On page 52, line 11, strike out the following:

Sec. 204. No part of the money appropriated in this title shall be expended for the purpose of collecting, sorting, handling, transporting, or delivering free the mail of any officer in any executive department or administrative agency of government.

And insert in lieu thereof the following:

Sec. 204. The Director of the Bureau of the Budget and the Postmaster General are hereby directed to conduct jointly a study of the use of the mails free of postage by the departments and independent establishments of the executive branch of the Government, and shall report to the Congress not later than 60 days after the passage of this act such actions as may be considered in the best interests of the Government to-

8. H.R. 1648 (Committee on Appropriations).

9. 89 CONG. REC. 5899, 78th Cong. 1st Sess., June 15, 1943.

ward reduction in the volume and cost of handling such penalty mail.

As part of a motion offered by Mr. Frank B. Keefe, of Wisconsin, an amendment was introduced containing substantially the same provisions as the Senate version of the section under consideration, and adding the following language:

. . . Provided further, That after January 1, 1944, no part of the money appropriated in this title shall be expended for the purpose of collecting, sorting, handling, transporting, and delivering free the mail of any officer in any executive department or administrative agency of the Government.

The following points of order were raised against the amendment:

Mr. [Emmet] O'Neal [of Kentucky]: Mr. Speaker, I make the point of order that the amendment is not germane to the paragraph under discussion. It goes beyond the matters considered in the paragraph.

MR. [LOUIS] LUDLOW [of Indiana]: I supplement that with the suggestion, Mr. Speaker, also that it is legislation on an appropriation bill.

Mr. O'Neal further stated:⁽¹⁰⁾

. . . The Senate amendment has only to do with a study of penalty mail, unless the Senate amendment includes the matter stricken from the House bill. The Keefe amendment deals with the use of the money after January 1, 1944, and this seems to go beyond the

10. *Id.* at pp. 5899, 5900.

scope of paragraph 204, the amendment of the Senate, in that among other matters there is a wide degree of prohibition as to all agencies of the Government. . . .

The Speaker⁽¹¹⁾ overruled the point of order, stating that:⁽¹²⁾

. . . The only difference that the Chair can see between the motion of the gentleman from Wisconsin and what was in the House bill and is now in the bill as it comes from the Senate is fixing the dates January 1, 1944, and June 30, 1944. . . .

Parliamentarian's Note: The Speaker apparently rejected the view implicit in Mr. O'Neal's argument, that the Keefe amendment was required to be germane to the language inserted by the Senate amendment.⁽¹³⁾

11. Sam Rayburn (Tex.).

12. 89 CONG. REC. 5900, 78th Cong. 1st Sess., June 15, 1943.

13. See §27.14, *infra*, supporting the view that the test of germaneness under such circumstances is the relationship between the language in the motion and the provision in the House bill proposed to be stricken by, and/or the language inserted by, the Senate amendment. Clearly the language proposed to be stricken is part of the subject under consideration under such circumstances.

Test of Germaneness as Affected by Whether Amendment to Senate Amendment is—Modification' of Senate Amendment or Entirely New Provision

§ 27.11 Clause 5(b) of Rule XXVIII is not applicable to a provision contained in a motion to recede and concur with an amendment which was not contained in any form in the Senate version and which is not therefore a "modification" of the Senate provision, the only requirement in such circumstances being that the motion as a whole be germane to the Senate amendment as a whole under clause 7, Rule XVI.

For discussion of the requirement of germaneness of Senate amendments to House bills and amendments and related procedures under Rule XXVIII clause 5, see §26, *supra*.

The proceedings of Oct. 4, 1978, relating to H.R. 7843, the Omnibus Judgeship Bill, are discussed in §27.12, *infra*.

Diverse Provisions Affecting Organization and Administration of Federal Courts

§ 27.12 To a Senate amendment to a House bill con-

taining diverse provisions relating to the organization and administration of the federal courts, including appointment of additional district and circuit judges, a split of the fifth circuit into two new circuits, assignments, terms and jurisdictional requirements, an amendment in the nature of a substitute containing comparable provisions, omitting any split of the fifth circuit but permitting courts of appeals of a certain size to establish administrative units, was held germane to the Senate amendment as a whole.

On Oct. 4, 1978,⁽¹⁴⁾ during consideration of the conference report on the Omnibus Judgeship Bill⁽¹⁵⁾ in the House, the Speaker Pro Tempore overruled a point of order against the amendment described above. The proceedings were as follows:

MR. [PETER W.] RODINO [Jr., of New Jersey]: Mr. Speaker, I call up the conference report on the bill (H.R. 7843) to provide for the appointment of additional district and circuit judges, and for other purposes, and ask for its immediate consideration.

THE SPEAKER PRO TEMPORE:⁽¹⁶⁾ The Clerk will read the conference report.

14. 124 CONG. REC. 33502-06, 95th Cong. 2d Sess.

15. H.R. 7843.

16. Abraham Kazen, Jr. (Tex.).

The Clerk read the conference report [in total disagreement].

THE SPEAKER PRO TEMPORE: The Clerk will report the Senate amendment.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

That (a) the President shall appoint, by and with the advice and consent of the Senate, two additional district judges for the northern district of Alabama, one additional district judge for the middle district of Alabama, three additional district judges for the district of Arizona, two additional district judges for the eastern district of Arkansas, one additional district judge for the northern district of California, three additional district judges for the eastern district of California. . . .

Sec. 6. On the effective date of this Act the nine active circuit judges of the fifth circuit whose official station is located in the States of Alabama, Florida, Georgia, and Mississippi are assigned as circuit judges of the fifth judicial circuit as redesignated by this Act; and the six active circuit judges whose official station is located in the States of Louisiana or Texas are assigned as circuit judges of the eleventh judicial circuit as constituted by this Act. The seniority in service of each of the judges so assigned shall run from the date of his original appointment to be a judge of the fifth circuit as it existed prior to the effective date of this Act. . . .

Sec. 10. Section 48 of title 28 of the United States Code is amended to read in part as follows:

“§ 48. Terms of court

“Terms or sessions of courts of appeals shall be held annually at the places listed below, and at such other places within the respective circuits as may be designated by rule

of court. Each court of appeals may hold special terms at any place within its circuit.

[Fifth circuit sessions to be held in Atlanta, Birmingham, Jackson, Jacksonville, Miami, and Montgomery. . . .]

Sec. 11. Section 46 of title 28, United States Code, is amended to read in part as follows:

“§46. Assignment of judges; panels; hearings; quorum

* * * * *

“(c) Cases and controversies shall be heard and determined by a court or panel of not more than three judges, unless a hearing or rehearing before the court en banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court en banc shall consist of all circuit judges of the circuit in regular active service.”. . .

Sec.15. (a) Section 1337, of title 28 of the United States Code, is amended to read as follows:

“§1337. Commerce and antitrust regulations; amount in controversy, costs

“(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided however*, That the district courts shall have original jurisdiction of an action brought under and by virtue of paragraph (11) of section 20, chapter 1, or section 319, chapter 8 of title 49 of the United States Code, only if the matter in controversy for each receipt or bill of lading exceeds \$10,000, exclusive of interest and costs. . . .

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

The Clerk read as follows:

Mr. Rodino moves that the House recede and concur in the Senate amendment to the bill H.R. 7843 with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

That (a) the President shall appoint, by and with the advice and consent of the Senate, three additional district judges for the northern district of Alabama, one additional district judge for the middle district of Alabama, three additional district judges for the district of Arizona, two additional district judges for the eastern district of Arkansas, one additional district judge for the northern district of California, three additional district judges for the eastern district of California. . . .

Sec. 6. Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals.

Sec. 9. (a) Section 1337 of title 28 of the United States Code is amended to read as follows:

“§1337. Commerce and antitrust regulations; amount in controversy, costs

“(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided however*, That the district court shall have original jurisdiction of an action brought under section 20(11) of part I of the Interstate

Commerce Act (49 U.S.C. 20 (11)) or section 219 of part II of such Act (49 U.S.C. 319), only if the matter in controversy for each receipt or bill of lading exceeds \$10,000, exclusive of interest and costs. . . .

MR. [ROBERT] McCLORY [of Illinois]: Mr. Speaker, I make the point of order that section 6 of the amendment offered by the gentleman from New Jersey is not a germane modification of the House bill and the Senate amendment thereto. Section 6 is an entirely new subject introduced under color of amendment contrary to clause 7 of rule XVI. Section 6 is not what is commonly known as a nongermane Senate amendment but rather is a nongermane House amendment.

Section 6 treats with the subject of "administrative units." Neither the House bill nor the Senate amendment treat with that subject. The Senate amendment did create a new 11th circuit. But the creation of new administrative units are very different subjects, the former being quite fundamental and the latter being—in the chairman's view—much less so. Moreover, while the Senate amendment dealt with the creation of one new circuit, the pending amendment deals with all circuits.

Finally, section 6 sets new law for en banc courts. The House bill did not. The Senate amendment did not. But the pending amendment says that the number of members of an en banc court may be set by rule of court. Current law—which neither body has sought to change—requires en banc courts comprised of all the judges.

For these reasons, section 6 is not germane. . . .

MR. RODINO: Mr. Speaker, I urge, first of all, that the matter in section 6

is wholly appropriate to the subject matter of the bill, which includes matters pertaining to all 11 circuits, and there is no issue of germaneness, therefore. If it is outside of the scope of the conference, that is not relevant. We are in technical disagreement. . . .

MR. McCLORY: Mr. Speaker, I just point this out, as I did: It is not a question of technical disagreement: it is a question that there was nothing in the Senate bill and nothing in the House bill. The Senate bill did provide for splitting the fifth circuit. I guess that is what they are trying to accomplish here, but what in fact is occurring is that they are trying to develop an administrative procedure which will set up the courts themselves without any law, without any act on the part of this body, to do something.

In a sense, we are delegating a legislative authority to administrative bodies of the courts to enact legislation. So, it is for all circuits throughout the country. It is something that is entirely new. It is new in the Senate, it is new here, and it is entirely nongermane as far as our House rules are concerned in my opinion, Mr. Speaker. . . .

MISS [BARBARA] JORDAN [of Texas]: Just briefly, Mr. Speaker, on the point of order, the question of germaneness is inappropriate to be raised at this time. This bill has as its total subject matter the creation of new district court judges and the creation of circuit judges, so "circuits" is viable, relevant subject matter of this conference.

The fact that this compromise proposal which is reported in the technical disagreement amendment proposed by the gentleman from New Jersey, the

point that we did not talk about administrative units when the bill was before the House, is not applicable to a germaneness question. The question of circuits was a question with us, and we can do anything within the context of that general subject matter of circuits which is desirable to be done.

This particular administrative unit amendment is apropos and germane to the subject matter of circuits. The gentleman from Illinois is arguing the scope of the conference rather than a point of germaneness. Mr. Speaker, on the issue of germaneness, the gentleman from Illinois must be overruled.

MR. McCLORY: Mr. Speaker, may I just respond to that statement simply in this way: We are not dealing in this bill with the subject of circuits. We are dealing with the subject of additional district court and additional circuit court judges for the Federal courts. The limited effect of the legislation before us was an amendment on that judgeship bill in the Senate with respect to one circuit, not all the circuits; so that this is not legislation dealing with division of the circuits. It is legislation dealing with additional judges.

May I say further that the subject of en banc courts is something upon which this body had better legislate independently. I do not see how we could possibly be delegating to an administrative body authority to decide legislation with respect to what is and what is not an en banc court, in contradistinction to what the law presently is, which is to the effect that all of the circuit judges represent the en banc court.

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

The Chair agrees with the gentleman from Texas on the essence of her argument. The essential question, since the conferees reported in disagreement, is whether the proposed motion is germane to the Senate amendment. The Senate amendment was much broader than the House version.

The Chair has a little difficulty in really pinpointing the point that the gentleman from Illinois makes. It may be that he intends his point of order to lie against the motion under rule XXVIII, clause 5. Clause 5(b)(2) of rule XXVIII provides that a point of order may be made upon the offering of a motion to recede and concur with an amendment in an amendment of the Senate reported from conference in disagreement, but only if the Senate amendment or a portion thereof as proposed to be amended by such motion contains matter which would not have been germane if offered to the House bill when it was under consideration.

The Chair would note, however, that the nongermane Senate matter to which the gentleman refers, the split of the 5th circuit into a 5th and an 11th circuit, is not proposed to be included even in modified form in the motion offered by the gentleman from New Jersey.

The amendment proposed to the Senate amendment provides, in section 6, for the establishment of administrative units in any court of appeals with more than 15 active judges, but deletes any mention of an adjustment of the fifth circuit.

Section 6 appears to the Chair to be a new proposition, not a modification of the portion of the Senate amend-

ment dealing with the fifth circuit. Therefore, a point of order under clause 5 of rule XXVIII does not apply in this instance.

The only appropriate test is whether the entire amendment proposed by the gentleman from New Jersey in his motion is germane to the Senate amendment as a whole, and it appears to the Chair that it is germane since the Senate amendment dealt with diverse subjects including appointment of additional district and circuit judges, a split of the fifth circuit, assignments and terms of the courts, and jurisdictional requirements.

For all of these reasons, the Chair will very respectfully overrule the point of order.

Parliamentarian's Note: The Chair mentioned the inapplicability of clause 5 of Rule XXVIII, although Mr. McClory did not specifically mention that clause, because the point of order was based on the argument that section 6 of the Rodino motion, taken alone, was not germane to the provision in the Senate amendment for a split of the fifth circuit. As the Chair indicated, that was not the proper test of germaneness where the provision complained of is an entirely new provision in an amendment to a Senate amendment rather than a "modification" of the Senate amendment.

Striking Appropriation for Missile Program—House Amendment Reinserting Funds and Earmarking Other Funds for Unrelated Grants

§ 27.13 To a Senate amendment striking an appropriation for a missile program from a general appropriation bill, a House amendment not only reinserting a portion of those funds but also earmarking other funds in the bill for specific grants unrelated to that missile program and waiving provisions of law otherwise restricting such grants was conceded to be nongermane.

On Nov. 15, 1989,⁽¹⁷⁾ during consideration of the Department of Defense Appropriations for fiscal 1990⁽¹⁸⁾ in the House, it was demonstrated that an individual proposition is not germane to another individual proposition when a point of order was conceded and sustained against the amendment described above:

THE SPEAKER PRO TEMPORE:⁽¹⁹⁾ The Clerk will designate the next amendment in disagreement.

17. 135 CONG. REC. p. —, 101st Cong. 1st Sess.

18. H.R. 3072.

19. Al Swift (Wash.).

The text of the amendment is as follows:

Senate amendment No. 94: Page 32, line 17, strike out all after "diseases" down to and including "program" in line 20.

MR. [JOHN P.] MURTHA [of Pennsylvania]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Murtha moves that the House recede from its disagreement to the amendment of the Senate numbered 94, and concur therein with an amendment, as follows: In lieu of the matter stricken by said amendment, insert "": *Provided further*, That of the amount herein provided for the Strategic Defense Initiative, \$52,000,000 shall be available only for the Arrow missile program: *Provided further*, That of funds appropriated in Research, Development, Test and Evaluation, Defense Agencies in fiscal year 1989, \$46,000,000 shall be available only for grants as follows:

(1) \$15,000,000 for the National Center for Industrial Innovation at Lehigh University . . .

Provided further, That of the total amount appropriated in this appropriations account for fiscal year 1990, \$15,200,000 shall be available only for grants, as follows:

(1) \$5,200,000 for the proposed Center for Environmental Medicine at the Medical College of Ohio;

(2) \$8,000,000 for the proposed Center for commerce and Industrial Expansion at Loyola University of Chicago; and

(3) \$2,000,000 for the Pilot Program for Combat Casualty Care Management and Research at the Martin Luther King, Jr. General Hospital-Charles R. Drew University of Medicine and Science . . .

Provided further, That the grants provided for in the preceding provisions shall be made without regard

to, and (to the extent necessary) in contravention of, subsection (a) of section 2361 of title 10, United States Code (which is hereby superseded to the extent necessary to make such grants), and shall be made without regard to subsection (b)(2) of such section, and shall be made without regard to the requirements of section 2304 of title 10, United States Code. . . .

MR. [STEVE] BARTLETT [of Texas]: Mr. Speaker, I make a point of order on the amendment.

Mr. Speaker, I make the point of order that the amendment offered by the gentleman from Pennsylvania (Mr. Murtha) violates clause 7 of rule XVI in that it is not germane to the subject matter under consideration, and I would seek to speak to my point of order.

MR. MURTHA: Mr. Speaker, we concede the point of order.

THE SPEAKER PRO TEMPORE: The point of order is conceded and sustained.

Senate Amendment Striking Prohibition Against Use of Funds To Control Air Pollution by Regulating Parking Facilities—House Amendment To Prohibit Use of Funds for Plans Requiring Review of Indirect Sources of Air Pollution

§ 27.14 A specific proposition may not be amended by a proposition more general in scope; thus, to a Senate amendment striking a provision in a general appropria-

tion bill which precluded the use of funds therein by the Environmental Protection Agency to control air pollution by regulating parking facilities, a motion in the House to recede and concur in the Senate amendment with an amendment which temporarily prohibited the use of such funds to implement any plan requiring the review of any indirect sources of air pollution was held more comprehensive in scope and was held to be not germane.

On Dec. 12, 1974,⁽²⁰⁾ during consideration in the House of the conference report on H.R. 16901,⁽¹⁾ it was demonstrated that where a Senate amendment proposed to strike out language in a House bill, the test of the germaneness of a motion to recede and concur with an amendment was the relationship between the language in the motion and the provisions in the House bill proposed to be stricken by the Senate amendment. The proceedings were as follows:

THE SPEAKER:⁽²⁾ The Clerk will report the next amendment in disagreement.

20. 120 CONG. REC. 39272, 39273, 93d Cong. 2d Sess.

1. Agriculture, Environment and Consumer Appropriations, fiscal 1975.
2. Carl Albert (Okla.).

The Clerk read as follows:

Senate amendment No. 8: Page 52, line 20, strike: "Sec. 510. No part of any funds appropriated under this Act may be used by the Environmental Protection Agency to administer any program to tax, limit, or otherwise regulate parking facilities."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I offer a motion. The Clerk read as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 8 and concur therein with an amendment, as follows:

"Sec. 510. No part of any funds appropriated under this Act may be used by the Environmental Protection Agency to implement or enforce any provision of a state implementation plan promulgated or approved pursuant to Section 110 of the Clean Air Act that requires the review of indirect sources, as defined in 40 CFR 52.22(b)(1), pending completion of judicial review, pursuant to Section 307(b) of the Clean Air Act, of the indirect source regulations set forth in 40 CFR 52.22, or any other such regulation relating to indirect sources. . . ."

MR. [PAUL G.] ROGERS [of Florida]: Mr. Speaker, I raise a point of order on the ground of nongermaneness.

The House provision provided only for parking, and the Senate struck completely the House provision.

This language is not germane in that it goes far beyond parking. The amendment would cover airports, it would cover highways, it would cover shopping centers, and it would cover sports arenas, regardless of whether any parking facilities are attached or associated.

There is no question but what this is not germane. It is far beyond what the House had stated, and I think it is not appropriate to be in an appropriation bill at all. Therefore I ask that it be stricken in accordance with the arguments used against the amendment. . . .

MR. WHITTEN: . . . Mr. Speaker, the legislation to which the gentleman from Florida has referred has had the effect of stopping employment in the cities of this country. It has done this because they have to have a permit from the Environmental Protection Agency for parking. It has prevented new buildings in universities, hospitals, shopping centers—and this at a time of great unemployment in the United States.

It was felt when the bill passed in the House that in order to prevent that effect upon our economy and upon the growth of our cities, and in order to protect the inner cities so that efforts could be made to live there, that we, in turn, should keep this one item from being used to effect this legislation.

In the Senate it was felt that since there are lawsuits pending throughout the United States, I think in at least four instances, that this legislation covering parking was the key, that that part which had parking in it should be included in the conference and the conferees felt that in the interest of the Nation that those related matters which are a part and parcel of the provisions to which we were trying to direct our attention, should be accepted, and it was accepted by the conferees.

So, Mr. Speaker, on that basis I respectfully submit that while we

touched on only one part of this provision, that the other parts thereby came before the conference, and on that basis we have gone along with delaying this, not to prohibit, but to restrict EPA from causing such delays or work stoppages in this area until such time as the courts determine the issue. And, as I said, the question is now pending before the Federal courts in at least four cases. Of course neither of these provisions, either the House or the conference provision, affects the rights of the cities, towns or of a State from taking such action as they wish. . . .

THE SPEAKER: The Chair is ready to rule.

There is only one issue involved here and that is whether the amendment included in the motion of the gentleman from Mississippi is germane. It obviously is far more comprehensive than the House provision, and is not germane thereto. The Chair, therefore, sustains the point of order.

Rule Against Offering Amendments Which Change Existing Law to Appropriation Bills as Not Applicable to Motion To Dispose of Senate Amendment

§ 27.15 Where a Senate amendment proposing legislation on a general appropriation bill is, pursuant to Rule XX, clause 2, reported back from conference in disagreement, a proposed House amendment to the Senate amendment adding further legislation is in order if germane

thereto, as clause 2(c) of Rule XXI proscribing amendments to general appropriation bills which change existing law has been held not to apply to motions to dispose of Senate amendments; thus, to a Senate amendment providing for prepayment of certain loans by Rural Electrification Administration borrowers serving a specified density of population, a proposed House amendment eliminating the population density criterion to broaden the applicability of the Senate amendment to additional borrowers within the same class was held germane.

During consideration of H.R. 1827 (supplemental appropriations, fiscal 1987) in the House on June 30, 1987,⁽³⁾ the Chair overruled points of order in the circumstances described above. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:⁽⁴⁾ The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 223: Page 49, after line 17, insert:

3. 133 CONG. REC. 18307, 18308, 100th Cong. 1st Sess.
4. Dan Glickman (Kan.).

RURAL ELECTRIFICATION
ADMINISTRATION

Notwithstanding the amount authorized to be prepaid under section 306A(d)(1) of the Rural Electrification Act of 1936 (7 U.S.C. 936a(d)(1)), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) that serves 6 or fewer customers per mile may, at the option of the borrower, prepay such loan (or any loan advance thereunder) during fiscal year 1987 or 1988, in accordance with section 306A of such Act.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 223 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

RURAL ELECTRIFICATION
ADMINISTRATION

Hereafter, notwithstanding section 306A(d) of the Rural Electrification Act of 1936 (7 U.S.C. 936(d)), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) may, at the option of the borrower, prepay such loan (or any loan advance thereunder) in accordance with section 306A of such Act. . . .

MR. [RON] PACKARD [of California]: Mr. Speaker, I make a point of order, the following points of order, actually:

No. 1, that subject to rule 21, clause 2, this amendment is legislating on appropriation bills.

No. 2, that this amendment is not germane to the supplemental appropriations bill. . . .

MR. WHITTEN: Mr. Speaker, I rise in opposition to the point of order. This amendment is germane to the amendment of the Senate.

What the amendment does is quite straightforward. It removes the phrase "that serves 6 or fewer customers per mile" from the Senate amendment. This has the direct result of allowing REA's that have population density of up to 12.4 customers per mile to qualify, rather than just 6 customers per mile.

The amendment does not change the class of borrowers that can prepay; it simply enlarges the same class. It does not add some other type of borrower.

The Senate amendment allows Rural Electrification Administration borrowers who serve 6 or fewer customers per mile of line to refinance their REA guaranteed debt with the Federal Financing Bank without being assessed a prepayment penalty.

There are 51 borrowers whose loans bear an interest rate such that they would be worthwhile to refinance at present interest rates.

At present there are 31 borrowers with loans whose density is 6 or fewer per mile.

There are 20 borrowers with loans whose density is greater than 6 customers per mile of line.

The conference agreement would allow all 51 borrowers to refinance their loans rather than only 31 borrowers.

This type of amendment is clearly in order and is germane.

Cannon's procedures states, "A general subject may be amended by spe-

cific proposition of the same class." Mr. Speaker, this is exactly what is being done.

In fact, the amendment is even stricter. In effect, what is involved is a proposition being amended by the same proposition in the same class. Clearly, such an amendment expands the scope, but is germane. . . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

With respect to the issue of whether this motion constitutes legislation on an appropriations bill, the Chair rules that it is not in violation of clause 2 [of Rule XX], since the amendment was brought back in disagreement for a separate vote, not as part of the conference report. . . .

With respect to the germaneness issue that the gentleman raises, the motion is germane to the Senate amendment since relating to the same class of borrowers covered by the Senate amendment and the Senate amendment itself is being brought back in disagreement for a separate vote. Therefore, there is no valid germaneness point of order with respect to the motion disposing of the Senate amendment. . . .

Therefore, the Chair overrules the various points of order.

Amending Senate Amendment Comprising Legislation on Appropriation Bill

§ 27.16 Where a Senate amendment on a general appropriation bill proposes an expenditure not authorized by law, it is in order in the House to

perfect the Senate amendment by germane amendments.

In the 75th Congress, during consideration of a deficiency appropriation bill,⁽⁵⁾ a Senate amendment as described above was reported in disagreement.⁽⁶⁾ Mr. Clifton A. Woodrum, of Virginia, made a motion to concur in the Senate amendment with an amendment, and Mr. Henry Ellenbogen, of Pennsylvania, made the point of order that the motion constituted "legislation on an appropriation bill."⁽⁷⁾ The Speaker pro tempore⁽⁸⁾ responded that, "the Senate amendment is legislation, and the amendment to that amendment . . . is not out of order because it contains legislation."

The following exchange then occurred:

MR. [THOMAS] O'MALLEY [of Wisconsin]: Mr. Speaker, I make the point of order that the amendment of the gentleman from Virginia is not ger-

5. H.R. 3587 (Committee on Appropriations).
6. 81 CONG. REC. 975, 75th Cong. 1st Sess., Feb. 8, 1937. See §27.10, supra, for discussion of a similar instance in which a Senate amendment comprising legislation on an appropriation bill was sought to be amended.
7. *Id.* at p. 976.
8. John J. O'Connor (N.Y.).

mane, since it limits the Senate amendment by date.

THE SPEAKER PRO TEMPORE: The Chair will state that it deals with the same subject matter, and the mere limitation of the Senate amendment by date does not destroy its germaneness, and the Chair therefore overrules the point of order.

Amendment to Special Order From Committee on Rules

§ 27.17 To a resolution providing that the House disagree to a Senate amendment that directed a joint committee to conduct a study of excess-profits tax legislation and further directed the appropriate committee to report such legislation and agree to a conference, an amendment providing that the House concur in the Senate amendment with an amendment actually enacting excess-profits tax legislation was held to be not germane, as a special order providing for consideration of a certain subject may not be amended by a proposition providing for consideration of another nongermane subject.

On Sept. 14, 1950, the House had under consideration a resolution providing for action on a tax

bill.⁽⁹⁾ The proceedings were as follows:

MR. [ADOLPH J.] SABATH [of Illinois]: Mr. Speaker, I call up House Resolution 842 and ask for its immediate consideration.

The Clerk read as follows:

Resolved, That immediately upon the adoption of this resolution the bill (H.R. 8920) to reduce excise taxes, and for other purposes, with Senate amendments thereto, be, and the same is hereby, taken from the Speaker's table; that the Senate amendments be, and they are hereby, disagreed to; that the conference requested by the Senate on the disagreeing votes of the two Houses on the said bill be, and hereby is, agreed to; and that the Speaker shall immediately appoint conferees without intervening motion.

Following rejection of the previous question on the resolution, an amendment in the nature of a substitute was offered which sent all other Senate amendments to conference and which amended, in particular, a Senate amendment relating to a study of excess-profits tax legislation. The Senate amendment stated:⁽¹⁰⁾

(a) The House Committee on Ways and Means and the Senate Committee on Finance are hereby directed to report to the respective

9. See 96 CONG. REC. 14832 et seq., 81st Cong. 2d Sess., Sept. 14, 1950. The bill, to reduce excise taxes and for other purposes, was H.R. 8920 (Committee on Ways and Means).

10. See 96 CONG. REC. 14054, 81st Cong. 2d Sess., Sept. 1, 1950.

Houses of Congress during the first session of the Eighty-second Congress, and as early as practicable during said session, a bill for raising revenue by the levying, collection, and payment of corporate excess-profits taxes with retroactive effect to October 1, or July 1, 1950, said bill to originate as required by article I, section 7, of the Constitution.

(b) The Joint Committee on Internal Revenue Taxation, or any duly authorized subcommittee thereof, is hereby authorized and directed to make a full and complete study of the problems involved in the taxation of excess profits accruing to corporations as the result of the national defense program in which the United States is now engaged. The joint committee shall report the results of its study to the House Committee on Ways and Means and the Senate Committee on Finance as soon as practicable.

Mr. Herman P. Eberharter, of Pennsylvania, offered the amendment to the resolution:

Amendment offered by Mr. Eberharter: Strike out all after the word "*Resolved*" and insert in lieu thereof the following:

"That immediately upon the adoption of this resolution, the bill H.R. 8920 with Senate amendments thereto be, and the same is hereby, taken from the Speaker's table to the end—

"(1) That all Senate amendments other than amendment No. 191 be, and the same are hereby, disagreed to and the conference requested thereon by the Senate is agreed to; and

"(2) That Senate amendment No. 191 be, and the same is hereby, agreed to with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate insert the following:

“TITLE VII—EXCESS-PROFITS TAX

“Sec. 701. Excess-profits tax applied to taxable years ending after June 30, 1950.

“Notwithstanding section 122(a) of the Revenue Act of 1945, the provisions of subchapter E of chapter 2 of the Internal Revenue Code shall apply to taxable years ending after June 30, 1950.

“Sec. 702. Computation of tax in case of taxable year beginning before July 1, 1950, and ending after June 30, 1950.

“Section 710 (a) (relating to imposition of excess-profits tax) is hereby amended by adding at the end thereof the following new paragraph:

““(8) Taxable years beginning before July 1, 1950, and ending after June 30, 1950: In the case of a taxable year beginning before July 1, 1950, and ending after June 30, 1950, the tax shall be an amount equal to that portion of a tentative tax, computed without regard to this paragraph, which the number of days in such taxable year after June 30, 1950, bears to the total number of days in such taxable year.” . . .

“Sec. 704. Unused excess-profits credit

“(a) Definition of unused excess-profits credit: Section 710 (c) (2) (relating to definition of unused excess-profits credit) is hereby amended to read as follows:

““(2) Definition of unused excess-profits credit: The term ‘unused excess-profits credit’ means the excess, if any, of the excess-profits credit for any taxable year ending after June 30, 1950, over the excess profits net income for such taxable year, computed on the basis of the excess-profits credit applicable to such taxable year. The unused excess-profits credit for a taxable year of less than 12 months shall be an amount which is such part of the unused excess-profits credit determined under the preceding sentence as the number of

days in the taxable year is of the number of days in the 12 months ending with the close of the taxable year. The unused excess-profits credit for a taxable year beginning before July 1, 1950, and ending after June 30, 1950, shall be an amount which is such part of the unused excess-profits credit determined under the preceding provisions of this paragraph as the number of days in such taxable year after June 30, 1950, is of the total number of days in such taxable year.” . . .

A point of order was raised against the amendment, as follows:⁽¹¹⁾

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I make the point of order against the amendment on the ground that the amendment is neither germane to the resolution sought to be amended, nor to the Senate amendment No. 191. The language of the Senate amendment would direct the Committee on Ways and Means of the House and the Finance Committee of the Senate to conduct a study of excess-profits-tax legislation during the Eighty-second Congress, ostensibly to report back to the House and Senate for passage with a retroactive date of July 1, 1950, or October 1, 1950.

The provision of the bill does not in any way attempt to legislate an excess-profits tax in connection with H.R. 8920. The amendment offered by the gentleman from Pennsylvania proposes an excess-profits tax in connection with H.R. 8920. . . .

In defense of the amendment, the proponent stated as follows:⁽¹²⁾

11. *Id.* at p. 14843.

12. *Id.* at pp. 14843, 14844.

MR. [HERMAN P.] EBERHARTER [of Pennsylvania]: In the first place, Mr. Speaker, this amendment seeks to amend the resolution reported out by the Committee on Rules. . . .

Mr. Speaker, the main purpose of this resolution from the Committee on Rules is to waive a rule requiring that matter subject to a point of order in the first place in the House if put in in the Senate shall be considered in the Committee of the Whole House on the State of the Union. The resolution of the Committee on Rules waives that. It is our contention, Mr. Speaker, that this being so the House has a right by its vote on this substitute resolution to waive the rule pertaining to germaneness, which my substitute amendment attempts to do.

The Speaker,⁽¹³⁾ in ruling on the point of order, stated:⁽¹⁴⁾

It is a rule long established that a resolution from the Committee on Rules providing for the consideration of a bill relating to a certain subject may not be amended by a proposition providing for the consideration of another and not germane subject or matter.

It is true that in Senate amendment No. 191 to the bill, which came from the Senate, there is a caption "Title VII," which states "Excess Profits Tax." But in the amendment which the Senate adopted to the House bill there is no excess-profits tax.

The Chair is compelled to hold under a long line of rulings that this matter, not being germane if offered to the

Senate amendment it is not germane here. The Chair sustains the point of order.

Special Rule Waiving Points of Order Against Nongermane House Amendments Proposed in Joint Statement of Managers

§ 27.18 Prior to consideration of a conference report, a special order was reported from the Committee on Rules waiving points of order against nongermane House amendments proposed in the joint statement of managers to be offered to certain numbered Senate amendments reported from conference in disagreement.

On July 28, 1983,⁽¹⁵⁾ the House agreed to House Resolution 284, waiving germaneness points of order against certain House amendments to Senate amendments to H.R. 3069 (supplemental appropriations for fiscal 1983):

MR. [JONAS M.] FROST [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 284 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

13. Sam Rayburn (Tex.).

14. 96 CONG. REC. 14844, 81st Cong. 2d Sess., Sept. 14, 1950.

15. 129 CONG. REC. 21478-80, 98th Cong. 1st Sess.

H. RES. 284

Resolved, That during the consideration of the amendments reported from conference in disagreement on the bill (H.R. 3069) making supplemental appropriations for the fiscal year ending September 30, 1983, and for other purposes, all points of order under clause 7 of rule XVI are hereby waived against the proposed House amendments printed on the following pages of the joint statement of managers accompanying the conference report, to the following numbered Senate amendments reported from conference in disagreement: on pages 9 through 10, to number 1; on page 11, to number 8; on page 35, to number 83; on page 45, to number 119; on page 48, to numbers 128 through 132; on page 56, to number 164; on page 57, to number 168; and on page 67, to number 231. . . .

MR. FROST: Mr. Speaker, the Committee on Rules has reported House Resolution 284 to provide for the orderly and expeditious disposition of the conference report on the fiscal year 1983 supplemental appropriation and its amendments in disagreement. The rule specifically waives points of order on proposed House amendments to certain amendments in disagreement. The rule waives clause 7 of Rule XVI, the germaneness rule, against 12 specified amendments to the Senate amendments reported from the conference in disagreement.

This unusual procedure is necessary in order that the House might consider these 12 amendments on their merit, for otherwise, it would be possible for any one Member of the House to raise a point of order against consideration of each of these amendments and would thereby preclude the House the opportunity to come to a decision on

these amendments. The waivers granted in the rule in no way change the normal procedure under which conference reports of the Appropriations Committee are considered, and as is customary, the conference report will be considered in the House under the hour rule. Once it has been adopted, the manager of the conference agreement, the distinguished chairman of the Committee on Appropriations, Mr. Whitten, will then bring up each of the 105 amendments in disagreement which will be considered and subject to a vote. In the 12 specific instances where waivers have been granted in the special order reported by the Committee on Rules, the waiver will enable each amendment to be called up, debated and voted on without a point of order being raised and sustained. Each of the amendments in disagreement is allowed 1 hour of debate, equally divided and each is subject to a rollcall vote. . . .

Mr. Speaker, I move the previous question on the resolution.

THE SPEAKER PRO TEMPORE [Mr. Dennis E. Eckart, of Ohio]: The question is on ordering the previous question. . . .

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the resolution.

The question was taken; and on a division (demanded by Mr. Thomas of California) there were—ayes 161, noes 63.

MR. [WILLIAM M.] THOMAS of California: Mr. Speaker, I demand a recorded vote. . . .

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 267, noes

138, answered "present" 1, not voting 27. . . .

So the resolution was agreed to.

Senate Prohibition on Use of Funds in Appropriation Bill—House Amendment Adding Nongermane Authorization

§ 27.19 While a point of order against a motion to amend a Senate legislative amendment to a general appropriation bill reported from conference in disagreement will not lie merely because the proposed House amendment adds legislation, the amendment must be germane to the Senate amendment; thus, to a Senate amendment prohibiting use of funds in a general appropriation bill for only one basing mode for the MX Missile, a motion in the House to recede and concur with an amendment adding to that prohibition an authorization of appropriations for research and development of another weapons system (PARCS) was ruled out of order as not germane.

During consideration of H.R. 5359⁽¹⁶⁾ in the House on Dec. 12,

16. The Department of Defense Appropriations for fiscal 1980.

1979,⁽¹⁷⁾ the Speaker sustained a point of order in the circumstances described above. The amendment in disagreement and the point of order thereto were as follows:

THE SPEAKER:⁽¹⁸⁾ The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 56: Page 29, line 7, insert: None of the funds appropriated under this paragraph to continue development of the MX Missile may be used in a fashion which would commit the United States to only one basing mode for the MX missile system.

MR. [JOSEPH P.] ADDABBO [of New York]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Addabbo moves that the House recede from its disagreement to the amendment of the Senate numbered 56 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert: . . .

In addition to any other funds authorized to be appropriated under this heading, there is hereby authorized to be appropriated during fiscal year 1980 an additional amount of \$5,000,000 only for research and development on the Perimeter Acquisition Radar Attack Characterization System (PARCS). . . .

MR. [RICHARD H.] ICHORD [of Missouri]: Mr. Speaker, I make a point of order against the motion offered by the gentleman from New York (Mr. Addab-

17. 125 CONG. REC. 35520, 35521, 96th Cong. 1st Sess.

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

bo) for the reason that this calls for an authorization. The amendment calls for an authorization in an appropriation bill.

. . . Mr. Speaker, the amendment is not germane, and I would point out for the edification of the Chair that the authorization for the PARCS radar was rejected by both the Committee on Armed Services of the House and the permanent Select Committee on Intelligence of the House, which are the authorizing committees for this particular weapons system. . . .

MR. [JACK] EDWARDS of Alabama: Mr. Speaker, I hate to find myself at odds with my subcommittee chairman, but I do not believe that I can concede the point of order.

This is a point of order raised against an amendment brought back in disagreement. It is not a point of order raised to a bill, and my understanding of the rules is that a point of order would not lie to an amendment brought back in disagreement.

THE SPEAKER: The Chair will rule that the germaneness point of order is well taken. It is very obvious that the motion is not germane as it relates to the Senate amendment 56, and the Chair sustains the point of order.

Amendment Affecting Funds in Other Acts

§ 27.20 To a Senate amendment prohibiting the use of funds appropriated for a fiscal year for a specified purpose, a proposed House amendment prohibiting the use of funds appropriated by

“this or any prior Act” for a different unrelated purpose is not germane.

The proceedings of June 30, 1987, relating to H.R. 1827, supplemental appropriations for fiscal 1987, are discussed in section 27.4, supra.

§ 27.21 To a Senate amendment reducing the amount and restricting the availability of a certain appropriation in the bill, a House amendment proposing (1) to make a portion of the appropriation available for a specified purpose notwithstanding any other provision of law and (2) to prohibit the use of funds appropriated in the bill or in any other act for another specified purpose was held not germane.

On Sept. 30, 1988,⁽¹⁹⁾ during proceedings relating to H.R. 4781, the defense appropriations bill, a motion was made that the House recede from its disagreement to a Senate amendment, and concur therein with an amendment.

Senate amendment No. 23: Page 9, line 24, strike out “\$21,890,400,000” and insert “\$21,817,327,000 of which \$1,549,883,000 shall not become available for obligation until July 1, 1989, and shall be available only for

19. 134 CONG. REC. 27147, 27148, 100th Cong. 2d Sess.

civilian personnel compensation and benefits”.

MR. [WILLIAM V.] CHAPPELL [of Florida]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: ⁽²⁰⁾ The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Chappell moves that the House recede from its disagreement to the amendment of the Senate numbered 23 and concur therein with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: “\$21,721,673,000 of which \$1,500,000 shall be available only for repair and maintenance of Decker Field, Utah: *Provided That* \$26,000,000 shall be available only for the operation of the SR-71 Base in the Pacific area and, notwithstanding any other provision of law, these funds shall be available for obligation and expenditure for this purpose: *Provided further*, That none of the funds appropriated in this or any other Act may be obligated or expended for the purpose of disestablishing or reducing the Air Force SR-71 survivable airborne reconnaissance capability for the Far East and Middle East Theatres from the level of such capability available on October 1, 1987”

MR. [DICK] CHENEY [of Wyoming]: Mr. Speaker, with respect to the Senate amendment numbered 23, I make the point of order that the amendment to the Senate amendment offered by the gentleman from Florida is not germane to the Senate amendment as required by clause 7 of House rule XVI. The amendment waives the application of any other law—including the requirements of the Intelligence Authorization Act, Fiscal Year 1989, which

was signed by the President on September 29, and section 502 of the National Security Act of 1947, as amended. It also seeks to limit the obligation and expenditure of funds in other appropriations acts. For both those reasons, the amendment is not germane to the Senate amendment. . . .

THE SPEAKER PRO TEMPORE: For the reasons given by the gentleman from Wyoming, the point of order is sustained against the motion.

Parliamentarian’s Note: Where an amendment revises an aggregate figure in a bill, an amendment to that amendment addressing other accounts within that aggregate figure may be germane; similarly, the fact that the amendment in the first degree addresses one account within the aggregate figure that it proposes to revise does not affect the germaneness of an amendment in the second degree addressing other accounts within that aggregate figure, because the proposal to revise the aggregate figure potentially opens to germane amendment all accounts within that figure.

Limitation on Particular Use of Funds—Amendment Limiting Other Funds

§ 27.22 To a proposition limiting the use of funds in a bill for a particular purpose, an amendment limiting the use of funds in other Acts

20. G. V. Montgomery (Miss.).

and for a purpose more general in scope is not germane; thus, to a Senate amendment to an appropriation bill reported from conference in disagreement, striking out a House provision prohibiting the use of funds in the bill for a designated Outer Continental Shelf lease sale in California, a House amendment prohibiting the use of funds in the bill or in any other Act for that lease sale and other California lease sales was conceded to be nongermane as more general in scope.

On Oct. 5, 1983,⁽¹⁾ during consideration of the Department of the Interior appropriations for fiscal 1984 (H.R. 3363) in the House, a point of order was conceded and sustained in the circumstances described above. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:⁽²⁾ The Clerk will designate the next amendment in disagreement.

The amendment reads as follows:

Senate amendment No. 95: Page 38, strike out all after line 21 over to and including line 15 on page 40.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I offer a motion.

1. 129 CONG. REC. 27319, 27320, 98th Cong. 1st Sess.
2. Dale E. Kildee (Mich.).

The Clerk read as follows:

Mr. Yates moves that the House recede from its disagreement to the amendment of the Senate numbered 95 and concur therein with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows:

Sec. 113. (a) No funds in this or any other act may be expended by the Department of the Interior for the lease or sale of lands within the Department of the Interior Southern California Planning area described in (1) through (4) below. No funds may be expended for lease or sale of lands within the area described in (1) through (4) so long as adjacent State Tidelands continue to be designated as State Oil and Gas Leasing Sanctuary pursuant to Sec. 6871.1 et seq. of the California Public Resources Code . . .

(1) An area of the Department of the Interior Southern California Planning Area off the coastline of the State of California Oil and Gas Leasing Sanctuary as described by Sec. 6871.1 et seq. of the California Public Resources Code in effect September 29, 1983. . . .

(4) An area within the boundaries of the Santa Barbara Channel Ecological Preserve and Buffer Zone, as defined by Department of the Interior, Bureau of Land Management Public Land Order 4587. . . .

(b) Until January 1, 1985, no funds may be expended by the Department of the Interior for the lease or sale of lands in OCS Lease Sale #80 which lie within an area located off the coastline of the State of California Oil and Gas Leasing Sanctuary as defined by Sec. 6871.1 et seq. California Public Resources Code in effect September 29, 1983. . . .

(c) Until January 1, 1985, no funds may be expended by the Department of the Interior for the lease or sale of lands within the Department of the

Interior Southern California Planning area, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), located in the Pacific Ocean off the coastline of Santa Monica Bay, State of California, which lies within a line on the California (Lambert) Plane Coordinate System. . . .

(f) In OCS Lease Sale 80, lease or sale of lands affecting the responsibilities of the Department of Defense shall be with the concurrence of the Secretary of Defense. . . .

MR. [JOHN B.] BREAUX [of Louisiana]: Mr. Speaker, I make a point of order against Senate amendment No. 95, the point of order being that under rule XVI, clause 7, the provisions are not germane.

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

THE SPEAKER PRO TEMPORE: The point of order is sustained. .

Amendment Changing Amount of Appropriation

§ 27.23 In amending a Senate amendment which appropriates a specific sum for a given purpose, the House is not confined within the limits of the amount set by the original bill and that set by the Senate amendment; but the amendment to the Senate amendment must be germane.

In the 76th Congress, following disposition of a conference report on an agriculture appropriations

bill,⁽³⁾ the following Senate amendment was reported from conference in disagreement:⁽⁴⁾

Amendment No. 110: On page 93, after line 13, insert:

Loans: For loans in accordance with sections 3, 4, and 5, and the purchase of property in accordance with section 7 of the Rural Electrification Act of May 20, 1936, as amended (7 U.S.C. 901-914), \$40,000,000, which sum shall be borrowed from the Reconstruction Finance Corporation. . . .

The following motion was made:

Mr. Cannon of Missouri moves that the House recede from its disagreement to the amendment of the Senate No. 110 and agree to the same with an amendment as follows: In lieu of the sum of \$40,000,000 named in said amendment insert "\$100,000,000."

A point of order was made as follows:⁽⁵⁾

MR. [JOHN] TABER [of New York]: Mr. Speaker, I make the point of order that this amount exceeds the amount carried in the Senate amendment and is not in order at this time.

Mr. Clarence Cannon, of Missouri, stated:

Mr. Speaker, the only requirement is that it be germane, and this is certainly germane to the Senate amendment to which it is offered. . . .

3. H.R. 8202 (Committee on Appropriations).
4. 86 CONG. REC. 6184, 76th Cong. 3d Sess., May 15, 1940.
5. *Id.* at p. 6185.

The Speaker⁽⁶⁾ ruled as follows:

. . . The Chair cites section 3189, of Cannon's Precedents, volume 8:

In amending a Senate amendment the House is not confined within the limits of amount set by the original bill and the Senate amendment.

The Chair therefore overrules the point of order.

***Appropriation for One Year—
Change in Permanent Law***

§ 27.24 To a Senate amendment pertaining only to an appropriation amount for an agency for one year, an amendment not only changing that figure but also adding language having the effect of permanent law is not germane; thus, to a Senate amendment, reported from conference in disagreement, only striking the fiscal year 1984 appropriation for the Congressional Research Service and inserting in lieu thereof a new figure, an amendment proposed in a motion to recede and concur with an amendment, permanently amending the Legislative Reorganization Act to require the Congressional Research Service to submit budget estimates for inclusion in the United States

6. William B. Bankhead (Ala.).

Budget, was conceded to be not germane and was ruled out on a point of order.

During consideration of the Legislative Branch Appropriations for fiscal 1984⁽⁷⁾ in the House on June 29, 1983,⁽⁸⁾ Speaker Pro Tempore Abraham Kazen, Jr., of Texas, sustained a point of order in the circumstances described above. The proceedings were as follows:

THE SPEAKER PRO TEMPORE: The Clerk will designate the last amendment in disagreement.

The amendment reads as follows:

Senate amendment number 17: Page 16, line 15, strike out "\$35,543,550" and insert "\$37,700,000".

MR. [VIC] FAZIO [of California]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Fazio moves that the House recede from its disagreement to the amendment of the Senate numbered 17 and concur therein with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "\$36,620,000 to carry out the provisions of section 203 of the Legislative Reorganization Act of 1946, as amended (2 U.S.C. 166), and section 203(g) of such act is amended, effective hereafter, to read as follows:

"(g) The Director of the Congressional Research Service will submit to the Librarian of Congress for review, consideration, evaluation, and

7. H.R. 3135.

8. 129 CONG. REC. 18129, 18130, 98th Cong. 1st Sess.

approval, the budget estimates of the Congressional Research Service for inclusion in the Budget of the United States Government. . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I make the point of order that the amendment embodied in the motion offered by the distinguished gentleman from California is not germane to the Senate amendment presently under consideration, and therefore that the gentleman's motion is in violation of clause 7 of rule XVI.

The gentleman's amendment has the effect of amending the Legislative Reorganization Act of 1970, and, for this reason, goes far beyond the scope of the Senate amendment and introduces a completely new subject. The amendment clearly is not germane.

It is equally clear, Mr. Speaker, that the germaneness test is applicable in the present parliamentary circumstances. In chapter 28, the most recent edition of *Procedures in the House*, it is stated in section 21 that:

Where a motion is offered to concur in a Senate amendment with an amendment, the proposed amendment must be germane to the Senate amendment. The rule of germaneness also applies to motions to recede and concur in a Senate amendment with an amendment.

Moreover, in the same section:

When considering a Senate amendment reported in disagreement by conferees, a proposal to amend must be germane to the Senate amendment.

Mr. Speaker, the germaneness test clearly applies and the amendment clearly is not germane. I ask that my point of order be sustained. . . .

MR. FAZIO: . . . I do concede the point of order.

THE SPEAKER PRO TEMPORE: The point of order is conceded and sustained.

Striking Funds for Fisheries Program—House Amendment Permanently Amending Authorizing Law

§ 27.25 To a Senate amendment to an appropriation bill reported from conference in disagreement, striking funds for a certain fisheries program, a House amendment permanently amending the authorizing law to provide authority for funding for a state ineligible under existing law was conceded not to be germane and was ruled out on a point of order.

An example of the principle that, to a proposition affecting funds for a program for one fiscal year, an amendment permanently amending the authorizing law relating to eligibility for funding in any fiscal year is more general in scope and is not germane, may be found in the proceedings of the House on Oct. 5, 1983,⁽⁹⁾ during consideration of the Department of the Interior appropriations for fiscal 1984 (H.R. 3363):

9. 129 CONG. REC. 27313, 27314, 98th Cong. 1st Sess.

THE SPEAKER PRO TEMPORE:⁽¹⁰⁾ The Clerk will designate the next amendment in disagreement.

The amendment reads as follows:

Senate amendment No. 16: Page 10, lines 10 and 11, strike out “; and for expenses necessary to carry out the Anadromous Fish Conservation Act (16 U.S.C. 757a–757f)”.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Yates moves that the House recede from its disagreement to the amendment of the Senate numbered 16 and concur therein with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows: “; \$4,000,000, to remain available until expended, for expenses necessary to carry out the Anadromous Fish Conservation Act (16 U.S.C. 757a–757f), of which \$500,000 shall be made available to the State of Idaho without regard to the limitation as stated in 16 U.S.C. 757e and without regard to the Federal cost sharing provisions in 16 U.S.C. 757a–757f: *Provided* That 16 U.S.C. 757e is amended by adding the following new sentence: “The State of Idaho shall be eligible on an equal standing with other states for Federal funding for purposes authorized by sections 757a to 757f of this title.”. . .

MR. [JOHN B.] BREAUX [of Louisiana]: . . . My point of order is pursuant to clause 7 of rule XVI, the provisions of which indicate that [the amendment] is not germane.

Mr. Speaker, I make this point of order for two reasons, if the Speaker would want me to be heard at this time.

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

10. Dale E. Kildee (Mich.).

THE SPEAKER PRO TEMPORE: The point of order is sustained.

Raising Ceiling on Number of District of Columbia Employees for Fiscal Year—Amendment Affecting Permanent Law Regarding Hiring Preferences

§ 27.26 To a Senate amendment raising a ceiling on the number of employees of the District of Columbia government during the fiscal year funded by the bill, a House amendment proposing also to address in permanent law a hiring preference system for such employees was held not germane.

The proceedings of Oct. 11, 1989, relating to H.R. 3026, District of Columbia appropriations for fiscal 1990, are discussed in § 24.5, *supra*.

Condition Unrelated to That Imposed by Senate Amendment

§ 27.27 To a Senate amendment to a general appropriation bill prohibiting the availability of funds in any Act for salaries and expenses for the Office of the Assistant Secretary of Treasury for Enforcement and Operations

after a date certain unless Congress enacts authorizing legislation for the Customs Service, a proposed House amendment restricting availability of funds in that bill for the same office unless specific categories of products, determined to have been produced by slave or convict labor in the Soviet Union unless the Commissioner of Customs is provided with evidence to the contrary, are barred from customs entry into the United States was conceded to be not germane as a condition totally unrelated to that contained in the Senate amendment.

On Nov. 7, 1985,⁽¹¹⁾ during consideration of H.R. 3036⁽¹²⁾ in the Committee of the Whole, the Chair sustained a point of order against an amendment, thereby holding that to a proposition conditioning the availability of funds upon the enactment of an authorizing statute for an enforcing agency, a substitute proposal conditioning the availability of some of those funds upon a prohibition

11. 131 Cong. Rec. 30984, 30985, 99th Cong. 1st Sess.

12. The Department of the Treasury and Postal Service Appropriations, fiscal 1986.

of certain imports into the United States was not germane, as establishing a contingency unrelated to that contained in the proposition to which offered. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:⁽¹³⁾ The Clerk will designate the first amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 3: Page 2, line 14, after "Annex" insert ": *Provided further*, That none of the funds contained in this or any other Act shall be available for the salaries and expenses for the Office of the Assistant Secretary of the Treasury for Enforcement and Operations, after March 1, 1986, unless United States Customs Service authorizing legislation is passed by the Congress."

MR. [EDWARD R.] ROYBAL [of California]: Mr. Speaker, I offer a motion. The Clerk read as follows:

Mr. Roybal moves that the House recede from its disagreement to the amendment of the Senate numbered 3 and concur therein with an amendment, as follows: In lieu of the matter proposed said amendment, insert the following: "*Provided*, That none of the funds appropriated by this Act shall be available for the salaries and expenses of the Office of the Assistant Secretary of the Treasury for Enforcement and Operations if any of the following products of the Union of Soviet Socialist Republics are entered, or withdrawn from warehouse, for consumption in the customs territory of the United States after December 31, 1985, unless the Commissioner of Customs is

13. John P. Murtha (Pa.).

provided with sufficient information pursuant to 19 CFR 12.43 attesting to the fact that the products have not been produced, manufactured, or mined (in whole or in part) by forced labor, convict labor, or indentured labor under penal sanctions:

“(1) gold ore,

“(2) agricultural machinery. . . .

“(8) any other product that the Commissioner of Customs determines to have been produced, manufactured, or mined (in whole or in part) by forced labor, convict labor, or indentured labor under penal sanctions: *Provided further*, That none of the funds appropriated by this Act shall be available to hinder or impede the Commissioner of Customs in making determinations under subsection (8) of the preceding proviso’. . . .

MR. [BILL] FRENZEL [of Minnesota]: Mr. Speaker, I make a point of order that the amendment is not germane to the Senate amendment numbered 3 under clause 7 of rule XVI of the rules of the House.

Senate amendment numbered 3 provides that no funds shall be available for salaries and expenses for the Office of the Assistant Secretary of the Treasury for Enforcement and Operations after March 1, 1986, unless Congress passes authorizing legislation for the U.S. Customs Service.

The proposed substitute amendment, on the other hand, prohibits funding of that office unless seven specific categories of products and other categories determined by the Commissioner of Customs to be produced by slave or convict labor in the Soviet Union are barred entry into the United States after December 31.

The amendment clearly raises new issues and involves subject matter

quite different from the Senate amendment. It also constitutes legislation specifically to prohibit certain imports within the jurisdiction of another committee. . . .

MR. ROYBAL: Mr. Speaker, I rise in opposition to the point of order at this particular point, and I just would like to state that the original Senate amendment provided that none of the funds contained in this or any other act shall be available unless the U.S. Customs Service authorizing legislation is passed by the Congress. . . .

This provision is more restrictive than the amendment in the Senate bill in that, No. 1, it limits the prohibition of funds to those made available by this act only and it does not apply to any other act.

No. 2, the language included in the amendment could appropriately be included in the authorizing legislation designated in the Senate amendment. It, therefore, does not address any additional topic, question, issue, or proposition not committed to committee or conference because the Customs authorizing legislation could contain all of the provisions included in the amendment.

It is the committee’s position that the primary purpose of this provision is not to change the scope of existing law. The purpose of this amendment is to compel the U.S. Customs Service to enforce existing laws.

I would like to put the administration on notice that we expect them to start enforcing the law.

Having said that, Mr. Speaker, I concede the point of order.

THE SPEAKER PRO TEMPORE: The gentleman concedes the point of order,

and the point of order of the gentleman from Minnesota [Mr. Frenzel] is sustained.

Rescinding Agency's Funds for Research on Seat Belts and Passive Restraints—Amendment Imposing Conditions on Availability of All Funds for Agency

§ 27.28 To a proposition rescinding an agency's funds for research and education on the subject of motor vehicle seat belts and passive restraints, an amendment conditioning the availability of all of that agency's funds on certain findings with respect to state compliance with federal standards for mandatory seat belt use was conceded to be not germane, in that it affected regulatory operations and was not confined to research and education funds.

During consideration of H.R. 2577⁽¹⁴⁾ in the House on July 31, 1985,⁽¹⁵⁾ a point of order against a motion to recede and concur with an amendment to the pending proposition was conceded and

14. 131 CONG. REC. 21832–34, 99th Cong. 1st Sess.

15. Supplemental Appropriations, fiscal 1985.

therefore sustained. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:⁽¹⁶⁾ The Clerk will designate the next amendment in disagreement.

The amendment reads as follows:

Senate amendment No. 262: Page 75, lines 14 and 15, strike out "\$7,500,000 or so much thereof as may be available on May 2, 1985" and insert "\$2,000,000". . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I offer a motion. The Clerk read as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 262 and concur therein with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "no funds shall be obligated until the Secretary has made a complete, definitive and binding ruling on the compliance of each state mandatory safety belt use law that has been enacted as of the date of this act with the minimum criteria set forth in Federal Motor Vehicle Safety Standard 208. . . .

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I make a point of order regarding amendment No. 262. The point of order is that that amendment is nongermane to the Senate amendment and so is violative of the rules of the House relative to this point.

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

THE SPEAKER PRO TEMPORE: The gentleman from Mississippi concedes the point of order. The point of order, therefore, is sustained.

16. Philip R. Sharp (Ind.).

Rescinding Funds for B-1 Bomber—Amendment To Delay Effectiveness of Rescission Pending Ratification of Salt II Treaty

§ 27.29 The amendment proposed in a motion to concur in a Senate amendment with an amendment must be germane to the Senate amendment; thus, to a Senate amendment to a general appropriation bill rescinding funds for continued construction and development of the B-1 bomber program, an amendment proposed in a motion to concur therein with an amendment, to delay the effectiveness of the rescission until after either House of Congress so approves and until after ratification by the Senate of a Salt II treaty, was ruled out as a nongermane unrelated contingency, since the condition involved actions by agencies and authorities not charged with administration of the B-1 bomber program, and the Salt II negotiations involved a broad range of arms control issues not necessarily related to the B-1 bomber program.

During consideration of the conference report on H.R. 9375 (supplemental appropriations for fiscal year 1978), the Speaker sustained a point of order in the circumstances described above. The proceedings in the House on Feb. 22, 1978,⁽¹⁷⁾ were as follows:

MR. [ROBERT K.] DORNAN [of California]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Dornan moves to concur in the amendment of the Senate numbered 43 with an amendment as follows:

“Provisions of the Senate amendment No. 43 to H.R. 9375 shall not take effect unless either House of Congress enacts a resolution to the effect and in any case not before a period of 90 days following ratification of a SALT II treaty by the Senate.”. . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I make a point of order that this is legislation not germane to the issue before us.

I make the point of order that involved in the SALT talks are a wide variety of issues, like the level of forces, the deployment of forces, the types and number of warheads, and so forth. It does not relate to the B-1 mission. The B-1 here is not a part of the SALT talk agreements. . . .

MR. DORNAN: Mr. Speaker, I believe it is in order. It is a limitation. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I do not think the gentleman from Texas has made a proper point of order. The question of

17. 124 CONG. REC. 4072-74, 95th Cong. 2d Sess.

legislation on an appropriation bill is not applicable at this point to an amendment adopted by the other body. The question of introducing new material is not in order, either. The amendment of the gentleman from California simply sets a future time when the effectiveness of the amendment of the other body will take place after ratification of the SALT agreement. It is a contingency and a limitation as to a future time, but I think the amendment is in order. . . .

MR. MAHON: Mr. Speaker, with further reference to the point of order, the matter involved is that the proposed amendment is not germane to the issues involved before the House at this time. It is extraneous. It is not germane. . . .

MR. BAUMAN: Mr. Speaker, the point I was making earlier in support of the amendment being in order is that there are ample precedents in the House to support a limitation as to a future time which is contingent upon action of either House or both Houses of Congress. This amendment simply delays the effect of the amendment of the other body to a time contingent upon the other body's action.

That has been upheld by the Chair on many occasions to be a proper limitation. I would add that the issue of the continuance of the B-1 bomber is certainly directly related to the outcome of the SALT talks and is, in my view, fully germane.

MR. MAHON: Mr. Speaker, I wish to make a further point.

It is true we can have limitations in an amendment, but not on an extraneous and totally different issue. The SALT issue is not related to the B-1

bomber rescission before the House and pending at this time. It is an unrelated matter and not germane. It is not subject to the limitation issue that has been set forth.

MR. DORNAN: Mr. Speaker, it will be noted in my amendment that it is only the action of either body, without concurrence of the other, that would implement this amendment No. 43 to H.R. 9375. That way, one House, either the Senate or the House, can make this decision at a time certain after that particular House or both Houses and the American people are assured that we do have a secure defense replacement for this manned bomber.

THE SPEAKER:⁽¹⁸⁾ The Chair is ready to rule.

The gentleman from Texas (Mr. Mahon) makes a point of order against the motion offered by the gentleman from California (Mr. Dornan) on the grounds that it proposes to concur in the Senate amendment with a non-germane amendment.

Senate amendment No. 43 would rescind the appropriation for the B-1 bomber program. The motion offered by the gentleman from California (Mr. Dornan) would amend the Senate amendment to condition the effectiveness of the rescission on the approval of the SALT II treaty between the United States and the Soviet Union. It is well established that is not in order to amend a proposition to delay the effectiveness of the legislation pending an unrelated contingency, such as actions within the responsibility of other agencies or authorities not specifically involved in the administration of the pending proposition.

¹⁸. Thomas P. O'Neill (Mass.).

While it is apparent to the Chair that continued development and construction of the B-1 bomber may as a matter of national policy be related to the progress and conclusion of the SALT II negotiations, it does not appear to the Chair that there is a sufficient nexus between the two issues to permit as germane the requirement that the denial of funding for the bomber program hinge upon the actions of the Departments of State, and their negotiators, for the United States as well as another country, and upon the action of the U.S. Senate in ratifying any agreement which may be reached. The Chair would also note that the issues under consideration in the SALT II negotiations go far beyond the issue of the construction of the B-1 bomber, and that the amendment would therefore condition its construction on the conclusion and approval of deliberations on other and unrelated arms control issues.

The point of order is well taken, and the Chair sustains the point of order.

Allocation of Funds for Defense Construction—Amendment To Restore Facilities Destroyed by Natural Disasters

§ 27.30 To a Senate amendment in disagreement which sought to establish certain priorities in the allocation of funds for construction projects related to defense, an amendment relating to restoration of facilities destroyed by acts of God was held not germane.

The following proceedings in the 78th Congress took place during consideration of the First Defense Appropriations Bill of 1945,⁽¹⁹⁾ and Senate amendments thereto in disagreement:⁽²⁰⁾

THE SPEAKER:⁽¹⁾ The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Amendment No. 17: Page 13, line 7, insert the following: *“Provided further, That in making allocations out of the funds appropriated in this paragraph for construction projects priority shall be given to emergency projects involving an estimated cost to the Federal Government of less than \$250,000.”*

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I move that the House recede from its disagreement to the amendment of the Senate No. 17 and concur therein.

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Speaker, I offer a preferential motion to concur with an amendment.

THE SPEAKER: The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Case: On page 13, amendment No. 17, lines 7 to 11, Mr. Case moves to concur in the Senate amendment [No. 17] with an amendment striking out the period, inserting a semicolon and

19. H.R. 5587 (Committee on Appropriations).

20. See the proceedings at 90 CONG. REC. 9611, 9612, 78th Cong. 2d Sess., Dec. 16, 1944.

1. Sam Rayburn (Tex.).

the following language: “*Provided further*, That the funds appropriated in this paragraph shall be available for restoration of community facilities destroyed by hurricane or other public disaster where the ability of the local community to restore or repair the facilities has been impaired by meeting demands created by the war.” . . .

MR. CANNON: . . . I make a point of order. . . .

Mr. Speaker, this is entirely new matter. The proposition before us is restricted specifically to situations growing out of the war. Here is a proposition which has no relation to the war; it is extraneous matter and is not in order. . . .

MR. CASE: Mr. Speaker, I would like to observe that the last part of the language which I have offered conditions the action proposed upon the repairing of community facilities where the ability of the community has been impaired by meeting demands created by the war. . . .

THE SPEAKER: The Chair . . . cannot see anything in the amendment . . . except an act of God; therefore the Chair thinks that the amendment is not germane and sustains the point of order. . . .

MR. CASE: Mr. Speaker, is it not true that in ruling upon questions of this sort where they involve securing an agreement between the two bodies of the Congress considerable latitude is allowed for the purpose of reaching an agreement in the interest of comity and that the ordinary rules of germaneness do not apply strictly?

THE SPEAKER: The Chair would differ with the gentleman on that. The Chair does not think that conferees on

the part of the House and the Senate could set aside the rule of germaneness.

General Amendment to Specific Proposition: Senate Amendment Providing for Vessel for One State Maritime Academy—Amendment Regarding Vessels for All State Maritime Academies

§ 27.31 To a Senate amendment providing for a training vessel for one state maritime academy, a proposed House amendment relating to training vessels for all state maritime academies was held not germane as more general in scope.

During consideration of H.R. 1827 (supplemental appropriations for fiscal 1987) in the House on June 30, 1987,⁽²⁾ it was demonstrated that a specific proposition may not be amended by a proposition more general in scope when a point of order against the following motion was conceded and sustained:

The text of the amendment is as follows:

Senate amendment No. 33: Page 8, after line 21, insert:

OPERATIONS AND TRAINING

Funds appropriated under this head in Public Law 98-396 for a

2. 133 CONG. REC. 18297, 100th Cong. 1st Sess.

training vessel for the State University of New York Maritime College shall be available for acquisition, preconversion and conversion costs of such vessel.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE:⁽³⁾ The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 33 and concur therein with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

Funds appropriated under this head in Public Law 98-396 for a training vessel for the State University of New York Maritime College shall be available for acquisition, preconversion and conversion costs of such vessel: *Provided*, That prior to the obligation of such funds and prior to the obligation of unobligated funds appropriated under this head for state maritime academies in Public Law 99-500 and Public Law 99-591, except for obligations necessary to complete current shipyard work and voyages in progress, all state maritime academies furnished a training vessel shall agree to such sharing of training vessels as shall be arranged by the Maritime Administration: *Provided further*, That the Maritime Administration shall submit its final plans for such a ship-sharing arrangement to the state maritime academies by October 1, 1987. . . .

MR. [GERRY E.] STUDDS [of Massachusetts]: Mr. Speaker, I make a point of order against the motion on the ground that the amendment that it

purports to add to the Senate amendment is not germane to said amendment. The Senate amendment deals solely with the New York State Maritime Academy. The amendment proposed on the part of the House to the Senate amendment deals with the full range of all the state maritime academies and as such is beyond the scope of the Senate amendment and is not germane thereto. . . .

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I concede the point of order.

THE SPEAKER PRO TEMPORE: The gentleman concedes the point of order.

The point of order is sustained.

Restrictions on Funds for Legal Services Corporation—Amendment Making Other Provisions of Law Applicable to Corporation

§ 27.32 To a Senate amendment to a general appropriation bill subjecting funds for the Legal Services Corporation to a comprehensive series of restrictions on its activities for that fiscal year and reconstituting its board of directors, a proposed amendment also applying to that corporation “with respect to the use of funds in the bill” certain substantive provisions of Federal criminal and civil law not otherwise applicable to it was held not germane.

The proceedings of Oct. 26, 1989, relating to the conference

3. Dan Glickman (Kan.).

report on H.R. 2991, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990, are discussed in §34.37, *infra*.

§ 27.33 To a Senate amendment striking from a general appropriation bill language earmarking the availability of funds therein, a House amendment not only reinserting the appropriation as so earmarked but also authorizing that program was conceded to be not germane.

On Nov. 15, 1989,⁽⁴⁾ during consideration of the Department of Defense Appropriations for fiscal 1990⁽⁵⁾ in the House, a point of order was conceded and sustained against the amendment described above, demonstrating that an authorization for a program is not germane to an appropriation earmarking for that program. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:⁽⁶⁾ The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 27: Page 10, line 3, strike out all after "law" down to and including "Mission" in line 9.

4. 135 CONG. REC. p. —, 101st Cong. 1st Sess.
5. H.R. 3072.
6. Ted Weiss (N.Y.).

MR. [JOHN P.] MURTHA [of Pennsylvania]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Murtha moves that the House recede from its disagreement to the amendment of the Senate numbered 27, and concur therein with an amendment, as follows: In lieu of the matter stricken by said amendment, insert "*Provided*, That notwithstanding Section 502 of the National Security Act of 1947, Section 136 of the Department of Defense Authorization Act for fiscal years 1990 and 1991 (H.R. 2461) or any other provision of law heretofore or hereafter enacted, neither the SR-71 nor the classified program referred to in Section 136 of the Department of Defense Authorization Act for fiscal years 1990 and 1991 (H.R. 2461) shall be terminated and that both the SR-71 and the classified system are hereby authorized: *Provided further*, That notwithstanding any other provision of law, any appropriations included in this Act for personnel, operation and maintenance, procurement, or research and development for the SR-71, the classified system referred to in Section 136 of the Department of Defense Authorization Act for fiscal years 1990 and 1991 (H.R. 2461) or any other classified airborne reconnaissance system are hereby authorized: *Provided further*, That operation of the SR-71 aircraft shall be transferred to the Air National Guard no later than July 1, 1990: *Provided further*, That of the amount appropriated, \$175,000,000 shall be solely for expenses associated with the SR-71 program, of which, \$100,000,000 shall be transferred to Operation and Maintenance, Air National Guard: *Provided further*, That \$130,000,000 is hereby authorized in addition to any other authorization for airborne reconnaissance programs and that of the amount appropriated, \$130,000,000 shall be transferred to Research, De-

velopment, Test and Evaluation, Defense Agencies 1990/1991 to be merged with and to be available for the same purposes and for the same time period as the appropriation to which transferred. . . .

MR. [ANTHONY C.] BEILENSON [of California]: Mr. Speaker, I make the point of order that the motion from the gentleman from Pennsylvania [Mr. Murtha] is not in order because it violates clause 7 of rule XVI because it proposes a nongermane amendment to the proposed amendment.

THE SPEAKER PRO TEMPORE: Does the gentleman from Pennsylvania want to be heard on the point of order?

MR. MURTHA: Mr. Speaker, we concede the point of order.

THE SPEAKER PRO TEMPORE: The point of order is conceded and sustained.

Philippine War Damage Commission—House Amendment to Enlarge Application of Senate Prohibition on Use of Funds

§ 27.34 Where a Senate amendment to a general appropriation bill sought, in part, to prohibit the use of specified funds as compensation of certain services of former employees of the Philippine War Damage Commission performed in connection with payment of Philippine war damage claims, a proposed House amendment thereto enlarging the class of

persons ineligible for such compensation was held to be not germane.

On May 14, 1963, during consideration of Senate amendments in disagreement on a general appropriation bill, a Senate amendment was read which related to Philippine war damage claims and which sought to change existing law by designating the Republic of the Philippines as payee in lieu of individual claimants, and by requiring the Republic to give assurances:

That no part of [the appropriated sums would] be directly or indirectly paid to any former Commissioner or employee of the Philippine War Damage Commission as compensation for services rendered as attorney or agent in connection with any such claim.⁽⁷⁾

A motion to recede and concur was offered with an amendment continuing the existing method of payment to individual claimants through the Foreign Claims Settlement Commission and providing that:

[N]o part of such appropriation shall be used . . . for payment to any former Commissioner or employee of the Philippine War Damage Commission, or to

7. 109 CONG. REC. 8505, 88th Cong. 1st Sess., May 14, 1963 (proceedings relating to H.R. 5517 [Committee on Appropriations], making supplemental appropriations for fiscal 1963).

any corporation, association, firm or other individual or party whatsoever, as compensation for services rendered as attorney or agent in connection with any such claim. . . .

Provided, That any person subject to the jurisdiction of the United States . . . who accepts . . . any . . . compensation . . . for services in furtherance of a claim . . . shall be fined . . . or imprisoned. . . .⁽⁸⁾

A point of order was made by Mr. Robert R. Barry, of New York, who stated:

Mr. Speaker, in my opinion the amendment is not germane in that it adds language to the Senate amendment setting forth penalties in violation of the criminal code of the United States. . . .

Mr. Albert Thomas, of Texas, in defending the amendment, stated:

[Y]ou are dealing here with a single subject matter. You have not changed the subject matter. You have merely tightened it up by inserting a penal provision, and I think it is germane.

The Speaker,⁽⁹⁾ in ruling on the point of order, stated:

The amendment offered brings in an additional class other than provided in the Senate amendment. The language reads "or to any corporation, association, firm or other individual or party whatsoever" and so forth, and provides criminal penalties.

The Chair feels that with respect to the additional class for criminal pen-

alties the point of order is well taken, and the Chair sustains the point of order.

Travel Allowances: Payments From Senate Contingent Fund—House Contingent Fund

§ 27.35 To a Senate amendment providing for payment, from the Senate contingent fund, of certain additional travel expenses incurred by Senate employees, an amendment providing additional travel allowances to Members of the House from the House contingent fund was held not germane.

The following proceedings took place on Mar. 29, 1961:⁽¹⁰⁾

MR. [ALBERT] THOMAS [of Texas]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the conference report on the bill (H.R. 5188) making supplemental appropriations for the fiscal year ending June 30, 1961, and for other purposes. . . .

THE SPEAKER:⁽¹¹⁾ The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate Amendment No. 66: Page 24, line 12, insert:

ADMINISTRATIVE PROVISION

The contingent fund of the Senate is hereafter made available for the

8. *Id.* at p. 8506.

9. John W. McCormack (Mass.).

10. 107 CONG. REC. 5275, 5277, 5278, 87th Cong. 1st Sess.

11. Sam Rayburn (Tex.).

payment of mileage, to be computed at 10 cents per mile [for certain travel undertaken], by employees in each Senator's office in any fiscal year.
 . . .

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

The Clerk read as follows:

Mr. Thomas moves that the House recede from its disagreement to the amendment of the Senate numbered 66 and concur therein with an amendment, as follows: In addition to the matter proposed by said amendment, add, at the end thereof, the following:

HOUSE OF REPRESENTATIVES

CONTINGENT FUND

The contingent fund of the House is hereafter made available for the payment of mileage, to be computed at ten cents per mile [for certain travel by Members] . . . in addition to mileage otherwise provided by law.

MR. [HAROLD R.] GROSS [of Iowa]: Mr. Speaker, I make a point of order against the amendment on the ground that the amendment is in violation of rule XVI, clause 7, of the rules of the House. The amendment is not germane because it deals with an entirely different class of people. . . .

MR. THOMAS: . . . This deals with travel by Members of the two bodies and is directly affected by the same general subject matter.

THE SPEAKER: Senate amendment No. 66 deals entirely with employees of the Senate. The amendment offered by the gentleman from Texas brings in Members of the House. Therefore the Chair must hold that the point of order is well taken.

The Chair sustains the point of order.

Availability of Senate Contingent Funds for Art and Historical Items in Capitol—Availability of House Unexpended Balances for Other Purposes

§ 27.36 To a Senate amendment relating to availability of the Senate contingent fund for art and historical items in the Capitol buildings, a proposed House amendment relating also to the availability of House unexpended balances for those or other purposes authorized by law, or required to implement specified House resolutions (such as those relating to "mass franked mailings") was conceded to be not germane.

During consideration of the conference report on H.R. 4404⁽¹²⁾ in the House on May 24, 1990,⁽¹³⁾ a point of order against the amendment described above was conceded and sustained, demonstrating that an individual proposition may not be amended by another individual proposition more general in scope.

12. Dire Emergency Supplemental Appropriations.

13. 136 CONG. REC. p. —, 101st Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:⁽¹⁴⁾ The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 171: Page 24, after line 9, insert:

Sec. 317. (a) Effective with the fiscal year ending September 30, 1990, and each fiscal year thereafter, any unexpended and unobligated funds in the appropriation account for the "Secretary of the Senate" within the contingent fund of the Senate which have not been withdrawn in accordance with the paragraph under the heading "General Provisions" of Chapter XI of the Third Supplemental Appropriation Act, 1957 (2 U.S.C. 102a), shall be available for expenses incurred, without regard to the fiscal year in which incurred, for the conservation, restoration, and replication or replacement, in whole or in part, of items of art, fine art, and historical items within the Senate wing of the United States Capitol, any Senate Office Building, or within any room, corridor, or other space therein. . . .

MR. [VIC] FAZIO [of California]: Mr. Speaker, I offer a motion.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I reserve a point of order on the motion.

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

The Clerk read as follows:

Mr. Fazio moves that the House recede and concur in the amendment of the Senate numbered 171, with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

Sec. 316. (a) Effective with the fiscal year ending September 30, 1990,

and each fiscal year thereafter, subject to the approval of the Committee on Appropriations of the Senate, any unexpended and unobligated funds in the appropriation account for the "Secretary of the Senate" within the contingent fund of the Senate in the case of the Senate and, subject to the approval of the Committee on Appropriations of the House of Representatives, any unexpended and unobligated funds in any appropriation account disbursed by the Clerk of the House in the case of the House of Representatives, which have not been withdrawn in accordance with the paragraph under the heading "General Provisions" of Chapter XI of the Third Supplemental Appropriation Act, 1957 (2 U.S.C. 102a), shall be available for the expenses incurred, without regard to the fiscal year in which incurred, for the conservation, restoration, and replication or replacement, in whole or in part, of items of art, fine art, and historical items within the Senate wing of the United States Capitol, any Senate Office Building, or any room, corridor, or other space therein in the case of the Senate and for the conservation, restoration, and replication or replacement, in whole or in part, of items of art, fine art, and historical items within the House wing of the United States Capitol, any House Office Building, or any room, corridor, or other space therein or for other purposes as authorized by law in the case of the House of Representatives. . . .

(d) The Committee on House Administration and the Committee on Rules, by July 15, 1990, shall use such unexpended funds as necessary to study and report to the House of Representatives the feasibility of implementing the provisions of H. Res. 386 and H. Res. 387. . . .

MR. CONTE: Mr. Speaker, reserving my point of order, I make a parliamentary inquiry. . . .

14. Douglas H. Bosco (Calif.).

Is the motion offered by the gentleman the motion that was presented, that was printed, in the joint statement of the managers?

MR. FAZIO: If the gentleman will yield, no, this has been modified slightly to include some language which would allow for a study and report to the House of Representatives on the feasibility of implementing provisions of House Resolution 386 and House Resolution 387 which are legislation introduced by the gentleman from Minnesota (Mr. Frenzel) and the gentleman from Illinois (Mr. Michel) to consider a new method of handling congressional frank mail. We felt those measures had sufficient validity that we ought to ask the Committee on House Administration as well as the Committee on Rules to review those bills and report back by July 15 on the feasibility of implementing them.

I would urge that the gentleman from Massachusetts (Mr. Conte) not insist on his point of order, because I think this is legislation that modifies and enhances the basic motion that I have made.

THE SPEAKER PRO TEMPORE: Does the gentleman from Massachusetts (Mr. Conte) insist on his point of order?

MR. CONTE: Mr. Speaker, yes, I do. The motion is not protected against points of order under the rule. The motion contains reference to funds of the House of Representatives. The Senate amendment pertains only to matters of the Senate. Further, the motion makes reference to a study by the Committee on House Administration in two House resolutions, none of which are mentioned in the Senate amendment.

These items and the motion are clearly nongermane to the Senate amendment, and the motion is, therefore, subject to a point of order.

THE SPEAKER PRO TEMPORE: Does the gentleman from California (Mr. Fazio) wish to be heard on this point of order?

MR. FAZIO: Mr. Speaker, I must regretfully concede the point of order. I do so very regretfully, because I think this was an effort to reach out to the minority and meet them halfway on what is obviously a very contentious issue.

If we are not allowed to do that tonight, I would have to concede.

MR. CONTE: Mr. Speaker, I appreciate the statement of the gentleman from California. I am not objecting to the study under the gentleman's new motion. The House fund is not protected, and I object to the fund, the slush fund, and that is what we want to knock out, and it should be knocked out.

THE SPEAKER PRO TEMPORE: The point of order is conceded and sustained.

Legislative Amendment on Appropriation Bill: Senate Office Extension—House Amendment Reducing Funding Ceiling for Extension and Containing Related Specifications

§ 27.37 A Senate amendment containing legislation reported from conference in disagreement may be amended by a germane amendment

even though the proposed amendment is also legislative; thus, to a Senate amendment reported from conference in disagreement on the Energy and Water Appropriations bill, appropriating funds for a Senate office building extension, providing a funding ceiling on such extension, and providing for the transfer of personnel and equipment to such extension upon completion, a proposed House amendment making a reduced appropriation for construction of such extension with a reduced funding ceiling, and providing that such extension upon completion meet all personnel needs currently satisfied by the buildings presently used for Senate office space, was held germane.

On Aug. 1, 1979,⁽¹⁵⁾ during consideration of the conference report on H.R. 4388 in the House, the Speaker overruled a point of order in the circumstances described above. The proceedings were as follows:

The Clerk read as follows:

Senate amendment No. 37: Page 32, line 21, insert:

15. 125 CONG. REC. 22002, 22007, 22008, 22010, 22011, 96th Cong. 1st Sess.

Sec. 502. There is appropriated, out of any money in the Treasury not otherwise appropriated, for an additional amount for "Construction of an Extension to the New Senate Office Building" \$57,480,700, to remain available until expended: *Provided*, That the amount of \$142,627,700 shall constitute a ceiling on the total cost for construction of the Extension to the New Senate Office Building: *Provided further*, That, it is the will of the Senate that upon completion of the Hart Senate Office Building, the Committee on Rules and Administration shall provide for the expeditious removal of personnel, equipment, and furnishings from the buildings known as the Carroll Arms, the Senate Courts, the Plaza Hotel, and the Capitol Hill Apartments and that said buildings shall remain unoccupied by the Senate until demolished: *Provided further*, That the Architect of the Capitol shall, within six months of the vacating of the buildings known as the Carroll Arms, the Senate Courts, the Plaza Hotel, and the Capitol Hill Apartments, submit to the Senate Committee on Appropriations estimates of the cost of razing and demolishing said buildings together with recommendations for future use, renovation, or demolition of the building known as the Immigration Building.

MR. [TOM] BEVILL [of Alabama]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bevill moves to recede in the amendment of the Senate No. 37 and concur therein with an amendment as follows in lieu of the matter proposed to be inserted by the Senate insert:

Sec. 502. There is appropriated, out of any money in the Treasury not otherwise appropriated, for an additional amount for "Construction of an Extension to the New Senate

Office Building" \$52,583,400 toward finishing such building and to remain available until expended: *Provided*, That the amount of \$137,730,400 shall constitute a ceiling on the total cost for construction of the Extension to the New Senate Office Building.

It is *further provided*, That such building and office space therein upon completion shall meet all needs for personnel presently supplied by the Carroll Arms, the Senate Courts, the Plaza Hotel, the Capitol Hill Apartments and such building shall be vacated.

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

. . .

Mr. Speaker, this amendment offered at this time would not have been in order had it been offered to the bill as originally before the House. The bill is an appropriation bill and this constitutes legislation on an appropriation bill. . . .

MR. BEVILL: Mr. Speaker, I wish to point out this is merely a change of the report language that is in the appropriation bill and it is germane and it is a part of the bill.

THE SPEAKER PRO TEMPORE:⁽¹⁶⁾ The Chair is prepared to rule. The Chair would like to state that the only requirement of the amendment in the motion offered by the gentleman from Alabama is that it be germane to the Senate amendment. The language is quite clearly germane to the Senate amendment No. 37 and, therefore, the motion is in order and the point of order is overruled.

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

Census of Agriculture by Director of Census—House Amendment To Prohibit Other Agencies From Collecting Agricultural Information

§ 27.38 To a Senate amendment in disagreement providing for a census of agriculture by the Director of Census, a motion to concur in the amendment with an amendment proposing that no other bureau or agency make such census or collect agricultural information, was held not germane.

In the 78th Congress, during consideration of the State, Justice and Commerce Appropriation Bill, 1945,⁽¹⁷⁾ a Senate amendment in disagreement was reported as follows:⁽¹⁸⁾

The Clerk read as follows: Amendment No. 10: On page 59 of the bill after line 3 insert:

Census of agriculture: For all expenses necessary for preparing for, taking, compiling, and publishing the quinquennial Census of Agriculture of the United States, including the employment by the Director, at rates to be fixed by him, of personnel at the seat of government and elsewhere without regard to the civil-service and classification laws; books of reference, newspapers, and

17. H.R. 4204 (Committee on Appropriations).

18. 90 CONG. REC. 6049, 78th Cong. 2d Sess., June 16, 1944.

periodicals; construction of tabulating machines; purchase, maintenance, repair, and operation of motor-propelled passenger-carrying vehicles; travel expenses, including expenses of attendance at meetings concerned with the collection of statistics, when incurred on the written authority of the Secretary; printing and binding; \$7,250,000, to be available until December 31, 1946, and to be consolidated with the appropriation "Census of Agriculture" contained in the First Supplemental National Defense Appropriation Act, 1944.

MR. [JOHN H.] KERR [of North Carolina]: Mr. Speaker, I move that the House recede and concur.

The Clerk read as follows:

Mr. Kerr moves that the House recede from its disagreement to the amendment of the Senate No. 10 and agree to the same.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Speaker, I ask for a division of the question.

THE SPEAKER:⁽¹⁹⁾ The gentleman may have that. The question is divisible.

The question is on the motion that the House recede from its disagreement to the Senate amendment.

The motion was agreed to.

MR. JONES: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Jones moves that the House recede from its disagreement to the amendment of the Senate No. 10 and agree to the same with an amendment as follows: At the end of the Senate amendment insert "*Provided*, That no other bureau . . . of the Federal Government shall collect agri-

cultural information . . . for a period of 2 years from the date of this act without a specific appropriation. . . ."

Mr. Malcolm C. Tarver, of Georgia, made the point of order that the Jones amendment was not germane to the provisions of the Senate amendment. Mr. Jones stated in reply:⁽²⁰⁾

Mr. Speaker, I think the amendment is a limitation upon this provision in the Senate amendment and a limitation upon an appropriation bill. It limits the scope of what it may be used for and limits who may use the information.

The following argument was also made in support of the Jones amendment:

MR. [JOHN] TABER [of New York]: Mr. Speaker, it seems to me that the amendment is clearly germane in that in providing for a census of agriculture it is clearly in order to provide by amendment that no other census of agriculture or the gathering of information of that same type shall be permitted in any other place. . . .

The Speaker, in ruling on the point of order, stated:

The Senate amendment provides for a specific amount of money for a specific purpose. The motion offered by the gentleman from Ohio (Mr. Jones) is clearly not a limitation on the expenditure of money or on the action of the Department in taking a census; therefore, the Chair sustains the point of

19. Sam Rayburn (Tex.).

20. 90 CONG. REC. 6050, 78th Cong. 2d Sess.

order in that the motion is not germane.

Feasibility Study of Land Transfer in State—House Amendment Waiving Law Affecting Environmental Liabilities in Another State

§ 27.39 To a Senate amendment proposing a feasibility study of a certain land transfer in one State, a House amendment waiving existing law concerning certain environmental liabilities in another State was conceded to be nongermane

During consideration of the Department of Defense Appropriations for fiscal 1990⁽¹⁾ in the House on Nov. 15, 1989,⁽²⁾ a point of order was conceded and sustained against an amendment as follows:

THE SPEAKER PRO TEMPORE:⁽³⁾ The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 243: Page 79, after line 4, insert:

Sec. 9114. Feasibility Study of Land Transfer for Use as a Correctional Facility.—(a)(1) The Secretary of Defense, in consultation with the

United States Attorney General, shall conduct a study of the feasibility of selling or otherwise transferring to the Commonwealth of Virginia, subdivisions thereof, or any combination of subdivisions thereof, a parcel of land approximately 100 acres not more than 100 miles from the southern boundary of Arlington County, from the military installations within Virginia which encompass land that may be suitable for use by the Commonwealth of Virginia, subdivisions thereof, or any combination of subdivisions thereof, as a site for medium security correctional facility for persons sentenced in the courts of Virginia or in the United States District Court in Virginia. . . .

MR. [JOHN P.] MURTHA [of Pennsylvania]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Murtha moves that the House recede from its disagreement to the amendment of the Senate numbered 243, and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert:

Sec. 9121. Notwithstanding the provisions of sections 1301 and 1341 of title 31 of the United States Code, or section 3732 of the Revised Statutes, or Section 119 of the Super Fund Amendments and Reauthorization Act of 1986, the Secretary of the Army may have the authority to hold harmless and indemnify the Coolbaugh Township and/or its duly created and authorized authority or authorities or other properly designated body or bodies, located in Monroe County, Pennsylvania (hereinafter "Township") for certain liabilities to third persons not compensated by insurance or otherwise for loss of or damage to property, death, or bodily injury, including the expenses of litigation or settlement arising out of the Township's performance of remedial activities for

1. H.R. 3072.

2. 135 CONG. REC. p.—, 101st Cong. 1st Sess.

3 Al Swift (Wash.).

the Army: *Provided*, That—(1) such liabilities were caused solely by hazardous substances, as that term is defined at section 9601(14) of title 42 of the United States Code, that were released by the Army, or its authorized agents and employees. . . .

MR. [RICHARD] RAY [of Georgia]: Mr. Speaker, I make a point of order against the manager's motion, pursuant to clause 7 of rule 16. That clause requires that in the consideration of Senate amendments to a House bill, an amendment must be germane to the particular amendment to which it is offered.

In this case, Mr. Speaker, the proposed House amendment to Senate amendment 243 is not germane because it relates to a different subject than the Senate amendment and indirectly amends existing law by waiving the application of certain statutes to the authority of the Secretary of the Army in a particular case. On these bases, Mr. Speaker, the House amendment is not germane.

THE SPEAKER PRO TEMPORE: Does the gentleman from Pennsylvania wish to be heard on the point of order?

MR. MURTHA: Mr. Speaker, we concede the point of order.

THE SPEAKER PRO TEMPORE: The point of order is conceded and sustained.

Senate Amendment Restricting Transfer of Jurisdiction Over Arizona Lands—House Amendment Restricting Creation of Historic Sites

§ 27.40 To a Senate amendment reported in disagree-

ment, which provided that jurisdiction over Arizona lands should not be transferred to the Secretary of Interior except by act of Congress, an amendment providing that no national monument or historic site be created except by act of Congress was held not germane.

On June 19, 1941, in proceedings relating to an Interior Department appropriation bill,⁽⁴⁾ several Senate amendments to the bill were reported in disagreement. Mr. Jed Johnson, of Oklahoma, offered an amendment to one such Senate amendment, as described above. A point of order was then raised, as follows:⁽⁵⁾

MR. [JAMES M.] FITZPATRICK [of New York]: Mr. Speaker, I make a point of order against the amendment; first, it is not germane to Senate amendment No. 152

Mr. Johnson having conceded the point of order, the Speaker⁽⁶⁾ sustained the point of order.

4. H.R. 4590 (Committee on Appropriations).

5. 87 CONG. REC. 5374, 77th Cong. 1st Sess.

6. Sam Rayburn (Tex.).

Senate Amendment Striking Language Prohibiting Payments to Named Individuals—House Amendment To Prohibit Payment From Government Funds to Class of Persons

§ 27.41 To a Senate amendment which struck from an appropriation bill language prohibiting the payment of compensation to three named individuals, an amendment providing that it shall be unlawful to pay, from government funds, individuals who have engaged in subversive activities, was held not germane.

On June 8, 1943, the House was considering Senate amendments to an appropriation bill.⁽⁷⁾ During consideration of one such amendment, Mr. Sam Hobbs, of Alabama, moved that the House recede and concur in the amendment, with an amendment as described above.⁽⁸⁾ Responding to a point of order made by Mr. Clarence Cannon, of Missouri, Mr. Hobbs stated:

[The amendment] is germane because it deals with the same identical

7. H.R. 2714, Urgent Deficiency Appropriations, 1943 (Committee on Appropriations).

8. See the motion reported at 89 CONG. REC. 5511, 78th Cong. 1st Sess.

subject matter which is covered by the Kerr amendment.⁽⁹⁾ The Kerr amendment deals, it is true, with only three named persons, but this sets up the same standard, only more rigorous, which was sought to be set up in the Kerr amendment. . . .

. . . The Kerr amendment differs from this substitute, insofar as germaneness is concerned, only in this: It named three men as the objects of its legislative wrath, whereas my substitute sets up a standard by which the eligibility of all in an indicated class must be judged. . . .

The Speaker,⁽¹⁰⁾ in ruling on the point of order, stated:

The provision of the Senate amendment that the gentleman seeks to amend by his motion very definitely applies to three individuals and no more. The motion of the gentleman from Alabama would cover numberless people if numberless people came under the provisions of his motion. The language of the bill is specific. The language of the motion of the gentleman from Alabama is general. The Chair must, therefore, hold that the motion is not germane, and sustain the point of order.

§ 28. Requirement That Amendments to Motions To Instruct Conferees Be Germane

The rule that amendments must be germane applies to the instruc-

9. The Kerr amendment was that stricken by the Senate amendment.

10. Sam Rayburn (Tex.).