

The amendment itself goes only to funding in the bill. It does not necessarily result in a loss or gain of revenues, as was shown to be the case in the arguments on the points of order cited by the gentleman from Pennsylvania.

The test here is certainty and inevitability of such a tax gain or loss, and just to complete the record, the gentleman from Pennsylvania cited a ruling by Chairman Beilenson on August 1, 1986.

Let the Chair read fully from that paragraph:

A limitation on the availability of funds for the Internal Revenue Service otherwise in order under clause 2(c), rule XXI may still be construed as a tax measure in violation of clause 5(b), rule XXI where it can be shown that the imposition of the restriction on IRS funding for the fiscal year will effectively and inevitably—

And I underline the words “effectively and inevitably,”—

preclude the IRS from collecting revenues otherwise due and owing by law or require collection of revenue not legally due or owing.

Absent a showing of inevitable or absolutely inevitable certain effects, the test is not met with respect to funding restrictions on annual appropriation bills and the point of order is overruled.

PARLIAMENTARY INQUIRY

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

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. WALKER: The Chair did not refer to the rulings, however, where it

is clear that the Chair is prepared to sustain points of order where the amendment is equally susceptible to more than one interpretation which clearly this particular amendment is. I did not hear the Chair rule on the point of order that I raised in that regard.

THE CHAIRMAN: The Chair will simply remind and repeat to the gentleman that in this line of precedent on funding restrictions on appropriation bills the test of inevitability of a tax increase or decrease is consistent through all the precedents. For that reason, again, the Chair rules the point of order out of order.

Under the rule, debate on this amendment and all amendments thereto shall not exceed 1 hour.

The Chair recognizes the gentleman from Wisconsin [Mr. Obey] for 5 minutes.

§ 9. Waiver

The rules of the House are enforced by points of order, usually raised by a Member calling the attention of the Chair and his colleagues to what the Member perceives to be an infraction of a rule. On some occasions, the Speaker or Member presiding will move to bring a violation of a rule before the body. The Chair will, for example, on his own initiative, call a Member to order for remarks uttered in debate which violate proper decorum.⁽¹⁸⁾

¹⁸. See §§ 9.17, 9.18, *infra*.

Since the House is given “rule-making” authority by the Constitution⁽¹⁹⁾ and creates its procedural and parliamentary code anew in each Congress, it can also use this same authority to change or waive a rule. A rule can be waived, mooted, or by-passed by unanimous consent,⁽²⁰⁾ by suspension of the rules, or by adoption of a special order reported from the Committee on Rules. Even a rule based on a provision of a statute can be waived under the House’s “rule-making” authority.⁽¹⁾ A waiver can be put in place after consideration of a bill has commenced.⁽²⁾

The requirement that points of order be made at the proper time also may be waived by agreement in the House or in the Committee of the Whole.⁽³⁾ The requirement may also be waived by the adoption of a special rule from the Committee on Rules,⁽⁴⁾ or by the granting of unanimous consent by

19. See Art. 1, Sec. 5, *House Rules and Manual* §58 (1997).

20. See §9.4, *infra*.

1. See §9.2, *infra*.

2. See §9.7, *infra*.

3. See Ch. 19, *supra*; and §9.5, *infra*.

4. See §9.1, *infra*.

For more complete discussion of special rules from the Committee on Rules waiving points of order, see §10 of this chapter and Ch. 21, *supra*.

the House.⁽⁵⁾ On one occasion, the proceedings whereby a provision in a bill was stricken by a valid point of order was later vacated by unanimous consent and the provision was reinserted in the text.⁽⁶⁾ Sometimes, too, the effect of earlier proceedings is such that a point of order is considered waived and cannot later be asserted against the proposition in question. Thus, if a motion that is susceptible to a point of order is agreed to by the House, no point of order being raised against it, the point is deemed waived.⁽⁷⁾ Where the scope of a rule waiving points of order is questioned, the Chair may be called upon to interpret the language.⁽⁸⁾ It should also be noted that a House Rule may

5. See §9.3, *infra*. But where points of order against consideration of a bill are not specifically waived as part of a unanimous-consent request for immediate consideration, a point of order that a quorum of the committee was not present when the bill was ordered reported will lie despite the unanimous-consent request. See the proceedings at 114 CONG. REC. 30751, 90th Cong. 2d Sess., Oct. 11, 1968, wherein such a point of order was sustained against consideration of S. 1507 although unanimous consent for immediate consideration of the bill had been granted.

6. See §9.19, *infra*.

7. See §§9.6, 9.16, *infra*.

8. See §9.8, *infra*.

specify that a particular type of point of order may be in order at any time. For example, under the provisions of Rule XXI clause 5, a point of order against an amendment proposing an appropriation on a bill reported by a committee not having that jurisdiction is in order at any time.⁽⁹⁾ However, even under this rule the precedents dictate that the point of order must be timely, i.e., during the five-minute rule in Committee of the Whole or before the amendment is adopted.⁽¹⁰⁾

In General

§ 9.1 Special “rules” or resolutions from the Committee on Rules often contain provisions expressly waiving points of order against certain language in the bill rather than against all provisions in the bill.

On May 8, 1968,⁽¹¹⁾ Mr. William M. Colmer, of Mississippi, called up House Resolution 1164, which provided:

Resolved, That during the consideration of the bill (H.R. 17023) mak-

9. Rule XXI clause 5, *House Rules and Manual* § 846 (1997). For further discussion, see Chs. 25, 26, *supra*.
10. See 92 CONG. REC. 2365, 79th Cong. 2d Sess., Mar. 18, 1946.
11. 114 CONG. REC. 12220, 12221, 90th Cong. 2d Sess.

ing appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1969, and for other purposes, all points of order against the provisions contained under the heading “National Aeronautics and Space Administration” beginning on page 19, line 17, through page 21, line 8, are hereby waived.

Mr. Colmer advised that the Committee on Rules in this instance had waived the points of order against certain specific items in the appropriations bill, rather than for all items in the bill.

MR. COLMER: . . . I might add also for the information of the gentleman—and of the Members of the House—that the Committee on Rules has recently adopted a course of procedure where these rules waiving points of order will be limited to specific items, as has been done in this instance.

Parliamentarian’s Note: Points of order were waived against the provisions of the bill pertaining to the National Aeronautics and Space Administration since the annual authorization bill for that agency had not yet become law.

Motion To Suspend Application of a Statutory Rule

§ 9.2 A motion to suspend the rules and pass a bill suspends all rules, including statutory provisions of law

enacted under the rule-making power of the House, and since under article I, section 5 of the Constitution, each House may make and change its rules, the House is not precluded from waiving a rule enacted as a statute.

On Nov. 1, 1977,⁽¹²⁾ Mr. Stephen J. Solarz, of New York, moved to suspend the rules and pass the Congressional Salary Deferral Act, H.R. 9282. Mr. Robert E. Bauman, of Maryland, raised a point of order against the suspension motion on the ground that it infringed the jurisdiction of the Committee on the Budget, in violation of section 306 of the Budget Act. The arguments on the point of order and the ruling of Speaker Pro Tempore George E. Brown, Jr., of California, are shown in the Record of that date.

CONGRESSIONAL SALARY DEFERRAL

MR. SOLARZ: Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 9282) to provide that adjustments in the rates of pay for Members of Congress shall take effect at the beginning of the Congress following the Congress in which they are approved, and for other purposes.

The Clerk read as follows:

H.R. 9282

Be it enacted by the Senate and House of Representatives of the

12. 123 CONG. REC. 36309-11, 95th Cong. 1st Sess.

United States of America in Congress assembled, That (a)(1) paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31), relating to congressional salary adjustment, is amended by striking out "Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which" and inserting in lieu thereof "Effective at the beginning of the Congress following any Congress during which". . . .

SEC. 2. (a) It shall not be in order in either the House of Representatives or the Senate to consider any appropriation bill, budget, resolution, or amendment thereto, which directly or indirectly prevents the payment of increases in pay rates resulting from a pay adjustment deferred under the amendments made by the first section of this Act.

(b) For purposes of subsection (a), the term "budget resolution" means any concurrent resolution on the budget, as such term is defined in section 3(a)(4) of the Congressional Budget and Impoundment Control Act of 1974.

(c) The provisions of subsection (a) are enacted by the Congress—

(1) as an exercise of the rule-making power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SEC. 3. The provisions of this Act shall take effect on the date of the enactment of this Act.

THE SPEAKER PRO TEMPORE: Is a second demanded?

MR. BAUMAN: Mr. Speaker, I have a point of order.

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

MR. BAUMAN: Mr. Speaker, I make a point of order against the present consideration of the bill under suspension on the ground that the bill itself and the manner in which it was considered is in violation of Public Law 93-344, the Congressional Budget Act, specifically section 306.

Section 306 of the Budget Act says as follows:

No bill or resolution and no amendment to any bill or resolution dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee of the Budget of that House or from the consideration of which such committee has been discharged, or unless it is an amendment to such bill or resolution.

Mr. Speaker, the bill before us specifically, in section 2, seeks to repeal part of the jurisdiction of the Committee on the Budget. Specifically it says the following:

SEC. 2. (a) It shall not be in order in either the House of Representatives or the Senate to consider any appropriation bill, budget resolution, or amendment thereto, which directly or indirectly prevents the payment of increases in pay rates resulting from a pay adjustment deferred under the amendments made by the first section of this Act.

Mr. Speaker, the Budget Act is very clear that so far as the rules of proce-

dure governing the Budget Act itself are concerned, that is within the jurisdiction of the Committee on Rules. This bill was reported by the Committee on Post Office and Civil Service, the committee of original jurisdiction, and I understand the jurisdiction was waived by the Committee on Rules. Nevertheless, section 306 makes it plain that since this bill, if it becomes statutory law, repeals part of the jurisdiction of the Committee on the Budget, it should have also been considered, in the opinion of the gentleman from Maryland, by the Committee on the Budget or their jurisdiction should have been waived. This was not done.

I would say further, Mr. Speaker, that if in fact any committee of the House is able to report a bill which prevents the Committee on the Budget from dealing with subject matters under that reporting committee's jurisdiction, then the Committee on the Budget in fact could be, over a period of time, destroyed as far as its capability of dealing with the Budget Act.

For all of those reasons, I make a point of order against consideration of this bill. I would further point out that section 306 does not deal with reporting or with whether or not the House can suspend the rules, but it forbids consideration by the House at any time of any legislation that repeals or changes the jurisdiction of the Committee on the Budget without that committee's acting upon it.

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

MR. SOLARZ: I do, Mr. Speaker.

I have unbounded admiration for the parliamentary sagacity of my good

friend, the gentleman from Maryland. Who am I, after all, to challenge the validity of this rather sophisticated parliamentary analysis? But may I suggest, Mr. Speaker, that the substantive merits of the gentleman's objection notwithstanding, the fact is that from a procedural point of view I do believe it has to be found wanting. The reason for that is that under the suspension of the rules, which are the terms under which the legislation is being considered, all existing rules of the House are waived, and to the extent that the provision to which the gentleman from Maryland referred is itself incorporated in the rules of the House, which do, after all, provide for the consideration of these budget resolutions, I would suggest that his objection is not relevant to this resolution and, therefore, is not germane.

MR. BAUMAN: Mr. Speaker, may I be heard further?

The gentleman makes the contention that by making a motion to suspend the rules of the House, this wipes out a rule against consideration in any form, including the suspension of the requirements of the Budget Act. There is ample precedent in the House for situations in which the Chair has ruled that a bill may not even be brought up under suspension if it has not in fact been considered by the committee of proper jurisdiction. I refer the Chair to Hinds' Precedents, volume 5, section 6848, page 925, in which it was ruled by the Chair that a committee, the Committee on the Census, could not bring up for consideration under a motion to suspend the rules a bill relating to the printing of a compendium of a census, because it had not been brought before the Committee on Printing.

It is quite obvious that this is a question of consideration. It is written into the statutory law that no such bill can be considered, and I am not aware that that rule of consideration can be suspended or repealed by a simple motion to suspend the rules. If, in fact, that is the case, the Budget Act is meaningless.

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Connecticut.

MR. GIAIMO: Mr. Speaker, the charge has been made and the objection has been raised that this legislation, particularly section 2, invades the jurisdiction of the Budget Committee in that it purports to prohibit the Budget Committee from exercising its jurisdiction over budget resolutions insofar as they would apply to pay raises and cost-of-living increases. I must submit that that is a proper interpretation.

However, I do believe that the argument of the gentleman from New York that this matter is being brought up under suspension of the rules is a very valid one and that the House of Representatives can in its wisdom by a two-thirds vote suspend the rules and deprive the Budget Committee and in fact the Appropriations Committee of jurisdiction in effecting pay raises or cost-of-living increases by a two-thirds vote.

THE SPEAKER PRO TEMPORE: Are there any other Members who desire to be heard on the point of order? If not, the Chair is prepared to rule.

The gentleman from Maryland makes a point of order against the con-

sideration of the bill H.R. 9282 under suspension of the rules on the grounds that section 306 of the Congressional Budget Act states that no bill or resolution nor amendment to any bill or resolution dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House or from consideration of which such committee has been discharged or unless it is an amendment to such a bill or resolution.

The Chair need not rule on the jurisdictional issue raised by the gentleman and points out to the gentleman from Maryland that under the specific provisions of section 904 of the Budget Act, the provisions of title III including section 306, which he cites, are stipulated as being an exercise of the rulemaking power of the House of Representatives with full recognition of the constitutional right of either House to change such rules so far as relating to such House at any time in the same manner and to the same extent as in the case of any other rule of such House. It is the opinion of the Chair therefore that it is within the discretion of the Chair under rule XXVII to entertain a motion to suspend the rules and to consider the bill at this time. Of course, the precedent cited by the gentleman from Maryland applies only to a provision which is no longer in rule XXVII relating to motions to suspend the rules made by committees. Accordingly the point of order is overruled.

MR. BAUMAN: Mr. Speaker, may I be heard further, at the sufferance of the Chair?

THE SPEAKER PRO TEMPORE: The Chair will hear the gentleman.

MR. BAUMAN: I thank the Speaker for permitting me to be heard further.

I would just point out that the Speaker has pointed out that it is within the prerogatives of the House to change the rules of the House, but this is not a rule of the House. It is a provision of a statute which is being waived, and while I would not appeal the ruling, I do not think that is a proper basis for the ruling.

THE SPEAKER PRO TEMPORE: The specific provision which the gentleman states has the status of a rule of the House of Representatives under the statute and under the Constitution.

Is a second demanded?

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Speaker, I demand a second.

Interpreting What Waiver Covers

§ 9.3 Instance where a unanimous-consent waiver of all points of order against a bill combined with a unanimous-consent agreement to consider the bill on a day certain was held to waive all points of order against the consideration of the bill for failure of the accompanying report to be available or to be sufficient under the rules.

On July 19, 1947,⁽¹³⁾ Speaker Joseph W. Martin, Jr., of Massa-

13. 93 CONG. REC. 9396, 80th Cong. 1st Sess. Under consideration was the National Security Act of 1947.

chusetts, ruled on the effect of a waiver on several points of order raised against a bill. The points of order had been waived pursuant to a unanimous-consent request which had been agreed upon three days previously.⁽¹⁴⁾ The unanimous-consent agreement provided as follows:

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I ask unanimous consent that it may be in order on Friday next and thereafter to consider the bill H.R. 4214, that all points of order against the said bill be considered as waived, and that there be not to exceed 5 hours of general debate, to be confined to the bill and to be equally divided and controlled by the chairman and ranking minority member of the Committee on Expenditures in the Executive Departments; and further, Mr. Speaker, I ask unanimous consent that after the passage of the bill H.R. 4214 the Committee on Expenditures shall be discharged from the further consideration of the bill S. 758, and it shall then be in order in the House to move to strike out all after the enacting clause of the Senate bill and insert in lieu thereof the provisions contained in H.R. 4214 as passed.

The proceedings on July 19 were as follows:

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consider-

ation of the bill (H.R. 4214) to promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security; and pending that, Mr. Speaker, I ask unanimous consent that all those who may speak on the bill may include in their remarks any relevant material, and that all Members who so desire may have five legislative days in which to extend their remarks in the Record on this subject.

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

There was no objection.

MR. [W. STERLING] COLE of New York: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. COLE of New York: My parliamentary inquiry is whether it would be in order at this time to make a point of order against the motion upon the ground that at least 24 hours have not intervened between the time the bill was available and the time the bill was called up.

THE SPEAKER: In reply to the inquiry of the gentleman from New York, the Chair would say that under the unanimous-consent agreement which was reached on July 16, appearing in the *Congressional Record* at page 9095, all points of order against the bill were waived.

14. 93 CONG. REC. 9095, 80th Cong. 1st Sess., July 16, 1947.

MR. COLE of New York: Mr. Speaker, a further parliamentary inquiry. I am further advised that although the bill is available this morning, the report accompanying the bill is not. Would it be in order to raise a point of order against the motion of the gentleman from Michigan [Mr. Hoffman] upon the ground that the report is not now available?

THE SPEAKER: It would not be in order because the same ruling would apply. All points of order were waived under the unanimous-consent agreement.

MR. COLE of New York: Mr. Speaker, a further parliamentary inquiry. I am informed that the report does not comply with the rules of the House in that it does not set forth the alterations proposed by the bill to existing law. My inquiry is whether the request of the gentleman from Indiana, the majority leader, that points of order against the bill be waived also carried with it the waiving of points of order against the report which is supposed to accompany the bill.

THE SPEAKER: The Chair is compelled to make the same ruling in this instance also. All points of order were waived under the unanimous-consent agreement and, therefore, the raising of that point of order at this time would not be in order.

MR. COLE of New York: Mr. Speaker, without undertaking to dispute the decision, I call your attention to the fact that the request for waiving points of order was directed to the bill itself. Does the Speaker rule that the waiving of points of order against the bill carried with it the waiving of points of order against the report?

THE SPEAKER: Yes.

Parliamentarian's Note: Under the modern practice, points of order based upon insufficiency or unavailability of the accompanying report or upon certain Budget Act violations go to the question of consideration and not to the bill itself and must be separately waived. If points of order against the consideration of a bill are waived by unanimous consent, such waiver applies to the committee report on the bill.

Unanimous Consent for Consideration of a Bill; What It Waives

§ 9.4 A unanimous-consent agreement "to consider a bill in the House on tomorrow or any day thereafter" may waive the three-day availability requirement but does not waive other points of order against consideration when the bill is called up under the agreement.

Where a non-privileged appropriation bill (not a general bill) was reported from the Committee on Appropriations, the chairman of that committee made a unanimous-consent request so the bill could be called up without meeting the three-day layover requirement. In response to an inquiry,

the Speaker indicated that if the request were granted, points of order under the Budget Act could still be raised when the bill was called up. The proceedings of Feb. 4, 1982,⁽¹⁵⁾ were as follows:

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I ask unanimous consent that it may be in order on tomorrow or any day thereafter to consider in the House the joint resolution (H.J. Res. 391) making an urgent supplemental appropriation for the Department of Labor for the fiscal year ending September 30, 1982.

THE SPEAKER:⁽¹⁶⁾ Is there objection to the request of the gentleman from Mississippi?

MR. [TRENT] LOTT [of Mississippi]: What about section 311(a) of the Budget Act? Is there a budget problem of hitting the ceiling?

MR. WHITTEN: In the first place, I do not know how that applies. It is my information that technically we are not in excess of the budget right now. That might be open to question on this, that, or the other thing. My purpose in offering this is so we could move ahead regardless. What I had in mind was the 3-day rule.

THE SPEAKER: May I answer the gentleman? It does not waive all points of order.

MR. LOTT: Mr. Speaker, that is what I wanted to ask.

THE SPEAKER: I say to the gentleman from Mississippi that it does not waive all points of order but makes

it in order to call the bill up under the conditions stated.

MR. LOTT: If I could, Mr. Speaker, I would address the question to the chairman, or perhaps the Chair could respond.

THE SPEAKER: The Chair understands the gentleman is speaking, of course, with regard to the Budget Act, the budget authority. This request, as stated, does not waive a point of order, if some Member would get on the floor to offer a point of order under the Budget Act.

MR. LOTT: Mr. Speaker, is it my understanding a point of order would lie on this point of the Budget Act when it comes to the House?

THE SPEAKER: The Chair would state that a proper point of order at that time would be entertained.

Unanimous Consent for Protection of a Specific Section

§ 9.5 The House may by unanimous consent agree to consider a section of a general appropriation bill without the intervention of a point of order.

On May 4, 1948,⁽¹⁷⁾ as an alternative to obtaining a rule waiving points of order from the Committee on Rules, the House granted unanimous consent to consider a section [containing legislation in

15. 128 CONG. REC. 844, 845, 97th Cong. 2d Sess.

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

17. 94 CONG. REC. 5264, 80th Cong. 2d Sess. Under consideration was H.R. 6430, a District of Columbia appropriations bill for fiscal 1949.

an appropriation bill] without that section being vulnerable to a point of order.

Mr. Horan, from the Committee on Appropriations, reported the bill (H.R. 6430) making appropriations for the government of the District of Columbia. . . .

Mr. Fogarty reserved all points of order on the bill.

MR. [WALTER F.] HORAN [of Washington]: Mr. Speaker, I ask unanimous consent that in the consideration of the bill making appropriations for the District of Columbia for the fiscal year 1949 it may be in order to consider without intervention of a point of order a section which I send to the desk and ask to have read.

The Clerk read as follows:

Sec. 2. Except as otherwise provided herein, all vouchers covering expenditures of appropriations contained in this act shall be audited before payment by or under the jurisdiction only of the Auditor for the District of Columbia and the vouchers as approved shall be paid by checks issued by the Disbursing Officer without countersignature.

THE SPEAKER:⁽¹⁸⁾ Is there objection to the request of the gentleman from Washington?

There was no objection.

Where Valid Point of Order Is Not Pressed Against an Amendment

§ 9.6 An amendment which is not in order because it is not germane to a pending

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

amendment may, by unanimous consent, be offered and considered notwithstanding this infirmity.

On occasion, the Committee of the Whole may proceed to consider and debate an amendment notwithstanding a decision that it is not germane. For example, on Oct. 31, 1975,⁽¹⁹⁾ the proponent of an amendment not otherwise in order was permitted to offer it although it was not germane.

MR. [ROBERT G.] STEPHENS [Jr., of Georgia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Stephens: Section 306 of title III of H.R. 10024 as reported is amended by striking the word "person" on line 22, page 15 and substituting therefor the phrase "state chartered depository institution" and by adding the words "state chartered" before the words "depository institution" on line 12, page 16. . . .

MR. [ALBERT W.] JOHNSON of Pennsylvania: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Johnson of Pennsylvania to the amendment offered by Mr. Stephens: Insert at the end of section 306(b) the following language: "Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced under—

19. 121 CONG. REC. 34563, 34564, 94th Cong. 1st Sess.

“(1) Section 8 of the Federal Deposit Insurance Act in the case of national banks, by the Comptroller of the Currency; and

“(2) Section 5(d) of the Home Owners Loan Act of 1933 in the case of any institution subject to that provision, by the Federal Home Loan Bank Board.”

THE CHAIRMAN:⁽²⁰⁾ The Chair observes that this is not a proper amendment to the pending amendment and should be offered separately.

The Chair will recognize the gentleman after the amendment of the gentleman from Georgia (Mr. Stephens) has been disposed of.

MR. JOHNSON of Pennsylvania: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. JOHNSON of Pennsylvania: Mr. Chairman, would it be in order to tack them together by unanimous consent at this point?

THE CHAIRMAN: By unanimous consent, yes. Is the gentleman making that request?

MR. JOHNSON of Pennsylvania: Mr. Chairman, I ask unanimous consent that my amendment be offered as an amendment to the pending amendment.

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

There was no objection.

Time of Adoption of Resolution of Waiver

§ 9.7 A resolution waiving points of order against a cer-

20. Spark M. Matsunaga (Ha.).

tain provision in a general appropriation bill has been considered and agreed to by the House after the general debate on the bill has been concluded and reading for amendment has begun in the Committee of the Whole.

On May 21, 1969,⁽¹⁾ a waiver of the points of order against a particular section of a bill was adopted after the first paragraph of the bill was read for amendment. The proceedings on the resolution waiving points of order were as follows:

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 414 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 414

Resolved, That during the consideration of the bill (H.R. 11400) making supplemental appropriations for the fiscal year ending June 30, 1969, and for other purposes, all points of order against title IV of said bill are hereby waived.

MR. COLMER: Mr. Speaker, I yield the customary 30 minutes to the minority, to the very able and distin-

1. 115 CONG. REC. 13246, 13251, 91st Cong. 1st Sess. Under consideration was H. Res. 414, waiving points of order against title IV, H.R. 11400, supplemental appropriation bill of 1969.

guished gentleman from California (Mr. Smith). Pending that I yield myself such time as I may consume.

Mr. Speaker, I shall not use all the time on this resolution. This is a rather unusual situation that we find ourselves in, parliamentarily speaking. We have debated the supplemental appropriation bill at some length under the privileged status of the Appropriations Committee. Now we come in with a resolution from the Rules Committee for one purpose and one purpose alone; that is, to waive points of order against a particular section of the bill. . . .

The language that the rule waives the point of order against is found in title IV of the bill. Title IV of the bill places a ceiling upon the amount of the expenditures that the Chief Executive can make within the fiscal year. Now, that amount is, roughly, \$192 billion.

. . .

MR. COLMER: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:⁽²⁾ The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Interpretation of Resolution Providing Waiver

§ 9.8 In construing a resolution waiving certain points of order, the Chairman of the Committee of the Whole may examine debate on the reso-

2. Edmond Edmondson (Okla.).

lution in the House in determining the scope of the waiver.

On June 22, 1973,⁽³⁾ Chairman James G. O'Hara, of Michigan, was called upon to interpret the intention of the Committee on Rules in the adoption of language waiving certain provisions of a House rule in the consideration of an appropriation bill.

THE CHAIRMAN: The Chair is prepared to rule.

The Chair feels that it will be necessary first to speak on the contention raised by the gentleman from Rhode Island (Mr. Tiernan) and amplified upon by the gentleman from Connecticut (Mr. Giaimo) with respect to the provisions of the resolution under which the bill is being considered, and whether or not the provisions of that resolution have an effect on the point of order made by the gentleman from Massachusetts (Mr. Boland).

The gentleman from Connecticut (Mr. Giaimo) is correct in asserting that if the amendment offered by the gentleman from Rhode Island (Mr. Tiernan) is out of order at all it is out of order because of the second sentence of clause 2 of Rule XXI, which contains the provisions that "nor shall any provision in any such bill or amendment thereto changing existing law be in order," and so forth setting forth exceptions. But the gentleman from Con-

3. 119 CONG. REC. 20983, 93d Cong. 1st Sess. Under consideration was H.R. 8825, the HUD-independent agencies appropriations for fiscal 1974.

necticut (Mr. Giaimo) contends, and the gentleman from Rhode Island (Mr. Tiernan) concurs, that the resolution providing for the consideration of the bill waives the provisions of that rule. The Chair has again read the rule. It says:

Resolved, That during the consideration of the bill (H.R. 8825) making appropriations for the Department of Housing and Urban Development . . . the provisions of clause 2, rule XXI are hereby waived.

It does not say that points of order are waived only with respect to matters contained in the bill. It says "During the consideration of the bill" the provisions of clause 2 of Rule XXI are waived.

The Chair was troubled by that language and has examined the statements made by the members of the Committee on Rules who presented the rule to see if their statements in any way amplified or explained or limited that language. The Chair has found that both the gentleman from Louisiana (Mr. Long) and the gentleman from Ohio (Mr. Latta) in their explanations of the resolution did, indeed, indicate that it was their intention, and the intention of the committee, that the waiver should apply only to matters contained in the bill and that it was not a blanket waiver.

Therefore whatever ambiguity there may have been in the rule as reported, the Chair is going to hold, was cured by the remarks and legislative history made during the presentation of the rule, which were not disputed in any way by the gentleman from Connecticut or anyone else. However, the Chair recognizes that it is a rather imprecise way of achieving that result

and would hope that in the future such resolutions would be more precise in their application.

The Chair then sustained the point of order raised against the amendments offered by Mr. Tiernan.

Waiver Against Bill Does Not Cover Amendments

§ 9.9 Where the House has adopted a resolution waiving points of order against a bill, no immunity is granted to Members to offer amendments which are not germane.

On June 15, 1948,⁽⁴⁾ Mr. Leo E. Allen, of Illinois, called up House Resolution 671, which provided as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for consideration of the bill (H.R. 6401) to provide for the common defense by increasing the strength of the armed forces of the United States and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and continue not to exceed 3 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed

4. 94 CONG. REC. 8340, 80th Cong. 2d Sess.

Services, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment, the Committee shall rise and report the same to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit. After the passage of the bill (H.R. 6401) it shall be in order in the House to take from the Speaker's table the bill, S. 2655, and to move to strike out all after the enacting clause of said Senate bill and to insert in lieu thereof the provisions contained in H.R. 6401 as passed.

The resolution was agreed to.⁽⁵⁾

On June 17, 1948,⁽⁶⁾ an amendment to the bill was offered by Mr. Edward H. Rees, of Kansas.

The Clerk read as follows:

Amendment offered by Mr. Rees: At the end of line 12, page 23, add the following and number the succeeding sections accordingly:

"Sec. 8. (a) The training under this act shall be administered and carried out on the highest possible moral, religious, and spiritual plane.

"(b) It shall be unlawful within such reasonable distance of any military camp, station, fort, post, cantonment, or training or mobilization place, where training under this act is being given, as the Secretary of National Defense may determine to

be necessary to the protection of the health, morals, and welfare of such persons who are receiving training under this act and shall designate and publish in general orders or bulletins, to establish or keep houses of ill fame, brothels, bawdy houses, or places of entertainment which are public nuisances, or other like facilities detrimental to the health and morals of persons who are being trained under this act, or to receive or permit to be received for immoral purposes any person in any vehicle, place, structure, or building used for the purpose of lewdness, assignation, or prostitution within said distance determined by the Secretary of Defense or to knowingly rent, lease, or permit the use of any property for such purposes. Any person, corporation, partnership, or association violating any of the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or imprisonment for not more than 12 months, or both.

"(c) The sale of or dealing in, beer, wine, or any intoxicating liquors by any person in any post exchange, canteen, ship's store, or Army, Navy, or Marine transport or upon any premises used for military or naval purposes by the United States is hereby prohibited. The Secretary of Defense is authorized and directed to take appropriate action to carry out the provision of this subsection."

MR. [WALTER G.] ANDREWS of New York: Mr. Chairman, I make the point of order against the amendment that the provisions thereof are not germane to the provisions of this bill.

THE CHAIRMAN (Mr. Francis H. Case of South Dakota): The Chair is ready to rule.

The gentleman from New York [Mr. Andrews] has made the point of order that the amendment offered by the

5. *Id.*

6. 94 CONG. REC. 8685, 8686, 80th Cong. 2d Sess. Under consideration was H.R. 6401, Selective Service Act of 1948.

gentleman from Kansas [Mr. Rees] is not germane to the bill. Several of the Members who have spoken have called attention to other provisions in the bill. The Chair must remind the committee that the provisions in the bill as reported by the committee were made in order by a special rule adopted by the House of Representatives. There may be provisions in the bill which would not be germane if offered as an amendment by individual Members, but are in order in the bill because they were made in order by the rule adopted by the House.

So every amendment offered must stand on its own bottom as to whether or not it is germane.

The Chair invites attention to the fact that the amendment includes such language as "It shall be unlawful to maintain certain institutions," and further on says, "Any person, corporation, partnership, or association violating any of the provisions of this subsection shall be deemed guilty of a misdemeanor" and so forth. In that respect it seems to the Chair that the amendment goes beyond the provisions of the bill, imposing penalties and sanctions on persons outside the armed forces.

Therefore, the Chair is constrained to sustain the point of order.

Effect on Amendments

§ 9.10 Where a resolution providing for the consideration of a bill specifies that "all points of order against said bill are hereby waived," the waiver is applicable only to the text of the bill and not to amendments.

On May 1, 1968,⁽⁷⁾ Speaker Pro Tempore Carl Albert, of Oklahoma, advised Mr. Durward G. Hall, of Missouri, as to whether points of order would lie against amendments to a bill after the adoption of a House resolution waiving points of order against the bill.

MR. [CLAUDE D.] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1150 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1150

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 16729) to extend for two years certain programs providing assistance to students at institutions of higher education, to modify such programs, and to provide for planning, evaluation, and adequate leadtime in such programs, and all points of order against said bill are hereby waived.
. . .

THE SPEAKER PRO TEMPORE: The gentleman from Florida [Mr. Pepper] is recognized for 1 hour. . . .

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

7. 114 CONG. REC. 11304-06, 90th Cong. 2d Sess. Being discussed was H. Res. 1150, providing for consideration of H.R. 16729, extending the higher education student loan program.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALL: Mr. Speaker, in view of our colloquy and our understanding of House Resolution 1150, which says, on lines 8 and 9, that "all points of order against such bill are hereby waived," my parliamentary inquiry is whether or not amendments submitted—inasmuch as on line 1, page 2, the resolution states "the bill shall be read for amendment under the 5-minute rule"—could not be subject to a point of order or a point of order made and lie against such amendments if they were nongermane or otherwise did not come under a rule of the House? A mirror image of my question is, does a point of order lie against all amendments that might be offered?

THE SPEAKER PRO TEMPORE: The resolution does not apply to amendments that might be offered. . . .

There is nothing in the resolution which would provide for a waiver of points of order against any amendment which might be offered to the bill, if such amendment were not germane under the rules of the House.

§ 9.11 Where the House by adoption of a resolution waives all points of order against any provisions in an appropriation bill, such action does not waive points of order against amendments offered from the floor.

On Aug. 20, 1951,⁽⁸⁾ the Chairman⁽⁹⁾ held that points of order would lie against amendments offered from the floor, despite a rule waiving points of order against the bill.

MR. [JOHN J.] DEMPSEY [of New Mexico]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. DEMPSEY: The amendment is not germane to this section, and in addition to that, it is purely legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Michigan desire to address himself to the point of order?

MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, in reply to the point of order made by the gentleman from New Mexico, I would like to say first that under the rule adopted at the time this legislation came to the floor all points of order were waived. Secondly, I think that the amendment is germane. . . .

MR. DEMPSEY: Mr. Chairman, the Committee on Rules waived points of order to the bill, but they certainly cannot waive points of order to an amendment which might be offered, which the gentleman is proposing to do.

8. 97 CONG. REC. 10408, 82d Cong. 1st Sess. [H.R. 5215, a supplemental appropriation bill for fiscal 1952]; *Id.* at p. 11682 [H.R. 2982, to readjust postal rates]; 100 CONG. REC. 9629, 83d Cong. 2d Sess., July 2, 1954 [H.R. 9680, Agricultural Act of 1954].

9. Edward J. Hart (N.Y.).

THE CHAIRMAN: The Chair is ready to rule.

With respect to the question of waiving all points of order, that runs only to the provisions of the bill and not to amendments offered to the bill. A proposition in an appropriation bill proposing to change existing law but permitted to remain, may be perfected by germane amendments, provided they do not add further legislation. The Chair is of the opinion that this amendment does add further legislation, and, therefore, sustains the point of order.

§ 9.12 Where points of order have not been waived against committee amendments in a bill, such committee amendments occupy the same status as those offered from the floor with respect to points of order.

On Aug. 9, 1954,⁽¹⁰⁾ absent a special rule waiving points of order, a committee amendment was ruled nongermane.

MR. [JOSEPH P.] O'HARA of Minnesota: Mr. Speaker, I make a point of order against the amendment on the ground that it is not germane to the bill as passed by the Senate. . . .

MR. [ARTHUR L.] MILLER of Minnesota: Mr. Speaker, this amendment was offered not here today in the House but . . . was voted and written

10. 100 CONG. REC. 13807, 83d Cong. 2d Sess. Under consideration was S. 3506, amending the District of Columbia Alley Dwelling Act.

into the bill when a full quorum was present in a regularly constituted meeting of the District of Columbia Committee. I am not sure what the vote was, but it was a substantial vote. Therefore it is not being offered here today as a new amendment. . . .

THE SPEAKER:⁽¹¹⁾ The Chair is prepared to rule.

In response to the parliamentary inquiry propounded by the gentleman from Nebraska [Mr. Miller] the Chair may say that the committee amendment assumes the same status in the House as any other amendment that might be offered from the floor. That is why the Committee on Rules is sometimes asked to report special rules waiving points of order against committee amendments. Those points of order usually involve questions of germaneness. . . .

The Chair is of the opinion that the amendment is not germane and, therefore, sustains the point of order.

§ 9.13 A resolution adopted by the House waiving points of order against a committee substitute does not waive such points against amendments to the substitute.

On Aug. 31, 1944,⁽¹²⁾ the Committee of the Whole considered S. 2051 pursuant to a House Resolution (H. Res. 627), adopted two days previously by the House. This resolution provided:⁽¹³⁾

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

12. 90 CONG. REC. 7463, 7464, 78th Cong. 2d Sess.

13. 90 CONG. REC. 7350, 78th Cong. 2d Sess., Aug. 29, 1944.

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill S. 2051, an act to amend the Social Security Act, as amended, to provide a national program for war mobilization and reconversion, and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and continue not to exceed 2 days to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the 5-minute rule. It shall be in order to consider without the intervention of any point of order the substitute amendment recommended by the Committee on Ways and Means now in the bill, and such substitute for the purpose of amendment shall be considered under the 5-minute rule as an original bill. At the conclusion of such consideration, the committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the bill or committee substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

In response to a point of order raised by Mr. John Taber, of New York, it was held that the waiver of points of order against a com-

mittee substitute was limited to these provisions only, and the waiver did not apply, according to Chairman Fritz G. Lanham, of Texas, to possible amendments to the committee substitute.⁽¹⁴⁾

MR. [AIME J.] FORAND [of Rhode Island]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Forand: Page 39, after the period in line 24, add a new section as follows:

“UNEMPLOYMENT COMPENSATION FOR
FEDERAL EMPLOYEES

“Sec. 403. (a) The Social Security Act, as amended, is further amended by adding at the end thereof the following new title: . . .

MR. TABER: Mr. Chairman, I make the point of order against the amendment that it is an appropriation of funds in violation of clause 4 of rule XXI of the House. . . .

THE CHAIRMAN: . . . Can the gentleman from Rhode Island show how that is not included in the prohibition in the rule cited by the gentleman from New York?

MR. FORAND: Mr. Chairman, I have not studied that point. I did not expect it was going to be raised. It has been carried in the Senate bill all the way through without a question, and I contend that title 301(a), under title III, is in the same category. No point of order has been raised against that. So if one is subject to a point of order, I imagine both would be.

14. 90 CONG. REC. 7463, 7464, 78th Cong. 2d Sess., Aug. 31, 1944.

THE CHAIRMAN: The Chair will state to the gentleman from Rhode Island that the rule under which we are considering this measure, waives points of order against the committee substitute, but not against the amendments which would be offered to that substitute.

. . .

Waiver for Text of Bill Offered as Amendment May Not Cover Portions Thereof Individually

§ 9.14 Where a resolution providing for the consideration of a bill makes in order the text of a specific bill as an amendment, points of order are considered as waived only against the complete text of the proposed bill and not against portions thereof.

On Dec. 10, 1969,⁽¹⁵⁾ Speaker Pro Tempore Carl Albert, of Oklahoma, explained the effect of a waiver to Mr. Clark MacGregor, of Minnesota.

MR. [RAY J.] MADDEN [of Indiana]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 714, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

15. 115 CONG. REC. 38123, 38130, 91st Cong. 1st Sess. Being discussed was H. Res. 714, which provided for the consideration of H.R. 4249, extending portions of the 1965 Voting Rights Act.

H. RES. 714

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4249). . . . It shall be in order to consider, without the intervention of any point of order, the text of the bill H.R. 12695 as an amendment to the bill. At the conclusion of the consideration of H.R. 4249 for amendment, the Committee shall rise and report the bill to the House with such amendments as may have [been] adopted. . . .

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. MACGREGOR: Mr. Speaker, under the resolution (H. Res. 714), if adopted, should the bill, H.R. 12695, be considered and rejected, would it then be in order, following rejection of H.R. 12695, should that occur, to offer a portion or portions of H.R. 12695 as amendments to H.R. 4249?

THE SPEAKER PRO TEMPORE: The Chair will state that would be in order subject to the rule of germaneness, if germane to the bill H.R. 4249.

Constructive Waiver

§ 9.15 *Parliamentarian's Note:* Where a motion which might have been subject to a point of order (if a point of order had been raised in a timely fashion) is, in the absence of a point of order, agreed to—it represents the will of the House and governs its proce-

ture until the House orders otherwise (or until a proper collateral challenge to that procedure is made).

On Oct. 9, 1968,⁽¹⁶⁾ following the Chair's disclosure of the absence of a quorum, the House adopted the following motion made by Mr. Brock Adams, of Washington:

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I move a call of the House.

MR. ADAMS: Mr. Speaker, as a part of the motion of a call of the House, I further move under Rule II, under which a call of the House is in order, that a motion be made for the majority here that those who are not present be sent for wherever they are found and returned here on the condition that they shall not be allowed to leave the Chamber until such time as the pending business before this Chamber on this legislative day shall have been completed.

THE SPEAKER:⁽¹⁷⁾ The question is on the motion offered by the gentleman from Washington [Mr. Adams].

The motion was agreed to.

The Clerk proceeded to call the roll.⁽¹⁸⁾ . . .

THE SPEAKER: On this rollcall 222 Members have answered to their names, a quorum.

16. 114 CONG. REC. 30212-14, 90th Cong. 2d Sess. At the time the Clerk was reading the Journal.

17. John W. McCormack (Mass.).

18. 114 CONG. REC. 30213, 30214, 90th Cong. 2d Sess.

There was discussion then concerning whether this motion would have been subject to a point of order, had one been made. The Speaker stated that the motion as adopted expressed the will of the majority of the Members present, and indicated that the question was moot.

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

THE SPEAKER: The gentleman will state it.

MR. BROCK: Is it not so that the rules of the House provide for the highly unusual procedure of calling in absent Members only in the case of the establishment of a nonquorum? Is that not true? And was the motion not illegal and improper on its face, having been made prior to the establishment of no quorum?

THE SPEAKER: The Chair will observe that we can always attempt to have Members attend who are not present at this time or actually in the Chamber at some particular time. Further, the Chair might also observe that every effort is being made on the Democratic side in connection with notifying Members of the situation that has existed for the past 12 or so hours.

MR. BROCK: But the parliamentary inquiry, Mr. Speaker, was to the question of whether or not the motion was in fact outside the normal rules of the House.

MR. ALBERT: Mr. Speaker, will the Chair yield?

THE SPEAKER: Does the gentleman from Oklahoma desire to be heard on the parliamentary inquiry of the gentleman from Tennessee?

MR. ALBERT: The gentleman from Oklahoma would only suggest if a point of order would have been eligible as against the motion made by the distinguished gentleman from Washington, it certainly has come too late in view of the action of the House.

THE SPEAKER: The Chair will state without passing on the question as to whether or not a point of order would lie if made at the proper time when the gentleman from Washington made his motion, that after the motion had been adopted no point of order was made. Therefore, the motion expressing the will of the majority of the Members present will be adhered to.

Parliamentarian's Note: As indicated in the Parliamentarian's note in Chapter 11, §3.2, supra, this instance does not establish a precedent that a "constructive waiver of a point of order" may be accomplished in the absence of a quorum. In such circumstances, a proper collateral challenge to an improper order of the House may be made, as the discussion in that chapter indicates.

Where No Point of Order Is Lodged, Proceedings May Continue

§ 9.16 Where an amendment is offered and no point of order is raised against its consideration, although a valid point of order could have been raised, the Chair may use his parliamentary discretion to

clarify the situation so that the amendment may be debated and voted on.

The proceedings of Mar. 21, 1975,⁽¹⁹⁾ illustrate the discretion that the Chair may sometimes exercise to allow the Committee of the Whole to work its will in an ambiguous situation.

Mrs. Millicent Fenwick, of New Jersey, had offered a perfecting amendment to the pending section of the Emergency Middle-Income Housing Act of 1975, which was being read for amendment under the five-minute rule. Her amendment struck out one paragraph of the section under consideration and inserted new language. After debate on the Fenwick amendment Mr. Les AuCoin, of Oregon, offered "a perfecting amendment" which was not in order, since only one perfecting amendment can be pending at a time. When no point of order was raised, the AuCoin amendment was debated. The Chair could have treated the second amendment as a substitute for the first but chose to entertain it as a perfecting amendment to the text which would be stricken if the Fenwick amendment were adopted.⁽²⁰⁾ The relevant pro-

19. 121 CONG. REC. 7950, 7952, 7953, 94th Cong. 1st Sess.

20. See §469 of Jefferson's Manual, *House Rules and Manual* (1997), for

ceedings are carried in §15.21, *infra*.

Chair's Initiative in Enforcing Rules

§ 9.17 In certain instances, particularly with respect to questions of propriety in debate, the Chair takes the initiative in enforcing the rules and does not await a point of order.

Jefferson's Manual provides that "it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House."⁽¹⁾ Because of this admonition from Jefferson, the Chair has customarily differentiated between debate which engages in personalities toward other House Members, where the Chair normally awaits a point of order from the floor, and debate which raises the issue of comity between the Houses.

Since the amendment to Rule XIV clause 1, in the 101st Congress, the standards of what is permissible debate with reference

discussion of the doctrine of perfecting text proposed to be stricken.

1. *House Rules and Manual* §374 (1997).

to the Senate has changed. But the duty of the Chair remains as stated by Jefferson.

An example of the Chair taking the initiative is shown in the following exchange of Apr. 17, 1975,⁽²⁾ which predated the amendment to Rule XIV mentioned herein.

(Mr. Cleveland asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

MR. [JAMES C.] CLEVELAND [of New Hampshire]: Mr. Speaker, I am amazed that four Democratic members of the Rules Committee of the other body, reviewing the challenge of Democrat John Durkin to the seating of Senator-elect Louis Wyman, should have yesterday voted to take away from Wyman 10 straight Republican ballots that had been properly counted for him in New Hampshire. These critically important votes belong to Mr. Wyman by settled New Hampshire law in a contest with an existing margin of two votes.

As even Durkin's counsel acknowledged before the committee, the ballots were and would have consistently been counted for Wyman in New Hampshire. On each the voter had voted a cross in the straight Republican circle with no marks on the Democratic side of the ballot. He had also voted a cross in every voting square except Mr. Wyman's. By operation of statute and court decision in New Hampshire for 60 years—as well as in other States

2. 121 CONG. REC. 10458, 94th Cong. 1st Sess.

having the straight ticket option—a vote in the straight ticket circle is a vote for every candidate under the circle and a vote in every box under the circle by operation of law.

Worse yet, similar ballots for Durkin in the original New Hampshire recount had not been challenged by Wyman because under settled New Hampshire law they were recognized as valid votes. These remain in the totals relied on by the Senate committee, counted for Durkin.

On April 9 in this Record I called for a new election in New Hampshire and surely this has now become a compelling necessity, unless we are to witness a legislative Watergate.

THE SPEAKER: ⁽³⁾ The Chair must ask the gentleman to desist and must call to the attention of the gentleman from New Hampshire that his remarks are in violation of the rules of the House and rules of comity. The Chair has been very lenient, but this goes far beyond the bounds.

It is not proper to criticize the actions of the other body, or any committee of the other body, in any matter relating to official duties.

MR. CLEVELAND: Mr. Speaker, would it be in order for me to quote a Member of the other body who characterized this?

THE SPEAKER: No, it would not be. The Chair was very lenient by letting the gentleman make his point, but the Chair is going to be strict in observing the rules of comity between the two bodies. Otherwise we cannot function as an independent, separate legislative body under the Constitution of the United States.

3. Carl Albert (Okla.).

Points of Order Against Improper Debate

§ 9.18 The Speaker reaffirmed his intention to enforce the provision in Jefferson's Manual which prohibits improper references to the Senate and to exercise his own initiative in calling Members to order where infractions occur.

On June 16, 1982,⁽⁴⁾ Speaker Thomas P. O'Neill, of Massachusetts, anticipating that the House would shortly be considering an amendment directed at activities of the Senate, cautioned Members against violating the provision of Jefferson's Manual. The announcement and subsequent inquiries are carried below.

THE SPEAKER: The Chair appreciates the fact that there is an amendment that will be offered very shortly concerning the Senate.

The Chair deems it necessary to make a statement at this time to firmly establish an understanding that improper references to the other body or its Members during debate are contrary to the rules and precedents of the House and will not be tolerated. The Chair will quote from section 374 of Jefferson's Manual which is a part of the rules of the House:

It is the duty of the House, and more particularly of the Speaker, to

4. 128 CONG. REC. 13843, 13873, 97th Cong. 2d. Sess.

interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder.

Traditionally when a Member inadvertently transgresses this rule of the House, the Chair upon calling the Member to order prevails upon that Member to remove the offending remarks from the Record. With the advent of television, however, the Chair is not certain that such a remedy is sufficient. Henceforth, where a Member's references to the other body are contrary to the important principle of comity stated in Jefferson's Manual, the Chair may immediately deny further recognition to that Member at that point in the debate subject to permission of the House to proceed in order. The Chair requests all Members to abide by this rule in order to avoid embarrassment to themselves and to the House.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CONTE: Mr. Speaker, in order to abide by the rules, which are very difficult, does the Senate have the same rule? Does the other body?

THE SPEAKER: No; the Senate does not have the same rule, but it is a rule of our House and we are going to abide by it as long as I am Speaker.

MR. CONTE: Is it permissible to refer to them as 'the other body'?

THE SPEAKER: That is permissible, the other body . . .

MR. [DAVID R.] OBEY [of Wisconsin]: If the gentleman will yield on that point, I do not want to behave like the other body. I am fed up with Members of the other body posing for holy pictures on congressional pay and then running around, collecting \$60,000 in outside income.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

THE SPEAKER PRO TEMPORE: The Chair is constrained to admonish the body, in accordance with the warning of the Speaker earlier, that the Members should be careful in their references to the other body.

Vacating Point of Order Proceedings

§ 9.19 Where several items in an appropriation bill had been stricken on points of order, the Committee of the Whole subsequently agreed to vacate the point of order proceedings, thereby causing the stricken language to be reinserted in the bill.

On June 7, 1991,⁽⁵⁾ during the consideration of the Defense appropriation bill, fiscal 1992, Mr. James A. Traficant, Jr., of Ohio, successfully made several points of order against provisions in the Operation and Maintenance title of the bill. He announced his in-

5. 137 CONG. REC. 13976, 102d Cong. 1st Sess.

tention to challenge many provisions by raising points of order, but reversed his position when promised that an amendment he wished to offer, also legislative in concept, would not be opposed by the bill managers when offered. He then sought to rectify his actions.

MR. [JOHN P.] MURTHA [of Pennsylvania]: Mr. Chairman, we have an agreement with the gentleman from Ohio that he can offer his amendment at the appropriate place, if he would ask unanimous consent to put back the provisions that he has taken out.

MR. TRAFICANT: Mr. Chairman, I would be glad to do that if I could feel that when we got to conference and got everybody in the back room, that when the law is signed by the President the Traficant amendment would be in there . . .

MR. MURTHA: Mr. Chairman, as the gentleman knows, I will do the best I can with every provision we have put in, including the provisions that the gentleman has put in the bill. We will do the best that we can to hold that provision.

I agree with the gentleman on the provision. I think it is a very important provision, and I agree with the gentleman completely on it.

THE CHAIRMAN:⁽⁶⁾ Are there any other points of order against title II?

If not, are there any amendments to title II?

VACATING PROCEEDINGS ON PREVIOUS POINTS OF ORDER BY MR. TRAFICANT

MR. TRAFICANT: Mr. Chairman, I ask unanimous consent that any provisions

of title II stricken by my objections to such provisions for having constituted legislation on an appropriation bill be vacated and the bill stand as it is.

THE CHAIRMAN: The gentleman from Ohio asks unanimous consent to vacate proceedings under points of order raised by the gentleman from Ohio only, not the gentleman from Indiana, under title II.

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

There was no objection.

THE CHAIRMAN: Those provisions, accordingly, are restored to title II of the bill.

§ 10. Role of Committee on Rules in Waiving Points of Order

In the “modern House,” at least since the 95th Congress, the Committee on Rules has been called upon to craft special orders governing the consideration of most major pieces of legislation to be brought before the House. Even bills otherwise given “privilege” by standing rules of the House, such as general appropriation bills, are often considered pursuant to or are protected by a special rule.⁽⁷⁾ Special rules can insulate a bill or amendments from points of order; they often are designed to expedite consideration.⁽⁸⁾

7. See § 10.16, *infra*.

8. See §§ 10.15, 10.19–10.22, *infra*.

6. James L. Oberstar (Minn.).