

B. PRIVILEGE OF THE HOUSE**§ 2. In General; Definition**

Under Rule IX,⁽⁴⁾ a question of the privilege of the House arises whenever its safety, dignity, or the integrity of its proceedings, is in issue. The question having been properly raised by the offering of a resolution, the Speaker initially decides whether the question presented constitutes a question of the privilege of the House. And, as the presiding officer of the House, it is customary for him to make a preliminary determination as to the validity of the question raised.⁽⁵⁾ Appeal may be taken from the Chair's ruling, however, since the final determination regarding the validity of such a question of privilege rests with the House.⁽⁶⁾

Debate in the House on a question of privilege is limited to one hour⁽⁷⁾ and may, like debate on other matters, be terminated by the adoption of a motion for the previous question.⁽⁸⁾ Of course, the House may choose not to undertake consideration of a question of the privilege of the House, prefer-

4. *House Rules and Manual* §661 (1973).
5. See §§6.1, 6.2, *infra*.
6. See §6.3, *infra*.
7. See §7.1, *infra*.
8. See §7.3, *infra*.

ring instead to table or to commit the matter to a designated House committee for its study and recommendations before debate begins.⁽⁹⁾

§ 3. Effecting Changes in House Rules or Orders***Change in House Rules*****§ 3.1 A question of the privilege of the House may not be raised to effect a change in the rules of the House.**

On May 24, 1972,⁽¹⁰⁾ during proceedings incident to the receipt of a report from the Committee of the Whole House on the state of the Union, Ms. Bella S. Abzug, of New York, as a "question of privilege of rule IX" submitted the following resolution:

H. RES. 1003

Resolved, That on May 24, 1972, at the hour of three forty-five postmeridian the House shall stand in recess for fifteen minutes in order that it may hear and receive petition for redress of grievances relative to the war in Indochina to be presented by a cit-

9. See §7.4, *infra*.
10. 118 CONG. REC. 18675, 92d Cong. 2d Sess. For an additional example see 79 CONG. REC. 14667-69, 74th Cong. 1st Sess., Aug. 24, 1935.

izen of the United States and further resolved that in order to present such petition, the said citizen be permitted on the floor of the House during such recess.

Mr. Hale Boggs, of Louisiana, then made the point of order that the resolution was not a privileged resolution. Following debate on the point of order, the Speaker⁽¹¹⁾ in his ruling on the point of order said:

The gentlewoman is out of order. The Chair cannot permit the gentlewoman to speak out of order.

The Chair has been very lenient in permitting the gentlewoman to debate her point of order, but the point of order is obviously in order.

The gentlewoman undertakes to change the rules of the House or to make an exception without unanimous consent and without a special order of the House.

The point of order is sustained, and the gentlewoman is out of order.

Change in House Orders

§ 3.2 It is not in order by way of a point of personal privilege or by raising a question of the privilege of the House to collaterally attack an order properly adopted by the House at a previous time, the proper method of reopening the matter being by motion to reconsider the vote

11. Carl Albert (Okla.).

whereby such action was taken.

On Feb. 13, 1941,⁽¹²⁾ Mr. Clare E. Hoffman, of Michigan, rose to a question of the privilege of the House and submitted a resolution requesting the restoration to the Record of certain remarks made by him and Mr. Samuel Dickstein, of New York, during the previous day's proceedings. Such remarks had been deleted by the House pursuant to the adoption of a motion to expunge made by Mr. John E. Rankin, of Mississippi. Following debate, an inquiry was heard from Mr. Hoffman as to whether the Chair had ruled on the question of the privilege of the House. Responding to the inquiry, the Speaker⁽¹³⁾ stated:

The House would have to decide that, and, in the opinion of the Chair, the House did decide the matter when it expunged the remarks from the Record. The Chair thinks, under the circumstances, that the proper way to reopen the question would be by a motion to reconsider the vote whereby the motion of the gentleman from Mississippi [Mr. Rankin] was adopted. The Chair is of the opinion that inasmuch as the question raised by the gentleman from Michigan was decided by a vote of the House on a proper motion, that he does not now present a question of privilege of the House or of personal privilege.

12. 87 CONG. REC. 979, 980, 77th Cong. 1st Sess.

13. Sam Rayburn (Tex.).

Parliamentarian's Note: On the legislative day of Oct. 8, 1968,⁽¹⁴⁾ after repeated quorum calls and other delay pending approval of the Journal, a motion was adopted ordering a call of the House upon disclosure of the absence of a quorum. Thereupon another motion was adopted (before the quorum call commenced) directing that those Members who were not then present be returned to the Chamber and not permitted to leave until the pending business (approval of the Journal) be completed. No point of order was raised against that motion, although it was agreed to by less than a quorum, and no motion to reconsider was subsequently entered against the motion. Subsequently, during the continued reading of the Journal, Mr. Robert Taft, Jr., of Ohio, as a matter both of personal privilege and of the privileges of the House, moved that he and all other Members in the Chamber who had been there at the time of the last quorum call be permitted to leave the Chamber at their desire. While the Speaker⁽¹⁵⁾ declined to entertain the motion as a question of privilege based upon Mr. Taft's conten-

14. 114 CONG. REC. 30214, 30215, 90th Cong. 2d Sess. (calendar day Oct. 9, 1968).

15. John W. McCormack (Mass.).

tion that under the Constitution and rules the freedom of Members who were present should not be restricted, the specific argument was not made that the order had been agreed to by less than a quorum or that it was directed only to the attendance of absentees and not to those present in the Chamber. This precedent does not, then, stand for the proposition that an improper order of the House or the manner of execution of an order of the House can never be collaterally attacked as a matter of the privilege of the House—it merely suggests that the proper contention was not made when the question of privilege was raised.

Change in Conference Procedure

§ 3.3 A question of the privilege of the House may not be raised to criticize or effect a change in conference procedure.

On July 29, 1935,⁽¹⁶⁾ Mr. George Huddleston, of Alabama, sub-

16. 79 CONG. REC. 12007–13, 74th Cong. 1st Sess. For further examples see 104 CONG. REC. 12690, 12691, 85th Cong. 2d Sess., June 30, 1958; 103 CONG. REC. 14737–39, 85th Cong. 1st Sess., Aug. 14, 1957; and 84 CONG. REC. 1367–70, 76th Cong. 1st Sess., Feb. 14, 1939.

mitted as a question of the privilege of the House, a resolution⁽¹⁷⁾ instructing certain House conferees to insist upon the exclusion from subsequent conference committee meetings of several experts and counsel who were present during a previous committee meeting at the insistence of the Senate conferees. A point of order was then made by Mr. John E. Rankin, of Mississippi, that the resolution did not state a question of the privilege of the House and further said:

To say that the Senate committee, when it brings its experts to advise them and to assist them in working out the parliamentary or the legislative problems involved, is a matter that goes to the integrity of the proceedings of the House of Representatives I submit does not meet the requirement; and therefore the resolution is not privileged. If they want to come in and ask new instructions, and give the House the right to vote on the instructions or what those instructions are to be, that might be a different proposition, but that would not be a question of the privilege of the House.

Debate ensued, at the conclusion of which the Speaker⁽¹⁸⁾ in sustaining the point of order, stated:⁽¹⁹⁾

The Chair does not wish to be understood as passing on the merits of the

17. H. Res. 311.

18. Joseph W. Byrns (Tenn.).

19. 79 CONG. REC. 12013, 74th Cong. 1st Sess.

question, because that is not within the province of the Chair, but the Chair thinks there is a distinction between an assault upon a member of a conference committee, as the gentleman from Alabama has suggested, and the attendance at a session of a conference committee of an employee of the Government upon the invitation of the conferees of one House. The Chair thinks that that is a matter of procedure that should be determined by the conferees. In the event that the conferees are unable to agree, it seems to the Chair that the remedy is provided in rule XXVIII. The Chair does not believe that under the facts stated a question of privilege is involved. The Chair, therefore, sustains the point of order.

§ 4. Raising and Presenting the Question

Prima Facie Showing

§ 4.1 The mere statement that the privilege of the House has been violated and transgressed, unsupported by a further showing of a prima facie violation or breach of the privilege of the House, does not properly present a question of privilege.

On Feb. 18, 1936,⁽²⁰⁾ Mr. Marion A. Zioncheck, of Washington,

20. 80 CONG. REC. 2312, 2313, 74th Cong. 2d Sess. For further illustration see 88 CONG. REC. 2005, 77th Cong. 2d Sess., Mar. 6, 1942.