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pick up the telephone and call the Federal Election Commission and ask, "Who, if anyone, qualifies for this class of mail? We have got some people who are applying for a permit. Shall we grant them the permit?"

The way this discretion is exercised is not that you mail a letter and wait to see if the Post Office catches you; you go down to the Post Office first and you say, "I am representing the Democratic"—or the Republican—"National Committee. We wish to have a permit with a number assigned to us so that our mail is clearly identified and to entitle us to mail as a nonprofit organization third class bulk mail."

At that point the Postal Service makes a determination as to whether or not you qualify. They do not make a determination as to whether the Democratic Party or the Republican Party qualifies; they simply pick up the phone and call the FEC and find out. . . .

THE CHAIRMAN:[16] The Chair is prepared to rule.

Exceptions to limitations or retrenchments permitted to remain in the bill are permitted if not constituting additional legislation. In the opinion of the Chair, the law already imposes a duty on the Postal Service, under Public Law 95–593, to determine whether any political committee is a National, State, or congressional committee of a political party.

Public Law 95–593 provides definitions of what constitutes political parties. Since these standards exist in the law, it is the opinion of the Chair that no additional burden is imposed by the amendment, or, in any event, the amendment remains a retrenchment, and the point of order is overruled.

16. Richardson Preyer (N.C.).

§ 5. Provisions Not Within the Halman Rule

Certainty of Reduction Must Appear

§ 5.1 An amendment to a general appropriation bill, proposing legislation which may result in a future deficiency appropriation and therefore does not patently reduce expenditures, though providing for a reduction in the figures of an appropriation, is not in order under the Holman rule.

On June 3, 1959,[17] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7454), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

> Amendment offered by Mr. [Daniel J.] Flood [of Pennsylvania]: Page 2, line 12, strike out "$3,233,063,000" and insert "$3,233,000,000, to be disbursed in such manner that the military personnel, Regular Army, shall be maintained at not less than 900,000 during fiscal year 1960."

17. 105 CONG. REC. 9714, 9715, 86th Cong. 1st Sess.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

MR. FLOOD: Mr. Chairman, the amendment I have just offered, instead of raising the bill and adding money, reduces the amount of the appropriation and is in the nature of a retrenchment. I take the position that it is, first, germane to the bill, obviously. And, secondly, it is obviously a retrenchment because it reduces the amount of the appropriation instead of adding to it, and it directs that the funds be used for the purpose of keeping the Army strength or making the Army strength at 900,000. The only question that would be in debate on the point of order made by my friend, the gentleman from Texas, would be as to the latter provision. Certainly, this amendment is germane. Secondly, I submit it is a retrenchment. . . .

. . . I submit to you, sir, in the bill itself there is a provision under the general provisions thereof stating that the funds in this bill cannot be used for any other purpose than those declared in the bill, and no other funds can be used for that purpose.

I submit, sir, that this is a flat, and intended by me to be a flat, limitation upon the Department of Defense. It permits no discretion to be utilized so it can be abused. It is a flat limitation upon the expenditure of funds. . . .

THE CHAIRMAN:[18] Does the gentleman from Texas desire to be heard on the point of order?

MR. MAHON: Mr. Chairman, I would like to be heard briefly. . . .

Mr. Chairman, all limitations on the size of military personnel have been suspended by Public Law 86–4, section 2, until 1963. Therefore there are no limitations—ceilings or floors—in effect during fiscal year 1960.

The amendment proposed would have the effect of establishing a floor as to the size of military force.

This amendment imposes additional duties on the executive branch since it would require them to maintain a specific number of troops, a requirement which does not exist at the present time. The amendment therefore is legislation on an appropriation bill.

This does make a reduction of $63,000 in the amount carried in the bill but funds would have to be disbursed on the deficiency basis which will require the appropriation of additional funds for this same purpose during fiscal year 1960 which is the period covered by this bill. Therefore, this is not a retrenchment as provided by the Holman rule. The language itself does not show retrenchment on its face. . . .

MR. FLOOD: Mr. Chairman, what I say will be a complete rebuttal. The only element the gentleman brings in is the question of the use of the funds. Certainly this affects the use of additional funds unless the Department of Defense came in for supplemental appropriations which would have to be by act of the President as an affirmative act.

The amendment is a limitation on the expenditure of funds in their discretion.

THE CHAIRMAN: The Chair is prepared to rule. . . .

While in the opinion of the Chair this amendment does in effect seek to

18. Eugene J. Keogh (N.Y.).

retrench expenditures, it does by the language added impose upon the executive branch a mandatory duty of maintaining personnel at a figure greater than provided in the pending bill; and in the opinion of the Chair constitutes legislation on an appropriation bill. Therefore, the Chair sustains the point of order.

Reduction Must Be Certain, Not Speculative

§ 5.2 To come within the purview of the Holman rule, it must affirmatively appear that a proposition, if adopted, will retrench expenditures as a definite result, not as a probable or possible contingency.

On Mar. 7, 1940,[19] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 8745), a point of order was raised against the following provision, and after argument, the Chair ruled that the provision was not in order.

Salaries and expenses: For all necessary expenditures of the Bituminous Coal Division in carrying out the purposes of the Bituminous Coal Act of 1937, approved April 26, 1937 (50 Stat. 72) . . . $2,187,800: *Provided,* That the first paragraph of subsection "(e)" of part II of the Bituminous Coal Act of 1937 (50 Stat. 72), is amended by inserting at the end of such paragraph and before the period the following: ": *Provided further,* That the provisions of this act shall not apply to a sale of bituminous coal for the exclusive use of the United States or of any State or Territory of the United States or the District of Columbia, or any political subdivision of any of them."

MR. [ANDREW] EDMISTON [of West Virginia]: Mr. Chairman, a point of order.

THE CHAIRMAN:[20] The gentleman will state it.

MR. EDMISTON: Mr. Chairman, I make a point of order against the proviso on page 8, beginning in line 7 and ending in line 14. . . .

MR. [JAMES M.] FITZPATRICK [of New York]: Mr. Chairman, I believe this amendment comes under the Holman rule. Eight percent of all the coal handled by this Commission will be used by the Federal, State, and city governments throughout the country. About 35,000,000 tons of coal will be used, and it will cost the Federal, State, and city governments approximately $3,850,000. It will cost the Federal Government alone $1,100,000.

The appropriation in this bill is $2,187,800 for the administration of the act. It will not be necessary for the Commission to handle about 8 percent of all the coal coming under the Bituminous Coal Act if this amendment is agreed to. It is hard to say whether or not it will save $187,000, which would be about 8 percent of the total amount allowed in the bill for administering the act. In my opinion it will certainly save from $20,000 to $100,000. If that is so, it surely is germane to the act,

19. 86 CONG. REC. 2512–14, 76th Cong. 3d Sess.

20. Jere Cooper (Tenn.).

and it will save the different cities, States, and the Federal Government over $3,000,000. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, that this item is legislation is specifically set out in the language between lines 7 and 10 on page 8 in that it proposes to add a paragraph to subsection (e) of part 2 of the Bituminous Coal Act of 1937. . . .

The language carried here does none of those things which are covered by the Holman rule. It is not in any way in order, nor does it appear that the language in any way effects a saving to the Treasury of the United States. Under these circumstances it is not legislation in line with the Holman rule, but quite the contrary, and the point of order should be sustained. . . .

THE CHAIRMAN: The Chair is prepared to rule. . . .

The gentlemen speaking in opposition to the point of order have endeavored to justify the provision appearing in the bill to which reference has been made on the ground that it comes within the provisions of the so-called Holman rule. . . .

The Chair . . . invites attention to page 56 of Cannon's Procedure in the House of Representatives, and quotes as follows: . . .

> It must affirmatively appear upon the face of the bill that the proposition, if enacted, will retrench expenditures.
>
> A retrenchment of expenditure relied upon to bring a proposition within the exception to the rule prohibiting legislation on an appropriation bill must be apparent from its terms, and a retrenchment conjectural or speculative in its application, or requiring further legislation to effectuate, is not admissible.

The Chair also invites attention to another precedent directly in point to a proper consideration of the question here presented, section 1530, volume VII of Cannon's Precedents, quoting:

> The reduction of expenditure relied upon to bring a proposition within the exception to the rule prohibiting legislation on an appropriation bill must appear as a certain and necessary result and not as a probable or possible contingency.

The language of the proviso to which the point of order is made is as follows:

> *Provided*, That the first paragraph of subsection '(e)' of part II of the Bituminous Coal Act of 1937 (50 Stat. 72), is amended by inserting at the end of such paragraph and before the period the following: "*Provided further*, That the provisions of this act shall not apply to a sale of bituminous coal for the exclusive use of the United States or of any State or Territory of the United States or the District of Columbia, or any political subdivision of any of them."

It seems to the Chair that this language is legislation on a general appropriation bill. The very language itself clearly shows that the purpose sought to be accomplished is the amendment of existing law. Therefore, as it appears so clearly that it is legislation on an appropriation bill, under the provision of the rule to which the Chair has referred and based upon the previous decisions and precedents here cited, the Chair feels that this provision does not properly come within that provision of clause 2 of rule XXI, known as the Holman rule.

The Chair, therefore, sustains the point of order made by the gentleman from West Virginia as to the proviso.

Reduction Cannot Be Contingent on Event

§ 5.3 To a paragraph appropriating money for the National Bituminous Coal Commission, an amendment providing that if the act appropriated for is declared unconstitutional by the Supreme Court none of the money provided in the bill shall thereafter be spent was held not to be in order under the Holman rule [the reduction of funds not being certain] but was viewed as a limitation.

On Jan. 24, 1936,[1] the Committee of the Whole was considering H.R. 10464, a supplemental appropriation bill. The following proceedings took place:

NATIONAL BITUMINOUS COAL COMMISSION

Salaries and expenses, National Bituminous Coal Commission: For all necessary expenditures of the National Bituminous Coal Commission in performing the duties imposed upon said Commission by the Bituminous Coal Conservation Act of 1935, including personal services and rent in the District of Columbia and elsewhere, traveling expenses, contract stenographic reporting services, stationery and office supplies and equipment, printing and binding, and not to exceed $2,500 for newspapers, reference books, and periodicals, fiscal year 1936, $400,000: *Provided*, That this appropriation shall be available for obligations incurred on and after September 21, 1935, including reimbursement to other appropriations of the Department of the Interior for obligations incurred on account of said Commission. . . .

MR. [ROBERT L.] BACON [of New York]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bacon: Page 22, line 11, after the word "Commission", insert "*Provided*, That if the Bituminous Coal Conservation Act of 1935 is declared to be unconstitutional by the Supreme Court of the United States, no money herein provided shall thereafter be spent, and all money herein appropriated and unexpended shall be immediately covered back into the Treasury."

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[2] The gentleman will state his point of order.

MR. WOODRUM: This seems to me to be legislation undertaking to effect a limitation. If, of course, the Supreme Court declares the act unconstitutional, expenditures under it will cease and no money may thereafter be expended under the act.

MR. BACON: Mr. Chairman, it seems to me this is an amendment that comes within the Holman rule, that it is a limitation saving money for the Treasury of the United States.

MR. WOODRUM: But it is made contingent on something that may or may not happen.

1. 80 CONG. REC. 994, 996, 74th Cong. 2d Sess.

2. Jere Cooper (Tenn.).

MR. BACON: Yes; it is made contingent on something happening.

MR. [KENT E.] KELLER [of Minnesota]: Mr. Chairman, if the gentleman will yield, is the gentleman suggesting that the Congress should hint the unconstitutionality of a law before it is passed on by the Supreme Court?

THE CHAIRMAN: The Chair is of the opinion that the Holman rule does not necessarily apply. The Chair is of the opinion, however, that the amendment is a limitation. The purport of the amendment taken as a whole impresses the Chair as being a limitation.

MR. WOODRUM: May I call the attention of the Chair to the fact that the amendment means hereafter, any time in the future, any appropriation that hereafter may be made, and that it is not confined to the appropriation in this bill?

THE CHAIRMAN: Yes; that is the very point on which the Chair's decision turns. The Chair interprets the words used in the amendment to mean that it refers to the appropriation provided in this bill. It would, therefore, be a limitation on the appropriation here provided. The Chair, therefore, overrules the point of order.

Parliamentarian's Note: The distinction was made in § 4, supra, between (1) provisions which, although legislative in nature, are nevertheless in order under the Holman rule, and (2) provisions which are not legislative in nature but are, rather, in order as proper "limitations." Limitations are discussed in §§ 64–79, infra. As an example of those instances in which the Holman rule is cited in support of an amendment but found inapplicable, the Chair relying instead on language of limitation, see § 64.27, infra, discussing the ruling of July 16, 1979. At issue on that occasion was an amendment to a general appropriation bill prohibiting the use of funds therein to carry out any ruling of the Internal Revenue Service to the effect that taxpayers are not entitled to certain charitable deductions. The Chair first indicated that the Holman rule was inapplicable, since the certainty of a reduction in expenditures did not appear. But the amendment was held in order as a limitation, since the amendment was merely descriptive of an existing ruling already promulgated by that agency and did not require new determinations as to the applicability of the limitation to other categories of taxpayers.

Reduction Cannot Be Conjectural

§ 5.4 Language in a general appropriation bill providing that "in the discretion of the Secretary of the Interior, not to exceed $3 per diem in lieu of subsistence may be allowed to Indians actually traveling away from their

place of residence when assisting in organization work" was held to be legislation and not in order under the Holman rule.

On May 14, 1937,[3] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision, and proceedings ensued as indicated below:

The Clerk read as follows:

For expenses of organizing Indian chartered corporations, or other tribal organizations, in accordance with the provisions of the act of June 18, 1934 (48 Stat., p. 986), including personal services, purchase of equipment and supplies, not to exceed $3,000 for printing and binding, and other necessary expenses, $100,000, of which not to exceed $25,000 may be used for personal services in the District of Columbia: *Provided,* That in the discretion of the Secretary of the Interior, not to exceed $3 per diem in lieu of subsistence may be allowed to Indians actually traveling away from their place of residence when assisting in organization work.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph upon the ground that it contains legislation and changes existing law, that the provision appearing on page 16, from lines 16 to 20, is legislation not authorized by law, and I make the point of order against the entire paragraph. . . .

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, this is clearly within the Holman rule. This retrenches expenditures. The Pay and Subsistence Act authorizes $5 a day. This simply reduces the per diem to $3 a day. Therefore I feel confident that this is within the Holman rule.

MR. TABER: Mr. Chairman, I do not believe there is any authority in law for the payment of any money for Indians for traveling away from their place of residence in connection with this work. In any event the proviso imposes new duties upon the Secretary of the Interior to determine in his discretion when funds may be allowed to Indians. The chairman of the committee has not cited us to any authority providing for any funds being allotted to Indians for such travel. The imposition of these additional duties upon the Secretary of the Interior make it clearly subject to the point of order.

THE CHAIRMAN:[4] The Chair is ready to rule. The Chair thinks that the first part of the paragraph down to the proviso in line 16 on page 16 is authorized under section 9 of the statute approved June 18, 1934, and, therefore, is in order. The Chair thinks, however, so far as the proviso, line 16 down to the word "work" on line 20, is concerned, that it does not appear on the face of this proviso that it necessarily is a saving, and therefore does not come within the Holman rule and appears to be legislation on an appropriation bill. The Chair, therefore, sustains the point of order as to the proviso.

Language Must Show Unqualified and Certain Reduction

§ 5.5 Legislation proposed on an appropriation bill must

3. 81 CONG. REC. 4592, 75th Cong. 1st Sess.

4. Lister Hill (Ala.).

indicate by its terms an unqualified reduction of expenditures, if it is to be in order under the Holman rule; accordingly, a paragraph in an appropriation bill proposing the continuance of a temporary law which eliminated bonus payments for re-enlistment in the Army, Navy, and Marine Corps, was held not to be in order under the Holman rule on the ground that the language did not specifically and definitely show a retrenchment of expenditures.

On Feb. 18, 1937,[5] during consideration in the Committee of the Whole of the Treasury and Post Office Departments appropriations bill (H.R. 4720), the Chairman made the following ruling:

> THE CHAIRMAN:[6] The Chair is ready to rule on the point of order.
>
> . . . (A) point of order is made against this proviso appearing on page 27, at line 10:
>
> > *Provided further,* That section 18 of the Treasury-Post Office Appropriation Act, fiscal year 1934, is hereby continued in full force and effect during the fiscal year ending June 30, 1938, and for the purpose of making such section applicable to such latter fiscal year the figures "1934" shall be read as "1938."
>
> This section clearly continues a provision of the so-called Economy Act of the Seventy-third Congress enacted in 1933, which eliminated bonus payments for reenlistment in certain departments of the Government. This provision expired by operation of law. This section provides for its reenactment or its continuance, and is, therefore, legislation. The suggestion has been made that the point of order should be overruled because there is a retrenchment under the Holman rule.
>
> The Chair reads from Cannon's Precedents, volume 7, section 1538:
>
> > Unless an amendment proposes legislation which will retrench an expenditure with definite certainty, it is not in order under the Holman rule.
>
> And, again, section 1542 of the same volume, which is a little more clearly applicable to this particular point of order:
>
> > In construing the Holman rule the Chair may not speculate or surmise as to whether a particular provision might or might not operate to retrench an expenditure. Legislation proposed on an appropriation bill must indicate by its terms an unqualified reduction of expenditure to fall within the exception of the rule.
>
> The Chair is of the opinion that the showing made is not definite enough to be an unqualified reduction of expenditure, because it is entirely speculative as to whether there would be reenlistments. The Chair, therefore, does not believe the proviso comes within the provisions of the Holman rule. It is clearly legislation on an appropriation bill, and the Chair sustains the point of order.

Parliamentarian's Note: Where a provision attempts reductions,

5. 81 CONG. REC. 1388, 75th Cong. 1st Sess.
6. Arthur H. Greenwood (Ind.).

qualifying words in the provision may operate to make the reductions uncertain. See, for example, § 52.6, infra, in which an amendment made specified reductions in a defense appropriation bill, but added the qualification that the reductions were to be made "without impairing national defense." Such a qualification makes the Holman rule inapplicable.

Reduction Based on Budget Estimates; Speculative and Uncertain

§ 5.6 An amendment to an appropriation bill providing for percentage reductions in accounts carried in the bill, to be computed by applying percentages to the corresponding estimates in the President's budget was held to be legislation and not in order under the Holman rule inasmuch as no reduction was shown on its face and any reduction thereunder would be speculative.

On May 17, 1951,[7] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 3973), a point of order was raised and sustained against the following amendment:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Thomas B.] Curtis of Missouri: On page 58, line 5, add a new section as follows:
>
> "Sec. 410 (a) Except as hereinafter provided, reductions in each appropriation . . . contained in this act are hereby made in the total amount resulting from the application of the percentages indicated herein to the amounts of obligations for the fiscal year 1952, if any, included in the President's budget estimates on which each such appropriation . . . is based, for the following objects:
>
> "Travel, 20 percent.
>
> "Transportation of things, 10 percent. . . ."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill. It requires the exercise of additional duties not required by any other law. Further, it is not protected by the Holman rule because any retrenchment of expenditures by the amendment is purely speculative, for any cuts are to be made on the basis of the figures in the President's budget. You cannot look at the bill and at the amendment and tell whether the amendment would reduce expenditures. . . . I respectfully submit that while there may be retrenchment under the Holman rule, it has to be entirely apparent on the face of the amendment, rather than speculative. Therefore, the amendment is not saved by that rule. . . .

MR. [JOHN] TABER [of New York]: The reductions are absolutely specific

7. 97 CONG. REC. 5477, 5478, 82d Cong. 1st Sess.

in every instance, and the amount to which the reduction would apply is absolutely specific. Therefore, it is not speculative in the slightest degree. . . .

THE CHAIRMAN:[8] The Chair is prepared to rule. . . .

After very serious study on this amendment, the Chair is of the opinion that this is legislation on an appropriation bill, and the question then arises as to whether it is protected by the Holman rule. That rule requires the legislation to make a retrenchment of expenditures beyond doubt. Since this amendment operates against the budget estimates rather than the amounts in the bill, the question of retrenchment is speculative.

Therefore, the Chair holds that the amendment offered by the gentleman from Missouri (Mr. Curtis) is legislation upon an appropriation bill and the Chair sustains the point of order.

Conjectural or Speculative Reduction Not Sufficient

§ 5.7 Language in a general appropriation bill restricting the powers of the selection boards for the Navy was held to be legislation and not in order under the Holman rule.

On Aug. 17, 1937,[9] during consideration in the Committee of the Whole of the third deficiency appropriation bill (H.R. 8245), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

MR. [WILLIAM H.] SUTPHIN [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Sutphin: Page 22, after line 10, insert a new paragraph, as follows:

"That the powers and duties conferred by law or regulation upon selection boards for the Navy now established or which may be established during the remainder of the fiscal year ending June 30, 1938, shall not be exercised after the date of the enactment of this act and prior to July 1, 1938, and no recommendation or action of any such board shall be effective during the remainder of the fiscal year ending June 30, 1938."

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, I make the point of order against the amendment that it is legislation on an appropriation bill and changes existing law. . . .

MR. SUTPHIN: Mr. Chairman, I admit the amendment is legislation, but respectfully submit that it is in order under clause 2 of rule XXI, the so-called Holman rule.

That rule requires that a legislative proposition in the first place must be germane to the subject matter of the bill, and, if germane, that it shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill.

8. Aime J. Forand (R.I.).

9. 81 CONG. REC. 9172, 9173, 75th Cong. 1st Sess.

The first requisite is that the legislation must be germane to the subject matter of the bill. This is a bill, according to its title, making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1937, and for prior fiscal years, to provide urgent supplemental appropriations for the fiscal year ending June 30, 1938, and for other purposes. The truth of the matter is, the bill is very largely a bill making supplemental or additional appropriations for the fiscal year 1938—the current fiscal year.

Among other subdivisions is one pertaining to the Navy Department. Whether there be a Navy Department subdivision or not, however, or whether there be any provision under the Navy Department section dealing with personnel or not, I submit that the bill adds to appropriations already made by Congress for the fiscal year 1938 for various governmental agencies, and provides, besides, additional appropriations for such fiscal year, and that is an amendment would be in order adding to an appropriation already made for a purpose authorized by law (the question of germaneness would not lie against such an amendment), it would be just as logical to hold in order an amendment the effect of which would be to reduce an appropriation already made, to wit, the appropriation "Pay of the Navy, 1938." The Chair is acquainted with the ruling holding in order on an appropriation bill a provision repealing an appropriation already made. The amendment proposed in effect repeals in part an appropriation already made.

Now, as to the expenditure-retrenchment phase, I should like to point out, so as to remove any doubt, how the amendment would bring about a "reduction of the compensation of any person paid out of the Treasury of the United States."

Section 2 of the act of July 22, 1935 (49 Stat. 487), provides that except in time of war there shall not be in the line of the Navy on the active list, exclusive of officers carried as additional numbers, more than 58 rear admirals, 240 captains, and 515 commanders. Therefore it is self-evident that in order for a commander to be advanced to the grade of captain there must be a fewer number than 240 captains; and likewise, in order for a captain to be advanced, there must be a fewer number than 58 rear admirals.

Advancement of officers of the Navy above the grade of ensign is contingent upon selection for promotion by a board of naval officers. There are a number of laws on the subject, but it should suffice here merely to cite section 291 of title 34 of the United States Code.

On page 859 of the hearings on the naval appropriation bill for the fiscal year 1938, a table appears—inserted by the Chief of the Bureau of Navigation, the Personnel Bureau of the Navy Department—giving by fiscal years actual and estimated retirements of officers owing to nonselection for promotion over the period 1934 to 1944, both inclusive. As to that portion which is an estimate, I might say that the appropriation for pay of the Navy for the fiscal year 1938 or any fiscal year is based upon estimates of the personnel situation prepared by the Bureau responsible for the table to which I have invited the Chair's attention.

According to that table, 16 captains will be retired during the fiscal year 1938 owing to nonselection. The table shows other retirements, but I shall not go further in the interest of brevity and clarity. The enforced elimination of those 16 captains will admit of the advancement of 16 selected-for-promotion commanders, which, in turn, would admit of the advancement of a like number of selected lieutenant commanders.

Those advancements, besides bestowing additional rank, will occasion added expense. Under the Joint Services Pay Act of 1922 (sec. 1, title 37, U.S.C.), the lieutenant commanders of normal service tenure would move into a higher pay period and would become entitled to a higher rental allowance, while the advanced commanders of normal service tenure also would move into a higher pay period, but would receive a lesser subsistence allowance, considerably more than offset, however, by the increase of pay.

I might go further and say that increased rank necessitates a change of station, which entails travel expense from the old to the new station, including the expense of moving dependents, where there are dependents. That is not conjectural in any sense. The amount of the expense necessarily would be, however, because we have no way of knowing either the present or new duty stations.

So, Mr. Chairman, as to the retrenchment phase, there can be no manner of doubt that the amendment will effect a substantial saving. I only have cited advancements from two grades in the interest of brevity and clarity. The rule does not deal with the degree of saving.

MR. WOODRUM: Mr. Chairman, the amendment on its face does not show any saving or retrenchment and it is purely speculative whether or not there would be any saving. As a matter of actual experience we know that if put into operation there would not be a saving, and the amendment in order to be in order must show positively that there is to be a saving to the United States Treasury. . . .

THE CHAIRMAN:[10] the Chair is prepared to rule. This amendment takes away the powers of the board now appointed for promotion in the Navy. Therefore, clearly it is legislation on an appropriation bill. Furthermore, it is not shown on the face of the amendment that there is any retrenchment of expenditures, and in order to come within the province of the Holman rule, such retrenchment must be certain and not conjectural or speculative. The gentleman from New Jersey (Mr. Sutphin) in arguing his point of order has emphasized that speculative feature of his amendment, if it should be adopted. The Chair, therefore, sustains the point of order.

Specifying Construction Materials; Not Definite Reduction

§ 5.8 During consideration of an appropriation for continuing the construction of annex buildings for the Government Printing Office, a provision that the exterior construction material for one annex building should be as

10. Claude V. Parsons (Ill.).

contemplated in the original cost estimates for the project was held to be legislation, and not in order under the Holman rule.

On Jan. 17, 1938,[11] the Committee of the Whole was considering H.R. 8947, a Treasury and Post Office Departments appropriation bill. At one point the Clerk read as follows, and proceedings ensued as indicated below:

> Government Printing Office, annex buildings, Washington, D.C.: For continuation of construction of annex buildings for the Government Printing Office, $2,500,000; and the limit of cost for this project is hereby increased from $5,885,000, as authorized in the Second Deficiency Appropriation Act, fiscal year 1935, approved August 12, 1935, to $7,000,000: *Provided*, That the character of the exterior construction material for annex building No. 3 shall be that contemplated in the original cost estimates for such project.
>
> MR. [EUGENE B.] CROWE [of Indiana]: Mr. Chairman, I make a point of order against the proviso on page 47, beginning with the word 'Provided', in line 14, and extending to the end of line 17, that it clearly is legislation on an appropriation bill under the provisions of clause 2 of rule XXI. . . .
>
> MR. [EMMET] O'NEAL of Kentucky: Mr. Chairman, this proviso merely seeks to reduce the expenditure and is in reality, therefore, a limitation on an appropriation bill and falls within the rule.
>
> MR. CROWE: Mr. Chairman, if the gentleman will permit an interruption, there is nothing about the language, as I see it, that limits or reduces expenditures.
>
> MR. O'NEAL of Kentucky. It is a limitation.
>
> THE CHAIRMAN:[12] the Chair is ready to rule. . . .
>
> . . . [T]his proviso is legislation and to be in order it would be necessary to show that it would effect an economy or a retrenchment. This not being shown, the Chair is therefore of the opinion that the proviso is subject to the point of order.
>
> The Chair sustains the point of order.

Reappropriation of Old Funds Not Necessarily Retrenchment; Retrenchment Language Must Be Germane

§ 5.9 The payment from a fund already appropriated of a sum which would otherwise be charged against the Treasury is not a retrenchment of expenditures falling within the Holman rule exception to Rule XXI clause 2.

On Oct. 18, 1966,[13] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 18381), a point

11. 83 CONG. REC. 652, 75th Cong. 3d Sess.

12. Arthur H. Greenwood, (Ind.).

13. 112 CONG. REC. 27425, 89th Cong. 2d Sess.

of order was raised and later sustained against the following amendment:

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bow: On page 16 after line 3 add a new section as follows:

"Sec. 803. Notwithstanding any other provision, appropriations herein, as the President shall determine, shall, not later than 120 days after the date of enactment of this Act, be reduced in the aggregate by not less than $1,500,000,000 through substitution by reduction and transfer of funds previously appropriated for governmental activities that the President, within the aforementioned 120 days, shall have determined to be excess to the necessities of the services and objects for which appropriated."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against this amendment.

THE CHAIRMAN:[14] The gentleman will state his point of order.

MR. MAHON: The point of order is that the amendment goes far beyond the scope of this bill and applies to funds made available by other laws for which appropriations are not provided in the pending measure. . . .

THE CHAIRMAN: Does the gentleman from Ohio wish to be heard on the point of order?

MR. BOW: Yes, I do wish to be heard, Mr. Chairman. . . .

I believe we have changed the Holman rule today by making it relate to this bill. The previous precedents of the House have been it must not necessarily apply to this particular bill when there is a retrenchment, so we are making new precedents today.

This is a general appropriation bill affecting various agencies. Since the amendment also deals with and affects various appropriations of various agencies, it is germane.

Again, there can be no speculation as to its retrenching Federal expenditures because it reduces appropriations in this bill—in this bill by $1.5 billion and requires the President to fund activities in this bill from previously appropriated funds that are excess to the necessities of the services and objects for which appropriated.

I point out again that the Holman rule does not go along with the decision suggested by the distinguished chairman of the committee that additional duties are involved.

Under the Holman rule it is a question of retrenchment of expenditures.

The legislation in this amendment is not unrelated to the retrenchment of expenditures. Instead, it is directly instrumental in accomplishing the reduction of expenditures. Thus, the proposed retrenchment and the legislation are inseparable and must be considered together.

"Cannon's Precedents," in volume VII, 1550 and 1551, holds that an amendment may include such legislation as is directly instrumental in accomplishing the reduction of expenditures proposed. That is the precise situation with respect to this pending amendment.

Again I cite "Cannon's Precedents," volume VII, 1511, which holds that language admitted under the Holman

14. James G. O'Hara (Mich.).

rule is not restricted in its application to the pending bill, and to the June 1, 1892, decision, to which I referred before, of the Committee of the Whole and its Chairman, that an amendment was in order under the Holman rule even though it changed existing law. [Note: See comment concerning the 1892 decision in the introduction to Sec. 4, supra.]

I say, Mr. Chairman, I believe if this is held to be out of order we will be changing the precedents and the rules of the House, and we will be destroying the Holman rule.

I urge the Chair to overrule the point of order.

THE CHAIRMAN: The Chair is prepared to rule.

The amendment offered by the gentleman from Ohio specifies that appropriations herein, as the President shall determine, shall be reduced in the aggregate by not less than $1.5 billion. This reduction would be achieved by authorizing and directing the President to utilize previously appropriated funds for the activities carried in this bill.

The Chair feels that the amendment is clearly legislation. It places additional determinations and duties on the President and involves funds other than those carried in this bill.

Therefore, if the amendment were to be permitted it would have to qualify, as the gentleman has attempted to qualify it, under the Holman exception, under the Holman rule, rule XXI, clause 2.

In the opinion of the Chair, the Holman exception is inapplicable in this instance for three reasons.

First, the payment from a fund already appropriated of a sum which otherwise would be charged against the Treasury has been held not to be a retrenchment of expenditures under the Holman rule.

Chairman Hicks, of New York, ruled to the same effect when a proposition involving the Holman rule was before the House on January 26, 1921.

Second, it seems to the Chair that the language proposed by the gentleman from Ohio [Mr. Bow] authorizes the reappropriation of unexpended balances, a practice prohibited by clause 5 of rule XXI.

Third, the amendment goes to funds other than those carried in this bill and is not germane.

With respect to the latter point and the citation that has been given by the gentleman from Ohio, which is found in the precedents of the House, volume VII, 1511, the Chair will note that the proposition reduced the number of Army officers and provided the method by which the reduction should be accomplished. It was an amendment, as it appears in the citation, to a War Department appropriation bill and was therefore germane in spite of whatever the general proposition in the heading may have stated.

For the reasons given, the Chair will sustain the point of order made by the gentleman from Texas.

Reimbursement to Treasury From Receipts

§ 5.10 Language in a general appropriation bill providing that all moneys hereafter received by the United States in connection with any irri-

gation project constructed by the federal government shall be covered into the general fund until such fund has been reimbursed for allocations to the project, was held to be legislation on an appropriation bill and not to come within the provisions of the Holman rule.

On Nov. 29, 1945,[15] during consideration in the Committee of the Whole of the first deficiency appropriation bill (H.R. 4805), a point of order was raised against the following provision:

> Total, general fund, construction, $42,765,000: *Provided*, That all moneys hereafter received by the United States in connection with any irrigation project . . . shall be covered into the general fund until the general fund has been reimbursed in full for allocations and appropriations made to such project from the general fund. . . .
>
> MR. [J. W.] ROBINSON [of Utah]: Mr. Chairman, I make the point of order against the proviso commencing on page 30, line 15, and continuing on page 31 down to the end of line 6 that it is legislation on an appropriation bill.
>
> MR. [CLARENCE] CANNON [of Missouri]: Mr. Chairman, the committee concedes the point of order. . . .
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I desire to be heard on the point of order. It is manifest that this item requires that funds received shall be covered into the general fund of the Treasury until the general fund has been fully reimbursed for the amount that it has expended. In my opinion that is an order under the Holman rule. It saves money to the Treasury on the face of the document.
>
> THE CHAIRMAN:[16] The Chair thinks it is clearly legislation on an appropriation bill, and so holds. The point of order is sustained.

Costs Shifted From Government to Private Party

§ 5.11 Language in the District of Columbia appropriation bill providing that in regard to the building of an underpass at Dupont Circle, the cost of changing or removing street-railway tracks by the street-railway company shall be borne by such company and providing further that the company shall install other equipment at its own expense, was held not to come within the provisions of the Holman rule.

On Feb. 1, 1938,[17] during consideration in the Committee of the Whole of the District of Columbia appropriation bill (H.R. 9181), a point of order was raised against the following provision, and pro-

15. 91 CONG. REC. 11192, 11193, 79th Cong. 1st Sess.

16. R. Ewing Thomason (Tex.).

17. 83 CONG. REC. 1379, 1380, 75th Cong. 3d Sess.

ceedings ensued as indicated below:

For the construction of an underpass at Dupont Circle . . . $480,000: *Provided,* That the cost of the necessary changes, removal, construction, and reconstruction of the street-railway tracks and appurtenances, to be performed by the street-railway company, including paving within the streetcar track area, shall be borne by the street-railway company owning or operating over the existing tracks: *Provided further,* That the funds herein appropriated shall be available for construction, at time of roadway paving, of suitable streetcar-loading platforms, and the street-railway company shall, at its own expense, furnish and install approved lighting equipment, signs, and so forth, in accordance with plans to be approved by the Public Utilities Commission and shall, at its own expense, operate and maintain such equipment.

MR. [VINCENT L.] PALMISANO [of Maryland]: Mr. Chairman, I make the point of order to the proviso on page 76, line 7, down to and including the word "equipment" in line 20. It is legislation on an appropriation bill.

THE CHAIRMAN:[18] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, I hope the gentleman will reserve the point of order so that I can ask him a question.

MR. PALMISANO: I reserve the point of order.

MR. COLLINS: Mr. Chairman, the provision to which the gentleman makes the point of order imposes upon the street-railway company a part of the expense of carrying on this work, and with the elimination of the language that the gentleman seeks to eliminate it means that the cost of the whole work will be imposed upon the District of Columbia. I am certain that the gentleman does not want to do that, because the streetcar company will be benefited by this underpass. . . .

THE CHAIRMAN: The Chair has examined carefully the language of the bill to which the point of order is directed. The Holman rule could not possibly apply in this case because the language does not retrench expenditures in one of the methods set forth in the rule, but is legislative in character and, therefore, prohibited in an appropriation bill.

The Chair sustains the point of order.

Authority to Terminate Employment

§ 5.12 Language in a general appropriation bill providing that the Secretary of State may, in his discretion, terminate the employment of any employee of the Department of State or of the Foreign Service whenever he shall deem such termination necessary or advisable in the interests of the United States, was held to be legislation on an appropriation bill and not to be within the provisions of the Holman rule.

18. William J. Driver (Ark.).

On Apr. 20, 1950,[19] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 7786), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 104. Notwithstanding the provisions of section 6 of the act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Secretary of State may, in his absolute discretion, during the current fiscal year, terminate the employment of any officer or employee of the Department of State or of the Foreign Service of the United States whenever he shall deem such termination necessary or advisable in the interests of the United States. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, a point of order. The language of section 104 gives to the Secretary of State—and I quote from the section—"in his absolute discretion" power to terminate the employment of any employee. I do not believe we have ever had legislation in the entire history of this Nation which contained this language "absolute discretion." . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, in my opinion this will result in a saving. It is in accordance with the provisions of the Holman rule. When the power authorized in this language is exercised and the Secretary terminates the employment of any officer or employee in his absolute discretion that will result in a saving. That will save money and is in order.

THE CHAIRMAN:[20] . . . The gentleman from New York [Mr. Marcantonio] has made a point of order against the language appearing in section 104 on page 46 of the bill on the ground that it is legislation on an appropriation bill. The Chair has examined the language. The Chair invites attention to the fact that the language does confer definite authority and requires certain acts on the part of the Secretary of State. In response to the argument offered by the gentleman from New York [Mr. Taber] as to the application of the Holman rule it is clearly shown by the precedents and decisions of the House that the saving must be apparent and definite on its face in the language of the bill in order for the Holman rule to apply. Certainly an examination of the language in question clearly shows that any saving would be speculative. In view of the long line of precedents and decisions dealing with the question of legislation on an appropriation bill, which is clearly prohibited under the rules of the House, the Chair has no alternative other than to sustain the point of order.

Reduction in Existing Contract Authorization

§ 5.13 Language in an appropriation bill seeking to change a contract authorization contained in a previous appropriation bill passed by another Congress was held to be legislation and not a retrenchment of funds in the bill.

On Apr. 25, 1947,[1] during consideration in the Committee of the

19. 96 CONG. REC. 5480, 5481, 81st Cong. 2d Sess.

20. Jere Cooper (Tenn.).

1. 93 CONG. REC. 4098, 80th Cong. 1st Sess.

Whole of the Department of the Interior appropriation bill for fiscal year 1948 (H.R. 3123), the following point of order was raised:

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I wish to reserve the point of order first in order that I may get some information before I make the point of order finally, and that is with respect to the language which appears at the bottom of page 51, which reads as follows:

> *Provided further,* That the contract authorization of $15,000,000 contained in the Interior Department Appropriation Act, fiscal year 1946, is hereby reduced to $9,750,000.

My point of order, Mr. Chairman, is that that is legislation amending a previous act and not within the purview of this bill making appropriations for fiscal 1948. It constitutes legislation on an appropriation bill for it destroys existing legislation.

Before I make the point of order, may I ask the chairman of the committee what the reason is for carrying that language? I feel that the development of the synthetic liquid fuel program is very essential to national defense and is probably the cheapest money we can spend in that direction.

MR. [ROBERT F.] JONES of Ohio: The purpose of this language is to limit the amount to be expended further on this project to the authorization provided in the basic act. In other words, the amount remaining after this appropriation will be the amount of $9,750,000, and will tie the entire appropriation to the basic authorization.

MR. CASE of South Dakota: What was the reason, then, for the increase of the authorization to $15,000,000 in the act of 1946 and establishment of contract authority?

MR. JONES of Ohio: That was to tie the appropriations to the $30,000,000 authorization.

MR. CASE of South Dakota: Mr. Chairman, having introduced a bill which seeks to accomplish about that very thing, I am constrained to make the point of order and do make the point of order.

THE CHAIRMAN:[2] Does the gentleman from Ohio desire to be heard on the point of order?

MR. JONES of Ohio: Mr. Chairman, the only purpose of the language is to limit the amount appropriated over all to the $30,000,000 authorization. It seems to me it is merely a restatement of the basic law and clearly in order under the Holman rule because on its face it saves money.

THE CHAIRMAN: This language changes a contract authorization contained in a previous appropriation bill passed by another Congress. The Chair sustains the point of order.

Use of Total Appropriation; Language Precluding Future Supplemental Funding

§ 5.14 A provision in the District of Columbia appropriation bill providing that the appropriation for public assistance shall be so administered as to constitute the total amount that will be utilized during such fiscal year

2. Earl C. Michener (Mich.).

for such purposes was held to place additional duties upon the commissioners and therefore legislation on an appropriation bill and not in order.

On Feb. 1, 1938,[3] the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. The following proceedings took place:

PUBLIC ASSISTANCE

For the purpose of affording relief to residents of the District of Columbia who are unemployed or otherwise in distress because of the existing emergency, to be expended by the Board of Public Welfare of the District of Columbia by employment and direct relief, in the discretion of the Board of Commissioners and under rules and regulations to be prescribed by the board and without regard to the provisions of any other law, payable from the revenues of the District of Columbia, $900,000, and not to exceed 7 1/2 percent of this appropriation and of Federal grants reimbursed under this appropriation shall be expended for personal services: *Provided,* That all auditing, disbursing, and accounting for funds administered through the Public Assistance Division of the Board of Public Welfare, including all employees engaged in such work and records relating thereto, shall be under the supervision and control of the Auditor of the District of Columbia: *Provided further,* That this appropriation shall be so apportioned and distributed by the Commissioners over the fiscal year ending June 30, 1939, and shall be so administered, during such fiscal year, as to constitute the total amount that will be utilized during such fiscal year for such purposes: *Provided further,* That not more than $75 per month shall be paid therefrom to any one family.

MR. [GERALD R.] BOILEAU [of Wisconsin]: Mr. Chairman, I make a point of order against the proviso appearing on page 58, line 2, after the word "Columbia' and ending on line 7 with the word "purposes."

I make the point of order that this proviso is legislation on an appropriation bill. . . .

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, the language about which the gentleman complains reads as follows:

> *Provided further,* That this appropriation shall be so apportioned and distributed by the Commissioners over the fiscal year ending June 30, 1939, and shall be so administered during such fiscal year as to constitute the total amount that will be utilized during such fiscal year for such purposes.

Unquestionably that is a limitation upon an appropriation and therefore comes within the rules of the House. The object is to save money, and the provision shows on its face that it will save money. . . .

THE CHAIRMAN:[4] The Chair has examined the language employed very carefully, and if I am correct in my construction of that language, it seeks to impose an additional burden upon

3. 83 CONG. REC. 1364, 75th Cong. 3d Sess.

4. William J. Driver (Ark.).

the Commissioners who are charged with the duty of administering the fund sought to be appropriated. In addition to that, there is nothing apparent in the language of the section that will result in a saving. The inference that we have from the statement of the chairman of the Subcommittee on Appropriations is not sufficient to bring it within the rule that a saving will be effected.

The Chair is therefore of the opinion that the point of order is well taken and so rules.

Nongermane Amendment; Unrelated to Funding in Bill

§ 5.15 To a bill making appropriations to supply deficiencies, an amendment proposing to change existing law by repealing that part of a retirement act relating to the President, Vice President, and Members of Congress, was held not germane and not in order under the Holman rule.

On Feb. 9, 1942,[5] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 6548), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

Amendment offered by Mr. [Donald H.] McLean [of New Jersey]: Page 49, after line 2, add a new section, as follows:

"Sec. 303. Public Law No. 411, Seventy-seventh Congress, chapter 16, second session, be, and is hereby, amended by adding at the end thereof the following: '*Provided*, That nothing in this act shall be construed to include within its provisions of the Civil Service Retirement Act the President, Vice President, members of the Senate, and the House of Representatives.'"

And on page 49, line 3, strike out "303" and insert "304."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order that the amendment is not germane to the bill, that it is legislation on an appropriation bill, and is out of order. . . .

MR. MCLEAN: I was laying the foundation for my argument.

If the Chair will refer to page 8 of this bill, he will there find the section to which I have referred suspending a provision of the Selective Service Act. That is clearly legislation on this appropriation bill and comparable to my amendment. There are exceptions to the rule that an appropriation bill cannot carry legislation, and I call the Chair's attention to the Holman rule. That rule provides that if the legislation would result in the saving of expenditures it is not subject to a point of order. In the Fifty-second Congress it was decided—

> An amendment to the pension appropriation bill tending to increase the class of persons prohibited from the benefit of the pension laws is in order because its effect would be to reduce expenditures.

The amendment which I have introduced would reduce expenditures. It

5. 88 CONG. REC. 1157, 77th Cong. 2d Sess. For a discussion of the germaneness rule generally, see Ch. 28, infra.

excludes from the benefits of the Civil Service Retirement Act the President, the Vice President, the Senators, and Members of the House of Representatives.

This is the first opportunity we have had to correct our blunder, and we ought to take advantage of it.

THE CHAIRMAN:[6] The Chair is ready to rule.

The amendment offered by the gentleman from New Jersey is clearly not germane to the bill under consideration. If it were germane it would be legislation on an appropriation bill. It does not in any way retrench expenditures under this bill. For two very good reasons, therefore, the Chair sustains the point of order.

Denial of Status to Aliens Not Holman Retrenchment

§ 5.16 Language in an appropriation bill providing "that no alien employed on the Canal Zone may secure United States civil-service status," was held to be legislation on an appropriation bill and not within the exception of the Holman rule.

On July 2, 1947,[7] During consideration in the Committee of the Whole of the War Department civil functions appropriations, a point of order was raised against a provision, as follows:

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, I make a point of order against the language on page 17, line 18, subdivision (7), "that no alien employed on the Canal Zone may secure United States civil-service status," is legislation on an appropriation bill in that it clearly changes existing law.

The existing law, Mr. Chairman, is found in the treaty which was signed between the Republic of Panama and the Government of the United States. The treaty was ratified by the Senate of the United States in 1939. . . .

In February of this year an Executive order was issued by the President modifying the civil-service rules. One portion of that Executive order distinctly permits Panamanians to take civil service examinations and be enrolled in the United States Civil Service. Consequently, this language against which I have raised a point of order forbids Panamanian citizens from securing civil-service status. Thus, it changes the law as set forth in the treaty and changes the law as set out in the Executive order. It is clearly legislation on an appropriation bill.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, if I may be heard on the point of order, the first part of that section reads as follows:

> No part of any appropriation contained in this act shall be used directly or indirectly, except for temporary employment in case of emergency, for the payment of any civilian for services rendered by him on the Canal Zone while occupying a skilled, technical, clerical, administrative, executive, or supervisory position unless such person is a citizen of the United States of America or of the Republic of Panama: *Provided, however—*

Then going to subdivision (7)—

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6. Howard W. Smith (Va.).

7. 93 CONG. REC. 8171, 8172, 80th Cong. 1st Sess.

that no alien employed on the Canal Zone may secure United States civil-service status.

Under the Holman rule, even legislation on an appropriation bill is permitted if it succeeds in the reduction of an expenditure. If aliens are to be given United States civil-service status, it will increase the liability of the United States for the payment of civil-service retirement and other provisions of that sort. Consequently, it seems to me that in that sense the inclusion of this language is a protection of the Treasury of the United States and may be permissible under the Holman rule. Clause 7, of course, is directly related to the "provided, however," and the language of limitation in the first part of the section.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I would like to call the Chairman's attention to the fact that an act of Congress takes precedent over a treaty or even an Executive order in the form of a treaty. So this language is clearly in order. Congress has the right to enact this legislation.

THE CHAIRMAN:[8] The Chair is ready to rule. So far as the remark just made by the gentleman from Mississippi is concerned, as the Chair remembers, it is in the last analysis an act of Congress, whether it be a treaty or whether it be a law. Therefore, that remark is not germane to the question now before the Committee.

As far as the statement of the gentleman from South Dakota [Mr. Case] is concerned, regarding the Holman rule, at most, this suggests that there might be a saving; there is the possibility of a saving. The Holman rule is very clear that legislation must in its language show an absolute saving. Therefore, that point would not be of any value in sustaining the position which the gentleman takes.

Section 7 provides that no alien employed on the Canal Zone may secure United States civil-service status. So far as the Chair has been advised, there is no law anywhere providing for that very thing, excepting this legislation found in an appropriation bill.

The Chair therefore sustains the point of order.

Holman Exception Distinguished From Limitation

§ 5.17 The Holman rule is applicable only where language in a general appropriation bill "changes existing law" and also has the direct effect of retrenching the amount of funds in the bill; it is not applicable where the language does not constitute legislation but is merely a negative limitation citing, without changing, the applicability of existing law.

On June 18, 1980,[9] an amendment to a general appropriation bill denying availability of funds therein to pay certain benefits to persons simultaneously entitled by law to other benefits, or in

8. Earl C. Michener (Mich.).

9. 126 CONG. REC. 15354-56, 96th Cong. 2d Sess.

amounts in excess of those other entitlement levels, was held in order as a limitation, since existing law already required executive officials to determine whether and to what extent recipients of funds contained in the bill were also receiving those other entitlement benefits. In the course of its ruling, the Chair stated that the Holman rule was not applicable to the provision in question. The proceedings are discussed in § 52.36, infra.

Hypothetical "Net" Saving

§ 5.18 Where existing law directed a federal official to provide for the sale of certain government property to private organizations in "necessary" amounts, but did not require that all such property shall be distributed by sale, an amendment to a general appropriation bill providing that no such property shall be withheld from distribution from qualifying purchasers was ruled out as legislation requiring disposal of all property and restricting discretionary authority to determine "necessary" amounts and not constituting (as required by the Holman rule) a certain retrenchment of funds in the bill.

On Aug. 7, 1978,[10] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 13635), a point of order was sustained against the following amendment:

> The Clerk read as follows:
>
> Amendment offered by Mr. John T. Myers [of Indiana]: On page 8, after line 10, add the following new section:
>
> None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses during the current fiscal year in connection with the demilitarization of any arms as advertised by the Department of Defense, Defense Logistics Agency sale number 31–8118 issued January 24, 1978, and listed as "no longer needed by the Federal Government" and that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308. . . .
>
> MR. [ABNER J.] MIKVA [of Illinois]: Mr. Chairman, I make a point of order on the amendment on the ground that I believe that it is legislation within a general appropriation bill and, therefore, violates the rules of the House. . . .
>
> MR. JOHN T. MYERS: Mr. Chairman, this is a simple limitation amendment. It merely limits the Secretary of the Treasury to continue to carry out existing law. It does not provide any new law. It simply says that the Secretary of the Treasury shall carry out the prevailing, existing law. . . .

10. 124 CONG. REC. 24707, 24708, 95th Cong. 2d Sess.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, rule 21, clause 2, of the Rules of the House (House Rules and Manual pages 426–427) specifies that an amendment to an appropriation bill is in order if it meets certain tests, such as:

First. It must be germane;

Second. It must be negative in nature;

Third. It must show retrenchment on its face;

Fourth. It must impose no additional or affirmative duties or amend existing law.

First. (The amendment) is germane. As the amendment applies to the distribution of arms by the Defense Logistics Agency, it is not exclusively an Army of civilian marksmanship amendment, so should not be placed elsewhere in the bill. . . .

Second. It is negative in nature. It limits expenditure of funds by the Defense Department by prohibiting the destruction and scrapping of arms which qualify for sale through the civilian marksmanship program, which is a division of the executive created by statute.

Third. It shows retrenchment on its face. Retrenchment is demonstrated in that the Department of Defense is prohibited from expending funds to destroy surplus military arms, and that the arms previously earmarked for destruction will be made available in accordance with existing statute. . . . The House, in adding this amendment, will secure additional funds for the Treasury which the General Accounting Office has determined is adequate to pay costs of handling the arms. For example, the M–1 rifles are to be sold at a cost of $110 each. These are the arms most utilized by the civilian marksmanship program. The Defense Department will not be required to spend additional funds to process the sale of additional arms. . . .

Fourth. [The amendment] does not impose additional or affirmative duties or amend existing law. . . .

Regulations issued . . . AR 725–1 and AR 920–20 provide for the issuance of arms by application and qualification through the Director of Civilian Marksmanship. The DCM shall then submit sale orders for the Armament Readiness Military Command (ARCOM) to fill the requests of these qualified civilians. Thus, the amendment simply requires the performance of duties already imposed by the Army's own regulation. . . .

MR. MIKVA: MR. Chairman, I particularly call attention of the Chair to the second half of the amendment, which imposes an affirmative duty on the Secretary, saying that such arms shall not be withheld from distribution to purchasers who qualify for purchase of said arms pursuant to title 10, United States Code, section 4308.

Under the general existing law, there are all kinds of discretions that are allowed to the Secretary to decide whether or not such arms shall be distributed. Under this amendment, the existing law is to be changed and those arms may not be withheld. The practical purpose is to turn lose 400,000 to 500,000 rifles into the body politic.

But the parliamentary effect is clearly to change the existing law under which the Secretary can exercise all kinds of discretion in deciding whether or not those arms will be distributed.

Under this amendment it not only limits the fact that the funds may be obligated but it specifically goes on to affirmatively direct the Secretary to distribute such arms under title X, which is an affirmative obligation, which is exactly the kind of obligation the rules prohibit, and I renew my point of order. . . .

THE CHAIRMAN:[11] The Chair is ready to rule.

The Chair has read the section to which the gentleman refers, title 10, United States Code, section 4308, and is of the opinion that it does not require that all firearms be distributed to qualified purchasers. The Chair further feels that while the first part of the amendment is a limitation, the last part of the amendment is a curtailment of Executive discretion, and the Chair sustains the point of order.

§ 6. Amendments Between the Houses

A rule of the House[12] prohibits its conferees from agreeing to certain Senate amendments to general appropriation bills absent specific authority conferred by the House. The rule provides:

> No amendment of the Senate to a general appropriation bill which would be in violation of the provisions of clause 2 of rule XXI,[13] if said amendment had originated in the House, nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.[14]

Amendments to Senate Amendment

§ 6.1 When the House was considering a Senate amendment to a general appropriation bill proposing an expenditure not authorized by law, it was held to be in order in the House to amend such Senate amendment by germane amendments that were legislative in nature.

On Feb. 8, 1937,[15] the House was considering a Senate amend-

11. Daniel D. Rostenkowski (Ill.).

12. Rule XX clause 2, *House Rules and Manual* § 829 (1973). For further discussion of issues arising between the House and Senate with respect to appropriation bills generally, and appropriations on legislative bills, see Ch. 25 § 13, supra. See also Ch. 32, House-Senate Relations, infra; Ch. 33, House-Senate Conferences, infra. And, see Ch. 13, Powers and Prerogatives of the House, supra.

13. See § 1, supra, for discussion of Rule XXI clause 2.

14. Managers may be authorized to agree to an appropriation by a resolution reported from the Committee on Rules. See 7 Cannon's Precedents § 1577.

15. 81 CONG. REC. 975, 976, 75th Cong. 1st Sess.