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amendment to a bill (H.R. 13915) intended to further equal educational opportunities, Mr. Roman C. Pucinski, of Illinois, demanded a teller vote; and the following discussion occurred:

THE SPEAKER:[7] All those in favor of taking a vote by tellers will rise.

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Speaker, on that I demand the yeas and nays.

MR. PUCINSKI: Mr. Speaker, I have demanded that the vote be taken by tellers and I will ask that it be taken by tellers with clerks.

THE SPEAKER: The gentleman from Illinois has demanded a vote by tellers and a request has been made that the Members rise. The Chair is counting.

At this point, Mr. Gerald R. Ford, of Michigan, advanced a parliamentary inquiry on a constitutional issue[8] after which the following occurred:

MR. PUCINSKI: Mr. Speaker, I withdraw my demand for tellers.

MR. QUIE: Mr. Speaker, I demand that the vote be taken by the yeas and nays.

Mr. Quie having renewed his request (as indicated above) and the Chair no longer being in the process of counting those in favor of tellers, the demand for the yeas and nays was entertained.

7. Carl Albert (Okla.).

8. See § 30.3, infra.

§ 26. Ordering of Vote

Generally

§ 26.1 The House has voted by the yeas and nays on ordering the previous question on approval of the Journal.

On July 25, 1949,[9] immediately after the Clerk concluded the reading of the Journal, the following exchange took place:

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I move that the Journal as read stand approved; and on that motion I move the previous question.

THE SPEAKER:[10] The question is on ordering the previous question.

MR. [JAMES C.] DAVIS of Georgia: Mr. Speaker, on that I demand the yeas and nays.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I demand the yeas and nays on ordering the previous question.

The yeas and nays were ordered.

The question was then taken; and there were—yeas 259, nays 88, not voting 85. So, the previous question was ordered.

§ 26.2 The yeas and nays have been ordered on a motion to dispense with further proceedings under the call for a quorum.

9. 95 CONG. REC. 10092, 10093, 81st Cong. 1st Sess.

10. Sam Rayburn (Tex.).

On June 5, 1946,[11] shortly after the Chair's announcement that it was Calendar Wednesday, Mr. Dan R. McGehee, of Mississippi, made the point of order that a quorum was not present. The Chair's count revealing the absence of a quorum, Mr. Howard W. Smith, of Virginia, moved a call of the House which was so ordered. Two hundred seventy-two Members then responded to their names, and the Chair announced that a quorum was present.

Immediately thereafter, the following occurred:

> THE SPEAKER:[12] On this roll call 272 Members have answered to their names, a quorum.
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I move that further proceedings under the call be dispensed with.
>
> MR. SMITH of Virginia: Mr. Speaker, on that I ask for the yeas and nays.
>
> THE SPEAKER: Those Members desiring the yeas and nays will rise and remain standing until counted. [After counting.] Forty-five Members have risen. The Chair, in looking over the membership since the announcement that 272 had answered, notes that 45 is more than one-fifth of the Members present now.
>
> MR. SMITH of Virginia: Mr. Speaker, I ask for a division.
>
> THE SPEAKER: The yeas and nays are ordered.
>
> The Clerk will call the roll.

§ 26.3 Whether a proposition will be subject to a roll call vote at a future time is a matter for the House, not the Chair, to decide.

On June 29, 1961,[13] Mr. Samuel N. Friedel, of Maryland, called up a resolution (H. Res. 354) which called for the creation and dissemination to each Member of a flag symbolizing membership in the House. The Speaker[14] put the question on the resolution, it was taken; and he announced that the "ayes" appeared to have it. Mr. H. R. Gross, of Iowa, then objected to the vote on the ground that a quorum was not present and made the point of order at the Speaker's request. Mr. Friedel sought to withdraw the resolution.

Thereafter, the following proceedings occurred:

> MR. GROSS: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. GROSS: Is it necessary to ask unanimous consent to withdraw the resolution?
>
> THE SPEAKER: It is, but the Chair did not think anyone would object to that unanimous consent request.
>
> MR. GROSS: Mr. Speaker, a further parliamentary inquiry.

11. 92 CONG. REC. 6352, 79th Cong. 2d Sess.

12. Sam Rayburn (Tex.).

13. 107 CONG. REC. 11798, 11799, 87th Cong. 1st Sess.

14. Sam Rayburn (Tex.).

THE SPEAKER: The gentleman will state it.

MR. GROSS: Will this resolution be subject to a roll call vote when it is called up again?

THE SPEAKER: That would be up to the House to decide.

Speaker's Determination as to Seconding Support

§ 26.4 In deciding whether to order the yeas and the nays, the Speaker counts the total number of Members present in the Chamber in order to determine if those seconding the demand constitute one-fifth of those present.

On July 20, 1939,[15] the Committee of the Whole reported back to the House a bill (S. 1871) to prevent pernicious political activities with sundry amendments adopted by the Committee. Under the rule, the previous question was ordered and the Speaker inquired as to whether a separate vote was requested on any amendment. Mr. Claude V. Parsons, of Illinois, having demanded a separate vote on each amendment, the House proceeded to consider the amendments in chronological order.

The House agreed to the first nine amendments by separate votes after which the Speaker put the question on the 10th amendment. Mr. Parsons then demanding the yeas and nays, the following exchange occurred:

THE SPEAKER:[16] The gentleman from Illinois demands the yeas and nays on the amendment just read. As many as favor ordering the yeas and nays will rise and stand until counted. [After counting.] The Chair will now count the number of Members present to determine whether or not a sufficient number have arisen to order the yeas and nays. [After counting.] Sixty-five Members rose in favor of ordering the yeas and nays. The Chair counted 365 Members present, which would require 73 Members rising to order the yeas and nays. Not a sufficient number rose and the yeas and nays are refused.

MR. [EDWARD W.] CREAL [of Kentucky]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CREAL: When the Chair takes the vote of those present and then counts again after they come in from the cloakrooms, is that number counted that comes in after the first number had risen?

THE SPEAKER: One-fifth of the Members present in the Chamber are required to order the yeas and nays in the House. When the demand is made, the Chair counts those who rise in favor of taking the vote by the yeas and nays, and it is then the duty of the Chair to determine the total number of

15. 84 CONG. REC. 9637, 76th Cong. 1st Sess.

16. William B. Bankhead (Ala.).

Members present in the Chamber and divide that count in order to determine whether or not one-fifth have seconded the demand for the yeas and nays.

The question is on agreeing to the amendment.[17]

§ 26.5 In determining whether a demand for the yeas and nays is supported by one-fifth of those present, the Speaker may use as a basis for such determination, the number of Members who responded on an immediately preceding roll call.

On Mar. 26, 1935,[18] the House had under consideration a resolution (H. Res. 174) which provided that upon its adoption, a joint resolution (H.J. Res. 117) pertaining to relief appropriations would be taken from the Speaker's table, with Senate amendments thereto, and a conference would be agreed to by the House.

Following considerable discussion, the question was put on ordering the previous question. Mr. John E. Rankin, of Mississippi, then demanded the yeas and nays which were ordered. The question was taken; and there were—yeas 265, nays 108, answered "present" 1, not voting 57. Accordingly, the previous question was ordered.

Immediately thereafter, the following proceedings occurred:

THE SPEAKER PRO TEMPORE:[19] The question is on the adoption of the resolution.

MR. RANKIN: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER PRO TEMPORE: The Chair will count. [After counting.] Sixty-four Members have risen; not a sufficient number.

MR. RANKIN: Mr. Speaker, I challenge the count.

THE SPEAKER:[20] The Chair may state that according to the roll call there were 371 Members present. It is very evident that the number who arose was not one-fifth of the number present as shown by the roll call.

MR. RANKIN: Mr. Speaker, I counted 70 myself.

THE SPEAKER: It would take more than 70 to order the yeas and nays.

So the yeas and nays were refused.

Immediately thereafter, Mr. Rankin demanded a teller vote on

17. Mr. Creal's fundamental question, that is, does the Chair count as present those who enter the Chamber after supporters of the demand have already arisen in computing the ratio, was considered by Speaker Rayburn 11 years later; see § 26.9, infra.

For routine instances where insufficient support resulted in denial of the yeas and nays, see 93 CONG. REC. 6392, 80th Cong. 1st Sess., June 4, 1947; and 84 CONG. REC. 5613, 76th Cong. 1st Sess., May 16, 1939.

18. 79 CONG. REC. 4474, 4475, 4476, 74th Cong. 1st Sess.

19. Henry Ellenbogen (Pa.).

20. Joseph W. Burns (Tenn.).

the passage of the resolution. This demand having been supported, tellers were ordered; the House divided; and there were—ayes 186, noes 78. The result of this vote prompted further inquiries on the Chair's prior refusal to order the yeas and nays:

MR. RANKIN: Mr. Speaker, I make the point of order we were entitled to a roll-call vote, because this vote shows there are not five times as many Members in the House as stood up a while ago and asked for a roll-call vote.

THE SPEAKER: By the gentleman's own count of 70, he was not entitled to a roll-call vote, because it requires 75, according to the roll call which has just been completed.

MR. RANKIN: I beg the Chair's pardon; what was the report?

THE SPEAKER: This vote was on an entirely different question, and the Chair has no doubt but what many Members have gone to their offices since the roll call was completed.

MR. RANKIN: No; Mr. Speaker, many Members have come in since then.

The regular order was demanded.

MR. [WILLIAM D.] MCFARLANE [of Texas]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MCFARLANE: Is there any way by which we can get a roll-call vote at this time?

THE SPEAKER: The House has refused a roll-call vote on the passage of the resolution.

So the resolution was agreed to.

MR. [GERALD J.] BOILEAU [of Wisconsin]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BOILEAU: Mr. Speaker, is it possible to have a roll-call vote on the basis of the number of Members present, as indicated by the teller vote, if one-fifth of the number shown by the teller vote would now ask for a roll-call vote?

THE SPEAKER: The Chair will state to the gentleman that quite a number of minutes—15 or 20, or perhaps one-half an hour—has elapsed since the House refused the roll call, and that roll call was requested immediately after a roll call of the House which disclosed 371 Members present. It therefore took 75 Members to order a roll call, and according to the count there were not 75 Members standing.

The Chair having explained the situation, there were no further requests for a roll call vote on the passage of the resolution.

Parliamentarian's Note: Using the number of Members responding on an immediately preceding roll call as a basis to determine whether the yeas and nays should be ordered is a practice which is not normally followed. See, for example, 92 CONG. REC. 6352, 79th Cong. 2d Sess., June 5, 1946, where Speaker Rayburn stated, "The Chair, in looking over the membership since the announcement [of an immediately preceding roll call] that 272 answered, notes that 45 is more than one-fifth of the Members present now." In the current prac-

tice, this is the way the Chair would count, that is, he would not rely upon an immediately preceding vote.

Chair's Count for Second

§ 26.6 The Chair has reversed his determination that an insufficient number have seconded a request for the yeas and nays where a subsequent count of the House indicated that one-fifth of those present had indeed stood to second the demand.

On Aug. 10, 1976, Speaker Carl Albert, of Oklahoma, had put the question of consideration with respect to a resolution called up in the House immediately after it had been reported by the Committee on Rules. The yeas and nays being demanded on the question, the Speaker counted 60 Members standing to support the demand, and then based on his estimate of those present, declared that "an insufficient number" had risen. A point of no quorum was then made and the Chair counted the House, finding on his count 240 Members in the Hall. He then reversed his decision and affirmed that a sufficient number had in fact stood to second the demand.[1] The proceedings were as follows:

Mr. Sisk, from the Committee on Rules, reported the following privileged resolution (H. Res. 1473, Rept. No. 94–1421), which was referred to the House Calendar and ordered to be printed:

H. RES. 1473

Resolved, That immediately upon the adoption of this resolution it shall be in order to take from the Speaker's table the bill (S. 3735) to amend the Public Health Service Act to authorize the establishment and implementation of an emergency national swine flu immunization program and to provide an exclusive remedy for personal injury or death arising out of the manufacture, distribution, or administration of the swine flu vaccine under such program, and to consider said bill in the House.

MR. [B. F.] SISK [of California]: Mr. Speaker, I call up House Resolution 1473 and ask for its immediate consideration.

THE SPEAKER: The Clerk will report the resolution.

The Clerk read the resolution.

THE SPEAKER: The question is, Will the House now consider House Resolution 1473?

The question was taken.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, on that I demand the yeas and nays.

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1. 122 CONG. REC. 26793, 26794, 94th Cong. 2d Sess. While the count of the Chair in determining whether a requisite number of those Members present has sustained a demand for the yeas and nays is not subject to verification or appeal (8 Cannon's Precedents §§ 3112–3118), the Chair may on his own initiative reverse his determination when satisfied that his prior count was erroneous.

THE SPEAKER: Those Members in favor of taking this vote by the yeas and nays will rise and remain standing until counted.

Sixty Members are standing, an insufficient number.

MR. [WALTER] FLOWERS [of Alabama]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: The Chair will count the House.

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

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. FLOWERS: Mr. Speaker, did the Chair count the House?

THE SPEAKER: The Chair counted just those standing.

MR. FLOWERS: How many were standing, Mr. Speaker?

THE SPEAKER: There were 60 Members standing.

MR. FLOWERS: How many are required, Mr. Speaker?

THE SPEAKER: One-fifth of all the Members present.

MR. FLOWERS: Mr. Speaker, if 60 Members were standing, I make the point of order that a quorum is not present.

THE SPEAKER: The Chair will count.

The Chair counts 240 Members present. A quorum is present, but the Chair is going to reverse his decision and declare the yeas and nays to be ordered. . . .

The Chair is going to reverse his decision because he did not initially count the House, and 60 is a sufficient number to order the yeas and nays under the count just made.

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

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, is a two-thirds vote necessary in order to pass this and consider the legislation?

THE SPEAKER: The Chair will state that in order to consider the resolution, a two-thirds vote is necessary, not to adopt it, but to consider it.

MR. BAUMAN: I thank the Speaker.

THE SPEAKER: The question is, Will the House now consider House Resolution 1473, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 293, nays 70, not voting 68. . . .

So, two-thirds having voted in favor thereof, the House agreed to consider House Resolution 1473.

The result of the vote was announced as above recorded.

THE SPEAKER: The gentleman from California (Mr. Sisk) is recognized for 1 hour.

§ 26.7 While the Chair's count of one-fifth of those Members present in the House to order the yeas and nays under section 5 of article I of the U.S. Constitution is not subject to challenge, the Chair may respond to a Member's inquiry as to the exact count.

On May 3, 1994,[2] the following proceedings took place on the floor of the House:

2. 140 CONG. REC. p. ———, 103d Cong. 2d Sess.

MR. [JOSEPH P.] KENNEDY [II, of Massachusetts]: Mr. Speaker, I yield back the balance of my time.

THE SPEAKER PRO TEMPORE:[3] The question is on the motion offered by the gentleman from Massachusetts [Mr. Kennedy] that the House suspend the rules and pass the bill, H.R. 3191, as amended.

The question was taken.

MR. [PORTER J.] GOSS [of Florida]: Mr. Speaker, I demand the yeas and nays.

THE SPEAKER PRO TEMPORE: All those in favor of the yeas and nays will stand and remain standing.

A sufficient number having arisen, pursuant to clause 5 of rule I, and the Chair's prior announcement——

MR. KENNEDY: Mr. Speaker, I would inquire of the Chair what the rule is about a sufficient number of Members rising.

THE SPEAKER PRO TEMPORE: The Chair advises that one-fifth of those present constitutes a sufficient number.

MR. KENNEDY: I would ask if the Chair would just count them up, please, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair already counted two Members standing. There are less than 10 Members on the floor.

MR. KENNEDY: Mr. Speaker, I withdraw my request.

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

3. George Darden (Ga.).

Chair's Count for Second Not Subject to Appeal

§ 26.8 The Speaker's count of the House to determine whether one-fifth of those Members present have risen to support a request for the yeas and nays is not subject to verification by appeal.

Where the yeas and nays were demanded in the House on the question of passing a bill under suspension, the Speaker, after counting those standing to second the demand and then counting the House, declared that less than one-fifth of those present had risen to support the demand. The Speaker declared that no appeal on the Chair's count was in order. The proceedings were as follows:[4]

THE SPEAKER PRO TEMPORE:[5] The question is on the motion offered by the gentleman from Oregon (Mr. Ullman) that the House suspend the rules and pass the bill H.R. 12578, as amended.

The question was taken.

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, two-thirds have voted in the affirmative.

MR. [HAROLD A.] VOLKMER [of Missouri]: Mr. Speaker, on that I demand the yeas and nays.

4. 124 CONG. REC. 28949, 28950, 95th Cong. 2d Sess., Sept. 12, 1978.

5. B. F. Sisk (Calif.).

THE SPEAKER PRO TEMPORE: The gentleman from Missouri (Mr. Volkmer) demands the yeas and nays. All those in favor of taking this vote by the yeas and nays will rise and remain standing until counted.

Not a sufficient number have risen.

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

Is the requirement one-fifth of the Members present?

THE SPEAKER PRO TEMPORE: Yes. The Chair will state that the requirement is that one-fifth of the Members present be standing for the yeas and nays, and there is not one-fifth of the Members standing.

MR. VOLKMER: Mr. Speaker, I count four Members standing.

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, an insufficient number have arisen.

The Chair will be glad to count, if the gentleman desires.

MR. VOLKMER: Would the Chair count, please? I believe there are only 25 Members here.

THE SPEAKER PRO TEMPORE: The Chair will count. Thirty Members are present.

Two-thirds having voted in the affirmative, the rules are suspended and the bill, as amended, is passed, and without objection, a motion to reconsider is laid on the table.

There was no objection. . . .

MR. [JOHN F.] SEIBERLING [of Ohio]: Mr. Speaker, is it in order to appeal the ruling of the Chair on the last vote?

THE SPEAKER PRO TEMPORE: The Chair will state to the gentleman that no appeal lies on the count of the Chair.

§ 26.9 Where the Speaker counted the Members rising to second a demand for the yeas and nays on a motion to adjourn and then counted the total number of Members present to determine whether one-fifth seconded such demand, he declined a Member's request that a new count be taken on the ground that some Members entered the Chamber and were counted after the count of those seconding the demand.

On Jan. 23, 1950,[6] toward the end of the day, Mr. John W. McCormack, of Massachusetts, moved that the House adjourn. Immediately thereafter, Mr. Vito Marcantonio, of New York, demanded the yeas and nays. The Chair then counted and announced that "fifty-four Members . . . [had] arisen, not a sufficient number."

The following then occurred:

MR. [EARL] WILSON of Indiana: Mr. Speaker, a point of order. There were many Members who came in and were counted after the standing count was taken. I ask that the vote be taken again.

THE SPEAKER:[7] The Chair is not going to make the count again because

6. 96 CONG. REC. 785, 81st Cong. 2d Sess.

7. Sam Rayburn (Tex.).

he has just counted both the total number of Members and the number standing to demand the yeas and nays.

The question is on the motion to adjourn.[8]

§ 26.10 Although a demand for the yeas and nays had been seconded by 20 percent of those voting, the Speaker noted that, counting himself, less than the minimum number of Members present had seconded the demand—so the yeas and nays were refused.

On June 30, 1937,[9] Mr. Sam Rayburn, of Texas, moved that the House adjourn. The Speaker[10] put the question; it was taken, and on a division vote demanded by Mr. John E. Rankin, of Mississippi, there were—ayes 41, noes 24.

Immediately thereafter, Mr. Rankin demanded the yeas and nays. The Speaker then proceeded to count those in favor of that demand, and announced that:

> . . . Thirteen gentlemen have arisen, not a sufficient number. The rule provides that the yeas and nays may be ordered by one-fifth of the Members present.

Since the Speaker had counted himself in reaching his conclusion, the 13 seconding Members—while comprising one-fifth of those who had voted—did not comprise one-fifth of those present. Accordingly, the demand was refused.

§ 27. Interruption of Vote

For Parliamentary Inquiry

§ 27.1 The Speaker has permitted the interruption of a yea and nay vote for a parliamentary inquiry where no Member had as yet responded to his name when called.

On June 27, 1935,[11] the House voted on the passage of a bill (H.R. 8555) to develop a strong merchant marine, among other purposes. A division having been demanded, there were—ayes 145, noes 131. Mr. William D. McFarlane, of Texas, then demanded the yeas and nays.

Immediately thereafter, the following proceedings occurred:

> MR. MCFARLANE: Mr. Speaker, I demand the yeas and nays.
>
> The yeas and nays were ordered.
>
> The Clerk proceeded to call the roll.
>
> MR. [RALPH O.] BREWSTER [of Maine]: Mr. Speaker—
>
> THE SPEAKER:[12] For what purpose does the gentleman from Maine rise?

8. See also §§ 26.4, supra and 31.1, infra.

9. 81 CONG. REC. 6642, 75th Cong. 1st Sess.

10. William B. Bankhead (Ala.).

11. 79 CONG. REC. 10288, 10289, 74th Cong. 1st Sess.

12. Joseph W. Byrns (Tenn.).