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yeas and nays will rise and remain standing.

MR. SHARP: Mr. Speaker, I withdraw my demand for the yeas and nays.

The amendment was agreed to.

§ 12. Binding Effect and Scope of Instructions; Violation of Instructions

Application to Senate Conferees

§ 12.1 Instructions of the House apply only to the conferees on the part of the House and do not apply to the conferees of the Senate.

On July 12, 1946,[17] Mr. Francis H. Case, of South Dakota, made a point of order in regard to the conference report on H.R. 6777, the 1947 government corporations appropriation bill.

MR. CASE of South Dakota: Mr. Speaker, it is my recollection that at the time this conference report was before the House previously a motion was made by the gentleman from Pennsylvania [Mr. Rich] instructing the conferees to disagree to the Senate amendment and insist upon our position. I have been told inferentially that at the conference no attempt was made to have the other body vote upon the disagreement. At least I have found no record of a vote by the other body. Under the precedents of the House, when one body proposes an amendment and it subsequently is taken to the other body and there is disagreed to, in comity the body proposing the matter should at least take a vote upon the proposition or recede from its position. It seems reasonable that the other body would do so, if the conferees were to follow the instructions given them. Consequently, I make the point of order that the conferees have disregarded their instructions and exceeded their authority in bringing the matter back to the House for a vote before it has been considered by the other body.

THE SPEAKER:[18] Of course, the instructions of the House could apply only to the conferees on the part of the House. They could not apply to the conferees on the part of the Senate. The Chair overrules the point of order.[19]

Advisory Nature of Instructions

§ 12.2 Motions to instruct conferees are in the nature of advisory instructions to the managers on the part of the House; they are not binding in a strict sense, since the House, by independent action, cannot compel specific

17. 92 CONG. REC. 8809, 8810, 79th Cong. 2d Sess.

18. Sam Rayburn (Tex.).

19. See also 79 CONG. REC. 12272, 74th Cong. 1st Sess., Aug. 1, 1935.

performance on the part of Senate conferees.

On May 29, 1968,[20] after Mr. Emanuel Celler, of New York, asked unanimous consent to send H.R. 5037, the Law Enforcement and Criminal Justice Assistance Act of 1967, to conference, Speaker John W. McCormack, of Massachusetts, recognized Mr. Richard H. Poff, of Virginia, for the purpose of posing a parliamentary inquiry.

MR. POFF: If the motion to instruct the conferees is adopted, is that instruction binding upon the House conferees, or is it in the nature of an advisory instruction only?

THE SPEAKER: The construction is that it is in the nature of an advisory instruction, because the House cannot instruct the managers on the part of the Senate.

Motion To Instruct Conferees Is "Advisory"

§ 12.3 The motion to instruct conferees is advisory only, and failure of the House managers at the conference to adhere to instructions of the House does not render the report subject to a point of order; and the Chair does not respond to a parliamentary inquiry whether a hypothetical motion would be "within the scope of conference."

After conferees had been appointed for more than 20 calendar days of the Department of Defense Authorization Act of 1982, a motion to instruct was offered under Rule XXVIII clause 1(c).[1] A motion to table having been defeated, several parliamentary inquiries were directed to Speaker Pro Tempore James C. Wright, Jr., of Texas.[2]

MRS. [PATRICIA] SCHROEDER [of Colorado]: Mr. Speaker, I offer a privileged motion.

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

The Clerk read as follows:

Mrs. Schroeder moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendments to the bill S. 815 be instructed to agree to the provisions contained in section 922 of the Senate bill.

20. 114 CONG. REC. 15499, 90th Cong. 2d Sess.

1. *House Rules and Manual* § 910 (1997).

2. 127 CONG. REC. 26046, 26049, 97th Cong. 1st Sess., Oct. 29, 1981.

MOTION TO TABLE OFFERED BY MR. DICKINSON

MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Speaker, I offer a motion to table.

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

The Clerk read as follows:

> Mr. Dickinson moves to lay on the table the motion of the gentlewoman from Colorado.

THE SPEAKER PRO TEMPORE: The motion is not debatable.

The question is on the motion to table offered by the gentleman from Alabama (Mr. Dickinson).

The question was taken; and on a division (demanded by Mr. Dickinson) there were—yeas 28, nays 18.

MRS. SCHROEDER: 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 PRO TEMPORE: Evidently a quorum is not present. . . .

So the motion to table was rejected.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The gentlewoman from Colorado (Mrs. Schroeder) is recognized for 1 hour.

MRS. SCHROEDER: Mr. Speaker, I yield myself such time as I may consume.

PARLIAMENTARY INQUIRY

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. DICKINSON: Mr. Speaker, I would like to ask if my understanding of the parliamentary procedure is correct.

The gentlewoman from Colorado has succeeded against the motion to table, in which case she has a privileged motion now pending. It is my understanding she will have 1 hour to debate the motion now pending, and is in control of that entire time. Is this correct?

THE SPEAKER PRO TEMPORE: The gentleman stated the issue correctly. . . .

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Speaker, the motion offered by Mrs. Schroeder was that the managers on the part of the House at the conference of the disagreeing votes of the two Houses to the bill S. 815 be instructed to agree to the provisions contained in section 922 of the Senate bill.

My inquiry is to what extent does that motion allow the House conferees to deviate in any way from the specific provisions of section 922 of the Senate bill?

THE SPEAKER PRO TEMPORE: The Chair advises the gentleman that no point of order would lie against the conference report if the House conferees do not follow the instructions of the House, should the House agree to the motion of the gentlewoman from Colorado.

MR. STRATTON: In other words, we could accept a provision on limiting cost growth that does not follow the precise wording of section 922 of the Senate bill?

THE SPEAKER PRO TEMPORE: The Chair is not going to rule on what will be in the scope of the conference. The

Chair is advising only as to the effect of the motion.

MR. STRATTON: Does this mean, Mr. Speaker, that if the gentleman from Alabama and I, who have been working on a substitute for the Nunn amendment, come up with something that does not have one or two of the provisions of the Nunn amendment in it, we are not in violation of the motion offered by the gentlewoman from Colorado?

THE SPEAKER PRO TEMPORE: The Chair would restate the parliamentary situation; that no point of order would lie for the reason that the conferees have not followed the instructions should the House adopt the motion of the gentlewoman from Colorado.

The motion to instruct is advisory.

§ 12.4 Instructions by the House to its conferees are advisory in nature and are not binding as a limitation on their authority, and there is no rule of the House requiring conferees to seek further instructions if they are unable to comply with instructions suggested to them.

On June 8, 1972,[3] Mr. Joe D. Waggonner, Jr., of Louisiana, made a point of order against the conference report on S. 659, the Education Amendments of 1972.

MR. WAGGONNER: Mr. Speaker, this point of order is quite simple. On two occasions the House of Representatives has by overwhelming votes instructed and given a mandate to the conferees from the House of Representatives on this particular legislation. I submit without any further explanation that they have violated the instructions of the House of Representatives, and therefore have violated, Mr. Speaker, the rules of the House of Representatives.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, will the gentleman yield?

MR. WAGGONNER: I am happy to yield to the gentleman from Missouri.

MR. HALL: Is it not the fact that it is stated in Jefferson's Manual when the rules of instructions are exceeded by the managers on the part of this body that the remedy lies in returning to the body for instruction, and thus another violation, as clearly set forth in the report, has been approved?

MR. WAGGONNER: The gentleman is exactly right.

THE SPEAKER:[4] The Chair is ready to rule.

The gentleman from Louisiana (Mr. Waggonner) makes a point of order against the conference report on the bill S. 659 on the ground that the managers on the part of the House have not adhered to the instructions imposed upon them by the House on March 8, 1972, and again on May 11, 1972.

The Chair has examined the precedents on this question and they consistently indicate, although conferees dis-

3. 118 CONG. REC. 20282, 92d Cong. 2d Sess.

4. Carl Albert (Okla.).

regard the instructions of the House, the Speaker cannot for that reason rule the conference report out of order. The Chair would suggest that the gentleman examine Hinds' Precedents, volume V, 6395 and Cannon's Precedents, volume VIII, 3246.

For this reason, the Chair overrules the point of order. . . .

MR. WAGGONNER: Do not the rules of the House of Representatives provide that when the House has given instructions to its conferees on any legislative proposal, if they cannot comply with those instructions, they are required to come back to the House of Representatives for further instruction?

THE SPEAKER: The Chair knows of no rule that makes such provision.

Instructions Neither Binding Nor Restrictive on Conferees

§ 12.5 Instructions in a motion to recommit a conference report are not binding, nor do they limit the issues which can be revisited in the conference: therefore all matters committed to conference are open to further negotiation when the conferees of the House and Senate meet pursuant to the recommittal motion.

On Apr. 21, 1988,[5] the motion to recommit, offered by Mr. Robert H. Michel, of Illinois, pursuant to the rule adopted earlier that day, evoked the following parliamentary inquiry by Mr. William D. Ford, of Michigan, with respect to the authority of the conferees if the motion were to be agreed to.

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I move the previous question on the conference report.

MOTION TO RECOMMIT OFFERED BY MR. MICHEL

MR. MICHEL: Mr. Speaker, pursuant to the rule, I offer a motion to recommit with instructions.

THE SPEAKER PRO TEMPORE:[6] The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Michel moves to recommit the conference report to accompany the bill, H.R. 3, to the Committee of Conference with instructions that the managers on the part of the House promptly report the conference report back to the House without the provisions of subtitle E of title VI (sec. 6401–6410) entitled Advance Notification of Plant Closings and Mass Layoffs.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report?

MR. MICHEL: I am, in its present form, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 430, the gentleman from Illinois [Mr. Michel] will be recognized for 10 minutes and the

5. 134 CONG. REC. 8198, 100th Cong. 2d Sess.

6. John P. Murtha (Pa.).

gentleman from Michigan [Mr. Ford], a Member opposed, will be recognized for 10 minutes.

The Chair recognizes the gentleman from Illinois [Mr. Michel].

PARLIAMENTARY INQUIRY

MR. FORD of Michigan: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. FORD of Michigan: Mr. Speaker, I would like to pose a parliamentary inquiry. I would like to understand, because in my 24 years in the House I have never seen a motion to recommit a conference report with instructions to pass.

So I am trying to grasp what the rules provide.

Am I correct, Mr. Speaker, that our parliamentary situation is that if a motion with any instructions is passed, that the instruction is a nonbinding suggestion, not to this body, not to this House or to the chairman of the committee of original jurisdiction, Mr. Rostenkowski, but to the conference of the House and Senate and that would then automatically commit the entire bill to the conference between the House and the Senate which could either disregard or adopt the conference instruction or indeed consider any other matter that would then be before that conference to change the conference report as it comes to us now.

THE SPEAKER PRO TEMPORE: The whole matter would go back to conference.

MR. FORD of Michigan: I thank the Speaker.

Conference Reports in Violation of Instructions

§ 12.6 The Speaker may not rule out of order a conference report as in contravention of instructions imposed on House conferees, as it is for the House to determine by its vote on the report whether its managers have disregarded their instructions.

On June 8, 1972,[7] the following occurred in regard to the conference report on S. 659, the education amendments of 1972:

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Speaker, this point of order is quite simple. On two occasions the House of Representatives has by overwhelming votes instructed and given a mandate to the conferees from the House of Representatives on this particular legislation. I submit without any further explanation that they have violated the instructions of the House of Representatives, and therefore have violated, Mr. Speaker, the rules of the House of Representatives. . . .

THE SPEAKER:[8] The Chair is ready to rule.

The gentleman from Louisiana (Mr. Waggonner) makes a point of order against the conference report on the

7. 118 CONG. REC. 20282, 92d Cong. 2d Sess.
8. Carl Albert (Okla.).

bill S. 659 on the ground that the managers on the part of the House have not adhered to the instructions imposed upon them by the House on March 8, 1972, and again on May 11, 1972.

The Chair has examined the precedents on this question and they consistently indicate, although conferees disregard the instructions of the House, the Speaker cannot for that reason rule the conference report out of order. The Chair would suggest that the gentleman examine Hinds' Precedents, volume V, 6395 and Cannon's Precedents, volume VIII, 3246.

For this reason, the Chair overrules the point of order.

Difference Between "Free" and "Instructed" Conferees

§ 12.7 While "instructed" conferees are not "free," they are not bound by a vote of the House to instruct and a point of order against a report which does not follow the instructions does not lie.

The discussion which occurred on June 17, 1977,[9] following debate on a motion to instruct conferees is carried here.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, I move the previous question on the motion.

THE SPEAKER PRO TEMPORE:[10] The Chair is going to make a further comment with regard to the parliamentary inquiry that was directed to the Chair by the gentleman from Iowa (Mr. Harkin). If the gentleman from California will withhold the motion for the previous question, the Chair wishes to clarify one apparent misconception.

Subsequent to the Chair's reply to the gentleman from Iowa, the gentleman made reference to the conferees as being free conferees. The Chair would point out there is, indeed, a distinction between free conferees and instructed conferees. If the motion to instruct should prevail, the conferees would not be in the purest sense free conferees. They would be instructed conferees. But notwithstanding the fact that were such conferees, as conferees have in the past, to report back a conference report not completely in conformity with those instructions, the conferees' report would not, for that reason, be subject to a point of order.

MR. [TOM] HARKIN [of Iowa]: If I understand correctly, the Chair is saying that, if the motion carries, that the conferees, while not being free, while they are instructed, still if they reach language which is different than that contained in the motion offered by the gentleman from California and bring this back as part of the conference report to the floor of the House, that a point of order cannot be sustained against that because the language is different.

THE SPEAKER PRO TEMPORE: That is correct. The Chair is simply saying that there is a distinction between free con-

9. 123 CONG. REC. 19697, 19698, 95th Cong. 1st Sess.

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

ferees and instructed conferees. The Chair is further saying that, under the precedents, the conference committee report would not be subject to a point of order and to be ruled out of order simply on the ground that it had varied from the instructions given. The House, under such circumstances, could perhaps recommit or reject a conference report.

MR. HARKIN: Under other circumstances, if I might inquire further of the Chair; if, in fact, this motion carries and it contains an instruction to the conferees to insist on this language, that it does not in any way clamp them in irons. I wish to make this distinction.

THE SPEAKER PRO TEMPORE: The Chair would not desire to respond in the sense of interpreting or monitoring the individual consciences of individual conferees, nor their individual concepts of their responsibilities to carry out instructions given by the House. That is beyond the purview of the Chair.

PARLIAMENTARY INQUIRY

MR. [J. WILLIAM] STANTON [of Ohio]: Mr. Speaker, a parliamentary inquiry in regard to the ruling or observations the Chair just made.

I want to make it clear to the gentleman from Iowa, sometimes I get the impression we want to back the motion and do not want to back the motion to lock the conferees.

MR. ROUSSELOT: That is not a parliamentary inquiry.

MR. STANTON: I am asking it now, if the gentleman will wait just a minute.

I want to know, Mr. Speaker, under the ruling the Chair just made, whether or not the gentleman from Maryland (Mr. Bauman) was not right that in his experience in the House that more or less, on a motion to instruct given the conferees, there is a strong moral obligation to stick with it word for word. I mean, it may be a personal opinion, but the few times that this has ever come up in the past, you definitely tie one hand behind you.

MR. ROUSSELOT: That is not a parliamentary inquiry. There are no hands tied behind your back.

THE SPEAKER PRO TEMPORE: The Chair will respond. It is not the prerogative of the Chair to interpret the moral responsibilities of Members of Congress. They would have their individual responsibilities. They would be instructed conferees, provided instructions by a vote of the House, and would be under some obligation to consider that instruction.

The Chair simply responded to the question propounded by the gentleman from Iowa to the effect that a conference report, though it might vary from those instructions, would not for that reason alone be subject to a point of order.

MR. HARKIN: I thank the Chair.

MR. ROUSSELOT: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the motion to instruct.

Instructions Dealing With Specific Paragraphs of Amendment

§ 12.8 The House may instruct its conferees to insist upon a portion of a House amend-

ment to a Senate bill sent to conference.

On July 24, 1973,[11] after the House agreed to a motion to send S. 1888, the Agriculture and Consumer Protection Act of 1973, to conference, Mr. Robert D. Price, of Texas, offered a motion to instruct the House conferees.

MR. PRICE of Texas: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Price of Texas moves that the managers on the part of the House, at the disagreeing votes of the two Houses on the bill S. 1888, be instructed to insist on the provisions of paragraph (26) of section 1 of the House amendment at page 38, lines 1 through 8 which read as follows:

"(B) by adding a new section 703 as follows:

"Sec. 703. Title IV of such Act as amended by adding at the end thereof the following:

" 'Sec. 411. No agricultural commodities shall be sold under title I or title III or donated under title II of this Act of North Vietnam, unless by an Act of Congress enacted subsequent to July 1, 1973, assistance to North Vietnam is specifically authorized.' " . . .

THE SPEAKER:[12] The question is on the motion offered by the gentleman from Texas (Mr. Price) to instruct conferees. . . .

The vote was taken by electronic device; and there were—yeas 371, nays 35, not voting 27. . . .

So the motion was agreed to.

Motion To Instruct Conferees To Retreat From House Position

§ 12.9 Form of motion to instruct conferees under Rule XXVIII clause 1(c) to retreat from a House position submitted to conference.

H.R. 3355, the Omnibus Crime Control and Safe Streets Act of 1994 had been "in conference" since May 19, 1994,[13] the date the Senate disagreed to the House amendments to a Senate amendment and agreed to the House's request for a conference. Mr. McCollum's motion to instruct under the "20-day rule" was thus timely.[14]

MOTION TO INSTRUCT CONFEREES ON H.R. 3355, VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

MR. [BILL] MCCOLLUM [of Florida]: Mr. Speaker, as I announced yesterday, I offer a privileged motion to instruct conferees on the bill (H.R. 3355) to amend the Omnibus Crime Control and

11. 119 CONG. REC. 25539–41, 93d Cong. 1st Sess.
12. Carl Albert (Okla.).
13. See 140 CONG. REC. 11102, 103d Cong. 2d Sess.
14. See 140 CONG. REC. 13208, 103d Cong. 2d Sess., June 16, 1994.

Safe Streets Act of 1968 to allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise to enhance public safety.

THE SPEAKER PRO TEMPORE:[15] The Clerk will report the motion.

The Clerk read as follows:

Mr. McCollum moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the Senate amendment to the bill H.R. 3355 be instructed not to agree to Title IX, relating to racially discriminatory sentencing, of the House amendment or to any similar provision.

Form of Motion To Instruct Regarding Specific Numbered Instructions Regarding Amendments to General Appropriation Bill

§ 12.10 An example of a motion to instruct conferees on a general appropriation bill to: (1) insist on disagreement to any Senate amendment adding new or increased rates of user fees to the bill; and (2) to insist on three specified Senate amendments.

On Aug. 16, 1994,[16] H.R. 4539, the Treasury and Post Office appropriations bill for fiscal 1995, had been "blue-slipped" when the House first received the Senate amendments and its request for conference. The Senate had modified one of its amendments and again insisted and asked a conference. Certain of the remaining Senate amendments were argued by some to violate the Constitutional prerogative of the House to originate revenue measures. As to several of the amendments, the Committee on Ways and Means saw no problem. Rather than invoking the constitutional prerogative a second time, the House opted to send the measure to conference, voicing its opposition to the offending amendments by the motion to instruct conferees.

The motion to instruct and a portion of debate on the motion are carried here.

MR. [STENY H.] HOYER [of Maryland]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4539) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1995, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

15. Robert E. Wise, Jr. (W. Va.).
16. 140 CONG. REC. 22565, 103d Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:[17] Is there objection to the request of the gentleman from Maryland?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. LIGHTFOOT

MR. [JIM] LIGHTFOOT [of Iowa]: Mr. Speaker, I offer a motion to instruct.

The Clerk read as follows:

> Mr. Lightfoot moves that the managers on the part of the House, at the conference of the disagreeing votes on the bill, H.R. 4539, be instructed to insist on disagreement to provisions contained in any Senate amendment regarding the imposition of new or increased user fees, collections or taxes which may be established by the Secretary of the Treasury and which are authorized by law, to insist on disagreement to the amendment to the last proviso set forth in Senate amendment numbered 16, to insist on disagreement to the Senate amendment numbered 26, and to insist on disagreement to the Senate amendment numbered 29. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Lightfoot] will be recognized for 30 minutes, and the gentleman from Maryland [Mr. Hoyer] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Iowa [Mr. Lightfoot].

MR. LIGHTFOOT: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have a motion to instruct conferees on items which have been considered by the subcommittee, the full Committee on Appropriations, and the House. I think the motion is very straightforward. It instructs conferees to reject new user fees proposed by the Treasury Department. Our subcommittee chose to reject the proposed user fees, totaling some $258 million. They include: a $20 fee for tax filers entering into an installment agreement with IRS to pay taxes owed over time; a $12 fee charged to those persons who request photocopies of tax returns from the IRS; an $8 fee imposed to transmitters of electronic returns; and an increase in the merchandise processing fee and the special occupational tax assessed by the Customs Service and the Bureau of Alcohol, Tobacco and Firearms.

Frankly, many of us feel more user fees are not the answer—they are, quite simply, a roundabout way to increase taxes.

The Senate, however, has included language permitting Treasury to retain the proposed user fees if they are increased. While the language doesn't authorize any new fees, it gives the IRS clear incentive to raise and implement fees on taxpayers.

Instructions Permitting Closed Sessions

§ 12.11 A motion to instruct the managers on the part of the House under Rule XXVIII clause 1(c) may include instructions to insist upon holding conference in executive session if so desired.

17. Ronald D. Coleman (Tex.).

On Aug. 1, 1935,[18] Mr. George Huddleston, of Alabama, offered a motion to instruct the House conferees on S. 2796, the Public Utilities Act of 1935.

MR. HUDDLESTON: Mr. Speaker, I offer the following motion.

The Clerk read as follows:

> Motion to instruct conferees by Mr. Huddleston: Moved that managers on the part of the House appointed upon request of the Senate for a conference upon the disagreeing votes of the House and the Senate on the amendment adopted by the House to S. 2796 be, and they are hereby, instructed as follows:
>
> That it is the will of the House that its managers insist upon a conference being held under just and fair conditions, such as will insure careful, calm, and deliberate consideration and will tend to promote an agreement by the conference, and that in the performance of their duties as such managers it is and shall remain the right and privilege of the managers on the part of the House, if in their judgment it is desirable in promoting the aforesaid ends, that such conference be held without the presence thereat of any person not a manager upon the part of either House or Senate.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I make the point of order that the resolution is out of order; that any resolution that would impugn the motives of the Senate conferees as being unfair is out of order. . . .

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I make the further point of order that the House is authorized to instruct conferees only on the matters in disagreement between the two bodies, and this is an attempt to go beyond that and regulate the conduct of the conferees on the part of the Senate. For that reason it is not in order and not privileged. . . .

THE SPEAKER:[19] The Chair is ready to rule. The gentleman from Alabama [Mr. Huddleston] has offered a motion to instruct the conferees on the part of the House at the conference on the bill S. 2796, which has been read at the desk. To that motion the gentleman from Texas [Mr. Blanton] and the gentleman from Mississippi [Mr. Rankin] raised points of order. The question as to whether the conferees shall be instructed in the manner proposed is a matter which must appeal to each individual Member of the House. The conferees are the agents of the House, and under this rule, as the Chair construes it, they are subject to its authority after 20 days have elapsed, so far as the matter of instruction or a motion to discharge and appoint new conferees are concerned. There is nothing in this motion, as the Chair reads it, which refers to the Senate conferees. Of course, this House has nothing to do with the Senate conferees, and this motion does not seek to interfere with their method or with what they do. It simply applies to the agents of the House, those who have been appointed managers on the part of the House to represent the House in the deliberations in the conference on the bill S. 2796. The Chair calls attention of the

18. 79 CONG. REC. 12272, 74th Cong. 1st Sess.

19. Joseph W. Byrns (Tenn.).

House to the fact that the motion is drawn so as to provide that in the performance of their duties as managers—

> It is and shall remain the right and privilege of the managers on the part of the House, if in their judgment it is desirable in promoting the aforesaid ends, that such conference be held without the presence thereat of any person not a manager on the part of either House or Senate.

The Chair is not called upon, and it is not within the province of the Chair to pass upon the question of whether a motion of this kind should be adopted at this time. The Chair does hold that this House has a right to dictate to its own managers their method of procedure in the conference, which is to be subsequently held. The Chair, therefore, overrules the point of order.[20]

Limitations on Scope of Instructions

§ 12.12 Instructions to managers of a conference may not direct them to do that which they might not otherwise do.

On May 9, 1955,[1] after Mr. Thomas J. Murray, of Tennessee, called up the conference report on S. 1, the Postal Field Service Compensation Act of 1955, the following occurred:

MR. [EDWARD H.] REES of Kansas: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:[2] Is the gentleman opposed to the conference report?

MR. REES of Kansas: I am, Mr. Speaker.

THE SPEAKER: The gentleman qualifies. The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Rees of Kansas moves to recommit the bill S. 1 as amended to the committee of conference with instructions to report back an agreement which would include the provisions of H.R. 4644 as reported by the House Post Office and Civil Service Committee, with the additional provision that the 6-percent increase be retroactive to March 1, 1955.

MR. MURRAY of Tennessee: Mr. Speaker, I make a point of order against the motion to recommit. As I understand, the motion instructs the conferees to do something less than the House voted. We are bound to follow the instructions of the House in the conference. That matter is not even in conference. . . .

THE SPEAKER: The Chair is ready to rule. The Chair thinks that this question has been passed upon many times in the past. An exactly similar question was raised on September 15, 1922, when a very distinguished gentleman by the name of John N. Garner made a similar motion to recommit with instructions to the conferees to lower the

20. Rule XXVIII clause 6, *House Rules and Manual* § 913d (1997), now addresses the method of closing a conference.

1. 101 CONG. REC. 5846, 5871, 84th Cong. 1st Sess.

2. Sam Rayburn (Tex.).

rates contained in either the bill or in the amendment. Mr. Edward Taylor, of the State of Colorado, made the point of order. Speaker Gillette sustained the point of order, and that decision may be found in Cannon's Precedents, volume VIII, section 3244. It is exactly on all fours with this. Therefore, the Chair sustains the point of order.

Motion To Instruct To Add Provisions Not in Conference

§ 12.13 A motion to instruct conferees is subject to a point of order if the instructions call for agreement to matter not committed to conference; and the Speaker sustained a point of order against a motion instructing the conferees to insist on positions not before the conferees on the Crude Oil Windfall Profit Tax Act of 1979.

On Feb. 28, 1980,[3] where conferees on H.R. 3919, the Crude Oil Windfall Profit Tax Act of 1979 had been appointed for more than 20 legislative days without filing a report, a motion to instruct was offered by Mr. Joseph L. Fisher, of Virginia. The motion directed the House conferees to insist on a mandatory allocation of the revenues from the crude oil profit tax for specified purposes, some of which were not committed to conference by the Senate amendment. The point of order, a portion of the argument and the Speaker's ruling are carried here.

MOTION TO INSTRUCT CONFEREES REGARDING NET REVENUES ON SENATE AMENDMENTS TO H.R. 3919, CRUDE OIL WINDFALL PROFIT ACT OF 1979

MR. FISHER: Mr. Speaker, I offer a privileged motion.

THE SPEAKER PRO TEMPORE:[4] The Clerk will report the motion.

The Clerk read as follows:

> Mr. Fisher moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the State amendments to the bill H.R. 3919 be instructed to insist that—
>
> As a matter of policy:
>
> (1) 50 percent of the net revenues from the windfall profits tax shall be made available for energy research, development, production, or conservation and for transit programs, and
>
> (2) 25 percent of the net revenues from the windfall profits tax shall be made available for energy assistance to low-income individuals, and
>
> (3) 25 percent of the net revenues from the windfall profits tax shall be available for any purpose.

MR. [SAM M.] GIBBONS [of Florida]: Mr. Speaker, I raise a point of order against the motion offered by the gentleman from Virginia (Mr. Fisher).

3. 126 CONG. REC. 4304, 4305, 96th Cong. 2d Sess.

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

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

MR. GIBBONS: Mr. Speaker, the motion offered by the gentleman from Virginia is an improper motion and is not in order. The motion would instruct the conferees to make a specific distribution of windfall tax receipts on a percentage basis for designate purposes. Neither the House language nor the Senate language specifically addresses the distribution of these tax receipts. Thus, the instruction is clearly beyond the scope of the conference and not a proper instruction under the rules of the House.

THE SPEAKER PRO TEMPORE: Does the gentleman from Virginia (Mr. Fisher) desire to be heard on the point of order?

MR. FISHER: I do, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman from Virginia is recognized.

MR. FISHER: Mr. Speaker, I will argue that the point of order should not be sustained, and these are my reasons: The House bill calls for an energy trust fund, which would include all windfall tax proceeds to be used as determined by subsequent legislation.

I would argue that my motion is within and less than the House bill provision. It simply indicates how, as a matter of policy, a portion of the total tax proceeds should be used.

The relevant House rule, I believe, is 28, at section 913a. My motion does not present an "additional topic, question, issue, or proposition not committed to the conference committee by either House," and, therefore, would be germane and within the scope.

It is not, I argue, an additional topic. We are still dealing with the proceeds of the tax and how to use it, which is spelled out in general terms within the House bill.

Nor is my amendment, quoting from the rule—

> A modification of any specific topic * * * committed to the conference committee by either House—

Such that the—

> modification is beyond the scope of that specific question.

Mr. Speaker, again I rest on the point that the topic is the use of the funds, and that is dealt with in great and ample scope in the House bill.

Furthermore, Mr. Speaker, the Senate bill contains numerous provisions for specific stimulation of energy production, conservation, and so on, and for energy payments to lower income persons.

The Senate bill is loaded with various provisions related to the use of the funds. . . .

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

MR. [BARBER B.] CONABLE [Jr., of New York]: I do, Mr. Speaker. . . .

I call the Speaker's attention also to the fact that this motion to instruct proposed by the distinguished gentleman from Virginia (Mr. Fisher) includes references to transit programs among the expenditures that would be permitted.

There is nothing about transit programs in the Senate version of the bill, although there is something to do with railroads. I think that also illustrates an example where this motion to in-

struct goes beyond the scope of the conference.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Florida (Mr. Gibbons).

MR. GIBBONS: Mr. Speaker, I want to repeat neither the House language nor the Senate language specifically addressed the distribution of these tax receipts.

The Senate bill has some tax credits in it, but those are not tax receipts. Those are never receipts to the Federal Government. So the gentleman's motion is clearly outside the scope of the conference. . . .

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

The gentleman from Florida has made a point of order against the motion of the gentleman from Virginia (Mr. Fisher) to instruct the conferees on H.R. 3919, the oil windfall profit tax bill, on the grounds that the motion seeks to direct the conferees to accomplish that which they are prohibited from doing under the rules.

Clause 3 of rule XXVIII prohibits conferees from including in their report any new topic, issue, or proposition not committed to the conference committee by the House.

The motion directs the conferees to make certain distributions of the windfall tax revenues in certain percentages for designated purposes.

In section 3 of the House bill, an energy trust fund was created to consist of amounts equivalent to the revenues from the oil windfall tax; subsection 3(d) did not designate any of the purposes for which the fund would be available simply stating that—

> Amounts in the trust fund shall be available, as provided by appropriation acts, for making expenditures for such purposes as may hereafter be specified by law.

Section 102(a) of the Senate amendment provided that $1 billion of the tax receipts be reserved for improvements in the Nation's freight and passenger railroad systems, with allocations of not less than certain amounts for three designated aspects of such railroad improvements.

Section 103 of the Senate amendment also provided for the deposit in a taxpayer trust fund of amounts equivalent to increases in income tax revenues as a result of oil decontrol.

Subsection 103(d) provided that amounts in such trust fund be available as thereafter provided by law for relief from increased social security taxes effective in 1981.

Neither the House nor the Senate provision mandate expenditures from the trust funds for any purpose. And neither version mentions use of the tax receipts for energy research, development, and conservation or for energy assistance to low-income individuals.

The Chair cannot consider any distributions the conferees may have considered in their deliberations and is restricted to reviewing the text of the House bill and Senate amendment in determining whether this motion directs the conferees to include matters beyond the scope of their authority.

Clearly, the House and Senate versions left to future legislation the appropriate distribution of tax receipts and the specific purpose is suggested, but not required in the Senate amendment, which do not relate to all the

programs addressed in the motion of the gentleman from Virginia.

Accordingly, the Chair disagrees with the gentleman from Virginia (Mr. Fisher), and the Chair sustains the point of order of the gentleman from Florida.

Motion To Instruct Outside Scope

§ 12.14 A motion to instruct conferees may not direct the managers to include a provision or concept which would be beyond the issues committed to conference, and for this reason a motion to instruct the conferees on a general appropriation bill to include a new funding limitation which was not contained in the House bill or any Senate amendment was ruled out as a violation of Rule XXVIII clause 3.

On Sept. 13, 1994, a motion to instruct was offered which called upon conferees to report a funding limitation not carried in the House appropriation bill or the Senate amendments.[5] After the Chair ruled the motion out of order, a second motion was in order and was offered by a minority member of the Committee on Appropriations. That motion was agreed to.

APPOINTMENT OF CONFEREES ON H.R. 4650, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1995

MR. [JOHN P.] MURTHA [of Pennsylvania]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4650) making appropriations for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:[6] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. WALKER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

> Mr. Walker moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 4650, be instructed to agree to the following language:
>
> No funds appropriated under this Act shall be used to deploy United States Armed Forces to Haiti or otherwise support United States Armed Forces in Haiti for purposes of removing the de facto regime or for subsequent peacekeeping by United States Armed Forces without first

5. See 140 CONG. REC. 24401, 24402, 103d Cong. 2d Sess. (H.R. 4650).

6. Michael A. Andrews (Tex.).

obtaining the prior approval of the Congress.

POINT OF ORDER

MR. MURTHA: Mr. Speaker, I make a point of order against the motion to instruct conferees. The motion instructs conferees to include matter outside the scope of the conferees' authority and is in violation of clause 3, rule XXVIII.

THE SPEAKER PRO TEMPORE: Does the gentleman from Pennsylvania [Mr. Walker] wish to be heard on the point of order?

MR. WALKER: Mr. Speaker, I do wish to be heard on my motion and on the point of order.

Mr. Speaker, my dear friend, the gentleman from Pennsylvania [Mr. Murtha], raises the point that the instruction that I have proposed falls outside the scope of the legislation that we have before us.

Mr. Speaker, the problem with the gentleman's point is the fact that we are about to engage, according to media reports and according to announcements from the administration, in an action in Haiti. This is not an action that was contemplated at the time the bills were being drafted either in the House or the Senate. . . .

This instruction, while it does not meet the strict interpretation of scope, is certainly within the scope of the moneys that are going to be utilized in the bill that is before us. There is no doubt that if this invasion takes place, the moneys that are going to be appropriated under this bill will be used in Haiti. . . .

So I think this is a necessary action to take and conferees would then be authorized to place this language into the bills that come back for final action in the House. I would hope that the Chair would rule in favor of this as an entirely appropriate way for the House to engage in the issue of Haiti and assure that the Members of this House have had at least a vote on whether or not to engage in a combatant action in the nation of Haiti.

MR. MURTHA: Mr. Speaker, I ask for a ruling.

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

The motion offered by the gentleman includes matter not within the scope of differences on any of the Senate amendments being sent to conference. The motion is, therefore, out of order under clause 3 of rule XXVIII.

On page 715 of the Manual it is stated that a point of order may be sustained against a motion to instruct House conferees to address a matter beyond the scope of differences being committed to conference by the 215 Senate amendments. . . .

The Chair sustains the point of order.

MOTION TO INSTRUCT OFFERED BY MR. MCDADE

MR. [JOSEPH M.] MCDADE [of Pennsylvania]: Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

> Mr. McDade moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 4650, as they resolve Senate amendment numbered 214, relating to fiscal year 1994 funding for Rwanda, be instructed to agree to the

following provisos contained in Senate amendment 214:

"*Provided further*, That no funds are available for United States participation in operations in or around Rwanda after October 7, 1994"; and

"*Provided further*, That any change in the mission from one of strict refugee relief to security, peace-enforcing, nation-building or any other substantive role, shall not be implemented without the further approval of the Congress".

§ 12.15 Conferees may not include in a conference report a new topic or issue not committed to conference; and a motion which directs conferees to adopt a new provision expanding definitions beyond those in either the House or the Senate version is ruled out as in violation of this principle.

On Sept. 29, 1994,[7] the House had under consideration the conference report on the bill S. 349, the Lobbying Disclosure Act of 1994. A motion to recommit with instructions was offered by Mr. George W. Gekas, of Pennsylvania. After the reading of the rather lengthy motion was dispensed with by unanimous consent, a point of order was made by Mr. John Bryant, of Texas, who was managing the conference report on the floor.

The motion, the point of order, and the Chair's ruling are included here.

THE SPEAKER PRO TEMPORE:[8] Without objection, the previous question is ordered on the conference report.

There was no objection.

MOTION TO RECOMMIT OFFERED BY MR. GEKAS

MR. GEKAS: Madam Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report?

MR. GEKAS: In its present form, I am, Madam Speaker.

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

The Clerk read as follows:

Mr. Gekas moves to recommit the conference report on the bill (S. 349) to the committee of conference with instructions for the managers on the part of the House to carry out the following:

(1) In the proposed section 103—

(A) strike out paragraph (8),

(B) strike out the second sentence of paragraph (9)(A), and

(C) strike out subparagraph (B) of paragraph (9),

(2) Strike out paragraph (5) of section 104(b).

(3) Strike out paragraph (6) of section 105(b).

(4) In the proposed section 103(10)(B)(xviii), strike out the material following subclause (II).

7. 140 CONG. REC. 26780, 26781, 103d Cong. 2d Sess.

8. Nancy Pelosi (Calif.).

(5) In the proposed section 103, insert before the period at the end of paragraph (12) the following: "or a person who spends more than $100,000 in a 6 month period to influence decisionmaking in the executive and legislative branch.".

(6) In the proposed section 106(c), strike paragraph (2).

(7) In the proposed Rule XXXV of the Standing Rules of the Senate strike out subparagraphs (a) and (c) of paragraph 2 and in clause 4 of Rule XLIII of the Rules of the House of Representatives strike out paragraphs (b) and (d) of clause 4. . . .

SEC. 112. LEGISLATIVE SERVICE ORGANIZATIONS.

(a) COVERAGE.—Any entity affiliated with a legislative service organization shall be considered a lobbyist subject to—

(1) the registration, reporting, and disclosure requirements of sections 104 and 105,

(2) the prohibition of section 106, and

(3) the amendments to the Standing Rules of the Senate and the Rules of the House of Representatives made by title II.

(b) OTHER REQUIREMENTS.—Each entity affiliated with a legislative service organization shall report to the Office of Lobbying Registration and Public Disclosure—

(1) the names and salaries of its staff,

(2) arrangements made with others to share staff and costs,

(3) relationships with other organizations in connection with lobbying activities, and

(4) any contributions, gifts, or reimbursements received. . . .

(e) DEFINITIONS.—For purposes of this section:

(1) The term "contribution" means a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

(2) The term "legislative service organization" refers to a particular category of working groups or caucuses organized to provide legislative services and assistance to Members of the House of Representatives and certified by the Committee on House Administration.

(3) The term "entity affiliated" means an organization which is described in at least 2 of the following:

(A) An organization which spends at least 10 percent of its funds in any year on—

(i) travel expenses for Members of Congress or congressional staff,

(ii) meals, receptions, or other food and beverage expenses on activities attended by Members of Congress or congressional staff, and

(iii) gifts (other than educational materials) to Members of Congress or congressional staff.

(B) An organization which has a name which is like or similar to the name of an entity of the House of Representatives, including a legislative service organization or congressional member organization, or uses the word "congressional" in its official name or title. . . .

At the end of the bill, add:

Any penalty applicable to lobbyists or lobbying firms in this bill shall also apply to Members of Congress.

MR. GEKAS (during the reading): Madam Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the Record.

MR. BRYANT: Madam Speaker, reserving the right to object, I would like to ask the gentleman from Pennsylvania [Mr. Gekas] if the motion to recommit is the one that was most recently given to our side.

MR. GEKAS: Madam Speaker, will the gentleman yield?

MR. BRYANT: I yield to the gentleman from Pennsylvania.

MR. GEKAS: Yes, Madam Speaker, we believe so.

MR. BRYANT: Madam Speaker, I would ask if we could get a clear identification of which motion it is.

MR. GEKAS: Madam Speaker, if the gentleman will continue to yield, we are down to two versions, the one that is now being read, or was being read, the one concerning grassroots lobbying, GS–14's and 16's, campaign spending, campaign contributions, and a few others.

MR. BRYANT: Madam Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

POINT OF ORDER

MR. BRYANT: Madam Speaker, I make a point of order that the motion to recommit offered by the gentleman from Pennsylvania [Mr. Gekas] is not in order, in that it instructs the conferees to carry out instructions which exceed the scope of the matters committed to conference. Specifically, the motion to recommit contains language which expands the definition of lobbyists and expands the definition of covered executive branch officials.

Both of these expanded definitions exceed the scope of the matters committed to conference. Therefore, Madam Speaker, I insist on the point of order.

THE SPEAKER PRO TEMPORE: Does the gentleman from Pennsylvania [Mr. Gekas] desire to be heard on the point of order?

MR. GEKAS: . . . I have a parliamentary inquiry, Madam Speaker. If the gentleman would respond to me, I am asking if in his point of order he itemizes the campaign contributions as one of the items.

THE SPEAKER PRO TEMPORE: The Chair will control the debate. Does the gentleman from Pennsylvania [Mr. Gekas] concede the point of order?

MR. GEKAS: No, Madam Speaker, I want to speak on it, but I want to make sure that that is what I heard; that in the point of order that he made, as a parliamentary question, I would ask does the point of order that was just entered by the gentleman from Texas [Mr. Bryant] include a point of order against the campaign financing feature of my motion?

THE SPEAKER PRO TEMPORE: The gentleman from Texas [Mr. Bryant] has made a point of order on several grounds. The Chair will entertain argument on the point of order from each Member on his own time.

MR. GEKAS: Madam Speaker, as a point of parliamentary inquiry, I simply wanted to have repeated whether or not the point of order that was made included the point on campaign financing. I could not hear the gentleman from Texas.

THE SPEAKER PRO TEMPORE: Will the gentleman from Texas repeat his point of order.

MR. BRYANT: Madam Speaker, I made a point of order that the motion to recommit offered by the gentleman is not in order in that it instructs the conferees to carry out instructions which

exceed the scope of the matters that were committed to the conference.

Specifically the motion to recommit contains language which expands the definition of lobbyists and expands the definition of covered executive branch officials, both of these expanded definitions exceed the scope of the matters committed to conference.

MR. GEKAS: Madam Speaker, I believe that the motion to recommit is in order. The important feature of the motion to recommit has to do with campaign contributions in which we feel that, as we argued in the well of the House, the big gift that we should be banning is campaign contributions by lobbyists, not just sandwiches. The question is, if the point of order is to prevail and the Chair is to rule that my campaign contribution feature is out of order, does that not return it to the status of the current law in which, then, the whole issue becomes one that cannot be a point of order if it is returned to current law? I pose that as a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: If the Chair rules this motion out of order, the gentleman may offer another motion to recommit. . . .

The gentleman from Texas has stated the point of order two times for the gentleman.

The Chair is prepared to rule. The gentleman from Texas makes a point of order against the motion to recommit offered by the gentleman from Pennsylvania.

As discussed in section 26.12, chapter 33 of Procedure in the U.S. House of Representatives, a motion to recommit a conference report may not instruct House conferees to include matter beyond the scope of differences committed to conference by either House.

The motion offered by the gentleman from Pennsylvania includes several instructions that violate this principle. For example, the motion instructs conferees to expand the definition of "lobbyist" as defined in both the Senate bill and House amendment to include not only persons who spend a certain period of time engaging in lobbying activities while serving a client but also those who spend more than a certain dollar amount within a fixed period to influence decisionmaking.

Another example is found in the instruction that expands the definition of "covered executive branch official" as defined in both the Senate bill and House amendment to include a position in the executive branch that is classified at or above GS–14 of the General Schedule.

The inclusion of even one of the above-described instructions provides the Chair with an adequate basis to find the entire motion out of order on the grounds the instructions exceed the scope of differences committed to conference. Accordingly, the point of order is sustained. . . .

MOTION TO RECOMMIT OFFERED BY MR. GEKAS

MR. GEKAS: Madam Speaker, I offer a motion to recommit.

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

The Clerk read as follows:

> Mr. Gekas moves to recommit the conference report on the bill (S. 349) to the committee of conference with instructions for the managers on the

part of the House to carry out the following:

(1) In the proposed section 103—

(C) strike out subparagraph (B) of paragraph (9).

(2) Strike out paragraph (5) of section 104(b).

(3) Strike out paragraph (6) of section 105(b).

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the motion to recommit.

§ 12.16 A motion to instruct managers to include in a conference report a provision not committed to conference by either House exceeds the scope of conference, in violation of Rule XXVIII clause 3.[9]

In determining whether a matter is "committed to conference," the Chair must look to the text of the bill and amendments in disagreement and not to terms or disclaimers used in the debate on that text. The Chair's ruling on Mar. 25, 1992,[10] followed this principle.

APPOINTMENT OF CONFEREES ON S. 3, SENATE ELECTION ETHICS ACT OF 1991

MR. [SAM] GEJDENSON [of Connecticut]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3) to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits for Senate election campaigns, and for other purposes, with House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

THE SPEAKER:[11] Is there objection to the request of the gentleman from Connecticut?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. THOMAS OF CALIFORNIA

MR. [WILLIAM M.] THOMAS of California: Mr. Speaker, I offer a motion to instruct.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Thomas of California moves that the managers on the part of the House at the conference on the disagreeing votes of the two houses on the amendment of the House to the bill (S. 3) be instructed:

To include provisions in the conference report that would limit the total cost of the bill to the total savings to be derived from the recommended offsets in the Senate bill and House amendment and specify the account given such costs and offsets under the terms of Section 301, Requirement of Budget Neutrality.

And to include in the conference report provisions containing the requirement that no taxpayer dollars may be used to finance congressional campaigns, such financing to include (1) any payments to reimburse the postal service for postage discounts provided to congressional campaigns

9. See *House Rules and Manual* § 913a (1997).

10. 138 CONG. REC. 6843, 102d Cong. 2d Sess.

11. Thomas S. Foley (Wash.).

(2) any payments to congressional campaigns (3) any other expenditure or obligation to offset revenue losses created by tax credits or other subsidies for the purpose of financing congressional campaigns.

POINT OF ORDER

MR. GEJDENSON: Mr. Speaker, I make a point of order that the directions of the gentleman from California [Mr. Thomas] are beyond the scope.

THE SPEAKER: Does the gentleman from California [Mr. Thomas] desire to be heard on the point of order?

MR. THOMAS of California: Yes, Mr. Speaker, I do.

It is my understanding that when the amendment to H.R. 3750 was presented to the House, the gentleman from North Carolina, the author of the amendment, indicated in an explanation of the measure that "the requirement that no taxpayer dollars may be used to finance congressional campaigns" was a portion of a substitute amendment.

In addition, on the floor during debate in the *Congressional Record,* page 34667 (11/25/91) the gentlewoman from Ohio [Ms. Oakar] said, "No taxpayers' dollars are involved." . . .

What this motion to instruct says is that no taxpayer dollars should be used to finance congressional campaigns. There are three examples of areas that financing should not be allowed, based upon the provisions that were in the bill. . . .

Therefore, Mr. Speaker, based upon all the allegations that were presented during the presentation of this bill, it seems to me that the scope of the conference certainly would find acceptable an explanation which simply delineates more specifically where no taxpayer dollars are to be allowed.

THE SPEAKER: The Chair is prepared to rule, if there are no further arguments.

Neither the House nor the Senate version contains the provision which the second part of the instruction directs the House conferees to include in their report.

The gentleman from California [Mr. Thomas] is quoting statements on the floor made by Members supporting the bill, but neither the House nor the Senate version contains such provisions.

For this reason, the motion exceeds the scope of the matters formally committed to conference and the Chair sustains the point of order.

Does the gentleman from California [Mr. Thomas] have an additional motion?

§ 12.17 It is not in order to instruct House conferees to exceed their authority; and where a motion directed the conferees to include in a subsequent conference report certain features of a separate bill, none of which were in the Senate bill or in the House amendments in disagreement, the motion was ruled out on a point of order.

The second conference report on S. 3, the Campaign Spending Limit and Election Reform Act

was considered in the House on Apr. 9, 1992,[12] pursuant to a special order (H. Res. 426) waiving points of order against the report and against its consideration. The House had, on the previous day, recommitted the original conference report; but the conferees met again and filed a new report on the same legislative day, Apr. 8, 1992.

The proceedings shown below relate to the second conference report (H. Rept. 102–487).

THE SPEAKER PRO TEMPORE:[13] The question is on the conference report.

MOTION TO RECOMMIT OFFERED BY MR. WALSH

MR. [JAMES T.] WALSH [of New York]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report in its present form?

MR. WALSH: Mr. Speaker, I am.

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

The Clerk read as follows:

Mr. Walsh moves to recommit the conference report on the bill S. 3 to the Committee of Conference with instructions to the managers on the part of the House to include in the conference report the provisions of H.R. 3770 including:

1. The requirement that a majority of a candidate's contributions come from individuals residing in the candidate's district.
2. A limit of $1,000 on PAC contributions to candidates.
3. A total ban on soft money contributions to political parties.

And to further include the requirement that no taxpayer dollars may be used to finance congressional campaigns.

POINT OF ORDER

MR. [SAM] GEJDENSON [of Connecticut]: Mr. Speaker, I rise to a point of order.

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

MR. GEJDENSON: Mr. Speaker, I would make a point of order that the instructions exceed the scope of the conference report. It is clear that the requirement of in-district funding is beyond the scope of the conference report, and I would move that therefore the motion to recommit should be ruled out of order.

THE SPEAKER PRO TEMPORE: Does the gentleman from New York [Mr. Walsh] wish to be heard in opposition to the point of order?

MR. WALSH: Mr. Speaker, I believe that this motion adds to the fairness of the conference report, and I would urge that it be added.

THE SPEAKER PRO TEMPORE: Does the gentleman from New York [Mr. Walsh] concede the point of order?

MR. WALSH: Mr. Speaker, I do not.

THE SPEAKER PRO TEMPORE: Does anyone else wish to be heard on the point of order?

12. 138 CONG. REC. 9021–23, 102d Cong. 2d Sess.
13. Dennis E. Eckart (Ohio).

MR. [PAUL B.] HENRY [of Michigan]: Mr. Speaker, I wish to be heard on the point of order.

THE SPEAKER PRO TEMPORE: The point of order is contested. The gentleman from Michigan [Mr. Henry] is recognized on the point of order.

MR. HENRY: Mr. Speaker, I want to be sure we understand what the point of order is and what the question is and what the contest is.

Mr. Speaker, my understanding is that the gentleman from Connecticut [Mr. Gejdenson] objects to the motion to instruct because the motion contains a provision that would require that in order to get Federal taxpayer match, one would have to raise campaign funds in one's district.

Mr. Speaker, if I understand it, that is what the objection is.

MR. GEJDENSON: Mr. Speaker, the objection is because it is beyond the scope of the conference. At this stage of the game to try to rewrite the whole conference is really in fact an attempt to kill campaign finance reform, at least at this session, in my perspective. . . .

THE SPEAKER PRO TEMPORE: Does the gentleman from Iowa [Mr. Leach] wish to be heard on the point of order? . . .

MR. [JIM] LEACH [of Iowa]: Mr. Speaker, there are two issues that this Member would like to make. One is that in his belief this is thoroughly and utterly germane.

The second point is how extraordinary it is that the party of alleged reform may or may not want to block real reform.

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

The gentleman from Connecticut makes a point of order against the motion offered by the gentleman from New York on the ground that the instructions therein exceed the scope of the conference.

The motion offered by the gentleman from New York proposes to instruct the managers on the part of the House to include in the conference report three features of a separate bill, H.R. 3770. Each of these three initiatives falls outside the matters committed to the conference as disagreements between the Senate bill and the House amendment thereto.

Therefore, under clause 3 of rule XXVIII, a conference report may not include a matter although germane that was not committed to the conference of either House.

In the opinion of the Chair, the instructions proposed in the motion offered by the gentleman from New York exceed the scope of the differences committed to the conference, and the point of order is sustained.

MOTION TO RECOMMIT OFFERED BY MR. WALSH

MR. WALSH: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the bill?

MR. WALSH: In its present form, I am, Mr. Speaker.

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

The Clerk read as follows:

> Mr. Walsh moves to recommit the conference report on the bill S. 3 to the committee of conference with instructions to the managers on the

part of the House to strip all sections from the bill that allow for public financing of subsidies of congressional campaigns, to wit sections providing for matching payments to candidates, voter communication vouchers, and reduced postal rate subsidies for candidates.

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit.

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

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

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 179, nays 243, not voting 12, as follows: . . .

So the motion to recommit was rejected.

Senate Decision on Motion To Instruct

§ 12.18 Although conferees have wide discretion when a Senate amendment has stricken out certain language of a House bill, it was held in the Senate that once a measure had been adopted by that body instructions to its conferees in the nature of new legislation were not in order.

On Feb. 1, 1939,[14] the Senate was considering the amendments reported back in disagreement from the conference on House Joint Resolution 83, providing additional appropriations for work relief for fiscal 1939. After Senator Joseph C. O'Mahoney, of Wyoming, offered an amendment containing new legislation to a motion to instruct Senate conferees to insist on Senate amendment No. 9, Senator Alva B. Adams, of Colorado (the proponent of the original motion) raised a point of order.

MR. ADAMS: . . . I wish to raise the point of order that the motion of the Senator from Wyoming is not in order; that it is not possible at this point to instruct the conferees to insist upon matter which is not before the conference committee. . . .

THE PRESIDENT PRO TEMPORE:[15] The question raised involves Senate amendment No. 9 in the joint resolution. The amendment of the Senate struck out the House language. The question in conference, or which will be in conference, is as to whether the language of the House provision shall be adopted by the conferees, or whether it is to be stricken out of the resolution or whether the conferees shall adopt compromise language, and report the compromise language to their respective bodies for approval or disapproval.

House Joint Resolution 83 was finally acted upon by the Senate some time last week. That final action was reported to the House, the House agreed to a conference, and conferees

14. 84 CONG. REC. 1004–09, 76th Cong. 1st Sess.

15. Key Pittman (Nev.).

were appointed. The question, first, is as to the authority of the Senate in the matter, and secondly, the authority of the conferees.

The Chair feels that all opportunity for legislation in connection with the House joint resolution ended with the passage of the measure in the Senate. The Senate has often held that it has the right to instruct its conferees—to instruct them, however, as to whether they shall insist upon a Senate amendment, or whether they shall yield on the amendment. The Chair does not believe that an instruction, after a measure has been finally passed by the Senate, can be put in the nature of new legislation which was not adopted by the Senate at the time the measure was under consideration. . . .

The present occupant of the chair feels that it would be improper practice to attempt by instructions to the Senate's conferees to legislate beyond the scope of legislation by either branch of the Congress. Therefore the point of order made by the Senator from Colorado [Mr. Adams] is sustained.

Motion To Instruct Conferees To Take an Action Which Would Not Have Been in Order in House

§ 12.19 While Rule XX clause 2 permits a motion to instruct House conferees to agree to a Senate amendment which would have been in violation of Rule XXI clauses 2 or 5 if offered in the House, instructions to amend such Senate amendment should not be made in a manner not in order under House rules (*e.g.*, to include unauthorized items (clause 2), to add further appropriations to a legislative bill (clause 5), or to include matter outside the scope of conferee's authority (Rule XXVIII clause 3)).

On Nov. 13, 1973,[16] the following proceedings occurred in regard to the conference report on H.R. 8877, appropriations for the Departments of Labor, Health, Education, and Welfare, and related agencies, for fiscal 1974:

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:[17] Is the gentleman opposed to the bill?

MR. QUIE: I am, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Quie moves to recommit the Conference Report on H.R. 8877 to the Committee of Conference with the following instructions to the Managers on the Part of the House:

That the House recede from its disagreement to the amendment of the Senate numbered 32 and agree to the same with an amendment, as follows:

16. 119 CONG. REC. 36835, 36847, 93d Cong. 1st Sess.
17. Carl Albert (Okla.).

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: "That the aggregate amounts made available to each State under title I–A of the Elementary and Secondary Education Act for grants to local educational agencies within that State shall not be more than 120 per centum of such amounts as were made available for that purpose for fiscal year 1973, and the amount made available to each local educational agency under said title I–A shall not be less than 90 per centum of the amount made available for that purpose for fiscal year 1973". . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Speaker, I make the point of order against the motion to recommit on the ground that it instructs the conferees to include matter in the conference report which is not otherwise in order. This provision described in the instructions we just heard is clearly legislation on an appropriation act. Therefore, it is not eligible for inclusion in a conference report under provisions of clause 2, rule 20[18] and clause 2, rule 21.[19] . . .

THE SPEAKER: The Chair is prepared to rule.

The gentleman from Pennsylvania (Mr. Flood) makes a point of order that the motion to recommit with instructions is in violation of the rules of the House and is not in order.

The motion to recommit directs the House conferees to recommend that the House recede from its disagreement to Senate amendment No. 32 and concur therein with an amendment. Senate amendment No. 32 was reported from conference in disagreement because, under clause 2 of rule XX, the House conferees had no authority to agree to that amendment, since it contained legislation on an appropriation bill and would have been subject to a point of order.[20] The Chair notes that on June 26, 1973, Chairman Holifield sustained a point of order against an amendment offered by the gentleman from Minnesota (Mr. Quie), on the grounds that the amendment added additional legislation to legislative language which had been permitted to remain in the bill by a resolution waiving points of order.

Under the precedents of the House, a motion to instruct conferees, or to recommit a bill to conference with instructions, may not include instructions directing House conferees to do that which would be inadmissible if offered as an amendment in the House—Cannon's Precedents, volume VIII, section 3235.

The Chair would like to point out two of the syllabi in section 3235:

> Instructions to managers of a conference may not direct them to do that which they might not do otherwise.
>
> A motion to instruct conferees may not include directions which would be inadmissible if offered as a motion in the House.

In the instant situation the Chair is of the opinion that the instructions included in the motion to recommit would, if offered in the House as an amendment to the language of the

18. *House Rules and Manual* § 829 (1997).

19. *Id.* at § 834.

20. 119 CONG. REC. 21388, 21389, 93d Cong. 1st Sess.

Senate amendment, add legislation thereto. As was the case in Chairman Holifield's ruling of June 26, 1973, the language would constitute a change in the allotment formula contained in the language of the Senate amendment. The Chair therefore holds that the motion to recommit is not a permissible motion within the meaning of clause 2, rule XX, and sustains the point of order.

§ 13. Extending Power of Managers

Authority To Agree to Senate Amendments

§ 13.1 The House agreed to a special rule taking a House joint resolution making appropriations with Senate amendments from the Speaker's table, disagreeing to the amendments, agreeing to the conference requested, directing the Speaker to immediately appoint conferees without intervening motion, and giving specific authority to the conferees to agree or disagree to any Senate amendment.

On Mar. 26, 1935,[1] Mr. John J. O'Connor, of New York, was recognized by Speaker Joseph W. Byrns, of Tennessee, for the purpose of offering the following resolution relating to House Joint Resolution 117, an appropriations measure for relief purposes:

H. RES. 174

Resolved, That immediately upon the adoption of this resolution the joint resolution, House Joint Resolution 117, with Senate amendments thereto, be, and the same is hereby, taken from the Speaker's table; that the Senate amendments be, and they are hereby, disagreed to by the House; that the conference requested by the Senate on the disagreeing votes of the two Houses on the said joint resolution be, and hereby is, agreed to by the House; that the Speaker shall immediately appoint managers on the part of the House without intervening motion; and that the managers on the part of the House are hereby given specific authority to agree, with or without amendment, or disagree to any amendment of the Senate to the said joint resolution notwithstanding the provisions of clause 2 of rule XX.

After considerable debate, the resolution was agreed to by the House.

1. 79 CONG. REC. 4465–77, 74th Cong. 1st Sess.